

**Governance and devolution:
charting the way**

processes devolution **design principles**
public scrutiny framework **rev**
transparency governance **research**

**Governance and devolution:
charting the way**

focus responsibilities arrangements
picture agreement commitment **maxim**
sequence solution negotiation

CONTENTS

Who this report is for and why we have produced it	4
Report headlines	5
The situation so far?	6
What are the key governance issues with which areas have been grappling?	7
■ Relationships with Government	7
■ The prize	8
■ Geography and size	9
■ The key relationship: between the Mayor and the Combined Authority	9
■ Managing other critical relationships	11
■ Resourcing	12
■ Securing political buy-in	13
■ Scrutiny	14
■ Engaging the public	15
Conclusions	16

This work has been commissioned and funded by the Local Government Association.

WHO THIS REPORT IS FOR AND WHY WE HAVE PRODUCED IT

Devolution is of interest to everyone in local government: whether your area is in the thick of it or you are watching with interest from afar.

This report will be of specific interest for those:

- with a responsibility for managing the establishment of a combined authority alongside the agreement of a devolution deal with Government – whether on the member or the officer side;
- with a responsibility for managing the agreement of a deal, where a combined authority is already in place, and understanding how existing governance systems and arrangements might need to shift accordingly;
- with a responsibility, once a deal has been made, for thinking practically about the detailed governance arrangements for implementing and taking action on a devolution deal;
- with a responsibility for overseeing or scrutinising any part of the above.

We think that this report will be of particular interest and relevance for a wider group of councillors, council officers, partners and interested citizens who may not be as knowledgeable on the intricacies of the devolution process as those who have been working within it for some time. For them, understanding the practical challenges and other issues that areas around the country have faced will help them to better engage in devolution decision-making in future.

Our research demonstrates that there is no easy prescription for good governance under devolved arrangements. There is no secret formula or approach guaranteed to result in success. Looking at the experiences and solutions of others can help to reflect and learn, but not to apply those solutions wholesale to what will usually be unique challenges.

As such, this paper does not seek to provide answers on effective governance, but does explore some of the common challenges and how a number of areas have tried to resolve them.

Two companion pieces to this publication exist, both also commissioned and produced by the Local Government Association. These are:

- “Combined authorities: a plain English guide” (2016)
- “Combined authority overview and scrutiny: a plain English guide” (2017)

CfPS has produced two previous pieces of research on this subject:

- “Devo why, devo how?” (2015)
- “Cards on the table” (2016)

This research highlighted a number of key governance issues for devolved areas – principally the need for a clear sense for each local area of the rational underpinning devolution, and the existence of a “sequence” for the devolution process, at each point of which a space has to be found for scrutiny by the public and by elected members.

We recognise that this is very much the start of the process for all those involved. CfPS is grateful for the insights of those to whom we have spoken as part of this exercise, and look forward to providing further support on the journey ahead.

Note on methodology

We have spoken to the officer governance lead for almost every area which has either agreed a devolution deal, or where a devolution deal is currently under development. This includes areas where a combined authority is in place.

We have also spoken to prominent member Leaders in some of those areas, and where possible and relevant, to the Chairs of combined authority overview and scrutiny committees as well.

In October 2016 we issued a short survey to gather the views of a wider range of practitioners, on the officer and member side – as well as to gather the views of community activists and others entirely outside the devolution process.

Our approach has been limited to speaking to those within local government – we have not spoken to those involved in LEPs, other partners, local community activists or the wider range of stakeholders who all have a part to play in devolution's success. This research has been focused specifically on the perceptions of those within the sector of the challenges they face, and how they are managing them. The dynamic of local authorities' position on "systems leadership" amongst a wider group of partners is one on which we have touched in previous publications (and which has informed our promotion of local Public Accounts Committees) but has not been the focus of our research here.

In order to ensure that we were learning people's frank, candid views about the devolution process, we decided not to quote people in this report, or to highlight individual combined authorities or areas when we make judgments about good or poor practice. We have not drawn conclusions from having spoken to single individuals; the themes we have drawn out reflect more general feedback from a number of different people.

