Enterprising councils

Supporting councils' income generation activity

Guidance

Contents

Foreword
Why be enterprising?

Councils are no strangers to being innovative and showing initiative in response to local need. What is new is the scale of the challenge: budgets shrinking whilst costs and demand continue to rise, all of which impact on local services and local communities. If we want to create sustainable solutions, being enterprising is now more important than ever.

Changes to funding sources through devolution deals, the retention of business rates and powers to generate income or raise taxation are presenting new possibilities, but as we move towards the removal of the revenue grant by 2020 there is a predicted £5.8 billion funding gap[1]. With councils already having experienced an overall 30 per cent reduction in funding between 2010 and 2015[2] the quick wins need to be replaced or certainly enhanced by more fundamental change to ensure long term financial sustainability.

At the same time, our ageing population and population growth are creating increased demand for services, particularly health and social care. With rising core costs creating additional pressure, this leaves less money available for other services; culture, environment and planning services have been the most affected, but spend on social services has also fallen by 11 per cent.[3,4]

The prevalence of social media and easy access to information is creating more informed service users, who are increasingly vocal about these issues.

This pressure is being felt across the public sector. In response, organisations are finding new, enterprising and innovative ways to work together. Councils are diversifying, developing trading companies, joint ventures with the private sector, and utilising entrepreneurial methods across a wide range of services, as well as through alternative delivery models. Collaboration across the public sector is increasing with partners focussing on early intervention and working with wider cohorts earlier.

During these tough times, interest in commercial activity – both improving internally delivered services and establishing new delivery models – continues to grow. The diversification of funding through income and trade is allowing councils to have greater control, balancing increased risk with the potential for substantial rewards.

This practical guidance, and the wider LGA support offer to councils' income generation activity, aims to assist councils to turn their commercial plans into reality.

Councillor William Nunn
Chairman of the LGA Improvement and Innovation Board

Introduction

Like any major change, the decision to increase income should not be taken lightly; it can take time, investment and have both positive and negative consequences. Each council should carefully consider what is appropriate to their unique local context – large scale or small scale, internal or external – using a model that makes the most of their circumstances, capabilities and risk appetite.

When there is a considered approach, driven by the desire to deliver improved outcomes for service users, the benefits can help to address current challenges: financial sustainability, stimulation of the local economy, job creation/security, and the continued provision of quality services driven by customer need. Being more enterprising can also help to create a more balanced relationship between the public and the council as equal, active partners.

At the same time, a commercial strategy should not be allowed to distract a council from fulfilling its commitments to local people regarding its statutory duties.

The following guidance is structured to take you through a considered approach to reviewing your opportunities for trading and charging for services, two of the most prevalent commercial activities.

It starts with an overview of key overarching considerations, such as developing a commercial strategy and undertaking the development of an options appraisal and business case to establish the optimum action for your council. This is supported by information on fundamental issues, such as relevant legislation, the skills, capability, culture and structure of your service/s and social value.

Following on from these sections are specific chapters on charging, trading, investment and market and competition factors that need to be considered when developing any options appraisal or business case.

In addition, a number of short case studies are provided to highlight some of the innovative practice already achieving results for communities.

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Chapter 1 – overarching considerations

Developing a commercial strategy

While councils face increased pressures, it's tempting to view commercialism as a 'silver bullet' which will allow everything else to remain the same and address all current challenges painlessly. But difficult decisions will still need to be made about the services delivered and how they are delivered.

Delivering efficiencies, helping communities to become more independent, managing demand and changing ways of working remain part of the overall solution and should be considered in parallel to commercial opportunities. In fact, efficient, customer driven, agile practices become even more important when operating in a commercial arena.

As with any major change, it is important to be clear about what you're trying to achieve in the short, medium, and long term. This, along with the local context and starting point, will be different for everyone which means that there is no one-size-fits all solution that can be easily applied. Developing a commercial strategy is important to ensure that all activity is consistent with your organisation's overarching aspirations and priority outcomes.

Strategic and operational questions to be considered:

- Is there a political drive for commercial activity and to what extent?
- Is the necessary political and managerial leadership in place and is it effective?
- What is your organisation's overarching strategy and how does it link to becoming more 'commercial'?
- How will commercial activity be delivered alongside the council's other duties and responsibilities?
- What are the key drivers for change?
- Is your organisation's culture receptive to being more commercial?
- Is there a commercial capability within your organisation?
- Is there the capacity within your organisation to undertake commercial activity?
- What is your organisation's risk appetite?
- Is there clarity on how you will prioritise commercial opportunities?
- Does your organisation have an Outcomes Framework in place with clear priority outcomes for delivery?

Operational

- What is the current situation for the service/s?
- What are the options for commercialising the service/s?
- What will be the impact from both a financial and quality perspective?
- What do your customers/service users want/need?
- What are the risks associated with changes in service delivery?
- Is there clarity on the operational options available to the service?

Generating income through fees and charges or trading can be a viable way to maintain vital public services but it can also be a way of supplying services that the market does not supply, services at risk of not being feasible or offering an affordable alternative for people if a lack of competition has inflated local prices. New, discretionary services can provide residents with more choice.

Setting up trading companies or investments may seem further removed from the core purpose of a council but can bring revenue back into the council and indeed into the area when trading at a regional or national level. But trading and charging at scale can have an impact on the local economy and as it increases is creating a new dynamic across the public sector.

It is important for each council to revisit its outcomes, priorities and purpose and ensure that charging and trading objectives remain aligned. There are many variations of commercial activity which are becoming more innovative as time goes on, this document assists with the consideration of commercial activity ranging from fees and charges through to establishing companies.

Determining the suitability of the commercial opportunity is driven by the organisation's commercial strategy and the outcomes and objective for the services.

Many of those involved with the case studies included in this guidance talked of their success but always in reference to the ability to continue to provide quality, local services rather than trading for trading's sake. The decisions made about commercial activity and what options to pursue should be informed and driven by the political aims and objectives for the council. The decisions should be in line with the key outcomes the council is wishing to achieve, whether that be increased housing, employment or growth of the economy. The commercial strategy should consider all these factors.

As councils become more enterprising it can also change the dynamic with businesses and with other councils so your approach should be considered. Councils typically want to support local businesses so can feel tension when trading.

Are you comfortable competing against local businesses?

- Are you comfortable competing against public sector organisations?
- Will you operate in your locale or will you operate outside of your boundaries?

Operating within your boundaries and providing services where there is a gap in provision is relatively straight forward but if you decide to trade outside of your boundaries or in an existing market it can become more complex. Services may not be bound by geography, you may have ambition to grow or attracting a certain share of the market may be necessary to make the venture viable but you should consider the impact.

- Will investing in other geographical areas create conflict?
- Will going for business in different areas create issues or tensions for partnerships with neighbouring authorities?
- Will operating in other areas in a competitive way be politically acceptable?
- Are you setting yourself up in direct competition or are you bringing something new to the market?

Case study 1

Warrington Borough Council Enterprising Warrington – a commercial strategy to 2020

Since 2012, Warrington Borough Council has taken significant steps to become more commercial in order to move towards a greater level of financial self-sufficiency. The approach taken was a change at strategic level that would affect the whole organisation and was based on a number of factors, including the tight geography of the borough, the pace of change desired and the high level of senior leadership buy-in. The first stage included engaging a range of influential staff, at many levels to a new way of thinking via the development of a commercial skills programme. The programme took a modular approach to what a more 'commercial' manager in Warrington would look like. It was co-produced and co-delivered, with a small number of partners who could add value from external influences and an independent point of view. Over 90 staff, mainly team leaders and operational managers, went through the programme of six half day modules within 18 months of inception.

There were many outcomes from the Commercial Skills programme. Some were measurable, such as improved quarter on quarter revenue generation and some were softer, but no less tangible, such as improved conversations with budget holders and a spike in ideas to 'do things differently'.

It was recognised that there existed lots of pockets of commercial activity across the council, some of which were mature and some which were emerging. The key to developing the commercial strategy was to identify as many of those activities as possible and organise them in a clear concise format and outline their impact both now and in the future. The activity includes:

- raising a £150 million CPI index linked bond which supports a range of financing initiatives
- loans to registered providers (RP's), delivering a return via arrangement fees and margin on interest rates, plus any new homes bonus and increased council tax base for Warrington and other councils
- a commercial property acquisition programme to develop long term revenue streams as well as improving the balance sheet of the council
- reducing the borrowing cost of capital programme by £14 million
- leading a multi local authority investment in the UK's second largest solar farm
- developing the new Local Authority Mortgage Scheme (LAMS) concept which has realised over 200 loans in Warrington lending over £5.5 million
- undertaking a £120 million redevelopment of the town centre (Time Square) which will deliver long term revenue and increased balance sheet worth
- residential and commercial green energy projects to mainly reduce fuel poverty, but also making small scale returns above the cost of investment
- growing year on year revenue with schools through greater customer focus, evolution of service design and improved tender performance
- digitising a range of trading from schools to learning and development, benefitting from administrative efficiency and strong revenue growth; winning significant business outside of traditional school and social care markets

as well as developing partnerships with others to support local training needs and extending the reach of own delivery

- developing added value wrap-arounds for statutory services such as pre-audits in public protection and increases in planning visits and planning support activities
- improving cost-modelling for all trading services to ensure transparency of costs and appropriate price points.
- Doing things differently:
- adopting an Outcome Based Budgeting process to align resources with key outcomes
- a fees and charges project to ensure continuous cycle of review and ensure all costs are recovered as a minimum
- a range of value for money reviews to assess current service delivery in the council and identify optimum delivery models for the future.

The commercial strategy was launched in early 2017, with the backing of the council's Executive Board. The strategy brought together all commercial activity from across the council as well as setting aspirations for the next three years. It was very iterative and took over twelve months to finalise due to ever changing external factors and the evolving commercial ethos within the council.

Key features of the strategy

- Alignment with the council strategy, customer strategy and medium term financial plan.
- Not solely focused on income generation. It also focuses on deployment of resources, demand management and doing things differently.
- Includes both existing activity with a range of ambitious new activity to ensure it is both relevant and aspirational.
- Acceptance that not all commercial schemes will succeed and that it is the value of the commercial programme as a whole that is vital.

Key learning points

- Engage members, staff and trade unions at an early stage and continue dialogue.
- Align commercialism with the broader council agenda.
- Create value chains linked to customer and social benefits.
- Be bold and opportunistic and be prepared to think outside of your comfort zone.
- Remove blockages and idea suppression, even if this means bypassing existing management structures.
- Establish a broad set of success criteria.
- Exploit and develop rare technical and professional skills and areas of interest.
- Take appropriate external professional advice.

An impression of the £120m redevelopment of Warrington town centre (Time Square).

Options appraisals, business case, decision making

While it's tempting to focus on a single approach it is important to develop an options appraisal for several options, not just the preferred one. Exploring different scenarios will ensure that proper due diligence has been undertaken and will give key stakeholders the opportunity to shape the solution so that it is collectively owned.

