

Economy, Business Growth & Skills Overview & Scrutiny Committee

Date: 8th June 2018

Subject: Devolution of the Adult Education Budget

Report of: Simon Nokes, Executive Director Policy & Strategy, GMCA

PURPOSE OF REPORT

Scrutiny members requested to be kept informed of the progress of Adult Education Budget (AEB) devolution to GM. Attached is a copy of the latest report which was presented to GMCA, for information.

BACKGROUND

The report provides an update on the current position regarding AEB in preparation for full devolution in 2019/20. It sets out:

- An update on strategic and operational issues around GM's ongoing preparations for AEB devolution
- The key practical activities and milestones required of the districts and the GMCA in the coming months to facilitate the formal transfer of functions from the Secretary of State to GMCA, and enable the GMCA to exercise functions concurrently with the Secretary of State.

RECOMMENDATIONS

Members are asked to:

- Note and discuss the update and to note that local authorities will be required to provide consent within a very short timescale following receipt of the final Order in June.

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1 Background

The background has been set out in full within previous papers considered by the CA. In summary, the AEB is a single budget stream bringing together adult further education (all 19yrs+ provision with the exception of apprenticeships/traineeships), community learning, and discretionary learner support. The AEB is intended to fund provision which supports the local labour market and economic development. In particular, it focuses on ensuring that adults have the basic and core skills that they need for work, including guaranteeing a number of statutory entitlements relating to English, maths and (from 2020 onwards) digital skills, as well as first level 2/3 qualifications.

As such, the AEB will play a key role in Greater Manchester's reform agenda, linking with other activity aimed at supporting our residents into productive and sustained employment as part of an integrated education, skills, employment and health system.

An overarching requirement for Greater Manchester, as set out in the Greater Manchester Strategy and emerging Local Industrial Strategy, will be to maximise the effectiveness of AEB to improve job outcomes for individuals. This includes the opportunity in the future to match GM's devolved AEB with ESF to maximise the investment and opportunities for those GM residents most in need of support. The AEB will allow GM to focus our future AEB funding policy and spending on core outcomes of progression into further learning, sustainable employment and higher earnings in employment. This should include labour market progression, increased contribution to earnings and productivity as well as progression into Traineeships and Apprenticeships. GM priority sectors will provide a particular focus.

DfE has issued an indicative GM budget for 2019/20 of £92.2 million. Current annual AEB expenditure on GM residents is around £80m, which funds c.78,000 learners in 312 institutions (mixture of Colleges, LAs, private providers and third sector organisations). This increase has arisen from the way in which DfE calculates local budgets for devolved areas¹. We have commissioned two research projects (detailed in section 6 below) to ensure that we have a comprehensive understanding of the way in which that money is currently used in GM and the possible impact of different funding decisions. The level and nature of demand for AEB funded provision varies across GM's 10 districts, but of the >140,000 learning aims undertaken, a significant proportion of programmes are statutory entitlements, together with policy entitlements such as English for Speakers of Other Languages (ESOL).

The GM approach previously agreed by Leaders is to make minimal changes to current funding levels in the first year of devolution, in order to avoid destabilising providers while we build the evidence base that will inform GM's future commissioning decisions. During the transitional 2018/19 'shadow' year we have an opportunity to work with providers to test different ways of measuring impact and monitoring performance, building upon the findings and recommendations of the research projects. Those

¹ The budget has been determined by calculating the cash value of provision delivered to GM residents in the previous academic year as a proportion of that year's national AEB budget. That GM proportion is then applied to the 2018/19 national budget to give an indicative locality figure for planning purposes. The final 2019/20 AEB will be confirmed by DfE in early 2019.

recommendations (appended to this paper) have received in-principle backing from stakeholder representatives via GM's AEB Task Group. This work is ongoing, but in the meantime, there are a number of critical - and urgent - practical steps required if we are to ensure that devolution takes place in 2019/20.

This paper sets out those practical steps and provides an update on GM's substantive preparations for devolution.

2 Legislation: Parliamentary Orders

The legislation enabling devolution of the AEB will be set out in Orders which will confirm the powers and duties transferring to the CA and make provision for the subsequent range of amendments required to existing legislation. The Orders will be accompanied by:

- an Explanatory Memorandum specifying the transferred functions
- a statutory guidance document setting out matters to which the CA should have regard but which are not mandatory
- an MoU formalising the strategic relationship and ways of working between DfE and CAs, building upon an MoU already in place for the transition year in 2018/19.

