

**Better Local Regulation -  
New Approaches to  
Securing Compliance**

**LBRO**  
Better Local Regulation

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## Local Regulation And The Quest For Prosperity

Clive Grace and Graham Russell

The critical importance of effective regulation to both economic prosperity and community protection has never been clearer. The global regulatory failure of financial services has had catastrophic consequences for most of the major economies in terms of economic growth and public finances, and has damaged the employment position of millions of people. Regulation can dramatically weaken both prosperity and protection, as it also can help to deliver them.

The Local Better Regulation Office (LBRO) has commissioned this collection of essays to prompt discussion and debate about this important public policy issue, drawing on the personal and professional perspectives of both those who regulate and those who are regulated. We recognise that those wider impacts of regulation – potentially positive but also potentially negative – are visible at the international, European, national and regional levels, and – crucially for the perspectives and arguments collected here – at the local level too.

Good regulation of business at local level, as argued by Councillors Bettison and Parsons in their article, helps create fair trading conditions benefiting consumers and legitimate traders alike, as well as a safer and more sustainable environment essential to community wellbeing and long-term economic prosperity. Poor local regulation adds burdens to business but may also fail – even at the same time – to ensure that our food is safe, that the air is fit to breathe, and that consumers can buy goods and services with confidence. In significant ways good regulation can contribute to the positive creation of ‘place’ but this potential has not been exploited in the UK, with the exception of some important but still embryonic experimental pilots.

An early development of this approach to the local regulation of business has been the 'Safer Food, Better Business' initiative of the Food Standards Agency. Those who have used the guidance manual believe that it helps them stay compliant with food hygiene legislation, with 70 per cent considering that it can increase business effectiveness.<sup>1</sup> 'Scores on the Doors' holds similar promise in raising standards whilst strengthening consumer confidence. Not every regulatory action has this win-win effect, but overall, local regulation serves both prosperity and protection.

A major question in relation to the UK's economic success and quality of life is how to regulate business at the local level in ways that best serve these dual aims. This pamphlet brings together valuable perspectives and evidence to show what is being done already, and where further progress can be made.

### The Impact and Benefit of Local Regulation

**Burdens:** There is no doubt that regulation at local level has impact, both on business and on communities, considered in the former case in the contribution from Simon Topman. The British Chambers of Commerce (BCC) regularly publishes a 'Burdens Barometer', which currently stands at over £75 billion – and a good percentage of that is local regulation. In fact, a MORI survey commissioned by LBRO of 1000 senior managers at companies based in England or Wales found that 58 per cent considered the burden of complying with local regulation to be 'about the same' as for planning, tax, employment and company law.<sup>2</sup> Similarly, the Institute of Directors has drawn together examples of the perceptions of business of negative regulatory impact and here too local regulation gets frequent mention.

Recent policy views from the Federation of Small Businesses (FSB) focus more closely on the ways in which local regulation can be better attuned to supporting business. The areas that the FSB highlights – booking routine visits ahead of time, reining back on routine inspection work at times of national emergency, and more joined-up risk assessments – all contain possibilities to make the local regulation of business better. The FSB is challenging local authority regulators to make sure that they support economic prosperity as well as protect communities, and it is right to do so. Local authority regulators have got better at working with business but there is still more to be done.

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<sup>1</sup> Food Safety Management Evaluation Report, Central Office for Information 2007

<sup>2</sup> Business Perceptions of Local Authority Regulatory Services, Ipsos MORI, 2008

**Consistency:** One critical area is in relation to the consistency of regulatory advice. For any businesses selling products in more than one local authority area, such as multi-site retailers, inconsistent advice creates difficulties for company-wide systems for ensuring quality and enforcing standards. This issue is viewed as a major problem: our MORI survey found that 33 per cent of the businesses trading across three or more local authorities perceived the advice received from councils to be ‘fairly’ or ‘very’ inconsistent. Potentially, this affects 250,000 companies across the UK. Those perceptions might not be entirely correct – and sometimes apparent ‘inconsistency’ can reflect local variations in circumstances or local democratic choice – but they have to be addressed if the relationships between businesses and local regulators are to be of maximum benefit. Consistency is central to the creation of LBRO and the introduction of the Primary Authority scheme.

**Benefits:** For all the value of the BCC’s Burdens Barometer, it does not directly account for the benefit of regulation, and local regulation is in fact also highly valued by business. Our MORI survey found that the provision of an advisory service and the maintenance of an ongoing relationship were seen as ‘very important’ by 41 and 37 per cent of the respondents respectively. In this context, it is worth adding that the satisfaction of business with local authority regulatory services (LARS) is one of the National Indicators for local authorities and local authority partnerships.

Those figures may help to get a more rounded view of the benefits and burdens of local regulation, but they do not justify unnecessary burdens. It is clear that local authorities could do more for business, especially in challenging economic times. The advice and guidance issued by LBRO earlier this year to local authorities in England and Wales highlighted the need for greater innovation and collaboration, and proposed practical ways in which councils could harness the potential of the direct relationship of their regulatory services with local business to provide support. In many authorities relevant initiatives are being taken already. Daniel Goodwin’s contribution later shows some of the things that can be done and, indeed, our advice and guidance was founded in part on recognition of what the best authorities are actually doing now. But that good practice needs to spread more quickly and determinedly across all authorities if the relationship between business and local regulators is to be optimised.

**Diversity and local regulation:** Perhaps one of the most important ways to better understand how local regulation and business can work better together is to recognise the sometimes radically different needs which different businesses have, and the differential vulnerability of consumers and other ‘beneficiaries’ of regulation. For example:

- Different business sectors have different requirements. Broadening the skills of inspectors so that they can better provide advice and guidance based on the experiences and needs of business was one of the recommendations of the Anderson Review.<sup>3</sup>
- Larger businesses often value a principles-based approach to regulation in which they can work out how best to comply with the core purpose of the regulation, whereas smaller businesses often simply want to know what they need to do to comply and so favour a rules-based approach. This issue has been explored by the Regulatory Reform Select Committee, most recently in its report on themes and trends.
- In highly competitive markets, where consumers are relatively powerful repeat purchasers with good access to information, and where, by their choices, they demand standards which match or exceed those that regulation requires, there is significantly less need for regulatory activity than in those where consumers are made vulnerable because they are weak, one-off players, with poor access to relevant information.
- Businesses attuned to the needs of or run by diverse communities may themselves have different needs, or may best be engaged through different methods, for example as reflected in Westminster City Council's ground-breaking work with restaurants in Chinatown, referred to in Richard Block's piece.<sup>4</sup>

### Co-Responsibility, Co-Regulation and New Relationships

**Principles of better regulation:** When regulation is sensible, properly made, and fairly enforced, it is to the benefit of everyone that its requirements are observed. But, as Ed Humpherson points out, regulators and policy-makers need to be mindful of both costs and benefits. Regulations are (or should be) created to help tackle problems and issues that the community (in its widest sense) feels the need to address. The first and essential point is that all regulatory enforcement should be conducted according to the principles of better regulation:

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<sup>3</sup> The Good Guidance Guide: Taking the Uncertainty Out of Regulation, Department for Business, Enterprise and Regulatory Reform (BERR), 2009

<sup>4</sup> The Chinatown Hygiene in Partnership Project (CHiP)

- Proportionate
- Accountable
- Consistent
- Transparent
- Targeted

**Co-Responsibility and new relationships:** However, we need to go beyond these principles. Most important of all, we must recognise that the responsibility to realise the underlying benefits of sensible and proportionate regulation is one which is – or should be – shared by all concerned: the regulator, the business, and consumers. This sharing, or ‘co-responsibility’, is conditional in part on how the other two parties behave and is based around each party having responsibilities and expectations from the regulatory relationship:

### *Regulators – Business*

- Regulators expect that businesses are compliant and businesses expect that regulators have a good understanding of business concerns. Therefore, regulators have a responsibility to issue reliable and accessible advice that demonstrates awareness of business drivers and to conduct their activity in a way that keeps regulatory burdens to a minimum. In return, businesses have a responsibility to comply with sensible and proportionate regulation and work alongside regulators to deliver the desired regulatory outcomes.

### *Business – Consumers*

- Consumers expect that businesses provide them with safe and high-quality goods and businesses expect that consumers will reward compliant businesses with increased custom. Therefore, businesses have a duty to provide consumers with helpful and clear information so that they can make informed choices about value for money but consumers also have a duty to use their purchasing power to support legitimate business.

### *Regulators – Consumers*

- Consumers expect that regulators will protect them from the detriment that results from regulatory non-compliance and regulators expect that consumers will also play a role in their own protection. Regulators therefore have the responsibility to both actively protect consumers from non-compliant business but also raise consumers’ awareness of their rights and information of emerging trends that might compromise their protection. Consumers have a responsibility to assist in regulatory priority setting and make good use of the information available to them to ensure that their behaviour drives positive outcomes.

In short, better regulation requires more effective relationships between the state, business, and citizens. At a local level, LARS and businesses need to build appropriate trust and understanding, creating a relationship that delivers tangible benefits for companies. Yet in focusing attention on the relationship between business and regulators, relationships with the third party in the regulatory exchange – citizens and consumers – need also to be kept in view, as the Regulatory Reform Select Committee has previously argued. Using the interrelationships between these three parties, regulators can design more effective interventions that allow regulated organisations and the intended beneficiaries of regulation to contribute alongside the regulator to produce better regulatory compliance and outcomes.

Perhaps most important of all is that business needs assured advice about regulatory requirements if it is to have confidence and grow. LBRO's Primary Authority scheme meets the needs of companies trading across council boundaries but our contention is that all businesses have the right to accessible and authoritative advice. This is supported by the Regulators' Compliance Code,<sup>5</sup> which recommends that regulators provide general information, advice and guidance in clear, concise and accessible language to make it easier for regulated entities to understand and meet their regulatory obligations. The advice should be sector specific and take into consideration the needs of a variety of users – from micro-businesses to large multi-site firms – and rapidly changing industries.

**Co-production:** One way of expressing part of these new relationships is the idea that achieving compliance with regulation, and realising the benefits of the outcomes it seeks, is something which is best 'co-produced' between regulator, business, and consumer. Co-production can be defined as the means by which the beneficiaries of public services are instrumental in the design, planning and delivery of specific services or broader social outcomes as a way of improving the service. In a regulatory context it is best understood as the means by which the efforts of regulated entities and the intended beneficiaries of regulation are harnessed along with those of the regulator to produce better regulatory compliance and outcomes.

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<sup>5</sup> Regulators' Compliance Code, BERR, 2007



### Localism (Rightly!) Rules... ..but National Threats Loom

**Local and national:** The complex interaction between local and national regulation has been refined in the UK and elsewhere in an effort to reconcile the requirement for local delivery (on effectiveness grounds) and local policy choice (on democratic and community grounds) with national and European requirements for more general standards and for more consistency than purely local arrangements could hope to achieve. This split-level regulation and enforcement – reflected especially in the enforcement division of labour and collaboration between local authority regulatory services with the national regulators, such as the Health and Safety Executive, as Judith Hackitt's piece highlights, – inevitably raises issues of coordination and potential fragmentation which it is partly LBRO's job to tackle. It also can lead to mis-alignment between the character and scale of problems and the resource available to address them, for example where a national threat or need is geographically concentrated (such as at major ports of entry like Felixstowe), or highly diffuse (such as internet trading).

