

REQUEST FOR MAYORAL DECISION – MD2622

COVID-19: Adult Education Budget (AEB) and AEB-European Social Fund provision

Executive Summary:

The GLA funds adult education provision through its Adult Education Budget (AEB) and AEB-European Social Fund (ESF) programmes, which are delivered by a number of external providers. The AEB Mayoral Board considers and makes recommendations to the Mayor on matters relating to the AEB, including funding allocations to education and training providers – which may be by way of grant (“AEB Grant”) or through contracts for services (“AEB Procured”¹). Any final decisions on such matters are taken by the Mayor in accordance with the GLA’s Mayoral Decision-making process.

On 18 March 2020 HM Government issued official advice that, due to the COVID-19 pandemic, all schools, colleges and early years settings would close to students (apart from those whose parents are key workers) from Monday 23 March 2020 until further notice. This will likely affect the ability of our providers to deliver their provision, and the Mayor may need to make urgent decisions to support the sector.

This Mayoral Decision asks the Mayor to confirm the approach he will take to support adult education providers in view of the pandemic. It also asks the Mayor to agree an amendment to the AEB Mayoral Board’s constitution so that, in exceptional circumstances, decisions can be taken more flexibly and/or expeditiously than is currently possible.

Decision:

That the Mayor:

- confirms that organisations in receipt of an Adult Education Budget (AEB) grant from the GLA will continue to be paid on the agreed profile if delivery is impacted as a direct result of COVID-19;
- confirms that the performance management point for contract reductions for AEB procured providers in London in May 2020 will not be applied, and that the end of year or December 2020 performance review for grant-funded and procured providers will recognise the disruption to provision as a direct result of COVID-19;
- in consultation with the AEB Mayoral Board², agrees to amend the Board’s constitution to include the amendments identified in paragraph 1.11 below (and in Appendix A); and
- agrees a variation to the process set out in Mayoral Decision-Making in the GLA, to enable decisions taken under the amended provisions of the constitution to be taken without using a Mayoral Decision form.

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: 17 April 2020

¹ The AEB procured programme (or AEB-ESF programme) uses AEB funding as match funding to draw down some of London’s ESF.

² As set out in the AEB Mayoral Board constitution, changes to the constitution may only be made in consultation with the AEB Mayoral Board, or if urgent, in consultation with the Chief of Staff and Deputy Mayor for Planning, Regeneration and Skills.

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

Decision required – supporting report

1. Introduction and background

- 1.1. The GLA's Skills & Employment Unit manages a portfolio of £306,444,875 for the Academic Year 2019/20 (of which £262,891,610 is managed as grants and £32,500,000 is managed as contracts for services³) across its Adult Education Budget (AEB) (AEB grant) and AEB-European Social Fund (ESF) (AEB procured) programmes. In addition, it will receive £318,580,139 for the 2020/21 Academic Year.
- 1.2. The AEB Mayoral Board was established in 2018 (under [Mayoral Decision 2328](#)), and considers and makes recommendations to the Mayor on matters relating to the use of the AEB. Any final decisions on such matters are then taken by the Mayor in accordance with the GLA's Mayoral decision-making process. The Board's constitution is attached at Appendix A. This sets out the work, terms of reference and governance arrangements relating to the Board, and also contains provisions as to Mayoral Decisions taken in relation to the AEB.
- 1.3. The World Health Organisation (WHO) has declared the current coronavirus (COVID-19) outbreak as a Public Health Emergency of International Concern (PHEIC)⁴, and, as of 11 March 2020, made the assessment that COVID-19 can be characterised as a "pandemic".
- 1.4. The WHO has issued a range of guidance documents to help countries to respond to the outbreak, and to enable them to try to slow and stop COVID-19 transmission. To date, this includes [consolidated package of existing preparedness and response guidance, critical preparedness, readiness and response actions for COVID-19](#), and [Risk Communication and Community Engagement \(RCCE\) Action Plan Guidance](#). This guidance is evolving as the COVID-19 outbreak progresses and the WHO is currently issuing daily 'situation reports' with the latest information.⁵
- 1.5. On 18 March 2020, HM Government announced that all schools, colleges and early years settings in England would close to students⁶ from Monday 23 March 2020 until further notice (apart from those whose parents are key workers⁷). As a result, work has been underway to identify how the GLA can help to mitigate the impact of COVID-19 on providers we fund via the AEB, including through funding and performance management measures. The Mayor will need to consider HM Government advice in respect of the AEB and any guidance issued by the designated ESF Managing Authority⁸ in response to COVID-19 and how this would impact on the proposals set out in this decision.
- 1.6. On 20 March 2020, the Deputy Mayor for Planning, Regeneration and Skills wrote to AEB grant and AEB procured providers to provide reassurances about the expected approach for how the Mayor

