Risk and commercialisation

A guide for local scrutiny councillors

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APSE (Association for Public Service Excellence) is a not-for-profit local government body working with over 300 councils throughout the UK. Promoting excellence in public services, APSE is the foremost specialist in local authority front line services, hosting a network for front line service providers in areas such as waste and refuse collection, parks and environmental services, leisure, school meals, cleaning, housing and building maintenance.

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The Centre for Public Scrutiny

The Centre for Public Scrutiny's (CfPS) purpose is to improve lives and places through effective governance and public scrutiny. As a national, independent charity with a long history of providing governance and scrutiny support to local government, alongside other public services and sectors CfPS exists to promote and support organisations to be more open to scrutiny and involve others in decision-making.

This report was written and researched by Elena Konopelko, Research Officer, and Ed Hammond, Director of Research, CPS with input from Paul O'Brien, Chief Executive, APSE

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Introduction

The financial crisis for local government continues to bite. The sector continues to speculate about the likely future of its funding, as the central grant is withdrawn and the detail of the localised business rate system intended to replace it remains unclear.

The crisis affects different councils, and areas, in very different ways. For top tier councils (counties and unitaries) pressures around social care and children's services dominate – "demand-led" services where cost control has historically proven difficult. For smaller districts, the challenge often lies in financial sustainability overall. The prevailing wisdom is that smaller councils will by definition find it more difficult to design and deliver services on their own with diminished funds.

As ever with these kinds of crises, many see opportunity – even where that opportunity might involve councils having to fundamentally change how they work. For a number of councils those different ways of working have coalesced around a word that has many different meanings: commercialisation.

Commercialisation – in the loosest sense – is about additional income generation activity. In reality the word means much more than just this, as this research will demonstrate. The problem is that in the sector, and amongst elected members, there is an imperfect understanding of what commercialisation actually is. While many agree that councils need to be more "entrepreneurial", it is easy to say the words but much more difficult to translate the language into action.

Councils can be pulled, and pushed, towards a more commercial approach. For some, it is about survival – seeing income-generation as a way to secure sustainable funding for the ongoing delivery of services. For others, it is more fundamental – an opportunity to reshape a council, its approach and its ways of working, towards a more commercial mindset overall. Both approaches have profound implications for member oversight, scrutiny and governance.

Council approaches to commercialisation will involve the deployment of internal resources in different ways – a different (and often more flexible) approach to the way that finances, assets and people are "used". The act of transformation – and the design of those activities – involves a commercial outlook.

"Commercialisation", as we conceive it, is not about setting up an arms length body or venture to "do the commercial stuff", with the rest of the council staying as it is. It involves a whole organisational shift, changes to the way that professionals and councillors think about their roles, and a more flexible approach to how entrepreneurial opportunities are taken account of. Of course, joint ventures and other similar structures can provide a mechanism for delivering those outcomes. But those structures are a means to an end, not the end in itself.

This publication aims to look at some of the more common approaches towards commercialisation and discuss ways in which scrutiny can engage with issues arising from those activities. It is based on desktop research and interviews with chief executives, leaders of council, scrutiny chairs and members of financial scrutiny committees, scrutiny officers, and officers from councils' commercial companies.

Some scrutiny practitioners are in two minds about the need to engage with scrutiny of issues relating to commercialisation. Some find it difficult to understand how scrutiny can add value, or even find the subject too internally-focused, not especially relevant to the lives of local people. This reflects a similar caution on scrutiny amongst those on the executive side. This paper aims to provide some practical ways for scrutiny to contribute in a way that makes a positive difference.

The approach that councils are taking towards commercialisation and entrepreneurialism sets the context in which improvements in other services happen – they set the context in which councils deliver services along with their partners, too, and cannot be treated as separate and distinct. The shifts in mindset and culture that are involved lend themselves to oversight by politicians – indeed, the nature of these shifts requires such oversight. For example, some of the critical decisions that councils will be making here will need to be informed by a mature approach towards risk – something which involves complex (and often subjective) judgments to be made which engage closely with the politics and perspective of decision-makers. These matters demand oversight, if only to draw in alternative perspectives that may add nuance to the way that major changes are planned.

This paper discusses the current landscape around commercialisation, names five key areas in which scrutiny can make a difference, offers seven scrutiny questions that can kickstart scrutiny activity in that area, and finishes with the three main principles of involving scrutiny.

How we carried out this research

This research is based on:

- Interviews with officers and councillors in councils which have put in place plans to operate more commercially and entrepreneurially;
- A review of publicly-available information about the work that scrutiny has done in those councils, and other authorities;
- A general review of the wider research literature around commercialisation, including that produced by sector bodies and think tanks, including APSE.

This report cites individual case studies of commercial activity – but with a caveat. We present a range of examples at the start of the paper, to provide context and to provoke thought about the sheer breadth and scope of commercial activity. We have, however, deliberately not got into in-depth thinking about these individual examples – and in particular, the governance solutions that have been put in place for those examples. This is because doing so would not be especially useful – all governance solutions are different, and highlighting some over others might encourage readers to take away the message that there are preferred structural "models" for governance of commercial activity – which is very much not the case.

This paper aims to provide a toolkit and guide to help you to build your own bespoke, locally-relevant governance and scrutiny systems for commercial activity. It reflects the importance of culture in this arena – and the need to think about the mindset, rationale and logic that underpins commercial activity. Because this must be different in every area, so must governance.

The current landscape

The word "commercialisation" means a very different thing now to what it might have meant fifteen or twenty years ago. Then, the focus of commercial activity was about charging for additional services – and selling services to neighbours. This kind of activity continues, but the new wave of commercial activity is about more than this – it is about changing the mindset and approach of councils, to adopt a more commercial and entrepreneurial mindset to how services are designed and delivered overall. Fundamentally, it is about integrating commercial activities, and a commercial mindset, into the core of how a council operates. It is not about spinning off commercial activities into an arms length body and keeping "core services" looking much the same as they have always done. This kind of integration means that commercial activity itself has to be carried out for a public policy purpose, not just to make money. Commercial activity should complement councils' core purpose as democratic bodies designing and delivering critical services for local people.

The best opportunities then, for commercialisation to have a significant effect, and to deliver both social and financial returns, lie in a more strategic approach. Of course, there are councils who have focused on squeezing existing assets, and adopting a more business-minded approach to fees and charges – but these kinds of operational changes will deliver only marginal gains.

