



DN COLLEGES GROUP

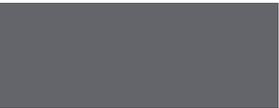
Subcontracting Controls

FINAL

9 July 2020

This report is solely for the use of the persons to whom it is addressed.
To the fullest extent permitted by law, RSM Risk Assurance Services LLP will accept no responsibility or liability in respect of this report to any other party.





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Version control

Version	Issued	Comments
Draft Report	6 July 2020	
Final Report	9 July 2020	

1 EXECUTIVE SUMMARY

1.1 Background

The Education and Skills Funding Agency (ESFA) has included clauses within its funding agreements for 2019/20 and the various funding rules for 2019/20 stipulating that providers which subcontract a certain level of provision are required to obtain a report from an external auditor on the arrangements in place to manage and control their subcontractors. The clause requires lead providers to supply the ESFA with a certificate confirming that the provider's arrangements are satisfactory.

As per the ESFA document "Provider external assurance on subcontract controls", the providers are in scope if they have entered into subcontracts to deliver provision with:

- an aggregate value of more than £100,000 each financial year (from 1 April to 31 March) for new apprenticeship starts from 1 May 2017.

or

- an aggregate value of more than £100,000 for the delivery of all other adult provision each funding year, including apprenticeship starts before 1 May 2017.

If the provider is in scope to obtain an external audit report for both of these elements, a single combined report is required.

For the purposes of the ESFA and this engagement, a subcontractor is a separate legal entity that has an agreement with a provider to deliver any element of the education and training ESFA funds. This includes delivery of apprenticeship training and/or on-programme assessment for new apprenticeships that started from 1 May 2017.

An external auditor is a professionally qualified person from an organisation external to the provider that is able to provide an independent report on their subcontracting systems and controls. The person should be registered with an appropriate professional body. For the sake of clarity, the external auditor cannot be an employee, director, trustee, shareholder or any other similar party with a vested interest in the provider, irrespective of whether their normal role is to carry out their audit work. The external auditor does not necessarily have to be a provider's existing external auditor.

The approach undertaken in relation to this engagement was to provide management with a questionnaire for completion, detailing the processes and procedures in place to ensure compliance with the Funding Rules. We then corroborated the responses provided by management through review of relevant documentation including, but not limited to:

- Board and/or Governing Body minutes
- Due Diligence documentation
- Contracts
- Subcontractor monitoring information

This is a factual report to determine whether the internal controls agreed in the scope (Appendix A) are operating as prescribed. This is an agreed upon procedures assignment delivered at the request of management. This report does not provide a level of assurance or internal audit opinion and should not be taken to provide such.

As per the June 2020 subcontractor declaration submitted to the ESFA, the Provider had the following subcontract arrangements in place:

Name of subcontractor	UKPRN Number	Proposed contract value (£)	
		AEB	Apprenticeships
Aspect Training Limited	10000417	77,760	-
Leeds College of Building	10003855	-	8,757.31
DETA (2000) Limited	10001940	-	52,355.18
Trackwork Limited	10026649	276,250	-

1.2 Findings

Detailed findings are provided in Section 2 of this report, but are summarised below:

Area	Observation
Adult Education Budget (AEB) and pre-1 May 2017 Apprenticeships	
General subcontracting requirements	Management action is needed to address issues identified
Selection and procurement	No issues noted
Entering into a subcontract	Management action is needed to address issues identified
Monitoring	No issues noted
Distributing income	No issues noted
Post-1 May 2017 Apprenticeships	
Agreeing the use of subcontractors with employers	No issues noted
Your written agreement with each employer	No issues noted
Delivery of apprenticeship training and on-programme assessment by delivery subcontractors	No issues noted
Contracting with delivery subcontractors	Management action is needed to address issues identified
Special Conditions	No issues noted
Reporting	No issues noted

1.3 Use of this report

This document is a factual report of our findings. Our report is prepared solely for your exclusive use and solely for the purpose of providing a report of factual findings from our work and to report to you the result of those procedures undertaken.

2 ACTION PLAN

The table below sets out the actions agreed by management to address the findings from this review.

Ref	Findings summary	Agreed management action	Action owner	Implementation date
Adult Education Budget (AEB) and pre-1 May 2017 Apprenticeships				
General subcontracting requirements				
1	At the time of review evidence could not be provided to confirm Board approval for the use of subcontractors for 2019/20.	The College will ensure the Corporation Board approve all subcontracting arrangements prior to the start of each academic year.	Business Development Director	1 September 2020
Entering into a subcontract				
2	Through review of both AEB contracts it was confirmed that the contracts did not include a list of all services the College will provide to the subcontractors and the associated costs for doing so.	The College will ensure that all AEB contracts include a list of all services the College will provide to the subcontractor and the associated costs for doing so. This will include a list of individually itemised, specific costs for managing the subcontractor, specific costs for quality monitoring activities and specific costs for any other support activities offered by the College to the subcontractor.	Business Development Director	1 September 2020
Post-1 May 2017 Apprenticeships				
Contracting with delivery subcontractors				
3	Review of contracts identified that in all instances the contracts did not refer to the written agreement the College has in place with each employer and did not include a breakdown of all the agreed services and costs.	The College will ensure that all subcontractor contracts make a clear reference to the up-to-date written agreement they have in place with each employer and include a breakdown of all the agreed services and costs.	Business Development Director	1 September 2020

3 DETAILED FINDINGS

Adult Education Budget (AEB) and pre-1 May 2017 Apprenticeships

3.1 General subcontracting requirements

Paragraphs 82 to 87 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulate that:

82. You must take your own legal advice about whether, in subcontracting part of your service delivery, you are a contracting authority awarding a public contract as defined by of Public Contracts Regulations 2015. If you are, then you should comply with the provisions of the 2015 Regulations. You must provide a synopsis of the legal advice for inspection by us on request.

