

**DERBYSHIRE COUNTY COUNCIL**

**MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES**

**12 January 2016**

**Report of the Strategic Director, Health and Communities**

**INTRODUCING A CHARGE FOR ADVICE PROVIDED TO LOCAL BUSINESSES  
BY DERBYSHIRE TRADING STANDARDS SERVICE  
(Health and Communities)**

**1 Purpose of Report:**

To seek approval for the Trading Standards Division of Health and Communities to charge for the advice it provides to local businesses regarding regulatory compliance issues.

**2 Information and Analysis:**

- 2.1 Providing advice to local businesses has, to date, formed an integral part of the service offered by the Trading Standards Division to ensure compliance with the wide range of 'consumer protection' legislation that the authority has a duty to enforce. As legislation has become more complex and trading more sophisticated, the role of the Trading Standards Service has developed from routine inspections to check compliance 'on-site' to a more reactive role answering requests for advice from local businesses, responding to referrals from other authorities, and acting on intelligence received from the public, other enforcement agencies, or from proactive market surveillance.
- 2.2 Ensuring that Derbyshire has a Strong Economy is a specific Council Plan Theme and the Trading Standards Division contributes to a number of Council Plan priorities including:
  - Supporting the Council's economic regeneration priorities.
  - Providing support to businesses in traditional and developing industries such as the visitor economy...food and drink and manufacturing sectors.
  - Adopting the Better Business for All Scheme (now known locally as 'Better Business Regulation') with local businesses, the Chamber of Commerce, Local Enterprise Partnership and local regulators to help businesses comply with regulatory requirements.
- 2.3 As well as access to competent expert advice on regulatory issues, the Trading Standards Division supports local business by taking enforcement action against the minority of businesses that either deliberately or recklessly breach legal requirements. For local businesses to grow, they need to be

confident about the advice they receive and able to compete on a fair and equal basis and not be undermined by unscrupulous traders who cut corners or deliberately seek to gain an unfair competitive advantage. Both the Trading Standards Compliance Policy<sup>1</sup> and the current Business Advice and Enquiries Policy<sup>2</sup> are available on the County Council website.

#### 2.4 Examples of how the Division currently supports local businesses includes:

- Targeted advice to 'at risk' businesses that supply age-restricted products (eg alcohol, cigarettes, knives etc).
- Operating the Trusted Trader Scheme – this was launched primarily to put local people in touch with local, reliable trades people and thus helping, in particular, older people to avoid falling victim to rogue traders. The Scheme was launched in 2009 when the recession was first beginning to impact on the economy and was seen very much as giving a boost to local traders.
- Operating the 'Heart of Derbyshire' Scheme to promote local food outlets that promote healthier food options.

In addition, the Division works closely with D2N2 Local Enterprise Partnership colleagues and has been a founding member of 'Better Business Regulation'; a local partnership of business and regulatory representatives which is committed to working together to remove any identifiable 'regulatory' burdens that might inhibit business growth. This group also helps facilitate a better understanding of pressures faced by colleagues working in both the business and regulatory sectors.

2.5 Because of the reduction in funding provided to local authorities by Government in recent years, the capacity to deliver Trading Standards Services has correspondingly reduced. As of September 2015 the Trading Standards Division net base budget was £1.46m and the staffing establishment was 40.2 FTE. This compares to £2.95m in April 2005 and an establishment of approximately 60 staff. A reduction of approximately 50% in base budget and 33% in staffing. The current Trading Standards Division establishment has also been dependent upon a significant contribution from the Public Health Resource Fund for the past two financial years in recognition of the contribution that the Division makes to achieving public health outcomes. Given the likely further reductions in funding, the current level of free advice to Derbyshire businesses is not sustainable. To enable the Division to continue to support local businesses and provide good quality assured advice it is essential that it retains a core of experienced, knowledgeable and competent officers.

