



Department
for Education

Devolution of adult education functions, from Academic Year 2019/20

Memorandum of understanding

January 2019

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Introduction

THIS MEMORANDUM OF UNDERSTANDING (which expression shall include the Appendices) ('MoU') is dated 1 January 2019.

Between:

(1) THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ('the Secretary of State'), acting through

- the Department for Education ('the Department'), a Department of Her Majesty's Government responsible for child protection, education (compulsory, further and higher education), apprenticeships and wider skills in England; and

- the Education and Skills Funding Agency ('ESFA'), an Executive Agency of the Department, responsible for funding education and skills for children, young people and adults;

and

(2) THE MAYORAL COMBINED AUTHORITIES ('CA')

Greater Manchester

Churchgate House, 56 Oxford Street, Manchester M1 6EU

Liverpool City Region

Mann Island, PO Box 1976, Liverpool L63 3HN

West of England

3 Rivergate, Temple Quay, Bristol BS1 6ER

Tees Valley

Cavendish House, Teesdale Business Park, Stockton-on-Tees TS17 6QY

West Midlands

16 Summer Lane, Birmingham B19 3SD

Cambridgeshire and Peterborough

Unit 3, The Incubator, Alconbury Weald Enterprise Campus, Huntingdon PE28 4WX

Each a 'Party', together the 'Parties'. Where an activity is to be undertaken by the Department, the ESFA or the CA, this is specified.

References to an 'Academic Year' in this MoU are to the period running from 1 August in one calendar year to 31 July in the following calendar year.

References to 'Data Protection Legislation' in this MoU are to UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy. References to 'UK Data Protection Legislation' in this MoU are to any data protection legislation from time to

time in force in the UK including the Data Protection Act 2018 or any successor legislation.

References to the 'CA Area' in this MoU are to the geographical area of the CA (namely the totality of the geographical areas of the constituent authorities of that area).

1. Context

1.1 Certain functions of the Secretary of State which relate to adult education under the Apprenticeships, Skills, Children and Learning Act 2009 ('ASCAL 2009'), and the associated adult education budget ('AEB') have been transferred to specified CAs by way of Orders made under the Local Democracy, Economic Development and Construction Act 2009.¹

1.2 This MoU refers to this transfer of functions as the 'devolution of the adult education functions'. Devolution of the adult education functions applies in respect of Academic Year 2019/20 (AY 2019/20) and thereafter.

1.3 This MoU sets out jointly agreed working arrangements between the Parties which relate to this new legal framework. It builds on the collaborative working relationship between the Parties, which were established as part of the transitional year, 2018/19 arrangements, and set out in an MoU for that year.

1.4 Each Party is committed to agreeing an approach and future relationship that will ensure national and local priorities for residents funded by the AEB are delivered in the most effective way possible and that the wider context of post-16 learning and skills provision funded by the Parties is considered. This MoU sets out an agreed approach to relevant matters following devolution of the adult education functions.

1.5 Arrangements to deliver the Parties' shared objective of closer collaboration across the post-16 learning and skills environment will be agreed separately, as will any working arrangements agreed between CAs, and between CAs and the Greater London Authority.

2. Background

2.1 Each relevant Order transfers to the specified CA adult education functions under section 86 to 88 of ASCAL 2009 with the exception of functions relating to apprenticeships training, adult detention or any power to make regulations or orders. The

¹ Greater Manchester <http://www.legislation.gov.uk/id/uksi/2018/1141>
Liverpool City Region <http://www.legislation.gov.uk/id/uksi/2018/1142>
West of England <http://www.legislation.gov.uk/id/uksi/2018/1143>
West Midlands <http://www.legislation.gov.uk/id/uksi/2018/1144>
Tees Valley <http://www.legislation.gov.uk/id/uksi/2018/1145>
Cambridgeshire & Peterborough <http://www.legislation.gov.uk/id/uksi/2018/1146>

functions under section 86 to 88 are as follows, and are exercisable by the CA instead of by the Secretary of State in relation to the CA area:

- section 86 (education and training for persons aged 19 or over and others subject to adult detention);
- section 87 (learning aims for persons aged 19 or over: provision of facilities); and
- section 88 (learning aims for persons aged 19 or over: payment of tuition fees).