Testing confirmed that legal advice had been sought during the tendering process, and that the contracts were reviewed by an independent legal firm.

83. Your governing body or board of directors and your accounting officer (senior responsible person) must agree your policy for delivery subcontracting. This policy must set out your reasons for subcontracting and that all your delivery subcontracting meets your strategic aims and enhances the quality of your learner offer. You must be able to confirm this by way of evidence, such as minutes of meetings and/or written sign-off. The minimum content for your policy for delivery subcontracting is set out in paragraph 115.

84. You must publish your policy for delivery subcontracting on your website.

The College has a Supply Chain Fee and Charges Policy in place which was approved by the Finance and Resources Committee in March 2019. The Policy was found to meet the above requirements.

85. You must not subcontract for delivery to meet short-term funding objectives.

It was confirmed that subcontracting has not been utilised to meet short-term funding objectives.

86. You must only use delivery subcontractors:

- 86.1. if you have the knowledge, skills and experience within your organisation to successfully procure, contract with and manage those subcontractors and can evidence this with the CVs of relevant staff
- 86.2. who your governing body/board of directors and your accounting officer (senior responsible person) determine as being of high quality and low risk, and provide written evidence confirming this
- 86.3. if you have robust procedures to ensure subcontracting does not lead to the inadvertent funding of extremist organisations
- 86.4. if before agreeing to use them you have described your reason for subcontracting, listed all services you will provide and the associated costs when doing so

Through discussions with management and testing documentation it was confirmed that staff have sufficient qualifications and knowledge to manage subcontracting. Testing confirmed that there was evidence that the College had processes in place within the subcontractors delivering AEB to ensure subcontracting does not lead to the inadvertent funding of extremist organisations. Reasons for subcontracting and associated services and costs are documented within the Colleges Supply Chain Fee and Charges Policy.

However, evidence could not be provided to confirm Board approval for the use of subcontractors in 2019/20.

Management action

The College will ensure the Corporation Board approve all subcontracting arrangements prior to the start of each academic year.

87. You are responsible for all the actions of your delivery subcontractors connected to, or arising out of, the delivery of the services, which you subcontract.

Through review of monitoring documentation, it was confirmed that the College has sufficient performance monitoring provisions in place. Additionally, the College has a responsibility statement documented within their Supply Chain Fees and Charges Policy.

Second-level subcontracting

Paragraph 109 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulates that you must not agree the use of any delivery subcontractor where this would require you to deliver ESFA funded AEB provision to a second level. All of your delivery subcontractors must be contracted directly by you and you may have more than one subcontractor.

Through discussions with management it was confirmed there is no second level subcontracting.

Reporting subcontracting arrangements

Paragraphs 110 to 111 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulate that:

110. You must provide a fully completed subcontractor declaration by the dates we will give you. This will be at least twice during the 2019 to 2020 funding year. If you do not make the declaration on time, we will suspend your payments. If you do not subcontract, you must still provide a nil return to confirm this.
111. You must also update your subcontractor declaration if your subcontracting arrangements change during the year.

It was confirmed that the College has, in time, completed subcontractor declarations during 2019/20. Declarations were made in November 2019 and June 2020.

3.2 Selection and procurement

Paragraphs 88 to 95 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulate that:

88. If you have not previously subcontracted provision we fund, you must get our written approval before awarding a contract to a delivery subcontractor and keep evidence of this. More information on subcontracting and seeking written approval is available.

The College has previously subcontracted with all current subcontractors and as such approval is not required.

89. When appointing delivery subcontractors, you must avoid conflicts of interest and you must:
- 89.1. write to us through your ESFA territorial manager about any circumstances (for example, where you and your proposed subcontractor have common directors or ownership) which might lead to an actual or perceived conflict of interest and
 - 89.2. not award the contract without our written permission
 - 89.3. keep as evidence both your request and our reply

No conflicts of interest were noted for all subcontractors as part of due diligence checks.

90. You must carry out your own due diligence checks when appointing delivery subcontractors and have both the process and the results available for inspection by us.
91. You must not use a delivery subcontractor's presence on the Register of Training Organisations, or any other public register or database, as an indicator that they are suitable to deliver to your specific requirements.

Testing confirmed that, for all subcontractors delivering AEB, due diligence had been conducted at the beginning of the year.