Establishing credible baselines can be a challenge but taking time to pull together a strong evidence base will prove invaluable in the longer term; to support decision making, provide a strong basis, and reduce the risk of failure. Similarly, key assumptions need to be made and validated to ensure consistency of vision but also provide accurate parameters for financial modelling. This could include 'red lines' on issues, performance and future challenges such as changes to costs, demand or legislation. SWOT[5] (Albert Humphrey) and PESTLE[6] (Francis J. Aguilar), as well as Porter's 5 Forces[7] (Michael Porter), are tools which can be utilised to assist with this activity.

No matter whether you plan to increase income or trade services you need to be fully aware of the financial implications; there will be additional costs involved, investment and ongoing running costs. This could be small scale such as increased marketing, or significant if it will involve setting up a whole new company. Resources will also be needed to develop the options appraisal and business case and, depending on the scale of your venture, you may need to draw in external expertise particularly for specialist legal and tax advice.

Changes are likely to have an impact on staff, service users and the wider public. This should be considered throughout an options appraisal and business case with key stakeholders actively engaged throughout. Staff and user insight at the exploration stage can improve design and help you to understand your customers and processes better, as well as help identify any necessary cultural shift within the workforce and capability development required.

All of this will need to be fully considered before developing a business case for the preferred model which, once you have a good evidence base, may be different from your original intention.

Items to consider as part of your exploration:

- skills
- performance
- efficiency and productivity levels
- costs – for set up and running
- market analysis
- staff turnover and morale
- stakeholder views
- levels of investment needed
- demand
- risks
- capability to deliver.

Case study 2
Nottingham City Council Commercial waste services

The catalyst/driver for change

In 2010, Nottingham City Council was starting to embrace a more business-like approach to delivering services. As part of this cultural shift, services began to reflect on their area and the opportunities for income generation. Waste Management was no exception and it quickly became clear that while trade waste already created some additional income, there were real opportunities for growth.

What are they doing?

Trade Waste now operates as a distinct service. Services are sold to businesses both locally and within neighbouring areas, directly and through sub-contractual arrangements. While they work in direct competition with private companies, Nottingham City Council took the strategic decision to avoid competing directly with other local authorities. However, they experienced a natural geographical expansion through working with other authorities that were looking to wind down services. This softer approach presented further opportunities to purchase equipment from those decommissioning the service.

How did they do it?

After reviewing the service, Nottingham City Council identified opportunities for efficiencies through typical measures such as operational changes, restructures, and route optimisation. But they also realised that trade waste was quite distinct from residential waste. Separation of these elements allowed a better understanding of the costs and increased the focus on trade waste as a commercial entity.

To fully understand the trade waste element, Nottingham City Council had to do a significant amount of baselining and analysis to identify unit costs and unit outputs, the potential impacts on these costs, and developing a greater understanding of capacity, including limitations. This exploration resulted in a good grasp of the fixed and variable costs which formed the basis of their business case.

Understanding their local market was also vital. While councils already benefit from knowing where local business are, it still took time and effort to develop knowledge of the local market and refine their charging structure to cover costs whilst trying to attract a market share.

Treating trade waste as a distinct company also supported a cultural change amongst staff who could see the direct impact of their work and the opportunity for growth and expansion of the service. Sales roles were instrumental in working with businesses to understand their needs and gain market and competitor intelligence.

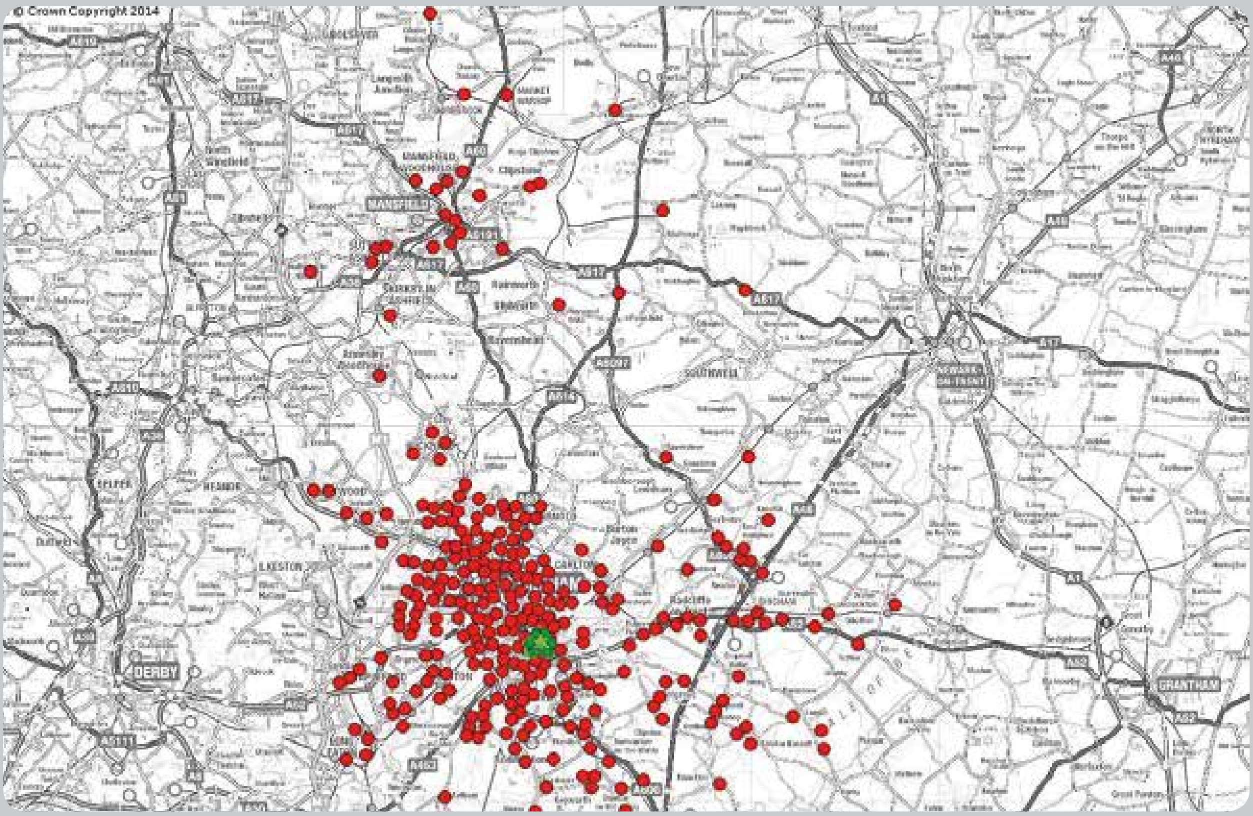
Key benefits and results

- Operational efficiencies have been achieved including, reduction in marginal cost per tonne of commercial waste collections by 14.6 per cent and a reduction in operating costs for domestic waste by £575,000 per annum- a reduction in frontline staff from 188FTE to 151FTE across the whole waste service.

- A far greater understanding of costs allows for better planning and decision making.
- Geographical expansion has meant around 800 additional contracts in neighbouring boroughs.
- There is increased turnover of £1.9 million per annum, total turnover of around £5.6 million per year.
- Increase in client base of 28 per cent.
- Creation of new confidential waste destruction service.
- Public sector values have been retained.
- There is greater job security for staff and opportunities for career progression in new roles such as sales.

Key learning points

- Fully understanding operating costs and what could affect them, including legislation changes, will allow you to plan accordingly.
- Understand and manage your risks, particularly the scale of contracts which may be new territory.
- Separating trade waste from residential waste allowed change to happen at a quicker pace.



The business map of Nottingham City Council's commercial trade waste service.

Legislation

Trading and charging for services has been a feature of local government for a considerable time. CIPFA's 'A Practical Guide for Local Authorities on Income Generation 2015'[8] is a useful reference point. When considering these options there are some key pieces of legislation which you should be familiar with.

Whilst this is a general guide to the relevant legislation, councils should always take their own legal advice before embarking on commercial activity.

Charging

Specific powers to charge for services are contained in a variety of local government statutes:

- Under the Local Authorities (Goods and Services) Act 1970 councils were given powers to enter into agreements with each other and with a long list of other designated public bodies.
- The Local Government Act 2003 ('the 2003 Act') added further possibilities. This, and a Trading Order[9] in force since October 2009 enables councils in England to trade in activities related to their ordinary functions on a commercial basis with a view to profit through a company. Originally, trading through a company was confined to certain categories of councils and named fire and rescue authorities but the Trading Order removed such restrictions. In addition, the 2003 Act empowers councils to charge for any discretionary services on a cost recovery basis.
- The General Power of Competence ('GPC') contained in the Localism Act 2011 now sits alongside local government's existing powers to trade and charge. Under the Localism Act 2011 commercial trading through a special purpose trading company is now an option open to many more public bodies including eligible parish councils, fire and rescue authorities, integrated transport authorities, passenger transport executives, economic prosperity boards in England and combined authorities. New powers contained in the Localism Act 2011 also provide the ability to charge for discretionary services on a cost recovery basis.

There are specific powers to charge for services scattered throughout local government legislation. For example:

- section 19 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') permits charging for the use of leisure and recreational facilities
- section 38 of the 1976 Act permits entering into agreements with other persons to make full use of local authority computers and equipment
- the Civic Restaurants Act 1947 permits district councils and London boroughs to run restaurants and otherwise provide for the supply to the public of meals and refreshments and use best endeavours to ensure its income is sufficient to cover its expenditure.

The Local Government Act 2003 includes a general power to charge for the provision of any discretionary service. The charging power is available to all 'best value authorities'.

The charging powers do not apply to services which an authority is mandated or has a duty to provide. However, councils can charge for discretionary services (that is, services they have power to provide but are not obliged to provide by law).

The recipient of the discretionary service must have agreed to pay for the provision of such services.

The 2003 Act charging power cannot be used where charging is prohibited or where another specific charging regime applies. Charging is limited to cost recovery and statutory guidance published in 2003 outlines how costs and charges should be established and that guidance remains in force.

The charging provisions contained in the Localism Act 2011 follow, very closely, the requirements of the 2003 Act to allow local authorities to charge up to full cost recovery for discretionary services. These provisions will continue side-by-side rather than replace the Local Government Act 2003 powers. Use of the GPC to charge is subject to a duty to secure that, taking one financial year with another, the income from charges does not exceed the costs of provision.

As with the 2003 Act powers, charging for things done in exercise of the GPC is not a power to make a profit from those activities. So authorities wishing to engage in commercial trading for profit will need to rely on other powers to trade, which are explored in the next section of this guide.