2.2 In addition, each Order also provides for the transfer of the Secretary of State's functions under section 90 of ASCAL 2009 which relate to the encouragement of education and training for persons aged 19 or over, and section 100(1) of ASCAL 2009 which relates to the provision of financial resources. These functions are transferred to the CA in relation to their area and will be exercisable concurrently with the Secretary of State.

2.3 The following conditions are set on the exercise of the transferred functions:

- the CA must adopt rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100 of ASCAL 2009 in accordance with any direction given by the Secretary of State; and
- in exercising the transferred functions, the CA must have regard to guidance² issued by the Secretary of State (as amended from time to time or replaced by a subsequent document). The CA will give effect to the guidance within the context of local strategic priorities and circumstances.

2.4 The Schedule to each relevant Order contains modifications as to the application of relevant legislative provisions. In addition, part 3 of the Greater Manchester Order makes various consequential amendments to primary and secondary legislation.³

2.5 This MoU sets out agreed ways of working between the Parties to support the carrying out of the transferred functions by the CA, in addition to matters set out in the statutory guidance. The Department acknowledges that in order for the CA to carry out the functions within its area, it must receive funds from the Secretary of State each year.

2.6 Entitlements

2.6.1 Entitlements are set out in the ASCAL 2009, and enable eligible learners to be fully funded for the following qualifications:

- English and maths, up to and including level 2, for individuals aged 19 and over, who have not previously attained a GCSE grade A* - C or grade 4, or higher; and/or
- first full qualification at level 2 for individuals aged 19 to 23, and/or
- first full qualification at level 3 for individuals aged 19 to 23.

Further information about the arrangements in 2018/19, are included in the documents in these links:

² <https://www.gov.uk/government/publications/exercising-devolved-adult-education-functions>

³ <http://www.legislation.gov.uk/id/ukxi/2018/1141>

<https://www.gov.uk/government/publications/adult-education-budget-funding-rules-2018-to-2019>

<https://www.gov.uk/government/publications/qualifications-getting-approval-for-funding/legal-entitlements-and-qualification-eligibility-principles-within-in-the-adult-education-budget>

2.6.2 The Secretary of State will continue to be responsible for setting the minimum literacy and numeracy level required to operate in everyday life in accordance with section 88 of ASCAL 2009. The minimum level is currently set at Level 2 of the Regulated Qualifications Framework.

2.6.3 The Secretary of State will continue to be responsible for determining which qualifications are covered by the entitlement. The Department will annually publish the list of qualifications, up to and including the minimum level, which are covered by the entitlement. The Department is responsible for reporting against a consistent set of qualifications. Eligible learners exercising their entitlement must be enrolled on courses leading to qualifications from the specified list of qualifications. The CA may choose to fund other provision (in addition to those specific entitlement qualifications), using the AEB.

2.6.4 The government has announced that a free entitlement to basic digital skills will commence from the beginning of AY 2020/21. This will operate in a similar way to the English and maths entitlement. The government will consult on new national standards for basic digital skills and the skills level at which to set the entitlement.

2.6.5 The CA will ensure equal access to English and maths provision under the entitlement for people with relevant protected characteristics under the Equality Act 2010. This may include access to provision of English for Speakers of Other Languages (ESOL) courses.

3. Purpose

3.1 The purpose of this MoU is to establish ways of working and an agreed approach to the discharge of the respective responsibilities of the Parties in relation to devolution of the adult education functions. It builds upon the January 2018 paper which encapsulated many of the assurances relating to the readiness conditions and covers the following areas:

- how decisions around the funding of provision are reached and communicated;
- managing financial risk, including in the event of insolvency and maintaining a sustainable and financially viable post-16 provider base;
- educational performance minimum standards;
- protection of learners;
- management of AEB funds;
- management of providers, including collaborative working to minimise administrative burdens;
- wider CA skills planning and the place of AEB within that; and
- governance of the CA's AEB.

4. Key objective

4.1 The Key Objective is to achieve effective engagement between the Parties, including coordinated local engagement with providers of adult further education ('Providers').

