

MAYOR OF LONDON

Managing Provider Performance

GLA AEB Procured provision monitoring and intervention
policy 2019-2023

Version 1



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Summary

1. The purpose of this document is to set out the Greater London Authority's (GLA) approach to monitoring provider performance for quality and financial stability. This document also sets out when the GLA will intervene when performance or financial resilience of a provider is below expected levels. This document supplements the information available in the *GLA Adult Education Budget 2019-23 Funding and Performance Management Rules for Procured Providers* (the Rules) and in the Conditions of Funding Agreement ("Contract").
2. This document will be periodically updated to ensure that the policy aligns to the requirements of GLA performance and measurements, alongside national policy requirements. Any updates will be clearly marked in new versions.
3. This publication is primarily intended for providers in receipt of a Contract with the GLA for delivery of AEB Procured provision. This includes:
 - general further education (FE) colleges;
 - independent training providers;
 - independent specialist providers;
 - employer providers;
 - local authorities;
 - institutes for adult learning;
 - sixth form colleges;
 - providers of adult education; and
 - universities and higher education institutions.
4. In addition, this document may also be of interest to:
 - learners who wish to see how providers are monitored for performance
 - Department for Education (DfE);
 - Education and Skills Funding Agency (ESFA);
 - Office for Standards in Education, Children's Services and Skills (Ofsted);
 - Further Education Commissioner (FEC);
 - Mayoral Combined Authorities;
 - Office for Students; and
 - other education and training providers.

5. If you are a learner who wishes to provide feedback on your education/training, please refer to the [information available](#) online on how to share your views with the GLA.

Approach to Performance Management

Role of the GLA Provider Manager

6. Each provider will have a named GLA Provider Manager who will work with a dedicated number of education/training providers. The GLA Provider Manager will act as the first point of contact when managing the contract between the GLA and the provider. The GLA Provider Manager will be responsible for monitoring providers throughout the life of the contract, including when performance is below the level as set out in the contract, and will visit the provider on a quarterly basis to discuss performance.

Working with other agencies

7. The GLA's Skills and Employment Delivery Teams will work with partner agencies in line with the AEB [Memorandum of Understanding](#) between the Mayor and DfE, the Memorandum of Understanding between the GLA and the European Social Fund (ESF) Managing Authority and other Service Level Agreements, including:
 - DfE/ESFA. Where providers receive funding from both the GLA and the ESFA in delivering their courses, the GLA will share data and intelligence which indicates concerns over a provider's performance or financial resilience with the ESFA's territorial and case management team to ensure that any measures which are implemented to correct underperformance do not have unintended consequences for the ESFA and vice versa. The ESFA will also share this information with the FE Commissioner.
 - Further to the above (where providers also hold a funding agreement directly with the ESFA), the GLA and ESFA will share intelligence in relation to provider performance and risk. This does not mean that the GLA will act to impose measures that correct underperformance against the ESFA contract. GLA Provider Managers will instigate intervention measures only when indicators evidence a risk to the viability of the GLA Conditions of Funding Agreement (Contract).

- Office for Standards in Education, Children's Services and Skills (Ofsted). Providers who are subject to an Ofsted inspection must make GLA colleagues aware of the inspection on receipt of the notice and invite the GLA provider manager to attend the feedback meeting. Following inspection, the GLA Provider Manager will review the outcomes of inspection and discuss any actions required to improve quality.
- FE Commissioner. For FE providers, the FE Commissioner may review provision funded by the GLA and make recommendations to improve the quality or financial resilience of a provider. The GLA will share information to assist the FE Commissioner and his team to complete any investigations, which will be coordinated by the ESFA. If a provider is visited by the FE Commissioner, the provider must give advance warning to their GLA provider manager and give the option for the GLA provider manager to attend key meetings.
- The ESF Managing Authority and GLA European Programmes Management Unit (EPMU). The GLA is using its AEB Procured provision as match funding to draw down ESF to fund an additional programme of skills provision. The AEB Procured programme deliverables must meet ESF requirements and are subject to audit by the ESF Managing Authority and EPMU. ESF projects may also be audited by the national ESF Audit Authority and the European Commission. Providers must comply with the national eligibility rules and programme guidance for ESF, which are available on the [European Structural and Investment Funds 2014-20 website](#) (also see [GLA webpages](#)).

