

Cabinet – 2 July 2014

Adoption of the Primary Authority Principle for provision of advice to business within Regulatory Services

Portfolio: Councillor Towe, Environment

Related portfolios: Councillor Andrew, Regeneration and Transport

Service: Regulatory Services

Wards: All

Key decision: No

Forward plan: No

1. Summary

1.1 Adopting the Primary Authority model of business advice will provide assured advice to businesses that are based in the borough but trade on a wider basis. The benefits to business are:

- The advice has to be recognised and taken into consideration by other authorities before taking formal enforcement action.
- They can benefit from an inspection plan which directs other authorities' inspections realising efficiencies and a standardised approach for the business.
- A mediation process in case of dispute between authorities.

The benefits to Walsall Regulatory Services are that:

- The advice is chargeable providing income to support service delivery.
- Some businesses are over-reliant on the current system, seeking advice very regularly. The charging model will reduce some of the contact releasing officer time for other service priorities.
- Use of the Primary Authority Agreement form means liability for the Authority is kept at a legal minimum.

All the above are on a statutory footing.

1.2 It is the role of regulatory services to enforce a range of legislation covering environmental health, trading standards, licensing and health and safety. Many people think of enforcement as the hard edged prosecution of businesses when breaches of the legislation occur. However, for many years, regulators have recognised the benefits of enforcement through compliance and the efficiencies that can be achieved through supporting and advising business. Where

businesses are based in one area but trade on a wider basis, eg regionally and nationally, this is been done through the provision of “Home Authority” advice, ie the regulator where the company is based providing the advice for the business to follow throughout its structure. This scheme does not affect the micro businesses who trade purely within the borough and our approach to compliance advice for these businesses is unaffected.

2. Recommendations

- 2.1 That the adoption of Primary Authority is approved.
- 2.2 That the charge is made to all businesses on all advice within scope of the Primary Authority Agreement.

3. Report detail

- 3.1 The council currently supports a number of local businesses that trade across council boundaries through voluntary partnerships, providing advice to the business and liaising with other local authorities that approach it. Current active partnerships are in place with more than 40 locally based businesses and include the following:
 - Homeserve
 - Poundland
 - Chicken Joes
 - One Stop Stores
 - Lawrence Meats Ltd
 - Intercoat
 - Piquant
 - House of Lancaster
- 3.2 These existing voluntary partnerships are valued by businesses and provide an important service for the regulatory community by enabling local authorities to co-ordinate their efforts. However, the following limitations apply to these partnerships:
 - Some of these partnerships require a high level of input from officers which is increasingly difficult to resource with diminishing staff levels.
 - Business may wish for a higher level of input than the local authority is currently able to resource
 - Businesses may lack confidence to rely on advice provided by this local authority because there is no requirement for other local authorities to respect the advice
 - Businesses may feel frustrated that the effort that they put into working with this local authority to improve their compliance is not recognised by other local authorities
 - There is no dispute resolution mechanism should local authorities disagree over interpretation of legal requirements, leaving the business in a difficult position

- There is limited infrastructure to support voluntary partnerships and other local authorities may not be able to easily identify that an active partnership is in existence
- 3.3 Primary Authority is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008, which allows businesses to form a partnership with a statutory basis with a single local authority. The scheme allows businesses to access “assured” advice on compliance, that must be respected by all other local authorities, thus addressing business concerns about consistency and giving them confidence. It also allows for the co-ordination of proactive inspection activities, thereby improving the effectiveness of local activities and reducing duplication of effort. The scheme supports local authorities in delivering protection for their citizens, workers and the environment.
 - 3.4 Primary Authority is a key element of the Government’s commitment to improve the delivery of regulation in line with the statutory principles of good regulation¹. These principles are that regulation should be transparent, accountable, proportionate, consistent, and targeted.
 - 3.5 Primary Authority is the responsibility of the Secretary of State for Business, Innovation and Skills, with the Better Regulation Delivery Office (‘BRDO’) operating the scheme on behalf of the Secretary of State. A partnership between a local authority and a business, once it has been nominated by the Secretary of State, has a statutory basis.
 - 3.6 A local authority that offers primary authority to businesses is demonstrating its willingness to work constructively with business to improve compliance, and is taking on responsibility for leading and shaping the regulation of a single business or a group of businesses. It does this by providing tailored, assured regulatory advice and by guiding the way that other local authorities regulate the business or businesses so that it is both effective and efficient, including through the sharing of compliance information.
 - 3.7 Primary Authority represents an important support service to locally based business and forms an integral part of the Authority’s priority “Supporting Business to Thrive and Supporting Local People into Work”. Business that are well regulated and compliant have a strong basis for conducting their business engendering customer confidence, a strong competitive position and mitigating the risks of formal enforcement action such as prosecution and the associated negative publicity.

