

Cards on the table

Tips and tricks for getting in on the action of devolution

processes devolution **design principles**
public scrutiny framework **revi**
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Cards on the table
Tips and tricks for getting in
on the action of devolution
active dialogue responsibilities arrangements
structure sequence commitment opportunity
data sharing solution constituent

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WHO IS THIS DOCUMENT FOR?

This document is intended for two main audiences:

- For those leading on governance in areas subject to devolution deals, pursuing devolution deals or planning to pursue devolution deals. This will be a large number of people – leaders, chief executives and other senior officers. As far as possible we have tried to provide an overview and general governance issues as we have found them, highlighting some of the challenges that cropped up in the areas where we have provided support and providing practical suggestions for the improvement of the whole system;
- For scrutiny practitioners (both officers and councillors). We consider that there is a particular role, as negotiations are pursued and beyond, for scrutiny practitioners, and some of this document is targeted directly at them. We seek to make suggestions for the continued involvement of non-executive councillors at almost every stage of the process.

We also recognise, and hope, that this document will be of use to a more general audience – in particular, to interested members of the public and local democracy campaigners who might want to know more about the challenges and opportunities around devolution governance.

We recognise that different people and different areas are likely to be at different points in the process. This document sets out a “sequence” of steps that areas are likely to undertake as they embark on the devolution process. In some areas of the country, devolution discussions will be further advanced than others. In those areas, practitioners may want to look at later stages in the sequence, and consider how they can weave those principles into the way that things develop. In some areas, discussions may not be proceeding in line with our sequence at all, but – as we highlight in the section on chronology below – we do not think that this, on its own, is a significant issue, as long as the key issues are discussed and agreed on by the right people.

WHAT ALL AREAS CAN DO RIGHT NOW

- Consider at what stage in the devolution process they currently stand;
- Evaluate and reassert what outcomes devolution will deliver to the area;
- Agree on what characteristics / principles good governance will need to embody in order to achieve these outcomes;
- Check whether effective governance systems are in place that meet those characteristics – whether those systems are transitional (to manage the process of negotiation and design) or permanent (intended to apply when devolution deals are fully in place);
- Ensure that strong data and information sharing – essentially, arrangements for meaningful transparency – is in place to support governance;
- Ensure that governance builds in opportunities for meaningful accountability and for the transmission of views and opinions between those in the wider public sphere, and decision-makers.

INTRODUCTION AND EXECUTIVE SUMMARY

In September 2015 we published “Devo why, devo how?” – our opening thoughts on the fast-developing issue of English devolution. It would have been confusing if we had titled this new report “Devo who, devo when?”, but that is essentially its focus – exploring the critical role of two groups of people who we feel have been overlooked in discussions so far (non-executive councillors and the public) and when they might fruitfully and usefully “feed in” to the formulation of devolution plans.

In this document, we provide a clear and consistent way for local areas to address some of the principal governance challenges with which they are faced. This is not about thinking of governance during an initial “design” phase, or putting together a bolt-on solution once other elements of a devolution deal have been agreed. It is about seeing governance as a way both to successfully agree a deal – and secure sign-up from a wide range of local stakeholders – and as a way to put that deal in place on the ground.

We believe that good governance is the key to any plan for devolution which aspires to be more than merely rearranging the deckchairs. Our research shows that good governance is important because:

- it brings public transparency and legitimacy to new decision-making arrangements,
- it actively helps to improve the design and implementation of services,
- it ensures that decisions more accurately reflect the needs of the public because they have been subject to public scrutiny – either directly or through the medium of elected representatives.
- it assists with efficient management and delivery. A system where responsibility is shared, acknowledged and understood – through a collective commitment to learning – is one where decisions can be made well, in the confidence that they will deliver the right outcomes.

These benefits, and their consequences in improved outcomes for local people, will not arise automatically. They will also not arise purely as a result of agreement on structures – the composition of a combined authority, voting arrangements, the veto powers afforded to a Mayor on combined authority decisions, or vice versa. Governance is more complex than that, and requires thought throughout the process.

Perhaps most importantly, devolution gives us a once-in-a-generation opportunity to rethink and redesign our approach and response to local democracy. Democracy – the involvement of local councillors and the public, and their roles as active participants in the process – is central to our vision for governance.

For this reason, we think it is important that Government’s tests for devolved governance – as well as requiring strong structures and systems – take account of the need for wider councillor and

Where we gathered evidence from

- 7 consultants working across (initially) five areas;
- Conversations with around 100 people – Leaders, Chief Executives and other senior officers, partners, scrutiny chairs, backbench councillors and members of the public;
- One-to-one conversations with a range of people involved at national level;
- Two roundtable meetings (one in October, one in March) to talk through some of the more significant challenges;
- A comprehensive literature review, including reviewing proposals, bids and other devolution-related material, including some not in the public domain.

community participation. And we also think that bid and proposal documents should put forward stronger commitments on these issues too, from the bottom up.

The sequence in brief: key governance questions at every stage

The why: what is the rationale underpinning a bid for devolution? What is the prize for the area?

The sense of place: is the geography right? Is there a common, shared narrative about the future, and about outcomes?

The proposal: are we able to put forward a coherent, consistent proposal to Government?

The negotiation: how is Government provoking us to change our plans? What will we need to do once the deal is agreed to get it implemented?

The deal and the sell: did we get the deal we wanted? How do we secure buy-in and ensure that plans for implementation are robust?

The design: how can we design detailed governance arrangements which meet the standards in our design principles, as well as knitting together good governance and the delivery of outcomes?

The implementation and the outcomes: what are the next steps? What do we do to monitoring ongoing performance?

The sequence: an introduction

In this paper we have suggested that devolution dealmaking tends to follow a sequence – from the initial development of a rationale for devolution, up to and including the final implementation of a deal and delivery of outcomes. It is important to bear in mind that this sequence reflects our suggestion of what should be happening. In some areas, things have been done or are being done in a different order. Of itself, this is not a problem – but it raises challenges later in the process, when key preparatory activity has not been undertaken because of rushed timescales or a sense that agreement on key issues can wait until later. Our work suggests that this is not the case.

The sequence gives context and coherence to what governance is actually about. It is dangerous to distil governance issues down to arguments about Mayors, or about who gets to vote on what topics in what forums. This is an important element of the debate but some much more fundamental issues have to be agreed first. In our view, it is the failure of both Government, and some areas attempting to negotiate with Government, to build consistent, clear narratives about the purpose, scope and outcomes of devolution that has led to some of those negotiations unravelling. Agreeing that shared purpose – that narrative, the sense of what the “prize” is – can be made easier with effective and understandable governance in place. As we note in the main body of the report, the deal is just the starting point – significant design work after the high-level negotiation is complete will require the presence of strong systems for accountability and dialogue, as permanent arrangements for decision-making are discussed and agreed. Governance can and should play a role at every stage – from challenging assumptions about the area’s priorities when the rationale for a bid is being developed, to drawing together partners around an agreed geography, through securing buy-in for a proposal to Government, culminating in the detailed design arrangements for the permanent structures which will be used to implement the deal.

It is important to remember that these are still very early days. Only a handful of areas have concluded devolution deals. Of those who have, real implementation of those deals – at the time of writing – is still some distance away.

The opportunity is still there to rethink the central role of governance, to act on our suggestions and recommendations, and by so doing try to ensure that a proper governance framework exists which can manage the huge changes that devolution is expected to bring about in local people's services, governance and lives.

The governance framework

We think that central to the success of good governance is a consistent, comprehensive framework within which governance will operate.

All areas will probably be planning some kind of constitution or other governing document to set some of these issues out, and a formal mechanism for establishing what systems are necessary. Indeed, for the establishment of a combined authority, a requirement is that a governance review be undertaken. The statutory governance review provides a mechanism for avoiding the tendency to focus too soon on the detail of the constitution.

The opportunity exists, through the mechanism of the governance review in particular, to ensure that governance systems are grounded in the principles of accountability and local democracy. The development of a governance framework which will make this happen provide the opportunity for a conversation between the public, decision-makers and elected representatives. This is about local democracy in its broadest sense, where traditional representation of the public by councillors is complemented by active dialogue and discussion, focused on the delivery of outcomes for local people. It is something that we think can only come about through the use of a clear, consistent framework that ties outcomes together with the processes being designed to deliver them.

We do not expect that a framework will lead to a perfect governance solution. In fact, we think that a perfect solution is impossible. The systems we put in place for devolution will often be ad hoc, messy, flexible and sometimes unpredictable. This emphasises the importance of a framework not to bring order, but to bring shared understanding of the complexity, and where roles and responsibilities lie within in. Without this framework, we worry that mechanisms will be established which might duplicate and overlap with existing council, and partner, governance arrangements. The rigour and discipline attached to formulating and designing a framework for those mechanisms will mean that all those involved will be participating in design with a clear outcome in mind. To add to, not duplicate governance structures, and make provision for how constituent parts will work together and be scrutinised on specified matters only. It will mitigate the potential risks attached to embedding arrangements which are too "informal" in nature.

