Education & Skills
Funding Agency

Post-16 Audit Code of Practice 2020 to 2021

Assurance and accountability requirements for post-16 providers, including further education and sixth-form college corporations

March 2021

Contents

Summary

The Post-16 Audit Code of Practice (the 'Code') sets out a common standard for the provision of assurance in relation to funding of post-16 providers. It sets out:

- the overarching assurance arrangements for post-16 providers
- the specific responsibilities within the assurance framework for sixth-form and further education corporations, and their external auditors / reporting accountants
- the requirements for independent training providers

The Code, together with supplementary bulletins, should be read alongside any agreement setting out conditions of funding in the Education and Skills Funding Agency's (ESFA's) grant funding agreements and contracts, as well as grant funding agreements and contracts issued by other funding bodies including, but not limited to, the Mayoral Combined Authorities (MCAs) or the Greater London Authority (GLA) in respect of devolved adult education funding.

Status

The provisions of this document remain in force until replaced or updated. For further education and sixth-form college corporations[1] this edition applies to all financial periods commencing on or after 1 August 2020, and the funding year 2020 to 2021. For independent training providers and special post-16 institutions this edition applies to the funding year 2020 to 2021.

In 2020 the ESFA published a supplementary bulletin to the College Accounts Direction 2019 to 2020 and the Post-16 Audit Code or Practice 2019 to 2020 which considered the impacts of COVID-19. The ESFA may publish further documents of this nature, which will have the same status as the College Accounts Direction and the Post-16 Audit Code of Practice. It is a requirement of this document that colleges apply the provisions of such bulletins.

Who is this publication for?

This document is intended for use by the following organisations, and their respective auditors / reporting accountants, whether they are funded directly by the ESFA or by one of the Mayoral Combined Authorities (MCAs) or the Greater London Authority (GLA):

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[1] Including institutions which are designated under Section 28 of the Further and Higher Education Act 1992.

- sixth-form and further education corporations
- independent training providers
- special post-16 institutions
- local authority (LA) controlled adult education centres and LA maintained schools with sixth-forms
- non-maintained special schools

Academy trusts with post-16 provision (including any sixth form colleges which have converted to academy status) are not covered by this publication and should refer to the Academies Financial Handbook and the Academies Accounts Direction. Further education and sixth form college corporations that are registered with the Office for Students (OfS) are obliged to follow this accounts direction, the OfS terms and conditions of funding, and the OfS Accounts Direction as detailed in paragraph 109. Higher Education Institutes that are part-funded by the ESFA should also follow these requirements.

Purpose

The ESFA, LAs, MCAs and the GLA fund young people's education, apprenticeships and adult skills, and all have a duty to demonstrate that they:

- spend public money in accordance with HM Treasury's guidelines
- have properly discharged any statutory and other legal requirements

The ESFA is an executive agency of the Department for Education and acts as agent of the Secretary of State. The ESFA's accounting officer is accountable to Parliament for how the ESFA uses its funds. This Code sets out how the ESFA obtains assurance from providers to meet this duty. It also sets out how MCAs and the GLA obtain assurance over devolved adult education funding.

What has changed in this edition?

1) the inclusion of a link to the ESFA's supplementary bulletin, and confirmation the colleges must apply the provisions of the bulletin and any subsequent publications of this nature (Status)
2) an update on the ESFA's subcontracting standard, including introducing the requirement for independent assurance reports on subcontracting arrangements to be considered by audit committees (para. 13-17)
3) clarification of the audit committee's role and scope and a link to the ESFA's guidance on the scope of work of audit committees (para. 27)

4) further details on the characteristics of an effective audit committee and the abilities of its members (para. 29)
5) a requirement for audit committees to consider the development and training available to its members (para. 30)
6) a requirement to include the date of appointment of the external auditor and the remaining term of the engagement in the audit committee's annual report (para.30)
7) an expectation that the audit committee should meet at least three times a year, or else include an explanation in their report (para. 32)
8) an update to the requirements to notify the ESFA of the resignation or removal of auditors, and confirmation that this is not required on expiry of their agreed term of office (para. 33)
9) a requirement for corporations to have a policy in place for regular re-tendering of external auditors, which should happen at least every five years (para. 34)
10) stating that having internal auditors in place is likely to assist audit committees in discharging their requirements (para. 35)
11) an expectation that departing accounting officers provide a statement on regularity, propriety and compliance covering the reporting period up to the date of departure where possible (para. 54)
12) clarifying that external auditors will present their findings annually to the board of governors (para. 66)
13) a summary of some of the principles which auditors will follow when performing their work (para. 68)
14) clarification that, whilst the ESFA will continue to provide both corporations and their auditors with a statement of grant payments made in respect of the funding year, the statement does not constitute assurance over the funds earned by the college (para. 73)
15) inclusion of a summary of information which will be included in the auditors' management letters to corporations, and an expectation that this includes findings categorised by priority, management responses to recommendations and the status of any prior year recommendations (para. 75-77)
16) clarification that the ESFA gains assurance over subcontracted provision through an external process but does not accept responsibility for the regularity of partner organisations (para. 90)
17) an engagement letter clause which confirms that outgoing auditors will share professional enquiry letter matters with the ESFA where such matters exist (Annex A)

18) the removal of references to a duty to the MCAs/GLA by the auditors (Annex B and Annex E)

19) stating that regularity concerns can arise where there is indication of inadequate budgetary control and management accounting arrangements (Annex C)

Clarification of terms

We use the terms ‘must’ and ‘should’ in this document:

- must – means a condition or requirement
- should – identifies minimum good practice for which there is no requirement, but which should be applied unless an alternative better suits the circumstances

Further information and feedback

Corporations and their auditors can ask the ESFA questions via an on-line enquiry form. Questions about devolved adult education funding should be directed to the relevant MCA or the GLA.

We are grateful to the individuals and organisations that have made suggestions or observations about this document.

Part 1: Assurance arrangements for post-16 providers

1. The ESFA requires assurance over a number of aspects of provider activity. The assurance requirements vary by provider type and the nature of the relationship between the provider and the ESFA. In all cases, the ESFA will require assurance that a provider has established entitlement to its funds by delivering learning in accordance with the terms of their funding agreement or contract ("use of funds"). The ESFA's assurance requirements cover more than use of funds for certain types of provider – see table 1.

Table 1: Assurance requirements

Area	Underlying requirements
Use of funds	Income is only receivable where the provider has established entitlement to funding in accordance with the underlying conditions of funding.
Internal control	The system of internal control is designed and implemented to deliver the provider's objectives and ensure compliance with statutory and contractual requirements.
Regularity	Expenditure is incurred and income received in accordance with relevant legislation, delegated authority, conditions of funding and other ESFA requirements. This includes spending money for the purposes intended by Parliament and/or other funders.
Propriety	Adherence to standards of conduct, behaviour and corporate governance[2], including fairness, integrity, the avoidance of private gain from public business, even-handedness in the appointment of staff, open competition in the letting of contracts and avoidance of waste.
Accounting requirements	Adequate financial records are maintained, and annual accounts produced in accordance with accounting requirements.

[2] The Seven Principles of Public Life provide further guidance.

2. In cases where the ESFA has a direct funding agreement or contractual relationship with providers, it will obtain its necessary assurance directly as follows:

Table 2: Assurance obtained by the ESFA

<table>
<tr><th>Provider type</th><th>Assurance approach</th><th>Assurance process</th></tr>
<tr><td>Sixth-form and further education corporations</td><td>Use of funds; internal control; regularity and propriety; accounting requirements</td><td rowspan="3">The ESFA's assurance processes are dependent on provider type, and include:
• using the work of others, including:
  ○ audit opinion on the annual accounts
  ○ assurance report on regularity
  ○ statement of corporate governance and internal control
  ○ annual report of the audit committee
• data returns to the ESFA
• sample of funding assurance reviews
• targeted work on identified concerns
• financial health assessments

The ESFA will obtain from each MCA/GLA an annual statement setting out the assurances it has over the providers detailed in the statement.
MCAs/GLA will also obtain assurance from the ESFA, which will provide each MCA/GLA with an annual assurance statement in respect of devolved adult education funding.</td></tr>
<tr><td>Independent training providers including any providers of adult education jointly funded by ESFA and an MCA/GLA</td><td rowspan="2">Use of funds</td></tr>
<tr><td>Special post-16 institutions</td></tr>
</table>

3. Reflecting the Secretary of State for Education's role as principal regulator, part 2 of this document sets out the assurance framework for sixth-form and further education corporations. Part 3 sets out the assurance framework for external auditors / reporting accountants of those institutions.

