



Education & Skills
Funding Agency

Post-16 Audit Code of Practice 2017 to 2018

**Assurance and accountability
requirements for post-16 providers,
including sixth-form and further
education colleges**

March 2018

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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 colleges¹

The Code should be read alongside any agreement setting out conditions of funding in Education and Skills Funding Agency's (ESFA's) grant funding agreements and contracts.

Validity

This document is updated annually. This edition applies to all financial periods commencing on or after 1 August 2017.

Who is this publication for?

This document is intended for use by the following organisations, and their respective auditors / reporting accountants:

- sixth-form and further education colleges¹
- independent learning providers
- special post-16 institutions
- academies with post-16 provision
- Local Authority (LA) controlled adult education centres and LA maintained schools with sixth-forms
- non-maintained special schools

Purpose

ESFA and LAs fund young people's education, apprenticeships and adult skills, and both have a duty to demonstrate that they:

- spend public money in accordance with HM Treasury's guidelines

¹ Includes designated institutions as set out in paragraph 15

- have properly discharged any statutory and other legal requirements.

The Code sets out how ESFA gains assurance from providers to meet this duty.

What has changed in this edition?

Changes in this version include:

- emphasising reporting accountants may, by exception, write to ESFA and ask for a summary of any matters relevant to regularity
- confirming that colleges will share their completed regularity self-assessment questionnaires with reporting accountants
- clarifying that staff governors should not be members of an audit committee
- clarifying that significant fraud now includes that which is systematic or unusual
- simplifying reporting arrangements so that all identified significant or material fraud is disclosed in the assurance report on regularity
- highlighting to external auditors their reporting responsibilities on matters of material significance
- highlighting that all four annexes have been updated

Part 1: Assurance arrangements for post-16 providers

1. Table 1 sets out where ESFA obtains assurance directly on providers.

Table 1: Assurance obtained by ESFA

Provider type	Area of assurance	Assurance process
Sixth-form and further education college corporations	Use of funds; internal control; regularity and propriety; accounting requirements	<p>ESFA assurance processes include:</p> <ul style="list-style-type: none"> • using the work of others, including: <ul style="list-style-type: none"> ○ opinion on the annual accounts ○ assurance report on regularity ○ statement of corporate governance and internal control ○ annual report of audit committee • sample of funding reviews • targeted work on identified concerns • financial health assessment <p>Processes are determined by provider type.</p>
Independent learning providers	Use of funds	
Special post-16 institutions	Use of funds	
Academies with post-16 provision	Use of funds; internal control; regularity and propriety; accounting requirements	<p>ESFA assurance processes are set out in:</p> <ul style="list-style-type: none"> • Academies accounts direction • Academies financial handbook

2. Table 2 sets out where ESFA obtains assurance indirectly on providers, through the work of LAs.

Table 2: Assurance obtained by LAs and shared with ESFA

Provider type	Area of assurance	Assurance process
LA adult education centres and maintained schools with sixth-forms	Use of funds; internal control; regularity and propriety; accounting requirements	<p>LAs are responsible for their own assurance processes, which may include:</p> <ul style="list-style-type: none"> • compliance with internal management frameworks and financial regulations • using the work of internal/external audit • review of schools financial value standard and assurance forms
Non-maintained special schools	Use of funds	

3. There are a small number of additional specific arrangements, including:
- ESFA obtains assurance over funding from the European Social Fund
 - LAs obtain assurance over all element 3 high needs funding
 - The Higher Education Funding Council for England / Office for Students obtains assurance for higher education institutions delivering young people’s education, apprenticeships and adult skills

Areas of assurance

4. ESFA requires assurance over the use of funds for all post-16 providers, that is, whether the provider has legitimately earned those funds by delivering learning in accordance with the terms of their funding agreement or contract.

5. For certain types of provider, ESFA’s assurance requirements need to cover more than this given their responsibilities for oversight – see table 3.

Table 3: Areas of assurance

Area	Underlying requirements
Use of funds	Income should only be receivable where the provider has earned the funding in accordance with the underlying conditions of funding.
Internal control	The system of internal control should be designed and implemented so as to deliver the provider’s objectives and ensure compliance with statutory and contractual requirements.
Regularity and propriety	Expenditure should be incurred and income received in a regular manner. Concerns over propriety of income and expenditure should be recorded where noted.
Accounting requirements	Adequate financial records should be kept and annual accounts should be produced in accordance with accounting requirements.

Part 2: Assurance framework for colleges: requirements for college corporations

6. This section sets out the assurance framework for college corporations and will be of interest to sixth-form and further education colleges, and their external auditors / reporting accountants.

