

CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES – 10 MAY 2010

TRADING STANDARDS SERVICE SELF-ASSESSMENT AGAINST THE REGULATOR'S COMPLIANCE CODE

Report by Director for Community Safety and Shared Services

Introduction

1. The Regulators' Compliance Code is a statutory code that any specified regulator must have regard to:
 - (a) when determining any general policy or principles about the exercise of specified functions; or
 - (b) when exercising a specified regulatory function which is itself a function of setting standards or giving general guidance about regulatory functions.
2. This Code applies to Trading Standards Services in performing most of their enforcement functions. Failing to comply with the provisions of the Code could undermine any formal legal action taken by the Service in response to any infringements found.
3. Since the Code is statutory the Trading Standards Service is required to ensure that its policies and procedures are fully compliant with its requirements.

The Regulator's Compliance Code

4. The Regulator's Compliance Code was introduced following the Hampton Review of administrative burdens on business. It aims to promote efficient and effective approaches to regulatory inspection and enforcement with a view to improving the outcomes of regulation without imposing unnecessary burdens on business.
5. The Code asks regulators to consider:
 - (a) **Supporting economic progress.**
Performing regulatory duties should not impede business productivity.
 - (b) **Risk assessment.**
Undertaking a risk assessment of all their activities.
 - (c) **Information and advice.**
Providing information and advice in a way that enables businesses to clearly understand what is required by law.

- (d) **Inspections.**
Only performing inspections following a risk assessment, so resources are focused on those least likely to comply.
 - (e) **Data requirements.**
Collaborating with other regulators to share data and minimise demand on businesses.
 - (f) **Compliance and enforcement actions.**
How formal enforcement actions, including sanctions and penalties, should be applied following the Macrory principles on penalties.
 - (g) **Accountability.**
Increasing the transparency of regulatory organisations by asking them to report on outcomes, costs and perceptions of their enforcement approach.
6. The Trading Standards Service is broadly compliant with the requirements of the Code. In particular, the Service meets many of the requirements through the application of the County Council's Enforcement Policy when making decisions regarding identified infringements of legislation and in publishing performance and service standards annually in its Service and Performance Plan. Some additional actions have been identified to address aspects of the Code's requirements, particularly in relation to engagement with business in drafting and issuing guidance on legislative requirements. The full self-assessment is included in Annex 1.
7. The requirements of the Code are summarised within the self-assessment in Annex 1.
8. The Code itself does not distinguish between the role of national regulators and that of local regulators. Therefore, it is possible to apply different interpretations of the Code's requirements. The Local Coordinators of Regulatory Services (LACORS) has issued guidance on the Code in order to clarify where they believe that a national regulator has lead responsibility for complying with the Code's requirements and where local authorities should implement the requirements. For example, LACORS state that if a local authority follows a nationally developed and published risk assessment methodology in determining its local inspection plans, then the authority will be complying with the provisions of the Code. The responsibility for ensuring that the risk assessment methodology meets the requirements of the Code lies with the national body that publishes the scheme.
9. The Trading Standards Service has completed a self-assessment against the requirements of the Code. In doing so it has followed the LACORS guidance in order to determine which aspects of the Code the local authority has responsibility for. The Cabinet Member's approval for this approach is being sought.

10. There is a low level of risk to the County Council in adopting this approach. The Council has a statutory responsibility to 'have regard to' the Code. However, regulators are not bound to follow a provision of the Code if they properly conclude that the provision is either not relevant or is outweighed by another relevant consideration. Decisions to depart from any provision of the Code should be properly reasoned and based on material evidence. By following existing procedures in relation to decision making that meet the requirements of the Code (e.g. the County Council's Enforcement Policy), there is no additional risk to any enforcement actions that the authority may take.
11. If the LACORS guidance was not followed in determining the action that the Trading Standards Service should take to meet the requirements of the Code, then a number of actions in addition to those identified in Annex 1 would be required. For example, the Service would need to consult businesses on the risk assessment methodology that the Service's inspection plan is based on.
12. The implementation of the requirements of the Code will lead to better engagement with, and reduce the burdens on, Oxfordshire businesses. A summary of the actions arising from the self-assessment is included in Annex 1.
13. The Code applies to other regulatory functions performed by the County Council. It is intended that Trading Standards will engage with other relevant services to support self-assessments within those services. By approving this approach to interpreting the Code in respect of Trading Standards, it is envisaged that a similar approach can be taken by other services without the need for further approval to be sought.

