

Apprenticeship Sub-contracting – Pitfalls and Possibilities

Bryony Kingsland – UK Funding Manager
@ByronyKingsland



Levy Funding and policy

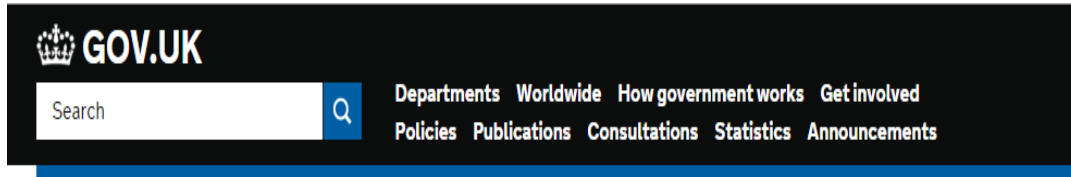
- The government is committed to significantly increase the quantity and quality of apprenticeships in England to reach 3 million starts by 2020.
- To enable this, government are introducing the employer apprenticeship levy from April 2017.
- The levy will contribute to improving workforce skills and the economy into the 2020's.
- Use of the levy and how providers and employers spend it will be carefully monitored by the SFA and IfA.
- The policy intent is that the levy should only be spent on apprenticeships and their delivery.
- Recent communications from the SFA indicates that Funding Rules will be strengthened to ensure appropriate use of the levy, and sanctions may be imposed on providers or employer providers who do not adhere to the funding rules requirements.





Public procurement

Sub-contracting – Public contracts regulations



[Home](#)

Guidance

Public procurement policy

From: [Crown Commercial Service](#)
Part of: [Government buying](#)
First published: 1 October 2015
Last updated: 8 February 2017, [see all updates](#)

Directives, regulations, policies and guidance relating to the procurement of supplies, services and works for the public sector.

Contents

- [Introduction](#)
- [The legal framework - international](#)

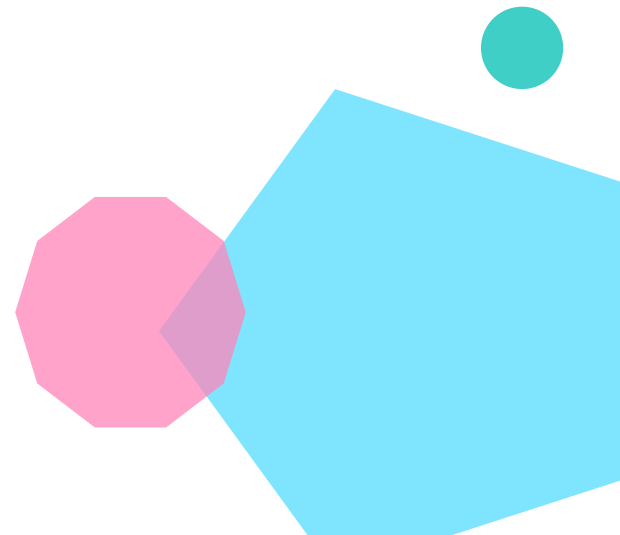
As a buyer or commissioner of supplies, services and works for the public sector you need to understand and be able to readily access the regulations and policies relating to procurement.

