

# The future of councils' 'regulatory services'

## Foreword

Trading standards, environmental health and licensing - often referred to collectively as 'regulatory services' - cover a very broad and diverse range of issues and activities ranging from animal health, to consumer protection, to food safety. They have a key role supporting a number of council priorities linked to the health, safety and protection of the public and places: a more recent priority has been the role these services can play in facilitating economic growth through their support of local businesses. The balance of these services rightly varies from place to place, depending on the local area. The regulation of businesses operating in rural Cumbria is unlikely to be identical to the needs of major conurbations such as Manchester or London: for this reason, the Local Government Association (LGA)'s recent vision for local regulation, *Open for Business*, made clear that councils should be able to shape regulation in accordance with local needs.

These services have historically been small services in the context of councils' overall activities and workforce, and the impact of recent cuts to local government funding has been to reduce their size still further: figures suggest a significant reduction in the workforce, as well as a significant loss of professional and technical expertise. Nationally, our overall capacity in these services has been weakened.

Undoubtedly, these services are less high profile, both politically and publicly, than larger services such as adult social care, planning or library services, although specific local issues can be high on councillors' agendas. They may also be generally perceived as lower risk, although in the case of serious breaches of consumer protection laws or environmental health controls, this is questionable. But these services nonetheless have important purposes in our communities, and there is now a pressing need to think seriously about the long term role and future of these services. This provides an opportunity as well as a challenge, in terms of the chance to re-think which elements of these services are the priorities; how these priorities should be delivered and what the appropriate responsibilities of state, businesses and consumers should be. If this opportunity is not taken, we risk not having viable services with the required capacity to support regulation and councils' wider ambitions for their people and places.

The purpose of this report, which builds on the study the LGA commissioned, is therefore to prompt serious thinking across local government and beyond about how to secure sustainable 'regulatory services' in future, recognising the reality of funding and demands of other services. This report marks the start of a tranche of LGA work considering the future of these services in conjunction with councillors, council staff, relevant professional bodies and the government. It will be followed up by a series of activities to stimulate the debate, and we invite all local authorities to share their views on this important issue.

Signed off by Board member

## **1. Introduction**

This report draws on a short exploratory study into what are sometimes referred to as councils' 'regulatory services' - that is trading standards, licensing and environmental health. The study was commissioned by the Local Government Association (LGA) in recognition of the pressures for change on these services and conducted by the Institute for Employment Studies. Alongside generic pressures such as the continued reduction in council resources and new models of organisation and service delivery, specific changes such as the return of public health responsibilities to councils; the deregulation / better regulation agendas; and a growing emphasis on the positive role regulatory services can play in supporting businesses, all combine to create the opportunity and need for some rethinking of regulatory services in local government.

The LGA wanted to explore the implication of these changes for regulatory services and the officers working within them, as part of our wider interest in the overall workforce of the future. In particular, there was interest in whether there is scope for a generic regulatory services professional working across all three services, in line with the assumed need for a more flexible and agile twenty first century workforce.

This report is structured into two sections. The first provides an overview of the key findings from the research the LGA commissioned. The findings summarised here are based on available reports and workforce data and interviews with over 35 individuals from a range of councils and other stakeholders. Based on these findings, the second section considers the key issues and challenges the sector must address to ensure a sustainable footing for these services in the future.

## **2. State of play: an overview of council regulatory services**

Councils' regulatory services exist because they deal with a set of fundamental issues related to public health, consumer protection and public safety. Each of the three services focuses on specific issues and activities. Their purposes, interests and work activities are inter-linked but distinct one from another.

### ***History and purpose***

Environmental health developed as a discipline in response to nineteenth century problems with poverty, ill health and disease arising from environmental factors including housing, pollution and bad food. Many of these issues are still surprisingly relevant today. The service covers a broad range of functions from air quality to noise to food safety to health and safety. This study indicated that heads of service and councillors do not necessarily see environmental health primarily as a 'regulatory service', but rather as supporting their strategic commitment to making their communities 'healthier' places to live and work. The recent move of public health back to local authorities makes the wider health agenda even more explicit.

