



Department
for Education

Delegation of certain adult education functions to the Mayor of London

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 MAYOR OF LONDON** of City Hall, The Queen's Walk, London, SE1 2AA ('the Mayor').

Each a 'Party', together the 'Parties'. Where an activity is to be undertaken by the Department, the ESFA or the Mayor / GLA, 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.

This MoU makes reference throughout to 'the GLA', being the Greater London Authority, established under the Greater London Authority Act 1999 ('GLA Act'), and of which the Mayor forms part. Where reference is made to 'GLA Area' in this MoU, this means the geographical area of Greater London as defined in section 2(1) of the London Government Act 1963.

The Secretary of State has delegated certain functions set out in the Apprenticeships, Skills, Children and Learning Act 2009 ('ASCAL 2009') to the Mayor via section 39A of the GLA Act. The effect of subsection 39A(6) of the GLA Act is that those functions are exercisable by the Mayor only and are not capable of further delegation. The Mayor will carry out the delegated functions in a manner which is consistent with section 39A(6), and where appropriate with the support of GLA staff. References to the Mayor and GLA in this document should be read accordingly.

Under subsection 39A(5) of the GLA Act, a function delegated to the Mayor may be revoked at any time by any Minister of the Crown. This MoU does not limit the ability of a Minister of the Crown to revoke the delegation in accordance with section 39A(5), however the Department expects that any such revocation would be carried out in accordance with general public law principles and at an appropriate time during business planning cycles so as to minimise the impact on learners and funding recipients.

1. Context

1.1 Certain functions of the Secretary of State which relate to adult education under the ASCAL 2009 and the associated Adult Education Budget (AEB) have been delegated to the Mayor. The delegation arrangements are set out in a delegation letter dated 6 December 2018 and agreed by the Mayor in accordance with S39A of the GLA Act. The delegation letter is attached at Appendix A.

1.2 This MoU also refers to this delegation of the specified functions as ‘devolution of the adult education functions’. Devolution of the adult education functions and associated AEB applies in respect of Academic Year 2019/20 (AY 2019/20) and thereafter.

1.3 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 the delegation.

1.4 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 the Mayor (acting where appropriate through the GLA) and Combined Authorities (CAs).

2. Background

2.1 The Secretary of State has delegated to the Mayor the 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 functions under section 86 to 88 are as follows, and are exercisable by the Mayor instead of by the Secretary of State in relation to the GLA 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, the Secretary of State has delegated 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 delegated to the Mayor in relation to the GLA area and will be exercised concurrently with the Secretary of State.

2.3 The Permanent Secretary for the Department is the Principal Accounting Officer responsible and accountable to Parliament for the proper stewardship of the resources allocated to the Department. The delegation letter provides for a delegation of functions by the Secretary of State to the Mayor and is subject to certain limited conditions as set out in the letter and the enabling legislation. In exercising the delegated functions, the Mayor must have regard to guidance issued by the Secretary of State for this purpose (as amended from time to time or as replaced by a subsequent document). The Mayor will give effect to the guidance within the context of local strategic priorities and circumstances.

2.4 As set out in the delegation letter, provided that the delegated functions are exercised by the Mayor in accordance with the conditions on the exercise of the delegated functions, the requirements to which the Mayor is subject under [Managing Public Money](#), and any associated MoU, the Secretary of State and the Department Accounting Officer will not participate in, or approve, decisions taken by the Mayor regarding the exercise of the delegated functions.

2.5 The [AEB Mayoral Board Constitution](#) sets out the governance approach to decision making in relation to Greater London. In addition, under the GLA 'Mayoral Decision-Making in the Greater London Authority' protocol, the delegated functions are categorised as a matter reserved by law for the personal exercise of the Mayor only.

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

2.7 Entitlements

2.7.1 Entitlements are set out in 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 is included in the documents in these links:

<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>

2.7.2 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.

2.7.3 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 Mayor may choose to fund other provision (in addition to those specific entitlement qualifications), using the AEB.

2.7.4 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.

2.7.5 The Mayor 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 delegation 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 GLA skills planning and the place of AEB within that; and
- governance of the Mayor'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 delegation 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 B).
- 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 GLA respective budget streams (including in-year changes); and consider the cumulative effect of planning decisions, by the ESFA and Mayor, on provider financial health. The Mayor 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 GLA 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 GLA 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 GLA. 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 GLA as soon as reasonably practicable. Where such a financial health assessment raises any issues of concern, ESFA will share that information with the GLA as soon as reasonably practicable.

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

6.1.3 The Department, the ESFA and the GLA 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 GLA area. The ESFA and the GLA will participate in and cooperate with the current national arrangements for monitoring of provider financial health. When intervention is likely, both ESFA and GLA, 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/GLA.

6.1.4 Where Intervention occurs, the ESFA and the GLA 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 GLA 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 C sets high-level target dates for planned activity in respect of the Department's communication of budgets to the GLA and how they link to the commencement of GLA 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 GLA's 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 GLA as a matter of urgency.