5. Principles of collaboration and the parties' responsibilities

5.1 The Parties agree to adopt the following principles ('Principles') in relation to the Key Objective:

- a. to work collaboratively at all levels, as well as to learn, develop and seek to exploit the full potential of the devolution of adult education functions, through the lens of the learner journey, including through budget lines, taking, where possible, complementary and consistent approaches, whilst recognising local priorities and autonomy;
- b. to share, on at least a quarterly basis, relevant information, experience, materials and skills, so as to learn from each other, develop effective working practices and to work collaboratively to identify solutions, eliminate duplication, mitigate risks and minimise costs;
- c. to adhere to all statutory requirements and best practice (including the seven principles of public life (the Nolan Principles) set out in Appendix A).
- d. to comply with applicable laws and standards including data protection and freedom of information legislation;
- e. to act professionally and without undue delay;
- f. each Party will consider the implications of any issues arising for the other Party and consult appropriately, if they deem that it is required, e.g. where there is, or is likely to be, a clear impact on the financial viability of colleges or other training providers;
- g. to seek to ensure sufficient and appropriately qualified employees and other necessary resources are available and (in the case of employees) authorised to fulfil the responsibilities set out in this MoU;
- h. to act in good faith to support achievement of the Key Objective and compliance with these Principles;
- i. to set out joint governance arrangements to underpin these Principles;
- j. to have consideration for each other in the performance of their respective roles and responsibilities as set out in this MoU; and
- k. to communicate with stakeholders (including Providers), openly, transparently and wherever possible, consistently.

6. Ways of working

6.1 Financial resources, consideration of jointly-funded provider financial health and sector stability:

6.1.1 The Parties will meet on a regular basis to discuss provider and sector financial stability; consider jointly, planned provider funding allocations from the ESFA and CA respective budget streams (including in-year changes); and consider the cumulative effect of planning decisions, by the ESFA and CA, on provider financial health. The CA and ESFA will be responsible for taking their own decisions on provider funding allocations – there is no requirement for them to jointly agree these allocations. However, using these regular local discussions, the CA and ESFA will keep each other sighted, as early as possible, on any planned or proposed variation to allocations, enabling ESFA to consider the impact on the overall financial position of the provider.

6.1.2 Providers that hold contracts or grant agreements with both CA and ESFA will be subject to ESFA financial health processes and assessments, in addition to any checks/due diligence (see paragraph 6.8.1 below) conducted by the CA. Information relating to these financial health assessments will be discussed and shared, in accordance with any Data Sharing Agreements (DSA) or other agreed mechanism, with the CA as soon as reasonably practicable. Where such a financial health assessment raises any issues of concern, ESFA will share that information with the CA as soon as reasonably practicable.

<https://www.gov.uk/government/publications/esfa-financial-health-assessment>

6.1.3 The Department, the ESFA and the CA commit to consulting with each other through the arrangements outlined at paragraph 6.1.1, in order to minimise the risk of insolvency of any further education institution in the CA area. The ESFA and the CA will participate in and cooperate with the current national arrangements for monitoring of provider financial health. When intervention is likely, both ESFA and CA, as funding stakeholders, will engage in dialogue. How and when this engagement takes place will vary, subject to the type of provider concerned, what the risks and issues are and the scale of funding interest of the ESFA/CA.

6.1.4 Where Intervention occurs, the ESFA and the CA are not expected to take the same action as each other (see paragraph 6.5.5), however discussion before action is taken is essential to understand (a) if, in case of the removal of funds by one Party, that would render the provider financially unsustainable; and (b) the consequential impact of the action.

6.2 Funding decisions:

6.2.1 The CA and ESFA will share with each other their intended timelines for communicating funding decisions, allowing Providers to plan delivery for the following Academic Year.

6.2.2 Appendix B sets high-level target dates for planned activity in respect of the Department's communication of budgets to the CA and how they link to the commencement of CA payments to Providers in the relevant Academic Year.

6.2.3 Following receipt of a budget from HM Treasury for delivery of adult education functions, the Department will make all reasonable efforts to

communicate the CA-level AEB budget by 31 January in the calendar year in which the relevant Academic Year commences, e.g. by 31 January 2019 for Academic Year 2019/20. In the event that the Department is unable to meet the 31 January aim, it will inform the CA as a matter of urgency.

6.2.4 The Department will aim to transfer the relevant budget, as a Section 31 (Local Government Act 2003) grant, via the 'Single Pot' or any subsequent, replacement arrangement, to the CA in April each year - in accordance with the arrangements set out in Appendix B. In the event that the Department is unable to transfer the budget by 30 April, it will notify the CA as a matter of urgency. Once the budget has been transferred by the Department to the CA, the CA will have flexibility to utilise that funding to meet administrative / operational costs associated with managing the budget and retain any underspends generated within the budget.