We are keen that Government does not specify the details of these governance arrangements. We want local areas to work through the associated issues themselves. However, over the course of our support programme it became clear that some sort of form and structure was necessary for discussions on governance to be constructive, and that this structure needed to be focused on outcomes.

Importantly, this structure is one that needs to be developed bottom-up – not by Government.

We strongly believe that, without the certainty and reflection that a framework could bring, devolution negotiations, arrangements and agreements could suffer. It is very easy for policymakers to become distracted by practical concerns about the mechanics of the process before the important – but less tangible – expectations and agreements around joint working have been set. This risk is magnified when only a small group of people are involved in the design process.

We think that governance frameworks might contain agreements on the following:

- How councils, and other partners, in an area covered by a devolution deal will develop policy. Who will be involved? What evidence will be used? What information will be published and when?

- How performance will be monitored. Who will be responsible for monitoring performance – when will this happen, and how? Who will supply the data? How will performance management across participating members of a Devo Deal be combined and shared across the partners, and with those who provide scrutiny?
- How “scrutiny” will be carried out. This will be scrutiny of a combined authority and its constituent authorities on business transacted under devolved powers. The people conducting the scrutiny might be a combined authority overview and scrutiny committee, the overview and scrutiny committees of a local authority in the area or the public (either individually or collectively). We cover the structural models available, and the practical circumstances around the establishment of joint scrutiny, later in this publication.

These agreements will need to be informed by a common understanding of the outcomes that the area is trying to achieve – which will in many instances be wide-ranging. Successful delivery of outcomes in a wide variety of policy areas will require a governance framework which is able to engage with, and deliver alongside, a range of local partners.

Work on governance and outcomes will need to happen in parallel, and work accordingly. A number of areas have set up separate “governance workstreams” to lead on, design and implement governance arrangements under devolution deals. There is nothing intrinsically wrong with this approach but areas might want to think of ways of more meaningfully integrating how they develop solutions to governance challenges with the way they are thinking of delivering substantive change to local people’s lives as a result of a deal.

The agreement in the governance framework would apply to all those partners signatory to the devolution deal, at a minimum. We blogged on the governance framework in more detail here - <http://www.cfps.org.uk/devolution-blog-managing-relationships-the-dynamics-of-partnership-working-and-the-need-for-clarity-and-leadership-in-decision-making/>

Some design principles – what good governance looks like

In previous publications on governance change we have sought to promote the idea of “design principles” as a core idea. Agreeing design principles:

- provides a common understanding of what you want decision-making to feel like;
- helps to clarify the behaviours, attitudes and values of those involved in the system;
- helps you to agree what the actual characteristics of good governance might be, divorced from arbitrary structural models;
- allows for the eventual design of structures to embed those principles (rather than putting structures in place and hoping that behaviours will evolve and change as a result).

On the basis of the support work we have carried out we have identified four key principles which seem to be of particular importance to those responsible for building new governance arrangements.

- Flexible and able to evolve over time. Under devolution in England, councils have been keen to agitate for further powers once the initial deal is done. In itself, this means that the role of the Mayor and combined authority are likely to continue to evolve – and governance will need to evolve with them.
- Proportionate and light touch. Nobody wants to establish some overarching, complex bureaucracy attached to the Mayor and combined authority. Resourcing will be tight, and a councillor-led system will require that elected members carry out these duties in addition to their existing roles. Any new governance and oversight system will need to be proportionate – it will need to focus

on those areas where it can most obviously add value and make a difference. Scrutiny for the sake of scrutiny, or for the sake of “information sharing” without discernible impact, will not be sustainable.

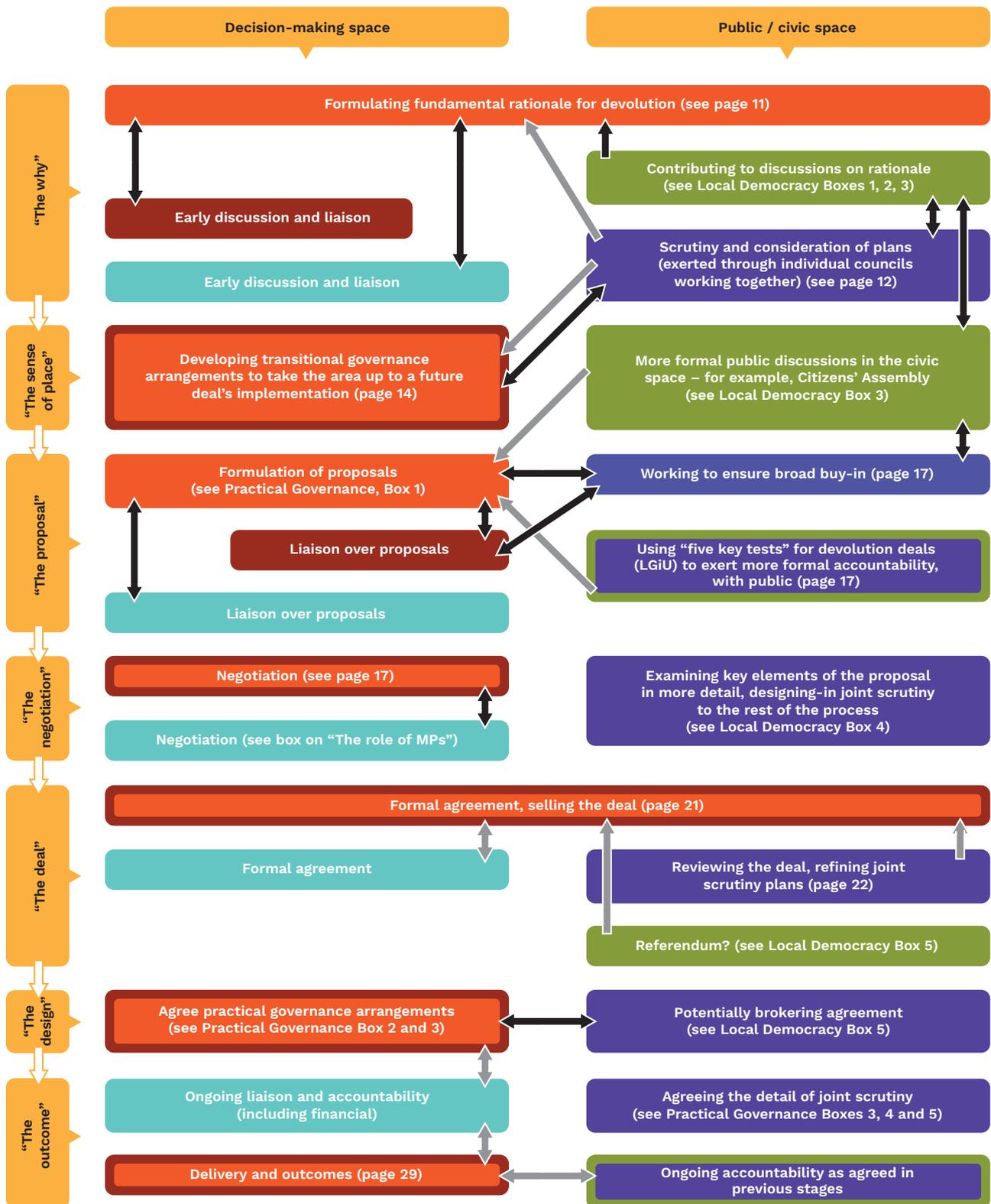
- Blending formal and informal mechanisms. “Committee-centric” oversight arrangements for the work of combined authorities will be inadequate. This is because decision-making in local areas will be focused on a range of partners – the Mayor, the combined authority, possibly smaller clusters of councils and individual authorities – not to mention the large number of partners also involved (including, in some cases, parish and town councils). Traditional, formal scrutiny arrangements are ill-equipped to deal with this challenge. A blend of informal and formal approaches to governance also allows us to think more creatively about how local people can be involved in the process as active participants, and how devolution decision-making can take account of public conversations happening in the civic space – something on which we comment later;
- Built on the principle of subsidiarity. It is accepted by most that, under devolution, steps must be taken to continue to push power down to the lowest appropriate level. Governance systems must be built that recognise this and facilitate it, and scrutiny must be able to engage with all tiers on the broader issues arising and where they impact. This design principle relies on the existence of robust information-sharing between all parts of the system –

Work being carried out by the LGA, meanwhile, suggests a slightly different, but complementary, set of criteria for good governance:

- **Civic leadership.** Does the model provide for effective place-based leadership?
- **Considered judgement.** Does the model support high quality decision-making processes that go beyond discovering the self-interested preferences of various stakeholders?
- **Transparency and efficiency.** Does the model make it crystal clear who is making decisions, on what issues, when, why and how?
- **Accountability and legitimacy.** Does the model ensure that decision-makers are held to account?
- **Inclusive public involvement.** Does the model provide for effective public involvement in decision-making?
- **Inclusive business involvement.** Does the model provide for effective involvement of the voices of business interests? What role will Local Enterprise Partnerships (LEPs) play in the governance arrangements?

