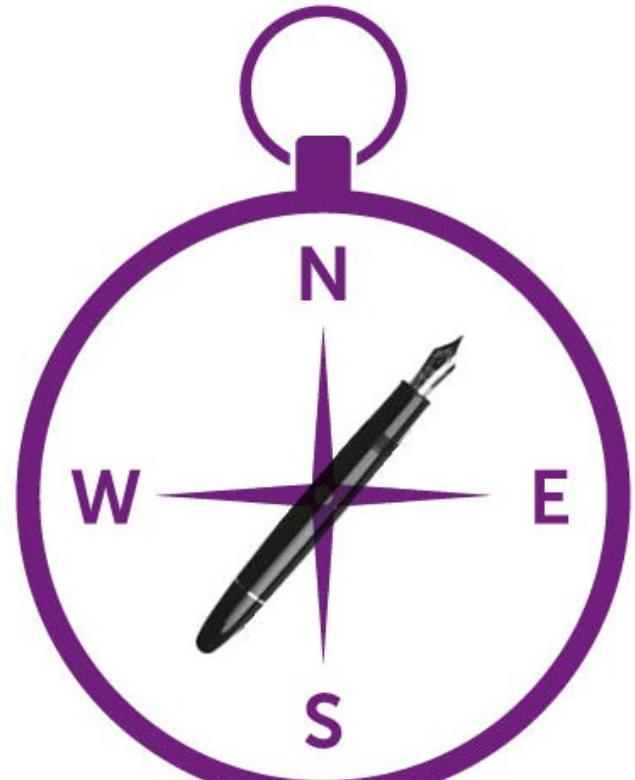
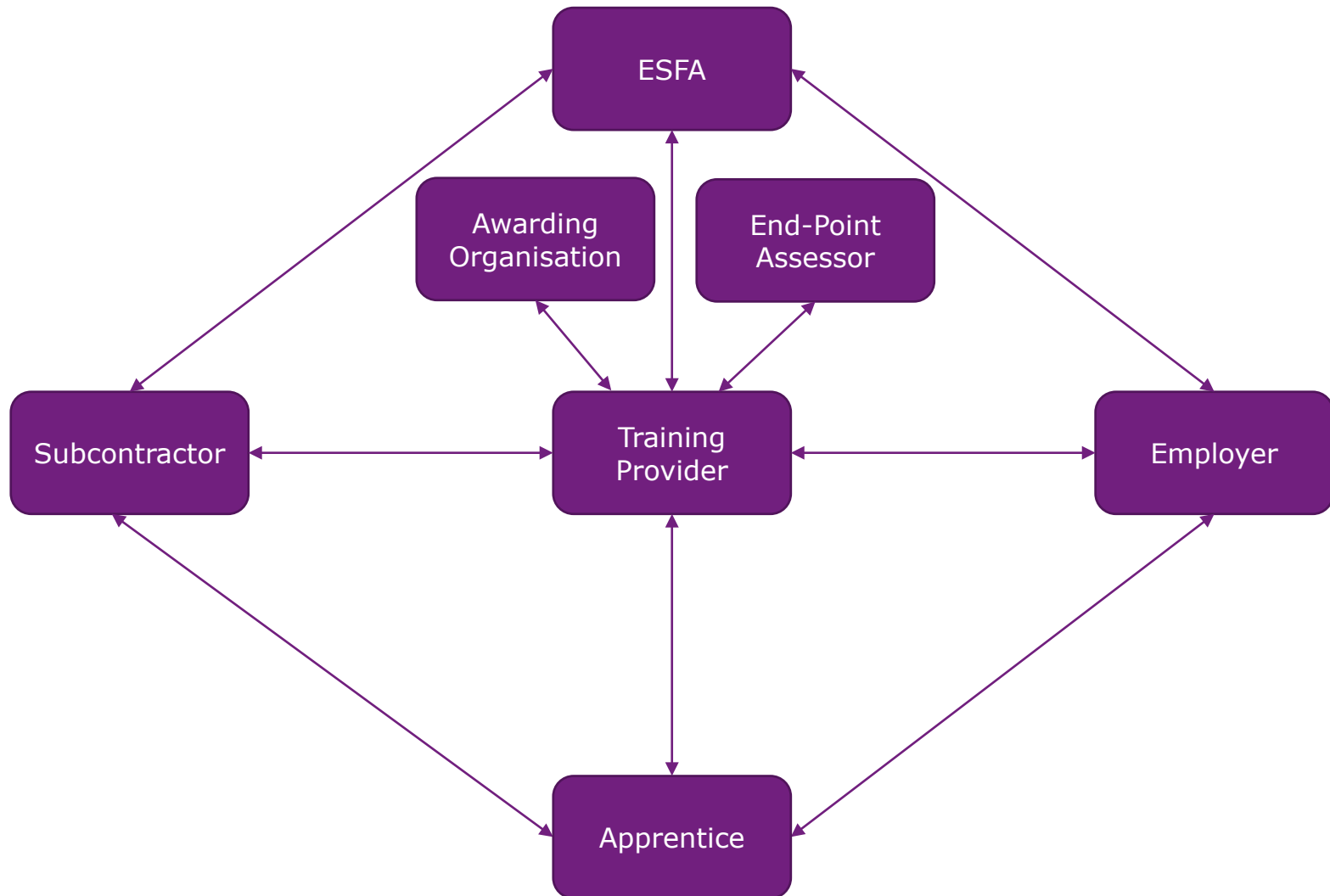


