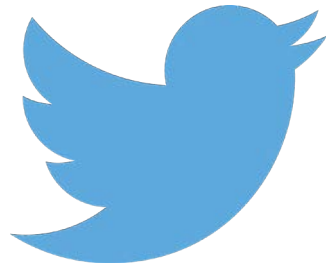




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**APSE Wales special strategic forum  
event**

**Wednesday 17 March**



# The Local Government Elections (Wales) Act 2021

# New General Power of Competence

- A general power of competence for principal councils and eligible community councils –provisions covered in Part II Chapter 1 and Chapter 2

## 24. The General Power of Competence

(1) A qualifying local authority has power to do anything ***that individuals generally may do***, even if that thing is, in nature or extent or otherwise—

(a) unlike anything a qualifying local authority may do apart from this section;

(b) unlike anything that other public bodies may do.

(2) Where subsection (1) confers power on an authority to do something, it confers power to do it in any way whatsoever, including—

(a) power to do it anywhere in Wales ***or elsewhere***;

(b) power to do it for a commercial purpose or otherwise for a charge, or without charge;

(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(3) The generality of the power conferred by subsection (1) on a qualifying local authority is not limited by the existence of any other power of the authority; and any other power of the authority is not limited by the existence of the general power.

# Why was GPC needed?

- LAML Case
- Previous limits under 'well-being' removed
- Clarifies right to charge and trade outside of local area
- 'Grey' areas for charging and trading

# Limitations

- GPC – subject to checks.
- Falls short of ‘saddle up the horses, arm your citizens and invade France’

## 25 Boundaries of the general power

(1) The general power does not enable a qualifying local authority to do anything that the authority is unable to do by virtue of a pre-commencement limitation.

(2) Nor does the general power enable a qualifying local authority to do anything that the authority is unable to do by virtue of a post-commencement limitation that is expressed to apply—

***Note: Reserve powers to Ministers***

# Charging provisions

## 26 Limits on charging in exercise of general power

- (1) The general power confers power on a qualifying local authority to charge for providing a service to a person only if the following conditions are met.
- (2) The first condition is that the service is not one that any enactment requires the authority to provide to the person.
- (3) The second condition is that the person has agreed to the service being provided.
- (4) Except in relation to a service provided for a commercial purpose, to the extent that the general power confers a power on a qualifying local authority to charge for the provision of a service, the power is subject to a duty to secure that, ***taking one financial year with another, the income from charges imposed under it does not exceed the costs of provision.***
- (5) The duty under subsection (4) applies separately in relation to each kind of service.
- (6) Subject to the duty under subsection (4), in exercising the power conferred by the general power to charge for providing a service, a qualifying local authority may set its charges as it considers appropriate, and may among other things—
  - (a) charge only some persons for providing a service;
  - (b) charge different persons, or different descriptions of persons, different amounts for the provision of a service.





# 'Trading' provisions

## 27 Limits on doing things for commercial purpose in exercise of general power

(1) The general power confers power on a qualifying local authority to do things for a commercial purpose only if they are things that the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2) Where, in exercise of the general power, a qualifying local authority does things for a commercial purpose, ***the authority must do them through a company.***