These are real problems but nonetheless the local delivery of regulatory services has enormous value, as reflected in the contribution from Steve Thomas, partly because of their positive impact on 'place shaping' and because of their proximity to customers, including business 'customers'. In particular, we see it as imperative that the improvement of local regulatory services is focused at local authority level as part of the self-improvement efforts that have strengthened so considerably in recent years. However it can only be fully effective if it is underpinned by solutions for those parts of the system where benefits and costs are not aligned for the individual local authority. There is a need to align these costs and benefits in ways which are not possible solely within a local delivery framework, and that means some regional or national funding and resource where necessary.

**Risk-based regulation:** Addressing national threats in order to allow localism to deliver is just one example of the need to fully implement risk-based regulation. If implemented holistically risk-based regulation can create a framework from which robust decisions can flow, purposefully using regulatory tools to move from risks to outcomes by focusing on the whole chain of risk and not merely the mechanisms by which regulation is applied. Managing risk and uncertainty are themes also highlighted by Philip Rycroft and Kate Cross. This entails the consideration of the key regulatory risks that the primary legislation and regulatory authority are designed to control and thus clearly defining objectives to address those risks. Regulatory interventions can be targeted, encompassing a broad range of alternatives that focus on making markets work more effectively.

The availability of other more flexible and risk-based sanctioning tools supports the achievement of better regulatory outcomes by equipping regulatory offices and authorities with tools to ensure a proportionate response to non-compliance linked to key regulatory risks. The full implementation of risk-based regulation has been hampered by the myriad of regulatory models and enforcement approaches in operation across the regulatory system, and another part of building new regulatory relationships is to better coordinate and consolidate these models and approaches.

### Enforcement, Compliance, and Outcomes

There is a need for local regulation to shift its focus and effort from enforcement to compliance, and from compliance to outcomes, even though outcomes are harder to measure and attribute. The generation of an evidence base to show the effectiveness of LARS is one of the objectives of our Impacts and Outcomes Toolkit, referred to in Tom Ling's article.<sup>6</sup> Some practical examples of effective collaborative working are also given in the contribution from Paul Brookes and Malcolm Shead.

**Outcome-focused services:** Achieving better outcomes for citizens and communities has increasingly defined the delivery of public services in recent years. Regulatory compliance is no longer an end in itself. Instead, regulatory interventions should focus on both securing compliance and contributing to wider local and national outcomes. A clear sense of purpose that is focused on citizen needs, including the needs of business, would also allow regulatory services to demonstrate their contribution to some of the most challenging policy agendas facing local communities and the nation, including financial inclusion, climate change, social cohesion and economy prosperity. The potential economic, social and environmental impact of regulatory activity makes these services an invaluable part of the place-shaping 'tool kit' available to elected council members and concerned citizens alike.

**LBRO's role:** The complexity of the local regulatory environment demands some innovative approaches, and LBRO has been created to help deliver that, as Jane Martin and Linda Jackson's pieces show. Our role includes acting as:

- a catalyst to provide consistency and to promote change in the system (as reflected in the primary Authority scheme);

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<sup>6</sup> Impacts and Outcomes of Local Authority Regulatory Services, RAND Europe, 2009

- an engine for stimulating sector-led improvement as reflected in our advice and guidance to local authorities on local regulation in the recession;
- a listener to and voice of business into the local authority regulatory services environment, for example through our advice and guidance and by building a firm evidence base on what the problems really are and how they can best be tackled;
- a builder of more effective networks across this complex environment, as reflected in the relationships we have built with national regulators, government departments, the key representative and professional bodies, and local authorities themselves;
- a promoter of best practice, for example through our work with Beacon local authorities, and on approaches to tackling underage drinking; and
- an aid to unifying local regulation through the full statutory role we play in Wales as well as England, through the commitments made by the Northern Ireland Assembly to participate in our work, and through the positive links we have built in Scotland with the local regulatory reform agenda.

It is worth noting that a number of countries and institutions (including the World Bank and the Organisation for Economic Cooperation and Development) are keenly observing the development of the LBRO as a new type of instrument which, through our small size and specific statutory responsibilities, offers a new solution as a catalyst for change. We are not a bureaucratic instrument, and nor are we a 'regulator of regulators' – rather, we are an active agent for change and coordination in a 'system' which had grown somewhat haphazardly and had become, in part, dysfunctional.

**The future for local authority regulatory services:** The period ahead is a time of both challenge and opportunity for local authority regulatory services. The challenge lies in the financial restrictions ahead for public services, and the need for local authority regulatory services to deliver fully on the 'modernising' better regulation agenda set out for them in the Hampton Report. They need to resolve the challenges inherent in delivering a set of responsibilities requiring a nationally coherent solution via local services that are a key part of the 'place' agenda, while simultaneously supporting local and national businesses.

This will not be easy, but the potential rewards are rich, including a major contribution to economic efficiency and a means of tackling many of the complex issues that beset local communities. It's a tough wicket, but the alternatives of excess localism or wholesale nationalisation are not attractive. The opportunities are there to be seized, and the contributors to this pamphlet all help to show the way.

**Clive Grace** is the Chair of LBRO and committed to encouraging the provision of local authority regulatory services in a way that accords with the better regulation principles. He also chairs Supporta Plc and the RCUK Shared Services Centre and is a Non-Executive Director of Nominet. He is an Honorary Research Fellow at Cardiff Business School and a member of the Health and Social Care Corporate Governance Committee of the Welsh Assembly Government. Until 2005 Clive was the Director General of the Audit Commission in Wales and Deputy Auditor-General for Wales, and prior to that he was Chief Executive of Torfaen County Borough Council.



**Graham Russell** is the Chief Executive of LBRO, a new public body that works with local authority environmental health, fire safety, licensing and trading standards services. Under his leadership, LBRO is developing risk-based and outcome-focused approaches to regulation, which reduce the burdens on businesses that comply with the law and target the rogue traders who flout it. One key initiative is Primary Authority, which ensures that companies operating across council boundaries can count on consistent and reliable advice about their legal obligations. Graham previously worked in local government, most recently as Head of Trading Standards and Community Safety at Staffordshire County Council.



**Contributions:**

<b>Philip Rycroft, Chief Executive,</b> Better Regulation Executive	14
<b>Simon Topman, Chairman,</b> West Midlands Chambers of Commerce	18
<b>Paul Brookes, Environmental Services Manager,</b> Chelmsford Borough Council, and <b>Malcolm Shead, Assistant Head of Trading Standards,</b> Essex County Council	21
<b>Linda Jackson, Senior Legal Adviser,</b> Confederation of British Industry	25
<b>Judith Hackitt CBE, Chair,</b> Health and Safety Executive	28
<b>Councillor Paul Bettison, Chairman,</b> Local Authorities Coordinators of Regulatory Services, and <b>Councillor David Parsons CBE, Deputy Chairman,</b> Local Government Association	31
<b>Jane Martin, Deputy Chief Executive,</b> Local Better Regulation Office	35
<b>Kate Cross, Policy Manager – Strategy,</b> Local Better Regulation Office	38
<b>Ed Humpherson, Assistant Auditor General,</b> National Audit Office	42
<b>Tom Ling,</b> RAND Europe	46
<b>Daniel Goodwin, Chief Executive,</b> St. Albans City and District Council	51
<b>Steve Thomas, Chief Executive,</b> Welsh Local Government Association	55
<b>Richard Block,</b> Westminster City Council	59

## Better Local Regulation: Meeting The Needs of Business

Philip Rycroft

A year on from the start of the world financial crisis, the process of taking stock and looking forward continues with a greater sense of perspective and the benefit of hindsight. The Better Regulation Executive has been exploring what might need to be done to ensure the wider framework of regulation is sufficiently robust to deal with the uncertainties and issues the financial crisis has raised for regulators in general.

Some commentators have pointed to the adoption of a 'light touch' approach to financial regulation as a major cause of the world financial crisis. They have consequently argued for increased regulatory intervention to avoid such a crisis occurring again. To accept this view more generally, that regulation needs to be tightened in other areas, would carry the risk of a knee-jerk reaction that could have profound effects, perhaps causing damage and costs in areas where regulation currently works well.<sup>7</sup> More recently, commentators have recognised that the real issue is not about more or less regulation, but about 'right' regulation. This is also the Better Regulation Executive's view: there is no merit in debating whether there should simply be more or less regulation, but that there should instead be a focus on *better* regulation. This means that regulation should be targeted on identified problems; proportionate to the severity of the problem, and applied with consistency and transparency, and that regulators should be properly accountable for their actions.

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<sup>7</sup> For further information, please see *Better Regulation, Better Benefits: Getting the Balance Right, Department for Business, Innovation and Skills, 2009*

While there is no consensus on the precise cause of the crisis, there were clearly a number of contributing factors. For example, the de Larosière Group cited the complex interaction of several factors including market failures, global financial and monetary imbalances, inappropriate regulation and weak supervision.<sup>8</sup> Given the global scale and complexity of factors involved, it is unlikely that the UK alone could have avoided the financial crisis. However, this leads to the obvious question: is there anything which could be done to prevent or reduce the likelihood of a similar event occurring in other regulated sectors/areas? For example, how can policy makers and regulators ensure the rapid growth of an unregulated market (commentators have noted the growth in the shadow banking sector, outside the formal regulation by the Financial Services Authority, as a contributor to the financial crisis) will not undermine a sector and leave it vulnerable to shocks? Or is it that the framework of regulation is insufficient to cope with the rapid changes in the market place, in particular changes to the nature and type of risks which the regulation and regulator is intended to safeguard against? Or could it be a combination of these or more?

The Government already has an ambitious programme of Hampton Implementation Reviews<sup>9</sup>, looking at the progress that regulators are making in embedding the principles set out in Sir Philip Hampton's report.<sup>10</sup> These will be completed by the turn of the year.

Over the coming months, the Better Regulation Executive will be working with the Local Better Regulation Office (LBRO), national and local regulators, sponsor departments, and business and consumer bodies to see how best to develop a better understanding of managing risk and uncertainty.

In order to help stimulate this debate, we have examined the expert commentary on the causes of the financial crisis and identified a number of key questions which are pertinent for all regulators across the regulatory spectrum. However these are not exhaustive, and you may have more ideas of your own.