The high level content of the Orders and the functions to be transferred are attached at Annex A. GM is working closely with DfE on behalf of the Mayoral Combined Authorities (MCAs) to develop the statutory guidance and MoU and to ensure that key assurances which will mitigate risk to the MCAs are included.

In order to remain on schedule for the laying of Orders prior to summer recess, DfE's absolute deadline for securing formal consent from MCAs is the first week in July. The draft Order and supporting documents will be shared with CAs during April for a period of informal consultation at officer level, with the final Order being issued during w/c 18 June for formal CA consent. The Parliamentary approvals process will take place in parallel to CAs' governance processes. This timescale is made more challenging by the Government's recent instruction that, in addition to the CA itself, each constituent local authority will be required to provide consent.

DfE recognises that its timetable is challenging but it has indicated that, should any of the MCAs not be able to meet the Orders deadline, devolution in that area is likely to be delayed by a year although those MCAs that are ready will proceed.

3 Readiness Conditions

In parallel with the legislative process, a series of high-level readiness conditions has been developed, along with detailed supporting narrative that will shape the statutory guidance and MoU, to provide clarity on where various responsibilities will lie for AEB funded provision, learners and institutions.

Concerns which had been raised previously around some of the readiness conditions, particularly around financial risk to the CA, have now largely been resolved (see Annex B). Critically, the draft narrative now confirms that CAs would not bear the exceptional costs of any insolvency measures instituted in the event of an FE college's financial failure. GM is working with DfE on behalf of the MCAs to ensure that this and other key assurances are confirmed formally within the supporting documentation, as well as

ensuring that the guidance allows GM the flexibilities we will need to manage the AEB in the transformational way that will support GM's wider skills ambitions, rather than the transactional approach in the current system.

4 Practical readiness assessment

In addition to the high level readiness conditions, a practical readiness assessment will be undertaken to ensure that we will be ready to assume the AEB in both operational and governance terms. Self-assessment will take place during April/early May, detailing GM's existing arrangements and plans to establish any systems and mechanisms that are not yet in place across a range of organisation-wide and AEB-specific functions (eg governance, contracting, finance and assurance systems). The evidenced self-assessment will be accompanied by a covering letter from GMCA's CEO, which will also be GMCA's opportunity to highlight any requirements we have of the DfE/ESFA upon which local readiness is contingent. Assuming GM's plans are sufficiently robust for the Orders to be laid, any risk associated with failing to deliver planned activity would be ours to manage thereafter.

5 Post-16 Strategic Skills Plan

DfE has directed that each CA must submit a strategic skills plan (SSP) setting out how the devolved AEB will be implemented and used. In GM, this plan will encompass our whole-system approach to skills and employment, situating the AEB within the wider post-16 skills landscape, updating the current Work & Skills Strategy and Priorities (published in 2015/16), and addressing national and local policy priorities including the Industrial Strategy, technical education reforms and the updated GM Strategy with its focus on people and place. There will be a strong focus on the future skills needs of GM's growth sectors and how the full skills and employment system - including but not limited to the devolved AEB - must align to support inclusive economic growth and social mobility. Consultation on the SSP will commence imminently.

Alongside the SSP, we are developing an AEB plan, structured around a framework issued by DfE (set out at Annex B), which will form part of the readiness assessment, providing the necessary assurances that GM will be strategically and operationally ready for devolution.

Our 'whole system' approach and the step change we have been seeking in GM's strategic relationship with central government is now being backed by DfE and ESFA, with new agreements around ways of working and the role/membership of the emerging Skills Advisory Panel. The strategic importance of these agreements cannot be overstated and are a testament to 18 months or more of GM lobbying of DfE and HMT around collaborative working. They will be a crucial part of the holistic approach to skills and employment planning that we have been advocating, as well as helping to manage and mitigate risk in the future.

6 Commissioning

The AEB plan, which will shape GM's commissioning strategy, will be informed by two pieces of research which were commissioned in autumn 2017 around data/performance management and funding models, in order to help us start building the evidence base that will enable us to ensure that the devolved AEB delivers the long-term outcome

improvements we want for GM residents. A number of impact categories have been identified for learners currently funded through the AEB, together with the nature and average costs of that provision, so that we can model the likely impact of different commissioning approaches. The impact categories and main recommendations from the report are attached at Annex D.

