

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2659

### **Title: GLA Adult Education Budget 2020/21 Funding Rule Changes for Grant and Procured Providers**

#### **Executive Summary:**

This Mayoral Decision (MD) form sets out proposed changes to the Adult Education Budget (AEB) Funding and Performance Management Rules for Grant and Procured Providers (the “GLA AEB Grant Rules” and the “GLA AEB Procured Rules”) and AEB Funding Rates and Formula for the 2020/21 academic year. The GLA AEB Grant Rules and the GLA AEB Procured Rules and GLA AEB Funding Rates and Formula will be published on the GLA website in July 2020.

The main change to the GLA AEB Grant and GLA AEB Procured Rules is the introduction of an additional flexibility to fully fund any full level 3 qualification with a duration of less than a year for unemployed and low-income Londoners not entitled to a fully funded level 3 qualification as part of the legal entitlement.

#### **Decision:**

That the Mayor approves the following changes:

1. GLA Adult Education Budget (AEB) Funding and Performance Management Rules for Grant Providers (the GLA AEB Grant Rules) set out in Appendix A;
2. GLA Adult Education Budget (AEB) Funding and Performance Management Rules for Procured Providers (the GLA AEB Procured Rules) set out in Appendix B; and
3. the proposed changes to the GLA AEB Funding Rates and Formula set out in 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:**

28/7/20

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

### Decision required – supporting report

#### 1 Introduction and background

- 1.1 In November 2019 and February 2020 the Mayor approved the following two policy changes for GLA AEB grant and procured providers ([MD2557](#) and [MD2582](#)) which were reflected in the draft GLA AEB Grant Rules, the GLA AEB Procured Rules and the GLA AEB Funding Rates and Formula for 2020/21 academic year published in March 2020:
- a 10% increase to the average cost per AEB-funded enrolment for English and maths qualifications at Levels 1 and 2 funded in 2020/21, amounting to £77 per funded enrolment; and
  - the introduction of flexibility within AEB grant-funded provider allocations to provide full funding for certain categories of learning provision that upskills eligible teaching and learning support staff to deliver improved provision for learners with Special Educational Needs and Disabilities (SEND) within the publicly funded further education (FE) sector.
- 1.2 In June 2020, the Education and Skills Funding Agency (ESFA) published Version 1 of the AEB Funding Rules for 2020/21 for non-devolved areas introducing a new digital entitlement to fully fund all 19+ learners who take any essential digital skills qualification up to and including level 1. Additionally, Version 1 of the ESFA AEB Funding Rules contains a number of clarifications and administrative changes. GLA usually mirrors these changes in the GLA AEB Grant and Procured Rules for reasons of consistency given that there are a number of AEB providers who have agreements with both the ESFA and the GLA.
- 1.3 At the same time, in response to the COVID-19 crisis, the Mayor approved an additional flexibility for 2020/21 academic year for all grant providers (MD2638) to use up to 10 per cent of their existing formula funded allocation (excluding funding awarded through the Skills for Londoners Innovation Fund and any additional funding awarded through Strands 1 and 2 of the Skills for Londoners COVID-19 Response Fund) to deliver non-formula funded provision directed towards pre-employment, job-focused training.
- 1.4 It is now proposed and the Mayor's approval is sought for a further change to the GLA AEB Grant and GLA AEB Procured Rules to support the delivery of higher level training to re-train, re/upskill and improve access to new employment opportunities to Londoners most at risk of long-term unemployment as a result of the COVID-19 crisis.
- 1.5 The proposed changes to the GLA AEB Grant Rules, the GLA AEB Procured Rules and the GLA AEB Funding Rate and Formula for 2020/21, which are set out in further detail in section 2 of this MD, are intended to:
- provide greater flexibility to both grant and procured providers to access full funding for use to meet costs of full Level 3 qualifications with a duration of less than a year for unemployed and low-income Londoners in addition to any Level 3 qualifications for which full funding is already available. The flexibility will apply initially only for 2020/21 academic year;
  - introduce a revised performance tolerance of 90% in 2020/21, in recognition of the ongoing impact of COVID-19 restrictions in relation to AEB classroom delivery, and to review these reconciliation arrangements in January 2021 with a view to recommending the introduction of further funding stability support measures, if necessary based on an analysis of first term delivery; and
  - introduce all changes made by the ESFA AEB Funding Rules for 2020/21 as set out in Appendices A, B and C.