REPORT HEADLINES

- Government's approach to devolution – particularly in the months following the EU referendum – has caused uncertainty in a number of areas. There is a perceived lack of understanding in Whitehall of how the needs of local democracy can sometimes work against the process that Government has laid out for devolution. Leaders and senior officers want to be more open and to engage a wider range of stakeholders more – alongside the public. But Government has prevented them from doing this, through the inherent secrecy of the negotiation process. Alongside this sits a frustration within local government at Whitehall's unwillingness to set out their objectives for devolution. While Government has repeatedly insisted that it has no central objectives and that devolution is for local areas to define, the approach taken towards devolution negotiations suggests that this is not the case. Having a sense of what the overall objectives are would help to anchor local discussions on devolution and its benefits in reality;
- For many at local level to whom we spoke, broader public service reform is a key goal of devolution – along with the prospect of multiple iterations of deals leading to meaningful local control of a wide range of locally-delivered services. If public service reform is truly one of the objectives of devolution, governance will need to change, shift and evolve to accommodate;
- A sense of pragmatism has for most overcome opposition to directly-elected Mayors. For some, this has led to attempts, through their governance schemes, to build in safeguards for combined authority decision making. How this will impact on Mayoral/Combined Authority (CA) relationships in practice remain to be seen – it is likely that the dividing line between Mayoral and CA responsibilities will be more blurred than many governance schemes suggest;

- All areas recognise the need to do more on engaging the public – but opportunities to do so in a consistent and meaningful way have in part been affected by Government’s approach. There are opportunities to do more to secure wider political buy-in – as part of getting the deal “over the line” in local areas, and as part of the wider requirement for effective and robust scrutiny at combined authority level;
- Political buy-in remains central. Even if the reality is different, the perception in the sector in recent months has been that the devolution process has been losing momentum - which may affect the commitment of Leaders to it - let alone the commitment of a council’s wider membership. For Leaders, being able to clearly set out the benefit and prize of devolution is supremely important, because not all have the political capital to – as one person to whom we spoke put it – “bring their members into line”. Scrutiny can and should be central to this process of drawing in a wider range of councillors to provide critical support to this process.

THE SITUATION SO FAR

In our 2016 publication “Cards on the table”, we looked in depth at the process of devolution from the beginning through to the implementation of a “deal” between Government and local areas. Between these two points, we found that there was a sequence of events which most areas need to pass through.

These include agreement of geography (which councils are included in the deal), the development of a proposal from the local areas to submit to Government, the negotiation with Government, the agreement of a deal, the selling of that deal to the public and partners in the area, the design of arrangements to implement the deal and the implementation itself. Some areas (such as Greater Manchester) have agreed multiple deals, with this deal making process having been a continuous one for the last few years.

Each stage has its own governance challenges, but most of those challenges have tended to focus on the following areas:

- The formulation of proposals (including the agreement of geography);
- The negotiation with Government;
- “Selling” an eventual deal to the public and to the wider member corps.

Some areas have already passed through all of these points on their way to their first deal – others have yet to. Areas of England can be divided into four broad categories, depending on where they are on their devolution journey.

- Established combined authorities. These are areas where CAs have been established; most but not all of these areas are working towards the elected of an executive Mayor. A devolution deal will usually be in place, or in the latter stages of agreement;
- Aspiring devolution areas. Areas about to establish a CA as the mechanism for delivering a deal which has either been agreed or is about to be agreed;
- Emerging areas. Areas which are seriously discussing devolution proposals with Government, but where the geography and structural arrangements aren’t yet wholly clear;
- Areas standing aside. Areas where there is no particular appetite for devolution and where there are no currently active discussions ongoing with Government.

Areas at different points on their journey will experience the kinds of challenges we have identified in different ways. For some, these challenges will be live concerns – issues with which they are grappling right now. For others, the same challenges will be historic ones, where solutions have been identified. The important thing to remember is that these challenges do not seem to dissipate once agreement has been reached on their resolution. Constant work is required to make sure those solutions remain fit for purpose. Governance is the key mechanism to ensure that this happens.

Areas will need to put in place “transitional” governance arrangements to manage the negotiation process that provide more certainty and consistency to a range of those who are involved and affected by devolution. Transitional governance systems should, from the outset, be designed with the end result of getting the deal over the line. Other considerations – securing buy-in, agreeing the substantive outcomes of the deal, and so on – are all connected to that final agreement with Government.