In an environment where council finances are subject to significant uncertainty, for many the main driver of commercial activity will be its potential to provide a reliable income stream, while also ensuring that a council is diversifying its income base overall. But there are other reasons. In particular, councils may think that a more entrepreneurial approach will allow them to make a step change in how they respond to and act on local people's needs – on their own, and with a range of local and national partners – tying in to the need for an overall social purpose.

Understanding these drivers helps get the strategic view of all council activities and assists both in terms of planning and scrutinising the work.

This central point – deciding on the overall objectives of "commercialisation" for a given council – are critical to success[1]. Objectives have to be subject to debate and consultation – as far as possible, key partners and the wider community need to understand what is happening and the impacts it will have on the way that they engage with the council.

Not only does this need to be decided at the outset, the issue needs to be returned to periodically as commercial arrangements mature. Context changes; the priorities of councils and their commercial partners can change, and diverge. A focus on income generation may make sense at the outset, but it can have unintended consequences – especially when commercial activity might have a negative impact on local business, although this should all be considered in any initial market analysis and any such risk minimised or considered appropriate, for example when a council is acting as a market disruptor for social purpose.

The kind of commercial and entrepreneurial activity that delivers transformative change for a council, in terms of making its services sustainable in the long term while not resulting in a diminution in the quality of those services for local people – must be accompanied by a shift in culture and mindset.

Who is doing what?

Before trying to define and classify the types of commercial and entrepreneurial activity in which councils are engaged, it is sensible to present some current examples – to give a sense of the breadth and scale of the changes that councils are making, and to provide some context for what follows. More details on many of these can be found in the body of research and guidance produced by APSE, its commercialisation

1 "Enterprising councils: supporting councils' income generation activities" (LGA, 2017): https://www.local.gov.uk/sites/default/files/documents/11%20 54%20LGA_Enterprising_Councils_09_Web.pdf

networks, which are well attended by both elected members and officers and its web resources.

Some of these examples reflect a more traditional approach to making more commercial use of existing issues – some involve a more radical departure for councils, rethinking how they work. What they all have in common is that they involve councils both making themselves more financially sustainable, while thinking about how they can serve local people in a different way. All, too, have their own unique governance implications, and we will explore some of those implications in the last section of this paper.

In **Nottingham**[2], the council in 2015 established an energy supplier, Robin Hood Energy, as a rival to the traditional "big six" energy suppliers. The council funded the establishment of the company by way of a £20 million loan. Three years after being established, RHE reported its first trading surplus, of £200,000, and is now valued at £30 million, with more than 150,000 customers.

In **Harrow**, the council uses an in-house entity, Harrow Commercial Services, to offer a range of services to local people and businesses on a chargeable basis. This includes making the most of existing assets – such as using the council's depot as a place to carry out MOTs – to charging for existing services such as bulky waste and pest control.

In **Richmondshire**, the council have sought to change the traditional delivery model for housing (which revolves around a Housing Association purchasing s106 properties and then converting them into affordable housing). The council have now moved to a model where they purchase a number of s106 properties and then market them. In essence, the council takes up the role of a developer. Under this model the purchaser would see a 30% reduction in the market value, paying £112,000 for outright ownership and the council would generate a receipt of £39,000 per property once legal and marketing costs had been deducted.

In **Buckinghamshire**, the council is engaged in a 2 year £3.4 million project that has 11 partners across the public and private sector working on a solution to amalgamate transportation data into a platform that sits in the Cloud and can be accessible by companies who wish to use this data. The data can be accessed by the development community in a standardised format and a commercial model put in place so that local authorities involved can benefit financially.There are also many other non-cashable benefits such as, avoiding vendor lock-in, improved network, reduced congestion, better air quality, more attractive county for businesses and a greater understanding of public transportation services for local citizens.

In **Camden**, the council provides a Wi-Fi network in areas of high footfall where residents, businesses and visitors will be able to access the council's online services. Each registered user will get 30 minutes of free internet access every day on each device they use on the network. This concessionary contract is designed to make better economic use of council owned assets and improve wireless network connectivity for the borough. Once users have taken advantage of the 30 minutes of free time, they will have the opportunity to purchase extra time from the provider of their choice. The contract the council holds with Arqiva provides substantial financial incentives for Camden; income generated (expected to be multiple millions of pounds) will be used to support digital innovation in local firms and tackle digital exclusion.

In **Orkney Islands** they have a well-established cruise liner terminal that is visited by over 140 ships per year earning the council well over £20m in turnover with a significant surplus contributing to the council's budget. This also generates thousands of visitors who spend significant sums of money on local attractions. They have also invested significantly in renewable energy to become self-sustaining in energy terms with surplus generation sold to the grid.

In **Southampton** the council has an existing property portfolio of £100m which generates a 7% annual return which contributes to the council's revenue budget. It recently approved an additional £65m borrowing for further investment to grow the councils' returns from its property investments further.

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2 For other examples of municipal energy – framed in the context of councils' "stewardship" responsibility – see "Municipal energy: ensuring that councils plan, manage and deliver on local energy" (APSE, 2015): http://www.apse.org.uk/apse/assets/File/Municipal%20Energy%20Web%20version%20final.pdf

Defining commercialisation – culture, risk and governance

- Councils are increasingly seeing themselves as holding "stewardship" of their area, as well as continuing to be directly responsible for the delivery of a wide range of services – a development of the "placemaking" philosophy of the 2000s;
- Councils are testing and putting into place a huge range of different commercial practices – ranging from squeezing existing assets more efficiently to a wholesale change in how councils consider their role and their relationships with citizens;
- These new practices must, if they are to be successful, sit in the context of a council that is changing its overall mindset and approach – setting up trading companies or other structures for commercial activity may form an element of commercialisation, but the cultural shift across the whole council is most important.
- Bringing about this change in culture is difficult – some councils have tried a "big bang" approach to change, others have tried to be more iterative. Both approaches have their pros and cons, but the role of non-executive councillors will be central whatever happens.

What is it? Commercialisation and the "ensuring council"

Below, we will talk about the cultural shifts involved for councils seeking to act in a more commercial and entrepreneurial way. Before doing so, it is worth thinking about the broader context in which commercialisation happens. It is not about carrying out some commercial activity on the sidelines and in other respects continuing with "business as usual".

It sits as part of a wider agenda in local government – a shift in our conception of what local government is here to do. It reflects the change from council's exclusively as "service providers" to a world where councils will be at the heart of a complex web of different individuals and organisations.

