

DERBYSHIRE COUNTY COUNCIL

MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES

18 February 2016

Report of the Strategic Director, Health and Communities

LOCAL GOVERNMENT ASSOCIATION REVIEW OF TRADING STANDARDS

1 Purpose of Report:

To advise the Cabinet Member, Health and Communities of a recently published Local Government Association (LGA) review of trading standards.

2 Information and Analysis:

- 2.1 On 27 January the LGA published a review of the Trading Standards Service. The review was initiated in the summer of 2015 in recognition of a significant reduction on Government for local authority services including trading standards and in response to a strategic vision published by the Chartered Trading Standards Institute (CTSI) suggesting that due to budget cuts, the trading standards service was becoming unviable.
- 2.2 The context of the review was that over the lifetime of the 2010-15 Parliament, local government funding from central government was cut by 40% and that Government projections for 2015-20 were for further significant reductions. Surveys have suggested that on average, local authority trading standards services have received a cut in budget of 40% but that there have been significant variations. For a relatively small service such as trading standards, such cuts can have a significant impact in terms of staff reductions and ability to continue to enforce the wide range of business and consumer protection legislation that is a statutory duty for local authorities to enforce.
- 2.3 A copy of the summary report is available as an appendix to this report, but the key conclusions following the review are that:
 1. Trading standards should remain fully integrated within local government
 2. The mechanisms already in place for managing local, regional and national trading standards work can provide a solid foundation for future management of different levels of trading standards work
 3. Services managed at scale offer the most sustainable future for local trading standards services
 4. Whatever the future model, there is a need for much more honesty about what is deliverable

- 2.4 The mechanisms referred to in the second point refer to the national and regional collaboration of local authority trading standards services. There has long been a recognition that rogue traders operate across local borders and in the benefit of pooling knowledge and expertise to benefit from economies of scale. Two relatively recent developments have further enhanced regional working; firstly the recognition of the importance of adopting an 'intelligence led approach' to help identify rogue traders and to assist local decision making so that resources can be concentrated on those criminals that represent the greatest risk of offending and secondly the establishment of a National Trading Standards Board to help form a strategic approach to tackling those areas of legislation that fall to the Department of Business Innovation and Skills and which followed the Consumer Landscape Review. Although approximately half of trading standards legislation falls within the scope of NTSB, there is still many other areas that are not currently administered by NTSB.
- 2.5 Finding the right balance between local accountability and the benefits from economies of scale is likely to be one of the key considerations over the next few years. There is no doubt that relatively small local authorities would benefit from a greater degree of collaboration and sharing of resource. With the potential of greater autonomy through devolved authority and the direction of travel of a combined D2N2 it is hoped that services such as trading standards will be able to take greater advantage of working across local boundaries.
- 2.6 Trading standards services appear to have developed a reputation for helping to deliver national government priorities in local areas – such as the response to animal disease outbreaks and responding to the Consumer Landscape Review. Trading standards services do enjoy a relatively unique perspective in terms of supporting local businesses as well as championing the consumer rights of local residents. However, where new responsibilities are assigned without additional resources, it is difficult to ensure that they are adequately supported. Requirements to enforce Energy Performance requirements is one such recent example.
- 2.7 The report – which is available via the link below - also mentions that many local authorities are seeking to generate alternative sources of income through commercialisation and the LGA is looking to provide further support in this area. Derbyshire is one such authority that is seeking to charge local businesses for the advice that we provide to help them comply with legal requirements.

http://www.local.gov.uk/publications/-/journal_content/56/10180/7662567/PUBLICATION

3 Other Considerations:

In preparing this report the relevance of the following factors has been considered; financial, legal, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

4 Background Papers:

None

5 Key Decision:

No

6 Call-in:

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

7 Officer's Recommendation:

That the Cabinet Member, Health and Communities notes the report.