Ultimately, it will be for areas themselves to develop their own design principles. The ones we have set above will probably have wide applicability, but there will always be local circumstances that demand a different approach. In any case, part of the value lies in talking together about what those characteristics of good governance will look like, and using that to build a shared sense of what is possible and desirable. Viewing a set of principles as working “off the shelf” works against that deliberative approach.

THE SEQUENCE: IN PICTURES



THE SEQUENCE: IN WORDS

This is a detailed laying-out of the key issues we encountered as the work progressed. There seems to be a sequence to the devolution process – how it is carried through from conception to delivery. Getting this sequence right is important (we blogged on the topic earlier in 2016). We have

followed that chronology, using it to highlight what key governance-related issues we feel need to be addressed and when, and what the solutions could be.

Thoughts on sequencing and timing

Our support programme met significant challenges around external pressures and influences (that were sometimes unpredictable) having a direct impact on the work we were doing. It meant that the character and nature of the work we carried out looked, in some cases, very different to from what we had planned. In a couple of areas, circumstances changed to the extent that our work could no longer continue.

In Cambridgeshire, moves to merge the devolution bid with that of Norfolk and Suffolk meant that our individual work was curtailed in February.

In Cornwall, we were able to conduct a number of interviews and hold a range of conversations, but work planned for later in the programme was cancelled because of the different complexion placed on local plans by the Boundary Commission's decision to undertake a more fundamental review of governance in the area.

In Hampshire and the Isle of Wight, well-publicised disagreements over the presence, or otherwise, of an elected Mayor as part of a devolution deal led to negotiations unravelling in February. A smaller-scale Solent bid was subsequently under development, the changes meaning that our work could not go ahead as originally planned.

In Sheffield, negotiations were stable, but there was some uncertainty about the involvement of some of the North Midlands authorities.

In Norfolk and Suffolk, geography again played a factor, as the scope of the negotiation progressively expanded – from an initial focus on Suffolk, to one encompassing Norfolk and Suffolk together, and eventually to one incorporating Cambridgeshire and Peterborough as well. Some councils in Cambridgeshire have since expressed opposition to the planned deal.

These political developments arising from negotiations around devo deals raised some big issues for sequencing – and the need to plan for work to be flexible, to account for the fact that chronologies may change.

Another challenge for sequencing is the imposition of deadlines by central Government. The widely-publicised deadline of 4 September 2015 for the submissions of proposals and bids for an initial wave of areas meant that some areas keen to sign up had to run through the earlier stages in the sequence particularly quickly. For some, this has caused problems since.

Our suggestions focus on the possible role of the scrutiny functions of individual councils in the area, and a combined authority OSC. We also look at the role of the public. The various different opportunities we lay out are intended to be a menu of options rather than a prescriptive list. Few councils will have the resources to engage scrutiny in every one of the ways we suggest.

Our chronology should not be taken as a hard and fast set of rules about how we, as an organisation, see devolution deals emerging and maturing in all cases. For practical reasons, in some areas individual steps may be conflated, or their order swapped around, with no particular ill effects.

We also want to make it clear that, in a number of areas, conversations have already moved on past the initial stages. Negotiations will have been concluded and deals will be in place. In these areas, there is an additional challenge, of ensuring that some of the steps we suggest

are undertaken earlier in the process have been adhered to, before moving on. We have found that making assumptions about what agreements have been reached, and about what, can lead to deals unravelling. Many areas have experienced issues with sequencing which have led to confusion, disagreement and, in some cases, negotiations breaking down.

A clearer sense of the likely chronology also makes governance and scrutiny easier, because it makes it easier to predict when input from a wider range of stakeholders might be productive and necessary.

LOCAL DEMOCRACY: BOX 1

Keeping people in the loop vs active engagement

The most vital aspect of the intelligent involvement of the public is to keep them involved. There needs to be some demonstration of how things are or will be changing as a result of their input.

When we spoke to the public more generally as part of this work in relation to one of our support areas, there was a unanimous sense that the public engagement process had been inadequate, even totally lacking, and resulting in a prevailing cynicism about the willingness of decision-makers to take the public's views into account. This demonstrates the risk of seeking to involve the public both too late and, in too limited a way, and of not keeping people involved and informed. While some to whom we have spoken suggested that public involvement would be premature before a deal is done (and before a bid or proposal is submitted to Government) our experience suggests that public involvement at the earliest possible stage makes sense – if focused on outcomes and the tangible improvements that devolution might make to local people's lives.

There are two reasons for keeping people in the loop.

- To inform them. There will be a need, at the very least, to broadcast information about what is happening. In some areas, such as in East Anglia, the local press have played an active role in this.
- To provoke further engagement and involvement. Keeping people informed provides the opportunity of bringing these informed stakeholders further into debate and discussion about devolution, its processes and its outcomes.

Further engagement and involvement will not be something which occurs through traditional means. Later on, we talk about how co-design of solutions for both governance and outcomes can go hand-in-hand with more traditional models of governance. For the moment, it is worth noting that:

- democratic engagement in the process is necessary, at this early;
- democratic engagement will happen in a variety of different spaces, not just formal forums;
- decision-makers and others will have to plan and prepare for the uncertainty this brings – but also for the opportunities it provides to reflect, challenge and learn from assumptions that decision-makers might make about local need, but which might be erroneous

The why

What could devolution do for us?

This is the first question for all areas embarking on the journey – it is a point that many areas have now reached and passed.

The nature and size of the prize is critical to future negotiations. **Real clarity is needed about what benefits could exist for the local area.** This clarity will help local areas to negotiate with Government with more confidence.

In many of the discussions around the structures and geography of devolved arrangements, this is the one thing that is consistently missing. **A sense of the fundamental outcomes from devolution has remained frustratingly vague** – a point we made in “Devo why, devo how?” in September 2015 [<http://www.cfps.org.uk/devo-why-devo-how/>]. A number of areas have moved swiftly into detailed design, thinking that they have established the fundamental rationale for devolution, often without reflection and consideration either by the public or non-executive councillors. This reflection and learning is, however, critical if a proposal is going to be pursued to the point of a deal and beyond.

“There’s been so little effort for buy-in because there’s a lack in many areas of a coherent shared narrative. What’s the prize, what’s the outcome? The lack of vision means there’s no basis for meaningful negotiation”

(participant at roundtable session)

What good governance and scrutiny brings. **Getting a sense of the prize of devolution is more than just putting together a wish list. Thought needs to be given to what the tangible outcomes might be that local people need and expect.** Local debate, discussion and dialogue can help to identify some of the key possibilities. It also provides the opportunity to start some wider discussions and dialogue about devolution which will hopefully continue – and to lay out the ground rules for future involvement.

The role for governance and oversight.

The “why” provides a valuable opportunity for learning and reflection on the fundamental rationale underpinning plans for devolution (although for those later on in the sequence, the opportunity to consider and review this rationale still exists). The refinement of the “why” and its conversion into a meaningful, robust “proposal” (see below) through a relatively open and exploratory process is critical – devolution proposals must not only be based on clear, consistent and high quality evidence, but must also benefit from the insight and perspective of a wide range of people, including all councillors. **The scrutiny committees of individual councils might draw together some of their own views, or informal efforts could be made to consider and collate a scrutiny response jointly.**

LOCAL DEMOCRACY: BOX 2

“Getting the public interested in devolution”

Most people will not be interested in devolution. They will be interested in the outcomes of devolution – the difference it is likely to make to their lives – but not in the complicated processes and structures that lead to those outcomes.

Public input in some form is vital, but it must be carefully considered for two reasons.

1. It should not unrealistically raise expectations amongst local people about how much is up for debate;
2. It should not be seen as a traditional “consultation” process.

Scrutiny can help to facilitate a public debate about the wider benefits of devolution. Focusing on outcomes – the benefits to local people from localising powers relating to transport, skills, economic development and so on – can give decision-makers a more accurate sense of local people’s aspirations, which can be fed into bids and proposals to Government. Careful planning can help to manage the risk that people will seek to promote “parochial” needs and requirements rather than “strategic” ones for the whole area.

An approach centred on the principles of co-design and co-production, where members of the

public could play a more equal role in the formulation of the governance framework, is likely to be most productive – particularly if this is embarked along early in the process. This will allow all those involved to learn from each other, and from experience, about both what local people want and need, and how far devolution can help to achieve those aims.

The sense of place

Geography is complicated, and messy. When our work started it looked as though the main tension was over whether the boundaries for combined authorities would conform to “travel to work” areas, or to traditional local government geography (like county boundaries). Now, it is much more complex.

