

**Manchester City Council
Report for Information**

Report to: Resources and Governance Scrutiny Committee – 5 January 2017

Subject: Devolution Governance

Report of: The City Solicitor

Summary:

Scrutiny Committee have requested a report setting out an update of the current position on devolution following the previous report in October 2015. This report deals with progress on the implementation of the devolution arrangements through the Cities and Local Government Devolution Act and the current proposals which have been subject to consultation.

Recommendation:

To note the report.

Wards Affected: N/A.

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Background documents:

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the officers above.

Report to GMCA 19th December 2014
Report to GMCA 31st July 2015
Report to GMCA/AGMA September 2015
Report to GMCA 18th March 2016
Report to Resources and Governance Overview and Scrutiny Committee May 2016

1. Background

1.1 Members will be aware from the Report in May 2016 that the Cities and Devolution Act was passed and came into force in March 2016. The Act is enabling legislation and specific powers for Combined Authorities and Mayors are subject to Orders which require the consent of the 10 GM districts as well as the CA itself.

2. Current position

2.1 At the time of writing this report, December 2016, the Phase 1 GM Order has been approved by the Commons and is waiting to be considered in the House of Lords. It is anticipated that it will be approved and that it will come into force in either late December or early January.

2.2 The Phase 2 Order is in the final stages of agreement and is intended to be laid in January 2017. This predominantly deals with the transfer of the functions of the Waste Authority in April 2018.

2.3 In addition there will be specific orders which will transfer the powers of the PCC and the Fire and Rescue Authority to the elected Mayor, a generic Finance Order that will deal with the financial arrangements for all Combined Authorities, and a specific finance order for each CA to deal with the particular deals that each CA has negotiated if required.

2.4 As the Buses Bill has not yet completed its passage through Parliament it is likely that there will also be a Phase 3 Order to ensure that all of the Mayoral Powers on buses is transferred.

2.5 Drafts of the PCC, Fire and Rescue and generic finance Order are all now being considered with a proposed date for laying before Parliament in mid-January.

2.6 Details of the powers to be transferred were set out in the report to this Committee in May 2016 and are repeated below for ease of reference.

POWER	RATIONALE
Planning, Housing and Regeneration	
<p>Mayoral strategic planning powers including:</p> <ul style="list-style-type: none"> • the power to create a statutory spatial framework for Greater Manchester; • Compulsory Purchase Powers in line with those held by the HCA; • the power to establish Mayoral Development Corporations; 	<p>The GM Spatial Framework will enable an informed, integrated approach to be taken to spatial planning across the city region, based on a clear understanding of the role of our places and the connections between them. It will ensure that Greater Manchester is able to meet current and emerging occupier demand to support a market-facing</p>

<ul style="list-style-type: none"> the introduction of a Mayoral Community Infrastructure Levy. <p>Other Housing and Regeneration powers including Housing and Communities Agency (HCA) powers to be exercised concurrently with the HCA</p>	<p>strategy for housing and employment growth.</p> <p>The additional Mayoral planning powers will enable the Mayor and the Combined Authority to drive development and regeneration across the area. Such strategic mayoral planning powers will only be exercised with the consent of the local planning authority(ies) concerned.</p>
<p>Incidental powers relating to the GM Land Commission to enable the SoS to make schemes transferring to GMCA land held by other public bodies (with their consent) in the same way land can be transferred to the HCA or GLA.</p>	<p>To oversee the efficient utilisation of the public sector estate to support growth and public service reform ambitions. In relation to surplus assets the Land Commission will identify barriers to disposal and develop solutions to address those barriers to help GM to meet its goal to deliver over 10,000 new homes per annum.</p>
<p>Bus franchising</p>	
<p>The transfer of additional supporting transport powers to the GMCA, including:</p> <ul style="list-style-type: none"> the transfer of responsibility from the Traffic Commissioner to the GMCA for the registration of bus services that operate wholly or mainly within GM, to support the management of franchised bus services once introduced; the transfer of responsibility from the Traffic Commissioner to the GMCA for functions in relation to traffic regulation conditions in so far as such conditions relate to GM; the joint exercise by the GMCA and Secretary of State for Transport of the function currently exercised by the SoS to make grants to bus operators in relation to services that operate wholly or mainly within GM. 	<p>The transfer of such powers would provide GMCA with an early opportunity to engage on a formal basis with operators of the current commercial bus network, prior to the new regime to be introduced by the forthcoming Buses Bill</p>
<p>Highways</p>	
<p>Delegated responsibility from the SoS or Highways England to the GMCA for the construction, improvement or maintenance of trunk roads and highways.</p>	<p>To ensure that management and investment is aligned to locally determined growth priorities to support the more effective and efficient operation of the network.</p>