**David Lowe
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Health and Communities**

LGA trading standards review

summary report

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Introduction

In summer 2015, the Local Government Association (LGA) launched a short and high level review into the future of local government trading standards services. The review followed on from the LGA's Remodelling Public Protection¹ report, which sought to highlight the challenges faced by council trading standards, licensing and environmental health teams following significant budget cuts. The review also responded to the outline vision for the future of the trading standards published by the professional body, the Chartered Trading Standards Institute (CTSI).

CTSI's vision proposed the creation of new strategic trading standards authorities and urged government to undertake further work to explore the proposal. The LGA's Safer and Stronger Communities Board (SSCB) had and received a number of concerns about the proposal, and therefore committed to undertaking a local government led review of the service. The LGA review ran alongside a review undertaken by the Department for Business, Innovation and Skills (BIS) and Better Regulation Delivery Office (BRDO) focusing on central government's requirements from the service.

The objective of the LGA review was to:

- understand what local government needs from its trading standards services
- consider the options for the future of the service, with a view to outlining a series of recommended next steps to further explore and take forward.

To deliver this, the review:

- undertook a short survey of English trading standards authorities
- established a stakeholder group comprising councillors, council chief executives and directors, and representatives of the Association of Chief Trading Standards Officers (ACTSO), CTSI and National Trading Standards (NTS)
- ran a series of interviews with members of the stakeholder group
- held a stakeholder group workshop to discuss key issues identified in a project discussion paper
- reported back to the LGA SSCB in early December with key findings.

Over the following four sections, this summary report outlines:

- the general context in which the review took place
- the key points emerging from the stakeholder group discussions during the review
- the LGA's response to these points
- how the LGA intends to take this work forward.

¹ www.local.gov.uk/web/guest/publications/-/journal_content/56/10180/7061800/PUBLICATION

Context

The review was largely conducted in the run up to the 2015 spending review, and it is helpful to start by providing some broader local government context. Over the course of the 2010-2015 Parliament, local government funding from central government was cut by 40 per cent. Government projections in Spending Review 2015 suggest further significant reductions to grant funding between 2015-2020 will be partially offset by locally raised income to give an overall reduction of 6.7 per cent in real terms. Government has committed that by 2020 local government will retain the total sum it raises through business rates; it remains to be seen whether the details of this as they are worked through will have any specific impact on business-facing services such as trading standards and other regulatory functions.

Figures suggest that over the 2010-2015 period, the average cut to trading standards budgets in England was 40 per cent, mirroring the overall cut. However, as was clear from the LGA survey of trading standards services, this average figure masks a wide variation in changes to trading standards budgets in individual councils, with some teams cut by significantly more than 40 per cent, and others by significantly less.

With more grant reductions to come over the current Parliament, the clear reality is that most trading standards (and other) services can expect further cuts in funding over the next four years given ongoing spending pressures in areas such as social care.

The £533 million reduction in public health funding over 2015-2020 is also likely to have a particular impact on trading standards, given that public health has supported a number of trading standards posts in recent years, notably on work to tackle illegal alcohol, tobacco and under-age sales.

Alongside local government finance, devolution was the other dominating issue for local government in 2015, and will remain so as we progress through 2016. With a number of areas already having devolution deals agreed, and others in development, the implications for trading standards and regulatory services thus far appear limited. Some devolution bids have mentioned regulatory services (although the focus appears to be on licensing issues) but at the current time, regulatory services are generally not playing a role in or being factored into devolution discussions, despite their role in supporting businesses and local economic growth, key themes for the new combined authorities.

Key messages from the review

The following key messages emerged from the discussions with the stakeholder group that took place during the course of the review.

Trading standards should remain fully integrated within local government

There was a strong commitment to trading standards remaining fully integrated within local government. Without exception, trading standards was seen as a valuable service able to support local priorities, communities and businesses.

Councillors and senior officers consistently highlighted the links between wider regulatory services (in unitary authorities), but also with other services such as public health, social care and economic growth. There was concern that creating strategic trading standards authorities that were separate to current local government structures would create additional costs and weaken the important links with other council services. While it was acknowledged that there may be a case for removing certain specific or isolated trading standards functions from local government if there were other appropriate homes for them, there was no appetite to see major changes in how trading standards services are managed.