Trading

The legislation relevant to local authority trading uses the term ‘commercial purpose’ to describe trading activities. Government guidance suggests ‘commercial purpose’ means having a primary objective to make a profit from the trading activities in question. In this guide, the term ‘trading’ is used much more broadly to cover a range of arrangements that councils might wish to enter into to make efficiencies through reducing costs; improving services for the benefit of users and, potentially, to generate profits. These may involve establishing new relationships with other councils and public bodies or with the private sector, voluntary and community sector, and individuals. For councils considering a new trading venture it will be essential to first determine whether it is acting pursuant to a ‘commercial purpose’. If so, the law requires councils to pursue that commercial purpose via a company. If not, alternative arrangements to establishing a company are also explored below.

1. The Local Government Act 1972, Section 101 permits local authorities to arrange for the discharge of their functions by a committee, sub-committee, an officer of the local authority or by another local authority. Many shared service arrangements are set up under these public administrative arrangements, usually with one of the authorities involved taking the lead.

2. The Local Authorities (Goods and Services) Act 1970 (‘the 1970 Act’) remains the bedrock for establishing shared service or joint arrangements between two or more public bodies. It permits councils to enter into ‘agreements’ with other local authorities or other designated public bodies, for the provision of goods, materials and administrative, professional and technical services, for the use of vehicles, plant and apparatus belonging to the authority and associated staff, and for the carrying out of maintenance. These powers remain particularly useful where authorities are seeking to provide goods or services of a relatively modest value to each other, and the costs and time associated with setting up a commercial trading company would be disproportionate. The 1970 Act leaves it to the public bodies concerned to make an ‘agreement’ to set out payment terms or otherwise as the parties consider appropriate. This offers flexibility and does not limit arrangements to simply cost recovery. Some councils have established shared services enterprises through a combination of public administrative arrangements such as a joint committee under section 101 of the Local Government Act 1972 and an agreement using the 1970 Act powers. Local authorities (and indeed other public bodies) can use these powers to ‘test the waters’ and explore whether collaborative arrangements can be established which make for more effective and efficient working.

Tax and fiscal considerations will also be paramount here, as setting up a company creates a new body which may (depending on the type of company established and the trading activities it carries out) be subject to the corporation tax regime and will be treated separately for VAT, National Non-Domestic Rates (NNDR) and stamp duty land tax purposes.

Using an agreement or joint committee structure where the arrangements are established for the better performance of public administration may also provide a better fit with one of the limited exceptions from EU procurement rules, known as the Teckal exemption (the first case in a line of case law now codified in Regulation 12 of the Public Contracts Regulations 2015 ("the 2015 Regulations'). This exemption is briefly outlined below and further detailed within Section 6. Overall this approach provides time for joint enterprises in the public sector to evolve through a joint committee arrangement and/or by agreement whilst retaining the option to establish a company structure compliant with Regulation 12 at some later date, if desired.

Setting up a company is one route by which public bodies that are 'contracting authorities' under the 2015 Regulations can establish shared services arrangements. Such public bodies could, for example, establish a company to perform a trading function of a specific and limited nature, with that company providing services to its controlling owners. The owners should be able to engage with the company without going through a procurement exercise, provided these arrangements are akin to 'in-house' arrangements to comply with the 'Teckal' exemption. 'Teckal' compliance features would need to be built into the constitution of the company to ensure its operations and management remain in the joint control of the owners on terms that satisfy the Regulation 12 'control' condition and to ensure that more than 80 per cent of the activities of that company involve it performing tasks entrusted to it by its controlling owners (or entrusted to it by other legal entities controlled by the same controlling owners). Subject to limited exceptions, there should be no direct private capital participation in the company. This type of 'Teckal' company would not be expected (or permitted) to trade commercially with the public at large. Local authorities creating a 'Teckal' company need to very clearly articulate what sort of enterprise they are intending to establish and what sort of custom or 'trade' that company would undertake to distinguish it from a more market orientated commercial trading undertaking. Commercial trading companies, unlike companies set up for trading by and between local authority owners would be outward facing and would seek to attract business from any source.

3. Trading beyond the public sector
   After many years of experience trading between public bodies, the Local Government Act 2003 added new possibilities for councils to extend their trading activities to provide services to other users beyond the designated public bodies' listed in the 1970 Act. This includes the wider market, private individuals and other bodies or organisations. In 2009[10] the Government permitted all best value authorities in England 'to do for a commercial purpose' anything which they are authorised to do for the purpose of carrying on their ordinary functions. The Localism Act 2011 has extended opportunities to do things for a commercial purpose much further. For example, when exercising the General Power of Competence (GPC) to do things for a commercial purpose, councils are not required to identify a statutory function upon which to 'hang' their trading activity. In other words, local authorities are allowed to expand their trading activities into areas not related to their existing functions. It also effectively removes geographical boundaries to local authority activity so that they can set up a trading company that can trade anywhere in the UK or elsewhere. But the law continues to prevent councils trading with individuals where they have a statutory duty to provide that service to them already.

The GPC also extended trading powers to 'eligible parish councils'. These are defined by the Secretary of State in secondary legislation[11] as parish councils who have:

- two-thirds or more of members of the council who have been elected at ordinary elections or at a by-election (as opposed to being co-opted or appointed)
- the clerk to the parish council who holds one of the listed qualifications and has completed relevant training in the exercise of the GPC, provided in accordance with the National Association of Local Councils' national training strategy for parish councils
- passed a resolution that it meets the conditions of eligibility.

Under both the Local Government Act 2003 and the Localism Act 2011, the power to trade must be exercised through a company.

There are different definitions of 'company' in the relevant legislation but there appears to be no substantive difference between the types of entity permitted as trading companies :

- the Local Government Act 2003 refers to companies within the meaning of Part V of the Local Government and Housing Act 1989, namely:
  - companies limited by shares
  - companies limited by guarantee (with or without share capital)
  - unlimited companies
  - registered societies within the meaning of the Co-operative and Community Benefit Societies Act 2014
  - societies registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969
- the Localism Act 2011 refers to companies that are:
  - within the meaning of section 1(1) of the Companies Act 2006
  - a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014
  - a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969.

With trading companies wholly owned by a council, any profits generated may go back to the council through dividends or service charges. These can then be used to hold down council tax and/or can be invested into frontline services. Local authorities may also consider participating in someone else's trading venture through a company, such as a social enterprise, as long as that entity is a company within the relevant definitions. A limited partnership or limited liability partnerships do not fall within the permitted categories for local authority commercial trading.

Skills, capability, and culture

Skills and capability

Leadership and support from the top is vital from both an officer and councillor point of view; as well as providing direction, leaders will help to make sure that the necessary resources are available. Almost all of the case studies featured in this document spoke of key individuals, councillors and officers, who believed in the vision and were able to drive the agenda forward.

Local government staff bring considerable skills to the table but some additional skills may be needed to adopt commercial roles. Additional skills and capabilities should be considered for the exploration and implementation of commercial activity. These may require very different skills and people, for example commercial management can require different skillsets to those required to manage services without a commercial focus. In addition traditional public sector financial accounting skills may, for example, not be suitable for the type of financial analysis and modelling required. Similarly marketing becomes a key enabler to commercial success but is not necessarily a core public sector skillset.

A skills analysis is an excellent way to baseline the current capabilities and capacities within the service/s and identify where investment is required to ensure that the service has the necessary people and skills to be commercially successful.

It's good practice to involve staff in any pre-decision exploration; it's a great source of insight, it smooths the transition into new ways of working if staff have had the opportunity to design the new services and it gives the opportunity to consider what support staff might need. This could be anything from new ICT skills if you are introducing new systems for payments or customer relationship management, entrepreneurial skills, or upskilling to new roles such as sales or business relationship management. Getting involved with the design can build enthusiasm for the new venture and ensure that staff understand the benefits of the new approach for both themselves and the service users.

Even if you have the right people in place to explore the options you may still need to create additional capacity; the amount of time required to fully explore different models should not be underestimated. It may be useful to second a cross-disciplinary team with the time available to focus on the task; HR, finance, legal and service knowledge are often useful. It may also be useful to consider bringing in new skills and knowledge to the organisation either on a temporary or permanent basis.

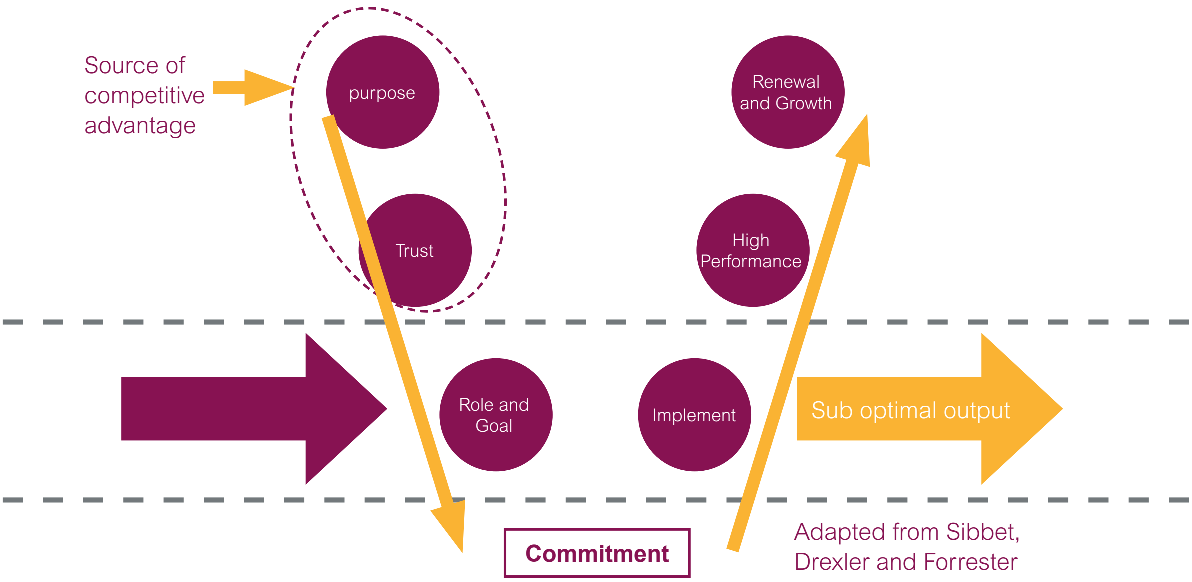
Culture

Establishing a commercially focused culture is imperative for the successful commercialisation of services, however the challenge this represents should not be underestimated.

Many services already charge and trade so scaling the activity up may not require more than enhancing existing skills and capabilities. However, for some parts of the organisations it could present a real challenge from a skills, capability and cultural point of view. Those delivering services may feel that charging for services that were previously free is not appropriate and both councillor and officer decision makers may find it difficult to remove traditional hierarchies and make changes to wider processes that will allow a more entrepreneurial culture to develop.