Trading Standards has a more clearly regulatory history. It grew out of protecting consumers from traders who sold unfair measures or products which were adulterated or otherwise unsafe. Current priorities include protecting vulnerable citizens in their neighbourhoods, for example keeping the elderly safe from 'doorstep' crime, as well as addressing organised crime and large scale 'scams', often perpetrated via the internet. Trading standards are increasingly collaborating regionally, nationally and internationally to address this second type of challenge. In other countries Trading Standards comes under the discipline of consumer protection.

Licensing is a specific way of regulating certain activities and councils issue licences for a diverse range of activities under complex and fragmented legislation. Although

licensing teams in councils are primarily responsible for overseeing the Licensing Act 2003, other teams will also be responsible for issuing licences related to their own work areas (for example, environmental health officers are likely to issue pet shop licences, pollution control permits etc). Despite being the most purely regulatory of the three services, licensing too is becoming more involved in the wider aspirations of councils, for example through the link between alcohol consumption and public health being a consideration in licensing of alcohol sales.

### ***Size and structure of services***

Regulatory services constitute a tiny proportion of overall council spending, with total net current expenditure in 2012-13 of some £526m on environmental health, £134m on trading standards, and £8.5m on licensing.<sup>1</sup> As would be expected in the context of a 40% cut to local government funding over the course of the current Parliament, what were already relatively small staff numbers have fallen. Estimates based on CIPFA's 2009 and 2013 surveys indicate that WTE staff numbers in environmental health and licensing combined have fallen from 15,900 to 12,410, and in trading standards from 3,860 to 2,510<sup>2</sup>. The recent TSI workforce survey found that most authorities employ less than 8 qualified trading standards officers and fourteen authorities in the survey had less than 2 FTE. In short, the study found highly interested councillors and well-motivated managers in the services reviewed, but based in teams where expertise is now spread very thinly.

The councils involved in this study showed no clear pattern in the positioning or organisation of their regulatory services. Services are arranged differently in unitary and two tier areas, where trading standards is a county function and licensing and environmental health are district functions. The 'regulatory' bundle of trading standards, environmental health and licensing is quite common in unitary authorities but often combined with a range of other services to make up the size of directorate desired. In two tier structures, environmental health and licensing are often combined in the same directorate, usually also with a very varied range of other services; likewise, trading standards teams have been grouped with a wide array of different services at county level.

These wide ranging directorates have partially resulted from a reduction in both the number of directorates and top level officers as one way of responding to financial cuts. Being in such wide directorates has had the effect of shifting management of smaller services, including the three regulatory services, down one or two levels and away from strategic decisions on finance and service priorities.

### ***The changing nature of regulatory practice***

The better and deregulation agendas of successive government, combined with the more pragmatic drivers of funding cuts and capacity constraints, have shifted regulatory practice in these services towards a more risk-based, intelligence led approach. In certain specialisms, work is now more likely to be reactive than proactive, cutting back both on routine checks and new initiatives to improve health or public protection. Some professionals expressed concern that over time the

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<sup>1</sup> Source: CLG statistics on LA expenditure 2012-3, February 2014. Most of the £160m total licensing expenditure is recovered through fees and charges service: additional expenditure of around £140m and £26m by EH and TS respectively is funded through fees, charges and other income. <https://www.gov.uk/government/publications/local-authority-revenue-expenditure-and-financing-in-england-2012-to-2013-final-outturn>

<sup>2</sup> Footnote on stats.

reduced focus on low risk businesses could reduce overall levels of compliance and lead to a slippage in standards.

More recently, government policy and the local impact of recession has focused attention on the role these services can play in supporting businesses and contributing to economic growth. This type of support can range from simply being more business friendly and providing easier access to basic advice, to giving more technical advice on how to improve standards, to introducing council accredited schemes to recommend, for example, food producers or other products as meeting high quality standards. The officers and councillors interviewed as part of the LGA study placed considerable importance on the role of councils in supporting the local economy and therefore businesses, although this does not detract from their primary purpose of keeping the public healthy and safe.

