

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2370

Title: Adult Education Budget Grant Funded Provision Delivery Arrangements

Executive Summary:

This MD builds on MD2255, under cover of which the Mayor approved his acceptance of the delegation to him of certain functions relating to the Adult Education Budget (AEB) for London, subject to meeting a series of principles set out in the delegation arrangement agreed by the GLA and the Department for Education (DfE). This MD should be read in conjunction with MD2371, which sets out proposals for the delivery of the AEB grant provision.

From August 2019, the Mayor will be responsible for the commissioning, delivery and management of London's AEB allocation, circa £311m per annum. This MD sets out the GLA's proposed approach to the performance management and delivery arrangements of the AEB grant-funded provision following devolution of the AEB budget in academic year 2019/20.

Decision:

That the Mayor approves:

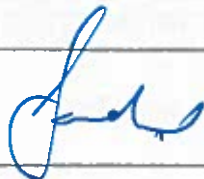
The approach proposed to the management of AEB grant provision in academic years 2019/20 and 2020/21.

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:

1/10/18

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

Decision required – supporting report

1. Introduction and background

- 1.1 As approved under cover of MD2255 – Devolution of the Adult Education Budget to the Mayor, the Mayor has now accepted the delegation of the Adult Education Budget (AEB) to London in academic year 2019/20, subject to meeting the series of principles set out in the devolution arrangement, as agreed by the GLA and the Department for Education (DfE). The GLA must meet six readiness conditions to demonstrate to the Secretary of State that, amongst other things, stability of the provider base and protection of the public interest through achieving value for money, will be safeguarded. If these principles are met, the Mayor will be responsible for the commissioning, delivery and management of London's AEB allocation of circa £311m per year from 1 August 2019.
- 1.2 This MD sets out the GLA's proposed approach to grant management and delivery arrangements for AEB grant-funded provision in academic year 2019/20, which addresses the sixth readiness condition set out by the Secretary of State – funding and provider management: *"funding and provider management arrangements, including securing financial assurance, are agreed in a way that minimises costs and maximises consistency and transparency"*.
- 1.3 The proposed approach to the award and management of AEB grant funding will differ in certain respects from that of AEB procured service provision and this MD should therefore, be read in conjunction with MD2371, which outlines the GLA's approach to AEB service provision and the procurement process for appointing providers.
- 1.4 An MD is being sought as, under the legislative framework which permits the transfer of statutory AEB functions to the Mayor, he is not able to delegate those functions in the normal way¹. This is recognised as a matter reserved by law for the personal exercise of the Mayor only under the Mayoral Decision-Making in the Greater London Authority protocol.

2. Objectives and expected outcomes

- 2.1 This MD sets out the approach proposed for the management of AEB grant funding which, in summary, involves:
 - 2.1.1 A grant management process which aligns closely to the sector's current performance management process, allowing GLA officers to develop strong relationships with the provider base and gather intelligence on performance and delivery, whilst not being overly disruptive for the sector;
 - 2.1.2 A grant management process for Adult Community Learning (ACL) providers which will bring the management of ACL providers in line with the remaining grant-managed provision;
 - 2.1.3 GLA reserving the right to make changes to future performance management processes following a two-year trial;
 - 2.1.4 Financial health due diligence, being undertaken on a risk-based basis, using the ESFA's existing financial health checks as an initial indicator of financial soundness;
 - 2.1.5 The mandating of certain Qualification Achievement Rates and minimum standards so that there is no change to the existing national approach to achievement rates and minimum standards;

¹ Section 39A of the Greater London Authority Act 1999

- 2.1.6 Management of any provider underperformance via intervention. This approach aligns with the ESFA triggers for informal and formal intervention but is managed on a case-by-case basis by the nominated GLA Provider Manager, rather than a separate intervention team;
- 2.1.7 Consideration and making of payments, subject to the submission of Funding Claims and the Earning Adjustment Statement (EAS), increases and reductions in grant values, Growth Requests and reconciliation, which is similar to the ESFA's current practice and reflects the GLA's data sharing agreement with the ESFA and which are likely to be in line with the ESFA's current practice; and
- 2.1.8 Requirement for providers to outline plans to use subcontractors at the beginning of the funding year and seek approval for any in-year changes to subcontracting, and also proposes to introduce a 20% cap on management fees.
- 2.2 It should be noted that the GLA's preferred position on audit is still subject to agreeing a service offer with the ESFA.
- 2.3 Aligned with the Mayoral commitment to maximising provider stability in the first year of devolution, our approach to grant management processes has been based on the ESFA's as far as possible. Key changes between the ESFA's and GLA's approaches are set out below:

