



WMCA Board

Date: Friday 10 November 2017

Time: 11.00 am **Public meeting** Yes

Venue: Council Chamber, Council House, Birmingham City Council, Victoria Square, Birmingham, B1 1BB

If you have any queries about this meeting, please contact:

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| No. | Item | Presenting | Pages |
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| Items of Public Business | | | |
| Skills & Productivity | | | |
| 9. | Devolution of Adult Education Budget | Councillor George Duggins | 1 - 6 |
| Item of Private Business | | | |
| 17. | Exclusion of the Public and Press [That, in accordance with s100(A) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business as it was likely to involve the disclosure of exempt information specified in paragraph 3 of the Act.] | Chair | None |
| 18. | Coventry - UK City of Culture Update | Chair | 7 - 12 |

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WMCA Board Meeting

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| Date | 10 November 2017 |
| Report title | Devolution of the Adult Education Budget |
| Portfolio Lead | Councillor George Duggins - Skills & Productivity |
| Accountable Chief Executive | Nick Page, Solihull Metropolitan Borough Council email: npage@solihull.gov.uk tel: (0121) 704 6018 |
| Accountable Employee | Rachel Egan, Programme Lead for Skills, Employment & Productivity email: regan@solihull.gov.uk tel: (0121) 704 8219 |
| Report has been considered by | WMCA Programme Board - 27 October 2017 |

Recommendation(s) for action or decision:

The WMCA Board is recommended to agree:

- (1) To proceed with the transition option during the transitional year 2018/19 prior to full devolution of the Adult Education Budget in 2019/20.

1.0 Purpose

- 1.1 To consider the available options for the management of the Adult Education Budget during the academic year 2018/19.

2.0 Background

- 2.1 The Combined Authority's Devolution Agreement states that "The government will fully devolve budgets to the Combined Authority from academic year 2018/19 (subject to readiness conditions)." This budget is now known as the Adult Education Budget (AEB) and combines all Education & Skills Funding Agency participation and support funding (not including European Social Fund, Advanced Learner Loans and apprenticeships). Its principal purpose is to engage adults and provide the skills and learning they need to equip them for work, an apprenticeship or further learning. It also enables more tailored programmes of learning to be made available, which do not need to include a qualification, to help those furthest from learning or the workplace. West Midlands Combined Authority is one of nine devolved areas that has this as part of their devolution deal. Devolution of the Adult Education Budget applies only to constituent member areas.
- 2.2 AEB grant funds activity in Further Education (FE) Colleges, Local Authority Adult & Community Learning services and at a much smaller scale through contracts with private training providers. The devolved AEB budget will initially be based on current spend on residents of constituent member areas and will therefore relate to the residency of the learner not to the geographic base of recipient institutions. The indicative budget for the academic year 2018/19 is £112.08m.

3.0 Key Issues

- 3.1 The Department for Education (DfE) wrote to WMCA on 4th August 2017 confirming that delivering full devolution of the Adult Education Budget (AEB) as originally intended could not take place without unmanageable risks to the Further Education sector and learners due to time lost during the General Election period. Initial proposals for the transitional year were outlined and confirmed in a further letter from the Department received on 1st November. This letter outlined two options for consideration: a transition option and a delegation option.

Transition Option

- 3.2 This option is about giving West Midlands Combined Authority a real say in what AEB provision will be available for residents and also acts as a stepping-stone to successfully delivering full devolution in 2019/20. Key Features of the transition option are:
 - a) Implementing a governance structure that ensures West Midlands Combined Authority is engaged with the Department so that there is an understanding of how post 16 policy aligns to AEB allocations and helping to achieve objectives for adult funding;
 - b) the Department will notify West Midlands Combined Authority of an amount of nationally-held AEB over which the WMCA will be able to influence, alongside the terms through which the WMCA will be able to influence AEB provision;

- c) West Midlands Combined Authority will work with providers to establish potential delivery plans which take into account local priorities and the sustainability of the provider base. The Department will then work with West Midlands Combined Authority to consider these plans and agree implementation arrangements;
- d) West Midlands Combined Authority will put in place monitoring processes, and inform the Department about them;
- e) West Midlands Combined Authority will put in place a strategic skills plan, reflecting an assessment of local strategic skills need. These will be discussed and agreed with the Department as a good opportunity to establish alignment of local AEB policy alongside national policies for non-devolved funding streams.

