

Taking a commercial approach

A guide for local councils in Scotland to income generation, trading and charging





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.



About this report

This report was written and researched on behalf of APSE Scotland by Andy Mudd who is the Head of APSE Solutions.

Andy Mudd has two decades of experience on all matters relating to local government income generation, trading and charging legislation and he has assisted local councils throughout the UK in developing approaches to the issues of commercialisation whilst retaining a public sector ethos in service delivery.

APSE Solutions is part of APSE's services to its' members and is a not-for-profit ethical consultancy and interim management service.

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Foreword

Local Government within Scotland is facing a number of challenges. Resources are not unlimited and yet demand for local council services is ever increasing. We have an ageing population alongside ever more discerning citizens who expect world class public services. Reliance on ever decreasing central funding for local councils means stark choices; cut services or find other ways to meet these on-going challenges. That is why APSE Scotland commissioned this guide for our member local councils to explore the dynamics of commercialisation in local government.

By commercialisation we are talking about those activities that local councils can provide at a charge in order to generate additional income. It makes clear that local councils are not at liberty to charge for those services that they ought to provide on a statutory basis, and nor would we want that to be the case. However, local councils in Scotland can add value to services that they already provide and are more than capable of entering into markets; both new and existing, to bring added value to citizens and to local economies. Many councils can legitimately act as market disruptors by bringing in better goods and services into local economies that work in the public interest and not against. Councils selling additional services can enhance user experiences beyond the basic service offering and in doing so create financial returns that support the continuance of local public services.

We are not suggesting that commercial activity by local councils is without flaws. Care should always be taken to ensure charging strategies do not create two tier public services based on the ability to pay. Access to services should always remain equitable. However, we also know that local councils are uniquely trusted by the public; our people have the skills, knowledge trust and training to deliver high quality additionality to local people and local economies. This agenda is not about local councils making a profit at any costs but about a measured and balanced approach to generating additional income to support local services. It is driven by an agenda to enhance social justice for local citizens by safeguarding local services. It is about new municipalism in an era of budgetary challenges.

I commend this report to you.

Cllr Les Sharp, Chair, APSE Scotland

1. Introduction

1.1 Commercialisation can take a number of different forms but in all cases refers to the participation of local authorities as sellers in commercial market places. By definition this means providing services to buyers who have a choice over who they buy them from. This is not new – councils have long provided leisure services, for example in competition with private providers, but in the past, there has been less of an emphasis on the financial return from such activities, with the main drivers being the achievement of clearly defined social policy objectives, i.e. health and fitness. Many UK councils are now offering services to a range of customers with the express aim of generating additional income in the form of a surplus of income over expenditure.

1.2 The term commercial is not easily definable. On one level it is simply about commerce or trading – the buying and selling of goods and services for a financial return. In the case of local authorities it can also be about an attitude to the use of resources that is applicable to everything the council does. In the context of this paper it relates to the development of trading relationships where there is an intention to generate additional funds to ease financial pressure on council services where the recipient of the service has a choice over who they purchase from.

1.3 It is important to stress that no local authority engages in commercial activity as an end in itself. Councils do not have shareholders and will, as a matter of course, always use ‘profits’ from trading to enhance or maintain service provision. This is particularly important in Scotland where the legislative framework creates requirements for a clear link between the well-being of the community and any commercial activity the council undertakes.

1.4 There are numerous services that have traditionally been provided on a charged for basis. Many of these are authorised by specific legislation and, in some cases, are expressly allowed or even required to operate on a better than cost recovery basis. Examples include leisure, commercial waste and retail catering. None of these have traditionally been provided primarily to make money but many do offer opportunities to do so. A developing commercialisation strategy should recognise this but also retain clarity over the important role these services play in meeting social, economic or environmental priorities.

1.5 There is little point or benefit in trying to untangle social policy objectives from commercial objectives. However, in a climate of reducing budgets it is important that council managers are able to recognise and take opportunities to off-set financial pressures. In part, this is about making efficient use of resources but it is also about ‘acting commercially’ where to do so will assist with the achievement of service objectives. This means developing a clear strategy framework that is capable of balancing any conflicts of interest between the need to generate income and service objectives. A number of authorities in England have been criticised for getting this balance wrong, for instance in relation to parking charges, where increases have been perceived as motivated by financial rather than wider environmental and economic development imperatives.