Health	
Devolution of health related local authority functions to the GMCA, including commissioner status, to be exercised concurrently with GM local authorities.	To enable the effective integration of health and social care provision across Greater Manchester, to deliver improved health and wellbeing outcomes to support and enhance GM's priority of reducing worklessness and supporting people back into employment and to ensure the financial sustainability of the health and social care system.
Skills and Training	
Conferral of local authority and central government training and skills functions to the Combined Authority, to be exercised concurrently with GM local authorities and the Secretary of State.	To provide the GMCA with the ability to reshape and restructure skills provision across Greater Manchester, aligning that provision with locally determined priorities to ensure that GM residents have the skills required to help businesses to grow, innovate and diversify.
Culture	
Devolution of a functional power of culture to the Combined Authority, to be exercised concurrently with GM local authorities.	Such a power would enable the GMCA to administer a grants scheme/fund corresponding to the "Section 48" grants scheme currently administered by AGMA. A functional power of culture would make it clear that GMCA functions include the promotion of cultural events and entertainment within Greater Manchester.
Blue light services	
Transfer of responsibilities currently exercised by the Police and Crime Commissioner and the GM Fire & Rescue Authority to the elected Mayor. Policing functions will be the subject of a separate order and fire and rescue functions will be the subject of a review as part of phase 2.	To promote greater integration of blue light services, ensuring that services are delivered in a more effective and efficient way.
Finance	
Introduction of a Mayoral precept to support the discharge of mayoral functions and GMCA levy to support non-mayoral CA functions	GMCA functions in relation to economic development and regeneration are currently funded through a recharge to the constituent councils. A precept or a levy would offer greater transparency to

	GM residents in relation to the funding of Mayoral functions.
GMCA borrowing powers. The GMCA can currently only borrow in relation to transport functions but the devolution settlement makes provision for the GMCA to borrow against all functions, subject to the agreement of constituent councils.	Current restrictions prevent a CA from borrowing in respect of any non-transport functions which a CA may subsequently assume. In order for the CA to take forward any arrangements which require borrowing one of the constituent councils has to borrow in its own right which is unsatisfactory, administratively burdensome and inconvenient. The transfer of wider borrowing powers will ensure the more efficient discharge of GMCA functions.
Data sharing	
Where relevant and appropriate the GMCA will be considered a local authority to enable Government departments to share data with it.	The ability to share data across public agencies (whilst providing the public with confidence that the use of such data is set within a regulated regime) is critical to our work to integrate public services, including health and social care services.
Constitutional and governance issues	
<p>The Mayor will have a functional power of competence so that s/he can carry out matters incidental to his/her main role.</p> <p>Legislation will make provision for the Mayor to appoint a political advisor and will set out the terms and conditions of such an appointment.</p> <p>The Mayor will be able to exercise functions jointly with other authorities in a joint committee.</p> <p>Whilst not powers to be devolved or transferred, the legislation to be drafted will also determine a number of constitutional and governance issues, including:</p> <ul style="list-style-type: none"> • mayoral and non-mayoral functions; • voting rights and majorities; • the role of the Deputy Mayor for policing to be limited to PCC functions; • the role and responsibilities of statutory committees; 	Such arrangements will ensure the effective operation of GM governance arrangements, including clear arrangements to ensure transparency and accountability.