## Legal Issues in Apprenticeship Employer Agreements

Mark Taylor  
*Partner*



# Contracting Relationships



# **Contractual issues between Providers and Employers**

# Form of Contract

- One contract per apprentice or a “call off” per apprentice.
- Inclusion of mandatory terms.
- Reference to the Funding Rules.
- Provider and Employer both have template contracts – which template should we use?
- Ensure contract is in place before starting work.

# Key Terms

- The apprentice must be employed on an appropriate contract in a genuine job.
- The work must be relevant to the apprentice's studies.
- Apprentice health, safety and welfare.
- Quality, monitoring and review.
- Control of the apprenticeship.

# Payment Terms

- Agreeing a price for training.
- Payment through the Employer's Digital Account.
- Employer co-investment where apprenticeship training is not funded through the Employer's Digital Account.

# Choosing the right Partner

- Absolutely vital to effective contracting;
- Type of Due Diligence:
  - Legal;
  - Financial;
  - Commercial/operational.
- Scope of Due Diligence.

## Other terms

If things go wrong:

- Ensure reporting requirements provide enough information to spot areas of concern.
- Warranties/indemnities/guarantees.
- Set out how disputes should be resolved.
- Insurance obligations.
- Teach out – contingency plan.
- Recovery of materials and learner data.
- Assistance for apprentices who are made redundant.



# Top tips for dealing with key challenges / disputes

- Read termination and dispute resolution mechanisms carefully before taking action.
- Consider whether there is an ability to re-negotiate or agree exit arrangements.
- Fraud issues - may need to provide records to the police consider data protection obligations.
- Consider if missing data may be obtained from third parties eg learners, examination boards, ESFA.
- Maintain adequate audit trail throughout to reduce risk of clawback.

# Subcontracts

# Key Terms

- You are responsible for all the actions of your subcontractors connected to, or arising out of, the delivery of the services which you subcontract.
- You must have a legally binding contract with each subcontractor that includes all the terms set out in the Funding Rules.
- You must make sure that the terms of your subcontracts allow you to:
  - monitor the subcontractor's activity
  - have control over your subcontractors, and
  - monitor the quality of education and training provided by subcontractors.

# Subcontracting - key challenges / disputes

- Withholding payment for breach of terms can amount to repudiatory breach of contract itself.
- Subcontractors often fail to provide all learner records and data (can use this as a bargaining tool to secure further payment).
- If fraud issues are detected may need to involve the police and/or ESFA.
- Once terminated:
  - often subcontractors experience financial difficulty/go bust;
  - can be very difficult to obtain copy records to prevent ESFA clawback;
  - additional costs involved with taking on learners or transferring to new provider;
  - may have to liaise with an insolvency practitioner re records/missed payments.
- Reputational issues.

# **Commitment Statements between Apprentices, Providers and Employers**

# Evidencing your 'Commitment'

- All apprentices, their employers and lead provider must hold a signed copy of the commitment statement setting out how they will support the successful achievement of the apprenticeship before the apprenticeship starts.
- The commitment statement must set out the planned content and schedule for training and end-point assessment. It must also set out what is expected and offered by the employer, lead provider (and any subcontractors) and the apprentice to achieve the apprenticeship.

# Evidencing your 'Commitment' continued

- It should also contain a short summary (two to three pages) setting out:
  - start and end dates of the apprenticeship;
  - details of the elements which are eligible for funding;
  - a list of organisations delivering the training;
  - roles and responsibilities of each party (Employer, Provider and Apprentice); and
  - process for resolving any queries, complaints or disputes.

*ESFA Guidance - Apprenticeship funding and performance management rules for training provider*

- Can be appended to but should remain separate to the legal contract between the Provider and Employer.

# Questions?





**Mark Taylor**

Partner

t: 0121 232 1051

m: 0771 776 8430

e: [marktaylor@eversheds-sutherland.com](mailto:marktaylor@eversheds-sutherland.com)

**[eversheds-sutherland.com](https://eversheds-sutherland.com)**

This information pack is intended as a guide only. Whilst the information it contains is believed to be correct, it is not a substitute for appropriate legal advice. Eversheds Sutherland (International) LLP can take no responsibility for actions taken based on the information contained in this pack.

© Eversheds Sutherland 2018. All rights reserved.