Title: The Appointment of Small Businesses Appeals Champions **IA No:** **Lead department or agency:** Department for Business, Innovation & Skills **Other departments or agencies:**	Impact Assessment (IA) **Date:** 24/04/2014 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Richlove Mensah 020 7215 5163

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£-1.75m	£-0.74m	£0.07m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

Evidence from the Government's Focus on Enforcement Reviews and supplementary research has shown widespread inadequacy in the provision of appeals and complaints mechanisms by national non-economic regulators – including an absence of transparent, effective procedures and poor explanation and signposting. Intervention is necessary to correct this failure and reduce the risk that poor enforcement decisions are left standing because of businesses' – and particularly small businesses' – inability to challenge them effectively

What are the policy objectives and the intended effects?

The overall aim is to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. The key objective of this specific measure is to provide assurance to business and Government that regulators are delivering against the goals relating to appeals and complaints set out in the new statutory Regulators Code[1].

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option1. Do nothing, relying on the new Code, but making no provision for assurance of compliance.

Option 2. Legislate to appoint an independent Small Business Appeals Champion within each non-economic regulator, responsible for delivering that assurance. (Preferred option)

Option 3. Appoint such an officer by agreement with each non-economic regulator, without any legislative basis.

Option 4. Create a single stand-alone body to deliver assurance in respect of all non-economic regulators.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 10/2017

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Hiroko Plant (SCS) Date: 24/04/14

[1] https://www.gov.uk/government/publications/regulators-code

Summary: Analysis & Evidence

Policy Option 2

Description: The Appointment of Small Businesses Appeals Champions

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -4.96	**High: -0.87**	**Best Estimate: -1.75**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		0.1	**0.9**
High	0.6		0.5	**5.0**
Best Estimate	0.3		0.2	**1.8**

Description and scale of key monetised costs by 'main affected groups'

Regulators - Total annual costs of £85k (costs of employing Champions and their support staff, net of costs passed to business)
Businesses - Total annual costs of £86k (pass through costs from regulators), voluntary one-off costs of £0.28m (familiarisation costs)

Other key non-monetised costs by 'main affected groups'

There are no additional non-monetised costs associated with this option.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

The creation of Small Business Appeals Champions will ultimately result in a simpler, more effective, more transparent, less costly and better understood series of processes by which businesses are able to challenge regulators' decisions and behaviour. The impacts of any changes created by the Champions will be set out in impact assessments and assessments under Accountability for Regulator Impact as they arise, and so are not estimated here.

Other key non-monetised benefits by 'main affected groups'

See preceding box.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

The costs of the measure, and the extent of any recharging to regulated businesses, are based on preliminary estimates made by regulators and their parent Departments. As they continue to develop implementation plans these figures may change.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.1	**Benefits:** 0	**Net: -0.1**	Yes	IN

Evidence Base (for summary sheets)

Executive Summary

1. The 2012 Autumn Statement announced a package of 5 measures to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. The package addresses a set of specific issues identified through a series of Focus on Enforcement Reviews and consultations such as that on the Regulators' Code. The package also builds upon the Transforming Regulatory Enforcement strategy in 2011, with a renewed emphasis on regulators being accountable and contributing to growth as part of the Government strategy to make the UK the best place to start, finance and grow a business.

2. The package comprised of a variety of policy interventions designed to achieve a sustained change in regulators' behaviour. This measure aims to address the shortcomings in regulators' appeals mechanisms identified in the *Focus on Enforcement* Reviews.

3. Businesses - and in particular small businesses - need to be confident that they can ask for an explanation or challenge a regulator's decision without fear, disproportionate cost or long delays. Evidence gathered under the Focus on Enforcement programme[1] shows that this is not always the case.

4. The new Regulators' Code, which took effect in April 2014, sets Government's expectations of regulators' treatment of appeals and complaints by non-economic regulators. The Government believes that this needs to be accompanied by a new form of assurance that regulators are delivering against these goals.

5. However, the Government recognises that there is a varied and broad range of statutory remits, enforcement regimes, and types of intervention against which a business may wish to appeal or complain. For that reason, it believes that the most efficient means of improving businesses' experience of appeals and complaints is to ensure that each regulator puts in place its own arrangements for audit and scrutiny.

6. For this reason, the Government announced in December 2013, in *Small Business: GREAT Ambition*[2], its intention to consult on the proposal to create in law and appoint within each non-economic regulator an independent Small Business Appeals Champion. The Government proposes that these Champions should be senior appointments, and anticipates that in many cases, where possible, they would be Non-Executive Directors (NEDs) of the Regulator. A consultation on this proposal was completed recently.

7. To ensure the needs of businesses - and particularly small businesses - are taken into account and for them to have confidence in the Champion, such Champions need to be independent. And to be effective they will need legal powers and duties to:

    - scrutinise the transparency, operation and effectiveness of regulators' appeals and complaints processes;
    - obtain data and information from regulators;
    - publicly report on their findings; and make recommendations for changes and improvements, also in public

8. The Government expects Regulators to comply with such recommendations for improvements to their processes, or explain why they have chosen not to.

9. Small Business Appeals Champions will be expected to discharge their role with a particular focus on the impact and performance of the regulator in respect of small businesses. This is because the Government believes that appeals and complaints procedures that are fit for purpose for small businesses are also likely to work well for businesses of all sizes. Therefore, businesses of all sizes are expected to benefit from the appointment of Appeals Champions.

10. The Government does not propose to give Appeals Champions any powers in respect of individual decisions made by regulators. To do so would be to depart from the objective of the policy – the improvement of overall processes and policies – and would be very likely to run into significant legal complexity. Champions will therefore not have powers to overrule or in any other way intervene in individual cases.

[1] http://discuss.bis.gov.uk/focusonenforcement/

[2] https://www.gov.uk/government/publications/small-business-commitment

11. The creation of Champions will not, of itself, create monetised benefits for business. However, as Regulators adopt Champions' recommendations, businesses will start to experience the benefits. These will take the form of resolution of the shortcomings listed above.

12. As a result of those reforms businesses overall are expected to spend less time in challenging decisions thanks to simpler, more accessible processes, and fewer poor decisions that impact negatively on businesses will be left to stand. Given the great variety of regulators' remits and enforcement regimes, this is likely to result in a mix of fewer formal appeals in some cases (for example if as a result of a Champion's recommendations alternatives to costly and complex appeals are created), and a larger number of more effective appeals in others.

13. The Government firmly expects the benefits to business to be substantial. There may also be benefits for regulators arising from simpler, more transparent appeals processes or reductions in enforcement costs arising from a more proportionate approach. However it would be inappropriate to quantify the benefits in this assessment because:

    - there is insufficient evidence to assess the likely pattern of recommendations which Champions might make, and regulators' approach to implementing them; and
    - each change will be subject to a separate Impact Assessment (or, for changes not affecting legislation, an assessment under the Accountability for Regulator Impact – ARI – scheme). Quantification in this assessment would therefore constitute double counting.

14. The main costs of this measure arise from the salaries of the Champions and the staff supporting them. Some of these costs are likely to be passed on to businesses through fees and charges; these costs are considered as direct costs to business for the purpose of this analysis. As a result of the appointment of Champions there are also likely to be very small voluntary one-off familiarisation costs to businesses. Following the RPC Opinion for the consultation stage impact assessment, these costs to business are treated as indirect. The net costs to business involved in engaging with Champions are likely to be nil or negligible, as we expect that businesses will use existing fora to engage with the relevant regulators. In addition, those businesses that do familiarise and engage with the Champions are likely to be those who would expect to benefit so the net cost of engaging on a regular basis is expected to be zero.