1.6 There is a degree of risk involved in commerce. No traded service makes money before money is spent and in a competitive market there is always potential for customers to choose to buy from somebody else. The strategy must therefore establish a corporate attitude to commercial risk and strike a balance between potential reward and potential loss.

2. Deciding to Act

2.1 Scottish local government faces further pressures on funding that threaten the quality and, in some cases, the continued delivery of services to local communities. Improvements to efficiency and increased productivity have been the principal response to spending reductions in the past and have been largely successful in avoiding the need to cut essential services. However, there are questions around the sustainability of services going forward and Councils must now explore all options for generating additional funding.

3. Aims and objectives

3.1 Commercialisation is concerned with the generation of income from external trading and charging but this is not an end in itself and must be considered in the context of a Council's wider social and economic policy objectives. Strategic managers must consider the impact that the development of commercial activity will have on the delivery of services and the achievement of corporate objectives. Additional income from trading will help off-set pressures arising from reductions in public expenditure but commercialisation also has the potential to change the relationship between the Council and its partners, which could include other public bodies, private sector companies and the wider public. A key element of the corporate strategy will aim at limiting or avoiding impacts from trading that undermine or otherwise have a negative impact on the achievement of wider objectives or core council service delivery.

3.2 Corporate objectives for commercialisation might include:

- Off-setting pressure on services arising from cuts in government funding

This might include a direct contribution to the council's revenue budget or cost savings through the sharing of overhead costs where trading activity is carried out on the basis of cost recovery.

- Contributing to wider council social or economic policy objectives

Some trading activities can have a direct (positive) impact on the quality of core service provision through the development of new skills and improved capacity. Other trading activities can operate to improve the overall market offer by setting improved standards and squeezing rogue or poor quality providers out of the market. Any expansion of trading activity is likely to have an overall positive impact on the local economy through the economic multiplier effect.

- Developing or sustaining skills and employability

An expansion of trading activity will create opportunities for staff to learn new skills as well as for the retention of jobs in core service areas.

- Contributing to a positive shift in culture within the organisation

Commercial success can have a positive impact on the culture of the organisation. This might include the development of new approaches to decision making and the breaking down of interdepartmental barriers that can hinder innovation and improvements to core services, as well as the wider commercial offer.

3.3 These objectives will be considered, amended and developed as the commercialisation strategy progresses to implementation stage and serve as a reference point for the creation of individual business cases for trading and charging initiatives.

4. Resourcing Action

4.1 The successful development of individual trading initiatives will be largely dependent on the availability of appropriate corporate resources. These resources will be focussed on the creation of a supportive corporate culture, along with making specialist expertise on legal, financial and marketing issues available when required.

4.2 The nature of this support will depend on what approach the council decides to take. Some authorities have created specialist commercial development posts, with a cross directorate brief, to provide both expertise and impetus to managers implementing trading ideas. Others have concentrated on trying to build commercial skills at the departmental level, supported as needed through legal, financial and communications services.

4.3 All trading activity requires a degree of financial support. In some cases this can be substantial, such as where trading is based on an initial capital investment, e.g. property development or where new equipment or premises are needed. Even where there is no significant investment requirement there will be a cash flow gap as the cost of service provision inevitably precedes the income flowing from it.

4.4 A balanced business case methodology will encourage the identification of the financial requirements and risks associated with each trading initiative. This will allow case by case judgements to be made but these should be consistent with corporate policies on investment and in particular, the organisational attitude to financial risk.

5. Strategy development and implementation

5.1 Traditional public sector organisations are often considered to be slow moving and bureaucratic. Decision making tends to be top down with sometimes onerous permissions regimes acting as blockages to organisational agility and innovation. Commercialisation, on the other hand, is generally associated with an entrepreneurial attitude, characterised by swift decision making and a willingness to manage, rather than simply avoid or minimise risk.

5.2 If commercialisation is to be successful it will be necessary to ensure that operational managers are in a position to pursue opportunities as they arise and to make commercial decisions, based on business need. At the same time however, the Council must remain cognisant of its fiduciary duties, ensure that it remains accountable through the democratic process and maintain legal compliance and consistency with corporate policy and values, e.g. with regard to employment and workforce issues.