Delegation under section 16 of the Localism Act 2011

- 3.4 Under this option, the Secretary of State (SoS) for Education would delegate relevant adult education functions and funding to West Midlands Combined Authority. Acting as an agent of SoS, and within the parameters set out in delegation arrangements West Midlands Combined Authority would decide on adult education provision for its residents, commission the provision, fund providers and manage delivery. In order to proceed with the delegation option the Secretary of State would need to be satisfied that agreement has been reached with West Midlands Combined Authority on all of the relevant readiness conditions, prior to any delegation being made.
- 3.5 The terms and conditions of the delegation arrangement will ensure transparency for all parties and support the SoS in her continuing accountability for her statutory functions in 2018/19. The terms and conditions will include:
- a) The functions to be delegated and any limits on discretion: e.g. the funding cycle, whether the delegation relates to all providers or, for example, just those with Grant Funding Agreements, seeking agreement of the SoS before setting criteria, procurement requirements;
 - b) What extent there will be for discretion to depart from DfE skills funding policies and AEB funding rules (noting that during the delegation period the SoS will retain overall responsibility) and clarity around any agreed flexibilities and any responsibilities on West Midlands Combined Authority to show value for money resulting from the flex;
 - c) How consultation / engagement with the Education & Skills Funding Agency (ESFA) and the Further Education Commissioner would work in respect of providers that are in scope of the Department's intervention regime;
 - d) How decision-making will be handled where institutions are funded by West Midlands Combined Authority for AEB provision and ESFA for non-AEB provision through potential implications on financial health of providers; e.g. 16 -19 Further Education and apprenticeships;
 - e) The criteria West Midlands Combined Authority will put in place that providers will need to adhere to in order to receive funding allocations especially in cases where West

Midlands Combined Authority decides to divert away from the ESFA funding rules and standard funding arrangements;

- f) The funding amount and the schedule for transferring funds, including any restrictions to be placed on the use of the funds; e.g. regarding the permission level of admin costs;
- g) Any payment(s) to West Midlands Combined Authority for the preparatory implementation and/or operation of the delegation arrangements for 2018/19;
- h) Arrangements to terminate the delegation and step in by the SoS, including any remedial action plan requirements of West Midlands Combined Authority;
- i) Reporting requirements by West Midlands Combined Authority in relation to performance and supervision by the DfE.; and
- j) The Department will require that West Midlands Combined Authority implements a suitably robust assurance framework on the in-year AEB spend to provide the required financial assurance on all provision to the Department, shortly after the financial year-end and prior to the Department compiling its annual report and accounts.

Consideration of the Options

- 3.7 Through the delegation option, WMCA would take on legal and financial responsibilities for AEB but any freedoms or flexibilities relating to the deployment of funding would require the agreement of the SoS. The extent to which any freedoms or flexibilities would be granted is yet to be confirmed.
- 3.8 The delegation option would require WMCA to complete extensive work to meet a test of practical readiness within a short period of time. This test would involve a requirement to demonstrate the ability to set up a number of systems and processes that align with the current funding system and working practises which may not necessarily reflect the systems and processes that WMCA would put in place for full devolution.
- 3.9 WMCA is working closely with grant funded AEB providers to analyse existing provision, assess the extent to which this supports WMCA priorities and outline what would change to support the delivery of WMCA priorities under full devolution. Had funding been devolved in 2018/19 the intention was to maintain current allocations for grant funded providers during that year and not to alter funding policy. This approach aligns with the transition option without the need to set up management and administrative systems to meet the requirements as set out under the delegation option.
- 3.10 Both options reference the requirement to produce a Strategic Skills Plan. DfE is keen to work closely with WMCA to ensure that there is a sensible alignment across post-16 skills plans and that AEB funded provision is not considered in isolation of the wider skills system. This presents WMCA with the opportunity to work with DfE to secure greater influence over skills funding that hasn't been devolved.

