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Review of Primary Authority: qualitative fieldwork with enforcing authorities

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Executive Summary

Context

- 1 This is one of two studies into Primary Authority undertaken by acl consulting in the early months of 2015¹. It is a piece of qualitative research focused on the impact that Primary Authority has had on enforcing authorities and was completed through interviews conducted primarily on a face-to-face basis with more than one hundred staff across twenty-three local authorities
- 2 At the time of the research, there were 3,572 businesses in Primary Authority out of a total of around 5.2m registered businesses in the UK.
- 3 The purpose of this project was to “look at how [Primary Authority] is operating and the impact of the scheme on local authorities in their role as enforcing authorities.”

Findings

Enforcing authority training in/awareness of Primary Authority

- 4 There is a clear knowledge gap about Primary Authority, particularly (but by no means exclusively) among ‘enforcing authority-only’ authorities.
- 5 Training and development materials – BRDO’s in the main – appear to be being used infrequently at present; instead there is a reliance on informal mechanisms that the evidence suggests may not fully meet the actual need.
- 6 Primary Authority has developed and evolved considerably over the past five years and there is a risk that the understanding of the scheme in the field has not kept pace. For example, awareness of coordinated partnerships (introduced in October 2013) was poor and criticisms of the Primary Authority Register often relate to older versions of the site and have been addressed by subsequent upgrades.

Impact of Primary Authority on enforcing authority activity “pre-visit”²

- 7 Enforcing authorities do not always establish whether or not the premises they are scheduled to visit is in Primary Authority: this is mainly because the Register is not routinely accessed before a visit.
- 8 To date the failure to check causes fewer problems than it might, primarily because; there is relatively little on the Register (i.e. Primary Authority Advice and inspection plans) that would have an impact on how an interaction between a business and an

¹ The other study, *Review of Primary Authority: quantitative surveys*, is being published simultaneously.

² We use the term “visit” as short-hand; “interaction” would be a more appropriate term to cover all forms of contact between an enforcing authority and a business in a primary authority partnership and we use it in the body of the text in this and subsequent sections of this report. More “traditional” terminology (e.g. inspection; investigation) are too specific and often no longer appropriate for the circumstances in which enforcing authorities engage with businesses.

enforcing authority is conducted; relatively few businesses are in Primary Authority; and those that are generally readily identifiable. It is unlikely that this will continue to be the case in future, particularly as the number of coordinated partnerships increases.

Impact on enforcing authority activity “in-visit”

- 9 For a variety of reasons (not very many businesses as yet covered by a partnership; few programmed inspections; low risk; and little on the Register that would have an impact on what an enforcing authority does during the course of an inspection), Primary Authority is a scheme that at present is encountered infrequently by enforcing authorities and has little impact on what most enforcing authority staff do in the field.
- 10 Where they are encountered – and notwithstanding checks in the system that are exercised by BRDO – there is a widely held perception that Primary Authority Advice and/or inspection plans impose restrictions on the ability of an enforcing authority to investigate the local implementation of policies, systems and procedures. This is technically incorrect, though some primary authority partnerships may seek to encourage such a perception in enforcing authorities.

Impact on enforcing authority activity “post-visit”

- 11 Currently the greatest potential for Primary Authority to have an impact on enforcing authority activity is after a visit to a business has taken place. As a minimum any protocol for contacting the primary authority and/or business about any issues noted should be followed; if the enforcing authority is proposing to take formal action against the business for a breach of the regulations then there is a set procedure that must be followed.
- 12 Enforcing authority staff were generally supportive of how Primary Authority worked post-visit “in principle” but had some concerns as to how it was operating “in practice”:
 - The way in which feedback is required can be onerous, especially if feedback is being given ‘for information’ and no further action is being contemplated by the enforcing authority
 - Feedback is not always welcomed and viewed positively by primary authorities
 - Feedback received is not always acknowledged by the primary authority
 - Enforcing authorities receive no contextual information relating to the feedback they provided (e.g. “We have received a number of similar comments from other enforcing authorities” or “No other enforcing authority has raised that with us”).
 - Primary authorities do not always act promptly on the basis of information received from enforcing authorities
 - Primary authorities do not always keep the enforcing authority informed of progress.
- 13 It was reported to us that some primary authorities are ‘very good’ at dealing with enforcing authorities; many could do better. Being “poorly treated” by primary

authorities when they raised an issue was certainly a cause of concern to some enforcing authorities.

The Primary Authority Register

- 14 There are three main issues with enforcing authorities' use of the Register:
- We believe that they are accessing the Public Register, which has no functionality and limited content, rather than the password protected part of the Register, which holds more information on each partnership – including Primary Authority Advice and inspection plans, if they have been published
 - Their use of – and hence their issues with – the Register are more historic than current (many of the matters raised have actually been addressed)
 - They are accessing the Register too infrequently; as a result familiarity with the structure and functionality of the site is not developed and maintained.
- 15 And, as already noted, when it is accessed there is often insufficient content in the password protected part of the Register.
- 16 We believe that infrequent use of the Register is at the root of many of the issues that enforcing authorities have with it – and with Primary Authority. Any actions that can be taken to encourage users to log-in, boost content and/or otherwise give enforcing authority staff a reason for visiting the password protected part of Register on a regular basis would be a positive development.

Costs/financial benefits of Primary Authority from the enforcing authorities' perspective

- 17 Overall Primary Authority currently imposes some additional costs and generates some savings for enforcing authorities. Where they exist, inspection plans and Primary Authority Advice may save time; however there are as yet few inspection plans. Moreover, though there is a growing body of Primary Authority Advice not all of it is on the Register and enforcing authorities may therefore be unaware of its full extent.
- 18 Where inspection plans do exist the need to review and understand the documentation, liaise with the primary authority and/or to provide feedback in a prescribed way, sometimes using a prescribed format, adds an additional task (or tasks). On balance we consider that, as it is currently operating, Primary Authority probably imposes more costs than it saves on enforcing authorities, but only to a minor extent.
- 19 However, as enforcing authorities become more aware of Primary Authority Advice on the one hand, and the number of inspection plans increase on the other, this position may change.
- 20 More fundamentally the nature of an enforcing authority's interaction with businesses has changed significantly – interactions are incident or compliance-related with (apart from Food Safety & Hygiene) few scheduled inspections taking place; coordinated partnerships have extended eligibility for the scheme considerably; and whenever possible enforcing authorities are working to achieve compliance through collaboration rather than enforcement. We believe that this changes the cost-saving

dynamic considerably from what was originally envisaged; it is probably time to revisit the assumptions behind the cost-benefit analysis for the scheme.

Overall assessment

- 21 Our interviewees were asked whether, on balance, they considered that the benefits of Primary Authority outweighed the drawbacks; of our twenty-three enforcing authorities:
- 9 were clear that they did – all of these authorities were also primary authorities
 - 4 considered that there was the potential for benefits to outweigh the drawbacks; whether or not this was achieved depended on the individual primary authority associated with a particular partnership
 - 3 were sceptical as to whether benefits could outweigh the drawbacks
 - 7 were clear that the drawbacks outweighed the benefits.
- 22 Our fieldwork thus suggests that enforcing authorities that are also primary authorities have a more positive view of Primary Authority (and doubtless a better understanding of it; more engagement with the Register etc. – not to mention an appreciation of the income stream it brings) than those that are “just” enforcing authorities. A tempting strategy, therefore, is to encourage more authorities to become primary authorities so that in sum (as “primary authority” plus “enforcing authority”) they will perceive the value of the scheme. However, currently our impression is that a (broadly) tripartite division is emerging between local authorities (the labels are entirely our own):
- “Superauthorities” who will act as primary authority partners for businesses from across the UK³, most of whom are actively seeking Primary Authority business
 - “Local primary authorities” who more or less actively seek partnerships with businesses headquartered in their area but have little or no ambition to work further afield
 - “Enforcing-only authorities” who currently have no ambition to become a primary authority.
- 23 Clearly it is possible for BRDO to challenge the perceptions of this third group; indeed, we would suggest they do so. However our discussions with officers in enforcing-only authorities suggest to us that some of these authorities at least are unlikely to seek to become primary authorities in the foreseeable future.
- 24 More generally it is perfectly possible to envisage how Primary Authority could be adapted to give the enforcing authority a better experience of the scheme – i.e. by addressing the drawbacks and accentuating the benefits – not least because it already operates well in some cases; the report which follows highlights some of the ways in which this could be achieved. However, the enforcing authority experience does not – at least to us – appear to have been central in the design of Primary Authority and we are not clear on the extent to which it “matters” now, particularly if

³ We recognise the regulatory differences between the four countries of the UK, but the argument here still stands.

Primary Authority is meeting the needs of businesses and primary authorities are broadly content (which all the evidence suggests is indeed the case).

1 Our study

A brief outline of Primary Authority

- 101 Primary Authority was introduced through Part 2 of the *Regulatory Enforcement and Sanctions Act 2008* [RESA] as a means of securing, by statute, greater coordination across and consistency of enforcement by local authorities of certain regulated areas of activity than had proved possible under voluntary arrangements. Part 2 of RESA came into force on 6th April 2009 and was an element of the then Government's commitment to implementing policies to address the findings of the Hampton Review.⁴ The Review concluded that significant variations and inconsistencies in the application of what were supposed to be national regulatory standards resulted in conflicting advice, uncertainty and unnecessary administrative burdens for businesses and wasted effort for both businesses and the enforcing authorities concerned.
- 102 Prior to the introduction of Primary Authority ostensibly similar arrangements operated on a voluntary basis – the “Home Authority” scheme and the “Lead Authority Partnership Scheme”, which ran until April 2011, and the Retail and Fire Key Authority Partnerships [RAFKAP] are the prime examples. Many early adopters of Primary Authority were either switchers from or had previous experience of these voluntary schemes.
- 103 Key differences between Primary Authority and the voluntary arrangements, which at least in part explain why the latter were not seen by Hampton as the solution in most cases, are that Primary Authority:
- Is set up on a statutory basis – amongst other things, this means that the existence of an agreement cannot be ignored by other local authorities not directly party to it and that there is a limit to the liability of the primary authority (the lead organisation on the local authority side) should its advice prove deficient
 - Allows for cost recovery by the primary authority
 - Enables an inspection plan and/or Primary Authority Advice to be developed that may have an impact on the regulatory activities of other (“enforcing”) authorities⁵
 - Has a formal referral and appeals process to resolve disputes between primary and enforcing authorities
 - Extends the previous Home Authority arrangements (which focused on trading standards and food safety) to cover other areas. Although devolution complicates the picture to some extent, in broad terms a total of (at the time of the research) twenty areas of local regulation are in scope for Primary Authority.
- 104 Further background information on Primary Authority is included as Annex 1 to this report.

⁴ *Reducing administrative burdens: effective inspection and enforcement*. Philip Hampton/HM Treasury, March 2005.

⁵ An “enforcing authority” is any local authority dealing with a business on a regulatory matter (e.g. carrying out an inspection or an investigation following a consumer complaint) in an area of regulation that is covered by that business's primary authority partnership.

- 105 In June 2011 there was a BIS consultation on *The Future of the Local Better Regulation Office [LBRO] and extension of the Primary Authority scheme*. Following the consultation the Better Regulation Delivery Office [BRDO] was created on 1 April 2012 as an independent unit within BIS and it took over responsibility for Primary Authority from LBRO.
- 106 Primary Authority continues to evolve under BRDO with refinements to the process, additional regulatory areas being brought in scope for partnerships and extensions to the type of partnerships that are available (see Annex 1 for the regulatory areas in scope at the time of the research for this project).

The basis of our study

- 107 At the time Primary Authority was launched a commitment was made to review the scheme after five years. In 2014, BRDO commissioned that review to evaluate the first five years of operation and to look at how the scheme should develop in the future. It wished to look at all parties affected by the scheme, which includes:
- Businesses in primary authority partnerships with one or more local authorities
 - Businesses eligible to join Primary Authority (broadly, those businesses which operate in more than one local authority area and are covered by areas of local regulation currently in scope for the scheme), but who have not (yet) done so
 - Local authorities who are in primary authority partnerships with businesses
 - Local authorities more generally, who will encounter Primary Authority when they interact with a business that has a primary authority partnership in place when carrying out their regulatory functions. This effectively includes all local authorities.
- 108 Accordingly, as part of the review process, in November 2014 BRDO commissioned acl consulting to carry out two research projects:
- A piece of primarily qualitative research focused on the impact that Primary Authority has had on enforcing authorities (completed through face-to-face interviews) – the project reported on here
 - A quantitative research project focused on the impact that Primary Authority has had on businesses and primary authorities (completed through a total of three telephone surveys) – reported on separately.⁶
- 109 It should be noted that at the time of the research there were relatively few co-ordinated partnerships in existence: these do not therefore particularly feature in our study, certainly not to the extent they would in any more recent review.

This research

- 110 This is the latest in a number of research projects that acl consulting have carried out for BRDO into Primary Authority.

⁶ *Review of Primary Authority: quantitative surveys of businesses and primary authorities.*

111 The purpose of this project was to “look at how [Primary Authority] is operating and the impact of the scheme on local authorities in their role as enforcing authorities.” The main ways in which enforcing authorities will interact with Primary Authority are summarised in the following table.