Some councils use the phrase and principles of "the ensuring council" to describe this emerging role, the typology (introduced by APSE research in 2013[3]) is a useful conceptual framework to use to understand what is going on. In short, an ensuring council is one that:

- Recognises the responsibility of local authorities to be active stewards of the their communities (ie, ensuring that social, economic and environmental wellbeing of the local area);
- Foregrounds the democratic legitimacy of local authorities, placing politics and public value before reliance on competitive markets;
- Endorses collaboration with citizens and stakeholders rather than competition and contractual relation (which provides important context for the more mature forms of commercialisation and entrepreneurialism we will talk about in this paper);
- Acknowledges the responsibilities of local government for advancing social justice through its strategic mobilisation of public employment and civic entrepreneurship.

Of all of these core functions, the "stewardship" role is perhaps most important – the council having broad, "macro" oversight over the whole area, within which a large number of actors operate. For councils, commercial activity, and a entrepreneurial ethos, needs to happen in service of this key role of stewardship. It is not just about financial sustainability for councils as institutions we are talking about here – it is the social sustainability of places themselves.

3 "The road to 2020: a manifesto for the ensuring council" (APSE, 2013): http://www.apse.org.uk/apse/index.cfm/research/current-research-programme/the-road-to-2020-a-manifesto-for-the-ensuring-council/the-road-to-2020-a-manifesto-for-the-ensuring-council/

What is it? The building blocks

Once culture and intent have been discussed and resolved, councils can turn their mind to the specific ways that those objectives can be made to happen.

There are a range of different types of commercial activity in which councils can engage – representing a spectrum both of opportunities, and of necessary shifts in mindset to realise the most financial benefit. These include some of the following.

Better use of fees and charges.

Charging more appropriately for services which might previously have been provided for free or where charges do not cover the real cost of provided service (usually refers to housing, cultural, planning and environmental services provided by the council). Virtually 100% of all councils have had to do some pricing analysis and make a decision about fees and charges in the last several years. A more realistic approach to the kinds of charges that the council already makes is likely to be a natural byproduct of a council's cultural shift to become more entrepreneurial. Importantly, "more commercial" does not, here, mean "increasing charges". It could be that the nature of charging is redesigned more fundamentally to reflect a different conception of the services regarded as "core" and those considered "value added".

Better use of investment.

Councils have long invested in traditional financial products as part of their treasury strategies, alongside property investments with some local councils traditionally being landlords of offices, shops and premises as well as housing. Changes in market conditions with low yields on traditional financial produces, is now a key driver to many councils increasingly looking towards property investment as a potential solution to increase income from investments . There is detailed step by step guidance to property and investment strategies in APSE / CIPFA research 'Bricks, Mortar, Money'[4]. Councils can use investment in commercial property as a vehicle for urban regeneration – although this approach can be risky. Investing in property for purely commercial purposes can be legally complex as noted by House of Commons Library research on the subject – although the situation is currently uncertain, and councils need to take due cognisance of statutory guidance[5]. The matter has been further confused by, Government announcing that it supported an outright ban[6] [7]. but with more recent announcements by the Secretary of State (Brokenshire, December 2018) that they recognised the importance and value of local authority investments to local council budgets. There are a number of examples of councils which have made commercial property investments both inside and outside their areas, which include Spelthorne, Eastleigh and Bournemouth.

Investments can be done via usual treasury management processes, or by creating a trading company (which we cover in more depth below). CfPS has written on the governance of treasury management arrangements in guidance published in 2018[8].

Saving money through internal council transformation.

While some councils decide to either cut some services or change fees, others opt for changing delivery mechanisms to ensure that the cost of delivery is aligned with the revenue from the service, bring a more commercially rigorous approach to the way that services are designed, and how local people engage with those services. To do that councils change IT or back office structures, or review functionality and responsibilities of certain departments (such as housing or planning ones

4 "Bricks, money, mortar" (APSE / CIPFA, 2017)

5 "Statutory Guidance on Local Government Investments" (MHCLG, 2018, 3rd edn), paras 46 and 47

6 "Local government: commercial property investments" (House of Commons Library, 2018): researchbriefings.files.parliament.uk/documents/CBP-8142/CBP-8142.pdf

7 "Ban on local council investments in risky property portfolios" (The Times, 27th December 2017): https://www.thetimes.co.uk/article/ban-on-local-council-investments-in-risky-property-portfolios-swsk2wcmw

8 "Treasire your assets" (CfPS, 2018)

for instance). According to the data, 46% of councils used new entrepreneurial methods in waste management, 38% in IT, and 36% in housing[9].

Sharing services.

Sharing some functions between different authorities to cut HR and related costs. The use of shared services is already well-developed; according to the LGA, over 98% of councils are sharing some services with a neighbouring authority, with total savings amounting to over £657m[10]. Most commonly councils share procurement and commissioning services (33% of all councils); property, facilities and utility services (20%); or have a shared management (9%). But how services are shared, and the rationale underpinning that sharing, may change as councils' entrepreneurial approach results in shifts in priorities. A few years ago, the primary rationale for sharing services was to save money[11] (with services themselves arguably continuing to be designed and delivered in the same way). Now, the challenge is more fundamental – shared services can be seen as a mechanism to deliver more fundamental transformation[12]. Often, this is beginning to look more and more like the kind of "alternative delivery models" that we talk about below – long term partnerships, ventures and trading – and by a renewed focus on the needs and expectations of "customers", or citizens. .

"Alternative delivery models", including trading.

There are a huge range of vehicles and models that councils can use to trade, manage and deliver services. These structures are not an excuse for moving commercial activity "outside" the council's normal structures. There will often be a business reason for setting up different structures to support commercial activity, but much commercial activity does not, legally or financially, demand it. In the worst case, the presence of such bodies could make governance more complex, increase bureaucracy and hence make councils less responsive and entrepreneurial. Care, therefore, is needed in determining whether they are necessary and, once established, that they continually demonstrate their fitness for purpose.

There is no single dominant model, but the establishment of trading companies is something which has probably had the highest profile recently. This can include the establishment and operation of Teckal companies, entities wholly owned by a council which as a consequence are exempt from certain formal procurement requirements when delivering services for the authority in question. Over 65% of all councils now own a trading company – a huge increase in recent years. The powers for councils to trade can be found in ss95 and 96 of the Local Government Act 2003.

