

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2423

Title: Adult Education Budget Grant Allocation and Management Approach

Executive Summary:

From August 2019, the Mayor will be responsible for the commissioning, delivery and management of London's Adult Education Budget (AEB) allocation, now confirmed as £306,444,875 for the 2019/20 academic year.

This MD sets out the GLA's approach to allocating grants to grant-funded providers for AEB delivery to London residents in the 2019-20 academic year. It also builds on MD2370, which sets out the GLA's proposed approach to the performance management and delivery arrangements of AEB grant-funded provision in London, by providing additional information relating to financial checks and due diligence, performance management and intervention, and audit arrangements for AEB grant-funded provision. Information regarding audit arrangements for the AEB procured programme and the 2019-2023 AEB-ESF programme are also included.

This MD should also be read in conjunction with MD2371, which set out the GLA's proposed approach to the performance management and delivery arrangements for AEB procured provision in London.

Decision:

That the Mayor approves:

- 1) The GLA's approach to allocating grants to grant-funded providers for AEB delivery to London residents in the 2019-20 academic year, as described in this decision form;
- 2) Changes from the approach set out in MD2370 and MD2371 to due diligence and financial assessments for AEB procured and grant-funded provision where, following legal advice, the GLA will no longer rely on a third party for due diligence and financial assessments and instead carry out its own due diligence checks;
- 3) Clarifications relating to the approach set out in MD2370 to the GLA's performance management and intervention processes for AEB grant-funded provision, specifically that the GLA will use similar informal and formal intervention measures as the ESFA, with prescriptive measures to bring performance back to target; and
- 4) The proposal to accept the ESFA's minimum service offer for AEB audit.

The above decisions were considered by the AEB Mayoral Board meeting on 10 January 2019.

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:

12/2/19

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

Decision required – supporting report

1. Introduction and background

- 1.1 The Mayor will be responsible for the commissioning, delivery and management of London's annual AEB allocation from 1 August 2019. For the 2019/20 academic year, this will be £306,444,875.
- 1.2 The majority of London's AEB will be allocated to grant-funded providers delivering education and training to London residents for the 2019-20 academic year. Providers eligible for an AEB grant include colleges, Institutes of Adult Learning, Higher Education Institutions and local authorities.
- 1.3 The Mayor is required to finalise and communicate the methodology for awarding grants to eligible providers and outline the approach for managing payments and performance through the publication of the *"Skills for Londoners AEB Funding and Performance Management Rules for Grant Providers"* (a draft of this document was published in December 2018 and a final version will be published in May 2019).
- 1.4 The GLA's grant allocation approach has been developed using data published by the Education and Skills Funding Agency (ESFA) in December 2018 on actual AEB delivery (excluding 19-24 traineeships, apprenticeships and continuing learners) by providers to London residents in 2017/18.
- 1.5 The Mayor has committed to maintaining provider stability through the grant allocation process by awarding grant-funded providers delivering to London residents an allocation in line with their previous AEB delivery in London in 2017/18, conditional on their ability to spend it.
- 1.6 However, given that grant allocations to providers have previously been made for delivery at a national level, the GLA has had to assume the value of a provider's equivalent London allocation to assess the impact of its allocations approach for 2019/20.
- 1.7 This MD sets out the GLA's approach to allocating grants to grant-funded providers for AEB delivery to London residents in the 2019-20 academic year. It also builds on MD2370, which sets out the GLA's proposed approach to the performance management and delivery arrangements of AEB grant-funded provision in London, by providing additional information relating to financial checks and due diligence, performance management and intervention, and audit arrangements for AEB grant-funded provision as considered and agreed at the Mayoral Board meeting on 10 January 2019.
- 1.8 It should be noted that the GLA has received a minimum service offer from the ESFA for its audit arrangements and is still engaged in discussion on this matter. As such additional information relating to the GLA's audit arrangements for AEB grant-funded provision are set out in a Part 2 form and reserved from publication until finalised.

