

Policy Platform

TRADING COUNCILS: HOW LOCAL AUTHORITIES CAN INNOVATIVELY USE COMMERCIAL POWERS

Introduction

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In a period of spending cuts and financial pressures, local authorities face a challenging task of providing the best possible services with less resource. But, this edition of Policy Platform argues, if councils could utilise their commercial trading powers more effectively

then the benefits to the locality, and to their residents would be marked. Local authorities must be innovative in a time of austerity, and currently the golden opportunity offered by trading powers is being, for the most part, overlooked.

The Local Government Act 2003 went some way towards freeing councils from trading restrictions but it would seem it did not go far enough. Currently only a handful of councils are fully utilising their trading powers and the rest are missing out on potentially lucrative opportunities that could provide much needed breathing space to those facing tight fiscal pressures.

The coalition government's Localism Bill contains provisions for granting councils a General Power of Competence allowing local authorities 'to raise money by charging and trading in line with existing powers and to provide indemnities and guarantees' (Localism Bill: General Power of Competence - Impact Assessment, DCLG). This will hopefully give the final 'green light' for councils to fully utilise their commercial powers for the good of their area.

The contributors to this month's Localis Policy Platform are in agreement that, if local authorities could look beyond their (often incorrect) assumptions about

their capacity to trade, then they could be reaping the rewards of commercial opportunities. They also argue that a localist credo dictates that councils can and should be able to behave as any other business would – with financial self-sufficiency and flexibility.

The leader of Bracknell Forest Council, Paul Bettison, hopes that, with the General Power of Competence, local authorities will be given a clearer picture of the legalities and freedoms with which they can use their commercial powers and that this will lead to an outwardly-focused 'entrepreneurial spirit' and bold decision-making in these areas.

Jenny Owen, Deputy Chief Executive and Commissioning Director of Adult Social Services, at Essex County Council, provides examples from Essex demonstrating how councils can develop an identity beyond that of a service-provider. She also notes that local authorities are not solely limited to trading with the private sector and that other councils provide equally vital and potentially profitable commercial openings.

Judith Barnes, Partner and Head of Local Government at Eversheds LLP, describes and dispels the myths and misunderstandings around what councils can and can't do in terms of trading. She contends that these damaging misconceptions are curbing the willingness of councils to consider the use of their commercial powers as a viable option.

Finally, the leader of Surrey County Council, Dr Andrew Povey, argues that whilst councils must take the initiative themselves to make better use of trading powers, there are still barriers to financial self-sufficiency that must be removed if local authorities are to capitalise on lucrative commercial opportunities in a time of public spending frugality.

We hope that you enjoy reading these informative and stimulating contributions to a vital debate.

Bracknell Forest Council

Paul Bettison, Council Leader



With the Chancellor sticking firmly to economic plan A (there is no plan B), the debate is moving on to the wider question of how local government will respond to a prolonged period of austerity.

Bleak as it is, it's not only the fiscal outlook that's proving a challenge. Councils up and down the country are facing increasing demands for better services, rapid technological change and a new legislative environment which will give communities a greater say in running services.

But could these demands force local government to re-invent itself for the 21st century, not unlike the golden age of Victorian municipalism but re-tooled and re-purposed for this century?

That might be stretching it a little, but there's no doubt that councils must seize the opportunity to move away from traditional models of organisation and delivery and find new, creative ways of meeting the needs of the people they serve within the resources they've got. Necessity is the mother of invention, after all.

To make this happen, councils must turn to the switches and levers at their disposal. Councils' power to trade on a commercial basis is one such set. At the last count, there were at least seven Acts of Parliament giving councils a wide range of commercial powers.

I don't plan to detail them all here but there are two important legislative milestones. Introduced over 40 years ago, the Local Authorities (Goods and Services) Act 1970 allows councils to trade with each other and other specified public bodies. Its powers, however, placed limitations on councils' freedom to trade. Trading with the private sector was difficult if not virtually impossible and it wasn't until the introduction of Section 95 of the Local Government Act 2003 that councils could throw off their shackles and begin commercial trading as we see it today.