4. An independent training provider (ITP) is a term used to describe organisations which deliver education and training and includes a range of legal entities, most of which are subject to regulation under the Companies Act 2006 and/or the Charities Act 2011.

5. Special post-16 institutions (SPIs) deliver education and support to young people with some of the most severe learning difficulties and/or disabilities or low incidence needs. SPIs do not have a distinctive definition in law.

6. The ESFA contracts with ITPs and SPIs to deliver education and training services. Additionally, some providers of adult education may contract with one or more of the relevant MCAs and/or GLA. These contracts set out in detail the requirements on the ITP and SPI for services delivery. It is the responsibility of each provider or institution to comply with relevant legislation reflecting their underlying legal status (for example, company, partnership or charity). Part 4 of this document sets out certain financial reporting and audit requirements, which must be followed by ITPs. The ESFA's and/or the MCA/GLA's relationship with ITPs and SPIs is contractual not regulatory, and this is reflected in the assurance arrangements.

7. Accountability and assurance arrangements for academy trusts with post-16 provision are set out in the ESFA's Academies Accounts Direction and Academies Financial Handbook.

8. Table 3 sets out where the ESFA obtains assurance indirectly on providers, through the work of OfS, LAs, MCAs and GLA.

Table 3: Assurance obtained by OfS, LAs, MCAs and GLA and provided to the ESFA

<table>
<tr><th>Provider type</th><th>Area of assurance</th><th>Assurance process</th></tr>
<tr><td>Higher Education Institutions</td><td>Use of funds; accounting requirements</td><td>Assurance is provided to the ESFA by the Office for Students currently on an annual basis through the exchange of letters.</td></tr>
<tr><td>LA adult education centres and maintained schools with sixth-forms</td><td>Use of funds; internal control; regularity and propriety; accounting requirements</td><td rowspan="2">LAs are responsible for their own assurance processes, which may include:
• compliance with internal management frameworks and financial regulations
• using the work of internal/external audit
• review of schools financial value standard and assurance forms
• compliance with the ESFA's funding rules, ensuring the data they submit to the ESFA is reliable and complies with the rules</td></tr>
<tr><td>Non-maintained special schools</td><td>Use of funds</td></tr>
</table>

Provider type	Area of assurance	Assurance process
Adult education providers funded by an MCA or the GLA	Use of funds; internal control; regularity and propriety; accounting requirements	The Memorandum of Understanding between the ESFA and the MCA/GLA specifies that the MCAs and the GLA are responsible for their own assurance on use of funds. However, this may also include assurances gained from work undertaken by the ESFA or other external bodies which are provided to the MCA/GLA including: • audit opinion on the annual accounts • assurance report on regularity • statement of corporate governance and internal control • annual report of the audit committee • data returns by the provider to the MCA/GLA • sample of ESFA funding assurance reviews • investigative work on identified concerns • financial health assessments on both colleges and ITP's • contract management and compliance activity. Each year there will be an exchange of assurance letters between the MCA/GLA and the ESFA setting out the assurances it has over the funding detailed in the statement.

9. There are a small number of specific arrangements, including:

- ESFA obtains assurance over funding from the European Social Fund and MCAs/GLA in respect of adult education funding
- LAs obtain assurance over all three elements of high needs funding

Funding monitoring and audits

10. Providers receive funding under grant funding agreements and contracts with the ESFA. These agreements and contracts require providers to comply with the ESFA's funding rules, maintain individualised learner records (ILRs) and submit ILR data returns to the ESFA in support of their funding claims. They also permit the ESFA to conduct funding audits at providers.

11. The ESFA obtains direct assurance over providers' funding grants generated through individualised learner record (ILR) data returns. The ESFA conducts a programme of funding monitoring, which involves data analysis and the identification of providers' ILR data anomalies. The ESFA informs providers of the ILR data anomalies and explains how to correct any incorrect data, pointing out that submitting inaccurate data is a breach of contract. The ESFA conducts data validation to help ensure that funding has been legitimately earned.

12. The ESFA also obtains direct assurance through a programme of funding assurance reviews, based on a random and risk-based sample of providers, which provides sector-wide assurance over funding claimed and under which the ESFA will recover any overpaid funding. In particular, the random sample facilitates the estimation of funding errors in respect of post-16 funding recognised in the ESFA's annual accounts. In addition to the direct assurance performed by the ESFA, MCAs/GLA will adopt their own processes for any additional assurance and/or validation checks relating to specific contracting requirements and local flexibilities ag Assurance requirements about subcontracting are published separately. reed as part of devolution.

Sub-contracting

13. Providers may sub-contract the delivery of ESFA funded learning, provided they comply with the sub-contracting requirements set out in the ESFA's funding rules.

14. The ESFA continues to receive information and investigate cases where subcontracted provision is not appropriately controlled, overseen and managed by the lead funded provider. In too many cases, despite strengthening our requirements, examples of subcontracting arrangements come to our attention that are entered into for short term financial reasons, or for other reasons where the interests of the students are not paramount.

15. On 30 June 2020, the ESFA published the government response to its subcontracting consultation. This set out our overall vision where only good, well managed subcontracting occurs and at a significantly lower volume than currently. Where

subcontracting does exist, it does so to enable specialist and geographically challenged delivery, meet the needs of employers and to enrich learners' programmes.[3]

16. Providers that receive devolved adult education funding should note that MCAs and the GLA will have their own subcontracting assurance requirements. Providers should refer to guidance published by the relevant MCA/GLA.

17. External auditors of ESFA-funded providers engaged in subcontracted provision should take into account the response to the requirements set out in the ESFA CEO's letter of 3 October 2019 as well as ESFA's new subcontracting standard to tackle poor oversight and fraud. These provide that subcontracting should only be used when it demonstrably meets the needs of specific learners or employers and that lead providers must exercise improved oversight of subcontracted provision to ensure that it is delivered responsibly. Specific assurance activities in this area require providers to comply with the funding agreement annual subcontracting assurance clause. This clause requires certain lead providers to obtain an independent report that provides assurance on the arrangements in place to manage and control their subcontractors. This report must be provided to the audit committee to be included in their annual report.

[3] Further details can be found at: https://www.gov.uk/government/publications/further-details-about-reforms-to-subcontracting-education-for-learners-over-16

Part 2: Assurance framework: requirements for sixth-form colleges and further education corporations

Corporations

18. Sixth-form and further education corporations are entities that operate one or more colleges. They have the legal status of statutory corporations and exempt charities. A college is a charitable activity undertaken by its corporation; it does not have a separate legal entity distinct from that of its corporation.

Designated institutions

19. We use the term corporation to refer to sixth-form and further education corporations established under the Further and Higher Education Act 1992 (as amended), where members of the corporation form the governing body. Requirements in this guidance apply equally to institutions designated under Section 28 of the same Act as being in the further education sector, to the extent permitted by their legal status and underlying legislation.

Responsibilities

20. The source responsibilities of corporations and governors stem from:

- education legislation, including the Further and Higher Education Act 1992 (as amended) and the Apprenticeships, Skills, Children and Learning Act 2009 (as amended)
- charity law (as applicable to exempt charities)

21. General responsibilities of corporations are set out in their instrument and articles of government and conditions of funding are set out in grant funding agreements and contracts with the ESFA. Further responsibilities are set out within:

- College Accounts Direction
- specific terms and conditions from all other sources of funding

22. Corporations should be familiar with these documents and the requirements in them. A good source of advice on the legal and regulatory framework applying to corporations is the Department for Education’s governance guide.

23. The instrument and articles of government complement the duties of governors as charity trustees. Under Sections 22 and 33L of the Further and Higher Education Act

1992 (as amended) corporations may change their articles, although any change is subject to the limitations set out in the Act and charity law.

