

Tougher Times

Enterprising councils

Getting the most from trading and charging

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Why this matters to councillors

A lot has changed since the first edition of this councillor guide appeared back in 2005.

One thing is certain. We now know that in the decade ahead public services will need to adjust to significantly **lower levels of central funding** than in the past. And councillors will be called upon to play a critical role, providing **leadership** to their councils and local partners through much tougher times.

In this new world, there are **no easy choices**. But where choices have to be made, they are **best made locally** by elected representatives who are in daily contact with the people that they serve.

It is clear that councils will need to take a fresh look at everything that they and their partners do. As part of this **fundamental review**, there are choices to be made about engagement in **trading activities** and **charging for services**.

Trading and charging are important options on the menu of **innovative ways of working** expected to develop quickly over the coming months, including employee-led mutual partnerships, communities' right to bid to take over local state-run services and other 'Big Society' approaches to decentralisation.

This updated guide (which takes account of the most recent **rule changes**) looks at the **options** councils currently have for trading and charging and at the **experience** that has been accumulating in local areas. It is the first in a series of *Tougher Times* guides designed to help councillors work their way through the difficult choices and respond to the leadership task that lies before them.

While the chief focus is on options for **income generation**, the guide also looks at how trading and charging powers can be used to help support **recession-hit local communities** and to provide the public with **greater choice**.

We need to point out that this short guide is not intended to be a definitive statement of the law and, as ever, councils need **to take their own legal and financial advice.**

In particular, the Government is committed to introducing a new **power of general competence**, something which local government has long sought, which will be an advance on the “well-being” power described in this guide and important for trading.

The contents of this guide apply only to **England**; different arrangements are in force in Wales, Scotland and Northern Ireland.

Delivering value for money

Keeping pace with local citizens' expectations is an uphill struggle when central funding is reducing.

Generating **additional income** is clearly one of the choices available to councils and other public sector partners. That is why it is important to consider all the options for trading and charging.

The income that is generated can be used to help hold down **Council Tax** and/or can be directed into **frontline services**.

Trading and charging for services have always been a feature of local government in this country (see **Boxes 1** and **2**).

Under the **Local Authorities (Goods and Services) Act 1970** councils can **trade with each other** and with **designated public bodies** (there is a long list).

The **Local Government Act 2003** added some new possibilities. The 2003 Act enables councils to trade on a **commercial basis** with the **private sector** through a **company** and it empowers councils to **charge for discretionary services** on a **cost recovery** basis.

The option of **trading through a company** is expressly about making a **surplus**. Profits go back to the council in the form of **dividends** and **service charges** (that is, charges for goods, services, premises etc. provided to the company by the council).

Originally, the trading company option was confined to councils in higher CPA categories. A series of amendments followed by a new **Trading Order**, in force since October 2009, changed that. It is now an option open to **any council** (apart from a parish council) **or fire and rescue authority** in England that approves a **business case**. **Box 1** looks at legal and other issues involved.

Under the 2003 Act, councils can also charge **individuals** and **private companies** for discretionary services (that is, ones they have power to provide but are not obliged to provide by law).

Here the **charges** must be based on **cost-recovery**, but income from charging can still help with the council's **financial position**.

For example, **overheads** (including fixed costs like premises) can be spread over a broader range of activity, and vehicles, plant and equipment bought by the council to provide the discretionary service can be used by the council for other purposes too.

Box 1

Trading

There are long-established powers for councils to trade.

Among the most important is the **Local Authorities (Goods and Services) Act 1970**. That Act authorises councils to enter into **agreements** with **other local authorities** and other **designated public bodies**, for the provision of goods, materials and **administrative, professional and technical services**, for the use of vehicles, plant and apparatus and associated staff, and for **the carrying out of maintenance**.

Payment terms are set out in an **agreement**. These are **not limited to cost-recovery**.

The 1970 Act is the bedrock of trading **within the public sector** and there is substantial experience of its operation. But the Act is limited in scope. For example, it does not allow trading with the private sector or the public at large.

Other established trading powers include, for example, the Local Government (Miscellaneous Provisions) Act 1976 which enables councils to enter into agreements with anyone for the use of spare computer capacity.

The **Local Government Act 2003** added new possibilities to trade with the **private sector**.

Under the 2003 Act the Government authorises trading by means of a trading order. In the first trading order, in 2004, only councils in higher CPA categories were permitted to trade with the private sector. That order was amended several times before being replaced entirely by the **2009 Trading Order** (see further reading below).

The 2009 order permits all councils (apart from parish councils) and fire and rescue authorities (FRA) in England to trade, “to do for a commercial purpose”, anything which they are authorised to do for the purpose of carrying on their ordinary functions. Under the 2003 Act, the power to trade must be exercised through a **company**.

