

**Heart of the South West LEP Board**

**November 27th, 2023**

**Chief Executive's Update – Transition/Integration of LEP functions and Assets to upper-tier Authorities**

**Lead Officer: David Ralph, Chief Executive, HotSW LEP**

**Contact Details: 07543 219390 – david.ralph@heartofswlep.co.uk**

**1. Summary**

This report provides updates on:

- The HotSW transition/integration arrangements following the announcements in August 2023 confirming the transfer of LEP functions to upper-tier Local Authorities – for comment
- Legal advice on the transfer of assets and possible indemnity based on this advice
- Initial legal guidance on Director Liabilities (recognising the Government will not provide any special dispensation) in the context of transition
- A draft letter to the CIC Regulator on the proposed treatment of assets
- Proposals to support resource into GSW to continue to progress elements of the Build Back Better plan not directly picked up through transition

Elsewhere the agenda includes a possible extension to the Exeter Science Park GPF loan.

**2. Recommendations – it is recommended that the LEP Board: -**

- i) **Provide comments on the proposed HOTSW transition/integration plan for submission to Government at the end of November - (Appendix 1)**
- ii) **Note the advice on treatment of assets is still awaited and agree the letter to the CIC Regulator accordingly – (Appendix 2)**
- iii) **Note the advice on Director liabilities – and seek appropriate indemnity from the Accountable Body (Appendix 3)**
- iv) **Agree to fund the continuation of 2 LEP delivery posts (until end March 25) to support the GSW team to sustain and extend delivery of key elements of the Build Back Better Plan namely:**
  - i) **High Value manufacturing**
  - ii) **Tourism incl data hub**
  - iii) **Energy Futures incl Hinkley Legacy, Gravity Supply Chain, FLOW and Hydrogen**

### **3. Transition/Integration of LEP functions**

Following the Ministers' letter in August, and the issuing of technical guidance - [Local Enterprise Partnerships: integration of LEP functions into local democratic institutions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/91441/Local_Enterprise_Partnerships_integration_of_LEP_functions_into_local_democratic_institutions_-_GOV.UK_(www.gov.uk).pdf), a template has been issued by Government for submission by November 30<sup>th</sup>. The Accountable Body has led completion of this working with officers from the upper-tier local authorities. The completed template will set out the proposed geography for delivery of LEP functions, how the functions/responsibilities of the LEP will be managed from April 1<sup>st</sup> 2024, and how the local authorities intend to embed a strong, independent, and diverse local business voice into local decision-making across the area.

The local authorities have advised that the completed integration plan will not be circulated in advance of the Board meeting and instead, a presentation will be given by the Accountable Body. The LEP is expected to confirm whether or not it supports the integration plan and there is space to provide comment

Further guidance is expected in the New Year specifically on Business Boards and regional economic strategies.

### **4. The National Picture**

Across the country (England) areas transition arrangements are very different – often depending on progress in their devolution journey.

Broadly, you can split areas/places into 2 – those already with devolution deals (eg West of England, West Midlands etc and those with a clear pathway to (Level 3 Devolution Deals) eg D2N2, Suffolk and Norfolk (although partic the latter is complicated; and those with no clear pathway to devolution (eg Dorset, SWLEP, SELEP).

A couple of further (Level 3) devolution deals are expected to be announced in/around the Autumn Statement (Humber, consolidation in the North East etc). In the HOTSW area,

Plymouth have recently confirmed they are no longer part of the Devon Devolution Deal but Devon County Council and Torbay Council are continuing to pursue a Level 2 deal.

However, whilst indirectly significant to transition/integration of LEP functions it is important to note that devolution and LEP transition have essentially been decoupled by Government. If a devolution deal is imminent, this might be a more appropriate time to transfer the LEP functions, reducing it from a 4 way split to 3. Indeed, many LEPs are continuing to operate for at least another year or until any devolution is enacted (eg Mayoral elections in April 25).

## **5. The HOTSW Transition/Integration Plan**

In summary, the proposals initially split the HOTSW area into 4 – Somerset, Devon, Torbay and Plymouth – until a Devolution Deal has been agreed for Devon and Torbay, with both the Governance (local business boards, economic strategy and intelligence) and functions eg skills, LGF delivery, monitoring and assets being sub-divided.

However, the current suggestion is that the Growth Hub will continue for at least 1 more year on a HOTSW geography (aligned with the delivery of local trading standards) but this is likely to require confirmation of further funding support from LEP budgets to sustain the level of existing delivery.

The Careers Hub has already been split into 2 areas – Somerset and ‘Greater’ Devon, although this too may require match funding from local sources including the LEP if the level of delivery is to be sustained into the next financial year. It is proposed that the LEP’s function and role in the three Enterprise Zones – Oceansgate, Gravity, and Exeter and East Devon will transfer to the relevant local authority from 31st March 2024.

There is currently little further information on how these areas will be governed – eg the commitment to and composition of any business boards - and how programmes will be managed other than within the existing LA structures. Plymouth seem to be the most advanced in their thinking, with emerging proposals to re-purpose the Plymouth Growth Board and update their economic plan by March 2024.

It is unclear which, if any, of the activities within the Build Back Better Plan will continue or indeed which ones will be dropped. Some eg rural, high value manufacturing, energy could be picked up by GSW but resource potentially would need to go with it, hence the recommendations later in the report.

The proposal is for the Business Leadership Group and the Skills Advisory Panel to cease on March 31<sup>st</sup> 2024, with the Growth Boards taking on oversight of the Growth Hub and the local authorities establishing their own arrangements for skills. The proposal is also for Innovation to form part of the Growth Board structures.