This newer economic driver for these services, alongside wider interest in public health and quality of the environment is making these so called 'regulatory services' rather less regulatory in both outlook and activity. In this sense they may be more appropriately seen as public health and protection services rather than 'regulatory services'. However, while the current direction of travel is for environmental health, trading standards and licensing to become less narrowly regulatory in focus, financial constraints *could* cause them to refocus almost solely on the enforcement of regulations in high risk situations. There are therefore growing tensions between the high aspirations which councils have for improving public health, community protection and business support on the one hand, and their diminishing resources on the other.

### ***Skills, expertise and future capability***

Changes in service drivers and regulatory approaches clearly have implications for officers working within regulatory services. In particular, the LGA study sought to understand the scope for the three regulatory services to join together more closely, including potentially through the creation of generic 'regulatory services' officers. This issue is an important element of the debate about a more flexible workforce and providing more coherent support to businesses. Recent proposals such as the LGA's *Rewiring Licensing*, which calls for the creation of a single business licence, imply a need for much greater joining up across business facing services; but what is the logical extension of this approach?

There is evidence from this study that officers working in these three services do share some skills and competencies. The Better Regulation Delivery Office's 'Regulator's DNA' project has focused on identifying these skills. Analytical skills (including increasing sophisticated use of ICT for investigative purposes), communication, persuasion and influencing, collaboration, a focus on outcomes and the ability to evaluate the effectiveness of interventions are all becoming increasingly important.

Two aspects of regulatory skills were flagged during the research as being of concern. An understanding of business (especially business processes and financial aspects), and the ability to work with business and influence through advice are clearly required in the 'business friendly' model of regulatory services, and managers felt that there were skills gaps in these areas. More could be done within existing qualification structures to focus on these skills and perhaps practise them through work-based learning experiences.

At the other end of the regulatory spectrum many of those interviewed felt their officers did not necessarily have the willingness or confidence to take enforcement

action even if they knew they should do so. This problem may worsen as resource reductions may force councils to limit taking forward the most expensive enforcement cases, which can account for the equivalent of an entire annual budget. Managers often felt that the people who perform very well as business advisers do not make the best enforcers and vice versa. The research suggested that in other sectors it would be thought unusual, and potentially a conflict of interest, to combine business advice and enforcement.

Beyond the shared set of competencies involved in working with business and the public and regulations, each of the regulatory services is underpinned by a considerable amount of theoretical and practical technical knowledge gained through both study and experience. Some of this knowledge is of legislation / codes of practice (for example in the licensing function), and some of issues and work areas and their associated scientific knowledge and practical techniques. The scientific knowledge is an especially important aspects of environmental health work. Investigative skills and understanding how to work with police is a key skill for trading standards officers.

The study found that at officer level the common pattern is for professionals covering a fairly broad range of work within their profession or occupation , except where the size of the team and volume of work justifies specialist teams, for example in food safety. Many professionals also carry an 'expert' hat in at least one area of specialism within their profession, even if this is not their full time role. Roles at officer / professional level have become more collaborative and flexible at the margins with other professionals in the work that they take on.

There were mixed views on whether it would be desirable, or achievable, to merge the roles of the different types of regulatory officer. At present environmental health and trading standards officers remain distinct roles even in directorates containing both. A key factor influencing future change will be the direction the three services move in and where they sit, issues addressed in the next section of the report.

Initial training and qualification routes into the three services operate in very different ways and all need some attention to remain effective in a shifting labour market. There is a risk that young people will either know nothing about these services or find them difficult to understand as career options. If they do take a related degree they will have trouble at present finding the work placement they need to complete their professional training. If they find themselves working in these areas, perhaps in a technical support role, they may not be offered a clear route of work experience and associated formal learning to progress their career if they wish to.