WHAT ARE THE MAIN GOVERNANCE ISSUES WITH WHICH AREAS HAVE BEEN GRAPPLING?

Relationships with Government

Almost all the areas with whom we spoke highlighted difficulties in conversations with Government. Some felt that aspects of Government’s approach was hindering the establishment of effective governance arrangements at local level.

The first concern is the **expectation around secrecy** that Government has been seeking to impose. Areas pursuing devolution deals were keen to engage a wider range of local partners in the negotiations and discussions preceding those deals, but Government was unwilling. This presented some significant governance challenges – particularly in those areas where no combined authority already existed. In particular, it has made broad political buy-in difficult to achieve in some areas.

“Government consistently sets challenging deadlines”

The second concern is the **expectation around time** that many feel Government has made of areas undergoing negotiations. Working at pace, Government expects local areas to turn around plans and proposals in a few days but often takes weeks to respond to requests from

local authorities. National policy on critical issues suddenly changes, changing the nature of the deal (a good example is the announcement on business rate localisation in late 2015, which materially affected the nature and scope of some deal proposals). Government reopens negotiations on issues which local areas had considered closed, or changes its view on issues where negotiations are ongoing. For local authorities (particularly in areas where combined authorities do not already exist) making decisions quickly on matters of substance is difficult but not impossible; this speed has however caused some local political tension and concern.

The third concern, and arguably the most important one, is the **lack of understanding of Government’s objectives**. Building a proposal for Government (and putting in place governance arrangements appropriate to that proposal) involves having a sense of the kind of outcomes that both would be right for the area, but that meet Government’s needs and expectations (this is in fact the essence of the negotiation process itself). The areas we have spoken to think that it is increasingly untenable for Government to insist publicly that the objectives of devolution are for local areas to define, given the nature of the deal-making process as a negotiation. There is space for local needs to drive the process (each devo deal does, after all, look different) but this clearly needs to be within a framework defined by how far, and how fast, Government is prepared to devolve. Areas would find it helpful to have this framework more clearly articulated.

This would allow local discussions to happen in a more straightforward way – it would also make it easier for areas to build in conversations with a wider range of players on the actions that could be formulated to develop those objectives in a local context. This is not about subsuming local priorities into a national sense of what is important, but using those national objectives as a framework for a necessary local discussion about how local priorities can be delivered within that framework.

The tension highlighted in a number of areas lies in a **lack of clarity** on whether Government is pursuing devolution with the objective of economic development and growth in mind, or whether it has the wider public service reform agenda in its sights. If the latter, the development of subsequent iterations of deals – and the governance systems accompanying them – will need to look and feel profoundly different. A devolution deal which is about delivering inward investment and promoting and developing policies around enterprise will involve a very different decision-making and accountability system.

For most local areas to whom we spoke, there is a sense that broader public service reform is the real prize – although there is little evidence of how this is being articulated at national level, and how it might be brought about. But planning for this ambition needs to start now, and this direction of travel needs to be understood by all the negotiating partners. In particular, those partners need to understand how, over time, governance may need to evolve to take advantage of those reforming opportunities. Some areas are, independently of Government, developing proposals to cover these kinds of aims locally, rather than waiting for Government to set out their own line on the subject.

While a substantive discussion of the broad public policy objectives of devolution is beyond the scope of this paper, they are important to understand insofar as they affect how areas plan, design and implement their governance arrangements.

The prize

Having a common understanding of what devolution’s ultimate outcomes are – the prize – are fundamental to building effective arrangements to make the CA work.

This understanding plays a critical part in the negotiation process. It also helps individual councils to be pragmatic about what the prize is worth. Good governance helps to identify what is a red line, and what isn’t, in that negotiation. Transparent and well-understood local arrangements for discussion and dialogue between leaders, between leaders and officers, and between leaders, officers and the wider member corps, will lead to a healthier understanding of what “pragmatism” means in this context.

“When Government came up with proposals on housing, the deal became too valuable to turn down”

Some deals foundered because some leaders and councillors, considered the imposition of a directly elected Mayor a cost so significant that it outweighs the committed Government funding (and the potential for additional freedoms and funding in due course) put in place through a deal.

