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# Monitoring of Sub Contractors and Supply Chain Fees and Charges Policy

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<b>Policy number:</b>	BP235	<b>Originator:</b>	Vice Principal HE and Skills
<b>SharePoint:</b>	Policies and Procedures		
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<b>Summary available:</b>	NO		

**This document can be made available in other formats,  
on request**

## 1 The Business Case and Rationale for Subcontracting

This policy is reviewed annually and agreed and signed off at SLT and the Corporation Board. Newbury College will consider partnership opportunities with high quality sub-contractors who enable the college to expand its current provision or diversify our provision in line with the Strategic Plan.

From 2023-24 the decision has been made by SLT to deliver provision 'in-house' and not to subcontract across any funding stream. The main decision for this is to focus on local provision that meets local and regional skills needs.

If the strategic decision not to subcontract changes, then the following detail will apply:

Subcontracted provision will only be considered if it meets one of the following objectives:

- Enhance the opportunities available to young people and adults
- Fill gaps in niche or expert provision, or provide better access to training facilities
- Support better geographical access for learners
- Offer an entry point for a disadvantaged group
- Support individuals who share protected characteristics, where there might otherwise be gaps

An additional incentive is to utilise the strengths and qualities of the subcontractor's provision and to incorporate this into our quality improvement plan to raise the quality of teaching and learning across all areas. Newbury College also provides support and training opportunities to improve the quality of teaching and learning for learner programmes delivered by our delivery sub-contractors. Regular monitoring of the subcontractor's provision and subsequent action plans ensure that a high quality of teaching and learning is maintained by all sub-contractors. Subcontracting must enhance the quality of our learner offer and subcontracting will not be agreed if it is only to meet short term funding objectives.

If more than 25% of the learners (based on ILR data) for AEB or 16 to 19 is forecast for subcontracting and it is not considered that this can be reduced to less than this, an exemption case would be submitted to the ESFA to obtain ESFA's agreement. This will be reviewed on an annual basis.

Newbury College have staff with, the knowledge, skills, and experience (for example, with appropriate qualifications or experience, as evidenced by their CVs) within the organisation to:

- successfully select subcontractors in line with the requirements of these funding rules and your contract with ESFA, and
- contract with and actively manage those subcontractors
- have robust procedures in place to ensure subcontracting does not lead to the inadvertent funding of extremist organisations

Those charged with governance/board of directors and the accounting officer (senior responsible person) have appropriate qualifications and experience to determine the subcontractors as being of high quality and low risk to public funds.

This policy is made available to all sub-contractors as part of the tender process in addition to being published on the college website prior to agreeing any new sub-contracted provision.

## 2 Due Diligence

The first stage in the process of setting up a new arrangement between a subcontractor and Newbury College or agreeing a new annual contract with a current subcontractor is Due Diligence. After an initial meeting, where the potential sub-contractor is provided with a copy/ link to this policy, the subcontractor will be asked to provide the documents stated in the due diligence letter (Appendix A).

A report is produced on the results of the due diligence process (Appendix B) and sent to the subcontractor, either with actions to address or an invitation to attend a further meeting to discuss the contract proposal.

Due diligence is managed by the Vice Principal HE and Skills as the SLT delegated member for Subcontracting. The Director of Finance will complete the financial sections and the Vice Principal Central Services will complete the staffing sections. Due diligence will be carried out when appointing new delivery subcontractors and on an annual basis with established subcontractors.

Newbury College will only use subcontractors for the delivery of provision if they have staff with the knowledge, skills and experience (appropriate qualifications and experience as evidenced by their CVs) within the organisation to:

- Successfully select subcontractors in line with the requirements of the relevant funding rules and Newbury College's contract with the ESFA
- Contract and actively manage those subcontractors

The due diligence process identifies the support required and associated costs and management fees for delivery sub-contractors. The report will clarify how the management costs are reasonable and proportionate to the delivery of high quality teaching and learning and how each cost contributes to the delivery of high quality learning. The report highlights the rationale for sub-contracting.

The due diligence will review the circumstances and criteria in the funding higher risk organisations and subcontractors policy ("funding higher risk organisations policy") in which ESFA would consider a provider (including subcontractors) to be a high-risk provider and as a result will not consider funding or agree applications and/or bids for funding from them.

Due diligence will apply the criteria in the funding higher risk organisations policy setting out when a provider is high risk and therefore not eligible to be appointed as a subcontractor. Contracts with any subcontractors will enable Newbury College to take appropriate action in line with the funding higher risk organisations policy, not only if it is deemed to be necessary, but also where ESFA requires the College to take appropriate action. Subcontractors must have the financial ability to deliver the requirements of the subcontract and the following link will be used for guidance in assessing the financial assessment of the subcontractor: *financial health guidance for organisations contracting with or applying to ESFA on Gov.UK*.

Newbury College will not contract with brand new companies who are yet to submit their first statutory accounts, unless they are able to thoroughly verify the new company's financial capability

Subcontracts will not be awarded or renewed to any organisation if:

- they have an above-average risk warning from a credit agency
- They have passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed
- Their statutory accounts are overdue

If a subcontractor does not meet, or continue to meet, the minimum due diligence and financial health checks required, Newbury College will suspend the right of the subcontractor to recruit new learners. Depending on the circumstances the contract may be terminated.