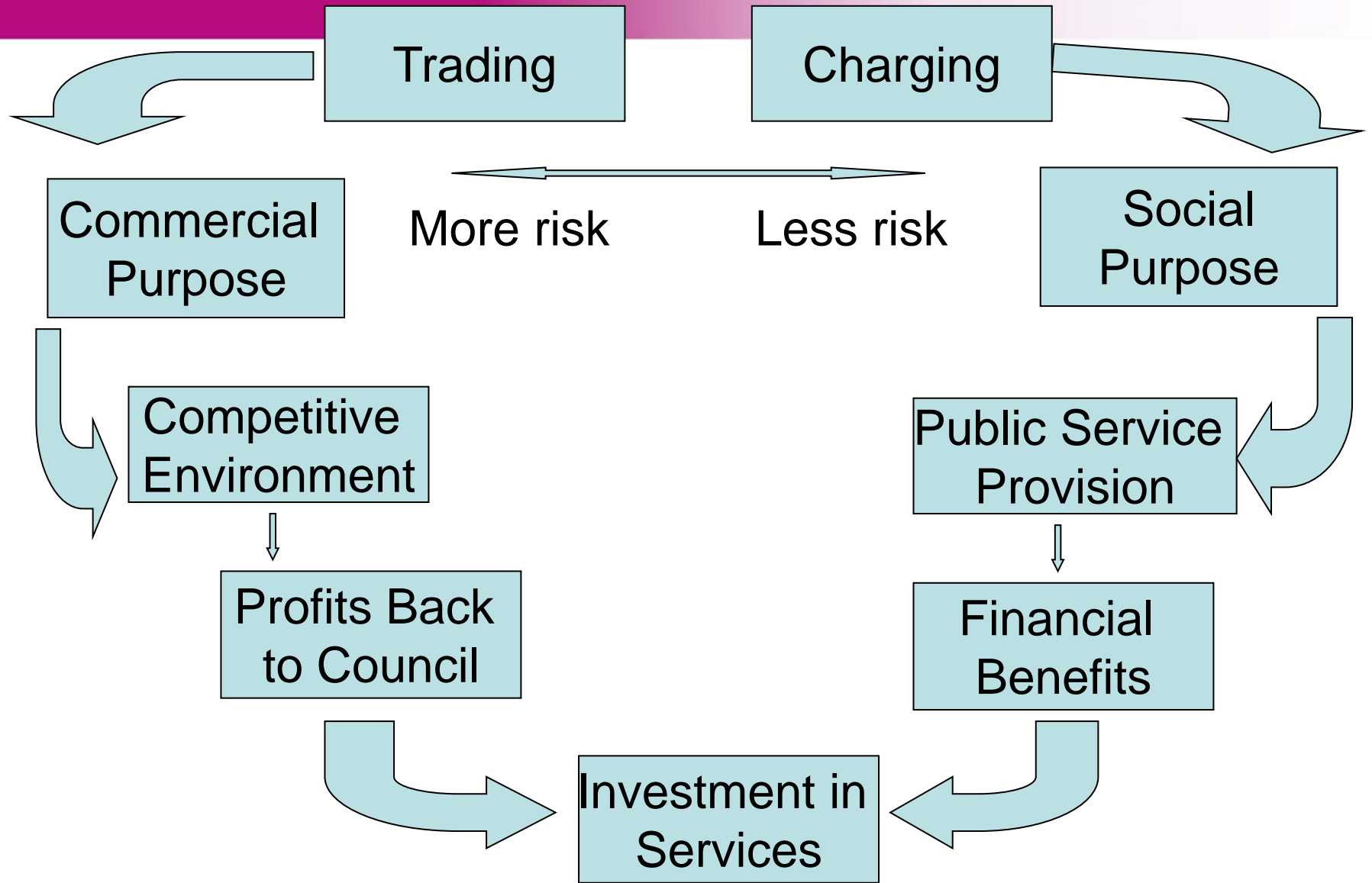
(3) A qualifying local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if any enactment requires the authority to do those things in relation to the person.

(4) In this section, "company" means—

(a) a company within the meaning of section 1(1) of the Companies Act 2006 (c. 46), or

(b) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 (c. 14) or the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (NI)).

(5) A qualifying local authority must have regard to any guidance issued by the Welsh Ministers about doing things, in the exercise of the general power, for a commercial purpose.



# Charging.....

- Its lawful!
- What powers?
- S.95 trading powers
- S.93 charging powers
- New power of general competence
- But ... historic powers
- Good and Services Act, Civic Restaurants Act

# Charging parameters

***‘taking one financial year with another, the income from charges imposed under it does not exceed the costs of provision’***



# True cost of provision

- Labour costs – operatives, supervisors, managers, training
- Materials
- Vehicles – hire, lease or purchase costs
- Fuel, maintenance, tax, insurance
- Invoicing, back office HR support, health and safety
- Assets – depots? Office buildings?
- Marketing, advertising, website?

# Trading – commercial purpose

## 27 Limits on doing things for commercial purpose in exercise of general power

(2) Where, in exercise of the general power, a qualifying local authority does things for a commercial purpose, the authority must do them through a company.