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<sup>8</sup> The de Larosière Group Report, February 2009, p.14  
[http://ec.europa.eu/commission\\_barroso/president/pdf/statement\\_20090225\\_en.pdf](http://ec.europa.eu/commission_barroso/president/pdf/statement_20090225_en.pdf)

<sup>9</sup> For further information, please see <http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/reviewing-regulators/page44054.html>

<sup>10</sup> Hampton, P. *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, London, March 2005, p.7

- Are we equipped to assess the unintended effects of regulation at an early stage, which, for example, encourage the growth of similar activities outside the regulatory framework?
- Do we have the right instruments to achieve our assigned objectives and are they fit for purpose?
- Are we able to share information and intelligence to deliver our objectives – especially in markets where the risks are most likely?
- Are we able to attract, develop and retain appropriate skills to ensure we have the capacity to identify and address risks?
- Do we feel supported and able to challenge when we see a potential problem?
- Do we feel sufficiently equipped to understand how new, possibly complex, developments in the market are affecting risks?
- Do we think that the objectives, roles and responsibilities for regulators are clear enough and address the key regulatory risks especially where there are overlaps in regulatory roles?

The Better Regulation Executive does not believe that the recent events in the financial sector justify a wholesale revision of the fundamental approach to regulation in other sectors. The principles of better regulation still hold true: that regulation should be accountable, proportionate, transparent, targeted and consistently applied. However, we need to be able to identify new and emerging risks and ensure regulators are appropriately equipped to address them in their day-to-day operations. Working with regulators to develop an approach for the future, which builds our shared capacity to deal with uncertainties and risks, is the most practical way forward. We recognise that work is already happening in this area, such as LBRO's 'Trading Places' project which is helping to build the capacity of regulators. Better equipping regulators to deal with emerging risk should be our shared priority.



*For further information on how the Government is addressing regulatory issues in the financial context, please see *Reforming Financial Markets* which was published by the Treasury on 8 July 2009.<sup>11</sup>*

**Philip Rycroft** is the Chief Executive of the Better Regulation Executive. He is also responsible for Innovation and Enterprise in the Department for Business, Innovation and Skills (BIS).



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<sup>11</sup> [http://www.hm-treasury.gov.uk/d/reforming\\_financial\\_markets080709.pdf](http://www.hm-treasury.gov.uk/d/reforming_financial_markets080709.pdf)

## Regulating Out Of Recession: Supporting Business

Simon Topman

Recession causes us all to not only count our costs but to look at every aspect of our work and ask some fundamental questions. Along with all the whys and hows and wherefores inevitably there arises that central issue: what should we change in order that we can do it better in future?

From this resolution so often springs the positive impact of recessionary times: opportunities to change some of those things that we know have held us back in the past but which have been so hard to grapple with in ordinary times. Now is the moment to seize them.

### Promoting Culture Change

The cost of regulation is well known to us all and is faced not only as a direct cost to all those businesses on which it falls but by the agencies who must inspect and enforce with the highest costs always being associated with non-compliance. So often we hear that we are in a post-Hampton world when in fact we are not. The culture change that Philip Hampton advocated has not yet been achieved. 'Hampton' lives now. We must not allow recent failures of regulation in the financial sector to undermine his essential message. We must not look backwards and reach for yesterday's solutions in tough regulation and insensitive enforcement. One glance at the British Chambers of Commerce (BCC) Regulatory Burdens Barometer will clearly demonstrate the added accumulated costs that this will generate. This is a time for going for a bigger prize to help business trade out of recession and carry the country with it.

### Mutual Understanding – the Role of Local Authority Regulatory Services

Local authority regulatory services – trading standards, environmental health, licensing and fire safety – have a critical role to play in supporting businesses as they come out of recession. But they are not always seen as such by business. Within the wider context of the local authority duty to promote local economic growth, regulatory services are on the ‘front line’ – dealing with the day-to-day issues that new, growing and established businesses face in order to be compliant. Particularly for small business, the advice and support offered by regulatory services at the local level can be the difference between success and failure. It is important that both local authorities and businesses understand the potential of the relationship and the contribution made to business growth and success. Businesses can only flourish in fair markets, where there is a good environment for a healthy workforce and within a local infrastructure that understands commercial needs. It would not be too much to say that business should regard the local authority as a key partner in achieving success – and that the local authority should understand better the importance of business growth for local economic wellbeing.

### LBRO Facilitating Change

The role for LBRO, in leading the culture change that this mutual understanding requires, is essential to enable business and local authority regulators together to address any unnecessary costs and other inefficiencies which can result from poor regulation. Supporting compliance – by being sensitive to commercial needs – must be the way forward, rather than what has sometimes been regarded as heavy handed enforcement, resulting from inflexible inspection regimes. Setting this bar just right is essential not only for local economic growth but also for national and international competitiveness.

The innovative Trading Places projects, which enables inspectors to spend time within businesses with whom they need to interact, is an excellent way of enabling a clear view of what it is like on the other side of the regulatory fence. Like all good communication it is two-way and helps the business to understand the inspectors’ responsibility to ensure compliance. Often the only contact a business will have with its local authority is through the inspection and enforcement regime; hardly the friendliest of introductions. But with the right approach of risk-based assessment, flexibility and education – on both sides – it can become a mutually beneficial experience. This is exactly the kind of ‘working together’ that Philip Hampton envisaged.

### The Importance of Consistency

But we also need to work together across local authority boundaries to create greater certainty and consistency. So many businesses trade across more than one local authority that confidence to act (to ensure compliance with local regulators) must not be underestimated. Not least because when a business receives conflicting advice (sometimes leading to unexpected prosecution) the potential for significant additional costs to resource changing requirements can be a serious burden – as well as a disruption. The primary authority scheme is very much welcomed by business because it will introduce the level playing field businesses need.

### Working Together

The role for LBRO in leading the culture change that will enable us all to achieve these goals in a well-regulated environment – in which costs will be minimised – is vital to the success of UK business as we strive to trade out of recession. The organisation has made a good start and chambers of commerce applaud its efforts to date. Much remains to be done of course, but there is a big prize to be won. LBRO must continue to take the lead, bringing together policy-makers, local and national regulators, businesses and consumers to ensure that we do see ‘Hampton’ fully implemented in practice and in spirit.

**Simon Topman** is the Chairman of the West Midlands Chambers of Commerce and the Managing Director of The Acme Whistle Company Ltd.



## **Local Authorities Working Together For Better Regulation**

**Paul Brookes and Malcolm Shead**

Close working between Chelmsford Borough Council Environmental Services and Essex County Council Trading Standards Department has resulted in more effective regulatory services for both businesses and the public alike. At Chelmsford Borough Council, the opportunity to tackle issues together, to facilitate better and more effective regulatory outcomes, and focus on getting the job done, rather than being territorial about county and district roles and responsibilities, has had a very positive impact. The two examples of collaborative working below illustrate the real benefits that can be achieved for local communities.

### **A Joined-up Approach to Regulation – Great Leighs Racecourse**

The closer working relationship started at the opening of a new racecourse at Great Leighs, Chelmsford. The grandstand for the racecourse was a two-storey temporary structure with a capacity for 5000 people, for which Essex County Council Trading Standards Department had responsibility for issuing a safety certificate under the Fire Safety and Safety of Places of Sport Act 1987. As well as enforcing food safety and licensing, Chelmsford Borough Council Environmental Services had responsibility for enforcing health and safety of all events at the course. There were concerns, in respect of the grandstand, for fire safety and structural safety as well as general health and safety issues.

In planning a high-profile opening of the racecourse, both nationally and locally, it became clear that difficulties caused by the racecourse management speaking separately to each of the relevant agencies was resulting in confusion about how regulation was being handled. Building on Essex Trading Standards significant experience of managing safety at sporting venues and the expertise of Chelmsford Borough Council managing public safety at the 'V' Festival, a Safety Advisory Group (SAG) was formed and chaired by Trading Standards.

All communication between the relevant enforcement agencies and the racecourse management was carried out via the SAG where all enforcement decisions were discussed and agreed. This meant that the racecourse received clear and unambiguous messages about what measures were required, and the order of priority for dealing with them. It also helped the individual regulatory partners manage the internal pressures that the opening of the racecourse was creating. This close cooperation between the agencies meant that a potentially difficult and sensitive situation was managed in a coordinated way and clear messages about what was needed to be done before a safety certificate could be issued were communicated. Just two weeks prior to the planned official opening of the racecourse the following statement was released by the SAG to the racecourse management and senior management teams of the regulatory agencies.

*'To prevent up to 5000 members of the public being able to access a potentially dangerous structure with no fire safety measures in place the SAG is considering the issuing of a Prohibition Notice preventing the grandstand being used on 28<sup>th</sup> May. Although the Prohibition Notice will be served by Trading Standards it has the support of all partners of the SAG including Chelmsford Borough Council, Police, and Fire Service.'*

The prohibition notice was served, which allowed very limited access on the ground floor of the grandstand, whilst dialogue continued between the racecourse owners and the SAG. This approach resulted in appropriate and proportionate enforcement which was understood and accepted by the racecourse owner. It also meant that the opening of the racecourse could go ahead as planned, albeit with strict controls in place to manage public safety. At the same time it gave a clear message to the racecourse operators that all of the regulatory agencies were working closely together on this project, had a well-coordinated approach and were seen to be communicating with one voice.

### Protecting the Public – Hot Dog Kennels

Whilst working together in resolving the issues at Great Leighs both Councils took a different approach to another difficult issue at a pet shop premises known as 'Hot Dog Kennels'. The owner of the pet shop imported puppies from the Republic of Ireland and sold them on. The puppies were allegedly from poor stock, resulting in many becoming ill and either dying or incurring large vets' bills for their new owners. Complaints were also made about the owner of the pet shop selling puppies claiming that they were fully vaccinated, were pedigree, and/or were bred at the premises.

Essex County Council Trading Standards was responsible for enforcing legislation in respect of the sale of goods and Chelmsford Borough Council was responsible for licensing the premises as a pet shop. Members of the public making complaints against this business had, therefore, been passed between both authorities seeking the most appropriate legislation under which to take enforcement action. This was recognised as ineffective so a multi-agency meeting, including the RSPCA, was called to discuss how best to tackle the problem. It was agreed that the most effective enforcement approach would be via the licence conditions and that Chelmsford Borough Council would be the lead authority. Expert advice from Trading Standards, the RSPCA and a veterinary surgeon resulted in a revision of the premises' licence conditions, which were designed to provide enhanced protection not only to consumers but also to the puppies themselves. This meant that the issues could be tackled by taking enforcement action for breach of the revised licence conditions. These conditions provide a model which can be shared with other local Authorities, or from which a national standard may be developed, and this is currently being progressed with the RSPCA. For its work carried out in respect of Hot Dog Kennels, Chelmsford Borough Council won the RSPCA's Community Animal Welfare Footprints Award 2009. The judges stated: *"It was felt that this work was not only innovative but a huge challenge for a second-tier authority to carry out. The consultation and work with other agencies and the potential as a model of good practice made Chelmsford a worthy winner of this year's award."*

### Working Across the Two-tier Structure

In both of these cases a collaborative approach has resulted in all the appropriate agencies determining the most effective enforcement approach with agreed objectives. The owner of the business then receives a very clear message from one lead agency resulting in effective enforcement. On this new approach Chelmsford Borough Council Environmental Services has recognised that the biggest benefit from this partnership is to the public – ensuring that regulatory services are effective irrespective of which local authority is responsible for enforcing the law. So far as regulation is concerned, the public see a seamless approach and are unaware of the two-tier structure. This can only be a good thing for effective enforcement. Essex County Council Trading Standards Department agrees with this analysis. It understands that the future of two-tier working is about delivering the benefits of a coordinated approach to regulatory services. It is in everyone's best interests to work together to achieve compliance which results in better public protection whilst minimising the regulatory burden on local business.

