



**APSE Commercialisation, Income Generation & Trading Advisory
Group**

The legal framework surrounding trading and charging powers

20th April 2017

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**WALKER
MORRIS**



What's the difference?



Brief History of Charging and Trading

In the beginning

Some specific legislation

S111 Local Government Act 1972

Spare Capacity

Will we get away with it?

Challenges

Court

- McCarthy and Stone v Richmond upon Thames LBC

Central Government

- DLOs, CCT

Audit

More Legislation

S150 Local Government and Housing Act 1989

Local Government Act 2003

Localism Act 2011

AND REGULATIONS AND GUIDANCE

Specific Powers



Encourage Visitors

- S144 LGA 1972



Provision of Entertainments

- S145 LGA 1972
- Power to charge



Parking,

- Part iv Road Traffic Regulation Act 1984



Recreational Facilities

- LG (MP) Act 1976



Energy

- Sale of Electricity by Local Authorities (England and Wales) Regulations 2010/1910

Providing Goods and Services to Public Bodies

- Local Authorities (Goods and Services) Act 1970
 - Authority may provide to a **Public Body**:
 - Goods and materials
 - Administrative Professional or Technical Services
 - Use of vehicles plant or apparatus
 - Works of maintenance
 - Such terms as to payment or otherwise as the parties consider appropriate

General Power of Competence (Localism Act)

- Power to do anything that individuals may generally do
 - Even though in nature extent or otherwise
 - Unlike anything the authority may otherwise do
 - Unlike anything that other public bodies may do
 - Individual with full capacity
- Anywhere in the UK or anywhere else
- For a commercial purpose or for a charge or without a charge
- For or otherwise than for the benefit of the Authority or its area or residents

Charging for Services

Local Government Act 2003

- Relevant authority may charge for a service if—
 - authorised, but not required, to provide the service
 - the recipient has agreed to its provision.
 - does not apply if another power or express prohibition to charge for the provision of the service,
- Duty to secure that income from charges does not exceed the cost of provision
 - taking one financial year with another.

Localism Act

- power to charge the person for providing a service only if—
- (not one that a statutory provision requires the authority to provide to the person,
- the person has agreed to its being provided, and
- the authority does not have power to charge for providing the service.
- taking one financial year with another, the income from charges does not exceed the costs of provision.

Power to Trade

Local Government Act 2003

- Authorised to do for a commercial purpose anything which authorised to do for the purpose of carrying on any of its ordinary functions.
 - Not where required or authorised under ordinary functions
- Power only exercisable through a company
 - part 5 of the Local Government and Housing Act 1989.
 - Prepare business case
 - Recover costs

General Power of Competence

- Limits on doing things for commercial purpose under the General Power
 - Only through Company
 - Not if activity is a duty
 - Subject to
 - pre-commencement limitations
 - post commencement limitations



RUNNING AS A BUSINESS

Do you need a Company?