15. Table 1 summarises the impacts.

Table 1 – Summary of impacts	**Low estimate**	**Best estimate**	**High estimate**
Net annual impact on regulators	£46k	£85k	£102k
Total annual pass through costs to business	£55k	£86k	£408k
Total one-off voluntary familiarisation costs to business	£0k	£280k	£570k

Risks/sensitivities and issues

16. The estimates given in this paper are sensitive to regulators' provisional estimates of the wage rates to be paid to Champions and the regulator staff supporting them, and the extent of their time commitment. Any eventual changes made by regulators arising from the recommendations of the Champions would be assessed either through an impact assessment or Accountability for Regulator Impact assessment that would set out the relevant costs and benefits including any expected impact on the overall number of appeals made.

Key Assumptions

Subject	Assumption	Source/Comment
Number of Champions	58	Assumed equal to the number of national non-economic regulators
Number of businesses in UK with 5+ employees	491,305	Business Population estimates 2013
Mean hourly wage for business	£28.85	ASHE 2013, uplifted for non-wage costs (17.8%) The occupational group used is 'Managers, Directors/Senior Officials' because it is assumed that it will be senior managers and business proprietors who are likely to familiarise themselves with the Champions
Time taken by affected businesses to familiarise	15 minutes	Assumption, based on time taken to read Annex C.
Proportion of businesses expected to familiarise	8%	Based on 2013 Regulatory Enforcement Survey

Problem under consideration

17. Evidence from the Focus on Enforcement Reviews found that:

    - Businesses often let what they consider to be poor regulator decisions stand, rather than appeal, as they are afraid of the consequences of 'ruining their relationship' with their regulator;
    - Many companies do not want to confront their regulators; they simply want to understand how a decision has been reached and why – but in many cases there is no regulator 'safe space' for companies to air concerns or discuss them informally;
    - Smaller businesses suffer particularly acutely as they are ill-equipped to challenge poor decisions adequately, or at all;
    - Damage to company growth, reputation and competitiveness results from unchallenged poor decisions;
    - Dysfunctional aspects of non-economic regulator appeals and wider regulatory systems are perpetuated as without challenge, regulators lack incentives to introduce necessary reforms;
    - There is insufficient transparency and proper scrutiny of regulators in this space;
    - Private and public sectors bear unnecessary costs, which can escalate when tribunals (that could have been avoided) become involved;
    - There are inconsistent terminologies and contradictory signposting and advice when it comes to regulators' appeals mechanisms. The terms "appeals" and "complaints" can sometimes be used interchangeably within and across regulatory bodies leading to confusion about which route to take, particularly where businesses are subject to regulation by more than one body;
    - Even where appeal routes exist, confusion about how to access them leads to costly delays which could potentially damage a business (and give advantage to competitors) in the meantime, with companies second guessing what to do rather than being able to challenge the decision.

18. Further information about the evidence base arising from the Reviews and other sources is given at Annex A.

Rationale for intervention

19. The Government believes that all parts of the public sector should prioritise, with real urgency, support for economic growth. The evidence outlined in the previous section suggests that the current practice of many regulators in dealing with appeals is inhibiting businesses in taking action which could contribute to growth.
20. The Government has replaced the former Regulators' Compliance Code with a new Regulators' Code, which took effect in April 2014. It is shorter, easier to follow, and provides a framework for how regulators, ranging from national organisations to local authorities, should engage with those they regulate.
21. The new Code takes account of the findings in respect of appeals outlined in the previous section. It sets new goals for regulators' treatment of appeals and complaints by non-economic regulators. These include

    - a clearly-explained route of appeal against decisions;
    - impartiality in how appeals are heard;
    - signposting and explanation of available appeals mechanisms;
    - transparency over data and customer feedback on, inter alia, their performance on appeals.

22. The Government believes that the Code needs to be accompanied by a new form of assurance that regulators are delivering against these goals. It also believes that action is needed on two further goals which were not appropriate for inclusion in the Code:

- where appropriate, giving businesses a route to get an informal "second opinion" from the regulator before considering a formal challenge; and
- increasing the consistency of terminology for appeals and complaints used by different regulators.

Policy objective

23. Ministers' objective for the Better Enforcement Programme is to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. This will enable regulators to be consistent in playing their part in creating a business environment that promotes growth and enterprise. Taken together, the package will stimulate and incentivise changes to the way regulators go about delivering the protections they provide, so that they can support businesses and foster economic growth more effectively.
24. Within that overall goal, their objectives for this measure are that
    - it should provide assurance to business and Government that regulators are delivering against the goals relating to appeals and complaints set out in the Code, and complement the Code and other aspects of the Better Enforcement Programme;
    - it should also promote greater use of second opinions, and greater consistency of terminology, as described in the preceding section;
    - the chosen mechanism should take into account the substantial diversity in the circumstances of regulators and of the businesses they regulate;
    - it should not undermine (or be perceived to undermine) regulators' independence of Government, or their delivery of their primary duties; and that
    - its costs to regulators and businesses should be kept to the minimum necessary.

Options considered

25. Any assurance mechanism for appeals and complaints processes will need to have the ability to
    - obtain data and information from regulators;
    - obtain feedback from businesses about the operation of regulators' appeals and complaints mechanisms;
    - scrutinise the operation and effectiveness of appeals and complaints processes, and recommend improvements;
    - publish findings and recommendations.
26. Four options have been considered to deliver the required assurance:

    Option 1 – do nothing;

    Option 2 – legislate to appoint an officer responsible for delivering that assurance – a "Small Business Appeals Champion" – within each non-economic regulator;

    Option 3 – appoint such an officer by agreement with each non-economic regulator, without any legislative basis;

    Option 4 – create a single, stand-alone body to deliver assurance in respect of all non-economic regulators.
27. The following paragraphs consider the options in more detail.

Option 1 – Do nothing

Assumptions

28. This option would involve relying on the provisions of the new Regulators' Code, without making any provision for assurance that regulators will comply with them.

Achievement of objectives

29. If all regulators had been motivated in the past to deliver good service to the businesses they regulate, many of the issues identified in the "problem under consideration" section above would already have been resolved. The new Regulators' Code may go some way to improving regulators'

behaviour, but it is difficult to predict the pace of change. However the Government's call for the whole public sector to promote growth is urgent. It does not allow time to wait for evidence of the effectiveness of the Code.

30. Evidence from the Focus on Enforcement reviews has shown that regulators' approach to the businesses they regulate varies widely. Some demonstrate excellent practices; others have much further to go. It is particularly important that the performance of this latter group should be improved quickly – but they are the group whose motivation to improve is likely to be weakest. Thus the "do nothing" approach is likely to have its weakest effect on this key group.
31. Under a "do nothing" approach, many of the issues identified in the "problem under consideration" section above would therefore continue. It is not possible to estimate the cost to business of continuation of these deficiencies, as we cannot know how many would have resisted regulator decisions if they felt empowered to do so or indeed how many would have been successful. (46% of businesses said[3] there was no point in appealing against a regulator's decision).
32. A "do nothing" approach would also fail to address the two further goals not included in the code (see paragraph 21).

Costs and benefits

33. There are no costs or benefits associated with this option as it creates no new requirements: it is the baseline against which the costs and benefits of other options are assessed.