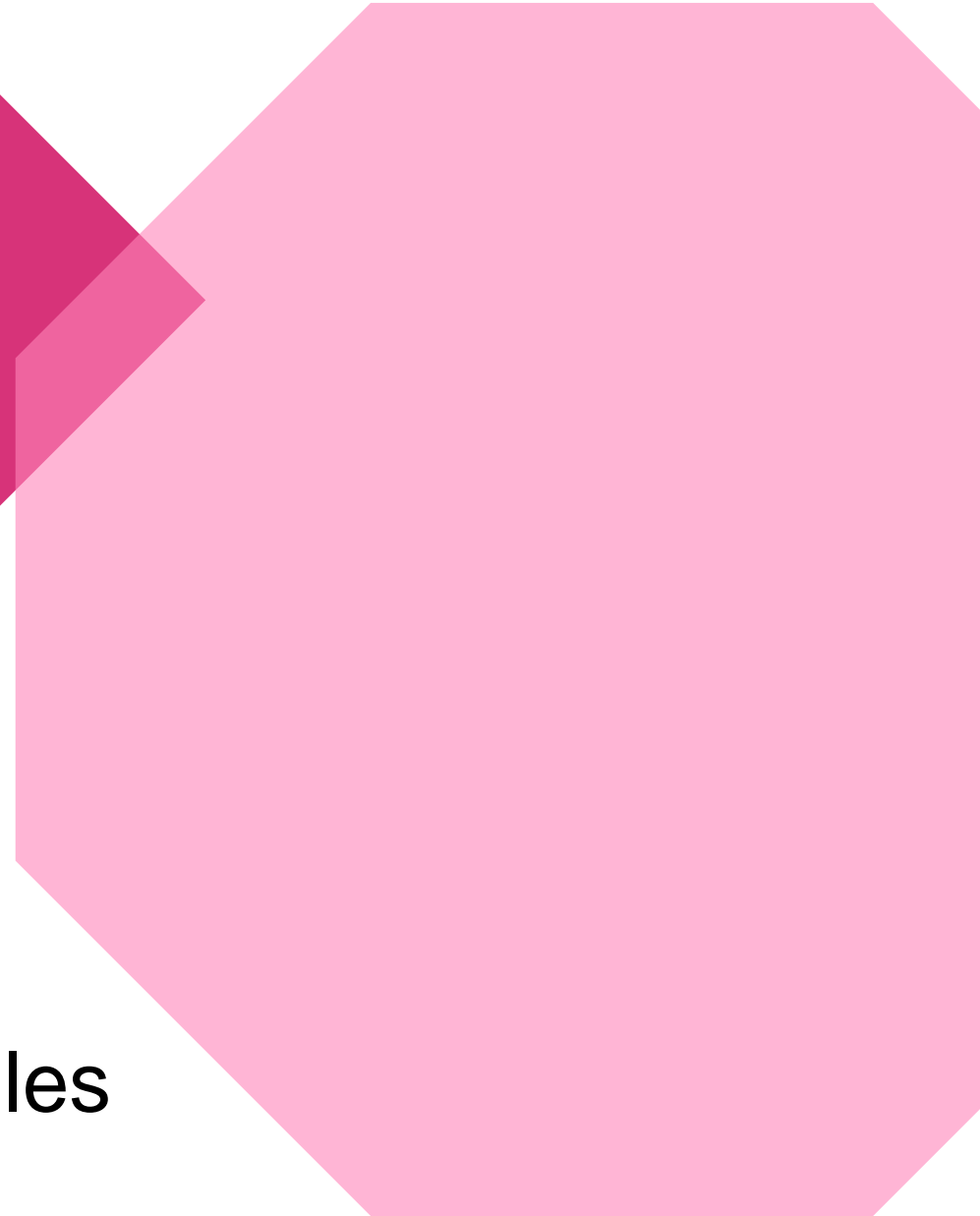
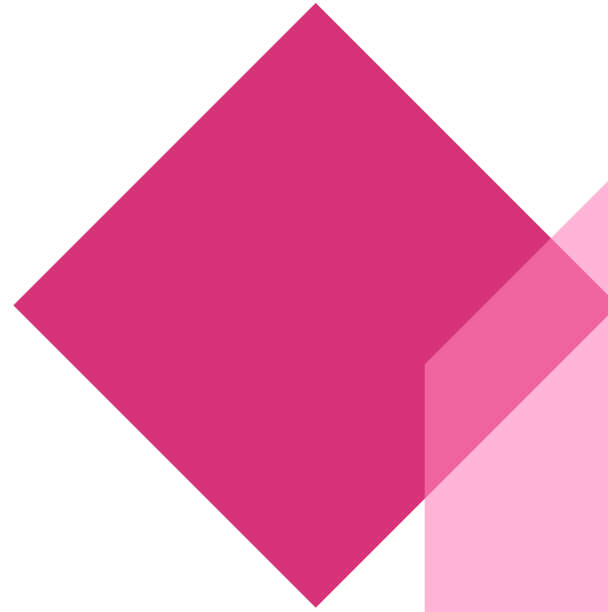
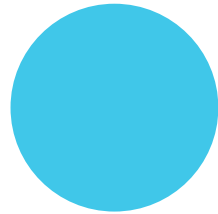
- Prime/Main and Employer Providers that decide to sub-contract must take their own legal advice before sub-contracting - Public Contracts Regulations 2015, re use of delivery subcontractors, and have this advice available for inspection by the SFA, and employers on request.
- <https://www.gov.uk/guidance/public-sector-procurement-policy>