In terms of answering the question ‘what does local government need from its trading standards services?’ there was a clear steer that councils value trading standards as a flexible and responsive resource that can be targeted to achieve different outcomes depending on local priorities.

The service offers a range of different tools to support local priorities, whether that is tackling under-age sales or anti-social behaviour, engaging and supporting rural communities, providing support to local businesses or a combination of all of these. From a local perspective, this means that trading standards may look very different in different places, depending on the local area.

This local diversity can create some challenges in reflecting the role of the service, given that trading standards covers a wide range of responsibilities which have little in common (eg, cybercrime and animal health) beyond the overarching, historic and very broad objective of protecting consumers, businesses and local communities. However, one of the strengths of the service is that it has proved to be flexible and adaptable, with priorities evolving over time to reflect new issues (such as under-age sales or cybercrime) or downgrade others (such as pricing). There was a clear message that local leaders valued the flexibility of this resource, and wanted to retain that.

However, trading standards isn’t simply about addressing local issues and priorities; as was noted at the stakeholder group workshop, trading standards operates at individual, local, regional and national levels depending on the issues it is dealing with. This differs from the typical situation in other services, which often have a narrower focus than trading standards and where local and government priorities are more likely to be aligned rather than effectively competing for limited resources.

There are clear challenges associated with using local services to deliver national responsibilities when overall funding has fallen to the extent that it has.

Local authorities will inevitably lean towards prioritising scarce resources on local issues that have a visible impact on their communities over national ones which may not do, particularly when government can provide no indication of what funding it is providing for trading standards, or any clear sense of what its overall priorities for the service are. This calls for two responses; firstly, greater clarity about what capacity there is to address both local and national priorities, and secondly, action to ensure that services are set up in a way that enables them to address a wide range of activity and the right balance between local and national priorities.

The mechanisms already in place for managing local, regional and national trading standards work can provide a solid foundation for future management of different levels of trading standards work

Trading standards has already put in place mechanisms for managing cross-border regional and national work. Alongside locally led trading standards work led by individual council teams, joint working through regional trading standards groups is well established, and the creation of NTS has provided a mechanism for managing work on national trading standards issues.

Existing structures have the potential to provide a solid foundation for the future, and there is no obvious or immediate need for new structures to tackle cross-border trading standards issues arising at regional and national level. NTS provides a sensible model for using local services to tackle national issues. As demonstrated by the Food Standards Authority's decision to use NTS to coordinate regional feed activity, it also offers a pragmatic route for commissioning specific areas of work that must be locally led but may

not always be local priorities, and therefore a way of addressing the inherent challenge of balancing competing local / national priorities.

However, alongside a possible reduction in BIS funding for NTS (following the department's 17 per cent funding cut in the spending review), the major challenge to the future of NTS is that its local foundations are being weakened. For example, as trading standards teams reduce in size, it will become harder for NTS to find local services that can host NTS teams. The local intelligence on which NTS is reliant may become degraded without local resource to support it. Heads of service are increasingly stretched (often across multiple services) and may be less able to dedicate the time required to support the board. Therefore, to ensure that the current regional and national working structures can provide a sustainable way of working in future, we must ensure that local trading standards services, the foundations of the whole model, are strengthened.

Services managed at scale offer the most sustainable future for local trading standards services

There was a clear steer in the stakeholder group discussions that there is a minimum level of resilience (and service) for trading standards, and that larger services are considerably better placed looking ahead to the future. It is notable that the strongest rejection of CTSI's suggestion that the current system is broken came from those services that have created larger joint services operating across two or more authorities. Even following the cuts, these services retain relatively large staff bases, are able to cover a range of specialisms, and believe that they are sustainable and resilient. Conversely, it was suggested that some services had already reduced to the point where they could not be said to be sustainable, and that there was a need for local government to be much more robust about the need to provide a minimum level of service.

