

MAYOR OF LONDON

Managing Provider Performance

GLA AEB Grant-funded provision monitoring and
intervention policy 2019-2020

Version 1

DRAFT

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Summary

1. The purpose of this document is to set out the Greater London Authority's (GLA) approach to monitoring provider performance for quality and financial stability. This document also sets out when the GLA will intervene when performance or financial resilience of a provider is below expected levels. This document supplements the information available in the Performance Management Rules [\(link \[final version to be presented to Mayoral Board in July 2019\]\)](#). Providers should refer to the Performance Management Rules, this document and their funding agreement.
2. This document will be periodically updated to ensure that policy aligns to the requirements of GLA performance and measurements, alongside national policy requirements. Any updates will be clearly marked in new versions. A full review of the policy will take place in advance of the 2020/21 delivery year.
3. This publication is primarily intended for providers in receipt of a Conditions of Funding (Grant) Agreement (the funding agreement) with the GLA. This includes:
 - general further education (FE) colleges;
 - local authorities;
 - institutes for adult learning;
 - sixth form colleges; and
 - universities and higher education institutions
4. In addition, this document may also be of interest to:
 - learners who wish to see how providers are monitored for performance
 - Department for Education (DfE)
 - Education and Skills Funding Agency (ESFA)
 - Office for Standards in Education, Children's Services and Skills (Ofsted)
 - Further Education Commissioner (FEC)
 - Mayoral Combined Authorities
 - Office for Students
 - other education and training providers.
5. If you are a learner who wishes to provide feedback on your education/training, please refer to the information available here [\(LINK \[to be included when webpage is live in July 2019\]\)](#) on how to share your views with the GLA.

Approach to Performance Management

Role of GLA Provider Manager

6. Each provider will have a named GLA Provider Manager who will work with a dedicated number of grant-funded providers and act as the first point of contact when managing the funding agreement between the GLA and the provider. The GLA Provider Manager will be responsible for monitoring providers throughout the life of the funding agreement, including when performance is below the level as set out in the contract, and will visit the provider on a quarterly basis to discuss performance.

Working with other agencies

7. The GLA's Skills and Employment Delivery Teams will work with partner agencies in line with the [Memorandum of Understanding](#) for the delegation of certain adult education functions to the Mayor of London and other Service Level Agreements to ensure that there is oversight of AEB programme delivery for London residents, including:
 - DfE/ESFA. Most providers will receive funding from the GLA and the ESFA in delivering their courses. The GLA will share data and intelligence which indicates concerns over a provider's performance or financial resilience with the ESFA's territorial and case management team to ensure that any measures which are implemented to correct underperformance do not have unintended consequences for the ESFA and vice versa. The ESFA will also share this information with the FE Commissioner.
 - As noted above, most providers will hold a funding agreement directly with the ESFA. While the GLA and ESFA will share intelligence in relation to provider performance and risk, this does not mean that the GLA will act to impose measures that correct underperformance against the ESFA contract. GLA Provider Managers will only instigate intervention measures when indicators evidence a risk to the viability of the GLA funding agreement.
 - Office for Standards in Education, Children's Services and Skills (Ofsted). AEB provision funded by the GLA is in scope for inspection by Ofsted. Providers who are subject to an Ofsted inspection must make GLA colleagues aware of the inspection on receipt of the notice and invite the GLA provider manager to attend the feedback

meeting. Following inspection, the GLA Provider Manager will review the outcomes of inspection and discuss any actions required to improve quality.

- Further Education (FE) Commissioner. The FE Commissioner may review provision funded by the GLA and make recommendations to improve the quality or financial resilience of a provider. The GLA will share information to assist the FE Commissioner and his team to complete any investigations, which will be coordinated by the ESFA. If a provider is visited by the FE Commissioner, the provider must give advance warning to their GLA Provider Manager and give the option for the GLA Provider Manager to attend key meetings.

Terminology

8. “Funding agreement” means the Conditions of Funding, the attached Appendices to the Conditions of Funding and any documents or parts thereof, policies or guidance specified in this Agreement and any variation to the Agreement accepted by the GLA in OPS (as the same may be amended, added to, supplemented, substituted or varied in accordance with the terms of this Agreement).
9. “OPS” means the "GLA Open Project System", being the GLA’s on-line management information system (MIS), or any successor system and/or any other system which performs any of the same functions and which GLA notifies to the Body from time to time.
10. Where this document refers to “delivery year” this is taken to mean August to July in a calendar year.
11. Providers in receipt of AEB Procured funding should refer to the GLA AEB procured provision monitoring and intervention policy ([LINK \[to be included when webpage is live in July 2019\]](#)).

Monitoring Delivery

12. Provider managers will aim to work collaboratively with providers to support them in delivering the provision set out in their funding agreement. Provider managers will monitor performance to identify where providers are at risk of underperforming against their funding agreement, and support action to improve performance and prevent poor performance.
13. Table 1 sets out the business cycle of information returned by providers and the envisaged timing of quarterly GLA Provider Manager visits in 2019/2020.

