

Hampton Review

LABREG

Best practice subgroup: 31 August 2005

Issues and options paper

Introduction

At its first meeting, the LABREG Best Practice Subgroup considered the issue of promoting best practice in local authority regulatory services. Two key points were noted:

- *Best practice has key interdependencies with the work of other subgroups*
- *The promotion of best practice should not be confined to the identification and generalisation of already existing approaches to local regulation, but should include developing better approaches than those that are current*

Brainstorming sessions produced a remarkably coherent view of the characteristics of best practice. This paper takes forward that view and the imperatives of the Hampton Review, and furnishes options to form the basis of a LABREG best practice statement.

This paper assumes that the best practice statement will be an explanatory annex of the revised Enforcement Concordat.

Best practice options

Section 1. Service structure integration

The Hampton Review argues strongly that the local regulatory services within its scope (broadly, trading standards and business-related aspects of environmental health, excluding licensing) should as far as possible be integrated. Integration would reduce the number of regulatory interfaces for business, promote integrated data collection and inspection requirements, and help coordinate enforcement against persistent offenders.

*The range of structures in local authorities, particularly the existence of non-unitary contexts, makes a generic model for integration a difficult objective. However, a **general requirement to integrate these services**, clarifying general principles set out in the Enforcement Concordat, could be established. Sitting below the general requirement could be a series of example **indicators of best practice**. In common with the performance management framework being developed by LABREG, these indicators would be a backdrop for discussion between regulators and those who assess their competence, rather than a binding set of specific requirements. (When general requirements and indicators are referred to throughout this paper, they are meant in this sense. The former clarify principles of the Concordat; the latter provide further illustration. The indicators are thus guidance, and alternative ways of fulfilling the general requirements will, of course, be admissible.) Indicators of best practice in this context might include:*

- *Full integration.* In unitary contexts, the services would be integrated, operating in the same broad service area/directorate, and have joint enforcement and inspection plans.
- *Account manager model.* A model for unitaries where a particular regulatory interface, or officers within it, act as an account manager for the rest of the authority. They would obtain the bulk of the information needed by the authority, and be supported by specialists where other interventions are needed. (A more developed version of this approach is suggested as a pilot below.)
- *Lead provider model.* In non-unitary contexts, an environmental health or trading standards department could take on a similar account management role for all of the enforcing authorities in a particular region.
- *Coordinated planning model.* In non-unitary contexts, districts and counties could develop joint-planning agreements, covering their collective enforcement requirements, with a view to integrating inspection activity where possible.

Service integration, regional issues and scarcity

There are examples of regional cooperation throughout the regulatory system, and they are laudable. However, feedback to the Hampton Review indicated that there are still inhibitors to this cooperation.

It is imperative that progress is made in this area, to demonstrate that the existing broad institutional and funding arrangements can be made to work and overcome problems. The problems of inconsistency of resourcing, the lack of a formalised regional dimension to regulatory services, and the inability of small authorities to sustain the cadre of specialist officers that they need to discharge all of their duties are a set of problems requiring either proactive coordination within the existing structures, or a wholly new set of structures. Accordingly, it is imperative that LABREG lends significant direction and impetus to regionalisation.

A general requirement for local authorities **to participate in regional planning forums** would provide impetus. Forums should:

- *Be cross-sector, encompassing the regulation and enforcement regimes specific to Hampton*
- *Pool and share specialist resources*
- *Develop regional information and enforcement strategies*
- *Share best practice*

Addressing structural and funding impediments is so critical to Hampton implementation however that it is worth exploring subgroup ideas for more radical solutions. Accordingly, two of those ideas should be piloted in the coming financial year. They are set out below.