5.3 APSE Solutions has developed a business case driven approach that is enabling and facilitative, whilst at the same time ensuring that trading initiatives are in line with the delivery of core corporate objectives and values. The approach recognises that income generating ideas are most likely to come from operational teams who understand and operate within the relevant delivery areas. The aim of the business case driven approach is to provide managers with a framework for identifying, evaluating and where appropriate, communicating trading ideas in a way that ensures they are consistent with corporate aims and objectives, as well as being commercially viable. The business case template encourages a balanced approach to the development and assessment of trading ideas under 5 headings:

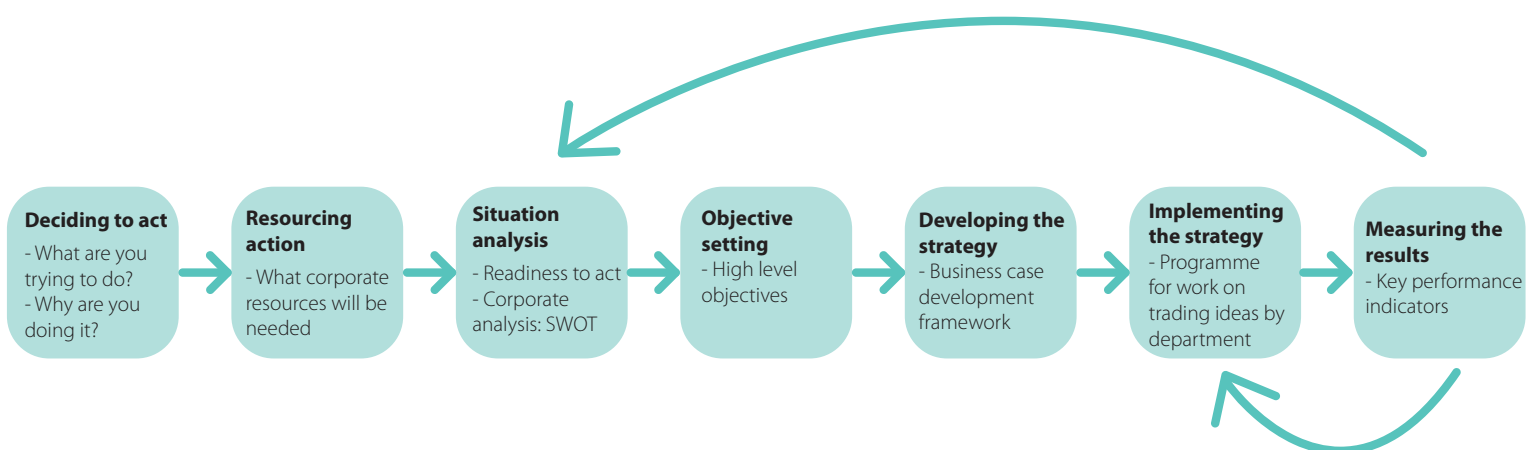
- Strategic case – fit with Council objectives and values
- Legal case – comfort that the proposed venture is lawful
- Financial case – consideration of cash flow and a clear understanding of cost and financial benefit
- Commercial case – market knowledge of customers and competitors
- Operational and technical case - staff and other resource requirements and how they can be met
- Risk assessment and management plan

5.4 Many UK local authorities have established discrete organisational entities through which to carry out external trading activity. These can be wholly owned companies with a separate legal identity or semi-autonomous business units. Other authorities conduct their trading activity from within existing departmental structures. Whilst the legal framework plays a part in determining the preferred route, commercial and financial considerations will also be relevant.

5.5 Individual trading and charging activities will have their own measurable success criteria. These may be around financial return but will also relate to employment and core service delivery. In some cases they may be wider than this and relate directly to the social and economic well-being of the council area. Some trading activity can be marginal in terms of the revenue it generates but at the same time play a critical role in maintaining or improving services through the sharing of fixed costs across traded and non-traded elements of the service. Key Performance Indicators should be developed to reflect this and to feed into operational and strategic decision making (short and long term feedback loops).

6. The Role of Leadership

Planning Model for instigating commercialisation



6.1 Under this model the primary role of corporate management is to facilitate and enable operational teams to take action – in this case to generate external income through trading. By creating a corporate strategic framework, the authority acts on the culture of the organisation as well as laying down parameters and establishing strategic objectives. This addresses some of the obstacles to progress commonly associated with public sector bodies, such as an absence of agility and slow decision making procedures. It also ensures that managers operate within an agreed framework and remain accountable to the democratic process.