Table 1 – Monitoring Delivery Timetable		
Month	Business Cycle Activity	GLA Provider Manager visits
August 2019	Year 1 delivery begins	Onboarding visit
September 2019		
October 2019		
November 2019	R04 ILR return Financial Statements return	Quarter 2 monitoring visit
December 2019		
January 2020		
February 2020	R06 ILR return Mid-Year Claim	Quarter 3 monitoring visit
March 2020	Financial health assessments	
April 2020	Year 2 Funding Allocations issued	
May 2020	R10 ILR return Subcontracting Plan approvals for next delivery year	Quarter 4 monitoring visit
June 2020		
July 2020		

	External Assurance on Subcontracting certificate returns	
August 2020	Year 2 delivery begins	Quarter 1 monitoring visit of new academic year
September 2020	R13 ILR return Year-End Claim Subcontracting Plan reconciliations	
October 2020	R14 ILR return Final Funding Claim	

14. Within the above business cycle, providers will have the opportunity to apply for a growth to their funding agreement value via the Skills for Londoners Innovation Fund. Further guidance on the Skills for Londoners Innovation Fund will be released in Autumn 2019.
15. The GLA Provider Manager will take the opportunity at the quarterly meetings to share information and discuss performance based on the information provided by each provider or other agencies such as Ofsted, including:

Table 2 – Monitoring Information	
Information	Monitoring discussion in respect of AEB
Individualised Learner Record (ILR) data returns	The timeliness and accuracy of ILR data related to London residents studying AEB.
Funding claims	Performance against funding agreement as shown in the Mid-Year, End-Year and Final Claims, and whether the total funding value should be adjusted to better reflect the level of performance.
Ofsted inspections	The outcome of any recent Ofsted inspection monitoring visit and the quality improvement actions which the provider is implementing to secure better provision.

Further Education Commissioner assessments	The findings or report of any FE Commissioner investigation or diagnostic assessment, and the action plan developed by the provider as a result of assessment.
Initiative funding	The progress with the delivery of any initiative or growth funding allocated in addition to the recurrent grant funding allocation.
Financial health assessments	The outcome of any review of the financial performance information where there are risks to the delivery of AEB and improvement action is required.
Audit	The report of audit processes, in particular where findings are qualified or require management action.
Subcontracting Plan	Progress with the delivery of the AEB subcontracting plan and any issues with performance.
Participant feedback and complaints	Information applicable to investigate a complaint raised by a learner.
Other	Any other information applicable to determine the level of risk associated with delivering the contract.

College Groups

16. Where a provider operates as a group, the funding agreement is held with the legal entity for the group. The GLA Provider Manager will agree the arrangements for quarterly performance management meetings with the provider to ensure that there is the scope for discussion about provision for London residents, as well as the group management of the funding agreement. If, based on the discussion about performance, a provider is unlikely to meet its overall funding agreement, the GLA reserves the right, at its discretion, to reduce the funding agreement in line with performance.

Subcontracting Arrangements

17. The GLA wants to ensure that provider delivery subcontracting meets strategic aims and enhances the quality of their learner offer for London residents.
18. Providers must set out the reasons for subcontracting in a Delivery Subcontracting Funding Retention and Charges Policy, which describes the alignment with strategic aims. Providers must publish the policy on their provider website at the start of each funding year.
19. Providers should return their subcontracting plans for the forthcoming delivery year to the GLA Provider Manager annually in June, prior to the commencement of delivery. This will include the names of subcontractors used, the value of the subcontracts, learner numbers and the amount of funding retained by the provider for the purposes of managing subcontracts. Based on the information provided, the GLA Provider Manager will approve subcontracting plans or discuss any additional information required. In-year changes to subcontracting plans should be notified to the GLA Provider Manager and approval sought prior to implementing a change. Providers must reconcile their subcontracting plans at the end of the delivery year as part of the AEB reconciliation arrangements.
20. In subcontracting plans, providers will be required to state the amount of funding they expect to retain to manage delivery subcontractors. The GLA will consider a retention of up to 20% of funding as a maximum cap and would not expect providers to retain more than this. In exceptional cases, the GLA will consider higher retention amounts only where there is a compelling rationale based on evidence. GLA Provider Managers will assess these exceptions on a case-by-case basis.
21. If annual subcontracted delivery aggregate value exceeds £100,000, providers will need to obtain an annual report from an external auditor that provides assurance on their arrangements to manage and control their delivery subcontractors. A certificate to accompany the report, signed by the auditor and the provider's accounting officer or senior responsible person must be submitted to the GLA by July (R11). The GLA Provider Manager may request to see the full report.
22. Providers must not enter into new subcontracting arrangements or increase the value of their existing arrangements if Ofsted has rated their leadership and management as inadequate; if they do not meet the GLA or ESFA Minimum Standards; or if the outcome of their annual GLA or ESFA financial health assessment is inadequate, unless the GLA have provided written permission in advance. These conditions will continue until the GLA is satisfied that the concerns have been addressed and the circumstances below no longer apply.