Performance Management

- 2.3.1 The two changes being proposed from the existing ESFA approach to Performance Management are:
- The introduction of a dedicated Provider Manager who will be a single point of contact for providers, meeting quarterly to discuss performance and gain an in-depth understanding of the local area needs, the provider's business cycle and challenges to delivery.
 - The GLA will reintroduce a growth request (an opportunity for Providers to request an increase in funding to their initial allocation) at least once per year in February.
- 2.3.2 These measures will ensure that the GLA Provider Managers will have timely access to data and decisions can be based upon sound evidence, which will in turn allow the GLA to ensure that the AEB budget is spent effectively and efficiently.

Adult Community Learning

- 2.3.3 The GLA proposes to reintroduce growth requests for ACL provision in place of the over-tolerance calculation, to bring management in line with grant-managed AEB provision. The GLA will reserve the right to process further Growth Requests subject to the availability of funding and the capacity and capability of a provider to spend it in full.

Financial Health Due Diligence

- 2.3.4 The ESFA will continue to conduct yearly financial due diligence assessments on providers in August. The GLA will take the following approach:
- Finance will rely on the Register of Training Organisations (RoTO) and the ESFA financial health check where the organisation's financial health check score is up to date and above "satisfactory".
 - Finance will carry out full due diligence checks on organisations who are not on RoTO or those whose financial health check score is not up to date or "satisfactory" or below, as they would be seen as a higher risk.

Qualification Achievement Rates and minimum standards

- 2.3.5 Minimum standards are the minimum acceptable performance level for providers delivering ESFA funding activities. They are an aggregated national calculation based on individual providers' overall Qualification Achievement Rates (QAR) which are typically calculated at qualification level for education and training.
- 2.3.6 The GLA proposes no change to existing processes as London's provider QAR data will continue to inform national minimum standards.

Intervention

- 2.3.7 The GLA will not be establishing a dedicated intervention team for grant provision as the ESFA currently do. GLA provider managers will manage between 7-10 grants providers, AEB procured providers and AEB-ESF (European Social Fund) providers. As a result they will be able to ascertain when the performance of one of their providers is falling below contracted levels, or if an ESFA intervention trigger is in risk of being breached. The Delivery teams will therefore retain oversight of the intervention proceedings against GLA funded providers to ensure a coordinated response to underperformance.

Audit

- 2.3.8 The GLA's preferred position on audit is still subject to agreeing a service offer with the ESFA.

Payments

- 2.3.9 The GLA is proposing to adopt the ESFA's approach to payments, subject to agreeing a data sharing protocol with the ESFA, that will cover all the key systems and forms involved in administering the payment approaches.
- 2.3.10 The GLA is proposing that providers can submit Growth Requests during or shortly after the mid-year funding claim (February), and that providers can voluntarily reduce their funding allocations through reduction statements (December/January and May), to make additional funding available for over-performing organisations and reduce the risk of underspend.

Subcontractors

- 2.3.11 Broadly, the GLA's approach to subcontracting will be the same as ESFA's. To satisfy requirements around achieving value for money, however, the GLA is proposing the following additional measures:
- Providers to outline any plans to use subcontracting arrangements at the beginning of the funding year;
 - Approval to be required for any in-year changes to subcontracting arrangements; and
 - A 20% cap to be imposed on subcontracting management fees, unless a provider can demonstrate that a management fee exceeding this cap can be justified.