The partnership continues to strengthen with the development of a tri-partite Primary Authority agreement between Essex County Council, Chelmsford Borough Council and Britvic which is in the final stages of negotiation. Planning has also started on other future joint working projects which will address local problems such as fly tipping, roadside car sales and ticket touts.

**Paul Brookes** is a Chartered Environmental Health Practitioner having qualified in 1996. He has worked as an Environmental Health Officer in Environmental Protection and Private Sector Housing and is currently Environmental Services Manager for Chelmsford Borough Council where he is responsible for environmental health, community safety and licensing.



**Malcolm Shead** is Assistant Head of Trading Standards at Essex County Council





## New Approaches To Securing Compliance: The Business Perspective

Linda Jackson

### Changing the Culture

It is more than four years since the Hampton report was published. It set the scene for a new enforcement landscape and for arrangements which would have the effect of reducing burdens for compliant businesses. Business saw this as an opportunity for a real change of attitudes with the key outcome being a change of culture on the part of enforcers. In particular it heralded a move towards a more consistent, efficient and above all compliance-led enforcement approach. The overarching aim would be to secure maximum compliance with the minimum of regulation.

For the first time there are structures in place, including the welcome establishment of LBRO, to bring about the changes which would make a real difference for business in the delivery of regulatory services. But how far have we come in promoting and embedding a different mindset and the all important culture change?

We acknowledge of course that it is not possible to legislate for a change of culture. Nevertheless the Confederation of British Industry (CBI) was disappointed that our calls for incorporation into legislation of a duty to secure compliance on the part of enforcers, rather than the current duty to enforce, fell on deaf ears. The government could have taken the opportunity to enshrine the Hampton approach in legislation in this way and to focus minds on helping businesses to comply with their obligations under the law rather than the traditional detect and prosecute approach.

The majority of businesses do what they can to fulfil legal requirements; it is not in their interests to flout the law. Sometimes, for a variety of reasons, things go wrong and infringements of consumer law may occur. Key for business in those circumstances is the opportunity to discuss at a local level the problems which have occurred, why they have happened and how they can be rectified.

Discussion at local level often delivers more effective compliance. It surely is better and more efficient all round that the situation is addressed and put right rather than that possibly long drawn out and resource intensive enforcement action is put in train. This is all the more vital when businesses are fighting for survival during times of recession.

### **Securing Compliance – Making an Impact**

What is business looking for at this time to translate the emphasis on compliance into practical reality?

First, the potential agenda for LBRO is vast and resources are necessarily limited. Our plea would be to tackle a small number of issues effectively, concentrating resources on areas which will have a real and significant impact. One or two real 'wins' are likely to do far more in establishing the influence and ability of LBRO to deliver its agenda than a larger spread of smaller initiatives.

Second, effective engagement on the part of LBRO with stakeholders, including business, is vital to understand fully the range and context of issues with which it is involved. Business involvement at early stages of policy or guidance formulation would ensure that the commercial implications are fully explored. This is of course not just a one-way process and business needs to step up to the plate and play its part.

Locally elected members are also a key part of that stakeholder landscape. We believe that LBRO has a key leadership role in doing more to persuade them of the value of business to the local community and economy, and to drive culture change in the way business is viewed and approached so that it percolates through local authorities at every level, from officials on the ground right through to elected politicians.

In terms of specific areas of activity, delivery of an effective Primary Authority regime is one area which could be a real and positive win. If this is a success it will do more than almost anything else to deliver the mind-set change and reduce inconsistencies of approach, particularly for national companies which operate across different local authority boundaries. The benefits of the Home and Lead Authority initiatives can be built on and strengthened. But the desire of some local authorities to charge for this service is a real problem for businesses; when economic circumstances are challenging it is not the time to be adding to costs.

A way needs to be found to deliver an effective service within current resources. The Primary Authority should not be seen in any way to undermine the 'new localism'. Indeed such schemes are a way of relieving pressure on local authorities and, by reducing duplication, allow them to free up resources to tackle additional activities which will benefit consumers.

In all this activity there needs to be clear understanding of what is best delivered at what level – whether local, national EU or global – and priorities established. Without priorities at all levels resources will be stretched too thinly.

### Ensuring Hampton Compliance

The second important area relates to the pilots announced in the Department for Business, Innovation and Skills (BIS) Consumer White Paper for enforcers to be granted the civil sanctions powers under the Regulatory Enforcement and Sanctions Act 2008. The Act specifies that these powers will be granted only to enforcers who are Hampton compliant. It is essential that a robust process is put in place to assess whether individual local authorities are fully compliant, not only in terms of the procedures which are in place but also adherence to the spirit of the Hampton principles. LBRO has a leading role to ensure that the process is truly rigorous and that it is effective from the beginning. The pilots need to cover a range of different types of authority. And business involvement must be a key part of the assessment process. The recent assessment of the Westminster authority worked well in those particular circumstances but that experience needs to be worked upon before it could be translated into a methodology which would be sufficiently robust for wider roll out.

There are clearly no silver bullets. Culture change is a long process but business would like to see positive outcomes post-Hampton and LBRO has a vital leadership role in delivering practical successes.

**Linda Jackson** is Senior Legal Adviser within the Company Affairs Directorate of the CBI. She is a barrister and responsible for developing consumer policy within the CBI, working through a wide network of member companies and organisations across many different sectors.



## **The Delivery Partnership Between Central And Local Regulators**

**Judith Hackitt CBE**

Delivering effective health and safety regulation requires partnership. Everyone has a role to play in all aspects, including compliance and enforcement. It must not be a top-down approach, but rather one of mutual recognition, engagement, consultation and commitment. The Health and Safety Executive (HSE) delivers its particular roles through its own central inspectors and Local Authority (LA) inspectors. Although they deal with different industries, they have identical powers and are responsible for regulating all sizes of business, from the smallest through to nationally and internationally operating corporations. The HSE and LA inspectors work very much on a partner basis. This partnership and cooperative approach has been a cornerstone to the HSE's recent developments. Building strategic partnerships with our LA colleagues has seen great strides taken. An example is our new Strategy which the LAs were party to the development of, as well as being delivery partners.

### **Working Together to Deliver the Change Agenda**

Commitment is a key element to any successful delivery of change. Everyone from the top down needs to accept change, meaning both the central HSE and our LA partners. Local Authorities Coordinators of Regulatory Services (LACoRS) has been very effective in helping this relationship evolve from what has sometimes, in the past, been seen as a disconnect between central and local bodies. A better understanding of these different perspectives has allowed us to develop and share best practice and encourage ownership of the change agenda.

### Flexibility and Consistency

We and our LA colleagues continue to work together to improve and optimise our approaches. There needs to be flexibility as well as consistency between the approaches taken towards business by all inspectors. This must include a shared awareness of the different roles of national and local inspectors and an acknowledgement that resources must be targeted at the areas of highest risk. We are seeing greater consistency in the approaches taken by LAs and the HSE and an agreed standard has been developed setting out how a health and safety service should operate. This is applied across the HSE's field operations division and LAs, and will in future also demonstrate how health and safety regulation meets the LBRO World-class coalition Excellence Framework for Local Regulation.

### Supporting Service Delivery Through Partnership

As well as developing consistent standards, our work has also included producing some of the tools that LAs need to deliver a service. For example, using input from our partners, we have developed a series of model risk assessments to assist small businesses in identifying what proportionate and common sense measures they need to take to discharge their health and safety responsibilities. Engaging with local authorities has helped ensure their resources are maximised by adopting similar approaches across the country. This means businesses get a consistent message. LAs are able to use their knowledge to work efficiently and effectively with local businesses.

For many years, we have supported a Local Authority Partnership Scheme (LAPS). This brings together companies that operate nationwide with a 'lead' LA which coordinates the regulatory approach to its business partner. Many of the principles of our LAPS schemes are now incorporated within the LBRO Primary Authority scheme and we will be encouraging the transition process to the latter.

But we need also to ensure our joint resources are utilised effectively. This means making the most of our respective strengths and ensuring that resources are allocated according to risk. A good example of this is 'WorkWell Dorset' where all the local authorities within Dorset have combined their resources with the HSE in a county-wide delivery plan.

### Achieving Greater Coherence

I believe there is a further challenge faced by all national regulators. We can each develop standards relevant to our own area of regulation but this means that LAs have to deal with a number of different approaches and standards. We need to be able to demonstrate a coherent approach to all risks if senior managers and directors of businesses are to be motivated to lead the drive for compliance. All those involved in the process, from managers through to advisers and consultants, need to be competent in providing risk-based, consistent advice as well as evidence-based action, but we can help by ensuring greater consistency of approach across all regulation.

A good example of this is compliance with environmental regulation which many businesses approach alongside the health and safety brief. This needs a supportive and mutually beneficial approach from us as regulators. Business faces a range of pressures, not least recession and international competition. None of us can operate in isolation; we are all part of a broader context – global, European or national. The more we as regulators act in partnership and demonstrate a consistent approach, the more successful we will be in ensuring compliance from duty holders.

**Judith Hackitt CBE** is the Chair of the HSE. She was appointed Chair of the Health and Safety Commission with effect from 1 October 2007 for a term of 5 years and became Chair of the Health and Safety Executive when the two organisations merged on 1 April 2008. Judith previously served as a Commissioner between 2002 and 2005. She was awarded her CBE for services to health and safety.



## **Keeping Regulation Local**

**Paul Bettison and David Parsons CBE**

Regulatory public protection services are an important offering of local councils. However regulation can be a challenging area. People often complain about too much regulation and too much red tape, but in its absence, citizens and consumers, particularly the most vulnerable, can be at risk. Recent history within the financial sector is littered with examples from Northern Rock to RBS.

We want to outline the importance of keeping the enforcement of public protection regulation at a local level; the vital contribution that council regulatory services can make to the local and national economy and how local government can highlight and reinforce its role in the regulation of businesses; and the developing relationships between regulators and the regulated.

### **Local Solutions to Local Problems**

Council regulatory services are often part of the partnerships that deal with very serious matters such as knife crime, binge drinking and climate change. They are at the frontline ensuring young people do not get access to knives and alcohol from their local corner store or supermarket through rigorous test purchasing and enforcement action where businesses continue to break the rules. They also support homeowners and businesses with advice and information on energy conservation and pollution control measures.

