

Minimum Contract Level Frequently Asked Questions

Published: 5th November 2010

Version: 1

1. Can you identify which provision is covered by the minimum contract level policy?

The following funding streams allocated by the Skills Funding Agency are expected to be taken into account when determining whether an organisation is above the minimum contract level (MCL): Train to Gain, Apprenticeships (all ages), Adult Learner Responsive, Adult Safeguarded Learning including Family Learning Impact Fund, Formal First Steps, Learner Support and European Social Fund (ESF). Allocations made by the Skills Funding Agency (the Agency) for all these areas in 2010/11 are available on [<http://skillsfundingagency.bis.gov.uk/providers/programmes/>].

Final details of how the MCL will be calculated and how this will be applied is dependent on Ministerial decisions following the outcomes of the recent funding consultation.

2. Will ESF allocations be taken into account of MCL?

We expect to take account of all ESF allocations in determining whether an organisation is above or below the MCL. An academic year figure for 2010/11 has been published as part of the Agency's allocations and this will be used if a minimum contract level is introduced for 2011/12.

Whether an organisation that falls below MCL would still be able to receive ESF allocations is likely to be dependant on whether the ESF relates to pre-19 for those not in education, employment or training (NEET) or post-19 provision. The Young People's Learning Agency (YPLA) has indicated that it will not place a minimum contract level on ESF contracts for pre-19 work whereas the Agency expects to treat post-19 ESF contracts in the same way as other mainstream funds. We will need to take account of the different ESF commissioning timescales in agreeing how this will be implemented and precise details will be confirmed in guidance to be published in November.

3. Why does it include Apprenticeships 16-18 when this is YPLA provision?

The Skills Funding Agency, through the National Apprenticeship Service (NAS), holds responsibility for funding 16-18 Apprenticeships. The Agency contracts and manages this provision on behalf of NAS.

- 4. MCL is based on 10/11 allocation, are we expecting any further cuts to MCL as a result of the comprehensive spending review?**

The Agency's intention is to base the MCL on the allocation that was given out in 2010/11.

- 5. When will we be written to formally to inform us we are affected by the MCL policy?**

As soon as the minimum contract level is announced, the Agency will write to providers that are under the threshold. We hope to do this in November, depending on when the Skills Investment Strategy is published. The Agency will also release guidance in November that sets out the implementation process and timescales so all providers are aware of the actions they may need to take.

- 6. Can you tell us when we will be formally informed what our contract value would have been for 2011/2012 so that we can formally start negotiating?**

This is dependent on when the Skills Investment Strategy is published and the Agency is informed of its grant from BIS. We will clarify the exact timescales in the guidance but we expect to be able to notify all providers of their indicative 2011/12 allocation in either late 2010 or early 2011, this will include the potential allocation that training organisations below MCL could have expected.

- 7. There is concern that setting up a new holding company for consortium arrangements will take longer than the time allowed by the Skills Funding Agency to have these arrangements in place. Will there be scope for extending the dead line to enable complex arrangements such as setting up a holding company or a consortium to take place?**

The Agency will be as flexible as possible in the timescales and processes it sets for new delivery arrangements to be formed. We will confirm precise timescales in the guidance but these should allow sufficient time for all new delivery models to be formed and approved. As for all other organisations these new organisations will need to be on the Agency's Approved College and Training Organisation Register (ACTOR) in order to be considered for funding. The processes and timelines will therefore need to take this into account.

- 8. Is it possible for a provider affected by MCL to split their provision between two or more prime contractors?**

The Agency will give providers affected by the minimum contract level an indication of the size of the 2011/12 allocation they would normally have received. It is then for the provider to enter into a new arrangement that suits their circumstances. If a provider wishes to work with 2 prime contractors, the Agency would have to split the smaller provider's allocation across the 2 prime contractors. In these cases, the Agency would need written agreement of the split and that both lead providers had agreed to this. A provider should seek an agreement that they feel is not disadvantageous to them and question whether holding separate sub-contracting agreements delivers the efficiencies required of the sector.

- 9. Will the Agency be giving guidance / have a policy about the setting of management fees?**

In the Funding Requirements for 2010/11 the Agency sets out a requirement for the large majority of funding from the Agency to be used for the benefit of the learner on their learning programme or for provision. The requirements state that the split of funding between lead and sub-contractor should be proportionate to the costs of the respective parties and that we expect the actual delivery costs to account for at least 85% of the funding. This is the minimum we expect and in many cases the actual delivery costs through the sub-contractor will account for 90-95% of the funding, but should certainly not be less than 85%. In some cases there may be additional services provided to the sub-contractor or delivery split between the lead and sub-contractor which may mean the level of funding going to the sub-contractor could be less than 85% - in these circumstances the additional services or split of delivery should be clearly documented and understood and agreed by both parties.

