

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 2 Examiner's Report May 2021

General

16 students sat the examination, 14 passes and 2 fails.

The marks ranged from 26-76.

Section A

Very few students opted to attempt questions 1,2 and 3 the vast majority choosing 4,5 and 6. Nevertheless most demonstrated good exam technique by picking up valuable marks on this section. The lowest mark in this section being recorded for question one, of 3 marks. Question one apart, impressively, everyone managed 4 marks or more. Three questions, 4, 5 and 6 having students who attained a perfect 10. This shows astute question choice and good exam technique. A big well done!

Section B

A better distribution across the range of questions, apart from Q9, only one student deeming this worth the effort.

Given the pass rate, it is no surprise that most candidates were able to pick up sufficient marks in section B to push them over the pass line. Half of the Candidates taking the exam gaining 60 plus marks, a fine achievement! Pleasing to see that many used a plan for section B and provided more structured answers.

Exam answers

As stated in the diatribe above, answers to all questions apart, from one candidate, achieved at least a pass mark in section A.

1. Briefly describe public health safeguarding issues that may be relevant in the course of work for regulators?

A mention of public health safeguarding should have pointed candidates to The Care Act 2014 which lays down responsibilities for Local authorities.

The general duty of a Local authority is to physical and mental health & protect the rights of adults to live in safety, free from abuse and neglect, making sure that children & adult's wellbeing is promoted. In Trading standards terms this often means looking at Rogue traders and scammers who target the older population. It is often easy to spot areas or individual properties that are occupied by old or infirm, they have handrails or ramps, gardens are often overrun, the outsides of the property can be rundown or neglected, they often have net curtains.

Strategies need to be put in place to protect them, concentrating resources in these areas . Having agreements with banks building societies and post offices to be on the lookout for unusual

withdrawals and questioning why they need large amounts of cash. Concerns by these organisations may often result in a call to TSS and a rapid response by TSS to help the old person. Other areas that may be targeted can be the protection of young people, The prevention of underage sales of such products as knives, alcohol or smoking materials. Hence, test purchasing by volunteer young persons to ensure shops and off licences do not sell age restricted items. Premises can be visited to advise on challenge 21 or 25 and diligence procedures can be put in place by shops to prevent such occurrences.

2. Briefly describe how regulation benefits business?

A question on regulation benefitting business is no stranger to this examination. Linking in to Better Regulation Principles. It benefits business in a number of ways. It sets down a standard that all businesses have to follow. Failure to follow that legal standard will result in a legal sanction of some sort. This ensures a level playing field, which all commercial organisations have to follow the law. Regulation is used to achieve a wide range of social, environmental and economic goals in the UK. Good regulation can save a business money or prevent legal sanctions, it can also enable innovation, for example by prompting necessary legislative change or improving consumer confidence in a sector. An uncontrolled market can result in some undesirable outcomes, for example, fake or dangerous goods, short measure deliveries of products, overcharging. It may not produce the full benefits that might otherwise result from regulated trading. Regulation is there to ensure that these undesirable outcomes do not occur, and the potential benefits are achieved. Regulators are typically accountable to Parliament. They assure Parliament and the public of high standards of probity in the management of public funds. They are also accountable to the public and businesses in their local authority (LA) areas and The Regulators' Code highlights how LAs should inform and interact with business.

Regulations should be fair, necessary, effective and affordable. To achieve this any interventions should be accountable, transparent, consistent, proportionate and targeted.

3. I believed that this was an easy question and thought that more than four would attempt it. Those that did achieved 6 or more marks for their efforts.

“Describe why economic operators may fail to comply with the law?”

In the first instance they may be a new business and be unaware that the law exists.

Many laws can be complex and difficult to interpret. Small to Medium Enterprises can struggle to understand such complexities.

There may be changes in the law. For a small or medium sized business, if not part of an organisation or PA scheme, they may struggle to keep abreast of new developments or changes. Covid being an example of rapid changes that many traders did not understand.

Many businesses initially comply with the law and set up diligence systems. However, changes in management and personnel, change in emphasis on diligence and checking procedures can mean that some systems become outdated, or not followed by production line staff and hence allowing faulty goods to be sold on, which thus do not comply .

