

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

7 September 2017

Report of the Strategic Director – Economy, Transport and Communities

‘PRIMARY AUTHORITY’ UPDATE

(1) **Purpose of Report** To advise the Cabinet Member of progress made by Derbyshire Trading Standards Service in recruiting local businesses into ‘Primary Authority’ Agreements (PAA) and recent proposals by Government to extend the Primary Authority Scheme.

(2) **Information and Analysis** As the Cabinet Member will be aware, the local authority has a duty to enforce a wide range of trading standards legislation intended by Parliament to protect consumers and to ensure that businesses trade fairly. Much of the legislation falls to ‘local weights and measures’ authorities to enforce in their respective areas. Trading Standards legislation is generally the responsibility of the higher tier local authorities, i.e. county and unitary authorities in England and Wales.

Whilst it is ultimately the prerogative of the courts to interpret the intentions of Parliament when drafting legislation, there is the potential for each individual local authority to interpret legislation within their respective local area, slightly differently. The ‘Home Authority’ Principle (HAP) was developed by trading standards authorities to increase consistency for businesses and help ensure that any enforcement action taken is fair and proportionate. The HAP determines that a business trading beyond county borders can seek advice from the local authority in which they are based – i.e. their ‘home’ authority. Under the terms of HAP, other enforcement authorities wishing to challenge a business regarding compliance issues with respect to goods or services being sold in their locality, should discuss with the relevant Home Authority regulator before approaching the business directly. This Principle was enshrined in law by the Regulatory Enforcement and Sanctions Act 2008 (as amended); this established the Local Better Regulation Office (LBRO – now Regulatory Delivery) which was part of the Department for Business and Industry (BIS – now BEIS) and became known as the ‘Primary Authority Principle’ (PAP) or ‘Primary Authority Scheme’ (PAS).

The main differences between the PAP and the HAP are that businesses can now rely on ‘assured’ advice and that local authorities can seek to recover the cost of providing that advice on a cost recovery basis. The Cabinet Member

for Health and Communities agreed to Derbyshire Trading Standards Service adopting the PAP in September 2013 and the first Derbyshire business was 'signed up' in January 2014.

DTSS has now signed up 15 businesses that provide a range of products including toys, food products (bakery items, chocolate, vitamins) caravans, tool hire, pottery and sports goods and equipment. Derbyshire has a thriving food sector and the Division has built up considerable expertise – supported by the Public Analyst for Derbyshire – in food law. Much of the advice provided is on food labelling including at the product development stage for a range of innovative food supplements. It should also be noted that three of the partnerships are with non-Derbyshire businesses that have approached the Service. Another novel business was set up with the support of a national supermarket chain and involves an 'App' that can be downloaded to help users to make use of and minimise food and other products that would otherwise be wasted. This partnership was also formed with South Derbyshire District Council Environmental Health Service. Derbyshire Trading Standards has also provided businesses with support in a product recall involving allergens, scoping exercises on complaints and referrals regarding caravan sales and aftercare service, advice on toy safety and testing and advice on pricing practices in line with new Government guidance.

A full list of Derbyshire businesses – including most recently - Sportsdirect.com Retail Limited – that have entered into a Primary Authority Agreement is provided in the Appendix to this report. There are several other PAA's in the pipeline.

In February DTSS conducted a survey of the businesses that had, at the time, entered into a PAP and had six responses from the ten businesses that had joined the scheme. The results of the survey are provided in the table below. Overall, five out of the six businesses that responded were either very or fairly satisfied with the Scheme. One business was a little dissatisfied and felt that the service should continue to be provided free of charge. 83% said that the PAP had delivered benefits to their business and out of a range of 1 to 10 the businesses rated the scheme 7.7 for value for money (a score of 10 being 'very good value for money').