Central Government seems to have inconsistent expectations around geography, and of the sense of scale required for a deal to be viable. On the one hand, the scale of the East Anglian deal appears to have been ever-increasing – from a prospective deal focused on Suffolk, to one involving Norfolk too, potentially now incorporating Cambridgeshire. On the other, at the time of writing it looks likely that a deal will be done with the Solent/South Hampshire authorities rather than Hampshire and the Isle of Wight, thus a far smaller geographical area than previously envisaged.

“The Treasury’s focus on functional economic areas does not resonate with the British people”

(participant at roundtable session)

We blogged on the importance of a strong sense of place in early 2016 (<http://www.cfps.org.uk/devolution-and-a-sense-of-place/>). A strong sense of place allows for compromise. People who feel part of a geographical area to which they feel an attachment are more prepared to think about what they are going to do for the whole area, rather than the smaller part of it which they might represent.

We also are working in a system where few local authorities have co-terminosity of boundaries with other parts of the public sector eg the Police Force area, the NHS England sub-regional team, Academy chains or Multi-Academy Trusts, or Local Enterprise Partnerships. Devolution – and Combined Authorities – seeks to bring partners together with clear outcomes in mind, but processes and governance structures might find it challenging to identify a shared sense of place – or relate with the public within those various areas.

Central to developing a sense of place through devolution is the issue of mutual trust. **Those to whom we have spoken about this issue have been sanguine about both the importance of trust and, in some cases, the lack of it. Without the commonality of purpose that can only come from a shared sense of place, trust will be difficult to bring about.**

What good governance and scrutiny brings. This phase allows those around the table (essentially, the people who will be negotiating with the Government) as well as other key stakeholders to get a clear sense of their own objectives and to talk through any disagreements.

“Early choices by designers matter – once the constitutional settlement is agreed upon, it is very difficult to change designs.”

(participant at roundtable session)

Getting the geography right is therefore critically important, so that relationships between the right people can be developed over time. Some relationships will already exist – some bilateral and some multilateral, through existing partnership arrangements. These may need to be recalibrated as plans for devolution develop.

In Greater Manchester’s case, for example, councils have had thirty years or more to develop a strong

sense of place, and to create a sense of mutual trust and respect. A strong sense of local leadership – driven in part by strong personalities of key individuals, but also that sense of place – was fundamental to this.

In other areas where joint working has led to devolution deals, there is a similarly long history of partnership and shared endeavour. In Cornwall, only one unitary council is involved – but there are implications for partners (police, health, the LEP) and neighbouring authorities (the Isles of Scilly in particular) which render even those conversations complex. Despite this, the council was able – through strong and effective leadership – to articulate a vision that those partners were able to sign up to.

This strong sense of leadership and commitment does not exist in all areas. Relationships may be delicate. **In some areas, the scale of the task ahead, at this stage, cannot be overestimated. But visionary, outcome-focused leaders will not let these geographical uncertainties put them off** if they have a strong sense of the rationale underpinning their devolution plans.

The role for governance and oversight:

- **This stage probably presents the first opportunity to begin to develop the loose, probably informal, governance arrangements to help the area to develop an “ask” and then to pursue negotiations.** This is critical to developing and maintaining trust and good relationships – even if an informal approach (probably typified by one to one meetings and small group discussion) appears worrisome to those who are used to more traditional and formal systems of accountability. A recent study by the Political Studies Association highlighted some of the risks around “informal governance” in devolution. We do, however, think that the system can bear informality here if the need for transparency and accountability is heeded elsewhere. Leaders, Ministers, civil servants and local MPs will all be part of this more informal process. The public, partners and the wider corps of non-executive councillors will not be part of this process. Despite the potential for concerns, we feel that a level of informality at this stage may be the only way to develop the strong sense of joint leadership necessary for success. Those with a stake in governance will need to talk to each other to recognise what this transitional governance system will look like. But those “inside” those initial negotiations will need to involve a wider range of stakeholders, to ensure that the learning and reflection that is critical to success in negotiating a good deal can happen in a consistent way.
- **Informal sharing between the scrutiny functions of neighbouring authorities could serve to highlight commonalities,** contributing to this process of building trust and making clear to political leaders where potential flashpoints might lie, now and in the future. This can feed into the discussions that leaders, at this stage, will be having with Government. At this stage, this could involve understanding how local partners will need to share data and information in the future – as well as making such data better available to the public (Transparency and information sharing is something on which we comment below.
- **Insight from the public (gathered during discussions on the “why”) will be useful in building a shared sense of place.** This might be bolstered through the involvement of a Citizens’ Assembly.

LOCAL DEMOCRACY: BOX 3

Citizens’ Assemblies

The Electoral Reform Society, funded by ESRC, piloted two Citizens’ Assemblies in late 2015 – one in Southampton and one in Sheffield. The outcome of these pieces of work was presented in a final report in April 2016, which can be downloaded at <https://electoral-reform.org.uk/tags/citizens-assembly>.

The membership of these bodies was drawn from panels convened by the polling company YouGov. It aimed to reflect, as far as possible, the population makeup of the area. In particular, it aimed to reach and engage those with no particular interest in devolution.

Both Assemblies met over two weekends in late 2015. Their work was supported by academic researchers and student facilitators. Both Assemblies developed and put across strong opinions about the devolution proposals; in both cases this focused on the structural systems being put in place to make devolution happen, in particular the presence of a Mayor. There seemed to be less discussion of the specific practical outcomes of devolution itself.

The idea of citizens' assemblies is an attractive one. Traditional public involvement or consultation exercises often yield limited results, but this more targeted approach not only has the potential to produce nuanced and sophisticated findings, it also empowers a comparatively large number of people in a short period of time, who can then continue to be involved as semi-formal consultees as the process develops.

One of the principal challenges, however, lies in cost. Each Assembly cost roughly £60,000 to convene. Although these were pilot exercises, it seems that most of this expense is associated with recurring costs – selecting participants and then providing Assemblies with close academic and policy support and advice. It is highly unlikely that combined authorities would be prepared to commit that kind of sum. However, the final report notes that **“this should be viewed as a positive social investment that is likely to increase the efficiency of subsequent policies and decisions.”** Local areas will have to weigh up the social value and impact of the investment made in this form of public involvement.

Another drawback is the involvement (or lack of it) from elected representatives. Assembly South involved local politicians – Assembly North did not. Our own work both with elected members and the public strongly suggests that councillors need to form a strong part of any process to involve and engage the public.

It may be that these barriers mean that areas look to different means of involvement. Citizens' juries (smaller groups, cross-examining witnesses to reach conclusions about a subject) might provide a more cost-effective mechanism – active engagement with local community and advocacy groups could be another. However, the twin benefits that the Assembly process brings – a true cross-section of the community, coming together to learn more about the subject and by so doing, produce sophisticated and nuanced recommendations for decision-makers – will by definition be expensive.

The proposal

Areas need to decide what they want to bid for. What is their proposal to Government – and for the area?

The proposal is embodied in the bid documents formulated by local areas, many of which were prepared in a hurry in summer 2015 to meet a Treasury deadline of 4 September 2015.

Nationally, these documents were of variable quality. Many areas of England have suffered from a paucity of data at decision-makers' fingertips with which to make rational decisions beyond the scope of a single council, or single council area. This lack of data has made it difficult to put together robust, evidence-based plans. As we have already noted, in Greater Manchester, the first area to secure a deal, joint evidence-gathering is mature, having been carried out by the Combined Authority and the Association of Greater Manchester Authorities (AGMA) for some considerable time. This evidence gathering can only be based on strong partnership working arrangements, which are absent, or at least not particularly well-developed, in many other areas. **In some areas there is no history of sharing evidence and data, and of making decisions based on that data. Going from that standing start to**

Legal questions: the 2009 and 2015 Acts and what they require

Around the time a formal proposal is being developed, most areas will be starting to think about the practical legal steps they will need to take to establish a combined authority.

Combined authorities are established further to the provisions of the Local Democracy, Economic Development and Construction Act 2009. Under the 2009 Act, Government may make an Order establishing a CA – provided that certain conditions have been satisfactorily met. Setup of the CA has three stages – a review by the councils involved, the drafting of a scheme to deal with the operation of the CA, and finally the Order itself.

Areas will need to think about how they follow through the legal requirements of the establishment of the CA, and the legal establishment of the deal, alongside the more detailed design of governance arrangements. This is a continuing process, which legally requires public consultation to be carried out. Starting to think about these plans now will provide a foundation for further discussion and – hopefully – swift agreement, once a deal is done.

More detail about the legal requirements surrounding devolution can be found in [INSERT NAME OF PHIL SWANN PAPER PRIOR TO PUBLICATION]

Under the Cities and Local Government Devolution Act, devolution deals are also given force through an Order.

Deals will put in place formal Gateway Assessments, which are periodic reviews intended to provide Government, and the area concerned, with assurance as to how money made available under deal has contributed to national growth. This raises questions about what systems can be put in place locally to contribute to this formal process.

an exceptionally robust, evidence-based proposal is a very tall order. For councils individually and collectively, available resource and time will be a big barrier, and areas have therefore had to think carefully about how to frame and develop their proposals. What is certain is that, if the evidence base is not there, this will inevitably adversely affect the negotiation and the later process to “sell” the deal (see below).