## 2 Objectives and expected outcomes

*Introducing an additional flexibility to fully funded level 3 qualifications for unemployed and low-income Londoners*

- 2.1 The economic crisis brought on by COVID-19 will likely result in a significant number of Londoners losing their jobs, particularly: those working in shutdown sectors where low pay and insecure employment persist; and young people leaving education and older workers having to adapt to increased digitisation in the labour market.
- 2.2 For these groups, the risk is that as employment falls and new job opportunities become scarcer, prolonged unemployment will follow, leading to long-lasting 'scars' on future earnings, employment prospects, and health and wellbeing.
- 2.3 The GLA can play an important role by helping to facilitate more targeted education and training through the AEB to help those most at risk of long-term unemployment to retrain and re/upskill to access new employment opportunities.
- 2.4 Currently only 19-23 year olds without a full level 3 are eligible to enrol on their first fully funded level 3 course as part of the legal entitlement. All other potential learners, including 19-23 year olds who already hold a full level 3 qualification, have to finance a level 3 qualification privately or through an Advanced Learner Loan (ALL), which can be a disincentive for some learners to take level 3 qualifications.
- 2.5 The AEB is a fixed pot of funding and the maximum sums available under GLA AEB Grants and Procured contracts are not usually subject to increase as a result of new policies being introduced. Any change therefore, to existing funding arrangements has to be accommodated within the existing allocations of grants or contracts which may lead to change in the balance of the existing AEB offer by colleges, particularly if additional funding is not made available by Government.
- 2.6 Given the positive returns<sup>1</sup>, in terms of earnings and employment prospects, to post-18 study at level 3, it is considered logical to widen the eligibility criteria to allow those groups particularly at risk of long-term unemployment to access fully funded level 3 courses. Such a change offers providers additional flexibility to provision and is of particular importance given the expected negative impact of the COVID-19 crisis on levels of unemployment in London and the likely increase in demand for upskilling or re-training by both unemployed and low-income Londoners.
- 2.7 The proposed change would allow any unemployed or low-income Londoner to access fully funded first or additional level 3 qualifications, with a duration of less than a year, so that learners are better equipped to access new employment opportunities or support their career progression.
- 2.8 As stipulated in the AEB Procured tender and contract documents, providers are required to comply with any changes made to the GLA AEB Procured Rules from time to time, as a result of changes to the ESFA's AEB Funding Rules for reasons of consistency. The change around level 3 qualifications will not alter the nature or scope of contracts of their value or the agreed targets and therefore will not lead to change in the economic balance of the contracts. This change allows procured providers to prioritise the delivery of level 3 qualifications if they wish to do so in response to an increased demand by learners. The changes do not however, significantly or materially alter the scope and nature of the contracts and so are not considered to be substantial for procurement law purposes.
- 2.9 It should be noted that there are a number of other minor amendments to the GLA AEB Grant Rules, the GLA AEB Procured Rules and the GLA AEB Funding Rates and Formula documents which include minor clarifications and other small changes such as correcting clerical errors that have been made directly to the text.

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<sup>1</sup> Review of Post-18 Education and Funding, May 2019 (the Auger Report)

- 2.10 The proposed changes to the GLA AEB Grant Rules and GLA AEB Funding Rates and Formula to implement these policy changes are set out in Appendices A, B and C. Once the amendments have been made, all three documents will be published in July 2020.

#### *Reconciliation change*

- 2.11 We expect that the impact of COVID-19 will be taken into account as part of the reconciliation process for 2020/21, where delivery is impacted by providers applying government advice in respect of COVID-19 social distancing.
- 2.12 It is proposed to initially introduce a revised performance threshold of 90%, which is a reduction from the current threshold of 97%. Where a provider performs at 90%, the AEB grant-funding allocation will be paid in full. This measure will provide additional funding stability and flexibility to support providers in responding to the London recovery.
- 2.13 As the impact of COVID-19 upon adult learning recruitment following the easing of lockdown measures is uncertain, it is proposed that the performance threshold and reconciliation arrangements for 2020/21 are reviewed in January 2021 informed by the first term of delivery. Based on this milestone review, the Mayor may determine any further support measures in respect of reconciliation that are necessary to support provider funding stability and the London recovery.

### **3 Equality comments**

- 3.1 Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities 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.
- 3.2 Relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 3.3 The Mayor is required to comply with the duty set out above in making the decisions set out in this report and any future decisions relating to the AEB made pursuant to those arrangements which will be subject to separate decision forms.
- 3.4 All AEB policy changes proposed for 2020/21 consider the potential equalities impact for people with relevant protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation).
- 3.5 The aim of the AEB and European Social Fund (ESF) is to improve opportunities for people who are disadvantaged in the labour market. Many potential AEB participants have protected characteristics listed above. The GLA's AEB provision will support a range of groups, particularly the most disadvantaged people not currently receiving sufficient support into employment or education. These include young adults who are not in education, employment or training (NEET), people without basic skills and people who are workless. It will also support Londoners in low-paid/low-skilled jobs.

