



APSE South/South West region

Taking the Commercial Road

Seminar

Workshop C:

Transformation and service delivery models

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Scope of the workshop

- Welcome and introductions
- Using management strategies to identify a commercial opportunity
- Examples and methods
- Turning it into a business case
- What delivery model should I use and why?



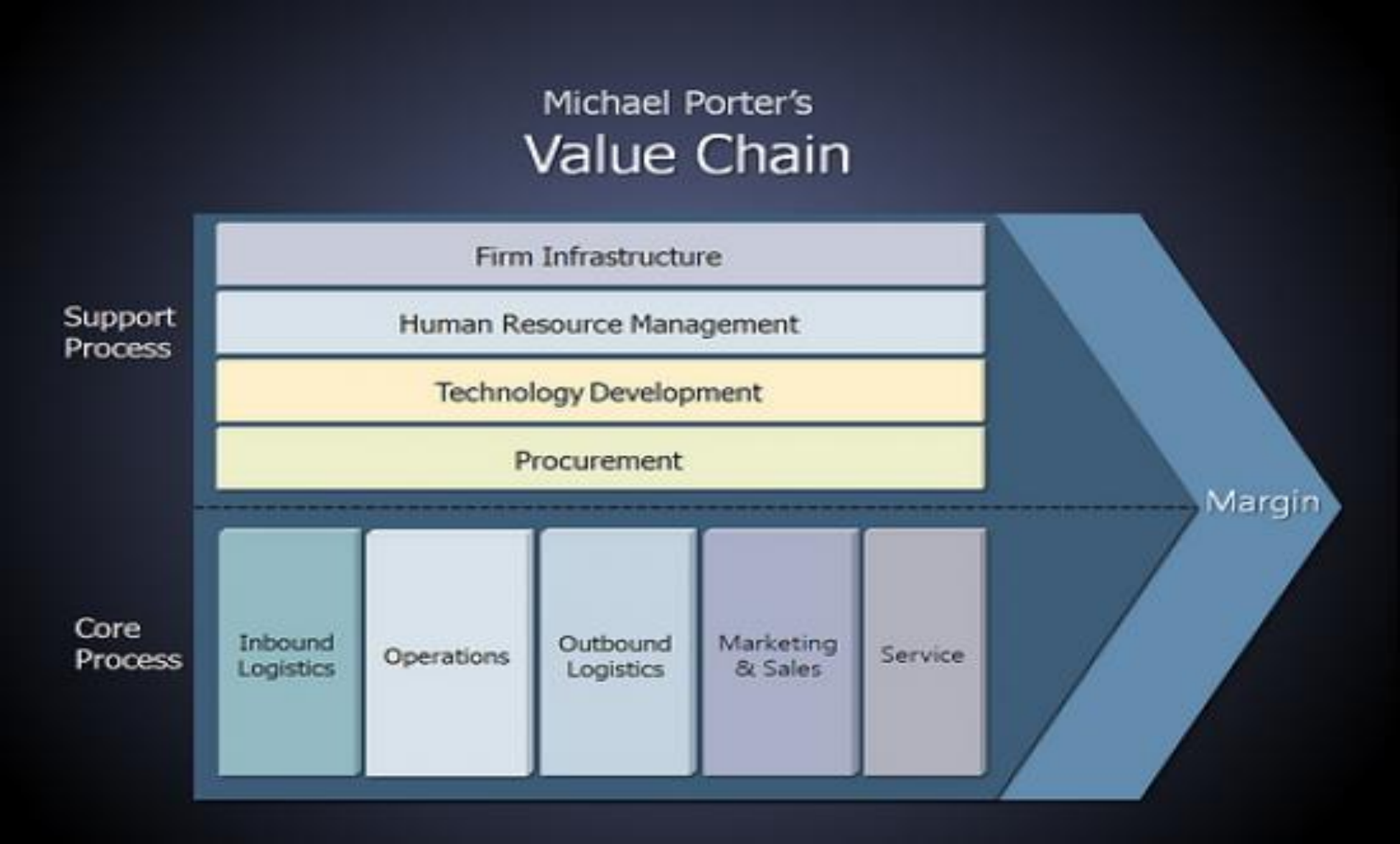
Welcome and Introductions

- A bit about me
 - My background
 - My role in this workshop
- A bit from you
 - Where are you from and what is your role
 - What do you hope to achieve from this workshop
- Now lets make a start together
 - Create an idea we run with