General responsibilities

7. General responsibilities of college 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 ESFA.

8. Further responsibilities are set out within:

- legislation, including [Further and Higher Education Act 1992](#) and the [Apprenticeships, Skills, Children and Learning Act 2009](#)
- charity law (as applicable to exempt charities)
- [college accounts direction](#)
- specific terms and conditions from other sources of funding

9. Colleges should be familiar with these documents and requirements in them.

Articles of Government

10. The main responsibilities of the college corporation are set out within their Articles of Government. Under sections 22 and 33L of the [Further and Higher Education Act 1992](#) corporations may change their Articles, although any change is subject to the limitations set out in the Act and charity law.

11. The Articles set out the corporation's responsibilities which, must include the effective and efficient use of resources, the solvency of the institution and the corporation, and the safeguarding of their 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

12. College corporations receive funding under grant funding agreements and contracts with ESFA.

13. ESFA's grant funding agreements and contracts set out in detail the requirements on, and responsibilities of, corporations, and that any mandatory requirements of the Code form a condition of funding.

14. For a complete picture of ESFA's assurance requirements, the Code should be read alongside ESFA's grant funding agreements and contracts.

Designated institutions

15. We use the term 'corporation' in this document to refer to further education and sixth-form college corporations established under the [Further and Higher Education Act 1992](#), where members of the corporation form the college's governing body. The requirements in this Code apply equally to institutions designated under §28 of the same Act as being in the further education sector, to the extent permitted by their legal status and underlying legislation.

College audit committee

16. It is a condition of funding and/or this Code that college corporations establish an audit committee.

17. The audit committee must advise the corporation on the adequacy and effectiveness of the corporation's assurance framework. 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 ESFA's specific requirements including the required format of the corporation's statement of corporate governance and internal control.

18. 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 and as a minimum must set out:

- the committee's right to investigate any activity within its terms of reference
- 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, and should not include staff governors
- a responsibility for the corporation, in appointing members, to maintain the committee's independence
- a requirement for the corporation to 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

- a restriction on the committee not to adopt an executive role

19. 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, risk management and control processes for the effective and efficient use of resources, solvency of the institution and the safeguarding of its assets
- advise the corporation on the appointment, reappointment, dismissal and remuneration of the external auditor, reporting accountant and other assurance providers (if 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 and other assurance providers (if applicable) and explain how independence and objectivity were safeguarded
- monitor, within agreed timescales, the implementation of recommendations arising from any reports of audit and assurance providers
- oversee the corporation's policies on and processes around fraud, irregularity, impropriety and [whistleblowing](#), 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) has been informed, and that appropriate follow-up action has been planned/actioned
 - that all significant cases of fraud or suspected fraud or irregularity are reported to the ESFA
 - 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
 - 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
 - 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, framework of governance, risk

- management and control processes for the effective and efficient use of resources, solvency of the institution and the safeguarding of its assets
- submit the annual report to the corporation before the statement of corporate governance and internal control in the annual accounts is signed

Accountability to Parliament

20. 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 external auditor of ESFA.

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

Responsibilities regarding the accounts

22. College corporations must prepare accounts in accordance with directions given by ESFA, and appoint an external auditor to audit these accounts.

23. Corporations must allow the external auditor unrestricted access to all records, information and assets which they consider necessary to fulfil their responsibilities.

24. By 31 December immediately following the financial year end, corporations must send to ESFA a copy of:

- the audited accounts
- the external auditor's management letter, including the corporation's response to any recommendations made

Responsibilities regarding regularity and propriety

25. Regularity and propriety are discussed within HM Treasury's '[Managing Public Money](#)' (MPM). MPM sets out that 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.

26. Colleges receive significant amounts of public funding from ESFA each year. This framework sets out how ESFA's accounting officer seeks to obtain assurance over the regularity and propriety of public funds to satisfy their responsibility.

27. MPM defines regularity as the requirement that 'resource consumption should accord with the relevant legislation, the relevant delegated authority and this document'.

28. For college corporations, this encompasses legislation (for example, the [Further and Higher Education Act 1992](#) and [Charities Act 2011](#)), conditions of funding and other guidance issued by ESFA.

29. 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'.

30. Propriety is less prescriptively defined but includes matters such as fairness, integrity, the avoidance of private profit from public business, 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 and coming to a professional judgement is required reflecting the high standard expected in organisations receiving public funding.

Statement of regularity, propriety and compliance

31. College 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.

32. 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.