23. Providers are responsible for all the actions of their delivery subcontractors connected to, or arising out of, the delivery of the services which they subcontract. Providers must manage and monitor all delivery subcontractors to ensure that high-quality delivery is taking place that meets the GLA's AEB funding rules.

Early intervention

24. GLA provider managers will work with providers to ensure that provision is of a high quality and that providers maintain financial stability. A provider may enter early intervention when one or more of the following triggers have been breached:
- GLA or ESFA Financial Health assessment determines that the provider's financial health 'Requires Improvement', or risks declining to 'Requires Improvement' or 'Inadequate' in future and/or the provider's financial information shows that the provider may not be able to meet liabilities in future;
 - Two consecutive 'Requires Improvement' ratings for overall effectiveness by Ofsted;
 - Poor and/or a measurable decline in performance management data; and/or
 - Escalation by the GLA Provider Manager due to local intelligence or poor-quality data returns.
25. Should one or more of the above triggers be met, the provider must complete and return an improvement action plan for approval by the GLA Provider Manager. The action plan must include a series of actions to remedy, or mitigate further consequences, of the trigger being breached. Each action must be:
- **Specific** – how the action will realise a clear improvement in the financial resilience or quality of the provider
 - **Measurable** – a measurable value or indicator which will be realised as a result of the action
 - **Attributable** – a named officer or officers will have responsibility for achieving the action.
 - **Realistic** – how the action will gain the desired improvement within the available resources; and
 - **Timebound** – achievable within a realistic timeframe.
26. Where the provider is also subject to intervention by the ESFA through the national oversight arrangements, the GLA will work with the ESFA to ensure that action to improve performance is complementary. The GLA Provider Manager will maintain dialogue with the provider and assist in supporting the provider back to financial resilience and an acceptable level of quality. The GLA Provider Manager will review the information provided and discuss actions directly with the provider, providing

supplementary actions if necessary. The GLA reserve the right to implement one or more of the following actions:

- A meeting with the chair and/or the full board;
- Request additional data on a regular basis, such as ILR data returns, monthly management accounts and financial information, reports submitted to the provider's senior management team;
- Impose additional performance monitoring points and meetings with the GLA Provider Manager;
- Require information which demonstrates how the provider is planning to tackle financial health decline. This may include undertaking a cost scrutiny exercise to identify how to reduce costs and/or bring them within sector standards and/or an assessment of the impact of any funding claw back or reduction in planned income;
- The provider's risk plan;
- Information on planned strategic developments, including but not limited to federation or merger arrangements with other colleges or training organisations;
- Reports from provider's internal auditors on the management of the provider, including financial compliance and health
- Provide the Self-Assessment Reports, Quality Improvement Action Plans and implementation updates.

27. As described above, the GLA reserves the right to discuss concerns regarding a provider's performance or financial stability with partner agencies, such as the DfE, ESFA and Ofsted, in accordance with the provider's Conditions of Funding (Grant) Agreement and Memorandum of Understanding. Where the GLA has been notified that the ESFA has made its own assessment of financial health, which has triggered early or formal intervention, the GLA will work with the provider and the ESFA to ensure that any improvement actions are complementary to deliver rapid improvement.

Financial Irregularity

28. The Mayor's Office of Policing and Crime (MOPAC), acting on behalf of the GLA, will consider and determine appropriate action for any allegations of suspected fraud and/or financial irregularity, including:

- A funded provider has claimed funding from the GLA through deception.
- A funded provider has broken the funding rules.
- A funded provider has not delivered education/ training funded by GLA.
- Corruption (the offering, promising, giving, requesting, receiving or agreeing to accept an inducement or reward, which may influence a person to act against the interests of the GLA) and bribery – for example, in relation to sub-contracting.

29. Where MOPAC determines that there is enough information to investigate the allegation, the provider will be placed in early intervention while the investigation is ongoing. The investigation may require additional actions to be taken, these can include but are not limited to:

- additional meetings with the GLA Provider Manager and MOPAC Auditor
- a review and/or retention of learner files.
- contact with learners and/or subcontractors to verify information contained in learner files.

30. The ESFA and other funding agencies will be informed of allegations that affect their funding streams.

Exiting early intervention

31. A provider will exit early intervention measures and return to the monitoring process as outlined in the early intervention of this document when:

- Ofsted have completed a review of provision and confirmed that the overall effectiveness of the provider is rated 'Good' or above;
- GLA or ESFA Financial Health Assessment indicates that the provider's financial health is rated as 'Good' or above; and/or
- Financial irregularity or fraud investigation is resolved satisfactorily.