³ AEB procured contracts are for four years (August 2019 to July 2023) and the total value of the AEB procured programme is £131m.

⁴ Under the International Health Regulations (2005) a PHEIC is defined as "an extraordinary event which is determined: I. to constitute a public health risk to other States through the international spread of disease; and II. to potentially require a coordinated international response". This definition implies a situation that: is serious, unusual or unexpected; carries implications for public health beyond the affected State's national border; and may require immediate international action. The responsibility of determining whether an event is within this category lies with the WHO Director and further information on the determination process can be found on the WHO website.

⁵ Available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>

⁶ The government have instructed that all classroom delivery must cease. Although advice may change, for the time being, providers may still deliver other learning (for example apprenticeships and 1:1 support). Distance and online learning can continue.

⁷ Key workers during the COVID-19 outbreak have been confirmed as those working in the following critical sectors: health and social care; education and childcare; key public services; local and national government; food and other necessary goods; public safety and national security; transport; and utilities, communication and financial services.

⁸ The ESF Managing Authority for England is the Department for Work and Pensions (DWP). The GLA's European Programmes Management Unit (EPMU) is the Intermediate Body, and manage London's regional ESF programme on behalf of DWP.

would continue to support their organisations during this challenging period (copies of the letters are available on request). This decision confirms the approach as follows:

- the GLA will continue to pay organisations in receipt of an AEB grant on the agreed profile if delivery is impacted as a direct result of COVID-19; and
- the performance management point for contract reductions for AEB procured providers in May 2020 will no longer apply, and the end of year or December 2020 performance review for grant-funded or procured providers will recognise the disruption to provision as a direct result of COVID-19.

1.7. In addition to the above, it is anticipated that arising out of or in connection with the COVID-19 crisis, certain urgent decisions will need to be taken in relation to the AEB. Such decisions might include where immediate action is required to effectively support providers as a result of the COVID-19 outbreak and its impact on delivery. While there are urgency provisions contained in the AEB Mayoral Board's constitution (see paragraphs 2.6 – 2.7 and section 10 of Appendix A), it is considered that that these provisions need to allow for more flexibility and/or expediency to enable decision-making that is responsive to fast-changing circumstances.

1.8. At present, the urgency process in the constitution is as follows:

"10 Urgency Procedure

10.1 If the Board has urgent business that needs to be considered before the next scheduled meeting, the Mayor, as Chair, may convene an urgent meeting of the Board where circumstances allow.

10.2 In order to ensure that the Board is able to progress decisions in an efficient manner, urgent matters may be determined by agreement of the Chair through the following procedure:

10.3 The Board will receive an email notification which identifies:

- Details of the matter requiring decision or views and the reason for urgency (including an explanation as to why an emergency meeting is not proposed to be held to conduct the business);
- The date the decision is required by; and
- The name of the person or persons making or putting forward the proposal/decision.

10.4 On behalf of the Mayor, the Mayor's Chief of Staff will confirm the outcome of the decision in writing by the date the decision is required. The final decision will then be taken via the standard Mayoral Decision process.