There are a variety of alternative delivery vehicles and models of which Teckals are just one. Some look and feel more "commercial" than others, although all require a shift in mindset in the council leading the process[13 14].

The best current examples relate to private sector partnerships and joint ventures – these can take a number of forms, which will go beyond traditional outsourcing arrangements. However, such arrangements can come with their own risks – political and organisational. For example, while councils can and do partner with private organisations on regeneration and redevelopment, the now-cancelled Haringey Development Vehicle (HDV), a 50:50 partnership between Haringey Council and the developer Lendlease is one example that might give councils cause to reconsider this kind of approach.

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9 "Commercial councils" (Localis, 2016)

10 https://www.local.gov.uk/our-support/efficiency-and-income-generation/shared-services

11 "Shared services and management: a guide for councils" (LGA, 2011): https://www.local.gov.uk/sites/default/files/documents/shared-services-and-manag-b7d.pdf

12 "Local government: alternative models of service delivery" (House of Commons Library, 2016): file:///C:/Users/Ed%20Hammond/Downloads/SN05950.pdf

13 "Responding to the challenge: alternative delivery vehicles in local government" (Grant Thornton, 2014): https://www.grantthornton.co.uk/globalassets/1.-member-firms/united-kingdom/pdf/publication/2014/alternative-delivery-models-lg.pdf

14 "Guidance: library alternative delivery models" (DCMS, 2018): https://www.gov.uk/government/publications/libraries-alternative-delivery-models-toolkit

The establishment of trading companies is at the moment one of the more prominent alternative delivery methods for local councils, and the services they provide. This approach began with the creation of business units and Direct Service Organisations in the 1990s; the modern form of trading is however very different. "Strategic fit" is now seen as being of particular importance, and links closely to effective governance[15]. This means that the possible tensions between company growth and sustainability (rightly, the focus of the trading company itself), and the overall strategic aims of the authority, need to be recognised. It is not safe to make the assumption that this alignment will exist automatically, and this will present particular governance challenges where Cabinet members and senior officers sit on the Boards of trading companies.

This goes hand in hand with the need to develop, within the council and the LATC itself, a commercial mindset and a recognition of the cultural shifts that need to happen in order for a trading company to operate successfully[16]. It also highlights the governance challenges that occur when councils attempt to establish separate structures for transacting commercial activity, rather than seeking to instil a commercial mindset, attitude and approach across the way that the council operates as a whole organisation.

How do we manage the risks – and how do we change our culture?

An increasing number of councils are pursuing commercial opportunities more assertively – but recognising the associated risks in doing so. Where risk appetite is set by councillors, this means that a political commitment to commercialisation is necessary – which can be a challenge. Research carried out by Zurich Municipal highlights the tensions in play here:

> *In earlier reports CEOs talked about trying out commercial projects but now toe dipping is giving way to opportunity surfing. Commercial income generating projects are the new norm for local government, with some competing against one another to buy and build hotels, harbours, piers, cinemas, university campuses, and science and research parks. Commercialisation is not new for councils.[…] However some CEOs believe that councils should not stray into private sector disciplines to pursue commercial opportunities. "When determining an organisation's risk appetite for commercial activity all factors need to be considered and communities should be consulted in the process." Another view is that it cannot be commercialisation at any cost: "It is essential to invest in infrastructure to remain sustainable. But investment cannot be at the expense of other ethical and legal responsibilities"[17].*

Adopting a different attitude and approach to risk is all about culture change – a shifting of mindset and expectations. Some councils are often talked about as being "risk averse" entities; in truth, being risk averse entails a nuanced understanding of risk, and some councils lack this. A lack of understanding leads some authorities to think that the status quo is inherently less risky – while at the moment, a more assertive approach and attitude towards commercialisation may be less so. But beyond this overall choice, risk and culture are bound up in politics – the attitude and approach of the council's leadership and of senior officers.

Certainly, two major drivers for change are the continued uncertainty over local government finances and growth in social care demand. Councils wedded to traditional contracting – outsourcing

15 "Briefing: local authority trading companies" (LGiU, 2015): https://www.lgiu.org.uk/briefing/local-authority-trading-companies-a-policy-in-practice-briefing/

16 "Spreading their wings: building a successful local authority trading company" (Grant Thornton, 2015): https://www.grantthornton.co.uk/insights/spreading-their-wings-building-a-successful-local-authority-trading-company/

17 "Why and we here? The 2017 Senior Managers' Risk Report" (Zurich / SOLACE, 2017), p4: https://newsandviews.zurich.co.uk/wp-content/uploads/2017/10/Zurich-Municipal-2017-CEO-report-Why-are-we-here.pdf

arrangements which tie authorities into long term arrangements from which deviation is complex and expensive – will find that the need for flexibility in how services are designed and delivered make those services increasingly unfit for purpose, and with them their attitude to traditional outsourcing itself.

The situation on all of these points – and others – is fluid. Councils' approach to risk need to be flexible to accommodate.

Flexibility reflects the change we need to make to our culture. Culture change cannot easily happen overnight. A council's drivers will influence whether a "big bang" approach is necessary or whether a more iterative approach can happen. Certainly, efforts to put in place a profoundly different operating model quickly will be risky – as Northamptonshire council found to their cost, as radically different (and ambitious) approaches to service delivery unravelled as it was found that they were not financially sustainable. But equally, the iterative approach could be too slow, and marginal gains over many years may not work when there is a need for change now.

Research carried out by NLGN[18] has used the typology of the "competing values framework" to unpick the challenge and opportunities presented by culture change. In this model, the values generally possessed in local government are those associated with hierarchy, stability and control – different to the values necessary in a complex and fast-moving environment where commercial activity is central.

In this context, a key element of culture change is its implications for workforce. Commercialisation will, in many places, involve a wholesale rethink and redesign of the council as a body – not only its internal structures but the way that individual members of staff work with each other, and with other partners[19]. Skills, development and wider workforce issues will need to be considered – with the associated implications for current, and future, leaders[20]. Expectations of staff will also need to change – and councils can expect that their staff's expectations of the council as an employer will also change. What, for example, might happen to public service ethos, and conventional ideas of public sector ethics[21], where staff transfer to a separate entity? Is such a transfer even necessary for us to deliver our objectives? There is an argument that, in fact, by creating and fostering a culture of municipal entrepreneurship that draws on local government traditions, the drivers and commercialisation and public service do not, in fact, need to come into conflict[22 23]. It will be important to engage with trade unions from the outset to establish protocols around such change.