Option 2 – Legislate to create a Champion within each regulator

Assumptions

34. This option would involve providing in primary legislation for the appointment of a Champion within each of the national non-economic regulators subject to the Regulators' Code. Their duties would be to scrutinise the transparency, operation and effectiveness of regulator appeals and complaints processes. Each Champion would produce an annual report
    - describing any concerns of business relating to the regulator's policies and processes for appeals and complaints;
    - setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.
35. Regulators would be under no obligation to implement whatever recommendations for reform might be made, but would be expected to provide a public explanation justifying any decision not to do so.
36. Champions would be expected to undertake the following activities:
    - **scrutinise** the transparency, operation and effectiveness of regulators' appeals and complaints processes;
    - **engage with business** representatives (e.g. Trade Associations) often through fora already run by regulators;
    - **obtain data** and information from regulators;
    - **publicly report** on their findings; and make recommendations for changes and improvements, also in public, describing any concerns of business relating to the regulator's policies and processes for appeals and complaints and how they are operating in practice, and setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.
37. Champions' reports should be driven by the evidence of their regulators' impact on businesses. Government can provide some of that evidence (about regulators in general, and sometimes about the Champion's own regulator). Champions would augment this with other sources of information relevant to their own regulators, notably engagement with relevant businesses and their representatives (eg Trade Associations).
38. Recommendations on matters outside the Regulator's control (for example, to amend the law) should be made to Ministers. Other recommendations should be made to the Regulator itself.

[3] "Regulatory Enforcement Business Survey" - final report submitted to BIS January 2014 by ICF GHK; not yet published at the time of preparation of this Impact Assessment

39. The Government proposes that a Champion's report should be laid before Parliament by the Secretary of State within three months of receipt. This will allow observations of the Secretary of State and the Regulator to be published at the same time.
40. The Champion would typically be a Non-Executive Director (NED) of the regulator or of comparable seniority. Several Regulators would be permitted to share a Champion: this might be appropriate for smaller regulators which regulate similar businesses.
41. Regulators will recover some of their costs from businesses, in accordance with their existing practices.
42. The Treasury Guide to Managing Public Money states that the standard approach to setting charges for public services is full cost recovery. Many regulators are moving in this direction. However, recent data from regulators (described below) shows that not all of the regulators already applying full cost recovery would expect to recover the costs of this policy: it would instead be treated in the same way as other residual taxpayer-funded costs. This suggests that a continued trend towards full cost recovery might imply a less than proportional growth in the costs of this policy to business.
43. Although this measure does not require any action of businesses, we assume that a small proportion will choose to familiarise themselves with its provisions. We would expect only those businesses that believe they will gain from familiarising themselves with the Champion's role would do so. Annex C includes material for a web page which the Department might use to inform businesses about this measure. Based on a conservative estimate of the time taken to read and absorb this material, we have assumed 15 minutes familiarisation time per business in our best estimate. We assume that the smallest businesses (fewer than 5 employees) do not familiarise and that a proportion of those with more than 5 employees will familiarise. From the 2013 Regulatory Enforcement Survey, 16% of businesses said that they had disagreed with a regulator's decision or intervention.[4] We therefore take this group as an upper bound to the percentage of businesses that are most likely to familiarise themselves with the Champion's role as they represent the group of firms who have expressed difficulties with the process previously. We then assume that no businesses do so (0%) for the lower bound estimate. This assumption is based on the premise that familiarising with Champions is entirely voluntary as the policy places no legislative requirement on business. For our best estimate we use 8% which is the midpoint value between our low and high estimates.
44. We assume that engagement with business will impose nil or negligible additional costs on businesses as the Champion is likely to use fora already run by regulators. The consultation has not provided any information to challenge the above assumptions.

Achievement of objectives

45. Option 2 is expected to deliver a good level of assurance of delivery by regulators. Giving a named individual responsibility and powers to publish their views and findings will ensure that regulators give priority to appeals issues (or face the court of public opinion) while also allowing for internal policing of a regulator's own performance. An internal appeals Champion may also result in quicker reforms as regulators may wish to forestall criticism by the Champion by acting in advance of any publication.
46. Working with the guidance to be provided by government, Champions are expected to promote greater use of second opinions. Working together, over time they should also be able to promote greater consistency of terminology.
47. By having a separate Champion for each regulator (or group of regulators) the option allows for the diversity in the circumstances of regulators and of the businesses they regulate. And because Champions will be appointed to regulators, rather than being external inspectors, it should not undermine (or be perceived to undermine) regulators' independence of Government, or their delivery of their primary duties.

[4] We take the weighted average of responses by firm size – 16% for 5-9 employees, 14% for 10-49 employees and 25% for 50-249 employees. The survey did not cover the largest firms with 250+ employees, so we assume a value of 25% for this group of firms.

Costs and benefits

48. The appointment of Champions will impose a direct cost to regulators. Some of this will be passed directly on to businesses through fees and charges. The remainder will be borne by regulators. If there is no corresponding increase in central funding, this remainder will represent an opportunity cost for the regulator as undertaking the Champions' duties would displace other activity. We have also considered the possible costs to businesses of familiarising themselves with the Champions arrangements, and of engaging with Champions.

Costs of employing Champions and staff

49. In April 2014 BRE undertook a survey of non-economic regulators and their sponsor Departments to establish their provisional estimates of the costs of implementing this policy. The survey questions are at Annex D. They cover the scope for sharing Champions; the hours to be worked by, and the salary rates of, each regulator's Champion and support staff; and whether the post(s) concerned would be additional or form part of an existing job-holder's role. From these responses, we are able to estimate the resource costs (Champion and support staff) associated with the role.

50. The survey also asked about the extent to which the resource costs would be passed on to regulated businesses through fees and charges, rather than being drawn from central funding.

51. Departments and regulators were asked to base their estimate for time commitments on the activities of Champions outlined in paragraph 36 above. One of those activities is obtaining data from regulators. Paragraph 6.5 of the Regulators' Code already sets an expectation that

> *"Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys and data relating to complaints about them and appeals against their decisions."*

52. This reduces the additional cost of the current policy as most of the data needed by the Champion would already be collected as part of the Regulators' Code.

53. Returns were received in respect of 31 of the 58 regulators although not all responded to every question. BRE officials made extensive efforts to maximise the response rate through telephone calls and emails.

54. There were 23 responses to the qualitative aspects of the questionnaire:

- 16 agreed that the Champion's role should be at NED level. The remainder suggested that it could be undertaken at a different (normally a lower) level. In these cases we have assumed that a Grade 7 equivalent would undertake the role and used the relevant time and wage estimates[5];
- 19 agreed that the role would be performed by an existing appointee; 3 reported that it would be performed by someone recruited for the role; and 1 did not respond to the question;
- 22 responses indicated that the role would be additional (with one non response). 11 did not expect to cost recover from business meaning that additional resources would be required or other activities displaced;
- A small number of regulators indicated that there might be scope to share a Champion. However, there was not enough information supplied at this stage of the policy development to build the sharing of Champions into the analysis.

55. The quantitative results are presented in table 2 below, analysed according to the size of regulator.

Table 2: average estimates from regulators	Time commitment (hours per year)		
	Large regulators (>1,000 regulatory staff)	Medium regulators (100-1000 regulatory staff)	Small regulators (fewer than 100 regulatory staff

[5] Some regulators did specify that the role could be undertaken at G7 level while others did not indicate the level of the staff who would perform the Champion's role.