Table 1 - Primary Authority Agreements Businesses Satisfaction Survey

No.	Question	Answer % Yes	Comments
6	Has entering the Primary Authority Partnership delivered benefits to your business?	83%	We did not have the chance to use the service
7	Are you clear about our fees and the costs of our services?	100%	

8	On a scale of 1 to 10, where 1 is not very good and 10 is very good, how would you rate the value for money provided by the partnership?	7.7	
9	Are we meeting expectations that we have agreed with you e.g. turnaround times for requests for advice?	100%	
10	Are you satisfied with the current processes for requesting and issuing advice?	100%	
11	Are you happy with the current arrangements for cost recovery and invoicing?	100%	
12	Is there anything about the current arrangements which you think could be improved?	33%	Yes, return to zero cost!
			A backup contact should our primary contact not be available would be helpful.
13	Are there any other services you would like the partnership to provide e.g. training, compliance audits?	17%	Compliance Audits could be of interest
14	Overall, how satisfied or dissatisfied are you with our Primary Authority Partnership?	33%	Very satisfied
		50%	Fairly satisfied
		17%	Fairly Dissatisfied

Changes to the Primary Authority Principle as a result of The Enterprise Act 2016

In February this year, the Government announced proposed change to the Enterprise Act 2016 to extend and simplify Primary Authority, enabling all UK businesses to benefit, including pre-start-ups. Currently there are approximately 17,000 businesses that have entered into a PAA, and the Government anticipates that by 2020 the number participating will have increased to around 250,000 including a large number of smaller businesses. To accommodate this expansion, Government believes that the administration of the scheme, which is undertaken by Regulatory Delivery a department within BEIS, must be simplified and the system for defining partnerships must be more sustainable than the current approach. The main changes are as follows.

1. Enabling national regulators to support primary authorities

National Regulators, such as the Competition and Marketing Authority (CMA), the Health and Safety Executive (HSE) and the Food Standards Agency (FSA) will be able to assist primary authorities in developing advice and guidance and developing and managing inspection plans for the businesses

and co-ordinators they work with. A key issue is the definition of 'cost recovery' and new guidance will clarify what this means. Primary Authorities and businesses will need to agree cost recovery arrangements up front so they will have an opportunity to resolve any concerns about charging before the supporting regulator gets involved.

2. Clarifying and simplifying enforcement action in Primary Authority

Where an enforcing authority proposes to take action against a business with a primary authority agreement in place, it must notify the primary authority. In most cases this must be in advance so that the primary authority can consider if the action is inconsistent with any advice it has given. In cases where there is a significant and imminent risk of harm the action can be notified retrospectively. There has been some confusion over what constitutes enforcement action, but the proposed changes are unlikely to be of significance to Derbyshire businesses

3. Determinations: updating requirements for applications

Disagreements arising in relation to proposed enforcement action against a business in Primary Authority may be referred to the Secretary of State for consideration – this is known as the determination process. However, in the eight years since Primary Authority was introduced there have only been two applications to the Secretary of State for determination. The vast majority of disagreements have been resolved quickly through discussion between local authorities and with support from Regulatory Delivery where needed. Given the success of this approach to date the Government considers that it should continue rather than introduce a more formal lower level mechanism.

4. Defining partnerships

Because businesses are subject to a variety of legislation enforced by both county authorities (eg trading standards) and districts authorities (via Environmental Health) there is the potential for a business based in a 'two tier' authority to have several different PAA's. The PAA does not have to be with the local authority where the business is based as they can choose which ever authority they feel will provide the best service. As part of the consultation process for the amendments to the Enterprise Act, Stakeholders were also asked for views on a separate administrative proposal to replace the use of categories, such as 'food standards' and 'fair trading', for defining the scope of partnerships with an approach whereby the scope will, by default, cover all the regulatory functions of the local authority that are within scope of Primary Authority.

The current categories that fall within the scope of Primary Authority are listed in the table below. It should be noted that because of the wide range of 'trading standards' legislation that falls to local authorities to enforce, eleven out of the 19 categories are the responsibility of the County Council.