These are just some of the areas that our regulatory services touch upon. This goes some way to demonstrating that regulatory services deliver frontline services that work on behalf of the whole community to ensure that they live in a safer place. Although many issues are perceived as national problems it is important that they are tackled on a local level and embedded into local plans. Regulatory services have an important and integral part to play in delivering councils' and their partners' strategic priorities and objectives. Different localities will have different needs and it is essential that regulatory services work with partners and tailor their services to those local needs to be really effective and valued by their communities.

Partnership working is essential for the success of delivering better regulation principles. Council regulatory services work with local politicians who know what is important to people in their communities at ward and even street level. Councils work closely with the police, primary care trusts, other local authorities and many more organisations to ensure that the community and particularly the vulnerable are protected from rogue traders, anti-social behaviour, knife crime, food safety, and other quality of life issues. If enforcement is not carried out at a local level that has a strong democratic mandate, working with communities, supporting legitimate businesses and targeting the rogues, what would happen to partnership working, the importance of total place and the future of local government?

### Supporting the Economy and Business

The findings of the Local Authorities Coordinators of Regulatory Services (LACoRS) policy review carried out by The Tavistock Institute illustrate that council regulatory services have their feet in two camps: the world of local governance and the world of business. Council regulatory services need to ensure that they support, influence and effectively contribute to both these worlds.

Council regulatory services can and do make a vital contribution to the local and national economy. This becomes more salient in the current economic climate. With the recession in mind, council regulatory services have to ensure that they focus on taking robust enforcement action against the real rogues, the most serious, serial offenders, many who have criminal intentions. Also, and very importantly, they support the legitimate businesses in their area who are key partners supporting local economic vitality with good standards in place, if consumers, the public, environmental and workplace safety and health compliance are to be secured.

A good example of local government working with businesses is that of Westminster City Council, winner of the LACoRS / BIS sponsored MJ Public Protection Award.<sup>12</sup> This project has been about ensuring compliance from Mail Forwarding Businesses (MFB) to register with the council as part of the London Local Authorities Act 2007. A MFB offers a postal address to a client for the receipt of mail that is then collected or forwarded on. Some MFBs did not request copies of identification from clients and some even operated on a 'no questions asked basis' leading to an increase in the amount of scams e.g. dodgy lotteries and rogue builders. The intentions of the project were to create a level playing field for MFBs and ensure compliance.

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<sup>12</sup> [www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=32D0BE8&id=22040](http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=32D0BE8&id=22040)



### New Relationships Between Regulators and the Regulated

The vast majority of councils do deliver a proportionate, risk-based and intelligence-led regulatory services regime that ensures a level playing field for businesses, helping them to comply with legislation, and affording proper standards of public protection. More work needs to be done to ensure that resources are targeted to those who are most vulnerable and those that need the most help.

It is important that councils demonstrate to the wider community, including the business community, the important contribution that council regulatory services play in safeguarding the health and well being of their community, whilst supporting the economy and the local businesses that are essential to local prosperity.

WorkWell Dorset is a project involving the HSE and all Dorset's local authorities to improve the effectiveness and efficiency of regulatory delivery in the county. The project, which is intended to run until March 2010, will:

- produce a detailed profile of Dorset's workplaces and employers / duty holders, which will better inform regulatory interventions. The project will initially consider type and size of business to enable targeting of activity, followed by more in-depth intelligence gathering to support specific proactive interventions;
- integrate service delivery and training across all Dorset's regulators;
- trial new ways of working, such as flexible warranting which will allow HSE and local authority inspectors to work in premises not allocated to them under the Enforcing Authority Regulations. The flexible warranting arrangements will be used in a number of projects designed to explore ways in which the HSE / local authority joint resource can be better targeted to risk.<sup>13</sup>

At the end of the project, processes will be in place to take forward joint investigations and joint targeting / delivery of proactive work. An important element of this will be a regulators' database to enable better sharing of expertise and improved identification and delivery of training.

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<sup>13</sup> [www.hse.gov.uk/aboutus/strategiesandplans/businessplans/plan0910.pdf](http://www.hse.gov.uk/aboutus/strategiesandplans/businessplans/plan0910.pdf)

Local regulation implemented by Councils across the UK plays an important role in the social, economic and environmental wellbeing of local communities. However, it is also imperative that central government when drafting new regulations does not do this in a knee-jerk fashion, sometimes over-reacting to a particular incident, but works with and listens to councils who are delivering these services on the ground. We must have effective, properly resourced regulations that work and are fit for future purpose. If we get this, Councils can deliver even better regulatory public protection services.

**Councillor Paul Bettison** was appointed Chairman of LACORS in September 2009. From 2006 – 2009 Paul was Chairman of the Local Government Association Environment Board. He has been Leader of Bracknell Forest Unitary Authority since 1997 and is the Conservative National Lead Peer for the IdeA.



**Councillor David Parsons CBE** is Chair of the Improvement Board and a Deputy Chairman of the Local Government Association. He is leading the national agenda for the Regional Improvement and Efficiency Partnerships, sustainable communities and Total Place.



## **Better Regulation Policy: A New Agenda**

**Jane Martin**

### **The Regulatory Policy Context**

Public policy must always reflect the political, social, economic and environmental context of the day. Policy initiatives always have a shelf life – sometimes in response to a ‘catastrophic event’ where something must be done to satisfy public concern, sometimes as political ‘window-dressing’ to catch the public attention, sometimes at a moment when a worthy cause makes it onto the public agenda. The subsequent paraphernalia of policy development and implementation in turn reflects the significance of the subject and the extent to which it is well embedded and well understood. The big policy mood swings are easier to spot and track: education, health and the economy, for example, are all areas where the levers of the central state are very visibly used to impact on the way in which public services are funded and delivered to achieve maximum benefit.

The case of ‘better regulation’ policy is no less interesting but arguably more difficult to track in the same way. Central and local governments have always used different forms of regulation to achieve public policy ends – although unintended consequences can often ensue. And indeed, the regulatory armoury of the state itself reflects political acceptability. Fundamentally, regulation, in a variety of different forms for different purposes, is used by government both to incentivise and reward good practice and behaviours, as well as to discourage and punish poor practice and behaviour – all in the public interest.

### **Regulating Business – Ensuring Compliance**

Regulating business has a long history in the UK. A scan of the regulations currently enforced by local authorities quickly demonstrates how public policy has spawned vast requirements for compliance with rules relating to fair trading, environmental health, food hygiene, health and safety and much more. Set alongside the rules relating to planning, building control, employment and taxation, it is easy to see why businesses say they are overburdened.

From a policy perspective, a key issue has to be the way in which the regulatory requirements on business have not only increased over time, but also developed within and across regulatory areas in line with different compliance regimes created at different levels of government. Hence, for example, the concerns of business in relation to UK interpretation of European regulation relative to other EU states reflect just one layer of complexity. Increasingly the policy issue here has to be how to ensure adequate, appropriate and reliable advice and support for businesses seeking to meet their responsibilities to comply, as much as how to ensure robust enforcement and effective prosecution.

### **A New Relationship for Prosperity and Protection**

Despite a long history of regulating business, the notion of ‘better regulation’ is a more modern policy development. Associated with delegated authority from central government to public service providers, a market economy and a less intrusive state, better regulation policy acknowledges the potential for regulation which assures effective devolved public administration to become burdensome.

Consistent with the changing public policy context, the policy aims for better regulation have more recently turned to the needs of business. The Hampton Report in 2005 was the seminal report, establishing a number of principles which would lessen the regulatory burden on business – highlighting the important role of local authority regulatory services that ensure business compliance with and on behalf of national regulators. Since that report, a number of further reports and initiatives<sup>14</sup>, including the establishment of LBRO in the Regulatory Enforcement and Sanctions Act 2008, have focused attention ‘downstream’ to the most effective ways for national regulators and local authorities to take account of better regulation principles in their dealings with business. The vision for LBRO to support both prosperity and protection clearly captures the policy aims to support businesses in creating economic growth whilst not compromising on public safety and wellbeing.

### **Working Smarter in a Complex Regulatory System**

The better regulation policy agenda is arguably now precariously poised in a ‘post-Hampton’ world which raises a number of questions about how regulation should be developed in future. Following the banking crisis, concerns have been raised about the relevance of a risk-based approach which may have proved lacking in the financial services sector.

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<sup>14</sup> For example The Rodgers Report, The Regulators Compliance Code and the Enforcement Concordat

At a time of economic recession, when the needs of business are paramount, we need to ask how best the local authority can safeguard both economic prosperity and public protection. Recognising that consumer choice is not always an option, particularly for the most vulnerable groups in society, the role of the local state must surely be to ensure compliant businesses meet the needs for local community wellbeing. Indeed this should be the prime purpose of regulation. The regulatory system is complex and risk-based approaches are appropriate if they recognise this prime purpose. In so doing local regulators will demonstrate their public value, not only to local people, but also to national regulators and central government.

### A New Agenda – Regulatory Policy in Context

LBRO operates at the 'business end' of the regulatory levers of the state. Whenever Brussels or Whitehall pulls yet another regulatory lever it needs to be aware of the implications and unintended consequences for effective compliance. This goes further than simple cost-benefit considerations. This means ensuring existing and new regulation adequately reflects the economic environment in which businesses are trading, the political context in which local authorities operate, as well as the social conditions for local communities which in turn influence the levels of need for public assurance. This is nothing new – but as we come out of recession it is worth reminding ourselves of the wider context in which regulation is deployed to effect change. In this way all those who make and implement policy will better understand the common purpose of such change and the necessary interdependencies between the agencies of the state, businesses and the public to achieve it.

**Dr Jane Martin** is Director of Policy and Engagement and Deputy Chief Executive at LBRO. She has written and researched widely on public policy and accountability.



## Risk-based Regulation: Learning The Lessons Of Crisis

Kate Cross

### Shifting Perspectives

In a complex and changing regulatory world, the assessment and control of risk have become subject to intense debate and scrutiny. While crisis in financial markets, tragedy in child protection and failures in food hygiene controls have highlighted a number of lessons for regulation, the ambition of Hampton to embed a comprehensive use of risk assessment across the regulatory lifecycle remains a necessity.

The achievement of this ambition has perhaps been hampered by the myriad of regulatory models and enforcement approaches in operation across the regulatory system. Regulatory requirements in the UK are positioned on a continuum from rules-based to principles-based regulation, which are enforced through approaches that range from wholesale to risk-based.

Principles-based regulation means placing greater reliance on principles and outcome-focused, high-level rules as a means to drive regulatory outcomes. The Anderson review of Government guidance found that goal-based regulatory regimes can pose more of a challenge for some smaller firms, and that smaller firms prefer the clarity of prescriptive regulation to regulations that have a range of possible compliance responses. A principles-based approach that is supported by detail provided in codes allows businesses flexibility within the principles while offering assurance for smaller firms through following easily accessible 'rules'. For business trading across local authority boundaries, bespoke assurance is given through advice provided via primary authority relationships.