Finally we have those businesses that do not attempt to comply, make no effort, or are criminal in their outlook, for example, counterfeiters, scammers, rogue traders.

4. What do we mean by risk in a regulatory setting and what are the benefits of taking a risk-based approach to trading standards activities?

Risk has been a part of the fabric of Regulatory services for many years and students were familiar with the concept. In the context of a regulatory system, all decision-making processes should be

based on the consistent application of risk management tools, in order to ensure that existing and new regulations contribute to managing uncertainty and achieving legislative objectives. The Regulators' Code lays down a standard for regulators to follow

Risk should be considered at every stage of a regulatory process.

Risk is a combination of the hazard and likelihood of non-compliance - the risk rating depends on both hazard and likelihood. The steps for risk assessment are:

- Identify the level of hazard
- Identify the likelihood of non-compliance
- Apply the likelihood of non-compliance to the level of hazard to determine the level of risk

Regulators have limited resources and Regulatory activity costs money. Those businesses that pose the highest risk should have the highest rating and inspected more frequently. Regulators should base their regulatory activities on risk and should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks. Regulators should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance.

The benefits of such an approach are that those businesses that comply will gain recognition and reduced levels of inspection. (Earned recognition) Resources are targeted to where they are needed most to those that need it and those that do not comply.

5. Why are voluntary controls good things for businesses?

Briefly: Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business. To achieve this they must be well designed, effectively implemented and properly enforced.

Voluntary codes of best practice can help to establish the basis on which markets function, ensuring trust between participants. This in turn creates an environment so that a fair, effective and transparent market can flourish and in which, by adhering to such codes, high standards of behaviour can be assured

Non-prescribed voluntary industry codes of conduct set out specific standards of conduct for an industry including how to deal with its members and customers. These codes only apply to those who sign up to them. For example: Glass & Glazing Federation: In September 2015 the GGF issued its new consumer code of practice to its member companies, to take account of all new consumer legislation.

Among various benefits, Codes are less complicated and cumbersome than introducing new legislation. Lower costs to introduce and trade enforces not state. They reduce the burdens on traders who are trading fairly and are much quicker and responsive to change than new law.

6. Drawing on the enforcement policy of a Trading Standards service, explain the alternatives to Prosecution and discuss two examples when other legal disposals may be more appropriate.

Local authority regulators have to publish an enforcement policy in accordance with the requirements of The Regulators' Code. Prosecution is the ultimate sanction. The purpose of better regulation is to get business to comply with the law and hence a range of options, or alternatives to prosecution were recommended by the Macrory Review in 2006 many of which are now used by local authorities. Alternatives vary in scale, generally in relation to the severity of the infringement. This could range from a simple chat by an enforcement officer, an advice letter or pointing out the local authority website with links to legislative guidance. This can be stepped up to compulsory training, a warning letter, a fixed penalty notice (depending upon the nature of the possible

offence). A simple caution, an Enterprise Act action, or the final step, a prosecution. Students were able to outline a couple of these and highlight the circumstances under which they may be used. Some decided to outline all they could think of, which still fulfilled the brief of the question, such that, of the 11 who opted to answer it, seven recorded marks of 7 or better.

7. Regulatory authorities have a duty to understand the economic impact they have on their local area. What codes of practice or pieces of legislation lay out these duties and how can regulatory enforcement bring a positive economic impact?

Some earlier reforms can be attributed to a Conservative Government back in 1983 and the promotion of Better Regulation principles by Regulators. Along the way successive governments have embraced these principles from the early days of “finding fault” on routine inspections, to assisting business to achieve compliance and to help industry thrive and grow on the basis of good regulation and better regulatory delivery. In 2005 a businessman Philip Hampton was asked to lead a review of regulatory inspection and enforcement. This review produced the Hampton Report. 2006 on why businesses failed to comply with regulations. The report recommended that:

- comprehensive risk assessment should be the foundation of all regulators' enforcement programmes;
- there should be no inspections without a reason, and data requirements for less risky businesses should be lower than for riskier businesses;
- resources released from unnecessary inspections should be redirected towards advice to improve compliance;
- there should be fewer, simpler forms;
- data requirements, including the design of forms, should be coordinated across regulators;
- when new regulations are being devised, Departments should plan to ensure enforcement can be as efficient as possible. Subsequently a review by Macrory proposed six core principles underlying the design of an effective modern sanctioning system. These developments ultimately led to the Legislative and Regulatory Reform Act 2008, S.1 which laid down a principle for the Government to follow in removing or reducing any burden from any legislation. Section 2 established the principle of Primary Authority as a statutory scheme in which a local authority can partner with a business, or with a group of businesses.

Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and regulatory activities should be targeted only at cases in which action is needed. In 2014 BEIS (or BIS) as it was then) amended the Regulators Compliance Code to the Regulators' Code to give added impetus to the Better Regulation by local authorities setting out principles that should be employed by Regulators to follow and The Regulatory Enforcement and Sanctions Act 2008, was amended by the Enterprise Act 2016 increasing the effective coverage of PA to all businesses large and small. Alongside the Reg. Code Section 108 of the Deregulation Act 2015 established that any person exercising a regulatory function must have regard to the desirability of promoting economic growth (the “growth duty”). In performing this duty, they must, in particular, consider the importance for the promotion of economic growth of exercising the regulatory function in a way which ensures that regulatory action is taken only when it is needed, and any action taken is proportionate.

8. What are the functions of National Trading Standards (Trading Standards Scotland) and how do they assist the work of local authority departments?

Functions include: e crime teams, Estate Agents and Letting, Intelligence team, Regional Investigations Teams, Scams teams, Food Hygiene delivery and work with the ASA referrals re misleading adverts.

I expected the students to be able to outline the teams (Listed on the NTS website) and what they do and how they benefit the work of local authorities.

Trading standards Scotland (TSS) : Operationally, TSS has a duty to coordinate and enforce cross boundary and national casework, as well as undertake the specialist functions of tackling illegal money lending and e-crime. It is a resource intended to add capacity to local authority trading standards teams in these areas of activity.

TSS has also developed an intelligence gathering and analysis function. This allows the national team to identify a picture of Level 2 criminal activity (activity that takes place across council and/or national boundaries) and has implemented a tasking and coordination process to determine the allocation of resource to tackle it.

For the current financial year (2019/20), TSS has chose to focus on specific problem areas:

- Doorstep Crime, Misleading Energy Marketing, Illicit Puppy Trade, Counterfeit Goods Online,
- IPTV (Illicit Streaming), Mobility Aids and Secondary Ticketing.

A couple of students attempted this Q with scant knowledge of NTS, in contrast those who had revised scored very well indeed.

9. In recent times traditional Chambers of Commerce have evolved into a number of different types of organisations who provide support for both new and growing local businesses.

a) Explain, with examples, how you feel these organisations can support their business members

10 marks

b) Your local organisation has requested a presentation to their members about how Trading Standards can work with their members. Draft a comprehensive presentation clearly detailing how Trading Standards can work with these business members

15 marks

c) Consider what impact your presentation may have on these businesses and discuss how you will prepare for any difficult questions that may be asked

10 marks

a) Chambers of trade and trade associations have been established with the principle to bring both different types of businesses, or similar businesses, such as plumbers, glaziers or builders together. They can help and support one another. Joining such an Association can be beneficial, as the Association can advertise the benefits of the Association to consumers. For example, they can operate codes of practice which give consumers confidence in the services or products offered. They can offer ADR schemes where disputes can be solved cheaply and easily. They can have sites where traders can be rated, according to how well or badly they perform. Advice to all members can be offered on a wide range of areas including legislative advice. The Association can join a PA scheme which will pass on interpretation of new law, offer training to members and help with contractual documents.

It offers regular meetings and the chance to network and pick up new ideas. New starters in the industry can be brought up to speed quickly by joining a network of “experts”. The Association can be part of the consultative network on new legislation.

b) Students should at least state that they would prepare a power point, or similar presentation as marks were awarded for this. First explain what TSS does and the relevant laws that it enforces. It enforces in a sympathetic manner offering advice and guidance in accordance with Better Regulation Principles. Help and advice on differing aspects of laws and details of the enforcement policies can be found on the local TSS website, with links to other helpful information for businesses.