Champions	50.0	35.6	14.8
Support staff	128.0	42.7	29.7
	Hourly wage rate (£ excluding uplift and expenses)		
Champions	44.5	43.5	54.0
Support staff	31.7	24.5	28.1

56. For each regulator, we use the estimates provided relating to the amount of hours spent by the Champion and their support staff[6] and the estimates of their respective hourly wage rates. The hourly wage rates are uplifted by 17.8% to account for non-labour costs and an additional 5% is included to cover the Champion's expenses[7]. Where estimates were not provided of the expected time spent and hourly wage rate, we have assigned the average values of those that did provide estimates in the relevant regulator size group.

57. Table 3 sets out our best estimate of the total annual resource costs across all 58 regulators associated with the Champions calculated in this way. It also gives low and high estimates of the costs. For the low estimate, we have taken the lowest estimates provided for each size group of the time spent and hourly wages rather than the average and applied the same cost recovery estimate described in para 58.[8] For the high estimate the maximum values of the estimates are used.

Change in estimates since consultation stage IA

58. When the consultation-stage IA was prepared there had had been no opportunity to gather evidence to drive estimates of the hours of Champions and their support staff. In the absence of such evidence the IA was deliberately based on a very conservative (high) estimate that the average Champion would need to commit 3 days a month with 3 days per month support from regulator staff, regardless of the size of regulator. As explained in the consultation IA, the figure for Champions was based on the average number of days to be worked in NED roles advertised on the Cabinet Office website. Even at the time that was expected to be a poor proxy for the actual burden on regulators, but it was the only evidenced figure available.

59. As noted above, the figures in this final stage IA were drawn from a questionnaire based on the list of Champions' activities set out in the consultation paper. It segmented regulators by size, making lower assumptions for the smaller ones on the assumption that their regimes were typically less complex and their stakeholder base smaller.

60. Between preparing the consultation-stage IA and the start of consultation, a number of informal conversations with regulators confirmed the view that the estimates in the consultation-stage IA were very high. The questionnaire to regulators therefore set out some lower assumptions for validation or correction by regulators, drawing on those informal conversations. In response, 10 regulators confirmed our figures for Champions' hours, 4 substituted higher ones and 4 lower ones. For support staff, the figures were 6, 1 and 7 respectively. There has been a similar improvement in the information on wage rates and pass-through of charges to business, although the figures for those have moved less significantly.

61. The figures derived from the questionnaire can be given much more weight than the figures in the consultation IA as evidence of the impact of the measure. On the basis of numerous discussions with regulators about the tasks which Champions will need to undertake and the way the work will need to be done, we believe that the time commitment which they have assumed in response to our questionnaire is consistent with delivery of the goals of this policy.

Recovery of costs from business

62. Regulators were asked to confirm whether the resource cost of the Champions and support staff would be met through cost recovery. The resulting recovery rate for each regulator was then

[6] The questionnaire in Annex D considered the Champion's and support staff''s different tasks in some detail, to help regulators to think through the estimates as clearly as possible. Our analysis then uses the total amount of time spent across all of the tasks.

[7] Two regulators suggested that wage costs should be uplifted by 30% to cover overheads. We have included the 30% uplift in these cases. The 5% estimate for expenses was only based on one regulator's response but does not seem unreasonable (increasing this assumption to 30% adds only 20k per annum to the total cost of employing Champions).

[8] Where some regulators indicated that no support staff would be required, we took the lowest positive value to avoid the support staff costs falling to zero in the low estimate.

applied to its own estimated costs. 24 regulators provided this information. Of these, 13 said that the costs would be fully recovered, whilst 11 said that there would be no recovery. For those regulators which did not respond to this question we used the responses from the 2012 Regulators' Questionnaire on the extent to which their regulatory enforcement activity was fully, partially or not cost recovered. We assigned vales of 100%, 50% and 0% to these responses respectively. Where no information on cost recovery was available, we assumed that 50% is recovered.

63. We do not have sufficient evidence to quantify the likely growth in cost recovery. As noted above, even regulators applying a "full cost recovery" policy will not necessarily recover the costs of this measure. Thus whilst the maximum proportion of costs recovered will be less than 100%, we cannot estimate how much less. Nor do we have evidence to show how quickly the recovery rate is moving towards that unknown maximum, as there is no standard information gathered from regulators about the proportion of costs recovered. As a sensitivity analysis to help identify the upper bound of the impact on business which may result from further movement towards full cost recovery, the "high estimate" column of table 3 assumes that the rate of cost recovery by regulators is higher in each year – 80% compared to the 50% that is derived as part of our best estimate.

Familiarisation costs

64. The proposed legislation would place legal duties on the Secretary of State, on Regulators, and on the Champions. There is to be no legislative requirement of any kind placed on business, nor any change in the incentives faced by businesses. Implementation of the policy will not require businesses to familiarise themselves with the legislation, or with its effect. It follows that any such familiarisation by business will be entirely voluntary. Familiarisation costs are therefore excluded from the EANCB calculations in response to the RPC Opinion on the consultation stage IA, although we do include an initial estimate of these voluntary costs within the NPV analysis

65. The Regulatory Enforcement Business Survey 2013 found that 16% of businesses had disagreed with a regulator's decision or intervention. This group of businesses would therefore appear to be a reasonable proxy for an upper bound estimate for the percentage of businesses with more than five employees that would be most likely to familiarise themselves with the Champion's role - an activity we assume would take 15 minutes of a manager's time, valued at £28.85 per hour from ASHE 2013 and uplifted for non wage costs.. As any familiarisation would be voluntary, we assume that no businesses would do so (0%) for the lower bound estimate, and take our best estimate as the midpoint between these (8%).

Summary of costs and benefits

66. Table 3 summarises the costs to regulators and businesses associated with this option.

Table 3: summary of costs	**Low estimate**	**Best estimate**	**High estimate**
Net annual impact on regulators	£46k	£85k	£102k
Total annual pass through costs to business	£55k	£86k	£408k
Total annual costs	£101k	£171k	£510k
Familiarisation costs	£0k	£280k	£570k

67. There are no anticipated direct benefits to business or regulators arising purely as a result of the appointment of the Champions. Any benefits will only be realised over time as a result of regulators implementing the recommendations of Champions that improve the small business experience of the appeals and complaints mechanisms. Any analysis of the expected benefits would be covered within further Impact Assessments or in business engagement assessments carried out as part of ARI.

Net impact on society

68. Taking into account the one-off voluntary familiarisation and annual costs to regulators and businesses outlined in table 3, it is estimated that the net present value (NPV) of option 2 over 10 years will be **-£1.75m**.

Option 3 – appoint an independent Small Business Appeals Champion within each non-economic regulator by agreement

Assumptions

69. This option would involve the appointment by agreement of a Champion within each of the national non-economic regulators subject to the Regulators' Code. Their duties and activities, terms of appointment and funding would be the same as in option 2. Our estimate of familiarisation costs would also be the same as in that option.

Achievement of objectives

70. Compared with option 2, option 3 will give less certainty that the appointments will be made. In some cases, regulators' establishing legislation could hamper the appointment of a new Board-level office holder of this sort. However it is impossible to estimate the take-up rate among regulators.

71. Because the Champion would not be under statutory duties to scrutinise, recommend and publish, small businesses are likely to have less confidence in the role than under option 2.

72. Option 3 is therefore likely to be less successful than option 2 in delivering the central goal of the policy. Most business responses to consultation indicated support for legislation on these grounds. The Federation of Small Businesses commented "Putting the Small Business Appeals Champions on a statutory footing, with clear powers and independent authority, [is] the best basis on which to proceed." Government will publish separately a summary of responses to the consultation.

