

Devo Why? Devo How?

Questions (and some answers) about
governance under English devolution



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About CfPS

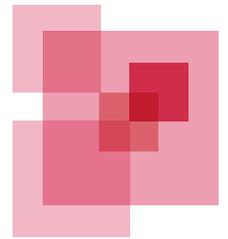
The Centre for Public Scrutiny is a charity devoted to good governance and good decision-making.

Our work is about exploring how good governance can be better understood, promoted and brought about in practice. We work with politicians, with academics and other thinkers at national level, with local politicians and those who support their work, and to those who provide services on the ground to work out how decisions can be made in a way that is more accountable, more transparent and which meaningfully involves a wide range of people – in particular, the public.

Find out more about our work on governance and devolution at www.cfps.org.uk/devolution



Foreword: Lord Bob Kerslake, Chair of the Centre for Public Scrutiny



Clear and effective governance and scrutiny must be a critical element of the devolution dialogue in England from the beginning.

New devolution arrangements must not be responsible for extending the divide between the governed and the governing. English devolution has huge potential to pass on proper power to those best placed to understand what's needed to improve the lives of their residents and the places where they live. It's also critical to putting local councils in a position to manage the financial pressures they are currently under.

Greater responsibility requires greater scrutiny. Devolution is a positive opportunity to build governance arrangements which are dynamic, flexible and really add value, rather than perpetuate old assumptions about those arrangements representing a brake on innovation.

From the beginning, there must be a clear role for elected members outside of the privileged few doing the deal. Devolution is a process, not an event. By adopting the principles of accountability, transparency and involvement from the off, local arrangements will fit an acceptable governance framework.

I'm delighted to be a part of CfPS's campaign to ensure that these vital issues take centre stage over the coming months. I look forward to seeing more leaders and senior decision-makers commit to the principles of accountability, transparency and involvement as they go about designing and delivering services together.

Bob Kerslake
September 2015

Introduction

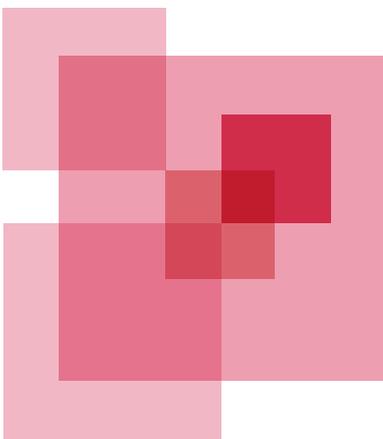
Devolution presents a huge opportunity to local areas. A vista of new powers is opening up – powers over local health services, over transport planning, over skills and economic development – and the funding to back them up.

At least, that is the hype.

For many, the subject provokes a combination of enthusiasm and trepidation. This is what local government has been asking for, local powers will allow the joining up of public services which is essential if we are to improve outcomes and create a system which is affordable

The breakneck speed of government policy change and implementation has caught many off guard and now fearing being left behind. There has been a burst of activity – deals for combined authorities in the North are developing, additional powers and responsibilities have been planned for Manchester and feverish preparation was carried out over August 2015 to submit proposals to meet the Chancellor's spending review deadlines. This all adds to the sense that big rewards are there for the taking. But there is also a sense that, in some areas, nobody is quite sure how to get hold of them.

There has been widespread public debate and discussion – including referendums – around devolution, and the development of devolved powers, in Wales, Scotland and Northern Ireland. This dialogue and openness has not been repeated in England. We think that this needs to change.



Background

More and more councils have been considering joining together to form **combined authorities**. Combined authorities were provided for in the Local Democracy, Economic Development and Construction Act 2009; the first to be formed was Greater Manchester, but others have joined them. CAs do not automatically secure devolved powers from Government, but they will usually take on the existing local roles and functions of Integrated Transport Authorities and Economic Prosperity Boards.

Meanwhile, **city deals**, or **devo deals**, are negotiations struck with Government about powers and functions currently controlled by central Government which will be devolved to local level. They generally follow on from approval of combined authority status, although such deals and negotiations do seem to be happening concurrently now.