6.2.4 The Department will aim to transfer the relevant budget to the GLA in April each year - in accordance with the arrangements set out in Appendix C. In the event that the Department is unable to transfer the budget by 30 April, it will notify the GLA as a matter of urgency. Once the budget has been transferred by the Department to the GLA, the GLA 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, in accordance with the terms of the

delegation letter. The delegation letter provides for the recovery of underspends by the Secretary of State in circumstances where the Secretary of State considers funds have not sufficiently been committed to be spent. In these circumstances, reasoned decisions will be provided in writing to the Mayor.

6.2.5 The Mayor will, in considering provider-funding decisions, consider the GLA's '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 Mayor must have external input to, or external checks on all the Mayor's general funding decisions.

6.2.6 The Department will consult the GLA and ESFA in a timely manner and before decisions are made, on any proposed changes to its methodology for calculating GLA and ESFA shares of the AEB. The Department, the GLA and ESFA will consider jointly any other proposals that could impact on use of the AEB by the GLA 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/delegated areas where the provider delivering the provision has an ESFA AEB funding agreement. The Mayor will decide and agree appropriate funding for London's residents where the provider delivering the provision has a GLA funding agreement. The ESFA and GLA 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 GLA 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 GLA, 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 GLA 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 GLA area) which is subject to the FE insolvency regime under TFEA. The GLA and ESFA will however be expected to co-operate with any Independent Business Review or formal insolvency procedure.

6.3.4 The GLA will continue to fund its resident learners affected by a college insolvency under TFEA (where they are being funded from the GLA's delegated 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 delegation of adult education functions, there should be no lessening of learner protections. The GLA 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 GLA in a timely manner on any proposals to change those Standards for 19+ provision. Provision funded by the GLA 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 GLA 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 GLA 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 GLA will share information on national intervention activity involving GLA-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 GLA and ESFA will meet on a quarterly basis or on a case-by-case basis, depending on circumstances to agree the extent of GLA involvement, taking into account the number of GLA residents in learning at the Provider and any known future plans.

6.5.5 Where Intervention occurs, the action taken by ESFA and the GLA 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 GLA 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 GLA 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 arrangements for payments that will be made to the GLA, by the Department. The Department and the GLA will also work together to evaluate and report on use of AEB funds, including in terms of value-for-money. The Department will pay regard to the GLA's timeline for monitoring and evaluation prior to making any request for monitoring and evaluation information. 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 GLA 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 GLA 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 Mayor in carrying out the adult education functions. It is recognised that the GLA 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 GLA 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 continue to obtain information from providers of further education under the devolution arrangements. In particular it applies in relation to a person who is receiving or has received funding from the Secretary of State, a local authority in England or a combined authority. This includes providers who are funded in accordance with the Secretary of State's delegation of functions under section 39A of the Act. Section 54 enables the continuation of current arrangements to gather data on further education in England and the gathering and publication of consistent and comparable data on the operation of the further education system across England.

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

6.8.4 The GLA 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 discuss matters in respect of AEB delegation and to review progress against the adult education functions as set out in this MoU and delegation letter. This will comprise:

- in support of the exercise of the delegated functions, the Secretary of State and the Mayor (or Minister of State for Apprenticeships and Skills and the Deputy Mayor) will meet on an annual basis to consider the overall performance of the AEB in London, the national and regional skills agenda and what more can be done to support GLA skills objectives;
- 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 GLA. These meetings will consider progress how the Parties can collaborate to best effect in the interests of learners, performance of the AEB in London and wider strategic skills issues in London. This will include the proposed use by the Mayor of any underspends as per the terms of the delegation letter. These meetings will be chaired by a Department Deputy Director and all Parties will agree to the terms of reference. Their effectiveness will be reviewed on an annual basis;
- together with CAs to which adult education functions have been devolved, the GLA and the Department will meet to consider post-16 policy design and implementation arrangements, to support delivery of the Mayor's skills priorities; and
- in addition to these meetings, the Parties will meet to discuss other aspects of the delegation 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 GLA 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 GLA 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 GLA will ensure that the Department (and those acting on its behalf) can use those Records for such purposes and the GLA 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 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 GLA has issued funding allocations to providers, whichever is later. Termination of this MoU by either Party does not:

- revoke or amend the delegation letter;
- change the Mayor's continuing obligation to act in accordance with 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 also 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, e-mail: Adult.SkillsDevolution@education.gov.uk.

For the GLA: Senior Manager – Programmes & Governance (Skills & Employment), e-mail: aeb@london.gov.uk

For the ESFA: Head of AEB Devolution, e-mail: AEB.Devolution@education.gov.uk.

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 GLA 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 the Chief Officer of the GLA.

14.3 The final route for escalation, if a decision cannot be agreed at senior officer level (DG/CO), 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 their 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 January 2019, on behalf of the Secretary of State for Education (including the Education and Skills Funding Agency) and the Mayor of London.

Appendix A: Delegation letter



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Date: 6th December 2018

Delegation of specified adult education functions from the Secretary of State to the Mayor of London

The Secretary of State in exercise of the powers in section 39A of the Greater London Authority Act 1999 ('the 1999 Act') makes the following delegation to the Mayor of London ('the Mayor'). The Greater London Authority (GLA) consists of the Mayor of London and the London Assembly.

