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Burness Paul

# TARIFFS AND LOCAL AUTHORITIES: POWERS, PROFITS AND PRACTICALITIES

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# Powers

## Powers

- Trading operations?
  - *Local Authorities (Goods and Services) Act 1970*
- Subsidiary power?
  - *Local Government (Scotland) Act 1973*
- Power to advance wellbeing?
  - *Local Government in Scotland Act 2003*

Important for LAs to look for the right power.

- **Trading operations** (best avoided as statutory limit outside of public sector is zero)
  - LA keeps trading accounts
  - Carried on for the purpose of enabling authority to raise money
  - Provided in a competitive environment
  - Provided on a basis other than straightforward recharge of cost
- **Subsidiary power** (need to find a function which the action facilitates or is conducive or incidental to)
  - Various functions to do with roads
  - Local outcomes under the Community Empowerment (Scotland) Act 2015
  - Duties re: Climate Change (Scotland) Act 2009 (duty to have regard to something in exercise of functions – not a function itself)
  - Production of supply of electricity - The Sale of Electricity by Local Authorities (Scotland) Regulations 2010
- **Power to Advance Wellbeing**
  - Power to do anything which authority considers likely to promote

- or improve the wellbeing of the area or persons within it.
- Can't be used for purpose of raising money, but LAs can impose reasonable charges

# Profits

No specific prohibition on making profit, but councils don't work on basis of "no prohibition". Powers basis (per above) will determine approach re: profit.

- **Subsidiary power**
  - S69(1) – sufficiently close link to function
  - S69(2) – not a prohibition on making a profit
- **Power to advance wellbeing**
  - S22(8)(b) – can impose "reasonable charges"

How councils work:  
an improvement series for councillors and officers

## Charging for services: are you getting it right?



What are reasonable charges?

[https://www.audit-scotland.gov.uk/docs/local/2013/nr\\_131031\\_hcw\\_charging\\_services.pdf](https://www.audit-scotland.gov.uk/docs/local/2013/nr_131031_hcw_charging_services.pdf)

- *“Charges for public sector services generally cover the costs of providing them and are not intended to generate income. Where charges generate a profit or surplus, this is normally reinvested in the service.”*
- *“In certain circumstances, councils and their associated organisations may be able to trade in the open market, applying commercial rates to generate some profit.”*

### Duty to secure best value - Local Government in Scotland Act 2003 S1

- (2) **Continuous improvement in the performance** of the authority’s functions
- (3) In securing best value, the local authority shall maintain an appropriate balance among—
  - (a) the **quality** of its performance of its functions;
  - (b) the **cost to the authority** of that performance; and
  - (c) the **cost to persons** of any service provided by it for them on a wholly or partly rechargeable basis.
- (4) In maintaining that balance, the local authority shall have regard to—
  - (a) **efficiency**;
  - (b) **effectiveness**;
  - (c) **economy**; and
  - (d) the need to meet the **equal opportunity** requirements.

