

**Title of meeting:** Cabinet Member for Environment and Community Safety  
Decision Meeting

**Date of meeting:** 13 July 2017

**Subject:** Assured Business Advice - Primary Authority Relationship 2017  
/ 2018

**Report by:** Director of Culture and City Development

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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## **1 Purpose of report**

- 1.1 The Government has produced a scheme whereby businesses can enter into a Primary Authority Partnership (PAP) with a Local Authority. This relationship involves the provision of assured advice to assist the way in which businesses comply with legislation. PAPs are especially attractive for businesses that trade across multiple local authority jurisdictions as the PAP creates a single point of contact.
- 1.2 The purpose of this report is to advise the Cabinet Member for Environment & Community Safety on:
- The Regulatory Services PAP business strategy
  - the charging mechanisms involved
  - service and financial risks

## **2 Recommendation**

- 2.1 **That the Cabinet Member for Environment & Community Safety approves the manner in which Regulatory Services proposes to deliver ‘paid for advice’ to businesses through the Primary Authority Partnership scheme and to approve the advice costs and charges involved as outlined in section 6 of this report.**

## **3 Reasons for recommendations**

- 3.1 The approaches of Regulatory Services to regulatory activity continues to develop so that it is defined less by a set number of inspections and more according to collaboration between regulators and regulated communities.

- 3.2 Where appropriate regulatory compliance systems are in place we recognise that businesses should be entitled to recognition of this and that our assessments of risk and regulatory oversight should be adjusted accordingly. We believe that businesses are entitled to earn this recognition provided that they demonstrate an ongoing achievement of high standards of compliance but without prejudice to the ability of local authorities to use the law to address serious cases of non-compliance when necessary.
- 3.3 The PAP scheme allows us to target our resources by ensuring that the demands of public protection are met without increasing the cost of regulation. The scheme, established by the Regulatory Enforcement and Sanctions Act 2008, allows businesses to form a partnership on a statutory basis with a single local authority. The scheme allows businesses to access assured advice on compliance, that must be respected by local authorities, thus addressing business concerns about consistency and giving them confidence in regulatory functions. It additionally permits the co-ordination of UK-wide proactive inspection activities, thereby improving the effectiveness of local activities and reducing duplication of effort.
- 3.4 PAPs are a key element of the Government's commitment to improve the delivery of regulation in line with the statutory principles of good regulation. Our delivery of the PAP scheme demonstrates our willingness to work constructively with businesses to improve compliance.
- 3.5 In 2013, the scope of the Primary Authority principle was extended by The Enterprise and Regulatory Reform Act 2013. Businesses having a shared approach to compliance (commonly through a body such as a trade association) are now able to enter into what are known as co-ordinated partnerships with a Primary Authority. The added value of a Co-ordinated Partnership is that it allows many businesses who may not be eligible for a direct partnership (particularly small businesses) to join together to benefit from Primary Authority. Regulatory Services wish to actively explore this additional ability to forge relationships with organisations as well as individual companies.

#### 4 **How does the PAP scheme work?**

- 4.1 Regulatory Services as the Primary Authority will act as the main point of contact between its partner business and the local authorities which regulate it. It is likely that we will, where appropriate, issue advice upon which businesses can rely. If an enforcing authority proposes enforcement action which we deem to be inconsistent with our advice, we may 'block' the enforcement action.
- 4.2 This consistency in regulation and enforcement increases businesses' operational certainty, reduces the burdens associated with regulation, and increases compliance by giving businesses clear instructions on how to meet a regulatory requirement in a cost-effective way.