24. The articles set out the corporation's responsibilities, which must include the effective and efficient use of resources, its solvency[4], and the safeguarding of its assets. The articles must prohibit the corporation from making changes to the articles that would result in the body ceasing to be a charity.

Grant funding agreements and contracts

25. Corporations receive funding under grant funding agreements and contracts with the ESFA. These set out in detail the requirements placed on, and responsibilities of, corporations, and that any mandatory requirements of the Code form a condition of funding. For a complete picture of the ESFA's assurance requirements, the Code should be read alongside the ESFA's grant funding agreements and contracts. Some corporations also receive funding under grant funding agreements and contracts with MCAs or the GLA in respect of devolved adult education funding, which also require compliance with this Code.

Corporation's audit committee

26. It is a condition of funding and this Code that corporations must establish an audit committee.

27. The audit committee must advise the corporation on the adequacy and effectiveness of the corporation's assurance framework. The audit committee must play a robust role in good stewardship and risk management and may refer to the ESFA's guidance on the scope of work of audit committees and internal auditors in college corporations. In addition, the audit committee advises and supports the corporation in explaining, in its annual accounts, the measures taken to ensure it has fulfilled its statutory and regulatory responsibilities. The College Accounts Direction sets out the ESFA's specific requirements including the required format of the corporation's statement of corporate governance and internal control.

28. The corporation must set out clear terms of reference for the audit committee. These should reflect accepted good practice for audit committees of publicly funded organisations[5] and as a minimum must set out:

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[4] Corporations should be mindful of the insolvency regime for further education bodies.

[5] HM Treasury's audit committee handbook may be a useful reference point.

- the committee's right to scrutinise any activity within its terms of reference, which may involve engaging a third party to assist
- the committee's right to access all the information and explanations it considers necessary, from whatever source, to fulfil its remit
- a requirement for the corporation to appoint a minimum membership of three, a majority of whom must be governors, which must not include the chair of the corporation or principal
- a responsibility for the corporation, in appointing members, to maintain the committee's independence and objectivity[6]
- a restriction on the committee not to adopt an executive role

29. Audit committees must include individuals with an appropriate mix of skills and experience to allow the committee to discharge its duties effectively. Collectively, members of the committee should have recent, relevant experience in risk management, finance, and assurance. The abilities of the membership of the audit committee should reflect the needs of the corporation and should extend to expertise in all relevant financial and non-financial areas. Audit committees will be most effective when they are staffed by individuals who are prepared to support, challenge, and warn the board of governors.

30. In addition, the audit committee must:

- assess and provide the corporation with an opinion on the adequacy and effectiveness of the corporation's assurance arrangements, framework of governance, which may include the board assurance framework, risk management and control processes for the effective and efficient use of resources, solvency, and the safeguarding of assets. Audit committees should take a holistic view with all aspects and systems, financial and non-financial, being in scope depending on their impact and effect on the corporation.
- consider the development of members and put in place appropriate training to ensure their skills and knowledge are up to date. Where the audit committee identifies a gap in its existing skillset, training and development should be provided to address this in the first instance.
- advise the corporation on the appointment, reappointment, dismissal and remuneration of the external auditor, reporting accountant, internal audit (as

[6] Corporations should consider whether staff-governor members of an audit committee meet good practice standards of independence and objectivity.

applicable) and other assurance providers (as applicable) and establish that all such assurance providers adhere to relevant professional standards.

- inform the corporation of any additional services provided by the external auditor, reporting accountant, internal audit (as applicable) and other assurance providers (as applicable) and explain how independence and objectivity are safeguarded.
- review and consider the reports of the external auditor, reporting accountant, internal audit (as applicable) and other assurance providers (as applicable), and monitor the implementation of recommendations to agreed timescales.
- oversee the corporation’s policies on and processes around fraud, irregularity, impropriety and whistleblowing[7], and ensure:
  - the proper, proportionate and independent investigation of all allegations and instances of fraud and irregularity
  - that investigation outcomes are reported to the audit committee
  - that the external auditor (and internal auditor if applicable) are informed of investigation outcomes and other matters of fraud, irregularity and impropriety, and that appropriate follow-up action has been planned/actioned
  - that all significant cases of fraud or suspected fraud, theft, bribery, corruption, irregularity, major weakness or breakdown in the accounting or other control framework are reported to the ESFA, and other relevant funding authority, as soon as possible
  - risks around fraud have been identified and controls put in place to mitigate them.
- produce an annual report for the corporation, summarising the committee’s activities relating to the financial year under review, including:
  - a summary of the work undertaken by the committee during the year
  - the number of the meetings held in the year, and attendance records for each audit committee member
  - any significant issues arising up to the date of preparation of the report
  - any significant matters of internal control included in the reports of audit and assurance providers

[7] Corporations should refer to the whistleblowing requirements set out in their funding agreements.

- details of the date of appointment of the external auditors and the remaining term of the contract
- the committee's view of its own effectiveness and how it has fulfilled its terms of reference
- the committee's opinion on the adequacy and effectiveness of the corporation's assurance arrangements, assurance over subcontracting, framework of governance, risk management and control processes for the effective and efficient use of resources, solvency, and the safeguarding of assets

The annual report to the corporation must be submitted to the corporation before the statement of corporate governance and internal control in the annual accounts is signed.

31. In addition to the mandatory responsibilities of an audit committee outlined above, as best practice audit committees may also oversee additional matters such as data breaches, GDPR issues and health and safety incidents.

32. The audit committee should meet at least three times a year. Where three meetings were not held, an explanation (such as when it was not possible to achieve a quorum) must be provided within the audit committee's annual report.

33. The audit committee must notify ESFA immediately of the resignation of auditors, or in the rare circumstance where the corporation removes the auditors, before the expiry of their term of office. Where auditors have resigned, other than at the end of their agreed term, the audit committee must copy to ESFA an explanation from the auditors. Where the corporation elects to remove the auditors, the audit committee must notify ESFA of these reasons. A change in auditor at the expiry of their agreed term of office does not require notification to the ESFA by the corporation.

34. The audit committee must ensure that there is a policy in place for regular retendering of the external audit service. The audit committee should consider the quality of the audit service required as well as the price. Corporations should ensure that the external audit contract is put out to tender at least every 5 years, though for the avoidance of doubt this does not necessarily require a different firm of auditors to be appointed.

35. Although corporations are not required to commission internal auditors, having an internal audit service in place, which may be supplemented by specialists in particular areas, is likely to assist audit committees in ensuring they have effectively discharged the requirements above.

Accountability to Parliament

36. Parliament's interest is that recipients of public funds apply and account for those funds properly and use them economically, efficiently and effectively. The Comptroller and Auditor General (C&AG), as Head of the National Audit Office, is the ESFA's external auditor.

37. The C&AG has the right under the Further and Higher Education Act 1992 (as amended) to inspect the annual accounts of any corporation that receives funding, and the right to carry out value for money investigations. The C&AG is selective in its use of inspection rights and will seek to rely on the work of the ESFA's assurance processes.

38. Corporations that are also funded by MCAs or the GLA in respect of adult education should note that these authorities will have their own internal and external auditors. Corporations should refer to their contracts or grant agreements with those authorities to understand the requirements of those authorities concerning audit access.

Responsibilities relating to the accounts

39. Corporations are required to prepare accounts in accordance with the ESFA's College Accounts Direction. They are also required to appoint an external auditor to audit those accounts. Corporations must allow the external auditor unrestricted access to all records, information and assets, which the auditor considers necessary to fulfil their responsibilities.

Responsibilities relating to regularity and propriety

40. Regularity and propriety are discussed within HM Treasury's 'Managing Public Money' (MPM). MPM sets out that the ESFA's accounting officer has a personal responsibility for safeguarding the public funds for which they are accountable, and for ensuring regularity and propriety in the handling of these funds. There are similar responsibilities attaching to MCAs and the GLA.

41. Corporations receive significant amounts of public funding from the ESFA each year. Some also receive funding from MCAs or the GLA for the provision of devolved adult education. This framework sets out how the ESFA's accounting officer, and their equivalent in the MCAs or GLA, seeks to obtain assurance over the regularity and propriety of public funds to satisfy their responsibility.