2. Objectives and expected outcomes

Grant allocations

- 2.1 The GLA's grant allocation approach has been developed based on the following key principles:
 - To maintain funding stability for providers;
 - To align allocations with actual performance levels; and
 - To ensure the process is fair, efficient and transparent.
- 2.2 The GLA will only grant to grant-funded providers delivering adult education services to London residents in 2017/18, where the value of that delivery was equal or above £100,000. This includes

grant-funded providers based outside London. The GLA expects to grant to 108 providers in 2019/20, subject to any pending mergers.

- 2.3 For other grant-funded providers delivering AEB to London residents below a value of £100,000, the GLA will allow them to submit a business case for why their grant funding for London should be continued. The assessment criteria for the business case are currently being finalised.
- 2.4 As set out in a report to the AEB Mayoral Board on 10 January 2019,¹ the GLA's approach to allocating grants in 2019/20 will be based on data published by the ESFA for actual AEB delivery (excluding 19-24 traineeships, apprenticeships and continuing learners) to London residents in 2017/18. As identified at the Board meeting, to mitigate the risk that some London-based providers could see a reduction in their current funding compared to their 2018/19 allocation, or be unfairly treated based on 2017/18 performance, the GLA has calculated an equivalent London 2018/19 allocation for all providers to enable it to analyse and compare funding values between years. This equivalent London 2018/19 allocation has been calculated by taking into account the proportion of London residents that providers delivered to from their AEB allocation in 2017/18.
- 2.5 Following this analysis, and to support the Mayor's commitment to maintain funding stability for providers in 2019/20, the GLA will apply the following changes to the ESFA AEB actual delivery data for 2017/18 in making its allocations to grant-funded providers delivering to London residents in 2019/20:
- All London-based providers (i.e. those geographically located within London) will receive no less than 95 per cent of their equivalent London allocation for 2018/19. This approach sets a reasonable funding floor to provide stability between academic years.
 - Any London-based provider whose delivery in London in 2017/18 was within three per cent of their equivalent London allocation for 2018/19 will receive 100 per cent of their equivalent London allocation. This approach ensures fair treatment of providers delivering in line with the current national tolerance arrangements set by the ESFA (i.e. those delivering at least 97% of their funding allocation are considered as having met their target).
 - Any London-based provider whose delivery was higher in 2017/18 than their equivalent London allocation for 2018/19 will receive their 2017/18 actual delivery value. This approach supports growth for those providers delivering more to London residents.
 - For non-London providers (i.e. those geographically located outside the capital), the GLA will match the cash value of their 2017/18 delivery in London.
- 2.6 This approach differentiates between London and non-London providers by offering funding protection to London-based providers in recognition of the important role they play in London's economy and the fact that the majority of their AEB delivery is to London learners. It should be noted that grant-funded providers based within the London region, unlike those outside the region, are part of the capital's public education infrastructure and asset base, with a primary focus on London residents and 'place' for their activity. These providers deliver across a wider range of the Mayor's London priorities and because of location are not able to shift their core business from within London. Additionally, it should be noted that no provider located outside of London will receive less than the value of their 2017/18 AEB actual delivery to London residents, which is in line with the approach published in the Skills for Londoners Framework.
- 2.7 It is also important to note that this approach will only be applied in 2019/20 as part of transitional arrangements to meet the Mayor's commitment to maintain funding stability for providers in the first year of AEB delegation. The ESFA has adopted a similar approach in the past and the Mayor has made it his priority that FE colleges in particular are fairly and effectively supported through the transition to new funding arrangements. This approach demonstrates this commitment.

¹ https://www.london.gov.uk/sites/default/files/20190110_aeb_mayoral_board_agenda_public.pdf

Performance Management

- 2.8 The GLA's approach to managing AEB grant-funded provision was set out in a report submitted to the AEB Mayoral Board meeting on 19 September 2018.
- 2.9 To maintain provider stability, the GLA is committed to making minimal changes to the ESFA's performance management processes. The only significant change the GLA is proposing to make is to reintroduce growth requests for formula-funded and Adult Community Learning provision during the mid-year claim process. However, this will be subject to availability of funding and the provider adequately demonstrating their capacity and capability to spend it.