Data sharing is also important for transparency and democracy. Informed public discourse cannot happen if the data underpinning critical decisions is not publicly accessible. There is no reason, for example, why the evidence base underpinning proposals cannot be published as a matter of course, and indeed it could be argued that this is critical for meaningful scrutiny to happen.

What good governance and scrutiny brings. If our work shows anything, it is that this stage is critical for success later on.

Local areas must be able to put forward a compelling case to Government for increased powers and funding. With proposals and bids from the vanguard areas already having come forward, areas now developing their own plans have some dilemmas to consider.

The main dilemma relates to the fact that **the experience of areas who have already gone through this process can be used to influence the proposal.**

Similarities in deals that have already been done mean that, for areas in the next wave of bidders, the need to start from scratch in putting resource into developing a fully bespoke deal may not be as significant. But this could lead to a temptation to adopt a cookie-cutter approach, short-cutting the design process for a proposal, and possibly not carefully considering the local circumstances underpinning such a bid. Areas which have been able to develop a strong sense of the “why” through good joint working in the past will have a way out of this.

One thing which seems clear is that **areas will need to develop an effective proposal quickly.** Government has been setting its own deadlines, but for local areas too, there is a logic in building up momentum to ensure that agreement can be reached without negotiations between councils descending into a morass. Scrutiny systems have to move similarly quickly and flexibly.

The role for governance and oversight:

- A key opportunity for effective scrutiny at this point is ensuring buy-in. **Good scrutiny can unpick the proposal, and rebuild it to be stronger. In doing so, a wider corps of councillors become stakeholders in the devolution process.** Councillors with more buy-in will be more prepared to make a political commitment to a deal which is particularly difficult to broker – and with buy-in (and communication), political fallout from a failed deal (or one which looks dramatically different from the initial proposal) may be easier to limit. Buy-in will also help to manage party political disagreement – something which scrutiny, as a non-party political process, can help with particularly.
- We think that the use, by local areas, of the “five key tests” for devolution deals, which were suggested by the Local Government Information Unit in their 2015 publication “Devolution: a road map” (<http://www.lgiu.org.uk/report/devolution-a-road-map/>) provides a useful anchor for robust scrutiny. Scrutiny councillors might ask:
 - Will a local deal along the lines being asked for deliver real benefits to local people, through growth or more sustainable local services?
 - Will public resources be spent legally, honestly and transparently?
 - How will councils ensure that return on spend is at least as effective as the current system?
 - Will the benefits of the local deal be fairly distributed?
 - How will new arrangements ensure accountability and engagement?
- The moment of “the proposal” being made public also allows councillors, and the public (potentially through the medium of a Citizen’s Assembly or Jury, as we highlight above), to consider for the first time the “road map” for the rest of the process. This might allow more public scrutiny to be brought to subsequent stages in the process, and **proper thought put to how traditional representative scrutiny, exerted by councillors, could be enhanced by deliberative and participative systems in due course.** We expand on these issues when discussing the “democracy stack”, below.
- Scrutiny’s involvement at this stage will be important but it will only have the time to look at the key headlines in “the proposal”. Scrutiny’s work will need to be light touch. That is why we suggest that scrutiny’s work be properly planned, before this stage is reached, to ensure that it can influence the drafting of documentation by senior officers and council leaders.

“While the economic argument has driven devolution so far, there is a real urgent democracy element to all of this as well, for the legitimacy and long term success of the model”

(participant at roundtable session)

The negotiation

Government has been jealous in its guardianship of insight and documentation of the negotiation process, and has restricted what areas can put in the public domain about that activity.

This has caused frustration for councillors who are not engaged in that process, bewilderment amongst the public (especially those who are “engaged” enough to be interested in the governance aspects of devolution, of whom there are a surprising number) and annoyance amongst some partners, for whom the negotiation is hidden despite their having a stake in its outcomes.

For Government – and even for some local leaders – there is a compelling reason for secrecy. A tightly defined negotiation cast-list can work through and refine proposals rapidly. The theory is that it is

The role of MPs

Local Members of Parliament have been playing a prominent role as local areas have developed proposals and sought to negotiate with Government.

While some of the MPs involved are in Cabinet or Ministerial positions, many are “ordinary” backbench MPs, who through the negotiation process have found themselves to be occupying particularly important local positions.

The involvement of MPs is not a substitute for broader conversations with the public. Furthermore, there is no real way for holding MPs to account for their role in the negotiation process. Local politicians have local scrutiny systems to answer to – Government Ministers have Select Committees and Parliament. MPs’ roles are less obviously subject to oversight.

We think that this is a natural facet of the informal nature of the negotiations. However, any steps to involve MPs in more formal governance, once deals are in place, needs to be looked at carefully. Proper safeguards need to be put in place to ensure their local accountability between elections.

easier (and more expedient) to request forgiveness from the wider councillor corps, from partners and from the public after the process is concluded, than it is to broker their permission beforehand.

Looking at these issues in a narrow sense, this is logical – it is in the interests of efficacy. However, in a more long term sense, **there is more political capital to be lost by keeping the process private and tightly circumscribed.** However, the Government is unlikely to change its approach any time soon, and those dissatisfied with these arrangements will need to think of creating “good enough” solutions that engage with the negotiation process as it currently stands.

However, **there are practical challenges around secrecy for the negotiation process itself, which are critical to local governance.** Where leaderships change (eg a by-election tipping a council into the majority control of a

different party, or a leader stepping down and being replaced) the negotiation could be destabilised. This naturally presents challenges for the delivery of services against the deal in the future. Leadership and political control can change in the middle of negotiations. If new leaders – previously uninvolved in the devolution negotiation and without a formal political stake in it – come into power but are unhappy with the content and outcomes of the deal, what can they do about it? There is no obvious answer.

LOCAL DEMOCRACY: BOX 4

Councillor involvement generally

It is surprising that engagement with local councillors seems to have been so patchy. By and large, councillors have been shut out of the process, with even overview and scrutiny members having to rely on periodic (and infrequent) updates from officers to keep themselves up to speed. This is the fault of the system, and the framework (or lack of it) for negotiation between local government and central Government, designed as it is to dissuade the wider sharing of information beyond a carefully selected group. Even where attempts have been made to engage backbench councillors in a more consistent way (for example, in Norfolk and Suffolk, the LGiU was contracted to travel the area convening awareness-raising seminars) this has principally been about information-sharing rather than dialogue. Occasional reports to OSCs clearly have not been enough, merely for non-executive councillors to note progress, rather than being part of discussions, negotiation or provision of checks and balances. The role of O&S has been marginalised through perceptions around the complexity, secrecy or urgency of deal making.

This is dangerous for three reasons.

- Firstly, the buy-in of a wider range of councillors is crucial to success.
- Secondly, the involvement of councillors – beyond receiving updates – is important in ensuring that deals, once they are done, are robust enough to succeed. This robustness is something that can only be tested through effective scrutiny and oversight.
- Thirdly, changes in personnel can have a significant effect on the direction of negotiations. Without wider buy-in and dialogue, following an election (or even a by-election) resulting in a change in political control, or any other internal group matter that could result in a new leader, carefully constructed agreements or negotiations could begin to unravel.

It is instructive to bear in mind that in our own engagement with the public, and through the Citizens' Assemblies, members of the public expressed the strong view that councillor scrutiny should play a critical role in the devolution process.

There are probably a range of different mechanisms that councils, individually and collectively, need to deploy to involve their councillors. Importantly, such involvement needs to be planned – following the sequence set out in the main body of the report above – to ensure that councillors have a stake at every stage in the process. These mechanisms are likely to be:

- Engagement within Cabinet. Because negotiations are being led by Leaders, Cabinet members are likely to need frequent updating;
- Engagement by leaders within political groups. To secure political buy-in from members of the same party;
- Engagement between political groups. Frequent discussion between the leaders of majority and minority parties in local councils to share information, discuss concerns and head off disagreement and discord;
- Engagement with scrutiny. Sharing information, inviting comment and brokering discussion – as we have discussed, this also provides a formal check and balance on the development and implementation of devolution deals;
- Engagement amongst all members. Other than at full Council, there needs to be sustained engagement with all members – at member briefings, a discussion event specifically convened for discussion of devolution issues, or similar.

All the forms of engagement listed above are probably required, and need to be planned for, for each stage in the sequence of the devolution process. If this seems time-consuming or resource intensive, it has to be placed against the risks of devolution deals or negotiation processes unravelling for want of broad buy-in.

This engagement needs to be underpinned through the provision and use of high-quality evidence. Significant amounts of data will exist between the wide range of stakeholders involved in discussions. Councillors can use this to consider what they suggest about the outcomes that are planned to be delivered, and what this might mean about how governance works on the ground.