42. MPM defines regularity as the requirement that 'resource consumption should accord with the relevant legislation, the relevant delegated authority and this document'. For corporations, this encompasses legislation (for example, the Further and Higher Education Act 1992 (as amended) and the Charities Act 2011), conditions of funding and other guidance issued by the ESFA.

43. Propriety is a related concept concerned with standards of conduct, behaviour and corporate governance. MPM defines propriety as the requirement that ‘patterns of resource consumption should respect Parliament’s intentions, conventions and control procedures’.

44. Propriety is less prescriptively defined but includes matters such as fairness, integrity, avoiding the use of public office to achieve private gain, even-handedness in the appointment of staff, open competition in the letting of contracts and avoidance of waste and extravagance. There are no definitive guidelines for propriety – coming to a professional judgement, reflecting the high standard expected in organisations receiving public funding, is required.

Statement of regularity, propriety and compliance

45. Corporations must publish a statement of regularity, propriety and compliance within their annual accounts. The format of this statement is set out in the College Accounts Direction, and requires disclosure of any identified material irregularity, impropriety or funding non-compliance.

46. Corporations should ensure that any references in their final signed statement to instances of material irregularity, impropriety or funding non-compliance are consistent with any findings from the work of the reporting accountant.

47. To form their conclusion the corporation must ensure that it is working within the boundaries of regularity and propriety. This work should be performed throughout the year, as part of their oversight of internal control processes such as:

- review of management reporting documents
- review of corporation minutes and reports
- confirming compliance with delegated authorities
- exercising effective control to ensure that funds and assets are protected and legal obligations are met

48. The following tests may be useful for the corporation to consider whether a transaction is regular and proper:

- is the expenditure in the best interests of the corporation?
- does the expenditure comply with approved procurement rules and policies?
- is there a valid benefit to the corporation from the expenditure and not just personal benefit to an employee or trustee?
- if a transaction could provide a personal benefit to an employee or board member, has this been independently and appropriately authorised?

- is the expenditure necessary?
- is the expenditure reasonable – does it meet identified and agreed needs?
- has the expenditure been properly authorised?

49. The corporation can also draw comfort from the work of the audit committee and internal auditor (if applicable) which provides a process for independent checking of internal control processes.

50. It is for the corporation to determine if further work is necessary at year-end to evidence their statement of regularity, propriety and compliance. If proper internal control processes have been adequately documented and have operated during the year, there should be no need for significant additional scrutiny.

Regularity self-assessment questionnaire

51. The ESFA publishes a regularity self-assessment questionnaire (RSAQ) to provide clarity of the accountability framework, key requirements and the type of evidence corporations may need to provide to their reporting accountant. This must be prepared annually to support corporations in drafting their statement of regularity, propriety and compliance. Corporations must provide a copy of their completed RSAQ to the reporting accountant, signed by the accounting officer and chair of governors.

Retaining evidence in support of regularity

52. The corporation must be able to support their statement of regularity, propriety and compliance. This includes responses given in the RSAQ that the corporation completes and discloses to the reporting accountant. Although specific documentation is not required, the accounting officer should retain a record of work undertaken throughout the year. This is to provide support for the sign-off at year-end and to assist with any reporting accountant queries.

53. The retention of working papers would also assist the corporation if the accounting officer changed during the reporting period, or before finalisation of the annual accounts.

54. Where there is a change of accounting officer during the year, or up to the date of signing the declaration, it is the responsibility of the new accounting officer to be satisfied that they can support their signing of the statement. This will be achieved through discussions between the new accounting officer and the corporation, the internal auditor (if applicable), the senior leadership team and, where possible, the previous accounting officer, who should provide a statement to the corporation on regularity, propriety and compliance covering the reporting period up until their date of departure, alongside all relevant minutes and reports during the period covered by the statement.

55. The ESFA's College Accounts Direction emphasises that in respect of business combinations, the chair and accounting officer of the receiving entity are responsible for signing off, and submitting to the ESFA, audited accounts of any dissolving corporation. Similarly, the receiving corporation's accounting officer needs to be satisfied that they can support their signing of the statement of regularity, propriety and compliance.

Fraud, regularity, and reporting

56. The legal definition of fraud as defined in the Fraud Act 2006 is: '*The making of a false representation or failing to disclose relevant information, or the abuse of position, in order to make a financial gain or misappropriate assets.'*

57. It is the responsibility of the corporation, as set out in grant funding agreements and contracts with the ESFA (and, where relevant, with MCAs and the GLA), to establish and maintain an adequate system of internal control, to ensure compliance, and to prevent and detect irregularities and suspected fraud (including theft, bribery and corruption). To achieve this a corporation must establish an effective and proportionate counter fraud strategy which sets out the approach to raising awareness, prevention, detection, investigation and sanction (including seeking redress where appropriate) of suspected fraud.

58. In developing a counter fraud strategy, corporations should consider the nature of the threat faced. The non-exhaustive list below contains the main components, and the anti-fraud checklist at Annex D offers a possible framework:

- a fraud risk assessment to identify areas most vulnerable to suspected fraud; the ESFA has developed a list of potential fraud indicators to support a review
- testing of internal control systems to ensure robustness and to help assess vulnerability to fraud
- policies and procedures in place (such as a whistleblowing policy and a fraud response plan), detailing how to report suspected fraud and the processes to follow when reports are received
- a fraud loss measurement exercise to evaluate the scale of suspected fraud
- a means of measuring the effectiveness of the counter fraud strategy

59. Corporations must have procedures in place to ensure any suspected or discovered instance of fraud, cybercrime, theft, bribery, corruption, irregularity, major weakness or breakdown in the accounting or other control framework are identifiable. Where identified, corporations must inform the chair of the audit committee, external auditors and internal auditors (if applicable) as soon as practically possible. The ESFA, and any other relevant funding provider, must also be informed when the amounts are significant, that is exceeding £10,000 in value, as soon as possible.

60. Significant fraud is usually where one or more of the following factors are involved:

- the sums of money are in excess of £10,000
- there is likely to be public interest because of the nature of the fraud or the people involved
- the particulars of the fraud are novel or complex
- the fraud is systematic or unusual in nature

61. Fraud, by its inherent nature of deception to result in financial or personal gain, means that the transaction must be irregular and improper. The accounting officer must include any significant, systematic or unusual fraud in their statement of regularity, propriety and compliance.

62. Fraud, including any suspected or attempted fraud, should be reported to Action Fraud to help identify systematic risks potentially affecting whole sectors (for example cybercrime). Action Fraud monitors the cost of fraud across the UK and has been set up to provide a single point of reporting and information for individuals and organisations.

63. The ESFA reserves the right to conduct investigatory work in respect of any provider when there are reasonable grounds to believe that fraud or other financial irregularity has taken place. If such a provider is also funded by another public authority, then the ESFA and that authority will cooperate to determine which authority will lead the investigation.

Part 3: Assurance framework: requirements for external auditors / reporting accountants of further education and sixth-form college corporations

General responsibilities

64. It is a condition of funding by both the ESFA and MCAs/GLA that corporations appoint an external auditor to audit their annual accounts. We require external auditors appointed by corporations to comply with the requirements of Part 42 of the Companies Act 2006, namely a firm or individual holding membership of a relevant supervisory body and allowed to carry out audits under the rules of that body.

65. Corporations must also appoint a reporting accountant to provide an assurance report on regularity each financial year. The reporting accountant must be the same as the external auditor. The external auditor/reporting accountant is expected to adhere to relevant professional standards in performing their work.

66. External auditors will present their findings annually at a meeting of the board of governors, which may be a joint meeting with the audit committee.

67. Corporations should note the Financial Reporting Council's Revised Ethical Standard issued in December 2019, and particularly section 5C, which states that a firm providing external audit may not provide internal audit services to the same client or to a significant affiliate of such a client.