In addition to the information provided by the subcontractor on the due diligence form, Newbury College will also refer to the list of declared subcontractors to determine the subcontracts held with other organisations. For subcontractors in receipt of an aggregate subcontract value of ESFA funding for delivering education and training that totals £100,000 or more for each funding year, or where the subcontract from Newbury College would take the total value of such subcontracts to £100,000 or more, the results of the due diligence will be shared with the ESFA. The ESFA will then undertake internal high-risk checks to determine if the subcontractor falls in scope of the Funding higher risk organisations policy. If they do, the College may be required to end the subcontract with that organisation, and it may restrict the future use of subcontractors.

Where a subcontractor has a subcontract valued at £500,000 or greater in any funding year, ESFA will carry out additional financial health checks directly with the subcontractor, in line with financial health guidance for organisations contracting with or applying to the ESFA. Newbury College will be required to supply ESFA with the relevant documents. If the subcontractor fails ESFA financial health checks no new subcontracted starts with the subcontractor will be agreed.

#### Distance subcontracted delivery

Only in exceptional circumstances will Newbury College make subcontracting arrangements for delivery outside its normal recruitment area. ('normal recruitment area' is defined in the funding regulations guidance).

Any new arrangements for distance subcontracting will need to be agreed by the ESFA and due diligence will not be approved until agreement is granted.

Where the College enters into distance subcontracting relationships, the same level of management, control and safeguarding of learners will be carried out to provide assurance that all the necessary rules are being met.

The due diligence report will be submitted to SLT for approval. SLT will be asked to confirm the need to subcontract and that the selection of any new subcontractor has been carried out fairly, transparently and in open competition. The due diligence must demonstrate the subcontractor's capacity and capability to deliver the contractual requirements of the contracted programme.

Due Diligence reports will be approved by the accounting officer (Principal and CEO) at SLT and by the Board of Corporation to ensure that subcontractors are of high quality and low risk to public funds.

As part of the Due Diligence process all subcontractors are required to declare any links by the organisation or any employees to extremist organisations and robust procedures are in place to prevent the inadvertent funding of extremist organisations.

### **3 Selection and Procurement of Subcontractors**

The ESFA will be notified ([subcontracting.requirements@education.gov.uk](mailto:subcontracting.requirements@education.gov.uk)) about any circumstances which might lead to an actual or perceived conflict of interest. For example, where Newbury College and proposed subcontractors have directors or beneficial owners in common. If this is the case:

- Contracts will not be awarded without written ESFA permission
- Evidence will be kept of both the request and ESFA reply

Contracts will not be agreed without written ESFA permission, to any institution or organisation which is not permitted to recruit 16 to 18 year old students and/or 19 to 25 year old high needs students (HNS), for example an 11 to 16 school.

All current and relevant procurement regulations will be adhered to. Contracting Authorities, must comply with the Public Contracts Regulations 2015 (“the 2015 Regulations”). The College will ensure that subcontractor(s) are selected fairly transparently and without discrimination and potential subcontractors have sufficient capacity, quality and business standing to deliver the provision that is being subcontracted.

Contracting authorities as defined by the 2015 Regulations, must comply with the provisions of the 2015 Regulations when selecting and awarding service delivery to a subcontractor. Each organisation must make its own determination about whether it is a contracting authority or not, taking legal advice, as necessary.

In accordance with the College’s agreement with the ESFA no agreement will be entered into for brokerage.

No artificial distinctions or distortions should be made when describing delivery arrangements in order to avoid the application of any ESFA rules.

This does not apply to Newbury College, but if an institution has not previously subcontracted ESFA provision they must seek and obtain written approval from the ESFA before awarding a contract.

Subcontracts for the delivery of ESFA funded provision will only be awarded to legal entities. If the legal entity is a registered company, it must be recorded as ‘active’ on the Companies House database. Subcontractors must register on the UK Register of Learning Providers (UKRLP) and hold a valid UK Provider Reference Number (UKPRN) to be eligible to receive ESFA funding, either directly or through a subcontracting arrangement.

No subcontracts will be agreed where this would require the College to subcontract ESFA funding to a second level of subcontractor. All subcontractors must have a direct subcontract with Newbury College. You may have more than one subcontractor, but each

subcontractor must have a direct subcontract with the College. The restriction on the level of subcontracting is in place to ensure that:

- lead providers retain clear and transparent accountability for the quality of training provision
- proper and appropriate controls are in place to manage the learner experience
- value for money is achieved by mitigating funding being utilised for multiple tiers of subcontractor management
- learners supported through subcontracting arrangements know about Newbury College and the subcontractors roles and responsibilities in providing the learning.

#### Subcontractors with contracts with multiple institutions

Due diligence checks will establish whether any subcontractors work with other directly funded ESFA lead providers.

Learners must not be enrolled at more than one directly funded ESFA provider. The College will carry out checks to ensure that they are the only provider that is claiming ESFA funding for the learners allocated to the College.

Newbury College, as the lead provider will claim all the funding for an ESFA-funded learner assigned to the college. When a learner is attending different directly funded providers for different components of their programme of study, Newbury College will record all these components and indicate on the individualised learner record or school census which elements are delivered via a subcontracting arrangement.

All individual students will have their correct unique learner number recorded on the College ILR.

Learners enrolled on a Diploma in Sporting Excellence in addition to their main study programme are exceptions and may have more than one provider.

#### **4 Contract**

A draft contract will be written following a successful due diligence process. The draft contract will be seen and agreed by both parties and agreed by SLT. If the contract value with any one party exceeds £100,000, the contract will need to be agreed by SLT and Newbury College Corporation will be notified at their next scheduled meeting. No students will be enrolled until the contract has been signed by both parties.

