

By email

Dear Jason,

Thank you for your letter of 7th September and its constructive tone. As you know LEP Board members had the opportunity to informally discuss the Government guidance, legal advice etc on 8th September and that discussion developed things a bit further. I feel there is a 'landing zone' emerging, though a bit more work to do on the details around that, expanded on below.

As stated at the Board meeting, the LEP management team is to become the transition team (from September 22nd). In response to your letter, I think you offered and it would be helpful for the Accountable Body to join that group and possibly even chair it?

The areas I would like to highlight are:

1. Starting Points

At the last Board meeting, we identified the importance of shared starting points and Government guidance as you say, provides a major steer. Within that some specific points are important to affirm, especially from paragraphs 18, 33 & 34:

- Government expects that integration of LEP functions will be undertaken as quickly as possible, ensuring a smooth and orderly transition
- Decisions on transfer of assets must be taken by end March 2024, but Government recognises that practical process may go beyond that date
- Management & transfer of assets to be agreed locally between the LEP, the Accountable Body & local authorities.

So, functions could and should transfer as quick as possible, consistent with a smooth transition. However, it is clear Government have not decided to transfer the functions, assets and liabilities of LEPs to relevant upper tier Local Authorities from 1 April 2024, as stated in your letter. We should make decisions by 31st March 2024 but may agree locally to work to transfer by this date but that is not mandated by Government.

In getting to an end-point, there are clear interdependencies with functions, funding (and therefore assets) and staffing (and therefore TUPE) so these need to be considered together rather in isolation; financial obligations on local authorities will be different if they have obligations to TUPE staff and assets are constrained by the CIC asset lock. I would suggest that we collectively work to identify where functions may go, check the staff/TUPE and asset implications and then re-check the original view on that specific function. This may not be perfect but gives a checklist when working through potential decisions.

I agree that the Ashfords advice does not address all the points as clearly as all partners had hoped but the summary position on assets is that both the LEP and Accountable Body have an element of control over the assets. I would suggest, that this means that the LEP, as a CIC, must be mindful of the CIC asset lock and any decisions on assets must be consistent with this unless the Regulator advises us otherwise.

Consequently, we cannot transfer the assets to local authorities other than at full market value and Government CIC guidance contains other options which CICs can consider in these situations which ought to be worked through and evaluated on their own merits. As I've previously advised, in speaking to the previous Chair and Chief Exec, this was specifically put in place and agreed to ensure the assets are held on behalf of the whole HotSW community. This is entirely consistent with, and not contradictory to, the funds themselves being public money.

2. Framework for Transition

Having said that, I think Friday's discussion started to steer us towards four areas for any landing zone although it was disappointing that the other upper-tiers chose not to attend. I know they felt the meeting was premature but the Chair considered this and thought a briefing should go ahead not least for the benefit of the non-LA Directors.

i. Staff

We have an absolute responsibility to all LEP staff. LEP Board members were keen to ensure staff were considered as a main priority in all decisions. I find it difficult to reconcile proceeding with an evolution of functions (and potentially transfer of assets) without having full sight of the implications on staff ahead of that discussion.

ii. Governance

Board members recognised the strength of true partnership across the private sector, local authorities, higher and further education and noted that other areas continue to operate this at scale. Transition therefore needs to be clear on how future Governance will continue in a way that allows all partners to contribute effectively to the future implementation of the functions. We think this can only be done with the LEP (and possibly others) directly in the discussion about the future arrangements and, as stated by the Chair, look to the examples of other areas where all partners are directly engaged.

Whilst we understand the preferred timeline of the Local Authorities, we remain unclear whether the transition is to 2 areas – Devon CCA and Somerset or whether to the four upper-tiers, Devon, Plymouth, Torbay and Somerset.

Government has promised further guidance on business representation and strategic economic planning by January 2024 which will need considering in local transition arrangements.

iii. Functions

This is probably the most straightforward area to a degree as Government guidance concentrates mainly on this. Some functions such as Careers Hub have effectively already set up a clear pathway to transfer. However, the future service provision of these functions will be directly dependent on the funding available. Match funding is required for much of this provision and therefore we need to be clear what local funding will be available. If the LEP were to close as you suggest and the assets locally transferred then this funding would not be available to support future delivery of these functions.

Therefore, I can't agree yet with your conclusion that the CIC should close on a specified date (you suggest end March 2024). It is an option but the date needs to reflect the CIC completing its responsibilities and therefore can only happen once the future of its asset position is clear – either keep the assets, transfer to another CIC or dispose of them at full market value.

Moreover, some functions such as innovation and transformational sectors are not included in Government's definition and will need further clarity (and potentially funding if they are to continue).

We have set out all the functions we think need considering in a table (as part of the briefing slides) – as a starting point it would be helpful if this could at least be agreed.

iv. Assets

I remain deeply concerned by the direct conflict of interest of some LEP partners in the asset discussion and think I do need a view on whether they should continue to be part of any decision-making process. Whilst logically assets should follow functions, I think the asset issue has such an overbearing impact on transition that in my view it has to be resolved before we can have any really meaningful transfer of functions. The only way I think we can resolve this is that the Accountable Body and the LEP need to take a view on who owns which assets and we need to send that to the Regulator for ratification - I find it really difficult to reconcile that direct beneficiaries should be part of the decision.

3. Next Steps

The Board agreed that yourself as S151 officer and the LEP should meet to discuss the next steps and timelines as soon as possible on the following:-

- a. Staffing – we need to agree if TUPE applies and to whom as soon as possible. We then also need to agree on potential liabilities.
- b. Governance: I think it would be helpful for the local authorities to set out their proposals on this.
- c. Functions: It would be helpful for Local Authorities to set out the full list of functions they think are in scope (and compare with the list supplied as part of the LEP Board discussion)
- d. Assets: the Accountable Body and LEP will need to work directly with the Regulator on a proposal which meets any asset lock arrangements
- e. A question was specifically raised on Friday regarding the option which appears to have been discounted of continuing to use the LEP as a vehicle for discharging activities going forward. It would be helpful if LAs could set out the rationale for discounting this and possibly other options they have considered rather than simply telling partners what they've decided.
- f. We probably need to revisit the business plan to the end of this financial year and spending of funds by or past 31st March 2024. It is important to recognise that LEP funding continues to be defrayed on Local Growth Fund spend until (at least) December 2024, Careers Hub until August 24 and as we move into autumn, functions such as the Growth Hub traditionally start to require certainty over funding into the next financial year to avoid having to serve notice to staff etc. Therefore, a blanket no further funding beyond March 2024 seems a very blunt instrument indeed.

So, thank you for your letter ahead of the Board meeting which we thought was constructive. As a matter of priority, I think it is important that the LEP and AB meet asap to agree next steps to set out to the transition team our proposed workstreams.

We did discuss a few months ago about some common principles by which to conduct these discussions. I'm not sure anything got signed off – that might be worth reconsidering although personally I think the Nolan principles suffice.

Yours sincerely

David Ralph
Chief Executive