A key finding of the research is the fact that technical capacity is becoming very thinly spread as many experienced people have left or will soon leave local government. Equally, the study suggested that the future pipeline of able and suitably skilled people into these services appears fragile.

### ***Joint working and innovation***

The study noted the lengthy list of interfaces between council regulatory services and other bodies including: the police (licensing, trading standards); Food Standards Agency (environmental health, trading standards); Health and Safety Executive (environmental health); Environment Agency (environmental health); public health professionals (licensing, environmental health); fire services (all); port authorities (trading standards / environmental health) and partnerships such as Local Enterprise Partnerships (LEPs) (all). It concluded that the more outcomes focused regulatory services become, the more outward facing and collaborative they will need to be. But

different services may be pulled in very different directions by their most important partners, especially towards public health for environmental health but towards crime-related services for trading standards. Organisations dealing with food and drink are important for all three services,

The study also looked at new models of service delivery in regulatory services. Compared to other services, there are relatively few instances of councils entering into public-private partnership arrangements to deliver regulatory services. Where these arrangements are in place, it is as part of a wider repositioning of a range of services rather than the a targeted approach for regulatory services. These services do not currently appear large or profitable enough for widespread outsourcing other than through such wider partnership arrangements or until such time as private providers sell some elements of these services from a base in one authority to other authorities.

In terms of shared services, some councils have been very proactive in sharing elements of these services across their geographical boundaries. In small districts, environmental health teams have sometimes become so small – just three or four people with perhaps a couple in licensing – as to jeopardise councils' ability to deliver their statutory functions. Some districts have got together to share or merge their services. This does not necessarily reduce pressure or achieve economies of scale, but does give the service a greater critical mass with which to operate and perhaps sustains better management support.

Some counties and their districts have created a larger shared team covering the three regulatory' services: in one example, this team had over a hundred people. Several other counties had discussed similar options but for various reasons these had not been implemented. Other areas have merged their trading standards teams together; some regulatory services teams are beginning to link in closely with their LEPs. Some of these wider models are shared services and some are looser collaborative arrangements. As in other service areas, however, even formal shared service models can come under pressure, and there is recent evidence of some shared services arrangements in trading standards being de-merged.

In the majority of councils, where formal structures for sharing services across authorities do not exist, there is still a widespread use of informal sharing of staff with particular areas of expertise. This is especially so in environmental health where the numbers of potential specialist areas of work is much larger than most authorities can carry. So, one authority may have an expert in animal health and another in noise pollution and so forth. Sometimes money changes hands when experts work across boundaries, but in many cases it seems to be more of an informal 'swap' system.

### **Summary**

The analysis undertaken for the LGA found a multitude of organisational and management structures incorporating regulatory services across different councils. This to be expected, as councils will respond to their differing local challenges in ways that are appropriate locally but differ overall, but makes it harder to discern clear trends about the directions these services will go in. The varying patterns may also reflect the fact that in many places in recent years, these services have been cut, without the strategic thinking that is now becoming necessary. But we are at the limits of that approach; in many councils, further cuts could mean these services are no longer viable.

The research warned that there should be serious concern about the loss of capacity and technical expertise in councils' regulatory, since these are statutory services and

councils will be exposed to risk if they cannot fulfil them. There is an increasingly urgent need for councils to think seriously about the key priorities for these services, and the most effective way of delivering them in the future within the constraints of the funding available. Although undeniably challenging, this presents an opportunity to develop services suited to the challenges of the twenty first century. The next section of this report outlines some of the key issues the sector will need to consider in doing so.

### **3. The future of regulatory services: challenges and choices**

The investigation undertaken for the LGA points to three main and interlinked sets of challenges and choices for services in environmental health, trading standards and licensing. These concern:

- the purpose and areas of focus for these 'regulatory services' over the coming years
- where they will be located in organisational and geographical terms
- how they will be staffed and how the country will maintain capability in the relevant areas of expertise.