The commissioning strategy will comprise two strands:

- Grant allocations for FE Colleges, Local Authorities and third sector providers. In GM this includes around 20 providers which deliver around 75-80% of AEB funded provision within GM. The ESFA currently funds these providers via a block grant on the basis that they are not-for-profit organisations in receipt of a grant to support their work (as opposed to a contract for specified activities). We would look to replicate that approach in 2019/20, subject to confirmation that grant allocations are compliant with relevant law/regulations.
- Contracts for specified services from independent training providers (ITPs) and other organisations currently delivering training to GM residents which account for the remaining one fifth of AEB funded provision. That 'long tail' of providers includes a large number who are delivering very small volumes of provision, as well as a significant volume of sub-contracted activity (including a large number of providers based outside of GM). Some of this activity is niche provision delivered by small grass-roots organisations, which we would not want to lose if there were to be any rationalisation of the GM provider base. As ITPs are commercial businesses, they are subject to a full procurement process.

DfE has confirmed that it will not be possible to novate existing contracts between ITPs and the ESFA, so we will be required to run a full procurement exercise. We will engage with the market imminently on GM's proposed approach in order to ensure that the principles, process and timeline for GM commissioning are agreed with providers.

It should be noted that many GM providers will also hold contracts with both the ESFA and at least one other devolved MCA. The MCAs are therefore working together to explore practical and proportionate contract management arrangements for providers who work across multiple geographies in order to minimise the administrative burden placed on providers.

7 Governance

The AEB Task Group, which is independently chaired and includes representation from GMCG, GMLPN, local authorities and other stakeholders, continues to provide a forum for advice, consultation and challenge. Wider Governance will be strengthened to support the AEB process, including the repositioning of the Skills & Employment Partnership to support the Local Industrial Strategy agreement around GM leading the way in the first Skills Advisory Panel.

8 Resources and operational costs after devolution

DfE has now confirmed that there will be no separate administration/management budget provided after devolution. They have indicated that GM funding, including the AEB itself, should be used to fund operational costs associated with AEB, and that any

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underspend (usually around 2-3% per year) will be retained by GM rather than returned to DfE.

9 Recommendation: As above.

Annex A: Content of Orders/functions to transfer to MCAs

Implementing full devolution in 2019/2020 – Secondary Legislation

In order to deliver devolution there is a requirement for Parliament to legislate to enable the transfer of the current statutory duties on the SoS to the MCA in relation to the delivery of adult education provision. To do this secondary legislation is required, in the form of a Devolution Order made under the affirmative procedure, which requires consent of each House of Parliament.

The Orders

1. Section 105A of the Local Democracy, Economic Development and Construction Act 2009 gives the Secretary of State for Education (SoS) the power to, by Order, transfer functions to an MCA. An order may include provision for the function to be exercisable subject to conditions or limitations specified in the order; and provision as to joint working arrangements.
2. The intention is to put in place an Order for each MCA detailing functions that will be transferred or exercised concurrently with the Secretary of State. This Order will only pertain to functions necessary for the delivery of adult education provision and will not include:
 - Anything related to apprenticeships;
 - Anything related to adult offender learning;
 - Anything related to training or education people aged 16-18;
 - Any power to make regulations or orders;
 - Anything related to SoS's spending authority.

Where specific duties have been transferred to the MCAs, there will also be a responsibility on the MCAs for having regard for people with learning difficulties when carrying out those duties under section 115 of the Apprenticeships, Skills, Children and Learning Act 2009.

Measure considered relevant for transfer

It is proposed to transfer the following measures in relation to the area of the MCA. These functions are contained in the Apprenticeships, Skills, Children and Learning Act 2009 and are subject to the exceptions specified above:

- i. S86 – MCAs will be responsible for exercising the function of securing provision of education and training for people aged 19+;
- ii. S87 – MCAs will be responsible for securing provision of facilities for relevant education or training for people to obtain qualifications in subjects defined under paragraph 1 of Schedule 5 (currently English, maths and specified vocational qualifications at Level 2 (or comparable)) when they meet the following conditions:

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- a. Are aged 19 or over (other than people under 25 with learning difficulties);
 - b. Do not have the qualifications in question or a comparable or higher qualification (including awards from outside of England);
 - c. Satisfy such conditions as specified in relevant regulations.
- iii. S88 – MCAs will be responsible for securing provision of free study for learners who meet certain conditions for study for specified qualifications provided as a result of s86 and s87. This relates to ‘Statutory Entitlements’ which currently apply to English, maths and specified vocational qualifications as defined in Schedule 5.