18 "Culture shock: creating a changemaking culture in local government" (NLGN, 2017): http://www.nlgn.org.uk/public/wp-content/uploads/Culture-Shock.pdf

19 "Outside the box: the council workforce of tomorrow" (NLGN, 2016): http://www.nlgn.org.uk/public/2016/outside-the-box-the-council-workforce-of-tomorrow/

20 "Walk tall: being a 21st century public servant" (SOLACE et al, 2016): http://www.solace.org.uk/knowledge/reports_guides/Walk%20Tall%20-%20final%20ebook%20for%20download%20080716.pdf

21 "Local public services senior managers: code of ethics" (SOLACE et al, 2015): http://www.solace.org.uk/knowledge/reports_guides/Solace%20Code%20of%20Ethics_Agreed%20at%20AGM%20in%20October%202015.pdf

22 "The new municipalism: taking back entrepreneurship" (APSE, 2018): http://www.apse.org.uk/apse/index.cfm/research/current-research-programme/the-new-municipalism-taking-back-entrepreneurship/

23 "Working at the frontline of austerity: the ensuring council and workforce planning" (APSE, 2015): http://www.apse.org.uk/apse/assets/File/Workforce%20Planning%20(web).pdf

How can scrutiny engage productively?

- Scrutiny is best when it does not focus on the structural elements of commercial activity (oversight of formal governance, for example) but instead focuses on culture and the outcomes for local people;
- There are five general areas which provide the best opportunity for scrutiny to exert influence – by looking at risk, oversight of governance, cultural transformation, monitoring performance and considering the rationale underpinning commercialisation itself.
- Scrutiny has to be underpinned by an understanding of the cultural transformation necessary in councils seeking to adopt more commercial approaches to their work.

Local people need assurance that decisions made on their behalf will be made in a way that is transparent, accountable, and that has a positive impact on their lives. For this reason, democratic scrutiny, aligned with CfPS's four principles of good scrutiny[24], is a vital part of commercial activity for councils.

Scrutinising "commercialisation", considering its complex landscape, is by no means easy. The governance issues present in a complex public service environment have been explored by many – notably CfPS in our research "Accountability Works!", but more recently by APSE. APSE's 2018 research "Bringing order to chaos: how does local government hold to account agencies delivering public services?" argues:

> *"There is a complex interplay that occurs when local government is seeking to influence other significant players in the locality and to ensure that those players develop policies, make decisions and commit resources to projects the council wishes to see developed. Alternatively councils will be engaged in brokering agreements between numerous players to bring together their often disparate and separate interest into some cohesive whole for the benefit of the locality."*[25]

These "other significant players" can be other public bodies – but increasingly they will be commercial entities – joint ventures, mutuals, or alternative delivery vehicles (including Teckals). A commercial model of operation means that it will be increasingly difficult to classify these partners as being "external" to the council – their work will be entwined in the council's core responsibilities. This presents a challenge to traditional models of governance, based as they are on clear hierarchies and "line of sight" accountability via senior officers to Cabinet members. The challenge here echoes the "competing values" cultural shift explored by NLGN that we explored in the last section.

In this context it may be best to think less about the structural challenges to governance – navigating the relationships between organisations – and more about the specific contribution that scrutiny, led by elected members, can make to the whole "system" of governance in a given locality.

This starts with the culture. We have talked about the need for a mindset shift within councils as they undertake to operate more entrepreneurially, and scrutiny has a critical role in understanding and supporting this shift. "Doing commercial" without engaging with this need for broader change, as we have discussed, will risk leading to only marginal gains. Scrutiny's work has, therefore, to begin by engaging in these core cultural issues – understanding the changes in prospect and how officers and members (and partners) will be brought along on the journey. Where there are gaps here, or where those objectives are poorly articulated, that is the first sign that more need to be done.

Once that first, central point has been reviewed and understood, scrutiny can dig in to some of the

24 "Using evidence in scrutiny" (CfPS / SOLACE / Alliance for Useful Evidence, 2017): https://www.cfps.org.uk/wp-content/uploads/CfPS-Using-Evidence-in-Scrutiny-WEB.pdf

25 "Bringing order to chaos" (APSE, 2018), p15: http://www.apse.org.uk/apse/index.cfm/research/current-research-programme/bringing-order-to-chaos-how-does-local-government-hold-to-account-agencies-delivering-public-services/

detail. We think that this contribution has five principal elements:

1. Helping to drive forward cultural transformation (further work on the cultural dynamics of change)
2. Helping to make judgments about the rationale underpinning commercial activity
3. A focus on risks
4. Oversight of governance itself – executive side management systems and the relationships between partners
5. Oversight of performance monitoring (rather than performance monitoring itself, which will largely be managed by traditional means, and within contract)

The overall focus for scrutiny, then, is on the "macro" aspects of governance and accountability – the health of the system, the rationale that underpins strategic action, culture and political leadership[26]. A focus on such issues echoes our comments on the "ensuring council" at the start of the last section – anchoring scrutiny in the new role of councils as this agenda develops.

1. Cultural transformation

Commercialisation must involve cultural change – a shift in attitudes towards more innovation, more responsiveness to local people, and an attuned sense of how a more entrepreneurial council can continue to meet its residents' needs. We commented on this at length in the section above – in particular, on the danger of the idea that commercialisation and commercial activity can be "parked" in another entity and leave the council otherwise unchanged. Councils may need to:

- Think about organisational development in its broadest sense – the values and attitudes which underpin what makes a good employee, how officers collaborate (and how they work with members) and the level of freedom to act and innovate that staff have, within legal frameworks
- Explore and agree in more detail how practices and approaches will need to change in order to support the council's move to a more entrepreneurial approach – this may involve a more rigorous approach of prioritisation, a more permissive approach to innovation and experimentation, a shift in the way that the council's officer corps thinks about individual and collective responsibility for decision-making, and so on
- Check whether scrutiny itself is tooled appropriately and whether scrutiny's work is sufficiently planned, managed and prioritised to engage meaningfully with scrutinise commercial activities. This includes the need to have a proper understanding of members' skills – and where gaps in skills might exist. Inevitably, this also demands a focus on resources, and whether scrutiny has the right resource, in the right place, to do what members and the council need it to do.
- Review employee skills and check whether the skills are fit for the new council purpose, and subsequently decide on new hires and/or restructuring (often as part of a wider organisational development strategy)
- Change corporate structures, where necessary. Structural change is something that should be countenanced once other changes have been considered in depth.