In accordance with section 39A(4) of the 1999 Act, the Secretary of State has consulted each London borough council, the Common Council, and the London Assembly.

The Secretary of State is satisfied that the specified functions can appropriately be exercised by the Mayor.

In accordance with section 39A(5) of the 1999 Act, this delegation may be revoked at any time by any Minister of the Crown.

In this delegation letter 'Greater London' means the London Boroughs, the City of London, and the Inner and the Middle Temple, in accordance with section 2(1) of the London Government Act 1963.

Delegation

1. The Secretary of State delegates, pursuant to section 39A of the 1999 Act, to the Mayor, the exercise of certain functions of the Secretary of State under the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act") subject to the conditions at paragraphs 7 to 12.
2. This delegation comes into effect immediately and applies only in relation to the provision of education or training in an academic year beginning on or after 1st

August 2019. An “academic year” means a period beginning with 1st August and ending with the next 31st July.

Delegation of functions by the Secretary of State to the Mayor in relation to the area

3. The Secretary of State delegates to the Mayor the following functions under the 2009 Act which are to be exercised by the Mayor instead of by the Secretary of State in relation to the area of Greater London:
 - (a) section 86 (education and training for persons aged 19 or over and others subject to adult detention);
 - (b) section 87 (learning aims for persons aged 19 or over: provision of facilities); and
 - (c) section 88 (learning aims for persons aged 19 or over: payment of tuition fees).

4. The functions mentioned in paragraph 3 above do not include:
 - (a) any functions relating to apprenticeship training¹;
 - (b) any functions relating to persons subject to adult detention²; or
 - (c) any power to make regulations or orders.

5. The Secretary of State delegates to the Mayor the following functions under the 2009 Act which are to be exercised concurrently with the Secretary of State in relation to the area of Greater London:
 - (d) section 90 (encouragement of education and training for persons aged 19 or over and others subject to adult detention); and
 - (e) section 100(1)(provision of financial resources).

6. The functions mentioned in paragraph 5 do not include:
 - (f) any function relating to apprenticeships training; or
 - (g) any function relating to persons subject to adult detention.

Conditions on the exercise of the delegated functions

7. The Mayor must adopt rules of eligibility for awards by an institution to which the Mayor makes grants, loans or other payments under section 100 of the 2009 Act in accordance with any direction given by the Secretary of State.

¹ “apprenticeships training” has the meaning given by section 83(5) of the 2009 Act

² “adult detention” has the meaning given by section 121(4) of the 2009 Act.

8. In exercising the functions delegated under paragraphs 3 and 5 (“the delegated functions”), the Mayor must have regard to guidance issued by the Secretary of State for this purpose (as amended from time to time or as replaced by a subsequent document).
9. Any funds provided for the purpose of the exercise of the delegated functions must only be used for the purpose of the exercise of those functions or matters related to the exercise of those functions.
10. (1) The Mayor may retain an underspend of funds from the funds mentioned in paragraph 9 subject to paragraph (2) below.

(2) The Secretary of State may reclaim all or part of an underspend of funds where, in the Secretary of State’s opinion, the Mayor has not sufficiently committed to spend such funds in relation to a future financial year for the purpose of the exercise of the delegated functions, or matters related to the exercise of those functions.

(3) For the purposes of this paragraph, an underspend of funds occurs where the Mayor has not spent the funds within the financial year for which those funds have been given by the Secretary of State.
11. The Mayor must provide to the Secretary of State appropriate assurance, monitoring and evaluation information as specified by the Secretary of State.
12. The Mayor must, in relation to Richmond and Hillcroft Adult Community College (“the College”) ensure that the Greater London Authority complies with the decision and terms as set out in the letter from Minister of State for Apprenticeships and Skills, Anne Milton, to the Mayor, dated 6th December 2018.

Accountability to the Secretary of State

13. Provided that the delegated functions are exercised by the Mayor in accordance with the conditions on the exercise of the delegated functions, the requirements to which the Mayor is subject under Managing Public Money³, and any associated Memorandum of Understanding between the Secretary of State and the Mayor, the Secretary of State and the DfE Accounting Officer will not participate in, or approve, decisions taken by the Mayor regarding the exercise of the delegated functions.

Indemnity

14. The Mayor is responsible for and will fully and effectively indemnify and hold harmless the Secretary of State against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses) suffered or

³ <https://www.gov.uk/government/publications/managing-public-money>. Managing Public Money is published by HM Treasury and may be amended from time to time.

incurred by the Secretary of State arising out of or in connection with the performance or non-performance (including any breach) by the Mayor of London of his obligations under this delegation letter.

Agreement by the Mayor

In accordance with section 39A(3) of the 1999 Act, the Mayor has agreed to this delegation.

The Mayor signed to agree to this delegation on 22nd January 2019.

Appendix B: 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 C: Allocations and payments

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



Department
for Education

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