33. 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

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

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

35. 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.

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

Regularity self-assessment questionnaire

37. ESFA has developed a [regularity self-assessment questionnaire](#) (RSAQ) to support college corporations in drafting the statement of regularity, propriety and compliance. This provides clarity over the framework, including the interpretation of key requirements and the type of evidence that should be considered.

Retaining evidence in support of regularity

38. The college corporation must be able to support their statement of regularity, propriety and compliance. This includes responses given in the RSAQ which the corporation 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.

39. 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.

40. 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 evidence of 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, alongside all relevant minutes and reports during the period covered by the statement.

41. The [college accounts direction 2017 to 2018](#) emphasises that in respect of business combinations, the chair and accounting officer of the receiving entity are responsible for signing off, and submitting to ESFA, audited accounts of any dissolving college. Similarly, the receiving college's accounting officer needs to be satisfied that they can support their signing of this statement.

Fraud

42. It is the responsibility of the corporation in conditions of funding as set out in grant funding agreements and contracts with ESFA to establish and maintain an adequate system of internal control, to ensure compliance, and to prevent and detect irregularities, including fraud.

43. Corporations must have policies and procedures, including a [whistleblowing](#) policy, on the process to be followed when suspicion arises of potential irregularity, including fraud, bribery, corruption, theft, any impropriety or major weakness or breakdown in the accounting or other control framework. The agreed policy and procedures must include the provision that when any significant instance of fraud, irregularity or major weakness or breakdown in the accounting or other control framework is suspected or discovered, the chair of the audit committee, ESFA and both external and internal auditors (if applicable) are informed as soon as practically possible.

44. 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

45. Fraud, by its inherent nature of deception to result in financial or personal gain, means that the transaction must be irregular and improper. The corporation will need to include any significant, systematic or unusual fraud identified in their statement of regularity, propriety and compliance. Fraud should also be reported to [Action Fraud](#) to help identify systematic risks potentially affecting whole sectors (e.g. cyber crime).

Sub-contracting

46. Assurance requirements about [sub-contracting](#) are published separately.

Part 3: Assurance framework for colleges: requirements for external auditor/reporting accountant

47. This section sets out the assurance framework for colleges and will be of interest to sixth-form and further education colleges and their auditors/reporting accountants.

General responsibilities

48. It is a condition of funding that college corporations appoint an external auditor to audit its annual accounts. ESFA requires external auditors appointed by college 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.

49. 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 undertaking their work.

Responsibilities regarding the annual accounts

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

51. 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 relevant [Statement of Recommended Practice: Accounting for Further and Higher Education](#).

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

- the college 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 and explanations required for their audit.

53. 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. They are 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.

54. ESFA will confirm the value of its main funding grants generated through the Individualised Learner Record (ILR) returns², to be included as income within the corporation's annual accounts. This includes apprenticeship funding paid under contract. The auditor will rely on assurance provided by ESFA when considering whether income recognised in the accounts from the main funding grants generated through ILR returns is fairly stated. Responsibility for the accuracy of funding claims remains with the corporation.

55. Where the external auditor is unable to provide an unqualified audit opinion 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 and ESFA, as soon as practically possible.

56. The external auditor must set out any findings arising from the audit in a management letter to the corporation each year. This should cover:

- the external auditor's approach to the audit
- the areas covered by the audit
- the external auditor's findings, including any significant concerns, if arising including ratings of the importance/risk
- any audit recommendations for the period
- the status of any audit recommendations from the previous year

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

Responsibilities regarding regularity and propriety

58. College 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.

59. The reporting accountant must undertake the engagement to provide limited assurance. Limited assurance engagements are defined as those concluding whether,

² Adult education budget (non-procured) and advanced learner loans bursary are paid against an agreed profile, and are subject to an end-year reconciliation process

based on the procedures performed and evidence obtained, nothing has arisen that suggests that information is materially misstated³.

60. For colleges, 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 which govern them.

61. The reporting accountant must set out any material matters within their assurance report on regularity.

62. 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

63. The reporting accountant's assurance report on regularity refers to the authorities which govern the college 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.

64. The reporting accountant should have regard to Public Audit Forum's [Practice Note 10](#) (PN10). This sets out a general framework for obtaining reasonable assurance over regularity. The regularity assurance framework for colleges 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

65. 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 accounts⁴.

66. 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

³ See [International Standard on Assurance Engagements \(ISAE\) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information](#)

⁴ 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.

67. 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. Many reporting accountants will already have detailed knowledge of the corporation's systems, procedures and controls from previous years' audit work.