<ul style="list-style-type: none"> the role and responsibilities of scrutiny and audit committees. 	
<p>Again, whilst not a power to be transferred legislative and regulatory change is required to determine Electoral Conduct rules, and clarification of requirements in respect of the Mayoral election.</p>	<p>To ensure that candidates and the electorate are clear on electoral arrangements.</p>

3. Overview and Scrutiny of the CA

3.1 The Cities and Local Government Devolution Act sets out the legislative framework for Scrutiny of Combined Authorities. It states that CAs must appoint one or more Overview and Scrutiny Committees and that such committees have power to:

- Review or scrutinise decisions made, or other action taken, in connection with the discharge of any of the CA's functions by the CA or the Mayor (this includes a call in power);
- Make reports or recommendations to the authority about the discharge of any of its functions;
- Make reports or recommendations to the CA on matters that affect the area or the inhabitants of the area.

3.2 The Chair of a CA Overview and Scrutiny Committee must be either an independent person (as defined in the Order); or an appropriate person (i.e. not a member of the same political party as the Mayor) who is a member of a constituent council.

3.3 The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016 which will enact the detail of the arrangements has now been laid before Parliament.

3.4 The main provisions of the Order are:

- The majority of the members must be members of the CA
- At least 2/3 must be present for a quorum
- Constituent Council members will have a vote but there is no casting vote
- Other members may be given a vote by the CA
- The CA must appoint members in a way that reflects the balance of political parties for the time being prevailing amongst the members of the councils taken together.
- Any member of the Committee, any member of the Combined Authority, or and member of a constituent Council, may refer to the Committee any matter which is relevant to the functions of the Committee and is not excluded.
- Where the Committee decides to make a report or recommendations it may publish the report or recommendations and require the CA or Mayor

to consider and respond within 2 months indicating what action it intends to take. The Committee may then publish the response.

- Where the Committee has called in a decision made but not implemented the CA or Mayor must hold a meeting to reconsider the decision within 10 days from the date on which the recommendations of Scrutiny were received.
- A CA must designate an officer as a Scrutiny Officer. The functions of a Scrutiny Officer are to promote the role of the Overview and Scrutiny Committee, and provide support and guidance to the members of the CA and Mayor in relation to the functions of the Overview and Scrutiny Committee. The Scrutiny Officer must not be an officer of any of the constituent Councils
- The Order also sets out rights of access to documents for Committee members and how key decisions must be dealt with, including the requirement for 28 days notice of such decisions and which decisions may be excepted from this requirement.

Update on Scrutiny review

4. GM's Current Approach to Scrutiny

- 4.1 Currently GM has two scrutiny committees: the Joint Scrutiny Pool, which has a broad remit to scrutinise GM working and decision-making across the Greater Manchester Strategy's strategic priorities; and Joint Health Scrutiny Committee the focus of which is on pan-Greater Manchester health strategy (GM Strategic Plan: Taking Charge) and service delivery. The latter's remit is governed by the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

Joint Scrutiny Pool

- 4.2 Greater Manchester's scrutiny function was established in 2008 to provide overview and scrutiny of the emerging body of collaborative work being delivered under the direction of the Association of Greater Manchester Authorities (AGMA) Executive Board.
- 4.3 In 2011 GM's Scrutiny Pool's remit was broadened to enable it to scrutinise the work of the newly formed Greater Manchester Combined Authority, as well as continuing its work with AGMA. The thirty-strong GM Joint Scrutiny Pool draws its members from backbenchers across GM's ten districts, three per authority. Rules of political and gender balance are used when districts nominate members. The Pool meets monthly.
- 4.4 Scrutiny's remit can be divided into three main areas of work which are set out in its terms of reference. The GM Joint Scrutiny's role is to:
- 4.5 Monitor the decisions of the GMCA and Executive Board, and the major and strategic decisions of the Transport for Greater Manchester Committee. It also has responsibility for monitoring Greater Manchester's delivery of transport services;

- 4.6 Investigate matters of strategic importance to residents of the ten GM districts and feedback the findings of their investigations to the GMCA, Executive Board or the Transport for Greater Manchester Committee;
- 4.7 Review performance against objectives and priorities set out in the Greater Manchester Strategy *Stronger Together*.
- 4.8 The GM Scrutiny Pool only considers issues of strategic importance to Greater Manchester. It does not get involved in minor matters, complaints or issues that are better dealt with by one of GM's constituent councils. Officers work with the districts' democratic services support officers to ensure that the work of GM's Scrutiny Pool adds value and supports the operation of local scrutiny processes. The GM Scrutiny Pool's terms of reference are clear that the work of GM Scrutiny must not duplicate the work of existing bodies or agencies.