Enforcing authority activity	Possible enforcing authority actions		
Planned/programmed inspection	Check Register – if partnership in place ...	Check for: <ul style="list-style-type: none"> • Inspection plan? • Advice? • Other information? Make contact with primary authority	Shape inspection activity accordingly Feedback to primary authority post-inspection Notify primary authority of any enforcement action
Response to a complaint	Investigate complaint or incident ⁷	No enforcement action	Feedback to primary authority
Response to an incident of non-compliance		Enforcement action	Primary authority must be notified

112 More specifically the aims of this project were to:

- Identify impacts on and costs to local authorities in their role as enforcing authorities
- Identify areas for improvement within the scheme
- Understand barriers to engagement within the scheme, including cultural and technical
- Assess understanding of the scheme among local authorities who are not in a primary authority relationship.

113 Our study is based on interviews held with staff at twenty-three enforcing authorities; these were chosen partly on the basis of the extent of authorities’ engagement with Primary Authority, as reflected in their interactions with the Primary Authority Register [the Register].⁸ The enforcing authorities visited are summarised in the following table.

⁷ The enforcing authority may also check the Register at this point.

⁸ The Primary Authority Register is the website for the scheme; amongst other things, it is the system through which enforcing authorities report matters noted during their interactions with businesses in primary authority partnerships.

		Enforcing authority also a primary authority?	
		Yes	No
Any matters reported by the enforcing authority via the Primary Authority Register?	Yes	9 authorities	7 authorities
	No	4 authorities	3 authorities

- 114 We also took trouble to ensure that our sample contained a range of authority “types” – county; district; metropolitan district; borough etc. – and therefore a range of urban and rural areas. Our sample was as follows:

	<i>In sample</i>	<i>In UK</i>
County Council	2	27
London Borough	1	32
Metropolitan Borough	4	36
Unitary	6	55 ⁹
Non Metropolitan District	10	201
	23	351

- 115 In total we spoke to 102 staff at enforcing authorities; the vast majority of these discussions were either 1:1 or in small groups. The interviews were semi-structured using a list of key issues to inform the discussions (a copy of this list is included as Annex 2 to this report). Those we spoke to were asked to describe their role/the main focus of their work; the results are summarised in the following table.

Role	No. seen	% of our sample
Environmental Health Officers [EHOs]	47	46%
Trading Standards Officers [TSOs]	27	27%
Food Safety Inspectors	10	10%
Senior managers – EH/TS team managers or above	10	10%
Other	7	7%

- 116 There is some brigading of functions and responsibilities here – for example TSOs includes a number of regulated areas (age-restricted sales; fair trading; metrology).

⁹ Plus the City of London Corporation and the Council of the Isles of Scilly, for a total of 353 English LAs.

The distribution of roles is broadly proportionate to the numbers of staff engaged nationally in each function (we do not have access to precise national figures) and reflects the fact that these regulated areas (EH, TS and food safety) are by some way the most popular areas covered by Primary Authority agreements.

- 117 The number of interviewees in each council varied between two and fourteen¹⁰, depending on staff availability on the day chosen for our visit. The modal value was 4.
- 118 In advance of preparing a presentation of our findings we also held a review meeting with BRDO staff responsible for managing the project and for managing the Primary Authority Register.

The plan of this document

- 119 This report is structured principally around the themes used for the fieldwork interviews – i.e.
- Training in/awareness of Primary Authority (Section 2)
 - The impact Primary Authority has on enforcing authority activity and issues arising:
 - Pre-visit (Section 3)
 - “In-visit” (Section 4)
 - “Post-visit” (Section 5)
 - Other issues raised during our work that do not readily fit into any of the headings above (Section 6)
 - Consideration of the costs and savings (financial benefits) of Primary Authority from the enforcing authorities’ perspective (Section 7)
 - An overall assessment of the benefits and drawbacks of Primary Authority from the enforcing authorities’ perspective (Section 8).

Acknowledgements

- 120 We would like to acknowledge the support and assistance we have had from our project managers in BRDO and BIS (Lynsey Brooks and Lynsey Pooler) and from all of their colleagues who have contributed to our thinking on this project.
- 121 We are particularly grateful for all of the contributions made by enforcing authority staff. We gave all interviewees a guarantee of confidentiality; therefore we will not refer to local authorities by name in this report.¹¹ For the same reason, we will not include the usual list of participants.

¹⁰ On this occasion we were invited to a full staff meeting.

¹¹ BRDO staff know the “long list” of those approached because we asked them to send the initial contact email about the study; they do not know which of the long-list agreed to participate.

2 Enforcing authority training in/awareness of Primary Authority

Introduction

201 We asked:

- How someone working for the enforcing authority learns about Primary Authority and what they should do when operating as an enforcing authority?
- Whether the authority had changed internal policies, procedures, plans instructions, documentation, systems, staff training, work allocations etc. to reflect/accommodate Primary Authority?
- Whether the staff interviewed understand what is required of them by Primary Authority?

External training and development

202 By “external training” we are invariably referring to training that has been developed and delivered by BRDO. These training modules on Primary Authority had been received (and valued) by many of those we interviewed.

203 Four issues emerged from our discussions:

- How recently the training had been accessed – the overall impression from our interviews is that, for many, BRDO training had been received some time ago, in the early days of Primary Authority
- For those who had received training from BRDO there was a sense of “been there; had that [and there is nothing more to be gained from further BRDO-delivered training].” We doubt that this is the case
- BRDO’s training materials are, perhaps understandably, felt to focus on the primary authority rather than the enforcing authority
- [Probably as a result] BRDO training was more likely to have been accessed by those who were (or who were planning to become) primary authorities than those who were (and were likely to continue to be) enforcing authority-only authorities.

204 Use of other BRDO channels – principally the website and use of the Primary Authority Handbook – for training purposes is limited (non-existent in the vast majority of cases).

205 Very occasionally reference was made to Primary Authority being covered in TSO and EHO professional training modules; one reference was made to the scheme being covered in the Regulatory Development Needs Assessment tool.

206 Enforcing authorities also referred to the development opportunities afforded by regional and national regulatory networks and other fora including groupings sponsored by the Chartered Trading Standards Institute and the Chartered Institute of Environmental Health – Primary Authority often featured as an agenda item at such events. These bodies’ publications also included references to Primary Authority where appropriate.

Internal training, development, procedures and documentation

- 207 Most of the enforcing authorities we saw – including those who are also primary authorities – have no internal training focussed on Primary Authority (we only found one that did).

“We run a regular in-house training programme. We also incorporate references to Primary Authority in our staff induction pack and it features in the professional exams taken by our trainee TSOs. We continue to brief our staff on how Primary Authority operates and to ensure that they are up to date with developments.”¹²

- 208 Primary Authority was also generally not referred to by authorities in any relevant internal documentation (policies, procedures etc.); those that did so were very much the exception.

“We have written Primary Authority into our protocols and service plan. These stress the importance of accessing whatever information is on the Register in a timely fashion and ensuring that we act upon it in all contacts with the business.”

“We have a procedures document that sets out how individual officers need to act with respect to Primary Authority when we act as an enforcing authority.”

- 209 Instead there was a reliance on more informal methods – a buddy system (new staff do not go out on their own for a period of time after recruitment); mentoring; a process of osmosis; and a reliance on more experienced staff having already encountered Primary Authority with a previous employer.

“Our staff have had no training on Primary Authority from an enforcing authority perspective whilst they have been here. For a variety of reasons [not high on the agenda; low visibility; the improbability of going into a business with a primary authority partnership; and the fact that most of our work is now complaints-driven] Primary Authority has little impact on what our officers do.”

- 210 More positively, authorities that are also primary authorities discuss current developments in Primary Authority at team meetings.

“We have regular team meetings to exchange information: this includes both membership of Primary Authority and experiences in dealing with specific partnerships and primary authorities.”

- 211 In some cases these formed a kind of peer-led “training” sessions at which, for example, information gleaned from regional or national events was disseminated internally.

- 212 Elsewhere a combination of methods – internal and external; formal and informal – is used to ensure that staff are aware of and up to date with Primary Authority.

¹² Throughout the report we include extracts from our interview notes. The text in the boxes is not necessarily a verbatim direct quote from our interviews (it is not our practice to record digitally our fieldwork) but is intended as a minimum closely to reflect comments made during our discussions. We would expect our interviewees to recognise the sentiment even if they do not recall the exact words used here.

“We have nothing formally written down regarding Primary Authority from either a primary authority or an enforcing authority perspective. However:

- *Any officer new to the council would be prepared for all aspects of their work by a system of buddying up and work shadowing*
- *We have had training input from BRDO*
- *Most officers will also attend regional/national events/meetings etc. relevant to their area of expertise where Primary Authority is covered*
- *All staff do BRDO’s two day introduction to Primary Authority*
- *Primary Authority also feature at the 6-weekly team meeting*

We are therefore reasonably confident that all our staff will be aware of and fully up to speed with Primary Authority.”

Demand for Primary Authority-related training and development

213 We detected no great demand among enforcing authorities for more formal external training and development in relation to Primary Authority – in fact quite the reverse:

- The opportunity cost of attending training was considered to be prohibitive

“Accessing training is expensive, particularly in terms of travel and subsistence but most of all the opportunity cost of losing a day’s work for each member of the team that attends.”

- Reductions in staffing levels were claimed to be making it difficult to release staff to attend any training/development activities, particularly because...
- ... for reasons that we go into in more detail in subsequent sections, most staff will encounter Primary Authority extremely infrequently and ...
- ... given the change in most enforcing authorities’ *modus operandi*¹³ it is rare for Primary Authority to have any impact on the work of an enforcing authority unless matters are detected during an inspection or an investigation that need to be taken up with the primary authority.

214 For these reasons it was generally felt that the return on any investment made in Primary Authority-related training and development activities by enforcing authorities would be low.

215 Of course, none of this means that there is no *need* for training. We were particularly concerned that the existence of coordinated partnerships and their potential impact (in essence many more small traders now potentially being in a primary authority partnership) was news to many of those we spoke to. We cover this in more detail in Section 3. There are also issues around the use of the Register (which we cover in detail in Section 6¹⁴) where training would be beneficial.

¹³ In brief, apart from food safety/hygiene, inspections are rarely scheduled: this reduces the number of regulatory interactions with businesses where Primary Authority applies. We explore this in more detail in subsequent sections.

¹⁴ In brief the only way in which we have been able to reconcile elements of the negative feedback about the Register with our understanding of how the website works is that, for a variety of reasons, enforcing authority staff are using the Public Register – i.e. they generally do not log-in and access the full functionality of the password protected parts of the [Primary Authority] Register.

- 216 Nor does it necessarily mean that more distributed forms of training in particular would be unwelcome – for example training materials that could be accessed on-line and used in-house; perhaps some case studies of good practice, coupled with training/development suggestions in the BRDO newsletter.
- 217 It may also be possible to provide materials that could be used to focus discussion in the regional groupings referred to above.

Conclusions and recommendations

- 218 There is a clear knowledge gap about Primary Authority, particularly (but by no means exclusively) among enforcing authority-only authorities.
- 219 Training and development materials – BRDO's in the main – appear to be being used infrequently at present; instead there is a reliance on informal mechanisms that the evidence suggests may not fully meet the actual need.
- 220 Primary Authority has developed and evolved considerably over the past five years and there is a risk that the understanding of the scheme in the field has not kept pace. For example, we have concerns that:
- There was little awareness of coordinated partnerships (introduced in October 2013) and the impact that this will have on enforcing authorities
 - The Primary Authority Register was widely criticised. Following discussions with BRDO staff to clarify how the Register works, our view is that these criticisms are historic and, as a result, often unfair: as we mention again in paragraph 603, the Register has evolved over time and newer versions of the software have addressed many of the issues identified in earlier versions (as is indeed typical in software development).
- 221 These – plus a more general update on developments in Primary Authority – would all be areas that could benefit from new training materials. If these could be developed and delivered remotely (i.e. on-line) then they would be more likely to be taken up by enforcing authorities.

3 Impact on enforcing authority activity “pre-visit”¹⁵

Introduction

301 We asked:

- How do you find out which businesses have a primary authority partnership in place?
- When you find out that a business has a primary authority partnership in place, what (if any) steps do you routinely take?
- How has Primary Authority changed the way you do things as an enforcing authority?

Establishing whether a primary authority partnership is in place

302 Potentially Primary Authority will first impinge upon an enforcing authority before its staff visit the premises of a business with a primary authority partnership. The first task for enforcing authority staff is therefore to determine whether or not a primary authority partnership is in place and – if it is – which regulatory areas it covers.

303 All those enforcing authorities we spoke to claimed that the Register was checked (though none could guarantee that this was by all staff on every occasion when they should have checked it). There were three main variants to the checking process supplemented by a few other, less common, approaches:

i Check the Register before every interaction

304 We doubt whether this is actually being done in practice but, if it is, this should almost guarantee that any business with a primary authority partnership is identified before an enforcing authority interaction with that business.

305 Of those enforcing authorities we visited ten have adopted this approach.

“Our policy is that all officers check on the Register for whether a primary authority partnership exists before any interaction with a business and that any inspection plan or Primary Authority Advice is downloaded in advance. Of course this may not happen in all instances.”

“The flag on our database that should highlight most businesses with a primary authority partnership is no longer up to date. Staff would need to look businesses up on the Register; they certainly do not always do this.”

306 One authority delegated the task of checking the register to one individual officer who “understands the technology”, and who looked up everyone’s proposed visits at the start of each working day. When this individual was on holiday or otherwise absent the authority “managed without”.

