

# **WEST OF ENGLAND COMBINED AUTHORITY**

## **PROVIDER PERFORMANCE MANAGEMENT FRAMEWORK 2023/24**

**VERSION 1 - 22<sup>nd</sup> March 2023**

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## **1. Purpose**

- 1.1. The purpose of this document is to inform all providers with a Grant Offer Letter (GOL) which deliver Projects on behalf of the West of England Combined Authority (the Combined Authority) for the 2023/24 academic year of the performance management and monitoring framework that will be applied to their Combined Authority Projects delivery. It should be viewed as a guidance document and the full terms and conditions are within the Grant Offer Letter and the Specification. The terms laid out in the performance management framework are legally binding as set out in the GOL.

## **2. In-Year Provider Performance Monitoring: Desk-Based**

- 2.1. The purpose of the Combined Authority in-year performance monitoring process is to:
  - 2.1.1. Understand what providers have delivered and claimed on behalf of the Combined Authority and how this compares with what the provider committed to deliver on our behalf as set out in their GOL.
  - 2.1.2. Inform our forecasts of full delivery across the academic year.
  - 2.1.3. Identify potential delivery issues at the earliest opportunity so that appropriate intervention and support may be put in place.
  - 2.1.4. Minimise the risk of under-delivery and over-delivery at both individual provider and whole The Projects programme level.
- 2.2. The provider's in-year performance may also have bearing on wider decisions taken within the Combined Authority to fund further provision including (but not limited to):
  - 2.2.1. Eligibility to access any in-year funding
  - 2.2.2. Determination of Project allocations for future financial years
  - 2.2.3. Formal Intervention
- 2.3. The Combined Authority will monitor the performance of providers regularly throughout the duration of the funding agreement utilising reports which summarise both the data submitted by providers through their monthly submissions of data sheets and / or the Individual Learning records (ILR), and the data and narrative submitted by providers as part of the monthly claim report process.
- 2.4. Where necessary, the Combined Authority may draw upon additional sources of relevant evidence and or require providers to share additional data and evidence, such as:

- 2.4.1. National Published data and analysis
- 2.4.2. Reports and analysis generated by the provider's own management information systems
- 2.4.3. Ad hoc requests for data and evidence
- 2.5. Our performance monitoring activities will focus on (but are not limited to) the following considerations:
  - 2.5.1. Funding claimed and / or paid during the year to date compared with the agreed profile as set out within the GOL.
  - 2.5.2. Funding claimed is within the agreed locations as set out within the GOL.
  - 2.5.3. Volumes claimed year to date compared with the agreed profile as set out within the Project Plan in terms of:
    - 2.5.3.1. Project participant enrolments
    - 2.5.3.2. Project participant achievements
    - 2.5.3.3. Project specific positive progressions either further learning or employment
- 2.6. Our assessment of provider performance will consider both provision which is delivered directly by the provider and provision which is delivered indirectly through a third-party delivery agreement. The prime provider is accountable for all delivery.

### **3. In-Year Provider Performance Monitoring: Provider Meetings**

- 3.1. In addition to the desk-based in year monitoring process, the Combined Authority will also meet with providers to both secure additional intelligence to inform our performance monitoring activities, and to discuss any issues which are either anticipated or have emerged through performance monitoring.
- 3.2. The Combined Authority will aim to convene regular performance monitoring meetings with providers. The actual frequency of discussions will be determined through a combination of risk and capacity.
- 3.3. Providers may however request a Performance Monitoring Meeting at any time and any issues emerge which are likely to have a significant impact on performance should do so to bring the matter to our attention at the earliest opportunity.
- 3.4. Performance Monitoring Meetings may also be used to allow the provider and the Combined Authority Project Officer to discuss emerging issue, agree appropriate actions, monitor implementation, and evaluate the effectiveness of the response before it becomes necessary to escalate the

matter to the formal intervention stage.

- 3.5. Minutes will be recorded for each provider meeting and shared in a timely manner with the provider after the meeting has been concluded.