The 2003 Act gives councils the power to trade for a profit – as opposed to merely covering costs – anything deemed as a public function with the private sector as long as they do it through a limited trading company. Profits go back to the council in the form of dividends and any charges provided to the company by the council such as accommodation also go back to the council.

As well as an extra source of revenue for the council, trading companies retain the skills of staff, reduce core costs, generate economies of scale and are able to react to market conditions more quickly than traditional in-house services. Trading companies can also fill gaps in services in the local market and may benefit local businesses by procuring goods and services locally.

Like their commercial counterparts, council trading companies are subject to competition law. They cannot distort markets by unfair public subsidies, by arranging preferential terms or other forms of unfair competition.

So far, so good. But what's interesting is how few local authority trading companies were established in the immediate wake of the 2003 Act. It was far from a rallying call. The act was supposed to create a dynamic and entrepreneurial public sector to increase diversity and choice in public services, introduce new players to the market, increase the scope for partnership working and provide business opportunities for the private sector.

A year after the Act was introduced, the Local Government Association asked councils about their plans to use the new powers. Just 2% said they were already using them and 18% had plans in the pipeline while 80% said they had no current plans to use the powers. Even of those saying they had plans, the majority reported that their plans were far from decided.

But it's becoming clear that councils are starting to take a fresh look at everything they and their partners do. The external environment is forcing them to. The issue then, is what role will trading companies play in a future local government landscape?

After a slow start, we're seeing a growth in the number of such companies. Services such as facilities management, construction, waste management and transport and vehicle maintenance are becoming established areas of local authority trading. Indeed, companies initially set up to ensure a sustainable future for the in-house team are now trading successfully with private sector clients.

Here in the South East, I'm the chairman of iESE, the region's body dedicated to delivering improvement and efficiency in local public services. Our funding from government runs out this summer. To retain the skills, knowledge and programmes of work and to give our customers the certainty they need to plan ahead, we're recreating iESE as a legal entity. Owned by its parent councils, iESE will be free to sell its services to councils and other bodies in and beyond the region. Profits will be re-invested in the company which in turn will be used to deliver more innovation

for our customers.

New avenues are opening up all the time, avenues that so far have been closed to local authorities. We'll see more joint ventures with the private sector, employee-led mutual partnerships will emerge and councils must respond to communities' right to bid to take over local state-run services and other Big Society approaches to decentralisation.

But as local government becomes increasingly creative in the use of its trading powers so barriers are emerging. One person's freedom to trade is another person's restraint to trade. Let me give you an example.

Spearheaded by the London Borough of Croydon, a number of London Boroughs came together to create local government's first insurance mutual in a century, the London Authorities Mutual Limited. Established under councils' general 'wellbeing' power, which the government at the time encouraged councils to use, the venture was designed to make substantial savings on councils' insurance premiums. Rather than going through a full competitive process, councils would give their business to LAML.

“...councils are starting to take a fresh look at everything they and their partners do. The external environment is forcing them to.”

However, an insurance firm objected and the courts, in the face of localism and efficiency, initially found against the authorities. The case centered on whether EU Contracts Regulations applied to a local government shared service vehicle. But after a lengthy legal process, the UK Supreme Court recently concluded that

the local authorities involved could give business to LAML without going through external competition. This was because LAML was fully under the control of the group of local authorities providing services for its owners.

The LAML case illustrates the complexity of issues behind council trading initiatives and the need to clarify both domestic and European law if innovation of this kind can flourish. Indeed, councils need the freedom to innovate. How many other, more risk-averse councils are sitting by the wayside waiting to see the outcome of legal challenge?

For his part, Eric Pickles has pledged to introduce a new power of general competence for local authorities, something which local government has long sought, which will be an advance on the

'wellbeing' power. This should finally allay any lingering doubts amongst the cautious as to how flexible the legal framework is for local councils.

So, will this herald a new era of local authority commercial trading? I hope so, but time will tell.

Local government has an enviable track record of innovation, but much of this innovation until recently has been inwardly focused. Going forward, local government must foster an active entrepreneurial spirit, recruit and develop much more commercially minded managers with fearless, visionary politicians prepared to make big, bold decisions.