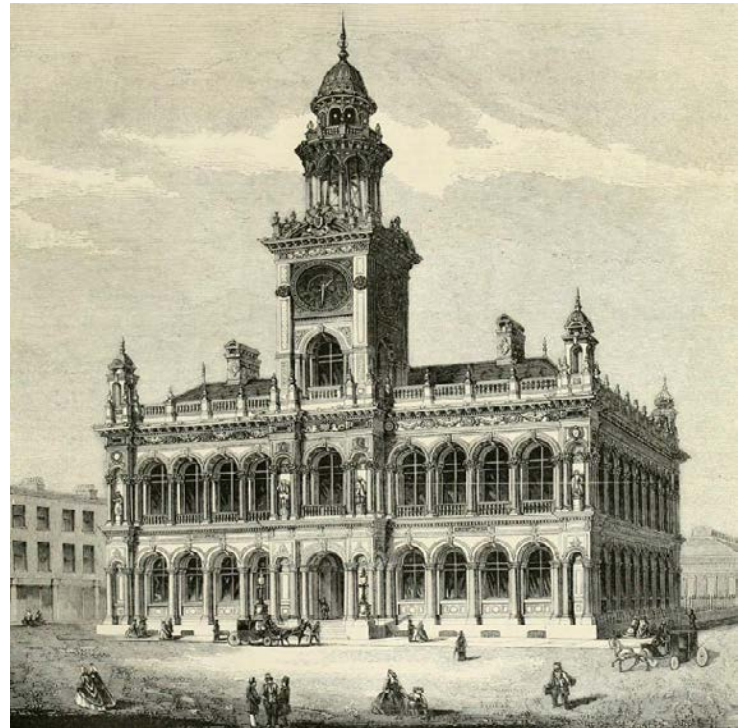
### Company type?

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# Local authority companies



# Most common types of local authority trading company?

- Wholly owned company
- Company limited by shares
- Company limited by guarantee
- 'Teckal' ( Brexit ) – Procurement Policy Note 11/20



# Local authority companies

- Powers to set them up
- Are they needed
- Advantages?
- Disadvantages?
- Recent Developments

# Benefits of company vehicle?

- Limited liability for shareholders
- Freedom from direct management / standing orders of the authority?
- The authority is able to present an external corporate face to the market
- Able to buy / sell / hold its own assets
- Able to exploit joint venture opportunities with the private sector and take advantage of private sector perspectives in winning new work
- But.....Some company types will expose you to competition

# Teckal companies?

- Authenticity?
- Changes to the Directive
- Profit!
- 20% external work?
- An 'Entity'?
- Exercising control
- Why not a DSO / DLO?
- Post Brexit.....?

# Disadvantages

- Taxation – always get a proper analysis
- Speed – not a quick process
- Markets – testing your market
- Immaturity of the company and its' finances
- TUPE?
- Equal Pay and comparator employer