73. In some respects option 3 would work as well as option 2:

- It will provide a vehicle to promote the use by regulators of "second opinions".
- Through the proposed network of Champions it would also provide a mechanism to promote greater standardisation in the terms used to describe appeals and complaints.
- It would allow each regulator's appeals Champion to focus their function on the nature of the regulator concerned, reflecting its own unique regime and set of regimes and sanctions, and its reputation and relationships with business.
- It would also protect regulator independence, because the assurance mechanism would be part of the regulator rather than externally imposed.

Costs and benefits

74. The structure of the costs under option 3 will be the same as that under option 2. The actual costs will only differ insofar as there is not full take-up by regulators of the policy. We have no evidence on which we could base an estimate of the take-up rate: nor is it feasible to acquire any. The costs can be expected to be proportionate to the take-up rate. So each 10% of regulators which did not take up the policy could be assumed to reduce costs by 10% relative to option 2.

75. If the regulators not taking up the policy were typical of the general population of regulators, the reduction in benefits might be expected also to be proportional to the reduction in take-up. However, it is not unreasonable to assume that any regulators which decided not to adopt the policy would tend to be those which are least responsive to business concerns. If that was the case the reduction in benefits might be expected to be disproportionately large by comparison with the reduction in take-up. It is not possible to quantify this effect.

Net impact on society

76. As costs are dependent on the take-up rate, it is not possible to give a point estimate of the net economic impact on society.

Option 4 - a single, stand-alone body to deliver assurance

Assumptions

77. That a single central body is created to deliver assurance. Its functions would be similar to those assumed for the Champions under options 2 and 3 above.

Achievement of objectives

78. This option would give Champions greater perceived independence from their regulators, and therefore increase small businesses' confidence in them. However Ministers have decided that it would be unacceptable in policy terms because it might be seen as threatening the independence

of regulators, which is also important to business. Many regulators have been deliberately created as independent entities and creating a new body with a challenge / scrutiny role in opposition to them (rather than within them, as the favoured option does) would inevitably create new frictions. It would also be difficult for a single body to engage the diverse business stakeholders of 58 regulators.

79. This option has other disadvantages and risks:

- It is highly uncertain whether a single body could build the capacity to audit 58 regulators, many of which operate multiple regulatory regimes. Each regime often has its own enforcement and appeals procedures. The range and diversity of appeals processes is therefore vast.
- Creation of a new body to perform this role would cause considerable delay to delivery of the policy.
- Such a body might not be consistent with public bodies policy. It is Government policy that a new public body can be created only if it performs a technical function which needs external expertise to deliver; needs to be, and to be seen to be, delivered in a politically impartial way; or needs to be delivered independently of Ministers to establish facts and/or figures with integrity.

80. Because the perceived impact of this option on regulators' independence was unacceptable, it was ruled out before other aspects of its impact on business were considered.

Overview of options

81. Table 4 below reviews the four options against the objectives.

Table 4: summary analysis of options	Option 1 – do nothing	Option 2 – legislate for Champions	Option 3 – voluntary appointment of Champions	Option 4 – central body
Assurance of delivery against Code	No – **critical failure**	Yes	Partial	Yes
Second opinions/ consistency of terms	No	Yes	Yes	Yes
Takes account of differences between regulators	NA	Yes	Yes	No
Regulator independence	NA	Yes	Yes	No – **critical failure**
Costs to regulators and businesses	Nil – this is the base case	£171k per year plus transition costs (£0.28m)	<£171k per year plus transition costs (<£0.28m)	Not calculated as option fails to meet critical objective.

82. Options 1 and 4 fail to deliver critical objectives, and have therefore been ruled out. Option 2 offers significant advantages over option 3 against the critical objective of assuring delivery against the Code; the two options are otherwise the same. Option 2 is therefore the preferred choice.

Wider impact on business

83. As noted above, it is expected that this measure will have positive implications for businesses, particularly small businesses.

Specific impact tests

Small and Micro Business Assessment

84. This measure is primarily for the benefit of small and micro businesses. Although the proposal to appoint Small Business Appeals Champions does not directly involve the regulation of business, some very small costs will be incurred by small and micro business as regulators recover a proportion of the costs from appointing the Champions. As part of the 2012 Regulator Questionnaire, an attempt was made to collect data on the characteristics of businesses covered by each regulator e.g. size of business. This information, however, was not forthcoming. We therefore assume that the distribution of costs among businesses (including small and micro businesses) will reflect the structure of existing fees and charges, and so should not produce a disproportionate burden on small or micro businesses.
85. We have considered the possibility of fully exempting small and micro businesses from these costs as well as a number of potential mitigating options e.g. a temporary exemption, voluntary contributions, or different cost recovery rates for small and micro businesses. However, all of the options would require revision of the fee structures of all or most of those regulators which pass on the costs of the policy. Changing fee structures, as well as levels, would be a very complex undertaking creating further costs. It would not be a proportionate approach to deal with a cost uplift which represents a small proportion of the fees and charges paid to regulators.
86. The objective of the Champions is to develop a new system of scrutiny and public reporting relating to the complaints and appeals processes of non economic regulators. This will help promote continuous change and enhance the relationship regulators have with business, and particularly with small business. As changes are implemented we anticipate these businesses will benefit from improved appeals mechanisms although we are not able to quantify these benefits at this stage.

Competition

87. We have not identified any specific impacts on competition.

Equalities and human rights

88. We have not identified any negative impact on protected groups or human rights as a result of our proposal. Annex B sets out the arrangements for the appointment of Champions which will follow existing arrangements for senior appointments based on merit.

One-In Two-Out

89. In response to the RPC Opinion in the draft consultation stage IA
    - the costs that are recovered from businesses to fund this measure are now considered within the scope of One-In, Two-Out, and are included in the EANCB calculations;
    - the voluntary familiarisation costs are now considered to be out of scope and are excluded from the EANCB calculations, in line with the guidance on permissive changes in the Better Regulation Framework Manual (paragraph 1.9.21).
90. As a result the measure represents a One-In, Two-Out “In” of £0.1 million (rounded to the nearest £100k).

Annex A

Summary of evidence

1. The Government's Focus on Enforcement programme has, since 2012, reviewed businesses' experiences of the delivery and enforcement of regulation in various sectors by national and local regulators[9]. The full range of regulatory interventions applied by all these bodies is enormous. They range from advice on how to comply with the law (where failure to follow the advice may result in a sanction of some kind), licensing decisions, imposition of monetary fines, orders to take specified action, or to stop specified action, and prosecution.
2. During the course of these reviews, some issues were raised by business that appeared to be common to many regulators, and across sectors of the economy. One of these was concerns expressed about the effectiveness of complaints and appeals systems.
3. The Government therefore undertook a separate review of complaints and appeals in order to draw out the principal concerns, pick up further evidence not gathered during the sectoral reviews, and undertook some new survey work to establish quantitative data alongside the qualitative evidence. This exercise considered opportunities for both appeals (including opportunities for informal resolution, such as seeking second opinions outside formal procedures) and complaints.