Often the prize is not about what might be gained now, but what the second, third or fourth iteration of a devolution deal might help to bring about. This can make a sense of realistic pragmatism difficult; the prize is less about a defined amount of Government money (£30 million a year for a set period, for example) than it is about potential for that deal to open up additional avenues for far greater opportunities. For many the real prize is public service reform. Devolution is seen as providing the mechanisms, the systems and freedoms to properly approach that challenge. But those opportunities might not be apparent with the first deal, and public service reform is an esoteric concept to get across to the wider member corps or, indeed, to the public.

This makes agreement all the more important, because it is only through discussion and dialogue that leaders can make an informed judgment about what outcomes are likely to come to pass, and what

the associated costs will be. Political leadership here is of critical importance – and, alongside that, politically-led accountability for that leadership.

A common understanding about the prize and what it is worth is necessary to confidently pursue a deal, even when the prize may be more about long-term potential than short-term financial gain. The existence of this common purpose has helped to secure more local commitment in those areas which have had success, and have helped to overcome opposition – although there will still be those implacably opposed to this agenda.

Geography and size

Some areas – particularly cities – have prior history of having worked together. This is often because of historic regional structures (such as Integrated Transport Authorities, or former metropolitan counties) having shared the same borders as new combined authorities.

All these factors make most of the deals done so far different to the expected next batch of deals (many of which cover far larger, more rural areas with less history of joint working). Coming together to develop a common rationale for devolution, and putting together a robust proposal, has been much more challenging for these areas. This has been a particular challenge in a number of two tier areas.

“The deals are one-member, one-vote – but the risk profile faced by counties is far greater than that faced by districts”

“Within weeks of the announcement it became clear that it was too big. There were too many working parts, on too tight a timescale, to make it workable”

We have spoken to many who recognise that **the kinds of strong working relationships that are well-established in cities cannot be created in rural areas overnight.**

It is difficult to say that there is an “optimum” size for a deal – that certain areas are “too big” or “too small”. In larger areas, councils are planning to tackle the challenge by creating small “clusters” of authorities to work together on issues of mutual interest and importance – recognising that much rests on the presence of a sense of place which

draws people, and partners, in the area together in a sense of common purpose.

The key relationship – between the Combined Authority and the Mayor

The most high profile relationship – and the one where the likely dynamic is least understood – is that between the Mayor and the CA.

There is now a **general acceptance that securing a deal of financial significance requires that areas agree to the election of an executive Mayor.**

This has led to many areas taking the **decision to adopt a Mayor out of pragmatism.**

This fixation of the role and function of the Mayor has in many areas overshadowed much of the discussion of devolution’s prize, and risks a simplified view emerging of the nuanced governance challenge that devolution presents.

“There is an advantage to having the devolution and combined authority discussions in parallel, rather than having to retrofit the deal to an existing CA system”

Concerns mainly arise from **uncertainty about the power balance between the Mayor and CA.**

For example, some CAs are seeking to actively develop and draft their governance arrangements to separate issues for which the Mayor holds responsibility from those which will remain the responsibility of the CA, and its constituent councils.

A detailed explanation of the distinctions and limits of these powers is a common feature of many schemes – and is a legal necessity. Many of those to whom we spoke cited this as an important issue in getting deals “over the line” in their area. **Important governance safeguards such as these are what have given political leaders the confidence to proceed.**

“We are putting arrangements in place to support the delivery of Mayoral manifestos, but so much depends on the personality and approach of the person who is elected”

Areas will need to think carefully about these safeguards, and how they might operate in practice. **We heard from some an expectation that things would work if the Mayor “slots in” to these agreed arrangements. This is not guaranteed.** A directly elected Mayor will have certain expectations about the relationship he or she will have with the Combined Authority. It is in our view unlikely that Mayors will be satisfied to be a spectator when the Combined Authority comes to make decisions on issues which cut very close to their responsibilities. That Mayor’s

direct personal mandate, and their (presumably) high profile in the locality, will make an expansion of their influence into CA reserved matters likely. Legally, it may be the case that Mayoral and CA responsibilities can be rigidly defined. Practically, the dividing line is likely to become blurred.

Politics will also have an impact. The issue of “one party states” – areas where all (or almost all) councils, and councillors, come from the same party – did not come up at length in our conversations. However, the relationship will inevitably be affected depending on whether the leaders on the CA are a mixed group, whether the majority of those members are of the same party as the Mayor, and so on. Common purpose will inevitably be easier to identify where this is the case (although it is not guaranteed). Whether such areas will see less effective scrutiny and governance by virtue of the majority of the key players being of the same party is moot – the evidence is not there in local government to suggest that similar principles apply there.