## 5 Statutory guidance and cost recovery

5.1 Guidance on the delivery of the PAP scheme has been issued by the Secretary of State. As such Regulatory Services will have appropriate regard to its direction. In order to deliver an effective and robust approach to PAPs, Regulatory Services will need to invest in ensuring that the following are robustly facilitated:

- suitable staffing resource to support partnerships - ensuring that staff have the required technical skills and knowledge and are competent in the delivery of primary authority services
- arrangements to effectively manage and deliver partnerships
- transparency and accountability in our delivery of PAP services
- consistency across the scheme; and
- cost recovery resources

5.2 The resources required to operate an effective partnership or group of partnerships will vary, depending on the scope of the partnership, and the scale of its activities.

5.3 In calculating these costs, Regulatory Services has had regard to the guidance issued by HM Treasury in *Managing Public Money*. Regulatory Services approach will be based upon a full cost recovery model. In doing so clear and transparent information explaining charges, and the basis on which they are calculated, will be provided prior to each PAP being agreed.

5.4 Services for which the PAP partners are likely to be charged for include:

- establishing partnership arrangements
- familiarising primary authority staff with the business
- raising awareness and understanding of the partnership amongst enforcing authorities
- developing, providing and reviewing PAP advice
- developing, managing and evaluating an inspection plan
- responding to queries and notifications from enforcing authorities
- collating and analysing data and other information
- training staff of the business; and

- conducting audits or other checks on compliance at the request of the business

## 6 Charging

6.1 The main costs to the businesses of the scheme are the costs charged by us to recover our time. We are permitted to recover full costs for our time from the businesses.

6.2 Businesses formalising a new PAP with Regulatory Services will be charged around the following principles:

- a one-off set up fee, constructed around the number of officer hours required to facilitate the formal establishment of the agreement
- a delivery fee, calculated from the estimated officer hours required to deliver the partnership within the first 12 months - in line with the areas as identified in 5.4
- an advice fee (ensuring that officer time spent on with the delivery of reactive on-going assured advice is recovered) stipulating a fixed number of hours of officer time to be billed each year following an estimation of the extent and scope of the agreement obtained during the discussions held to establish the agreement. Where is number of hours is exceeded an additional charge based upon the hourly rate will apply.
- Where a PAP enters into a second year the charges fashioned around the needs of the business will be reviewed. Where PAPs are ongoing only advice fees will be invoiced.
- Where formal business advice is offered outside a formal PAP scheme Regulatory Services reserve the right to charge an appropriate recovery rate for such advice.

6.3 It is proposed that the Business Support Team Leader will take on the role of 'Contract Manager' for the PAP scheme. This officer will have the responsibility for the development and maintenance of these partnerships with businesses; liaison and the nomination of partnerships; the setting the contract prices in line with 6.2; and the delegated authority to agree service standards and agree appropriate arrangements for cost recovery with partner businesses.

## 7 Principal PAP business values

7.1 In delivering the PAP scheme, Regulatory Services will:

- Effectively maintain and develop existing primary authority partnerships and advice provision, including inspection plans where relevant, in accordance with legislative provision, guidelines and best practice, ensuring a high

quality, responsive service to primary authority businesses and local regulators

- Identify, secure and successfully develop new primary authority partnerships and advice provision, including inspection plans where relevant, ensuring information about new partnerships is promptly communicated in line with established national guidance and sufficient time is allocated to establish and grow each new business agreement
- Maintain records of interactions and chargeable time to enable accurate charging, ensuring businesses are invoiced on time
- Develop and promote the Council's approach to the primary authority and business growth agendas by fostering and maintaining a good working relationship with national regulators, government departments and stakeholders. Lead or participate in working groups aimed at developing and improving new approaches to ensuring business compliance with legislation
- Identify, create and offer traded services to organisations, businesses and individuals (including other Local Authorities and existing Primary Authority Partnerships) resulting in beneficial outcomes to those that procure the services and income generation
- Participate in the training of other staff on primary authority and other traded service related matters to ensure resilience in the service and provide personal development opportunities