¹ Legislative and Regulatory Reform Act 2006, section 21

- 3.8 The council has an obligation under the Regulators Compliance Code² to provide businesses with advice and guidance about their legal obligations in respect of environmental health, trading standards, and licensing legislation. Where businesses require additional advice and support services under Primary Authority, the Act enables the council to recover the costs associated in providing these services from the business. This will allow greater impact to be achieved from the existing resources deployed in providing support to business on regulatory issues.
- 3.9 Standard terms and conditions for partnerships, made available by BRDO, mitigate the risks for participating local authorities to the minimum allowable in law
- 3.10 Officers are in the process of establishing a new working relationship with an expanding business which has recently come to our attention and which is interested in entering into a Primary Authority Agreement. Officers will then look at the existing businesses with which they have a relationship and new businesses to develop a plan to roll out programme.
- 3.11 Primary Authority is not available to all businesses and the authority will continue with its current support arrangements for those businesses that are not eligible, for example where they require regulatory advice in an areas that is outside the scope of Primary Authority.

3.12 The Authority can charge business for the advice provided under the Primary Authority agreement on a cost recovery basis. This is often at a lower cost than a business pays for consultants. The cost that has been worked out for 2014/15 is £43.37 per hour for officers and £60.32 per hour for managers. Because this is charged on cost recovery basis, the cost would have to be recalculated each year. The Primary Authority scheme also provides that an element of free advice can be provided to businesses. The option being recommended to Cabinet is that the charge is made to all businesses on all advice within scope of the Primary Authority Agreement.

Examples of how these charging models would work and the financial impact on businesses are included in **Appendix A**.

- 3.13 Primary Authority is not applicable to businesses which trade entirely within the borough and thus there is no impact from the adoption of this model on those businesses, many of whom are the smallest businesses with whom we have dealings.

4. Council priorities

- 4.1 **Supporting Business to Thrive and Supporting Local People into Work** - It is recognised that good well delivered regulation supports business and helps economic growth and creates jobs.

² Regulators' Compliance Code: Statutory Code of Practice for Regulators, BERR, 2007. This Code will be replaced in the near future by the [Regulators' Code](#) (BRDO, 2013) which includes the same requirement in relation to the provision of advice and guidance.

4.2 **Improving Health and Wellbeing, including Independence for Older People** – Many of the businesses that will be within scope of Primary Authority are importers, manufacturers and distributors in the food and alcohol sectors. Good advice to these businesses can have a significant impact on health and wellbeing.

4.3 **Creating Safe, Sustainable and Inclusive Communities** – Thriving businesses reduce areas of deprivation, void properties and promote employment.

4.4 **Improving Safeguarding, Learning and the Life Chances for Children and Young People** – Thriving businesses create employment opportunities for all residents thus improving family life and employment prospects for school leavers.

5. Risk management

5.1 Use of the standard Primary Authority Agreement provided by BRDO means that legal and commercial risks are mitigated to the legal minimum. Resource implications for the service will be considered before entering into each agreement. Discussions will be held with each business prior to entering into a Primary Authority Agreement to ensure that they are aware of their potential financial liability to minimise the risk of bad debts. The intention is that there is a gradual roll out of Primary Authority rather than converting all existing home authority arrangements en masse.

6. Financial implications

6.1 Financial services are involved in calculating the charge. Use of the standard Primary Authority Agreement provided by BRDO means that legal and commercial risks are mitigated to the legal minimum.

7. Legal implications

7.1 Use of the standard Primary Authority Agreement provided by BRDO means that legal and commercial risks are mitigated to the legal minimum. A copy of the template agreement is attached as **Appendix B**.