As councils seek increasingly creative, flexible ways of delivering services under difficult circumstances, they will need the tools to do the job properly. The Supreme Court's ruling on LAML, the forthcoming power of competence and Localism Bill are exactly what's needed. The toolbox is getting bigger.

Essex County Council

Jenny Owen, Deputy Chief Executive and Commissioning Director of Adult Social Services



As part of a commitment to deliver the best quality of life in Britain, Essex County Council (ECC) has two key priorities which underpin all aspects of our work: 'putting the customer first' and 'delivering value for money'. Crucially, we also recognise that these priorities are not distinct. Achieving

true value for money is not just about cost savings, it is about getting the most for residents from the resources available. In essence, the council is always striving to deliver a better service by listening to our communities, but at the same time we are also seeking to maximise the resources available to us, to ensure that this shared vision for better service can be fully realised. To meet these aims in the current financial climate we need to be more innovative than ever, and that is why we are exploring the potential of a range of different delivery vehicles, including LATCs and other commercial opportunities, as a means to deliver on both counts.

One way in which we can use trading and our commercial acumen to deliver better results for our residents is by recognising what we do best, and making the most of this capability and capacity. ECC's successful bid to run Slough Borough

Council's (SBC) library services is a good example of this. Despite the difficulties which many councils have had in delivering efficient library services, for many years Essex Libraries has been running first class facilities, and when reviewing its operating model in 2010, ECC identified the opportunity to trade this service and maximise its potential. Consequently, when SBC sought to find an external partner to run its libraries, motivated primarily by the desire to deliver a better service for its residents, Essex Libraries was ideally placed to win the contract.

This collaboration between ECC and SBC will help both councils to deliver a library service which maximises resources and positive outcomes for their

residents. Residents of Slough will benefit from an efficient library service of the highest quality, while Essex Libraries will be able to further develop their good practice and maintain local facilities, thereby also benefitting library users in Essex. Moreover,

the service will provide opportunities for economies of scale and greater efficiency, a benefit which will be passed on to all residents. While other library services across the country are being closed, or severely curtailed, ECC has managed to avoid closing any of its libraries through this innovative approach to securing sustainable income. Based on a sound foundation of excellence and efficiency, there is clearly also ongoing potential to expand the library service's trading capabilities.

This is an approach which we think can work in other service areas as well, and further opportunities to trade will arise in tandem with ongoing service improvement across the whole council. Moreover, these opportunities are not confined to trading with other councils, as there are clearly also emerging opportunities to market our services in the private sector. For instance, we are currently promoting our Essex Guardians scheme to the national market. This is a pioneering service which works to improve the quality of life of vulnerable adults by helping them to handle their personal finances when they, or their carers, are unable to do so. Guardians support clients by managing all aspects of what can often be complex financial affairs, including tasks such as making claims for benefits, filling out tax return forms and payment of household bills. These are the kind of tasks which would otherwise fall to overburdened relatives or solicitors. What ECC can offer is both a more rounded service, informed by the authority's vast experience of working with vulnerable adults, and the economies of scale which generate good

value for customers, clients and the council itself. In this way the case of Essex Guardians illustrates how the development of new and better services can also bring opportunities to generate added value for all residents.

Another way in which we can make local authority trading work for the council and its residents is the potential it gives us to empower the staff who deliver services, and in turn be more responsive to and engaged with services users. The relationship between our staff and our customers is key to delivering a service which truly fulfils the needs of its users. In social care for example, where there is relationship between 'provider' and 'user' built up over many years, this is especially the case. However, we know that the strict distinction between these two parties can be a barrier to maximising value for all involved, and devolving services away from a traditional centralised model, when done properly, can present us with one opportunity to redefine this relationship, as well as maintain and improve vital services.

ECC has already had some high profile success in this regard with Essex Cares. Established in 2009, Essex Cares was the first social care local authority trading company in the country and as such it is serving as a trailblazer for other authorities, as well as for ECC itself. Following a good transition, which engaged and enthused employees along the way, the council, and most importantly Essex residents, are now reaping the benefits of this new approach. Crucially at a time when new solutions are needed to meet social care needs within constrained budgets, Essex Cares has already been demonstrating its worth in terms of maximising resources. Within the first year of operation it had managed to meet its efficiency savings requirements, exceed predicted profit levels, and deliver a dividend return to the Council. There have also been opportunities to branch out into delivering discretionary services to generate additional revenue and greater adaptability has made partnership working across the public sector more straightforward.