5. GM Joint Health Scrutiny

- 5.1 There has been a Greater Manchester health scrutiny function in operation since 2002 with a remit to scrutinise health and social care at a GM level. In 2014 its remit was refreshed under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. Greater Manchester's Joint Health Scrutiny Committee has delegated powers from the 10 Authorities of Greater Manchester to undertake all the necessary functions of health scrutiny in accordance with the 2013 regulations: it is a body which reviews and scrutinises health services matters which are provided at a Greater Manchester level; and is a body to which health services providers have a duty to consult under the 2013 Local Health Scrutiny Regulations.
- The Joint Health Scrutiny Committee can scrutinise the strategies, policies, actions and consultations of:
 - GM Health & Social Care Partnership;
 - NHS England;
 - the joint work of the Greater Manchester Clinical Commissioning Groups (the Association of GM Clinical Commissioning Groups);
 - Public Health England (Greater Manchester);
 - Local Authorities across Greater Manchester regarding their role as providers and commissioners of social care, and as public health agencies;
 - All other cross-boundary NHS services i.e. North West Ambulance Service, Christies, Specialist Children's Services provided by the Royal Manchester Children's Hospital;
 - Services provided to patients living and working across Greater Manchester;
 - Specific health issues that cut across geographical boundaries.
- 5.2 Individual authorities reserve the right to undertake scrutiny of any of those authorities listed above with regard to matters relating specifically to their local population. Joint Health Scrutiny has ten members, one per GM district. The committee meets quarterly.

5.3 GM's holistic, place-based approach to achieving our growth and reform ambitions means that health issues are integral to our work on public services reform. As GM's Joint Scrutiny Pool considers items from across all of the GM Strategy's priorities, health matters will be occasionally considered by the Joint Scrutiny Pool where these are fundamental to the delivery of broader public service reform work. Recent examples of this include work on early years and the 'working well' programme. Officers review agendas to ensure that there is no duplication of the work of both of these bodies.

6. Reviewing GM's Scrutiny Function

6.1 GM's governance arrangements have evolved and developed to suit GM's changing needs over a long period. GM is committed to continually reviewing and improving its governance structures to reflect the new policy landscape. Greater Manchester recognises that its ways of working and formal governance need to support transparent and publicly accountable decision-making. This is even more important in the light of the new powers that devolution brings.

6.2 The GMCA's scrutiny function has undergone two reviews: the first in 2014, initiated before GM's devolution agreement in response to the increased profile and volume of sub regional working the GMCA/ AGMA Executive board; and the second, current review, promoted by the GMCA acquiring significant new powers as well as an elected mayor. Both reviews are described below.

6.3 The 2014-15 review was undertaken with an improvement focus, to strengthen and improve GM's current arrangements, to ensure an effective transition to an elected mayor. The work was undertaken by North West Employers. In June 2015 the GM Joint Executive Board considered a report which describes the review process, key findings and recommendations.

6.4 A number of improvements recommended by the review have been implemented. These improvements have supported members to maintain a sharp focus on key areas performance and policy development, and the in-depth scrutiny through task and finish working.

Improvements implemented as part of the 2014/15 review include:

- a consolidated forward plan of forthcoming reports and areas of policy development being
- considered by the GMCA being taken monthly to scrutiny as part of their work programme.
- This informs the timely scrutiny of issues;
- a GM Annual Performance Report to guide scrutiny's work programme;
- Member-led work programming;
- Lead portfolio holders for each policy theme are now attending Scrutiny Pool meetings to
- present reports;
- The introduction of task and finish groups to undertake in-depth reviews of

