

# Report

## Cabinet Member for Regulatory Functions

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### Part 1

Date: 8 September 2016

Item No: 1

**Subject** Public Protection - Primary Authority: Tailored Business Advice Partnerships

**Purpose** To approve a new strategy in relation to business advice; specifically to agree that Trading Standards, Environmental Health and Licensing can enter into statutory Primary Authority Relationships with businesses; and also to charge businesses for advice.

**Author** Trading Standards Manager

**Ward** City Wide

**Summary** The Government has produced a scheme whereby businesses can enter into a “Primary Authority” Relationship with a business. This relationship will involve the provision of assured advice to assist the way in which businesses comply with legislation and other matters. Additionally, Sections within the Public Protection Service will provide bespoke advice to businesses, even if they are not within a formal Primary Authority Relationship. All advice provided will be on a cost recovery basis, detailed in the Public Protection advice costs and charges schedule (Appendix).

**Proposal** Approve the provision of ‘paid for advice’ to businesses through the Primary Authority scheme and also for individual businesses not within the scheme; and to approve the Public Protection advice costs and charges schedule.

**Action by** Head of Law and Regulation

**Timetable** Immediate

This report was prepared after consultation with:

- Business Improvement Team
- Public Protection Manager
- Finance Officers
- Head of Law and Regulation
- Environmental Health Manager
- Team Leaders [Trading Standards; Environmental Health; Licensing]
- Local manufacturers and businesses

**Signed**

## Background

### 1. Support for Local Businesses: Background

- 1.1 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.
- 1.2 These 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:
- It is difficult to continue to resource such relationships
  - Businesses 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

### 2 Primary Authority – Background

- 2.1 “Primary Authority” is a statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008, which allows businesses to form a partnership on a statutory basis with a single local authority. The scheme allows businesses to access assured advice on compliance, that must be respected by local authorities, thus addressing business concerns about consistency and giving them confidence. It also allows for the co-ordination of UK-wide 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.
- 2.2 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 regulation<sup>1</sup>. These principles are that regulation should be transparent, accountable, proportionate, consistent, and targeted.
- 2.3 Primary Authority is the responsibility of the Secretary of State for Business, Innovation and Skills, with the government agency ‘Regulatory Delivery’ (RD) 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. The Government has recently demonstrated its commitment to Primary Authority by extending the scheme to new areas of regulation, and enabling more businesses to participate.
- 2.4 A local authority that offers the primary authority scheme is demonstrating its willingness to work constructively with businesses 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 businesses so that it is effective and efficient, including the sharing of compliance information with other regulators/local authorities. Primary Authority represents an important support service to locally based business. This type of assured advice will support current council commitments to improving businesses within the City, such as the council objective to support Newport as a ‘working city’. It also supports directly the new commitments under the recent Well-being of Future Generations (Wales) Act 2015 which requires authorities to work towards the well-being goal for a ‘prosperous Wales’.

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<sup>1</sup> Legislative and Regulatory Reform Act 2006, section 21

- 2.5 The Council has an obligation under the Regulators' Compliance Code<sup>2</sup> to provide businesses with advice and guidance on their legal obligations in respect of Trading Standards, Environmental Health, Fire Safety and Licensing legislation. Where businesses require additional advice and support services, as under a Primary Authority relationship, the Act enables the council to recover the costs associated in providing these services to the business. This will allow public protection services to have a greater impact with our existing resources to support businesses comply with regulatory requirements.
- 2.6 Primary Authority is administered by RD. Standard terms and conditions for partnerships, made available by RD, mitigate the risks for participating local authorities to the minimum allowable in law.

### **3 Primary Authority in Newport**

- 3.1 In Newport, officers plan to offer Primary Authority to businesses in a number of ways. If a business wishes to utilise the skills of the service to a great extent, then there will be a facility to charge an annual fee which will secure a set number of hours of advice. Additionally, businesses can choose to set-up a Primary Authority partnership with us, but then use the officers as-and-when required; such a relationship will then be charged on an hourly rate. Following discussions with Finance Officers, the hourly rate has been set at £50; and for businesses who commit to an annual contract; this could be reduced to no less than £40, on a sliding incremental scale depending on the level of commitment provided. During the setting up process, there will be an amount of administration time devoted to the required submissions to RD; a charge will be levied for this work.

### **4 Contract Managers**

- 4.1 It is proposed that the Trading Standards Manager and the Environmental Health Manager take on the role of 'Contract Manager' within the scheme and are able to enter into partnerships with businesses; liaise with RD and request nomination of partnerships; set the contract price; and agree the service standards and have the delegation of authority to agree appropriate arrangements for cost recovery with partner businesses.

### **5 Other Paid for Advice and Training**

- 5.1 Following the loss of resources in Trading Standards, the Section stopped providing advice to businesses when they proactively call the office to assess whether their operations are trading lawfully. There are many examples across the UK of regulatory services of local authorities providing such advice for a charge. It is proposed that Newport City Council agrees to a charging regime for the provision of advice for business. It is proposed that Trading Standards commence this regime with immediate effect; whilst Environmental Health and Licensing assess whether such a change is appropriate for their service.
- 5.2 Officers from Public Protection hold valuable skills and knowledge and are able to deliver business advice by way of formal training to businesses. This will be an excellent method of both providing a consistent message to businesses and to supporting the budget position of the sections within Public Protection. It is proposed that the costings for any training courses will be developed on a case by case basis. It will be agreed that such a method of providing businesses with advice will always cover the costs of holding the training course.