6.2 This model is particularly appropriate where an authority seeks to create a whole authority approach to commercialisation. The aim is foster a culture of entrepreneurialism where the pursuit of commercial opportunities is an expected element of the operational management role. Trading risk can be shared across a range of different ventures which, though relatively low in value, make an aggregate significant financial contribution.

6.3 There are a number of examples, particularly in England, where a different approach has been followed. In these cases commercial activity is mostly focussed on property investment and concentrated on relatively few (but high value) schemes. This model is a closer fit with traditional public sector vertical management styles but can increase the level of exposure to risk unless a relatively cautious approach (with correspondingly moderate yields) is adopted. The different approaches are explored in greater detail below.

7. Options for management and resources

7.1 Recent APSE Solutions research for one authority indicates that it is possible to categorise council commercial activity as follows.

- Property based commercial investment
- Focus on a small number of high value trading initiatives
- Multiple trading initiatives across the whole authority – or more likely across traditional public facing parts of it.

7.2 These are not necessarily mutually exclusive but the research indicates that authorities in England and particularly in London that have concentrated on property have tended not to also develop many trading initiatives. Whilst councils have long been major holders of land and commercial property, the reasons for this have been more strategic and historical than financial. Now, authorities, such as Portsmouth and many of the London Boroughs, have taken on ownership of property, both within and outwith, their areas as pure investment assets. Thus, Portsmouth owns a car dealership in a neighbouring borough and the London Borough of Wandsworth owns the Car Phone Warehouse in Cardiff. Both of these authorities also have substantial portfolios of properties in their respective boroughs.

7.3 Low returns on deposits, the relative liquidity of councils and the availability of currently attractive yields (around 6% on capital employed) from these sort of investments all go to make them attractive as a major plank of council treasury management strategy. APSE research estimated that across the UK local authorities invested more than £1bn in property assets in 2016 alone.¹ This may change if other investments become more attractive when and if, interest rates return to normal levels.

8. Legal issues

8.1 The following is not intended as legal advice and the author is not a lawyer. It is essential to take advice before undertaking trading activity. In some cases because there is a degree of legal uncertainty, it may be necessary to obtain the opinion of leading counsel.

8.2 Scottish local authorities are unable to rely upon a presumption that anything they do, not otherwise prohibited by law, is lawful. They must instead be able to point to a power directly provided or implied by legislation to support everything they do. In terms of trading it is necessary to identify a) a power to undertake the relevant activity and b) a power to do so on a commercial basis.

8.3 Activities that are not specifically authorised can still be lawful, either because they are incidental to an activity that is lawful, or because a power to do them is implicit. Thus, whilst the collection of controlled waste is specifically authorised, there are a range of other associated activities that are incidental or implied, such as the purchase, use and maintenance of refuse collection vehicles, the temporary storage of waste at transfer stations and the employment of staff.

8.4 Some traded activities are authorised by specific legislation. Section 45 of the Environmental Protection Act 1990, for example, not only creates a power to collect commercial waste but also a power to make a 'reasonable charge' for doing so. There are many examples of similar powers, many of which can be found in the Local Government and Planning (Scotland) Act 1982 including:

Leisure, culture and social s16

Street cleansing s 25

Public conveniences s26

Provision of markets s27

Provision of clocks s28

¹ Bricks, Mortar, Money, property investment as a potential means of securing an additional and sustainable source of revenue, David Bentley and Wyn Jenkins, APSE 2017

8.5 Whilst these powers make provision for charging, it is not always clear that this can be at a level that generates a surplus. The term 'reasonable' in relation to the trade waste power could conceivably be interpreted as meeting the cost of service in order to be 'reasonable' to its customers. It could also be interpreted as meaning at a market rate as this is what customers could 'reasonably' expect to pay given that council providers are in competition with private trade waste companies. In fact, commercial waste services throughout the UK do generate surpluses, suggesting that the latter is the correct interpretation.

8.6 A power that is widely used by UK councils is the Civic Restaurants Act 1947. This power to, 'establish and carry on restaurants and otherwise provide for the supply to the public of meals and refreshments', has proved an adequate basis for the commercial retail of food at a range of venues from cafes in parks to high end restaurants in theatres and civic buildings. It does not actually make express provision for the making of a surplus but there are many examples of council run food outlets that do so.