Terminology

8. "Contract" means the Contract between the GLA and the Provider consisting of the Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed and signed by both Parties, in writing and/or digitally on OPS.
9. "The Managing Authority" means The Managing Authority (MA) that is responsible for managing the national ESF element of the European Structural and Investments Funds (ESIF) programme. In London, the ESF is managed by the GLA's European Programmes Management Unit (EPMU) which acts as an Intermediate Body (IB) on behalf of the Department for Work and Pensions (DWP) which is the national Managing Authority for ESF for England. References to the Managing Authority include the DWP and EPMU.
10. "OPS" means the "GLA Open Project System", the GLA's on-line management information system (MIS), or any successor system and/or any other system which performs any of the same functions and which GLA notifies to the Contractor from time to time.

11. Where this document refers to “delivery year” this is taken to mean August to July in a calendar year.
12. Providers in receipt of AEB Grant funding should refer to the [GLA AEB Grant provision monitoring and intervention policy](#).

Monitoring Delivery

13. Provider managers will aim to work collaboratively with providers to support them in delivering the provision set out in their contract. Provider managers will monitor the progress of performance against the Provider contracted targets, and support action to improve performance and prevent poor performance against the contract. In relation to compliance, the purpose of monitoring is to check that all the necessary policies, procedures and evidence are in place to meet the ESF requirements and support payments made by the GLA to the Provider.
14. The GLA Provider Manager will undertake quarterly reviews of performance, including ESF compliance checks against contracted deliverables, outputs and results. The frequency of monitoring and review visits may be increased if a provider underperforms against the contract deliverables, outputs and results, or if the GLA has other concerns about delivery.
15. Table 1 outlines the areas the Quarterly reviews will cover.

Table 1 – Monitoring Delivery Information	
Information	Monitoring discussion in respect of AEB Procured provision Review of provider risk assessment and mitigation plans.
Individual Learner Record (ILR) and ESF Supplementary Data	Timeliness and accuracy of participant data provided to the GLA. Evidence checks on deliverables, outputs and results to ensure compliance with the Rules including the national ESF data evidence requirements: eligibility and results guidance https://www.gov.uk/government/publications/european-structural-and-investment-funds-eligibility-documents (including subcontracted provision)
Funding Claims	ILR and ESF Supplementary Data evidence checks against funding claims made, including checks against claims by

	<p>delivery strand (ESF Priority Axis 1; ESF Priority Axis 2), for learner support and against the Flexible Allocation.</p> <p>Review of funding for learner support (sample checks against actual costs for learners).</p>
Delivery against profile (outputs and expenditure)	<p>Review of contracted outputs and results against profiled performance, identifying reasons for variance where relevant.</p> <p>Review of expenditure against profile (including by delivery strand, for learner support and against the Flexible Allocation), identifying any reasons for variance to forecast profile.</p> <p>Consideration of any associated risks including potential impact upon contract value.</p> <p>Consideration of recovery actions where delivery is behind profile.</p>
Quality Assurance checks	<p>Sample checks on evidence and face-to-face interviews with learners (including subcontracted provision) to ensure that:</p> <ul style="list-style-type: none"> • learning is appropriate to the ESF Priority Axis and each learner needs/aspirations • qualifications are appropriate to the ESF Priority Axis and the learner's needs/aspirations • participant satisfaction levels are satisfactory • relevant project-specific policies and procedures are in place to meet ESF requirements (including Equalities, Sustainable Development, Health and Safety etc.) and the stated monitoring and review processes are followed
ESF Publicity Requirements	<p>Checks to ensure all publicity materials associated with the AEB Procured provision (including that of subcontractors) adhere to ESF and GLA publicity requirements.</p> <p>Case Studies are provided to publicise positive and ESF contribution to success.</p>