Research findings

4. ICF GHK, in collaboration with BMG Research, carried out a survey of micro, small and medium-sized businesses for the Department for Business, Innovation and Skills in 2013[10]. The purpose of the research was to provide further evidence of the impact of regulator activity on business and to aid understanding of how and where regulators can support growth in how they go about their activities. The survey provides some further quantitative evidence in relation to appeals.
5. Headline findings included the following:
    - Sixty-three per cent of businesses surveyed who have at some point disagreed with a regulator's decision have never appealed.
    - Of those businesses that did not appeal against decisions, the most common reasons given were that there was 'no point appealing' (46 per cent) or that they 'have not had enough time' (19 per cent) as their main reasons. A further 10 per cent thought the process was too expensive.
    - Proportionately, micro and small businesses are less likely to appeal than medium-sized enterprises (28 and 36 percent respectively, as against 51 per cent).
    - The findings also support evidence from Focus on Enforcement reviews that regulated business report not wanting to upset their relationship with their regulator.

> "Presently, we have no idea whatsoever about our legal standing when it comes to filing complaints, appealing to an unfair outcome or bringing suit in court. We prefer to avoid legal actions against regulators that could backfire in the future. However, if we are assured that no such thing can happen, then we might consider appealing against certain regulatory decisions if need be"
>
> [Owner: Hair and beauty salon, Central London, with 8 employees. In operation 13 years[11]].

9 http://discuss.bis.gov.uk/focusonenforcement/
10 ICF GHK Regulatory Enforcement Business Survey January 2014
11 ICF GHK Regulatory Enforcement Business Survey January 2014 – Case Study

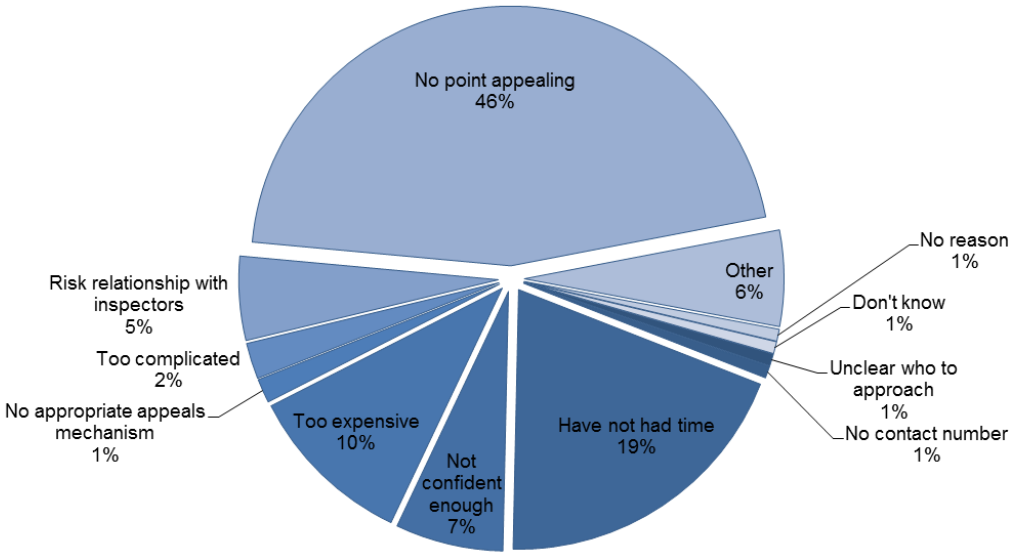

Figure 1: Survey: Why small to medium sized business did not appeal when they disagreed with a regulator's decision

[12]

Explanation or advertising of procedures

Publicly available information on regulator web sites - appeals

6. In order to supplement the evidence gathered during meetings and written submissions from businesses and regulators, in Spring 2013 the review team undertook user-testing of 57 national regulator websites. The exercise found that:
    - 6 national regulators had no that could be found about how to lodge an informal appeal/ seek a second opinion;
    - 7 national regulators did not appear to have any information on how to make a complaint;
    - 19 national regulators did not appear to have any information about their formal appeals mechanisms.
7. Recognising that this exercise provides a "snapshot" in time this evidence is an illustration that appeals and complaints procedures are less than open or transparent. Several Regulators have pointed out that when enforcement action is taken against a business, their procedures require them to explain rights of appeal, and that it is only at that point that it becomes necessary to understand the process. For example, VOSA (Vehicle Operator and Service Agency) include full details of the statutory appeals process on the forms issued when an infraction occurs. Larger regulators also pointed out that given the range and complexity of their enforcement regimes there was no single process for appealing. Additionally, if procedures are complex, the regulated business may well not understand them properly which is of course a problem in itself.
8. The Government's view, however, is that this should not mean that information is not made available in public.

Understanding of Complaints **Procedures**

9. The 2012 Business Perceptions Survey[13], which explores businesses' views on the extent of the burden of regulation, asked businesses whether they had an appropriate channel for complaint. Only a quarter of businesses that responded said they felt there was an appropriate channel through which to complain about the way regulation was enforced. Large businesses were more likely to say there was an appropriate channel for complaints. Businesses which agreed that

[12] ICF GHK Regulatory Enforcement Business Survey January 2014

[13] NAO/LBRO/BRE (2012) Business Perception Survey 2012

regulation was easy to comply with were more likely to say there was an appropriate channel for complaints.

10. Sampling of the websites of both regulators and local authorities has suggested that in most cases there is more information on how to complain about an inspector's behaviour than on how to appeal against a decision. Complaints procedures were often easy to find and clearly set out. In some cases, separate teams were in place to handle the complaint, minimising the perception that the complaint might not be given fair and due regard.

Inconsistent terminology and contradictory signposting and advice

11. The terms “appeals” and “complaints” can sometimes be used interchangeably within and across regulatory bodies leading to confusion about which route to take, particularly where businesses are subject to regulation by more than one body.
12. For example, to appeal against an Ofsted rating following an inspection of a childcare provider such as a childminder or nursery, the business uses the complaints mechanism. The same mechanism is also used for complaints about the conduct of an inspector. However a challenge to a registration decision taken by the regulator has a separate process which is termed “appeal”.
13. Even where appeals routes clearly exist, confusion about how to access them leads to costly delays which could potentially damage a business (and give advantage to competitors) in the meantime, with companies second guessing what to do rather than being able to challenge the decision.
14. Businesses in the chemicals sector subject to “COMAH” (Control of Major Accident Hazards” regulations reported several different ways of appealing an enforcement decision by the Competent Authority (jointly the Environment Agency and Health and Safety Executive), and low levels of awareness of the differences between them, or how they operate.

Lack of clarity over appeals against local enforcement decisions

15. Although the proposals in this consultation relate to the national regulators only, Focus on Enforcement has uncovered considerable evidence of concerns relating to local authority appeals and complaints. For example, during the appeals review several local authority regulatory services cited the Local Government Ombudsman (LGO) as the backstop authority to whom businesses could take appeals should they not be satisfied with the response of the relevant local authority. However, the LGO when consulted, explained that its primary purpose was to consider cases from individuals but not from businesses, although sometimes they could exercise discretion and do so. Similarly, during the Focus on Enforcement review of small businesses in food manufacturing, some environmental health officers suggested that ultimately complaints and appeals could be referred to the Food Standards Agency (FSA) for adjudication. This is not the case: the FSA has no formal locus in intervening in local authority enforcement cases.