Principles of public procurement

The over-riding principles that public procurement policy require are:


- That all public procurement must be based on value for money and achieved through open and fair competition, with all operators treated equally and without discrimination.
- That procuring/contracting authorities act in a transparent and proportionate manner.
- There are financial thresholds at which point procurement policy applies.
- <https://www.gov.uk/government/publications/procurement-policy-note-1815-new-threshold-levels-2016>





Sub-contracting – due diligence and rules

Where to find further information




Apprenticeship funding and performance-management rules for training providers

May 2017 to March 2018

Version 1

This document sets out the funding rules which will apply to all training providers delivering the apprenticeship programme following the introduction of the apprenticeship levy. It also sets out the performance-management rules which will apply to all training providers delivering apprenticeships to non-levy-paying employers.

February 2017
Of interest to colleges, training providers, higher education institutions and employers delivering training to staff outside of their organisation.



Apprenticeship funding: rules for employer-providers

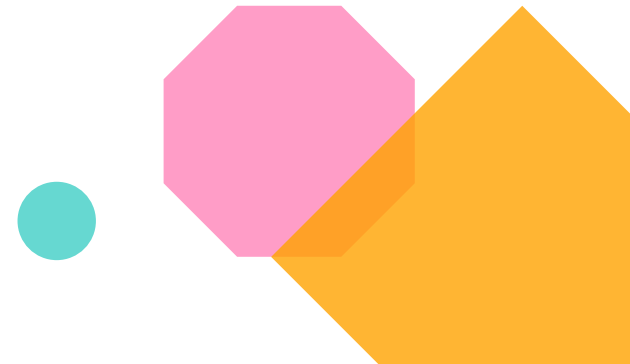
May 2017 to March 2018

Version 1

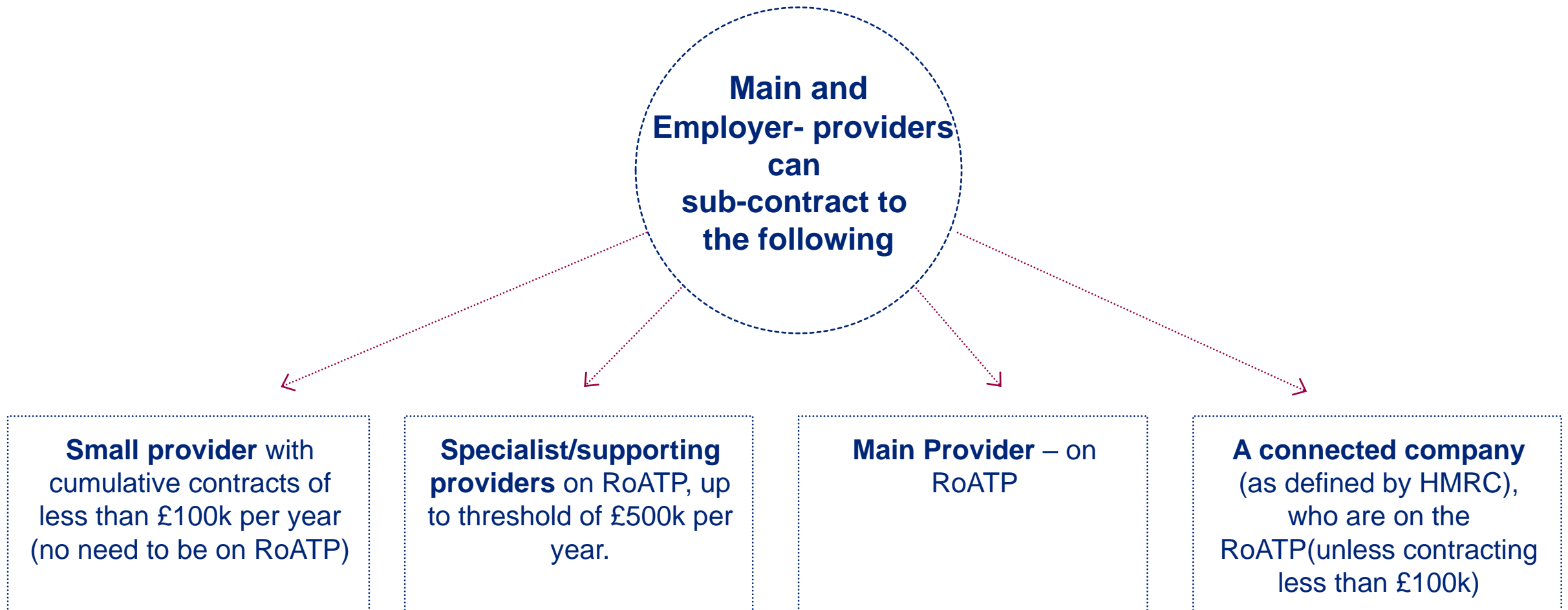
This document sets out the funding rules which will apply to all employer-providers following the introduction of the apprenticeship levy.

