

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2499

### Title: GLA Adult Education Budget Provider Monitoring, Intervention and Audit Approach

#### Executive Summary:

From August 2019, the Mayor will be responsible for the commissioning, delivery and management of London's AEB allocation, circa £311m per annum. This MD builds on: MD2370, which approved the outline approach to the management of AEB grant provision in academic years 2019/20; MD2371, which approved the approach to managing AEB procured services; and MD2255, which through which the Mayor agreed to accept devolution of the Adult Education Budget (AEB).

This MD seeks approval for the GLA's approach to the performance management of, and delivery arrangements for the AEB as described in the attached Appendices.

#### Decision:

That the Mayor:

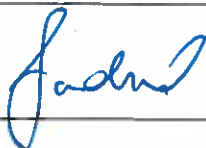
1. Approves the GLA AEB Grant-funded provision monitoring and intervention policy (Appendix A);
2. Approves the GLA AEB Procured provision monitoring and intervention policy (Appendix B); and
3. Agrees the recommended audit and financial assurance approach as set out at Appendix C.

#### Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

29/7/19

## **PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1 As approved under cover of MD2255 – Devolution of the Adult Education Budget to the Mayor, the Mayor has accepted the delegation of the Adult Education Budget (AEB) to London in academic year 2019/20, subject to meeting the series of principles set out in the devolution arrangement, as agreed by the GLA and the Department for Education (DfE). The GLA must meet six readiness conditions to demonstrate to the Secretary of State that, amongst other things, stability of the provider base and protection of the public interest through achieving value for money, will be safeguarded. By meeting these principles, the Mayor will be responsible for the commissioning, delivery and management of London's AEB allocation of circa £311m per year from 1 August 2019.
- 1.2 This Mayoral Decision (MD) sets out the GLA's proposed approach to grant and contract management and delivery arrangements for AEB grant-funded provision in academic year 2019/20 and procured provision in the years 2019-2023, which addresses the sixth readiness condition set out by the Secretary of State – funding and provider management: *“funding and provider management arrangements, including securing financial assurance, are agreed in a way that minimises costs and maximises consistency and transparency”*.
- 1.3 An MD is being sought as, under the legislative framework which permits the transfer of statutory AEB functions to the Mayor, he is not able to delegate those functions in the normal way<sup>1</sup>. This is recognised as a matter reserved by law for the personal exercise of the Mayor only under the Mayoral Decision-Making in the Greater London Authority document.

#### Provider management and intervention

- 1.4 This report builds on the approaches to provider management approved by MD2370 and MD2371, and the proposed approaches endorsed by the AEB Mayoral Board on 19 September 2018, 10 January 2019, 10 April 2019 and 11 July 2019. The appended policy papers (Appendix A: Managing Provider Performance GLA AEB Grant-funded provision monitoring and intervention policy 2019-2020 and Appendix B: GLA AEB Procured provision monitoring and intervention policy 2019-2023) bring together information into one source for ease of use for providers. To support the Mayoral commitment to maximising provider stability and delivering a smooth transition in the first year of AEB delegation, the GLA's approach to performance management is based on Education and Skills Funding Agency (ESFA) management processes as far as possible.

#### Audit and financial assurance

- 1.5 The Mayor's Office for Policing and Crime (MOPAC) provides audit services to the GLA. GLA Officers have been working with MOPAC to develop an audit approach that will provide the GLA with a high level of assurance over the AEB. Further detail is available in sections 2.12 to 2.15 and Appendix C.

#### **2. Objectives and expected outcomes**

- 2.1 This MD sets out the approach proposed for the management of AEB grant-funded provision and GLA AEB procured provision. Separate policy guidance has been prepared for the GLA grant-funded provision and the GLA AEB procured provision due to the differences in contracting terms, monitoring processes and mitigation actions to correct underperformance.

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<sup>1</sup> Section 39A of the Greater London Authority Act 1999