Most importantly however, frontline staff have been brought to the centre of the way in which the service operates. It is no coincidence that a more engaged workforce, as demonstrated by a decline in sickness absences, has translated into increased user satisfaction, with 99% of those surveyed satisfied with the service they received. (Essex Cares (2010) Impact Report 2009/10; Making a Difference to People's Lives) The flexibility with which Essex Cares and its staff now operate has provided more opportunities for users themselves to partake in this innovation and offer feedback to shape services in a way which meet their own personal need more effectively.

“Achieving true value for money is not just about cost savings, it is about getting the most for residents from the resources available.”

We are also looking at how we can utilise a more customer-centred approach and responsive service to create commercial opportunities. In doing so we are trying to apply the lessons of other customer-focused sectors. Essex Assist, for example, has been developed to improve brokerage for care and care services, offering those who self-fund their care or have personal budgets better access and value for money. Essex Assist will create a one-stop shop for customers and provide them with the opportunity to interact with other service users and determine value for money through 'trip-advisor' style ratings systems. By engaging the customer and offering quality assurance, Essex Assist will improve the delivery of its statutory obligations, while creating a platform from which it can appeal to

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good quality providers who will value the role which Essex Assist can play in promoting their services to individual users. This commercial appeal will again provide the opportunity for the council to generate and redistribute additional resources for residents.

In conclusion then, the trading of goods and services offers an opportunity for local authorities to meet the financial challenges we currently face. Most importantly however, it also offers us new ways of meeting our objectives and priorities, as well as those of our residents. The key motivation for any council activity must be to ensure that our customers have access to the best possible services, and any opportunity to create the additional double benefit of empowering service users, and maximising our available resources, should be embraced.

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Trading can be a dirty word in some quarters. There is still a stigma around local authorities trading, despite there being a wealth of powers under which local authorities can charge for services and trade. There are lots of misconceptions or what I sometimes call “urban myths” around charging and trading, particularly that:

- “local authorities cannot trade with the private sector”;
- “local authorities can only trade through a company”;
- “authorities are unable to charge more than the costs of providing services”;
- “authorities may only do things in their own area”.

Hopefully by the end of this article you will agree.

Charging and trading are not mutually exclusive. One person's charging may be another person's trading, particularly where the same services are concerned, so is it better to talk about income generation? The language of some of the legislation may work against that by specifically labelling powers as charging or trading powers. That goes to the heart of perhaps some of the problems and confusions around powers - that the legal description of what is going on may not be the same as the perception of the service manager who is trying to generate a positive return on the services provided from whoever is willing to pay for those services.

The title for this article, provided by Localis, aptly captures the essence of what councils should be doing to generate income, ie innovatively using commercial powers and prefaces that with “Trading Councils”. The Audit Commission has previously adopted terminology “Positively Charged” when discussing the extent to which local authorities generate income from fees and charges on top of the usual sources of council tax and government grants etc. So whatever language we use colloquially may not reflect the description in the legislation.

It is perhaps worth mentioning that there is no absolute prohibition on local authorities generating income through trading, although some people may believe that to be the case. There are many powers, some of

“I have heard many a service manager saying “my lawyer says there are no powers” to do something when in reality there may be a number of ways to achieve the intended objectives.”

which are little known, but having nearly 30 years’ experience of working within and for local authorities gives one an idea of where to start looking or how to construct the rationale to utilise the broad ranging powers that are available.

Eric Pickles MP bemoaned the lack of use of the wellbeing power at the

Second Reading of the Localism Bill and cited that only 17% of authorities had used the power. “The reason for that is the innate conservatism of those providing legal advice, so councils have tended to err on the side of not introducing it”. He went on to say that the general power of competence included in the Localism Bill “is so important... that it turns the determination requirements on their head. All those fun-loving guys who are involved in offering legal advice to local authorities, who are basically conservative, will now have to err on the side of permissiveness. That is a substantial change.” Personally I am not convinced that lawyers in local government deserve such bad press, however, I have heard many a service manager saying “my lawyer says there are no powers” to do something when in reality there may be a number of ways to achieve the intended objectives.