A range of advantages to larger services were cited. Larger services have the resources to be active in a wider range of specialisms than their smaller counterparts, leaving them better placed to manage not only a range of local priorities, but also competing local and national priorities. Larger services will have the capacity to be more flexible and responsive to emerging issues, redeploying resources more easily as required. Additionally, larger services will also have the capacity to support key areas of expertise – such as the use of intelligence, new commercial services, and financial investigators who can help secure funds through the Proceeds of Crime Act – that can ensure existing resources are targeted appropriately, as well as helping to generate additional income.

There may be concerns that larger or joint services could weaken the link with local decision making, lead to less dedicated local resource for participating councils or be perceived as smaller services being subsumed within a larger neighbouring authority. However, a number of joint services – for example, the established West Yorkshire Joint Service (WYJS) covering the five West Yorkshire unitary authorities, or the newer two-county joint services in Devon / Somerset and Surrey / Buckinghamshire – appear to have overcome these concerns, and suggest that there is considerable scope for individual council areas to benefit from being part of a larger service.

There would also be national benefits to having larger local trading standards services. As well as providing firm foundations for an NTS led model of national trading standards work, and the capacity to support it, larger, more sustainable services are likely to help ensure national resilience in key specialisms. There would be scope for larger services to act as centres of excellence in different types of work, in contrast to significant concern about dwindling specialist expertise in important areas as local teams reduce in size.

It is also important that councils continue to draw from a sustainable pool of trained, competent officers, with new recruits being drawn into the service through a range of different routes. An issue highlighted in discussions about wider regulatory services outside the review indicated challenges in finding placements for academic graduates to develop their skills in a real world environment. This risks leaving councils with expertise concentrated in an ageing workforce, with potential newer recruits lacking the experience needed to assume duties effectively. It is clear that there is some need to incubate and nurture new offers to regulatory professions, and larger services are more likely to be able to support this role.

Whatever the future model, there is a need for much more honesty about what is deliverable

A clear message from the review is that although larger services are likely to prove more sustainable in the long term, there is a need for more honesty – locally, but especially nationally – about the fact that no service can deliver what it used when it experiences cuts of the order trading standards has, whatever size it was to start with or is now. Put simply, current level of resources cannot sustain the same level of protection, across the same number of areas, as was the case previously.

That being the case, there is a need for openness about what is being delivered and what isn't; locally, there should be clear governance and political accountability for these decisions. WYJS was held up as a good example of a service with a significant level of member oversight due to its joint committee structure. In other places, it has been suggested that there is less political oversight and involvement with the service than might previously have been the case.

As we said in Remodelling Public Protection, there is a need for a more realistic approach from government about the extent to which regulatory services can absorb new responsibilities given the pressures they are under. Trading standards already have well over 200 statutory responsibilities, and over the course of the review, three new ones came into force or were introduced into Parliament:

- reporting responsibilities in relation to the display of Energy Performance Certificates (thereby attaching new burdens to a low priority responsibility)
- enforcement responsibilities for new plastic bag charges
- enforcement responsibility for the new apprenticeship brand.

Government must do more to acknowledge that capacity at local level is already fully stretched, and shift away from its default approach of making trading standards responsible for all manner of enforcement activity.

It would also be helpful if government could provide greater clarity about the prioritisation of existing statutory responsibilities which have more of a national dimension than a local one. Trading standards services are already prioritising different types of activity based on intelligence, levels of detriment and local priorities: a clear steer from central government about which of its policy areas it needs local teams to prioritise – and which it doesn't – would be helpful. The two trading standards reviews have generated discussion about the shift away from undertaking work in the area of pricing, for example, as well as weights and measures. A clear statement from government as to whether it considers such examples to be acceptable, in the context of limited resources and other priorities, would be an extremely useful outcome from the central government review.

LGA response to the review's key messages

On trading standards

The LGA welcomes the support expressed during the review for retaining trading standards within local government. As we set out in summer 2015, we believe that trading standards should remain within local government, with local control over local trading standards work, and separate governance mechanisms for the regional and national NTS work funded centrally by government. This will ensure a flexible local resource able to target local issues and support local priorities, alongside structures to direct strategic national work, with NTS overseeing project teams to undertake coordinated and focused work.