### **Financial Summary**

- The costs and financial implications: You must discuss financial implications with the Head of Finance and the report must identify from where your proposals will be funded, together with any impact on budgets or any opportunity costs

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<sup>2</sup> 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.

	Year 1 (Current) £	Year 2 £	Year 3 £	Ongoing £	Notes including budgets heads affected
<b>Costs (Income)</b>	Unknown	Unknown	Unknown	Unknown	This work aims to reduce an existing income target which exists due to a historical error. It will therefore have a positive impact on the budget and will provide the budget manager an opportunity to balance the budget.
<b>Net Costs (Savings)</b>	Unknown	Unknown	Unknown	Unknown	
<b>Net Impact on Budget</b>	Unknown	Unknown	Unknown	Unknown	

## Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Carrying out work without covering the costs	H	L	To introduce robust time monitoring process	Public protection managers
Setting unrealistic income targets for such a new endeavour	H	L	Instead of setting a new income target – use any income from these schemes to meet the shortfall caused by the current income target in Trading Standards which has no income stream set against it (Historical accounting error)	Public protection managers

## Links to Council Policies and Priorities

Ensuring that this work is completed as required will support the following Council Policies and Strategies:

- Newport City Council's Corporate Plan "Standing Up for Newport" 2012-2017 (Relevant priorities: "A Working City").

This work-stream will also assist the council meet its 'wellbeing goals' under the Well-being of Future Generations (Wales) Act 2015; in particular the 'prosperity' goal.

## Options Available

### Option1

To agree that Trading Standards, Environmental Health and Licensing Services can enter into Primary Authority Relationships and provide 'Paid for Business Advice' as described in paragraphs 1 to 5 above

### Option 2

Not to agree that Trading Standards, Environmental Health and Licensing Services can enter into Primary Authority Relationships and provide 'Paid for Business Advice' as described in paragraphs 1 to 5 above

## **Preferred Option and Why**

**Option 1:** As this will assist the Public Protection Service with one of its main projects for 2016 and beyond. This type of assured advice will support current council commitments to improving businesses within the City and supports directly the new commitments under the Well-being of Future Generations (Wales) Act 2015 which requires authorities to work towards the well-being goal for a 'prosperous Wales'.

## **Comments of Chief Financial Officer**

The proposed action within the report should not result in any additional cost to the council and will create a new income stream. However, this will need to be properly managed throughout the financial year to ensure that any target set can be consistently achieved year on year. This income stream will go towards offsetting other income pressures within the budget and therefore will not be an additional MTRP saving.

## **Comments of Monitoring Officer**

The proposed action is in accordance with the Council's statutory powers under the Regulatory Enforcement and Sanctions Act 2008 and the Local Government Act 2003. In accordance with the 2008 Act, the Council is able to seek Primary Authority status for the purposes of entering into partnerships with local businesses for the provision of regulatory compliance advice. The Council is able to charge a reasonable fee for the provision of this Primary Authority work, based on the actual costs incurred, in accordance with section 31 of the Act. The proposal to undertake this Primary Authority role is supported as it meets the objectives of the legislation in terms of ensuring a more consistent and streamlined national approach to regulation and also the Council's general well-being objectives. The proposal to charge fees for discretionary advice is also supported. Because of budgetary pressures and the need to prioritise the mandatory, high risk inspection and enforcement work, the Council has not been able to sustain the previous level of discretionary advisory work. However, the imposition of fees for this discretionary advice will ensure that the cost of the work is fully recovered. The Council can charge reasonable fees for this discretionary service in accordance with section 93 of the 2003 Act. However, given that there are no additional resources available to carry out the Primary Authority role and provide the discretionary advice, then it will be necessary to manage the work to ensure that it does not detract from other statutory public protection work. It should also be made clear to any businesses entering into primary authority partnerships with the Council that this does not compromise or prejudice in any way the Council's statutory enforcement role.

## **Staffing Implications: Comments of Head of People and Business Change**

There are no Human Resources implications. The Primary Authority scheme, which provides 'paid for advice' to businesses, supports the priorities within the Single Integrated Plan and the Corporate Plan. The scheme aims to improve the advice given to businesses to assist them in complying with legislation and other matters, which contributes to the key actions within the economy and skills theme and working city priority. The scheme is relevant to the Wellbeing of Future Generations Act, with particular reference to the 'prosperous Wales' wellbeing goal of an economy which generates wealth and employment opportunities.

## **Comments of Cabinet Member**

N/A

## **Local issues**

N/A

**NB: Do not circulate for ward member comments until the report is drafted in accordance with the wishes of your Head of Service or Corporate Director and with the knowledge of the relevant cabinet member.**

## **Scrutiny Committees**

N/A

## **Equalities Impact Assessment**

These proposals do not need an EIA

## **Children and Families (Wales) Measure**

N/A

## **Consultation**

N/A

## **Background Papers**

Primary authority website <https://primaryauthorityregister.info/par/index.php/background>

Dated: 8 September 2016