#### ***What are 'regulatory services' here to do and what will they focus on?***

Going forward, councils need to understand where these services fit in the context of their broader corporate priorities. What strategic objectives are regulatory services ultimately supporting, and how does this frame difficult decisions about resourcing and influence service level priorities?

Environmental health is closely linked with many aspects of public health both old (eg the impact of housing and pollution on health) and newer (eg healthy eating as well as food safety). Trading standards teams often prioritise their work protecting vulnerable people from doorstep or street crime (especially the elderly and the young) and enabling them to live safely in communities. But trading standards are also increasingly concerned with larger scale criminal activity (eg internet fraud) which is not confined to particular localities. Licensing is the service most clearly focused on regulation, but likewise is increasingly influenced by wider council priorities, such as the health and safety impacts of alcohol consumption in localities.

All regulatory services have a potentially growing role in supporting local businesses. This may be focused in the first instance on helping businesses to achieve compliance in a pragmatic and cost effective way, but also extends into more proactive work such as kitemark schemes and so on.

Both the diverse public protection safety agendas and the business agenda are encouraging councils to see these three services *widen* their remits – but possibly in diverging directions: health, crime and business. On the other hand, funding cuts could rein in these wider ambitions in and reinforce a narrower, regulatory purpose: making sure businesses abide by regulations, especially in areas of high risk to the public. Anecdotally, there is some suggestion that this is already starting to happen.

Essentially, the decisions facing councils relate to how wide the purposes of smaller services such as these can be. Are they simply about administering sets of regulations and enforcement, or more proactive action on health and public safety? In an era of austerity, which elements of these services should councils prioritise, and are there elements that we simply cannot afford anymore, balancing available resources, costs, net benefits and risk? To what extent will the answer to this vary from place to place, depending on local businesses and economies?

An interesting extension of this question is to think about the potentially radically different ways of delivering some or all of these priorities, in terms of the appropriate responsibilities of consumers, businesses and the state. Could some functions that are currently the responsibility of councils be overseen by businesses with a stake in them, rather than at the cost of the state? Should we move on from the recent trend towards deregulation and better regulation and be focusing on a *self*-regulation model, recognising the political reality of constrained public funding and the benefits to responsible businesses from much of this activity? Is there scope to make risk based judgements about the public protection issues that could reasonably be left to businesses to oversee, and those that are so important that the state should always have a role?

These are big questions that society as a whole, rather than simply councils, will have an interest in.

A more specific but related issue for councils is whether there is there a market for paid-for business advice services that go beyond their core / free services. As well as supporting local economic growth, this could offer an alternative delivery model as well as a mechanism to supporting local economic growth. The few early examples of outsourced services have not found significant markets for this yet, although it seems that the business models for outsourced services incorporates the future development of additional paid for services for business. The LGA is working with two councils to pilot a paid-for assured-advice service, and the creation of a business support / account manager role for businesses working with regulatory services, and will share the findings of these as they conclude

### ***Where should these services sit geographically and organisationally?***

The current location of these services is historic, reflecting the localised challenges that environmental health, trading standards and licensing teams were originally tasked with addressing. But while some aspects of work remain very local (eg regulating food premises, managing local alcohol premises and protecting vulnerable people from rogue doorstep traders) others are not contained within council borders and may be regional, national or – increasingly – international (eg internet scams, food fraud).

Trading standards has already started to respond to these geographical tensions through the National Trading Standards Board, with different regions leading work on issues including illegal money lending, scams and e-crime. This model reflects the fact that it is unrealistic for all councils to develop and retain specialist expertise to deal with issues that cross authority boundaries. The recent Elliot review, commissioned following the horsemeat scandal, also argued that a national as well as local approach is required in tackling serious criminal activity in food production.

As expertise becomes more stretched in individual authorities, and as the nature of the issues being tackled in regulatory services changes, councils should give serious thought to how services best operate at the different geographical levels relevant to their work. What are the issues that can still be tackled most effectively locally, which are the ones where a collaborative approach might be more appropriate; and what are the different options for collaboration? If larger and more sustainable teams are created across authorities by collaboration (eg lead authority models) or shared services, how can teams continue to serve local communities in the many aspects of their work which are neighbourhood and premises based?