Those to whom we spoke on both the member and officer side acknowledged the uncertainty involved here.

In many areas there is a specific understanding that the Mayor and combined authority will need to work together seamlessly. We suspect that the need to secure buy-in from the wider membership of councils has resulted in a more guarded position. Concerns about the need to protect councils’ sovereignty will have played a part. However, we expect – given the conversations we have had – that the presence of a Mayor willing to work constructively and positively with the CA will lead to a relaxation in these joint working arrangements.

“We have consistently talked about the Mayor and the combined authority acting together, as a single unit – not separately”

All were agreed that successfully building the relationship would come down to the personal style of the Mayor, and the personal style of the individual members of the CA Cabinet. This raises challenges for business continuity – what, for example, will happen when a new Mayor takes office, or where key local government leaders are replaced?

It is only when Mayors are elected that we will get a clear sense of what this means in practice. The expectation that governance will “shake down” in practice is being used as a justification by some areas to leave their arrangements fairly loose for the time being. There is an idea that the passage of time will make success more likely.

A lot of this hinges on expectations around the likely Mayoral/Combined Authority relationships. Areas with existing executive Mayors within them recognise that that person will want to place their

stamp on decision-making, and will need time to buy themselves in. **It can take time for mutual trust to grow.**

It is however potentially dangerous to assume that time will resolve all tensions. **Formal safeguards and strong legal systems to manage the decision-making process will still be necessary.** Informal and collaborative working can achieve much, but an approach defined by the principle of “wait and see” will be problematic. Firstly, the framework for governance will be defined by Order, laid and agreed in Parliament – making it important to get those fundamentals right in advance, at least. Secondly, candidates for Mayor need to have some kind of idea what to expect before the election. While it is unrealistic to expect them to slot in to a pre-existing framework, there will be some basic expectations of behaviour, duties and roles to which they will need to adhere. The scheme and the associated Order provides the foundation on which this can be built – but it must be built, and consciously, rather than expecting it to merely coalesce organically over time.

Following the election, CAs should expect a shift in the way that they work. There may be tension and disagreement. Governance will have to be flexible enough within the framework set out in the Order – focused enough on the need to make things work, rather than reflecting the rigidity suggested in some schemes – to account for this.

Managing other critical relationships

There are a number of other relationships which need to be aligned in order for Combined Authorities to work effectively.

The relationship between the CA’s constituent and non-constituent authorities must be clear. The respective duties of members and officers – and the extent of any delegation – has to be agreed. Importantly, the relationship between the CA and its constituent councils is also critical – the need to secure and protect the political and organisational sovereignty of those councils is something on which all are agreed.

Beyond these, there are a number of other stakeholders – the LEP (and the business community more generally); other public sector partners; the voluntary and community sector; local transport providers – and of course, Government.

This could make for a confused governance landscape, as mutual lines of accountability overlap and a clear sense of who is responsible for what is lost.

Relationships between councils

For areas in the vanguard of devolution, relationship-building between councils was comparatively easier than for those areas currently going through the design process. For the most part, those who have already done deals are cities with existing, well-understood boundaries; they are areas for which there is already a “sense of place”, embedded through existing sub-regional arrangements such as an Integrated Transport Authority, or common strategies on issues such as economic development and planning. **Even with such a history of shared purpose, successful partnership working on devolution is not guaranteed** (as the example of the North East shows).

Those securing and pursuing deals now, however, cannot turn to a long history of collaboration. **Some two-tier areas have had fractious relationships, and devolution discussions have become a tussle between a county and its corresponding districts.** This has been informed in some areas by the prospect of reorganisation – either thought to be promoted by Government, or by one or more councils in an area at the “expense” of others. In some areas, this has led to rival devolution proposals being developed (sometimes at the instigation of Government) supported by reports and research from consultants specifically engaged to bolster the credibility of those proposals.

Ultimately, things come down to interpersonal relationships. Governance arrangements will need to build on these relationships; this means that attempts to restrict or constrain the role of the Mayor may not work, and may be counterproductive, depending on the personalities of those involved and their willingness to change and adapt.