92. You must not appoint any delivery subcontractors with a contract value of £100,000 or greater for each funding year unless they are listed on the Register of Training Organisations first:
 - 92.1. this also applies if the subcontract from you would take the total value of subcontracts that the delivery subcontractor holds to deliver education and training funded by us through ESFA funded AEB to £100,000 or more
 - 92.2. we will restrict your future use of ESFA funded AEB delivery subcontractors if this occurs
93. You must obtain this information from each proposed delivery subcontractor and also refer to the latest published list of declared subcontractors and the Register of Training Organisations. If you use a delivery subcontractor who exceeds the £100,000 threshold and is not listed on the Register of Training Organisations, you must immediately end your subcontract with that organisation. This applies regardless of whether you were the provider whose contract took the delivery subcontractor over the threshold.
94. You must ensure any delivery subcontractor you appoint continues to meet the requirements of the Register of Training Organisations and that you provide them with all the necessary support.

Testing confirmed that both AEB subcontractors are listed on the Register of Training Organisations.

95. You must not enter into new subcontracting arrangements or increase the value of your existing arrangements if any of the following circumstances apply. These conditions will continue until we are satisfied that the concerns have been addressed and the circumstances below no longer apply if
 - 95.1. Ofsted has rated your leadership and management as inadequate
 - 95.2. you do not meet our Minimum Standards
 - 95.3. the outcome of your annual financial health assessment we carry out is inadequate, unless we have provided written permission in advance

Testing confirmed that the College is complying with these requirements

In addition, the various funding agreements stipulate that the Provider shall ensure that subcontractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Provision.

Review of due diligence documentation confirmed that the College is complying with this requirement.

Paragraph 30.12 of the Conditions of Funding (Grant) (Colleges) [Higher Education Institutions] [Local Authority] 2019 to 2020 stipulates the following:

30.12 Where the annual value of this Agreement exceeds £5 million per annum and the College wants to subcontract one or more of the Services, the following provisions apply:

30.12.1 The College will advertise on Agreements Finder all sub-contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Agreement Period.

30.12.2 Once a Sub-Contract has been awarded, the College will update the notice on Agreements finder with the details of the successful Sub-College.

30.12.3 In addition to any other management information requirements set out in this Agreement, the College agrees and acknowledges that it will, at no charge, provide timely, full, accurate and complete SME Management Information ("MI") Reports to the Department which incorporate the following:

- (a) the total revenue received directly from the Agreement;
- (b) the total value of Services under the Agreement that have been sub-contracted (including revenues for non-SMEs/non-VCSEs); and

(c) the total value of sub-contracted revenues to SMEs and VCSEs.

The total value of funding paid to the College under the current AEB contract does not exceed £5m per annum.

3.3 Entering into a subcontract

Paragraphs 96 to 103 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulate that:

96. You must only award contracts for delivering ESFA funded AEB provision to legal entities. If the legal entity is a registered company, it must be recorded as 'active' on the Companies House database.
97. You must not award a subcontract to any organisation if:
 - 97.1. it has an above-average risk warning from a credit agency
 - 97.2. it has passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed
 - 97.3. its statutory accounts are overdue

Testing confirmed that, for all subcontractors providing AEB, due diligence had been completed, including a companies house check, credit checks and statutory accounts review.

98. You must make sure that learners supported through subcontracting arrangements know about you and your delivery subcontractor's roles and responsibilities in providing the learning.

Review of enrolment documentation confirmed that this requirement was satisfied.

99. You must have a legally binding contract with each delivery subcontractor that includes all the terms set out in paragraph 104 to 105.

Review of contractual documentation confirmed that, whilst signed contract were in place, the following clauses had been omitted:

105.3. a list of all services you will provide to them and the associated costs for doing so. This must include a list of individually itemised, specific costs for managing the subcontractor, specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the subcontractor

105.4. a description of how each specific cost is reasonable and proportionate to delivery of the subcontracted teaching or learning and how each cost contributes to delivering high quality learning

Management action

The College will ensure that all AEB contracts include a list of all services the College will provide to the subcontractor and the associated costs for doing so. This will include a list of individually itemised, specific costs for managing the subcontractor, specific costs for quality monitoring activities and specific costs for any other support activities offered by the College to the subcontractor.

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100. You must have a contingency plan in place for learners in the event that:
 - 100.1. you need to withdraw from a subcontract arrangement
 - 100.2. a delivery subcontractor withdraws from the arrangement
 - 100.3. a delivery subcontractor goes into liquidation or administration
 101. You must make sure that the terms of your subcontracts allow you to:
 - 101.1. monitor the delivery subcontractor's activity

101.2. have control over your delivery subcontractors

101.3. monitor the quality of education and training provided by delivery subcontractors

Testing confirmed that the terms of the contracts are sufficient to cover the requirements as detailed above.

102. You must obtain an annual report from an external auditor if the ESFA funded AEB contracts with your delivery subcontractors will exceed £100,000 in any one funding year.

102.1. the report must provide assurance on the arrangements to manage and control your delivery subcontractors

102.2. comply with any guidance issued by us

103. You must supply us with a certificate signed by the external auditor and an authorised signatory to confirm you have received a report that provides satisfactory assurance. We may ask you to provide a copy of the full report and any associated plan to implement the external auditor's recommendations.

It was confirmed that the College received a report from the RSM in 2019 to provide assurance over their subcontracting arrangements and also received a certificate to confirm this.

In addition, the relevant funding agreements stipulate that:

- a) The Provider shall ensure that any sub-contract entered into for the purpose of delivering the Provision funded by the ESFA under this Agreement contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- b) The Provider shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term giving effect to this requirement.