There may be scope for further thought on how these services are structured within councils, including the overlaps between the services themselves and the interfaces with other services and bodies.

If the services are to respond to wider strategic agendas, it seems most likely that much of environmental health would sit naturally with public health. However this solution does raise issues in relation to the tiers of local government and in the extent to which public health works with business as well as with citizens and health services. Similar issues apply in relation to licensing. The wider trading standards agenda frequently links closely with policing, and some councils have actively considered the links between trading standards and the police. In pursuing these wider agendas, the services will work with quite complex sets of partners and this may challenge how councils seek to organise them.

Alternatively, if finance forces a narrower, regulatory focus then calling these services 'regulatory' and pushing them closer in organisational terms makes more sense. But the research for the LGA suggested that this is not the direction either directors or members really wished to go. A third alternative is that there may be some specific service areas which may be most efficient if they cut across existing silos. For example, could we have food safety services with expertise in safe food supply, food sales and support by business for healthy eating?

Support for business and economy also raises issues about where services are located. Supporting business is not relevant to all aspects of existing services, eg in environmental health work relating to noise pollution and nuisance is as likely to relate to residents as to businesses. But many councils are already thinking about how business-facing regulatory services can support local businesses, and this poses questions about how teams are structured. Should business advice and enforcement work be undertaken by the same teams and individuals or should there be a clearer separation between the two?

***How do we ensure those working in these services have the right skills and how do we best sustain our national capability in relevant areas of expertise?***

The issues and choices in the purposes of these services and where they sit have implications for the officers working within regulatory services. Across the local government sector as a whole, there is a need to retain enough of the specialist expertise within the current regulatory services workforce to ensure national resilience in the face of major incidents and current challenges. Given the impossibility of individual councils retaining expertise in the huge array of specialisms within these services, this will require joined up thinking and collaboration across councils about skills mixes and formal or informal sharing of different expertise. But this very could be difficult to manage and coordinate.

Additionally, there are issues for the professional bodies representing officers in these services – the Trading Standards Institute, Chartered Institute of Environmental Health and Institute of Licensing – to consider from this report. In particular, thought should be given to how the possible existing skills gaps identified in the research for the LGA – around business understanding and knowledge, and confident approaches to enforcement action – can be addressed through initial training and continuing professional development. Consideration should also be given to the extent to which core regulatory skills, as reflected in BRDO's 'regulator's DNA' project, are consistently dealt with in the various training routes into these professions.

Both councils and professional bodies also need to think about how these occupations in public sector settings market themselves to young people entering the workforce. Can clearer vocational paths be developed and communicated to offer progressive development up to professional level for entrants coming with varied levels of educational qualifications? Postgraduate entry routes, and modular training with both core and optional modules seems an obvious way to go in occupations where roles vary considerably and new areas of work may come along.

#### **4. Regulatory services at a cross roads**

As local government funding cuts bite deeper in 2014/15 and beyond, further 'salami slicing' of regulatory services will neither deliver the next round of savings required, nor, in many cases, leave councils with viable services that meet their statutory duties in these services, or even simply the ones that councils may choose to prioritise. Councillors and senior officers in local government, as well as managers and officers in regulatory services themselves, have some serious choices to make.

As outlined above, many of these choices will be driven at the local level, based on the nature of local priorities, economies and businesses. But there may also be a need for system- and sector-wide change. While these questions undoubtedly arise from extremely challenging circumstances, and may prompt some very difficult decisions, a more positive view is that they also create an opportunity to rethink traditional structures and delivery to develop an approach designed to meet both 21<sup>st</sup> century challenges as well as 21<sup>st</sup> century funding constraints.

The purpose of this report and the LGA's future of regulatory services work is to help facilitate this thinking at individual council level, collectively and beyond, by articulating some of the key issues to be considered. We therefore encourage all councils to join the debate. Please email us your views at: [XXXXXX](#).