4.0 Financial implications

- 4.1 The Adult Education Budget relating to spend on residents within the WMCA constituent member area in 18/19 has an indicative value of £112.08m
- 4.2 WMCA will need to fully cost and ensure that the necessary resources are in place to manage the budget under either the 'transition' or 'delegation' option in 18/19 and before accepting full devolution of funding in 19/20. DfE are unable to clarify whether funding will be available to support either preparation or management and administrative costs to be incurred by WMCA in relation to AEB during 2018/19 at this time.
- 4.3 Under the delegation model, arrangements will be put in place between central government and the Combined Authority to ensure that funding decisions take account of the need to maintain a sustainable and financially viable 16+ provider base.
- 4.4 Under the delegation model, clear principles and arrangements will be jointly 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.
- 4.5 Under the delegation model funding and provider management arrangements, including securing financial assurance, will be agreed between the government and the combined authority in a way that minimises costs and maximises consistency and transparency.

5.0 Legal implications

- 5.1 The transition option would involve DfE setting a framework for variation of allocations to in-scope providers. Parameters will be established on issues affecting how far allocation variation would be allowed:
 - a) ensuring continuing adequacy of funding devoted to learning under the statutory duties for free study for specified learners/learning; this should be protected at 2017/18 delivery levels as a minimum;
 - b) ensuring continuing funding provided to support reasonable adjustments under the Equalities Act;
 - c) ESFA and WMCA taking account of how to handle providers who may be in formal intervention and or under a notice of concern, agreeing the most sensible, pragmatic way for WMCA influence to be exerted;
 - d) more generally, guarding against any changes to funding levels putting a grant-funded provider's financial stability at risk; a potential mechanism would be for no provider to be subject to a total year-on-year reduction of more than x% as a result of varying the allocation - we need to address what constitutes a sensible percentage;
 - e) taking into account any relevant Area Review findings in determining any variation in allocation
- 5.2 The power to delegate under section 16 of the Localism Act is a general power under which a Minister of the Crown may delegate to a permitted authority (including a combined authority) any of her eligible functions (subject to some limited exceptions) to such extent and subject

to such conditions as she sees fit. The Minister must be satisfied that the function can appropriately be exercised by the permitted authority. In principle, this power could be used to delegate the exercise of the Secretary of State's AEB functions to a Combined Authority, in respect of its area. The Secretary of State would enter into any delegation arrangement in respect of the delegation of AEB functions, which would include conditions regarding the exercise of the function(s). The functions that may be transferred under the 'delegation' model are set out below, and are subject to a general exclusion with respect to apprenticeship training, education for people in adult detention and any power to make regulations or orders.

- a) Duty to secure appropriate 19+ further education (under s 86 of the Apprenticeships, Skills Children and Learning Act 2009 ('the 2009 Act');
- b) Duty to secure appropriate FE for 19+ learners who do not have certain specified qualifications (s 87 of the 2009 Act);
- c) Duty to ensure that provision is free for relevant 19+ learners who do not have certain specified qualifications (s 88 of the 2009 Act);
- d) Duty to encourage learner and employer participation in education and training of people aged 19+ (s 90 of the 2009 Act);
- e) Duty to have regard to the needs of 19+ learners with Special Education Needs (other than those aged 19-25 with Educational Health Care plans, who will remain outside the delegation as they are treated like 16-18 year-old learners) (s 115 of the 2009 Act).
- f) Power to exchange information with providers and local authorities to enable or facilitate the exercise of any relevant function (s 122 of the 2009 Act).

6.0 Equalities implications

- 6.1 A full equalities assessment will be carried out as part of the development of the AEB commissioning framework.

7.0 Other implications

- 7.1 None.

8.0 Schedule of background papers

- 8.1 None.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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