February 2017
Of interest to employer-providers.

<https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>



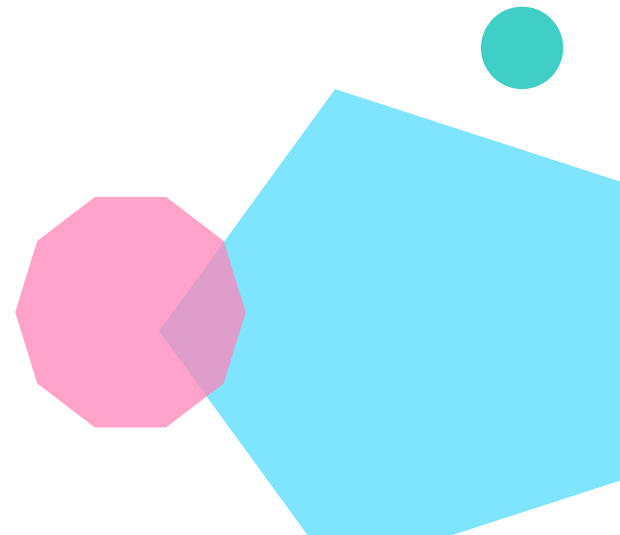
WHO CAN SUB-CONTRACT?



Sub-contracting – due diligence

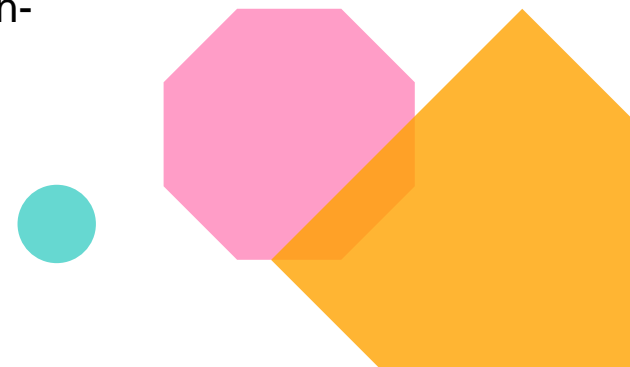
Before you start:

- Providers must carry out due diligence checks on potential delivery subcontractors. The process and results must be available for inspection by the SFA and employers.
 - ✓ Financial checks – audited accounts if possible
 - ✓ Staffing and company director checks
 - ✓ Previous Ofsted reports
 - ✓ Performance data
 - ✓ Equality and Diversity policies
 - ✓ Prevent Duty
- Providers must not agree to the use of delivery subcontractors with an employer if they do not have knowledge, skills and experience of contracting with, and managing, delivery subcontractors.