Research conducted by Allan Drexler, David Sibbet, and Russ Forrester focused on what makes high performance groups successful. They devised a model that comprises seven stages to help characterise a high performance team culture. These are:

1. Purpose and vision
2. Trust building
3. Role and goal clarification
4. Commitment
5. Implementation
6. High performance
7. Growth/renewal



High performing team model (adapted from Sibbet Drexler and Forrester[12])

Each stage is identified by the primary[12] question of concern for the organisation when they are in each phase. The structure of the model resembles the path of a bouncing ball and the model demonstrates the organisation's arch of energy. When in the stages of orientation and renewal, organisations will often feel a greater sense of freedom which provides great opportunities for potential and possibility. As an organisation moves into the middle stages, there is more constraint and goals are less flexible.

- Purpose and vision
  The primary question asked during this first stage of the model is, 'Why are we here?'. The organisation must work together to identify its vision or purpose. At this point it is vital to work out what the council means by commercialisation. Senior officers and councillors must lead and communicate this in order to align the organisation's vision and mission with that of the individuals in the organisation. When staff feel more connected, they are more likely to participate in achieving the group's goals.
- Trust building
  This is the stage during which people want to know who they will work with, their expectations, agendas and competencies. Trust can only be established once the organisation's members are clear about its values and capabilities and have a view about where they fit, in terms of their individual roles and responsibilities. Adherence to the values and intolerance of values being breached is vital at a senior level during the trust building phase.

According to Sibbet Drexler and Forrester, having a clear organisational purpose and a climate of trust in the organisation are fundamental to high performance and team success.

- Role and goal clarification
  Here is where the senior political and managerial leadership of the council works to communicate and refine a shared commercial vision by discussing possibilities, variations, and the reasons these goals may or may not be the best options. This ultimately defines the organisational mission. This starts at the top, but occurs at various levels of the organisation in order to build engagement and commitment to the vision, purpose, mission, strategies to be adopted and the values of the organisation.
- Commitment
  This stage is about 'getting it done'; decisions are made, priorities set and structures put in place in order to drive

commercial activity. If the senior leaders do not drive this and lead the organisation in this phase, staff members may resist the changes by:

  - disowning individual responsibility for the success of the organisation
  - going along with the preferences of others
  - attacking proposed courses of action without offering any feasible alternatives.

Such behaviour is often fuelled by a lack of leadership and could indicate:

  - unclear priorities
  - unclear roles
  - poor values.

- Implementation
  The implementation stage is dominated by timing and scheduling. Some iteration of the previous stages may be required as the organisation encounters unforeseen obstacles and works to find an optimum path. The key here is to enable the organisation to develop processes and procedures to deliver the commercial mission. This may require senior leaders to clear obstacles or kill some sacred cows to enable the delivery of the vision, purpose and strategy.

- High performance
  This model might suggest that 'high performance' is a destination that all commercial organisations reach, however research indicates that many never do. An organisation does not have to reach this point for its goals to be achieved. The approach outlined in the model is designed to increase the probability of becoming a high-performance organisation and spending more time in this stage.

- Growth/renewal
  The primary question at this stage of the process is, 'Why continue?'. You can think of renewal as both an ending and a new beginning. Each member of staff in the organisation led by the board should reflect on what did and didn't work, what was achieved, and what issues remain to be tackled. This thought process leads to an organisation that is capable, evolving, and adapting to its environment with a culture that can embrace change.

The senior political and managerial leadership of the council should then demonstrate what these values mean in terms of their behaviour, decisions taken, and specific management actions that demonstrate to all employees that the values are alive and real. It is important that this behaviour is adopted by all leaders. In practice, managers and other employees will copy what they see as being acceptable behaviour, rather than reacting to communications which describe what values are.

Local authorities may want to consider investing resources to support a corporate programme to implement their strategy. Investment in change management, developing employee capabilities, communications, aligning performance management processes, and adapting governance mechanisms may be required to enable a more entrepreneurial culture to flourish.

The next case study is a good example of establishing a commercial culture.

Case study 3
Sevenoaks District Council
Becoming financially self-sufficient

The catalyst/driver for change

In 2010 Sevenoaks District Council recognised that in order to retain the range and quality of their services they would need more than the traditional approach of finding efficiencies and savings. They recognised early on that government funding was unlikely to return to pre-austerity levels, and that a more innovative approach to financing the future would be needed. So, they took the bold decision to take the hit early on by reducing revenue spend by a third over two years, but also to explore different income streams which resulted in them becoming financially self-sufficient in 2016.

What are they doing?

The council has a property investment strategy that allows them to buy and build assets within the Sevenoaks area. This started with the purchase of a single office block that they extended, adding significant capital and rental value. It has since moved on to more diverse properties including a petrol station, a working man's club and even transforming a car park into a new hotel that they will lease to a hotel chain. Their strategy is to ask a simple question when faced with a new opportunity; will it offer a return that will enable us to deliver and maintain the range and quality of services our residents need? Most of the strategy is delivered through the council but Sevenoaks do own a separate company for specific activity.

A key part of their success lies in the fact that they have also fundamentally changed their approach to training and development. This has had a significant impact on staff and organisational culture, which has in turn contributed to increased public satisfaction levels. Rather than pay for generic training packages, they have developed their own tailor made programmes for management and personal development that deliver a far greater return on investment. This includes, amongst other things, trained executive coaches (current employees) available to anyone in any part of the organisation, and two-hour training courses that make it easier for people to release themselves from their day-to-day responsibilities to take the opportunity to learn. This investment in staff helps people to grow within and beyond the organisation and an evaluation tool helps to measure improvement.

How did they do it?

Sevenoaks District Council have developed their approach on two main pillars:

- a 10-year, rolling budget that could be easily accessed and used by all to understand the impact of each decision to spend or save
- maintaining control; external input from specialist services is required but none of their services are outsourced.

This approach allows them to continue to innovate and keep making decisions that are right for them, without worrying about contractual issues.

At the start of their journey, the council created a temporary appointment to bring the necessary economic development skills and knowledge into the organisation. They assembled a small team, giving the opportunity for others in the council to grow and develop. Starting with one property allowed them to test their understanding of the market and develop confidence in their approach enabling them to grow their portfolio at a sustainable rate.

Early on they realised that the decision-making process was not quick enough for the market that they were competing in; putting every purchasing decision through the council put them at a significant disadvantage. Instead, they created a framework that would allow delegated decision making in accordance with criteria on spend, expected return and geographic parameters set and agreed to by the council.

The agile and professional approach adopted by Sevenoaks District Council has already earned them a good reputation within local government. They have become a trusted partner, attracting business that would otherwise go elsewhere.

At the same time, the approach to staff investment has meant that while the workforce has significantly reduced over 10 years, those that remain with the council benefit from a people-centred approach where a customer is ‘anyone who isn’t me’. This has created a positive, empowered and risk aware culture.

Benefits and results

- There is money available for quality services – investments are providing a minimum 6 per cent return
- Local regeneration
- Staff and members have developed their capabilities and understanding of the market.
- There is a very positive, empowered culture where officers and councillors consider and understand the impact of saving and spending decisions over the long term.
- Self-sufficiency rather than reliance on government grants means more control over their own future.
- Performance is up by around 41 per cent.
- Productivity is up by around 45 per cent.
- Resident satisfaction is around 80 per cent with trust levels the same.

There is a very low level of complaints.

Key learning points

- Start with people; a strong organisational culture supported by a clear vision, good communication and access to support, at every level, is vital.
- Be clear about your strategy; keep it simple and be disciplined.
- Understand risk and be risk aware not risk adverse; the risk of doing nothing can sometimes be greater.
- Take informed decisions; understand the long term impact of different choices.
- Plan over the longer term. A 10-year rolling plan, for example, will allow you to fully understand the challenges ahead.
- Talk to the public about what you’re doing and why; if it’s well thought through then people will understand.
- Decision makers need to focus on the big stuff.
- Don’t become emotionally attached; you need to make business decisions that support your aims.
- Not everything will be successful; it’s OK to fail.

Social value

While there is no single agreed definition of social value, the evaluation of non-financial measures is increasingly important for public sector organisations, particularly as adverse effects can have a direct impact on demand for council and public sector services. The Public Services (Social Value) Act 2012 goes some way to formalise this through its requirement for councils to consider how what is being procured might improve the economic, social and environmental wellbeing of an area. Councils can have a significant impact as a major employer, and supplier and buyer of goods, works and services. Their reach and influence shapes the local area and actions can be felt at a regional and national level. Similarly, it should be noted that charging/trading can help ensure the resilience and sustainability of otherwise vulnerable services.

Maintaining a public sector ethos remains at the core of many local authority commercial models and the decision to operate commercially should consider social value as part of the options appraisal. Areas to consider include:

- the impact on residents
- the impact on local businesses
- the impact on employment/employees
- environmental impacts.

The way that contracts are set up and services and goods are procured should be considered early in the process to assess the positive and negative impacts that this could have. For example, incorporating training opportunities to help people into work, encouraging suppliers to support the local economy and considering the impact on the environment by reducing the length of your supply chain. There are no right and wrong answers but you should be mindful of your values and legal obligations and ensure that the decisions that you make reflect them.

The Public Services Act does not specify how or when consultation should be carried out but meaningful consultation with staff and the public can help to inform both design and decision making. Engaging with stakeholders early to outline the problem you are trying to solve or the opportunity that you want to embrace, with an invitation to help inform the solution can be beneficial for both parties.

Chapter 2 – charging

Why/when to charge?

The ability to charge for services has been available to councils for some time, most recently through the Localism Act 2011. Charging represents a commercial opportunity which is potentially relatively straight forward to introduce and not dependent upon significant change and/or investment. There are lots of existing opportunities available to councils which they could exploit without having to fundamentally change their delivery.

There are however limitations; charging powers do not apply to services which an authority is mandated or has a duty to provide and charging is limited to cost recovery. But the ability to charge for discretionary services can generate significant income, allowing money to be used to fund other services.

The decision to charge or increase charges for a service should align with existing strategy. The creation of Oakland Enterprise Park by Rutland County Council is a prime example. Regenerating an old prison into a mix of business units for businesses of different sizes has been financially rewarding for Rutland but it also aligned with a number of objectives:

- avoiding the negative impacts of a brownfield site
- stimulating the local economy both directly through job creation and indirectly by keeping those who typically commute within the area
- providing more than a traditional landlord service by incorporating business support and guidance
- increasing leisure provision to support health and wellbeing.

Again, you should take time to consider your options and whether this is the right approach for the outcomes that you want to achieve. When considering an existing service, it is useful to ask fundamental questions; should the service continue to be delivered? Who is best placed to deliver it? A thorough analysis of the options may conclude that the service should be delivered by a different provider or stopped. However, the flip side of this is introducing charges, or increasing existing charges is a quick way to generate additional revenue into the organisation.

Operating commercially from within a council does have many benefits. Key features:

- lower set up costs than a spin out model
- less complicated to implement than a spin out model
- retain full control
- retain full access to other departments and services
- easier to reverse the decision or exit the arrangements
- being part of an existing brand could have negative or positive effects.