8.7 Other specific powers include those pertaining to burials and cremations. These have been of particular interest recently as a number of councils have explored the potential for the creation of a commercially viable end to end funeral service, i.e. to include undertaking as well as the disposal of remains. In this case the law allows burial authorities to charge such fees as the authority 'thinks fit' for cremations and any other services relating to the cremation. This appears to provide a basis for charging for peripheral services such as the sale of memorials and potentially, also undertaking. Moreover, it also allows the council to determine for itself what the charge should be and does not preclude the making of a surplus. Unfortunately, the equivalent power to charge for burials does not include the related services clause. This casts doubt on whether it provides a basis for undertaking – or any other service that is not the burial itself, although it may be argued that such associated activities are incidental to the specific power.

8.8 Lawyers have long struggled with the complexities of a framework that relies upon such interpretations and have tended to take a cautious approach. The provision of a power 'to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions', in the 1973 Local Government (Scotland) Act was helpful but did not amount to a general power as it maintained the link with authorised functions.²

8.9 The Local Government in Scotland Act 2003 created a genuine general power for the first time. It allows local authorities to do anything that will, in the view of the council, promote or improve well-being in its area. The specific inclusion of things done outside of the area and powers to, 'enter into arrangements or agreements with any person' and to, 'provide staff, goods, materials, facilities, services or property to any person', all support the proposition that the power provides a basis for commercial activity where the council considers it to satisfy the wellbeing test. However, specific restrictions on the power include it not enabling, 'the doing of anything which may be done under the Local Authorities (Goods and Services) Act 1970' (see below). Statutory guidance interprets this as 'traded services' which it defines as those provided in a competitive environment where charging goes beyond cost recovery.

8.10 Notwithstanding that the guidance is not actually the law and that councils are only required to have regard to it, the well-being power cannot be considered an adequate basis for trading on anything other than a cost recovery basis. Whilst this is a significant restriction, it does not however prevent council's benefitting financially from services charged for under the power. Many councils in England have made use of a similarly restricted power under English legislation (s93 Local Government Act 2003) to generate savings through the sharing of overhead and other costs between charged for and non-charged for service elements. The ability to aggregate cost at the level of 'type of activity' allows a surplus to be generated on a charged for element whilst still breaking even overall.

8.11 The well-being power is helpful but the Scottish legislation creates further powers that are more overtly aimed at allowing Councils to trade in competition. Amendments to the Local Authorities (Goods and Services) Act 1970, brought about by the 2003 Act, extend the existing ability of local authorities to trade with other public bodies to trading with private bodies and individuals.

² The issue of when an activity can and cannot be properly considered to be incidental has been considered by the courts. Two cases in particular, *R v Richmond upon Thames Council, ex parte McCarthy & Stone Ltd* and *Risk Management Partners Ltd v Brent London Borough Council* established that the power cannot be widely construed, i.e. to authorise something that is incidental to another incidental activity, rather than directly to an authorised function

8.12 Some misleading, but long since withdrawn, explanatory notes created some initial doubts as to the efficacy of the legislation. In particular, it was stated that trading could only be carried out from surplus capacity. This was in fact one of the issues considered in the case of *R v Yorkshire Purchasing Organisation ex parte British Educational Supplies Limited* back in 1998. The case not only ruled that councils were entitled to build trading capacity but also clarified that they were able to make profit and trade on a speculative basis. These findings are applicable to the amended legislation.

8.13 A further source of doubt about the amended Goods and Services Act is the inclusion of a restriction on the amount of income that a council can generate from trading activity conducted outside the public sector. This statutory limit is to be set by ministers, who are also provided with a power to allow it to be exceeded. No such limit has been set, leading to a divergence of opinion over whether it is therefore zero or unlimited. Although there are numerous examples of Scottish councils trading under the power without having been challenged and Ministers have not felt it necessary to set the limit, the issue has not been considered by the courts and legal advice should be sought as appropriate.

What is clear?