What good governance and scrutiny brings. Where negotiations have already taken place, there has been no practical space within the negotiation period for meaningful oversight and scrutiny.

Government has designed the process to be a tight, focused dialogue between itself and a handful of local leaders.

This is frustrating from a governance perspective. Where there has been little engagement with the wider corps of councillors before the start of the negotiations, a lot rests on the ability of local leaders to use the political capital at their disposal to reassure, and to promise more robust engagement later in the process. **If the circumstances have made it impossible before, it is not too late to begin “good faith” engagement now. But whatever happens, people beyond that small negotiating team will not be involved at this stage.**

This is not necessarily the end of the world. We noted earlier, talking about deliberative spaces, that the most important thing is that the whole system is deliberative and democratic in nature – not that every single element of it needs to be. **This is an example of an instance where, if we (and if participants in the system) have confidence that the whole system is democratic, we can be phlegmatic about individual elements not allowing for public influence.** That is not to say that this will be a time when the wider group of councillors can be sitting on their hands, or limiting their involvement to periodic updates from those in the know.

Key opportunities for governance and oversight:

- Revisit key elements of “the proposal” to examine them in more detail. Risks can be examined and steps taken to recommend mitigation. New data may have come to hand since the proposal was prepared – from partners, and other sources – that could be used to lend context to this discussion. More detailed questions about outcomes can be asked which delve into the practicalities of how those outcomes will be delivered.
- Look in more depth at the division of power, funding and responsibilities between local government and a Mayor/combined authority. Sovereignty and the concept of “subsidiarity” (see box) will be particularly important.
- Consider the fundamental role of joint oversight and governance, and start to design the arrangements for it – in particular, looking at how the “governance framework” will be built. In our experience, members were looking throughout the process for a clear mechanism to be more actively involved. We go into the detail of establishing joint scrutiny arrangements elsewhere in this paper.

PRACTICAL GOVERNANCE: BOX 1

The principles of subsidiarity

Subsidiarity is the idea that decisions should be made at the lowest appropriate level. For some services, this might be at combined authority level. In others it may be a county. It may be a cluster of districts or a subset of unitary councils. It might be an individual district, a town, a parish, a neighbourhood or community. What “lowest level” means in practice will come down to a local appetite for meaningfully pushing power down to local people, tempered by realism around where some services will be best – and safest more safely – delivered on a larger scale, and as resources allow.

We think that detailed discussions over subsidiarity can best begin at this stage – although earlier discussions may have seen the basic principles being talked about and agreed. This will be a good point to work out what is politically possible, and to agree the broad framework within which leaders, chief executives and others might make decisions later.

Agreeing the principles of subsidiarity will take time; agreeing the practicalities will take longer. This goes to the heart of the devolution process, cannot be rushed, and more than any other element of the process requires buy in from a wide range of people to work properly. We talk about this element in more detail under “the design”, below.

The deal and the sell

The deal has often been seen as the end product of the process, but really it is only the beginning of the story. The deal really presents the framework for a continuing round of negotiation – both between the local area and Government (as more detail is fleshed out – which we note below), and within the local area itself.

There is a significant sales exercise for local leaders to undertake once a deal has been signed.

Information will be thin on the ground during the negotiation process, and there is an immediate post-deal opportunity to reveal more about the deal itself and what it will help achieve. This “sell” will need to be undertaken between the deal being done and – most likely – the election of an executive Mayor for the combined authority’s area, possibly a year or so later. This sales exercise is already under way in a number of areas.

We describe this as a sales exercise for a reason. In a basic sense, **fundamental objections can be expressed at this stage but ultimately little can be done about them – it is too late.** The deal has been done and all parties are committed to delivering its outcomes.

However, there is much to play for in the detailed design of new systems and structures, and as time passes the necessity will arise to tweak and change priorities, outcomes and plans. **The sell may therefore be necessary to persuade people to engage, and to keep those already engaged committed to the process – essentially, to keep up momentum.** A loss of momentum at this point would be critical – both political capital and financial resource needs to be put into the arrangements as their implementation nears.

Several areas have now reached this stage, where detailed design work is starting and a sales exercise is ongoing. We reflect on some of their experiences below.

What good governance and scrutiny brings. Have leaders delivered the deal they promised? This stage offers the opportunity for everyone to check the outcome and to understand the rationale for any changes.

LOCAL DEMOCRACY: BOX 5

Referendums

Durham has held a referendum to test public appetite for their devolution deal, but in this it is an outlier. Nationwide, there is very little appetite amongst politicians and decision-makers to open devolution deals up to a public vote. The reasons can be loosely summarised as follows:

- The deal itself is best regarded as the “heads of terms” of an agreement where negotiation continues;
- The deal will be complex and wide-ranging, and difficult to reflect in a yes/no vote;
- It is unclear whether such referendums would be legally or politically binding.
- They offer only a one-off snapshot of public opinion.

Of course, a referendum could also provoke wider public debate about the issue and provide a critical democratic long-stop in the process. It could provoke local areas to engage with their residents more consistently throughout the process, so as to secure a “yes” vote once a deal is done.

It is worth remembering that post-hoc “ratification” of deals, either by full Council or by a referendum, is potentially useful for those areas who wish to take those steps, but they cannot take the place of more effective public involvement earlier or later in the process. It is worthwhile to note

that, in a few areas, ratification attempts have led to devolution deals being rejected by councils. This highlights the importance of early engagement in mitigating this problem, and the development of a shared narrative to which a large number of members are able to sign up.

It is also worth remembering that it is at this stage that deals may be at risk of foundering. A deal may have been done, but maintaining the momentum from that deal may be challenging. We know that the immediate aftermath of the deal being made public can be a fast-paced and febrile process. For this reason, opportunities for constructive, formal scrutiny may be limited – but there is still likely to be a role of some kind for non-executives.

The role for governance and oversight:

- Reviewing the deal and comparing it to the proposal and rationale for devolution. In the areas where we provided support, a number of councils' overview and scrutiny functions have formally provided their comments on an agreed deal. However, this process appears to have been quite general in nature, with little detailed comparisons being carried out between what has been agreed and what was originally asked for. It could be because it is too early to evaluate, so **a marker should be set down for scrutiny to compare the agreed outcomes against original plans further into the discussions**
- Revising plans for future joint scrutiny in the light of the deal. In some areas, members and the officers supporting them have struggled to develop coherent plans for joint scrutiny – this is an issue that we discuss in much more depth in the sections below. **Members know that they need to play a role, and that there needs to be some liaison between scrutiny at local level, and at combined authority level, but procedures may not be established nor tested through regular joint activity.**
- Participation in any formal “ratification” process – potentially by providing a forum for debate prior to a full Council vote or a means to feed public input into that debate.

LOCAL DEMOCRACY: BOX 6

The democracy stack

Devolution offers significant opportunities around democratic renewal. The idea of the “democracy stack” is particularly important as we try to design the public voice into our permanent governance arrangements.

Different spaces exist in which local people – decision-makers, scrutineers, members of the public – will all operate. Alongside the “representative” space – with which local politicians and decision-makers will be most comfortable – there are less formal spaces.

Representative democracy cannot have meaning or exist without the presence of these other, informal, civic spaces. Local advocacy and community groups inhabit this space, but so do looser groups of people – those who comment on local message boards (the “digital civic space”), those involved in local community activity which may not be “council-facing” – essentially, any individual or group of people who is active in the public sphere.

People in authority need to make positive commitments to recognising the interconnection between formal representation – through the Mayor, and indirectly through the combined authority – and the vital need to bolster and build that more informal, civic space. This will involve a commitment to a number of different means of communication and dialogue (and a recognition that different contexts will require different approaches to decision-making – something which has profound consequences for the design of formal governance systems). Some of this engagement will need to

involve semi-formal mechanisms for decision-making which are open and reflective. Some will need to be participative – involving active, fast-paced and often informal co-design and co-production of solutions with a large range of local people.

The design (and flexibility)

The post-deal design phase is critical. Throughout this period, Government will continue to make staged multi-million pound payments to local areas, as part of devolution deals, and those areas will need to commit to undertake certain actions to continue to receive this money. **The risk is that this will mean that the primary accountability relationship will be between a combined authority (or other local structure) and Government, where it ought to be between the combined authority and more local structures, including the public.**

This point in the process highlights the fact that there appear to be two phases to the successful prosecution of a devolution deal, requiring two different approaches to governance. The first phase is transitional – the governance systems that are put in place to get you to the point of implementation (see below). The second phase is to establish the permanent governance arrangements for the delivery of services.

These two phases will naturally flow into each other.