Collection and Publication of Data

16. Government policy on transparency and use of public data is clear. As the Cabinet Office guidance[14] sets out, there are many reasons why Government data is useful: it introduces transparency – in a democracy it sheds light on what the Government and its agencies are doing. In addition, data about public services’ performance is a good way of measuring the effectiveness of the Government’s policies..
17. The Focus on Enforcement programme conducts an annual survey of the non-economic regulators. In 2012/13 the survey included a question on appeals and complaints.
18. There are examples of good practice. For example, the Marine Management Organisation (MMO) conducts an annual customer satisfaction survey, the results of which are published on its website. It also publishes quarterly data on the number of complaints received and responded to.
19. However, the evidence suggests that not all regulators are similarly transparent. One regulator responding to the request for appeals and complaints data, saying *“we are not clear why would need to collect this information.”*

[14] https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services

20. The data[15] provided suggests that something in the order of 401,358 separate enforcement actions (not including advice provision) were taken in the last year for which records were available. 41,168 appeals, requests for determinations, and complaints were addressed to the same group of regulators. Clearly not all of these will have been related to the regulatory interventions (e.g. a complaint may have been made about a competitor's activity, or by a member of the public about a business), and more than one appeal or complaint may have been made in respect of a given intervention, so caution should be exercised in correlating the two sets of figures. However, they demonstrate the overall volume both of activity undertaken by regulators, and of their need to respond to dissatisfaction from those they regulate (or wider society) about their performance.
21. The Focus on Enforcement Regulators' Questionnaire data showed that for the 53 regulators responding, in the most recent year for which data was available:
    - Three regulators said they did not collate the data so have a lack of management information about how many complaints or appeals are being lodged against them
    - One regulator could not distinguish between complaints and appeals data
    - 20 regulators stated that they had not received any appeals or complaints and 50% of those regulators had issued sanctions of one form or another in the year being reported upon
    - 3 regulators that operate through Local Authorities reported that they did not collate complaints or appeals data centrally and that the Local Authorities did not have that information either.

Opportunity for problems to be resolved informally

22. A theme that has emerged from several Focus on Enforcement reviews has been the desire on the part of businesses – usually small businesses – for a "safe space" in which to discuss, better understand, and possibly challenge, outside a formalised process, a decision. Some suggested this could take the form of a "second opinion" from a different source within the regulator. Several different reasons for not wanting to appeal formally were given. For example, some businesses reported being concerned about the asymmetry in resource and legal clout between themselves and the regulator; others were simply unsure as to whether they had a strong case and wished to discuss it.
23. This problem was also raised by Lord Heseltine in his report "No Stone Unturned[16]" which included a recommendation that, "all non-economic regulators should publish policies showing how their customers can ask, without prejudice, for an independent second opinion on a regulatory decision or requirement".
24. Focus on Enforcement reviews have found many examples of businesses who would have preferred to have been given the opportunity to resolve issues outside formal processes. For example, some childcare providers reported a lack of opportunity to discuss the outcome of an inspection before the verdict was given formally via a report or rating. There was some scope to correct factual inaccuracies in reports but relatively trivial breaches mentioned in the report which remains on the public record could have been put right in discussions between the inspection and report.
25. Businesses in the pharmaceutical sector said they had been asked to appeal to regulators via correspondence only, rather than via the telephone and this led to delays. Simple issues were handled in writing meaning there was no opportunity to talk through minor points.
26. Companies in the chemicals sector reported that what they perceived to be an inability to seek a second opinion in a non-confrontational manner was a real issue for them. In addition, businesses in that sector observed that a fear exists that if an issue is raised with the Competent Authority and takes some time to resolve, it can result in higher charges under the cost-recovery model. That in itself was cited as a reason not to appeal.

[15] Focus on Enforcement Regulators' Questionnaire 2012/13, Better Regulation Executive, BIS

[16] No Stone Unturned in Pursuit of Growth, The Rt Hon the Lord Heseltine of Thenford CH, October 2012. https://www.gov.uk/government/publications/no-stone-unturned-in-pursuit-of-growth

27. Regulators have pointed out that in some cases the expertise of the staff involved is drawn from a very small pool, and that this inevitably limits availability of people other than those who took the original decisions. For example, HSE hazardous chemicals experts take decisions and consider any subsequent appeal. This understandable need for expertise also inevitably limits the field of people who could be called upon to offer a second opinion.
28. Pubs told us of their inability to resolve minor infractions to prevent them leading to damaging licensing conditions. They gave an example of a “no smoking” sign which led to a licensing condition but could have been resolved via a conversation before the final decision was made.

Lack of alternative to the Courts

29. Some businesses have raised the issue of there being no apparent alternative to bringing an appeal against a regulator’s action via a judicial route. This is often the direct result of legislation that sets out grounds and procedure for appeal.
30. For example, The Gangmasters (Appeals) Regulations 2006 set up the arrangements for the conduct of appeals by a business against a GLA decision in respect of refusal, revocation, modification or transfer of a licence. An appeal can be made to the Gangmasters Licensing Appeals Tribunal, but there appears to be little opportunity aside from this legal route to seek a discussion with the regulator (other than on matters of fact).
31. Businesses that wanted to appeal against an intervention from a Fire and Rescue Authority for example appear to have only two possible routes: to ask for a Secretary of State determination or to take the issue to the courts which would have been costly. No second opinion or informal resolution process appeared to exist. In some cases (eg certain Care Quality Commission decisions), the Judicial Review process is the only apparent option for appealing a decision. This route can be expensive, unduly confrontational and time consuming.
32. Some appeals against regulatory interventions are prescribed by statute. Although this would appear to preclude alternative, less formal or purely administrative options, it could be argued that there could be an opportunity for formal resolution as a first stage. There appears to be a lack of suitable opportunities for parties to resolve differences of opinion without having to use more formal or statutory routes.

The operational independence of the person considering the complaint or appeal.

33. Even when a business does feel the need to lodge a formal complaint or appeal, perceptions about the independence of the person who would consider it can be a factor. A (quite possibly unfounded) worry that challenging the decision of a regulator could alter working relationships with inspectors, might result in unfavourable treatment in future, and scepticism about the impartiality of those hearing the complaint or appeal can combine to make the prospect of such a challenge unappealing.
34. Chemicals businesses covered by the COMAH regime suggested that there was a perception that if the business is raising issues within an established line management chain it is presumed unlikely that a team member’s judgement will be overturned – In essence, that they would be ‘asking the police to police themselves’. There is also a fear of damaging the relationship with the regulator and local inspectors.
35. Until the revised Regulators’ Code comes into force, subject to Parliamentary agreement, in April 2014 no cross-cutting statutory requirement exists for national regulators to ensure that appeals are heard and / or considered by individuals outside the direct management chain of the person who took the original decision.

Annex B

About the Champions

1. The Government's intention is that objective of a Small Business Appeals Champion should be to encourage the regulator to improve the impact on business of its policies and processes for appeals and complaints. In this context "business" should include both regulated businesses and others – such as their customers or suppliers – which could be affected by the regulator's decisions. Champions should have regard to the Regulators' Code and the duty on regulators to consider economic growth[17]. This objective would be set out in statute.
2. In the light of the evidence set out in Annex A, the Government intends that guidance should invite the Champions to focus on seven areas. The first four of these are identified in the Regulators' Code
    - whether there is a clear and impartial route to appeal or complain;
    - whether there is those who consider appeals or complaints have sufficient operational independence;
    - whether options for appeal or complaint are explained clearly to businesses;
    - whether the regulator publishes adequate data on appeals and complaints
3. The remaining three areas are:
    - whether there is, or should be, an opportunity for businesses to ask the regulator for a "second opinion" before considering whether to make a formal appeal or complaint.
    - where there is more than one route to appeal or complain, whether they are all necessary and whether in combination they are sufficiently simple to understand and use
    - whether terminology distinguishing appeals and complaints is comprehensible
4. Issues (vi) and (vii) were not identified in the Code because resolving them will often require changes to legislation, which are outside the power of the regulators to whom the Code is addressed.
5. The Government also wants to hear views on the overall scope of the scrutiny role – ie whether there are types of appeal or complaint that they should not be able to scrutinise.

