

Derbyshire County Council

Meeting with Cabinet Member, Health and Communities

11th February 2014

Report of the Strategic Director, Health and Communities

REGULATORS' CODE

1 Purpose of the report:

To seek approval from the Cabinet Member, Health and Communities for the process of reviewing the Trading Standards Compliance Policy in view of a proposed new Code of Practice for Regulators.

2 Information and analysis:

- 2.1 As Members will be aware, the Trading Standards Division enforces a wide range of legislation made by Parliament which the local authority has a duty to enforce. The legislation impacts on businesses trading in Derbyshire and, in general terms, is intended to ensure that consumers are protected from unfair and unsafe trading practices. The Division has a range of sanctions available to it when non-compliance is identified. These range from verbal and written advice through to the issuing of a formal notice or caution and ultimately to court action which might be via the civil court, magistrates court or a licensing authority.
- 2.2 In deciding what action to take, the Division is guided by its own Compliance Policy (formerly referred to as an Enforcement Policy) and any government advice and legal process (for example the Code for Crown Prosecutors first issued in 1985). As well as the course of action taken, the approach of officers in applying the law is considered and regular feedback sought from businesses to ensure that, for example, officers are polite and courteous at all times. The feedback that we receive from local business - based on a sample of businesses - with whom we have had some form of interaction (including those against whom we have taken enforcement action) is overwhelmingly positive. See table below which includes the responses from businesses during the previous financial year in brackets.

Trading Standards Business Survey Result 2012-13

Question Topic	Businesses
Were you treated fairly by staff?	96% (98%)
Were staff helpful?	90% (89%)

Did we give you advice or info which was easy to understand?	100% (98%)
Were staff courteous and polite at all times?	99% (100%)
How satisfied were you with our service?	99% (97%)

2.3 Authority to enforce new and amended ‘trading standards legislation’ is regularly sought from Cabinet and/or the Regulatory and Licensing Committee depending on the nature of the legislation. As an externally accredited quality assured service, the Division regularly monitors and reviews its compliance policy using an internal quality control database called workbench. The first policy subject to this process was formulated in May 2002 and was based on a policy previously agreed by Members and is available to the public on the county council website via the link below:

http://www.derbyshire.gov.uk/images/compliancepolicy_tcm44-8256.pdf

2.4 Government has for many years tried to get the balance right between legislation to protect citizens and avoiding placing too onerous a regulatory burden on business. One of the earliest attempts to ensure that regulators were not ‘over-zealous’ was the Enforcement Concordat – a 46 page guide to both business and regulators published by the then Department of Trade and Industry in 1998. Amongst other principles of good enforcement it extolled the virtues of:

- Openness
- Helpfulness
- Proportionality, and
- Consistency

It also encouraged enforcement authorities to have a complaints procedure and encouraged regulators to have a ‘light touch’.

2.5 In April 2008 Government introduced the Regulators’ Compliance Code (18 pages) which supplemented the Enforcement Concordat and placed a legal requirement on local authority regulators to ‘have regard’ to the Code when conducting enforcement actions including:

- Regulators should allow, or even encourage, economic progress and only intervene when there is a clear case for protection.
- Regulators should use comprehensive risk assessment to concentrate resources on the areas that need them most
- Regulators should provide authoritative advice easily and cheaply
- No inspection should take place without a reason;
- Businesses should not have to give unnecessary information

- Businesses that persistently break regulations should face meaningful sanctions
- Regulators should be accountable for the effectiveness of their activities

2.6 In July last year Government announced a further revision to the requirements placed on enforcement authorities seeking to ensure business compliance with legal requirements in the form of a new 'Regulators' Code' which is due to come in force in April 2014. The revised code (just 7 pages) is intended to improve the way regulation is delivered at the frontline such as the Focus on Enforcement review of appeals, the proposed Growth Duty for non-economic regulators and the Accountability for Regulator Impact measure. In announcing the new Code, the Minister of State said:

"This Government is committed to reducing regulatory burdens and supporting compliant business growth through the development of an open and constructive relationship between regulators and those they regulate. The Regulators' Code provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

"Our expectation is that by clarifying the requirements contained in the previous Regulators' Compliance Code, in a shorter and accessible format, regulators and those they regulate will have a clear understanding of the services that can be expected and will feel able to challenge if these are not being fulfilled.

"Regulators within scope of the Regulators' Code are diverse but they share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective. This Code does not detract from these core purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate."

2.7 The new Code is divided into six sections which now includes a requirement to support business growth (see section one) and avoid imposing 'unnecessary regulatory burdens'. It also specifies in the first section (para 1.3) that regulators should ensure that their officers are competent.

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

2.8 Most of the requirements of the new code are already enshrined in the existing Trading Standards Compliance Policy. However, section 6 does require the authority to demonstrate how the Division is complying with the Code and to ensure that this information is available to the public. This may require a revision both to the existing policy and also how this information is collated and made available to the public. As the new code is still in draft form it is proposed that any revision to the current Compliance Policy is considered as part of the existing review of divisional policies in accordance with our quality control procedures. It is proposed that any changes to the existing policy and how the division intends to demonstrate compliance is brought back to Members for approval.

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 Strategic Director's recommendation:

That the Cabinet Member, Health and Communities agrees to a review of the Trading Standards Compliance Policy in light of a new 'Regulators' Code' due to be introduced in April 2014.

David Lowe
Strategic Director
Health and Communities