A fundamental part of all the discussions have been the prospects for further fiscal devolution – giving local authorities, as they come together to form combined authorities, more power to raise and spend funds as they see fit. This presents a highly attractive opportunity for local government to assert its independence.

Meaningful fiscal devolution is central to the vision of many for a settlement which will see local areas take responsibility for designing, financing and delivering services locally.

Without it, there is an argument that devolution is merely decentralisation, a farming-out of certain central Government functions to local areas while Whitehall stays firmly in control of the purse-strings.

Without it, the ability of councils to truly innovate, and to create an affordable system, is severely hampered.

This has meant that, nationally, conversation has skipped ahead quickly to the “how” of devolution. How will deals be developed and improved upon? How will decisions be made?

These are important questions that focus on governance – accountability, transparency and involvement.

They are not, however, questions which address the fundamental question at the heart of the devolution debate – why? Why devolve? What improvements will result from devolution, and is devolution the only way to secure those improvements?

This paper will begin to set out some of the key governance issues which councils (and other public sector organisations) will have to address around those two questions - the-why and the how.

Why?

As set out by many commentators, “the case for devolution” is heavy on assumptions. There are some benefits which will cut across most areas of England and about which the LGA, as the membership body for local authorities in England, is fairly confident. These are that devolution can deliver:

- More sustainable public finances (through more freedom to innovative, and to deliver proposals around service integration and transformation which will save money);
- A stronger economy, and long term prosperity (through a more localised approach to dealing with skills and employment issues);
- A fairer settlement for England and the rest of the UK (balancing the need for devolution in England against further devolution in Scotland and Wales, in particular)¹.

1. “Devo Next: English Devolution – local solutions for a successful nation – an offer of partnership with Government” (LGA, 2015)

All of this may be true. However, the precise local benefits, and reasons, for securing combined authority status, and then a city deal, can be difficult to identify. Those reasons and benefits are likely to be different for every area – this stands to reason, otherwise there would be little point in pursuing devolution as a policy goal in the first place. But this means that local discussion and determination is vitally important.

In our paper, “Growth through good governance” (2014) we highlighted the risk of failing to clearly set strong, strategic objectives. Clarity of purpose is critical – a sense of what the question is that devolution is answering. Before the structures of a combined authority or a “devo deal” are even being discussed, there needs to be a clear sense of what its constituent authorities are trying to achieve.

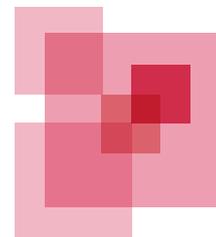
This demands robust scrutiny and strong governance to work. It requires that:

- The development of the main strategies which define how councils and their partners will work together be delivered transparently;
- Those strategies must be based on a strong evidence base, aimed at clarifying what outcomes the authorities are aiming to achieve by working together as a combined authority, and whether other partnership models (alongside, or instead of) might help to achieve those ends;
- This evidence base be developed through a focus on residents’ needs, and a mature approach to risk and resilience;
- Issues around institutional and public ownership of these plans be clear at the outset².

2. “Growth through good governance” (CfPS, 2014), pp8-9

Scrutiny committees of the authorities aspiring to form part of the combined authority must be able to look at those authorities’ plans, to ensure that they satisfy these critical criteria, before detailed negotiations with Government begin. We think that ideally, public engagement at the outset can help those leading the negotiations to understand what a “good” settlement for local people might look like.

In reality, the pressure of timescales may make widespread public engagement and dialogue difficult, and under these circumstances it may be that this scrutiny can be led by the overview and scrutiny committees of combined authorities themselves, if those structures have been established in advance of a deal being done with Government.



Whatever happens, there needs to be some independently led, reflective dialogue about devolution, its aims, objectives, and outcomes – even if this is limited to the general themes and principles.

This is about opening up the process by which areas first come together to ascertain whether pursuit of a devolution deal, is right for them. It is about democracy, bringing other voices into the debate, other than the “local elite” of senior officers and Leaders, and other privileged partners.

Councillors can help to bring more insight about what local people want and need. In their community leadership role, they can work to engage people who might be less likely to take part in a formal consultation process.