- There is a significant range of services that are provided under specific legislation. In many cases the legislation allows for charging, although not in all cases on a surplus generating basis.
- There is a well-established and unrestricted ability to trade, including for profit, with other public bodies and a range of others designated as public for the purposes of the Act. The latter includes all schools, housing associations, utility companies and many others listed in an appendix to the Act.
- There is a clear ability to trade with any person subject to interpretation of the absence of a statutory limit on turnover from such activity.
- There is a clear basis for undertaking activities, including outwith the area of the authority, that will, in the view of the Council, enhance or promote the well-being of the council area or that of at least some of the people living in it. This cannot be used as a power to undertake 'traded' activities but does allow cost recovery. In all cases it should be borne in mind that it is unlikely that a financial benefit to the authority will be sufficient in itself to satisfy the well-being test. The benefit must be to the well-being of local citizens, not just the council itself.³
- There is no requirement in Scottish law for trading to be conducted through arms-length arrangements and doing so does not avoid the statutory turnover limit. There is nonetheless a clear legal basis for trading in this way where a council wishes to do so. Where a company or other corporate vehicle e.g. a Limited Liability Partnership is used it is essential to ensure compliance with competition law, including and in particular in relation to procurement and state aid.

Meeting the well-being test

8.14 A note produced by the Scottish Government's Best Value task force in 2004 sought to draw attention to the link between the power of well-being and two other key planks of the legislative framework, the duty to secure best value and the duty of community planning. The note asserts that, 'External trading should not be undertaken simply for its own sake nor to perpetuate historical practice. Councils should have clear, explicit reasons for work of this nature, which justify the associated balance of risks and rewards'. It goes on to list what the task force considered to be legitimate reasons to engage in trading activity.

- Reduces cost to the Council by sharing of overheads,
- Makes use of surplus capacity,
- Shared gains of joint working through the community planning process,
- Reduced costs to partners be they public, private or voluntary
- Limited local alternatives or market failure
- Contributes to the Council's corporate goals in a way which cannot be better provided by an alternative provider
- Creation of a critical mass of business to allow desired standards of technology etc. to be justified,
- Provides contribution to the local economy which contributes to sustainable development
- Provides a degree of local market regulation

³ This was one of the points considered in the English case of *Risk Management Partners Ltd v Brent London Borough Council and others* which considered the correct interpretation of a similarly worded power provided under the Local Government Act 2000

8.15 The advisory note expresses a clear policy intention to ensure that trading activity makes a tangible contribution to public well-being and is consistent with the duty of best value. However, it is not statutory guidance and should not be read as a statement of the legal position. One point in particular, already discussed above, is that the legislation does not, on the face of it, restrict trading to the use of surplus capacity. Nor does it restrict the ability to trade for a profit under the amended local Authorities (Goods and Services) Act (other than in so far as the turnover limit does or does not do so).

8.16 There are several examples of activities which are capable of providing a commercial return whilst at the same time meeting a clearly identifiable local need. Nottingham City Council's energy retail business is an excellent example of an initiative that operates on a commercially viable basis but which has had a demonstrable local impact on fuel affordability. By competing against established suppliers, Robin Hood Energy forced average energy prices in the regional market down from being amongst the highest in the UK to amongst the lowest.

8.17 Other examples of commercial activity that have a direct impact on the well-being of local people include the development of social and affordable housing. Councils throughout the UK have built houses for sale and for rent at market rates as well as social housing. Such schemes are not always strictly commercial but can attract new funding from government, stimulate the local economy and create revenue or capital receipts for the councils concerned. Recent APSE research refers to a number of case studies which includes details of how Highlands Council has been tackling the need for an increase in affordable housing in its area.⁴

8.18 One English authority, Gateshead Council, has set up an end to end funeral business with the clear aim of tackling the problem of funeral affordability. Work undertaken by APSE Solutions for a number of different authorities shows how councils can simultaneously generate a good commercial return and bring down the cost of funerals to combat funeral poverty.

8.19 It is important to bear in mind that English law differs from Scottish law and that, in particular, many of the uncertainties around powers discussed here have been dealt with in England through the provision of a power of general competence. However, the specific legal basis underpinning these sort of initiatives is perhaps less important than the way in which they are patently beneficial to local communities. The Scottish legal framework places significant emphasis on the link between powers and well-being. This being the case it makes sense to actively seek to identify trading opportunities where the well-being benefit can be readily identified. This may not always be direct. For example, it might be argued that there is a well-being case for a council to establish a roofing business, as to do so would offer a trusted alternative to private companies in a market place where vulnerable customers are frequently exploited by dishonest traders.