RECOMMENDATION

14. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve the Trading Standards Service following the Local Co-ordinators of Regulatory Services (LACORS) guidance on the Regulator's Compliance Code when determining action required to meet the requirements of this Code.**

JOHN PARRY
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Background papers: N/A

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April 2010

**Summary of Actions arising from the Trading Standards Service
Compliance Code Self-Assessment**

APRIL 2010

Draft Action plan (subject to formal approval)

Business Engagement- Advice and Guidance

The process for communicating legal requirements relating to regulatory activities is to be improved to ensure the required information is provided in a timely fashion by the means preferred by businesses.

Business advice and information produced by the service is to be improved by engaging businesses in the design of such information to ensure it best suits business's needs.

Business Engagement- Inspection and Information Gathering

Inspection processes to be improved to ensure positive feedback is provided where appropriate.

Information collected from businesses to be minimised through a review of requirements imposed on businesses to provide information to us (for example, when applying for licences).

Internal Improvements

Decision making processes relating to identified breaches of legislation to be improved to reflect the full range of formal and informal options available to the authority.

Staff awareness of the Compliance Code and its requirements to be improved to ensure continuing compliance.

CHECKING COMPLIANCE WITH THE REGULATORS' COMPLIANCE CODE

Responsibility		OXFORDSHIRE
Has the relevant legislation and the parts of the authority enforcing it been identified?	SELF-ASSESSMENT RELATES TO OXFORDSHIRE COUNTY COUNCIL TRADING STANDARDS SERVICE ONLY.	
Have staff responsible for ensuring compliance with the Code been identified and informed?	TRADING STANDARDS SENIOR MANAGEMENT RESPONSIBILITY HAS BEEN AGREED. NO STAFF TRAINING/AWARENESS OF THE CODE YET UNDERTAKEN. <u>ACTION 1</u> - STAFF TRAINING TO BE COMPLETED ONCE SELF-ASSESSMENT IS COMPLETE.	
Economic progress		
Is a process for measuring and minimising the burden of regulatory intervention in place?	<p>THE LACORS GUIDANCE STATES-</p> <p><i>National regulators and sponsoring departments will take the lead on this area due to the requirements on them to</i></p> <ul style="list-style-type: none"> ▪ <i>undertake impact assessment on policy implementation, which includes a small business test;</i> ▪ <i>deliver on their simplification plans.</i> <p><i>By complying with the Enforcement Concordat and Code for Crown Prosecutors</i></p> <p>http://www.cps.gov.uk/Publications/docs/code2004english.pdf</p> <p><i>councils already undertake enforcement and other interventions on a proportionate basis therefore LACORS envisages that there should be no change for councils' working practices.</i></p> <p><i>LACORS will work with government departments to ensure that they allow for reasonable variations to meet local government priorities.</i></p> <p><i>LACORS understands that Local Better Regulation Office (LBRO) will be producing further guidance on the way councils may need to consider the impact of their work in relation to economic progress. LACORS will be working closely with LBRO to develop any further advice in this area.</i></p> <p>THE AUTHORITY HAS A PUBLISHED ENFORCEMENT POLICY WHICH INCLUDES REFERENCE TO THE ENFORCEMENT CONCORDATE AND THIS CODE. THE CODE FOR CROWN PROSECUTORS IS APPLIED WHEN CONSIDERING FORMAL ENFORCEMENT ACTION. THEREFORE NO ACTION IS REQUIRED AT A LOCAL LEVEL.</p>	
Is a means of review in place?	N/A.	

