

**CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES
5 JULY 2010**

**PRIMARY AUTHORITY PARTNERSHIP BETWEEN OXFORDSHIRE
TRADING STANDARDS SERVICE AND SAINSBURY'S
SUPERMARKETS LIMITED**

Report by Acting Head of Trading Standards & Community Safety

Introduction

1. The Regulatory Enforcement and Sanctions Act 2008 establishes a statutory scheme for businesses trading across local authority boundaries called the Primary Authority Scheme. Under this scheme a business can enter into a formal partnership with a local authority. Having entered into a Primary Authority partnership, the advice provided by the local authority has to be taken into account by other councils before enforcement action can be taken against the business concerned.
2. Oxfordshire Trading Standards Service has been in discussions with Sainsbury's Supermarkets Limited ('Sainsbury's') about entering into a Primary Authority partnership. Sainsbury's have been in discussions with other local authorities but discussions with Oxfordshire Trading Standards have reached an advanced stage. The detail of this potential partnership is outlined below. Under this proposed partnership, Oxfordshire Trading Standards will provide advice and support to Sainsbury's. Sainsbury's will meet the costs of this service.
3. This report explains the background to Primary Authority partnerships, the benefits and risks of entering into a partnership with Sainsbury's and requests approval in principle to enter into this partnership should agreement be reached between the parties.

The Primary Authority Scheme

4. The Primary Authority scheme was introduced in April 2009 following the Government's acceptance of the findings of a review of regulatory burdens undertaken by Philip Hampton. His report, entitled 'Reducing Administrative Burdens: Effective Inspection and Enforcement', identified that businesses should be able to receive authoritative regulatory advice and too often the advice of one local authority could be challenged by another local authority adopting a different interpretation to legislation.
5. The Primary Authority scheme is operated by the Local Better Regulation Office (LBRO). Once a business and a local authority have agreed to form a Primary Authority partnership and have agreed the basis of this relationship they have to apply to the LBRO for the local authority to be 'nominated' as the business's Primary Authority. The LBRO will ensure that the proposed

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partnership is suitable and appropriate, in particular having regard to the resources available to support the partnership's requirements. Having satisfied itself that the local authority is suitable for the partnership concerned, LBRO will nominate that local authority as the Primary Authority for that business. The LBRO also appoint an account manager to assist the partnership.

6. Primary Authority partnerships are available in respect of several regulatory fields; Trading Standards, Environmental Health and Health and Safety. A Primary Authority partnership can cover the full scope of the business's regulated activities in these fields or be limited to specific aspects of the business's activity. The scope and detail of each partnership is determined by the business and the local authority concerned.
7. Once a partnership has been accepted by the LBRO, the Primary Authority assumes responsibility for providing advice and guidance to the business in respect of the regulated functions within the scope of the partnership. The Primary Authority also assumes responsibility for providing advice and guidance to other local authorities in relation to how the other authorities should exercise their enforcement functions in respect of that business.
8. Other local authorities considering formal enforcement action against the business concerned must inform the Primary Authority before taking that enforcement action. If the action proposed by the enforcing authority is inconsistent with any advice or guidance given by the Primary Authority in respect of that aspect of the business's activity, the Primary Authority may direct the enforcing authority not to take that enforcement action. In the event of a dispute arising between enforcement authorities and Primary Authorities, the matter may be referred to the LBRO. In this respect the LBRO has a statutory role to make the final determination on whether enforcement action can proceed or whether the Primary Authority's direction not to take action should be upheld.
9. Primary Authority partnerships may also result in the publication of inspection plans. Inspection plans are agreed by the business and Primary Authority and contain information on the aspects of the regulated business that should be considered by other local authorities when conducting inspections of that business's operation. They are intended to allow the business to focus regulator's activities on particular business processes or risks that they would wish to be closely monitored. This provides the business with more information about how particular aspects of their procedures are actually operating in their branches.
10. In a secure section of the LBRO website, Primary Authorities can publish documents relating to their partnerships. This may include, with the business's consent, company procedures and policies. In publishing such documents the business may reduce burdens arising from repeated requests from regulators to provide certain information.

Home Authority Relationships

11. The Local Authorities Coordinators of Regulatory Services introduced the Home Authority Principle in the 1980s. The Home Authority Principle states that the local authority for the geographic area in which a business's main decision making office is based assumes responsibility for liaison with that business on behalf of other local authorities and for providing advice and guidance to that business.
12. Oxfordshire Trading Standards Service has operated Home Authority relationships with Oxfordshire based businesses for many years. A Primary Authority partnership differs to Home Authority support in a number of respects. Principally, Home Authority relationships are not supported by legislation. Typically, Home Authority relationships are informal and are not underpinned by service level commitments. Other local authorities do not have to refer to the Home Authority for a business before taking formal action against that business.
13. Oxfordshire Trading Standards Service intends to continue to offer Home Authority support to Oxfordshire businesses and will, if appropriate, convert those relationships into formal Primary Authority partnerships should the business concerned wish to do so. At this time it is not intended that Oxfordshire Trading Standards will charge an Oxfordshire based business that it already supports with Home Authority advice should this relationship become a Primary Authority partnership. This supports the County Council's 'World Class Economy' strategic priority.