Intervention

- 2.10 The GLA will work closely with AEB providers to ensure that their delivery and performance meets the criteria agreed in the grant agreement. The GLA will undertake regular monitoring visits to providers and will raise any concerns regarding delivery, including performance, at the earliest opportunity.
- 2.11 The ESFA currently implement informal intervention measures when any of the following conditions are met:
- 2.11.1 Significant decline in the financial health score resulting in a 'satisfactory' grade;
 - 2.11.2 Financial health score is a weak 'satisfactory' due to key ratios;
 - 2.11.3 Forecasting demonstrates that the college is at risk of moving into 'inadequate' in the future unless it takes preventative action;
 - 2.11.4 Other (such as complaints or whistle blowers); or
 - 2.11.5 Two consecutive 'requires improvement' grades for overall effectiveness (Ofsted).
- 2.12 The GLA intend to impose the same informal intervention triggers as stated in 2.11.1 to 2.11.5. Where issues with performance and/or the quality of delivery are identified, the GLA will require the provider develop an action plan to address these issues, which will require approval by the GLA.
- 2.13 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.
- 2.14 The ESFA currently implement formal intervention measures when any of the following conditions are met:
- 2.14.1 The provider fails to implement agreed actions to improve performance and/or address issues in relation to the accuracy, quality and timeliness of data submissions and evidence to support claims;
 - 2.14.2 The provider fails to implement agreed actions resulting from an FE Commissioner's diagnostic assessment and report;
 - 2.14.3 The provider fails to deliver the minimum standards or the data evidences a decline in achievement of targets;
 - 2.14.4 The provider's financial health score is 'inadequate' or presents a risk of declining to 'inadequate' without intervention measures²;
 - 2.14.5 The provider becomes insolvent;

² In the Mayoral Board agenda of 10 January 2019, the provider's financial health score declining to inadequate was listed only as an informal intervention measure, however, the risk and implications of the financial health decline mean that a decline in financial health to inadequate would also trigger formal intervention measures.

- 2.14.6 Audit findings identify serious and/or widespread irregularities and/or failures in management control systems;
- 2.14.7 A complaint or whistle-blower alerts the GLA to a serious breach in financial management or safeguarding; or
- 2.14.8 The provider is deemed 'inadequate' by Ofsted inspection for overall effectiveness.
- 2.15 The GLA intend to impose the same measures for formal intervention as stated in 2.14.1 to 2.14.8. The GLA will work with the provider to seek to explore all avenues for raising performance, achievement and quality before implementing further measures of intervention, including but not limited to, further performance management points and/or suspension of payments against grant value and/or a reduction in the grant value and/or regular submission of detailed information such as management accounts and/or Governing Body minutes, which will be agreed in an action plan.
- 2.16 Should any of the conditions described in 2.14.1 to 2.14.8 be met, the GLA will write to the provider to confirm the intervention notice. A copy of this letter will be made public on www.london.gov.uk and will remain on the website until the intervention is closed. The GLA will also write to the provider when the intervention is closed, and a copy of this letter will be made public on www.london.gov.uk.

Financial Health Due Diligence

- 2.17 The ESFA will continue to conduct yearly financial due diligence assessments on providers as part of its wider financial intervention process. The GLA will take the following approach:
- Colleges and other grant funded providers will be asked to provide a copy of their Accounts and Finance Record for 2017/18, along with their most recent Financial Health score; and
 - GLA Finance will undertake a risk-based approach to financial health checks and due diligence based on a calculation of financial health scores. Where a provider has a financial health score of satisfactory or below, the GLA will identify additional monitoring arrangements for 2019/20 to manage any risks to funding and provision.
- 2.18 To provide for ongoing monitoring, the GLA will ask colleges and other grant funded providers to share a copy of their annual Financial Planning information returned annually.

Audit

- 2.19 The GLA has received a minimum service offer from the ESFA for its audit arrangements and is still engaged in discussion on this matter. As such, information relating to the GLA's audit arrangements for AEB grant-funded provision is set out in a Part 2 form and reserved from publication until a later date.
- 2.20 Further discussions with ESFA to finalise the approach to audit are ongoing, with an in-principle agreement expected to be in place by March 2019.