Using management strategies to identify a commercial opportunity

Traditional competition strategy



...and Porter's five forces that shape competition



Longevity



Red ocean/blue ocean competition

- Commoditised product v differentiated product
- Focus on competition or focus on demand
- Swim free or face the sharks

Understanding Demand

- Where does demand come from?
- Refocussing
- Changing behaviour (demand) instead of just accommodating/reacting to it
- Creating new patterns of demand
- Tapping into demand from different customers

Planning

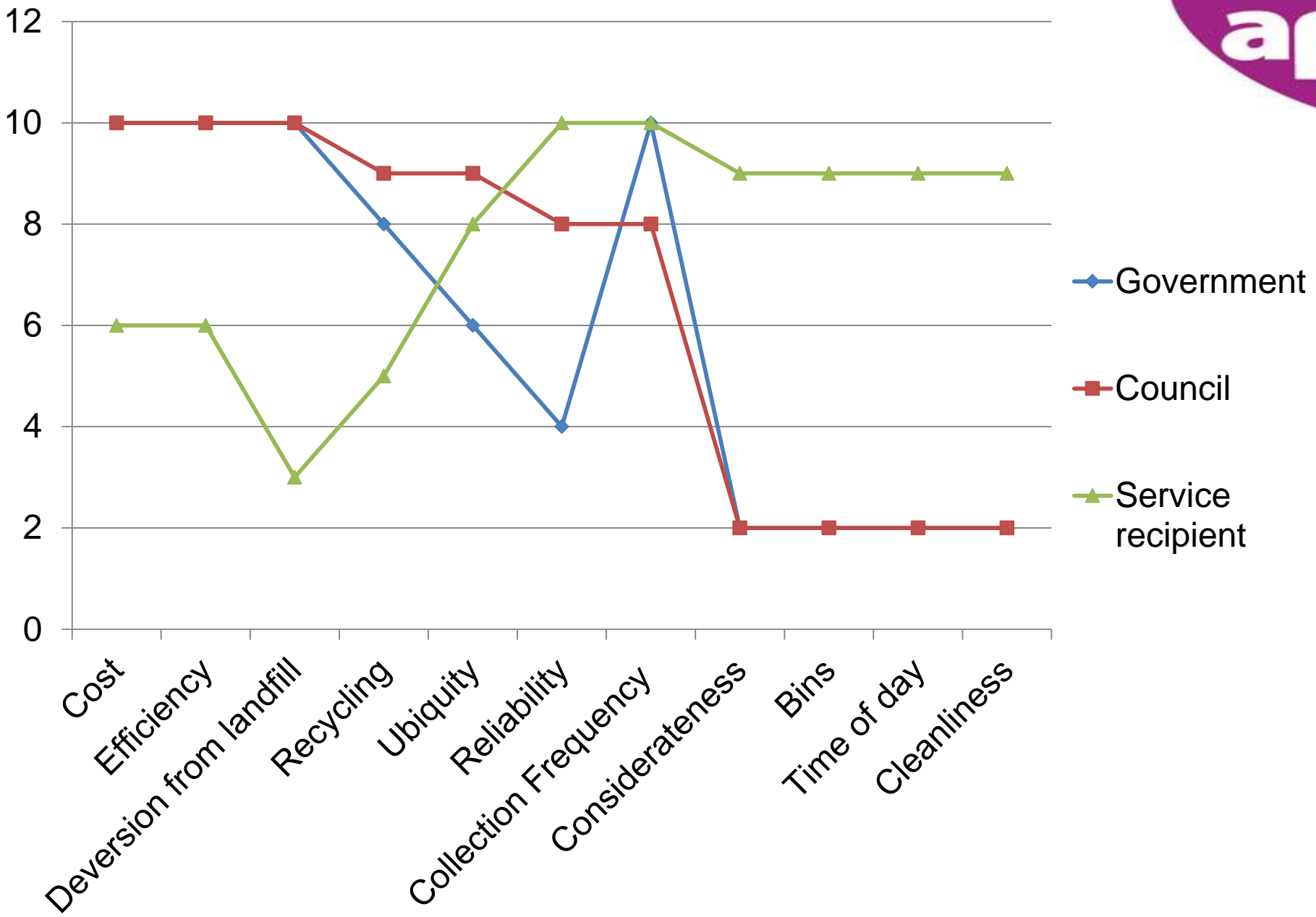
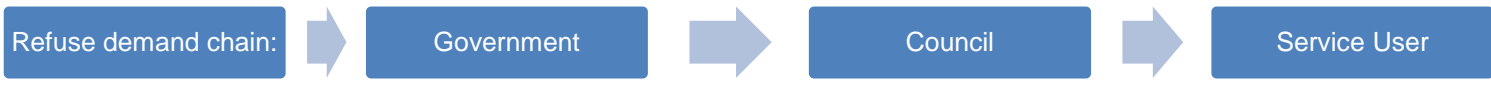
- Horizon scanning
- Innovation