Testing confirmed that the contracts include a term that ensures the ESFA has the right to enforce the terms of the subcontract. It was also confirmed that there is a clause that specifies that they shall make payment within 30 days.

3.4 Monitoring

Paragraphs 106 to 108 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulate that:

106. You must manage and monitor all of your delivery subcontractors to ensure that high-quality delivery is taking place that meets our funding rules.

107. You must carry out a regular and substantial programme of quality-assurance checks on the education and training provided by delivery subcontractors, including visits at short notice and face-to-face interviews with staff and learners. The programme must:

107.1. include whether the learners exist and are eligible

107.2. involve direct observation of initial guidance, assessment, and delivery of learning programmes

108. The findings of your assurance checks must be consistent with your expectations and the delivery subcontractor's records.

Testing confirmed that monitoring is conducted to ensure that high-quality delivery is taking place, this includes monthly performance monitoring reviews with subcontractors. There were also direct observations to review the initial guidance, assessment, delivery of learning programmes and confirming that learners exist and are eligible.

3.5 Distributing Income

Paragraphs 112 to 117 of the ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3) and associated Funding Agreements stipulate that:

112. You must review your delivery subcontracting policy annually. This must be signed by your governing body or board of directors and your accounting officer.

It was confirmed that the Supply Chain Fees and Charges Policy was last updated in March 2019 and was approved by the governing body.

113. You must publish your delivery subcontracting policy on your website before entering into any subcontracting agreements for the 2019 to 2020 funding year.

The Supply Chain Fees and Charges Policy has been published on the College's Website.

114. Employers receiving ESFA funded AEB funding must send their delivery subcontracting policy to their ESFA territorial manager. This information will be held on record and be available for requests under the Freedom of Information Act.

115. As a minimum, you must include the following in your delivery subcontracting policy:

- 115.1. your contribution to improving your and your delivery subcontractor's quality of teaching and learning
- 115.2. how you will identify the support required and associated costs for different delivery subcontractors
- 115.3. how and when you communicate and discuss your delivery subcontracting policy with potential delivery subcontractors, or current ones for new learner starts
- 115.4. for each subcontractor, how you will determine a detailed list of your specific costs for managing them, specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the subcontractor
- 115.5. for each subcontractor, how you will determine each cost is reasonable and proportionate to delivery of their teaching or learning and how each cost contributes to delivering high quality learning.
- 115.6. how you will ensure you describe to each subcontractor, before each subcontracting relationship is agreed
 - 115.6.1. your reason for subcontracting
 - 115.6.2. the services you will provide when subcontracting to them and the associated costs when doing so, including a list of specific costs for managing the subcontractor, specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the subcontractor.
 - 115.6.3. how each cost is reasonable and proportionate to delivery of the subcontracted teaching or learning and how each cost contributes to delivering high quality learning
- 115.7. payment terms between you and your delivery subcontractors; the timing of payments in relation to delivery and timescale for paying invoices and claims for funding received
- 115.8. timing for review of your delivery subcontracting policy
- 115.9. where you publish your delivery subcontracting policy

Review of the Subcontracting Fees and Charges Policy confirmed that all the above required areas have been covered.

116. You must also tell us the actual level of funding paid and retained for each of your delivery subcontractors in 2019 to 2020. You must email this information to your ESFA territorial manager using a template which we will supply to you. We will let you know the date by when you must do this. We will publish the information on GOV.UK.

117. You must include the following in your published ESFA funded AEB delivery subcontractor fees and charges:
- 117.1. name of each delivery subcontractor
 - 117.2. the UK Provider Reference Number (UKPRN) of each delivery subcontractor
 - 117.3. contract start and end date for each delivery subcontractor
 - 117.4. funding we have paid to you for ESFA funded AEB delivery by each delivery subcontractor in that funding year
 - 117.5. funding you have paid to each delivery subcontractor for ESFA funded AEB delivery in that funding year
 - 117.6. details of the funding you have retained in relation to each delivery subcontractor's ESFA funded AEB delivery for that funding year
 - 117.7. if appropriate, funding each delivery subcontractor has paid to you for services or support you have provided in connection with the subcontracted delivery

At the time of our review, the College confirmed that they had not received the template from the ESFA to enable this information to be submitted.

Post-1 May 2017 Apprenticeships

3.6 Agreeing the use of subcontractors with employers

Paragraphs 167 and 169 to 178 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

167. At the outset of each apprenticeship, a main provider and employer will agree a plan for its delivery. You must directly deliver some of the apprenticeship training and/or on-programme assessment associated with each employer's apprenticeship programme. By apprenticeship programme we mean the apprentices that are being trained for the employer that has chosen you. The volume of training and/or on-programme assessment that you directly deliver for each employer must have some substance and must not be a token amount to satisfy this rule. It must not be limited to a brief input at the start of each employer's programme or involve delivery to just a few of a large number of apprentices.

Due to this review being completed remotely it was not possible to obtain employer agreements for two subcontractors (Leeds College of Building and DETA (2000) Limited) as they were maintained as hard-copy documents on-site at the Colleges.

For Aspect Training Limited the above requirement was met as per the agreed delivery plans.