10.5 Where a decision has been taken under this procedure a report concerning the action taken will be placed on the agenda for the next scheduled meeting of the Board (as a matter for notification only) with a rationale for the decision having been taken under these procedures rather than at an upcoming meeting."

1.9. The "standard Mayoral Decision process" referred to in paragraph 10.4 of the constitution means the document approved by the Mayor, entitled "Mayoral Decision-Making in the Greater London Authority," which requires the Mayor to take decisions relating to the AEB in a Mayoral Decision form. This process is summarised in section 2 of the AEB's Mayoral Board's constitution. Although urgent business may be dealt with at urgent meetings of the Board, a subsequent Mayoral Decision is still required (under the standard Mayoral Decision process) in order for the Mayor to approve or otherwise the Board's recommendations. Similarly, as can be seen from paragraph 10.4 of the constitution, the formal and final decision following the urgency process (for conducting business outside of a Board meeting) also needs to be taken via the standard Mayoral Decision process, in a Mayoral Decision form. These requirements can significantly increase the amount of time between the

Board reaching urgent recommendations, and these subsequently being agreed or otherwise by the Mayor in a Mayoral Decision. In view of COVID-19 in particular, it is considered prudent that the Mayor has the ability, in exceptional circumstances, to take certain urgent decisions (concerning the AEB) outside of this standard process.

- 1.10. For example, to ensure that providers can continue to operate during the COVID-19 outbreak, and to lessen any further impact on learners, it may be necessary to make urgent variations to provider grant agreements, contracts and/or payments, which might include advance payments to individual providers if appropriate.
- 1.11. In view of this, this decision asks the Mayor to agree to amend the AEB Mayoral Board's constitution to include the amendments in strikethrough and bold below. The existing clause 10.5 will be renumbered to 10.6.

10.4 On behalf of the Mayor, the Mayor's Chief of Staff will confirm the outcome of the decision in writing by the date the decision is required. The final decision ~~will~~ **must normally** then be taken via the standard Mayoral Decision process.

10.5 In exceptional circumstances, the Mayor may take a final decision outside of the standard Mayoral Decision process. Any decisions taken outside of the standard process must be appropriately recorded and reported.

- 1.12. The proposed amendments will enable the Mayor to take decisions outside of the standard Mayoral Decision process – either at Board meetings, or via the Board's urgency procedure (further to 10.2-10.3 of the Constitution) – but only in exceptional circumstances.
- 1.13. A summary report of any decisions taken in this way would be submitted to the Corporate Investment Board for notification.

2. Objectives and expected outcomes

The decisions to confirm AEB grant payments and the performance management point for contract reductions

- 2.1. As a part of the Skills & Employment Unit's business continuity planning during the COVID-19 outbreak, this Mayoral Decision seeks to put measures in place to support providers during the outbreak, enabling decisions to be made quickly and in response to providers' individual needs. This is aligned to the Cabinet Office Procurement Policy Note (Action Note PPN/02/20) which instructs Contracting Authorities to "act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over".
- 2.2. Continuing to pay organisations in receipt of an AEB grant on the agreed profile if delivery is impacted as a direct result of COVID-19 will help to mitigate the impact that the outbreak has on grant-funded providers and provide them with the confidence to take the required steps to respond to the evolving situation. The Mayor has already agreed profile payments for grant-funded providers and therefore this decision reconfirms the position during a period of uncertainty.
- 2.3. Similarly, by not applying the performance management point for contract reductions for AEB procured providers in May 2020, and by providing assurances that the end of year or December 2020 performance review for grant-funded or procured providers will recognise the disruption to provision as a direct result of COVID-19, we hope to minimise the impact the outbreak has on our AEB providers. It would not be possible to now undertake the May 2020 review given the government instructions on closure and social distancing. Any end year assessment of performance will need to take into account the disruption of the outbreak as it will impact on all skills provision.