Non-executive members can help, through their representative role, frame this debate, weigh up different priorities, and ascertain what some realistic outcomes might be. It will also increase their understanding of what is happening and help gain their ownership and buy-in.

This is not just about undertaking an academic exercise, or adding a sprinkling of bureaucracy for the sake of things. It satisfies three important requirements:

- Opening out the planning process around combined authorities and devolution deals, in the interests of local democracy³;
- Making the planning process itself more robust. Planning for major service change is more effective if others – particularly non-executive councillors – are actively involved⁴.
- Creating the right culture which has accountability, transparency and involvement as the core operating principles from the off and recognises the positive value of scrutiny.

3. See blogs at:

http://www.cfps.org.uk/?location_id=394&item=461, and <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/devolution-lets-less-secrecy-town-9532772>

4. “The change game” (CfPS, 2015),

http://www.cfps.org.uk/domains/cfps.org.uk/local/media/downloads/CfPS_Change_Game_WEB.pdf

How?

The “how” of devolution is the big governance challenge. There are probably two particular areas of focus – the transition (the business of doing the deal itself) and then design and delivery of joined-up strategies, delivery plans and the redesign of services under the new arrangements.

Transition and negotiation

The deal-making process is currently almost entirely secret. Details have been released only when agreements have been reached, by the Chancellor of the Exchequer. A couple of announcements were made to coincide with the Budget in June 2015⁵; more are expected alongside the Spending Review in autumn 2015.

What we do not know is the process that has led to these announcements. Some evidence exists which gives an imperfect insight⁶. The Devolution Bill produces what is being called an “enabling framework” for devolution which will clarify some issues, but the detail will still be thrashed out in private between a handful of privileged individuals. This bilateral negotiation (rather than a national settlement for the whole of England) means that the process of transition, and of delivery under devolved arrangements, will be asymmetric – that is, it will look very different from place to place⁷. Devolution will therefore be dynamic, flexible and – critically – entirely bespoke.

This is excellent for ensuring that areas are more likely to be able to put in place arrangements which suit them and their needs. But the asymmetry involved also provides an additional impetus for transparency. Local people – anyone, indeed, not involved in the negotiations – need to understand what devolution priorities are being arrived at and agreed on. Increased public exposure in this process will lead to a more informed local debate. At the very least, the broad shape and principles of a bid for more devolved powers should be opened up to the public eye.

As we have set out above, part of the planning process for devolution, and the process of negotiation, must involve non-executive councillors (and others, as appropriate) having an opportunity to review and test the plans which the area takes to Government.

Design and delivery

In some quarters, the devolution debate has started and ended with the question – “how will we deliver on the ground?”. It’s an important issue to resolve, but not until the issues we have already discussed have been agreed upon.

Design and delivery are fundamental to making sure that the outcomes that the combined authority and its partners expect and plan for actually happen. Strong governance will help here.

We explored in our publication “The change game” how redesigns of public services need to be carried out in ways that involves local people and increases understanding of their needs, and that they be overseen by independent-minded non-executives. This is certainly the case for existing organisations undergoing transformation, but it is especially pertinent for brand new organisations and partnerships such as combined authorities. Here, there is a real opportunity to design in good governance from the ground up. It presents a vital chance to integrate the principles of accountability, transparency and involvement into everything the combined authority does. If this happens, good governance itself can help to bring about the outcomes that the combined authority’s leadership want to achieve⁸.

5. For example, in respect of Greater Manchester – <http://www.bbc.co.uk/news/uk-england-manchester-33448965>”.

6. For example, “A new devolution baseline: a planning tool for councils” (LGA, 2015), <http://www.local.gov.uk/documents/10180/6917361/Devolution+Deals/877c953d-5f89-4c09-b92a-256bf9aab8a2>

7. “Devolution: a road map” (LGiU, 2015); see also “Asymmetries in UK devolution: the logical consequences of bilateral negotiations” (Centre for Constitutional Change, blogpost, 2015)

8. See “Growth through good governance” (CfPS, 2014)

The detail

Growing devolution, growing governance

The deals now being done with different areas of England will not be preserved forever in aspic. They will grow and evolve over time. Even now, the deal previously done between Government and Manchester is developing, to incorporate more services and responsibilities.