## **4. Informal Intervention**

- 4.1. Following the identification of significant issue such as actual or forecast under-performance or delivery of provision outside contracted location the Combined Authority will work with the provider to ensure that they have put appropriate measures in place to rectify the issue.
- 4.2. At this stage the intervention is deemed to be informal as the proposed solution should primarily be determined by the provider through their own internal performance and quality management processes. The Combined Authority may however ask a provider to put an informal intervention measure in place if we identify an issue which the provider has not yet identified.
- 4.3. The Combined Authority's involvement will normally be limited to advice, support, and monitoring implementation to ensure that the intervention is effective.
- 4.4. The Combined Authority would expect the intervention to be proportional to the scale of the specific issue identified. The intervention would normally take the form of a specific time limited action plan with appropriate milestones and measures of success, but other forms of redress may be appropriate.
- 4.5. If the informal intervention does not adequately resolve the issue within the planned timescale the Combined Authority may opt to either extend the timescale within which the matter must be resolved or escalate the matter to formal intervention.

## **5. Formal Intervention**

- 5.1. The Combined Authority may require the provider to put formal intervention measures in place in the following circumstances:
  - 5.1.1. The issue identified is considered by the Combined Authority to be sufficiently significant to be dealt with formally rather than informally.
  - 5.1.2. Attempts to resolve the matter through informal intervention have not been successful within a reasonable timeframe.
  - 5.1.3. Ofsted inspection determines a providers Overall Effectiveness as inadequate.
  - 5.1.4. FE Commissioner diagnostic assessment determines that a provider requires urgent escalation to formal intervention.

- 5.2. The Combined Authority will instigate formal intervention measures when indicators evidence a risk to the viability of the Combined Authority Grant Offer Letter.
- 5.3. In contrast to informal intervention, any formal intervention will be both initiated by the Combined Authority and will include specific conditions which the provider will be required to satisfy by a certain date. These conditions would normally be confirmed through a variation to the providers GOL and therefore become contractual obligations.
- 5.4. If the conditions are not addressed to the Combined Authority's satisfaction this will be considered to be either a minor or serious breach of the GOL and we may respond in a number of ways, including (though not limited to):
  - 5.4.1. Extending the deadline by which the condition must be satisfied (on condition that there is clear evidence of progress, and we are satisfied that the issue will be fully resolved given more time)
  - 5.4.2. Reducing the providers allocation
  - 5.4.3. Withdrawing any future allocation or indicative allocation shared with the provider
  - 5.4.4. Ruling the provider ineligible to secure future project funding
  - 5.4.5. Requiring the provider to reprofile
  - 5.4.6. A temporary or permanent suspension of recruitment (either in general or limited to the specific area of concern)
  - 5.4.7. A temporary or permanent suspension of delivery (either in general or limited to the specific area of concern)
  - 5.4.8. A temporary or permanent suspension of payment (either in general or limited to the specific area of concern)
  - 5.4.9. Commissioning a formal investigation of the provider
  - 5.4.10. Commissioning an audit of the provider
  - 5.4.11. Requiring the provider to repay funding already released
  - 5.4.12. Terminating the GOL
- 5.5. Whist reserving the right to respond to a failure to satisfy conditions which form part of intervention through the means outlined above, the Combined Authority deems this to be a last resort and will seek to resolve emerging issue in partnership with the provider before such measures become necessary.

