



Executive Committee
17 June 2013

**Report from the Director of Environment and
Neighbourhood Services**

For Information

Wards Affected: ALL

Introduction of a Charge Based Regulatory Advice Service for Businesses.

1.0 SUMMARY

- 1.1 This report seeks Executive approval for the introduction of a Primary Authority Partnership (PAP) scheme in the London Borough of Brent (LBB) and for the introduction of a charging system to increase the availability of advice and support to businesses, and especially Small and Medium sized Enterprises (SMEs), with provision of up to seven hours free advice and guidance on regulatory matters.
- 1.2 These proposals will reduce and simplify the regulatory burden on businesses entering into PAPs by ensuring that they can have confidence in applying the advice they have been given nationwide with consistency of approach between different local enforcement agencies.
- 1.3 For businesses requiring more advice than it would presently be possible to give from existing resources, these proposals extend the availability of advice, with up to seven hours advice and support provided free, which is expected to be sufficient for most small businesses, and the option of accessing more advice if required at an extremely economic rate.

2.0 RECOMMENDATIONS

- 2.1 That the Executive:-
 - i. Agrees to the Council adopting the Primary Authority Partnership scheme under the Regulatory Enforcement and Sanctions Act 2008 (RESA).
 - ii. Delegates authority to the Director of Environment and Neighbourhood Services to enter into Primary Authority agreements with businesses and to request nomination of partnerships to the Better Regulation Delivery Office under the provisions of Section 25 of the Regulatory Enforcement and Sanctions Act 2008.

- iii. That the Executive agrees to the Council adopting a system of providing up to seven hours' regulatory advice for all businesses free of charge, and the introduction of a charge based scheme on a cost recovery basis for those that require more than seven hours' of advice as detailed in paragraph 3.11 below.
- iv. That the Executive agrees to the Council adopting the proposed hourly charging rates of £51.54 (Annual Contract) and £64.43 (Pay As you Go contract) and, thereafter, to increase these rates on an annual basis on 1st April each year by the annual change in the Retail Price Index (RPI) for January of the year concerned.

3.0 DETAILS

- 3.1 Local Authority regulators, such as Trading Standards, Food Safety and Health & Safety, have been advising businesses of all sizes for many years in a number of ways. From small to large enterprises, advice has been provided, to the extent possible within available resources, free of charge. Regulators have justified this on the basis that this is a part of their statutory duties and that helping businesses comply with the law was a more effective way of ensuring compliance than by just inspection and enforcement action (including prosecution). This approach also satisfied the requirements of the Enforcement Concordat and the Regulators' Compliance Code.
- 3.2 One particularly powerful compliance tool that has developed over the years is the Home Authority (HA) principle whereby a Local Authority acts as the single point of contact for businesses that are based in their area but operate across the country. Local Authority regulatory services have been supporting HA relationships with larger companies for many years. The ethos behind these voluntary agreements has been to work constructively with businesses and advise them on the best way to achieve compliance with the law.
- 3.3 The Regulators' Compliance Code requires regulators to offer a certain level of free advice. It states, "Advice services should generally be free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support".
- 3.4 The RESA introduced the concept of PAPs. They were seen as logical developments of HA schemes. PAPs are legally recognised schemes, unlike the voluntary HA schemes they are intended to replace. In simple terms, they are HA schemes under a statutory footing and with "teeth". To be formally recognised as a PAP, all agreements have to be registered with the Better Regulation Delivery Office (BRDO) in accordance with their basic terms and conditions.
- 3.5 The Primary Authority scheme is open to any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function. It is recognised that not all businesses will be eligible to join the PAP scheme but all will, nevertheless, continue to be supported under the current arrangements with up to seven hours of free regulatory advice as

described in 3.10 below, and the ability to access further advice at reasonable cost.

3.6 PAPs can be offered across a range of different regulatory categories, such as Health & Safety, Food Safety and Trading Standards, and can be run jointly in conjunction with other local authority services. The categories for PAP agreements will also increase in the future, and expand to include agreements with, amongst others, trade organisations. The categories covered by PAPs are shown below but these are likely to increase in the future, e.g. alcohol licensing.