What governance and scrutiny can bring. At this stage in discussions, there is an opportunity for the first time to start having detailed, “nuts and bolts” discussions about exactly how decisions will be made. **At the start of this document we referred to the creation of a “governance framework”, and it is during this period that this framework begins to take shape.**

There is a risk that circular discussions ensue about governance. The use of the governance framework to provide structure to the discussion will, we think, help with this, because it will encourage people to focus on the outcomes rather than the rights and wrongs structural solutions considered in isolation. That said, there might be a history of scrutiny in constituent local authorities in engaging with governance changes that may have been undertaken both in the 2000 to 2011 period, and since the Localism Act 2011 enabled further changes to governance arrangements. **It would be useful for the lessons of scrutiny engagement in constitutional change to be drawn on where councils and combined authorities are developing new governance frameworks.**

PRACTICAL GOVERNANCE: BOX 2

Likely practical, contentious issues around decision-making... and some possible answers

All the areas where we were providing support have spent time grappling with a number of key “nuts and bolts” issues. Again raising sequencing issues, some areas (and other areas in England, where we were not providing support) seemed to be discussing these issues in an ad hoc way, usually too early (before deals had been done and while negotiations were still ongoing). Often, discussions were taking place before agreement had been reached on the core governance principles underpinning them. This is another reason why we feel that adoption of a clear and coherent governance framework will provide some structure, helping local areas to resolve these points, and formally to state the principle of scrutiny and public engagement along the devo journey.

Some of the more contentious issues include:

- “One council one vote” – or are some councils more equal than others? Particularly in two tier areas, this has caused problems. Should counties have more seats at the table than others?

Should urban councils with a larger population have a louder voice than more rural ones? Taking a pure “one council one vote” option seems untenable where more than around a dozen councils are involved, purely for reasons of logistics – but how would an approach which tacitly excludes certain councils from decision-making be in the interests of good governance? And shouldn’t population size be relevant to such negotiations and governance models?

- Clustering and “lead authorities” – while this is an issue which has predominated in two tier areas, it is likely to be of interest in larger areas with a mix of two tier and unitary councils, or which are wholly unitary but of varying sizes. It suggests one way around the notion that all councils have to be involved in all issues. However, it raises two controversial points – firstly, the prospect that the introduction of unitary local government for remaining two tier areas could follow for “clusters” in future, and secondly the gathering of powers and service delivery responsibilities at a further remove from where they are currently exercised – which is likely to prove unpopular with members and is not consistent with subsidiarity principles.
- Relationships with partners – in particular, the LEP. We comment on this in more detail below.
- Division of responsibility – especially in two tier areas – this is another aspect of the “subsidiarity” debate. Who makes decisions on what, and when? Is there, for example, scope for counties to give power to districts, alongside district clustering? One area even posited the idea of “returning” certain county council responsibilities to central Government as part of a deal – although that is perhaps best seen as a thought exercise than a concrete proposal – and is unlikely to command much support from local government.
- The powers of the Mayor – this has been one of the more significant flashpoints. There are circumstances in which the Mayor might be able to veto the combined authority, or vice versa. Areas will be keen to embed such powers – particularly where they have the potential to constrain the Mayor’s powers – in the Order which establishes devolved arrangements.
- Managing the (inevitable) politics involved – because of personal, and political, tension between key players, there is a temptation to put in place governance solutions to manage individuals, which is not in the interests of proper succession planning. However, any governance solutions put in place need to recognise and harness the “human element” of negotiation and decision-making. Fundamentally, how will decision-making and accountability work when there are so many players in the game? A participant at our second roundtable said, **“If you’re a member of the public trying to understand who’s ultimately made decisions [...] the idea of the Mayor was that the Mayor would become the focus of accountability. If the Mayor has responsibilities but doesn’t have full power and has to mediate his (sic) agenda through counties and districts through the combined authority, they won’t be able to get things done”**. Whether this is indeed the case is something that local areas will need to unpick and explore.

The role for governance and scrutiny:

- Local oversight and scrutiny arrangements can seek to broker agreement on some of these more complex matters.
- Agreement of the detail of joint scrutiny arrangements (see below). This discussion will not happen in a vacuum. The proposal and agreement of robust oversight and scrutiny arrangements may make it easier for councils and partners to agree on the kinds of contentious governance matters highlighted above. With stronger scrutiny should come the confidence to delegate certain decision-making activities at combined authority level to smaller groups or individuals. Local histories of joint scrutiny may help.

- Further steps will need to be taken to involve and integrate partners. Certain partners are likely to be signatories to the deal itself, and will hopefully have been involved substantively from the outset, but there may be others who are likely to be affected by this work – and by the consequent governance changes. In particular, providers of commissioned services may need to review their relationships with their commissioners as local priorities change and align sub-regionally. It is likely that some partners will want to think about integrating their own scrutiny arrangements with those of the combined authority – which has implications for joint scrutiny, on which we comment below.

PRACTICAL GOVERNANCE: BOX 3

Partner relationships

We looked in some depth at the need to involve and engage partners in decision-making and governance – particularly the LEP.

There are no easy answers to the question of partner involvement. Partners will see their accountability as facing elsewhere, and may well not recognise the need for direct local accountability to residents – in a formal sense, anyway.

There will, however, be a need to formally integrate partners into the decision-making systems at all levels. As responsibilities and outcomes become more intertwined – along with the funding packages to deliver them – governance must evolve to match. Local authorities may have some challenging decisions to make as to how far they accept partners’ rights to “reach in” to what might previously have been seen as internal matters. Partners will have to have the same discussions. And the inevitable complexity involved in reaching agreement on these points will mean that everyone think about the implications for local democracy and engagement.

The CA’s principal partner – other than the Mayor - is likely to be the LEP (or LEPs). The likely future of LEPs is up for debate. Some think that they will as has happened in London and to a lesser extent in GM – become advisory bodies to the CA. Others think they will still operate independently, each holding each other to account in partnership. The nature of the CA/LEP relationship is fundamental and agreeing on a “direction of travel” is important to be able to design an effective governance system.

We comment below, in general, on joint scrutiny, touching on joint scrutiny of partnership business.

PRACTICAL GOVERNANCE: BOX 4

Joint scrutiny arrangements

“[Overview and] Scrutiny must play a vital role – it is central to securing the public interest and acting as the public voice. But I’m not really aware that scrutiny is being involved at the moment” (County council scrutiny chair)

“For me the major concern is governance, and the potential conflict [between decisions made by a combined authority and individual councils]. Who will manage the money, including investments, and won’t this just be another tier of bureaucracy without accountability?” (District council scrutiny chair)

In a number of areas, scrutiny practitioners and others with an interest in governance have been considering how to establish joint scrutiny arrangements.

There is always a risk that joint scrutiny arrangements will be undertaken by default (because of a perceived need to “scrutinise devolution” – and because all combined authorities must, by law, have an overview and scrutiny committee under the terms of the 2016 Act). In areas where discussions between scrutiny practitioners are under way, there is anxiety that a need to carry out “additional” work on devolution will stretch resources. In our view, such worries start from the assumption that standing arrangements will always be necessary to scrutinise devolved activity, and that “devolution” is a single, monolithic topic which requires a unique structural response. Neither is in fact the case. Nor is it the case – as some have expressed concern to us – that scrutiny by the CA OSC will interfere with or otherwise constrain scrutiny at local level. Both will be necessary. But there are, of course, risks.

Who’s involved?

The first question for those establishing joint scrutiny arrangements is to work out who is involved. It is possible to envisage it as solely a role for elected councillors, but that fails to take account of the reality of partnership working. Others, locally, outside the local government sector, will need to be recognised as important partners both in delivery, and in scrutiny. How might this work?

- The use of expert and technical advisers. Independent local experts – academics, in all likelihood – could assist local scrutiny by providing semi-formal technical advice.
- Those in non-executive positions on partnership bodies could play a scrutiny role alongside the combined authority OSC, and other local OSCs. This could be through formal co-option to sit on those bodies, or more informal arrangements.

There is a track record of this kind of partnership scrutiny. In relation to the health service, joint working with various iterations of patient/public involvement systems has taken place since 2001 – in relation to policing, the recent development of PCPs, and community safety scrutiny, has required integration between local authority scrutiny functions and the work of local partners. Lessons can be learned from these experiences and applied here.

There is a particular challenge around the monitoring, by the CA OSC, of outcomes which also relate to the responsibility of LEPs. LEP assurance is defined by the agreement of a “local assurance framework”, but the NAO, in their recent study, found that many LEPs lack effective resourcing to monitor this framework. This provides an ideal opportunity for the CA OSC to play a role, and by so doing knit together the CA/LEP relationship.

In this way, the combined authority’s overview and scrutiny committee will naturally take the lead on scrutinising issues which fall within the direct remit of the combined authority. However, strategic decision-making on transport, economic development, skills and other topics likely to constitute the core of CA business will flow into individual councils’ duties and responsibilities on those issues, and into connected issues which involve partners, such as housing, social care, children’s services and the environment. This means that, even for strategic matters, the CA OSC will never be able to operate in pure isolation – it will need continually to liaise and communicate with the scrutiny functions of the constituent councils. Planned poorly, this could be a recipe for both ineffectiveness, and bureaucratic sclerosis.

