

North Yorkshire County Council

Business and Environmental Services

Executive Members

23 August 2019

Better Together – Joint Approach to Primary Authority

Report of the Assistant Director - Growth, Planning and Trading Standards

1.0 Purpose of the report

- 1.1 To report to and the Corporate Director Business and Environmental Services (BES) and BES Executive Members on a proposal taken to the Better Together Steering Group and the Better Together Joint Members for North Yorkshire County Council Trading Standards Service and Selby District Council Environmental Health Service to collaborate in their approach to seeking new primary authority partnerships.
- 1.2 To seek approval for the proposed collaboration.

2.0 Background to the report

- 2.1 The Regulatory Enforcement and Sanctions Act 2008 (RESA) created primary authority partnerships which allow a business to enter a formal partnership with a regulator for the provision of assured advice. Another regulator cannot take action against a business where that conflicts with assured advice provided by the primary authority. This ensures consistency of enforcement across England and Wales, and enables economic growth by giving businesses the confidence they need to launch new products and develop their enterprise.
- 2.2 Primary authority partnerships may be formed in relation to other regulated areas, such as environmental health and health and safety, in addition to trading standards. Unitary authorities can, therefore, be better placed to offer a comprehensive primary authority package as they have statutory responsibility for all those functions. This has the potential to disadvantage businesses based in two tier authorities as it can be harder for them to identify primary authority partners.
- 2.3 There are no geographic limits to primary authority partnerships within England and Wales (subject to co-ordination with a Welsh authority on devolved matters).
- 2.4 Providing primary authority enables a local authority to maintain competent staff with a detailed knowledge of the areas they regulate. Charges may be levied on a cost recovery basis, which helps ensure that the time spent on maintaining specialist knowledge and preparing tailored advice sustainable.

3.0 The Better Together Proposal

- 3.1 The document presented to the Better Together Steering Group is attached as appendix A. The aim is to create a flexible and responsive collaboration which maximises opportunities for both local authorities whilst also offering advantages to businesses seeking a primary authority partnership.

- 3.2 The intention was to commence the joint approach on 1 July 2019. This has been delayed pending legal advice about the need for the proposal to be incorporation into the Better Together Collaboration Agreement (see 4.1 below).
- 3.3 The collaboration will be reviewed periodically and expansion to other district councils to provide resilience considered if appropriate.

4.0 Legal Implications

- 4.1 Legal and Democratic Services were consulted and advised that as there are no significant financial or staffing implications the protocol (appendix 1, within appendix A to this report) can be implemented with approval from the Corporate Director (Business and Environmental Services) and Business and Environmental Services Executive Members.

5.0 Financial Implications

- 5.1 There are no significant financial implications for the County Council arising from this report as there will be no recharges and each authority will be responsible for recovering their own charges arising from work done.

6.0 Equalities Implications

- 6.1 There are no equalities implications for the amendments. A decision record sheet covering the decision not to complete an equalities impact assessment has been submitted and signed off.

7.0 Recommendations

- 7.1 That BES Executive Members and the Corporate Director (BES) note the contents of this report and approve the collaboration between NYCC trading standards service and Selby District Council environmental health service in accordance with the attached protocol.

MATT O'NEILL
Assistant Director Growth, Planning and Trading Standards

Author of report: Jo Boutflower, Head of Business and Consumer Services

Background Documents: None

Better Together Steering Group – 24 May 2019**Proposed Protocol for Joint Delivery of Primary Authority****1.0 Purpose of the report:**

- 1.1 To propose a joint approach to delivering the statutory primary authority scheme for North Yorkshire County Council and Selby District Council.

2.0 Background to the report

- 2.1 Primary authority was introduced as a statutory scheme by the [Regulatory Enforcement and Sanctions Act 2008](#). The scheme allows a formal partnership to be agreed between a business and a local authority with a 'relevant function' such as trading standards or environmental health. The local authority then provides advice and guidance to the business on an 'assured advice' basis, and any other local authority must notify the primary authority before taking enforcement action. If the intended action is in conflict with the assured advice previously provided, the primary authority may object to enforcement action. The intention of scheme is to provide clear and consistent advice to businesses allowing them to trade and launch products on a regional or national basis without fear that another local authority might take a different interpretative approach to regulation. Partnerships may be set up with businesses both inside and outside the local authority area.
- 2.2 [Section 31 of the Act](#) allows a local authority to charge a fee representing the costs reasonably incurred by it in the exercise of its functions in relation to the primary authority partnership.
- 2.3 Primary authority is overseen by the Office for Product Safety and Standards (OPSS) within the Department for Business, Energy and Industrial Strategy (BEIS). OPSS has to agree each partnership and also arbitrates when there is a dispute between a primary authority and an enforcing authority. OPSS is frequently contacted by businesses seeking a primary authority relationship and it seeks expressions of interest from relevant local authorities which are then put to the business concerned. Businesses, particularly food businesses, are interested in setting up a partnership which can cover trading standards, environmental health and health and safety aspects of their enterprise.

