



Cabinet

Tuesday, 11 December 2018

Environmental Health and Trading Standards Primary Authority and Assured Business Advice Collaboration

Non Key Decision No. 33

Report of the Executive Manager – Neighbourhoods

Portfolio Holder for Community and Leisure Councillor D Mason

1. Purpose of report

- 1.1. The Government has a scheme whereby businesses can enter into a Primary Authority Partnership (PAP) with a local authority. This relationship involves the provision of assured advice to assist the way in which business comply with legislation. PAPs are especially attractive for businesses that trade across multiple local authority areas as the PAP creates a single point of contact.
- 1.2. Both the Council through its Environmental Health service and Nottinghamshire County Council through Trading Standards have a number of PAPs and there is an opportunity to respond to the needs of business and collaborate via a memorandum of understanding to offer a seamless 'one stop shop' for assured advice and other associated business advice to current and future PAPs.
- 1.3. The purpose of this report is to seek approval from Cabinet to form a collaborative partnership with Nottinghamshire County Council Trading Standards, in accordance with a memorandum of understanding, to offer PAP's to businesses both regionally and nationally.

2. Recommendation

It is RECOMMENDED that Cabinet

- a) Approves the principle of working in collaboration with Nottinghamshire County Council Trading Standards to deliver Primary Authority Partnerships and associated business advice, and
- b) The Executive Manager for Neighbourhoods have delegated authority to finalise and sign a Memorandum of Understanding which will capture the operational arrangements for the collaboration.

3. Reasons for Recommendation

- 3.1. There is an opportunity for the Council to maximise its PAP offer by working in collaboration with Nottinghamshire County Council Trading Standards which will create a seamless one stop shop for businesses to receive high quality assured advice on regulatory compliance.
- 3.2. In order to formalise the relationship this will be delivered through an agreed memorandum of understanding.

4. Supporting Information

- 4.1. The national approach to regulatory activity continues to develop so that it is increasingly defined less by a set number of inspections and more according to collaboration between regulators and regulated communities.
- 4.2. Where appropriate regulatory compliance systems are in place the Council recognises that businesses should be entitled to recognition of this and that assessments of risk and regulatory oversight should be adjusted accordingly. It is important that businesses are entitled to earn this recognition provided that they demonstrate an ongoing achievement of high standards of compliance but without prejudice to the ability of local authorities to use the law to address serious cases of non-compliance when necessary.
- 4.3. The PAP scheme, established by the Regulatory Enforcement and Sanctions Act 2008, allows businesses to form a partnership on a statutory basis with a local authority. The scheme allows businesses to access assured advice on compliance, that must be respected by local authorities, thus addressing business concerns about consistency and giving them confidence in regulatory functions. It additionally permits the co-ordination of UK-wide proactive inspection activities, thereby improving the effectiveness of local activities and reducing duplication of effort.
- 4.4. PAPs are a key element of the Government's commitment to improve the delivery of regulation in line with the statutory principles of good regulation. The Council's delivery of the PAP scheme demonstrates our willingness to work constructively with businesses to improve compliance. In 2013, the scope of the Primary Authority principle was extended by The Enterprise and Regulatory Reform Act 2013 to businesses having a shared approach to compliance (commonly through a body such as a trade association) who can now enter into what are known as co-ordinated partnerships with a Primary Authority. The added value of a Co-ordinated Partnership is that it allows many businesses who may not be eligible for a direct partnership (particularly small businesses) to join together to benefit from a PAP. Therefore, there is a real opportunity to actively explore this additional ability to forge relationships with organisations as well as individual companies.
- 4.5. In addition to the clear benefits of supporting businesses to successfully grow which links to the Council's priority of delivering economic prosperity, the development of PAP's has a further and direct benefit to the Council by

making a contribution to the fixed overheads of statutory services such as environmental health and supporting staff development through the need to maintain competencies in key business sectors.

- 4.6. Both the Council and Nottinghamshire County Council have a strong track record in developing successful PAPs in the county and beyond with collectively over 40 such partnerships including national household names such as Boots and Jury's Inn. In terms of the Boots PAP there is already a good working relationship with Nottinghamshire County Council Trading Standards and Nott's Fire and Rescue. However, from discussions with businesses, the Office of Product Safety and Standards, and best practice from elsewhere in the country it clearly demonstrates that businesses prefer a seamless, one-stop shop that offers a comprehensive suite of regulatory advice covering product safety, labelling, food safety, health and safety and other business compliance advice. Therefore, the formation of a collaborative partnership with Nottinghamshire County Council will allow the collective partnership to maximise its PAP offer to both local and national businesses.
- 4.7. In order to manage the future collaboration a memorandum of understanding will be required which will be based around the following principles:
- Maximise existing primary authority partnerships and advice provision in accordance with legislative provision, guidelines and best practice, ensuring a high quality, responsive service to PAP businesses and local regulators
 - Identify, secure and successfully develop new PAP's and advice provision, including inspection plans where relevant, ensuring information about new partnerships is promptly communicated in line with established national guidance and sufficient time is allocated to establish and grow each new business agreement
 - Maintain shared records of interactions and chargeable time to enable accurate charging, ensuring businesses are invoiced on time
 - Develop and promote both Council's approach to the primary authority and business growth agendas by fostering and maintaining a good working relationships with national regulators, government departments and stakeholders.
 - Identify, create and offer traded services to organisations, businesses and individuals including existing PAP's resulting in beneficial outcomes to those that procure the services and income generation
 - Have regard to the guidance issued by the Secretary of State on the delivery of the PAP scheme which requires that
 - suitable staffing resource is available to support partnerships
 - ensuring that staff have the required technical skills and knowledge and are competent in the delivery of primary authority services
 - arrangements are in place to effectively manage and deliver partnerships
 - maintaining transparency, accountability and compliance with relevant legislation such as GDPR