## **6. National Intervention**

- 6.1. The Combined Authority approach to informal and formal intervention as detailed above is limited to matters concerning the delivery of the Project provision which the Combined Authority funds. In addition to this some providers will be subject to the national intervention regime which is led by ESFA and the FE Commissioner.
- 6.2. The Combined Authority is committed to ensuring all providers are delivering high quality provision for adults across the West of England and as part of the devolution deal the Combined Authority will support and work in conjunction with the FE Commissioner, Ofsted and ESFA to deliver early intervention activities to support providers achieve positive outcomes for adult learners.
- 6.3. The Combined Authority will share data and intelligence which indicates concerns over a provider's performance or financial resilience with the ESFA's territorial and case management team to ensure that any measures which are implemented to correct underperformance do not have unintended consequences for the ESFA and vice versa. The national ESFA policies and guidance about the oversight of providers are published here;
  - 6.3.1. College oversight: support intervention  
[College oversight: support and intervention - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/college-oversight-support-and-intervention)
  - 6.3.2. How ESFA maintains oversight of independent training providers  
[How ESFA maintains oversight of Independent Training Providers \(ITPs\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/how-esfa-maintains-oversight-of-independent-training-providers)
- 6.4. Where the Provider is also subject to intervention by the ESFA through the national oversight arrangements, the Combined Authority will work with the ESFA to ensure that action to improve performance is complementary.
- 6.5. For providers in significant financial difficulties, and where existing support has been agreed, the existing support arrangements from the ESFA remain in place, including emergency funding. The Combined Authority will maintain dialogue with the provider and the ESFA and assist in supporting the provider back to financial resilience and an acceptable level of quality.
- 6.6. This approach will reduce the need for any separate review to be undertaken. The ESFA and the Combined Authority will be looking to ensure that any action taken:
  - 6.6.1. is in the interests of learners
  - 6.6.2. protects public money
  - 6.6.3. achieves resolution of financial or quality concerns at pace
- 6.7. Please consult the Funding and Performance Management Rules and the

Grant Funding Agreement for more information.

## **7. Annual Provider Performance Review**

7.1. The Combined Authority will undertake a more formal review of provider performance at the mid-year point. This will normally be conducted in or around October or November for Projects operating between financial years and may examine:

7.1.1. Any intelligence secured through the in-year provider performance monitoring process to date.

7.1.2. Actual performance year to date in the current academic year (based on the most recent monthly claim form return, learner tracker and, if available, the ILR Return).

7.1.3. Forecast performance across the full current academic year.

7.1.4. Any applications for further Project provision (if available and not already considered through other processes).

7.1.5. Any updated financial health analysis.

7.1.6. Any updated due diligence information and analysis.

7.1.7. Any relevant information relating the quality of the provider, such as:

7.1.7.1. Inadequate Ofsted Inspection and Monitoring Reports

7.1.7.2. Inadequate Provider Self-Assessment and Quality Improvement Plan progress

7.1.7.3. Nationally published performance data

7.1.7.4. The Combined Authority calculated success rates

7.1.7.5. The Combined Authority calculated positive progression rates

7.2. Our analysis of performance will consider all of the aspects of Project as set out in paragraph 2.5 above.

7.3. As a result of our Annual Provider Performance Review, the Combined Authority may decide to:

7.3.1. Put formal intervention measures in place (see paragraph 5 above) to address:

7.3.1.1. Actual under-delivery in the current financial year.

7.3.1.2. Forecast under-delivery across the remainder of the current financial year.



- 7.3.1.3. Any other concerns or issues identified.
- 7.3.2. Address actual under-performance in the current academic year due to actual under-delivery up to and including the mid-year review through:
  - 7.3.2.1. Requiring immediate repayment
  - 7.3.2.2. Securing repayment through an agreed repayment plan
  - 7.3.2.3. Reducing and re-profiling the allocation for the current financial year
- 7.3.3. Address forecast repayment across the remainder of the current academic year through:
  - 7.3.3.1. Reducing and re-profiling the allocation for the current academic year
- 7.3.4. Terminate the Grant Offer Letter for the current academic year.
- 7.3.5. Withdraw or not issue any allocation or indicative allocation for the next funding year
- 7.4. The Combined Authority expects providers to deliver 100% of the agreed profile each month and reserves the right to recover funds if this is not the case at the Annual Provider Performance Review point.
- 7.5. The Combined Authority shall be entitled to reprofile, reconcile, or cease payment, cease recruitment of new learners, and or delivery of the provision by the Provider to existing learners, at Combined Authority's discretion and subject to the terms of the GOL.