The contract details the contingency plan if the subcontractor is unable to deliver, safeguarding and Prevent processes, management costs, quality monitoring activities and costs and other supporting activities agreed between the parties. Payment terms, timing of payments and the process for invoicing is clearly included in the contract.

#### **5 Initial Advice and Guidance**

The subcontractor is responsible for ensuring that all students have been given the correct initial advice and guidance relating to their programme of study. All potential subcontractors must hold Matrix accreditation; if they are unable to prove this as part of the due diligence process, they will be contracted to achieve Matrix accreditation within 6 months of contracting. They must be satisfied that the student is eligible for the course and that they are capable of completing the programme successfully. Students must also be informed of their link to Newbury College and the services that they are able to access from us.

## **6 Skill Scans**

For Apprenticeship programmes potential students must undergo an initial assessment which identifies any additional learning needs, English and Maths requirements and skill scan relating to the skills, knowledge and behaviours required for the qualification. Assessment tools used for Maths and English must be up to date and based on the national literacy and numeracy standards. Sub-contractors delivering AEB funded programmes must ensure that potential students who identify additional learning needs are assessed and supported on their programme of study.

## **7 Eligibility**

Subcontractors must ensure that the eligibility of all students has been checked against the current year's Eligibility and Contribution Rules before they are enrolled on a programme of study. Newbury Colleges requires all students to complete a Newbury College enrolment form. For Apprenticeship programmes the ILP, training plan, apprenticeship agreement and employer agreement must also be completed. A member of Newbury College staff checks that this information is correct, if any discrepancies or omissions are found the student will not be enrolled onto the system and the sub-contractor will be asked to resolve the issue.

## **8 Enrolling Students**

The following documents are required by Newbury College to enrol students onto their programme:

- Fully completed Newbury College Enrolment Form signed by the student and provider at the start of the programme (16 – 19 Provision, Adult Skills Fund (ASF) and Apprenticeship - the enrolment form will be provided to the subcontractor for use once contracts are signed. The enrolment form and supporting evidence is used to confirm that the learner is eligible for ESFA funding.
- Evidence of benefits or supporting evidence to validate claims for full funding (All funding streams)
- Learning Agreement that is signed at the time of enrolment; the agreement must reflect the outcome of initial guidance and assessment for an individual student and set out their study programme and any learning support to be provided. (All funding streams)
- Fully completed commitment statements signed by the student, provider and employer (Apprenticeship)
- Apprenticeship Agreement (Apprenticeship)
- Results of the Skill Scan/ initial assessment (Apprenticeship)

- Employer Contract signed by the provider and employer (Apprenticeship programmes)
- Individual Learning Plan with evidence of the student's Skill Scan and any requirements for additional learning support signed by the student, provider and employer which shows how 20% off the job training will be met (Apprenticeship)
- Proof of the start of learning – either recorded on the ILP, register evidence or evidence of an assessor visit. (All funding streams)
- Workplace Health and Safety form – showing that the workplace / place of learning is safe (Apprenticeship) – NOTE: If there are actions on this document, the student will not be enrolled until the actions are completed.

Newbury College retain the right to:

- Enrol or reject learners as would be the case if the learners were being taught at the College
- Agree the learning programme and its means of delivery
- Agree the arrangements for assessing the progress of individual learners.
- Agree procedures for the College to regularly monitor the delivery of programmes provided throughout the period of the programme

All documents must be checked by the subcontractor before being sent to Newbury College and fields such as the qualification reference number and delivery location postcodes must agree with those stated in the contract.

Newbury College checks the quality of all of these documents before the student is enrolled onto the system. No student will be enrolled where there start date precedes the date that the contract has been signed by both parties. Subcontractors will be issued with any actions from the quality audit.

## **9 Health and Safety**

All workplaces and places of learning (other than distance learning programmes) for students must have been assessed for Health and Safety before students commence their programme of learning. Evidence of this must be submitted to Newbury College with the enrolment paperwork.

## **10 Registering Students with Awarding Bodies**

It must be agreed prior to the contract whose responsibility it will be to register the students with the relevant awarding body. Evidence of registration must be kept in the student's file and, if the subcontractor has registered the students, a copy of the evidence must be sent to Newbury College. The student's registration number must be recorded in their ILP. This is audited by Newbury College during the termly Quality Audits.

## **11 Quality Monitoring**

The level of quality monitoring of the sub-contractor will be dependent on the risk level posed by the contract. New providers will be subject to a student telephone audit, announced or unannounced visit, lesson observation and 100% paperwork audit. Providers with a history of high



quality provision with Newbury College will have an announced or unannounced visit (if possible) or telephone audit, lesson observation and paperwork audit per year.

As part of the contract, a schedule of quality audits is agreed with the subcontractor. These are set once a term and may be in the form of auditing student files, paperwork audits or visiting students for their feedback on the programme. A representative from the subcontracting organisation may be required to be in attendance at these quality visits. At least one of these audits will be an announced/ unannounced visit to the sub-contractor / partner's premises or telephone audit of learners.

A paperwork audit may check the following:

- ILR information matching the ILP and eligibility documents
- For Apprenticeships - 'off the job training' evidenced with log book or register and 'on the job training' evidenced via the log book. The evidence must show that the student is in learning for every month that they are recorded on programme.
- Evidence of student reviews for Apprenticeships at 10 – 12 week intervals or 6 – 8 weeks for those with additional learning needs must be available in the student files and the quality of the reviews will be assessed.

If supporting information is held on an e-portfolio system the audit will be conducted from the evidence held in the e-portfolio.