The main effect is to enable councils to trade with the private sector for a profit (i.e. commercially). In other words, to enter into **commercial contracts**. The profits may then go back to the council through **dividends** or **service charges**. Councils can only trade in services that they are able to provide in the first place for the purpose of carrying on any of their **ordinary functions**, which includes the **well-being power** (and would include any future “general competence” power).

Local authority trading companies can take a variety of **forms**, and this includes **joint ventures** with other **public sector** and/or **private** and **civil**

society partners, including social enterprises, as long as the company comes within the Local Government and Housing Act 1989 (Part 5).

To exercise the power to trade, the council or FRA must first **approve a business case** (“a comprehensive statement”) covering **objectives** and associated **investment** and other resources required, business **risks** with an indication of their significance, and the expected **financial results** and any other relevant outcomes expected.

They must also **recover the costs** of any accommodation, goods, services, staff and anything else they supply to the company under any agreement or arrangement.

Other important **legal, commercial and financial considerations** for councils or fire and rescue authorities setting up a trading company include company law issues, the cost of bidding for contracts, tax liability (corporation tax and VAT), EU procurement law and state aid rules and employment law (TUPE and pensions). There needs to be a **business plan** for the operation of the company.

Box 2

Charging

There are **specific powers** to charge for services scattered throughout local government legislation. For example, the Local Government (Miscellaneous Provisions) Act 1976 permits charging for the use of recreational facilities.

The **Local Government Act 2003** introduced a wide-ranging power to charge. The charging power is available to all “best value authorities” and was not linked to an authority’s Comprehensive Performance Assessment (CPA).

Under the Act, councils can decide to charge for **any discretionary service**. That includes discretionary services provided on the basis of the **well-being power** in the Local Government Act 2000.

The Act does not apply to services which an authority is **mandated** or has a **duty** to provide. Also, the recipient of the discretionary service must have agreed to its provision and to pay for it.

The 2003 Act power cannot be used where charging is **prohibited** or where another **specific charging regime** applies. Charging is limited to **cost recovery**. Authorities wishing to engage in commercial activity with the private sector in their discretionary services will need to rely on other powers such as the **trading powers** under section 95 of the 2003 Act.

In 2003 ODPM (as it then was) issued **statutory guidance** on how costs and charges should be established and that guidance remains in force (see further reading below).

Sustaining communities

In some parts of the country communities fail to thrive because the market does not supply the services local people need at a price they can afford to pay. The recent recession showed this in sharp relief.

Market failure of this kind needs to be addressed if communities are to be kept viable. Enterprising councils have stepped in to correct market failure of this kind by **providing services themselves**.

By entering the market the council may be seeking to **moderate prices** for essential services. This may be necessary where the absence of competition means that price rises are not being kept in check.

The well-being power (**Box 3**) provides the statutory basis for action of this kind.

The delivery of new **discretionary services**, charged for on a cost-recovery basis, is an option for councils faced with a challenge of this kind. Charges may be **subsidised** where this is merited.

A local authority **trading company** is another option although the commercial purpose of the company means that it would not suit every case.

Box 3

Well-being power

The power to do anything the council considers likely to promote or improve the **economic, social or environmental well-being of the area** (the “well-being” power) was introduced by the Local Government Act 2000.

The 2000 Act specifically authorises arrangements or agreements with any person and the provision of staff, goods or accommodation to any person. Here “any person” includes those in the **private sector**.

There are also powers to give financial assistance and to enable cooperation, coordination and facilitation of others’ activities.

There are two important **limitations** on the use of the well-being power. It cannot be used to:

- Do something that the council is unable to do due to a **prohibition, restriction or limitation** on its powers contained in other legislation, or
- **Raise money** by way of a precept, borrowing or otherwise.

For the purposes of the power to charge, the 2003 Act overrides the prohibition on raising money. Government guidance on trading and its use in conjunction with the well-being power explains that activities under section 2(1) of the 2000 Act, such as the provision of goods and services, can now be traded, that is made available at a commercial rate in connection with the exercise of the well-being function (see **Boxes 1 and 2**).

Providing choice

Individual citizens and local communities vary widely in their needs and aspirations. Councils seek to be responsive by **tailoring services** and **offering choice** where appropriate.

The 2003 Act charging power provides some new possibilities.

For example, a council might decide to provide a **new discretionary service**, that is an **addition or enhancement** to a **statutory service**, and then charge for it.

The additional service could be requested by an **individual** or collectively by a **neighbourhood**.

Using the power in this way, it is possible to make a degree of choice **self-financing**.

