

DELEGATED DECISIONS BY CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES – 19 MARCH 2013

TRADING STANDARDS SERVICE POLICY FOR THE PROVISION OF BUSINESS ADVICE AND SUPPORT SERVICES

Report by Director of Social and Community Services

1. Introduction

The Trading Standards Service currently supports Oxfordshire businesses through the provision of business advice in relation to Trading Standards law and through other support services. These services are offered free to all businesses regardless of the size of the business and frequency of their enquiries. The services are highly regarded by businesses. The Trading Standards Service periodically reviews the way in which these services are delivered.

The Regulatory Enforcement and Sanctions Act 2008 enables businesses to receive enhanced support from regulatory services to ensure consistency of advice and to reduce burdens. The scheme introduced by the Act is called Primary Authority. Under the scheme, Primary Authority Partnerships between business and regulators are available to all businesses that trade across local authority boundaries. The legislation underpinning the Primary Authority scheme gives legal status to the advice provided to the business and allows for local authorities to recover costs for some or all of their services. The scheme also allows for the development of inspection plans relating to that business and these plans direct the interaction that regulators have with this business.

Outside of formal Primary Authority Partnerships the Trading Standards Service provides support to Oxfordshire based businesses on an ad-hoc basis. It is possible to charge for these support services.

This report outlines the options for introducing charging for some business support services provided by Oxfordshire Trading Standards Services. In particular the report seeks formal approval for:

- The active promotion of Primary Authority Partnerships, which will be chargeable.
- The introduction of charging for the provision of detailed advice and support to businesses that do not want to form a Primary Authority Partnership. These charges will be based on an hourly rate.

It is not the Service's intention to charge for basic advice services or to charge start-up businesses for advice in order to support and encourage local economic growth.

2. Exempt Information

None

3. Background

Oxfordshire Trading Standards Service ('the Service') discharges regulatory functions on behalf of Oxfordshire County Council. The Service has responsibility for enforcing a wide range of legislation intended to protect both consumers and businesses.

The Trading Standards Service supports the County Council to deliver its priority theme for 'a world class economy' by;

- Providing Oxfordshire businesses with business advice and support services.
- Tackling unfair and illegal trading practices to provide a level playing field for legitimate businesses.
- Minimising the risk of costly and damaging product or service design failures through business inspections.
- Providing a business approval scheme to enable reputable businesses to distinguish themselves (the Buy with Confidence Scheme).
- Tackling the sale of counterfeit products which undermines legitimate markets.

The Service currently offers businesses advice on the laws applicable to them within the Trading Standards remit. It also offers a degree of consultancy type services including checking product labels, advice on specific products or systems and advice on problems that arise. In offering these services for free businesses it will save the time and expense of engaging consultants or solicitors.

In 2007 the Government introduced a statutory Code for regulators called the Regulator's Compliance Code. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business.

Local Authority regulatory services must have regard to this Code in determining policies or principles or when setting standards. One principle that the code seeks to address is that regulators should provide authoritative and accessible advice, easily and cheaply. In particular, the Code requires-

a) Regulators should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements, are

promptly communicated or otherwise made available to relevant regulated entities.

b) Regulators should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Such information, advice and guidance should be provided in clear, concise and accessible language, using a range of appropriate formats and media.

In 2008 the Regulatory Enforcement and Sanctions Act was introduced to enable business to receive enhanced support from regulatory services, to ensure consistency of advice and, where a business trades nationally, to reduce the burden of dealing with enquiries from different local authorities. This Act introduced the Primary Authority scheme. Under a Primary Authority Partnership specific services can be provided by the local authority to a business in order to minimise regulatory burdens for that business. The scheme allows for local authorities to recover costs for some or all of the services provided. Oxfordshire Trading Standards currently has a bespoke chargeable Primary Authority Partnership with Sainsbury's Supermarkets Limited.

As a consequence of the Regulators Compliance Code there is an obligation on the Service to provide business advice. Providing business advice and support services also contributes to the County Council priority to create a world class economy. Trading Standards recognises the need to assist and help start-up businesses to gain the knowledge and skills to comply with Trading Standards legislation and to continue to trade fairly.

However, the Service is frequently asked to provide business support services of a consultancy type, rather than advice or information that businesses can refer to and then interpret and apply themselves. The Service is also able to enter into formal partnerships which provide value to the business and reduce their costs. It is therefore appropriate to consider whether these additional services should be charged for. Many other local authorities have followed the route of charging for business advice, such as Surrey, Milton Keynes, West Yorkshire, Slough and Nottinghamshire.

