

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2282

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

Executive Summary:

In support of the delegation of certain Adult Education Budget (AEB) functions to the Mayor at the start of the 2018/19 academic year, the Mayor must put in place the necessary processes to deliver a successful programme of activity and satisfy the Secretary of State that the functions will be implemented and delivered effectively.

To support this process, specialist, external legal advice is required on a range of related matters and this Mayoral Decision seeks approval for expenditure of £150,000 for legal costs incurred in this process.

Decision:

That the Executive Director of Development, Enterprise and Environment approves:

Expenditure up to £150,000 on specialist legal services from Eversheds Sutherland in preparation for the Secretary of State for Education delegating statutory functions relating to the Adult Education Budget (AEB) to the Mayor of London from the 2019/20 Academic Year.

AUTHORISING DIRECTOR

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: Lucy Owen

Position: Executive Director –
Development, Enterprise and
Environment

Signature:



Date:

2/10/19

PART I – NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1. London, and seven Mayoral Combined Authorities, are expecting to take on responsibility for the Adult Education Budget (AEB) in their respective areas from the 2019/20 Academic Year (1 August 2019) subject to a formal transfer of functions from the Secretary of State for Education.
- 1.2. The principal purpose of the AEB is to engage adults and provide the skills and learning they need to equip them for work, an apprenticeship or further learning. It also enables more tailored programmes of learning to be made available, which do not need to include a qualification, to help those furthest from learning or the workplace.
- 1.3. In support of the transfer of these powers, the Mayor must satisfy the Secretary of State that the functions will be implemented and delivered effectively and put in place the necessary processes to deliver a successful programme of activity.
- 1.4. When the statutory functions are formally delegated to the Mayor (expected in early 2019), he will be required to take all AEB related decisions personally¹. In advance of this, all AEB decisions are being treated as though they are a matter reserved by law and for the personal exercise of the Mayor only under the Mayoral Decision-Making in the Greater London Authority protocol.
- 1.5. MD2255 – Devolution of the Adult Education Budget to the Mayor provides further information on the Mayor's decision to accept the AEB functions, subject to the final arrangements being confirmed by the Secretary of State for Education.

2. Objectives and expected outcomes

- 2.1. Given this is a new delivery area for the Mayor, with a circa £311m annual budget involving the discharge of sector specific statutory functions, specialist legal advice is required. Eversheds Sutherland have been engaged (via TfL's legal panel) to provide these services given their expertise in educational law and ability to advise on matters including procurement of delivery providers and contracts and grant arrangements.
- 2.2. To support this process, external legal advice has and continues to be sought on a range of matters and this Director Decision seeks approval for expenditure £150,000 on the same.
- 2.3. Eversheds Sutherland are working and will continue to work with the GLA and TfL legal to provide a range of specialist legal advice required to enable the GLA's informed consideration, preparation for the delegation to it, and its subsequent implementation and delivery of a programme for the delivery of the Adult Education Budget (AEB) functions concerned.
- 2.4. Given that details of the delegation continue to evolve so does the scope, nature and volume of legal advice and so it is not possible to set a fixed price for legal services. Officers are minded at present to allocate £150,000 for such advice although in the event that further expenditure is required in this regard further approvals will be sought.
- 2.5. TfL legal are separately supporting all work related to the statutory delegation of powers.

¹ As per the requirement under Section 39A of the Greater London Authority Act 1999

3. Equality comments

- 3.1. This DD deals solely with the legal costs associated with the delegation of certain educational functions from HM Government to the Mayor. The Public Sector Equality Duty under section 149 of the Equality Act 2010 will be relevant to the exercise of any delegated functions, but is not considered relevant for the purposes of this decision.

4. Other considerations

- 4.1. Eversheds Sutherland were appointed, via the existing Transport for London (TfL) Legal panel² as they demonstrated a particular expertise in educational law. Any legal advice provided by them seeks to mitigate all legal risks for the overall AEB Programme, particularly on key issues such as our procurement approach and contract/grant management.

5. Financial comments

- 5.1. The estimated costs of up to £150,000 for the proposed legal services will be funded from the Adult Education Implementation budget for 2018-19 held within the Skills & Employment Unit. If further advice beyond the initial budget resources allocated is required, this will be subject to further approval via the Authority's decision-making process.

6. Legal comments

- 6.1. The decisions requested of the Director concern preparation for the exercise of powers proposed to be delegated to the Mayor by the Secretary of State under section 39A of the Greater London Authority Act 1999 (GLA Act). Under section 34 of the GLA Act, the GLA may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any functions of the GLA.
- 6.2. In taking the decision requested, the Director must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic (race, disability, sex, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (section 149 of the Equality Act 2010). To this end, the Director should have particular regard to section 3 (above) of this report.

7. Planned delivery approach and next steps

- 7.1. The agreement between the GLA and Eversheds Sutherland will be monitored by TfL Legal and the GLA to ensure any advice sought is reasonable and proportionate. As noted at section 2.3 above whilst officers are minded to allocate £150,000 for legal costs at this point the project and need for legal advice continues to evolve. The need for additional expenditure in this regard is therefore, not unlikely. Approval for such additional expenditure will be sought by way of further Decisions.

Appendices and supporting papers:

None

² TfL Legal provide the GLA's legal service under a shared services 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

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:

(✓)

Assistant Director/Head of Service:

Lucy Owen has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

(✓)

Financial and Legal advice:

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

(✓)

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on the 24 September 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

25-09-18

TOM MIDDLETON ON BEHALF OF MARTIN CLARKE