2.6 The ability for local authorities to charge in defined circumstances for providing advice was confirmed by the Regulatory Enforcement and Sanctions Act

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<sup>1</sup> [http://www.derbyshire.gov.uk/images/compliancepolicy\\_tcm44-8256.pdf](http://www.derbyshire.gov.uk/images/compliancepolicy_tcm44-8256.pdf)

<sup>2</sup> [http://www.derbyshire.gov.uk/images/business%20advice%20and%20enquiries%20policy\\_tcm44-8253.pdf](http://www.derbyshire.gov.uk/images/business%20advice%20and%20enquiries%20policy_tcm44-8253.pdf)

(RESA) in 2008. This Act introduced the concept of the Primary Authority Principle (PAP) which is a written agreement between a local authority and business. For many years local authority Trading Standards services operated – and still do - the Home Authority Principle (HAP). HAP was developed to ensure a consistent interpretation of trading standards legislation and to avoid one local authority providing conflicting or contradictory advice to businesses operating in more than one area of the country. Under HAP, a business can enter into an agreement (usually) with the local authority in which their head office is located and which is nominated ‘Home Authority’ (HA). The HA takes responsibility for providing advice and guidance on legal issues and other authorities or enforcement agencies are expected to liaise with the Home Authority before contacting the business concerned. The PAP takes the concept a step further by facilitating ‘assured’ advice – which can be binding – and enabling local authorities to charge for the advice on a cost recovery basis. According to the Better Regulation Delivery Office (BRDO) – the Department of Business Innovation and Skills agency responsible for PAP – 7,695 businesses are participating in a Primary Authority Scheme.<sup>3</sup>

- 2.7 Derbyshire Trading Standards sought CabCo approval for adopting the PAP in September 2013 (see CabCo Report: Adopting the Primary Authority Scheme, 10 September 2013.<sup>4</sup>) This was in response to a specific request from a Derbyshire based business. Over the past 12 months or so, although not actively promoting the PAP, there are now six businesses signed up to the scheme. Perhaps understandably, other businesses have been happy with the free advice they have been receiving up to now, but informal discussions with local business leaders confirm that, in principle, businesses accept that they need to pay for good quality advice that helps them to comply with legal requirements.
- 2.8 There does not appear to be a ‘statutory minimum’ level of advice that local authorities have to provide defined within legislation, although a number of authorities have interpreted this as providing access to on-line advice and leaflets. The Regulators’ Code introduced in April 2014, which was reported to CabCo in February 2014<sup>5</sup>, suggests that:
- Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself. (Section 5.1)

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<sup>3</sup> See consultation document Extending and Simplifying Primary Authority: Keeping the UK Competitive

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461336/15-423-pa-extension-and-simplification.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461336/15-423-pa-extension-and-simplification.pdf)

<sup>4</sup> CabCo Report: Adopting the Primary Authority Scheme, 10<sup>th</sup> September 2013

[http://www.derbyshire.gov.uk/council/meetings\\_decisions/meetings/cabinet\\_member\\_portfolio/health\\_communities/10092013\\_health\\_and\\_communities.asp](http://www.derbyshire.gov.uk/council/meetings_decisions/meetings/cabinet_member_portfolio/health_communities/10092013_health_and_communities.asp)

<sup>5</sup> CabCo Report: Regulators’ Code 11th February 2014

[http://www.derbyshire.gov.uk/council/meetings\\_decisions/meetings/cabinet\\_member\\_portfolio/health\\_communities/20140211\\_health\\_and\\_communities.asp](http://www.derbyshire.gov.uk/council/meetings_decisions/meetings/cabinet_member_portfolio/health_communities/20140211_health_and_communities.asp)

- Regulators' published service standards should include clear information on:
  - their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges (Section 6.2 e)

2.9 It is proposed that from 01 April 2016 any Derbyshire business seeking or requiring advice from Derbyshire Trading Standards will have the following options:

1. Free access to web-based advice, leaflets etc., and or referral to appropriate partner.
2. Joining the Derbyshire Trusted Trader Scheme (if eligible) where, in addition to other benefits they will be entitled to up to 2 hours free advice per year.
3. Entering into a Primary Authority Agreement where any advice provided would, under the scheme be charged at a rate of £65 + VAT per hour. PAP members would be required to enter into an agreement for a minimum number of 10 hours advice per annum.
4. All other advice, subject to paragraph 5, would be chargeable at a rate of £65 + VAT per hour.
5. Up to two hours free advice per year would be provided to any Derbyshire based business that was referred to the Trading Standards Division via the D2N2 Growth Hub.