The decision to amend the AEB Mayoral Board's constitution

- 2.4. The proposed amendments to the Board's constitution are designed to build more speed and/or flexibility into the decision-making processes relating to the AEB. They would operate as follows: in circumstances considered exceptional by the Mayor, the Mayor could elect to make a final decision (following consideration by the Board) without having to do so in a Mayoral Decision form. This would mean that the Mayor could make a final decision whilst he is in attendance at a Board meeting, or via the Board's urgency procedure (further to 10.2-10.3 of the Constitution). Any decisions taken by the Mayor in this way would, however, have to be appropriately recorded and reported. They would be reported in summary to the Corporate Investment Board for notification, which would include an explanation of the exceptional circumstances pertaining to the decisions.
- 2.5. Care needs to be taken to ensure that decisions taken in this way remain robust, compliant with legal requirements, and are properly recorded, open and transparent. This includes being compliant with the requirements of the terms and conditions of the Secretary of State's delegation to the Mayor and, in particular, the requirements to which the Mayor is subject under the Treasury document, Managing Public Money.
- 2.6. In line with the Mayor's commitment to openness and transparency, all decisions taken through the Board's urgency procedure are already reported back to future Adult Education Board meetings and a summary of such decisions published with the agenda. The Secretary of State has been informed of the changes to the constitution.
- 2.7. A major reason for seeking the proposed amendments to the constitution now is the COVID-19 crisis. We envisage that the crisis may give rise to exceptional circumstances where urgent decisions may need to be taken to respond quickly and with agility as the pandemic develops, for example, in order to approve variations to individual AEB grant and AEB procured grant agreements, contracts and/or payments in the event that delivery is affected as a direct result of the outbreak. This is in order to reduce the potential negative effects on our providers and learners. It is important that decisions on these matters can be taken quickly in order to provide reassurance to the sector and to ensure our provider base is sustained financially during the current period of closure. In addition, there may be a reputational impact if the Mayor is not able to be reactive to new guidance and take quick decisions during this time, particularly as the situation is continually evolving.

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 report about the process for taking urgent AEB decisions directly related to COVID-19 and provider grant agreements, contracts and/or payments.

4. Other considerations

Risks and issues

- 4.1. In respect of continuing to pay AEB grant-funded on profile for the remainder of the year, this is the payment arrangement approved by the Mayor for grant-funded providers in 2019/20. The decision therefore confirms that the previous decision continues to apply in order to provide reassurance during the COVID-19 crisis.
- 4.2. Regarding the suspension of the May performance management point, AEB procured providers are paid on actuals to date so payments are in line with delivery. Contracts will be reviewed at the December performance point, which is a pragmatic approach given the current COVID-19 situation would limit a review at this current time.
- 4.3. By amending the constitution as proposed, care would need to be taken to ensure that any decisions taken via this process were justified and reported appropriately. This is mitigated by the measures set out earlier in this decision form, in that decisions would only be taken in this way if there were genuinely exceptional circumstances. Furthermore, it is for the Mayor to decide, what constitutes exceptional circumstances and all decisions taken under this process would be formally reported back to both the Corporate Investment Board and Adult Education Budget Mayoral Board for notification. In addition, the Mayor may revoke the change to the constitution at any point should he wish to.

Other

- 4.4. The AEB Mayoral Board has been consulted on this decision through its urgency procedure.
- 4.5. There are no conflicts of interest to declare from those involved in the drafting or clearance of this decision.