Charging for services as part of the council can be part of a longer transition into an alternative delivery model. But if you expect to make more than full cost recovery then you should consider different legal models.

Costs, investment, risks

Before you decide to charge for a service you need a good understanding of the true cost of delivering that service. This will help you to understand what level to charge at, drive out any inefficiency to keep you competitive with the market and will help you to decide whether it is in fact worthwhile to create additional demand for the service. Calculating unit costs will be different in each organisation and type of service. Understanding overheads and support services in large organisations can also be a challenge but it is important to understand this to ensure that you are fully covering your costs for support services such as ICT, HR, finance as well as overheads such as property and pensions.

The level of investment required and payback periods will vary but should form part of the analysis to understand whether it is beneficial to charge and potentially increase demand for a service.

Selling services, whether new or existing, does involve risk; from a financial perspective, if you have invested or committed to spend, and from a reputational perspective. Having a legal obligation to fulfil a contract increases risk to the organisation and should be considered against the level of risk that the organisation is prepared to accept.

Charging for a discretionary service could be controversial and unpopular. Taking the time to adequately consult with the market and users of the service who are most likely to be affected by charging can help to mitigate some of these problems and avoid damage to relations with local communities and local businesses.

The following measures can help to meet concerns and opposition to charging and income generation:

- providing proper transparency and accountability of the charge regime
- explaining the context of the charges, how they have been assessed and the basis upon which charges have been calculated setting out the context within which the charges are being considered and what the income will be used for
- demonstrate that you have considered the impact of charges on different sections of the community
- undertaking thorough market research on what other councils are doing, what they are charging and what other private and voluntary bodies are doing in the same or similar markets
- being able to demonstrate that the end user is getting value for money.

Key risks to consider:

- financial risks – eg operating at a loss, losing investment of custom, changes to core costs
- reputational risks – eg letting down customers or failing to deliver contracts and services to the required standard
- operational risks – eg the loss of staff during transition.

Benchmarking and market analysis

Benchmarking against other providers and conducting market analysis are both useful exercises before decision making but also periodically as a useful source of business intelligence. While like-for-like comparisons are not always possible you can still gain insight from both operational and cost perspectives. Understanding market trends and demand can help to inform whether entering a particular market is the right thing to do. Questions to consider:

- Who is operating in the market?
- What do other providers charge?
- Are there any gaps in the market?
- Can you be competitive while remaining viable?
- How do you compare?
- What are the margins?

Case study 4
Rutland County Council Oakham Enterprise Park

The catalyst/driver for change

Like many councils, Rutland County Council's five-year medium term financial plan made it clear that funding levels were reducing at the same time as expenditure was increasing. While saving played a part in bridging the gap, this would not be enough to solve the issue. It was therefore necessary to find new income streams.

Around the same time, the Ministry of Justice (MoJ) made the strategic decision to close HMP Ashwell; a 25-acre category C prison. Rutland County Council could see the opportunity that the site presented to generate income while supporting their strategic objective for economic growth.

What are they doing?

In 2012, after the MoJ assessed several different options, the council successfully negotiated the purchase of the site with the vision to transform it into a business park. Following a £3.5 million capital injection, extensive building works and the development of the Oakham Enterprise Park brand, it now boasts business and industrial units, leisure facilities and an 'Events Zone' that takes advantage of the unique architecture and security onsite.

But the business park goes beyond a traditional rental offer. Tenants have the added benefit of support and signposting to additional services such as funding and training opportunities. Staff are on-hand to help businesses in whatever way they can from listening to business plans to ensuring the smooth running of the facility. The site is designed with different sizes and types of business in mind including individuals looking for storage space, incubation units for start-ups and larger spaces for established organisations including a new adult learning and skills centre. While there is more to be developed on this extensive site, they have already achieved 100 per cent occupancy of the existing buildings, which hosts around 106 local businesses.

How did they do it?

Rutland County Council made sure that they were clear about the financial risks that the project would face. They made sure that funding sources were identified, that the plan was affordable and that it would deliver value for money. Similarly, they understood the needs of local businesses and the market that they were about to enter. Upon purchase of the site, they continually reviewed their options as the project developed and worked with partners such as the Local Enterprise Partnership, and later Sports England, to secure financial assistance that would complement the investment made by the council. The project was delivered through a transparent and effective project management structure including a framework of high level cabinet meetings to sign off project milestones, whilst involving scrutiny and all member briefings as much as possible.

The transformation of the site was not without its challenges. It was the first site of this size that the council had taken ownership of and it was done on a very tight budget. However, no amount of experience would have prepared them for the unique infrastructure challenges presented by the former prison site and its buildings which had previously been exempt from building regulations

Key benefits and results

- Local business is supported and retained resulting in job creation, apprenticeships and training opportunities, and the continued stimulation of the local economy.
- The provision of leisure and sports facilities, including local clubs, are supporting a health and wellbeing agenda.
- Tapping into the events and filming industries had created demand for other goods and services such as accommodation.
- A brownfield site, which could have created issues for the area, is instead delivering positive opportunities and outcomes.
- There is an ongoing revenue stream for the council, a budgeted £250,000 annual surplus, which is supporting the continued delivery of public services.
- The land value has significantly increased creating a capital asset for the council.
- Significant generation of new business rates.

Key learning points

- Full assessment of the risks and options, including financial forecasting, is necessary for informed decision making.
- A robust business case is crucial to not only ensure political support but also ensure that the figures and benefits add up.
- Sufficient scrutiny and an audit trail will ensure that the project can withstand challenge.
- A mature approach to risk along with fast and efficient decision making is key.
- Individuals who believe in the vision and can effectively communicate it are vital.
- Be brave.

Oakham Enterprise Park hosts around 106 local businesses and includes leisure facilities and an 'Events Zone'. The site was formerly HMP Ashwelt, a 25-acre category C prison.

Chapter 3 – trading

Why/when to trade?

Trading covers a broad range of arrangements from shared services to establishing new companies. The model used will be dependent on what you are trying to achieve but if you are pursuing a 'commercial purpose' then the law requires councils to do this via a company. While shared services are a familiar arrangement for most councils, the establishment of new companies to trade to the public sector and beyond, is becoming increasingly popular.

Trading as a separate company can have many benefits when aligned to your overall strategy but it should not be treated as a quick win as it will take time to fully explore and then implement a new model. With risk involved, developing a strong evidence base and robust modelling pre and post decision is vital, as is good change management.

You need to be clear about your drivers and what you're trying to achieve as this will have a direct consequence on the type of model that you adopt. Different approaches will be needed depending on whether you are trying to reduce your costs, fill a gap in the market, increase quality or grow; and these drivers are not mutually exclusive. It is still important to consider other options available, for example, stopping the direct delivery of services if another provider can meet the outcome or if there is no longer demand.

As part of the exploration stage you should consider the scope of services involved in the new model; it is not a case of all or nothing. Different elements of a service can be provided seamlessly to the end user without the new model delivering everything directly.

It is therefore important to understand the different options available to create a model that creates value.

There are many benefits to establishing trading arrangements. When successful, there can be direct financial benefits such as reducing delivery costs, allowing growth and increased income to be reinvested locally, contributing to the local economy and safeguarding and/or creating local jobs. A trading venture can benefit from a level of freedom and flexibility that is harder to achieve as a council or public sector body because both organisations have a very different purpose; with fewer services to deliver and different levels of risk, council trading companies can reduce hierarchies, increase autonomy amongst staff and speed up decision making. All of this can improve the quality of services and outcomes for service users.

Key features:

- different models to choose from
- greater scope for income generation
- less control for the council than in-house delivery
- greater control than outsourcing model
- greater opportunity to innovate
- more complexity and cost for set up.

Cost and investment

As outlined in 'Chapter 1 – Overarching considerations' it is vital to have an in-depth understanding of your finances, built on credible baseline and benchmark information. Full understanding of the delivery costs, anticipated income and the factors that could affect either figure will create a strong foundation and early warning signals.

While budget pressures may drive the setup of a trading entity, there will be a cost associated with developing and implementing a new model; investment should be considered, with a funding source identified. Reserves can be a source of investment if the business case stacks up, but robust financial modelling should be used to fully understand the financial impact over the short, medium, and long term. It is common for companies to be in deficit for the first few years of operation so access to finance should be in place.

The business case should include the financial impact for both the new organisation or model and the council. While there will be a desire for the new organisation to be successful and profitable, it should not be to the detriment of the council. For example, establishing an alternative delivery model for a service that was achieving income for the council and therefore contributing to support services could leave a budget gap. This all needs to be considered as part of the overall business case to the council.

There will be a cost to exploring the options and developing a business case and business plan. As a minimum, staff time will be required to assess the options, and specialist advice is likely to be required at some stage in the journey, particularly when setting up a new company. As part of the business case, you should consider the cost of implementation. This may include legal fees, tax advice, training and development, recruitment and equipment. Additional resources may be needed as part of shadow or transition arrangements.

A new model will inevitably have new running costs to consider. If you are transferring staff then you need to transfer pensions; actuarial evaluations will be needed and decisions made on new pensions arrangements. This can have an impact on running costs and even if you want to keep the same conditions for staff the Local Government Pension Scheme will not necessarily be available to them when employed by the new company. Corporation tax will be need to be incorporated into financial models in most scenarios when trading commercially, with the exception of certain charities. Tax advice should be sought to fully understand the implications of different models. Additional cost such as property, new staff roles, bidding for contracts, and building a reserve fund may also be important for long term sustainability and future investment. But the new company should be designed to be agile in other areas allowing for savings to be made to offset additional costs.

It may be appropriate to put buy back arrangements in place between the new organisation and the council. Support services such as HR, finance and ICT can be particularly attractive. There are benefits for both parties; the council receives income towards its existing services and avoids having to downsize certain services, and the new company can enjoy a certain level of security and consistency that can allow focus to be on other matters. Buy back arrangements for a set period of time can also be beneficial for both organisations to transition and mature; the council has time to reduce provision or strengthen their offer to customers, the new organisation has time to understand what it needs and commissioning services accordingly. But these can create tensions as the new company may feel that it can get better value for money and customer service from elsewhere and may feel that this option diminishes the control and autonomy of the new company, with blurred lines between the two organisations. Whatever the outcome, buy back arrangements should be considered as part of the business case.

Modelling for efficiency, growth and income targets should form part of financial modelling with a clear understanding of the ambition, but also the reality of the market in which you are operating. Market analysis can provide information on the costs and performance of competitors which can help to identify the targeted customer base and set realistic milestones.

Market analysis and understanding operating and unit costs should inform price setting which is regularly reviewed to stay competitive.

State aid
When setting up a new company it is important that state aid and specialist advice in this area is recommended for your unique circumstance. Under EU legislation public authorities are forbidden to provide subsidies or other aid to private entities in order that there is fair competition across the whole of the EU. There are exceptions and some exemptions may apply.