The subcontractor will be provided with the result of the audit and all actions will be monitored for a timely resolution.

During the visits joint observations of teaching and learning may be conducted to standardise the process. Lesson observations of tutors and assessors must be carried out by all contracted partners and submitted to Newbury College. Any tutor/ assessor who is graded as requires improvement must be mentored and re-observed by the subcontractor with the new observation form submitted to Newbury College within 12 months from the initial observation.

A representative from the subcontractor organisation is required to attend meetings at Newbury College during which student progress is discussed and action plans set for students who may be falling behind with their programme of study. In cases where there are a few students finishing their programme this meeting may be by telephone with documents e-mailed to Newbury College.

Newbury College must be informed of all planned EQA visits relating to the contracted provision and copies of EQA reports must be sent to Newbury College as soon as they are received. These are CRAG rated and actions set are monitored by Newbury College.

## **12 Monitoring of Subcontractors and Subcontracted Provision**

Newbury College is responsible for the actions of subcontractors connected to, or arising out of, the delivery of the services, which are subcontracted. If the subcontractor fails to deliver, the College will be responsible for making alternative arrangements for the delivery of education and training, protecting the audit trail, and/or repaying ESFA or ESF funding. If, as part of this process the ESFA require funding to be repaid, the subcontractor will be required to repay Newbury College the associated funding that had been paid to them.

Newbury College will manage and monitor all of its subcontractors to ensure that high-quality delivery is taking place that meets the requirements of the College contract with the ESFA for the provision of ESFA funded delivery (which includes compliance with ESFA funding rules).

Safeguarding will be rigorously monitored by Newbury College for all subcontracts.

It is not acceptable for any staff with a direct or indirect financial interest in the subcontractor to undertake any management control activities This includes signing time sheets or invoices, as well as organising and/or carrying out monitoring activity or visits to check the subcontractor delivery.

Newbury College will carry out a regular and substantial programme of quality assurance checks on the education and training provided by subcontractors including spot checks and face to face interviews with staff and learners. The quality monitoring includes:

- verifying learners exist and meet the eligibility criteria for ESFA Funding
- direct observation of initial guidance, assessment and delivery of learning programmes, training and/or direct observation of assessment
- findings of quality assurance checks must be consistent with the College expectations and subcontractor's records
- Monitoring Safeguarding and Prevent. The prevent duty applies to subcontracted provision. It requires providers to have due regard to the need to prevent people from being drawn into terrorism. All further education providers must comply with relevant legislation and any statutory responsibilities associated with the delivery of education and safeguarding of students, and this includes students receiving provision under a subcontracting arrangement.
- Ensuring that subcontractor's evidence meets the requirements of the ESF funding rules and is maintained and is accessible until at least 31 December 2030. (Notification will be given of any change to this date).

Subcontractors will be monitored to ensure that learners have full access to free funded education and training, including (but not limited to) information about and access to, 16 to 19 bursary and other student support funding, information, advice, and guidance (IAG) and access to learning support if required.

Newbury College will notify the ESFA if any of their subcontractors goes into administration or liquidation. (requirement continues to at least 31 December 2030).

(Notification will be given of any change to this date).

### **13 Unfunded Students**

Any students who are at risk of not completing before their planned end date must have an action plan agreed with Newbury College to ensure achievement as soon as possible after their planned date. Subcontractors are contracted to achieve an agreed timely success rate for each cohort of students and, if this is not achieved, a financial penalty, stated in the contract, will be imposed

## 14 Withdrawn Students

Newbury College must be notified within 1 month of a student withdrawing from their programme of study. In addition to this evidence of the last date in learning, reason for withdrawal and all of the student's original paperwork including reviews, ILP etc must be sent to the College. Late notified withdrawals will result in a financial penalty being imposed.

## 15 Fees

The standard fee for 'provision' subcontracting is 20% of the funding that Newbury College receives from the funding agency.

Funding Retained for Quality Assurance and Oversight:

Learner visits: 4.5%  
Learner calls: 2%  
Paperwork Audit: 2%

This fee includes:

- Monitoring of the quality of provision as set out in this policy
- Standardisation meetings and lesson observations
- Support and guidance on funding rules, quality and delivery of programmes
- Quality Audits

Funding Retained for Administrative Functions:

MIS Data Entry: 5%  
Due Diligence: 3%  
Producing Contract: 3%

This fee includes: Assessment of the tender/ base documentation

- Due Diligence Process
- Production of the contract
- Production of the monthly invoice request
- Data entry onto the Newbury College Management Information System
- Data returns

Funding retained for mandatory training sessions for subcontractors – advised by Newbury College:

- Mandatory training sessions for subcontractors: 0.5%

Subcontractors who do not meet Newbury College's quality standards at the due diligence stage but are approved conditionally may be set a higher fee for the initial contract as there will be additional checks / training required and there is a higher potential risk to Newbury College.

Subcontractors who have maintained a long term relationship with Newbury College of delivering high quality provision, with timely success rates consistently at 85% and above may be offered a fee of 15%.

Under delivery will not be subject to clawback but may impact on future contracts being awarded to the subcontractor.

If the contracted achievement rates are not met at the end of the academic year, Newbury College holds the right to withhold 10% of the achievement funding generated from the contracted provision for that academic year.

Justification of how the management costs are reasonable and proportionate to the delivery of high quality learning:

Subcontractors retain 80% (max 85%/ min 80%) of the funding generated from their programmes to deliver high quality teaching and learning.  
The management costs relate to the processes listed above

How each cost contributes to the delivery of high quality learning:

Due Diligence: Ensures that the subcontractor has the skills and capabilities to provide the learners with a high quality programme.