We can assume that aspects of the devolution deals for all areas will also grow and evolve. Devolution, after all, is a process, not an event. Leaders will be thinking flexibility about different opportunities – not least the prospect for further fiscal devolution, but also changing demographics, the development of new technologies and changing organisational, and area, priorities.

Alongside fiscal devolution (which many in local government hope, rather than expect, to arrive – but whose need is only going to become more pressing with time) will come the freedom for combined authorities to design more innovative approach to service delivery, and achieve outcomes for local people, in radically different ways. The prospect of the scale and nature of devolution which would allow this to happen country-wide is not imminent, but it is something that we can perhaps hope for and expect. It presents a vital opportunity for the local government sector to take control of a wider range of services, on behalf of and for the benefit of local people. But the way in which this happens will look different in different parts of the country, as we have already mentioned.

How, therefore, do we design governance systems which will be appropriate – not only for what we have now, but for the work that combined authority areas will be doing in future? Those priorities – the “why” of devolution – may shift and change over time. The structures of delivery, the expectations of local people, the nature of public finances – all are also likely to change. We have to put in place governance frameworks that have the flexibility to change accordingly.

Furthermore, how do we design into those systems a way to evaluate and hold to account how they are performing, and what the outcomes are, as a means of informing councils’ future plans for requests for further powers?

We feel that whatever governance arrangements are adopted, they need to satisfy several requirements:

- **Accountability** – Decision-makers must clearly take responsibility, and engage with those seeking to hold them to account (non-executives, the public, and others); decision-makers also need to have the confidence that systems are in place that allow them to benefit from the insight that those holding them to account (especially the public) can provide.
- **Transparency** – It must be clear (to professionals, elected councillors and the public) who is making decisions, on what, when, why and how. Transparency is key to effective accountability (although the two or not the same thing⁹);
- **Involvement** – A sense of being informed by the views and concerns of the public. A commitment to public involvement should be seen as central to good governance.

All these principles require a central role for non-executives. Scrutiny councillors must be seen as central to any arrangements – they bring the credibility that comes through direct election, and the insight that their engagement with their constituents brings to the debate;

9. “Your right to know” (CfPS, 2013)

National framework, local determination

It is critical that these issues be resolved by meaningful discussion at local level, rather than national prescription. However, experience suggests that this is easier said than done. There is generally a tendency to underthink governance – to put in place structural measures which answer the questions of political representative and managing the dynamics associated. They can often provide the illusion of accountability and transparency, but fail to deliver on either.

We are in favour of approaches which see combined authority areas being given the initial push to have that meaningful discussion, but with the product of that discussion, and the approach agreed as a result, being entire down to the area to resolve. By this we mean that:

- There has to be a conversation amongst a range of local people and organisations about what good governance and accountability will look and feel like;
- Everyone involved should agree on some measures to put this into practice;
- These measures should be set down in writing in a way that is understandable, and shouldn't be able to be changed or ignored unilaterally.

What this probably means is that Government needs to provide a light-touch framework within which that discussion can happen, to protect against the risk of an imbalance of power between executive decision-makers and non-executives (and those outside the system entirely), leading to measures being adopted which reflect the convenience of influential people rather than the wider good of the whole area.

Getting the balance right between no direction at all, and too much, is a challenge. But we think that we have developed a number of approaches that Government could adopt that could help. Legislation would provide for the building blocks of these arrangements, but would crucially leave the detail to local areas to decide upon.

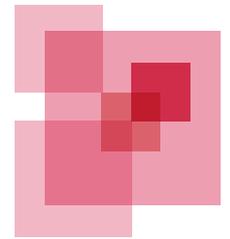
- **Local accountability systems statements.** As a deliberate response to the increased decentralisation of public services, and the need to assure value for public money¹⁰, the last Government started to produce “accountability systems statements” – documents setting out how Government Departments’ Accounting Officers will account for the money voted to it by Parliament. The statements highlight the differing levers and systems (including local democracy) which act together to secure effective accountability¹¹.