68. In carrying out their work external auditors and reporting accountants will apply the following principles:

- **Integrity and objectivity** – the external auditor and reporting accountant will carry out their work with integrity and objectivity. Auditors will also comply with applicable ethical frameworks, along with any additional requirements set out by relevant regulatory, recognised supervisory and other relevant bodies.
- **Professionalism** – the external auditor and reporting accountant will carry out their work in compliance with standards issued by relevant regulatory bodies.
- **Professional scepticism** - the external auditor and reporting accountant will exercise professional scepticism. This means they will obtain and document the information and explanations they consider necessary to provide sufficient, appropriate evidence to support their judgements, both in relation to their audit of the financial statements and the regularity review. They will meet the requirements of professional standards, where applicable.
- **Proportionality -** the external auditor's work should be risk-based and proportionate. It should be designed to meet the auditor's responsibilities, applying the auditor's professional judgement to tailor their work to the circumstances in place at the corporation and the audit risks to which they give

rise. The auditor should also consider carefully the practical and resource implications for the corporation when framing recommendations arising from their work.

- **Appropriate knowledge and skills –** the external auditor and reporting accountant should ensure that they have the necessary skills and knowledge to discharge their functions effectively and have arrangements in place to ensure that their staff have sufficient knowledge of the relevant financial reporting, regulatory and legislative frameworks. They will ensure that audit teams comply with statutory and other relevant requirements relating to the security, transfer, holding, disclosure and disposal of information, particularly personal information received or obtained during the course of their work.

Responsibilities relating to the accounts

69. The external auditor must audit the annual accounts in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK).

70. The external auditor must provide an opinion on whether the annual accounts, in all material respects, give a true and fair view and have been prepared in accordance with the Statement of Recommended Practice: Accounting for Further and Higher Education.

71. The external auditor must report by exception whether, in their opinion:

- the corporation has not kept adequate accounting records
- the annual accounts are not in agreement with the accounting records
- if they have not received all information / explanations required for their audit

72. The external auditor has a professional duty to consider the members of the corporation's report on the operation and financial review within the annual accounts. This will include the corporation's statement of corporate governance and internal control. The auditor is required to take appropriate action under auditing standards if the statements made are materially inconsistent with the audited financial statements or any information is apparently materially misstated based on, or materially inconsistent with, their knowledge of the corporation acquired in the course of performing the audit, and report accordingly.

73. The ESFA, and where applicable the relevant MCA/GLA, will notify both corporations and their auditors the value of their main funding grants through funds' payments statements, generated through the individualised learner record (ILR) returns, to be included as income within the corporation's annual accounts. Responsibility for the accuracy of funding claims remains with the corporation.

74. Where the external auditor is unable to provide an unmodified audit opinion or where they wish to use an alternative form of wording, or where the external auditor intends to include an emphasis of matter paragraph or material uncertainty relating to going concern, they must communicate this to the accounting officer, the chair of the corporation, the chair of the audit committee, the ESFA and, where applicable, the relevant MCA/GLA, as soon as practically possible.

75. External auditors are required to communicate with those charged with governance matters arising from the audit. This must be in the form of a written report (“management letter”), prepared in accordance with *ISA (UK) 260 Communication with Those Charged with Governance* and *ISA (UK) 700, Forming an Opinion and Reporting on Financial Statements*. Auditors are required to communicate:

- their responsibilities in relation to the audit
- the planned scope and timing of the audit, and
- the significant findings from the audit.

76. External auditors are required to report:

- their views about significant qualitative aspects of the corporation’s accounting practices, including accounting policies, accounting estimates and financial statement disclosures
- significant difficulties, if any, encountered during the audit
- significant matters, if any, arising from the audit that were discussed, or subject to correspondence with management and the written representations the auditor is requesting
- other significant matters arising from the audit that, in the auditor’s professional judgment, are relevant to the oversight of the financial reporting process.

77. The management letter should also cover:

- the external auditor’s findings, categorised by priority
- any audit recommendations for the period with management responses
- the status of any audit recommendations from the previous year

78. The management letter must also report on the regularity assurance engagement.

Responsibilities relating to regularity and propriety

79. Corporations must appoint a reporting accountant to provide an assurance report on regularity each financial year. The reporting accountant must be the same as the external auditor.

80. The reporting accountant must perform the engagement to provide limited assurance. Limited assurance engagements are those concluding whether, based on the procedures performed and evidence obtained, nothing has arisen that suggests information is materially misstated[8].

81. For corporations, the reporting accountant provides limited assurance that expenditure disbursed and income received have been applied to purposes intended by Parliament, and financial transactions conform to the authorities that govern them.

82. The reporting accountant must set out any material matters within their assurance report on regularity. Any other findings arising from the engagement should be set out in their management letter to the corporation, including any concerns over propriety.

Framework of authorities and criteria for assessment

83. The reporting accountant's assurance report on regularity refers to the authorities that govern the corporation. Understanding the framework of authorities relevant to the conduct of the activities of a corporation will assist the reporting accountant in planning their work and identifying risk of potential material irregularities in the annual accounts.

84. The reporting accountant should have regard to the Financial Reporting Council's Statement of Recommended Practice, Practice Note 10, Audits of Financial Statements of Public Sector Bodies in the United Kingdom (PN10). This sets out a general framework for obtaining reasonable assurance over regularity. The regularity assurance framework for corporations seeks limited assurance, and therefore PN10 does not strictly apply. It does, however, remain a useful reference for:

- understanding the framework of authorities
- testing to obtain sufficient appropriate evidence
- reporting on regularity
- understanding materiality and risk

85. Much of the work required to understand the activities and relevant framework of authorities will already have been considered in the audit of the annual accounts[9].

86. In making their assurance report on regularity, the reporting accountant will need to further understand and assess how the corporation has interpreted the framework of

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[8] See International Standard on Assurance Engagements (ISAE) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information.

[9] See International Standard on Auditing (UK) 315 and International Standard on Auditing (UK) 250A.

authorities in its own context, and the systems, procedures and controls that have been put in place to ensure compliance.

87. The corporation's statement of regularity, propriety and compliance, and regularity self-assessment questionnaire, should inform the reporting accountant's work by demonstrating how the requirements are met.

Regularity testing

88. In planning their testing, the reporting accountant should refer to Practice Note (PN) 10, which sets out the general framework for obtaining assurance over regularity and International Standard on Assurance Engagements (ISAE) 3000, which set out some specific considerations for limited assurance engagements.

- PN10 (Part 2: paragraph 42) sets out that procedures designed to obtain assurance over regularity would usually comprise a combination of tests of controls and substantive procedures
- ISAE 3000 sets out that the nature and extent of testing is a matter for the professional judgement of the reporting accountant, although it is anticipated that testing will be based primarily on the corporation's statement of regularity, propriety and compliance.

89. It will typically be most efficient to undertake regularity work in conjunction with, and at the same time as, the audit of the annual accounts.

90. Regularity testing of the ILR return is excluded from the reporting accountants' work, as the ESFA performs funding assurance reviews for its own purposes (see paragraph 12). Similarly, the ESFA gains assurance over subcontracted provision through an external assurance process (paragraph 17). The ESFA will provide colleges and their auditors with an annual statement of funds paid. The reporting accountant is, therefore, limited to considering whether payments are made in line with Parliament's intentions, any contractual terms and in accordance with the corporation's financial regulations and procedures.

91. Other than the exclusions above, the regularity work should include all corporation expenditure and income received, regardless of source. This includes income and expenditure of any subsidiaries or joint venture arrangements to the extent that they are included as part of the consolidated annual accounts.

92. Reporting accountants must notify the corporation and the ESFA if potential regularity matters that could affect ILR returns and associated claims come to their attention during their work. They should also notify the relevant MCA/GLA if devolved adult education funding is concerned.

93. Where the reporting accountant has specific concerns over the regularity of income and expenditure at a corporation, they may, exceptionally, write to the ESFA (and the MCA/GLA when relevant) and ask for a summary of any relevant matters, for example fraud and whistleblowing (if such information is not reasonably available from the corporation).

94. The reporting accountant should consider whether they can rely on the work of a third party (such as internal audit, if applicable) who has undertaken assurance reviews relevant to the objective of the regularity assurance engagement. It is a matter of professional judgement how much reliance the reporting accountant places on this work.