Escalation

32. If the provider fails to agree an action plan, or does not implement the action plan as agreed, or does not meet the agreed milestones, the GLA may, at its discretion, implement further measures of intervention including, but not limited to, reducing the allocation value or suspending payments. Under these circumstances, the provider will enter formal intervention measures.

Formal intervention

33. A provider may enter formal intervention when one or more of the following triggers have been breached:

- Failure to comply with informal intervention measures as described in the 'escalation' process above;
- Quality of the providers provision is evidenced as below contracted levels, as evidenced by:

- Ofsted inspection determines that the overall effectiveness of a provider is inadequate;
 - FE Commissioner diagnostic assessment determines that a provider requires urgent escalation to formal intervention;
 - The provider is in receipt of a notice for ‘minimum standards’ from the ESFA;
 - A decline in the provider’s educational performance data, as described in the below section.
- Financial health assurance:
 - GLA or ESFA Financial health assessment is ‘Inadequate’;
 - The provider is considering structural change, including via an Independent Business Review (IBR), or Structure and Prospects Appraisal (SPA); and/or
 - If a provider enters the FE insolvency regime, as defined by the Technical and Further Education Act 2017¹.
 - Audit, assurance, fraud and investigations:
 - A qualified opinion resulting from a funding audit;
 - A fraud or financial irregularity investigation produces evidence to support suspicion or allegations; and/or
 - A provider fails to provide audit and assurance documents required by the GLA (to be set out in an audit code of practice).

Educational Performance Data

34. The GLA recognise that the Qualification Achievement Rates (QARs) and Minimum Standards calculation is an important assessment of provider quality. Following the announcement that the ESFA are consulting on the replacement of Notices to Improve based on Minimum Standards², GLA Provider Managers will use provider ILR data returns and National Achievement Rates Tables (NARTs) to benchmark provider performance. GLA Provider Managers’ initial assessment of the providers past performance will include the following:

- overall QARs as key indicators of performance by institution type;
- performance by qualification types against national levels; and
- performance by sector subject area against national levels.

¹ Technical and Further Education Act 2017 (TEFA 2017) available at <http://www.legislation.gov.uk/ukpga/2017/19/contents>

² Department for Education, College Oversight: Support and Intervention policy document, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796610/College_Oversight_Support_and_Intervention.pdf

35. GLA Provider Managers will review the providers' NART data over the previous three years to identify early signs of declining performance.
36. The actions required to mitigate the decline in performance data will depend on the level of improvement required. The GLA Provider Manager will discuss and assist in implementing any actions on a case-by-case basis, ensuring that the provider is supported so that no unintended consequences result from the intervention.
37. The GLA reserve the right to review the intervention triggers and corrective actions in line with national policy, once available.

Structural changes: Independent Business Reviews (IBRs) and Structure and Prospect Appraisals (SPAs)

38. A provider seeking structural changes to their institution or group must inform their GLA Provider Manager at the earliest opportunity. The GLA Provider Manager, supported by colleagues with financial and legal expertise, must be invited to participate in any IBRs or SPAs, regardless of whether the IBR or SPA has been commissioned by the provider, the FE Commissioner or a third party, such as a creditor.
39. The GLA will not provide financial assistance for IBRs.
40. Providers should ensure that the GLA Provider Manager is informed of the IBR and/or SPA. The GLA may, at its discretion, implement further measures of intervention including, but not limited to, reducing the allocation value or suspending payments in the event that the provider fails to notify the GLA where IBR or SPA is instigated.

Insolvency and the Technical and Further Education Act 2017

41. The Technical and Further Education Act 2017 introduced the insolvency regime applicable to FE Colleges, sixth form colleges, Institutes for Adult Learning and specialist designated institutions. If a provider enters the FE insolvency regime, they must alert their GLA Provider Manager and enable them to participate in the process, including any IBR as set out above.
42. In accordance with the [Memorandum of Understanding](#), the GLA will alert partner agencies, including the DfE and ESFA, in any cases where the GLA Provider Manager believes that a provider is at risk of insolvency. This may be before formal notification of the insolvency regime from the provider, when the provider's financial health indicators evidence that the provider is at risk of insolvency.

43. Further information on the FE Insolvency Regime is available in the [Technical and Further Education Act 2017](#) and the [Department for Education's College Oversight: Support and Intervention policy document](#).

Formal intervention tools to rectify performance

44. Should a formal intervention trigger be realised, the GLA will work with the provider to explore a range of actions for raising financial performance, achievement and quality. The provider must complete a SMART action plan which must be submitted to the GLA Provider Manager. The action plan must include a range of activities to remedy, or mitigate further consequences, of the trigger being breached to secure rapid improvement.
45. The GLA Provider Manager will assess the proposed action plan and implement further actions to bring financial and quality performance in line with contracted levels. In addition to the actions available in the informal intervention mitigation process, the GLA may implement further measures of intervention, including:
- Suspension of payments against grant value within the standard national profile;
 - A reduction in the grant value; and/or
 - Referral to partner agencies such as the ESFA and FE Commissioner.