6.2.5 The CA will, in considering provider-funding decisions, consider its 'conflicts of interest' policy. As a minimum, that policy will include:

6.2.5.1 requirements on all those involved in decision-making and all those receiving funding from this budget to declare and record actual and perceived conflicts of interest; and

6.2.5.2 appropriate external checks, an internal monitoring process and external input to decisions. For clarity, this relates to monitoring / oversight / arbitration on conflicts of interest matters - independent legal or audit advice would satisfy the requirement for external input and/or checks. This paragraph does not mean the CA must have external input to, or external checks on all its general funding decisions.

6.2.6 The Department will consult the CA and ESFA in a timely manner and before decisions are made, on any proposed changes to its methodology for calculating CA and ESFA shares of the AEB. The Department, the CA and ESFA will consider jointly any other proposals that could impact on use of the AEB by the CA and ESFA, e.g. where additional requirements / entitlements or new programmes are being considered or where budget changes from HM Treasury are notified. For clarity, no additional funding is planned for the specific purpose of delivering the digital skills entitlement.

6.2.7 Funding of the learner will be determined by their residency postcode prior to enrolment. The ESFA will consider and agree appropriate funding for residents of non-devolved areas where the provider delivering the provision has an ESFA AEB funding agreement. The CA will decide and agree appropriate funding for its residents where the provider delivering the provision has a CA funding agreement. The ESFA and CA will fund their respective learners, as determined by their residency postcode, for the duration of their learning aim or programme, irrespective of whether the learner moves to another area whilst in learning; and the learner's eligibility will not change during the learning aim or programme. The ESFA and CA will ensure their respective learners continue to be eligible for funding for the whole of the learning aim or programme if they are eligible for funding at the start, even if the duration is for over one year.

6.3 Insolvency:

6.3.1 The Technical and Further Education Act 2017 ('TFEA') makes provision for a new insolvency regime applicable to certain further education providers that is

due to come into effect on 31 January 2019 and will provide an orderly process for insolvency of a failed college. The insolvency regime applies aspects of normal insolvency law to FE and sixth form colleges in England and Wales that are statutory corporations. TFEA has also introduced a special administration regime, known as an education administration, with a special objective to protect learner provision for existing students at an insolvent FE body (as defined at section 4 of TFEA). The insolvency regime under TFEA only applies to FE bodies incorporated under the Further and Higher Education Act 1992 and specialist designated institutions. Some providers, such as Independent Learning Providers (ILPs) are not subject to TFEA and hence the education administration provisions will not apply to these providers. Providers may still be subject to normal insolvency provisions under the Insolvency Act 1986 and associated legislation.

6.3.2 The costs of funding an education administration, for the purposes of achieving the special objective are not required to be met by the CA, regardless of where the college is and where the majority of learners are funded from. TFEA includes a flexible funding power allowing the appropriate national authority (defined in section 5 of TFEA), to decide, on a case-by-case basis, whether and how to fund an education administration.

6.3.3 For the avoidance of doubt, the Parties agree that the CA will not be expected to pay for the costs of the Special Administration Regime itself, nor to provide any form of exceptional financial support to any college (including any college within the CA area) which is subject to the FE insolvency regime under TFEA. The CA and ESFA will however be expected to co-operate with any Independent Business Review or formal insolvency procedure.

6.3.4 The CA will continue to fund its resident learners where they are affected by a college insolvency under TFEA (where they are being funded from the CA's devolved AEB), while a solution to protect those learners is identified and delivered. In the same way, ESFA will continue to fund learners resident in non-devolved/delegated areas, where they are funded from the non-devolved/delegated AEB.

6.4 Learner protection:

6.4.1 As part of the devolution of adult education functions, there should be no lessening of learner protections. The CA and ESFA will, in their respective conditions of funding with providers, seek to secure protection for learners, ensuring that the terms of legal arrangements with a provider, whether a Grant Funding Agreement or Contract for Services, include the following provisions:

- AEB funds are only provided where learners are engaged in safe and appropriate learning facilities;
- AEB funds are only provided where learners are protected from extremism and the Provider complies with the 'Prevent' Duty;
- arrangements exist for the appropriate handling and protection of AEB learner data; and
- equal treatment and access to provision for AEB-funded learners and relevant adjustments under the Equality Act 2010 are required:
<https://www.gov.uk/guidance/equality-act-2010-guidance>.