It seems logical to spread this national scheme to local areas. The national accountability systems statements will themselves provide a good start. Such statements could involve not only combined authorities, but other tiers of government, and other partners delivering local services.

- **Local governance frameworks.** A local governance framework would provide a slightly more prescriptive means of doing roughly the same thing. We consider that a framework should contain statements on public involvement, on policy development and on performance (how policy would be developed by a combined authority, how performance would be monitored, and how non-executives could be involved in these processes), on partnership working, and on the structures and resources to support these systems and arrangements. Again, the detail would be left to local areas to decide.

10. “Accountability: adapting to decentralisation” (DCLG, 2011), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6263/1994187.pdf

11. Reflecting some of the findings from our own research, “Accountability Works” (CfPS, 2010)



12. "Devolution in England: a new approach" (Federal Trust, 2014), http://fedtrust.co.uk/wp-content/uploads/2014/12/Devolution_in_England.pdf

- **Local public engagement, discussion and dialogue.** A wide variety of options exist – polling, citizens’ juries, focus groups, and even the establishing of local constitutional conventions or other forums for discussion and debate¹². What such deliberative measures have in common is that they would see local people being able to talk about how they would want and need to influence decision-making when new, sub-regional arrangements are established. They would also discuss the practical issues of the devolution deal itself – lending legitimacy to that deal by having its negotiation informed by a wider group of stakeholders.

A common theme for all of these approaches is the involvement of a wider range of people in debate and discussion that might otherwise have been the case. As we have suggested, some additional protections would need to be built in, to ensure that this happens. We think that it makes sense that what governance arrangements exist are “owned” by non-executives, so that they will be able to have a veto over how governance will work, and will hold to account decision-makers for their delivery against whatever has been agreed.

What Scrutiny arrangements might work best?

The point of our approach is that it would be entirely down to local areas to decide on approaches to governance that work best for them. Different powers and functions will be devolved, at different speeds, to different areas. A one size fits all approach is therefore particularly inappropriate.

In “Growth through good governance” we posited a range of different governance models which could be used for Local Enterprise Partnerships (LEPs), with a focus on how those bodies could be held to account. We think that a similar spectrum of choices exist for combined authorities. Ranging from powerful local Public Accounts Committees to more traditional scrutiny committees, discussions between authorities and their partners can design a niche for effective, strong accountability exerted by non-executive members.

Such “overview and scrutiny-led” structures will be the core of sub-regional accountability but not its totality. Other governance arrangements will need to play their part. Audit committees, open access to official information produced and used by the authority, and concrete plans for meaningful public involvement will all have to play their part. The combined authorities’ leadership will need to demonstrate their own clear commitment to making these systems work.

The OSC will however play an important role in assuring the viability and effectiveness of these arrangements, and will need to be supported and resourced accordingly.

How scrutiny is undertaken also needs further examination. As public expectations change, the way that councillors undertake their work needs to adapt for it to continue to be relevant, responsive and of public value.

Our next steps

In 2015/16 we will:

- Provoke and develop a debate amongst key policymakers nationally and locally about good governance, bringing the principles of accountability, transparency and involvement into the heart of the design and development of the English devolution settlement;
- Work directly with a small group of areas to develop and embed their governance arrangements, further to the agreement of a devolution deal with Government;
- Publish our findings from this work, informed by our wider work on governance and major service change.

The next six to twelve months are critical. As the vanguard of English combined authorities are created and agree deals with central Government, expectations around what devolution looks like, and how it should feel, will become more set. Designing new and different governance arrangements will become more difficult, when it is felt that there is a tried and tested model to follow. We want to help local areas to break out of those assumptions, to lead and develop local discussion about devolution, and to design systems which give power and voice to a wider range of people, rather than sticking to the institutional status quo.

We are keen to have further discussions with anyone who wants to talk about the issues raised in this paper, and to share further details on our thoughts and plans. You can contact Ed Hammond, Head of Programmes (Local Accountability) on **020 7187 7369** or at **ed.Hammond@cfps.org.uk**