## **8. Recovery of Funds**

- 8.1. The Combined Authority reserves the right to recover funds for reasons of under-performance, poor quality, or poor alignment with the Combined Authority Strategic Priorities (as expressed in the Combined Authority Specification and the application or project plan of the individual provider). In addition to this we are obligated to recover some elements of funding as this forms part of our agreement with central government, and funding will be recovered from the Combined Authority if not fully utilised.
- 8.2. Where we have the power to do so, we may opt to waive our right to recover funding if sufficient mitigating circumstances exist at whole-programme or individual provider level. Decisions taken at provider level will be considered on a case-by case basis and representations must be fully evidenced.
- 8.3. Before reaching the point where the recovery of funding becomes

necessary the Combined Authority will normally seek to resolve the issue through a combination of informal measures agreed with the provider and / or formal intervention measures arising from either the escalation of issues from informal measures or the outcome of our annual provider performance review process (including any subsequent formal reviews instigated as a result of annual provider performance review). We however reserve the right to recover funds in absence of the above should it prove necessary to do so.

8.4. The Combined Authority will consider waiving the right to recover funds if mitigating circumstances exist. In such circumstances the provider would need to be in a position to demonstrate:

8.4.1. That they actively brought the risk of under-performance to the attention of the Combined Authority at the earliest possible opportunity so that appropriate informal and / or formal measures may be put in place to mitigate the risk.

8.4.2. The causes of under-performance were issues which were beyond the providers ability to control.

8.4.3. That the provider has done all that could be reasonably expected of them to maximise delivery.

8.4.4. That any funds not recovered have been exclusively utilised in support of the Combined Authority Project provision and have not been used to subsidise any other programmes or activities.

8.5. Where under-performance has occurred and a sufficient case for mitigation is not in place, our decision to recover funds will be informed by the scale of under-performance.

8.5.1. The Combined Authority will communicate any formal changes to its Reconciliation approach to Providers.

8.6. Where appropriate, if there is underspend at quarter four, the Combined Authority will however consider recovery of funds through:

8.6.1. Immediate Repayment

8.6.2. Repayment through an agreed repayment plan

8.6.3. Reducing and reprofiling the providers allocation for the current financial year. Only if The Projects contracts are rolled over to following year.

8.7. Examples of circumstances where recovery of funds through the mechanisms set out in paragraph 8.6 include:

8.7.1. Where the cause of the under-performance will not be present in the future funding year

- 8.7.2. Where the provider will not be in receipt of a Combined Authority Projects allocation in the future funding years
- 8.7.3. Structural change affecting the provider concerned (e.g. merger)

## **9. Minimum Quality Standards for Delivery**

The Combined Authority will enforce minimum quality standards through the monitoring of qualification achievement rates for the Projects provision. This section also sets out how the Combined Authority plans to establish minimum standards based on positive progression rates. We plan to undertake desk-based monitoring and analysis of these standards during each financial year.

- 9.1. The Combined Authority will continue to use achievement data to review provider standards for The Projects provision.
- 9.2. The Combined Authority will review The Projects Key Performance Indicators (KPIs) to annually assess a provider's effectiveness in delivery.
- 9.3. In addition to minimum standards, the Combined Authority will also consider the following Minimum Quality Thresholds:
  - 9.3.1. An Ofsted inspection resulting in a 'requires improvement' grade or an 'inadequate' grade for a provider's leadership and management, teaching and learning and adult learning provision.
  - 9.3.2. Learner survey outcomes which evidence poor levels of adult satisfaction levels.
  - 9.3.3. FE Commissioner intervention due to poor financial health or quality performance and consequent notice to improve.
  - 9.3.4. Instigation of the Insolvency Regime.
  - 9.3.5. Instigation of a college or FE Commissioner led Structure and Prospects Appraisal (SPA).
  - 9.3.6. Fraud Investigation specifically related to Adult learning.
  - 9.3.7. ESFA Poor financial health reporting.
- 9.4. If any of the above are instigated during the funding agreement period (either against the provider or any of their third-party arrangements), the Combined Authority will immediately review the provider's funding agreement and may take one of the following actions:
  - 9.4.1. Require the provider to suspend the recruitment of adult learners funded through the Combined Authority Projects provision.

9.4.2. Reduce, suspend, or recover payments to the provider