Information and guidance on all relevant aspects of law and regulation can be provided to start-up businesses through to large national and international organisations. Students should explain PA what it does and how it can provide tailored advice to individual businesses, also a similar scheme can be provided to associations (Direct or Coordinated schemes). Dedicated officers with Single Point Of Contact (SPOC) for the business.

This will help with anything from interpretation, to training and development of new product & services.

TSS clamp down on those who do not conform, this ensures a level playing field for honest traders where they are unfairly undercut by dishonest traders. This drives up customer loyalty within the sector and can also drive-up standards.

- c) There is always a risk of reaction that “Big Brother is watching us.” Businesses may be worried about how they are targeted, or selected, for inspection. With subsequent questions on what happens if we get it wrong. You will need to allay unfounded fears of persecution. Questions may arise as to how you perform your inspections, what criteria you use, for example? This gives the opportunity to explain how you use risk analysis to set your inspection criteria. You also respond to complaints from members of the public.

The presentation could also drive up expectation of what TSS can do for local businesses and a subsequent increase in demand for services to these businesses. This may cause logistical problems for a small to medium local authority, where demand outstrips supply.

There may be present those who have fallen foul of the law in the past who could ask awkward questions or be hostile. Without breaching GDPR, you need to be able to field such questions and be prepared to answer fairly with general answers. You need to be prepared to hand out leaflets and contact details to those who would prefer this method of contact rather than being provided with a website address.

9. A complaint has been received from a councillor, Eileen Stubbs, that a local convenience store near to her home had sold a packet of cigarettes to a 15 year old boy. Stubbs recognised the boy as the son of her neighbour. She gave the name of the shop, and the location where the shop was based.

On the same day she had visited the shop, there were a small group of youths outside dressed in the uniform of Newham Secondary School. Some of the youths were smoking and one or two appeared to be exhibiting the effects of drunkenness.

- a) What would be your planned actions in following up this complaint?

25 marks

- b) When you check your records it showed that the business has been open for 11 months but no visit has taken place from your department. Would this make any difference to the follow up action that you might take? If so explain why/why not?

10 marks

This specific question highlighted the problems that Covid has caused in trainee regulators, between those who had previously been on an underage complaint or inspection and those who had not been out on any aspect of work since commencing employment within the past year. This reflected in the spread of marks. Higher scores for those with apparent experience and knowledge.

- a) Contact the councillor to thank her for the information and ensure you get full details of days and dates when her various observations took place. You may need a S9 statement from her.

Check your records to determine the previous history of the business. When the last visit took place and what if any contraventions were found. Is it an established business and has it been advised in the past?

Check other databases such as CACS to determine if any other complaints have been submitted regarding this shop. Does the shop operate a challenge 25 type of policy, or are they registered as having any specific diligence system, requisite notices, till prompts etc. Do they have a premises licence and is a personal licence issued?

Is it on a high, medium or low inspection rate of risk assessment?

You cannot ignore a high-profile complaint from a Councillor, especially if they are a member of the Cabinet in local authority.

You may have to plan to carry out a Test Purchase (TP) exercise. If you are organising such an exercise then it would be more economic to target other high risk premises in your area, where similar problems occur. Volunteers need to be found and inspection undertaken in line with the Code Of Practice (COP) for using underage volunteers. Often police cadets are used for such an exercise.

I expect the students to explain how such a TP exercise would be undertaken in line with the COP, so that the volunteer is protected at all times and within sight of an officer within the store. An explanation of what would happen if alcohol/cigarettes are sold and how that would be progressed on the day or following day? Follow up enforcement could be suspension or removal of alcohol licenses, or prosecution, or a combination of these, dependent upon the situation and circumstances discovered.

- b) If it is a relatively new business then your approach may be different. They may not know or understand what legislation applies to them and you may wish to take a more sympathetic approach in line with your Enforcement Policy. This may mean you explain the law to them, possibly offering training to the business and its staff, many authorities charge for such a course. They may be offered a PA scheme. You could point out the different schemes on offer and requirements of same.