169. You must take your own legal advice about whether, in subcontracting part of the service delivery, you are a contracting authority awarding a public contract as defined by the Public Contracts Regulations 2015. If you are, then you should comply with the provisions of the 2015 Regulations. You must provide a synopsis of the legal advice for inspection by us and employers on request.

It was confirmed that the College had sought independent legal advice during the review of the contracts.

170. You must publish on your website a broad statement of the approach you take to subcontracting before agreeing the use of subcontractors with any employer. This should include your reason for subcontracting, all services you will provide when doing so and how you determine the associated costs.

This requirement was met based on the information documented within the College's Supply Chain Fees and Charges Policy which is available on the College's Website.

171. You can use delivery subcontractors to complement your own delivery if requested by an employer and agreed at the start of an apprenticeship. Within an employer's apprenticeship programme (conditional on paragraph P167) delivery subcontractors can deliver full or part-apprenticeship training.

Due to this review being completed remotely it was not possible to obtain employer agreements for two subcontractors (Leeds College of Building and DETA (2000) Limited) as they were maintained as hard-copy documents on-site at the Colleges.

For Aspect Training Limited the above requirement was met as per the agreed delivery plans.

172. You must only use delivery subcontractors that satisfy one of the following two criteria:

- 172.1. they are on the published Register of Apprenticeship Training Providers and have applied by the main or supporting application routes; or
- 172.2. they are either the apprentice's employer, a connected company or charity as defined by HMRC and are on the published Register of Apprenticeship Training Providers, having applied through the employer-provider application route.

All subcontractors are documented within the published Register of Apprenticeship Training Providers.

173. You must not agree to the use of delivery subcontractors with an employer if you do not have knowledge, skills and experience of contracting with, and managing, delivery subcontractors.

It was confirmed that the College has sufficiently experienced staff members in place within the Contract Management Team.

174. You must carry out your own due diligence checks on potential delivery subcontractors including taking account of any relevant Ofsted reports. The process and results must be available for inspection by us and employers. You must not use a potential delivery subcontractor's presence on the Register of Apprenticeship Training Providers, or any other public register or database, as an indicator that they are suitable to deliver to your, or the employer's, specific requirements.

175. You must not agree with an employer the use of a delivery subcontractor that you assess as being unsuitable, or whose quality of delivery is demonstrably inadequate, even where the employer decides not to work with you as a consequence.

176. You must have robust procedures in place to ensure you do not inadvertently fund extremist organisations through the subcontracting of apprenticeship training and/or on-programme assessment.

177. You must not agree the use of any delivery subcontractor where this would require you to subcontract apprenticeship training and/or on-programme assessment to a second level. All of your delivery subcontractors must be contracted directly by you and you may have more than one subcontractor. The restriction on the level of subcontracting is in place to ensure:

- 177.1. that main providers retain clear and transparent accountability for the quality of training provision;
- 177.2. that proper and appropriate controls are in place to manage the apprentice experience; and
- 177.3. that value for money is achieved by mitigating funding being utilised for multiple tiers of subcontractor management.

178. You must maintain the relationship with each employer at all times. You must not allow a delivery subcontractor to lead that relationship.

In addition, the various funding agreements stipulate that:

- a) The Provider shall ensure that subcontractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Provision.

Review of due diligence documentation confirmed that the College is complying with this requirement.

Paragraph 30.12 of the Conditions of Funding (Grant) (Colleges) [Higher Education Institutions] [Local Authority] 2019 to 2020 stipulates the following:

30.12 Where the annual value of this Agreement exceeds £5 million per annum and the College wants to subcontract one or more of the Services, the following provisions apply:

30.12.1 The College will advertise on Agreements Finder all sub-contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Agreement Period.

30.12.2 Once a Sub-Contract has been awarded, the College will update the notice on Agreements finder with the details of the successful Sub-College.

30.12.3 In addition to any other management information requirements set out in this Agreement, the College agrees and acknowledges that it will, at no charge, provide timely, full, accurate and complete SME Management Information ("MI") Reports to the Department which incorporate the following:

- (a) the total revenue received directly from the Agreement;
- (b) the total value of Services under the Agreement that have been sub-contracted (including revenues for non-SMEs/non-VCSEs); and
- (c) the total value of sub-contracted revenues to SMEs and VCSEs.

The College does not currently have an ESFA contract in place which exceeds £5m per annum.

3.7 Using subcontractors

Paragraphs 152 and 154 to 160 of the Apprenticeship funding rules for employer-providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

152. You must directly deliver some of the apprenticeship training and/or on-programme assessment associated with your apprenticeship programme. By apprenticeship programme we mean the apprentices that are being trained by you. The volume of training and/or on-programme assessment that you directly deliver must have some substance and must not be a token amount to satisfy this rule. It must not be limited to a brief input at the start of your programme or involve delivery to just a few of a large number of apprentices. You can find further information in the document Using Subcontractors in the Delivery of Apprenticeships.

Review of documentation confirmed that the College was directly delivering some of the apprenticeship training and/or on-programme assessment associated with the apprenticeship programmes.

154. You must take your own legal advice about whether, in subcontracting part of the service delivery, you are a contracting authority awarding a public contract as defined by the Public Contracts Regulations 2015. If you are, then you should comply with the provisions of the 2015 Regulations. You must provide a synopsis of the legal advice for inspection by us.

