

PART 2 – CONFIDENTIAL FACTS AND ADVICE

MD2763

Title: AEB Allocations and Funding Arrangements

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not suitable for publication until the stated date because:

Part 2 is restricted as it contains information that is legally privileged. Release of such information may impact upon the GLA's ability to properly deliver the Adult Education Budget (AEB).

Date at which Part 2 will cease to be sensitive or when this information should be reviewed with a view to publication:

This Part 2 form is restricted until September 2021 whereupon it must be reviewed before any decision to publish.

Legal adviser recommendation on the grounds for not publishing information at this time:

In the event the information contained in this Part 2 is the subject of a request for information under section 1 of the Freedom of Information Act 2000 (the "Act"), it is considered that access can be denied on the basis that such information constitutes exempt information under section 42 of the Act on the basis that part of the information contained in this Part 2 is legally privileged.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. Section 42 of the Act provides that information is exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The section 42 exemption under the Act is a qualified exemption and its use is therefore subject to a public interest assessment.

Public interest assessment

At present, on balance, it is considered that the public interest may be best served if the information is not disclosed. The purpose of legal professional privilege is to enable openness in all communications between client and lawyer to ensure access to full and frank legal advice.

The content of this Part 2 records the provision of such advice and officer's responses to the same in order that the decision sought may be considered fully in light of risks of proceeding as proposed and the effective and efficient delivery of the Adult Education Budget (AEB) Level 3 National Skills Fund (NSF) funding.

The eligibility of the exemption should be reassessed in the event of a Freedom of Information request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

Name: Stephen Fernandes-Owen, TfL Legal

Date: 2 February 2021

Once this form is fully authorised, it should be circulated with Part 1.

Decision and/or advice:

1 Issues for consideration

Award of grants to Independent Training Providers without competition

- 1.1 In order to mitigate risks of affording, or being perceived to afford, certain providers' financial assistance to meet operating costs unfairly, which distorts the market on which they operate, the GLA typically opens funding opportunities to competition. Such transparent competition also assists the GLA to meet its statutory duties to secure value for money and prudently manage public funds.
- 1.2 Awarding funding to a ringfenced group of providers may be argued: to afford those providers an unfair advantage; thereby distort competition on the market on which they operate; and be sub-optimal in terms of achieving value for public money. There is a risk therefore, that a provider not in receipt of funding might seek to challenge such award on the basis that it is an anti-competitive and unlawful subsidy. Whilst it cannot be said with any certainty as to whether or not such risks will crystallise, the COVID-19 situation and its impact upon providers should be taken into account.
- 1.3 Officers are of the opinion however, that the above risks and proceeding to award as proposed is outweighed by the risks associated with making the funding opportunity subject to competition – see below.
- 1.4 As noted in Part 1 of this MD, the Prime Minister announced that from April 2021, any adult aged 24 and over who wants to achieve their first full Level 3 qualification will be fully funded under the National Skills Fund.
- 1.5 Much of this provision is currently funded using loan finance made available through Advanced Learner Loan (ALL) agreements between the Education and Skills Funding Agency (ESFA) and training providers. From April 2021, responsibility for funding this provision in London will be delegated to the Mayor. The Department for Education (DfE) has allocated £5,532,062 of additional funding to the Mayor to fund this provision through the remaining four months of the 2020/21 Academic Year (AY), and £22,150,655 for the full 2021/22 AY.
- 1.6 However, no new enrolments from April 2021 can be funded via ALL agreements because the ESFA will no longer hold the responsibility for funding this provision to Londoners. Without funding therefore, the provision of Level 3 qualification courses to Londoners is put at risk. The Mayor has committed to ensure continuity of provision through the first two years of administering the AEB in London. To ensure that this provision to Londoners remains available, it is recommended to fund independent training providers (ITPs) that currently deliver the provision through ALL for the remaining period in 2020/21 (April – July), and the full 2021/22 AY, subject to their submission and GLA's approval of a business case and satisfaction with the outcome of due diligence activity to be undertaken.
- 1.7 Up to nine providers are in scope for potential award as they have delivered over £100,000 worth of eligible provision to Londoners in 2019/20 through their ALL agreements with the ESFA. The £100,000 minimum threshold for awards follows GLA policy for AEB grant awards as outlined in [MD2423](#). That threshold was formulated when planning the implementation of the AEB in London

prior to commencement of the 2019/20 AY. The most recent data available at the time (2017/18) showed that a high number of organisations delivered small amounts of provision to Londoners. Officers were of the opinion that, as the management and administration of grant agreements carry fixed costs, the management of many small grants of below £100,000 in value would not be cost-effective. It is proposed to apply the same minimum threshold in this instance for the same reason. Therefore, independent training providers that have delivered below £100,000 worth of eligible provision to Londoners in 2019/20 will not be considered.

- 1.8 This amounts to up to £1.4 million in 2020/21, and up to £4.2 million in 2021/22.
- 1.9 Under cover of [MD2513](#), the Mayor approved the restriction of grant funding to providers whose main delivery site is located within London and its neighbouring authorities ('the London fringe'), unless they could evidence delivery of specialist provision through a supporting business case. Two of the nine providers in question, that delivered over £100,000 worth of eligible provision to Londoners in 2019/20, are located outside of the London fringe. As all grant providers located outside the London fringe were given the opportunity to submit a business case for the continuation of funding following approval of MD2513, it is proposed that these two providers located outside the London fringe will also be given an opportunity to present a business case to be funded.
- 1.10 Other options were examined regarding the allocation of this funding, including opening the funding opportunity for competition, or confining the award with competition to the remainder of the 2020/21 AY only and allowing all providers to compete for funding in 2021/22. Although the risks set out at paragraphs 1.1 and 1.2 above are noted, officers are of the view (as per paragraph 1.3) that it is noted that there is greater risk in adopting either of the other options because: analysis of 2019/20 delivery data shows that both options risk a loss of provision in the immediate term (£4.2 million annually) which poses a significant risk to London's learners and employers who are dependent on the skills gained from delivery of these qualifications; two of the nine ITPs that would potentially be funded are London's two largest providers of NSF eligible provision in 2019/20; and two of the other ITPs that would potentially be funded appear among the ten largest providers of NSF eligible provision in 2019/20. Qualifications eligible through the NSF Level 3 Adult Offer are considered a high priority as they are aligned with sectors critical to London's recovery. A loss of this provision would be economically damaging to London's economy and its residents.
- 1.11 In addition:
- as the awards without competition proposed in 2020/21 will only be made for four months of the AY and will therefore, have a third of the value of provider delivery in 2019/20, officers are of the opinion that they are not of a level which is likely to incentivise a challenge; and
 - in the 2021/22 AY, all organisations will have an opportunity to apply for further funding through the AEB Good Work for All Fund (£6 million is proposed in 2021/22) which may also disincentivise challenge.