Regional specialism and local account management: a new model and a challenge to the professional bodies and central regulators

Various representations were made to the Hampton Review about the impact of the separation of aspects of trading standards and environmental health, both at a “professional” level and in the requirements set out by central regulators, who often require certain activities to be carried out only by TSOs and EHOs. This separation was felt to inhibit fuller integration. Some representations pointed to the need for a modernised service approach in which regulatory services are designed around the needs of business sectors and consumers, and not according to the dictates of professional silos. This point was forcefully restated during some LABREG subgroups, and in particular the Performance Management subgroup. It was suggested that much compliance management is generic in nature, and moreover, delegates observed that this is an area that has become an increasingly large part of the public sector. The argument was

made that for some activities, specialisation was unnecessary, and also limited access to a wider recruitment pool consisting of those with a background in compliance.

One model that would potentially address these issues, and allow for local and regional strategies for integration, would be a developed account management approach. In this approach, most inspection and other enforcement requirements for a particular business or business sector would be the responsibility of what are usually, wrongly, termed generalists, but who would in reality be broad compliance specialists for the sector in which they operate. These “account managers” would be backed up by trading standards and environmental health specialists (within the authority, or within a wider regional pool), whose services could be called upon when needed.

This would help to pluralise career development paths for those operating in the sector. Those who bring or develop transferable skills for use in account management roles would have demonstrable further career potential outside the sector in other sorts of compliance role, while specialists would have wide-ranging but targeted responsibilities, making better use of scarcity and potentially diversifying officers’ exposure to problems and issues.

Accordingly, pilots should be set up, involving a number of authorities, potentially all in one English Region, to examine and test this enforcement model. TSI, CIEH and the regulators should examine their requirements for activities to be carried out by specialists, and relax them to the extent required to test the model. Participating authorities should explore the full potential of pooled specialisms, to see whether this provides greater resource elasticity, and enhances regional enforcement potential.

Super providers and regional service integration

There are examples of high performing authorities carrying out services on behalf of others in local government. There was significant support for this in the subgroup as a means of increasing standards of service provision in the regulatory sector. Moreover, the inhibition to full integration posed by non-unitary contexts led some delegates to suggest that an “upward” integration of relevant environmental health services, currently administered at district level, into county council trading standards offices, should be explored.

Accordingly, two types of “super provider” pilot should be set up. In the first, a high-performing authority, most probably a unitary, should carry out regulatory services obligations for a single or cluster of neighbouring authorities, receiving relevant funding to do so. In the second, a feasibility study should be carried out to assess the practicability and benefits of upward integration.

Section 1 recommendations summary

- *General requirements should be included in best practice statement for service integration and regional strategies*
- *Pilots for a new enforcement model and super providers should be established*

Section 2. Presumption against routine inspection

This is a key element of the Hampton agenda. Regulators at all levels are encouraged to shift activity away from routine inspection into risk-based, intelligence-led enforcement strategies. The revised Enforcement Concordat will codify this Hampton principle.

*To support this, a general requirement in the best practice statement should spell out for local authorities that they should look to **evaluate the effectiveness of their inspection activity***

and shift resources from non-essential inspection into other compliance activity. (Similar requirements will be set out for regulators.) Working with the BRE and other colleagues, the Performance Management subgroup will consider whether this general requirement should be supported by a time-limited **performance target** quantifying the required shift of enforcement resources.

Section 2 recommendations summary

- That the general requirement relating to inspection be included in the best practice statement
- That the LABREG Performance Management subgroup should explore the possibility of a relevant performance target

Section 3. Proportionate and business-friendly enforcement

This is another key Hampton principle, which will be defined by the Enforcement Concordat. Accordingly, the subgroup should comment on the Concordat's specific wordings in this area (to be circulated to LABREG delegates in due course). However, certain specific best practice requirements and indicators should support the general intent. These are set out in the following sections.