Table 2 – Current Categories for Primary Authority Advice

No.	Category	Trading Standards	Environmental Health	Licensing	Fire Service
1	Age Restricted Products	Yes			
2	Age Restricted Services		Yes		
3	Agriculture	Yes			
4	Animal Establishments		Yes		
5	Animal Health & Welfare	Yes			
6	Environmental Protection		Yes		
7	Explosives Licensing	Yes			
8	Fair Trading	Yes			
9	Fire Safety				Yes
10	Food Safety & Hygiene		Yes		
11	Food Standards	Yes			
12	General Licensing			Yes	
13	Health, Safety & Welfare	Yes			
14	Housing		Yes		
15	Metrology	Yes			
16	Petrol Storage	Yes			
17	Pollution Control		Yes		
18	Product Safety	Yes			
19	Road Traffic	Yes			
	Total	11	6	1	1

The main concern, expressed by both business and local authority stakeholders during the consultation, was that the new approach could limit business choice; for example in choosing different primary authorities depending on the level of resource, expertise and competency a local authority has in a particular area, or depending on geographic location. However, to accommodate the anticipated expansion in the scheme, Government is committed to a simplification of the existing scheme and the system for defining partnerships must be more sustainable than the current approach.

It is not anticipated that the changes will have a significant immediate impact on DTSS as there are relatively few Primary Authority Agreements in place in Derbyshire for non-trading standards categories. It could, however, necessitate a closer working relationship with the other Derbyshire local authority regulators. DTSS is currently represented on the Derbyshire Chief Regulators group and the D2N2 Better Business Regulation group both of which have representatives from other Derbyshire Regulators. One of the current PAA which involves both Food Standards and Food Safety and Hygiene was prepared in conjunction with South Derbyshire Environmental Health Service.

As a result of the changes to the Enterprise Act all existing Primary Authority Agreements will have to 'migrate' to the new arrangements and this process is currently in hand. The new PAA Service Level Agreements with the respective businesses will include arrangements for passing on the cost of any advice sought from a national regulator. There is also a potential issue with the devolved administrations as it is understood that the new Agreements only apply to England and that separate agreements will be required for Scotland, Northern Ireland and Wales.

The draft Coordination of Regulatory Enforcement Regulations 2017 will be laid before Parliament in time to come into force on 1 October 2017. Revised Primary Authority Statutory Guidance will also be issued on 1 October 2017.

(3) **Financial Considerations** The PAP guidance suggests that local authorities should charge for their services at a 'cost recovery' rate. Derbyshire Trading Standards Service has calculated this to be £65 per hour to include on-costs and over heads. Most businesses are offered a minimum '10 hours a year' package totalling £650, with any additional hours costed at the above hourly rate. The total 'PA' advice income for 2016/17 was just over £7,000. The income forecast for the current financial year is c£35,000.

Other Considerations

In preparing this report the relevance of the following factors has been considered: legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property, social value and transport considerations.

(4) **Key Decision** No.

(5) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(6) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(7) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the progress made in recruiting local businesses into 'Primary Authority' Agreements and recent proposals by Government to extend the Primary Authority Scheme.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Appendix List of Primary Authority Agreements with Derbyshire Trading Standards Service

Company	Location	Sector	Date of First Agreement
A B Gee of Ripley Ltd	Ripley	Toy and Hobby	7 May 2015
British & Continental Food Brokers	Long Eaton	Long-life Bread and Cake suppliers	2 June 2016
Brunel Healthcare Manufacturing Ltd	Swadlincote	Manufacturer of vitamins, minerals and nutritional supplements	21 July 2016
Denby Pottery Company Ltd	Denby	Pottery manufacturer	29 March 2016
Frank Wright Trouw Nutrition Ltd	Ashbourne	Manufacturers of vitamin and mineral mixtures for livestock	21 April 2015
Glossop Caravans Ltd	Glossop	Caravan and Motorhome retailer	3 April 2015
The Hire Supply Co UK Ltd	Long Eaton	Tool hire company	19 February 2016
My Furniture	Sandiacre	Furniture manufacturer/importer and supplier	24 January 2017
Strata Products Ltd	Pinxton	Plastic Home and Office Products supplier	19 February 2016
Thorntons Ltd	Alfreton	Chocolate manufacturer and retailer	23 November 2015
What Next Candy Co Ltd	Hatfield, Glossop	chocolate and sugar confectionery	6 January 2014
Cannon Tools Limited	Birmingham	Tool supplier	11 April 2017
Nutrivitality Ltd	Derby	Vitamin product manufacturer and supplier	11 April 2017
OLIO	London	Food waste 'App'	11 May 2017
Sportsdirect.com Retail Limited	Shirebrook	National sports retailer	3 August 2017