Scrutiny practitioners can cut through some of these difficulties by designing the system around the answers to some key questions:

- What is being delivered, by whom and at what level (understanding the “subsidiarity” points we made earlier)?
- Who is accountable? Who commissioned the service? And to whom are the providers accountable?

- What mechanisms exist, and might exist, to help local scrutiny practitioners, working together, to exert this accountability? How can these be effected, and the scrutineers supporter?
- How the public and partners be engaged in this broader operation of scrutiny powers?
- Where are the gaps in scrutiny? How can they best be addressed?

We think that part of the solution can be found by working through “Step by Step to Joint Scrutiny: A Handbook for Scrutineers” (Cardiff Business School, 2015 <http://business.cf.ac.uk/sites/default/files/news/FINALJoint%20Scrutiny%20Handbook%20A5%2812%29english.pdf>). This document was produced to provide guidance to Welsh authorities, where the need to conduct joint scrutiny is becoming more pressing as the partnership working agenda, and the pressure for collaboration, accelerates. What follows is an attempt to adapt these steps to apply to devolution-related issues in England.

1. Having an agreed way to decide when to conduct scrutiny in which forum (following on from thinking about subsidiarity on the executive side).
2. Having an agreed way to decide how to work, and conduct scrutiny alongside, partner organisations. There are others, locally, with a scrutiny role and who are also involved in holding to account services that may be impacted by devolution.
3. Ultimately, having an agreed, quick way to invoke these arrangements. Opportunities to undertake joint scrutiny will emerge at short notice.

Once protocols and agreements are in place or updated to allow areas to work together to identify and undertake work on issues of mutual interest, joint work can start. The CBS research suggests seven steps:

1. Selecting the right model – ranging from informal dialogue to more formal standing joint committee arrangements (we expand on this point in the section below);
2. Designing terms of reference. This is about establishing a common understanding of how and why scrutiny arrangements will work; the key relationships between those who are involved, and other crucial terms of engagement. This is about ensuring that all those involved have shared expectations of how work will be transacted and the outcomes that are sought.
3. Appointing and preparing scrutineers. Where more formal joint arrangements are to be established – even if they are to be time-limited in nature – a collective understanding about where skills and expertise lie, and identifying any political or organisational flashpoints before work starts in earnest. It is about identifying and preparing a suitable chair, and for building a team that can work effectively together. Most fundamentally, for some authorities it will involve thinking very differently about how scrutiny is done.
4. Setting up officer support. Initial plans will have come to a conclusion about what level of resource might exist to support joint scrutiny, but practical arrangements for shared support will also need to be put in place to avoid the possibility of confusion and overlap. It may be that it is decided that a single authority will lead, or if there is a governance unit or secretariat for the combined authority, it might lead, whilst ensuring independence for the scrutiny function.
5. Managing the review. This is the usual process of setting objectives, scoping the review, gathering evidence, evaluating material, setting timescales and formulating SMART recommendations, as with any other review or inquiry – subject to section 6 below.
6. Co-ordinating evidence gathering. This is worth dwelling on in the planning stage as there are

likely to be particular complexities around relationships, where evidence may be held by a wide range of partners. This means that evidence-gathering sessions need to be very carefully planned and that project scopes are rigidly adhered to, to avoid the natural temptation to expand or otherwise alter original plans.

7. Reporting arrangements. To whom will recommendations be submitted? A range of bodies are likely to be involved (in comparison, many council scrutiny reviews will focus on recommendations to Cabinet).

Making this happen is highly likely to involve all councils in areas with devolution deals amending their work programming arrangements to take account of the possibility of joint scrutiny in the future. Increasingly, the sharing and co-ordination of work programmes across an area will be essential rather than an optional activity.

PRACTICAL GOVERNANCE: BOX 5

Some possible scrutiny governance models

The structural model for scrutiny and governance is less important than the behaviour of the people operating within that model. It should be borne in mind, too, that the models below are presented divorced of context – in reality, they will need to be designed to integrate within decision-making systems too.

Whatever their context, structures can work to encourage people to behave in certain ways – it is therefore important to get it right, without overlooking individual people's attitudes and values. Structures must be built in order to embed positive behaviours and good practice (transparency, accountability, the involvement of a wide range of people).

- The local Public Accounts Committee. What we would regard as the “gold standard”, a local PAC would – either by agreement of a range of local partners or powers put in place in legislation, or possibly both – have the responsibility of looking at public value and public spend across an entire locality. Our detailed paper on the operation of Public Accounts Committees can be found at <http://www.cfps.org.uk/local-public-accounts-committees-detailed-proposals/>
- The single, commissioning combined authority OSC / the “hub and spoke” model. This option appears to be gaining traction as an option in some areas, although it raises concerns for sovereignty and subsidiarity. It places the combined authority at the centre, potentially commissioning work to be delivered by individual constituent councils and playing a co-ordinating role, bringing together relevant but separate scrutiny activity by councils with scrutiny by a joint committee. A single combined authority OSC might also commission short, sharp time-limited reviews to be carried out on combined authority business. It is important to note that resource constraints mean that it is highly unlikely that traditional, in-depth task and finish work will be viable.
- The multiple OSC model. Here, there will be more than one overview and scrutiny committee at combined authority level – mirroring what happens locally in many councils. This seems to be being discussed seriously as a proposition in some areas, where members feel that a single committee will not be able adequately to scrutinise the broad spread of combined authority business. We are not sure that – however the multiple model works – there will be scope for the establishment of multiple committees – resourcing will militate against it, and the focus of the CA as a strategic entity means that it may be entirely unnecessary.

- The traditional model. We do not recommend what we describe as the “traditional model”, but present it here as an example of an approach to avoid. We worry that, as more areas establish combined arrangements, it will become more likely than not that this model will predominate. This is because – in our experience – jointly-agreed systems seem to revert to the level of the “lowest common denominator” – the council in the area with the most traditional, and least innovative, model of scrutiny, because this is often the line of least resistance. Hence, the risk of ending up with a combined authority overview and scrutiny committee which meets four times or six times a year and takes (and merely notes) a range of officer reports, updating members on areas of interest, but not allowing for full scrutiny and accountability. Members may discuss these reports in the meeting and find them interesting - but it is definitely not scrutiny.

The implementation and improving outcomes

Implementation – in governance terms – will be marked by the creation of a new combined authority, the election of a Mayor, or both. The “design” and “implementation” stages are likely to merge together – implementation of the deal will begin before a Mayor is elected, for example.

The only area which can be said to have approached this stage already is Greater Manchester – and even GM has yet directly to elect its Mayor. As such, practical lessons here are thin on the ground. However, **devolution will need to start delivering**. At some point – it may be surprisingly soon – leaders will be able to point to particular outcomes on the ground, and be able to say, “this would not have happened, but for the deal we did with Government”. Getting implementation right is therefore critical.

What governance and scrutiny can bring. In many ways, looking at the role of governance in implementation and the delivery of outcomes involves attempting to look beyond an event horizon, further than the temporary governance arrangements currently being established to the permanent systems which will underpin delivery in the future. **We know that those permanent systems will be necessary and that they will soon exist, but it feels presumptuous to imagine exactly how they will operate in practice.** The “design” phase above takes us as far as we can go on the detail for now. What more can be done?

The answer lies in the nature of devolution itself – a process, not an event. We know that devolved arrangements will continue to evolve, which is why one of the design principles we have identified is **the need for flexibility**. Effective governance will be about identifying those opportunities for evolution, and providing the means for capitalising on them. There is the potential that even if devolution does not immediately lead to the introduction of unitary local government it may do so in future. How might this affect the delivery of services on the ground, and the way that governance operates – and scrutiny gets involved at the stage of agreeing reorganisation and beyond? Where will scrutiny fit in any new structures that might evolve after the deal is struck and implemented?

“All local government is facing significant savings and with RSG disappearing, it’s a bit of a wake up call that if you want to unitarise, you have to go now. Devolution provides a second driver towards the streamlining of governance”

(participant at roundtable session)

The role for governance and scrutiny:

- Thinking of ways to ensure that the combined authority and its business stay visible and transparent, and that buy-in continues to be maintained – from the public, the broader cadres of politicians at all tiers and professionals;

- Developing and maintaining a cultural acceptance that aspects of the governance settlement may have to change – and significantly – as time passes. LGR may affect things. So might the prospect of further devolved powers, shifting the powers and responsibilities of the Mayor and combined authority;
- The delivery of outcomes will affect the development of new priorities. Governance systems will need to be able to engage substantively with those changes, and change themselves to accommodate them.

TO CONCLUDE...

Devolution being a process, not an event, means that once we start talking about outcomes, it is time to start talking about the “why?” again. What do our successes – and failures – to exert change locally mean about further powers we might need in the future? And so the merry-go-round of devolution starts again, leading us back through the sequence we have already described to plan, redesign and implement new agreements for the delivery of different services.



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