Blue Ocean tools

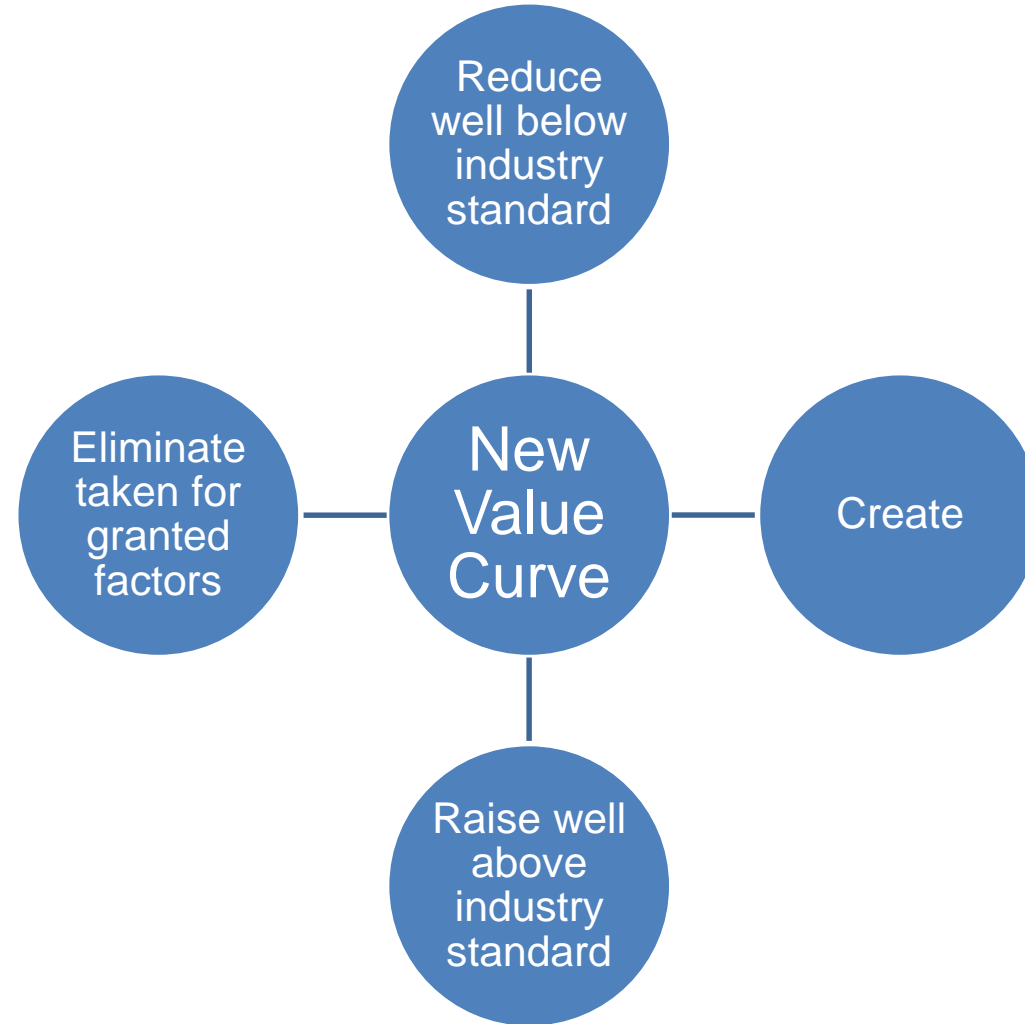
- The demand chain
- The demand curve

- 4 action framework
- 6 path framework





4 Action Framework



6 Path Framework



	Head to head competition	Blue Ocean Creation
Industry	Focus on industry rivals	Looks across industry boundaries
Strategic group	Focus on competitive position within strategic group	Looks across strategic groups within industry
Buyer group	Focusses on better serving the buyer group	Redefines the industry buyer group
Scope of product or service offer	Focusses on maximising the value of product within the bounds of its industry	Looks across to complimentary products and service offerings
Functional – emotional orientation	Focusses on improving price performance within existing orientation	Rethinks the functional – emotional orientation of its industry
Time	Focusses on adapting to external trends as they occur	Participates in shaping external trends over time