We endorse the need for greater national prioritisation of the diverse range of duties that trading standards are responsible for. Government must be clear, and realistic, about setting national trading standards priorities. It must recognise where regulation, whether national or European, is diverting resources to low risk work that burdens regulators as well as businesses (and often more so), sometimes without any discernible benefit – as in the case of the energy performance certificates. This must be addressed by government.

On structures, we also agree that, in order to ensure the future sustainability of trading standards work, councils should explore the options for sharing their services to create larger units. There is no one size fits all model for different councils, but having fewer, larger trading standards services, which serve more than one council but sit fully within local government structures, is likely to help ensure greater long term resilience of trading standards expertise.

In particular, this would allow greater capacity for the development of commercial approaches, which we believe have an important role to play in supporting regulatory services in future.

We urge councils looking at creating larger services to learn from areas that have successfully introduced new structures (such as West Yorkshire, Devon and Somerset and Surrey and Buckinghamshire) – in particular, how they have successfully balanced the benefits of larger services while retaining local accountability and prioritisation.

Although we note that a clear picture of what a minimum service looks like does not exist, we also acknowledge that wide disparities in trading standards resourcing in similar authorities raise question marks about the extent to which levels of protection are consistent in different areas. Such disparities between often neighbouring authorities – which cannot realistically be accounted for by greater efficiency, or differing local circumstances – can ultimately pose significant reputational challenges for local government as a whole.

There is therefore a strong argument for individual councils where services have reduced to a very small size, or where they are significantly out of line with other similar authorities, to risk assess their services and consider any alternative options for accessing and providing expertise across a range of different areas.

As stated, we do not believe that a uniform model is desirable. There will be justifiable reasons why structures ultimately look different in different places and we therefore would not support mandating a new approach.

We believe that larger services could be formed that fit within the new combined authority areas, but this may not be the case everywhere, and certainly some existing arrangements differ from emerging devolution arrangements. Alongside larger shared services, alternative approaches could include mutual aid agreements and memorandums of understanding that facilitate the sharing of cost and expertise between councils. This may also help to enable the maintenance of specialist trading standards functions within smaller authorities. However, what matters most is that councils are able to develop the approaches that most suit their areas and local priorities, and can make these work within the changing map of local government.

We are aware that in many councils (although clearly not all, given different council responsibilities), trading standards currently forms part of a joined up regulatory services unit. The LGA does not believe it would be beneficial to pull trading standards out of this type of unit in order to create larger trading standards units operating across council boundaries. In contrast, we believe that there is scope for exploring the role that larger regulatory units including trading standards and other regulatory services could provide in the future. This might be of particular interest in some of the new combined authorities where regulatory services sit within the same tier of local government.

On wider regulatory services

Although the review focused primarily on trading standards, the LGA has heard from councils that are pooling expertise from several different professions to create regulatory and enforcement teams that can deliver lower-level enforcement work irrespective of professional specialism. This has reinforced the LGA's consistently highlighted view that there is a need for different regulatory professions (trading standards, environmental health, licensing and others) to work together more closely.

We believe it is important to make this point again as we think about how to move forward from the two reviews of the service.

The discussion so far has been characterised as being about two very different positions—the creation of a single generic regulatory services officer versus the view that as routine, less-specialist activity reduces, trading standards is moving inexorably apart from other council regulatory services and is now more closely aligned with partners such as the police.

The LGA believes that the way forward lies between these positions. There is a clear and ongoing need for specialist expertise across a range of different areas of regulatory services. Officers still need to be trained in these specialisms; councils still need access to their expertise and, as budgets reduce, they need to think creatively about how they can preserve this resource. This argument applies as much to environmental health as it does to trading standards, and many other professions beyond them.