Information on the administration/management fee being charged will be collected as part of the ACTOR process and through the annual return of sub-contractors that colleges and providers are required to do. Through this we will monitor how funding is being used to ensure that sufficient funding is being used to support high quality educational and vocational training. At this stage we are not proposing to set any limits on the management fee as that is part of the agreement between the lead and sub-contractor. However, we plan to publish information on the levels of administrative/management fees being charged as soon as possible this year. We believe publishing this information will bring much greater transparency to how funding is being used.

10. What are the plans the Agency has to manage and monitor the quality of subcontracted, consortium or managing agent provision?

The responsibility for the quality of provision will rest with whomever the Agency holds the contract with and it is for that organisation to determine their delivery model. That organisation will need to be on ACTOR and will be subject to the performance management arrangements of the Agency. Part of that performance management may include a discussion regarding the performance of their sub-contractors and how they are addressing any issue of underperformance but the direct relationship will continue to be with the lead contractor.

The Agency is currently considering whether all sub-contractors should need to be on ACTOR, or whether this should at least apply above a certain threshold. Clearly if there is significant amounts of provision being delivered through a sub-contractor (potentially through a number of different lead providers) then it is important this provision is being effectively managed and could potentially be subject to a high level of monitoring by the Agency.

11. What happens if I have a dispute with the organisation I choose to sub contract with or go into a managing agent relationship with?

That is entirely a matter for the providers in question. It is not the role of the Agency to intervene in such cases. All providers should make sure they seek legal advice before entering into any new delivery arrangements.

12. If the arrangements I choose do not work out in year one can I opt out and choose to move my provision to another SFA contractor?

Providers need to ensure that they have the ability to opt out of arrangements but sub-contractors or consortia members will not be able to 'port' their share of provision between providers as this provision is held by the lead provider only and the Agency will only have a contractual relationship with lead providers. It is entirely at the discretion of lead providers what proportion of provision a sub-contractor or consortia lead should receive.

13. Is there a limit on the amount of provision a lead provider can sub-contract?

While the Agency has previously stated that there were limits on the amount of provision that a contractor had to deliver directly, latest legal advice has allowed us to remove this requirement. This means that the Agency will simply seek to procure educational and vocational training services and it will be for organisations to determine their own delivery model.

14. My organisation is not affected in year 1, however I am affected in year 2 & 3. Can I opt to go in to new arrangements earlier?

Yes. The Skills Investment Strategy is expected to confirm whether the minimum contract level is likely to increase year on year so that providers can make informed choices about this. We will include a section in the guidance about the timescales for providers wishing to make arrangements for 2012/13 and beyond.

15. We are a provider who is broadly satisfactory on a range of measurements (Inspection, Framework for Excellence (FfE) and Success Rates etc) we are concerned we won't be able to sort an arrangement out because organisations are only looking for good or better providers to offer sub contracting or other arrangements to, what will happen to us?

If a provider is unable to source alternative delivery arrangements, the most likely course of action is that it will be placed on a run-down contract so that existing learners and activity is funded for as long as necessary before the contract is terminated.

16. Our organisation doesn't deliver an Apprenticeship framework – what happens to us?

The minimum contract level for 2011/12 will be applied on the basis of a provider's total contract value with the Agency as at the beginning of the 2010/11 academic year. If a provider is below the threshold it will need to seek alternative delivery arrangements if it wishes to continue to be part of the supply chain.

17. We are a college with a large contract with the Agency worth well above £500,000, which has been suggested as the possible minimum contract level. Our employer responsive element of that (we hold a direct employer responsive contract with the Agency to deliver Train to Gain) is below the £500,000 MCL. Is the MCL viewed as the entire contract level we hold with the Agency and therefore will we continue to be contracted directly through the Agency to deliver employer responsive provision? Will we therefore not be required to sub-contract to a lead?

Yes, the MCL will be applied on your total contract value, including any provision you sub-contract. See also question 1.

- 18. We currently deliver Train to Gain provision through our direct contract with the Agency. We currently don't deliver Apprenticeships but are planning to start delivering them. Will we be allowed to start delivering this new area of work? Will we have to tender to do this through ACTOR or will we be able to start delivering apprenticeships without having to tender?**

Freedoms and flexibilities mean that you can deliver 19+ Apprenticeships now although you should alert your Account Manager as there are necessary amendments to the funding systems required so you can enter the appropriate data. For 16-18 Apprenticeships, a contract variation will be needed and there are additional requirements so you must discuss this with your Account Manager before committing to delivery.