95. The ESFA does not require reporting accountants to maintain separate files in respect of the audit of the annual accounts and their regularity work. As mentioned above, they can incorporate regularity sampling into the audit of the annual accounts. However, they will need to clearly document their regularity assurance work, including the objectives, methods, results / findings and conclusions for the testing, which underpins their assurance report on regularity.

The assurance report on regularity

96. Annex E sets out the required format of the reporting accountant's assurance report on regularity, including the format of the limited assurance conclusion.

97. The scope of the limited assurance engagement is set out at paragraphs 83 to 87 above.

98. Where the reporting accountant identifies potential irregularities, these should be discussed with the corporation and accounting officer. Potential irregularities should be considered individually and in aggregate in terms of whether they represent a material irregularity, by either value or nature. The reporting accountant should also revisit their risk assessment.

99. When the reporting accountant concludes that there are matters of material irregularity, by virtue of value or nature, either individually or in aggregate of transactions underlying the annual accounts, this will lead to a modified assurance report on regularity including full disclosure of those matters in that report. If this constitutes a matter of material significance[10], then it must be reported to the ESFA.

100. Where irregularity is identified, but the reporting accountant concludes it is not material, by virtue of value or nature, either individually or in aggregate, or does not relate

[10] As defined in: Matters of Material Significance reportable to UK charity regulators.

to transactions underlying the annual accounts, the issue will be reported in the reporting accountant's management letter.

101. Where the reporting accountant is unable to provide a report on regularity or where they wish to use an alternative form of wording, they must communicate this to the accounting officer, the chair of the corporation, the chair of the audit committee, the ESFA as soon as practically possible.

102. The reporting accountant must consider the impact of any regularity issue on their audit of the annual accounts.

103. The assurance report on regularity has due regard to propriety without formally providing assurance over it. Propriety is concerned with conduct and behaviour rather than compliance with a framework of authorities and it is therefore not readily susceptible to objective verification. There is no requirement to provide assurance on propriety save for when, as per PN10 (Part 2: paragraph 9) issues of propriety come to light. The reporting accountant should consider whether, and if so how, they may be reported.

Materiality and risk

104. In the absence of an alternative assurance standard, the Code draws on some of the principles set out in PN10 even though the further education sector is not specifically within scope.

105. PN10 (Part 2: paragraphs 31 to 40) sets out that the auditor's assessment of what is material is a matter of judgement and includes both quantitative (value) and qualitative (nature) considerations. Materiality affects both the way in which the auditor plans and designs the audit work on regularity, and how the auditor evaluates and reports the results of that work. The assessment of materiality at the planning stage for regularity may be different to that applied for the audit of the financial statements as a whole.

106. Materiality is relevant when planning and performing the assurance engagement, including when determining the nature, timing and extent of procedures, and when evaluating whether the subject matter information is free of misstatement.

107. The materiality level applied for the testing of transactions in terms of whether they are regular or have been used in accordance with the contractual terms and conditions of grant, may also differ to that applied to the annual accounts.

108. Matters of material significance[11] must be reported to the ESFA, as set out in section 160 of the Charities Act 2011.

[11] As defined in: Matters of Material Significance reportable to UK charity regulators.

Additional audit requirements for colleges registered with the Office for Students

109. Corporations that are registered with the Office for Students (OfS) are obliged to follow the requirements of the extant OfS Accounts Direction as well as those set out in this document. OfS-registered corporations, and their auditors, should take note of the requirements set out in the OfS Accounts Direction. It should be stressed that the OfS requirement to provide an audit opinion on use of funds as set out in the OfS Accounts Direction does not remove the requirement for the reporting accountant to provide a report on regularity as set out in Annex E of this document.

Fraud

110. Fraud, by its inherent nature of deception to result in financial or personal gain, means that the transaction must be irregular and improper. Identified fraud that is significant (paragraph 60) or material will lead to a modified assurance report on regularity, including full disclosure of those matters in that report.

111. The additional requirement to report fraud as a breach of regularity does not alter, reduce or replace the standard reporting requirements for fraud including the Proceeds of Crime Act 2002.

Required provisions in the terms of engagement

112. The duties of the external auditor/reporting accountant must be clearly set out in an engagement letter in accordance with ISA 210 (Revised 2016). Annex A sets out standard clauses, covering the external audit of the accounts and the regularity assurance review, that must be included within the letter of engagement between the corporation and the auditor/reporting accountant. These clauses include details of the arrangement for the regularity assurance engagement, which allows the ESFA and any other funding authority to draw assurance from the report on regularity.

113. Annex B sets out standard terms of reference for the regularity assurance engagement. These terms outline the responsibilities of the corporation, reporting accountant and the ESFA in relation to the engagement, and the duty of care owed by the reporting accountant.

114. Colleges registered with the OfS and their auditors will need to build both “use of funds” and “regularity” aspect into their letters of engagement (paragraph 109.

115. Where the corporation and/or external auditor/reporting accountant want to use an alternative form of words, they must agree this with the ESFA.

116. There is no expectation that the ESFA will sign the engagement letter.

Part 4: Requirements for independent training providers

General responsibilities

117. ITPs must meet any statutory responsibilities they have in relation to financial accounts, audit, and other legal, financial and governance requirements. Legislation and guidance most common to ITPs is summarised in paragraphs 120 to 129.

118. ITPs receive funding under grant funding agreements and contracts with the ESFA. These set out in detail the requirements placed on and responsibilities of ITPs, and that any mandatory requirements of this Code form a condition of funding. For a complete picture of the ESFA's assurance requirements, the Code should be read alongside the ESFA's grant funding agreements and contracts. Some ITPs also receive funding under grant funding agreements and contracts with MCAs or the GLA in respect of devolved adult education funding, which also require compliance with this Code.

119. All ITPs may be subject to a funding audit by the ESFA in respect of funds received (paragraphs 10 to 12).

Financial accounts

120. Private limited companies, companies limited by guarantee, limited liability partnerships, and community interest companies have a statutory responsibility under the Companies Act to file their annual financial accounts with Companies House within 9 months of their financial year end (unless stated otherwise). Public limited companies must meet the same requirement within 6 months of financial year end under the Act.

121. Under the Charities Act all registered incorporated charities (and registered unincorporated charities with a gross income exceeding £25,000 in that financial year) must file their financial accounts and their trustees annual report with the Charities Commission within 10 months of their financial year end.

122. Other legal entities should ensure they comply with their statutory requirements, as set out in their incorporation documents or other relevant legislation.

External audit

123. Private limited companies, companies limited by guarantee, and community interest companies have a statutory responsibility under the Companies Act to appoint external auditors to audit their annual financial accounts unless they meet two of the three criteria defined in the Companies Act Section 382(3).

124. Limited liability partnerships are also required to have their accounts audited unless they meet the criteria as defined in the Companies Act.

125. All public limited companies require external audit.

126. Charitable organisations may be required to have an external audit or an independent examination depending on their size. The criteria for determining whether a charity requires an audit is set out in the Charities Act 2011.

127. Other legal entities should ensure they comply with their relevant statutory requirements in respect of external audit, where applicable.

128. In addition to the audit of the financial statements, providers with subcontracted provision of over £100k are required to obtain an independent report over the arrangements in place to manage and control subcontractors in accordance with paragraphs 13 to 17.

Other legal requirements

129. Private limited companies and companies limited by guarantee should be aware of all of the information they need to provide by law in their annual directors' report as set out in The Companies (Miscellaneous Reporting) Regulations 2018. They should also familiarise themselves with the UK Corporate Governance Code published by the Financial Reporting Council in July 2018.

130. Public limited companies are subject to these requirements and in addition are by law required to have a qualified company secretary, have at least two directors, and hold an annual general meeting.

Annex A: Clauses for inclusion in the letter of engagement

The following paragraphs must be included in the letter of engagement between the corporation and their external auditor/reporting accountant.

Regarding the audit of the annual accounts

This letter establishes an agreement between [name of audit firm] and the corporation in relation to the audit of, and reporting on, the corporation's annual report and financial statements (annual accounts).