In some areas, the retention by constituent authorities of their sovereignty has been a concern. There is no formal governance solution for this. Collaboration and joint working will accelerate under devolution, and we suspect that attempts to rigidly specify the responsibilities of individual councils, and that of the CA, will falter – just as similar attempts will for the Mayor and CA. **The only solution is likely be one which highlights pragmatism and dialogue** – through building and maintaining relationships and trust. Only mutual trust and dialogue will overcome suspicions that power will be “drawn away” from individual councils to a remote and unaccountable combined authority and/or Mayor.

Some areas have recognised the need to involve and engage others. This is particularly the case where those areas are already thinking about the possible ways to use the combined authority and the devolution deal as a springboard for wider public service reform. This encompasses engagement of partners even if they might not currently be directly affected by decisions being made. This open, collaborative approach, which sees decision-making as a joint process, has huge benefits – but also presents challenges for governance when it comes to clarity of roles and responsibilities, general openness and transparency, and accountability for failure.

Resourcing

Having the resource in place to secure agreement and push decisions through is central to a successful dealmaking process, and a successful CA once the deal is being implemented. For areas without a combined authority in place this has proven extremely challenging.

“Securing a budget – even for quite a streamlined operation – is a difficult sell”

Costs are usually divided equally between constituent councils. For small shire districts, this is likely to prove difficult. However, it is logical where those councils are concerned that making a smaller financial contribution might lead to their having “less clout”.

It has been easier for existing combined authorities to negotiate agreements with Government, because the resource is often already in place to do this. Where no combined authority is in place, the responsibility has sat with officers and members with duties at their own authorities. This is a temporary measure, and there is no obvious solution at this stage.

Part of a solution might however lie in the agreement of robust transitional governance arrangements, as many areas have sought to adopt both formally and informally. Transitional arrangements are about deciding who talks to who about what, and when – how bumps in the road will be navigated, what the red lines might be in negotiations, what the role will be for non-executive councillors and how to put together a consistent communications plan for all of this. Putting such a plan in place will also help with the management of resources. **Critically, those transitional arrangements are all about getting the deal over the line** – at this stage, that is the overriding objective. Other objectives – involving and engaging people, agreeing negotiating positions and so on – are corollaries. Where areas have had this singularity of purpose, deals have generally been easier to make – where a commitment to agreeing a deal has been less clear or councils have been significantly more cautious, it has made a deal less likely.

Transitional arrangements can be built and developed as the deal is made, and as new structures are developed and added. It is a model that reflects the iterative nature of devolution itself.

Securing political buy-in

Despite all the work that may have gone into the process amongst key leaders, senior officers and others, in some cases wider political support has not been achieved. As the dealmaking process concludes and implementation begins, backbench-led scrutiny arrangements will keep the wider member corps central and relevant to decision-making.

Formal votes by full Council are consultative in nature; ultimately, under executive arrangements, it is the decision of Cabinet whether or not to proceed with a decision to enter into a devolution deal. However, without the political backing of the majority of councillors, Leaders will find it difficult to sustain a commitment to the devolution process. **It is likely that, in many cases where full Council votes fail, this is likely to be for a combination of reasons.** But a failure of leaders to bring their members along with them is likely to be critical. One factor seems to be different views on the prize of devolution, and the price worth paying to get that prize. Without an agreement on that point, conversations about structures dominate people's minds – not only the Mayoral/CA dynamic, but also the tension between councils in two-tier areas, which has resulted in some interesting plans on voting and veto arrangements in those CAs.

Leaders will need to use their political capital carefully as they understand how to bring other members on board – a difficult task when the negotiation process has deliberately locked those members out. Some Leaders will be able to carry councillors along with them – others will lack the political capital to do so.

“My difficulty in talking to my members was that many thought that we Leaders have more power in this than we actually do”

Those to whom we spoke recognised the need to do more on this; some admitted to having made mistakes in the way that they had approached this challenge, and some officers expressed frustration at the difficulty that political leaders had had in – in one person's words – “bringing members into line”.

Managing these political relationships is about more than bringing councillors into line or keeping them “informed” – it is about using every mechanism at the disposal of councils to involve and engage councillors. This will involve a blend of formal and informal channels.

Where many areas have encountered difficulties is by planning member engagement in an ad hoc way. On their own, none of these approaches are very effective.

