



Balancing the books

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Using your legal powers for income generation

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“It was the best of times, it was the worst of times...”

The Context

- The Age of Austerity
 - local authority funding squeeze
 - falling public sector employment levels
 - increasing service pressures
- The Age of Opportunity
 - Use charging and trading to
 - change behaviour
 - generate income streams

Key Questions

- What do you want to do?
- Why?
- What is the best way to achieve it?

What powers do Councils have to generate income?

- Limited range of powers in the NI context ***but***
- The General Power of Competence

Limited range of powers

- Local Government (Best Value) Act (Northern Ireland) 2002
- Section 1 Local Authorities (Goods and Services) Act 1970
 - Ability to charge for the supply of goods services or materials
 - But only to another public body
- Section 1 Local Government (Miscellaneous Provisions) Act 1976
 - power to charge the public or private companies for the provision of computer related services

General Power of Competence

Section 79 Local Government Act (Northern Ireland) 2014

- anything you can do the council can do
- power to do it with or without charge
- not limited to benefitting the area or residents
- not limited by existing powers

Section 81 LGA (NI) 2014

- power to charge for both non commercial purposes (charging) and commercial purposes (trading)

What constraints are there?

- Restrictions on the use of the GPC
- The possibility of legal challenge
- Using a trading company

Restrictions on the use of the GPC

Section 81 Local Government Act (Northern
Ireland) 2014

- Cannot charge for the discharge of a statutory function
- Income cannot exceed expenditure

Will the power be restricted in future?

The possibility of legal challenge

- Ultra vires doctrine
 - Local authorities can only act in accordance with their powers to do so. If they do not they are said to act ultra vires i.e. beyond their powers.
- Who might the challengers be?
- The importance of risk management

Using a trading company: fact or urban myth

- You cannot develop land outside your area without a trading company
- You cannot trade outside the area without setting up a trading company
- Trading for 'commercial purposes' always requires a company
- Any private sector trading requires a company from day 1
- If you want to make a profit you must set up a trading company

The Best Practice approach to income generation

- Stakeholder consultation
- Business planning
- Risk mitigation

Business Planning & Risk Mitigation

- Follow the normal prudent course for decision making
- Give consideration to:
 - resource use and utilisation
 - financial implications
 - anticipated specific benefits
 - risk mitigation
 - statutory duties and strategic objectives alignment
 - effective and economic roll out
 - any public law duties

Business Planning

- A Business Case should contain:
 - Objectives of the business
 - Investment and other resources needed
 - Risks and how significant these are
 - Expected financial results and other outcomes expected to achieve
- No subsidy – recover staff and other costs etc.
- Elected Members approval

LOCAL SERVICES
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