Producing Contract: Ensures that the subcontractor will carry out agreed duties to ensure compliance with funding rules and quality regulations to ensure that learners receive a high quality of delivery, training and assessment.

Learner visits and calls: Ensure that learners exist, during the visit Newbury College conduct lesson observations and gain learner voice by having meetings with the learners.

Paperwork Audit: Ensures compliance with funding rules

MIS Data Entry: Ensures learners are funded through ILR.

Quality Monitoring (EDIMs, Achievement, E&D, British Values, Safeguarding and Prevent agenda): Ensures that programmes are operating to high quality standards.

It is the responsibility of the subcontractor to collect any required employer contribution in accordance with the Newbury College fee structure. Subcontractors are required to submit data to Newbury College when requested regarding the fees collected for the annual employer contribution collection report to the funding agency.

## **16 Payment Terms**

Newbury College shall pay the Subcontractor in accordance with the invoicing procedure set out in the contract following receipt of payments from the Secretary of State for Skills.

Newbury College shall pay the Contractor within 30 calendar days of receiving the invoice. Newbury College may at its discretion require the Contractor to provide any appropriate supporting information it considers necessary before making payment.

The obligation to make payments to the subcontractor rests with Newbury College; the Secretary of State for Skills is not liable to make payments directly to the contractor.

Newbury College requires the sub-contractor to use the Newbury College fee structure for learner or employer contributions and to notify Newbury College of the fees collected each month.

The subcontractor is responsible for collecting the learner / employer contributions in full.

The subcontractor may choose whether to apply the discounts stated in the fee structure but may not apply a discount more generous than that set by Newbury College.

The fee to the subcontractor will reflect the percentage of the funding rate paid to Newbury College in addition to the undiscounted fee rate set for the qualification.

If the Subcontractor fails to send information to be put onto the Newbury College System in the prescribed manner or fails to submit the appropriate supporting information when necessary, Newbury College shall not be in breach of the Contract (and nor shall any interest be due) if there is any delay in making a payment, provided that Newbury College has not unnecessarily delayed payment of the relevant claim.

Details of the subcontractor's bank account and address must be notified to Newbury College. Newbury College shall send notifications of payments to that address.

At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by Newbury College to the Contractor) Newbury College and/or the Funding Agency shall be entitled to validate any claim for payment made by the Subcontractor. At all times the Subcontractor shall provide all necessary assistance as requested by Newbury College.

Subcontractors must comply with all funding requirements.

#### **17 Recovery of Sums Due**

Wherever under the Contract any sum of money is recoverable from or payable by the Subcontractor (including any sum which the Subcontractor is liable to pay to Newbury College in respect of any breach of the Contract), Newbury College may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with Newbury College.

Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

The Subcontractor shall make any payments due to Newbury College without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Subcontractor has a valid court order requiring an amount equal to such deduction to be paid by Newbury College to the Subcontractor.

All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **18 Publication of Data**

This policy outlines the education rationale for subcontracting with Newbury College. The policy has been signed off by the Board of Corporation and SLT (dates as stated on front cover).

The following data (or template provided by the ESFA) will be published to record the actual level of funding paid and retained for each of the sub-contractors in each funding year. This data will be published on the Newbury College website ([www.newbury-college.ac.uk](http://www.newbury-college.ac.uk)) within 30 days of the close of the funding year's ILR.

- The educational rationale for subcontracting
- Management Fee structure
- List of subcontracting partners with the information below for the previous funding year

Sub-Contractor UKPRN	Sub-Contractor Name	Contract Start Date	Contract End Date	Provision Type	Funding Paid to the Lead by the ESFA (£)	Funding Paid to the Sub-Contractor by the Lead Provider (£)	Funding Lead Provider has Retained (£)	Funding Sub Contractor has Paid to the Lead Provider (£)

## 19 Communication

This policy is published by 31<sup>st</sup> October each year and available to view on the Newbury College website: <http://www.newbury-college.ac.uk> ([Policies \(newbury-college.ac.uk\)](http://www.newbury-college.ac.uk))

Potential subcontractors are invited to look at this policy before submitting their due diligence evidence. Once the sub-contractor has passed the due diligence the management fee and payment terms are agreed for the accepted cohort of learners and written into the contract.

## 20 Whole programme subcontracting and restrictions for schools and academies

ESFA approval will be sought to continue with or embark on new arrangements for whole programme subcontracting.

<https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16>

Schools and academies must not subcontract whole study programmes under any circumstances. Legally, being a pupil and attending a school are based on physical presence. Although schools have powers to arrange some educational activities away from their premises, these are not intended to allow the whole of a pupil's education to be delivered somewhere, and by someone, other than the school. Schools and academies can therefore only subcontract provision for learners who:

- attend the institution for at least one element of their programme throughout the academic year.
- attend the school or academy at least once a week.
- subcontracting arrangements will not be agreed with special schools for the whole, or for a substantial proportion of a students' programme where they are aged 19 to 25. Special schools have the option to set up a legally and financially separate entity to make provision for 19- to 25-year-olds as advised in the high needs funding: operational guide.

When a subcontractor wants to appoint and work with a third party, which could include a sports club, it is Newbury College as the provider who must have a direct contractual relationship with the third party and not the subcontractor. Third parties must not be appointed or managed by the subcontractor. There must be no financial transactions between a subcontractor and a third party. You must take steps to assure yourself that the third party has:

- Facilities that are safe, suitable, and fit for purpose.
- Safeguarding arrangements that are robust and reviewed regularly, at least on an annual basis.
- Appropriate steps are taken to ensure that both you and the sports club are clear on what activities are suitable for ESFA funding and what activities are not suitable for ESFA funding.