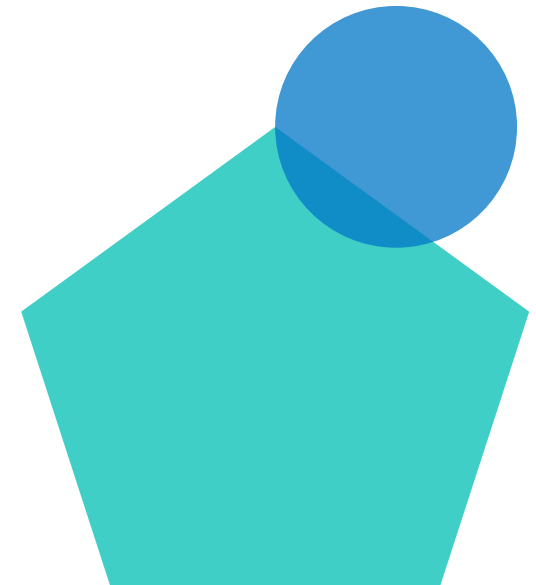
Sub-contracting – due diligence

- £100k cumulative threshold sub-contractors – not on RoATP.
- £500k cumulative threshold Sub-contractors – on RoATP.
- SFA will place restrictions on your future use of sub-contractors if you exceed these thresholds.
- SFA will permanently exclude any organisation from delivering apprenticeship training as a subcontractor, where they allow their funding to exceed this total in any one year.
- All Main and Employer providers who run sub-contracts must provide a fully completed Delivery Subcontractor Declaration Form. This will be at least twice between 1 May 2017 and 31 March 2018. If you do not return the form on time, SFA will suspend your payments.
- If you do not subcontract, you must still provide a nil return form to confirm this.
- Employer-providers must evidence the actual costs of delivery of apprenticeship training and on-programme assessment.



Sub-contracting rules

- Main providers can use sub-contractors, if requested and agreed with the employer at the start of each apprenticeship.
- If you are the lead prime provider, you must maintain the relationship with each employer at all times. You must not allow a delivery sub-contractor to lead that relationship.
- Funding for all elements of each apprenticeship will be routed through either a single main provider that the employer has chosen, or through the employer-provider. This includes English and maths funding.
- Prime providers or employer-providers must carry out due diligence checks on potential delivery sub-contractors.
- Subs can deliver full or part apprenticeships.
- There must be a legally binding contract with each sub-contractor.
- All of your delivery subcontractors must be contracted directly by you. You must not allow second level sub-contracting.