- particular issues.
 - The first on Employment and Skills reported to the GMCA/AGMA joint Executive Board this
 - municipal year there are a further two task and finish groups taking place: one looking at
 - GMCA communications and another focusing on renewable energy;
 - live-streaming of scrutiny meetings;
 - a role description for scrutiny committee and working group members.
- 6.5 GM's scrutiny arrangements are currently under further review as GM implements its devolution agenda (subject to the passing of secondary legislation). GM has to ensure that its emerging governance arrangements make provision for the decisions of the GMCA and the elected mayor (when elected in 2017) are made in a transparent manner and are subject to effective scrutiny.
- 6.6 This second review is focused on GM's post 2017 scrutiny arrangements, but builds on the work of the 2014 review. Representatives nominated from each district along with three leaders are working to support the development of proposals and evaluate options for GM's future scrutiny and governance arrangements, focussing on the following areas:
- Structures: to consider what would be the best structures and capacity to help members from across GM to scrutinise the policy and decisions of the GMCA and elected mayor;
 - Powers: to review scrutiny's current powers to ensure that the proposed new arrangements allow GM's scrutiny members to provide meaningful challenge and proper checks on the decisions taken by the elected mayor and the GMCA;
 - Legal Compliance: to ensure that GM has a scrutiny function compliant with the provisions of the Cities and Local Government Devolution Act 2016 (including any compliance with Orders relating to scrutiny that are made by the Secretary of State under the Act);
 - Health Scrutiny: to develop proposals on how the scrutiny of health and social care should be configured to allow meaningful involvement of members while recognising that no additional decision making powers are moving from the NHS to the elected mayor or the GMCA¹;
 - Officer Support: to consider how the new scrutiny arrangements should be supported by officers and members.
- 6.7 The Scrutiny Working Group members were nominated by each local authority, who sat alongside three representatives of the GMCA:

Bolton	Cllr Susan Haworth
Bury	Cllr Iain Gartside

¹ By April 2017 (subject to the necessary legislation) the GM Combined Authority will be given the duty to improve Greater Manchester's residents' health, and given commissioner status. These powers will be held concurrently with the ten districts and the Secretary of State. This will ensure that the GMCA has the necessary powers to implement its health devolution deal.

Manchester	Cllr James Wilson
Oldham	Cllr Colin McLaren
Rochdale	Cllr Neil Butterworth
Salford	Cllr John Walsh
Stockport	Cllr Kate Butler
Tameside	Cllr John Taylor
Trafford	Cllr Jonathan Coupe
Wigan	Cllr John O'Brien
GMCA	GM Interim Mayor Tony Lloyd
	Lord Peter Smith
	Cllr Sue Derbyshire (until 5 May 2016)

6.8 The following mission statement was agreed by members of the Working Group.....

Decisions made in the name of the people of Greater Manchester must be transparent and accountable to the people. Scrutiny of the Mayor and the GM Combined Authority by those democratically elected across Greater Manchester makes for effective decision making. It ensures the accountability which improves public services for all our people and all our communities. GM wants to make sure that its governance structures and ways of working support this ambition.

An effective scrutiny function can improve the quality of decisions made on behalf of the conurbation's residents and businesses. Scrutiny enables non-executive members to hold the elected mayor, GMCA, AGMA Executive Board and the Transport for Greater Manchester Committee to account for their decisions, and, if necessary, ask them to think again.

Decision making is strengthened by scrutinising major strategic initiatives before decisions are made (pre-decision scrutiny) and by reviewing performance and exploring different policy responses to delivering the Greater Manchester Strategy's priorities (scrutiny investigations). Embedding this approach gives scrutiny a proactive role in policy development.

GM is committed to a process of continual improvement of its governance structures and, with this in mind, this review of GM's scrutiny function will be guided by three principles:

1. **Keep things simple** - any new structures and proposals should be easy to understand and communicate to the wider public;
2. **Manageable** - any new structures and proposals need to deliver a robust scrutiny process which is fit for purpose and proportionate in terms of cost and time;
3. **Effective** - any proposals for new arrangements need to include mechanisms which can track and demonstrate how the scrutiny function has improved the quality, transparency and accountability of GM's decision-making.

Following consideration the findings of a work load analysis of the GMCA's

key decisions the Working Group decided that GM's future scrutiny arrangements should adopt a themed scrutiny structures which would allow detailed overview and scrutiny of policy themes and, to retain the flexibility offered by task and finish groups. Final proposals regarding GM's arrangements will be put forward once the full implications of the Generic Scrutiny Order have been reviewed from Greater Manchester's perspective.