## **4 Other considerations**

### *Key risks*

- 4.1 Risk of not amending the GLA AEB Procured Rules. Risks arise if changes are made to the AEB Grant Rules but not to the GLA AEB Procured Rules because the programmes would then be subject to different sets of Funding Rules. This could confuse providers and learners, result in a requirement for additional data collection and verifications, and ultimately increase the risk of non-compliance and the need to clawback ineligible payments. In addition, there could be considerable reputational risks if providers funded through different mechanisms are considered to be being treated differently in an unfair way. To mitigate this risk, it is proposed that the changes to the GLA AEB Procured Rules mirror the changes approved in the GLA AEB Grant Rules.
- 4.2 Uncertainty related to COVID-19. The impact of social-distancing measures upon adult education recruitment is uncertain and may lead to provider loss of income in respect of AEB and other funding streams such as Advanced Learner Loans and fees. The amended rules provide for a milestone review of AEB performance thresholds to enable the Mayor to take account of the need for any additional measures for supporting Londoners, AEB provision and provider funding stability at January 2021.
- 4.3 There are no interests to declare from those involved in the drafting or clearance of this decision.
- 4.4 The proposals set out in this MD were considered by the AEB Mayoral Board on 1 July 2020 and the draft MD was circulated in full to members ahead of consideration by the Corporate Investment Board.

## **5 Financial comments**

- 5.1 There are no current direct financial implications arising from the proposed amendments to the GLA's AEB Funding and Performance Management Rules for both Grant and Procured Providers, and the GLA AEB Funding Rates and Formula.
- 5.2 Whilst there is no financial impact on the overall AEB budget, there may be adjustments to individual programme strands due to the introduction of the flexibility amendments stated within this decision relating to the funding of Level 3 qualifications.
- 5.3 If these adjustments do occur, they will be contained within the overall AEB budget envelope.

## **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 limitation of a delegation under s39A is that the usual power of delegation by the Mayor is not available in respect of s39A delegated functions.
- 6.2 In taking the decisions requested, the Mayor must have due regard to the Public Sector Equality Duty - namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic (race, disability, gender, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (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 Officers have indicated, at section 2.8 of this MD form that:

- (a) AEB funding and contracting opportunities were competed and tendered and Grants and Contracts let on the basis that providers must comply with the GLA's AEB Funding Rules as in place and amended from time; and
- (b) the changes proposed are not substantial for the purposes of regulations 72(1)(e) and (8) of the Public Contracts Regulations 2015.

6.4 On that basis the changes in question would fall within the scope of the grants and contracts competed/procured and awarded and could be considered permitted modifications provided that, as officers have indicated, the changes do not:

- (i) render a contract materially different in character from that initially concluded;
- (ii) introduce conditions which, had they been part of the initial procurement procedure, would have:
  - allowed for the admission of other candidates than those initially selected;
  - allowed for the acceptance of a tender other than that originally accepted; or
  - attracted additional participants in the procurement procedure;
- (iii) change the economic balance of the contract in favour of a contractor in a manner which was not provided for in the initial contract agreement; or
- (iv) extend the scope of the contract considerably.

6.5 Should the Mayor be minded to make the decisions sought, officers must ensure that the changes are published and communicated clearly to providers.

## 7 Planned delivery approach and next steps

Activity	Timeline
Mayoral Decision made	July 2020
Approved GLA AEB Grant Rules, GLA AEB Procured Rules and GLA AEB Funding Rates and Formula published	July 2020

### Appendices:

Appendix A – Changes to AEB Grant Funding Rules

Appendix B – Changes to AEB Procured Funding Rules

Appendix C – Changes to GLA AEB Funding Rates and Formula

### Supporting papers:

MD2557 – AEB Policy Changes 2020-21

MD2582 – AEB Procured Policy Changes

MD2638 – AEB Emergency response to COVID-19 Crisis

**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**

**Is there a part 2 form – No**

Part 2 of this MD form contains advice which is legally privileged.

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to  
confirm the  
following (✓)

**Drafting officer:**

Lubomira Chirmiciu has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Sarah Mulley have 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 13 July 2020.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

**Signature**

*D. Gene*

**Date**

17 July 2020

**CHIEF OF STAFF:**

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

**Signature**

*D. Bellamy*

**Date**

13 July 2020