# Who wants to be the customer?

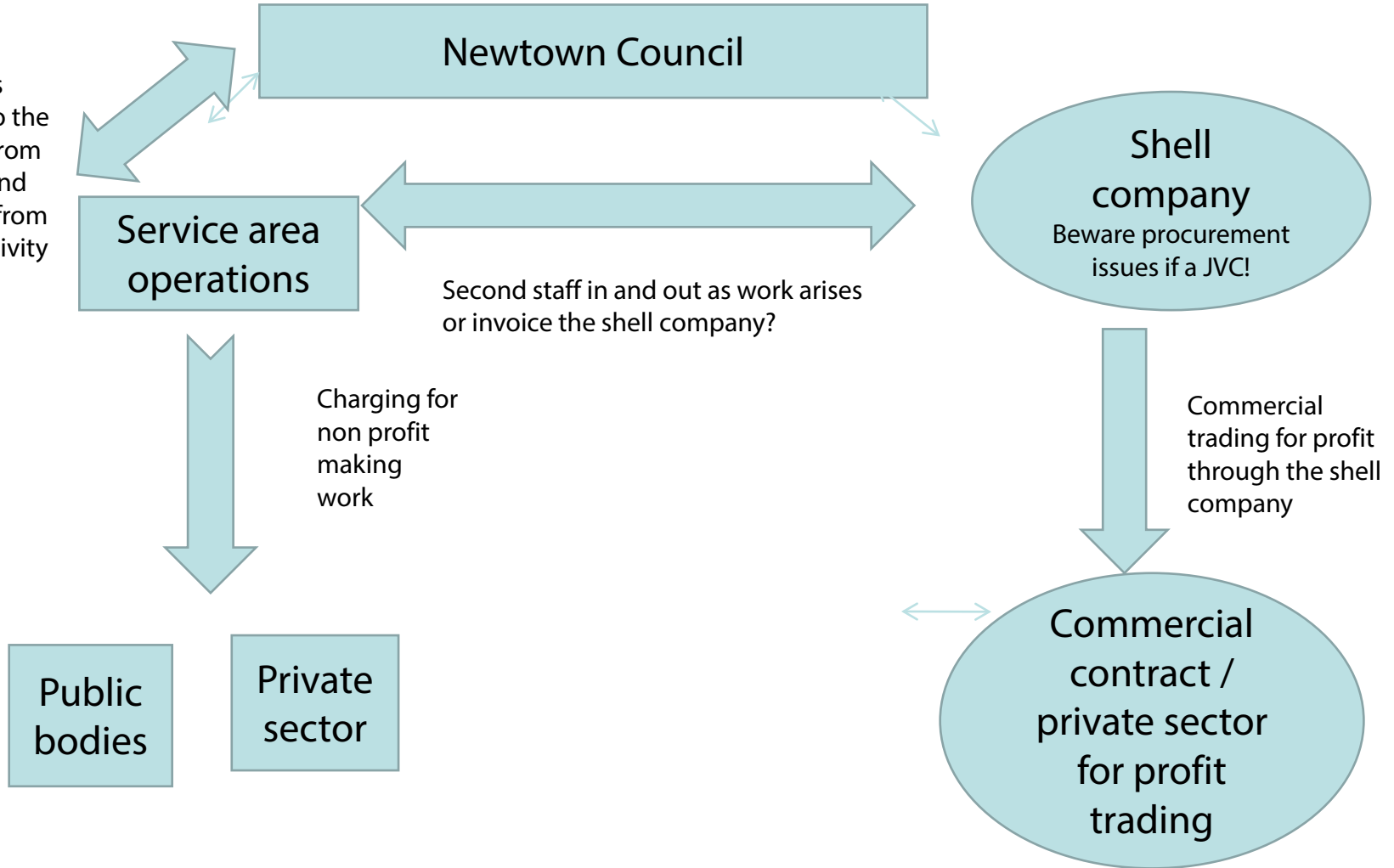




# Hybrids



Efficiencies returned to the authority from charging and dividends from trading activity



# What is it that you are seeking to do?







# Do you need a company?

- Can you achieve what you need to achieve through charging or a shared service style collaboration?
- Do you need a special purpose vehicle?
- Do you need a company or just an agreed strategy
- Charging can be for 'welfare pricing'

# Financial issues

- Funding structure for any capital requirements?
- Prudential accounting regime –CIPFA Code
- Audit
- State Aid ( and procurement ) (WTO Criteria)
- Taxation – treatment of VAT? Corporation Tax?

# Where do you want to be?

- What do you want to do?
- Do you have new markets to exploit or efficiencies to squeeze?
- Finance and taxation considerations
- Procurement?
- Changes to TECKAL 'rules'
- What should be the performance framework?

# Governance

- What is the appetite for risk amongst elected councillors?
- Who will sit on boards of companies or as part of a strategic approach to charging?
- What will good governance and scrutiny look like?