8. Property implications

8.1 There are no specific property implications above the requirements already needed by the service

9. Health and wellbeing implications

9.1 Many of the businesses that will be within scope of Primary Authority are importers, manufacturers and distributors in the food and alcohol sectors. Good advice to these businesses can have a significant impact on health and wellbeing

10. Staffing implications

- 10.1 This will be delivered from within existing staff resources with training provided for staff.

11. Equality implications

- 11.1 There are no specific equality implications as Primary Authority is the adoption of a statutory regime and applies to all businesses within its scope.

12. Consultation

- 12.1 In addition to the services referred to above, consultation has also taken place with business support colleagues in Strategic Regeneration particularly around the charging model and the identification of routes to raise awareness of the service in the local business community.
- 12.2 In addition, a communication plan is being developed in conjunction with the Authority's communications team.

Background papers

None

Author

Lorraine Boothman
Interim Trading Standards Manager
☎ 653065
✉ boothmanl@walsall.gov.uk

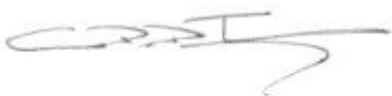
David Elrington
Environmental Health Manager
☎ 653023
✉ elringtondj@walsall.gov.uk

Jamie Morris
Executive Director



24 June 2014

Councillor C Towe
Portfolio Holder



24 June 2014

Financial Analysis

The accountants have worked out the costs for Environmental Health, Trading standards and Licensing for all officer roles and calculated an average for the officers who would provide Primary Authority advice and can be seen in table 1. This includes relevant on costs and recharges and comes to £43.37 per hour. A specific chargeable rate of £60.32 for specific management involvement or oversight should it be required in a particular Primary Authority relationship. The calculations have taken into account the guidance on calculating the charging rate for Primary Authority provided by the BRDO.

Table 1 Calculation of the hourly rate for Primary Authority Charging

<u>Regulatory Services Rates Per Hour</u>		
FTE	1.00	1.00
TIME (in minutes)	60	60
Post Title	Front Line Officer	Manager
	43.37	60.32
Salary	19.43	31.29
On Costs	4.24	7.25
Other Employee Costs	3.04	3.07
Supplies & Services	0.83	0.83
Third Party Payments	0.79	0.55
Transport	0.66	0.88
Central	14.38	16.45
	43.37	60.32

Financial Analysis

Table 2 below illustrates the costs to businesses of various sizes and complexity of Primary Authority. This table is purely illustrative to present an idea of how adoption of Primary Authority might affect businesses. It does not reflect any the circumstances of any individual business in Walsall. The needs of any individual business and their projected costs would be discussed with that business before entering into such an agreement.

Description of business	Nature of advice	No of hours	Cost (@ £43.37 per hour)	Comment
<p>A large national business importing, wholesaling and retailing goods that are subject to detailed specific regulatory requirements, eg electrical goods, toys, food</p> <p>OR</p> <p>A producer of food products that is subject to food hygiene, food standards and labelling, metrology</p>	<p>Advice on legal requirements, relating to the production and quality control of the products sold</p> <p>Advice on product labelling</p> <p>Advice on food hygiene in the factory, supply chain and at retail</p> <p>Advice on compliance with the Licensing Act 2003</p> <p>Advice on setting up & managing a customer complaints policy</p> <p>Handling enquiries from other local authorities and regulators</p> <p>Setting up and monitoring an inspection regime</p>	100 (an average of 2 hours per week)	£4337	There are likely to be very few businesses that require this level of input
A packer of chemical products	<p>Advice on labelling</p> <p>Metrology checks and advice</p> <p>Health & Safety advice</p>	10	£433.70	
A national seller of insurance products	<p>Advice on sales practices</p> <p>Complaints handling and monitoring</p> <p>Web site compliance</p> <p>Staff training</p> <p>Referrals form other local authorities</p>	48	£2,081.76	
A producer of high quality niche	Advice on legal requirements relating to	15	£650.55	

Financial Analysis

products sold at craft fairs and supplied to specialist retailers eg soaps, luxury chocolate	the products Advice on product labelling Advice on quality control Advice on food hygiene Handling enquiries from other authorities			
An online retailer of consumer products	Advice on legal requirements relating to the products Advice on product labelling Advice on quality control Advice on food hygiene Handling enquiries from other authorities Advice on website compliance with legislation relating to distance selling, cancellation rights etc	12	£520.44	
An established small producer of sandwiches supplying retail outlets locally and in neighbouring authorities	Advice on food hygiene, standards and labelling Prices	6	£260.22	
A start up business in bespoke upholstered furniture	Advice on safety legislation, health & safety at work, pricing and internet sales	12 hours in year 1 then 5 hours per year	£520.44 in year 1 then £216.85 in the following years	