Date: September 2011

Audit Committee: 03 October 2011

Corporation: 12 December 2011

Reviewed: September 2013 (no change), Sept 2014 (minor change), Sept 2015 (minor change), Sept 2016 (minor changes throughout), July 17 (very minor change), Oct 2018 (minor changes), July 2019, Sept 2020, October 2021, July 2022, July 2023, June 2024

Next Review: July 2025

## Appendix A. Due Diligence Letter



Dear

### Re: Partnership Agreement for delivery of 16 – 19 Provision, Apprenticeships / AEB

The first stage in the process of setting up a new arrangement between **COMPANY** and Newbury College is our Due Diligence process. Please could you provide the following information relating to **COMPANY** and return it to us as soon as possible.

- The legal name, address and legal status of the **COMPANY** (Sole Trader, LLP, etc)
- Trading name and trading address if different from above
- Company registration number and UKPRN
- Evidence of registration on the most recent Register of Training Organisations.
- If registered with a charity commission or regulator, please include the charity registration number
- Details of any direct contracts held with the ESFA or any contracts in progress with other partners and the financial value of these contracts, for the previous and current funding years. In the case of terminated contracts please provide the reason for the termination.
- Three years of Financial Statements relating to **COMPANY**
- Names of all Directors (Trustees) and Senior Managers of the **COMPANY** and details of their previous appointments. Any potential conflicts of interest must be disclosed.
- Disclose any past or present county court judgements or action in the civil or criminal courts relating to the **COMPANY** or its Directors.
- Details of any quality marks held – including evidence of Matrix Accreditation
- ESF poster evidence
- Audit reports relating to delivery of ESFA funded provision
- A reference from three partners you have worked with (this should include success rates if applicable and a description of the relationship between yourselves and the referee)
- Copies of your insurance certificates for Professional Indemnity and Public Liability
- The latest OFSTED report if applicable
- Copies of awarding body centre approval certificates to deliver qualifications funded through the proposed agreement
- Copy of latest Self-Assessment Report
- Latest External Verifier reports for those qualifications proposed as part of the agreement
- Copies of teaching, Assessor and Verifier qualifications for all staff involved in the delivery of provision funded through the proposed agreement
- Evidence of DBS checks for all staff involved in the delivery of provision funded through the proposed agreement
- Evidence of training (or plans to deliver training) for all staff relating to Safeguarding, Prevent and Equality & Diversity
- Evidence of data protection and security systems for the exchange of personal data and compliance with data protection legislation
- Evidence of systems required for compliance of SFA data collection and record keeping



- Copies of the following policies and procedures: Health and Safety; Quality Assurance policy; Student appeals; student discipline (including action regarding bullying/ harassment); Plagiarism/malpractice (student); Staff malpractice/code of conduct; Complaints procedure; Safeguarding; Data protection/ GDPR compliance and security systems; Environmental and Sustainability Policy; Whistleblowing policy; Business Continuity and Disaster Plan.
- Declare any reportable injuries, diseases and dangerous occurrences covered by the RIDDOR regulations together with actions taken to prevent reoccurrences.
- Evidence of how the **COMPANY** meets the 'Prevent Agenda' including policies and procedures relating to avoiding and dealing with extremism
- If the 'Prevent Policy' does not state that the **COMPANY** or **Directors** do not have any links to extremist organisations, please supply a statement to this effect or provide detail on the organisational links.
- Equality and Diversity / Single Equality Duty policy and evidence of how the **COMPANY** is actioning reducing achievement gaps
- Evidence of compliance with employment legislation and immigration rules
- Evidence of delivery staff proof to work in the UK and proof that salaries meet minimum wage requirements
- Evidence of student support arrangements
- Evidence of arrangements for assessing the progress of individual students, student tracking procedures and regular communication with students
- Evidence that the **COMPANY** has the capacity to deliver all contractual requirements without the need to subcontract any part to another provider
- Confirmation of the of the learning programmes to be contracted and the delivery models
- Newbury College reserve the right to carry out a credit check on **Company**

If you have any queries concerning any of the above, please let me know.

Yours sincerely

Dr Jo Houghton  
Director of Business and Partnerships

## Appendix B. Due Diligence Report

### Subcontracting Due Diligence Report

Date:

Registered Company Name (Legal Name):

Trading Name if different from above:

UK Registered Business Address (as registered with Companies House):

Trading Address if different from above:

Legal Status (Cross as applicable):

- Charitable Incorporated Organisation
- Community Interest Company
- Company Limited by Guarantee
- Limited Liability Partnership
- Partnership
- Private Limited Company
- Public Limited Company
- Sole Trader
- Statutory Corporation
- Unincorporated Charity
- None of the above

How long has the Company been actively trading?