## **8 Risks to service**

- 8.1 Trading standards currently has relationships with 10 businesses which are based in Portsmouth generating approximately £70,000 of annual income. Environmental Health has three PAPs generating in the region of £25,000 of annual income. The full time employment of 2.5 FTE is necessary to deliver these partnerships. This is a significant use of *existing staffing* resource and necessarily deflects these resources from the statutory obligations of the service.
- 8.2 A recent review of existing PAP agreements delivered by Regulatory Services has resulted in emerging concerns in regard to how a number of partnerships are operating in terms of cost recovery. It is clear that a number are operating to the financial detriment of Regulatory Services as the costs recovered are lower than the level officer resource applied. Where such circumstances have been identified a review of the PAP in question will be implemented and discussions will be held with the businesses concerned. It is possible that as a result of increased costs or a restriction on the number of hours to be provided that a number of PAPs and the level of income will fall.
- 8.3 What is clear is that not only are Regulatory Services reliant in funding terms from these PAPs but there is concern that any failure to maintain partnerships in

the longer term or develop new partnerships should others be revoked would result in a considerable financial deficit to existing levels of service funding.

- 8.4 PAP agreements require that we deliver value for money for the company however; it is possible that the activities undertaken may be things the company would do anyway. It is therefore possible that these agreements may be taking time and resources away from prevention and enforcement work required elsewhere.

## **9 Equality impact assessment**

- 9.1 A full equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010. The provisional EIA is attached as **Appendix 1**.

## **10 Legal implications**

- 10.1 The proposed action is in accordance with the Council's statutory powers under the Regulatory Enforcement and Sanctions Act 2008 and the Local Government Act 2003. In accordance with the 2008 Act, the Council is able to seek Primary Authority status for the purposes of entering into partnerships with local businesses for the provision of regulatory compliance advice.
- 10.2 The Council is able to charge a reasonable fee for the provision of this Primary Authority work, based on the actual costs incurred, in accordance with section 31 of the Act.
- 10.3 The proposal to undertake this Primary Authority role is supported as it meets the objectives of the legislation in terms of ensuring a more consistent and streamlined national approach to regulation and also the Council's general enforcement objectives.
- 10.4 The proposal to charge fees for all advice is also supported. As a result of budgetary pressures and the need to prioritise the mandatory, high risk inspection and enforcement work, the Council has not been able to sustain the previous level of discretionary advisory work. However, the imposition of fees for this discretionary advice will ensure that the cost of the work is fully recovered.
- 10.5 The Council can charge reasonable fees for this discretionary service in accordance with section 93 of the 2003 Act. However, given that there are no additional resources available to carry out the Primary Authority role and provide the discretionary advice, then it will be necessary to manage the work to ensure that it does not detract from other statutory public protection work.
- 10.6 It needs to be noted that any businesses entering into PAPs with the Council do present a potential problem in that should it be necessary to consider, sanction and potentially prosecute a business for breach it is quite clear that a defence could be raised by the business potentially asserting that they have acted in compliance with advice received from the Authority under the auspices of the

PAP. This said each decision to prosecute is looked at upon its individual facts and any decision to prosecute is determined in the light of the CPS Code of Guidance for Prosecutors.

10.7 The above having been stated it is clear that it should be made abundantly clear that the mere entry of a business into a PAP will not absolve them from needing to comply with the law and that it does not mean that the Council will not have the ability to comply with the primary statutory and legal functions vested with the Council.

**11 Director of Finance's comments**

11.1 The proposed action within the report should not result in any additional cost to the council as the service will apply cost recovery charges as outlines in section 6. However, this will need to be properly managed throughout the financial year to ensure that any target set can be consistently achieved year on year. If positive, this income stream will go towards offsetting other income pressures within the budget and will not be an additional saving.

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Signed by: Stephen Baily, Director of Culture and City Development

**Appendices:**

**Appendix 1 - Equality Impact Assessment**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Nil	Nil

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for Environment & Community Safety on

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Signed by: Councillor Robert New, Cabinet Member for Environment and Community Safety