Statutory Requirement

Trading
Powers

Choice

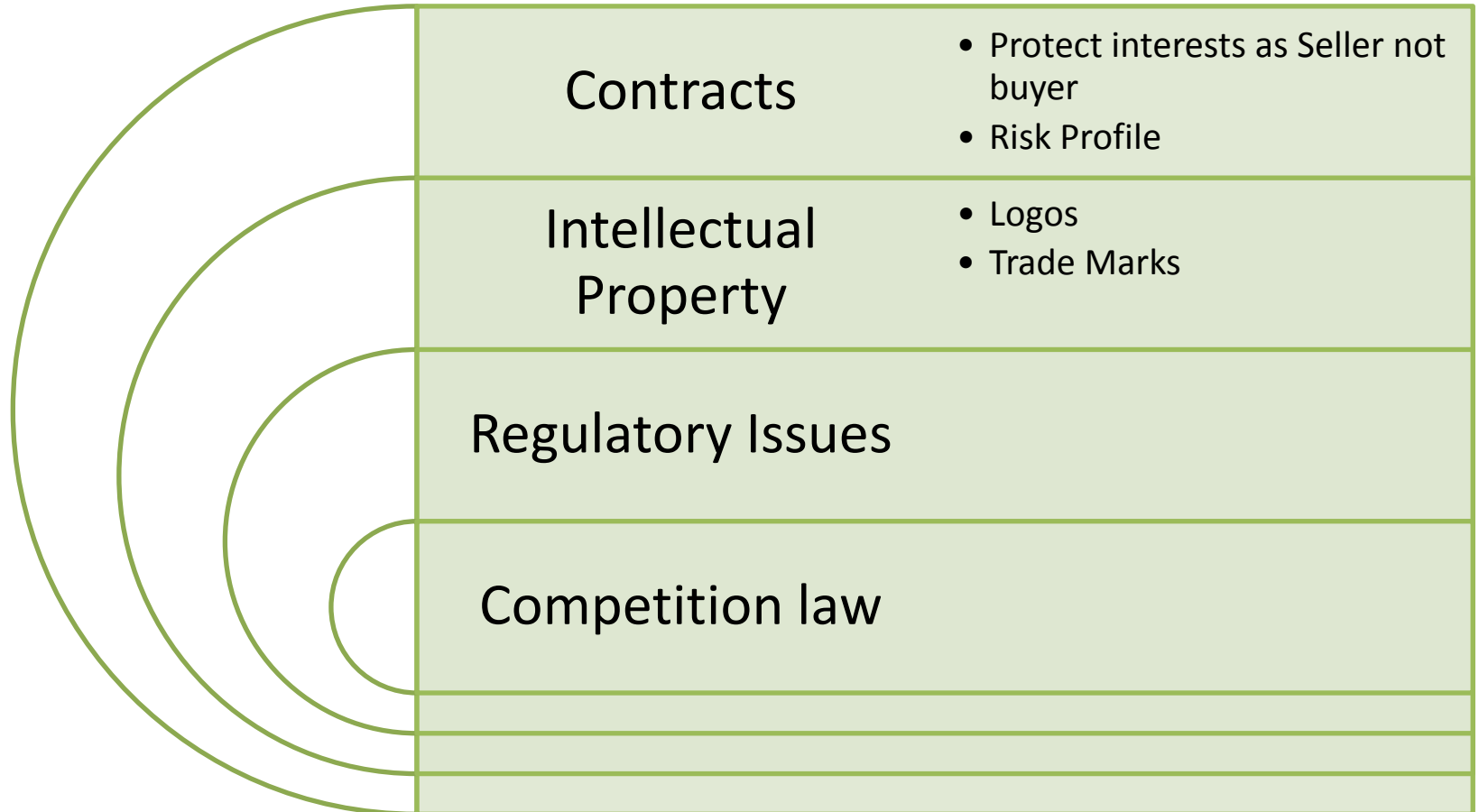
Limited
Liability

Tax

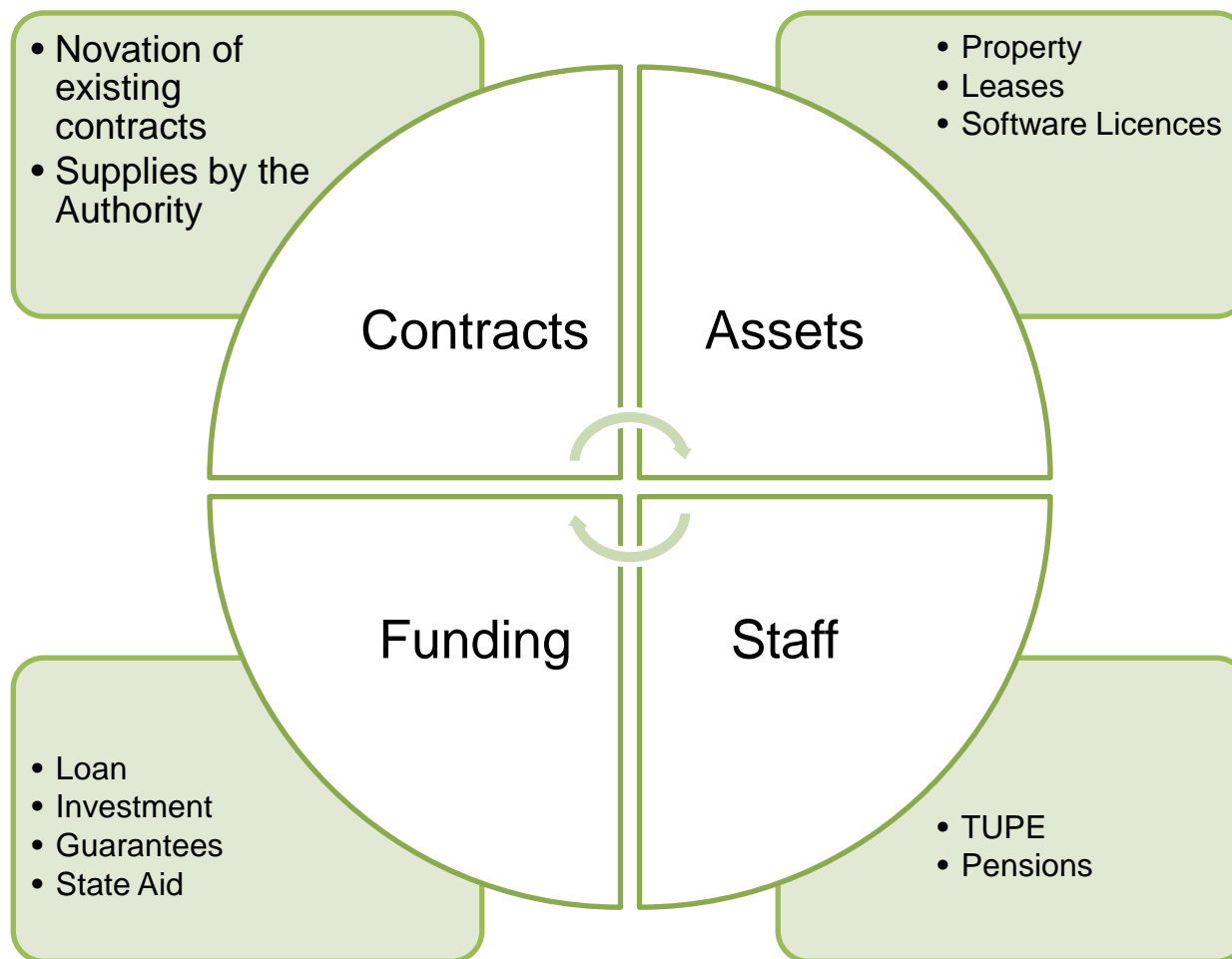
Governance

Procurement

Other Business Issues



Business Transfer Issues



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