We shall conduct our audit of the corporation's annual accounts in accordance with the latest International Standards of Auditing (UK) issued by the Financial Reporting Council ('ISAs') and in full compliance with any instructions, guidance or frameworks issued by the ESFA, and where relevant any issued by Mayoral Combined Authorities or the Greater London Authority in respect of devolved adult education funding, including those within the extant College Accounts Direction.

We have a professional responsibility to report if the annual accounts do not comply in any material respect with applicable accounting standards and the requirements of the accounts direction, unless in our opinion non-compliance is justified in the circumstances. In determining if departure is justified, we will consider whether:

- the departure is required for the annual accounts to give a true and fair view
- adequate disclosure has been made concerning the departure

We shall report to the ESFA, and when applicable the relevant devolved authority, as soon as practically possible, any significant fraud or major weakness or breakdown in the accounting or other control framework, of which we become aware, subject only to the requirements of the Proceeds of Crime Act 2002.

Where we as auditors conclude that we must resign from the engagement before the expiry of the term of office, we will provide the corporation with a statement of circumstances that we consider should be brought to its attention, which the corporation will send to the ESFA.

Where we cease to hold office in any circumstance we will provide ESFA with details of any matters which would normally be noted in the professional enquiry letter to successor auditors under the ICAEW professional requirements, where such matters exist.

Regarding the regularity assurance engagement

The Secretary of State for Education, acting through the ESFA, has prescribed standard terms of reference for regularity assurance engagements. These are included within Part B of the Post-16 Audit Code of Practice.

We will perform our regularity assurance review and report to the ESFA and, if applicable the relevant devolved authority, in accordance with those standard terms of reference.

The Secretary of State, acting through the ESFA, will not be required to sign this engagement letter.

Annex B: Terms of reference for the regularity assurance engagement

The following are the pre-agreed terms of reference on which the Secretary of State for Education, acting through the ESFA, engages the reporting accountant to perform a limited assurance engagement on regularity in connection with the corporation.

The ESFA accepts that an agreement between it, the corporation and its reporting accountant on these terms is formed when the reporting accountant signs and submits its assurance report on regularity to the ESFA or the relevant devolved authority.

The ESFA is not required to sign anything. The Code and [extant College Accounts Direction] provide the framework and reporting requirements for the statement of regularity, propriety and compliance. The large number of corporations in scope of this engagement make it impractical to have an engagement letter with each individual reporting accountant. Standard terms of reference are therefore in place.

Amendments to these standard terms may only be considered in exceptional circumstances and require the ESFA's approval. Amendments may cause delay to the reporting accountant's work leading to late submission of the related report and consequent breaches of funding conditions.

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1 Introduction

The corporation is required to submit to the ESFA an assurance report on regularity signed by a reporting accountant, which provides limited assurance, as part of its annual report and financial statements (annual accounts). These terms of engagement set out the basis on which the reporting accountant will sign the assurance report on regularity.

2 The corporation's responsibilities

The corporation is responsible for:

- complying with the requirements of the ESFA's grant funding agreements and contracts, or of any other public funder, including provision of information as required

- producing annual accounts to 31 July[12] each year in accordance with the requirements of the extant College Accounts Direction
- having these accounts audited by a registered auditor
- submitting audited accounts to the ESFA by ESFA's required deadline
- ensuring the accounting officer's report has been made without bias
- maintaining proper records complying with the terms of any legislation or regulatory requirements and the terms and conditions of funding

The corporation's accounts shall meet the requirement of the extant College Accounts Direction to include the reporting accountant's assurance report on regularity.

The corporation will make available all records, correspondence, information and explanations that the reporting accountant considers necessary to enable the reporting accountant to perform its work. The reporting accountant will request and the corporation shall provide:

- written representations in relation to matters for which independent corroboration is not available
- confirmation that significant matters have been brought to the reporting accountant's attention

The corporation, the ESFA and where applicable the relevant devolved authority, accept that the ability of the reporting accountant to perform their work effectively depends upon the corporation providing full and free access to financial and other records. The corporation shall obtain any such records held by a third party and ensure they are made available to the reporting accountant.

The reporting accountant accepts that, whether or not the corporation meets its obligations, there remains an obligation on the reporting accountant to the ESFA to perform its work with reasonable care. The failure by the corporation to meet its obligations may cause the reporting accountant to modify its conclusion or be unable to provide a conclusion.

[12] Amend dates as necessary to reflect extended period or short period accounts.

3 Scope of the reporting accountant's work

The reporting accountant will use professional judgement and take account of the particular circumstances of the corporation to determine the scope of work to support the conclusion in accordance with the Post-16 Audit Code of Practice (the Code).

The reporting accountant may communicate with the ESFA as part of the planning and delivery of the regularity engagement where they believe there is an issue with a specific corporation.

4 Form of the reporting accountant's report

The mandatory report that the reporting accountant will provide, on the assumption that the reporting accountant is able to report in that form, is included in the Code.

The reporting accountant's report is prepared on the following basis:

- that the ESFA has no right by virtue of regularity engagement to place reliance on the work of the external auditor/reporting accountant and the opinion they form in respect of their audit of the annual accounts of the corporation
- the reporting accountant's report is prepared solely for the use of the corporation and the ESFA, and solely for the purpose of submission to the ESFA in connection with the requirements of the Code. It may not be relied on by the corporation or the ESFA for any other purpose.
- the corporation, the ESFA or others may not rely on any oral or draft reports the reporting accountant provides. Exceptionally and upon request by the corporation or the ESFA, the reporting accounting may provide a letter or report on interim findings or specific regularity matters, based on findings to date and without prejudice to any conclusions contained in the final signed report. Such reports/letters will be subject to a variation of or addendum to these terms, agreed with the corporation and ESFA. Otherwise, the reporting accountant accepts responsibility to the corporation and the ESFA for the reporting accountant's final signed reports only.
- to the fullest extent permitted by law, the firm of reporting accountants, its partners and staff neither owe nor accept any duty to any person or entity (including, without limitation, any person who may use or refer to publications of the ESFA) other than the corporation and the ESFA. They shall not be liable for any loss, damage or expense of whatever nature which is caused by any person or entity other than the corporation or the ESFA's reliance on representations in the reporting accountant's reports.

5 Liability provisions

The reporting accountant will perform the engagement with reasonable skill and care and accepts responsibility to the corporation and the ESFA, for losses, damages, costs or expenses ('losses') caused by its breach of contract, negligence or wilful default, subject to the following provisions:

- the reporting accountant will not be responsible or liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than the reporting accountant, except where, on the basis of the enquiries normally undertaken by reporting accountants within the scope set out in these terms of engagement, it would have been reasonable for the reporting accountant to discover such defects
- the reporting accountant accepts liability without limit for the consequences of its own fraud and for any other liability which it is not permitted by law to limit or exclude
- subject to the previous paragraph, the reporting accountant must discuss any proposal to limit their liability, whether to the corporation and/or to the ESFA, arising on any basis; whether in contract, tort (including negligence) or otherwise, arising from or in any way connected with this engagement (including any addition or variation to the work) with the audit committee and the ESFA in advance of approval by the corporation. This is on the basis that the corporation and the ESFA agree that any such limitation to the reporting accountant's liability will apply in aggregate to the reporting accountant's liability to the corporation and the ESFA .

The corporation and the ESFA agree that they will not bring any claims or proceedings against any individual partners, members, directors or employees of the reporting accountant. This clause is intended to benefit such partners, members, directors and employees who may enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999 ('the Act'). Notwithstanding any benefits or rights conferred by this agreement on any third party by virtue of the Act, the parties to this agreement may agree to vary or rescind this agreement without any third party's consent. Other than as expressly provided in these terms, the Act is excluded.

Any claims, whether in contract, negligence or otherwise, must be formally commenced within 2 years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action, and in any event no later than six years after the relevant report was issued (or, if no report was issued, when the reporting accountant accepted the engagement in writing). This expressly overrides any statutory provision which would otherwise apply.

6 Fees

The reporting accountant's fees, together with VAT and out-of-pocket expenses, will be agreed with, and billed to, the corporation. The ESFA is not liable to pay these fees.