Securing compliance in a risk-based manner allows for innovation and encourages local ownership while targeting limited resources. Risk-based regulation creates a framework from which robust decisions can flow, purposefully using regulatory tools to move from risks to outcomes by focusing on the whole chain of risk and not merely the mechanisms by which regulation is applied.

### **Embedding a Strategic Approach to Risk**

Assessing risk in a strategic, systematic way should begin with a consideration of the statutory purpose of the regulatory organisation – the key regulatory risks that the primary legislation and regulatory authority is designed to control – and clearly define objectives to address those risks.

In its report, 'Risk, Responsibility and Regulation – Whose risk is it anyway?', the Better Regulation Commission recommended 'that each department and agency with responsibility for regulation should identify the principal risks they are protecting against and what short and longer term outcomes their interventions are designed to achieve'. This requirement was enacted through the Legislative and Regulatory Reform Act 2006.

The principal risks differ for national regulators and local authorities. National regulators such as the Health and Safety Executive, the Food Standards Agency and the Gambling Commission were established to manage specific risks, with their statutory purpose defined primarily in terms of public protection. In contrast, the community leadership and place shaping role of local authorities defines the purpose of local authorities in broad terms of promoting and improving social, economic, and environmental wellbeing. The key regulatory risks are to prosperity and protection, negated by delivering and commissioning services to ensure the wellbeing of local communities.

### **Better Regulations**

Clear understanding of the regulatory risks facing a regulatory body improves the design of regulations, and enables regulators to have an informed dialogue with those affected by any proposed regulatory change and design appropriate policy solutions, rather than a passive consultation on draft legislation.

The introduction of new regulations and the associated 'change' costs of compliance remain the greatest regulatory burden businesses face,<sup>15</sup> and a greater range of regulatory interventions and alternatives to regulation need to be considered by central departments during policy development.

### Local and National Risk

Given the broad statutory purpose of local authorities, strategic prioritisation enables local authorities to analyse the impact of regulatory risks at a local and a national level. In the context of limited resources, tension can exist between national and local interests, and regulatory services need to set priorities that both control national threats or risks, such as those described in the national enforcement priorities, and meet the needs of local communities. Prioritisation must be supported by robust evidence to ensure that priorities and resource allocation reflect the reality of risks posed rather than perception.

### Appropriate Interventions

Outcome-focused service delivery has to take the end users' needs into account at each stage of service planning and delivery. Using the interrelationships between the three parties – business, regulators and citizens – regulators can design more effective interventions that allow regulated organisations and the intended beneficiaries of regulation to contribute alongside the regulator to produce better regulatory compliance and outcomes.

Selecting appropriate intervention techniques should be based on an understanding of the needs of those affected by regulation, either as a regulated body or as a beneficiary. This includes understanding citizens' concerns and priorities, the business environment, its mode of operation and incentives, and wider market conditions. Understanding these interdependencies enables regulators to select the most appropriate tool to make the market more effective and drive better regulatory outcomes. Tools may include empowering and changing consumer behaviour through improved education, targeted enforcement or the provision of regulated information.

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<sup>15</sup> Research commissioned by LBRO and carried out by the Centre for Regional Economic Development, University of Cumbria. The report can be found at [www.lbro.org.uk](http://www.lbro.org.uk)



Where targeted inspection is the most appropriate action, local regulators are guided by risk-assessment schemes to identify and assess risk factors relating to activities and premises. With more than ten different risk-assessment schemes relating to trading standards, environmental health and licensing currently in use, there is genuine opportunity for nationalisation by identifying areas of commonality to support effective risk-led inspection activity and reduce unnecessary burdens on compliant business.

### Closing the Gap

The systematic use of risk should encompass risk-based sanctioning decisions in response to business non-compliance. The introduction of alternative sanctioning powers, as proposed by the Macrory review and enacted in the Regulatory Enforcement and Sanctions Act 2008, offers more flexible and risk-based sanctioning tools to ensure a proportionate response to non-compliance, avoiding a sanctioning gap of both under, or over, penalisation.

Collectively, these stages of risk assessment – principal risks and purpose, prioritisation, interventions and sanctioning – realise Hampton's vision and deliver a regulatory approach that meets the demands of the complex local regulatory system.

*More information, including LBRO's draft strategy for 2010-2013, can be found at [www.lbro.org.uk](http://www.lbro.org.uk).*

**Kate Cross** is Policy Manager – Strategy at LBRO. Her previous roles involved establishing intelligence-led approaches to enforcement in trading standards at local and regional levels.



## The Permanent, Unchanging Truths Of Local Regulation

Ed Humpherson

In cricket, it's a cliché to say that form is temporary but class is permanent, and that a selector should always choose a player on the basis of class, not form. Light-touch regulation had been, for some years, the form player in the world of regulation. But the financial crisis has exposed the risks of over-reliance on light-touch regulation, and reminded us all of the permanent truths of effective regulation. This article reiterates those permanent, unchanging truths.

There is no doubt that good regulation is more important now than ever; in the current economic climate businesses, the third sector and the public sector are increasingly seeking ways to improve efficiency and cut costs. But views of what constitutes good regulation are shifting. Whilst there appears to be broad consensus that the basic Hampton principles remain valid, there are concerns that risk-based regulation has not been implemented or enforced effectively.

So now is an important time for those delivering the better regulation agenda to remind themselves of the key principles behind implementing and enforcing an effective risk-based system, and ensure these principles are embedded across all regulators.

At the National Audit Office (NAO), we have considered all aspects of the better regulation agenda: delivering effective impact assessments, adopting Hampton principles, and reducing administrative burdens for business and public sector workers. We have also paid attention to the inquiries the Regulatory Reform Select Committee has conducted. The evidence points us to some core themes for delivering better regulation which apply to both policy makers and regulators.

### Understand the Problem

If policy makers are to improve the regulatory environment, they need to understand the problem regulation is trying to solve and the wider impact of such an intervention on its stakeholders. And to operate a risk-based system effectively, it is vital to gain a thorough understanding of the risks.

*Engage with your stakeholders:* Consulting key players is important both for policy makers in designing and improving regulations, and for regulators in identifying where risks lie. Our work has shown that businesses' understanding and interpretation of regulatory requirements have an influence on their levels of compliance. We know that different types of businesses vary in their knowledge and perceptions of regulation and this is vital information for policy makers and regulators to take into account.

*Identify and understand the risks:* We found that developing a risk-assessment system was a key challenge for regulators implementing Hampton principles. Risk assessments need to be comprehensive, covering both high level and specific risks. They should be used to inform judgments about the allocation of resources to different areas of risk.

*Ensure capability within the regulators:* If regulators are to identify and understand complex risks, they must have appropriate skills. The Financial Services Authority has established that it needs to increase the number and improve the skills of its supervisory staff in response to the financial crisis. Other solutions are also possible – our Hampton implementation reviews indicated that regulators can improve their use of intelligence to target risk effectively whilst still limiting their data requests.

### **Make Informed Decisions**

An open and evidence-based assessment of costs and benefits, and the trade-offs between the two, is vital for regulators and policy makers to make good regulatory decisions.

*Develop a solid evidence base:* Policy makers require a rigorous approach to assessing options. A full evaluation of all the costs and benefits of introducing new regulations is key to good decision making, alongside a thoughtful consideration of the alternatives. All stakeholders should be considered. A thorough assessment of risks associated with the different options is also important.

*Use robust tools to make open and transparent decisions:* Using tools such as cost benefit analysis to make decisions and publishing the decisions through impact assessments are important in making informed, clear choices. Our work on the Hampton reviews revealed that some businesses believe that regulators ignore firms' own capabilities for managing risk and history of compliance. This view highlights the importance of ensuring decisions are transparent and well communicated.

*Use enforcement tools and powers to target high-risk areas:* Having established the risks, inspection and enforcement activity should be weighted towards areas of greater concern. But good regulatory decisions based on clear understanding of the risk are of little value if the regulations do not have, or do not use, levers and tools to enforce those regulations. Hampton recognised that regulators needed a risk-based approach to allocating their activities and they needed tools to punish persistent offenders and reward compliant behaviour. And in 2009 the Regulatory Reform Select Committee concluded that regulators should be ‘willing to use their powers more effectively’.

### Look Behind You

Looking at the impact of regulation is crucial to improving it. Evaluation needs to be thorough and focused on real impacts on the regulated and the beneficiaries.

*Evaluation is vital:* Policy makers need to evaluate their actions to assess whether regulation has been effective. And regulators must understand the effectiveness of their activities to inform thinking on how best to inspect and enforce. But such evaluations are too seldom done. In financial regulation, key bodies have sought to understand the causes of the financial crisis. But looking back should not be done only when considering ‘what went wrong’ – it should be a systematic and integral part of every decision.

*Focus on the outcomes:* Evaluation must consider the impact on all those affected by regulation, not just progress against targets. Our work on reducing administrative burdens for business has shown us that targets can create incentives and encourage action, but what really matters is whether businesses are noticing a real reduction in the burden of regulation.

### Uncertain Times Ahead

The better regulation agenda finds itself in uncertain times. Core beliefs have been challenged by the financial crisis. Rather than seeking new initiatives or principles, now is the time to reassert the eternal themes that should permeate the work of all policy makers and regulators. The cricket selectors are right. Form is only temporary. Class is permanent.

**Ed Humpherson** has been an Assistant Auditor General since 2007, having joined the NAO in 1993. He was appointed to the new NAO Board in July 2009. He is responsible for the NAO's work on business and economic affairs.



## Evaluating The Contribution Of Regulation In The ‘Post-Hampton’ World

Tom Ling

### Impact and Outcomes

Understanding and evaluating the contribution of local authority regulatory services has been an issue under discussion for some time. RAND Europe recently conducted research for LBRO in this area that gave a number of insights into how best to evaluate services. The study highlighted two particular areas of wider interest: firstly the importance of practitioners and professionals acknowledging that they are engaged in a process of continuous change management, and secondly, how the process of evaluation, in itself, supports learning and greater accountability, not least because of a participant approach.

An evaluation aims to understand what difference a service, regulation, or other activity makes, at what cost, and who bears the costs and receives the benefits. It is therefore concerned with the contribution made to achieving desirable outcomes and minimising undesirable costs and consequences. Sooner or later this requires some consideration of understanding contribution and causality, often in the context of complex interventions that may evolve over time. Increasingly, regulatory services today are in a change environment. Driving this change are the behaviours of consumers, the corporate sector, non-government organisations, the ‘public interest’ (articulated in a variety of ways at both the local and national levels), and the regulatory services themselves. Regulatory impacts are therefore not static.

### Evaluating the Outcomes of a Changing Service

Our approach to evaluating regulation services has five elements. Individually these elements are neither controversial nor radical but taken together they provide a firm and pragmatic base for evaluating regulation.