How councillors can address this

- identify and articulate the nature of the transformation in culture that needs to take place (ensuring that this transformation is well articulated, and consistent);

26 Ibid, p28

- identify what the associated risks and costs are likely to be;
- decide how the council can mitigate those risks and balance the costs;
- ensure that the process of transformation is scrutinised and managed effectively[27].

2. The rationale underpinning commercialisation

One of the biggest roles that scrutiny can play in scrutinising plans for commercialisation is assisting with ensuring that there is a logic underpinning plans for commercialisation, and entrepreneurialism – that there is an outcome in mind and a clear and realistic sense of how to deliver that outcome. Early involvement of scrutiny in these major change plans mean that scrutiny can play a part in the assurance of those plans – helping the rest of the organisation to understand and implement them.

This is about more than just having "success criteria" – but such a sense of what success looks like will provide a critical framework for holding the council to account, and they ensure that new commercial entities are aware of their responsibilities as well. While there is no way of compiling a full list of potential factors (as they would largely depend on the type of commercial activity), the key issues scrutiny can look at in this regard are the following:

- Recommending financial criteria for new investments, namely, agreeing on the borrowing limits, yields, returns and other financial indicators that would ultimately guide commercialisation decision-making
- Looking at the governance structure of new commercial vehicles/activities and setting up clear responsibilities of councillors and officers with regards to those activities
- Deciding on the ethical component of commercialisation. Councillors may wish to grapple with the need for social responsibility in trading, and whether the council – and commercial entity – would be prepared to achieve a lower financial return alongside a higher social return – focusing on what is known as the "triple bottom line", which does not focus exclusively on profit.
  In addition to that, there are ethical considerations with regards to neighbouring councils as well. Questions include:
    - is there a potential for a conflict of interest when investing in other geographical areas?
    - can there be tensions among neighbouring councils over certain commercial decisions?
    - If so, do benefits outweigh the conflict of interest/tension issues?
    - how can these be issues mitigated?
- Deciding on key performance indicators, ensuring that the outcomes of commercialisation are well understood, overseeing and commenting on the preparation of equality impact assessments, and setting the framework for ongoing monitoring of commercial and entrepreneurial activities. We would not suggest a forensic focus on performance management; there is too much risk of duplication. However, general member oversight of the process of performance management – ensuring that systems for measuring and improving are effective – could be productive.

Doing the above requires Executive-side commitment. Without that, it will be difficult for scrutiny to get involved either when commercial plans are at an embryonic stage (when discussions over member governance will be most valuable). By extension, this means that member scrutiny risks being overlooked overall. The nature of the transformation, and the nature of commercial activity, means that it will arguably be difficult to retroactively design scrutiny into commercial activity once

27 "The change game" (CfPS, 2015)

that activity is well underway. It is possible, but it will be more difficult, and scrutiny may find its role (and its potential positive impact) constrained.

3. Risks

Risk provides a good "way in" to any major council decision, combining as it does the opportunity to engage with culture and mindset (the council's risk appetite) with a practical engagement in the mechanics of the issue, service or function under scrutiny. We noted the importance of risk issues, and risk appetite, in the section above.

With this opportunity comes a caveat. A fixation on risk could be seen as promoting a sense that scrutiny acts, or should act, as a brake on innovation; we do not suggest a pessimistic approach to scrutiny which accentuates only the negatives. Consideration of risk is valuable principally insofar as it helps to understand, tackle and mitigate those risks. It is about empowering the council, executive members and senior officers to properly tackle these issues – not about throwing up enough worry to persuade decision-makers that commercialisation is an unknown whose inherent risks are so significant that they should not be pursued.

The risks relating to the commercialisation process as whole include the following:

1. Risks of the status quo
   For some councils – especially those with leaderships ideologically opposed to the idea of democratic, public institutions becoming "commercial" in their outlook and approach – other approaches may seem more attractiveCommercialisation is not the only game in town – there are other solutions to explore. Each alternative has its own risks.
2. Strategic risks
   Any commercial activity – trading, establishing joint ventures, and so on - has its strategic risks. For instance, commercial activities done solely for the purposes of reducing budget deficit or generating extra income suffer from their narrow focus and low horizon planning, which in turn may lead to these activities being disjointed and costing the council more than envisioned while delivering only marginal benefits; it may also result in poor alignment between the role of any new trading entity and that of the council. Risks associated with "whole council" transformation, of which commercialisation may form a part, include:
   a. time,
   b. employee loss and/or retention issues associated with any ensuing restructures (and associated workforce issues, as discussed above),
   c. difficulty of formulating and agreeing on a new culture among the council's leadership and members more generally (especially where clashes in expectation exist between adherents of governance systems based on more hierarchical approaches, and those keen to explore different ways of working),
   d. the high initial costs of such a decision where the financial benefits may arise later on (and, as witnessed by some of the poorest performing traditional outsourcing arrangements, those benefits may simply evaporate, never having existed in the first place),
   e. the necessity to plan over a long period of time where the council's financial position may be uncertain (particularly in the light of uncertainty over business rates – although of course commercialisation is about bringing more certainty to council finances, and making local services more sustainable)

   There are also strategic risks associated with the council "diverting resources" to commercialisation at the expense of day-to-day service delivery and it is an important question of how to balance council existing duties with new activities. In reality, transformation – and changing culture – should be about recognising that councils' commercial activities operate in service and in alignment to its overall "stewardship" role, so a well-designed system should not divert resources away from what might be described as "core" (or worse, "legacy") activity.

3. Financial risks
Each kind of commercial activity has its own financial risks. Usually, these will be understood and acted on by officers, in consultation with Cabinet members, as per the prudential code requirements on risk detail and managed with the commercial entity itself; there will be no need for member-led scrutiny to focus on the detail of this. However, oversight of financial risk is an important element of the overall governance picture – particularly in terms of understanding and challenging the risk appetite that the council and its partners share on financial risk.