One of the key powers in the armoury is the Local Authorities (Goods and Services) Act 1970. This Act enables local authorities to:

- supply goods or materials;
- provide any administrative, professional or technical service;
- use vehicles, plant or apparatus and appropriate staff; and
- undertake works of maintenance

for other local authorities and a whole list of other organisations designated as public bodies by further Acts of Parliament and Statutory Instruments.

The list covers thousands of bodies, including educational establishments, housing associations, “community associations”, health bodies and others. Section 1(3) goes on to state that “any agreement... may contain such terms as to payment or otherwise as the parties consider appropriate”. This has been interpreted by the courts in the *British Education Supplies v Yorkshire Purchasing Organisation* case (1997) to mean that a profit can be generated from those activities. Clearly the public body commissioning the services

may need to procure, however, this may be less of a concern for the providing local authority.

Interestingly, amendments made for police authorities, enable Goods and Services Act trading to be undertaken for anybody rather than just public bodies. Similarly for Scottish authorities, subject to a potential cap that may be imposed by Scottish ministers. Section 2 of the Act requires a separate account to be kept of income received.

Other examples of powers to charge and trade include:

- the power to provide restaurants under the Civic Restaurants Act 1947;
- the power to charge for special collections and other additional services as well as commercial waste under the Environmental Protection Act 1990;
- the ability to provide MOTs under section 45 Road Traffic Act 1988 and potentially follow up works required;
- powers to sell surplus computer capacity, eg to enable electronic billing by other utilities and service providers under section 38 Local Government (Miscellaneous Provisions) Act 1976;
- ability to do works outside the area under s32 Local Government (Miscellaneous Provisions) Act 1976;
- the power to sell electricity from renewable sources under section 11 of Local Government (Miscellaneous Provisions) Act 1976.

There are many more.

Wherever local authorities are able to trade for profit under the Goods and Services Act or explicit powers, like those above, then they should do so. We would normally expect some form of business case to be prepared, potentially for member approval, unless within the scope of officer delegation, setting out the objectives of the activities to be undertaken, the investment and resources needed, evaluating the risks and how significant these may be as well as the expected financial results and other outcomes. Contingency plans would be appropriate in the event that things do not go according to plan.

Another landmark in the charging and trading infrastructure came with the introduction of charging and trading powers in sections 93/95 Local Government Act 2003. These new powers are additional - enabling authorities to charge whenever they have a power to provide a service and are not under a duty; likewise to trade for a commercial purpose in that function. If there are other powers then the 2003 Act would direct you to those other powers to charge and trade

respectively.

The downside of using the charging power in the 2003 Act is that taking one year with another the income should not exceed the costs of the activity. That is not marginal costing, but includes the total cost of the service, ie all overheads including corporate and democratic core as well as covering the costs involved in providing services for the authority itself and service enhancements. The authority can choose the definition of service so this could include a number of services, some of which may be more self financing than others and the legislation also permits differential charging so perhaps the elderly or another needy group could pay less or nothing at all, whereas the DINKIS could pay much more.

When it comes to trading under the 2003 Act the authority must have as the central purpose risk based commercial trading in the private sector. So this power is not relevant when you are seeking to improve your own services by generating income under the Goods and Services Act or developing services to improve wellbeing benefits for residents or shared service delivery etc. Here we are talking about operating a commercial trading entity without subsidy through a Part 5 Local Government and Housing Act 1989 company or industrial and provident society. There is a need for a business case as mentioned above and don't forget procurement and TUPE requirements amongst other things.

Not only does a local authority need to find a relevant power, but it needs to exercise it properly following proper procedures and in a Wednesbury reasonable manner, to withstand challenge. In other words it must be for proper purposes/motives, taking into account all relevant considerations and ignoring irrelevant matters, not irrational, in good faith, balancing the risks against the potential rewards alongside the usual fiduciary, best value, equalities and other relevant duties.