Section 3 recommendations summary

- That the subgroup reviews the relevant section of the Concordat
- That best practice requirements and indicators relating to proportionate engagement with business should be properly linked to the Concordat

Section 4. Synthesising data requirements between regulators and eliminating redundant ones

This Hampton principle will again be set out in the Concordat. A general requirement may also be appropriate to reinforce it, for both local and national regulators, calling for **enforcers to engage in collective efforts to reduce the number of requests to business for data.** The performance framework may also develop a target to reinforce both this principle and related practical work being taken forward by the BRE

Subgroup delegates also suggested that the principle could be supported in practice by the adoption of a "trading premises model" of enforcement, in which the registration of local premises was accompanied by an integrated collection of data and relevant compliance information. While there may be problems with this system, it should certainly be piloted, especially if benefits included "fewer, better forms", online form-filling facilities with self-automating guidance (CF: planning portal technologies) and inspection holidays for participating firms.

Section 4 recommendations summary

- That the subgroup should review the relevant section of the Concordat
- That there should be a supporting general requirement
- That the subgroup reviews any relevant targets
- That a "trading premises" pilot be established and evaluated

Section 5. Proactive advice-giving to businesses

Hampton Review fieldwork revealed significant variations in the resources that authorities put into providing advice to businesses. Many produce information packs, attend business fora, and try to meet early with new start-ups. For other authorities, engagement with business information needs is more reactive, the authorities waiting for businesses to contact them.

The latter approach risks the possibility that businesses wish to comply but are concerned that contacting a local enforcer looks like an implicit admission of non-compliance. The former approach, especially if it rests principally on one-to-one engagement with businesses, can be very resource intensive, and indeed might represent an ambition that cannot be fulfilled.

All authorities Hampton contacted complained of the lack of generic business information materials provided to them by central regulators, indicating that large amounts of resource are devoted to producing bespoke information resources.

*Accordingly, a general requirement to **provide proactive information and support for businesses** should be set out in the best practice statement, with some defining indicators. These would include:*

- *Attendance of business fora*
- *Accessible, web-based information for businesses*
- *Information packs for certain sectors of business, made available on request, and also downloadable (with businesses in the relevant sectors advised of the existence of these downloads, through borough newspapers, Chambers of Commerce newsletters etc)*
- *FAQ sections on websites, business “surgeries”, anonymous online Q&A fora*

More general requirements will be set out in the Concordat for consultation with businesses and consumers on enforcement strategies. The Concordat will also set out a new requirement for regulators to work together to produce generic information for business sectors. To support this requirement, LABREG should appoint suitable coordinators for preparatory and pilot work. The project should examine whether the bulk of business information requirements can be addressed generically. An audit of the information produced by regulators can be conducted, to see if it can be tailored into information packs, ideally business-sector specific, rather than regulator-specific.

Section 5 recommendations summary

- *A general requirement on information provision to businesses should be set out in the best practice statement, supported by indicators*
- *A stipulation to national regulators to harmonise their information provision should be set out in the Enforcement Concordat*
- *A related preparatory and pilot project should be initiated*

Section 6. Consumer protection

The Hampton Review envisaged a virtuous enforcement circle. Moving away from routine inspection of broadly compliant businesses would free resources to target rogue traders and protect consumers.

*The best practice requirement to provide information and advice proactively to business should be counterbalanced by a general requirement to **sustain intelligence-led consumer protection strategies**.*

The indicators of this requirement should include:

- *The provision of consumer advice services, either directly or as part of Community Legal Service Partnerships or Consumer Support Networks. (The subgroup may wish to strengthen this requirement.)*
- *Providing information to consumers relating to consumer protection campaigns*
- *Clear protocols for the handling of consumer enquiries (see below for additional Enforcement Concordat guidance on this point)*
- *Sustaining a cadre of investigative officers to administer intelligence-led enforcement strategies and collaborate with other agencies to pursue rogues, who would refer cross-boundary issues to affected authorities and national agencies, and act on referrals they receive (see Enforcement Concordat guidance below)*