¹⁵ We use the term “visit” as short-hand; “interaction” would be a more appropriate term to cover all forms of contact between an enforcing authority and a business in a primary authority partnership and we use it in the body of the text in this and subsequent sections of this report. More “traditional” terminology (e.g. inspection; investigation) are too specific and often no longer appropriate for the circumstances in which enforcing authorities engage with businesses.

307 Even if the Register is checked religiously this will not necessarily pick up that the individual premises about to be inspected is covered by Primary Authority. A particular issue was raised in relation to premises whose ownership can be transferred and/or name changed on a regular basis (e.g. pubs and hotel chains) – a set of premises that were not in Primary Authority for the last visit might be ‘now’ because it had been sold to another company.

“There is no ready way of finding out whether an individual set of premises is covered by Primary Authority. One of our FSH officers went to a pub – it had changed hands since his last visit and was now part of a group with a primary authority partnership [fortunately the food safety manual had a note to this effect]. The officer returned to the office, checked the Register and rescheduled the visit.”

ii Check the Register if it “looks” like there might be a primary authority partnership

308 In practice this tends to mean: “Is the business of a sufficient size such that I might expect there to be a partnership in place”.

“Our database is not sufficiently reliable as a pointer to where there is a primary authority partnership so our staff apply common sense judgements for where one might exist and check the BRDO site accordingly.”

“We struggle to know who is in Primary Authority and who isn’t. Usually it’s a gut feeling and then we try to check on the Register.”

309 This has never been a fool-proof means of identifying which businesses are in Primary Authority (there are plenty of businesses that would not register as such with most enforcing authorities); with the introduction of coordinated partnerships¹⁶ it is increasingly unreliable and unsustainable.

310 Of those enforcing authorities we visited six have adopted this approach.

iii Check on the Register if our internal database flags the business as being in a primary authority partnership

311 All local authorities we visited maintain some form of database of businesses that they regulate, on which they can record visits and other regulatory activity. Some of these databases have been developed in-house and some have been purchased/leased/etc from one of a small number of specialist suppliers. LAs in this group attempted to record on their databases whether individual businesses were in a primary authority partnership.

312 It is of course an individual LA’s responsibility to keep its database up to date, in this as in other respects. However the major local authority database suppliers used to receive regular updates from BRDO on new primary authority partnerships and updated their clients’ databases accordingly; these updates are no longer provided (for technical reasons which we do not fully understand). It is possible for individual authorities to perform their own update by checking the Register for details of new

¹⁶ A co-ordinated partnership is a statutory agreement between a primary authority and a group of businesses co-ordinated by a third party intermediary such as a franchisor or trade association.

partnerships – one can search the partnership database by “date of partnership creation”, and thus focus on all partnerships created since the last time one looked. Alternatively it should be possible to use the list of new partnerships provided through the BRDO Newsletter – though a significant proportion of our interviewees believed (wrongly) that the Newsletter was no longer published.¹⁷ However, neither is as fool-proof as the previous arrangements. “Is the flag up to date?” is now a legitimate question.

- 313 We identified seven of “our” enforcing authorities that relied on an internal flag to highlight businesses with a primary authority partnership.

“Since our commercial database provider and BRDO are no longer exchanging information there is no longer a reliable flag on the database; officers are often simply using their best guess as to whether a partnership is in place and inevitably this means that some will be missed.”

“Our administrator scans the Primary Authority website and sets a flag on our database whenever they identify a new partnership. Our standard practice is for officers to check our database before contacting any business. However, it was far easier when BRDO sent updates of new businesses joining Primary Authority.”¹⁸

iv Other approaches

- 314 One authority had a prompt on its local inspection documentation – effectively it asked staff to confirm that they had checked to see if there was a primary authority partnership in place. Of course, by definition this prompt would not be there for any non-inspection based interactions with the business.

- 315 Reference was also made to oral checks with the local manager (though, as was pointed out to us, they will not necessarily know) and to on-site notices to the effect that “We are in Primary Authority” being publicly displayed, in the front of relevant manuals etc.

“As a backstop we will be encouraging all premises covered by one of our primary authority partnerships to display a notice to this effect – this would be a prompt for employees as well as enforcing authorities.”

- 316 Of course by the time an enforcing authority officer/inspector saw these it may be too late (i.e. they would be on the premises and have already planned what they were going to do without reference to any Primary Authority Advice, information and/or an inspection plan that might be on the Register). This can be mitigated to some extent by having the Primary Authority Register easily accessible on hand-held devices “in the field”. Arguably it currently is accessible to any tablet or smartphone with a web browser and 3G/4G access, though there are some screen size/browser compatibility issues. However local authorities would need to see wider value in supplying officers

¹⁷ In fact PA News is sent via the Primary Authority Register to a mailing list of around 5,000 recipients who are registered users of the Register. The list is generated automatically and a supplementary mailing list is maintained of email addresses of other people (not necessarily Register users) who have requested it. The bulletin now carries details of new direct partnerships and inspection plans.

¹⁸ We have already noted that a number of LAs believe the BRDO Newsletter no longer exists.

with tablet computers if this is to be effective (i.e. a value beyond their occasional use for Primary Authority purposes).¹⁹

- 317 In summary, we are clear that enforcing authority staff are not routinely establishing whether or not a business has a primary authority partnership as a matter of course before each interaction with a business. Currently the only guaranteed way for them to do so is to check the Register (though this is not absolutely reliable at the individual set of premises level – see the discussion re. pubs and hotel chains above); for a variety of reasons (see Section 6) many enforcing authority staff do not do this.

How does Primary Authority impact on enforcing authorities pre-visit?

- 318 The fact that enforcing authority staff are not routinely establishing pre-visit whether or not a business has a primary authority partnership causes fewer problems than it might because:
- At present few businesses are currently in Primary Authority
 - There are even fewer businesses that are in Primary Authority *and* have published information on the Register that would have an impact on what an enforcing authority officer/inspector does during an investigation
 - With the notable exception of Food Safety & Hygiene, the vast majority of regulatory interactions between enforcing authorities and businesses are in response to a complaint or to an incident. In these circumstances the first priority is to visit and to see what is going on and the contents of an inspection plan can be ignored by the enforcing authority, whose focus must be on investigating the specific complaint or incident in hand.

“We have not had to pay much heed to Primary Authority pre-inspection. Most interactions are in response to an incident or a complaint so anything in an inspection plan is a secondary consideration at best – the priority is to investigate the incident or complaint.”

- 319 Primary Authority Advice may still be relevant and helpful to enforcing authorities in deciding how to handle a complaint or incident, though we found almost no evidence of it being referred to in advance of a reactive visit by those officers interviewed for this project.
- 320 Food Safety & Hygiene inspectors do still carry out scheduled inspections of local business premises on a regular basis. We were consistently told that, in the absence of any relevant material on the Register, Primary Authority has little or no effect on these inspections. Enforcing authority colleagues argued that “engagement in Primary Authority” is not a recognised factor that can be included in any formal assessment of risk (though technically they may be incorrect in this respect).

¹⁹ We note, in this context, the work that BRDO is doing to design a geographical information system (GIS) that will enable location-detecting smartphones and tables to show all Primary Authority member sites in their immediate vicinity. A pilot of this is at an advanced stage of development.

321 At the margins, perceptions of risk may affect:

- The scheduling of inspections – those businesses with a primary authority partnership may be scheduled after those without
- Who conducts the inspection – some enforcing authorities tend to give inspections of businesses in Primary Authority to sub-contractors on the basis that these will tend to be low risk, easier and “cleaner” inspections.²⁰

322 Thus in practice, and for a variety of reasons (not all of them good), in the majority of cases Primary Authority will have little impact on what an enforcing authority does prior to engaging with a business even if that business has a primary authority partnership in place.

“Primary Authority does not achieve all it could do for enforcing authorities because there is so little material on the Register. If there is simply a record of the partnership and no information, no Primary Authority Advice and no inspection plan then, in practice, Primary Authority will have no effect on what an enforcing authority does unless an issue is noted during an intervention – and this is a rare event.”

“We rely on officers to check the Register before they go out – though this would matter less for TSOs (no routine inspections) and for many businesses in general as there is no inspection plan or Primary Authority Advice on the Register.”

“Too often there is nothing on the Register. When an enforcing authority has taken the trouble to log on this can be infuriating. It has a negative impact on how Primary Authority is perceived. For an enforcing authority to see any benefit there needs to be information on the Register that has some impact on what they do with the employer.”

323 Where there is relevant material on the Register and it is found in advance of an interaction then it is generally – though not always – reviewed before the business is contacted.

“In general we would not review Primary Authority Advice until we got back to the office after an interaction; we find it is often more effective to do the work and then see if anything you want to suggest impacts on an area covered by it.”

“We would download any requirements from the Register – particularly inspection plans – and read these carefully before visiting the business: this is often not a trivial task.”

324 As a matter of courtesy, some enforcing authorities contact the primary authority in advance of any interaction with their partner business, though most in our sample did not. For example, one authority would make contact if there was an inspection plan in place, in order (we understand) to discuss what exactly the primary authority had in mind: this is only practicable because there are so few inspection plans.

Conclusions and recommendations

325 Enforcing authorities do not always establish whether or not the premises they are scheduled to visit is in Primary Authority: this is mainly because the Register is not

²⁰ Though this is itself problematic because subcontractors do not always qualify for access to the Register or the authority’s internal database since they are not employees of the local authority concerned.

routinely accessed before a visit. BRDO could do more to re-emphasise the importance of checking the Register before every visit, particularly in the context of coordinated partnerships.

- 326 It might be argued that currently this failure to check the Register has little impact on activity. Certainly our interviewees believed the decision to visit a business should be purely risk-based, and should not take into account whether or not a business is in Primary Authority *per se*.
- 327 However, one reason that any current failure to check the Register has little impact is because for most businesses there is little information on the Register (i.e. Primary Authority Advice and inspection plans) that would have an impact on how an interaction is conducted. Given that this should change over time as the Register becomes a more effective tool, it follows that in future the failure to check will have more serious consequences.

4 Impact on enforcing authority activity “in-visit”

Introduction

401 We asked:

- How do you modify your approach or working practice (if at all) for a business in a primary authority partnership?
- How has Primary Authority changed the way you do things as an enforcing authority?

Impact on “in visit” activity

402 For a variety of reasons, rehearsed in the preceding section, Primary Authority has little or no impact on the work undertaken by enforcing authorities when they visit a business:

i Coverage

403 There are at present few businesses covered by a partnership.²¹ Even allowing for the fact that the proportion of business *premises* covered by Primary Authority will be greater since many businesses with multiple outlets are in the scheme, the vast majority of work undertaken by enforcing authorities at the time of our fieldwork was reportedly with non-Primary Authority businesses²² and any impact that the scheme has on enforcing authority activity will therefore inevitably be marginal.

ii Programmed inspections

404 As has already been noted in Section 3, for the majority of regulated areas there are few programmed inspections; these are now only regularly undertaken in relation to Food Safety & Hygiene. This further reduces the likelihood that an enforcing authority will come into contact with a business in Primary Authority.

“Trading Standards has been reactive [i.e. no programmed inspections; complaint and incident-related investigations only] for some time. As a result Primary Authority Advice and inspection plans have little or no impact on our trading standards-related work.”

iii Targeted investigations

405 Outwith any normal cycle of inspection activity, enforcing authorities do still undertake specific targeted investigations. However, where they take place these tend to focus on purely local operators so it is less likely that they will include businesses with a

²¹ According to the *2014 Business Population Estimates* published by BIS there are 5.2m businesses in the UK (not all of these will be subject to local authority regulation); at the time of writing, according to the Primary Authority Register there are 3,572 businesses in a primary authority partnership (direct or coordinated).

²² Note that an enforcing authority may be unaware that a particular business is in Primary Authority, even after a visit.

primary authority partnership (though we note that this position may change to some extent as coordinated partnerships develop).

iv Low risk profile

406 Businesses with a primary authority partnership will generally be assessed as lower risk within their sector and therefore subject to less frequent inspections than other businesses²³: this reduces even further the likelihood that an enforcing authority will come into contact with a business in Primary Authority.

v Content of the Register

407 As has also already been noted in Section 3, even if a business is in Primary Authority and scheduled for an inspection there is little on the Register (i.e. Primary Authority Advice and inspection plans) that would have an impact on what an enforcing authority does during the course of an inspection.

“Primary Authority may affect what you do but only if the Register has anything pertinent on it in relation to the business, which is rarely the case.”

“Inspection plans and Primary Authority Advice would directly influence the work an enforcing authority carries out. However you rarely come across either.”

408 Clearly, where an enforcing authority encounters a business with a primary authority partnership that includes Food Safety & Hygiene, *and* that partnership either has an inspection plan and/or has published Primary Authority Advice, then Primary Authority should have an impact on the work that enforcing authority staff undertake with that business. Almost invariably in all other cases it is unlikely that Primary Authority will have any impact on the work that enforcing authority staff undertake during any visit.