It should be noted the Digital Economy Act 2017 amends s88 to extend the current statutory duties to create a new duty to ensure that specified qualifications in making use of information technology are free of charge to people aged 19 and over who do not already have a relevant qualification. The qualifications or descriptions of qualification to which the duty applies are to be set out in secondary legislation. The level of attainment demonstrated by the qualification to which the duty applies must be the level that the Secretary of State considers is the minimum required by a person aged 19 or over to be able to operate effectively in day-to-day life. MCAs will take on this duty.

It is proposed that the following functions of the Secretary of State should be exercised concurrently with the MCA in relation to their area (also subject to the restriction set out above):

- iv. S90 – MCAs will assume the general duty to encourage participation by individuals and employers in education and training amongst people aged 19 or over. The SoS for Education will retain the duty for encouraging participation in training in respect of England as a whole so this duty will be exercised concurrently.
- v. S122 – This section enables information sharing as between specified persons for the purpose of enabling or facilitating the exercise of a relevant function. This power will be extended to include the MCA in respect of the transferred functions, and will continue to be exercisable by the Secretary of State.

Annex B: Readiness Conditions

Readiness Condition	Concern/resolution
1. Parliament has legislated to enable transfer to local authorities of the current statutory duties on the Secretary of State to secure appropriate facilities for further education for adults from this budget and for provision to be free in certain circumstances	GM's established processes should enable us to secure LAs'/CA consent relatively quickly. Formal assurances have been sought from Government around long-term funding commitments to ensure that the transfer of statutory functions to the CA will be accompanied by guaranteed funding with which to meet our obligations. These assurances are unlikely to be contained within the Orders themselves but may form part of the supporting MoU.
2. Completion of the Area Reviews process leading to a sustainable provider base	DfE recognises that some original recommendations arising from Area Reviews may no longer be viable or have been superseded by alternative proposals. This now means that, for this condition to be satisfied, DfE's Area Review Implementation Board (ARIB) must be satisfied that no Area Review implementation will be destabilised by devolution. The ARIB will review implementation status in MCA areas and, if satisfied that progress is on track, it will be content to consider any risks on a case-by-case basis under condition 3 below.
3. After the Area Reviews are complete, agreed arrangements are in place between central government and the Combined Authority to ensure that devolved funding decisions take account of the need to maintain a sustainable and financially viable 16+ provider base	In response to GM concerns around the risks of viewing AEB in isolation of other provider funding streams, GM will push for tri-lateral collaborative working between CAs, ESFA and DfE to be formalised in the supporting documentation in order to help form a holistic view of the provider base. In GM, the regional ESFA team has agreed to involve GMCA in its discussions with GM providers around 16-18 activity in addition to the collaboration around provider financial health, intervention and sustainability.
4. Clear principles and arrangements have been agreed between central government and the Combined Authority for sharing financial risk and managing failure of 16+ providers, reflecting the balance of devolved and national interest and protecting the taxpayer from unnecessary expenditure and liabilities	DfE has now confirmed that in the event of provider financial failure, any decision by the SoS to fund the cost of the education administration will be met by the DfE, regardless of where the college is and where the majority of learners are funded from. GM 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 a college. We would be expected to co-operate with any Independent Business Review or the Education Administrator and would continue to fund affected learners in alternative provision at the same rate as the original provider.
5. Learner protection and minimum standards arrangements are agreed	GM will be expected to ensure that any local changes to national minimum standards do not reduce the protection/standards learners can expect from national benchmarks. At our request, DfE has agreed to open up policy discussions with Ofsted to ensure that, when devolved AEB provision is inspected, local priorities/

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	<p>criteria are taken into account by inspectors so that providers are not penalised by local responsiveness (eg in focussing on holistic outcomes and progression for learners rather than simply counting outputs).</p>
<p>6. Funding and provider management arrangements, including securing financial assurance, are agreed in a way that minimises costs and maximises consistency and transparency</p>	<p>A tripartite approach has been agreed between GMCA and the regional ESFA team which will support our work with providers, including developing joint arrangements for data, audit and other requirements which minimise the burden on providers.</p> <p>A data governance group (comprising DfE, ESFA and CAs' policy and data specialists) will work throughout the 2018/19 shadow year to ensure that our data requirements are in place in time for 2018/20, enabling us to start building the evidence base for future commissioning as well as ensuring our approach to provider management and payment is operationally viable.</p>

