



What models for income generation and service delivery

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What are the routes to income generation?



- Simple charging mechanisms
- Trading companies. Are they needed?
- Shell company models
- Coops, mutuals and spin outs: The legal issues
- Public procurement and Teckal
- The Hamburg exception

Charging ahead



Charging powers



- Goods and Services Act 1970
- Local Government in Scotland Act 2003 (subject to 'proper accounting practices')
- Environmental Protection Act 1990
- Civic Restaurants Act 1947
- Section 32 Local Government (Miscellaneous Provisions) Act 1976
- **Note General Power of Competence – not Agreed**

Advantages v Disadvantages



- Simplistic
- No staff transfers
- No complex legal structure
- Will you get the cultural shift?
- Are your services 'match fit'?



Establishing a company

- Many types of corporate entity
 - Limited Liability Partnerships
 - Community Interest Companies
 - Company limited by shares / guarantee
 - Industrial and Provident Societies
 - Charitable Trusts
 - Teckal Company

The most suitable vehicle depends on the specific needs of the authority!

Wholly owned company



- Most common
- Parent council as the shareholder
- Purpose and activities will determine if Teckal or not!
- Many powers to set them up but no GPC as yet in Scotland!
- Trading account guidance

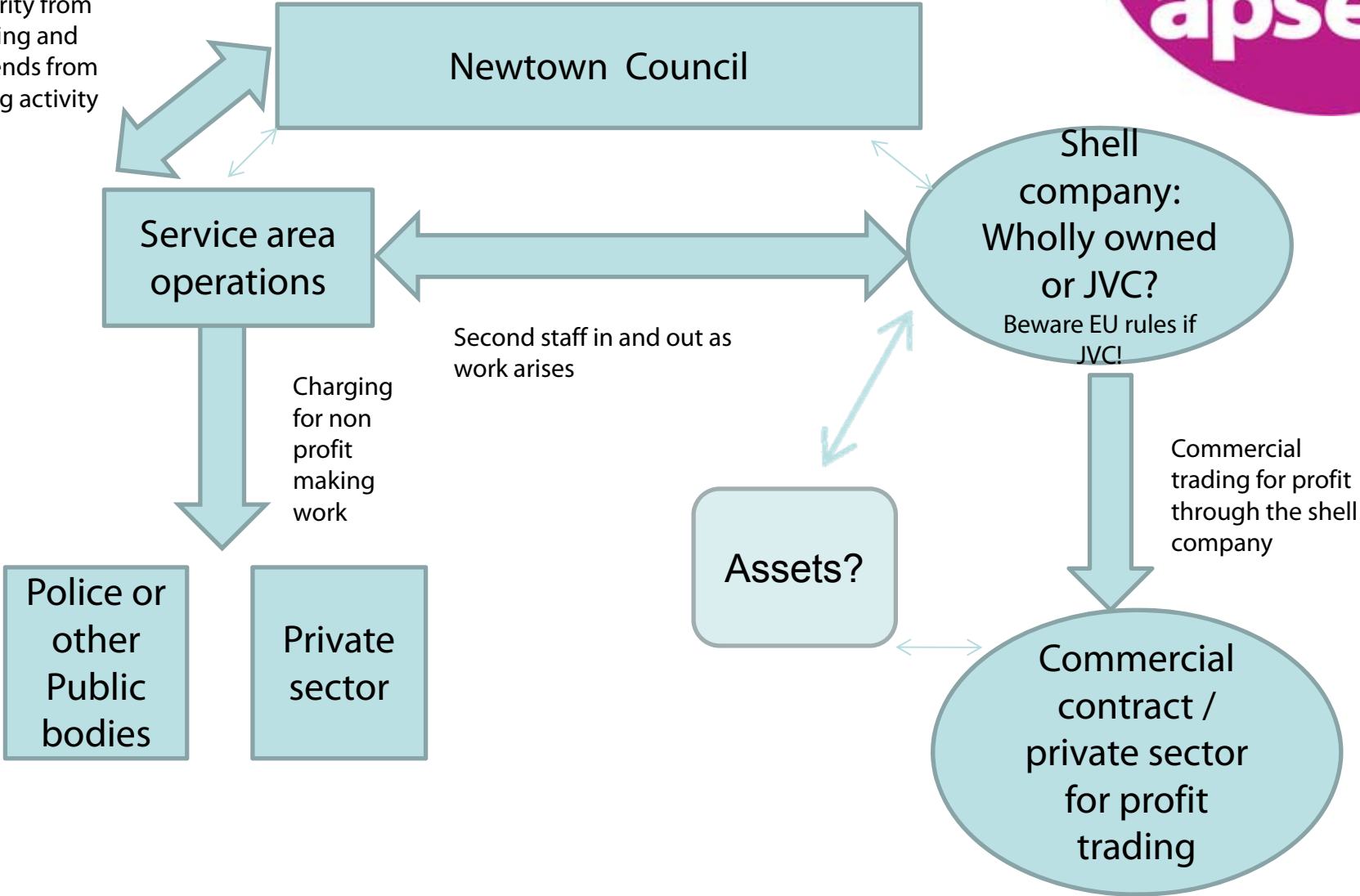
Hybrid or shell company model



- Charging route - no company needed
- 'shell company' – keep public to public – non commercial operations through simplistic charging route – limits liability
- Shell company to trade through if needed –
- HR – second staff in and out as required to do the traded work?



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



Alternative models?



- Coops
- Mutuuls
- 'Spin Outs'
- Community Interest Companies
- Industrial and Provident Societies

What do we mean by a 'coop'



- Subjective rather than objective
- No 'one definition'
- Broad understanding of a range of definitions
- Retail or consumer coops, consumer-run businesses, worker coops, community coops....
- Employee ownership models or the 'Maude model'



What legal structure?

- No 'cooperative legal form'
- Unincorporated ?
- Incorporate to limit liability on its members
- Industrial and provident society
- Private company limited by guarantee / shares
- Community interest company
- But... it is NOT your company – you can't award contracts 'as of right'
- Invokes competition in most circumstances

Industrial and provident society



- An industrial and provident society is 'an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community, and is registered under the Industrial and Provident Societies Act 1965'.
- Treated as a 'body corporate' - companies for tax purposes and
- Liable to Corporation Tax in respect of their profits
- Some rules on share dividends
- Note: Co-operative and Community Benefit Societies Act 2014

Private company limited by guarantee / shares



- Limited company legal form – well known
- Doesn't protect any 'cooperative principles'
- Must be registered through companies house
- Articles of association and memorandum of association
- Shares and fund issues? Unable to offer shares to the public for fund raising.