It was confirmed that the College had sought independent legal advice during the review of the contracts.

155. You can use delivery subcontractors to complement your own delivery. Within your apprenticeship programme (conditional on paragraph EP152) delivery subcontractors can deliver full or part-apprenticeship training for frameworks and standards.

156. You must only use delivery subcontractors that satisfy one of the following two criteria:

- 156.1. they are on the published Register of Apprenticeship Training Providers and have applied by the main or supporting application routes; or
- 156.2. they are one of your connected companies or charities as defined by HMRC and are on the published Register of Apprenticeship Training Providers, having applied through the employer-provider application route

Review of documentation confirmed that the College is complying with these requirements.

157. You must carry out your own due diligence checks on potential delivery subcontractors including taking account of any relevant Ofsted reports. The process and results must be available for inspection by us. You must not use a potential delivery subcontractor's presence on the Register of Apprenticeship Training Providers, or any other public register or database, as an indicator that they are suitable to deliver to your specific requirements.

158. You must not use a delivery subcontractor that you assess as being unsuitable, or whose quality of delivery is demonstrably inadequate.
159. You must have robust procedures in place to ensure you do not inadvertently fund extremist organisations through the subcontracting of apprenticeship training and/or on-programme assessment.

[Review of supporting documentation confirmed sufficient due diligence checks had been undertaken for all relevant subcontractors.](#)

160. You must not agree the use of any delivery subcontractor where this would require you to subcontract apprenticeship training and/or on-programme assessment to a second level. All of your delivery subcontractors must be contracted directly by you and you may have more than one subcontractor. The restriction on the level of subcontracting is in place to ensure:
 - 160.1. that main providers / employer-providers retain clear and transparent accountability for the quality of training provision;
 - 160.2. that proper and appropriate controls are in place to manage the apprentice experience; and
 - 160.3. that value for money is achieved by mitigating funding being utilised for multiple tiers of subcontractor management.

[The College is not currently subcontracting to a second level.](#)

In addition, the various funding agreements stipulate that:

- a) The Provider shall ensure that subcontractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Provision.

[Review of due diligence documentation confirmed that the College is complying with this requirement.](#)

3.8 Your written agreement with each employer

Paragraphs 179 to 180 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

179. You must clearly describe to each employer and potential subcontractor, before each subcontracting relationship is agreed the reason for subcontracting and all services you will provide and the associated costs when doing so. This must include a list of specific costs for managing the subcontractor; specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the subcontractor. All of these costs must be individually itemised and describe how each cost contributes to delivering high quality training. You must also explain how such costs are reasonable and proportionate to delivery of the subcontracted apprenticeship training.
180. If you and an employer agree the use of delivery subcontractors, you must have an up-to-date written agreement in place with each employer that sets out the following for the delivery of their apprenticeship programme:
 - 180.1. The apprenticeship training and/or on-programme assessment that you will directly deliver.
 - 180.2. The amount of funding you will retain for your direct delivery.
 - 180.3. The apprenticeship training and/or on-programme assessment that each delivery subcontractor will contribute to the employer's apprenticeship programme.
 - 180.4. The amount of funding you will pay each delivery subcontractor for their contribution.
 - 180.5. The specific amount of funding you will retain to manage and monitor each delivery subcontractor.
 - 180.6. The specific amount of funding you will retain for each other support activity you will provide to each delivery subcontractor.

- 180.7. The specific amount of funding you will retain for the monitoring you will undertake to ensure the quality of the apprentice training and/or on-programme assessment you have contracted each delivery subcontractor to carry out.
- 180.8. A detailed description of how the funding retained for each activity detailed in P180.5 to P180.7 contributes to delivering high quality training and how the funding retained is reasonable and proportionate to delivery of the apprenticeship training described in P180.3.
- 180.9. Any actual or perceived conflict of interest between you and any delivery subcontractors. For example, where you and a delivery subcontractor are part of the same group, share common directors or senior personnel, or where you will benefit financially from using a particular delivery

Due to this review being completed remotely it was not possible to obtain employer agreements for two subcontractors (Leeds College of Building and DETA (2000) Limited) as they were maintained as hard-copy documents on-site at the Colleges.

Review of employer contracts for Aspect Training Limited confirmed the above requirements were met.

3.9 Delivery of apprenticeship training and on-programme assessment by delivery subcontractors

Paragraphs 181 to 186 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

181. You are responsible for all of the actions of your delivery subcontractors that are connected to, or arise out of, all the apprenticeship training and on-programme assessment that you have subcontracted to them.
182. You carry overall responsibility for the quality of apprenticeship training and on-programme assessment undertaken by your delivery subcontractors.
183. You must manage and monitor all of your delivery subcontractors to ensure that high-quality delivery is taking place that meets our funding rules.
184. You must carry out a regular and substantial programme of quality-assurance checks on the apprenticeship training and on-programme assessment provided by delivery subcontractors, including visits at short notice and face-to-face interviews with staff and apprentices. The programme must:
 - 184.1. include whether the apprentices exist and are eligible; and
 - 184.2. involve direct observation of initial guidance, assessment and delivery of training and/or on-programme assessment.
185. Your findings must be consistent with these funding rules, your expectations and the subcontractor's records. You must report any instances to us where this is not the case.
186. If any of your delivery subcontractors undergoes a change of circumstances that affects its ability to continue to deliver under a subcontract with you, you must make alternative delivery arrangements for each apprentice affected by this, in agreement with their employer. Change of circumstances include going into liquidation or administration, key delivery staff leaving the organisation, or removal from the Register of Apprenticeship Training Providers. The change of delivery arrangements must be recorded in your written agreement with the employer.