While this looks resource intensive, in addition to the possible redeployment of resources freed up by reductions in routine inspections, both the Enforcement Concordat and the introduction of a priority framework for regulation should introduce some targeting. First, as part of the proportionality requirements relating to business, enforcing authorities should make clear that not all complaints against business will be investigated. Rather, they should set out clear protocols, constituting the “merits test” that they will apply to consumer complaints, prior to investigation. This should include criteria such as the vulnerability of the complainant, the nature of the harm or risks identified in the complaint, and the prospects of a successful enforcement against the business. Where the requirements of the merits test are not met, there will be no investigation. (However, the details of the complaint should be stored, so that patterns of multiple complaints, another potential merits test trigger, can be noted and investigated.) Secondly, enforcing authorities should apply a similar merits test to their own enforcement actions. The Concordat will discourage enforcement strategies that are reliant on entrapment, save in cases this approach is essential to provide intelligence against businesses believed to be in systematic and deliberate breach of compliance regimes. Merits tests should include the likelihood of securing a conviction against the business in question and the admissibility of due diligence defences. Thirdly, the priority framework should guide authorities on the kinds of breaches that they should target. Other, non-prioritised regulatory requirements may be enforced more passively and reactively, if at all.

Inter-authority collaboration on consumer protection raises the issue of a national consumer protection strategy, which will ultimately be the responsibility of the new CTSA. It would make sense for LABREG to work closely with DTI and OFT officials on the piloting of any preparatory arrangements in this area. Best practice brainstorms featured ideas DTI/OFT colleagues may wish to explore. These were:

- *The establishment of formal referrals protocols between local enforcing bodies*
- *The development of a central investigative and enforcement cadre; or*
- *Central direction of local enforcement activity on national or regional issues, including the appointment of lead investigating authorities*

Section 6 recommendations summary

- *That a general requirement for consumer protection strategies with supporting indicators should be set out in the best practice statement*
- *That this requirement should be targeted and made sustainable by associated features of the Concordat*
- *That LABREG should participate fully in centrally led work on the implementation of national consumer protection strategies*

Section 7. Business incentives schemes including “traffic light schemes”

A Hampton Review requirement for LABREG is to investigate best practice in local incentive schemes for businesses. (This is the obverse of work being pursued following Hampton by the BRE on penalties.)

In its broadest sense, this issue did not feature much in brainstorm discussions. However, requests for information on local schemes should feature in the Autumn consultation exercise (see final section of this paper).

One specific scheme featured heavily in the subgroup discussions, namely the traffic-light scheme being developed by LB Bexley as part of the DTI-led Retail Enforcement Pilot. Such schemes may prove very useful in providing business with an incentive to comply, and also in tracking outcomes relevant to the principles of the revised Enforcement Concordat. The Concordat will emphasise improving rates of compliance, rather than focusing efforts on measurable volumes of activity, such as numbers of premises visited etc. Strategies to move businesses out of non-compliance into compliance change reality for the better, and local traffic light schemes could help to measure success.

Accordingly, a number of variants of the Bexley traffic light scheme should be piloted.

Section 7 recommendations summary

- *That the Autumn consultation should ask participating authorities about their incentives schemes for business*
- *That traffic-light schemes should be piloted*

Section 8. National/local issues and the Home Authority Principle

The revised Enforcement Concordat will for the first time embrace local and national regulators. A requirement stipulated in the Concordat will be for national regulators, working with local authorities, to keep the boundary between those activities that they enforce themselves and those enforced on their behalf by local authorities under continuous review. The principles determining where enforcement should sit should be effectiveness, logic and the convenience of the regulated, and not simply the custom and practice of the regulators.

A related issue is the Hampton suggestion that the CTSA should coordinate the regulation of large business multiples. This suggestion has been reinforced by the government’s business manifesto, and declarations from ministers, in particular the Chancellor of the Exchequer, along the same lines. The intention is to introduce a comprehensive national scheme, building on the idea behind the Home Authority Principle, but eradicating some of its current operational weaknesses, such as uneven resourcing.