- 2.2 The expectation is that the GLA will broadly follow the same timescales and business cycle as the ESFA and that the GLA/ESFA will share information in line with the Memorandum of Understanding agreed between the Mayor and the Secretary of State.
- 2.3 *Education Performance Data for grant-funded providers.* Previously, the Mayor committed to using the 'minimum standards' as a criterion for assessing provider quality. The ESFA have confirmed that minimum standards as a performance measure is under consultation and will be removed from the performance management processes from January 2020, and therefore the 2018/19 academic year may see the final release of notices for minimum standards. Minimum standards measured the provider's performance over the previous five years for qualification achievement rates against a learning programme. In the 2019/20 delivery year, providers who have received a notice for Minimum Standards from the ESFA will be subject to enhanced monitoring by their GLA Provider Manager, in line with the approach set out at Appendix A.
- 2.4 For the 2019/20 delivery year, to mitigate the loss of minimum standards information, the GLA proposes to use the publicly available National Achievement Rates Tables (NARTs) to review provider performance. GLA Provider Managers will consider the providers' NART data over the previous three years and complement this information with the providers' Individualised Learner Record data to identify early signs of declining performance.
- 2.5 The actions required to mitigate the decline in performance will depend on the extent of the decline shown by the range of data available to the GLA. The GLA Provider Manager will discuss and agree any actions to improve performance on a case-by-case basis, ensuring that the provider is supported and that no unintended consequences arise because of the intervention.
- 2.6 The GLA reserve the right to review the intervention triggers for education performance data and corrective actions in line with national policy, once available.
- 2.7 *Structural changes for grant-funded providers: Independent Business Reviews (IBRs) and Structure and Prospects Appraisals (SPAs).* Further information on IBRs and SPAs, and the expectations of GLA funded providers have been detailed in Appendix A.
- 2.8 *Education administration and insolvency under the Technical and Further Education Act 2017 (TFEA) for grant-funded providers.* Further information on education administration and the expectations of GLA funded providers have been detailed in Appendix A.
- 2.9 The TFEA insolvency regime is not applicable to independent training providers (ITPs) or independent specialist providers (ISPs) who may have been procured in the GLA AEB procurement process. However, ITPs and ISPs are subject to insolvency proceedings as a business entity.
- 2.10 The following processes 2.11 to 2.16 are relevant to the monitoring of both Grant-funded and GLA AEB Procured provision:
- 2.11 *Financial health monitoring and subcontractor compliance.* Policies and processes relating to financial health monitoring and subcontractor compliance were endorsed by the AEB Mayoral Board on 10 January and 10 April 2019. This information, along with the developed business cycle, has been collated to provide comprehensive guidance for providers, which complements the Performance Management Rules.
- 2.12 *Financial audit, irregularity and assurance.* The information presented in Appendices A and B relate to policy and processes set out in the below paragraphs 2.13 to 2.15 and Appendix C.
- 2.13 The ESFA has set out a minimum audit offer for Mayoral Combined Authorities/GLA in respect of the grant programme. This was presented to the AEB Mayoral Board on 10 January 2019 and has now been formally accepted in line with the Mayor's Decision as documented in MD2423.

- 2.14 The recommended approach to Audit, as set out in Appendix C, has been developed following a review of the ESFA's Post-16 audit code of practice 2018-19, in consultation with MOPAC.
- 2.15 Based on the recommended approach, GLA officers will work with MOPAC and the ESFA to develop arrangements for the AEB grant and procured audit visit programme. GLA officers will review the options for the delivery of the audit programme and recommend a preferred approach to the autumn Mayoral Board meeting, considering the aims of value for money and minimising administrative burden on providers.
- 2.16 The AEB Mayoral Board (chaired by the Mayor) reviewed Appendices A and B and approved the substantive policy content on 11 July 2019.

### 3. Equality comments

- 3.1. In carrying out any functions in respect of the AEB, the Mayor will comply with the public sector equality duty under section 149 of the Equality Act 2010.
- 3.2. Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities – of whom the Mayor is one – must have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.3. Relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 3.4. In designing the monitoring and intervention processes, the learner's interests have been placed at the heart of monitoring provider performance. This includes assuring the quality of the provider in delivering quality provision for all learners through independent assessment by Ofsted inspectors. Provider Managers will use the quarterly monitoring visit with providers to discuss any concerns raised within an Ofsted report, including outcomes for learners and provision for learners with high needs. GLA Provider Managers will monitor how the provider responds to resulting actions and recommendations presented by Ofsted using the provider's Self-Assessment Reports including Quality Improvement Plans. Where necessary, the Provider Manager will recommend further actions and/or implement intervention actions as detailed in Appendices A and B.

### 4. Other considerations

*Key risks associated with the GLA's provider monitoring, intervention and audit approach are:*

<i>Risk</i>	<i>Consequence</i>	<i>Likelihood</i>	<i>Impact</i>	<i>RAG rating</i>	<i>Mitigation</i>
The grant management process is heavily dependent on timely access to data, which	This risk relates to the service level agreement whereby the ESFA will receive and process the data which forms the basis of the GLA monitoring	<i>Low</i>	<i>High</i>	<i>A</i>	This risk will be mitigated by establishing and maintaining a collaborative dialogue with ESFA under the service level agreement