Reconstruct market boundaries



Look across alternative industries

- Bring sites
- Skip hire

Look across strategic groups within industries

- Domestic collection
- Recycling
- Trade waste

Look across the chain of buyers

- Government
- Council buyers
- Councillors
- End users

Look across complimentary product and service offerings

- Street cleansing

Look across functional or emotional appeal to buyers

- Opportunity to save the planet

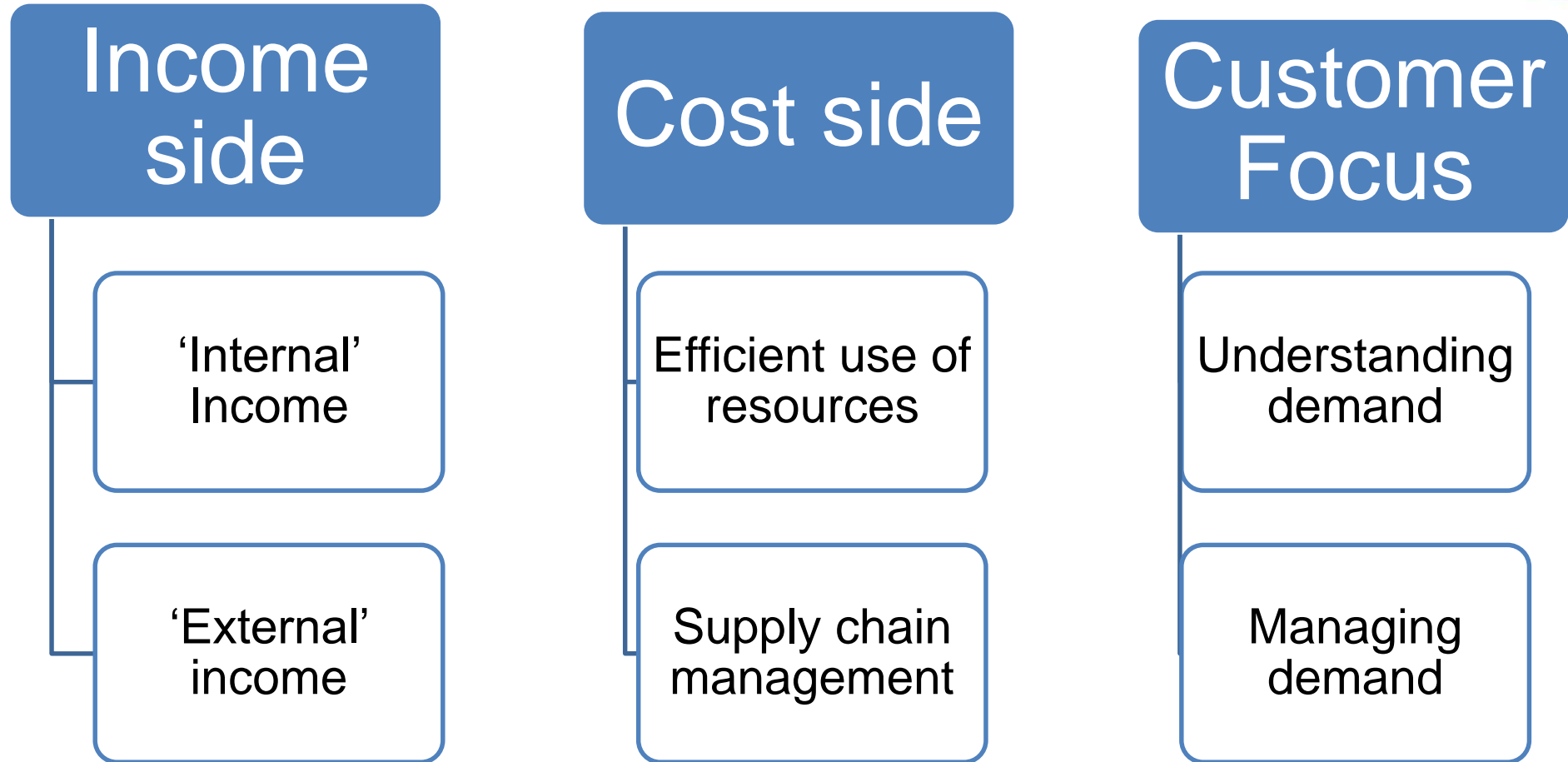
Look across time

- Increasing number of bins for recyclables



Examples and methods

Elements of business success





Internal income

- Council budget
- Government grant
- Maintaining market share
 - Contestability
- Social policy objectives
 - Why are some social policy budgets ring-fenced and others not ring-fenced?
 - Link with demand issues – prevention or cure



External income

- Commercial approach
 - 5 case model (see later)
- Trade waste
 - Market share
 - Value
- Other charged for services examples
 - Green waste
 - Bulky waste
- Recycling
 - Quantity
 - Quality
 - Negotiating the best price

Cost



- Efficiency - Lean
 - Staff
 - Vehicles and other plant
 - Transactions
 - Business processes
- Supply chain management
 - Power of suppliers
- Procurement
 - Legal issues
 - Competence
 - Impact on competition
- Competitiveness/contestability – commercial development
 - The market
 - Link with demand
- Sub-contracts
 - Do they add value?

Changing behaviour to save cost



- Original experiment in Copenhagen reduced littering by 46%

Encouraging recycling





A blue ocean alternative

- Communal waste bins – underground skips
- High standard of cleanliness
- Skip collection vehicles
- Close to houses
- Monthly or less empty frequency
- Dispose of household waste anytime
- Alternative for elderly/disabled/non joiners



Turning it into a business case

So what is a business case?



- An argument or justification –why rather than how
- To convince investors
- Three stages
 - Strategising
 - Producing an outline case
 - Producing a final case

The Solutions 5 case model



- Based on HM Treasury guidance
- A balanced approach
- Likely cases
 - Strategic
 - Financial
 - Commercial
 - Technical or operational
 - Legal



And let's not forget risk

- Trading is inherently risky
- All business carries risk with it
- Information needed
- Risk assessment and managing this



The Strategic Case