3.0 Proposal

- 3.1 North Yorkshire County Council Trading Standards Service has been operating primary authority successfully for several years and currently has [32 formal partnerships](#) with a variety of food and non-food businesses. From April 2019, its hourly charge for primary authority work is £72. This charge represents officer and supervision costs and service overheads. The methodology used in the calculation can be shared in due course if the proposal progresses.
- 3.2 The service is conscious that, unlike public protection services in unitary authorities, it is unable to offer the full range of primary authority advice which would be of most benefit to businesses. It is also limited in responding to OPSS calls for expressions of interest in new primary authority opportunities as it cannot offer environmental health or health and safety advice.

- 3.3 OPSS is supportive of local authorities taking a joint approach to primary authority and would be receptive to NYCC and SDC jointly expressing an interest in providing primary authority to a particular business. Each authority would have an individual partnership agreement with the business, however, negotiations, set up and marketing could be dealt with jointly.
- 3.4 A protocol would be agreed setting out a process by which the joint approach would be delivered. A draft protocol is produced as Appendix 1 to this report.

4.0 Benefits and Risks of the Proposal

- 4.1 The benefits offered by the proposal are:
- i. A holistic offer to business enabling growth and meeting business need.
 - ii. Increased market for primary authority offer by virtue of joint marketing and new avenues available through OPSS.
 - iii. Cost recovery for primary authority work increases sustainability and resilience of individual services.
 - iv. Ability for officers to develop specialist skills leading to improved service for all businesses and increased motivation/officer development.
 - v. Although a joint initiative, the creation of individual partnerships allows each Authority to be in control of demands on services and charges.
- 4.2 The risks involved are perceived to be minimal. Partnerships would be subject to separate agreements between the business and each Authority giving each Authority control over its commitment and the impact on its service. There would be no obligation on either party to negotiate or agree a partnership that they did not believe they had the capacity or capability to manage. The risks involved in providing advice under the scheme are no more than those involved in providing any form of regulatory advice and can be covered by the same professional indemnity insurance.

5.0 Next Steps

- 5.1 The Steering Group is invited to endorse the proposal and review the draft protocol, which is intended very much as a starting point. It is proposed to seek legal advice on the protocol and to develop a memorandum of understanding in respect of the working arrangements. The aim is to go live with the joint approach on 1 July 2019.

Report Author:

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North Yorkshire County Council
29 March 2019

Appendix 1

DRAFT PROTOCOL FOR THE JOINT DELIVERY OF PRIMARY AUTHORITY

Scope

- a) This protocol is for use between NYCC and SDC in respect of the statutory primary authority scheme.
- b) It sets out the processes by which the two authorities will seek to deliver primary authority jointly where it is appropriate to do so in the interests of a business or businesses, and where it will improve service delivery or the sustainability of the service.

Marketing Primary Authority

- a) When either party becomes aware of an OPSS call for expressions of interest in a primary authority opportunity the nominated contacts will discuss and agree whether an expression of interest should be submitted within 48 hours.
- b) Neither party is obliged to submit an expression of interest in circumstances where it is considered that the authority does not have the capacity or capability to deliver primary authority or where there is some other barrier to delivery.
- c) If one party declines an opportunity to express an interest or pitch to a potential primary authority, the other party may progress the opportunity either alone or with another partner.
- d) NYCC and SDC will distribute each other's primary authority marketing materials as appropriate in the course of inspections and other interactions with businesses.
- e) NYCC and SDC will refer businesses interested in primary authority to the nominated contact within each Authority.
- f) Marketing approaches may be made to businesses outside one or both Authority areas with the agreement of both parties.

The Partnership Agreement

Where a partnership is agreed, the two Authorities will enter separate written agreements with the business concerned and those agreements will be subject to OPSS approval. The parties may provide individual contacts or a single point of contact to businesses depending on need and practicality.

Each party will share information about fees and the services it offers with the other party.

Each party is free to determine its own fees and the extent of the services it offers within the confines of any existing partnership agreement.

Each party may enter a primary authority partnership with a business alone or with another partner if the other party decides for whatever reason not to enter a primary authority partnership.