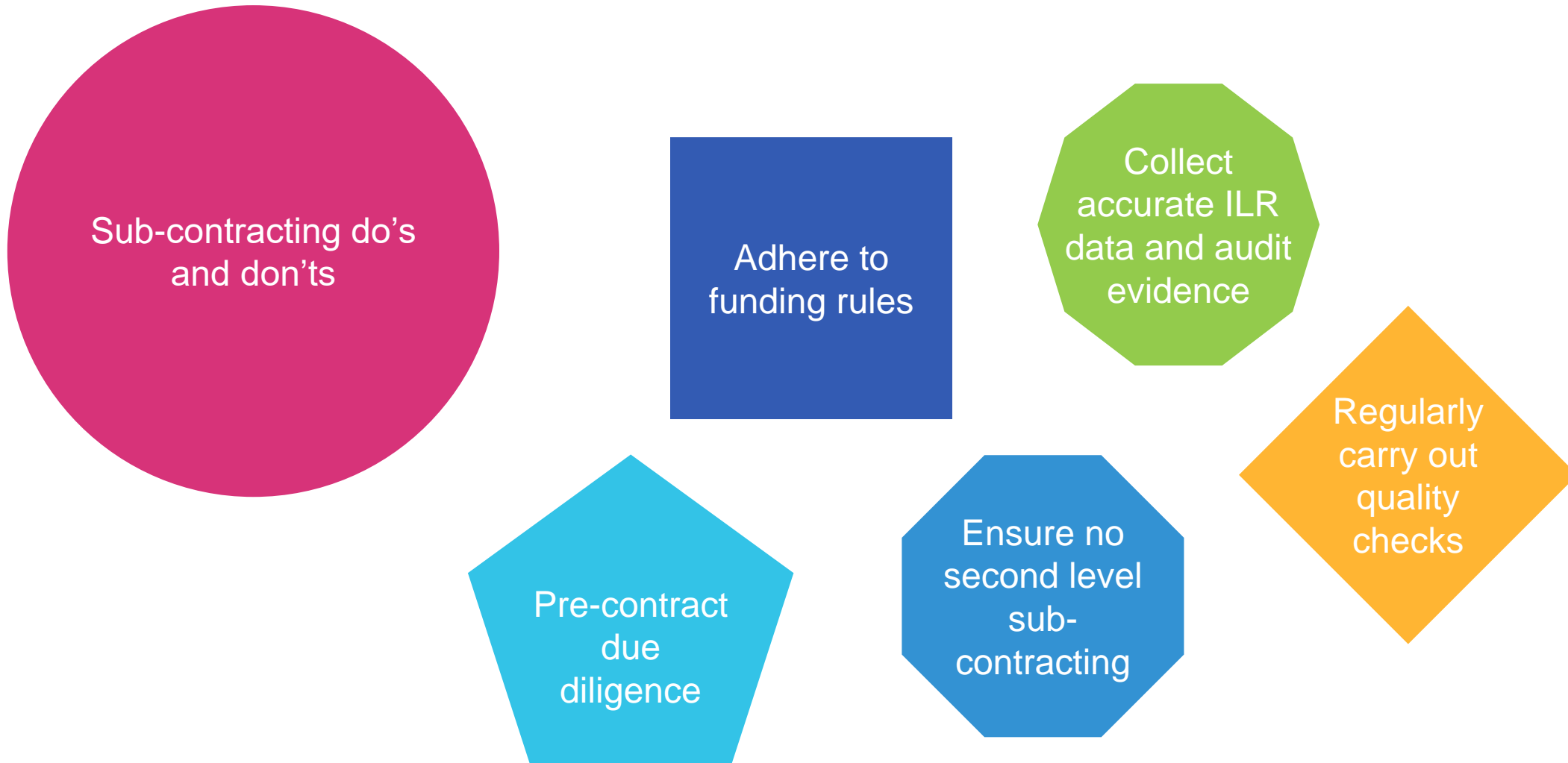


Sub-contracting rules

- As a main provider or employer-provider you must –
 - ✓ Directly deliver some of the apprenticeship training and/or on-programme assessment associated with the apprenticeship programme.
 - ✓ Ensure that the volume of training and/or on-programme assessment that you directly deliver has some substance, i.e. is not be a token amount to satisfy this rule.
 - ✓ Ensure that what you deliver is not limited to a brief input at the start of each apprenticeship or to just a few of a large number of apprentices.
 - ✓ Where the employer is the delivery subcontractor they must report the actual costs of delivery.
 - ✓ Obtain an annual report from an external auditor if the apprenticeship contracts with your delivery subcontractors will exceed £100,000 in any one financial year.
 - ✓ Have robust measures in place to ensure you do not inadvertently fund extremist organisations through sub-contracting of apprenticeships or on-programme assessment.
 - ✓ Not second level sub-contract.



Sub-contracting - essentials



Sub-contracting do's
and don'ts

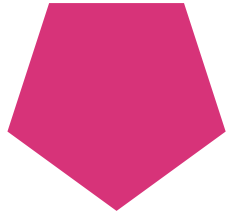
Adhere to
funding rules

Collect
accurate ILR
data and audit
evidence

Regularly
carry out
quality
checks

Ensure no
second level
sub-
contracting

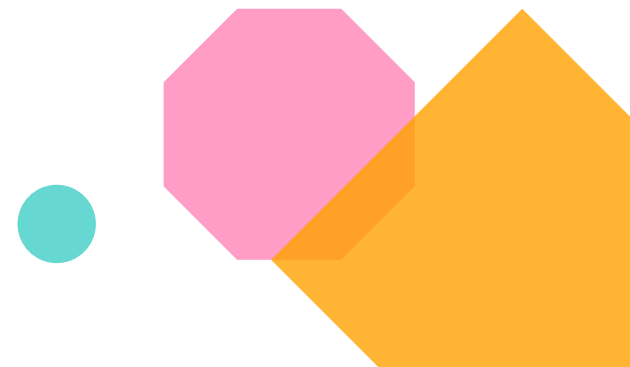
Pre-contract
due
diligence



Contracts and quality assurance

Contracts and written agreements

- You are responsible for resolving all disputes and disagreements between employer and delivery sub-contractors.
- Agreements entered into by you and the employer are legal agreements and dispute resolution should be in accordance with the terms of the written agreement and ultimately would be enforceable through the courts.
- At a minimum, written agreement/legal contracts should require Sub-contractors to:
 - ✓ Adhere to the funding rules
 - ✓ Make provision of data for ILR returns
 - ✓ Give SFA and nominated persons access to all documentation and premises relating to apprenticeship delivery
 - ✓ Assess performance against Ofsted Common Inspection Framework and incorporate their delivery evidence into your SAR
 - ✓ Ensure probity of spend of public funding and monitor for financial irregularity