4. Proposed Future Approach

The Service proposes the following approach to the provision of business advice and support services.

4.1 General Advice and Guidance

The Service will continue to provide general advice and guidance for businesses to access themselves. This will include web based advice materials, leaflets and e-newsletters explaining changes to legislation. This service and information will be provided without charge or restrictions on access.

4.2 New/Start-up businesses

New (i.e. those that have not sought advice from the Service before) and start-up businesses will receive free advice and guidance on Trading Standards legislation to help them start their business, to continue to comply with consumer laws and enable them to thrive.

Examples of services which will be provided free to new or start-up businesses include:

- Signposting to web based advice.
- Telephone and email advice or advice in person on matters within the Trading Standards remit.
- Advice to help the business to comply with the law before they commence trading or launch a new product.
- Discussion on labelling or product issues as a result of a complaint or referral from another local authority.

Any repeated requests for advice or support or requests which subsequently become very complex and require detailed research will be charged for on an hourly basis. In order to ensure the costs of administering the payment process is recovered a minimum set fee will be charged equivalent to 5 hours at the standard hourly rate. This set fee will only be charged on the first contract with the business and thereafter further enquiries will be charged according to the actual time spent on the enquiry.

4.3 Established businesses

Businesses that are based in Oxfordshire and which do not wish to sign up to Primary Authority Agreement will receive self-help advice on the legislation enforced by Trading Standards which is applicable to them. This will be provided free of charge but will be limited to providing general guidance and information that the business then has to apply itself. Any complex work or work specific to a particular product, system or issue (i.e. assessment of legal compliance of a new product label) will be charged for on an hourly basis with the same set minimum fee applying. The services which will be free include;

- Signposting to web based advice or other guidance, or a letter/email with general guidance on relevant legislation.
- Leaflets and newsletters on recent changes to legislation.
- A general explanation of the law in relation to a question raised by the business.

Chargeable activities could include:

- Tailored advice to the business or for a unique set of circumstances.
- Repeated advice on the same issue (of which the company has already been advised).
- Assessment of and reports on product labels at the request of the business (e.g. food labels, credit advertisements, safety labels), where the amount of time spent exceeds one hour.

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- Testing of goods at the request of a business (e.g. the accuracy of weighing or measuring equipment).
- Assessing new or existing terms and conditions of business at the request of the business.
- Delivery of training at the request of the business.
- Assessment of brochures or leaflets at the request of a business.
- Site visits at the request of the business.

4.4 Primary Authority Partnerships

Primary Authority Partnerships will be promoted to businesses and tailored to the needs of those businesses. The Primary Authority Partnership will be underpinned by an agreement setting out the service levels and aims of the Partnership. The business will be charged an amount agreed in advance and recorded in the agreement. They will be provided with detailed advice and additional services according to their needs which may include:

- Regular meetings with the business to discuss new and emerging issues.
- The issue of Primary Authority advice and development of inspection plans which have statutory status under the Regulatory Enforcement and Sanctions Act.
- Training services.
- Reviews of policies, procedures and systems.
- Audit of business systems and business compliance.
- Approval of product labels.

The Service proposes two pricing structures for Primary Authority agreements:

Standard Agreement

A standard contract will include an initial set-up fee and a minimum of 10 hours of advice. Further advice or support will be charged for on an hourly basis and the agreement could include an additional amount of time requested by the business. The agreement will be renewed annually with the same minimum hours of support being charged for.

Travelling expenses (where incurred at the request of the business) and other costs incurred by the Service (e.g. the cost of accessing specialist reference material such as British Standards) will be charged to the business.

Bespoke Agreement

A bespoke contract for larger businesses will be established depending on the business' needs. The requirements will need to be established through discussion with the business concerned.

Up until this point, the Service has not proactively advertised Primary Authority as a route to obtaining business advice, but it is intended that, subject to

approval, we will be able to promote the services that we can provide more widely.

5. Benefits of the Proposed Approach to the Provision of Business Advice and Support by the Trading Standards Service

In adopting the approach outlined above, the Service will continue to provide business advice and support services to help develop a vibrant local economy. In particular, the continuation of free advice services to new and start-up businesses will ensure that businesses which could not afford to pay for consultancy services can still access the advice that they require. However, the Service will also extend the range of services available to Oxfordshire businesses to better meet local needs. Where these enhanced services require an additional investment of time from the Service the recovery of the cost should minimise the impact of this work on other services and generate income for the Council.