409 We found three instances where, in the absence of any Primary Authority Advice or an inspection plan, enforcing authorities considered that Primary Authority might still conceivably have an impact on the work they undertook:

- Fewer premises visited in a local authority area. If the enforcing authority inspected a proportion of a business’s premises in their area and found these to be compliant then it might decide that this was sufficient and only conduct additional inspections in response to customer complaints (the storage and sale of fireworks by a major retailer was quoted as a specific example)
- Less work done during a visit. If an inspector found that the business premises were compliant in the areas initially inspected they might reduce the amount of work that they undertook at this business

“We can tell within a few minutes whether a premises is going to be OK or not. A few simple checks will confirm whether this business needs only a ‘light touch’.”

²³ As we have noted in paragraph 320, enforcing authority staff do not usually take into account a business’s participation in Primary Authority as part of a specific risk assessment. However, the *kind* of business that is attracted to Primary Authority is, we were told, likely to take regulatory compliance more seriously in the first place and put more policies and systems in place to mitigate risk. Such businesses are likely to be assessed as lower risk even when Primary Authority participation is not taken into account.

- A higher bar for investigations into customer complaints. An enforcing authority might be more inclined to consider an issue reported by a customer to be a “local failure of implementation” and to set a higher bar (e.g. in terms of the frequency of issues raised) before a member of staff visited the premises concerned.

“More recently we have become both reactive and more selective; often we now investigate only when we have a number of complaints that indicate that there may be a pattern of behaviour or non-compliance.”

410 These three instances were specifically ascribed by interviewees to the presence of a Primary Authority partnership, and additional (for example) to any changes in practice following the adoption of a more risk-based approach in general. However, these were very much the exception rather than the rule, with most interviewees reiterating that membership of a Primary Authority partnership *per se* (as opposed to the presence of Primary Authority Advice or an inspection plan) did not change the way they worked.

Limitations on the scope of work

411 Enforcing authorities’ main concern in relation to the impact of Primary Authority on any work they might do “in visit” was that primary authorities should not attempt to restrict their ability to look into the *implementation* of policies by their business partners in premises in their area. To do so was felt to:

- Be contrary to the duty of enforcing authorities to protect businesses, employees and/or the general public in their area
- Compromise their ability to act on local intelligence about how the business operated in their area
- Deprive the business of potentially valuable local intelligence on how policy, systems and procedures were being implemented in their area.

412 It is important to note that most enforcing authorities did not view Primary Authority Advice or inspection plans negatively *per se* – in many cases the reverse was true. Indeed a number of interviewees suggested that Primary Authority would only have “fulfilled its purpose” when the majority of partnerships had inspection plans and Primary Authority Advice.

413 However, to reiterate the point, what they were against was Primary Authority being used to place (in their view) inappropriate limitations on the scope of their work with a business. In particular any restrictions on an enforcing authority investigating the local implementation of national policies, processes and systems, whether or not these were covered by Primary Authority Advice and/or an inspection plan were considered to be inappropriate by almost all of the enforcing authorities we spoke to.

“Where they exist, inspection plans can be helpful if they guide the enforcing authority to check that the business is doing what it should be doing insignificant areas (e.g. cross-contamination). On the other hand a ‘restrictive’ inspection plan is unhelpful and inappropriate.”

“Any inspection plan that puts limits on what an enforcing authority can look at is a cause for concern. Local officers know what aspects of a business’s operation are of concern to them and should be able to look at these areas without fear or favour.”

"We are responsible for regulation in our area and therefore do not take particular account of inspection plans, especially where they suggest we do not need to do something which we regard as important. We still need to see what is happening on the ground locally."

Confusion *re* inspection plans

- 414 During the course of the fieldwork we found some confusion in a minority of enforcing authority staff about the impact of inspection plans – specifically some are under the impression that if something is *not* mentioned in an inspection plan then it cannot be looked into.
- 415 Our understanding is that this is categorically not the case. Inspection plans can (and frequently do) ask an inspector to look at areas that are of particular interest to the business; they can also specify that certain elements of a business's operation (for example policies and procedure documents) are the subject of Primary Authority Advice and need not (indeed should not) be inspected. But where an area is not referred to in an inspection plan under either heading (i.e. neither "please look at" nor "please do not look at") then enforcing authority inspectors have full freedom to do as they see fit.
- 416 In addition, inspectors can look at *anything* they wish to if they believe they have "urgent cause", regardless of any inspection plan or Primary Authority Advice.

Compare:

"We believe that inspection plans determine what we are allowed to inspect in a very specific way – things that are not listed in the inspection plan cannot be inspected. As such they dramatically reduce what we are allowed to inspect – and may add things that we regard as not particularly important. They therefore just compromise the effectiveness of our inspections."

To:

"We are absolutely clear that inspection plans only exclude elements from inspections if they are specifically mentioned as 'to be excluded'. However there are very different kinds of inspection plans out there, written in very different ways, and we can see how the confusion might have arisen, particularly where inspection plans are very detailed."

- 417 This represents a fundamental misunderstanding of how Primary Authority operates that, we suggest, needs to be corrected as a matter of some urgency.
- 418 On a related matter, we also noted some concerns that inspection plans were too voluminous, requiring enforcing authority staff to go through text that was not relevant to them to find the parts that were – "Why is there only one plan per partnership?" was a common question. The Primary Authority Handbook makes it clear that: "...in some cases a primary authority may conclude that the partnership's objectives would be better served through the development of two or more separate inspection plans."²⁴ This is a recent change (until April 2015 only one inspection plan was

²⁴ *Primary Authority Handbook*. April 2015. BRDO. The reference to the number of inspection plans is on page 129.

allowed); in view of the feedback, BRDO might want to remind authorities of the new position.

Additional work required by inspection plans

419 We were told that inspection plans can require enforcing authority staff to do work that they would not otherwise undertake during the course of an inspection – for example, the completion of an extensive inspection *aide memoire* to be returned to the company via the primary authority. BRDO believes that this should not be the case – and indeed all inspection plans are reviewed to ensure that additional tasks are not required. It may simply be that enforcing authorities are not aware that they can decline the request to complete and/or that the *aide memoire* does not make it sufficiently clear that ‘completion of any or all sections is optional’. Our interviewees clearly did not consider that “saying No” was an option.

420 Additionally, poorly structured inspection plans may require enforcing authority staff to work less efficiently:

“Inspection plans can take a while to follow, particularly if they are not well-structured and you have to retrace your steps to areas you have already looked at.”

“We resent the fact that we appear to be ‘required’ by inspection plans to carry out detailed third party audits of companies’ local operations – in at least one case going far beyond what a reasonable inspection of the company would normally involve.”

421 Where this is the case Primary Authority had increased enforcing authorities’ workload.

422 One of the authorities we spoke to considered that this had been an issue in the past but that the quality of inspection plans had improved recently in this regard.

Conclusions and recommendations

423 For a number of reasons, Primary Authority is a scheme that at present is encountered infrequently by enforcing authorities and has little impact on what most enforcing authority staff do in the field.

424 Nevertheless there are a number of causes of concern that BRDO may be minded to address.

425 There is a widely held perception that Primary Authority imposes restrictions on the ability of an enforcing authority to investigate the local implementation of policies, systems and procedures through Primary Authority Advice and/or inspection plans. We would go as far as to say that it was, from the enforcing authority perspective, one of the major causes of dissatisfaction with the scheme. Enforcing authorities find it difficult to see how, logically, a primary authority can certify that all national policies are being followed to the letter in a local branch of the business that the primary authority has not visited recently.

426 We have been assured that BRDO already reviews inspection plans to ensure that no such restrictions on inspecting local implementation of national policies are imposed before plans are approved. It might be worth BRDO requiring this to be noted more

explicitly on plans. A simple statement to the effect that “Nothing in this Inspection Plan should prevent the enforcing authority checking the local implementation of policies, systems and procedures during an inspection” would suffice.

- 427 Similarly with regard to Primary Authority Advice, enforcing authorities believe that they are being prevented from inspecting areas that are of interest to them because “we [the primary authority] have issued Primary Authority Advice.” BRDO might wish to point out to primary authorities that they cannot block investigations of local compliance simply because Primary Authority Advice is in place.
- 428 There is a misunderstanding in some enforcing authorities regarding the scope of inspection activity to be carried out where there is an inspection plan in place – i.e. “We can only inspect the areas specifically mentioned in the plan”: this should be relatively easy to address (e.g. through publishing additional guidance on the Register).

5 Impact on enforcing authority activity “post-visit”

Introduction

- 501 We asked enforcing authority staff how Primary Authority has changed the way they do things as an enforcing authority after an interaction with a business.
- 502 We also asked enforcing authority staff to identify one or more activities they had undertaken involving a business that was covered by a primary authority partnership and to consider how the interaction differed from what they would have done had Primary Authority not been in place.
- 503 As will be apparent from Sections 3 and 4, in practice Primary Authority has little if any impact prior to and during interactions with businesses. However there is at least the potential for some impact on enforcing authority activity “post-visit”. As a minimum any protocol for contacting the primary authority and/or business about any issues raised should be followed.

Providing “post-visit” feedback and taking follow-up action

- 504 Under Primary Authority enforcing authorities are no longer solely feeding back to local managers; most matters noted during the course of an interaction are fed back to the primary authority as well. This is an additional task in itself (though many LA officers were used to giving feedback “to home authorities” under the Home Authority scheme²⁵, albeit perhaps on a less routine basis or in a less structured way).

Compare:

“We would feed back to the business locally in the same way as usual but point out that we will also be contacting their primary authority partner even if this is only ‘for information’ and no further action is being contemplated.”

To:

“We would advise the local business of what we had found and what we were going to say to the primary authority as a matter of courtesy.”

And to:

“Rather than raising issues of concern with the local manager we detail to the local manager those issues that we will be raising with the Primary Authority: this is a semantic but important change.”

“We feed back our findings to the primary authority with only a ‘copy’ going to the local manager.”

²⁵ A number of authorities, we found, are still running Home Authority schemes (with which their business partners are presumably quite happy) and have no intention of ceasing to do so.

505 The means through which any feedback has to be given can serve to complicate matters. Two issues are worth noting:

i Feedback through the Register

506 Requiring feedback to be provided through the Register was not always viewed positively, particularly when many enforcing authority staff are unfamiliar with it and will inevitably find this difficult to do and when the feedback is largely “for information” and no enforcement actions are being contemplated.

“Our efforts to email the primary authority were rebuffed and we were told, in no uncertain terms, to use the Register for any communications.”

“Too much is being pushed through the Register when a simple email or brief call would be sufficient. Officers do not have the time [to engage with the Register] and many (usually relatively minor) matters will not get reported as a result – and/or will get resolved informally at local level only.”

507 There is a risk that, unless some form of enforcement action is being contemplated, some enforcing authority staff will simply opt not to provide feedback because they are put off by “the technology”. Indeed there is a belief that some primary authorities are aware of this and are deliberately requiring use of the Register in order to reduce the number of times that they are contacted by enforcing authorities.

508 Equally we found other primary authorities that were entirely relaxed about how feedback was given and happy to receive feedback outside the Register in whatever form is most convenient to the enforcing authority concerned (by phone or email).

“We are getting more queries raised by email and telephone direct from enforcing authorities than through the Register. The Register tends to only get used for more formal notifications, where some form of action may be required. Currently less than a third of primary authority partnership-related queries come via the Register – we are quite relaxed about this.”

509 Where less formal lines of communication were permitted, enforcing authorities generally appreciate this.

“We seem to have lost the opportunity for more informal interactions between authorities when an informal interaction would suffice.”

510 The point also applies to any on-going dialogue between enforcing and primary authorities should this be required – i.e. some primary authorities require this to be conducted through the Register; others are content for enforcing authority staff to use whatever means is most convenient to them.

ii Feedback in a prescribed form

511 Primary authorities can also require feedback in a prescribed format (or a proforma). We received mixed comments about these from enforcing authority staff – some were positive; others considered that they duplicated the work and therefore added significantly to the tasks required to complete an inspection for no net gain.

Compare:

“Where we are asked to complete a proforma or aide memoire this can add a lot of time to the process – their documentation as well as ours has to be completed. Such documentation often does not accord with the more interactive and practical way that we are now seeking to engage with businesses locally. It is asking for feedback on something that we would not ordinarily do.”

To:

“The business had an aide memoire and an inspection plan that officers were asked to complete if they visited one of their premises. The aide memoire was useful and the whole experience was really positive.”

“If there is an inspection plan and Primary Authority Advice then the visit is usually shorter and the documentation less onerous than for one of our standard visits.”

iii Feedback more generally

513 Regardless of how an issue was raised by an enforcing authority, the lack of any acknowledgement by the primary authority was a frequent cause for concern. On a practical level, particularly if the issue was reported via the Register, the enforcing authority was not sure if the issue had been properly reported, whether the primary authority was proposing to look into the matter and/or how the matter had been resolved.

514 It would help if the Primary Authority Register system provided a formal acknowledgement that an issue had been correctly submitted – perhaps by an automated email to the submitter. Such automatic acknowledgements are common in Government’s web-based IT systems – for example, both DVLA and HMRC make extensive use of them. But providing such automated acknowledgements would not absolve the primary authority from the professional courtesy of providing a reply.

515 It is also professionally discourteous for a primary authority not to reply to queries raised by a fellow regulatory professional. We return to this point below.

516 In these circumstances one enforcing authority was robust in their response.

“If we don’t hear from a primary authority about an issue we have raised then we do whatever we would have done in the absence of Primary Authority; we don’t badger them or continue waiting for a reply.”

517 Often taking matters to the next level will elicit a response from the primary authority concerned; if it does not then the enforcing authority is no worse off.