- 2.4 Specialist external legal advice and assistance has been and will continue to be sought and provided on documentation required for the delivery of both the award of AEB grant funding and AEB contract for services. Aligned with the Mayoral commitment to maximising provider stability in the first year of devolution, the GLA's approach to developing the documentation to support AEB devolution has been to use existing ESFA documentation as the baseline, and amend only where necessary; specifically,

documents such as Funding and Performance Management Rules and Conditions of Grants templates are being prepared in accordance with the instructions of GLA officers as to the GLA's proposed approach to AEB grant funding (as outlined above) and AEB contracts for services (as outlined in MD2371).

- 2.5 The AEB Mayoral Board (Chaired by the Mayor) reviewed the draft funding documentation and approved the substantive policy content of the same on 19 September 2018 and the final versions of the same will be circulated to the Board before issue.

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.

Relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 3.2. 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.
- 3.3. 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.
- 3.4. 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 *Lack of consultation with the sector on performance management leads to development of an approach that is not fit for purpose.* Though the approach to performance management has been tested with providers during provider visits and cross sector roundtables with both in and out of London Providers, timescales do not allow for formal consultation of the grant management process in the Skills for Londoners Framework. To mitigate this, it is proposed that the grant management approach is tested through provider networks, such as Association of Colleges and Hoxex.
- 4.2 *The grant management process is heavily dependent on timely access to data, which needs to be agreed with ESFA.* The risk will be minimised by establishing, agreeing and entering into accurate, relevant terms of reference in the Memorandum of Understanding between the Mayor and the Secretary of State for Education and a data sharing protocol and maintaining a collaborative dialogue with ESFA both at the development and delivery stages. Until such an agreement is reached, however, the GLA is at risk of not receiving information required to effectively manage AEB grant. For example,

without receiving data on previous financial health assessments, it will prove difficult to judge the direction of travel for a provider's financial health.

- 4.3 *There is a risk of challenge from providers who have funding reduced or who do not receive a growth request.* This risk will be mitigated by ensuring that all growth requests and reductions in funding are evidence-based on data returns. The basis upon which any funding is reduced and growth will be made available.
- 4.4 *There is a risk of underperformance due to delayed approvals of subcontracting in-year change requests.* The GLA will develop systems that allow for timely and speedy assessment of in-year subcontracting approval requests. A comprehensive provider on-boarding package will be offered and ongoing provider and sector engagement on processes and systems at the development and first year delivery stage aim to mitigate the risks involved. Payment decisions depend on assessing performance through Individualised Learner Record (ILR) data.

5. Financial comments

- 5.1 There are no direct financial implications arising from approving the approach for managing the AEB grant provision.
- 5.2 The recommended approach in managing the AEB grant provision sets out a framework of good governance, ensuring that the AEB grant provision is administered in a fair and transparent way in line with the Authority's Financial Regulations and Contracts & Funding Code. The Financial Due Diligence will be risk-based with the aim of managing financial risk effectively and efficiently during the period of delivery, thus providing the platform to maximise the potential for successful delivery by the delivery partner.
- 5.3 The recommended approach will be closely monitored, with any future changes being 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 excluded in respect of s39A delegated functions. The proposed Memorandum of Understanding relates to the funding of the GLA, by the Department for Education, of preparations for the exercise by the Mayor of these 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 of delegated AEB before the grant of the same has been made, including liaison with the Department of Education to ensure that the funding may be claimed in respect of expenditure proposed;
 - 6.3.2 Funding is distributed fairly, transparently, in manner which affords value for money in accordance with all applicable ESFA requirements and the GLA's Contracts and Funding Code; and
 - 6.3.3 Appropriate grant funding agreements are put in place between and executed by the GLA and recipients of AEB grant funding before any commitment to fund is made.

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
Finalise AEB funding documentation and secure Mayoral approvals in accordance with the powers delegated by the Secretary of State	May-Sep 2018
DfE inform GLA of indicative allocations for academic year 2019/20	Jan 2019
Grant agreements issued, provider inductions and training, project set-up etc.	Apr-July 2019
Delivery commences on AEB Grant provision	1 August 2019

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

If YES, for what reason:

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 - No

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

Nabeel Khan 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 1 October 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

Date

01-10-18

TOM MIDDLETON ON BEHALF OF MARTIN CLARKE

CHIEF OF STAFF:

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

Signature

Date

1/10/2018.

D. Bellamy