The Champions' duties

6. The Government proposes that a Champion's key duty should be to produce an annual report
    - describing any concerns of business relating to the regulator's policies and processes for appeals and complaints;
    - setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.
7. Champions' recommendations should not consider or influence individual decisions.
8. Champions' reports should be driven by the evidence of their regulators' impact on businesses. Some of that evidence (about regulators in general, and sometimes about the Champion's own regulator) will come from Government – for example the evidence at Annex A. The Government would expect Champions to augment this with other sources of information relevant to their own regulators, notably engagement with relevant businesses and their representatives (eg Trade Associations). The Government does not believe that statutory provisions are necessary to require the Champion to seek such evidence. It does propose that regulators should be under a duty to provide evidence requested by a Champion relevant to his scope.
9. The Government recognises that recommendations on matters outside the Regulator's control (for example, to amend the law) should be made to Ministers. Other recommendations should be made to the Regulator itself. The Government therefore proposes that the Champion's report should be addressed both to the relevant Secretary of State and to the Regulator. The duty to report to the Regulator cannot be reflected in law if the Regulator is not already recognised in

[17] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263264/13-684-growth-consultation.pdf

statute: in such circumstances, the obligation to report to the regulator will be reflected in guidance.

10. The Government proposes that a Champion's report should be laid before Parliament by the Secretary of State within 21 days of receipt. This will allow observations of the Secretary of State and the Regulator to be published at the same time.

Seniority and Credentials

11. The Government believes that the Champion should be of sufficient seniority to attract the confidence of business and of the regulator's leadership team, and should where possible have a business background in the relevant sector.

12. The regulators affected by this proposal have a variety of governance arrangements. The role will typically be equivalent to that of a Non-Executive Director (NED) of the regulator. The actual status of the role will need to be considered on a case-by-case basis.

How should Champions be appointed?

13. Champions will need to be, and to be seen to be, independent of their regulators. It should therefore be for the person who appoints the regulator – typically the relevant Secretary of State - to appoint a Champion.

14. The term "regulator" encompasses a very wide range of bodies. Some are recognised in law as legal entities in their own right, some are not. The means by which senior appointments are made to them vary considerably. This variety requires an approach that allows for flexibility to reflect individual circumstances, but which conforms to the overall policy intention that appointments should be made to each body.

15. As noted above, the Government envisages that in many cases the role of Champion may be grafted on to an existing post. To make this possible the Government proposes that Champions' contracts should be based on existing legal arrangements – for instance, those for the appointment of NEDs. Terms and conditions – including remuneration, hours of work and arrangements for resignation or dismissal – would be set in that context.

16. The Commissioner for Public Appointments is the guardian of the process used by Ministers to make senior appointments based on merit. Most appointments to regulators are already governed by the Commissioners' arrangements. If a Champion's role is to be grafted on to an existing post within the regulator, the appointment would be expected automatically to be subject to the Commissioners' arrangements. The Government's presumption is that such arrangements should also apply to other appointments of Champions.

Annex C

Example:

How an announcement of the appointment of a Small Business Appeals Champion might appear on a website

Small Business Appeals Champion

We are pleased to announce the appointment of a Small Business Appeals Champion. This person, who was appointed by the Secretary of State and will be independent of the regulator, will assess whether our appeals and complaints processes are as clear and effective as they should be. They will hold us to account by checking that businesses can easily find and use our appeals and complaints routes. The Secretary of State has asked that in particular the champion should investigate whether we have:

- a clear and impartial route to appeal
- appeals considered by the person who took the original decision
- a comprehensible explanation of the right to appeal or complain
- data on appeals or complaints
- a route to get a second opinion
- complex/multiple appeals procedures
- inconsistent terminology for appeals and complaints

The champion will publish their findings annually, laying their report in Parliament and publishing it on our website. We will carefully consider the recommendations and explain what action we have decided to take as a result. The champion will not deal with individual cases and there will be no immediate change to our appeals procedure.

ANNEX D: Survey of non-economic regulators

1. The assumption in the consultation document is that the Appeals Champion should be at Non-Executive Director (NED) level or of equivalent status. Would you expect your Appeals Champion to be a Non-Executive Director (NED)?
2. If not, what status do you envisage?
3. Would you expect the Champion to be an existing appointee or would you be recruiting a person specifically to take on the role?
4. If an existing post-holder is appointed to take on the role of a Champion, would such a role be in addition to or would it be replacing existing duties?
5. What is your assessment of the likely time and costs associated with the Champion's duties as described in the consultation document.? The table below sets out our estimates for a typical large, medium and small regulator. We would welcome improvements on these estimates.
6. The consultation anticipates the sharing of Champions in certain circumstances - eg if the two regulators' processes are inter-related, or they have similar business stakeholders. Do you anticipate such a scenario? If so, in respect of which regulators?
7. If the appointment and work of Champions created additional costs, would these costs be passed through to business, or met from central funding?

Champions' task	Working assumption for large regulator (i.e. greater than 1000 regulatory staff) - time spent on activities	Working assumption for medium size regulator (i.e. 100 - 1000 regulatory staff) - time spent on activities	Working assumption for small regulator (i.e. less 100 regulatory staff) - time spent on activities	Regulator's assessment of Champion's and support staff's time required to fulfil role
Gathering evidence: - familiarisation with existing processes, procedures - asking regulator's staff to provide internal documentation, for instance guidance on handling appeals; - discussing relevant issues with business representatives – whether in fora already run by the regulator or separately.	24 hrs Champion 48 hrs support staff at Grade 7 level	0.5 time/ effort required for large regulator	0.25 time / effort required for large regulator	
Scrutinise the transparency, operation and effectiveness of regulators' appeals and complaints processes	8 hrs Champion; 40 hrs support staff at Grade 7 level	As above	As above	
Drafting of report: describing any concerns of business relating to the regulator's policies and processes for appeals and complaints and how they are operating in practice, and setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.	16 hrs Champion 24 hrs support staff at Grade 7 level	As above	As above	
Publish report, laying copy in	2 hrs Champion	As above	As above	

Champions' task	Working assumption for large regulator (i.e. greater than 1000 regulatory staff) - time spent on activities	Working assumption for medium size regulator (i.e. 100 - 1000 regulatory staff) - time spent on activities	Working assumption for small regulator (i.e. less 100 regulatory staff) - time spent on activities	Regulator's assessment of Champion's and support staff's time required to fulfil role
Parliament	16 hrs support staff at Grade 7 level			
Total hours Champion (per year) Daily rate for Champion	50 450*	25 450	12.5 450	
Total Hours Support staff (per year) Hourly wage – staff	128 £28.91†	64 £28.91	32 £28.91	
Expenses (travel and subsistence etc)				

* Our assumed daily rate for Champions is based on typical pay for recently advertised non-executive director posts. Please substitute any better estimate you may have – e.g. based on the pay for the regulator's current NEDs if you expect to appoint a NED as Champion.

† Our assumed hourly rate for staff is drawn from the ASHE 2012 survey. Please substitute any better estimate you may have – e.g. based on the regulator's salary bands.

BRE, April 2014

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