Exiting formal intervention

46. The provider will remain in formal intervention until the underperformance trigger has been rectified, as evidenced by:
- Quality of provision;
 - Ofsted inspect the provider and determine that the overall effectiveness of the provider is 'Good' or above;
 - The FE Commissioner is satisfied that the provision is of good quality and the provider has adequate financial stability; and/or
 - The provider's educational performance data evidences an improvement to that agreed within the provider's action plan;
 - Financial health and stability of the provider:
 - GLA or ESFA Financial Health Assessment indicates that the provider's financial health is rated as 'Good' or above; and/or
 - The provider is no longer at risk of insolvency, as confirmed by the appointed education administrator.

- Audit, assurance, fraud and investigations:
 - A satisfactory follow-up audit following receipt of a qualified opinion;
 - MOPAC Recommendations are satisfactorily implemented and any clawback decisions are complied with; and/or
 - The provider complies with the GLA's audit and assurance requirements.

47. When a provider exits formal intervention, the GLA reserves the right to implement additional measures to the usual monitoring process or require the provider to enter early intervention, so that the risk of future declines in performance is monitored and quickly mitigated. This will enable the GLA Provider Manager to support the provider to ensure that the provider is supported to stabilise.

Other formats and languages

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Summary

1. The purpose of this document is to set out the Greater London Authority's (GLA) approach to monitoring provider performance for quality and financial stability. This document also sets out when the GLA will intervene when performance or financial resilience of a provider is below expected levels. This document supplements the information available in the *GLA Adult Education Budget 2019-23 Funding and Performance Management Rules for Procured Providers* (the Rules) and in the Conditions of Funding Agreement ("Contract").
2. This document will be periodically updated to ensure that the policy aligns to the requirements of GLA performance and measurements, alongside national policy requirements. Any updates will be clearly marked in new versions.
3. This publication is primarily intended for providers in receipt of a Contract with the GLA for delivery of AEB Procured provision. This includes:
 - general further education (FE) colleges;
 - independent training providers;
 - independent specialist providers;
 - employer providers;
 - local authorities;
 - institutes for adult learning;
 - sixth form colleges;
 - providers of adult education; and
 - universities and higher education institutions
4. In addition, this document may also be of interest to:
 - learners who wish to see how providers are monitored for performance
 - Department for Education (DfE)
 - Education and Skills Funding Agency (ESFA)
 - Office for Standards in Education, Children's Services and Skills (Ofsted)
 - Further Education Commissioner (FEC)
 - Mayoral Combined Authorities
 - Office for Students
 - other education and training providers.

5. If you are a learner who wishes to provide feedback on your education/training, please refer to the information available here ([LINK \[to be included when webpage is live in July 2019\]](#)) on how to share your views with the GLA.

Approach to Performance Management

Role of GLA Provider Manager

6. Each provider will have a named GLA Provider Manager who will work with a dedicated number of education/training providers. The GLA Provider Manager will act as the first point of contact when managing the contract between the GLA and the provider. The GLA Provider Manager will be responsible for monitoring providers throughout the life of the contract, including when performance is below the level as set out in the contract, and will visit the provider on a quarterly basis to discuss performance.

Working with other agencies

7. The GLA's Skills and Employment Delivery Teams will work with partner agencies in line with the AEB [Memorandum of Understanding](#) between the Mayor and DfE, the Memorandum of Understanding between the GLA and the European Social Fund (ESF) Managing Authority and other Service Level Agreements, including:
 - DfE/ESFA. Where providers receive funding from both the GLA and the ESFA in delivering their courses, the GLA will share data and intelligence which indicates concerns over a provider's performance or financial resilience with the ESFA's territorial and case management team to ensure that any measures which are implemented to correct underperformance do not have unintended consequences for the ESFA and vice versa. The ESFA will also share this information with the FE Commissioner.
 - Further to the above (where providers also hold a funding agreement directly with the ESFA), the GLA and ESFA will share intelligence in relation to provider performance and risk. This does not mean that the GLA will act to impose measures that correct underperformance against the ESFA contract. GLA Provider Managers will instigate intervention measures only when indicators evidence a risk to the viability of the GLA Conditions of Funding Agreement (Contract).

- Office for Standards in Education, Children's Services and Skills (Ofsted). Providers who are subject to an Ofsted inspection must make GLA colleagues aware of the inspection on receipt of the notice and invite the GLA provider manager to attend the feedback meeting. Following inspection, the GLA Provider Manager will review the outcomes of inspection and discuss any actions required to improve quality.
- FE Commissioner. For FE providers, the FE Commissioner may review provision funded by the GLA and make recommendations to improve the quality or financial resilience of a provider. The GLA will share information to assist the FE Commissioner and his team to complete any investigations, which will be coordinated by the ESFA. If a provider is visited by the FE Commissioner, the provider must give advance warning to their GLA provider manager and give the option for the GLA provider manager to attend key meetings.
- The ESF Managing Authority and GLA European Programmes Management Unit (EPMU). The GLA is using its AEB Procured provision as match funding to draw down ESF to fund an additional programme of skills provision. The AEB Procured programme deliverables must meet ESF requirements and are subject to audit by the ESF Managing Authority and EPMU. ESF projects may also be audited by the national ESF Audit Authority and the European Commission. Providers must comply with the national eligibility rules and programme guidance for ESF, which are available on the European Structural and Investment Funds 2014-20 website (<https://www.gov.uk/guidance/england-2014-to-2020-european-structural-and-investment-funds>), also see GLA webpages: <https://www.london.gov.uk/what-we-do/funding/european-social-fund>