This approach is clearly not suitable for all services. In certain services **equity** is the overriding concern and **statutory requirements** must always be observed.

How this works in practice

Research commissioned in recent years by LGA, the Audit Commission, the Government (INLOGOV) and the Association of Public Service Excellence (APSE) has shown that councils are making considerable use of the various trading and charging powers (see further reading below).

The [Charging Directory](#) published by the Audit Commission shows the full spectrum of charging activity in the sector.

Facilities management, including building maintenance, cleaning, catering and grounds maintenance; waste management and transport and vehicle maintenance are well-established areas of local authority trading activity and new avenues are being opened all the time.

The tougher times that councils are now living through, combined with reforms in particular services such as adult social care, are leading to a **growth** in the number of local authority trading companies including joint ventures with civil society organisations and the private sector. Pioneering examples are shown in **Box 4**.

Box 4

Trading company pioneers

[Norse Group](#) is a holding company created in 2006 to bring together two companies, owned by Norfolk County Council, which were already trading successfully: facilities management provider Norse (formerly Norfolk County Services) and property consultant NPS Property Consultants. In 2008 Norfolk Environmental Waste Services (NEWS) joined the group, expanding the range of services. The group turns over in excess of £150m and employs over 5,000. Jointly-owned operating subsidiaries provide services around the country.

[SK Solutions](#) is wholly-owned by Stockport Council. It provides a wide range of services ranging from facilities management, including catering, to highways and waste management. It was formed in 2006 from the council's direct services department when some 1,000 staff transferred. Today, turnover is around £40m.

[Swindon Commercial Services](#) has followed a similar path and provides a parallel range of services. It was established as a trading company early in 2010 with 800 staff and a turnover in excess of £70m.

[Essex Cares](#) is the name of a group of local authority trading companies providing adult community support, equipment and employment and inclusion services. In 2009 some 850 county staff were transferred to this business which currently has a turnover of over £30m.

[Chelsea Care](#), which provides brokerage and domiciliary care services, was formed as a business start-up in 2009 aiming for an initial £1m turnover. Croydon Council is among other councils currently considering a trading company model for adult social care.

[Kent Top Temps](#) started out in 2003 as an agency within Kent County Council's Commercial Services. In 2005, in order to take on work in the private sector, it was transferred to a trading company. It is a recruitment agency, recruiting to permanent, temporary and contract jobs throughout the county. Currently, turnover is in excess of £22m and there are 26 permanent staff. Trading as **Kent Top Travel**, the company also operates one of the largest commercial bus and coach fleets in the county, providing vehicles for private hire, public service routes and Park & Ride services in process. Today, this operation has an annual turnover of nearly £6m and employs 125 staff.

Checklist for councillors

Has the council -

- Carried out a **fundamental review** of its activities - in conjunction with local partners - and as part of that looked at use of trading and charging powers?
- Adopted a **policy** on trading and charging that is aligned to council strategy and a delivery plan?
- Carried out **option appraisals** (including early legal, financial and HR advice and market research)?
- Approved a **business case** for selected options (especially where this is a statutory requirement) and an operational **business plan**?
- Put in place a **change programme** (as appropriate) including cultural change as well as administrative arrangements?

Getting help

If you need further information or help with trading or charging you can contact any of the following –

Regional Improvement and Efficiency Partnerships (RIEPs)

[Who's Who in the RIEPs](#)

Local Government Improvement and Development

Lee Digings
National Adviser, Procurement
Lee.digings@local.gov.uk

Local Partnerships

Alan Munro
Project Director
Alan.munro@localpartnerships.org.uk

Local Partnerships offer a training programme on local authority trading and charging.

Further reading

[*General Power for Best Value Authorities to Charge for Discretionary Services*](#), ODPM, 2003

[*General Power for Local Authorities to Trade in Function Related Activities Through a Company*](#), ODPM, 2004

[*And the Addendum to that Guidance issued in April 2007*](#),

[NB. To be read in light of 2009 Trading Order]

[*Loosening the Reins: A Survey of Local Authority Approaches to Prudential Borrowing, Charging and Trading*](#), LGA, 2004

[*Using the New Powers to Trade and Charge: Local Authority Case Studies*](#), LGA, 2005

[*Local Authority Trading: Research Report*](#), CLG (INLOGOV), 2007,

[*Positively Charged: Maximising the Benefits of Local Public Service Charges*](#), Audit Commission, 2008,

[*SI 2009/2393, The Local Government \(Best Value Authorities\) \(Power to Trade\) \(England\) Order 2009*](#) [2009 Trading Order],

[*Joint Ventures: A Guidance Note for Public Sector Bodies Forming Joint Ventures with the Private Sector*](#), HM Treasury, 2010,