We spoke to a few areas who had undertaken – or were planning to undertake – a more holistic approach. Such an approach might, for example, involve:

- Expecting that Leaders will take active steps to engage their own members – and the leaders of minority groups within their councils;
- Arranging for member briefings – both through overview and scrutiny, and through other means (political group meetings, other informal briefings);
- Using these mechanisms both to share information, and to gauge commitment and buy-in;
- Having a systematic communications plan which covers all of the above.

There is a limit to how much advance planning can be carried out, given Government's unpredictable approach to the negotiation process. But a plan, which provides a framework for those relationships to be managed, is better than an approach which is entirely responsive.

Non-executive councillors should take the opportunity to think about and agree a sensible approach on what their contribution will be to achieve that end result.

Part of getting the deal over the line is about demonstrating to Government that there is a shared understanding about devolution in the area, and that there is minimal chance of the deal being unexpectedly derailed when constituent councils come to vote on it. Political buy-in has therefore been recognised as vitally important, and requires a range of politically-led and officer-led solutions to achieve.

As part of their wider communications efforts, combined authorities (and areas aspiring to establish combined authorities, and agree deals) have recognised the need to agree a flexible and responsive approach to communication and dialogue with the wider corps of elected members.

Scrutiny

“We have consciously tried to focus on the outcomes of the deal, but councillors aren’t really thinking about those outcomes”

Where scrutiny systems have been set up for combined authorities, they have often struggled to be relevant and effective. **This does not seem to be a process with forensic, effective scrutiny at its core.** Combined authority scrutiny does not seem to engage consistently with scrutiny at local level either – something we considered an important factor when we looked at this issue as part of our publication “Cards on the table”.

Many areas are trying to address this shortcoming. Those areas which have been operating combined authority scrutiny for some time are taking the opportunity to review how that works. For others, the launch of their new systems in 2016 and 2017 provides an opportunity to think critically about what they consider the role of scrutiny to be.

“The problem with scrutiny is the tight timetable, with Regulations not expected until the end of the year [2016]. We’ve given it some thought, but not as much as we should”

For many areas **the focus for scrutiny seems to be the setting-up of a formal committee, with little sense about what the role of that committee might be.**

Although there is an “in principle” commitment to scrutiny, many leaders simply haven’t had the head space to think strategically about this issue. **But this places the onus on scrutiny in the constituent authorities to make the running.** Local scrutiny has tended towards a reactive approach, being briefed on devolution when developments

arise but not formulating a common understanding of what member-led accountability at a combined authority might look like. Where combined authority scrutiny has been set up, resource constraints and a confusion about role and value has led some scrutiny members themselves to become dissatisfied and disengaged.

It has not helped that Government has delayed the laying in Parliament of an Order that will explain some of the mechanics of scrutiny’s operation. This delay need not call a halt to wider conversations about scrutiny’s role, function and duties. But it can be used as an excuse to do nothing, and it has a practical impact in terms of the way that combined authority governance schemes, rules of procedures and so on come to be developed in detail. Authorities do have access to some information about the technical aspects of scrutiny, which can be found on the face of the Act. These include scrutiny’s general powers (similar to those applying to local government overview and scrutiny committees), arrangements for establishing call-in provisions, and chairing arrangements (including the requirement that chairs will need to be independent, or “appropriate”, people).

Ultimately, there is a risk that **scrutiny could be seen as a “bolt on” to governance arrangements** rather than as an integral element – a critical part of the check and balance between the CA Cabinet and the Mayor. This mirrors the attitude that we know exists in many councils and reflects the low

profile of member scrutiny amongst those at the top table. In order to make scrutiny more vital, members will need to define their role, focus their work and direct their work programme to those interventions that can make the most practical difference to local people's lives. This will require that key leaders at the CA – and the Mayor – recognise scrutiny's central role, and take steps to empower scrutiny to carry out this role.

Those areas with Mayoral elections in 2017 expect to put in place plans to manage the coming into office of that Mayor which highlight the need for collaborative working. Scrutiny will be a key way to manage these relationships – particularly if public service reform becomes a live element of devolution and combined authority arrangements. Scrutiny provides a means to manage the governance uncertainty of collaborative decision-making – possibly through the mechanism of local Public Accounts Committees.