Attitude of the primary authority to feedback given

518 There is evidence – some of it seen by us (in the case of email exchanges) and some of it recounted to us during the course of this project – that primary authorities and/or their business partners can respond unsympathetically when shortcomings are identified and referred to them by enforcing authorities, in turn requiring enforcing authority staff to be robust in their response.

“Generally our experiences are positive – we find that you can speak to people who treat you in a professional manner, are helpful and are keen to provide a high level of customer care. We do not feel that they are trying to fetter or water down enforcing authority powers. However some partnerships are obstructive, unhelpful and defensive – they operate Primary Authority in a way that most others do not.”

“What we were querying was not the policy that was the subject of Primary Authority Advice but the implementation of that policy locally. It took a while for the primary authority to accept this even though it seems obvious that Primary Authority Advice cannot conceivably extend to a sign-off of local implementation.”

- 519 From BRDO’s perspective the risk is that perceptions of Primary Authority will be damaged as enforcing authorities draw conclusions from their interaction with these businesses and their primary authorities.
- 520 It also reinforces the view, one that many of the enforcing authorities we saw share, that in some cases primary authorities’ staff can get too close to their business partners and risk losing their objectivity. Again this is damaging to some enforcing authorities’ perceptions of Primary Authority.

Primary authority “blocking”

- 521 In theory it is possible for a primary authority to block actions that an enforcing authority proposes to take; we came across few such cases in our fieldwork – mainly because issues are rarely escalated to this level.

“It is vanishingly rare for us to take any enforcement action on a ‘reputable business’ of the sort that is generally in Primary Authority – we would tend to work to achieve compliance through advice and guidance.”

- 522 Where a proposed action is blocked in theory the enforcing authority can challenge this though in practice this rarely happens.

“The ability to challenge the primary authority’s view is severely curtailed in practice – we simply do not have the resource to pursue this other than in the most serious cases. This is not necessarily good for good regulation and for ensuring compliance.”

- 523 Certainly, and for whatever reason, limited use of the resolution process within Primary Authority has been made to date.

The primary authority will deal with it

- 524 Once something has been raised with the primary authority there is an assumption that it will handle it: this can work well where this is indeed the case – the enforcing authority does not need to pursue the matter; the primary authority keeps it informed of the process it is following; and the need for a follow-up visit by the enforcing authority can be removed.

“We have good examples of where things we have identified have been resolved locally without resort to notices and also rolled out nationally, presumably to the benefit of many more customers. Our experience is that Primary Authority makes it much more likely that this will happen than would otherwise be the case under Home Authority.”

525 Where a primary authority takes matters forward, the need for enforcement action can be removed. Most enforcing authorities viewed this positively – if the aim is to get businesses to comply and this can be done without resort to formal enforcement processes, so much the better. Some were uncomfortable with the “dual standard” this implied – a business in Primary Authority would not have enforcement action taken against it whilst, for the same offence, a business outside the scheme could still face enforcement action.

“In the absence of Primary Authority I might have been persuaded by the complainant to engage on a much more lengthy process that would have taken up considerably more of my time.”

526 The ability of primary authorities to handle post-interaction queries and feedback was however an issue for some enforcing authorities who had seen matters that they had raised disappear “into a black hole”.

“We get the impression that some primary authorities may be struggling to cope with the work; it can be quite hard to establish contact and then they don’t always get back to us within a reasonable time. This puts us in a difficult position, particularly if we have a complainant wanting to know how things are going or the issue requires some action to be taken.”

527 Indeed, more generally how to engage with an apparently uninterested primary authority was a cause of concern for some enforcing authorities.

528 The evidence (from our other, parallel project) relating to the size of primary authority partnerships is also relevant here; we found that a large proportion of partnerships commanded very low fees from the business concerned (in a number of cases, less than £100 per annum). Even allowing for “free” (i.e. uncharged) hours, which are given in some cases, there is clearly a limit to what the primary authority can do for a fee of this size.

529 Of course, it may be that such a “low fee” partnership is not in fact generating many (any?) enforcing authority queries; if it is, then the primary authority is either doing a significant amount of work it is not being paid for (suggesting under-recovery of costs) or alternatively not responding to queries because they are under-resourced. It would be interesting to see whether those primary authorities who are identified by enforcing authorities as being uninterested in dealing with them set lower fees than those who provide enforcing authorities with a good service.

530 On the other hand, the enforcing authority (quite rightly) has no access to fee levels and therefore is given no evidence – from the Register or elsewhere – as to whether a particular partnership is “large” or “small”. All it does have is the guidance (from the Primary Authority Handbook or elsewhere) on what a primary authority can be expected to do; in our view, this guidance gives the impression of a level of activity and indeed support for enforcing authorities that a primary authority on £100 per year might struggle to meet.

531 More generally primary authorities were criticised for failing to provide feedback to the enforcing authority on whether/how the matter was resolved. Primary authorities may claim that it is not always possible to give full details of steps taken by a business following a complaint or other issue, since to do so may involve breaching

commercial confidence or the risk of reputational damage. However this is not currently always made clear to or understood by enforcing authority staff.

"We wrote up the inspection aide memoire and submitted it; there were two issues that we judged to be significant and where we would have expected a response from the primary authority. We went to some trouble but have heard nothing. Now we are not sure what if anything has been done and whether the public are being adequately protected."

"Last year we had cause to contact thirty primary authorities – fewer than half bothered to reply and some of those who did gave 'stock answers'. If primary authorities do not respond to us or appear to be not interested then this makes us think less of Primary Authority."

532 Other concerns about passing issues to the primary authority for it to address with the business were:

- In the case of a matter raised by a consumer or employee, how this might appear to the complainant. To the consumer, "I have referred this to the primary authority" is potentially just jargon, and unlikely to be acceptable as a resolution to the issue
- The loss of the ability to get the issue resolved locally and the potentially negative impact that having to "escalate" matters might have on the local relationship between the enforcing authority and the local branch of the business

"Primary Authority can be a barrier to us taking proactive action with the business on our own patch. In the end it is their staff and customers in our area that we have to be primarily concerned about. To the extent that we 'hand' something over to the primary authority we also risk handing over our ability to rectify matters locally."

- Enforcing authorities losing the ability to engage in the investigation.

Impact of Primary Authority on reported incidents

533 During the course of our interviews we discussed the handling of a total of fifty-eight matters that had been reported by enforcing authority staff to the business's primary authority; these ranged in seriousness from accidents (including fatalities) to the (in our view) trivial.

534 Enforcing authority staff were asked to reflect on the impact that the business being in Primary Authority had had on the process in terms of:

- The length of time it took to resolve the issue
- The amount of time that the enforcing authority had had to put in to resolve the issue
- Whether Primary Authority had saved the enforcing authority any time in bringing the issue to a resolution

... and to make an overall assessment of the impact of Primary Authority in terms of the complexity and effectiveness of the process as a means of resolving the issue.

535 Our analysis of the views expressed by our enforcing authority interviewees is summarised in the following table.

Measure of impact	Impact		
	Positive	Neutral	Negative
Elapsed time to resolve issue	23	11	20
Time input to resolve issue	8	33	14
Time saved in resolving issue	21	35	
Overall assessment – complexity	31 ²⁶	9	18
Overall assessment – effectiveness	20	22	10
Total	103	71	62
			35

536 Based on the figures and our discussions with enforcing authority staff, our view is that the overall impact of Primary Authority has been positive. Whilst there has been no impact in terms of the time-related measures (those enforcing authorities reporting a positive impact are effectively balanced by those reporting a negative impact) the overall assessments of the scheme's impact, in terms of both complexity and effectiveness, are positive.

537 Examples of the sort of comments made by our interviewees are contained in the following table.

²⁶ This includes seven staff who said Primary Authority had made matters more complex but that this was a positive outcome – usually because the issue raised had been addressed across the business as a whole rather than just in the enforcing authority's area.

Measure of impact	Impact	
	Positive	Negative
Elapsed time to resolve issue	<i>"We raised an issue but this was a technical area and we needed more specialised input. The primary authority was able to check the policy and confirm its implementation at the locality."</i>	<i>"Slower and more bruising. The primary authority was initially adamant that the matter was covered by Primary Authority Advice and that the action we proposed was therefore blocked."</i>
Time input to resolve issue	<i>"A phone call to raise the issue with the primary authority and one or two follow-ups. Without Primary Authority I am sure I would have had to go round the houses trying to find the right person to speak to."</i>	<i>"We sent a considerable number of emails and made phone calls to the primary authority. In the end we decided to prosecute anyway."</i>
Time saved in resolving issue	<i>"Considerable. With the inspection plan I spent a lot less time in each store than would have otherwise been the case."</i>	<i>"None." [Our interviewees were not particularly effusive on this point]</i>
Overall assessment – complexity	<i>"The primary authority was better-placed to get the issue resolved than we would have been." "Slightly more complex – but in a good cause as we understand that the matters we raised [food hygiene improvements] were more widely disseminated."</i>	<i>"It was an extra and ineffectual step in the process; we went ahead and prosecuted anyway." "More complex. Without Primary Authority we would almost certainly have taken some action by now. We know others have also raised the issue but this has not been acknowledged."</i>
Overall assessment - effectiveness	<i>"Highly effective. Practice has been changed across all stores and Primary Authority made this a much more likely outcome."</i>	<i>"Less effective. The primary authority seemed more concerned to protect the business than in ensuring the safety of staff employed locally."</i>

Conclusions and recommendations

- 538 Enforcing authority staff were generally supportive of how Primary Authority worked post-visit “in principle” but had some concerns as to how it was operating “in practice”.
- 539 It is readily possible to conceive how Primary Authority might be made to work better from an enforcing authority perspective:
- The way in which feedback is made by enforcing authorities would not be onerous. Proformas (which reduce the burden of the primary authority but may transfer it to the enforcing authority instead) would be kept to a minimum and only used when both parties recognise them as helpful. A common understanding of the “level of concern” at which feedback should be provided through the Register as opposed to more informally would help ensure that what is important is captured (and subsequently accessible) and not swamped by what is trivial²⁷
 - Feedback would be welcomed and viewed positively by primary authorities – not least because it would give them a clearer and more comprehensive picture of regulatory compliance at their business partners
 - All feedback received would be acknowledged
 - Enforcing authorities would be given some contextual information relating to the feedback they provided (e.g. we have received a number of similar comments from others)
 - The primary authority would act promptly on the basis of information it received from enforcing authorities
 - The primary authority would keep the enforcing authority informed of progress.
- 540 The above currently happens, but by no means in every case. The changes that would be required are not particularly major.
- 541 A first and simple step might be to stress to primary authorities that they must reply (meaningfully) to every enquiry (etc.) raised by an enforcing authority, and to point out to enforcing authorities that they are fully entitled to expect such a reply and to take whatever action they deem appropriate if a reply is not forthcoming.²⁸
- 542 More generally, as a means through which better practice might be encouraged, BRDO might want to consider introducing a “Best and/or most improved primary authority [to deal with]” category, to be voted on by enforcing authorities, as part of its annual awards. Case studies on the nominees that describe why enforcing authorities found these primary authorities better to deal with might suggest to others how they might change their practices. It would also recognise those primary authorities that are attempting to work most effectively with enforcing authorities.

²⁷ Clearly when further action is being contemplated by the enforcing authority then use of the Register is absolutely required. On the other hand some post-visit enquiries from enforcing authority to primary authority are so routine, and so easily addressed, that their presence on the Register would amount to “clutter”. There is a grey area between these two.

²⁸ Alternatively, this might flush out that a great number of enforcing authorities’ communications are not being delivered “for technical reasons” – which could then in turn be investigated.

543 Being “poorly treated” by primary authorities when they raised an issue was enforcing authorities’ second cause of concern in relation to Primary Authority.

6 Other issues

Introduction

601 This section deals with a variety of other issues which emerged in our interviews, and which do not fit neatly into the process-driven structure of our report so far.

Accessing the Register

602 In the preceding text we have mentioned a number of concerns that we have about the way in which enforcing authorities are using “The Register”; we provide more detail about these concerns here.

603 It is important to note that some of the issues reported in relation to the Register may reflect users’ experiences of an earlier version of the site – the Register has evolved over time and some of the concerns with earlier versions have been addressed. It is, of course, interesting that many enforcing authority users did not respond in a way that would suggest that they had recently re-engaged with the Register since these changes were implemented and found it to have improved (e.g. “Passwords used to lapse on a regular basis; it’s much better now.”)

604 It is worth starting with a brief description of the Register as it now is – we found that many interviewees were themselves unclear on this. The overall website www.primaryauthorityregister.info is known as the “Primary Authority Register”, and contains a range of information about Primary Authority, some of which is in the public domain and some of which is not.

605 Information in the public domain includes the Handbook amongst other publications, and a large collection of supporting tools and resources for local authorities and businesses alike (both those currently in a primary authority partnership and those considering one). It also provides access to a simple listing of businesses in primary authority partnerships together with a map showing locations of relevant business branches and outlets (where those businesses have chosen to make this information publicly available). The map and listing are accessed via clicking a button marked “View Public Register”. The Handbook and other publications etc. are accessed directly from the home page. All of this any member of the general public, indeed any internet user worldwide, is able to access.