The state aid rules are intended to ensure that market forces may operate freely across Europe with no unwarranted interference through the state (national government) or an 'organ of the state' such as a local authority.

Meeting any of the following criteria could constitute a state aid issue:

the aid has the potential of affecting competition and trade between member states

- the measure granting aid is capable of or could have the effect of distorting competition by conferring an advantage or benefit on a selective basis
- the aid is paid through (directly or indirectly) state resource, and this can take a variety of forms such as grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or the provision of goods and services on preferential terms
- the aid favours certain undertakings, or the production of certain goods.

When setting up a separate company it can be easy to fall foul of state aid rules if considering transferring equipment in to the new company below market value or providing start up finance. You should treat the new entity exactly the same as you would any third party provider to avoid any direct or indirect subsidy which would breach state aid rules.

If a state aid issue arises, the assistance proposed must be approved in advance by the European Commission through:

- the Commission approving a formal notification
- the assistance being compatible with an existing approved scheme, or
- the assistance being compatible with one of the state aid block exemptions issued by the Commission.

The consequence of unlawful state aid is potentially serious, including damages payable by the authority to any third parties who can show that they have suffered a loss as a result of the aid (plus interest) from the recipient.

Legal and delivery models
When it comes to considering the legal model for commercial activity there is one main rule; form should always follow function. It will be important to consider what you're trying to achieve and then see which model fits; strategic fit, partnership opportunities, ownership distribution, control and influence, procurement regulations, tax considerations, risk allocation, sources of additional investment, whether private sector capabilities are desirable, exit strategies and competitive advantage, will all form part of the decision making process.

Shared services, contracts and partnerships with other public bodies have been popular; typically for back office functions such as management teams, transactional services, commissioning, etc. but it has also been used to provide frontline services. However, while shared services still have value, we are seeing an increase in the use of joint ventures and separate legal entities. In 2014, the Cabinet Office announced that 100 new public service mutual have spun out.

There are a growing number of delivery models and legal arrangements available with no one approach gaining dominance. While such choice can allow you to tailor make your design to your unique circumstance, it can be difficult to navigate through all of the options.

When considering which legal form is the most appropriate, it is important to get legal, tax and business advice. A common pitfall is to seek legal advice alone. A legal expert may be able to advise on the technical implications of each model but they may not be in a position to provide the business expertise which you will require to maximise the opportunities available.

An overview of each of the most commonly used models is included below:

Model	Overview
Shared services or joint working	A number of bodies come together to deliver services to each other that they previously provided separately. The main driver is achieving efficiency; bringing independent departments and resources together can release efficiency without a reduction in standards, however, the financial benefits are limited. Developing and implementing shared services arrangements still takes time to design and plan while relationships can have a significant impact on the outcomes. Other key considerations for shared services are being able to directly employ expertise that individual authorities couldn't afford and providing resilience in service continuity.
Joint ventures	A commercial arrangement where two or more organisations establish a new entity for a specific purpose. When between the private and public sector it can provide advantages over traditional contractual arrangements. Shared ownership, risk and reward creates a different dynamic and can build more positive, collaborative relationships than traditional contracting. A typical driver is to attract private sector investment and joining up the different knowledge and skills from the two sectors. Robust governance and contractual arrangements that suit both parties are vital.
Local authority trading company	These are 100 per cent owned by a local authority but can operate commercially therefore can participate in a much wider market than a council could. A key benefit is that financial return comes directly back into the council while the council can maintain a high level of control as the parent organisation. This in turn makes it easier to retain a public service ethos and have the company share the goals of the local authority. However, too much control can stifle the innovation and entrepreneurialism that the trading company was set up to take advantage of.
Mutual	There are many different types of mutual but in short, they are owned and run by and for the benefit of their members who can be employees, customers, suppliers, investors or other organisations. They fit well with a public sector ethos and benefits include employee control which in turn can improve productivity, staff morale and innovation as staff are active agents.

Limited company	These can be limited by shares, by guarantee or public limited and provide limited liability to the members/owners for the activities and debts of the company. A memorandum and articles of associate are the governing documents outlining the objectives of the organisation along with powers, duties and responsibilities, in line with the Companies Act. Charites and CICs can take a limited form, adding additional legal and regulatory requirements.
Community interest company (CIC)	A company must satisfy several criteria to become a CIC. They must then comply with CIC law and the CIC regulatory framework. Everything that it does should contribute towards benefit for the community. This focus provides greater access to funding, albeit not to the same level as a charity. There are restrictions on how assets and profits can be used to safeguard their use for the community; these restrictions are outlined in the articles of the company.
Trusts	As a non-profit-distributing organisation, trusts are an effective way of managing an asset or resource for the benefit of a third party. Councils can transfer responsibilities and functions to other organisations through a trust, for example, transferring a local park to a town council.
Charity	A charity must comply with charity law and the charity regulatory framework. The main aim of a charity is to provide benefit to the public and a key attraction is the ability to increase access to different funding streams such as grants and donations as well as benefit from tax advantages. Charities have the freedom to trade but do have restrictions on what they can do with their profit.

Governance and the role of scrutiny

Effective scrutiny improves the strength of decision making as well as ensuring that decisions are transparent and in accordance with the needs of the local community. Getting the governance right is integral to the success of any good decision making process. Councils should develop a clear commercial strategy and governance framework which operate within the parameters of their constitution. The governance framework should clearly articulate the role of councillors and scrutiny.

The governance framework will be specific to your local context, the organisational constitution and will vary based on the enterprise that you are developing and the type of activity that you will be undertaking. It will also be dependent on the scale of activity, the risk profile, the legal model and the existing council governance arrangements. It is likely that this is area where specialist advice may be required.

Careful consideration is required to ensure that the governance framework is compliant with the councils existing legal and financial framework and constitution whilst also adhering to company law. Particular care should be taken to identify any conflicts of interest; this can be done through the initial options appraisal and decision making process and also once your commercial activity becomes operational.

Councils should consider governance early in the options appraisal process prior to making any decision to embark on commercial activity. The decision making process should clearly articulate:

- who sits on the board, whether that be councillors, officers or independents and if that creates any potential for conflicts of interest

- the nature of the decisions that are reserved for the shareholder (ie the council) and those that are taken by the board
- what is being requested of councillors and officers and the training and support they will receive
- the risks and potential benefits
- how these risks will be proportionately managed
- under which legal powers is the decision being taken
- any delegated powers
- the governance framework and scrutiny process
- consideration of having non executives on the board.

A good governance framework should:

- define the distribution of rights and responsibilities between shareholders, the board and managers/employees, commissioners and contract management
- be compliant with the councils existing legal and financial framework and constitution whilst also adhering to company law
- articulate the rules and procedures for making decisions (within any new legal entities and within the council)
- balances the need for control to manage the councils shareholder interests with the flexibility required to achieve company objectives
- have a clear separate role (from shareholders) for commissioners which defines the role, and controls in operation to ensure the council is achieving value for money for the services it purchases from any external organisation.
- enable administration's priorities to be fulfilled and reporting back into the councils reporting arrangements is in place.

Risks and contingency planning

While implementing major change always carries risk, many of our case studies felt that the risk of doing nothing was more severe than any other risk they faced. Instead of being risk adverse, you can be risk aware and put effective mechanisms in place at every step of the journey. This is the value of a robust options appraisal, business case and business plan; to help you to understand, avoid and mitigate risks.

As outlined throughout this guidance, approaching the task in an appropriate order will create a strong foundation; decide on your objective and outcomes, then decide on the model.

A part of your planning process you should consider the impact of failure and identify an appropriate exit strategy. While a council may have no legal obligation to step in if a company which it set up fails, some may choose to minimise the impacts of failure to remain aligned to their values or avoid additional reputational damage.

In some instances of failure, if the customers are buying the services directly, and the entity is not providing a statutory service, then there may be other providers for the customer to turn to. While it may cause reputational damage to the council there may be little action necessary. However, if the council is a customer of the new entity and relies on it to provide services to residents then the risk and need for direct action is far greater. The council may need to bring the service back in-house, taking on board the disruption, reputational damage, and any additional costs that may be incurred. If the council has decommissioned a service it can take time to deal with the practicalities of bringing it back in-house; finding property, procuring equipment, and bringing back skills that may have been lost. Alternatively, the council may choose to find an alternative provider but again, the costs and time involved could disrupt services and may rely on expensive emergency provision, for example, if providing adult social care.

Buy in, skills and capabilities

When developing the option for a trading company, you will need to consider where the workforce will come from. Existing staff could be seconded from the council and any partner organisations or TUPE could be used to transfer staff into the new company. Seconding staff can help to keep positive relationships between the new organisation and the council and can help staff to feel more comfortable and secure about the new arrangement. But it can also make it more of a challenge to create a culture and dynamic that is different to the council and can place limits on more innovative approaches to reward and incentives as well as financial levers.

Using the Transfer of Undertakings (Protection of Employment) Regulations 2016, SI 2006/246 (TUPE) to transfer staff into a new organisation can give provide more autonomy for the company and greater clarity for staff about their new role. It can make developing a new culture easier and allow the company to take ownership of approaches to recruitment and retention. But it does leave the new organisation with a greater liability should anything go wrong. Terms and conditions and liabilities for any future redundancy cost, etc. should be made clear through legal conditions.

There may be new requirements for roles at all levels from board member, managing director to sales and marketing and you should consider if the required skills and knowledge already exist within the organisation or whether it will need to be brought in.

It's not just the new company that may need new skills and functions. The council may find a need for increased commissioning and contract management capabilities and capacity as relationships with service providers change. This will be different depending on the type of model used and the scale.

While transitioning into a new model can be a time of anxiety for staff, there are many who report feeling re-energised, engaged and optimistic about their new situation, particularly if they have had the opportunity to influence and design the new arrangements. It can result in a change in dynamic and culture that allows innovation and autonomy, while staff get the opportunity to learn new skills.

Leading staff through change, helping them to see their place in the future of the organisation and ensuring opportunity for input will help to retain individuals through times of uncertainty. But while working in a new company can be exciting for some, it is not for everyone.

New companies will also be competing in a wider jobs market so pay and conditions need to reflect that and alternative models allow for more flexibility and innovative ways to incentivise staff. This can include performance and/or attendance related rewards tailored to the market they are operating in such as additional annual leave and bonus payments.

Case study 5

Cheshire West and Chester Council and Wirral Borough Council Trading schools services

The catalyst/driver for change

Cheshire West and Chester Council and Wirral Borough Council have an ambition that schools and other educational settings continue to have access to high quality, value for money, sustainable education related services. They both have a long tradition of delivering well respected services to schools but recognised that the role of local authorities in relation to schools and education is undergoing a fundamental change. This change will affect all services councils provide to educational settings, both central statutory functions and traded services alike. The main factors driving the changes were:

- the increasing delegation and diversion of funding directly to schools and corresponding reduction in retained council budgets, eg changes to funding of retained duties through the dedicated schools grant
- the development of a competitive commercial market for support services and entry of private sector providers with significant marketing and business development resources.