The introduction of a new general power of competence will not take away the second limb of the ultra vires doctrine requiring powers to be exercised properly. It will, however, allow local authorities even wider scope to do anything that an individual may do, even "things... unlike anything that public bodies do". There will be some limitations, including the need to follow any pre-existing requirements on other powers and where reliance is placed on charging and trading the requirements will be similar to the Local Government Act 2003. The general power of competence will not permit wider delegation and any post commencement legislation will not limit

the exercise of the power unless there is an express restriction. The secretary of state will retain the ability to constrain the use of the wellbeing power through regulations but equally will be able to amend, repeal or revoke legislation which restricts its exercise.

Roll on late 2011/early 2012 when the power will be available.

It is well worthwhile exploring the breadth of powers available to local authorities to generate income. The smart authorities probably already have in place an income generation strategy which sets out the objectives, the processes to be followed and who is authorised to take decisions about new and innovative income generation.

It is not all about the legal position, however. Some authorities may be in favour of generating business irrespective of the ability of the local market to deliver - wanting a share of the action. Other councils may feel that where there is a mature market then the local authority should not engage in job substitution by competing themselves, as this will put locals out of work and impact on the local economy. On the other hand local authorities are often a trusted brand and many residents would feel more comfortable in utilising council services rather than potential "cowboys" for some services.

Political views about the extent to which an authority is willing to take risks or ring fence risks need to be taken on board and officers need to be savvy about the local market and the impact of any decisions. So for example, generating income by just putting up prices could have an effect of reducing income because it stifles demand. While some services are not price sensitive, eg parking in Westminster, others may well be and in some areas lower charges may mean that the council sells more, makes the population much happier and actually generates a larger surplus, but that depends upon the service.

Some authorities are looking at establishing trading companies. Here the council needs to be clear what the motives for the company are and whether it is primarily around service delivery and improving efficiency (community objectives) or whether it is more about risk based trading with the private sector.

There is a need for the business case to crystallise the reason for setting up such corporate ventures - as much can be delivered internally. In other words why not start by exploiting the public sector market before getting into the complexities of

running separate legal entities. Ultimately it is a question of 'horses for courses' and the culture and politics of the organisations concerned and in some circumstances the 'big bang' approach may work.

Surrey County Council

Dr Andrew Povey, Council Leader



Freeing councils from targets imposed by Whitehall and top-down performance measurements are important in helping them to take control of their own affairs.

Even more essential is the need set local authorities free financially. That is the only way we can truly innovate and continue to provide services that local people really value.

In the current financial climate we should be doing what any good business would do – examining all opportunities to diversify and develop income streams to protect frontline services and reduce the council tax burden on residents.

The Government's review of public sector funding, due to be published next month, will no doubt go some way to addressing the problems of the current system, where local authority funding is largely under the control of central Government.

Freeing councils from central government grant by allowing local authorities to keep a greater share of business rates is certainly a huge step towards letting them take control of their own affairs and drive their local economies.

Beyond this review of the main funding system, though, the commercial activity of councils seems to be strongly discouraged. There are a range of laws that effectively stop local authorities from fully embracing a commercial mindset in a public sector context.

Under the Local Authorities (Goods & Services) Act 1970 councils can trade with each other, or with a list of other approved public bodies, but cannot do so with the private sector or the public.

The Local Government Act 2003 (and 2009 Trading Order) offers more possibilities but the overall scope remains limited. These acts allow councils to trade on a commercial basis with the private sector at a profit. This can only be done through a company and is limited to trading services councils are already allowed to provide. Legal, commercial and tax obligations and the risks associated with them also come into play. While the 2003 act also allows councils to charge for discretionary services, this is only on a cost recovery basis.

Despite these limitations there are still good examples of inventive councils being commercially savvy and doing all they can to use their powers to the maximum.

In Surrey, the county council established a unique public-private sector partnership with Babcock International Group. The joint venture, Babcock 4S, provides schools with services in areas such as personnel, governor support, cleaning and grounds maintenance. It works with more than 50 local authorities and recently paid the council a dividend of £1.1 million. Launched in 2004, the joint venture was voted 'Best Supplier to the Education Sector' at the 2010 Education Investor Awards and it has provided significant savings for the council while helping to improve already high education standards.