Broadly, a timeline could continue as follows:

- Nov 27: LEP Board reviews the outline transition plan and provides a comment
- Xmas: Government confirms transition arrangements, potentially funding and any devo arrangements
- Jan 17: LEP Board agrees to 24/25 funding commitments and future of the CIC
- Feb: Upper-tier local authorities sign off transition plan

- March 31: Functions transfer and potentially assets assuming Regulator is satisfied with the proposed treatment.

## **6. Ongoing Areas of Possible Concern**

There remain 3 areas of concern regarding the emerging LEP transition arrangements. Unless addressed satisfactorily, these could lead to possible legal challenge and/or damage to the reputation of Directors.

One of these relates to potential dis-aggregation of delivery, the other two to the possible of assets.

### **i) Dis-aggregation of Functions**

The proposal to split LEP functions 4 ways seems sub-optimal in terms of orderly transition and sustaining delivery and more driven by sharing out the assets amongst (some of) the Members. At the outset, it was suggested that a SWOT analysis setting out possible transition options should be progressed

- a) Maintaining delivery at a HOTSW geography - using the existing HOTSW JC as a vehicle with LA leadership)
- b) Splitting the area into 2 made sense in the context of a PDT Devo Deal
- c) splitting the area into 3 or 4 would not appear to meet the Government transition requirements of supporting Functional Economic areas (greater than 500,000 people).

However, this is probably more an issue for Government and the Local Authorities than it is the LEP and therefore something on which the LEP might wish to comment rather than specifically object to.

However, it does mean that a whole series of novations of existing agreements, possibly new Accountable Bodies and Assurance Frameworks could need to happen and as raised previously at the Board, LAs will also 'be marking their own homework' when it comes to completion of ongoing delivery of the LGF programme.

We have yet to receive any clarity on whether and to whom TUPE does or does not apply. It will be important to ensure this fragmentation of delivery is not used as a justification not to TUPE core LEP staff. Without seeing the advice, it is difficult to understand how LEP staff in one part of the country benefit from TUPE and not equivalent LEP staff in other parts. LEP staff have not been party to the TUPE advice as they are conflicted.

### **ii) Treatment of Assets**

As we have discussed at previous Board meetings, there is a concern around the treatment of assets which the technical guidance confirms is the responsibility of the LEP and Accountable Body. The Accountable Body has advised the Board over the last 5 years that it is acting 'on behalf of the LEP'. Indications (from the previous Board meeting) are that they will now advise the Board that in their view, the LEP's assets belong to the Accountable Body.

The initial legal advice highlighted this as an 'Accountancy issue'. It is unclear whether this additional advice has been sought, and the final legal advice that sets out a justification for transferring the assets to LAs has also not yet been shared by the Accountable Body.

This inconsistency with the accountancy treatment appears to be in direct conflict with our Assurance Framework (that the Partnership shall operate as a CIC). This Accountancy issue needs to be addressed as part of the transition. If this Partnership was delivered via a CIC then its assets should be 'locked in' under the CIC asset lock rules accordingly.

This principle does not preclude transition of the assets to LAs ownership as they could either take over the lead of the existing CIC or set up new ones to which the assets can be transferred (and nominated to as part of our Articles). This would also give greater confidence the funding will continue to be used for the purposes it was originally set out for – referred to as part of the guidance.

As this advice is being given by the Accountable Body, Directors may look to seek an indemnity from them regarding any subsequent legal challenge.

### **iii) Assets - Possible Conflicts of Interest**

With regard to the treatment of assets, the upper-tier LAs will directly financially benefit from the transfer of assets. Any decision process needs to manage these conflicts carefully, those that could benefit may choose not to take part in the LEP decision. Furthermore, as well as the LEP's Assurance Framework and code of conduct, this concern is exacerbated by the CIC rules which clearly state that:-

"With only very limited exceptions such as the payment of dividends and the return of paid up capital on liquidation, a CICs assets cannot be returned to its members unless they are themselves asset locked bodies."

The Accountable Body has been asked for formal advice on these conflicts but a response has not yet been received.

## **7. Directors Liabilities**

HMG have indicated that Ministers will not provide an indemnity to cover personal liability claims against former LEP directors and so the position remains as in the August guidance.

**The email reads** *'Whilst Ministers are hugely grateful for the work LEP directors have undertaken over the last decade, this position is in line with the one we take with all private enterprises and with the position we took when the RDAs closed'.*

Consequently, I have therefore –with agreement from the AB - commissioned our own legal advisors to set out Director responsibilities and potential liabilities. Their advice will be circulated as soon as it is available.

As the Board's actions are dependent on advice from our Accountable Body it may be appropriate to ask them for an indemnity.

## **8. Letter to the CIC Regulator**

At the last Board meeting, it was agreed that to draft a letter to the CIC Regulator setting out our intention to consult them with regard to the transfer of the assets. A draft is attached although it is difficult to send this until we have clarity on 'ownership' of the assets and whether this accountancy treatment complies with the LEP's assurance framework.

## **9. Future Delivery of Transformational Opportunities set out in the Build Back Better Plan/Ongoing Support to GSW**

Delivery and co-ordination of the (transformational opportunities within) Build Back Better plan has largely been led by LEP officers and are not covered by the transfer of functions proposed by Government.

Some of this work remains important for the HOTSW area and risks being lost or not progressed in the changes and may not be covered by TUPE. The LEP Board is therefore asked to support ongoing funding for two posts to support this work (until March 25) – seconded to the GSW for ongoing line management.

There is sufficient funding within LEP budgets to cover this work – other 'core' posts would be picked up (or not) through TUPE but these can be formerly set out at the January LEP Board meeting when LEP commitments to deliver the transition arrangement will need to be confirmed.