4. Political risks

5. Commercialisation is a risky venture by definition and it requires strong leadership to reach success. Hence, political risks of failing or mismanaging have to be considered seriously; there are associated risks about the political direction of the authority. In addition to that, some commercialisation activities touch on rather complex issues relating to the intersection of politics and ethics – should the council invest only in commercial property or should it be advancing affordable housing (or both)? Should investments not cross the border of the council, or can they be done only based on merit, including international off-shores? Will new traded companies get into competition with services provided by neighbouring councils or interfere with an existing commercial market offer or where the market should fill the gap? Can that lead to political tensions? There is no blueprint or right or wrong answer for any of the questions, and each council should be aware of political risk associated with communities or neighbouring councils not being satisfied with some of the council choices. There is also a statutory requirement to undertake sensitivity analysis in Wales.

6. The risk of the objectives of the commercial entity/entities beginning to diverge from the objectives of the council.
Councils may consider that they can carry out commercial activity which perfectly aligns with the wider objectives of the authority, and the needs of local people. This is not guaranteed. Commercial entities may begin to develop and pursue their own priorities; as they diverge the risks to the council potentially increase around both political accountability, and the commercial entity's continued delivery of services that meet the council and the community's needs. This is, for example, a challenge faced by many housing associations, moving into a position of operating more as conventional developers than social landlords. There is a particular, associated risk here relating to the position of council officers and elected members, who may sit on the boards of such commercial entities, and who may therefore find it difficult to maintain the "Chinese walls" between the two organisations as their priorities may continue to diverge. We will expand on this issue in the section below on "Governance"

7. Compound risk
Compound risk is a joint risk of all commercial activities together. Often enough, members and officers have an understanding of risks relating to a particular commercial activity and have a sense of what will happen if that activity fails. However, there is usually little discussion of consequences of numerous activities not going according to the plan either

financially, or strategically, or politically, or in any other way at the same time. Compound risks summarises all possible risks from all commercial activities undertaken by the council and checks whether that risk is still bearable by the authority.

8. Other council-specific risks
Each local authority would have circumstances that are unique and can be only known to the councillors of that area. Those circumstances would have associated risks with them, and those risks also need to be identified and considered.

This list is not exhaustive. Apart from the listed risks there are risks that would be related to each commercialisation type. For instance, trading services and opening a council-owned company risks may include risks of losing oversight, financial risks of failing, reputational risks to the council if the company does not deliver, governance issues depending on the governance model, and so on. Traded services, however, is an umbrella term for companies that can be opened for numerous purposes, and each one of the particular company would have its own market risks in addition to the ones mentioned before. Luckily, most of those risks should be fully analysed by the council prior to commencement of commercial activity, but it's important for scrutiny to be aware and keep track of them as well.

While it may be impossible to identify all potential small and big risks of commercialisation strategy or each type of commercial activity, based on our research having a broad understanding of main risks on top of agreeing on the council risk appetites has proven to be a useful activity.

How councillors can address this

- Have regular access to risk registers, and engage with the risk discussions which happen at Board level in any separate commercial entity;
- Be prepared to identify, monitor and oversee the biggest strategic risks – escalating them to committee or another public space for discussion only where scrutiny can add value;
- Build an understanding of commercial risk and reward into broader scrutiny work;
- Understand and act on the need to incorporate an understanding of risk into the way that scrutiny engages with and drives cultural change – by encouraging officers and Cabinet members to take risk seriously, and to talk frankly and candidly about it.

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4. Governance

Oversight of commercial activities is an important task, and scrutiny will need to align its work to ensure that it does not duplicate what governance systems already exist. This introduces an issue to which we will return – the need for a flexible and responsive approach to governance.

There are as many different approaches to governance as there are commercial activities. Governance is complex – as we outlined above, one of the more significant tensions exist between the tendency to adopt traditional, hierarchical governance solutions, and the drive to be more flexible and dynamic. Councillors may be more comfortable with hierarchical systems which gives them "visibility" on commercial activity – but this may in itself make such activity more difficult to transact.

The potential pitfalls and opportunities of different governance approaches are only now coming to be explored – which is why scrutiny is in such a good position to be at the vanguard of oversight of how such systems work. Who makes strategy – who answers to whom for what – how are decisions made? In getting an understanding of these issues, members can help to tease out where gaps in governance might exist – and where scrutiny itself might fill those gaps.

This is about more than just looking at organograms and structure charts – it is about understanding the mindset of the key individuals with decision-making responsibility and challenging their assumptions about how they expect themselves, and each other, to work together.

The biggest challenge usually emerges when a council is looking into setting up a new company. While the governance model of council being the sole or majority shareholder and several councillors and officers forming the board of directors is the most used one, this system very commonly backfires in cases of trouble. Through our research we found that councillors and officers who were members of the company's board often found themselves in a conflict of interest. On one hand they have responsibility to keep certain information within the council company due to confidentiality and other agreements. On the other, they have responsibility before taxpayers and the council itself. Often enough, actions stemming from these responsibilities are in conflict with each other. While some conflict of interest may always be there in such cases, scrutiny can assist with:

- Understanding the potential for the conflict of interest
- Mitigating the potential for the conflict of interest by devising special clauses in board of directors' contracts and agreements between newly established company and the council

Governance issues also relate to the monitoring of commercial activity overall by the Executive. In some areas, commercial activities are overseen by Full Council – reflecting a more cautious, traditional approach. In others, smaller groups are involved in making decisions – but this informality can lead to wooliness in who holds responsibility for what and at what time.

There is some debate about which option is the most suitable one, with some councillors claiming that the speed with which you operate on the market is different from the local authority decision-making timeframes, and hence, a smaller working group is necessary to make efficient and timely decisions. There is no right or wrong answer, as each each approach to general oversight has its own risks and benefits. A general rule is that with a more fundamentally different approach to the culture of commercialisation the oversight of "commercialisation" itself will not be as obvious and apparent – it will be integrated into everything that the council does, and attempting to extract it will be both very difficult and undesirable. Scrutiny's approach will therefore need to be designed to accommodate this.

How councillors can address this

- Talk to officers, other councillors and commercial partners about how decisions are made;
- Understand, practically, how commercial activity is monitored and overseen – perhaps through the use of case studies or user journeys;
- Think about their own expectations of what level of oversight might be appropriate for different commercial activities – based on their own assessment of risk and risk appetite.

5. Monitoring performance of existing commercial activities

Finally, scrutiny can bring its expertise in monitoring existing commercial activities and holding all relevant parties to account – particularly where commercial activity has been "mainstreamed" into the way that the council delivers services day-to-day. In doing this scrutiny might make use of APSE's Performance Networks, which provide benchmarking data across the public sector. Benchmarking has to be carried out carefully – particularly given the importance of culture and attitude, which cannot easily be measured. But benchmarked data does provide a vital jumping-off point for further scrutiny.