Both councils recognised that these factors posed risks which could potentially impact the quality of services which schools receive and they decided that they wanted to maintain a strategic link with schools by developing a more collaborative model with them.

What are they doing?

In 2014, both councils engaged in a conversation with schools to gage their appetite for developing a community interest company which would be run by schools for the benefit of the community, with profits being reinvested in outcomes for children.

The main ambition for the new organisation, was to:

- deliver high quality services that are value for money
- support improving outcomes for children and young people by reinvesting profits into service improvements and the local community
- create a single front door through which schools, and other customers, can access services
- include mutual principles by involving schools and governors in the running of the new organisation
- be commercially successful.

In 2015, the councils established the new company and it now employs over 1000 employees and has an annual revenue of £23 million.

How did they do it?

In 2014, the transformation programme was put in place to work with stakeholders to identify and shape viable options for appraisal. This was an extensive process which involved detailed analysis of the market environment, existing cost structures, and potential opportunities. A business case was then developed based on sound evidence.

Once the decision to create the company was made a managing director with excellent commercial acumen was recruited to develop and deliver a business plan which would deliver the outcomes being sought. A board was recruited which was largely made up of school and governor representatives and a clear shareholder governance model was adopted which ensures members have an ongoing role in the scrutiny of the success of the company.

Key learning points:

- Have a clear business case which apprises all delivery options?
- Make sure schools are involved in the conversation early. Make the conversations meaningful
- Ensure that there is the commercial acumen to develop a credible business plan which is deliverable.
- Ensure that a governance model is adopted which:
  - provides the company with the flexibility required to be successful
  - provides an ongoing role for the council (and members) as shareholder to ensure they are achieving the outcomes for which the company was created.

Pupils from a local school taking part in a programme offered by Edsential – a community interest company owned by Cheshire West and Chester Council and Wirral Council to provide services to the education sector.

Chapter 4 – investment and property development

We are beginning to see some councils taking an entrepreneurial approach to generating income through property development and investment. Councils across the country are looking at ways to build new homes and commercial premises for local citizens and businesses. This has the potential to deliver a direct financial return whilst also growing the council tax base and business rates base.

This is particularly specialist activity where advice should be sought, if necessary from a range of experts such as lawyers, property experts and accountants. Councils considering investment activity should be clear around long term risk and benefit modelling, governance and what specialist capabilities may be required to support the activity. They should be aware of the accumulated affect of every decision they take as well as the risks of each individual decision.

Emerging models include buying shares, investing in start-up businesses and developing fund management functions.

When considering investment and property development, councils should be mindful of a council's capital finance regime. This is a complex but critical area, where specialist advice may be required. Councils should pay particular attention to The Prudential Code for Capital Finance in Local Authorities which underpins the system of capital finance.

CIPFA's Prudential Code has been developed as a professional code of practice to support councils in taking these decisions. Authorities are required by regulation to have regard to the Prudential Code when carrying out their duties in England and Wales under Part 1 of the Local Government Act 2003, in Scotland under Part 7 of the Local Government in Scotland Act 2003 and in Northern Ireland under Part 1 of the Local Government Finance Act (Northern Ireland) 2011[13].

Case study 6
Durham County Council
Business Durham

The catalyst/driver for change

Durham County Council came into being in 2009 as part of local government reorganisation. One of the objectives for the new authority was to attract economic investment into the area and so it set up a bespoke service to focus on this area; Business Durham.

What is the council doing?

Business Durham, whilst still part of the council, operates under an independent brand and identity. Its aim is to create an environment that attracts and supports businesses into County Durham. Funded by the property portfolio, the company supports start-ups and SME expansion, raising the profile of the area. It provides a business support programme that covers a range of areas from starting up, upscaling ideas, relocating, and securing property and funding. It also helps to facilitate networking between businesses; the wide geographical area and less dense population can prove a challenge for natural networks to develop.

But, as part of this model, Business Durham goes further than just trying to create a favourable environment for business. It manages, has invested in, and developed a portfolio of business properties from office space to laboratories. It also directly invests in new organisations, working in partnership with businesses in new and unique ways, and is currently exploring a self-sustaining venture capital investment fund which would be managed through the creation of a new company, owned by the council, and eventually becoming Financial Conduct Authority (FCA) authorised.

The ambition is to move further into financial investment, utilising an FCA accredited fund manager, is certainly at the forefront of innovation in the sector and could lead the way for an entirely new, enterprising model.

Key benefits and results

- Revenues comes back into the council, creating public value.
- A far greater return is achieved, along with a more sustainable model, by partnering with businesses rather than providing grants.
- Businesses receive a higher level of support and advice than they would through a traditional grant, as both parties have a vested interest in their success.
- There is a greater intermediary community active in Durham, facilitating wider growth opportunities for Durham businesses.
- County Durham benefits from a thriving and diverse economy that continues to attract inward investment.
- Making County Durham an attractive place to do business continues to provide local jobs.

Key learning points

- Council support for innovation and a mature approach to risk will allow you to take advantage of unique opportunities.
- Creating a separate feel without creating a separate legal entity can help to maintain good links with colleagues in different parts of the organisation while allow a new dynamic and culture to grow.
- Financial modelling and sound business planning are key, as are having people with the right capabilities in place.

NETPark, the North East Technology Park, is one of Business Durham's strategic sites. It is one of the fastest growing Science, Engineering and Technology Parks in the UK. All companies at NETPark are members of NETPark Net, Business Durham's specialist support service for science, engineering and technology companies, which offers virtual support to members anywhere in the world.

Chapter 5 – scaling up

If councils charge for existing services or set up a single trading element, then there will not necessarily be huge impact on an organisation as a whole. But as the volume and diversity of enterprising activity grows it can fundamentally change the structure and vision for the council and you may need to revisit your corporate strategy.

The question of scaling up is an important one in terms of the overall strategy. Councils will not want to allow commercial activity to grow out of all proportion, so that it detracts from the council's core purpose. It is also important to consider the impact on the remaining organisation and the implications on funding when scale is increased.
For example, you may have reduced the size of the organisation by procuring services from separate legal entities but some overheads will not reduce such as the cost of democracy. Similarly, some demand, and therefore cost, in areas such as property will reduce in stages which may be beneficial when at one level, ie releasing one property, but could create increased financial pressure over a smaller base if you are left with a building which has the same running costs but is not at capacity.

You must understand your organsiation's capacity to grow its commercial activities and maintain service delivery at the same time. Periodically revising your strategy, target operating model and governance arrangements will help you to stay aware and in control as will an informed prioritisation of decisions.

Chester and Wirral – pupils

Chapter 6 – markets and competition

Guidance on how and when to enter markets supplied by the Competition and Markets Authority

Competition is a process of rivalry where each supplier has an incentive to deliver what the customer wants as effectively and efficiently as possible in order to win or keep business. Competition:

- **drives suppliers to improve their internal efficiency and reduce costs** so they can deliver the same goods and services to consumers at lower prices
- **encourages suppliers to adopt new technology** and/or new techniques and processes which can reduce suppliers' costs
- **encourages suppliers to invest in innovation** to improve the quality of their existing products and/or develop new ones that better suit the changing needs and preferences of consumers
- **reduces managerial inefficiency** as competitive pressures from other suppliers and new entrants lead suppliers to look for more efficient ways to organise their business
- **improves industry-wide productivity** as the entry, or the threat of entry, by new suppliers and the exit of inefficient suppliers helps to raise productivity across a market.

Over the long term, competition – by improving supplier-level efficiency and incentivising investment in innovation – generates higher rates of productivity growth resulting in increased economic growth and greater prosperity.

Local authority trading companies

Local authorities can secure the benefits of competition in a market by creating and shaping a market over time in which multiple suppliers compete and end users exercise effective choice. Alternatively, councils can introduce competition through competition for the market, where suppliers compete for a contract to deliver a good or service. In either case, councils may choose to set up a trading company in order to help generate or intensify the benefits of competition.

Local authority trading companies might be established with this intention in mind where:

- the free market fails to provide the desired goods and services at an appropriate level
- councils wish to benefit from the commercial value of public sector assets
- councils are best able to capture synergies or efficiencies.

Generally speaking, a greater number of competitors is a good thing. However, simply setting up a trading company will not necessarily generate the benefits of competition. These benefits are only secured if suppliers, including any trading company, have both the ability and the incentives to compete vigorously – either against each other or in the face of the possibility of new entrants.

The 'Teckal exemption'
Use of the Teckal exemption (where the trading company will – for the purposes of procurement – be treated as an in-house administrative arranging) risks local authorities missing out on the benefits of competition. Whilst such an arrangement will save the money of a procurement exercise, it will likely result in a lack of understanding of the potential benefits of competition which could outweigh the procurement costs. In the short term, it would be difficult for a council to be confident that the taxpayer is getting value for money. In the longer term, by protecting the trading company from the forces of actual and potential competition, Teckal companies will likely face very limited incentives to improve or innovate which may lead to less responsive, less innovative services.

In order to generate the desired competition benefits, local authority trading companies must have the ability and incentives to compete.

Any company, regardless of ownership, can enjoy a competitive advantage perhaps because it has invested wisely or developed an efficient business model. But sometimes the ownership of a company can work to its advantage or disadvantage. For example, public sector providers may face additional costs associated with their local authority connections, such as universal service obligations or public sector wage requirements. Conversely, local authority trading companies may benefit from access to cheaper finance or contracted out services being subject to different rates of VAT.

Where a competitor has an advantage deriving from its ownership rather than its performance, in the short term contracts may not be awarded to the most efficient supplier, potentially leading to higher prices and worse outcomes. In the longer term, incentives for suppliers to compete and/or innovate will be weak. Eventually, more efficient productive suppliers may leave the market.

These outcomes are bad for:

- the national economy, which will see reduced gains in productivity
- the local economy, which will see reduced incentives for new companies to set up or for existing companies to innovate if they won't be rewarded by winning contracts
- taxpayers, who will overpay for goods or services received
- local service users, who are likely to get a less responsive service, characterised by lower innovation.

Where markets are in play, competitive ones are more likely to give better outcomes in relation to price, choice, quality, and innovation than uncompetitive ones. It important that public bodies neither suffer disadvantages nor exploit any unfair advantages over the private sector.

Scenario 1: local authority trading companies competing in the open market

When local authority trading companies compete with private or voluntary and community sector companies for customers or contracts, including for contracts let by other public bodies, it is possible that they will benefit from their association with the local authority. Whilst this could constitute a legitimate advantage, trading companies should be careful to ensure such benefit does not stray into unintentional state aid (see page 29).

Where local authority trading companies act as a gateway to other services, the trading company must not give private sector competitors worse access to facilities than their own downstream operations. Such behaviour could result in worse services for local users and might constitute illegal abuse of a dominant position.