⁴ Delivering affordable homes in a changing world: Ensuring councils can meet local housing need, Henderson K. et al, APSE 2018

9. Risk issues

9.1 Commercial trading is inherently risky and it is inevitable that some initiatives will fail, just as they do in the private sector. There is however a major difference between the taking of risks with one's own money and the taking of risks with public money. Councils undertaking commercial activity must ensure that the risks they take are proportionate and demonstrably reasonable. It is neither legally nor politically acceptable to act recklessly and any major scale trading loss is likely to provoke a significant backlash. The consideration of risk is therefore an essential part of developing a commercialisation strategy.

Attitude to risk

9.2 Local government has well developed risk assessment expertise. In the past this has been primarily used to reduce exposure rather than to improve risk management. A council's attitude to risk will be reflected in the permissions regime governing entry into trading relationships as well as in how it responds to the failure of any given initiative. Local authorities have well defined fiduciary duties that effectively disallow recklessness but this does not preclude the taking of commercial risk. Compliance with fiduciary duty will be indicated by whether the council had properly considered and put in place proportionate measures to manage risks rather than the fact that the risk was taken.

9.3 Individual officers involved in the pursuit of trading initiatives will need a clear understanding of the corporate attitude to risk. If officers expect to be punished for commercial failure, they will be reluctant to take the sort of risks that are likely to be necessary if they are to succeed in competitive markets. There must however be a clear expectation that risk will be fully assessed and understood and that on-balance a decision to go forward with a trading initiative is reasonable.⁵

Strategies for management of risk

9.4 The starting point for good management of risk is early and accurate identification of the key risk factors. Whilst there is likely to be an emphasis on financial issues the significance of reputational risk and of legal non-compliance should not be underestimated. A balanced business case using the headings strategic, legal, commercial, financial and operational should identify and assess risks associated with each heading. As well as indicating likelihood, impact and overall severity this assessment should identify prevention and mitigation measures to be taken. Some of the main generic risks associated with each heading are shown in the table overleaf:

⁵ In this context reasonable means reasonable to an impartial, fully informed external person

Business case element	Generic Risk	Comment
Strategic	Trading activity not consistent with political ethos of council	Business cases should actively demonstrate how a proposed initiative will contribute to corporate priorities. Where no such contribution is identifiable there is no case for proceeding.
	Trading activity results in backlash from private competitors Negative press or public feedback	It is the nature of competition that there are winners and losers. It is however important to be able to demonstrate that the council is not operating unfairly and that any adverse impact on local business is fully understood and acceptable before trading commences. In some cases these can be presented as a positive – e.g. if a council roofing service puts cowboy builders out of business this is unlikely to be seen negatively. Where risks of negative public perception are identified these can be mitigated through an effective communication strategy to ensure that there is wide-spread understanding of the benefits that will flow from the trading initiative.
	Trading failure results in reputational damage	Careful consideration of the risk/reward ratio and a robust balanced business case are required. Clear communication strategy and well thought through risk mitigation strategy essential for high profile initiatives.
Legal	Trading activity deemed unlawful Challenge from competitors	Most trading activity is low risk in this respect but where there is doubt about vires it is essential to ensure that appropriate advice is taken. Councils should always act reasonably and demonstrate that they have taken account of the impact of any trading activity on local businesses etc. When trading through a separate corporate entity such as a wholly owned company or LLP advice should be taken on procurement and state aid implications.
Commercial	Demand failure Supply failure	Understanding the market is a crucial element of a robust business case. Deep knowledge of the customer is a prerequisite of any successful trading venture.
Financial	Trading fails to generate a profit Trading failure leads to loss of sunk expenditure	The business case should set out profit and loss projections on a basis that is acceptable to council finance team. Trading should not continue where it is unable to operate on a financially sustainable basis. Risks such as non-payment should be assessed and mitigated i.e. by requiring payment in advance where appropriate. Clarity over the extent of sunk cost exposure should be included in the business case and go to careful consideration of the risk/reward ratio. Unaffordable levels of exposure should be avoided. Spreading financial risk across a range of different initiatives will help to off-set the impact potential of individual failures.
Operational	Inability to provide service because of staff shortage or lack of suitable equipment Diversion of resources impacts on delivery of core services	Business case should clearly demonstrate what resources are required and where they will come from. Good business planning is essential - including contingency planning. Core service delivery should be protected and in most cases it will not be acceptable to rely upon existing capacity to deliver commercial activity.

**LOCAL SERVICES
LOCAL SOLUTIONS**