Primary Authority Partnership with Sainsbury's

14. Discussions have taken place between the Trading Standards Service, Cherwell District Council and Sainsbury's concerning a potential primary Authority partnership. Final agreement is yet to be reached. However, all parties have agreed the broad detail of a potential partnership. The proposed Primary Authority partnership with Sainsbury's is as follows:
15. Oxfordshire Trading Standards will enter into a Primary Authority partnership with Sainsbury's to provide advice and guidance on all aspects of this business's activity that falls within the regulatory scope of Trading Standards Services. At the same time, Cherwell District Council will enter into a similar agreement with Sainsbury's in respect of Environmental Health and Health and Safety matters.
16. Both Oxfordshire Trading Standards Service and Cherwell District Council will employ specialist officers (a qualified and experienced Trading Standards Officer and a similar Environmental Health Officer) to provide the service to Sainsbury's. The Environmental Health Officer will be seconded from Cherwell District Council to the Trading Standards Service. They will remain an employee of Cherwell District Council but will be based with the Trading Standards Service and work alongside the Trading Standards Primary Authority officer. This arrangement will ensure that there is some resilience to

the partnership, providing for the partnership to be supported whilst either officer is absent with only minimal support from existing Trading Standards staff.

17. The Primary Authority officers will work closely with Sainsbury's staff. Their role will include providing advice and guidance on product specific issues (e.g. labelling requirements on new products), assisting the company in relation to any new legislative requirements and advising on procedures introduced to meet regulatory requirements. They will also act as the first point of contact for other local authorities with questions or issues relating to Sainsbury's.
18. It is intended that through the partnership Sainsbury's will seek to change their relationship with the enforcement community. They wish to develop a working relationship with the enforcement community which is based on collaborative approach to resolving local issues. This will be achieved through the primary authority facilitating an openness between Sainsbury's and the enforcement community through publishing information on Sainsbury's operation and through facilitating a joint problem solving approach towards local issues, moving away from the more traditional adversarial enforcement focused approach.
19. A key element of the partnership will be the primary authority officers' understanding of Sainsbury's business. It is believed that the regulatory burdens placed on Sainsbury's could be reduced if the officers primarily acting as a conduit for enquiries from the enforcement community had an in-depth knowledge of the company, including retailing, warehousing, logistics, etc. In addition, through understanding Sainsbury's business, the primary authority officers could more readily change Sainsbury's relationship with the enforcement community.
20. In order to develop this understanding, the Primary Authority Officers will initially spend 3-6 months with Sainsbury's learning the company's operations in depth. This will include time within retail stores, their head office, warehouses and logistics sections.
21. Through discussions with Sainsbury's it has been concluded that supporting the Primary Authority partnership will require 2 full time officers. On the basis that Sainsbury's are not an Oxfordshire based business and therefore this role will entail an entirely new workload, Sainsbury's have agreed to meet the costs of providing this service. The financial implications are discussed in more detail below.

Benefits of a Primary Authority Partnership with Sainsbury's

22. A Primary Authority Partnership with Sainsbury's will bring a number of benefits to Oxfordshire Trading Standards. Through the partnership, the primary authority officers will develop an exceptional understanding of the operations of a large national retailer. The Service already provides a considerable amount of business support to Oxfordshire businesses and this improved knowledge of business operations will result in better business

advice services to Oxfordshire businesses. Similarly, whilst Trading Standards has existing working relationships with Environmental Health teams in the County, having an Environmental Health Officer based in the service will improve our knowledge of environmental health work and should ensure stronger links develop between regulatory services in Oxfordshire. In addition, Sainsbury's have spoken with a number of local authorities regarding Primary Authority partnership and it will bring increased prestige and profile to Oxfordshire County Council through being chosen by Sainsbury's for this partnership.

23. Furthermore, for some time there has been a national emphasis on improving regulatory outcomes through targeting resources at problem businesses whilst supporting legitimate businesses through better advice and guidance (the Better Regulation agenda). Entering into this partnership with Sainsbury's will put Oxfordshire County Council at the heart of this agenda, again supporting the Council's 'world class economy' priority.

Risks

24. Entering into a formal partnership does introduce additional risks for the Council. Through a review of the Primary Authority scheme information published by the LBRO the following risks have been identified:
25. **Professional negligence claims.** Although the Trading Standards Service already provides advice and guidance to businesses, doing so under a formal partnership arrangement which is paid for by the business concerned introduces a professional negligence liability. This risk is limited under the formal agreement to the total amount paid by the business for the service in a single year. This financial risk will be transferred through appropriate insurance.
26. **Contractual breach.** Primary Authority partnerships are underpinned by service level agreements. In the event that these service levels are not met there is a potential consequence for Oxfordshire Trading Standards Service. This risk has been mitigated by the assessment of resources required to perform the service under the agreement and will be further managed by ensuring that the service level agreement is consistent with that assessment. Financial liability is again limited under the formal partnership agreement. The most likely consequence of failing to fulfil the contractual arrangements will be a termination of the contract.
27. **Personnel risks.** To support this agreement Oxfordshire Trading Standards will be employing an additional member of staff. In the event that the partnership is terminated, this member of staff may need to be made redundant with consequential financial liability falling on Oxfordshire County Council. Arrangements will be required to eliminate this financial liability but these have not yet been agreed. Approval is sought to enter into a formal partnership subject to this liability being transferred under the agreement.

Financial and Staff Implications

28. As stated above, the proposed partnership will be supported by the appointment of a dedicated Trading Standards Primary Authority Officer. The cost of this post will be met in full by Sainsbury's under the agreement. Similarly, the cost of the Environmental Health Officer post will be recovered by Cherwell District Council.
29. Under the legal framework for Primary Authority partnerships, the local authority can recover all costs reasonably incurred. As such, the agreement will provide for travel and subsistence costs for the primary authority officers to be met by Sainsbury's and will contain an allowance for management overheads.

RECOMMENDATION

30. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve the Trading Standards Service entering into a formal Primary Authority agreement with Sainsbury's Supermarkets Limited as detailed in this report.**

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Background papers: Nil

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