Elsewhere local authorities have set up successful commercial operations with annual turnovers running into many millions of pounds. SK Solutions, which provides services from facilities management to highways, was formed in 2006 by Stockport Council. Essex County Council combined public and private sector expertise to provide adult community support and equipment through the trading company Essex Cares while Norfolk County Council set up Norse Group.

Freeing councils further commercially would help them build on these successes but ground rules will need to be set out for trading with the private sector and in competition with business.

Clearly – as the Federation of Small Businesses has argued – market distortion must be avoided at all costs, particularly as councils, alongside central government, are keen to step up our role in promoting and sustaining local business growth, especially in the current economic climate. Local authorities should not enter into new commercial activity lightly and certainly not without doing a thorough assessment of the potential impact on local businesses.

“In the current financial climate we should be doing what any good business would do...”

It appears that the existing wellbeing powers and the imminent general power of competence do not liberate councils to trade in any goods or services from which they are currently prohibited but is there any reasonable argument for limiting commercial activity?

Two principles are immediately obvious – relating to market failure and risk. Much of councillors' work is about protecting and improving local communities. If, for example, a rural community was at risk of isolation because there was no affordable

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public transport service, it would be reasonable for a local authority to provide the service and make it available to everyone who wants to use it.

However, would it be reasonable to seek to set up a rival bus service on a lucrative urban route? Finding the right balance to protect taxpayers and ensure there is no distortion of normal market conditions is essential.

Extending councils' sphere of activity beyond those areas viewed as part of their 'natural' domain also potentially means managing more risk. In the current climate, when councils are striving to provide residents with the best services possible with less public money, it may be questioned in some quarters whether they should be involved with commercial enterprises and the risks presented by market forces and cycles. In some cases it may not be appropriate but, as long as a thorough analysis of those risks is done together with a full business case, the benefits could far outweigh the drawbacks.

Trading and paying for services are fundamental to localism. In my opinion there is no logic to forcing people to subsidise poorly used services through their council tax but there is a case for residents contributing to the cost of those they really value.

That is why I am keen to explore the case for shifting some of the cost of non-essential services from taxpayers to the people who actually use them. Not only will this ensure good, modern services, it will give residents greater control of them. Asking people to pay for services that are discretionary can certainly be seen as fairer than taxing people

for services they don't use or from which they do not see the benefit.

Payments could be tailored according to the needs of local communities. For example, there could be a case for varying charges for parking in different areas, depending on whether the local priority is to reduce congestion or to stimulate economic activity.

In addition, there is the potential to extend this to influence people's behaviour – either encouraging the take-up of socially useful services among certain groups or discouraging undesirable behaviour, such as the use of a car for short journeys. Indeed cutting charges could also be used to influence behaviour positively.

We all know about no-frills airlines. Passengers pay for a minimum level of service and extras – an in-flight meal or checking in baggage – cost more. As local authorities look more closely at differentiating between core and enhanced service provision, there are opportunities to give people a choice about paying for elements over which they have discretion. This could be seen as a natural extension of the drive to personalise adult social care services and put more control in the hands of the people using them.

There will always be some who oppose charging, arguing that all public services should be provided at the same standard, with discrimination based on need rather than the ability to pay. However, charging for public services is not new. Everyone accepts that going for a swim at the local council pool means handing over money at the entrance or taking an adult education course involves paying.

Preventing some services from charging at all is hugely unhelpful, difficult to justify and potentially can be to the detriment of local people. Take the library service as an example. A case could be made for giving local people the opportunity of paying a small annual subscription to make sure a library at risk of closure remains open, although the idea would need to be worked through in more detail. The question that needs to be answered here is whether it is fair to do this if people living elsewhere within an authority's boundaries get the same service free.

The message for a government that is hugely receptive to giving councils the freedoms they want and need are clear. Remove unnecessary, pernicious restrictions that are out of step with the culture of self-sufficiency and local decision-making. Let us take full responsibility for making decisions about commercial enterprise that

support our strategic objectives, are in step with local market conditions and for which we are happy to be accountable.

About Localis

Localis is an independent think-tank dedicated to issues related to local government and localism more generally. We carry out innovative research, hold a calendar of events and facilitate an ever growing network of members to stimulate and challenge the current orthodoxy of the governance of the UK.

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