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Risk assessment	
Does risk assessment precede and inform all aspects of regulatory activity to ensure most effective targeting?	YES. LACORS RISK ASSESSMENT SCHEME APPLIED WHERE NECESSARY. OTHER ACTIVITY IS INTELLIGENCE BASED AND AN INTELLIGENCE OFFICER HAS BEEN APPOINTED TO DEVELOP INTELLIGENCE LED ENFORCEMENT ACTIVITIES.
Are businesses consulted on methodologies?	NOT APPLICABLE AS NATIONAL METHODOLOGIES FOLLOWED AND NO LOCAL SCHEMES HAVE BEEN ADOPTED.
Are methods subject to review and continuous improvement?	NOT APPLICABLE AS NATIONAL METHODOLOGIES FOLLOWED AND NO LOCAL SCHEMES HAVE BEEN ADOPTED.
Advice and guidance	
Are legal requirements relating to regulatory activities promptly communicated to businesses, including changes?	IN PART, THROUGH THE WEBSITE AND TARGETED E-MAILS TO SOME FOOD BUSINESSES. <u>ACTION 2</u> - IMPROVE PROCESSES FOR COMMUNICATING CHANGES THROUGH THE WORK OF THE COMMUNITY LIAISON OFFICER FOR THE BUSINESS COMMUNITY.
Is advice, information and guidance made available to businesses in a range of formats?	YES ELECTRONICALLY AND IN HARD COPY AND THROUGH BUSINESS ENGAGEMENT EVENTS/TALKS.
Are businesses involved in developing the guidance?	NO. <u>ACTION 3</u> - SEEK BUSINESSES VIEWS ON NEW GUIDANCE.
Is the effectiveness monitored?	PARTLY THROUGH CONSULTATION. <u>ACTION 4</u> - SEEK BUSINESSES VIEWS ON OUR EXISTING GUIDANCE.
In offering advice, are statutory requirements distinguished from 'best practice' guidance?	YES, RECORDED IN POST INSPECTION/INTERVENTION REPORTS.
Are basic advice services to businesses offered free of charge?	YES.
Can help be sought by businesses	YES.

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without triggering enforcement action?	
Inspections and other visits	
Except for dealing with requests or acting on intelligence, do all visits and inspections come from a risk-assessment process?	YES, AS EXPLAINED ABOVE.
Is random inspection kept to a minimum and solely to test risk-assessment methodology?	YES.
Is positive feedback from inspections given to businesses to reinforce and encourage good practices?	IF SO, WOULD NEED TO SEEK OUT EVIDENCE – POST INSPECTION REPORTS MAY IDENTIFY SOME AREAS OF GOOD PRACTICE, BUT THESE ARE NOT ANALYSED <u>ACTION 5</u> - FOLLOWING A STAFF BRIEFING ON THE REQUIREMENTS OF THIS CODE, IMPLEMENT A PROCESS FOR CAPTURING EXAMPLES OF POSITIVE FEEDBACK.
Are steps in place to ensure collaboration between different regulators on inspections to minimise burdens on businesses?	YES. PARTICULAR LINKS WITH POLICE, FIRE AND ENVIRONMENTAL HEALTH OFFICERS. REVISED VERSION OF RETAIL ENFORCEMENT PARTNERSHIP (THE SMARTER INSPECTION SCHEME) ADOPTED BY OXFORDSHIRE DURING 2009/10.
Information requirements	
Before asking businesses for data has a cost-benefit analysis been undertaken?	STATUTORY REQUIREMENTS (I.E. LICENSING OR REGISTRATION PROCESSES) FOLLOWED FOR MOST DATA COLLECTION THAT IS UNDERTAKEN. NO FURTHER ROUTINE DATA COLLECTION UNDERTAKEN EXCEPT- <ul style="list-style-type: none"> - RECORDING OF BASIC BUSINESS DETAILS DURING INTERVENTIONS - SATISFACTION SURVEYS (EXTENSION OF NI182) (VOLUNTARY)
Is there a process to ensure sharing of data between regulators?	YES. DEVELOPED AS PART OF THE SMARTER INSPECTION SCHEME.