Paragraphs 161 to 166 of the Apprenticeship funding rules for employer-providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

161. You are responsible for all of the actions of your delivery subcontractors that are connected to, or arise out of, all the apprenticeship training and on-programme assessment that you have subcontracted to them.
162. You carry overall responsibility for the quality of apprenticeship training and on-programme assessment undertaken by your delivery subcontractors.

163. You must manage and monitor all of your delivery subcontractors to ensure that high-quality delivery is taking place that meets our funding rules.
164. You must carry out a regular and substantial programme of quality-assurance checks on the apprenticeship training and on-programme assessment provided by delivery subcontractors, including visits at short notice and face-to-face interviews with staff and apprentices. The programme must:
- 164.1. include whether the apprentices exist and are eligible; and
 - 164.2. involve direct observation of initial guidance, assessment and delivery of training and/or on-programme assessment.
165. Your findings must be consistent with these funding rules, your expectations and the subcontractor's records. You must report any instances to us where this is not the case.

Review of supporting monitoring information confirmed that the College is complying with these requirements.

166. If any of your delivery subcontractors undergoes a change of circumstances that affects its ability to continue to deliver under a subcontract with you, you must make alternative delivery arrangements for each apprentice affected by this. Change of circumstances include going into liquidation or administration, key delivery staff leaving the organisation, or removal from the Register of Apprenticeship Training Providers.

Testing confirmed that none of the subcontractors have undergone a change in circumstances that affect their ability to continue to deliver. There is a plan in place for the continuation of delivery if any of the subcontractors could no longer deliver the provision.

3.10 Contracting with delivery subcontractors

Paragraphs 187 to 190 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

167. You must have a legally binding contract with each delivery subcontractor.

Legally binding contracts were found to be in place with all delivery subcontractors.

168. You must obtain an annual report from an external auditor if the total apprenticeship contracts with your delivery subcontractors will exceed £100,000 in any one financial year. The report must provide assurance on the arrangements to manage and control your delivery subcontractors. The report must comply with any guidance issued by us. You must supply us with a certificate signed by the external auditor and an authorised signatory to confirm you have received a report that provides satisfactory assurance. We may ask you to provide a copy of the full report.

It was confirmed that the College had received a report from RSM in 2019 to provide assurance. The report highlighted some areas of concern and actions to mitigate these.

169. Your contract with each delivery subcontractor must specify the following:
- 169.1. They must keep to our funding rules.
 - 169.2. They must provide you with ILR data so that your data returns to us accurately reflect delivery information.
 - 169.3. They must give us, and any other person nominated by us, access to their premises and to all documents related to their delivery of apprenticeships.
 - 169.4. They must give you sufficient evidence to allow you to:
 - 169.4.1. assess their performance against Ofsted's common inspection framework or the requirements of the QAA quality code;
 - 169.4.2. incorporate the evidence they provide into your self-assessment report; and
 - 169.4.3. guide the judgements and grades within your self-assessment report.

- 169.5. They must always have suitably qualified staff available to provide apprenticeship training and/or on-programme assessment.
 - 169.6. They must co-operate with you to ensure that there is continuity of learning for apprentices if the subcontract ends for any reason.
 - 169.7. They must tell you if evidence of irregular financial or delivery issues arises. This could include, but is not limited to, non-delivery of training when funds have been paid, sanctions imposed by an awarding organisation, allegations of fraud, an inadequate Ofsted grade, not meeting relevant QAA quality code indicators, allegations or complaints by apprentices, employers, staff members, or other relevant parties.
 - 169.8. They must not use our funding to make bids for, or claims from, any European funding on their own behalf or on our behalf.
 - 169.9. They must not use payments made by us as match funding for ESF projects.
170. Your contract must make a clear reference to the up-to-date written agreement you have in place with each employer and include a breakdown of all the agreed services and costs.

In addition, the relevant funding agreements stipulate that:

- a) The Provider shall ensure that any sub-contract entered into for the purpose of delivering the Provision funded by the ESFA under this Agreement contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- b) The Provider shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term giving effect to this requirement.

[Review of contracts identified that the following requirement had been omitted:](#)

[170. Your contract must make a clear reference to the up-to-date written agreement you have in place with each employer and include a breakdown of all the agreed services and costs.](#)

Management action

The College will ensure that all subcontractor contracts make a clear reference to the up-to-date written agreement they have in place with each employer and include a breakdown of all the agreed services and costs.

3.11 Special Conditions

Special conditions for subcontracting to employer-providers

Paragraphs 191 to 192 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

- 167. Organisations who have successfully applied through the employer-provider route of the Register of Apprenticeship Training Providers are only eligible to deliver apprenticeship training and/or on-programme assessment to apprentices employed either by them or a connected company or charity as defined by HMRC. You must ensure any employer-providers who are delivery subcontractors to you meet this requirement.
- 168. Employer-providers must evidence the actual costs of delivery of apprenticeship training and on-programme assessment (see Apprenticeship Funding: Rules for Employer-Providers).

