

## PART 2 – CONFIDENTIAL FACTS AND ADVICE

**MD2513**

**Title: Adult Education Budget Grant Allocation Approach 2021/22**

*Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.*

**This information is not suitable for publication until the stated date because:**

It contains legal advice subject to legal professional privilege.

**Date** at which Part 2 will cease to be sensitive or when this information should be reviewed with a view to publication: 31 December 2019

**Legal adviser recommendation on the grounds for not publishing information at this time:**

In the event of a request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 (“the Act”), it is considered that access can be denied on the basis that the information is covered by legal professional privilege (LPP).

LPP is available to protect legal and legal-related communications from disclosure whether those communications relate to the provision of legal advice or litigation which is in contemplation. LPP is based on a fundamental principle that people must be able to communicate freely with a lawyer and that those communications be treated in confidence and not be revealed without consent.

We have considered the public interest and strongly believe that the public interest in protecting legal professional privilege outweighs the public interest in disclosure of the information in this document.

The general public interest inherent will always be strong due to the importance of the principle behind LPP: safeguarding openness in communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.

On balance, we do not consider that the public interest considerations favouring openness and transparency outweigh the public interest in maintaining the exemption.

The eligibility of the exemption should be reassessed in the event of an FOI request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

**Legal Adviser** - I make the above recommendations that this information is not suitable for publication at this time.

**Name:** Mark McConochie

**Date:** 8 August 2019

*Once this form is fully authorised, it should be circulated with Part 1.*

### **Additional risks arising / mitigation**

There is a risk that by only funding existing grant-funded providers based in London, or within reasonable travel-to-learn distances for London learners, in 2021/22 (Year 3) the GLA could be subject to legal challenge, perhaps by an aggrieved existing provider.

The GLA has already consulted with the sector on this change as part of the Skills for Londoners Framework consultation which took place between April and May 2019. Also, while the GLA committed to making minimal changes to funding in 2019/20 (so as to give providers stability during the transition to AEB delegation), no commitments have been made by the GLA to providers that the GLA believes could create any reasonable expectation that affected providers will continue to receive funding in the same way in future years without the method of allocation being subject to change. Taking this into account, there are good prospects of resisting any legal challenge that is brought alleging breach of an enforceable expectation as to future funding.

The GLA's grant allocation approach for 2019/20 was to differentiate between London and non-London providers by awarding funding protection to only those London providers at risk of losing funding on the basis that London-based providers play an important role in supporting London's economy and deliver the majority of their AEB to London learners. On the same basis, the GLA wants to ensure future grant funding is targeted at those providers delivering directly to London learners as they have the local knowledge and understanding, as part of the capital's network of education and employment services, to ensure it meets the needs of the local community most effectively. The GLA is communicating this policy now to give all out-of-London providers sufficient notice to prepare for this change and to allow them the opportunity to make a business case for why their funding should continue based on the type of provision they deliver or the groups of learners they deliver to.