

# **CORPORATE PROCUREMENT**

## **TRADING AND CHARGING POLICY**

**June 2005.**

## TRADING AND CHARGING POLICY

### The Policy

1. As with other policies , trading and charging must be linked to the council's corporate objectives to achieve improvement in services, the provision of best value and is an integral part of strategic procurement.
2. To simplify the policy trading and charging is considered separately.

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- The financial objective of trading shall be to make a surplus.
- A Business Case must be prepared and approved by the council before trading commences. The Business Case shall include: -
  - an assessment of the impact of trading on competition law, VAT, corporation tax, the prudential code on capital finance, accounting and reporting procedures, Standing Orders, Financial Regulations and the Procurement Code of Practice.
  - the proposed treatment of any trading surplus.
  - The impact on local businesses
- The council shall have an exit strategy in place before trading commences

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- The financial objective of charging is to ensure that income does not exceed cost.
- Charging shall apply only to a discretionary service only, not a mandatory or statutory service.
- Prior to the introduction of a charge, the council shall consider: -
  - the social objectives to be achieved,
  - the market for that service.
  - the level of demand for that service, and how different levels of charge may affect demand.
- The council will consult with users in advance of charging
- As part of the annual planning cycle the council shall consider the opportunities for charging and identify the financial consequences.
- The council shall approve all charges for discretionary services in advance.
- When determining charges the Council will comply with the CIPFA Best Value Accounting Code of Practice. The Financial Management Unit will provide the necessary advice on the implications of the code and how it can be applied to set charges

## The Policy Framework

1. The following policy framework is developed to underpin the overall Trading and Charging Strategy to ensure the council is complying with the law and that risks are minimised in what is a complex area. The policy will be integral to the overall Procurement Strategy of the council.
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- 2.1 The trading powers are available to councils in the top 3 CPA categories of “excellent”, “good” & “fair”; they are not available to “weak” or “poor” authorities. If a council in the top 3 categories is reclassified downwards then it loses its power to trade although there is a two-year transitional period after which trading ceases if the council fails to regain its top 3 status. Thus a council classified as “fair” would need to be cautious about entering into any trading arrangement
- 2.2. The powers cover trading with private individuals and bodies only. Trading with public bodies is already allowable under the Local Authorities (Goods and Services) Act 1970 and these public-to-public trading powers remain unaffected by the new legislation. A council can therefore continue to trade with any public body under the existing legislation: the new powers must be considered for use only in the context of trading with the private individuals or bodies.
- 2.3 A council can trade in any function-related activity. This means in any service which it is empowered to provide except for a statutory service where there is already an obligation to provide. Trading includes the provision of goods and materials, staff, accommodation and services to any private person. Thus the trading powers include the provision of assistance by way of providing staff or support service  
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- 2.4 The trading activity must take place on a commercial basis and the financial objective is to make a surplus.
- 2.5 Trading must be exercised through a company structure. This is to ensure a level playing field with the private sector. “Company” is as defined in Part 5 of the Local Government and Housing Act 1989 although this definition is to be updated.  
  
The Council will consider the following options: -
  - Setting up a company for trading purposes;
  - or investing in a company;
  - or trading through a company in which it has not been directly involved in setting up for trading purposes
- 2.6 The Council will prepare and approve a business case before trading. The business plan will be updated annually and approved at member level

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- 2.7 In considering the impact of trading the Council will:-
- Assess affordability under the prudential regime for capital finance which came into effect in April 2004
  - Analyse the impact of competition on the Company including the effect of Competition Act legislation.
  - Ensures the Company prepares company accounts and adheres to Companies Act legislation.
  - When required the Council must provide group accounts incorporating, where applicable, their interest in the Company.
  - The Council will ensure the Company takes account of the impact of VAT and corporation tax.

2.8 The Council will address the constitution and structure of the trading company: -

- How the company will be set up
- The nature of investment
- Who will head the company
- Whether the company will be bound in any way by the council's Standing Orders and Financial Regulations

2.9 The council will determine the treatment of any trading surplus and consider the extent to which it can affect its distribution. The main policy options are: -

- Retain the surplus in the trading company;
- Transfer it to the council (in whole or in part);
- Refund to users.

Any trading deficit will have to be covered by the council in the year of account

2.10 The business case must include an exit strategy, which will include the effects of changes in CPA category and the mechanisms by which the council can divest itself from the company

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3.1 The charging powers apply to any discretionary service – they do not apply to a mandatory or statutory service. The new powers also apply to discretionary services provided in the exercise of well being powers under the Local Government Act 2000. The new powers do not apply to core education services in schools, core library services, fire fighting, core police services, electoral registration and the conduct of elections

3.2 The council is not required to charge and may continue to provide discretionary services free.

3.3 The powers require that a service user must agree to the service and to the charge. In practice developing a tariff list for discretionary services and offering this to users can probably best achieve this aim. If a user accepts the tariff for a service this will signify acceptance of the service and of the charge.

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- 3.4 The objective of charging in the financial sense is to ensure income does not exceed cost. This is a financial duty and means that the primary purpose of charging is not to make a surplus (unlike trading, which requires that a surplus must be made). This also means, of course, that there are a wide range of subsidy options available as well as charging to recover total cost
- 3.5 The Council must determine the social objectives of charging. The legislation does not prescribe these objectives and in practice the council will need to choose its own local rationale. Some options include:
  - Charging to reduce abuse of services;
  - Charging in order to provide a signal of demand;
  - Charging to promote equity;
  - Charging as a means of educating and informing service users of the costs of provision;
  - Charging to promote best value for money
- 3.6 In considering charging for discretionary service the Council will analyse the market for that service and try to determine the level of demand for the service and how different levels of charge may affect that. It will also need to be clear about the user or user groups that will be affected by the charge and should consult with them in advance to gauge their reaction to any charge.
- 3.7 Corporate policy on charging will be integrated with service management. When determining charges the Council will comply with the CIPFA Best Value Accounting Code of Practice and the Financial Management Unit will provide the necessary advice on the implications of the code and how it can be applied to set any charges.
- 3.8 The information guidelines for charging are set out in the Council's Medium Term Financial Strategy and to ensure the Council is fully appraised the business case should include the following information : -
  - Current charge if any
  - Proposed charge
  - % Increase if any
  - Estimated income to be generated
  - Income as a % of expenditure
  - Subsidy levels if any
  - Reasons for subsidy
  - Analysis of the impact of the charge