Terminology

8. "Contract" means the Contract between the GLA and the Provider consisting of the Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed and signed by both Parties, in writing and/or digitally on OPS.
9. "The Managing Authority" means The Managing Authority (MA) that is responsible for managing the national ESF element of the European Structural and Investments Funds (ESIF) programme. In London, the ESF is managed by the GLA's European Programmes Management Unit (EPMU) which acts as an Intermediate Body (IB) on behalf of the Department for Work and Pensions (DWP) which is the national Managing Authority for ESF for England. References to the Managing Authority include the DWP and EPMU.
10. "OPS" means the "GLA Open Project System", the GLA's on-line management information system (MIS), or any successor system and/or any other system which

performs any of the same functions and which GLA notifies to the Contractor from time to time.

11. Where this document refers to “delivery year” this is taken to mean August to July in a calendar year.
12. Providers in receipt of AEB Grant funding should refer to the GLA AEB Grant provision monitoring and intervention policy (LINK [to be included when webpage is live in July 2019])

Monitoring Delivery

13. Provider managers will aim to work collaboratively with providers to support them in delivering the provision set out in their contract. Provider managers will monitor the progress of performance against the Provider contracted targets, and support action to improve performance and prevent poor performance against the contract. In relation to compliance, the purpose of monitoring is to check that all the necessary policies, procedures and evidence are in place to meet the ESF requirements and support payments made by the GLA to the Provider.
14. The GLA Provider Manager will undertake quarterly reviews of performance, including ESF compliance checks against contracted deliverables, outputs and results. The frequency of monitoring and review visits may be increased if a provider underperforms against the contract deliverables, outputs and results, or if the GLA has other concerns about delivery.
15. Table 1 outlines the areas the Quarterly reviews will cover.

Table 1 – Monitoring Delivery Information	
Information	Monitoring discussion in respect of AEB Procured provision Review of provider risk assessment and mitigation plans.
Individual Learner Record (ILR) and ESF Supplementary Data	Timeliness and accuracy of participant data provided to the GLA. Evidence checks on deliverables, outputs and results to ensure compliance with the Rules including the national ESF data evidence requirements: eligibility and results guidance https://www.gov.uk/government/publications/european-

	structural-and-investment-funds-eligibility-documents (including subcontracted provision)
Funding Claims	<p>ILR and ESF Supplementary Data evidence checks against funding claims made, including checks against claims by delivery strand (ESF Priority Axis 1; ESF Priority Axis 2), for learner support and against the Flexible Allocation.</p> <p>Review of funding for learner support (sample checks against actual costs for learners).</p>
Delivery against profile (outputs and expenditure)	<p>Review of contracted outputs and results against profiled performance, identifying reasons for variance where relevant.</p> <p>Review of expenditure against profile (including by delivery strand, for learner support and against the Flexible Allocation), identifying any reasons for variance to forecast profile.</p> <p>Consideration of any associated risks including potential impact upon contract value.</p> <p>Consideration of recovery actions where delivery is behind profile.</p>
Quality Assurance checks	<p>Sample checks on evidence and face to face interviews with learners (including subcontracted provision) to ensure that:</p> <ul style="list-style-type: none"> • learning is appropriate to the ESF Priority Axis and each learner needs/aspirations • qualifications are appropriate to the ESF Priority Axis and the learner's needs/aspirations • participant satisfaction levels are satisfactory • relevant project-specific policies and procedures are in place to meet ESF requirements (including Equalities, Sustainable Development, Health and Safety etc.) and the stated monitoring and review processes are followed
ESF Publicity Requirements	Checks to ensure all publicity materials associated with the AEB Procured provision (including that of subcontractors) adhere to ESF and GLA publicity requirements.