- Identify authorities strategic objectives (key plans etc.)
- Any conflicting priorities?
- Ethical issues around generating income
- Involvement of elected members



The Financial Case

What's it for?

- To show that the business is affordable
- To demonstrate that it will be effectively managed
- To provide comfort that it will not result in a loss
- Public accountancy obligations



The Financial Case

- Budgets v trading accounts
- Cash flow
- Types of cost
- Pricing



Cash flow forecast

- The process of filling up the money pot
- Need to know
 - How much will go out and when -costs
 - How much will come in and when -income
- Key issue – how will you finance outgoing expense whilst waiting for income to fill up the pot?
 - Terms on which money comes in
 - Terms on which money goes out



Types of cost

- Fixed cost
 - Committed expenditure within a defined period
- Variable cost
 - Over the same time period (all costs variable over long run)
- Total cost and Full Cost
 - The two added together
- Average cost
 - Total cost divided by total output
- Marginal cost
 - Change to total cost of producing one more unit of output
- Sunk cost
 - Irrecoverable if the business fails



What costs?

•**95.02**The full cost of any activity is the amount by which in the long run the expenditure of the body carrying it out would be reduced if it gave up that activity. No costs are truly fixed; only for short-term ad hoc exercises can any overheads safely be treated as being fixed.

CIPFA CJC On-line Guide



Comparing with private rates

•**95.37** For **private sector comparators** practitioners need to remember that few private sector bodies apportion all their overheads and head office costs. Their budgetary and financial controls do not require any such apportionments because they normally rely on contribution accounting, whereby each part of the organisation is expected to make a surplus, which is its contribution to unapportioned overheads. These are then accounted for centrally.

CIPFA CJC On-Line Guide



Price

- Price is determined by what purchasers are prepared to pay for the product
- However there will be no product if the price is not high enough to make production worth while
- In perfect competition price would be equal to marginal cost i.e. there would be no profit but suppliers would break even and be able to service their debts



So what do we need to know?