Engaging the public

Consultation and engagement have been an important element of the dealmaking process everywhere. For most, it continues to be post-hoc – consulting the public as part of the process leading up to the finalisation of a deal and the agreement of a Mayoral/combined authority model.

For most, this has meant **seeking to secure public responses to the governance review, when it is drafted.**

In some areas, more proactive approaches have been taken. Polling companies have been engaged to chart local responses to devolution, and high profile consultation exercises have been designed to garner public responses on the substantive outcomes of devolution. Little has been done to clarify the role of the public once new arrangements are in place – although those to whom we spoke stated their commitment to continue to engage the public.

“You can never do enough consultation”

It is easy to discount such approaches as not sufficiently ambitious. **However, there is no obvious alternative.** In “Cards on the table”, there were suggestions that areas might look to engage the public at the earliest stage, when proposals are being developed. However, in areas where geography is sometimes uncertain until surprisingly late in the day, and where political tension and disagreement make the negotiation process a difficult one, broad engagement of this kind can be impractical.

A number of areas reflected that **the public is not interested in “devolution” per se**, but that they are (and will be) interested in the outcomes of devolution, and that this should be the focus.

All of those to whom we spoke recognised the importance of speaking to the public, and expressed frustration that the deal making process as it currently stands makes such general public conversation difficult.

The passage of time is seen as a partial solution to public engagement – the expectation being that as the Mayor settles into their role and assumes a higher public profile, and as the outcomes of devolution on the ground become apparent, engagement will be easier.

This makes practical sense. There is, however, a risk attached to it. The risk is that of complacency – that we can kick our current challenges down the road in the hope and expectation that our future selves will be able to identify solutions.

There is a similar risk in trying to anticipate everything at the outset; as we have already commented, much of the devolution process is unpredictable. It is likely that the right balance between proaction and reaction will be different for every area.

CONCLUSION AND THE DIRECTION FOR GOVERNANCE

Local players need to have a sense of how governance will work when devolution is up and running. There are some general themes that have emerged from our research which suggest a common approach. These themes are not surprising, but a wider understanding of them across an area – and how they will apply in practice – will be critical to putting in place strong and well-understood governance solutions.

Perhaps the most important thing is that devolution is an iterative process. Not everything can be decided at the outset, and there will be uncertainties in place that will only be resolved with time and experience. Elements of devolution's prize may become clear only when the second, third or fourth deal is being transacted. This is a long term endeavour.

In addition to an understanding of that general point, the following features all seem to be usual:

- Wherever possible, joint decision-making based on consensus. Collaboration will be a fact of life, and there will be a sense of common purpose;
- A strategic, high-level role for the CA, with delivery being handled and managed elsewhere. There is little appetite for the assumption by the CA of service delivery responsibility at a later stage;
- Providing space and opportunity for politicians (including the Mayor) to exercise political leadership – with checks and balances being managed through creative tension between the roles of Mayor, leaders on the CA, and the CA's scrutiny function;
- Governance will be informal and flexible, because rigid delineation between roles and responsibilities will be difficult to maintain in a collaborative environment;
- Collaboration and other forms of close joint working will defend and protect the individual identities of the different partners involved, because – within broad agreement about the outcome and purpose of devolution – it will allow different options and tactical priorities to be played out and discussed in an open and managed way;
- The flexibility of governance arrangements will allow the CA and its partners to respond opportunistically to opportunities to work together – making further deals more likely, and substantial public service reform across a whole area a real possibility;
- Meaningful public engagement in conversations about what is right for the area will feed into this collaborative approach.

These features are broad-brush in nature. For many Leaders (and other who have been involved day-to-day in these negotiations) they are likely to sound like common sense, and will not add any additional insight to their challenges. However, the critical challenge is to ensure that these features and the arguments in favour of them are shared by a far wider range of local partners and stakeholders.

Without that common understanding of the expected features of the decision-making process under devolution, political buy-in (and, potentially, buy-in from other partners) may be hard to maintain.



77 Mansell Street London E1 8AN
telephone **020 3866 5100** email **info@cfps.org.uk** twitter **@cfpscrutiny**

www.cfps.org.uk

Centre for Public Scrutiny Limited is a registered charity: 1136243 and a Limited Company registered in England and Wales: 5133443