6.4.2 In the event that a learner protection issue arises, giving a Party cause for concern, the relevant Party shall take action to inform the other. The Parties will agree, on a case-by-case basis, what action will be taken and by whom.

6.5 Quality/Intervention:

6.5.1 The Department will specify national educational performance Minimum Standards that will apply each year, consulting with the CA in a timely manner on any proposals to change those Standards for 19+ provision. Provision funded by the CA for its resident learners that falls in scope of national Minimum Standards, will form part of the national assessment of provider performance against these national standards. Further guidance on the current national standards is available here: <https://www.gov.uk/government/publications/minimum-standards-2017-to-2018>

6.5.2 ESFA will ensure that the CA is informed as soon as reasonably practicable, about post-19 providers, also funded by ESFA, that fall below national Minimum Standards.

6.5.3 The CA and ESFA will share their respective performance information for adult education and training provision commissioned by them from jointly-funded providers, through their regular dialogue.

6.5.4 The ESFA and CA will share information on national intervention activity involving CA-funded Providers, including activity arising or planned following FE Commissioner intervention activity, Ofsted inspection, Minimum Standards failure or any Notice to Improve issued to a Provider. The CA and ESFA will meet on a quarterly or case by case basis, depending on circumstances to agree the extent of CA involvement, taking into account the number of CA residents in learning at the Provider and any known future plans.

6.5.5 Where Intervention occurs, the action taken by ESFA and the CA should be consistent with their respective conditions of funding, but ESFA will operate within the wider national intervention policy set by the Department. The ESFA and the CA are not expected to take the same action as each other, however discussion before action is taken is essential to understand (a) if, in case of the removal of funds by one Party, that would render the provider financially unsustainable; and (b) the consequential impact of the action.

6.5.6 The Department will engage with the CA and ESFA on national programmes and initiatives that support quality improvement across FE, including through the FE College Improvement Board.

6.6 Fund management:

6.6.1 The Parties will ensure that appropriate arrangements are in place for the receipt and disbursement of AEB funds. Paragraph 6.2.4 above sets out the nature of the grant payment that will be made to the CA, by the Department. The Department and the CA will also work together to evaluate and report on use of AEB funds, including in terms of value-for-money, in accordance with the relevant requirements of the Single Pot Assurance Framework National Guidance, as amended from time to time or any subsequent document:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/516215/Single_Pot_Assurance_Framework.pdf. The Parties will

consider together, the practical arrangements for information sharing in respect of any evaluation, including through the activity outlined in paragraph 6.1.1.

6.6.2 The CA and ESFA will, for their respective areas of responsibility, separately publish and operate their own systems of rules and principles that safeguard public funding; confirm eligibility; set out contracting and sub-contracting arrangements; set out management information requirements on Providers; and document payments and performance management arrangements for AEB-funded activity.

6.6.3 The CA and ESFA will publish on their respective websites, accessible to the general public, the terms and conditions of their funding agreements and contracts for services which they use with Providers and will also publish provider allocations information in the autumn term and any subsequent changes.

6.7 Data:

6.7.1 The Parties will jointly agree through the Devolution Data Group (DDG), a set of reliable, accessible and timely data, through appropriate DSAs or other agreed mechanism, to facilitate the delivery of operational processes and strategic planning.

6.7.2 The Parties will act in accordance with any DSAs or other agreed mechanism they have and will consider the impact on Providers of any additional proposals made.

6.7.3 Learner data will continue to be gathered from providers in a national data system via the Individualised Learner Record (ILR), from which the ESFA will share data (in accordance with the agreed DSA or other agreed mechanism) to support the CA in carrying out its adult education functions. It is recognised that the CA may have additional data requirements that go beyond what is currently collected nationally through the ILR and that the Department or ESFA may propose changes to the ILR from time-to-time. The CA will be engaged in the ILR refresh process through the DDG. The Parties will work together through the DDG to maximise the effective sharing of data in accordance with data protection legislation, and to manage potential changes to the system, minimise new data-provision demands on Providers and avoid duplication.

6.7.4 Section 40 of the TFEA amends section 54 of the Further and Higher Education Act 1992 in respect of England to ensure that the Secretary of State can obtain information from providers of further education who receive funding from CAs. This will enable the continuation of current arrangements to gather data on further education in England and will enable the gathering and publication of consistent and comparable data on the operation of the further education system across England, as has been the case before devolution of the adult education functions.