Community interest company



- A community interest company (CIC)
- Organisations that want to conduct their business for community benefit
- 'asset lock' – assets cannot be distributed for private benefit – even when winding up a CIC the asset lock would prevent distribution of assets to members
- Public shares issues prohibited

Funding and future funding



- Dependant on form?
- Grants?
- Will services be divested or contracted?
- With reduced public funding what about future funding streams?
- State aid?
- Reliance on ongoing financial support?

Employment and pensions issues...?



- TUPE or not TUPE?
- 'Business entity'
- Affordability?
- Pension admission arrangements?
- Redundancy liabilities?
- Sustainability of the model or company
- Longevity of contracts awarded?

The evidence



- Review of 1,600 national and international cases
- Lack of data about the benefits co-ops and mutuals to local service delivery
- Only 12 case studies where any impact evaluation had been carried out
- Some cases found staff had to reduce their own terms and conditions to survive
- Success factor ? On-going support from the public sector – a nurturing not contractual relationship



So what about Teckal companies?



- All public contract works governed by the EU regulations
- Teckal now codified by the new EU Directive
- What are the limitations?



Teckal ...

- Authority exercises control similar to that over its own departments - decisive decisions over its strategic objectives or significant decisions
- At least 80% of its activities are carried out for the authority
- No direct participation of private capital in the entity (except where provided by national conformity issues)

Problems....



It depends what you are trying to do!

What is it that you are seeking to do?





Or assets?



Business plan



- The business to be created
- The market
- The trading plan
- The management and organisation
- Financing
- Business strategy
- Risk

Threat or opportunity



- Sustainability
- Contract or divest a service?
- Financial stability?
- Taxation
- Ability to raise capital?
- Liabilities?
- Accountability and democracy?

Risks?



- Product or contract failures?
- Flexibility in meeting new demands and new market demands
- Business or work reducing?
- Fleet investment strategies
- Meeting demands in new time frames?
- Procurement and competition



Procurement issues

- Procurement issues
 - The company as a “contracting authority”
 - Obtaining business from the local authority
 - EU regime
 - Lack of track record/financial standing
 - LA providing services to the company
- Competition issues
 - State Aid (Art 87)

What do you want to achieve?



- Think about what you are trying to achieve?
- Can you apply 'principles' but not the structures?
- Are there alternative models of delivery more suitable for public services?
- Beware applying 'market' principles to public services on a blanket basis!
- What are the 'rightful' democratic constraints

Case Studies



- Knowsley Council
- Nottingham City Council
- Swindon Commercial Services
- Solutions SK
- South Gloucestershire Council

Thank you



Any questions

LOCAL SERVICES

LOCAL SOLUTIONS



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