- age-restricted sales
- agriculture
- animal establishments & animal welfare
- consumer credit
- environmental protection
- explosives licensing
- fair trading
- farm animal health
- food safety and hygiene
- housing
- metrology
- petroleum licensing
- pollution control
- product safety
- road traffic
- health and safety
- general licensing
- food standards

3.7 Although PAPs have developed from HA schemes, there are some fundamental differences that can present opportunities for businesses and local authorities. These include:-

- PAPs are legally recognised. Once a PAP contract is signed all other enforcement authorities have to have regard to it.
- Several areas of enforcement are covered, including, at present, Trading Standards, Environmental Health and Health & Safety.
- One source of advice for the company, which would be authoritative. Other enforcers would have to follow it and not act in a contradictory manner.
- A national inspection plan could be drawn up. This could help reduce the number of inspections the trader is subjected to nationally.
- The existence of an effective PAP should be considered as part of a regulator's risk assessment process thus reducing the trader's risk rating.
- As confidence in a business increases, it should reduce the number of enforcement inspections that are carried out. This will enable hard pressed LAs to concentrate their resources on other more serious problems and priorities.
- PAPs have an effective dispute resolution mechanism in the event of disagreements between local authorities ("LAs") with respect to statutory interpretation and other enforcement actions. There is no formal dispute resolution process with the voluntary HA scheme.
- The PAP scheme provides consistent advice from one source – businesses argue that inconsistent advice is still an issue costing them unnecessary time and money.
- It will improve communication between enforcing authorities and PAs, including increasing the information about a business from other LA officers. This will feed intelligence led enforcement.
- It will lower costs for the PAP businesses and LAs
- An added advantage will be that PAPs will help increase the knowledge and skill of officers providing the service

3.8 Most LAs have found that the demand for their 'free' business advice services has been increasing over the years. At the same time they have found that their resources have decreased. In Consumer & Business Protection (CBP) there has been a 25% reduction in staff in the last two years whilst the demand on the services has increased. With the advent of PAPs many LA regulators have taken the opportunity to have a fundamental look at how they deliver their business advice and support services. As such, a number of LAs, including, Milton Keynes Council, Slough BC, Surrey CC, have introduced a charge based scheme to help cover their costs. The table below compares the charging structures between the proposed Brent scheme and the abovementioned Councils who operate similar fee based business advice services. It should be noted that Brent's proposed scheme is significantly more generous in offering up to seven hours' of free advice whilst the proposed rates are similar to those that are charged by the other Local Authorities. This greater availability of free advice will predominantly benefit SMEs.

Local Authority	Free Advice (Number of Hours)	Option 1 (Hourly Rate)	Set up Costs (Amount)	Option 2 (Hourly Rate)	Set up Costs (Amount)
LB Brent	Yes (7 Hours)	£51.54	No	£64.43	No
Surrey CC	Yes (1 Hour)	£67.00	No	£67.00	£600
Milton Keynes Council	No	£56.63	£75	N/A	N/A
Slough BC	Yes (Minimal Initial Advice)	£58.80	No	N/A	N/A

3.9 Should the introduction of PAPs be accepted, then there are likely to be several different options that could be adopted depending on the needs of the business. It is proposed that Brent adopts the PAP scheme under the RESA and introduces a charging mechanism for the provision of business advice. However, it must be recognised that the introduction of the scheme should not unfairly penalise Small and Medium Size Enterprises (SME). (The European Commission has defined SMEs as any business which employs fewer than 250 employees with a turnover or balance sheet of less than 50 million Euros and 43 million Euros respectively). In fact, BRDO's opinion is that SMEs would most benefit from PAPs as they do not always have the resources to employ their own compliance or legal teams to provide the necessary advice and guidance to enable them to operate lawfully.

3.10 No individual business should be penalised through the introduction of this scheme. According to our records there are over 6,000 business premises in Brent relating to Trading Standards, Food Safety and Health & Safety. These businesses are graded according to the risk rating that is established based on a number of factors, i.e. type of goods/services, size of the business in terms of number of employees and outlets, retailer, manufacturer or importer. The number of businesses held on the Consumer & Business Protection team's databases and the risk ratings is as follows:-

Team	High Risk	Medium Risk	Low Risk
Food Safety	221	1559	917
Health & Safety	221	1559	917
Trading Standards	102	2883	3177

Regulatory Services no longer carry out routine inspection and advisory visits except to high risk businesses. Inspection and advisory visits are also carried out on request from the business, or when complaints are received from consumers or other local authorities. Last year 429 enquiries for regulatory advice were received from Brent businesses, the vast majority of which were from large enterprises that operate nationally such as retailers, manufacturers and importers. Based on the above and our knowledge and experience, local SMEs do not require advice and information over and above the seven hours of free advice that is being proposed in this scheme. The majority of SMEs fall within the low and medium risk categories and, as such, they will not be adversely affected as a result of this change in policy. Therefore, it is proposed that seven hours' of free advice and guidance is offered to all businesses in Brent under the specified areas of regulation. This would ensure that we continue to fulfil our obligations under the Regulators' Compliance Code and allow businesses to continue to access our services at no additional cost to them unless their requirements are such that they place excessive demands on our resources.