# Planning to Trade or Charge: Key Issues

- Market research
- Assessment of competition
- Risk assessment
  - Sensitivity analysis
- Resourcing
  - How?
    - Staffing
    - Training
    - New back office processes
    - Marketing /advertising
    - Pricing policies
- Investment requirements
- Reputation



# What are others doing?

# Money from asset lease or rental? Co-location of services?





# Greening your economy?

- Investment in an Esco?
- White label?
- Solar PV on public buildings?
- Wind? Tidal?
- Battery storage



# Selling your street names



# Geotechnical consultancy services

- Desktop Studies,
- Factual and Interpretative Ground Investigation Reports
- Ground Investigation for Development Roads
- Advice on Bearing Pressures and Foundations
- Factual Ground Investigations for Soakaways
- Contaminated Land Surveys
- Ground Water and Gas Monitoring
- Materials consultancy

# Assets and Investments

- Durham County Council – retail developments, renewables
- Sevenoaks – petrol station, car parks
- Mansfield – Hotel
- Southampton - Property portfolio
- Daventry - £2m income compared to £3m council tax

# Housing company?

- A form of investment
- PRS properties
- Market rate sales?
- Market rate lets?
- Or collaboration on local needs with districts

# Care sector

- Residential Homes development
- Private beds to cross-fund council funded beds
- Selling Home Care to no-council funded residents
- End to end care services
- Beyond domiciliary care



# Events

## Stockton International Riverside Festival



# Lumiere

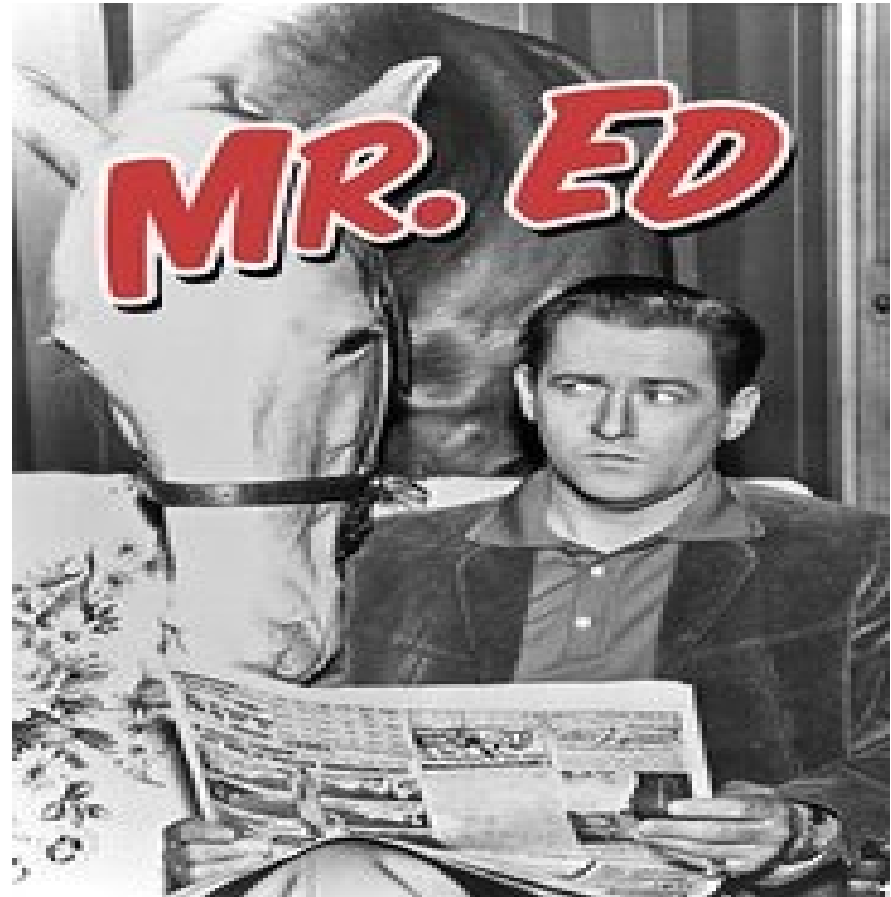




# Franchises in libraries?



# Testing labs



# Shell company trading model consultancy / developer support



# South Gloucestershire



# South Tyneside: Domestic cleaning service





# Nottingham Parks



# Kent Commercial Services



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# Contact details

**Mo Baines, Head of Communication and  
Coordination**

**Email: [mbaines@apse.org.uk](mailto:mbaines@apse.org.uk)**



**Association for Public Service Excellence**

3rd floor, Trafford House, Chester Road,  
Old Trafford, Manchester M32 0RS.

**telephone: 0161 772 1810**

**web: [www.apse.org.uk](http://www.apse.org.uk)**