	Case Studies are provided to publicise positive and ESF contribution to success.
Ofsted inspections	The outcome of any recent Ofsted inspection monitoring visit and the quality improvement actions which the provider is implementing to secure better provision.
Further Education Commissioner assessments (where appropriate to Providers)	The findings or report of any FE Commissioner investigation or diagnostic assessment, and the action plan developed by the provider as a result of assessment.
Financial health assessments	The outcome of any review of the financial performance information where there are risks to the delivery of AEB Procured provision and improvement action is required.
Audit	<p>Reports of audits undertaken, in particular where findings are qualified or require management action.</p> <p>Checks that provider's control systems maintain evidence for each deliverable (including those of subcontractors).</p> <p>Sample check of learner records to confirm eligibility compliance.</p>
Subcontracting Plan	<p>Evidence of provider management of any subcontracted provision and any issues with performance.</p> <p>Evidence of provider monitoring of subcontractor performance and ESF compliance checks.</p>
Participant feedback and complaints	<p>Evidence of how the AEB Procured provider collects feedback from participants and how the feedback is used to inform improvements/changes to programme delivery.</p> <p>Evidence of how complaints are dealt with according to the provider policy.</p>
Other	Any other information applicable to determine the level of risk associated with delivering the contract.

Sub-contracting Arrangements

16. The GLA will want to ensure that provider delivery subcontracting meets strategic aims and enhances the quality of their learner offer for London residents.
17. Subcontracting arrangements were assessed as part of the Provider AEB Procured tender. Subcontractors were required to pass the relevant criteria in the Standard Selection Questionnaire.
18. The GLA must be notified of any proposed change to agreed subcontracting arrangements and approval sought prior to implementing a change. In these circumstances, the GLA reserves the right to revisit the selection criteria as originally tested during procurement to confirm that these criteria would still be met in light of the proposed change
19. In subcontracting plans, providers will be required to state the amount of funding they expect to retain to manage delivery subcontractors. The GLA will consider a retention of up to 20% of funding as a maximum cap and would not expect providers to retain more than this. In exceptional cases, the GLA will consider higher retention amounts and only then if there is a compelling rationale; GLA Provider Managers will assess this on a case-by-case basis.
20. If annual subcontracted delivery aggregate value exceeds £100,000 providers will need to obtain an annual report from an external auditor that provides assurance on their arrangements to manage and control their delivery subcontractors. A certificate to accompany the report, signed by the auditor and the provider's accounting officer or senior responsible person must be submitted to the GLA by July (R11). The GLA Provider Manager may request to see the full report.
21. Providers must not enter into new subcontracting arrangements or increase the value of their existing arrangements if Ofsted has rated their leadership and management as inadequate; if they do not meet the GLA or ESFA Minimum Standards; or if the outcome of their annual GLA or ESFA financial health assessment is inadequate, unless the GLA have provided written permission in advance. These conditions will continue until the GLA are satisfied that the concerns have been addressed and the circumstances below no longer apply.
22. Providers are responsible for all the actions of their delivery subcontractors connected to, or arising out of, the delivery of the services, which they subcontract. Providers must manage and monitor all delivery subcontractors to ensure that high-quality delivery is taking place that meets the GLA's AEB funding rules.

Formal Performance Review Points and Growth Requests

23. Overall performance against each provider annual and lifetime contracted targets will be reviewed at performance management points at least twice per funding year in December and May. Providers may request contract growth at these points if delivery has consistently exceeded the contracted delivery to date and is projected to continue to grow.
24. If, based on the cumulative performance at that point, the GLA deem a provider is unlikely to meet its overall contract delivery targets, the GLA reserves the right, at its discretion, to reduce the contract value or terminate a contract.
25. The AEB Procured Contract includes a break clause allowing the GLA to terminate the Contract at the end of funding years two and three. The annual performance review with respect to exercising the first break clause will be undertaken in December 2020, and in December 2021 for the second break clause.

Underperformance or non-compliance

26. Where underperformance or non-compliance is identified, the GLA will request a provider to propose actions to bring the performance in line with agreed targets within a certain period (a Recovery Plan).
27. The recovery plan must include a series of actions to remedy, or mitigate further consequences, of the trigger being breached. Each action must be:
 - **Specific** – how the action will realise a clear improvement in the financial resilience or quality of the provider
 - **Measurable** – a measurable value or indicator which will be realised as a result of the action
 - **Attributable** – a named officer or officers will have responsibility for achieving the action.
 - **Realistic** – set out how the action will gain the desired improvement within the available resources; and
 - **Timebound** – set a realistic timeframe in which the action will be achieved.
28. The resulting SMART Recovery Plan must be submitted to the GLA Provider Manager via the OPS system. The GLA Provider Manager will review the information provided and discuss action directly with the provider, providing supplementary actions if necessary. The GLA Provider Manager will maintain dialogue with the provider and assist in supporting the provider to address the issue(s).

29. The GLA reserves the right to also implement one or more of the following actions:

- Impose additional performance monitoring points and meetings with the GLA Provider Manager;
- The provider's risk plan;
- Reports from provider's internal auditors on the management of the provider, including financial compliance and health;
- Provide the Self-Assessment Reports, Quality Improvement Action Plans and implementation updates.

Clawback or contract termination

30. If performance does not improve as a result of the SMART Recovery Plan or the provider fails to implement it, options open to the GLA include reduction or termination of the contract, including clawback of all or part of the funding paid to date.