Companies House Registration Number:

Is Company Active on Companies House Database? Yes No

(Add Screenshot)

If registered with a charity commission or regulator add the Charity Registration Number:

Type of Organisation:

- Academy
- Central government department, executive agency or non-departmental public body
- Delivery organisation connected to apprenticeships
- Training Agency (ATA)
- Employer training apprentices within their connected companies
- Employer training own staff and those within other organisations
- Further Education Institution
- General Further Education College
- Group Training Agency (GTA)
- Higher Education institution (HEI)
- Independent Training Provider
- Local Authority including LEA Schools

- Multi-academy Trust
- National College
- NHS Trust or Fire Authority
- Police Constabulary or Police and Crime Commissioner
- Sixth Form College
- None of the above

**Classification of the Organisation:**

- Public Service Mutual (an organisation that has left the public sector but continues to deliver public services): Yes No
- Sheltered Workshop (an organisation that employs people with disabilities separately from others): Yes No
- Small or medium enterprise (defined by the European Commission): Yes No
- Third Sector (A voluntary or community organisation for example, a registered charity, an association, self-help group or community group, social enterprise, a mutual or a co-operative): Yes No

**UKPRN Number:**

**Registration on the Register of Training Providers:** Yes No

**Matrix Accreditation** Yes No

**ESF Poster evidence** Yes No

**Please complete Annex A with the details of the senior management team who are responsible for subcontracted delivery in your organisation and, their involvement in any other organisations receiving funding directly from Education and Skills Funding Agency (ESFA) or as a subcontractor.**

**All parties named in Annex A are required to complete the ESFA Privacy Notice (Annex B) and submit with the other due diligence documents**

**Who is the person in control of the Organisation:**

**Full Name:**

**Date of Birth:**

**Please provide the following information for the primary contact for the organisation who Newbury College will deal with:**

**Title:**

**First Name:**

**Last Name:**

**Business e mail address:**

**Contact Number:**

**Please provide the names of Directors, Trustees and Senior Managers (Including previous appointments and length of service in organisation):**

**Please provide a declaration of Conflicts of Interest for all Directors, Trustees and Employees associated with the contract**

On headed paper please provide a declaration of any association with extremist organisations by company or any employees

Newbury College takes consideration of the High Risk Policy when undertaking Due Diligence checks on potential and current Subcontractors. Please refer to this policy when answering the next 2 questions.

[ESFA policy on funding higher risk organisations and subcontractors - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Does the Organisation fall into any of the mandatory exclusions? Yes No

If Yes, which?

Does the organisation fall into any of the discretionary exclusions? Yes No

If Yes, which?

Financial Statements- – please provide the last 3 years statutory accounts

Are Statutory Accounts Overdue? Yes No

Does your organisation have an above-average risk warning from a credit agency? Yes No

Result of Credit Check  
(Add Screenshot)

Any Evidence to Show that it has Passed a Resolution (or the court has made an order) to Wind Up or Liquidate the Company or that Administrators have been Appointed?

Yes No

Evidence of CCJ or other Court Proceedings

Please provide evidence of Contracts held with the ESFA including reasons for the termination of the agreements and Other Funding Contracts and Values (Previous and Current Funding year)

Please cross as applicable:

- The subcontractor's value of ESFA funding for delivering Education and Training has a total below £500,000 and this intended subcontract with them would not take the total of contracts above £500,000 or more
- The subcontractors value of ESFA funding for delivering education and training totals £500,000 or more

Is the contract for brokerage? Yes No

**Has your company had any evidence of:**

- non-delivery of training when funds have been paid
- sanctions imposed by an awarding organisation
- allegations of fraud
- an inadequate Ofsted grade
- allegations or complaints by learners, staff members, or other relevant parties

**References: Please provide 3 references from other organisations that you are a subcontractor for**

**Please provide current copies of Insurance Certificates for Professional Indemnity Employer Liability and Public Liability**

**Please provide the most recent OFSTED/Quality Reports**

**Please provide the most recent Audit Reports**

**Please provide current awarding body centre approval certificates**

**Please provide the latest External Verifier reports for all delivery programmes:**

**Please provide the latest Self Assessment Report:**

**Please confirm the learning programmes to be contracted and delivery models**

**Please outline the arrangements you have for assessing the progress of individual students and how this information is tracked**

**Please specify the delivery location for this contract:**

**Is ESFA approval required for delivery location?    Yes        No**

**ESFA Approval evidence: (if applicable)**

**Is the contract for whole programme subcontracting?**

**Is ESFA approval required for whole programme subcontracting?    Yes        No**

**ESFA Approval evidence: (if applicable)**

**DBS checks for all staff involved in the delivery of provision**

**Evidence of appropriately qualified and trained staff for delivery and proof of direct employment (Please provide CVs, CPD, DBS and training records for all delivery staff)**

**Evidence of delivery staff proof to work in the UK and proof that salaries meet minimum wage requirements**

**Evidence of training (or plans to deliver training) for all staff relating to Safeguarding, Prevent and Equality & Diversity**

YES

NO

**Please provide evidence of systems to ensure compliance with the Skills Funding Agency's requirements for data collection and the keeping of records**

**Policies & Procedures (Please provide copies of the following):**

Equal Opportunities

Health and Safety

Quality Assurance policy

Student appeals

Student discipline

Plagiarism/malpractice (student)

Staff malpractice/code of conduct

Complaints procedure

Safeguarding

Sustainability

Data protection (GDPR) and security systems

Whistleblowing

Compliance with employment legislation and immigration rules

Prevent Agenda

Business Continuity and Disaster Plan

**Evidence of any RIDDOR Actions:**

**Evidence of Student Support Arrangements:**

**Does the contractor have the capacity to deliver all contractual requirements without the need for second level subcontracting or third party arrangements?**

**By signing below the named party acting on behalf of the organisation named in this report confirms that all information given is correct and that the organisation is valid to be a Subcontractor in line with the current Subcontracting Funding Rules and applicable ESFA funding Rules. It is also confirmed that the organisations financial performance is in line with the ESFA financial health assessment.**