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<p>Are forms designed with input from businesses?</p>	<p>NO. <u>ACTION 6</u>- CONSULT BUSINESSES ON THE DESIGN OF FORMS (WHICH WE HAVE CONTROL OVER) ONCE THE SERVICES DIRECTIVE IMPLEMENTED.</p>
<p>Compliance and enforcement actions</p>	
<p>Are positive incentives in place to reward businesses that consistently achieve good levels of compliance?</p>	<p>YES. WE OPERATE THE BUY WITH CONFIDENCE SCHEME AND WILL RUN THE FARMER OF THE YEAR AWARD THIS YEAR. RISK RATINGS REFLECT THE BUSINESSES COMPLIANCE RECORD.</p>
<p>Are the circumstances of any breach discussed with a business before formal action is taken?</p>	<p>YES, EXCEPT IN RELATION TO MATTERS REQUIRING IMMEDIATE ACTION IN ACCORDANCE WITH THE ENFORCEMENT POLICY AND CONCORDATE.</p>
<p>Do any sanctions or penalties comply with Macrory principles?</p>	<p>YES AND THE RANGE OF ACTIONS THAT MAY BE TAKEN IN RELATION TO ANY INFRINGEMENT IS STATED IN THE ENFORCEMENT POLICY ALONGSIDE THE DECISION MAKING PROCESS. HOWEVER, THE PRINCIPLES ARE NOT EXPLICITLY STATED IN THE ENFORCEMENT DECISION MATRIX. <u>ACTION 7</u>- UPDATE THE ENFORCEMENT DECISION MATRIX TO INCLUDE STATEMENT OF MACRORY PRINCIPLES.</p>
<p>Is an enforcement policy published?</p>	<p>YES AND INCLUDES REFERENCE TO THE CODE AND DECISION MAKING PROCESS.</p>
<p>Are outcomes of regulatory activity measured?</p>	<p>YES THROUGH THE REVIEW OF THE ANNUAL BUSINESS PLAN AND NATIONAL AND LOCAL INDICATORS.</p>
<p>Is the choice of enforcement action justified externally year on year?</p>	<p>WE ABIDE BY THE ENFORCEMENT CONCORDAT AND TEST EACH CASE FOR EVIDENTIAL AND PUBLIC INTEREST CRITERIA. OUR ANNUAL BUSINESS PLAN INCLUDES A SUMMARY OF PERFORMANCE FOR THE PREVIOUS YEAR WHICH INCLUDES OUTCOMES AND RATIONALE FOR ACTION TAKEN.</p>
<p>Does follow-up to enforcement action happen?</p>	<p>YES. A TARGET IS SET EACH YEAR TO BRING ALL NON COMPLIANT BUSINESSES TO A STATE OF COMPLIANCE.</p>
<p>Is the whole process of regulation transparent?</p>	<p>YES.</p>
<p>Are reasons for formal enforcement action given to a</p>	<p>YES.</p>

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business at the time it is taken, together with details of relevant appeals procedures?	
Are inspectors enabled to be consistent in similar situations?	YES, THROUGH TRAINING, THE QUALITY MANAGEMENT SYSTEM WORK INSTRUCTIONS AND PROCEDURES.
Accountability	
Are effective consultation processes with businesses in place?	YES THROUGH NI182 CONSULTATION, WHICH INCLUDES ADDITIONAL QUESTIONS AND FACE TO FACE FEEDBACK VIA THE COMMUNITY LIAISON OFFICER- BUSINESS COMMUNITY.
Are employees courteous and efficient in their dealings with businesses?	YES, EVIDENCE FROM CONSULTATION.
Are comments and feedback acted on?	YES (ALTHOUGH WE RECEIVE VERY FEW COMMENTS).
Is the complaints procedure publicised, including the right to complain to the Local Government Ombudsman?	YES.
Decision making	
Are reasons for decisions not to comply with the Code properly documented?	NOT RELEVANT AT THIS TIME.