3.11 Where any business requires more than the seven hours' of free advice, then a charging scheme would apply in accordance with the following two options:-

Option 1 – This will be ideal for a trader who consults the Council for more than seven hours but on an irregular basis. The trader could then avail themselves to additional advisory services on a “pay as you go” basis.

Option 2 – This option would be suitable for traders who also consult the Service on a regular basis, irrespective of whether just locally based or anyone that trades across several LA boundaries. The Authority should promote PAPs to those companies that are eligible under RESA as experience from other parts of the country has shown that they are generally well received by businesses and regulators once properly established. Potential cost savings to the business can be significant and a well-run PAP should increase trust between the parties and improve levels of compliance. For this Option, the preferred method is to have an annual contract based on an agreed level of engagement with the business depending on the type of trade, number of referrals, complexity of legal advice and the different areas of regulation that the agreement will cover. However, any business that enters into an agreement for advice and support could also choose to pay on an hourly basis. By looking at these various factors, it will be possible to assess, with some degree of certainty, how much resources will be made available to the business for which a total up front annual fee can be calculated based on a lower hourly rate than in Option 1 above.

- 3.12 Should the proposal to introduce a PAP scheme be accepted then a good starting point for possible recruits are existing Brent HA companies. Other companies outside the borough could also be approached, particularly if they trade in a business sector that can be robustly supported by our specialist staff. There are already several examples of PAPs being run by Authorities where the business is not based in their area and where there has not been a previous HA relationship. In fact, there are potential opportunities in the future to offer this service on a shared basis with other Local Authorities, particularly those that are members of the WLA.
- 3.13 The Council should actively offer PAPs to companies across more than one category under RESA. Many existing PAPs are signed up on that basis as it reflects what the businesses require. In Brent, Food Safety, Health & Safety and Trading Standards are already under one management structure within the Consumer and Business Protection (CBP) Service and, therefore, the scheme will be relatively simple to administer. The types of businesses that would be suitable for PAPs are:-
- i. Companies with brand protection issues, such as counterfeiting. This is an area of strong local expertise and could include luxury goods producers in the fragrance and clothing fields.
 - ii. Large food packers. There are numerous such companies in Brent and they are supplying products to many of the major multiple retailers. Some businesses that have already been approached have shown an interest in PAPs and could be jointly covered by our Food Safety, Health & Safety and Trading Standard teams.
 - iii Other HA companies where there are existing good working relationships.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no additional financial implications for the Council. In fact, if the recommendations of this report are adopted and a charging scheme is agreed then a small amount of the income that is derived from this source may be able to offset some of the current Food Safety, Health & Safety and Trading Standards budget pressures.
- 4.2 The provision of the PAP has been piloted in Brent by the CBP Service and, to date, five businesses have signed up to the scheme. Three businesses have opted for Option 1 and have agreed to pay at an hourly rate of £64.43 for the provision of regulatory advice services. Two large scale businesses that operate nationally have opted for Option 2 and are paying annual fees based on an agreed number of hours of advice and support from the Council on their specific area of regulation at an hourly rate of £51.54.
- 4.3 It is anticipated that the uptake of fee based advice service within the borough in the first year will be no more than fifty businesses. Any charges received on a cost recovery basis will be used to support the Council's existing budgets for the provision of regulatory services. Furthermore, should the demand for a charge based advice service increase significantly, then the income from this would allow the Council to divert some of these resources to employ additional staff to deliver this advisory work ensuring higher priority work such as investigations into

dangerous products, food hygiene and food safety alerts, and accidents at work, etc. is not compromised.

- 4.4 HMRC has indicated to another Primary Authority that VAT should be charged on the price, if the advice and support provided by that Authority could have been supplied by the private sector. In the circumstances, it is likely that VAT will be payable on top of the Council's prices.

5.0 LEGAL IMPLICATIONS

- 5.1 By having "Primary Authority" status, the Council has the power under section 31 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA") to charge businesses fees on a cost recovery basis in relation to the exercise of its functions as a Primary Authority under Part 2 of RESA 2008. In calculating the costs incurred in providing the service, a local authority should have regard to the guidance issued by HM Treasury entitled "Managing Public Money" and in particular Annex 6.2 thereof. "Primary Authority" allows a business to form a partnership with a single local authority and this partnership, once it has been nominated by the Better Regulation Delivery Office, has a statutory basis.
- 5.2 Under section 25 of RESA 2008, the Secretary of State, through the Better Regulation Delivery Office ("BRDO"), may nominate a local authority to be a "Primary Authority" for the exercise of a relevant function under Part 2 of RESA 2008 in relation to a business. In this scenario, the BRDO has the power to nominate Primary Authority Partnerships between the Council and businesses so that the PAP agreement has a statutory footing.
- 5.3 The Council has an obligation under the Regulators Compliance Code (Statutory Code of Practice for Regulators, BERR, 2007) to provide businesses with advice and guidance about their legal obligations in respect of environmental health, trading standards, fire safety and licensing legislation. Where businesses require additional advice and support services under Primary Authority, section 31 of RESA 2008 enables the Council to recover the costs associated in providing these services from the business.