7 Quality of service

The reporting accountant will investigate all complaints. The ESFA or the corporation has the right to take any complaint to the professional supervisory body governing the reporting accountant.

8 Provision of Services Regulations 2009

The reporting accountant will not be prevented or restricted by virtue of the reporting accountant's relationship with the corporation or the ESFA, including anything in these terms of engagement, from providing services to other clients. The reporting accountant's standard internal procedures are designed to ensure that confidential information communicated during the course of an assignment will be maintained confidentially.

9 Freedom of Information Act 2000

If the ESFA receives a request under the Freedom of Information Act 2000 for the disclosure of confidential information, it will inform the corporation promptly of such request and ensure that any representations made by the corporation, or reporting accountant, are fully taken into account when it responds to the request. However, the decision to release information rests with the ESFA.

10 Alteration to terms

Amendment to these standard terms of engagement may only be considered in very rare circumstances. All additions, amendments and variations to these terms of engagement shall be binding only if in writing and signed by the duly authorised representatives of the parties. These terms do not affect any separate agreement in writing between the corporation and the reporting accountant.

11 Applicable law and jurisdiction

This agreement shall be governed by, interpreted, and construed in accordance with English law.

The corporation, the ESFA, and the reporting accountant irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise on any basis in connection with the validity, effect, interpretation or performance of, or the legal relationship established by this agreement or otherwise arising in connection with this agreement.

Annex C: Summary of regularity concerns

This annex sets out some of the characteristics of providers where we have identified regularity concerns. Corporations and their auditors may wish to consider these areas when assessing compliance. This list is not exhaustive and is given as guidance only.

Governance

Good governance is important in delivering a high-quality service and ensuring accountability. The corporation is responsible for good governance. Regularity concerns can arise where there is indication of:

- ineffective governance structure, including lack of policies in key areas
- weaknesses in the corporation's approach to holding management to account
- inadequate record keeping, for example poor quality or missing meeting minutes
- ineffective implementation of policies and procedures, for example in tendering, capital projects, budget monitoring and reporting, anti-fraud measures
- inadequate reflection of charity law and associated good practice, including Charity Commission guidance on decision-making
- inappropriate related party relationships and transactions and incomplete disclosure thereof

Management

Effective management is needed if a corporation is to deliver a quality service through day-to-day operations. Regularity concerns can arise where there is indication of:

- ineffective management structure, including lack of control processes, non-compliance with control processes and lack of relevant experience in key areas
- weaknesses in systems and controls reported by internal audit
- inadequate record keeping, for example poor quality bookkeeping
- inadequate budgetary control and management accounting arrangements
- ineffective use of resources, including land, buildings, staff, cash, borrowings
- slow response to issues identified by Ofsted

Useful resources

It is important to remain vigilant to risks, which, if they crystallise, result in regularity issues. Useful resources for further consideration include:

- College: notices to improve
- Governance guide
- FE Commissioner reports
- College corporation financial management good practice guides
- Common issues - we periodically publish information and guidance about common issues identified from our funding audit work to help post-16 providers improve their internal control framework.

Annex D: Anti-fraud checklist for post-16 providers

Fraud occurs in every sector and providers need to be aware of the potential for it to occur.

EFSA has published indicators of potential fraud: education providers, which provides information for academies, colleges, private training providers and employer providers in receipt of the ESFA funding to help them identify potential fraud.

The 10 questions below are intended to help providers review their arrangements for preventing, detecting and dealing with fraud should it occur. Arrangements will vary according to the size, structure and complexity of the provider.

Summary
Responsibility and accountability embedded in the structure
Adopting a risk-based approach and a focus on prevention
Realistic approach to resources supporting counter fraud
Audit committee engagement
Assurance sought on effectiveness of counter fraud arrangements

1. Are directors / governors / trustees, accounting officer (if applicable) and chief financial officer (or equivalent) aware of the risk of fraud and their responsibilities about fraud?
2. Does the provider have a regularly reviewed counter fraud strategy, fraud risk assessment processes and a fraud response plan?
3. Has the provider established systems and processes to respond quickly and effectively into allegations of suspected fraud, and responding to actual fraud when it arises?
4. Does the provider engender an anti-fraud culture throughout the organisation, for example: a clear statement of commitment to ethical behaviour; anti-fraud champion; focus on prevention; sound financial regulations (including segregation of duties); recruitment; disciplinary procedures; screening; training and induction?
5. Is fraud risk included within the remit of the provider’s audit committee?
6. Is fraud risk considered within the provider’s risk management process?
7. Does the provider have regularly reviewed and published policies on whistleblowing, declarations of interest and receipt of gifts and hospitality?
8. Is it clear how and to whom suspicions of fraud in the organisation or subcontractors should be reported, both within the provider, and externally (e.g. Action Fraud, external auditors, regulators, the ESFA as necessary)?
9. Does the provider periodically evaluate the effectiveness of anti-fraud measures in reducing fraud?
10. Does the provider undertake ‘lessons learned’ exercises when suspected or actual fraud has taken place?

Annex E: Reporting accountant's assurance report on regularity

To: The corporation of [name] and Secretary of State for Education, acting through Education and Skills Funding Agency (the ESFA)

In accordance with the terms of our engagement letter dated [x] and further to the requirements and conditions of funding in the ESFA's grant funding agreements and contracts, or those of any other public funder, we have carried out an engagement to obtain limited assurance about whether anything has come to our attention that would suggest, in all material respects, the expenditure disbursed and income received by [name of corporation] during the period 1 August 20XX to 31 July 20XX[10] have not been applied to the purposes identified by Parliament and the financial transactions do not conform to the authorities which govern them.

The framework that has been applied is set out in the Post-16 Audit Code of Practice (the Code) issued by the ESFA and in any relevant conditions of funding concerning adult education notified by a relevant funder. In line with this framework, our work has specifically not considered income received from the main funding grants generated through the Individualised Learner Record data returns, for which the ESFA has other assurance arrangements in place.

This report is made solely to the corporation of [name of corporation] and the ESFA in accordance with the terms of our engagement letter. Our work has been undertaken so that we might state to the corporation of [name of corporation] and the ESFA those matters we are required to state in a report and for no other purpose. To the fullest extent permitted by law, we do not accept, or assume, responsibility to anyone other than the corporation of [name of corporation] and the ESFA for our work, for this report, or for the conclusion we have formed.

Respective responsibilities of [name of corporation] and the reporting accountant

The corporation of [name of corporation] is responsible, under the requirements of the Further & Higher Education Act 1992, subsequent legislation and related regulations and guidance, for ensuring that expenditure disbursed, and income received, are applied for the purposes intended by Parliament, and the financial transactions conform to the authorities that govern them.

Our responsibilities for this engagement are established in the United Kingdom by our profession's ethical guidance and are to obtain limited assurance and report in accordance with our engagement letter and the requirements of the Code. We report to you whether anything has come to our attention in carrying out our work which suggests that in all material respects, expenditure disbursed and income received, during the period 1 August 20XX to 31 July 20XX[10] have not been applied to purposes intended by

Parliament or that the financial transactions do not conform to the authorities which govern them.

Approach

We conducted our engagement in accordance with the Code issued by the ESFA. We performed a limited assurance engagement as defined in that framework.

The objective of a limited assurance engagement is to perform such procedures as to obtain information and explanations in order to provide us with sufficient appropriate evidence to express a negative conclusion on regularity.

A limited assurance engagement is more limited in scope than a reasonable assurance engagement and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in a reasonable assurance engagement. Accordingly, we do not express a positive opinion.

Our engagement includes examination, on a test basis, of evidence relevant to the regularity of the corporation's income and expenditure.

The work undertaken to draw to our conclusion includes:

- [X]
- [X]

Conclusion

In the course of our work, [except for the matters listed below] nothing has come to our attention which suggests that in all material respects, the expenditure disbursed and income received during the period 1 August 20XX to 31 July 202XX[13] has not been applied to purposes intended by Parliament, and the financial transactions do not conform to the authorities that govern them.

- [Matter 1]
- [Matter 2]

[Signed]

[13] Amend dates as necessary to reflect extended period or short period accounts.

[Firm]

[Date]

Education & Skills
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