- 19. In our current Train to Gain consortium we have three delivery partners who do not hold their own contract with the Skills Funding Agency. Can we continue to sub contract with them when minimum contract levels are introduced or would we have to run down their current carry over delivery?**

This depends on whether you will continue to hold a direct contract with the Agency or not. If you will yourself be a sub-contractor as a result of the application of MCL, further sub-contracting will only be agreed in exceptional circumstances.

- 20. I understand that there are legal issues that the SFA are looking into related to moving to MCL arrangements. What are they, and do they affect any of the potential models we are considering using?**

The Agency has been seeking the advice of its solicitor to check that the processes for approving any new delivery models are robust and not open to challenge. We plan to issue a communication in early November setting out how these processes will operate.

- 21. I understand that there are procedural issues related to new providers under consortium and managing agent arrangements being registered on ACTOR will these be resolved in time for the Skills Funding Agency imposed deadline of end February 2011 for providers to notify the Agency of their arrangements for August 2011 onwards?**

All organisations that wish to be considered for funding from the Skills Funding Agency will need to be on ACTOR, regardless of the type of delivery model the organisation wants to employ. Where these organisations are made up of existing contractors who wish to operate through the new organisation then we need to clarify the requirements on this new organisation and how they will be treated as part of the 2011/12 allocations process. This will be clarified in early November and in guidance on the minimum contract level released after the Skills Investment Strategy is published.

- 22. Does the MCL apply to the National Employer Service contracts?**

This will be for the Minister to agree but we expect large NES employers to be exempt from the minimum contract level. The case for exemption is based on the broader strategic relationship

with these particular employers and reflects the different account manager relationship that we have with these employers.

23. Can the Skills Funding Agency offer any legal advice?

It is not appropriate for the Skills Funding Agency to offer advice to individual colleges or training organisations. We would encourage all colleges and training organisations to seek their own legal advice before entering into new legal arrangements but this is not a service that the Agency is able to offer.

24. How much money is going to be saved by the Agency in undertaking this process?

If a minimum contract level is introduced at £500k, the Agency will be able to significantly rationalise the number of direct contracts it holds and manages. Currently, the Agency has 625 direct contracts with providers that have contract values of less than £500k and account for only 3% of funding allocated in 2010/11. Once the number of direct contracts has been rationalised, the Agency will be able to achieve savings and reduce overheads but it is too early to quantify how much this might be.

25. Will you take account of quality as well as contract value?

The minimum contract level is likely to be based on 2010/11 allocations so the initial application of the level will not take into account quality at the point the level is applied (November) but as part of the minimum levels of performance process, 11/12 indicative allocations will be adjusted where provision is below the Minimum Levels of Performance (MLP) so quality will be taken into account as part of the allocations round.

We do not propose that where the application of MLP means that a provider moves from above the minimum contract level to below it that we then make the decision they should be in scope to lose a direct contract.

26. Have you considered the risk that there will be multi layers of subcontracting?

The Skills Funding Agency's Funding Requirements clearly sets out the expectation that sub-contracting is only to one level, apart from where exceptional circumstances are agreed by the Agency to allow more than one level. The Agency will be monitoring the volume and pattern of sub-contracting throughout 2010/11 to ensure it is aware of any risks that it then needs to manage.

27. Will there be limits on the number of subcontractors a provider will have?

No but as above, the Agency will be monitoring the volume and pattern of sub-contracting and will enter a dialogue with lead providers where it can see that the number of sub-contractors in an arrangement may pose undue risk.

28. Will not for profit/charitable companies be considered more favourably than private providers?

No. The Agency is adopting a provider neutral approach to the implementation of the minimum contract level. The approvals process for new delivery arrangements is the same for all providers. Exemption categories have not yet been agreed by BIS but these are expected to be very limited.

29. Will there be any tolerance on the level set?

No. The Agency is expecting to apply the minimum contract level without a tolerance.

30. How many providers are there above £500k?

Of the 1475 providers the Agency allocates to, 625 have contract values of less than £500k (this figure now includes ESF only providers) and 850 have contract values of above £500k.

31. How will managing agents be treated?

While the Agency has previously stated that there were limits on the amount of provision that a contractor had to deliver directly, latest legal advice has allowed us to remove this requirement. This means that the Agency will simply seek to procure educational and vocational training services and it will be for organisations to determine their own delivery model.

The Agency will continue to use a full Office of the Journal of the European Union (OJEU) procurement process for procuring managing agents for the management of services such as information, advice and guidance rather than the direct delivery of education and training.

32. How will new providers be treated?

Where a new provider (that does not currently contract with the Agency) wishes to secure funding from the Agency, it will need to be approved through ACTOR. ACTOR will assess value for money, risk to the Agency, capacity, capability and resource. While being on the register will not be a guarantee of funding, we will only consider those organisations on the register for funding.