- What our costs will be within a defined period?
 - Fixed cost
 - Variable cost
- What price is achievable for the product?
 - At various levels of supply
- What total sales are achievable within the period?
 - At various price levels



So we can work out

- Whether income will be enough to cover costs
 - technically includes normal profit
- Whether we might return a profit, i.e. earn more than we spend
- The timescale over which this happens to:
 - Project cash-flow
 - Work out funding requirement to cover cost before income begins to exceed outgoings

The Commercial Case



- Understanding the market you are operating in
- Finding out about your customers
- Identifying your USP

Understanding the market



“Marketplace success goes to those companies/organisations best matched to the current environment imperatives –those who can deliver what people are ready to buy”.

Source Philip Kotler-Marketing Management



Product differentiation

- Making your product different from your competitors.
- Why bother?



How to differentiate.....

Could be achieved through:

- distinctive design
- branding
- performance
- price

Finding out about your customers



- **Target market**

- The group of customers that an organisation or business has decided to aim its products at.
- This will influence the communication and marketing strategy



The 4 “P”s of Marketing:-McCarthy

- Product
- Price
- Place
- Promotion

Marketing is matching an organisation’s capabilities and the wants of customers in order to achieve the objectives of both parties



Are Four P's enough?

- People
- Physical Resources
- Process Management

USP



- A feature or benefit that separates a product from that of its competitors
- Key to identify this and communicate it to customers

Some examples



- "You get rid of dandruff"
- "You get fresh, hot pizza delivered to your door in 30 minutes or less --or it's free."
- "When your package absolutely, positively has to get there overnight"
- "Melts in your mouth, not in your hand"

The Technical/Operational Case



- Can it actually be done?

The Legal Case



- Powers
- Duties and responsibilities
- Liabilities



Doctrine of ultra vires

- Must have a power to provide
- Must have a power to charge for provision
- Types of power
 - Specific
 - Implied
 - Incidental
 - General



Examples of charging & trading powers

- Civic Restaurants Act 1947
- s.45 Environmental Protection Act 1990
- s.19 Local Government (Miscellaneous Provisions) Act 1976
- s.145 Local Government Act 1972
- s.150 Local Government & Housing Act 1989
- s.32 Local Government (Miscellaneous Provisions) Act 1976
- s. 38 Local Government (Miscellaneous Provisions) Act 1976
- s.45 Road Traffic Act 1988
- s.11 Local Government (Miscellaneous Provisions) Act 1976



The Goods and Services Act 1970: A power to do and a power to charge

“...any public body...supply of goods or materials...provision...of any administrative, professional or technical service”

“use of vehicle, plant or apparatus” and appropriate staff

“works of maintenance” –not new build

- Not limited to “spare capacity” –YPO case
- Express charging power, but must be public body
- Can make a profit
- Separate account



Developing Framework

Section 2 Local Government Act 2000

- Anything likely to promote economic, social or environmental wellbeing
- Limitations on use
- Local Government Act 2003
 - S93 Charging Power
 - S95 Trading through a company
- Localism Act 2011
 - General power of competence



Power to charge for discretionary services

- Section 93 Local Government Act 2003 and Localism Act 2011

“A Best Value authority may charge a person for providing a service” if:

- The authority is authorised, but not required by an enactment to provide the service;
- S/He has agreed to its provision
- Section 93(6) must have regard to guidance
 - General Power for Best Value Authorities to Charge for Discretionary Services*



Key areas on charging for discretionary services

- All BV authorities –unitary authorities, fire police and national parks
- A power to charge, not to undertake the activity
- Preliminary test:
 - What is the power to undertake the activity?
 - Is it discretionary (not compulsory)?
 - Is there a prohibition on charging?



Calculating the Charges

- The limitation to cost recovery in s93, but flexibility
 - Definition of “each kind of service”
 - Time period for calculation
 - Method of calculation
 - Charging discretion
- Differential charging
- Total cost



Commercial trading through a company

Section 95 Local Government Act 2003 and Localism Act 2011

- Doing for a “**commercial purpose**”any of their ordinary functions –now includes anything under GPC
- Not where “required” to do something
- Not where existing commercial activity
- Must be through a Part V company
 - Company or IPS for now
- Trading Guidance

But not the only type of company that can trade ...



The Business Case

- Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009
 - 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.