Where a trading company has a dominant position[14], it must take extra care not to:

- refuse to grant access to facilities owned/managed by the trading company which may be essential for other competitors to operate in a market
- charge prices so low that they do not cover the costs of the of the product or service sold in order to exclude competitors
- offer different prices or terms to similar customers without good reason
- refuse to supply an existing or long standing customer without objective justification.

If a trading company is to help deliver the benefits of competition to the local authority, local service users and the local economy, it must not create barriers to the effective operation of other suppliers.

Scenario 2: local authority trading companies bidding for contracts let by their parent authority

There are also competition risks when a trading company bids for – or wins – contracts let by its parent local authority. In order to ensure the council secures the potential benefits of competition, private sector companies considering bidding against the trading company for the contract have to be confident that they stand a real chance of securing a contract. Even the perception that a council might discriminate in favour of a trading company may discourage private sector firms from committing resources to bidding for contracts and thus both weaken competition and prevent the local authority from understanding the true nature of the competitive market.

Some areas of risk to fair and effective competition cited by disappointed bidders include:

- Procurement process: the bid criteria or nature of the procurement process should not favour the trading company over private or voluntary and community sector bidders.
- Regulatory capture: it is possible that the local authority will create an environment which benefits its trading company, or may enforce regulation differently in relation to the trading company. For example, council traffic wardens may not give parking tickets to vehicles clearly operated by a council-related business.
- Conflict of interest: given the authority's interest in the financial viability of the trading company, governance standards must be exemplary and clear to reassure potential bidders that the conflict of interest will not sway procurement decision making.
- Misallocation of costs: trading companies may underestimate the value of any service provided by the council. If charges for services provided or allocations of overhead costs are too low, a trading company could offer its services at an artificially low price, potentially driving private sector competition out of the market.
- Mispricing of risk: private sector bids usually build in contingency for increases in costs above expectations over the life of the contract (for example, in the cost of fuel). If a trading company fails to price such a risk accurately the bid may appear cheaper but in fact expose the council to the risk of having to bear the additional cost. Thus, the value for money judgement underpinning contract award can be distorted.

Councils need to be aware that these risks may prevent them securing best value from procurement exercises. Even the perception that a local authority might discriminate in favour of their trading company may discourage private sector firms from bidding for contracts.

Trading companies and competition law

Trading companies are likely to be considered economic actors subject to the same competition rules as private sector competitors. That means that the authority must not breach state aid rules in dealing with a trading company, and it must not breach the prohibitions against anti-competitive agreements and abuse of dominance set out in competition law. Furthermore, only if fair competition between trading companies and others is allowed to flourish will the benefits to users and taxpayers be secured.

Non-compliance with competition law can have serious consequences for a council and for trading companies including adverse reputational impact, possible financial penalties and claims for damages.

Case study 7
South Norfolk Council Housing development

The catalyst/driver for change

Like many areas, the demand for housing in South Norfolk was outstripping supply. Council owned - development sites had been identified in the local plan and while the options for development were considered, they recognised the strategic benefits of applying a public-sector ethos to local house building through a company model.

Around the same time, the council also started to consider the decline in building control provision amongst the public sector as legislative changes in the 1990s had resulted in a rise in private sector provision. Rather than wind down services as others had, South Norfolk Council decided to take their high-quality offer and existing strong building control brand to the market to generate additional income.

As an enterprising council, it seemed natural to explore different approaches for these services.

What are they doing?

South Norfolk Council has several enterprising models including housing development, property management and building control companies.

The housing development enterprise was the first of these ventures and began when the council began to develop a site in 2013. It has moved on significantly since then, with the first property being sold in 2014, and further residential and commercial spaces being developed adopting a live-work approach.

While some properties are sold on a commercial basis, other residential properties are rented through a property management entity, meeting some of the need for affordable rental accommodation in the area.

In addition, a building control company began to trade in 2014. This offers support to customers to meet the statutory requirements of building control, as well as offering ancillary consultancy services and testing.

How did they do it?

While South Norfolk Council has a number of companies, they made sure that they did not simply apply the same design to all. Instead, they considered the most appropriate design and approach for each scenario with thorough viability studies for each. This has resulted in different arrangements, for example, in areas such as staffing. For the housing and property companies, it was appropriate to make secondment arrangements for staffing so that employees are still part of the council. For the building control company, however, it was appropriate to recruit staff separately with different terms and conditions to South Norfolk Council employees.

Buy back arrangements have been utilised to cover areas such as marketing, sales and finance. This has allowed the new companies access to support services and has created growth and greater sustainability for the areas of the council that sell and provide those services, as well as opportunities for staff to take on a new challenge.

As the portfolio of companies developed, governance became increasingly important. The housing and property companies have a board to govern their activity along with a shareholder agreement, as does the building control company. The boards include officers and non-executive directors; the use of which brings new skills and knowledge into an organisation. The council, as company owner, has selected councillors in the role of shareholder.

Although each company has been set up to compete with private, and in the case of building control, public sector competitors they do prefer to work in partnership with other councils whenever possible.

Key benefits and results

Housing has been developed for the good of the district rather than purely for monetary gain; maintaining a public-sector ethos has kept design and build to high standards.

Utilising buy back and loan arrangements has created additional incomes streams for the council.

The secondment of staff has allowed personal development, upskilling across the organisations and maintained links with colleagues, as well as encouraging a commercial ethos in delivering council services.

While it has taken time and investment, profit is anticipated from 2017/18 onwards.

Key learning points

Extensive upfront planning, exploration and financial modelling for each venture is vital to ensure that the journey and milestones are clear.

Emphasise timescales to manage expectation; building housing is a long process and can take around 18 months just to get onsite. Similarly, as with many new businesses, profit may not come for several years.

Be clear about who can make what decision and individual roles both before and after setting up a new company.

A company can operate differently; but it doesn't have to. Work out what's best for the company and what's best for the council in each situation.

Try not to underestimate the resource needed from new roles; it takes time and effort to win contracts.

Plan what you will do if the venture fails or fails to meet a contract; will the council step in to fulfil a contract to avoid reputational damage? It is prudent to carry out contingency planning.

One of the houses at the Rosebery Park development, which is being built by Big Sky Developments – a company wholly-owned by South Norfolk Council. The final development will consist of 57 two, three and four bed houses.

7. Check list

When considering an alternative delivery model for a service it is important to ensure that you undertake a robust and evidence based decision making process. The four stages outlined in 'Chapter 1 – Overarching considerations' provide a sound framework to consider:

Developing a commercial strategy → **Options Appraisal, Business Case and Decision Making**

Developing a commercial strategy

- What is the organisation's overarching strategy ?
- Is there a political drive for commercial activity and to what extent?
- What are the drivers for change?
- Where does the organisation want to be in five years?
- Are you comfortable competing against local businesses?
- Are you comfortable competing against public sector organisations?
- Will you operate in your locale or will you operate outside of your boundaries?
- Will investing in other geographical areas create conflict?
- Will going for business in different areas create issues or tensions for partnerships with neighbouring authorities?
- Will operating in other areas in a competitive way be Politically acceptable?
- Are you setting yourself up in direct competition or are you bringing something new to the market?

Options Appraisal, Business Case and Decision Making

OVER ARCHING

- What is the current situation?
- What is your objective?
- What are the efficiency and productivity levels?
- Do you understand the current and future demand on the service?
- What are the options (See Charging, Trading and Investment) and has each viable option been satisfacorily explored?
- Do you understand the costs – for set up and running of the alternative options?
- Have you undertaken a full market analysis?
- Have you engaged key stakeholders and gathered their views?
- Have you identified, understood and put in place suitable management of risks?
- Have you considered future governance?

LEGISLATION

- Have you identfied and understood all relevant legislation?
- Are you ensuring you are compliant with relevant legislation?

SKILLS, CAPABILITY & CULTURE

- Do you know the current staff turnover and morale?
- Is the required leadership in place?
- Have you assessed the current skills and capabilities?
- Are staff involved?
- Are key stakeholders, those involved in future governance, suitably skilled/trained?

SOCIAL VALUE

- Have you assessed and understood the impact on residents?
- Have you assessed and understood the impact on local businesses?
- Have you assessed and understood the impact on employment/ employees?
- Have you assessed and understood environmental impacts

8. The future

The guidance has outlined areas for consideration when embarking on an enterprising journey but this does not begin to capture the wide and diverse opportunities available. Current trends indicate that this diversity of approaches and delivery vehicles is set to continue. Councils have always been enterprising but the scale, variation and pace is a more recent phenomenon and the fabric of the public sector is fundamentally changing. This uncertainty brings with it a level of anxiety, but the resilience and innovation already displayed by councils up and down the country shows that the mould has been broken and gives confidence that councils will continue to forge new and innovative paths as they strive to provide quality, sustainable, public services.

9. LGA support offer to councils' commercial activities

LGA's Advanced Commercial Group (ACG) was set up in 2014 and comprises 25 councils from across the country who are particularly advanced and innovative in their commercial thinking. The aims of the ACG are to:

- share different approaches to commercialisation to enable mutual learning
- enable councils already advanced in their thinking to move further, faster
- identify potential synergies/opportunities for collaboration/partnerships/joint ventures where appropriate
- design and shape the LGA's improvement offer on commercialisation.

Commercial Experts
We've extended the LGA's Productivity Expert offer to provide funding to councils who wish to engage with a commercial expert to provide the necessary skills and expertise to help the council to generate income.

Commercial skills training for senior officers
We have developed a course in partnership with the Institute of Directors (IoD) which will allow participants to learn the key skills and competencies needed to equip councils to undertake greater commercial activity.

The course is delivered over eight days comprising of the following four modules:

- **Governance** - strategic risk evaluation and management
- **Strategy** - formulating strategy
- **Finance** - financial roles and responsibilities of directors
- **Dealing with commercial partners and negotiating skills** - supplier relationship management

The LGA's commercial skills procurement solution (CSPS)
In partnership with YPO, provides councils with a bespoke solution to finding the right people, making the delivery of commercial projects easier and ensuring councils pay a competitive price for specialist expertise.

Further information about the LGA support offer can be found at: www.local.gov.uk/commercialisation

10. Endnotes

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13 CIPFA's Prudential Code for Capital Finance in Local Authorities (Prudential Code) was introduced in 2004. Local authorities are required to "have regard" to it when developing their capital investment plans. Since then, the landscape for local government has changed significantly following the sustained period of reduced public spending and the developing localism agenda. At the time of writing, CIPFA were reviewing the Prudential Code, and out to consultation how it can be strengthened or amended.
The latest edition of the Prudential Code is available here: http://www.cipfa.org/policy-and-guidance/publications/t/the-prudential-code-for-capital-finance-in-local-authorities-2011-edition-book

14 A 'dominant position' is here defined as being able to behave independently of the normal constraints imposed by competitors, suppliers and consumers.

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