

## REQUEST FOR MAYORAL DECISION – MD2384

**Title: Legal costs incurred in preparation for the delegation of Adult Education Budget (AEB) functions to the Mayor**

### Executive Summary:

In support of the delegation of certain Adult Education Budget (AEB) functions to the Mayor at the start of the 2019/20 academic year, the Mayor must put in place the necessary processes to deliver a successful programme of activity and satisfy the Secretary of State that the functions will be implemented and delivered effectively.

Under cover of DD2282, up to £150,000 on associated legal costs was approved. Implementing AEB functions requires a substantial procurement exercise in which further specialist external legal advice is required. This Mayoral Decision seeks approval for further expenditure of up to £100,000 for legal advice relating to AEB activity. This will take the total allowance of expenditure up to £250,000 for external legal services. We expect this expenditure will be predominantly related to AEB procurement costs. It is possible that there may be other legal costs associated with implementing the AEB; it is anticipated that the expenditure proposed in this Mayoral Decision will be sufficient to cover any additional costs.

### Decision:

That the Mayor approves:

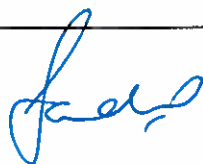
Further expenditure of £100,000, allowing a total of up to £250,000 on specialist legal services from Eversheds Sutherland in preparation for the Secretary of State for Education delegating Adult Education Budget (AEB) statutory functions to the Mayor of London from the 2019/20 Academic Year onwards.

### 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:

4/12/18

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

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

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

- 1.1 London and seven Mayoral Combined Authorities are expecting to take on responsibility for the Adult Education Budget (AEB) in their respective areas from the 2019/20 Academic Year (1 August 2019) onwards, subject to a formal transfer of functions from the Secretary of State for Education.
- 1.2 The principal purpose of the AEB is to engage adults and provide the skills and learning they need to equip them for work, an apprenticeship or further learning. It also enables more tailored programmes of learning to be made available, which do not need to include a qualification, to help those furthest from learning or the workplace.
- 1.3 In support of the transfer of these powers, the Mayor must satisfy the Secretary of State that the functions will be implemented and delivered effectively and put in place the necessary processes to deliver a successful programme of activity.
- 1.4 When the statutory functions are formally delegated to the Mayor (expected in early 2019), he will be required to take all AEB-related decisions personally<sup>1</sup>. In advance of this, all AEB decisions are being treated as though they are a matter reserved by law and for the personal exercise of the Mayor only under the Mayoral Decision-Making in the Greater London Authority protocol.
- 1.5 MD2255 – Devolution of the Adult Education Budget to the Mayor provides further information on the Mayor's decision to accept the AEB functions, subject to the final arrangements being confirmed by the Secretary of State for Education.

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

- 2.1. Given that this is a new delivery area for the Mayor, with a circa £311m annual budget involving the discharge of sector-specific statutory functions, specialist legal advice is required.
- 2.2. This Mayoral Decision seeks approval for further expenditure of £100,000 for specialist legal advice from Eversheds Sutherland, taking the total expenditure up to £250,000.
- 2.3. Eversheds Sutherland have been engaged (via Transport for London's [TfL] legal panel, using the standard legal panel terms and conditions) owing to their expertise in educational law and ability to advise on matters including procurement of delivery providers and contracts and grant arrangements. Their advice will support the GLA's preparation for delegation, and its subsequent implementation of a programme for the delivery of the Adult Education Budget (AEB) functions concerned.
- 2.4. As details of the delegation continue to evolve, so do the scope, nature and volume of legal advice required, meaning it is not possible to set a fixed price for legal services. Officers anticipate that the expenditure requested in this Mayoral Decision will enable the GLA to sufficiently cover all further legal costs associated with AEB implementation.
- 2.5. TfL Legal is separately supporting all work related to the statutory delegation of powers.

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<sup>1</sup> As per the requirement under Section 39A of the Greater London Authority Act 1999

### **3. Equality comments**

- 3.1. Under s149 of the Equality Act 2010 (the Equality Act), as a public authority the Mayor must have due regard to the need to eliminate discrimination, harassment and victimisation, and any conduct that is prohibited by or under the Equality Act; and to advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and those who do not (the Public Sector Equality Duty “PSED”).
- 3.2. Officers have considered this Mayoral Decision having due regard to the PSED, and as it deals solely with the legal costs associated with the delegation of certain educational functions from HM Government to the Mayor, officers have concluded that there are no additional measures which ought to be taken to discharge their duties. That said, the PSED will be relevant to the exercise of any delegated functions.

### **4. Other considerations**

- 4.1. Eversheds Sutherland were appointed, via the existing TfL Legal panel<sup>2</sup> as they demonstrated an expertise in educational law. Any legal advice provided by them is sought by the GLA to mitigate legal risks for the overall AEB Programme, particularly on key issues such as our procurement approach and contract/grant management.
- 4.2. DD2282 (October 2018) approved expenditure of up to £150,000 for legal costs incurred in this process. Officers are seeking approval for further expenditure of £100,000 to Eversheds Sutherland by way of this Mayoral Decision due to the volume of work necessary to prepare compliant procurement documents in accordance with the Public Contract Regulations 2015.
- 4.3. DD2282 stated that there was an expectation that the need for legal advice would be likely to continue to evolve, which would require additional expenditure.

### **5. Financial comments**

- 5.1. The additional expenditure of up to £100,000 on specialist legal services with Eversheds Sutherland will be funded from the AEB implementation budget for 2018-19 and 2019-20 held within the Skills & Employment Unit, thus bringing the total value of permitted legal costs with Eversheds for the AEB programme to £250,000.

### **6. Legal comments**

- 6.1. The foregoing sections of this report indicate that:
- (a) the decisions requested of the Mayor concern the exercise of the GLA’s general powers under the Greater London Authority Act 1999 (GLA Act), falling within the GLA’s statutory powers to do such things considered to further or which are facilitative of, conducive or incidental to the promotion of economic development and wealth creation, social development or the promotion of the improvement of the environment in Greater London; and
  - (b) in formulating the proposals in respect of which a decision is sought officers have complied with the Authority’s related statutory duties to:
    - pay due regard to the principle that there should be equality of opportunity for all people;

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<sup>2</sup> TfL Legal provide the GLA’s legal service under a shared services arrangement

- consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and
- consult with appropriate bodies.

- 6.2. Section 39A of the GLA Act permits delegation of functions by the Secretary of State to the Mayor, but excludes the operation of section 38 of the GLA Act – under which the Mayor may normally delegate functions to, for example, employees of the GLA – in relation to functions delegated by the Secretary of State.
- 6.3. 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 between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation) and those who do not share it, and to foster good relations between persons who share a relevant protected characteristic 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.
- 6.4. Officers have indicated in section 2.1 that appropriate contract documentation was put in place and executed by the proposed service provider and the GLA, and officers should ensure that the scope of service is extended (if considered necessary) before the commencement of the required services.

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

- 7.1. The agreement between the GLA and Eversheds Sutherland will be monitored by TfL Legal and the GLA to ensure any advice sought is reasonable and proportionate. If further expenditure is required, approval will be sought by way of a further Mayoral Decision.

## **Appendices and supporting papers:**

None

**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:**

Jamie Davies has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Lucy Owen 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 3 December 2018.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

*M. D. Allen*

Date

3.12.18

**CHIEF OF STAFF:**

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

Signature

*D. Bellamy*

Date

3/12/2018.