606 The Register also includes a number of details about individual partnerships, including business and LA contact details, Primary Authority Advice and Inspection Plans, some of which contain commercially sensitive information that should not be made available to the general public. To access these, a user needs to be “registered” and receive a password linked to his or her email address; the user can then “log on” (from the home page of the Primary Authority Register) and is then directed to a new “home page”²⁹ from which appropriate additional information can be accessed. One also needs to be “logged on” to send secure messages, upload completed inspection *aides memoire*, etc.

²⁹ There are (we understand) slightly different home pages for different classes of registered users.

- 607 Somewhat confusingly (in our view), the “logged on” user who wishes to access additional details about a particular partnership is asked to choose the tab marked “Public Register”. The screen that then appears is identical to that which a member of the general public sees when clicking the “View Public Register” button. The difference is that more information is automatically brought up about the partnership and the option to click “View” to access further details about a particular partnership now “works”, and shows those details. (When a member of the general public clicks “View” from the Public Register he or she is merely directed back to the home page.³⁰)
- 608 The description given above (if we have done the Register justice) hopefully makes it clear why the first act of any enforcing authority inspector should be to log-in³¹. However, the very seamlessness with which the public domain areas of the Register are interwoven with the password-protected information means that it is not immediately obvious to a casual enforcing authority user just how important logging-in is – nor that failing to do so means that they will be unable to access a great deal of information that would be helpful to them.
- 609 A number of claimed “difficulties with the Register” identified by enforcing authorities can, we believe, only be explained by enforcing authority staff inadvertently or out of necessity (passwords having been forgotten or lapsed) accessing the Public Register rather than logging-in and accessing the password protected parts of the Primary Authority Register.³²
- 610 Such claimed difficulties would include:
- An inflexible search facility. The Public Register’s search facility requires an exact match for (e.g.) a business name or else no partnership is listed. However the logged-in user’s home page provides a much more powerful “fuzzy search” tool (which the general public user never sees) and that also brings up more information about a partnership (even before “view” is clicked on) than appears in the public register
 - Non-recognition of trading names and group structures. Again, the search function in the Public Register will not search on these, whereas the search tool available to the logged-in user will do so
 - An apparent lack of any useful information, Primary Authority Advice and/or inspection plans on the Register: these are, as noted above and quite correctly, only accessible once one has entered one’s password and “logged in”
 - Unhelpful routing. If a non-logged in user types a business name in correctly in the Public Register a list of partnerships is given; if the user then clicks on “View” (in anticipation of seeing more detail about the partnership) they are returned to

³⁰ The idea behind this routing is that the user is then (if he or she has a password) in the right place to “log on” so as to be able to view the details in question. However this point is not always grasped by naïve users, who may instead suspect a circularity bug in the website routing. See also below.

³¹ Helpfully, once logged in one remains so, even when visiting information pages that are in the public domain.

³² Though the difference this would make to their user experience in practice is often limited, there being a large number of partnerships for which no information is given, even when the full Register is accessed. See below.

the site home page with no explanation being offered as to why this has happened. The reason for this is in fact entirely logical; the additional information is, of course, restricted access and only viewable if the user logs in. However the need to do so is not made explicit.

"We are not a primary authority and we do lack confidence [when engaging with the Register]. We are never sure we are using it effectively, particularly when it does not seem to give any indication of whether we have successfully completed what we were trying to do."

- 611 Other claimed difficulties are perhaps more historic than current – in particular it was alleged that “passwords lapsed too quickly if they are not used”: this was an issue with the first version of the Register (active 2009-2013), but should not be affecting the one currently in use. In part it may explain why some staff said they logged on using a colleague’s password – often the designated Primary Authority administrator – rather than their own.

"Some officers have had difficulties in setting up their account on the Register and have used a colleague’s log-in as a temporary fix: this means that any responses go to him and not directly to the officer concerned, which can complicate matters."

"We do not all have passwords for the BRDO website – effectively one of our number handles this on behalf of all the team."

- 612 We understand that the policy has been revisited to allow for easier password resets and the password expiration issue has been rectified. Of course enforcing authority staff may not be aware of this – indeed our discussions would suggest that in many cases they are not.

- 613 However, some of the difficulties reported to us appear to have more substance and currency to them:

i Downtime for maintenance

- 614 Enforcing authority staff often have a relatively short space of time in which to access any information on the Register; if when they attempt to do this it is not available then this may mean that the officer does not have time to try again later, especially in the context of officers using tablets “in the field” to access Primary Authority information in real time.

- 615 Often messages suggest that the reason for non-availability is general maintenance – indeed one of our team experienced just such a downtime (“... from Thursday evening for twenty-four hours...”) shortly after they had registered. We understand that during the development of the site downtime for new releases was fairly frequent but that this happens much more rarely now and is normally caused by urgent security patches from the software providers.

ii Upload and submission difficulties

- 616 Some enforcing authority staff reported that it was unclear (at least to them) whether they had successfully completed certain tasks within the Register – e.g. submitted a response, comment etc. after an interaction; uploaded a document, picture etc. for the primary authority’s attention.

"It is not clear when issues have been submitted or documents have been attached. We have had four cases in the last week where documentation that an enforcing authority thought they had submitted had not been or where documentation that they thought had been attached was missing."

"We have tried to master the intricacies of the Register but even for us [an experienced primary authority with a number of partnerships] using it is still not second nature. For example we are unsure as to whether certain actions are intended to generate a receipt or acknowledgement from the system – official notifications of intent to take action would be a good example. This creates confusion."

- 617 As a result some enforcing authority-primary authority interactions are taking place outside the Register. We were told by some authorities that for non-contentious matters, this was actively encouraged (though others will only deal through the Register). As noted in Section 5, in at least one case extra-Register traffic was considerably greater than that that came through the Register.
- 618 One of our authorities was having to regularly check the site as it was not confident that the notification process was working effectively. Issues that had apparently been raised through the Register were not coming through to the primary authority, which was only finding out about them if/when the enforcing authority made contact to see what progress has been made. This may explain some of the "lack of response" issues aired above.
- 619 We understand that users are now copied into certain messages generated by actions in the Register, including the submission of an enquiry, but that further work is required to make all actions more visible.

iii Browser or other software issues

- 620 Some features in the Register are not compatible with older versions of certain browsers. In these cases, BRDO recommends the use of Firefox, an open-source browser that is fully compatible with the Register.
- 621 Nevertheless for, as far as we can tell, a small minority of authorities the browser that they are using (or some other software issue) does not enable access to the Register and to documents stored on it. As a result one of 'our' authorities relies on someone within BRDO sending them documents they need to see as email attachments.

iv "White space"

- 622 Despite several efforts by BRDO to get details filled in on the partnership pages (including direct contacts with primary authorities), there is a general lack of information on many partnerships within the Register, even when the (password protected) Primary Authority Register has been accessed. This implies that most partnerships have not published anything on the Register that would impact on the work of an enforcing authority.

"When you get onto the site there is relatively little information on the Register. The danger therefore is that, through experience, officers stop accessing the site because there is almost invariably nothing there for them."

- 623 The position is complicated by a lack of familiarity with the Register, meaning that enforcing authority staff are uncertain whether there actually is no more information available or whether they have simply failed to “do something” or “go somewhere else on the site” where further information would be provided (see our comments re. the Public Register above).

“As a minimum, each primary authority partnership should have to complete the partnership information page in full.”

“There should be a minimum data requirement on the Register for every primary authority partnership setting out, for example, contact protocols, areas and priorities/activities that are a particular focus for the partnership and where inspection plans and Primary Authority Advice is in place [even if the Advice itself is not published].”

v **Layout**

- 624 The site was criticised by enforcing authority staff for not being intuitive enough to be readily useable (though these comments may relate to experiences of earlier versions of the site).

“It is not easy to log on; if you use the Register infrequently passwords seem to lapse; the site is difficult to navigate and hard to find what you want. It is not fit for purpose.”

“The Register takes the icing off the cake; if this was working perfectly then the scheme would be a whole lot better.”

“Difficulties experienced when using the Register may be putting staff off recording matters on it.”

- 625 Whilst the general tenor of comments was negative, it is also important to note that some enforcing authority staff (generally those with a reasonable or better level of IT skills) were entirely comfortable with the site and reported no difficulty in using the Register properly.³³

Use of sub-contractors

- 626 Enforcing authorities are making increasing use of sub-contractors for food safety and hygiene-related work – usually to carry out the more routine inspections of low risk premises. These inspections are more likely than others to be of premises that are covered by a primary authority partnership.

- 627 Three issues were raised by interviewees:

- Access to the Primary Authority Register – it was claimed that without a .gov.uk email address it was difficult to secure access to the Register and that sub-contractors were therefore unable to access information, Primary Authority Advice and/or inspection plans
- Access to internal authority systems – not an issue for BRDO, but local authorities often do not allow non-authority owned devices to access their internal systems. To the extent that such systems include information on business

³³ Nor, for that matter, *once we understood the difference between the public and restricted access parts of the Register, did we.*

premises in general (which they all do) and Primary Authority in particular (which some do), this will place limitations on sub-contractors in relation to the scheme

- General levels of awareness of Primary Authority – this was claimed to be disappointingly low in some cases.

628 Of course, if sub-contractors cannot access the full Register then they cannot take into account Primary Authority Advice or follow inspection plans. On the other hand, if they can access the full register with the same rights as employees of their client local authority then they will be able to submit notices (etc.) without these being approved by a local authority employee and, unless carefully monitored, their access rights may continue when they are no longer sub-contractors of the authority. Neither of these positions is satisfactory, for obvious reasons.

Information flows

629 It is worth noting that some enforcing authority staff feel “in the dark” about Primary Authority. We have already mentioned the disagreement among interviewees over whether the Primary Authority newsletter “still exists” and a number of interviewees were specific about how much they missed the useful information it used to contain. For the record, we are aware that the newsletter does exist and that a number of interviewees still receive it (or something that they described as “a newsletter”). Indeed, as already noted in Section 3, all registered users of the Register receive the PA News bulletin. There is no option to subscribe or unsubscribe; delivery ceases only when a user has been removed from the Register (e.g. if they change jobs or responsibilities). Possible reasons for non-delivery would include authority IT filters and incorrect email details given when registering – though since a user’s email is also his/her logon identifier it is difficult to see why incorrect email details would not swiftly be picked up.

630 To cover the point that those who have difficulty using the Register could arguably benefit most from receiving the newsletter, a notice could also be sent out to the Primary Authority “administrator” in each local authority inviting him or her to submit a list of local colleagues to receive it.

631 A (loosely) related point is the extent to which information about Primary Authority has flowed into other Government departments and agencies. Purely as an example, we have in front of us the current *Model form for the registration of a food business establishment*³⁴, intended to be used by local authorities, which – despite specifically collecting information about the “Head Office address of food business operator” – does not give the applicant the chance to state whether or not the proposed business establishment is, or will be, within scope of Primary Authority.

³⁴ Courtesy of www.food.gov.uk – though we have no wish to single out this particular agency, which does in fact have a full description of Primary Authority on its website.

Conclusions and recommendations

- 632 Enforcing authority staff are unfamiliar with the (password protected) part of the Register. They need to be reminded about the differences between the Public and (password protected) registers and encouraged to register and use the latter.
- 633 More generally it would be worth BRDO reiterating that the website has been through a number of revisions and that local authority users should find that many if not all of the issues that they previously had with it will have been addressed.
- 634 Any actions that can be taken to boost content and/or otherwise give enforcing authority staff a reason for visiting the (password protected) Register on a regular basis would be a positive development. In this context, BRDO might want to consider:
- Publishing further “requests to populate” their Primary Authority entry to all partnerships (we understand that BRDO has already done this) – the most obvious (and easiest) way to give enforcing authorities a reason to use the Primary Authority Register is to ensure that there is information on it. It might be that some form of “sanction” – for example a letter to the local authority’s Chief Executive – could be considered in the case of “persistent offenders”
 - Ensuring that all primary authorities publish a core dataset of basic information (which should be specified) about the partnership. At the very least this should give contact details for the primary authority officer dealing with the partnership – this is often stated to be the most useful information from the enforcing authority point of view.
 - Ensuring that each business keeps an up to date list of premises covered by their primary authority partnership to address the ownership issue (ultimately the geo-app will cover this however an interim fix would be helpful)
 - Encouraging (again) primary authorities to publish Primary Authority Advice either in full or – if commercial concerns apply – in summary form with a request to contact the primary authority for further information if an enforcing authority is contemplating work that impinges on any of the areas listed
 - Developing a facility (or bulletin board) through which enforcing authorities can raise issues that they have identified during Primary Authority-related interactions
- 635 We recognise that our final point is a more controversial proposal which may not find favour with businesses or primary authorities. However, the exchange of information along these lines is already happening to some extent through other fora – formal (e.g. EHCnet) and informal; there may be value in BRDO offering the opportunity for these exchanges to take place within the Register.
- “Primary Authority has no informal consultation network such as that that LACORS used to offer. We miss this.”*

“It should be possible for enforcing authorities to look on the Register to see in what areas there has been recent ‘traffic’.”
- 636 In our view, infrequent use of the Primary Authority Register is at the root of many of the issues that enforcing authorities have with it; anything that can be done to “boost traffic” would be beneficial.