Ofsted inspections	The outcome of any recent Ofsted inspection monitoring visit and the quality improvement actions which the provider is implementing to secure better provision.
Further Education Commissioner assessments (where appropriate to Providers)	The findings or report of any FE Commissioner investigation or diagnostic assessment, and the action plan developed by the provider as a result of assessment.
Financial health assessments	The outcome of any review of the financial performance information where there are risks to the delivery of AEB Procured provision and improvement action is required.
Audit	<p>Reports of audits undertaken, in particular where findings are qualified or require management action.</p> <p>Checks that provider's control systems maintain evidence for each deliverable (including those of subcontractors).</p> <p>Sample check of learner records to confirm eligibility compliance.</p>
Subcontracting Plan	<p>Evidence of provider management of any subcontracted provision and any issues with performance.</p> <p>Evidence of provider monitoring of subcontractor performance and ESF compliance checks.</p>
Participant feedback and complaints	<p>Evidence of how the AEB Procured provider collects feedback from participants and how the feedback is used to inform improvements/changes to programme delivery.</p> <p>Evidence of how complaints are dealt with according to the provider policy.</p>
Other	Any other information applicable to determine the level of risk associated with delivering the contract.

Sub-contracting Arrangements

16. The GLA will want to ensure that provider delivery subcontracting meets strategic aims and enhances the quality of their learner offer for London residents.
17. Subcontracting arrangements were assessed as part of the Provider AEB Procured tender. Subcontractors were required to pass the relevant criteria in the Standard Selection Questionnaire.
18. The GLA must be notified of any proposed change to agreed subcontracting arrangements and approval sought prior to implementing a change. In these circumstances, the GLA reserves the right to revisit the selection criteria as originally tested during procurement to confirm that these criteria would still be met in light of the proposed change
19. In subcontracting plans, providers will be required to state the amount of funding they expect to retain to manage delivery subcontractors. The GLA will consider a retention of up to 20% of funding as a maximum cap and would not expect providers to retain more than this. In exceptional cases, the GLA will consider higher retention amounts and only then if there is a compelling rationale; GLA Provider Managers will assess this on a case-by-case basis.
20. If annual subcontracted delivery aggregate value exceeds £100,000 providers will need to obtain an annual report from an external auditor that provides assurance on their arrangements to manage and control their delivery subcontractors. A certificate to accompany the report, signed by the auditor and the provider's accounting officer or senior responsible person must be submitted to the GLA by July (R11). The GLA Provider Manager may request to see the full report.
21. Providers must not enter into new subcontracting arrangements or increase the value of their existing arrangements if Ofsted has rated their leadership and management as inadequate; if they do not meet the GLA or ESFA Minimum Standards; or if the outcome of their annual GLA or ESFA financial health assessment is inadequate, unless the GLA have provided written permission in advance. These conditions will continue until the GLA are satisfied that the concerns have been addressed and the circumstances below no longer apply.
22. Providers are responsible for all the actions of their delivery subcontractors connected to, or arising out of, the delivery of the services, which they subcontract. Providers must manage and monitor all delivery subcontractors to ensure that high-quality delivery is taking place that meets the GLA's AEB funding rules.

Formal Performance Review Points and Growth Requests

23. Overall performance against each provider annual and lifetime contracted targets will be reviewed at performance management points at least twice per funding year in December and May. Providers may request contract growth at these points if delivery has consistently exceeded the contracted delivery to date and is projected to continue to grow.
24. If, based on the cumulative performance at that point, the GLA deem a provider is unlikely to meet its overall contract delivery targets, the GLA reserves the right, at its discretion, to reduce the contract value or terminate a contract.
25. The AEB Procured Contract includes a break clause allowing the GLA to terminate the Contract at the end of funding years two and three. The annual performance review with respect to exercising the first break clause will be undertaken in December 2020, and in December 2021 for the second break clause.

Underperformance or non-compliance

26. Where underperformance or non-compliance is identified, the GLA will request a provider to propose actions to bring the performance in line with agreed targets within a certain period (a Recovery Plan).
27. The recovery plan must include a series of actions to remedy, or mitigate further consequences, of the trigger being breached. Each action must be:
 - **Specific** – how the action will realise a clear improvement in the financial resilience or quality of the provider
 - **Measurable** – a measurable value or indicator which will be realised as a result of the action
 - **Attributable** – a named officer or officers will have responsibility for achieving the action.
 - **Realistic** – set out how the action will gain the desired improvement within the available resources; and
 - **Timebound** – set a realistic timeframe in which the action will be achieved.
28. The resulting SMART Recovery Plan must be submitted to the GLA Provider Manager via the OPS system. The GLA Provider Manager will review the information provided and discuss action directly with the provider, providing supplementary actions if necessary. The GLA Provider Manager will maintain dialogue with the provider and assist in supporting the provider to address the issue(s).
29. The GLA reserves the right to also implement one or more of the following actions:

- impose additional performance monitoring points and meetings with the GLA Provider Manager;
- the provider's risk plan;
- reports from provider's internal auditors on the management of the provider, including financial compliance and health; and
- provide the Self-Assessment Reports, Quality Improvement Action Plans and implementation updates.

Clawback or contract termination

30. If performance does not improve as a result of the SMART Recovery Plan or the provider fails to implement it, options open to the GLA include reduction or termination of the contract, including clawback of all or part of the funding paid to date.
31. The GLA will work with the provider to explore all avenues for raising performance, achievement and quality before terminating a contract. The decision to terminate is at the GLA's discretion, but circumstances which might lead the GLA to terminate a Contract include:
- failure to address issues in relation to the accuracy, quality and timeliness of data submissions and evidence to support claims;
 - the provider fails to deliver the contracted deliverables, outputs and results, or the data evidences a decline in achievement of targets;
 - the provider becomes insolvent;
 - audit findings identify serious and/or widespread irregularities and/or failures in management control systems.
32. If the intervention results in a provider's contract being cancelled, the GLA has a duty of care to enable any displaced participants to access alternative provision.

Financial Risk

33. In case of insolvency, the contract for services may be terminated with immediate effect and the GLA may, if it considers it appropriate, require that the delivery be transferred to another provider. In these circumstances, the GLA has a duty of care to enable any displaced participants to access alternative provision. Various ESF obligations extend beyond contract termination, including access, retention and/or return of documents for audit purposes. GLA Provider Managers will be required to ensure that the audit trail is secured to guard against future clawback.

Financial Irregularity

34. The Mayor's Office of Policing and Crime (MOPAC), acting on behalf of the GLA, will consider and determine appropriate action for any allegations of suspected fraud and/or financial irregularity, including:
- a funded provider (e.g. college or training provider) has claimed funding from the GLA through deception;
 - a funded provider has broken the funding rules;
 - a funded provider has not delivered education/ training funded by GLA;
 - Corruption (the offering, promising, giving, requesting, receiving or agreeing to accept an inducement or reward, which may influence a person to act against the interests of the GLA) and bribery – for example, in relation to sub-contracting.
35. Where MOPAC determines that there is enough information to investigate the allegation, they may require additional actions to be taken, these can include but are not limited to:
- additional meetings with the GLA Provider Manager and MOPAC Auditor;
 - a review and/or retention of learner files;
 - contact with learners and/or subcontractors to verify information contained in learner files.
36. The ESFA will be informed of allegations that affect their funding streams. If suspected fraud relates specifically to ESF-funded activity, the Managing Authority will be kept informed of the issue, how it is being dealt with and the outcome.
37. Where a fraud or financial irregularity investigation produces evidence to support suspicion or allegations, the GLA may decide to terminate the AEB Procured Contract in accordance with the terms of the contract, and this may also involve the clawback of funding.
38. In the event of a funding audit that results in a qualified opinion, GLA provider managers will monitor delivery more closely until a satisfactory follow-up audit visit is complete.

Audit

39. The AEB Procured provision must comply with ESF rules and guidance and will be subject to the same external audit requirements set by the European Commission (EC) and Managing Authority (MA). Data and information must be accurate and supported by appropriate evidence so that claims made by the GLA to the Managing Authority will also be correct and can be audited successfully.

40. The ESF regulations require an audit trail is maintained for funding received and learner activity. Evidence for each deliverable must be available for audit. Failure to maintain the audit trail will lead to funding being recovered.
41. Late changes to data can incur audit penalties. AEB Procured provision data must be complete and correct when it is submitted.
42. Although the ILR specification allows for 'unknowns' these will impact on the data quality supplied to the EC and should be avoided. ILR and supplementary data must be as complete as possible.

Other formats and languages

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