Scrutiny can decide:

- Whether performance matches the original objectives in relation to outcomes and other key indicators.
- How have council services been affected by more commercial attitudes and approaches

and in what spaces have changes (positive and negative) been most keenly felt – by the council and by local people

- What the reporting requirements are for monitoring by the management systems of the commercial entity itself, and more generally by the council's Cabinet
- How scrutiny can use data and information produced by commercial entities (for their Boards, and other purposes) to keep a check on activity – with a view to intervening on a "by exception" basis if concerns about performance should arise
- What form such intervention should take, so as not to unreasonably restrict the commercial entity's freedom to act, but recognising the importance of democratic accountability.

Finding a way in for scrutiny

Many council Leaders and Chief Financial officers, and even directors of council-owned companies that we spoke to are keen supporters of scrutiny reviewing their work, provided there is an understanding of the terms of reference. In this regard, exploring the areas above can help build a common ground between scrutineers and those who are scrutinised. As ever, it must be clear how scrutiny will add value – a difficult task, where governance is complex and where oversight from councillors might be seen as working against the necessary flexibility and dynamism of commercial ventures.

In addition to that, below we offer seven scrutiny questions that may assist as scrutiny begins to scope out its involvement, and to examine and understand the role it can play. Scrutiny members will hopefully find that as they come to answer these questions, it will become easier to discuss and agree which of the approaches that we have set out above might be most appropriate to adopt:

1. Does the council have a commercialisation strategy – a clear articulation of how and why it wishes to pursue commercial opportunities and become more entrepreneurial? Does the council understand the importance of culture to this change – and the need to think of this as a "whole council" endeavour? Does this strategy include all commercialisation activities that the council is undertaking or is planning to undertake? Does the council really understand what "commercialisation" means?
2. Is council's approach to commercialisation a piecemeal one (i.e. looking at squeezing existing assets or opportunism) or a more strategic one? There is nothing intrinsically wrong with a more opportunistic approach but it could make it difficult to "scale up" commercial plans, and it may make commercialisation more difficult to achieve if the necessary cultural issues have not been systematically addressed. However, many authorities will commence in one area of activity at the outset to test capability and build knowledge and skills in this area prior to going wholescale.
3. What is the risk appetite in the council and has there been a fair assessment of risks of commercialisation activities and consideration of alternative options?
4. Are proposed or existing commercial activities viable? Do they stem from council strengths – do they take account of and complement our broader social purpose? How has viability been assessed – how will it continue to be assessed? How will the viability or otherwise of the commercial activity impact on the council – positively or negatively?
5. What is the governance structure of commercial activities – on a day to day basis and at a more strategic level? What are the risks associated with such a structure and how these risks can be mitigated?
6. Is the rational and purpose of commercial activity mainstreamed within how the council works day to day – rather than commercial activity being treated as an adjunct to "core" activity?
7. How has the council considered ethical issues that might arise from commercialisation? How has the role of local democracy, the needs of citizens and the duties of the council been built in to the way that commercial activity will be managed and overseen?

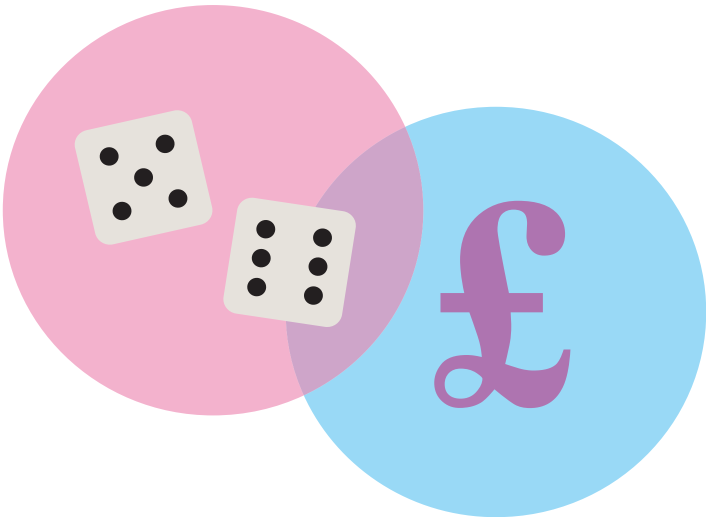
Three principles for effective scrutiny

Scrutiny can bring a lot to the table when it comes to commercialisation. Our research does, however, suggest that councils have struggled to find a clear role for elected member oversight as councils become more entrepreneurial. To combat that and as a conclusion we would like to offer three key principles:

1. **Early engagement**
   The earlier scrutiny is engaged the more effective it can be and the more time it has to analyse the situation, do benchmarking, consult the constituents and engage the public, and provide council with relevant recommendations. Also, having early engagement supports good relationships between scrutiny and Executive, and shows trust in scrutiny, which in turn is beneficial for the whole council. Another benefit of early engagement is in scrutiny councillors being fully aware of the commercialisation process at the start, and hence being able to offer its support and expertise at a much quicker rate without necessarily setting up task-and-finish groups.

2. **Streamlining scrutiny**
   Too often scrutiny of commercialisation is thought of as an in-depth exercise, usually taking a form of task-and-finish group, that takes several months to be fulfilled. Considering the pressures of commercialisation, it is indeed difficult to set aside several months for such a process. However, streamlining scrutiny, i.e. including scrutiny into all major commercialisation discussions and negotiations, and referring some matters to scrutiny as soon as those arrive might be more beneficial for the council. In this way, scrutiny would have all the relevant knowledge to consider the final commercialisation decision made by the council, would have enough data to monitor performance, and would be involved in numerous steps of the commercialisation way without taking away time from decision-making. The ability and knowledge to scrutinise should also be shared more widely than just 'finance and resources' if their work remitted includes any aspect of commercial activity.

3. **Having a strategic approach**
   Ideally, a council should have a strategic approach to commercialisation, i.e. it should be an activity that goes beyond piece-meal investments or service revisions. Similarly, scrutiny function should take a strategic approach to monitoring and scrutinising commercial activities. Due to the nature of scrutiny and commercialisation, it will never be possible to scrutinise every single aspect of commercialisation or each activity. Hence, it is important for scrutiny to know what its strategy is when it comes to commercialisation, what it should focus on, and what its priorities are.



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