- 637 As part of any “request to populate”, it would be helpful if pages “left intentionally blank” could be labelled as such: this would provide reassurance to enforcing authority staff that they had not missed anything. Requiring Primary Authority staff to enter these words would also remind them of what they had left to do.
- 638 We believe that there would also be value in having a “Frequently Encountered Issues” page (or “Not found what you are looking for” prompt) within the Register: this (these) need not be extensive but could, for example:
- Remind users to log in to access the full functionality of the Register if they have not found what they are looking for
 - Provide hints on effective searching if there are “No results” or the results given are “Not what you are looking for?”
- 639 It would be helpful if there was a clear indication to enforcing authority users that any responses sent or information uploaded via the Register had been correctly sent.
- 640 Following discussions with BRDO staff with responsibility for the Register, we understand that it would be possible for approved sub-contractor staff to be given read-only access to it (as indeed we were given for the purposes of this project). We suggest that enforcing authorities are asked to identify any named individuals that they use and that these individuals are given passwords by BRDO on either an “until further notice” or periodic (e.g. annual) renewal basis: this would help to ensure that all those interacting with businesses in Primary Authority have access to any information, Advice and/or inspection plans on the Register while overcoming the “independent action” reservations raised above.
- 641 To avoid downtime when enforcing authorities are likely to need access to the Register, maintenance should be scheduled at weekends whenever possible. We appreciate that this will require an increase in expenditure, but this is vital if “real time” access to GIS and Register information is to be achieved.

7 Costs/financial benefits of Primary Authority from the enforcing authorities' perspective

Introduction

- 701 We asked whether our interviewees could quantify the costs and benefits of Primary Authority in terms of the time spent. As this was a qualitative project (and, specifically, not a quantitative survey or any kind of “time study” of hours actually worked by interviewees/LA officers) our conclusions from these questions are not based on any averaging or other analysis of data given to us but rather on our synthesis of the various qualitative as well as quantitative information we received.
- 702 There were four assumptions that relate to enforcing authorities built into the cost-benefit analysis that was used when establishing Primary Authority; these were:
- i. Costs:
 - (a) 1.0 hour per week per enforcing authority on general interactions with Primary Authority
 - (b) 1.0 hour per referral to a primary authority
 - ii. Benefits/savings:
 - (a) 50 enforcing authorities saving an average of 7.0 hours annually due to Primary Authority (in terms of familiarisation, risk assessment etc.)
 - (b) 2.0 hours saved by enforcing authorities per inspection plan per year.

Fieldwork data

Costs

- 703 Enforcing authorities found it hard to identify any costs they incurred from either general interactions with Primary Authority (i.(a) above) or from making to referrals to primary authorities (i.(b) above), primarily because such interactions were, for the reasons described in preceding sections of this report, so infrequent and so variable in their nature or content.
- 704 In terms of the three dimensions to activities identified in this report, currently:
- Pre-visit – in practice there is no significant additional cost-generating activity regularly required of an enforcing authority pre-visit
 - In-visit – in practice, again there is no significant additional cost-generating activity regularly required of an enforcing authority in-visit
 - Post-visit – there is some scope for additional cost-generating activities to be required of an enforcing authority post-visit; these are discussed in the following paragraphs.
- 705 These need to be seen in the context of the level and frequency of activity that applies to each. A review of data from the Register for the nine month period

February to October 2014 reveals a total of 2,210 enquiries going through the Register during that time (see the table below).

- 706 The nine month average we provide in the table is calculated on a fairly crude basis using 400 councils as the denominator and simply serves to demonstrate the fact that the average enforcing authority will have relatively little contact with primary authorities.

Enquiry type	No. of enquiries		9 month per e.a. average
Alternative inspection request	2		-
General enquiry	927	1,924	Under 5
Information referral	995		
Proposed enforcement notice	125	157	$\frac{1}{3}$
Retrospective enforcement notice	32		
Inspection plan feedback		129	$\frac{1}{4}$
Total number of enquiries		2,210	~5

- 707 A not unreasonable average over a twelve (rather than nine) month period would be to assume a total of 6 interactions per authority per year; the vast majority of these will not be enforcement-related.
- 708 On the basis of our fieldwork we would suggest that the average one hour per week on general interactions with Primary Authority (quoted above at i.(a) in paragraph 702) is excessive – an hour per month might be more reasonable. On the other hand, the figure of one hour per referral (quoted at i.(b)) is not unreasonable. Together these general plus referral interactions represent around 1½ hours per month per authority.
- 709 We would however not wish to exclude the possibility of “systemic” (if often untraceable) costs incurred through, for example:
- The relatively infrequent need for regulatory staff to ensure that they keep up to date with Primary Authority developments
 - The need for staff to establish and maintain facility with the Primary Authority Register and perhaps to upgrade local IT systems in order to use it effectively (although any systems that need upgrade for this purpose are arguably overdue for one anyway)
 - Updating local databases for new partnerships – though this task would disappear if the link between the Register and database providers was restored.

Annual savings due to Primary Authority (excluding inspection plans – covered separately below)

710 As Primary Authority currently operates, the main opportunities for savings arise in the event of an enforcing authority reporting an issue to a primary authority post-visit and, if necessary, the primary authority taking the matter up on its behalf; the savings can be considerable but the opportunities to generate them occur relatively infrequently.

711 The data in the table above suggests that around 2,700 matters a year might be referred through the Register to primary authorities by enforcing authorities. From this project we know that referrals also occur outside the Register; we have no idea of the extent to which this takes place. However, referrals outside the Register are, by definition, likely to be for more minor (and therefore presumably less time-consuming and less cost-generating) matters.

“Sometimes we may choose a less interventionist course of action with a particular business if we are sure that they are working with their primary authority to address the shortcomings: this will save a little time.”

“There is no firm evidence over use of time – some things take longer [especially completing post-inspection reports in the required format]; other activities are shortened, particularly if a primary authority takes over the issue and resolves it to our satisfaction.”

“Primary Authority makes formal action less likely and this should certainly save enforcing authorities time and money. However the number of times you would feel the need to take enforcement action against most businesses in Primary Authority will be very few and far between.”

“An obvious saving would be on the need to read documentation where this is covered by Primary Authority Advice – we can just focus on its implementation. The saving can be as much as half the time that would otherwise be devoted to an intervention – so half rather than a full day in some cases. However, if there is no inspection plan or Primary Authority Advice in place then there are no savings.”

712 We found no evidence from our fieldwork that would support the relevant estimated benefit from ii (b) of paragraph 702 above – i.e. that 50 enforcing authorities save an average of 7.0 hours annually due to Primary Authority. Our view is that on the one hand the number of enforcing authorities saving time would be considerably more than 50 – the data suggests that around half of English authorities (which would be 200) have had some of this kind of interaction with Primary Authority in 2014. However:

- The time saved is likely to be less than 7.0 hours: this is because, as the data shows, most referrals are not made with enforcement in mind but simply to draw attention to more minor issues noted during a visit; most such issues would, in all probability, be quickly raised and resolved at a local level if Primary Authority did not exist
- Savings are generated by enforcing authorities not having to follow-up matters noted (the primary authority does this for them) rather than being due to “familiarisation, risk assessment, etc.”: this simply reflects the fact that, for enforcing authorities, the opportunities for savings are at the back- rather than the front-end of the process.

- 713 There are too few instances and too many variables to enable us to draw definitive conclusions on what a more appropriate figure for the time saved per authority might be. These variables include for example, the nature of the partnership as perceived by the enforcing authority (“obstructive/defensive”, “positive”, or “uninterested”); the enforcing authority’s degree of engagement and familiarity with Primary Authority (in particular with the Register); the issues raised by the enforcing authority; and the content of Primary Authority Advice (i.e. what has been signed-off) and of inspection plans (structure, content and any requirements vis à vis feedback – see below). All of these will have an impact.
- 714 Nevertheless, we recognise that an estimate based on our interviews is better than an estimate that was made five years ago and based on what it was thought might happen before the launch of Primary Authority. Therefore, at this stage our best guess is that, due to Primary Authority, individual enforcing authorities might save an average of 2½, rather than 7, hours per year in post-visit follow-up of issues.

Annual savings due to inspection plans

- 715 The evidence that we have from enforcing authorities on the impact of inspection plans is split between those who considered that they had added time – and therefore cost – and those who could identify savings.

Compare:

“With an inspection plan the inspection took four times as long to complete (a total of 6 hours) when compared to a usual, non-Primary Authority visit.”

“The real additional burden is compiling the reports that inspection plans can require. A conservative estimate is that this doubles the amount of time needed to carry out and write-up an inspection [from two hours to four on average].”

“The database is far from user-friendly and takes time to interrogate. However this is a minor irritant when compared to the time inspection plans involve: these create a whole additional layer of tasks with no corresponding savings for the enforcing authority.”

To:

“Reporting arrangements for inspection plans are arduous but they greatly shorten inspections, which makes up for it.” [Though note that this comment was from an authority that had misunderstood the nature of inspection plans.]

“Where the primary authority is serious and there are inspection plans and Primary Authority Advice in place then it is possible to save serious amounts of time – for example in one case we have been able to reduce sampling by 75%.”

- 716 However, most of the enforcing authority staff we interviewed could identify no benefits from inspection plans – mainly because the majority had had no experience of inspecting where one was present.
- 717 There is therefore insufficient evidence for us to comment definitively on whether the original estimate of 2.0 hours saved by enforcing authorities per inspection plan per year) is reasonable, though our suspicion based on what is available to us is that the saving is not as great as this. Taking into account additional time incurred through, for example, investigating areas that would not otherwise be looked at and

completing *aide memoires* (see Section 4) our best estimate is that inspection plan-related costs are balanced out by inspection plan-related benefits.

718 We summarise our conclusions in the following table:

<i>Original assumption (2010)</i>	<i>Our conclusion from fieldwork</i>	<i>Applied, annually, to 400 councils</i>
<i>Costs</i>		
One hour per <i>week</i> per enforcing authority on general interactions with Primary Authority	One hour per <i>month</i>	4800 hours
One hour per referral to a primary authority	Agreed	6 per LA: 2400 hours
<i>Savings</i>		
General savings of 7 hours annually due to better risk information etc, across 50 LAs	Suggest 2 ½ hours a more supportable estimate	Half of LAs benefited in 2014: 500 hours
2 hours saved per inspection plan	No interview evidence to back this up: both costs and savings reported	-

Conclusions

719 Overall Primary Authority currently imposes some additional costs and generates some savings for enforcing authorities. Inspection plans and Primary Authority Advice may save time; but there are relatively few inspection plans in place and, where it exists, not all Primary Authority Advice is on the Register. Where inspection plans do exist, the need to review and understand the documentation, liaise with the primary authority and/or to provide feedback in a prescribed way, sometimes using a prescribed format, adds an additional task (or tasks).

720 On balance we consider that, as it is currently operating, Primary Authority probably imposes more costs than it saves on enforcing authorities, but only to a relatively minor extent. For cost-benefit analysis purposes, the figures that we would suggest are substituted for those in paragraph 702 are as follows:

i. Costs:

(a) 1.0 hour per month per enforcing authority on general interactions with Primary Authority

(b) 1.0 hour per referral to a primary authority and an average of 6 referrals per year per enforcing authority. The vast majority of referrals are ‘for information’ rather than enforcement action-related

(Say costs of 7,200 hours a year in total).

ii. Benefits/savings

(a) 200 enforcing authorities saving an average of 2.5 hours annually due to Primary Authority; these savings mainly arise because the primary authority takes up and resolves matters noted by the enforcing authority

(b) No net saving or benefit arising from inspection plans for enforcing authorities.

(Say net savings of 500 hours in total).

721 Such interview evidence as we have suggests that these costs and savings are scaleable as the proportion of businesses in Primary Authority increases. However, as already noted they are based on interview evidence not firm quantitative analysis so too much reliance should not be placed on them.

722 In addition, a further degree of caution needs to be exercised when using these figures. Primary Authority is not operating as was originally envisaged – in particular there are fewer instances of published Primary Authority Advice and inspection plans than were anticipated so their impact on the enforcing authority task remains largely untested; and there is a (currently undefined) level of interaction between primary and enforcing authorities that takes place outside the Register.

723 We also acknowledge that our work is based on a small sample of the full range of local authorities. Moreover as Primary Authority expands to cover many more business and indeed regulatory areas the picture may change.

724 More fundamentally the nature of an enforcing authority's interaction with businesses has changed significantly – in particular:

- Increasingly (apart from Food Safety & Hygiene almost exclusively) interactions are incident or compliance-related with few scheduled inspections taking place
- The recent introduction of coordinated partnerships extends eligibility for the scheme to a far wider range of businesses than was previously envisaged
- There has been a general shift away from enforcement and towards a more collaborative approach, working with businesses to achieve compliance.

725 We believe that this changes the cost-saving dynamic considerably from what was envisaged at the time Primary Authority was being developed and the initial analysis was being prepared; it is probably time to revisit the assumptions behind, and elements of, a cost-benefit analysis for the scheme from first principles.

8 Summary: the benefits and drawbacks of Primary Authority from an enforcing authority perspective

Introduction

801 We asked:

- What benefits do you think Primary Authority brings to enforcing authorities?
- What drawbacks are there to Primary Authority from the enforcing authority perspective?
- Whether the benefits outweighed the costs.

Benefits and associated drawbacks

802 The principal benefits and drawbacks of Primary Authority from an enforcing authority's perspective are summarised in the following paragraphs. In this context it is important to bear in mind that, for reasons that we have already briefly rehearsed, businesses with a primary authority partnership are rarely encountered by enforcing authorities.