At time of review it was confirmed that the College has not subcontracted to any employer-providers.

Special conditions for subcontracting to supporting providers

Paragraphs 193 to 194 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

169. Delivery subcontractors who have successfully applied to the supporting application route of the Register of Apprenticeship Training Providers must not receive more than £500,000, or £100,000 if the delivery subcontractor is identified as new, of apprenticeship funding for their delivery from 1 April to 31 March each year.
170. You must ensure that you are not one of a number of organisations making payments to any supporting provider that exceed £500,000, or £100,000 if the delivery subcontractor is identified as new, in any one year. We will place restrictions on your future use of delivery subcontractors if this happens.
171. We will exclude any supporting provider that has applied to the Register of Apprenticeship Training Providers through the supporting application route where they allow their funding to exceed their respective total in any one year.

Testing confirmed that none of the subcontractors were on the register as supporting providers.

Special conditions for all instances where the employer is the delivery subcontractor

Paragraph 196 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulates that:

172. Where the employer is the delivery subcontractor you must only pay them for actual costs of delivery. Employers must not profit from apprenticeship delivery to their own employees.

Testing confirmed that none of the subcontractors are employers in relation to the apprenticeships that have been subcontracted to them.

3.12 Reporting

Paragraphs 197 to 198 of the Apprenticeship funding rules for main providers 2019-20 (Version 2) and associated Funding Agreements stipulate that:

170. You must provide a fully completed delivery subcontractor declaration by the dates we will give you. This will be at least twice between 1 April to 31 March each year. If you do not make the declaration on time, we will suspend your payments. If you do not subcontract, you must still provide a nil return to confirm this.
171. You must also update your subcontractor declaration if your subcontracting arrangements change during the year.

It was confirmed that the College has, in time, completed subcontractor declaration during 2019/20. Declarations were made in November 2019 and June 2020.

APPENDIX A: SCOPE OF OUR WORK

Scope

Our work has been conducted in line with the agreed scope of work as set out in the engagement letter between DN Colleges Group and RSM Risk Assurance Services LLP.

We have undertaken testing of the controls the organisation has in place for subcontracting in line with the guidance (External Assurance on Subcontracting Controls) issued by the Education and Skills Funding Agency in June 2018.

For the purposes of the Education and Skills Funding Agency and this engagement, a subcontractor is a separate legal entity that has an agreement with a provider to deliver any element of the education and training ESFA funds. This includes delivery of apprenticeship training and/or on-programme assessment for new apprenticeships that started from 1 May 2017.

Our sample size reflected all subcontractors used by the organisation which fall under the definition of subcontractor used by the Education and Skills Funding Agency, as follows:

- Aspect Training Limited
- Leeds College Of Building
- Deta (2000) Limited
- Trackwork Limited

Controls within the scope of our testing

Our work was conducted to test the controls DN Colleges Group has in place in relation to the following funding guidance as relevant:

- ESFA funded adult education budget (AEB): funding and performance management rules 2019 to 2020 (Version 3)
- Apprenticeship funding rules for main providers August 2019 to July 2020 (Version 2)
- Apprenticeship funding rules for employer-providers August 2019 to July 2020 (Version 2)
- Conditions of Funding (Grant) (Colleges)
- Conditions of Funding (Grant) (HEI)
- Contract for Services (Independent Training Providers)
- Conditions of Funding (Grant) (Local Authority)
- Conditions of Funding (Grant) (Special Post-16 Institutions)
- Conditions of Funding (Grant) (Trust)
- Conditions of Funding (Grant) (Employer)
- HEI Adult Contract for Services: Higher Level Apprenticeships
- Contract for Services: Adult Education Budget (Procured)
- Contract for Services: Procured Non levy Apprenticeships Education and Training
- Contract for Services Adult Education and Training (extension)

FOR FURTHER INFORMATION CONTACT

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The matters raised in this report are only those which came to our attention during the course of our review and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Actions for improvements should be assessed by you for their full impact. This report, or our work, should not be taken as a substitute for management's responsibilities for the application of sound commercial practices. We emphasise that the responsibility for a sound system of internal controls rests with management and our work should not be relied upon to identify all strengths and weaknesses that may exist. Neither should our work be relied upon to identify all circumstances of fraud and irregularity should there be any.

Our report is prepared solely for the confidential use of DN Colleges Group, and solely for the purposes set out herein. This report should not therefore be regarded as suitable to be used or relied on by any other party wishing to acquire any rights from RSM Risk Assurance Services LLP for any purpose or in any context. Any third party which obtains access to this report or a copy and chooses to rely on it (or any part of it) will do so at its own risk. To the fullest extent permitted by law, RSM Risk Assurance Services LLP will accept no responsibility or liability in respect of this report to any other party and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any person's reliance on representations in this report.

This report is released to you on the basis that it shall not be copied, referred to or disclosed, in whole or in part (save as otherwise permitted by agreed written terms), without our prior written consent.

We have no responsibility to update this report for events and circumstances occurring after the date of this report.

RSM Risk Assurance Services LLP is a limited liability partnership registered in England and Wales no. OC389499 at 6th floor, 25 Farringdon Street, London EC4A 4AB.