Primary Authority Partnerships offer businesses the option of developing a relationship with local regulators that ensures consistent and reliable advice from one point of contact. They enable a relationship to develop which ensures the regulator has in-depth knowledge of the business' operation and can provide specific services tailored to that business' needs. This can lead to reduced regulatory compliance costs for businesses and a reduction in risk of regulatory challenge. It also enables the sharing of information in a secure and confidential manner between the regulator and the business, and the wider enforcement community where that information might reduce regulatory burdens.

Supporting Primary Authority Partnerships requires a commitment of time from the Service. Therefore, it is appropriate to consider charging the business for this service where it is an enhanced service that would not otherwise be provided.

6. Business Support Services provided by other Local Authority Trading Standards Services

A number of other local authority Trading Standards Services have recently introduced a policy of charging for business advice and support services. Examples include-

- Surrey County Council offer businesses one hour of free business advice and thereafter charge an hourly rate for any additional enquiries. They also offer Primary Authority Partnerships on a cost recovery basis. The standard hourly rate charged by Surrey Trading Standards is £67 per hour.
- Milton Keynes Council Trading Standards provides a Business One Stop Service. Businesses are required to register for this service. The registration fee is £75, which covers registration and the first hour of

advice. From then on, an hourly rate of £56.63 per hour is charged for all time taken to prepare and provide advice.

- West Yorkshire Trading Standards Service has adopted a policy for the provision of primary Authority Partnerships. Under this policy businesses engaged in partnerships are charged a fee to recover West Yorkshire's costs in supporting the partnership. The business is also charged a start-up fee for the partnership which includes 15 hours of advice.

7. Chargeable Rate

It is proposed that the hourly rate to be charged will be set annually through the normal Cabinet approval of fees and charges.

Initially it is proposed that a charge of £40 per hour is applied which will cover the cost of the officer's time spent on the enquiry. Any additional costs incurred will also be charged to the business. Examples of these costs include travelling costs or the purchase of specialist materials required to provide the information requested.

8. Consultation

The Service has approached two local businesses to discuss these proposals. One business has responded positively to the idea of a Primary Authority Partnership with services being provided on a charged for basis and recognises the benefits of the specialist advice and assistance it can bring. The other is considering the proposals. The Service has an existing relationship with Sainsbury's Supermarkets Limited which is provided on a full cost recovery basis and which has been in place for over 2 years. The Service is also in discussion another national business which have approached the Service on the basis of the benefits that they believe an efficient single point of contact could bring them.

Based on the views of businesses the Service already supports and those that have been approached recently it is clear that a number of businesses would benefit from the enhanced services that could be provided.

9. Risk Analysis

There are no significant risks arising from the proposed introduction of charging for some business advice and support services. Professional indemnity insurance is in place which covers the financial risk of claims against the authority for incorrect advice.

10. Legal implications

The Enforcement Concordat requires regulators, including local authorities, to provide advice and guidance on regulatory issues. The Service will continue to meet this requirement through the provision of internet based information

resources and through the provision of general advice in response to direct requests for advice received by the Service.

Primary Authority partnerships are underpinned by legally binding agreements between the local authority and the business. There is a standard agreement which should be used for this purpose but this can be modified with agreement between the business and the local authority. The agreement limits the local authority's liability for tort, negligence or otherwise.

The Regulators' Compliance Code allows for advice services to be provided on a chargeable basis.

11. Financial and Staff Implications

It is envisaged that the workload generated from charging for business advice will be absorbed within the Trading Standards Service. If demand for the enhanced services is significant then the income will be used to increase staffing capacity. In considering any new Primary Authority agreements the service will establish the resources required to support the agreement before entering into that agreement.

Charging for business advice and support services will generate income for the Service. It is not possible to reliably estimate the likely level of income at this time but it is expected to be relatively small in the short-term. An initial estimate is that the Service might receive between £10,000 and £20,000 in the first year but that this level of income should rise once partnerships are established. From research carried out into the level of income received by other local authorities who charge for these services it is unlikely that the total level of income from chargeable services of this type will exceed £50,000 in the long-term.

12. RECOMMENDATIONS

The Cabinet Member for Safer and Stronger Communities is RECOMMENDED to agree that:

- (a) the Trading Standards Service actively promotes and encourages Oxfordshire businesses to enter into Primary Authority Partnerships on a cost recovery basis;**
- (b) the Trading Standards Service will consider approaches from businesses outside of Oxfordshire for Primary Authority Partnerships on a cost recovery basis; and**
- (c) for those businesses not wanting to enter into a Primary Authority Partnership, the Trading Standards Service adopts a policy of charging Oxfordshire businesses for Trading Standards business law advice on an hourly basis as set out in this report. Basic advice and advice to start-up businesses will continue to be provided free of charge.**

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Background papers: None

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