Testing

68. 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 test regularity would comprise a mix 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

69. 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.

70. ESFA has accepted responsibility for obtaining direct assurance over the corporation's main funding grants from ESFA, generated through ILR returns⁵. This includes apprenticeship funding paid under contract. The corporation remains responsible for the accuracy of these returns; however, regularity testing of the completion of these returns is excluded from this framework. ESFA has also accepted responsibility for obtaining assurance on the same basis as above where the corporation is delivering through a partner organisation. The reporting accountant is, therefore, limited to considering whether payments are made in line with any contractual terms and in accordance with the corporation's financial regulations and procedures.

71. Other than the exclusions above, the regularity work should include all college expenditure and income received, regardless of source. This includes income and

⁵ Adult education budget (non-procured) and advanced learner loans bursary are paid against an agreed profile, and are subject to an end-year reconciliation process

expenditure of any subsidiaries or joint venture arrangements to the extent that they are included as part of the consolidated annual accounts submitted to ESFA.

72. ESFA expects that if potential regularity matters that could impact on ILR returns and associated claims come to the reporting accountant's attention during their work, they will notify the corporation and ESFA.

73. Where the reporting accountant has specific concerns over the regularity of income and expenditure at a college, they may, exceptionally, write to ESFA⁶ and ask for a summary of any relevant matters, such as fraud and whistleblowing:

- if information is not readily accessible from the college
- evidence is provided of their relationship to the college as reporting accountant

74. 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.

75. ESFA do 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 document clearly the objectives, method and conclusion.

The assurance report on regularity

76. [Annex D](#) sets out the required format of the reporting accountant's assurance report on regularity, including the format of the limited assurance conclusion.

77. Limited assurance engagements are defined as those concluding whether, based on the procedures performed and evidence obtained, anything has arisen that suggests that information is materially misstated.

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

79. The reporting accountant must set out a summary of the work performed in the assurance report on regularity e.g. enquiry, inspection and review, observation and re-performance.

⁶ Via email to PRA.Financialhealth@education.gov.uk

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

81. 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. In such instances, the reporting accountant should consult with ESFA in advance.

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

83. 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 and ESFA, as soon as practically possible.

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

85. 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. In this case the reporting accountant should consider whether, and if so how, they may be reported.

Materiality and risk

86. In the absence of an alternative assurance standard, the Code draws on some of the principles set out in [PN10](#) even though the college sector is not specifically within scope.

87. [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.

88. 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.

89. 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.

90. Matters of material significance⁷, must be reported to ESFA, as set out in section 160 of the [Charities Act 2011](#).

Fraud

91. Fraud, by its inherent nature of deception to result in financial or personal gain, means that the transaction must be irregular and improper.

92. Identified fraud that is significant (see [paragraph 43](#)) or material will lead to a modified assurance report on regularity including full disclosure of those matters in that report.

93. 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

94. 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 that must be included within the letter of engagement between the college corporation and the auditor/reporting accounts. These clauses include detail of the arrangement for the regularity assurance engagement, which allows ESFA to draw assurance from the assurance report on regularity.

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

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

⁷ As defined in [Matters of Material Significance reportable to UK charity regulators](#)

97. To avoid bureaucracy there is no expectation that the engagement letter would be signed by ESFA.

Sub-contracting

98. Assurance requirements about [sub-contracting](#) are published separately.

Annex A: Clauses for inclusion in the letter of engagement

The following paragraphs must be included in the letter of engagement between the college 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 college corporation in relation to the audit of, and reporting on, the college corporation's annual report and financial statements (annual accounts).

We shall conduct our audit of the college corporation's annual accounts in accordance with the [Revised International Standards of Auditing \(UK\)](#) issued by the Financial Reporting Council ('ISAs') and in full compliance with any instructions, guidance or frameworks issued by ESFA, including those within the [college accounts direction 2017 to 2018](#).

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 the non-compliance is justified in the circumstances. In determining whether or not the 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 ESFA, 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 cease to hold office for any reason, we will provide the corporation with either a statement of any circumstances connected with the removal or resignation that we consider should be brought to the corporation's attention, or a statement that there are no such circumstances. The college corporation must copy this statement to ESFA as soon as practically possible following receipt.

Regarding the regularity assurance engagement

The Secretary of State for Education, acting through ESFA, has adopted the standard terms of reference included within the post-16 audit code of practice.

We will report to ESFA in accordance with those standard terms of reference.