Annex C: AEB Skills Plan requirements for Mayoral Combined Authorities (MCAs)

- a) assessment of current MCA area, considering the mix & balance of AEB-funded provision;
- b) MCA skills priorities, focusing on analysis of the current fit with 'a' above;
- c) evidence-base supporting the SSP, including reasons for any proposed changes over current mix and balance of provision, employer demand gathered and how representative that is of the MCA employer-base;
- d) how learner demand will be considered;
- e) a description of local MCA engagement with, and responses from, impacted learning providers, as well as future plans in this respect;
- f) the assessed impact on post-16 providers of any proposed changes to AEB allocations and any plans to ease the transition for those adversely affected;
- g) specifically, what current AEB-funded provision will cease and at which providers, how/if it'll be replaced and when;
- h) confirmation of continuing statutory / policy entitlements under current AEB funding arrangements;
- i) how SSP outcomes 'success' is defined and measured;
- j) the timeline for MCA review and evaluation of its AEB SSP as well as reporting / publication arrangements; and
- k) how MCA skills priorities complement / support delivery of national programmes / strategies, for example including Apprenticeships & Traineeships and other non-devolved post-16 further education;
- l) planned outcomes from AEB-investment for three years, 2019/20, 20/21 & 21/22, assuming steady-state funding, but being aware that this cannot currently be confirmed;
- m) how those outcomes differ to outcomes from current AEB-funded provision in the area, insofar as a comparison is possible from available data;
- n) the expected impact these changes will have on the local economy and when;
- o) handling arrangements for any provider concerns, including conflict resolution;
- p) whether and how 'equality' issues have been addressed as part of this process; and
- q) MCA contacts for further information.

Annex D: Recommendations for GM funding policy/commissioning strategy

D1: Data monitoring and performance management framework (RCU Ltd)

This project has identified a number of impact categories for learners in GM who currently undertake AEB-funded provision. This will help us understand the current offer, including the average cost and duration of each type of learning, in order to inform our future funding policy and performance management approach:

Impact Category	ILR Definition	Description
Job Skills for the Unemployed	Learner is unemployed prior to learning (or unknown employment status) and has at least one learning aim where 90% or more of all learners are unemployed or employed for less than 16 hours (excluding categories 4 and 5 below). In addition any learner on a learning aim with 'Employability' is also included.	A programme of learning that has the primary aim of getting unemployed people into work.
Skills Training for Employed Learners	Learner is employed prior to learning (or unknown employment status) and has at least one learning aim where 90% or more of all learners are employed (excluding categories 4 and 5 below).	A programme of one or more learning aims that has the primary aim of improving the capability and productivity of the workforce.
Skills and Technical Education	Learner has at least one learning aim at Level 2 or above on a subject within a technical route.	A programme of learning that offers initial technical education of individuals with the primary aim of skills development and/or further progression in learning.
Community Learning – Engagement	Learner taking at least one aim classified as Community Learning.	A programme of one or more learning aims that has the primary aim of engaging hard to reach learners, providing basic skills and progression into further learning
ESOL	Learner taking at least one aim classified as ESOL.	A programme of one or more learning aims that has a primary purpose of teaching English to speakers of other languages so that they can more effectively engage with the local economy and society.
Standalone Maths and English	Learner only taking qualification in English and/or Maths (and not appearing in categories 1-5).	Learning aims for Individuals who wish to improve their maths and English skills in order to improve employability and life chances.
Other (Not Categorised Above)		Not coded in the above categories.

With those impact categories in mind, the report makes a number of recommendations:

1. GMCA should discuss current AEB provision with individual providers using the Impact Categories and the associated provider level dashboards. This should help clarify the current provision and help in future planning by linking impact categories to an agreed set of outcomes.

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2. GMCA should work with providers to improve the quality of Outcomes information recorded in the ILR in response to issues identified which may hamper GM's ability to monitor outcomes and link them to funding.
3. If outcomes monitoring is carried out locally by each provider then a centralised audit is recommended to ensure consistency and provider confidence in the data and to help to identify good practice.
4. GMCA to explore how a 'study programme' structure within the ILR for AEB learners could be implemented across GM.
5. Quarterly updates of the provider dashboard would provide timely feedback to GMCA and providers on progress.
6. GMCA should review the provider base within each Impact Category. This should include niche providers, subcontractors and providers located outside of the area.