- Adoption of a full cost recovery approach for PAP related advice (with regard to the guidance issued by HM Treasury in Managing Public Money). In doing so clear and transparent information explaining charges, and the basis on which they are calculated, will be provided prior to each PAP being agreed. Services for which the PAP partners are likely to be charged for include;
 - establishing partnership arrangements
 - familiarising primary authority staff with the business
 - raising awareness and understanding of the partnership amongst enforcing authorities
 - developing, providing and reviewing PAP advice
 - developing, managing and evaluating an inspection plan
 - responding to queries and notifications from enforcing authorities
 - collating and analysing data and other information
 - training staff of the business
 - conducting audits or other checks on compliance at the request of the business
- Where formal business advice is offered outside a formal PAP scheme the collaboration partners reserve the right to make appropriate charges for such advice.

4.8. Subject to Cabinet approval and support from the relevant Committee of the County Council the next steps will be to finalise the memorandum of understanding with a view to actively marketing the new collaborative service early in 2019.

5. Alternative options considered and reasons for rejection

5.1. The Council could continue to maintain and develop single discipline PAP's however it is likely that these will remain of limited interest to businesses and therefore it could stifle the opportunity for the Council to grow its existing PAP portfolio. The recommendation that the Council works in collaboration with Nottinghamshire County Council Trading Standards to create a stronger platform for growth by providing businesses with what they want develops existing and new arrangements for the future.

6. Risks and Uncertainties

6.1. Notwithstanding a PAP, a business may ultimately still be the subject of enforcement action including a prosecution for more serious breaches. A defence could be raised by the business that they were acting in compliance with advice received from the primary authority which may create a reputational risk for the Council and potential conflict. However each decision to prosecute is looked at upon its individual facts and any decision to prosecute is determined in the light of the CPS Code of Guidance for Prosecutors.

6.2. The resources required to operate an effective partnership or group of partnerships will vary, depending on the scope of the partnership, and the

scale of its activities. However due to the full cost recovery principle and the opportunity to generate additional income from traded services outside of PAP sufficient resources will be maintained to ensure that the Council's existing statutory functions e.g. food hygiene inspections will continue to be delivered in accordance with the annual food law enforcement plan.

7. Implications

Financial Implications

7.1.1. Adoption of a Full Cost Recovery model will enable the council to recover any costs associated with provision of the service as well as making a contribution to the fixed costs attributable to the Environmental Health team.

Legal Implications

7.1.2. The Regulatory Enforcement and Sanctions Act 2008 was enacted to support a consistent and seamless approach to regulation. The proposal outlined in this report is therefore in accordance with legislation.

7.1.3. The Local Government Act 2003 widened Local Authority charging powers to support charging for discretionary services. Charging for services as outlined therefore supports the statutory requirements to carry out inspections whilst supporting the Councils approach to commercialism.

7.1.4. As outlined in this report, there is a potential argument that a conflict exists should it be necessary to prosecute. However, the merits of enforcement action (including prosecution) will be considered on the facts of the individual case and in accordance with each Councils enforcement policy and the CPS code of guidance.

Equalities Implications

7.1.5. A full equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010.

Section 17 of the Crime and Disorder Act 1998 Implications

7.1.6. The recommendations of this report have no direct implications on community safety matters.

Other implications

7.1.7. None.

8. Link to Corporate Priorities

The recommendations of this report and the development of this collaboration will contribute to the Corporate Strategy key themes of:

- Delivering economic growth to ensure a sustainable, prosperous and thriving local economy – *by supporting business compliance and growth*
- Maintaining and enhancing our residents' quality of life – *businesses that are compliant with regulatory requirements will provide greater assurance and bring a range of benefits to employee's, visitors and consumers*
- Transforming the Council to enable the delivery of efficient high quality services – *the development of this collaboration will enhance the opportunity for full service cost recovery and income generation*

9. Recommendations

It is RECOMMENDED that Cabinet

- a) Approves the principle of working in collaboration with Nottinghamshire County Council Trading Standards to deliver Primary Authority Partnerships and associated business advice, and
- b) The Executive Manager for Neighbourhoods have delegated authority to finalise and sign a Memorandum of Understanding which will capture the operational arrangements for the collaboration.

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Background papers available for Inspection:	None.
List of appendices:	None.