This issue is one for DTI to take forward in the context of consultations on the future shape of the CTSA. However, LABREG involvement in work in this area would be useful. Within the subgroup, opinion was divided as to whether the principle that large multiples should be subject to a coordinated national scheme should mean the creation of a new entity to deliver inspection and enforcement services directly, or whether coordination and strengthening of the existing arrangements by CTSA would suffice. It would make sense for LABREG to be involved closely in any pilot work, which could look at options from coordination, through direct purchasing of large business inspection services from local government by CTSA, to direct provision by CTSA.

Nevertheless, the principle is sufficiently clearly the thrust of government policy for it to be included in the Concordat and associated best practice statement for central regulators. This should state in general terms that regulators covered by the Concordat should work to **simplify as far as possible the regulatory interfaces for business. Such simplifications should be dictated by administrative convenience of business, not that of the regulators.** A best practice requirement will also feature, indicating that this process of simplification will require full cooperation from regulators with Hampton-driven mergers, but also, more relevantly for LABREG, will underline the government's expectation of radically simplified and coherent compliance arrangements for large multiples.

Section 8 recommendations summary

- That the subgroup should review relevant wordings on national/local issues in the Enforcement Concordat
- That LABREG should collaborate on DTI-led moves towards reformed regulatory arrangements for large businesses

Section 9. Regulatory officers: training and appraisal

The combination of measures being developed by LABREG will present significant cultural challenges to individual officers. As part of its second major work programme, LABREG should engage with umbrella bodies and regulators to test whether current training and development packages need to be reworked to meet the challenges of a reformed regulatory landscape, and whether approaches to recruitment and retention need reshaping.

One immediate step that could feature as a general requirement in the best practice statement is that officers should be **appraised against the requirements of the Concordat**, among other things. Indicators could include:

- Assessments of supportiveness, diplomacy, proportionality and problem solving approaches to business
- Innovation in consumer protection
- The use of 360 degree feedback from business and other client groups

Section 9 recommendations summary

- That LABREG's second work phase should look at training, development, recruitment and retention in regulatory services
- That a general requirement on officer appraisal should be included in the best practice statement

Section 10. Competition

Some delegates to the subgroup take the view that introducing competition into the regulatory system would encourage local enforcers to raise their game. They point to building control, where either private companies or local authorities can assess compliance with building control regulations, as a successful example.

This is a contentious issue. There is nothing to prevent the outsourcing of inspection services by local authorities under current legislation, save the comparative scarcity of the relevant specialisms (though as we have seen, certain steps could limit this inhibition.) But this is not the central issue. The question is whether regulatory services can be provided by other market entrants. This assumes there are gains to be made by those entrants, and that presupposes major contracts or fees. The major contracts would only be sufficiently attractive in bulk-

purchasing contexts, and in particular where changes in the funding mechanisms governing regulators introduced some form of purchaser provider split, with central regulators paying directly for inspection and enforcement services from local authorities and other market entrants bidding for the work. Fees presuppose that businesses would be paying for guarantees of compliance either from local authorities or other auditors. Since many of the regimes within the Hampton scope are not fee-related, a move towards fee-based systems would be required, and this would be unattractive without some significant quid pro quo for business.

Nevertheless, the issues are worth exploring in pilot form. Suitable sponsors should be identified for a feasibility study on introducing competition into the local regulatory system.

Section 10 recommendations summary

- *That a competition feasibility study should be carried out*

Recommended next steps

The subgroup should consider, amend and agree this paper. The paper will then be worked up into a best practice statement to provide an annex of the Enforcement Concordat.

LABREG will then engage in an initial consultation on this statement. This will consist of a questionnaire directed to around 20 local authorities, selected by LACORS and the BRE, who will then participate in a mini-conference in October 2005. The best practice statement will then be finalised in October, in time for more formal and exhaustive consultation from November 2005 to February 2006.

The statement would be initially revised in the light of consultation, and further revisions would be made in the light of evaluations of pilot work, and periodically thereafter. All pilots mentioned should be launched as soon as resources can be mobilised (realistically as soon as possible after finalisation of LABREG outputs in November 2005).