6.0 DIVERSITY IMPLICATIONS

- 6.1 As stated above, the charge based advice service must be administered in accordance with the public sector equality duty under the Equality Act 2010.
- 6.2 In carrying out this charge based advice service, it would be incumbent on the Council under the 2010 Act to: (1) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation (along with other conduct) prohibited under the 2010 Act; (2) advance equality of opportunity between people who share a 'protected characteristic' and those who do not; (3) foster good relations between people who share a protected characteristic and those who do not.
- 6.3 The nine protected characteristics under the 2010 Act are: Age; Disability; Gender Reassignment; Race; Religion or belief; Sex; Sexual Orientation; Marriage and Civil Partnership; and Pregnancy and Maternity.

- 6.4 In March 2012, the Council's regulatory services officers held a consultation seminar (including one-to-one discussions) with local businesses. Representatives from 30 local businesses attended the event. There were no adverse issues raised during this consultation in relation to Equality Act 2010 considerations.
- 6.5 It is not envisaged that the scheme would have an impact (either positive or negative) in respect of the following protected characteristics: Age; Gender Reassignment; Sex; Sexual Orientation; Marriage and Civil Partnership.
- 6.6 In respect of the protected characteristic of disability: The Council would ensure that those with a disability have the same opportunity to access the scheme as those without a disability, by making reasonable adjustments to the fee based advice service where appropriate (for example, by supplying any written advice in braille format where necessary). A responsible officer would be appointed to collate monitoring information received back from fee paying service users to determine whether the scheme was effective for those with a disability.
- 6.7 In respect of the protected characteristic of race: the Council has identified the risk that some potential users from BME backgrounds may not take advantage of the scheme, particularly at the outset. This may be because some potential service users have English as an additional language, resulting in the users not fully appreciating the nature and benefits of the scheme. To mitigate this risk and to help ensure an equal opportunity to access the scheme, the Council would, wherever possible, seek to utilise the skills of officers who are able to communicate in the same language as that of the trader. Officers' knowledge and experience show that generally language is not a barrier to communication with businesses, but in the rare event where this is the case, then the Service has a number of officers who speak a range of different languages such as Hindi, Gujarati, Punjabi, Bengali, German, Mandarin, Hokkien and Malay. Furthermore, there are occasions when the use of interpreters and translators is sought to overcome any communication difficulties. This will continue to be the case even after the introduction of a charge based business advice service. Therefore, officers do not envisage that the policy will result in any direct or indirect discrimination to any of the protected groups. The Council will nominate a responsible officer to review (within a formal structure at defined periods) the monitoring information it receives back from service users to determine whether any particular groups are failing to take advantage of the service. The officer responsible for reviewing the monitoring information would check that small businesses are using the scheme, because it may be that a disproportionate amount of small businesses are owned members of the BME community. Officers are aware that most of the BME businesses in Brent are small to medium size enterprises and would, therefore, ensure that no one is treated unfairly through the introduction of the scheme as it will be open to everyone. Furthermore, outreach work is an integral part of our day to day activities and, once the policy has been agreed, then officers will ensure that the scheme is promoted with a view to increasing the take up of free advice and, where necessary, encouraging businesses to join Brent Council's fee paying service. As stated above, officers are aware that the majority of small to medium size businesses in Brent do not require more than seven hours of regulatory advice

per year and in that scenario, such advice can be provided free of charge (on the basis that it does not exceed seven hours per annum).

- 6.8 In respect of the protected characteristic of pregnancy and maternity: those who are pregnant may benefit from the health and safety advice made available under the scheme.

7.0 STAFFING / ACCOMMODATION IMPLICATIONS (IF APPROPRIATE)

- 7.1 Should approval be granted for the introduction of a charge based advice service, then there will initially be no additional staffing requirements. However, if the demand from businesses to join the scheme is greater than anticipated, then it is possible that additional staff will be required, which will be funded from the income that is received for the provision of this service.

BACKGROUND PAPERS

The Regulator's Compliance Code :

<http://www.berr.gov.uk/files/file45019.pdf>

The Regulatory Enforcement and Sanctions Act 2008:

<http://www.legislation.gov.uk/ukpga/2008/13/contents>

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