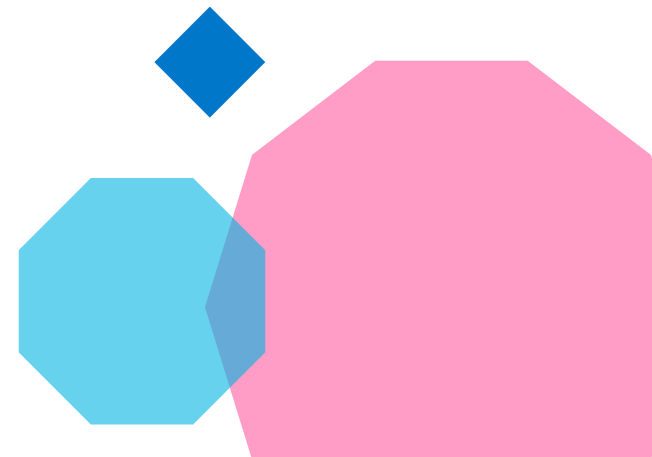


Sub-contracting – quality assurance

- Providers and provider-employers are responsible for the actions of their delivery sub-contractors - for all the apprenticeship training and on-programme assessment.
- You carry overall responsibility for the quality of apprenticeship training and on-programme assessment undertaken by your delivery subcontractors. Including readiness for Ofsted Inspections.
- You must manage and monitor all of your delivery subcontractors to ensure that high quality delivery is taking place that meets our funding rules.
- This includes carrying out a regular and substantial programme of quality-assurance checks such as;
 - Quality assurance visits at short notice
 - Face to face interviews with staff
 - Face to face interviews with apprentices
 - Verification of apprentices eligibility and existence
 - Observations of on programme delivery, training and assessment
- If any of your delivery sub-contractor circumstances change (administration, key staff leaving, removal from RoATP), you are responsible for making alternative delivery arrangements for each apprentice, in agreement with their employer.

Sub-contracting and end-point assessment (EPA)

- Providers and Employer-Providers must ensure the end assessment organisation (EAO) is totally independent of any learning delivery or management of the apprentice during the duration of the apprenticeship.
- If you are the main provider, you must contract with the apprentice assessment organisation that has been selected by the employer.
- You must have a written/legal agreement in place with the EAO.
- The written agreement must set out the arrangements for end-point assessment, including arrangements for any re-takes and payments.
- Providers must ensure that the price agreed with the employer for the apprenticeship delivery includes the amount the employer has agreed with the assessment organisation for EPA. This includes the cost of external quality assurance (EQA).
- Costs of end-point assessment will vary but SFA expects that it should not usually be more than 20% of the Funding Band Maximum.
- Sensible to ensure the EAO is consulted at commencement re costs and timing and include this in the written agreement/legal contract with employer and/or sub-contractor.



Pitfalls

- Using sub-contracting to develop delivery methods that are not accepted by SFA/IfA as meeting policy intent.
- Potential sanctions if contracting arrangements do not meet funding rules requirements for spend of levy. E.g, exceeding sub-contracting thresholds; employers not reporting actual spend.
- Accessing levy funding as management fee income, whilst not actually delivering apprenticeships with the employer.
- Potential for poor Ofsted outcomes if sub-contractors are not monitored effectively, affecting reputation and performance data (showing on Find an Apprenticeship Provider Tool).
- Not including EPA organisations in sub-contracting negotiations.
- Not monitoring and auditing financial position of sub-contractors (e.g. RoATP thresholds).
- **Your reputation!**



Possibilities

- **Providers –**

- Expand and supplement your provision and delivery (potentially your curriculum offer) by developing more partnerships with specialists, or providers with sector experience you do not have in your organisation or teams.
- Widen your offer across more employers in your region of delivery.
- Develop mutually beneficial partnerships between consortia of providers and employers, that helps to meet the skills need of the local area and ensure future skills of workforce.

- **Employers –**

- Work with delivery experts in their field to supplement your own teams knowledge and skills.
- Access specialist knowledge or resources for areas your own staff may not be able to deliver (e.g. English and maths, off the job learning, e-learning).
- Widen the your apprenticeship offer across your teams to enable effective staff development and progression planning.
- Develop mutually beneficial partnerships to ensure the skills of your workforce into the future.



Employer provider full-day workshops

Everything you need to know about becoming an Employer-Provider, including:

- Levy – how it works and how to manage it
- Funding Rules and regulations
- SFA Audit Processes and Requirements
- Ofsted Inspection requirements
- Applications to RoATP
- 6 Step Guide to Successful Implementation

Thursday 13 April 2017 - Wakefield

Wednesday 19 April 2017 - London



Thank you! Any questions?

