

APSE: Balancing the Books

Local Council Income Generation,
Trading and Investment

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Using Your Legal Powers for Income Generation

- Busting the myth about the need for a trading company
- 10 things you can do using your charging powers
- Taking a risk but acting with due diligence



Income Generation, Trading and Investment: Context

- Funding
- Lowest public sector employment since ONS started (1999). LA now 2.27 down 660k since 2007

But - Opportunities:

- Capital assets and investments > £250 BN
- Technology
- Use charging and trading to
 - Change behaviour
 - Generate income streams

...understand the market, the politics and the culture

Income Generation, Trading and Investment

Key questions:

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



...there is usually more than one way to skin a cat

Trading Companies: 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

10+ Examples Using Charging Powers

- Local Authorities (Goods and Services) Act 1970
- Section 45 Environmental Protection Act 1990 (commercial waste)
- Local Government (Miscellaneous Provisions) Act 1976:- Section 11 (Renewables); Section 19 (Leisure); Section 38 (surplus computer capacity)
- Section 145 Local Government Act 1972 (entertainments)

10+ Examples Using Charging Powers

- Staff secondment s113 Local Government Act 1972
- Section 97 Building Act 1984 (works)
- Section 32 Local Government (Miscellaneous Provisions) Act 1976
- Civic Restaurants Act 1947
- Section 45 Road Traffic Act 1988 (MoT)
- Section 139 LGA 1972 Acceptance of gifts and incidental works

10+ Examples Using Charging Powers

- Powers to Invest: s12 Local Government Act 2003
 - Functions
 - Assets
 - Treasury management
- Buy & sell land including Local Government Act 1972; Town & Country Planning Act 1990; & Housing Act 1985
- Local Authorities (Land) Act 1963 (development)
- Sections 24-26 Local Government Act 1988 (privately let housing)

Charging for discretionary services s93 Local Government Act 2003

- Limitation to cost recovery in s93, but flexibility
 - Definition of “each kind of service”
 - Time period for calculation “taking one year with another”
 - Corporate and Democratic Core included & other overheads
 - Charging discretion/Differential charging
- Secretary of State Guidance



Commercial trading through a company

- Section 95 Local Government Act 2003: doing for a “**commercial purpose**” ... ordinary functions
 - Not where “required” to do something i.e. duty
 - Not where existing commercial activity
 - Must be through a company or Society registered under the Co-operative & Community Benefit Societies Act 2014 or the Industrial and Provident Societies Act (Northern Ireland) 1969
- Trading Guidance

Developing a Business Case

Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (Wales 2006)

Business Case must 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.

Members approve?



General Power of Competence

“Power to do **anything that individuals generally may do**” including things “unlike anything” that public bodies do

Power may be exercised in any way whatever:

- Anywhere in United Kingdom or abroad
- For a commercial purpose or otherwise, for a charge or without charge
- For the benefit of the authority and its area of persons resident/present or otherwise

Not limited by powers that overlap... but



Boundaries and Limits

- Restrictions/limitations on other powers to be observed
- Power to charge (s3) may not be used if: under a duty; for a commercial purpose; and power to charge elsewhere (ignore s93 LGA 2003), but
 - limited to cost recovery
- Power to trade for a commercial purpose (s4) may only be exercised through a company/society under the Co-operative & Community Benefit Societies Act 2014 or Industrial and Provident Societies Act (Northern Ireland) 1969

Boundaries and Limits

- No wider powers to delegate functions
- Secretary of State may amend, repeal or revoke legislation which restricts the exercise of the general power
- Secretary of State may constrain by regulations
- Still retain ultra vires rule - must exercise powers properly, having regard to relevant considerations business case, market, risks and likely rewards etc.

Acting with due diligence

- Explore all avenues and fit powers with purposes
- General Power of Competence is **additional** to Local Government Act 2003 & **additional** to wide ranging existing powers
 - Incremental approach
- Form follows function:
 - Not “I want one of those”
- Exercise powers properly - effective audit trail
- Transparency, responsibility and accountability



Any questions?



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Our promises

- To **understand** you
- To **provide solutions** that contribute to your success
- To give you **fair pricing** and clarity on costs
- To give you the **right team**
- To **communicate clearly**
- To **care about our relationship with you**





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Lawyers for the public,
private and third sectors

Thank you!

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