

Third-party arrangements including conflict of interest

As part of the 2022 Statement of Compliance, we asked awarding organisations (AOs) to answer questions about arrangements with third parties involved in the design, delivery, and award of qualifications. We also asked about arrangements to identify, review, monitor and manage conflicts of interest in all instances where AOs have shared ownership, governance, or operational arrangements with Centres and/or training providers, or employers.

This is the high-level thematic summary of our findings. We are sharing our findings to support awarding organisations' compliance with Conditions C1 and C2.

How we conducted reviews

Our review focussed on awarding organisations' third-party arrangements in the following areas:

- The nature of third-party arrangements
- Evaluation of third-party's ability and willingness to comply with all relevant General Conditions of Recognition
- How awarding organisations make clear their contractual expectations to third parties
- Monitoring and enforcing third-party arrangements including:
 - Reviewing and risk assessing third-party arrangements
 - Monitoring third-party risk management and business continuity plans
 - Managing poor third-party performance
 - Managing failure in any agreements

For awarding organisations with shared ownership and or operational, financial, resource, personnel, or governance arrangements with Centres and/or Apprenticeship Training Providers, we also asked about arrangements in place to identify, review, monitor and manage conflict of interest.

What we learned from the reviews

97% of awarding organisations told us they have arrangements with third parties to support their design, delivery, or award of qualifications. The majority of awarding

organisations described different types of formal, written contracting arrangement. A small number of awarding organisations described having informal arrangements on isolated long-standing contracts, which after further probing by the regulators, they intended to formalise.

Indicators of strong performance

In terms of the **nature of arrangements**, stronger performing awarding organisations described:

- Formal, signed, and enforceable contracts, referencing the General Conditions or Qualification Level Conditions
- Detailed terms and conditions that clarify expectations
- Contracts with employers and training providers, for AOs delivering EPA
- Structured performance monitoring, KPIs and feedback underpinned by service level agreements.

In terms of **evaluating third parties' ability and willingness to comply with the Conditions before entering into arrangements**, stronger performing awarding organisations described having:

- A documented procurement policy and process
- A documented Centre approval process scrutinising experience, capacity, and capability, informing any subsequent Centre risk rating and monitoring activity
- Due diligence checks of new third parties extending beyond financial and capability checks to include a statement of commitment to the Conditions of Recognition
- Recruitment and selection processes for associates, often closely aligned to staff recruitment and selection processes.

In terms of **making expectations clear**, stronger performing awarding organisations described using:

- Regular review meetings with third parties to reinforce and clarify expectations
- Written service level agreements with key performance indicators
- Requiring third parties to make annual declarations of ongoing ability to meet contractual requirements

- Detailed role descriptions and person specifications for third-party associate roles
- Mandatory training, in particular ensuring associates, for example EQAs, fully understand requirements prior to engagement in any capacity
- Written guidance, in the form of Centre and associate EQA handbooks and working instructions to reinforce expectations.

In terms of **monitoring and enforcing arrangements**, stronger performing awarding organisations described:

- Having risk management strategies incorporating third-party risk ratings and risk registers; and annual reviews of financial viability and business continuity plans
- Having a documented third-party performance management process and sanctions policy
- Proactively conducting root causes analysis or lessons learned exercises which are viewed as an opportunity to support continuous improvement
- Periodically reviewing their own contingency plans and response arrangements in light of third-party monitoring, supporting fast and effective enforcement

For awarding organisations with shared ownership and or operational, financial, resource, personnel or governance arrangements with Centres, stronger performing awarding organisations described **conflict of interest arrangements** including:

- Clear lines of separation between different parts of the business, with written contracts setting out relationships
- Having an up-to-date written conflict of interest policy and procedure with an associated register or log
- Conflict of interest checks built into key policies and procedures, for example, excluding conflicted individuals from Centre recognition committees, appeals panels, and malpractice panels
- Assessor working instructions or handbooks providing clarity on additional mitigations where conflict of interest was unavoidable
- Regular conflict of interest performance reporting to the governing body.

Thematic risks

There is an opportunity for awarding organisations to consider their due diligence arrangements and how they gain confidence and assurance third parties will support their continued compliance with the Conditions. However, the level of controls and complexity of arrangements should be appropriate and proportionate to avoid unnecessary burden to both parties.

Some AOs struggled to demonstrate effective pre-contract processes. There is also a risk that AOs rely on the business continuity plans and risk management data obtained during pre-contract due diligence checks and do not ensure third parties maintain up-to-date business continuity plans and risk registers. The potential impact of relying on pre-contract due diligence arrangements throughout a contract increases significantly when pre-contract due diligence checks are weak. There is an opportunity for AOs to review arrangements and ensure processes incorporate periodic checks of third-party risk management and business continuity plans, supporting on-going compliance with the Conditions.

Most AOs described contract monitoring arrangements, often using examples to illustrate arrangements. However, enforcement arrangements were often less evident. There is a risk that AOs with weak third-party monitoring and enforcement arrangements cannot be assured third parties are fulfilling contractual requirements. This results in awarding organisations developing, delivering, or awarding qualifications that do not comply with the Conditions and leads to unreliable and invalid certifications. There is an opportunity for awarding organisations to consider all third-party monitoring and enforcement arrangements, supporting the protection of Learners.