will be processed by the ESFA.	process. If there is a delay in receiving the data, provider monitoring will also be delayed or incomplete.				and Memorandum of Understanding.
The data sharing agreement and service level agreement with Ofsted is yet to be finalised.	Without the service level agreement and data sharing agreement, Ofsted cannot receive the required data from the GLA to risk assess providers in the selection process for inspections and to assure quality.	<i>Low</i>	<i>High</i>	<i>A</i>	This risk will be mitigated by establishing, agreeing and maintaining a service level agreement and data sharing agreement, or similar in advance of the start of GLA AEB delivery on 1 August 2019.
Removal of 'Minimum Standards' as a measure of provider quality.	The ESFA's removal of 'Minimum Standards' as a monitoring and quality criterion for performance risks undetectable underperformance.	<i>High</i>	<i>Low</i>	<i>G</i>	The GLA have mitigated this risk by proposing an alternative method of assessing provider quality as detailed in sections 2.3 to 2.5. In addition, the GLA reserve the right to update the policy and mitigations in line with national practice.
General Data Protection Regulation (GDPR) compliance	The GLA will receive, collect, analyse and store personal data in relation to learners to monitor provider performance.	<i>High</i>	<i>Low</i>	<i>G</i>	GLA Governance have been consulted in relation to receiving, collecting, analysis and storage of learner's personal data to ensure compliance against GDPR.
GLA and ESFA audit and assurance visits are yet to be confirmed.	Providers experience multiple assurance visits from the GLA and ESFA.	<i>Low</i>	<i>Medium</i>	<i>A</i>	The GLA intend to mitigate this risk by liaising closely with the ESFA to ensure that the selection and timing of audits are aligned. Further details on the audit and assurance processes will be presented to the autumn Mayoral Board.

## 5. Financial comments

- 5.1 The proposed monitoring and intervention policies relating to both the grant funded and procured AEB provision ensures that good governance and Project Management processes are in place to

award, monitor and where required intervene in circumstances highlighted within the main body of this report and the associated appendices. This ensures that the GLA investment in the AEB projects having the best possible opportunity to succeed in delivering on the desired outputs and safeguarding the investment from underperformance and any financial irregularity that could occur – facilitated by Financial Health monitoring.

- 5.2 With regards to the proposed Audit approach, further work is required on assessing options to establish a preferred solution for audit visits to be carried out on behalf of the GLA. All costs, however will be earmarked from within the AEB budget on an annual basis and where ESF related, part funded from the ESF Management & Administration budget.

## **6. Legal comments**

- 6.1 Section 39A of the Greater London Authority Act 1999 permits the delegation of ministerial functions to the Mayor, subject to certain limitations and conditions. This forms the basis for the proposed delegation of AEB functions from the Secretary of State for Education to the Mayor. A particular and onerous limitation of a delegation under s39A is that the usual power of delegation by the Mayor is excluded in respect of s39A delegated functions. The Memorandum of Understanding relates to the funding of the GLA, by the Department for Education, of preparations for the exercise by the Mayor of these functions.
- 6.2 In taking the decision requested, the Mayor must have due regard to the Public Sector Equality Duty; under section 149 of the Equality Act 2010. To this end, the Mayor should have particular regard to section 3 (above) of this report.
- 6.3 Should the Mayor be minded to make the decisions sought, officers must take care to ensure that the policies and approach in question are followed and taken consistently in the administration and management of the AEB programme.

## **7. Planned delivery approach and next steps**

- 7.1. The approved approaches will be published on [www.london.gov.uk](http://www.london.gov.uk) in July 2019, ahead of commencement of delivery on 1 August 2019.
- 7.2. The GLA will work with the ESFA to determine the practical arrangements for the audit programme and develop options for delivering additional audit visits where required. The preferred approach will be brought to the AEB Mayoral Board for consideration in the Autumn.
- 7.3. The approved GLA AEB Grant-funded provision monitoring and intervention policy will be reviewed on an annual basis to ensure that approved approach aligns with national policy and provides assurance that provider performance is adequately monitored.
- 7.4. The approved GLA AEB Procured provision monitoring and intervention policy will be reviewed on an annual basis to ensure that approved approach aligns with national policy.

## **Appendices and supporting papers:**

**Appendix A** – Managing Provider Performance: GLA AEB Grant-funded provision monitoring and intervention policy 2019-2020

**Appendix B** – Managing Provider Performance: GLA AEB Procured provision monitoring and intervention policy 2019-2023

**Appendix C** - Financial audit, irregularity and assurance

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

**Part 1 - Deferral**

**Is the publication of Part 1 of this approval to be deferred? No**

**Part 2 – Sensitive information**

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form – No**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to confirm the following (✓)

**Drafting officer:**

Elizabeth North has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Debbie Jackson has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Jules Pipe has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**

This decision was agreed by the Corporate Investment Board on the 22 July 2019.

**EXECUTIVE DIRECTOR, RESOURCES:**

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

**Signature**

*M. D. Ollie*

**Date**

*22.7.19*

**CHIEF OF STAFF:**

I am satisfied that this is an appropriate request to be submitted to the Mayor

**Signature**

*D. Bellamy*

**Date**

*25/7/2019.*