However, we are still of the view that there is more that can be done to join up lower-level enforcement activity across different professions. Although it is argued that most of this type of activity has been reduced as a result of budget cuts, with teams now focused on more specialist work, some councils and members report that in their areas there is still a significant amount of less specialist, locally directed premises-based work taking place. For example, there is considerable overlap in the businesses that may be visited in relation to licensing, tobacco or food controls – all of which are areas councils are still very active in, and which can require varying degrees of expertise – creating the potential for duplication of visits and resources. Moreover, there may be no need for some of this type of work to be undertaken by professionally qualified officers (although some of it may need to be overseen by professionals).

The LGA believes that, as they consider their options for managing and maintaining crucial trading standards activity, councils should also be reviewing their wider regulatory and

enforcement activity to map out any overlaps and the scope for bringing different types of activity together, regardless of traditional professional or team boundaries. Some councils are developing a cadre of officers able to operate to a certain technical level across a range of different areas rather than just one, with a view to providing more joined up services and freeing up professional capacity for more specialist work. Similarly, there is ongoing work by councils and the professional bodies to create a 'regulatory services' apprenticeship.

We are extremely supportive of the apprenticeship initiative and believe that the proposal recognises that there remains a degree of crossover in the services and skills requirements of different professions, without in anyway undermining the continued need for professional, specialist expertise to draw on.

We encourage all our members to ensure that they have fully explored the scope for joining up across different areas of enforcement and regulation, and urge the different professional bodies to work with local government to fully support this.

Taking this work forward

In Remodelling Public Protection, the LGA argued that there is a pressing need to address the decline in local regulatory services as a result of cuts to local government funding. Since then, the publication of the CTSI vision and central and local reviews of trading standards have drawn further attention to the issues facing trading standards services (although many of the conclusions will apply across other regulatory services as well), and reinforced the need for action. The challenges faced are not of local government's own making, and they are not its most pressing issue: however, this is a moment to take advantage of the current focus from both central and elements of local government. Failing to take action now risks harming the reputation of local government; more seriously, it risks harm to individuals, communities and the economy in the event of a service failure in a critical area of trading standards.

Although we do not necessarily support the idea of a minimum level of service, we believe that there is a need for greater clarity about the benefits larger services can offer, particularly for a non-professional audience less familiar with the diversity of trading standards work. The LGA therefore intends to commission further work looking at the potential benefits of larger trading standards or regulatory services, including case studies of existing joint services, to share with its members and encourage councils to give serious consideration to this approach. We would reemphasise that this work should be supported by a much clearer set of visible trading standards policy priorities from central government, without which there is a weaker rationale for moving away from very small local teams focusing to a much greater extent on local issues.

At the same time, we will consider what individual support we can give to councils in exploring the options for the future of their service – in particular, to heads of service in trading standards (and wider regulatory services) who we would encourage to take the initiative in developing proposals for new arrangements. We recognise the arguments that larger services are difficult and time-consuming to establish, and that heads of service do not have sufficient seniority to take this forward. However, we note that some of the recently established joint services have been created remarkably quickly and believe that local authority chief officers and members would welcome the impetus of proposals for improving and sustaining services.

This applies in particular to those areas with an established route forward for devolution. Outside of the North East, regulatory services do not appear to be on the agenda in devolution discussions, but there appears to be considerable scope to redesign local services in line with the maps of new combined authorities, and a strong rationale for doing so; both in terms of trading standards / regulatory services' business support / economic growth role, and the likely cohesiveness of joined up services operating in larger areas that nonetheless have a distinct local identity (as already demonstrated in West Yorkshire). While recognising that the current financial climate makes long term planning difficult, we nevertheless urge officers and councillors in those areas to be proactive and forward thinking about what a local trading standards or regulatory service right for their area should look like in 15 years' time.

Finally, we will look to provide further support to councils in specific areas such as commercialisation (following on from our commercialisation in regulatory services conference this summer).

As stated above, these approaches will not offset the reduction in local trading standards capacity; but they have the potential to better manage the impact of it. These are hugely challenging times, and no single body has all the answers to address them; therefore, councils, the LGA, professional bodies and government must work jointly to help councils find the most appropriate local solutions for their areas



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