**Signed:**

**Name:**

**Position in Organisation:**

**Date:**

**Contracts Manager Comments:**

Reason for Sub-contracting:

Support required:

Proposed costs and management fees:

Justification of how the management costs are reasonable and proportionate to the delivery of high quality teaching and learning:

How each cost contributes to the delivery of high quality learning:

**Finance Director Comments:**

**HR Director Comments:**

**HoD Comments (Quality):**

**Progress to SLT:** Yes                      No

**SLT Comments:**

**Corporation-Approval: Yes**

**No**

**Corporation Comments:**



### **Appendix C. Contingency Plan for Subcontracted Provision**

Newbury College may itself provide or may employ and pay a third-party supplier to provide the Services or any part of the Services:

(a) if a Force Majeure event prevents the Contractor from providing part or all of the Services in accordance with the Contract in any material respect for more than one month; or

(b) if the Contractor fails (or Newbury College reasonably believes that the Contractor is about to fail) to perform the Services in accordance with the Contract or to meet the Minimum Performance Levels of the Minimum Service Levels.

Reasonable costs in providing or procuring the provision of the Services may be withheld or deducted from any sums due to or shall be recoverable from the Contractor by Newbury College as a debt. Any balance of Fees after the deduction referred to in the previous sentence shall be paid to the Contractor in accordance with payment clauses in the contract.

The subcontractor shall co-operate with Newbury College and any third-party supplier engaged by Newbury College so that Newbury College and the third-party supplier can provide the Services or any part of the Services,

To the extent to which the Services are being provided by Newbury College or a third-party supplier, the subcontractor shall be relieved of its obligations to provide the Services and the subcontractor shall not be liable for the acts or omissions of Newbury College or the third party supplier in providing the Services.

Newbury College may require the Contractor to resume delivery of the Services once the parties are satisfied on reasonable grounds that the Contractor shall be able to resume delivery of the Services in accordance with this Agreement.

## Appendix D. Financial Health Guidance for Due Diligence

Financial health for organisations is graded, based on the following three elements:

- Profitability (sustainability)
- Solvency (current ratio)
- Gearing (debt ratio)

The information required to calculate these three elements is taken from the latest available, and where applicable, published financial statements. Every organisation must submit this information to us in accordance with the requirements specified for procurement procedures.

Financial statements submitted must be full accounts (not abbreviated / abridged), and audited, where appropriate. If only abbreviated accounts are required for Companies House filing, you must still submit your full statutory accounts (in the format required by the Companies Act 2006 and relevant reporting requirements) to us, which must include, as a minimum, the following elements:

- an end of period profit and loss account, or equivalent
- an end of period balance sheet
- commentary and breakdown, including all notes to the accounts
- a breakdown of amounts contained within creditors/ other creditors (other creditors is determined here as any item recorded within either current or long-term liabilities that is not identifiable in its own right). For assessment purposes, "Other Creditors" is not an acceptable accounts classification and it must be further explained.

Organisations must supply full accounts, not just an extract or selected pages.

If your organisation, due to its legal form, is not required to produce statutory financial statements, you must submit accounts in a format similar that prescribed for companies' annual accounts. These must include the same minimum elements noted above.

If your organisation is unable to supply statutory financial statements because it has not traded for a sufficient period, you must supply management accounts to date, showing actual activity, along with forecast figures for a remaining period. The combined information must cover a period no less than one year, with the management accounts comprising at least three months of actual trading activity. As a minimum, these must consist of:

- a profit and loss account covering a 12-month period
- an end of period forecast balance sheet
- a 12 month rolling cash flow statement
- detailed narrative supporting assumptions made for both management accounts and forecast information

If an organisation has not been actively trading for a minimum period of three months, then it is not eligible to apply for procurement rounds. (Actively trading is determined here as including income and expenditure arising as a result of trade and does not include the incurrence of set up or start-up costs).

We will assess management accounts and financial forecasts on an individual basis. We will take into consideration their achievability, potential for delivery against the information submitted

If any of the required information is missing, we will grade financial outcome as 'Inadequate', due to insufficient information available for assessment.

We reserve the right to use and / or rely upon external sources of information to inform our decision on your finances, such as, Companies House, Charities Commission, credit reference agencies, along with information from sites that monitor these.

### Parent Companies

If your organisation is part of a wider group of companies or is classed as a subsidiary, you must submit full financial statements for the ultimate UK parent company. You must also submit those of the contracting or applying organisation.

If your ultimate UK parent company does not produce consolidated accounts, you are required to supply the accounts for their non-dormant subsidiaries.

If your ultimate parent company is registered outside of the UK, you must supply the full financial statements for your UK parent company.

### Financial Health Elements

Element	Definition
Profitability	<p>Operating position after tax as a percentage of income, defined as:</p> $\text{Profit after tax} / \text{Turnover} \times 100$ <p>For this purpose, depreciation and amortisation are added back to profit after tax and dividends are subtracted.</p>
Solvency	<p>Current ratio defined as:</p> $\text{Current Assets} / \text{Current Liabilities}$
Gearing	<p>Total debt as a percentage of reserves and debt.</p> <p>Reserves are defined for this purpose as shareholders' funds less intangible assets. If this is a negative figure, an automatic score of 0 is given.</p> <p>Debt is defined as all long-term and short-</p>

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term borrowings, which include, bank overdrafts, finance leases and hire purchase contracts, credit cards, directors' loans to the company, inter-company and group loans to the company, personal loans to the company, directors' current accounts and amounts owed to the directors'.

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