5. Financial comments

- 5.1. Approval is being sought to amend the AEB Mayoral Board constitution to enable urgent decisions be taken in exceptional circumstances, in this case as a direct result of the impact of COVID-19. This may require variations to provider grant agreement, contracts or payments, which would be subject to consideration by the AEB Mayoral Board.
- 5.2. Confirmation is also sought for AEB grant funded organisations in London to continue to be paid based on the agreed profile, if they are impacted by COVID-19. In addition, that the performance management point for May 2020 not be applied, and that year-end performance review should recognise disruption to grant-funded and procured providers. This is consistent with Government guidance issued in Procurement Policy Note - Supplier relief due to COVID-19 (Action Note PPN 02/20 issued March 2020).
- 5.3. The AEB budget is fully funded by specific Government grant agreements, so there is no direct financial impact on the GLA's overall financial position. There may be changes in re-alignment which may affect individual strands, but these will be contained within the overall AEB envelope.

6. Legal comments

- 6.1. In preparation for the delegation of adult education functions from the Secretary of State to the Mayor of London, the Mayor established the AEB Mayoral Board and approved its constitution in July 2018, under Mayoral Decision 2328. Upon being satisfied as to these arrangements, the AEB powers and funding were delegated by the Secretary of State for Education to the Mayor of London under Section 39A of the Greater London Authority Act 1999 (GLA Act) from 1 August 2019. The Mayor is not permitted to delegate the discharge of these functions and must discharge them personally (section 39A (6) of the GLA Act). The terms and conditions of the delegation are contained in a letter,

dated December 2018, delegating specified adult education functions from the Secretary of State to the Mayor; and a Memorandum of Understanding, dated January 2019, entitled “Delegation of Certain Adult Education Functions to the Greater London Authority.”

- 6.2. The constitution of the Board complies with the legal requirements arising from the fact that the powers delegated to the Mayor (under section 39A of the GLA Act) must be exercised by him personally. As set out in the constitution, the Board (which is chaired by the Mayor) acts as an advisory body to the Mayor on matters relating to the AEB. After having due regard to the Board’s recommendations, the Mayor makes final decisions in accordance with the GLA’s standard Mayoral Decision process (see: section 2 of the constitution). Decisions concerning the AEB are also matters reserved for the Mayor in “Mayoral Decision-Making in the Greater London Authority.”
- 6.3. For the reasons set out in sections 1 and 2 above, the GLA considers that the procedures for urgency contained in the constitution need to be amended. The proposed amendments to the constitution facilitate the more flexible and expeditious decision-making the GLA is seeking. Under paragraph 11.2 of the constitution the Mayor may amend the constitution in consultation with the AEB Mayoral Board. Any changes will need to be reported to the next meeting of the AEB Mayoral Board.
- 6.4. The proposed changes to the constitution permit the Mayor, in exceptional circumstances, to make decisions outside of the standard Mayoral Decision process; and so not within a Mayoral Decision form. The proposed amendments provide that any such decisions must be appropriately recorded and reported. Appropriate legal and financial input as to these matters should be sought at the earliest possible stage.
- 6.5. In accordance with the constitution, any decisions taken through the urgency procedure will need to be reported back to the AEB Mayoral Board formally at the next appropriate meeting.
- 6.6. The Mayor may agree a variation to the process set out in Mayoral Decision-Making in the GLA as proposed in this decision.

7. Planned delivery approach and next steps

- 7.1. Following approval of this Mayoral Decision, urgent AEB decisions required that directly relate to COVID-19 and provider grant agreements, contracts and/or payments may be brought to the AEB Mayoral Board for consideration via its urgency procedure.
- 7.2. It is anticipated that once this Decision is approved, the AEB Mayoral Board will be asked to consider proposed AEB policy changes in response to the COVID-19 virus.
- 7.3. Depending on the level of urgency, any subsequent decisions pertaining to individual providers may be grouped for consideration by the Board, or considered on a case-by-case basis.
- 7.4. A summary of all urgent decisions taken by the Mayor through this process will be reported to the Corporate Investment Board for notification.

Appendices:

Appendix A – AEB Mayoral Board constitution (updated March 2020)

Supporting papers:

MD2328 – AEB governance arrangement

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 – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Claire Sherer 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 in draft form on 30 March 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

1 April 2020

CHIEF OF STAFF:

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

Signature



Date

1 April 2020