## Statutory

### To be provided without direct charge



### Statutory guidelines (eg recover costs)



### Local discretion



## Discretionary

# Practicalities

## Documenting Decisions

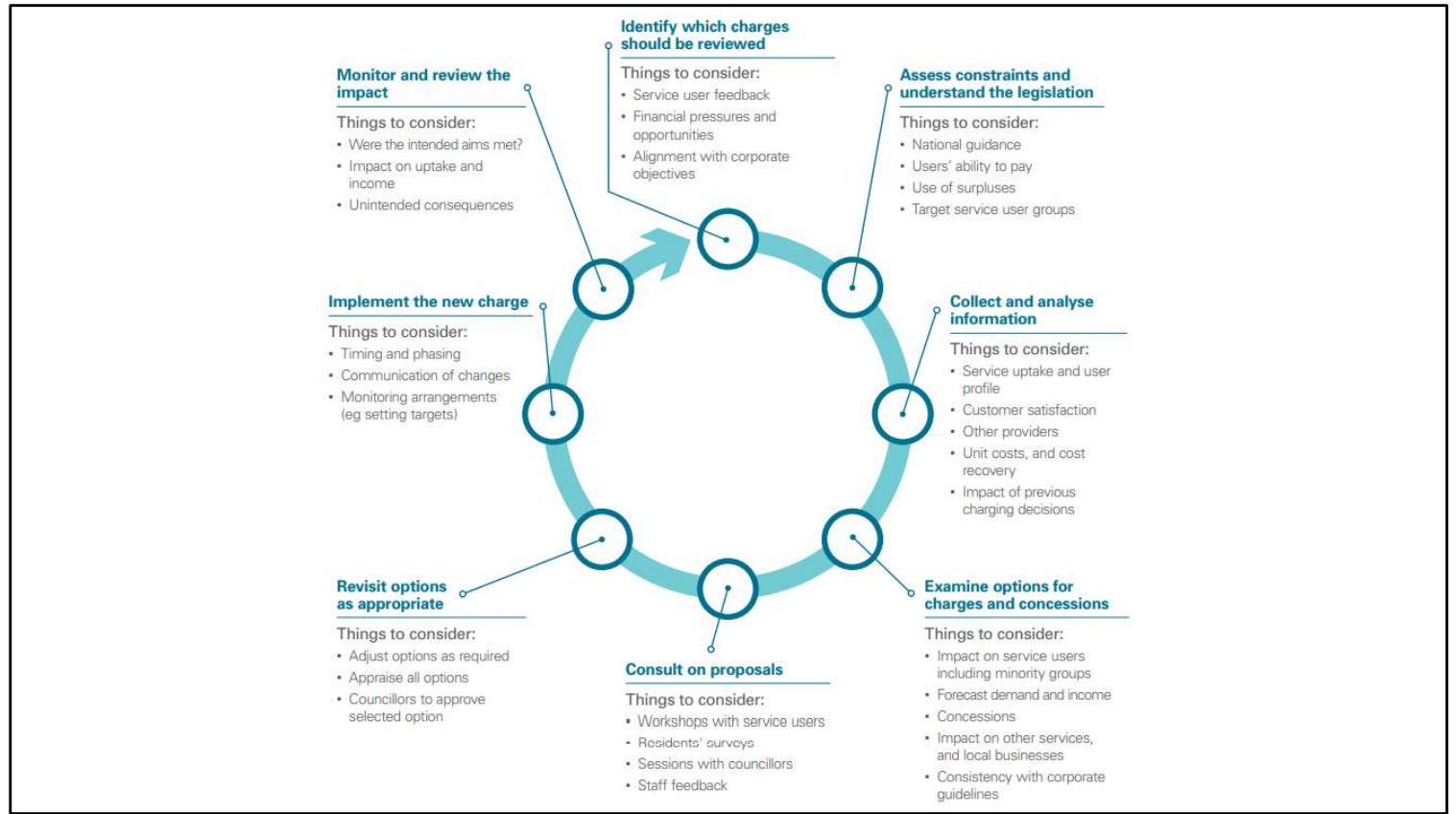
- Who is making the decision? Do they have power to do so on behalf of the authority?
- What are they considering? Failure to consider relevant factors could make the decision unreasonable.
- Is the decision “reasonable”?

## Establishing an Evidence base

- What are you trying to evidence? Link to local authority’s function? Likelihood of promoting wellbeing? What kind of wellbeing? How is the duty to secure best value being secured?
- How are you evidencing it? Public consultation? Data analysis and consideration of ‘market rate’? Stakeholder engagement?

Specifically on charges – helpful resources from Audit Scotland on following two slides. Broad range of considerations - local policy, accessibility, quality of service, corporate guidelines, etc.)





Issue	Yes/No	Action
<p><b>Charging policy</b></p> <ul style="list-style-type: none"> <li>Do councillors give you a clear direction over charging priorities?</li> <li>Do you have clear policies in place for how charges should be applied – do these recognise the constraints and legislation that apply?</li> <li>Are corporate policy and guidelines adhered to by service directors/ service providers?</li> <li>Is charging practice in arm's-length providers and contracted services consistent with the council's policy?</li> </ul>		
<p><b>Financial management</b></p> <ul style="list-style-type: none"> <li>Do you understand the contribution that charges make to the financial position of the council?</li> <li>Do you understand how your charging practice compares with other councils?</li> <li>Do you understand unit costs, the extent to which costs are recovered by charges, and patterns of income from charges?</li> <li>Do you understand how services are subsidised and the extent to which charges recover costs?</li> <li>Do you have a register of charges across the council to help manage charges consistently?</li> </ul>		
<p><b>Setting charges</b></p> <ul style="list-style-type: none"> <li>Do you fully assess charging options, in line with the good practice set out in this report?</li> <li>Do you have clear objectives for charging, such as to influence behaviour and service uptake, or to recover costs?</li> <li>Do you understand customer views and the likely impact of charges on service uptake and income overall?</li> <li>Is there evidence that charges are adversely affecting uptake or impacting on service users?</li> </ul>		

Issue	Yes/No	Action
<p><b>Reviewing charges</b></p> <ul style="list-style-type: none"> <li>Have you reviewed the council's overall approach to charging – what issues need to be addressed?</li> <li>Are there any charges that should be reviewed, eg that are inconsistent with other providers?</li> <li>Is there scope to generate more income from charges, for example by raising charges in line with the market?</li> <li>Have you consulted service users and council tax payers over charging?</li> <li>Do you make good use of available technology to make charging and concessions more efficient and user-friendly?</li> </ul>		
<p><b>Concessions</b></p> <ul style="list-style-type: none"> <li>Do you have corporate guidelines on how concessions should be applied?</li> <li>Are these consistent with and linked to overall charging policies?</li> <li>Are concessions applied consistently across services?</li> <li>Is eligibility for concessions managed efficiently and shared across services?</li> <li>Are concessions and the use of subsidy managed to ensure that services are financially viable?</li> </ul>		



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