Firstly, the approach requires us to not only look at the outcomes of programmes of work, but also to pay equal attention to processes. The outcome of regulation is deeply influenced by the way the regulatory service is managed. Local regulatory services constantly adapt and change reflecting local and national priorities as well as available resources. Our concern with understanding changing processes focuses primarily on evaluating the rich descriptions we are told about how change affects outcomes. In contrast traditional evaluation approaches tend to look at regulatory outcomes first and then to look for evidence to support attribution (for example measuring changes in sales of alcohol following a change in regulation).

Secondly, we believe the approach must engage practitioners. As external evaluators we aim to work closely with policy makers and practitioners to understand and elaborate change. Successful evaluation should understand the perspective of the policy makers, practitioners and service users, including an understanding of what motivates their behaviour since it will be these motivations, as much as the formal regulation, which will determine the contribution of the service to wider public benefits. We would have found this step much more difficult without the support of LBRO in encouraging and facilitating this engagement.

Thirdly, the approach requires an ability to reconstruct and represent the process connecting activities (both internally and externally) and how these contributed to the outcomes identified, including identifying, where possible, the causal mechanisms at work. More grandly this might be referred to as a 'Theory of Change' but we prefer to call it the 'contribution story'. This is important for reducing any ambiguity about what the intended contribution of the regulatory services is to meeting local and national priorities.

Fourthly, we were aware that just by virtue of having an evaluation done, services will learn and change. So compliance with regulation, and therefore the contribution of local enforcement services, may change as practitioners discuss, compare, learn and innovate as a result of participating in the evaluation.

Finally, evaluations should also be sensitive to the fact that different and potentially conflicting theories of change might be simultaneously pursued within any regulatory system.

Collectively, these five elements describe an interest not only in *causal effects* (what happens when an independent variable changes) but also *causal mechanisms* (what connects causes to their effects); not only what regulators and regulatees *say* they do but what the evidence *shows* they do; and not only what contribution stories practitioners *tell* themselves and others but also what really *contributes* to public benefit.

### Understanding the Contribution of Regulation for Public Benefit

The approach to evaluating regulation outlined here develops the ‘contribution story’ the service can make, which helps us to understand why practitioners and policy makers believe that their use of resources will contribute to public benefits and what side-effects and unintended outcomes they envisage. Taking the contribution story as the starting point increases the chances of both supporting accountability and improving learning for future practice. Our approach recognises the need to focus on the concerns and needs of regulators, regulatees, the wider public and policy makers. In practice, this means developing and understanding the contribution story to make sense of the (sometimes varying) claims made. This approach is a very pragmatic way of dealing with the limits of achieving valid accounts of attribution to processes with multiple aims. Reducing the uncertainty of the contribution made, rather than achieving certainty about attribution, must therefore be an important purpose of evaluating post-Hampton regulation.

### Taking Practical Steps to Assess the Contribution of Regulatory Services to Public Benefit

John Mayne has outlined six steps in contribution analysis<sup>16</sup> and here we present a variation on this and link it to the particular issues related to arriving at a legitimatised audit judgment. The steps towards understanding contribution are:

1. Identifying the formal contribution story from documentary analysis
  - Identifying agreed performance criteria, performance standards, and expectations
2. Identifying tacit and informal assumptions through interviews with practitioners and wider stakeholders, participant observations, etc

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<sup>16</sup> Mayne, 2001 op cit p. 9



- Identifying tacit and informal performance criteria and standards and stakeholder expectations
3. Understanding if there is a shared contribution story and, if not, identifying a variety of stories used by analysis of qualitative data
    - Identifying what performance standards are/were anticipated and regarded as legitimate
  4. Identifying what kind of evidence would be needed to support these stories through logical analysis and literature review of related approaches
    - Identifying what data would be needed to determine actual performance standards
  5. Identifying the available evidence (made available by the regulator, wider stakeholders and literature)
    - Identifying what the available evidence shows and what evidence is regarded as robust and appropriate by stakeholders
  6. Filling any essential evidence gaps using appropriate methodologies and within the budget constraints of the audit
    - Identifying and collecting additional evidence, including on unanticipated outcomes and comparator data
  7. Weighing the strength of the available evidence (assessing evidence for its independence, validity, replicability etc)
    - Developing a performance judgement based on a credible account of the contribution made and minimising the uncertainties surrounding this contribution
  8. Providing an analysis of the varying stories and their evidence base
    - Producing the final audit report

### Conclusion: a Future Model for Evaluating Local Regulation?

Our evaluation approach based on the contribution regulatory services can make to wider public benefits provides a pragmatic but robust basis for supporting judgments about the current consequences of regulation and how these might be improved in the future. The evaluation and its analysis must take account of the needs of practitioners and provide a methodological basis that addresses the problems of studying specific activities and unfolding processes which might have multiple meanings and purposes.

This suggests a new approach to evaluation, one in which the knowledge required for the evaluation is co-produced by regulators, regulatees, evaluators and others. Rather than large one-off studies it would most probably generate a stream of evaluative evidence allowing for a repeated opportunity to embed learning and accountability in a continuously changing service.

**Tom Ling** has led a wide range of evaluation and research projects for the European Commission, national government departments and audit bodies at RAND Europe, a not-for-profit research organization working for the public interest. He is also Professor Emeritus in Public Policy at Anglia Ruskin University and an honorary visiting senior research fellow at Cambridge University. He has published widely both on evaluation and on the relationship between evaluation and accountability in journals including *Public Administration* and *Evaluation*. His books and edited volumes include *The Changing British State* (Polity) and *Reforming Healthcare By Consent* (Radcliffe). He is a member of the European Evaluation Society and INTEVAL, the international evaluators' research group.



## Realising Local Vision Through Regulation

Daniel Goodwin

### **Working With Partners to Achieve Local Priorities and Outcomes for Economic Regeneration and Community Wellbeing**

Regulation should help a local place and its community realise its potential. Regulation has already played a major part in making the place what it is and any vision for the future therefore needs to consider how it will use regulation to achieve its ends. St Albans City and District has seen a constant enmeshing of social activity, regulation and enforcement. The Romans brought focused governance and their religious enforcement gave rise to St Alban and the city's name. The mediaeval market town was a focus of weights and measures regulation, the Abbey took its tithes, Henry VIII then stripped the Abbey, and there was regulation of sanity in the surrounding Victorian mental institutions. Even the Magna Carta was drafted here, regulating the excesses of monarchy. It is against this historic background that we seek a balance between local and national priorities and work hard with our partners to achieve it.

The district's economy today is largely based upon tourism, retail, catering, food, financial and business-to-business services, in line with the wider Hertfordshire economy. There is a wide range of small and medium-sized enterprises, high use of technology, and burgeoning environmental sustainability-based activities. The Council's teams work well with partners. Together we have achieved a number of awards and accolades in the field of regulation and enforcement. There are excellent relationships particularly in managing the night-time economy and licensing. A joint pro-active approach is taken by both licensing teams within the Council and Hertfordshire Constabulary to tackle problem premises early and to find solutions before the need to take formal action. Relationships with businesses are generally good with close links with the Chamber of Commerce, the president of which is a vice-chair on the Local Strategic Partnership.

### Working with Partners

Our approach to regulation and enforcement with our partners has already had a significant impact on community safety. Examples include thoughtful use of CCTV and numberplate recognition, a taxi marshal scheme and a business against crime initiative developed jointly with local business and the police. We will shortly be piloting a night-time licensing support team. We were quite quickly off the blocks in our response to the economic downturn and swiftly organised workshops with businesses, which have informed projects that are now being addressed in a cross-council recession project board which is focusing on securing economic sustainability.

### Supporting the Local Economy

Rather than being a framework of central control and restriction, regulation should be part of the management of the economic aspects of the vision for the locality and its reputation, through co-delivery with those who are regulated. Yet in much of the recent writing on regulatory matters, Hampton and Rogers reports included, there are key gaps in thinking through the fundamental economics of businesses and the locality, the dilemmas faced in the emerging regulatory landscape and the tipping points of viability. It's the *local* economy, stupid! As with the underlying economics of anything, this involves the resolution of a range of dilemmas, including the following:

- Helping local businesses survive versus ensuring protection from regulation disasters which can dent public confidence in a place
- Costs versus risks of proactive inspection
- Aiding cost cutting versus fighting corner cutting
- Specialisation and focus versus unified teams systems and processes
- The need to resource our own research and development versus the overall costs of services and the recovery burden on business
- Provision of training to businesses versus ensuring their ownership of compliance

The resolution of these various competing pressures will involve regulatory services and partners in new ways of working together. In particular, there is a need to think through the advice services we provide and their relation to risk. Can we achieve a reasonably consistent approach, particularly through our development of web-based information services? Two excellent pieces of joint agency working across Hertfordshire and Bedfordshire are the development of a 'compliance matrix' which helps businesses identify which pieces of the framework relate to them and build their understanding, and a flexible warrant scheme, which will allow officers to work together across geographical and organisational boundaries. How can we take this approach further and make compliance more interactive? How might we use self-assessment more effectively as a tool?

### Regulation Supporting Local Vision

Places are best shaped by vision and thought rather than chance and national guidance. I believe that this is an exciting time for regulation because of the increasing role that Local Strategic Partnerships, Sustainable Community Strategies (SCS) and Local Development Frameworks are having in the shaping of place. Regulatory services can help to deliver that local vision and use it to surf the waves of legislation and guidance rather than be dragged down and overwhelmed in its undertow. This can be done by being outcome and policy focused in our strategies and operational arrangements. In doing this work, we need to be cost conscious, with a clear understanding of our own economics and avoiding 'cost shunting' between partners, businesses and the public. We can achieve this through the development of activity and risk-based costing models, and deliverable resource and workforce plans.

In St Albans District we have recently undertaken exercises to develop city and rural visions in support of the SCS. I think we must now think through what the regulatory response should be to this work through the development of a conscious business and public engagement strategy, setting out what we want to achieve and discussing the regulatory balance needed to achieve it. This will involve our partners ever more closely on co-production and delivery of our regulatory services, thereby reinforcing the strategic role in the community of regulatory services. This will ensure that the public and politicians are clear about how they can contribute to their vision for the district. There is a local track record of delivery and the will to achieve this – we now need to build the new framework to do so.

**Daniel Goodwin** is Chief Executive at St Albans City and District Council, a role he took up in July 2006. Daniel's previous local government jobs were with Wealden District Council where he was a Corporate Director with responsibility for corporate services; Peterborough City Council, where he held a number of posts including Head of Culture and Recreation and Head of Policy and Strategy; District Audit, where he was a Principal Value for Money Specialist; and the London Borough of Brent, where he was a Commissioning Manager in libraries and cultural services. In 2004 Daniel graduated from University of Warwick Business School having gained a distinction in the new Masters in Public Administration. He is a member of SOLACE and a Fellow of the Royal Society of Arts.



## Working Together In Wales For Better Local Regulation

Steve Thomas

Sex, suggested Philip Larkin with his usual sarcasm, was discovered in 1963. There may be an equally unjustified proposition that Welsh local authorities only considered working in support of each other in the aftermath of the Welsh Assembly Government's public service reform agenda entitled 'Making the Connections'.