3. Equality comments

- 3.1. 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.
- 3.2. Relevant protected characteristics are age, disability, gender re-assignment, 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 decision set out in this paper and any future decisions relating to the AEB made pursuant to those arrangements which will be subject to separate decision forms.
 - 3.4. Contractual agreements with delivery partners for this programme will require them to comply with all applicable existing and future equal opportunities laws, regulations and guidance, and GLA guidance in relation to race, nationality, ethnicity, disability, gender, sexual orientation, age, religion or belief.
 - 3.5. GLA officers will periodically monitor successful projects to verify that equalities policies, procedures and processes are understood and applied by staff and project participants; that they are being monitored and reviewed; and that any underperformance against agreed equalities targets is being investigated and relevant mitigation actions are being taken.

4. Other considerations

Key risks associated with the GLA's Grant Management approach are:

- 4.1. *The GLA's approach to grant allocation could create perverse incentives by rewarding London-based providers for underperformance.* This risk will be mitigated by ensuring providers are made aware that this approach is part of a transitional arrangement for 2019/20 to the meet the Mayor's commitment to maintain funding stability for providers in the first year of AEB delegation. The ESFA has adopted a similar approach in the past and the Mayor has made it his priority that providers are fairly and effectively supported through the transition to new funding arrangements.
- 4.2. *The GLA's approach to grant allocation differentiates between London and non-London providers by offering funding protection to those London-based providers at risk of losing funding compared to their 2018/19 ESFA allocation.* This approach has been agreed in consultation with our external legal advisers. London-based providers play an important role in supporting London's economy and deliver the majority of their AEB to London learners. As such, the GLA is keen to support them in the transition to new funding arrangements. At the same time, this approach ensures no grant-funded provider will receive less than the value of their AEB delivery to London residents in 2017/18.

5. Financial comments

- 5.1 The proposed approach to allocating grants to grant-funded providers for AEB delivery in London, including the financial checks & due diligence, performance management, the intervention triggers and methodology for mitigation sets out a framework of good governance, ensuring that the AEB grant provision is administered in a fair and transparent way but also helps to maintain funding stability in the first year of the AEB delegation to the GLA (a key Mayoral commitment of the proposed delegation of functions).
- 5.2 The Financial Due Diligence will be risk based with the aim of managing financial risk effectively and efficiently during the period of delivery including when intervention is required, thus providing the platform to maximise the potential for successful delivery by the delivery partner.
- 5.3 As noted within the main body of this report, the GLA has received a minimum offer from the ESFA for its audit arrangements and is still engaged in discussions on this matter. As such, information relating to the GLA's audit arrangements for AEB grant-funded provision is reserved from publication. It should be noted, however, there is no administrative budget to fund any additional audit provision from within the delegated AEB and, as such, once the costs have been fully scoped out the confirmed

arrangements and budget will be subject to further approval via the Authority's decision-making process.

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 not available in respect of s39A delegated 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:
 - 6.3.1 Exercise care in incurring or committing to any expenditure in reliance on delegated AEB before the grant of the same has been made, including liaison with the Department for Education to ensure that the funding may be claimed in respect of expenditure proposed; and
 - 6.3.2 To the degree that reliance is to be placed upon access to and the use of ESF funding, liaise closely with the GLA's European Programmes Management Unit to ensure that such use is ESF compliant.

7. Planned delivery approach and next steps

- 7.1. The approved option for AEB grant management will be further developed by Officers and externally tested through representative bodies.

Activity	Timeline
Letters issued to providers with illustrative allocations and information relating to the allocations process	February 2019
Deadline for Providers to return information required as part of the allocations process (financial information, business case if relevant)	March 2019
Information reviewed/allocations confirmed	April 2019
Mayor approves final allocations	April 2019
Letters issued to providers confirming final allocations	April 2019
AEB delivery commences	1 August 2019

Supporting papers:

MD2370

MD2371³

AEB Mayoral Board 10 January 2019 agenda and minutes – available on the GLA website

³ MD2371 is reserved from publication until 1 August 2019 as it sets out the procurement strategy and estimated expenditure figures; Part 2 of the decision is also subject to legal professional privilege.

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

Until what date: (a date is required if deferring)

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 – Yes

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

Christopher Wright and Beth Anderson have 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 11 February 2019.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. J. Allen

Date

11.2.19

CHIEF OF STAFF:

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

Signature

J. Bellamy

Date

11/2/2019