6.7.5 The CA will provide information to the Department that the Secretary of State may reasonably require for purposes connected with further education (content and timing of such data to be agreed between the Parties).

6.8 Commissioning

6.8.1 The CA and ESFA will conduct appropriate due diligence in establishing which Providers will deliver AEB-funded provision, complying with Public Contracts Regulations 2015, as appropriate.

6.8.2 ESFA will provide a register of its current AEB Providers.

6.8.3 The CA and ESFA will undertake legally compliant exercises and put in place contract/performance management regimes.

6.8.4 The CA and ESFA will ensure each has market entry and exit requirements and that these are clear to stakeholders, including Providers.

6.9 Skills planning / priorities

6.9.1 The Parties will work together, through the Skills Advisory Panel (SAP) or local variation thereof, where appropriate, and considering the Local Industrial Strategy (where one exists), to develop skills needs analysis and plans. Such plans will be designed to ensure a strategic landscape is built for learners that responds to local and national priorities and economic needs. Arrangements will be agreed between the Parties under the 'closer collaboration' arrangements set out at paragraph 1.5.

6.10 Governance

6.10.1 The Parties will meet under formal governance arrangements (to be established) to discuss matters in respect of AEB devolution and to review progress against the adult education functions as set out in this MoU. This will comprise:

- in support of the exercise of the devolved functions, the Secretary of State, or relevant Minister, and the Mayor and/or the Mayor's representative will meet on an annual basis to consider the national and regional skills agenda and what more can be done to support CA skills objectives.
- the Department will meet together with all CAs to which adult education functions have been devolved, and the GLA, to consider post-16 policy design and implementation arrangements, to support delivery of the CA's skills priorities;
- the Parties will meet on a quarterly basis, or as required, as part of the continued operational relationship between the Department, the ESFA and the CA. These meetings will consider progress and how the Parties can collaborate to best effect, in the interests of learners; and
- in addition to these meetings, the Parties will meet to discuss other aspects of the adult education functions. Any Party can convene these meetings.

7. Costs and liabilities

7.1 Except as otherwise provided for in this MoU, the Parties will each bear their own costs and expenses incurred in complying with the ways of working under this MoU.

7.2 Each Party shall remain liable for any losses or liabilities incurred due to their own or their employees' actions and neither Party intends that the other shall be liable for any loss it suffers as a result of this MoU.

8. Confidentiality

8.1 Each Party understands and acknowledges that it may receive or become aware of confidential information belonging to another Party, whether in the course of operating this MoU or otherwise.

8.2 Each Party shall treat another Party's confidential information as confidential and safeguard it accordingly, and not disclose another Party's confidential information to any other person (except their employees, agents, and professional advisers to which such disclosure is necessary for the purposes contemplated under this MoU).

8.3 These obligations of confidentiality shall not apply to any confidential information to the extent that such confidential information is required to be disclosed by a requirement of law placed upon the Party making the disclosure. This includes any requirements for disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or Data Sharing Code of Practice issued by the Information Commissioner.

9. Data protection and record keeping

9.1 The Parties confirm that they shall comply with their responsibilities under Data Protection legislation. To the extent a Party is processing another Party's data (for example, where the CA has access to learner records provided by the Department) each Party will safeguard such data and treat it in the same manner as it would treat its own data to comply with the requirements of Data Protection legislation.

9.2 The CA will permit access to any records, data and information collected by it in relation to Department-funded programmes ('Records') to the Department and any persons, including other crown bodies and auditors (including third party auditors acting on the Department's instructions) to inspect such Records on reasonable notice. This may include taking copies of such Records and sharing the same with other government agencies. The CA will ensure that the Department (and those acting on its behalf) can use those Records for such purposes and the CA shall secure all necessary consents to share any personal data (including sensitive personal data) comprised in such Records, with the Department.

10. Assurance and audit

10.1 The Parties will use all reasonable endeavours to ensure adult further education providers they fund adhere to the post-16 audit code of practice:

<https://www.gov.uk/government/publications/post-16-audit-code-of-practice>.

10.2 The Parties are responsible for assurance of their own funds but will consider together, whether a Joint Audit Code of Practice could be introduced, to help minimise the administrative burden across Provider post-16 learning and skills activity.