There is nothing new in local authorities working together. It is endemic in local authority systems elsewhere in Europe, and Wales has its own well established examples. Many local government services can illustrate innovations which have occurred since the Making the Connections reforms and some of these have been worked through in partnership with the Welsh Assembly Government and the UK Government and have benefited from development grants.

Welsh local government responded positively to 'Making the Connections'. There is widespread support for the principle that whilst Wales benefits from having forms of government which are community based, they are only sustainable if they work together to spread costs, share specialisms and improve service quality. The support that local government offered was based on its established experience of working together and its own determination to build on what had been achieved.

Welsh local government worked with the Welsh Assembly Government to jointly commission the Beecham Report on local service delivery. Beecham confirmed the merit of community-based service delivery but challenged all parts of Welsh government to support local services through a citizen focus which required better integration of services and, where necessary, more working across geographical boundaries to provide the specialised services that people need.

### Joint Working in Wales

Regulatory and Public Protection Services in Wales have certainly been engaged in this agenda and have demonstrated significant examples of successful joint working over past years.

Since the successful bid by Welsh Heads of Trading Standards, in collaboration with Cardiff Council, to establish Consumer Direct Wales, Welsh Regulatory Services have actively sought and embraced opportunities to cooperate at the national Welsh level in delivering services which have brought substantial benefit to consumers and businesses operating in Wales.

Prior to the establishment of the Wales Illegal Money Lending Unit in November 2007, very little work was being done in relation to the substantial problem of loan sharks operating across Wales. With the advent of this new team of specialist officers plus a seconded police officer, during its first year of operation, the Unit evidenced over a million pounds in illegal lenders' loan books and identified 70 illegal money lenders with 10 cases reaching the prosecution stage.

More recently the all-Wales Scambusters team has been set up by the Heads of Trading Standards, in conjunction with Newport and Conwy councils. This team is working closely with the Wales National Food Fraud Unit, based in Ceredigion, to collect and share intelligence about major scams operating across the sector in Wales in order to more effectively target national crime.

### Regulating the Rural Economy

The rural economy is of major importance in Wales and Animal Health and Welfare services in Wales already have good informal arrangements between a number of Welsh local authorities to share officers and provide mutual assistance in emergencies and for major investigations. Following the introduction of the Animal Welfare Act in 2006, the Welsh Assembly Government provided funding to local authorities under its Companion Animal Welfare Scheme. This has promoted the establishment of four Animal Welfare forums covering the whole of Wales. In these forums local authorities are engaging with the full range of animal welfare organisations and other interested public sector bodies to seek to improve the welfare of companion animals in Wales.



In addition to this a number of collaborative projects have been established across the Welsh regions to devise innovative ways to tackle problems around dog breeding and puppy farming, internet selling of pets and the import and export of animals via the Republic of Ireland. Currently we are exploring options for building further on existing arrangements to deliver joint services on a more formal basis.

### Developing Initiatives

Many more excellent examples of joint working exist. Environmental Health Best Practice Standards have been developed by the Welsh Heads of Environmental Health as a self-assessment tool for service managers. These have been adopted by all 22 Welsh authorities. Conwy and Denbighshire councils are developing a fully integrated Regulatory Services team. The All-Wales Community Safety Accreditation Scheme has enabled a consistent approach to local authority officers issuing penalty notices for disorder in respect of underage sales of alcohol. A key factor in the success of many of these partnerships and projects has been a willingness to work together through the difficulties presented and a desire to raise the profile of Regulatory Services in Wales.

### Future Ambition

Whilst I have outlined some of what has been achieved and some of what is planned, the aim is to add impetus to future ambition. The foundations are robust but there is much development yet to take place before Welsh local government can claim to have made its contribution to a fully developed and connected public service. There is an on-going challenge to share what is working in each part of Wales and ensure that successful innovation is adapted and transferred quickly to fit the needs of other areas.

**Steve Thomas** is Chief Executive of the Welsh Local Government Association, taking up the post in March 2004. Appointed to the WLGA in October 2000 as Head of Strategic Policy, Steve has worked in local government since 1989. He started within the field of Economic Development and was then tasked in the early 1990s with the project management of the reorganisation of Islwyn Borough Council leading up to the establishment of the new unitary authority Caerphilly County Borough Council in 1996. At Caerphilly County Borough Council Steve was the Head of Policy, Best Value & Central Services where he managed a range of functions including corporate strategy, democratic services, elections and the Wales Programme for Improvement.



## **Better Regulation: Safeguarding Communities Through Achieving Compliance**

**Richard Block**

Two key principles underpinned Westminster City Council's Environmental Health, Licensing and Trading Standards service recent Beacon application to the theme Cutting Red Tape – Delivering Real Economic and Social Benefit through Effective Regulation. The first was an emphasis on the delivery of economic and social benefit – the second strand of the theme that is often overlooked. The second was to demonstrate effective regulation as a golden thread running across all elements of the service. It is our assertion that such an approach gives better local regulation credibility and relevance in a 'post-Hampton' world.

### **Economic and Social Benefits**

So how is real economic and social benefit delivered through regulation? In Westminster's experience, understanding local issues and problems is essential. We have developed sophisticated measures to capture and analyse local intelligence. For example, we have an intelligence product based on a range of sources of council and police data. This can identify which of our 3500 licensed premises are causing the most problems so that resources can be prioritised towards them. A task group including police, fire and a range of Westminster regulatory services then develops joined-up solutions to tackling problem premises.

Detailed consultation has also been undertaken with persistent high-risk businesses. This has been tailored to support particular communities, such as the Chinese food businesses community. The results of the consultation have led to redesigned regulatory interventions which ensure they have the optimum effect on achieving compliance. Westminster also regularly consults with landlords of rented accommodation in the borough through a landlords' forum. We consider private landlords as businesses and as such the principles of better regulation should be applied to them as well.

### A Balance of Incentives and Sanctions

Providing the correct balance of incentives and sanctions has been a key to Westminster's success. Businesses are given support to comply where they require it. For example, a free occupational health service and healthy business advice service is provided for small and medium-sized enterprises funded by the primary care trust. Free food hygiene training and coaching have been provided to high-risk food businesses and a Chinese Masterchef competition has been established to celebrate compliant Chinese restaurants. As part of our drive to prevent the misuse of knives by younger adults, retailers who sell knives have received advice and support to help them comply with the law. The campaign was supported by test purchase operations.

Where businesses expose the public to unacceptable risk and fail to comply then a firm line is taken. The service has pursued a number of high-profile cases, some of which have resulted in accusations that Westminster City Council is not 'Hampton-friendly'. However, if the incentives referred to above are to be effective, those businesses exerting real effort to comply must see that by doing this they are gaining an advantage over those who are not.

### Improving Communities

Better regulation is not just about improving the lot of business. For real social benefits to be realised, regulation needs to be used to improve the lives of communities. Westminster has been using effective regulation to assist in the regeneration of an area known locally as Prince of Wales junction. Residents had long complained that the area was the main crime and disorder hotspot in the north of the borough. Environmental health officers have worked in partnership with the police, other council departments and landlords of rented accommodation to improve the security of estates where drug dealing and prostitution were rife. The response was mixed and enforcement action had to be taken in some cases, but by continually engaging and, in some cases, match-funding improvements, the estates are now cleaner and more secure.

The trading standards team has also been tackling doorstep crime through working with a number of statutory and voluntary agencies. Materials giving tailored advice on how to deal with traders have been developed to deliver concise and clear messages to local people, and regular presentations are given at venues where vulnerable or older adults meet. These have been adapted at the request of the local community.

The team has also worked closely with a specialist theatre company to deliver a number of entertaining and educational plays that sensitively advise vulnerable and older adults on doorstep selling and scams. Some local banks have also been involved. This work has received very positive feedback from the community.

### Responding to the Recession

The current financial situation will certainly raise new challenges in achieving compliance and it is how regulators respond to these challenges that will determine their credibility moving forward. For example, Westminster's food team has seen more than a 100% increase in food premises closure orders in the first four months of the financial year as food businesses are cancelling pest control contracts and neglecting routine maintenance to save money. The team is responding with an offer of free pest control training for any Westminster food business to be delivered in partnership with the British Pest Control Association (BPCA). The BPCA has a shared interest that businesses are aware of their pest control responsibilities, as its members are the pest contractors having their contracts cancelled by restaurants.

### Achieving More with Less

It is often said that small local authorities may not have the capacity to match the achievements of larger authorities such as Westminster. This is not true. If anything intelligence-based approaches and innovations that make interventions more effective would be even more useful in an environment where there is less resource. Westminster has demonstrated that with some lateral thinking, better regulation can be used to ensure real social benefit and fulfil wider council objectives raising the profile of regulatory services. In times of budget pressures this is much more valuable than solely relying on the mantle of being a statutory service to justify resources.

**Richard Block** currently manages the Food, Health and Safety service at Westminster City Council with responsibility for over 5000 food premises and 20,000 other businesses. The service has developed innovative approaches to achieving compliance many of which featured in Westminster's successful beacon application in the theme of Cutting Red Tape: Delivering Real Economic and Social Benefit through Effective Regulation.



## **About LBRO**

The Local Better Regulation Office helps councils improve the way they implement environmental health, fire safety, licensing and trading standards regulations. It is our responsibility to ensure these vital public services are consistent, targeted, accountable, transparent and proportionate to risk.

We reduce unnecessary red tape for law-abiding businesses, to allow greater focus on targeting the rogue traders who harm vulnerable people and damage our communities. By making it easier for councils to advise on and apply the rules, and simpler for companies to understand them, we help to ensure that local regulation delivers both prosperity and protection.

Our duties include managing the Primary Authority scheme, advising central government on local regulation, providing statutory guidance and best practice to councils, and updating the list of national enforcement priorities for local government.

LBRO was established under the Regulatory Enforcement and Sanctions Act 2008 as a non-departmental public body, accountable to the Department for Business, Innovation and Skills (BIS) through the Better Regulation Executive.

We are governed by an independent Board and operate across the United Kingdom from our base in central Birmingham.

We would be pleased to hear your views on the issues raised in this pamphlet. Contact Kate Cross at [kate.cross@lbpro.org.uk](mailto:kate.cross@lbpro.org.uk) or via 0121 226 4000 to have your say. Alternatively, visit [www.lbpro.org.uk](http://www.lbpro.org.uk)

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Better Local Regulation

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*“Intelligence-based approaches and innovations that make interventions more effective will be even more useful where there is less resource.”*

**Richard Block**  
*Westminster City Council*

*“Regulation should be part of the management of the vision for the locality.”*

**Daniel Goodwin**  
*St Albans City and District Council*

*“The more regulators demonstrate a consistent approach, the more successful we will be in ensuring compliance.”*

**Judith Hackitt CBE**  
*Health and Safety Executive*

*“Businesses can only flourish in fair markets within a local infrastructure that understands commercial needs.”*

**Simon Topman**  
*British Chambers of Commerce*