31. The GLA will work with the provider to explore all avenues for raising performance, achievement and quality before terminating a contract. The decision to terminate is at the GLA's discretion, but circumstances which might lead the GLA to terminate a Contract include:

- failure to address issues in relation to the accuracy, quality and timeliness of data submissions and evidence to support claims;
- the provider fails to deliver the contracted deliverables, outputs and results, or the data evidences a decline in achievement of targets;
- the provider becomes insolvent;
- audit findings identify serious and/or widespread irregularities and/or failures in management control systems;

32. If the intervention results in a provider's contract being cancelled, the GLA has a duty of care to enable any displaced participants to access alternative provision.

Financial Risk

33. In case of insolvency, the contract for services may be terminated with immediate effect and the GLA may, if it considers it appropriate, require that the delivery be transferred to another provider. In these circumstances, the GLA has a duty of care to enable any displaced participants to access alternative provision. Various ESF obligations extend beyond contract termination, including access, retention and/or return of documents for audit purposes. GLA Provider Managers will be required to ensure that the audit trail is secured to guard against future clawback.

Financial Irregularity

34. The Mayor's Office of Policing and Crime (MOPAC), acting on behalf of the GLA, will consider and determine appropriate action for any allegations of suspected fraud and/or financial irregularity, including;
- A funded provider (e.g. college or training provider) has claimed funding from the GLA through deception
 - A funded provider has broken the funding rules
 - A funded provider has not delivered education/ training funded by GLA
 - Corruption (the offering, promising, giving, requesting, receiving or agreeing to accept an inducement or reward, which may influence a person to act against the interests of the GLA) and bribery – for example, in relation to sub-contracting
35. Where MOPAC determines that there is enough information to investigate the allegation, they may require additional actions to be taken, these can include but are not limited to:
- additional meetings with the GLA Provider Manager and MOPAC Auditor
 - a review and/or retention of learner files
 - contact with learners and/or subcontractors to verify information contained in learner files.
36. The ESFA will be informed of allegations that affect their funding streams. If suspected fraud relates specifically to ESF-funded activity, the Managing Authority will be kept informed of the issue, how it is being dealt with and the outcome.
37. Where a fraud or financial irregularity investigation produces evidence to support suspicion or allegations, the GLA may decide to terminate the AEB Procured Contract in accordance with the terms of the contract, and this may also involve the clawback of funding.
38. In the event of a funding audit that results in a qualified opinion, GLA provider managers will monitor delivery more closely until a satisfactory follow-up audit visit is complete.

Audit

39. The AEB Procured provision must comply with ESF rules and guidance and will be subject to the same external audit requirements set by the European Commission (EC) and Managing Authority (MA). Data and information must be accurate and supported by appropriate evidence so that claims made by the GLA to the Managing Authority will also be correct and can be audited successfully.

40. The ESF regulations require an audit trail is maintained for funding received and learner activity. Evidence for each deliverable must be available for audit. Failure to maintain the audit trail will lead to funding being recovered.
41. Late changes to data can incur audit penalties. AEB Procured provision data must be complete and correct when it is submitted.
42. Although the ILR specification allows for 'unknowns' these will impact on the data quality supplied to the EC and should be avoided. ILR and supplementary data must be as complete as possible.

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GLA Adult Education Budget Provider Monitoring, Intervention and Audit Approach

Appendix C: Financial audit, irregularity and assurance

- 1.1 Following a review of the ESFA's Post-16 audit code of practice 2018-19 in consultation with MOPAC, the following audit and financial assurance approach is recommended for the GLA's AEB provision:
 - 1.1.1 Local authorities retain responsibility for providing assurance for their AEB grant funding.
 - 1.1.2 Colleges to submit annual accounts, external audit statements, internal audit committee reports, and a Regularity Opinion to the GLA in accordance with ESFA guidance and timelines.
 - 1.1.3 All providers to have policies and procedures in place, including a whistleblowing policy, on the process to be followed if suspicion arises of potential irregularity.
 - 1.1.4 GLA investigations into allegations of fraud and financial irregularity to be led by MOPAC's Directorate of Risk, Audit and Assurance.
 - 1.1.5 All AEB grant funded providers (other than local authorities) to be audited as part of a five-year plan through a risk and random selection approach. Providers to be removed from the random selection pool once an audit has been completed within the five-year cycle.
 - 1.1.6 All AEB procured providers to be audited over the programme's four-year term.
- 1.2 Based on the above recommended approach, GLA officers will work with MOPAC and the ESFA to develop arrangements for the AEB grant and procured audit visit programme.
- 1.3 The ESFA has set out a minimum audit offer for MCAs/GLA in respect of the grant programme, this was presented to the AEB Mayoral Board in January 2019 and has now been formally accepted in line with the Mayor's Decision as documented in [MD2423](#).
- 1.4 During the summer period, the GLA will work with the ESFA to determine the practical arrangements for the audit programme offer including the options for delivering additional audit visits where required. 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.