"From an enforcing authority perspective, the impact is minimal because you rarely go into a business where a primary authority partnership exists and, if you do, then there will generally be no inspection plan or Primary Authority Advice and, if there is, it can usually be ignored because now you are going in to investigate a specific incident or a complaint rather than to inspect."

i Saves time at inspections

803 Primary Authority has the potential to save enforcing authorities time during an inspection.

804 At the moment this potential is often unrealised because:

- Instances of Primary Authority Advice and inspections plans are relatively few in number
- From the enforcing authority perspective, inspection plans are sometimes poorly drafted in terms of their content (meaning the enforcing authority sees itself as "unpaid help"), structure (difficult to follow on paper and on the ground) and/or tone (overly directive).

"Complicated inspection plans are a huge headache and no help to enforcing authorities – there is enough to do; these just make matters worse."

805 It is interesting – at least to us – that there appears to be no suggestion that when producing an inspection plan, primary authorities might wish to consult with (or offer the opportunity for comment on a draft to) a sample of enforcing authorities given that they and others will be responsible for carrying it out.

806 We also note the contradiction in enforcing authorities wanting more inspection plans whilst the number of occasions on which they might be of use is in decline (only Food Safety & Hygiene carry out regular inspections). In future it may be that there is more

scope for inspection plans that are informative rather than directive in nature. We wonder if the range of inspection plans that it is possible to develop is fully appreciated by primary authorities.

ii Saves time post-interaction

807 There is more scope for Primary Authority to save enforcing authorities time after an interaction with a business, particularly if the primary authority takes up the issue(s) on an enforcing authority's behalf.

"Our experience is that you are more likely to get a response and to get it quicker going via the primary authority than through other means."

808 Currently the potential savings are again often unrealised because, from the enforcing authority perspective:

- The prescribed format in which feedback is required can be burdensome for the enforcing authority to complete
- More generally, the requirement to use the Register, if insisted upon by the primary authority, can pose difficulties for enforcing authority staff and can seem disproportionate unless there is a risk that some form of enforcement action will follow
- Primary authorities are not as good as they could be at acknowledging feedback on receipt; telling the enforcing authority what it proposes to do about the matter(s) raised on a timely basis; and regularly keeping the enforcing authority informed of progress.

"Primary Authority could save time if there was an issue that required following up but we would need to ensure that the primary authority did follow the matter up properly."

"When we go to the trouble of making an enquiry of the primary authority these are almost invariably valid, have been raised by a fellow professional and deserve the courtesy of consideration and a response."

809 On the other hand, enforcing authorities do seem to us to be in danger of being too passive in their dealings with primary authorities. If an enforcing authority has raised a matter with the primary authority and it has not responded within what it considers to be a reasonable time then, we suggest, it should take whatever action it would have done had Primary Authority not applied – out of courtesy it might want to re-contact the primary authority to give it another chance to respond before it does so (though there is no requirement for this). If nothing else this course of action might prompt a response from the primary authority.

"The major drawback is the disenfranchisement of the enforcing authority. The way Primary Authority has evolved it seems to be that, unless the enforcing authority is contemplating or takes formal action, matters are handed over to the primary authority for it to resolve; often the enforcing authority can hear no more about the issue."

810 And, unless the primary authority formally directs against it or refers the matter to determination, our understanding is that there is nothing in Primary Authority that stops an enforcing authority from taking whatever action it considers to be appropriate, to a timescale that it also considers to be appropriate. A primary

authority cannot prevent matters that should be raised from being raised simply by being obstructive.

811 However, it should not come to this: it is hard to believe that simple, courteous communications between staff in the respective authorities' regulatory departments would not resolve many of the issues in a professional and amicable manner.

iii Provides a structure for regulation

812 Primary Authority provides a structure for all local authority regulators to work within; there is an element of certainty to the process that was, by most accounts, not there with the voluntary arrangements and the benefits of this are generally recognised.

813 However, there are times when hard-pressed enforcing authorities feel that within the structure greater flexibility could be introduced – in particular the ability of primary authorities to insist that the Register is used for communications in all circumstances, including the most mundane, is an issue.

814 On the other hand, we acknowledge (as did one of our interviewees, not themselves involved in a primary authority partnership) that it is only when the Register is used for *all* interactions between a primary authority and its enforcing authorities that it provides a full track of activity. If this is considered to be important, it may be that explaining this point, coupled with a push to get staff to use the password protected part of the Register, will make enforcing authorities less inclined to see being directed to use it as simply a bureaucratic imposition and happier to use it than many currently seem to be.

iv Perceptions of regulation

815 Our other research project³⁵ demonstrates that businesses' perceptions of regulation are almost invariably enhanced by Primary Authority.

816 There is a risk that the general public's confidence may be undermined – we have questioned whether a response to the effect that: "We have referred the matter to the primary authority and are waiting for it to respond" is sufficient. However, in our view the risk is relatively minor, particularly if enforcing authorities are a little more confident in their dealings with primary authorities.

817 There are also confidence concerns from enforcing authorities – in particular that an appropriate distance between the regulator and the regulated is not always maintained. Again, if enforcing authorities are a little more confident in their dealings with primary authorities this may help to address this.

³⁵ "Review of Primary Authority: quantitative surveys". BRDO, June 2015.

v A better way to achieve more compliant businesses

818 Primary Authority is in tune with a move away from prosecution and towards achieving compliance through working with businesses to improve their practices. In particular, the scheme is generally considered to offer a more effective means through which business-wide (as opposed to local area only) change can be achieved than voluntary arrangements.

“Primary Authority offers a better route to achieve business compliance (it is easier to work in a less adversarial manner) and allows an enforcing authority that engages properly to make better use of its resources.”

819 Unfortunately enforcing authorities are not always aware that wider change has resulted from an issue that they raised – usually because the primary authority has failed to communicate this.

“Primary Authority makes things marginally more complex for enforcing authorities: this would be worth it if we knew how issues that we raised had been handled and, in particular if they were learning points for the whole organisation. Unfortunately we often do not.”

820 To the extent that Primary Authority saves time (see i. and ii. above) it may free-up some enforcing authority resources to work with other businesses in the area, making these more compliant too.

Overall assessment

821 We asked our interviewees whether, on balance, they considered that the benefits of Primary Authority outweighed the drawbacks. Out of 23 authorities:

- i. 9 – all of these were also primary authorities – believed that they did
- ii. 4 considered that there was the potential for benefits to outweigh the drawbacks; whether or not this was achieved in practice depended on the individual primary authority

“It very much depends on the quality of the primary authority – and perhaps on the incidents that are reported to it. From our experience sometimes the primary authority or the business can be quite defensive; on other occasions it works like a dream.”

- iii. 3 were sceptical

“At the moment it is difficult to see how we gain.”

- iv. 7 believed that they did not.

“There is so little information on the Register.” We have suggested ways in which more content that might attract enforcing authorities can be placed on the Register.

“The way we work has changed so much” This is true, however it does not mean that there is no role for a primary authority to play (e.g. in resolving issues reported by the enforcing authority)

“It restricts what an officer can do locally too much.” We doubt that this is the case in practice; formal blocking of an enforcing authority is rare and there is therefore, in practice, little to

prevent the enforcing authority taking the actions that it feels are appropriate in the circumstances if it is minded so to do.

Conclusions

- 822 The quality of the enforcing authority experience does not appear to us to have been central in the design of Primary Authority – the emphasis is almost exclusively on the primary authority-business relationship. This is understandable but perhaps unfortunate.

“We have lost the sense of a ‘regulatory community’ – the relationship between authorities no longer feels like a partnership between equals; we are excluded.”

“Primary Authority is not being sold as a helpful service to the enforcing authority – the emphasis is entirely on the benefits to the business. It would be perfectly possible to build a model where this was the case, however the needs of enforcing authorities seem very much of secondary or no importance at the moment.”

“From the enforcing authority perspective, the main issue is the inequality in the relationship – Primary Authority is for the business; enforcing authorities are an inconvenience.”

“Home Authority was more of a partnership between equals on the regulatory side rather than a partnership between an authority and a business to the exclusion of all other authorities, which is what Primary Authority can feel like.”

- 823 It is perfectly possible to envisage how Primary Authority can be adapted to give the enforcing authority a better experience of the scheme – in the terms of this section addressing the drawbacks and accentuating the benefits – not least because it already operates well in some cases. We have highlighted some of the ways in which this could be achieved.

“We do not feel Primary Authority disempowers us in any materially important way. If used properly [i.e. there is information on the Register] then it ‘gets the basics out of the way’ and allows our officers to focus on areas that really matter/make a difference.”

- 824 What is not clear to us is the extent to which the quality of the enforcing authority experience “matters” particularly if Primary Authority is meeting the needs of businesses and primary authorities are broadly content (which all the evidence suggests is indeed the case).
- 825 Our fieldwork consistently suggests that enforcing authorities that are also primary authorities have a more positive view of Primary Authority (and doubtless a better understanding of it; more engagement with the Register etc. – not to mention an appreciation of the income stream it brings) than those that are “just” enforcing authorities. A tempting strategy, therefore, is to encourage more authorities to become primary authorities so that in sum (as “primary authority” plus “enforcing authority”) they will perceive the value of the scheme.
- 826 However, currently all the signs are that a (broadly) tripartite division is emerging between local authorities (the labels are entirely our own):

- “Superauthorities”, who invest in and market their expertise as primary authority partners and are seeking to attract businesses from across the UK³⁶ to go into partnership with them
- “Local primary authorities”, who more or less actively seek partnerships with businesses headquartered in their area but have no ambition to secure partnerships with businesses further afield
- “Enforcing-only authorities”, who for a variety of reasons currently have no ambition to become a primary authority (in some cases even for a business local to them).

827 Clearly it is possible for BRDO to challenge the perceptions of this third group; indeed, we would suggest they do so. However our discussions with officers in enforcing-only authorities suggest to us that some of these authorities at least are unlikely to seek to become primary authorities in the foreseeable future.

828 We would therefore suggest that every effort that reasonably can be made is made to ensure that the Primary Authority “experience” is satisfactory, and arguably beneficial, from the enforcing authority point of view even if the authority concerned is not, and has no intention of ever being, in a primary authority partnership. We consider that the recommendations made in this report will at least provide a start in this direction.

acl consulting
June 2015.

³⁶ We recognise the regulatory differences between the four countries of the UK, but the argument here still stands.

Annexes

1 Background note on Primary Authority

- 1 Primary Authority is a statutory scheme which allows businesses regulated by multiple local authorities to form a partnership with a single local authority: this local authority, once nominated by the Secretary of State, is known as the 'primary authority' for the business and is able to issue robust and reliable regulatory advice which is recognised by other local authorities that regulate the business (known within the scheme as 'enforcing authorities'). The primary authority may also guide inspections and other local checks on the business's compliance by publishing an inspection plan.
- 2 Partnerships can cover regulatory areas such as fair trading, food standards, health and safety, petroleum licensing and others (a full list "as at the time this study was commissioned" is in the table below).

Box 1. Primary Authority regulated areas	
Age Restricted Products	Food Standards
Age Restricted Services	General Licensing
Agriculture	Health Safety and Welfare
Animal Establishments	Housing
Animal Health and Welfare	Metrology
Environmental Protection	Petrol Storage
Environmental Protection (Welsh Regulations)	Pollution Control
Explosives Licensing	Product Safety
Fair Trading	Public Health (Welsh Regulations)
Fire Safety	Road Traffic
Food Safety and Hygiene	

- 3 Primary authority aims to build better relationships between businesses and local regulators, delivering local regulation that is consistent at a national level, but sufficiently flexible to address local circumstances.
- 4 Primary Authority is administered by the Better Regulation Delivery Office (BRDO) on behalf of the Secretary of State.

2 Issues covered in interviews with enforcing authority staff

Background

- What is your role and how does this bring you into contact with Primary Authority?
- How would someone working for your authority learn about Primary Authority and what they should do when operating as an enforcing authority?
- Has your authority changed internal policies, procedures, plans instructions, documentation, systems, staff training, work allocations etc. to reflect/accommodate Primary Authority?

Regulatory and other activity from the enforcing authority perspective

- Identify one or more activities you have undertaken as an enforcing authority in the context of Primary Authority (i.e. involving a business that is covered by a primary authority partnership)
- How did the interaction differ from what you would have done had Primary Authority not been in place?

Primary Authority more generally from the enforcing authority perspective

- Do you believe you understand what is required of you by Primary Authority?
- Is there anything specifically required of you as an enforcing authority that you struggle with?
- How do you find out which businesses have a primary authority partnership in place?
- When you find out that a business has a primary authority partnership in place, what (if any) steps do you routinely take? How do you modify your approach or working practice (if at all)?
- How has Primary Authority changed the way you do things as an enforcing authority?
- What benefits do you think Primary Authority brings to enforcing authorities?
- What drawbacks are there to Primary Authority from the enforcing authority perspective?

Overall conclusions about Primary Authority from the enforcing authority perspective

- How does Primary Authority add value to/benefit your work?
- How does it detract from/impose costs (time or opportunity) upon you?
- Do you put more or less time into businesses that are in Primary Authority than you would if they were not in the scheme?
- How can you quantify the costs and benefits in terms of the time spent?
- Do the benefits of Primary Authority to the regulatory community as a whole, and to business, outweigh any costs it might entail, or any other drawbacks?