

PART 2 – CONFIDENTIAL FACTS AND ADVICE

MD2581

Title: AEB Grant Allocations 2020/21

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 (a) commercially confidential and (b) 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 it is determined that release of the information contained within would not impact upon the commercial interests of the referenced organisations.

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

In the event of any request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 ("the Act"), it is considered that access can be denied on the basis that the disclosure of such information would prejudice the GLA's and proposed grant recipients' commercial interests and therefore is covered by the exemption under section 43 of the Act. Additionally, certain information contained in this document is believed to be subject to legal professional privilege, as it outlines legal advice sought by the GLA from its internal and external legal advisors, and therefore is covered by the exemption under section 42 of the Act.

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. In particular:

- section 42 of the Act provides an exemption for information which is subject to legal professional privilege. The GLA has sought legal advice from its internal legal advisors, TfL Legal, and from its external legal advisors, Eversheds Sutherland regarding execution of funding agreements. As these discussions have not been made known to the world at large, this information can be considered confidential.

NOT FOR PUBLICATION

- section 43 of the Act provides that information is exempt information if disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). The paragraph above states that the information is considered commercially sensitive as the potential mergers outlined below are subject to ongoing negotiations and such information is not available in the public domain.

The section 42 and 43 exemptions are qualified exemptions and their use is therefore, subject to a public interest assessment.

Public Interest Assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure by the GLA of confidential information regarding legal advice sought or the financial status of potential grant recipients would be likely to bring into question the GLA's decision making processes, which may in turn delay or have a detrimental effect on the GLA's ability to deliver AEB provision in London.

The eligibility of these exemptions should be reassessed in the event of an FOI 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.

Legal Adviser - I make the above recommendations that this information is not suitable for publication at this time.

Name: Emma Brookman, TfL Legal

Date: 30 January 2020

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

Decision and/or advice:

1 Issues for Consideration

College mergers

- 1.1 Hadlow College and West Kent and Ashford College entered liquidation in late 2019. Elements of these colleges are expected to be acquired by other colleges with grants from the GLA, specifically, Capel Manor, North Kent College and East Kent Colleges Group. Indicative allocations to expected acquiring colleges did not reflect the additional funding that may be due to them as a result of the acquisition. One site was formally transferred in early January 2020 to Capel Manor College, but other sites are still pending. We will allocate the funding based on delivery locations at the levels agreed by the liquidated and acquiring colleges or their representatives.
- 1.2 Two London providers, Kensington and Chelsea College (KCC) and Morley College, are set to merge ahead of the 2020/21 academic year. KCC currently holds out-of-London sub-contracting arrangements. The Education and Skills Funding Agency (ESFA) has agreed to increase the GLA AEB budget by the corresponding amount and the GLA has agreed to passport this increase to Morley College subject to the successful merger with KCC. Currently, the GLA expects the value of this funding to be £838,000. This will be reflected in Morley College's final grant allocation and might be subject to change in case the amount in question is amended. Any change will be reported back to the AEB Mayoral Board for information.

Changes to the AEB 2020/21 Grant Funding Agreement Template

- 1.3 The current version of the AEB grant funding agreement template applies to academic year 2019/20. The template has been updated by external lawyers Eversheds Sutherland for 2020/21 to take into account revisions to the national DfE/ESFA version of the AEB funding agreement. The law firm drafted the GLA 2019/20 version of the template as a FE sector specialist. The GLA updated version is attached at Appendix C and is recommended for approval.
- 1.4 An issue for consideration is how the funding agreement is to be executed. TfL Legal advice sets out that execution by deed is preferable as this avoids risk of invalidity and is the usual practice of the GLA for executing grant agreements.
- 1.5 However, it is proposed that the updated agreement is executed by signature rather than by deed. This approach would align the GLA practice with that of the ESFA, which does not execute AEB agreements by deed. It would allow for the GLA to move towards electronic signature of agreements at a future date.
- 1.6 It is proposed that the draft template is executed by the signature of the accountable person at each provider, for example the Principal/CEO in the case of a college. As execution by deed in a college typically requires the convening of two members of the corporation and the application of the corporate seal, the ability to use electronic signature or make expedient variations is operationally limited by the deed approach.
- 1.7 As grant funded providers are colleges and local authorities, they are public bodies in their own right with responsibilities for public expenditure. It is considered that the alignment to the DfE/ESFA approach would bring benefits in terms of the GLA AEB programme management without exposing the GLA to an unmanageable level of risk.

2 Risks arising / mitigation

- 2.1 Further amendments are expected to the final allocations that have been set out in Part 1. Final allocations will be updated to include the additional funding due to these institutions at the next meeting of the AEB Mayoral Board.