11. Start date and duration

11.1 This MoU will commence on the date of this agreement. In the event that there is an irreconcilable dispute arising between the Parties in relation to matters set out in this MoU, it may end upon termination by either Party, having first exhausted all other avenues/attempts at resolution, set out at sections 13 and 14 below. In those circumstances, either Party may terminate this MoU by giving to the other Party written notice expiring in a minimum of three (3) months or at the end of the latest Academic Year for which the CA has issued funding allocations to providers, whichever is later. Termination of this MoU by either Party does not:

- revoke or amend the devolution Order;
- change the CA's continuing obligation to act in regards to the Statutory Guidance; or
- terminate any separately signed arrangements arising from agreement to this MoU.

11.2 In the event of termination of this MoU, the Parties will seek to work together to ensure the continuation of:

- appropriate assurances around financial liabilities in the event of FE insolvency, as set out in section 6.3 above; and
- appropriate national arrangements to support AEB delivery, including maintaining provider financial health, data and audit processes.

12. Review and amendments

12.1 This MoU will be reviewed at the request of either Party, the first review to be carried out around one (1) year after the date of commencement. It may also be reviewed as part of the governance arrangements, set out at section 6.10 and any dispute resolution procedure, as set out at section 14.

12.2 Amendments to this MoU may only be made upon written agreement of the Parties.

13. Communications

13.1 All notices or communications under this MoU shall be in writing and sent for the attention of the representatives whose contact details are set out below or to such other person or other address as the relevant Party may give notice to the other:

For the Department: Head of Adult Education Budget Devolution Team

For the CA: Appropriate delegated official

For the ESFA: Head of Adult Education Budget Devolution Team

14. Escalation procedure

14.1 Any dispute arising from this MoU which cannot be resolved through discussions between the Parties' representatives using the facility outlined in section 13 shall be referred to a Deputy Director of the Department and/or ESFA and the CA delegated

decision maker, who shall convene within thirty (30) days of such referral to discuss and seek to resolve the dispute.

14.2 In the event the dispute remains unresolved, it is then escalated to the relevant Director General of the Department (currently Director General, Further and Higher Education Directorate), and CEO of the CA.

14.3 The final route for escalation, if a decision cannot be agreed at senior officer level (DG/CEO), would be for the relevant Minister and Mayor to meet and discuss.

14.4 Where all these avenues have been explored and an impasse remains, either Party can decide to terminate the MoU, giving the requisite notice period, in accordance with section 11.

15. Miscellaneous

15.1 This MoU does not confer any rights on any third party. Nothing in this MoU shall be interpreted as limiting, superseding, or otherwise affecting either Party's normal operations in carrying out its statutory, regulatory or other duties. This MoU does not limit or restrict either Party from participating in similar activities or arrangements with other entities.

15.2 Nothing in this MoU shall create a partnership or joint venture between the Parties, nor shall this MoU constitute one Party as the agent of another Party nor the employees, contractors or consultants of one Party as those of another Party. No Party shall have authority to enter into any contract, warranty or representation as to any matter on behalf of another Party. No Party shall be bound by the acts or conduct of another Party.

16. Status

16.1 This MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour it.

17. Governing law and jurisdiction

17.1 This MoU shall be governed by and construed in accordance with English law.

Signed

This MoU was signed in December 2018, on behalf of the Secretary of State for Education (including the Education and Skills Funding Agency) and the Combined Authority and agreed to commence on the date stated at the beginning (1 January 2019).

Appendix A: Nolan principles

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B: Allocations and payments

| <u>Target date</u> | <u>Planned activity.</u> |
|--------------------|---|
| | <u>NB. Dates and activity in this table are aims and will follow receipt, by The Department, of the relevant budget information.</u> |
| January 2019 | The Department notifies CA of AEB budget allocation for 2019/20 academic year: 1 August 2019 to 31 July 2020 |
| April 2019 | The Department pays to CA, AEB funds for 2019-20 financial year : August 2019 to March 2020 (8 months) |
| August 2019 | CA begins making payments to Providers for academic year 2019/20 |
| January 2020 | The Department notifies CA of AEB budget allocation for 2020/21 academic year: 1 August 2020 to 31 July 2021 |
| April 2020 | The Department pays to CA, AEB funds for 12 months activity: 4 months of academic year 2019/20 (April 2020 to July 2020) and 8 months of academic year 2020/21 (August 2020 to March 2021) |
| April 2020 | CA continues making payments to Providers for 2019/20 academic year, period April 2020 to July 2020 |
| August 2020 | CA begins making payments to Providers for 2020/21 academic year |



Department
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