The Secretary of State, acting through 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 ESFA, engages the reporting accountant to perform a limited assurance engagement on regularity in connection with the college corporation.

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 ESFA.

ESFA is not required to sign anything. The Code and [college accounts direction 2017 to 2018](#) 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.

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

1 Introduction

The college corporation is required to submit to 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 college corporation's responsibilities

The college corporation is responsible for:

- complying with the requirements of ESFA's grant funding agreements and contracts, including provision of information as required
- producing annual accounts to 31 July⁸ in accordance with the requirements of the [college accounts direction](#)
- having these accounts audited by a registered auditor

⁸ Amend dates as necessary to reflect extended period or short-period accounts

- submitting audited accounts to ESFA by 31 December
- 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 college corporation's accounts shall meet the requirement of the [college accounts direction](#) to include the reporting accountant's assurance report on regularity.

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

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

3 Scope of the reporting accountant's work

The reporting accountant will use professional judgement and take account of the particular circumstances of the college 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 ESFA as part of the planning and delivery of the regularity engagement where they believe there is an issue with a specific college corporation.

4 Form of the reporting accountant's report

The mandatory report which 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 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 college corporation
- the reporting accountant's report is prepared solely for the use of the college corporation and ESFA and solely for the purpose of submission to ESFA in connection with the requirements of the Code. It may not be relied upon by the college corporation ESFA for any other purpose
- the college corporation, ESFA or others may not rely on any oral or draft reports the reporting accountant provides. The reporting accountant accepts responsibility to the college corporation and ESFA for the reporting accountant's final signed reports only
- to the fullest extent permitted by law, except for the college corporation, ESFA, the firm of reporting accountants, its partners and staff neither owe nor accept any duty to any person (including, without limitation, any person who may use or refer to any of ESFA's publications) and shall not be liable for any loss, damage or expense of whatever nature which is caused by any person'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 college corporation, and 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 should discuss any proposal to limit their liability, whether to the college corporation and/or to 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 ESFA in advance of approval by the college corporation. This is on the basis that the college corporation and ESFA agree that any such limitation on the reporting accountant's liability will apply in aggregate to the reporting accountant's liability to each and all of the college corporation and ESFA

The college corporation and 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 three 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 college corporation. ESFA is not liable to pay the reporting accountant's fees.

7 Quality of service

The reporting accountant will investigate all complaints. ESFA or the college 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 college corporation and 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 to the reporting accountant during the course of an assignment will be maintained confidentially.

9 Freedom of Information Act 2000

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

11 Applicable law and jurisdiction

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

The college corporation, 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. Colleges 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 college corporation is responsible for good governance. Regularity concerns can arise where there is indication of:

- 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
- ineffective governance structure, including lack of policies in key areas
- inadequate reflection of charity law and associated good practice, including Charity Commission guidance in 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 use of resources, including land and buildings, staff, cash and borrowings
- slow response to issues identified by Ofsted
- inadequate record keeping, for example poor quality bookkeeping
- ineffective management structure, including lack of control processes, non-compliance with control processes and lack of relevant experience in key areas

Useful resources

There have been very few material instances of irregularity in the college sector, however it is important to remain vigilant to the risks. Useful resources for further consideration include:

- [Action Fraud website](#)
- [Charity Commission guidance, publications and information](#)
- [College: notices to improve](#)
- [FE Commissioner reports](#)
- [Tackling charity fraud: new resouces](#)

Annex D: Reporting accountant's assurance report on regularity

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

In accordance with the terms of our engagement letter dated [x] and further to the requirements and conditions of funding in ESFA's grant funding agreements and contracts we have carried out an engagement to obtain limited assurance about whether anything has come to our attention that would suggest that in all material respects the expenditure disbursed and income received by [name of college] during the period 1 August 2017 to 31 July 2018⁴ 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 ESFA. In line with this framework, our work has specifically not considered income received from the main funding grants generated through the Individualised Learner Record returns, for which ESFA has other assurance arrangements in place.

This report is made solely to the corporation of [name of college] and 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 college] and 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 college] and ESFA for our work, for this report, or for the conclusion we have formed.

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

The corporation of [name of college] 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, is applied for the purposes intended by Parliament and the financial transactions conform to the authorities which 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 2017 to 31 July 2018 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 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 college'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 2017 to 31 July 2018⁹ has not been applied to purposes intended by Parliament and the financial transactions do not conform to the authorities which govern them.

- [Matter 1]
- [Matter 2]

[Signed]

[Audit firm]

[Date]

⁹ Amend dates as necessary to reflect extended period or short-period accounts



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