Primary Authority

Summary of Partnership Arrangements

*This document **does not** form part of the Primary Authority Terms and Conditions which underpin the statutory basis of a partnership. It sets out a template that parties may choose to use to capture the practical arrangements that they have agreed for operation of their partnership³. Equally, the partnership may choose to capture its partnership arrangements in another way. These arrangements do not need to be submitted to BRDO as part of the application for nomination.*

BRDO welcomes any feedback that you have on this document, and how it might be improved. Please email pa@brdo.bis.gsi.gov.uk with the subject line 'Feedback on Summary of Partnership Arrangements template' in the subject line.

SUMMARY OF PARTNERSHIP ARRANGEMENTS between [PRIMARY AUTHORITY] AND [THE BUSINESS]

1. Primary authority services

Suggested content: This section should include a short statement setting out the scope and objectives of the partnership and the expectations that each party has of how the partnership will operate.

It is helpful to explain the primary authority services that the parties have agreed will be provided, for example:

- *in relation to Primary Authority Advice (see 4 below);*
- *the service provided to enforcing authorities (including those that might be outside the scope of Primary Authority⁴), in terms of explaining the business and the partnership; responding to enquiries; and how the primary authority will communicate with enforcing authorities;*
- *an inspection plan, where the partnership is considering developing one;*
- *collating and analysing data and other information on compliance;*
- *training staff of the business;*
- *conducting audits or other checks on compliance at the request of the business.*

2. Commitments

Suggested text:

The business will:

³ Section 13.1, Primary Authority Statutory Guidance (BRDO, 2013)

⁴ Section 2.12, Primary Authority Statutory Guidance (BRDO, 2013)

- a. work constructively with the primary authority in relation to the provision of primary authority services;
- b. inform the primary authority as soon as possible of any significant change affecting the business that may impact on the provision of primary authority services;
- c. provide the primary authority with reasonable notice of its requirements for provision of primary authority services;
- d. provide the primary authority with information and assistance that the primary authority may require in order to provide a quality service.

The primary authority will:

- a. ensure that primary authority services are provided by competent officers with relevant skills and experience;
- b. respond to all notifications received via the Primary Authority Register promptly and within statutory timeframes;
- c. respond to queries from the business within agreed timeframes, and advise the business as soon as practicable where this is not possible;
- d. act in accordance with the Regulatory Enforcement and Sanctions Act 2008 and [Primary Authority Statutory Guidance](#).

3. **Communication**

Suggested content: This section should detail how the parties will communicate with each other, including any arrangements for regular meetings.

4. **Arrangements for requesting, providing and managing Primary Authority Advice**

Suggested content: This section should detail the partnership's arrangements in relation to Primary Authority Advice, as required by section 18 of the Primary Authority Statutory Guidance. There should also be provision for managing Primary Authority Advice including ensuring that it remains current.

Suggested text:

- a. Primary Authority Advice will be provided on behalf of the primary authority by: *[add details of officers authorised to provide the advice, and details of any 'sign off arrangements']*
- b. Requests for Primary Authority Advice will be made on behalf of the business, via [phone/email] by: *[add details of those authorised to request and receive the advice]*
- c. The primary authority will acknowledge requests within *[add details of any agreed timeframes]* of receipt.

- d. Where the business requires Primary Authority Advice to be provided in a defined timeframe, this will be specified in the request. The primary authority will endeavour to meet this timeframe and will advise the business as soon as practicable where this will not be possible.
- e. Primary Authority Advice will be provided or confirmed in writing *[include reference to any template that will be used]*, and details of the Primary Authority Advice will be included in a schedule maintained by the primary authority.
- f. The business will advise the primary authority as soon as reasonably practicable of any change in circumstances which might affect the validity of the Primary Authority Advice provided.
- g. The business will make available to the primary authority relevant advice that it receives from any national regulator or from *[include details of any other primary authority that the business is in partnership with]*
- h. *[include details of the parties' agreement as to whether all Primary Authority Advice will be shared with enforcing authorities via the secure area of the Primary Authority Register].*

5. **Cost recovery**

Suggested content: This section should set out the cost recovery arrangements between the business and the primary authority where the primary authority intends to recover the costs of services provided. The arrangements given here are a suggestion only. Further information on cost recovery is provided in the Primary Authority Statutory Guidance, sections 5 and 13.