### 3 Legal and Financial Considerations:

- 3.1 Section 31 of the Regulatory Enforcement and Sanctions Act (RESA) 2008 permits 'Primary Authorities' to charge 'regulated persons' *such fees it considers to represent the costs reasonably incurred by it in the exercise of its functions*'. There is guidance<sup>6</sup> on what constitutes 'cost recovery' and it is generally accepted that this includes salary, on-costs and additional costs associated with delivering the service such as travelling, officer training and supervision. The 'cost recovery' rate proposed for Trading Standards Advice is calculated as £65 + VAT per hour. This in line with the Corporate Charging Policy.<sup>7</sup>
- 3.2 Section 93 of the Local Government Act 2003 enables a local authority to make charges for cost recovery provided that the authority is authorised, but not required, by an enactment to provide the service and the recipient has agreed to its provision. The services which are proposed to be charged for relate to advice that is over and above that required by law.

<sup>6</sup> See HMT's Managing Public Money:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf) and The Chartered Institute of Finance and Accountancy (CIPFA) Service Reporting Code of Practice Available from <http://www.cipfastats.net/sercop/>

<sup>7</sup> For Corporate Charging Policy:

[http://dnet/Images/2011%2008%2023%20Corporate%20Charging%20Policy\\_tcm10-187842.pdf](http://dnet/Images/2011%2008%2023%20Corporate%20Charging%20Policy_tcm10-187842.pdf)

- 3.3 Appropriate governance arrangements will be adopted by the Department to ensure that legal requirements continue to be met.
- 3.4 The role that Regulatory Services have in supporting local businesses and promoting growth has been recognised by Government. The introduction of the Enforcement Concordat in 1998 encouraged a more collaborative and less punitive approach to supporting business – particularly in the event of non-compliance. The Regulators' Code introduced by statute in April 2014 requires regulators to carry out their activities *'in a way that supports those they regulate to comply and grow'*<sup>8</sup>.
- 3.5 With regard to providing advice to local businesses the Code stipulates that:
- '5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.*
- 6.2 Regulators' published service standards should include clear information on:*
- e) Their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges*
- 3.6 The current Trading Standards Division net base budget (as of end September 2015) is £1.46m. However, the current Trading Standards Division establishment is supported by £218,000 funding from the Public Health Resource Fund (PHSF) and c£70,000 of 'one-off' funding. Given the anticipated reduction in funding following the Comprehensive Spending Review, it is essential that the Division identifies alternative sources of income to enable it to continue to deliver at least some of the current levels of service.
- 3.7 Based on current demands, and assuming that many businesses when faced with having to pay for advice will choose not to, it is estimated that the initial additional income for 2016-17 will be approximately £50k. Although it should be acknowledged that there is a degree of uncertainty associated with this estimate.

#### **4 Human Resource Considerations:**

- 4.1 When providing advice on legal issues to local businesses it is essential that the Authority retains sufficient competent staff so that businesses can be confident about the advice that they receive. The Trading Standards Division has a programme of continual professional development and job profiles reflect the level of advice required to 'Home Authority' and 'Primary Authority' businesses. It will be necessary to ensure that the Division continues to

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<sup>8</sup> See <https://www.gov.uk/government/publications/regulators-code>

ensure that staff retain professional competencies in trading standards legislation that is constantly changing.

- 4.2 Whilst the Trading Standards Division establishment has reduced from approximately 60 to 40 over the past decade, the number of operational staff who are competent to provide HA/PA advice is considered adequate for the anticipated demand. Additional income from local business will off-set a loss of core funding. However, given the age profile of the Division (average age over 50) the Division will need to ensure that it can recruit and train sufficient numbers of professionally qualified and competent staff in the future.
- 4.3 Trading Standards staff already charge for a variety of services and in particular metrological calibration services and so the additional requirement to charge for business advice is not considered to be out of scope of current job profiles.

## **5 Other Considerations:**

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

## **6 Background Papers:**

CabCo Report: Adopting the Primary Authority Scheme, 10 September 2013  
CabCo Report: Regulators' Code, 11 February 2014

## **7 Key Decision:**

No

## **8 Call-in:**

Is it required that call-in be waived for any decision on this report? No

## **9 Officer's Recommendation:**

That Cabinet approves the introduction of a charge for business advice provided by the Trading Standards Division of Health and Communities as detailed in paragraph 2.9 of this report.

**David Lowe**  
**Strategic Director**  
**Health and Communities**