Localism Act: General Power of Competence

- Local authority has “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 or persons resident/present or otherwise
- Not limited by powers that overlap.....but



Boundaries and Limits

- Power to charge may only be used if not under a duty and where no power to charge outside this section and s93 Local Government Act 2003
 - cost recovery
 - definition of service
- Power to trade may only be exercised for a commercial purpose through a company
- No wider powers to delegate functions



Boundaries and Limits

- Secretary of State may amend, repeal or revoke legislation which restricts the exercise of the general power
- Secretary of State may constrain by regulations
- Raising money?
- Still retain ultra vires rule



Conclusions

- Wide powers to provide
 - Specific
 - Implied
 - General
- Adequate powers to charge and/or trade
 - Will there be a need for a company?
- Must act reasonably
 - And demonstrate that you have done so
- Have regard to exposure to legal risk
 - Check with a lawyer if in doubt



Duties and responsibilities

- Wednesbury rules
 - Have regard to all relevant factors
 - Disregard all irrelevant factors
 - Make reasonable decisions
- Fiduciary duty
 - Obligation to act responsibly
 - Impact on risk taking
- Duty of best value
 - To make arrangements to secure continual improvement by reference to economy, efficiency and effectiveness



Links with procurement rules

- Treaty requirements
 - Competition: non-discrimination, transparency, fairness
 - State aid risks
- Public Contracts Regulations 2015
 - Part A and Part B abolished
- Teckal exception codified
 - Criteria and application



When can a Teckal company also be a trading company?

- A commercial purpose?
- Control test
- Activity test
- Risk



Liabilities

- Exposure to legal risks
 - Professional liabilities
 - Public liabilities



What delivery model should I use and why?



What can we do?

- Doctrine of ultra vires
- But a permissive legal framework
- Localism Act 2011
- “power to do anything that individuals generally may do” including things “unlike anything” that public bodies do



Key constraints

- Activity must be lawful....
- And 'reasonable'...
- And consistent with 'fiduciary duty'...



Trading models

- Direct trading and/or charging
- Trading through a trading company
- Trading through a 'Teckal Company'
- 'Trading' via semi or fully independent vehicles
 - Leisure trusts
 - Spin out arrangements – MBOs, Mutuals
 - JVs with private sector



Direct trading/charging

Pros

- Simplicity
- Direct control
- Transparency
- Shared overheads
- No issues with profit for public sector trading
- Helpful accountancy rules under charging power

Cons

- Not when it is 'for a commercial purpose'
- Financial risk
- Conflict over use of resources
- Reputational risk
- Lack of agility?
- Slow decision making?
- High cost?



Trading through s95 Company

Pros

- Can be for a commercial purpose –private as well as public
- Separates commercial from public
- No limits on size of activity
- Can be any activity
- Protection from risk

Cons

- Loss of control
- Activity
- Culture
- May be issues around sharing overheads
- Profits may be retained by company
- Lead in time



Trading through Teckal company

Pros

- Shared overheads
- Direct contract awards provide company with a trading history
- Freedom from council bureaucracy
- Agility/commercial freedom
- Can reduce operating costs

Cons

- Loss of control
- No separation of commercial from public
- Commercialisation of council services
- Impact on low paid workforce
- Restrictions on turnover from commercial work (including for public sector)
- Potential for hollowing out



‘Trading’ through semi or fully independent vehicles

Pros

- Tax advantages for some
- Freedom from Council bureaucracy
- Access to new sources of revenue?
- New organisational ethos
- For mutuals –in line with government policy push

Cons

- Loss of control
- Loss of accountability
- Not really trading
- Limited growth potential
- No profit distribution



Some conclusions on models

- Legal environment is very permissive
- Most trading activity can be delivered directly but...
- Company structure may:
 - Be needed for trading for a commercial purpose
 - Protect the council from risk
 - Separate commercial from public



Some company model examples

- Wakefield fleet maintenance
- Gateshead's shell company
- Teckal model
 - NORSE
 - Solutions SK
 - CORMAC
- Various arms length social care companies



Structure v Culture

- What drives arms length initiatives?
- Escaping from the Council
 - Decisions making
 - Risk aversion
 - Absence of entrepreneurial spirit
- Perceptions about cost
 - Pay and pensions
 - Central costs



What really matters?

- Commercial skills
 - Selling
 - Operating a trading account
- Market knowledge
 - What skills do we have?
 - Who wants to buy from us?
- Approach to risk
- Agility

The delivery model objectives



- Legally compliant
- Manages risk effectively
- Fit for purpose
- Sustainable
- Delivers



LOCAL SERVICES
LOCAL SOLUTIONS



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