Suggested text:

- a. The primary authority will charge the business for the cost of providing primary authority services as follows: *[include details of the charges agreed. Where the charges will be subject to an annual review, this should be mentioned]*
- b. The primary authority will invoice the business for its charges on a *[monthly/quarterly/annual]* basis. The invoice will detail the work carried out.
- c. The business will pay any amounts due within *[x days]* of the date of the invoice.
- d. The charges are intended to reflect the cost to the primary authority of providing primary authority services. Should there be a change affecting either party that materially impacts on the cost to the primary authority of providing primary authority services it will notify the business as soon as reasonably practicable and the parties shall discuss in good faith any amendment to the charges that may be required.
- e. *[include details of any arrangements to recover costs for third party services commissioned by the primary authority with agreement from the business]*

6. Contact details

Suggested content: The effective operation of Primary Authority is reliant upon enforcing authorities being able to access accurate information on the Primary Authority Register. Both the primary authority and the business are responsible for updating their details, however the business may choose to ask the primary authority to update the Primary Authority Register on its behalf. This section should detail arrangements to ensure that details are kept up to date.

Suggested text:

- a. The primary authority and business acknowledge the importance of maintaining current details on the Primary Authority Register.
- b. The primary authority will maintain its contact details on the Primary Authority Register and ensure that any changes are made on the Register as soon as possible.
- c. The business will notify the primary authority of changes in its contact details, trading names and premises details and will make the changes on the Primary Authority Register as soon as possible.

7. Changes to partnership

Suggested content: Any proposed changes to the arrangements between the business and primary authority in terms of adding or removal of a category, as well as changes to the regulated person(s) need to be notified via the Primary Authority Register as they will affect the legal status of the partnership. Further information can be found in the Primary Authority Statutory Guidance, section 17.

Suggested text:

- a. If the business and the primary authority agree to add another category to, or remove a category from, the scope of the partnership, the primary authority will submit a notification via the Primary Authority Register.
- b. If the business makes changes to its name or status as a legal entity, it will inform the primary authority as soon as possible. The primary authority will submit a notification via the Primary Authority Register.
- c. If the business and the primary authority agree to change the regulated persons covered by the partnership, the primary authority will submit a notification via the Primary Authority Register.

8. Information

Suggested content: Effective primary authority partnerships will involve the business sharing information about itself and its operations with the primary authority. Parties should consider how this will happen and make provision for it in this section, bearing in mind that the primary authority is subject to freedom of information legislation ('FOI'). For example:

- *The parties may agree that the primary authority will access information directly from the business' systems, rather than holding the information.*
- *The primary authority may agree to share its response to any FOI request with the business, before responding.*

9. **Collaboration with other primary authorities**

Suggested content: This section should ensure that, where the business has more than one primary authority, its primary authorities collaborate to ensure a consistent approach. This section can be omitted if the business has only one primary authority; however parties may choose to retain it in case the business forms additional primary authority partnerships in future.

Suggested text:

a. The primary authority will contact any other primary authority for the business:

- Before issuing Primary Authority Advice in which the other primary authority might have an interest; and
- When developing an inspection plan.

10. **Review of the Partnership**

Suggested content: The business and the primary authority should review partnership arrangements periodically. This section should explain their arrangements to do this.

Suggested text:

a. The business and the primary authority agree to review the arrangements for the partnership *[insert details of agreed review period eg. annually]* or otherwise when significant changes arise.

11. **Terminating the Primary Authority Relationship**

Suggested content: A partnership can only end by revocation by the Secretary of State. Either party is entitled to request revocation, and this should occur via the Primary Authority Register. Wherever possible a notice period should be given to enable any outstanding matters to be resolved before the partnership is revoked.

Suggested text:

a. Should the primary authority or the business wish to terminate their partnership, they will notify the other party, giving a notice period of at least *[insert details of agreed timeframe]* to allow for any outstanding matters to be resolved. After this period the primary authority will submit a revocation request to the Better Regulation Delivery Office via the Primary Authority Register.