

Chartered Trading Standards Institute submission to the Cutting Red Tape Review

The Chartered Trading Standards Institute welcomes the opportunity to submit evidence as part of the Cutting Red Tape review of Local Authorities.

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government. The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

CTSI is extremely disappointed that government have decided not to publish their review of trading standards which took place last year. We understand that the conclusions and recommendations from that review will now be incorporated into the results of the current Red Tape review. However, these reviews have considerably different aims and focuses, with recommendations from the former unlikely to be affected by any findings in the current review. Therefore we cannot see the case for postponing publication of the existing recommendations, which would alleviate the considerable uncertainty under which services are now operating and allow them to move forward and begin implementing any recommended changes.

As we have stated in our previous submissions, the case for change in trading standards services is urgent given the lack of resilience and the unsustainable negative trajectory of resources and staff numbers. Several recent issues have highlighted the need for a strong trading standards service across the country including the threat posed by unsafe hoverboards last Christmas and the ongoing problems with faulty tumble dryers. We understand that the delay in publication is likely to be significant, given that this review could last for up to a year, and believe that this is a missed opportunity to influence three year service plans currently being developed by local authority services.

That said, the current review offers an opportunity to reshape the legislative framework for local authority regulators to make it fit for purpose in the 21st century, and CTSI welcomes the opportunity to contribute to that debate. We would ask that the review take full account of all the evidence supplied to previous reviews to help inform the outcome.

Role of local authorities in supporting businesses

It is vital that the review acknowledges the important role which local authority regulators play in supporting legitimate businesses in the UK and creating the conditions in which a sustainable and balanced economy can grow. There have been a number of reviews and reports examining this area in the past which we hope will be considered as part of the current review. There is plenty of evidence of how local authority regulation supports businesses in these reviews, and we would highlight in particular the work of the Institute for Local Government Studies at the University of Birmingham as recorded in their report, [*The Impact of Trading Standards in Challenging Times*](#). The researchers found that there was 'clear evidence of the commitment in trading standards to support business in facilitating compliance' (p33).

Services have applied the lessons from previous reviews of regulation, particularly the [Hampton](#) and [Macrory](#) reports (2005 and 2006 respectively), which set out the need for a business friendly response, focusing on a fair and proportionate response in cases of non-compliance and recognising the need for regulators to help business comply by educating and advising them. Local authority trading standards services regularly work with businesses to provide this kind of advice and guidance on how they can comply with the law. For large businesses that operate in more than one local authority area, Primary Authority partnerships are encouraged, which bring substantial benefits to businesses by ensuring a single point of contact and consistency of advice and guidance. However, it is smaller businesses – less likely to have their own dedicated compliance officers – that are perhaps most in need of advice and support from trading standards.

Regulations which are put in place to protect consumers and businesses can be complex and difficult to apply. Guidance from central government – which by its nature has to be universally applicable to many different types and sizes of business – can be confusing for smaller businesses to interpret. Local authority regulators play a key role in advising and supporting businesses to become and remain compliant with the law by helping them to understand how regulations apply to their business. Local authority advice can save businesses time and money by making sure they get it right first time and do not gold-plate or overcomplicate regulatory requirements.

Although a lot of progress has been made over the last ten to fifteen years, there is still room for improvement, and local authorities should be encouraged to share best practice on how to support businesses more effectively. There are a number of different ways to do this, but it is worth highlighting here the Better Business for All partnerships which focus on working with LEPs, local chambers of commerce and the FSB to improve relationships between businesses and regulators. As a professional body, CTSI remain keen to highlight best practice in this area and we will continue to work with all relevant partners to provide updates and training for officers.

It must be said however that falling resources in many authorities have restricted the ability of services to be proactive in this area – many services no longer have the capacity to engage with external partnership programmes as they have been forced to focus on responding to the highest priority intelligence – often where there is a threat to life and limb. This reduces the number of contact hours they can spend with businesses and forces them to focus on enforcement against rogues without fulfilling their full capacity to support business growth. Moreover, shrinking resources have an impact on training budgets and we have serious concerns about the ability of services to maintain staff competency in this environment and continue to provide the best quality of advice to businesses.

In our submission to the original trading standards review we highlighted how larger strategic trading standards authorities would benefit businesses as well as consumers. This solution has the potential to improve consistency for businesses and ensure they have access to expert and competent officers to advise them.

On the other side of the coin, effective enforcement by local authority regulators also supports legitimate businesses by removing and discouraging a minority of rogue traders. Anecdotally, our members say that over 95% of businesses **want** to comply with legislation, leaving a small minority who are intentionally flouting the law. It is essential that enforcers retain the powers and competence to deal with this. If regulations and standards are not effectively policed, unscrupulous traders will undercut honest businesses, distort and damage the market and undermine consumer confidence. By contrast the maintenance of a level playing field allows legitimate businesses to compete fairly without putting the public at risk, which promotes productivity and economic growth.

It is important for trading standards services to understand business attitudes towards regulation and complying with the law as this will help them to assess which intervention is most appropriate in each case. The typical enforcement triangle with ascending severity of sanctions can be lined up alongside business attitudes to regulation – with formal prosecution being used only for the most serious of offences and offenders.

1. Businesses that are fully compliant with the law: these businesses are committed to complying and understand the requirements of the law. They may also go beyond the requirements of the law and demonstrate voluntary best practice as part of membership of professional bodies, adherence to codes of practice etc.
2. Businesses that want to comply but struggle to understand what is required: these businesses want to comply with the law but may not have the resources or the expertise to understand how regulations apply to them. They need assistance to understand and apply the requirements of the law to their individual business and to move into category one.
3. Traders that are not committed to complying with the law as a principle but will only do as much as they need to in order to avoid being caught. They might base their calculations on a number of factors including the risk of non-compliance being discovered or the behaviour of other traders in their area or category and may seek to exploit enforcement inconsistencies, differences of interpretation and grey areas in the legislation.
4. Criminals with no intention of complying with the law, regardless of the potential effects for the public: enforcement effort should be concentrated at this end of the scale to remove rogue traders and criminals and maintain a level playing field. Traders in this category will often focus their attention on the most vulnerable people in the community and are known to target areas where enforcement capacity is weakest.

Of course these are not discrete, fixed categories – they are fluid and have blurred edges. The regulatory approach should be to push as many businesses towards the top end of the scale as possible, while retaining the ability to remove from the marketplace those few hard criminals at the bottom. This is an approach that has been gradually adopted by the trading standards profession over the last ten years.

This approach is similar to that suggested by Professor Christopher Hodges's recent paper on 'Ethical Regulation'. Regulators should support those acting in good faith with advice and education in order to encourage behavioural change – to shift more businesses into the higher categories. In this model, it is also important that businesses and regulators build trust, particularly about ethical values and culture which will help regulators place a business on the scale above. Professor Hodges writes of 'the need to construct mechanisms by which an independent judgement may be made' of business commitment to ethical behaviour. 'Mere claims by a company that it can be trusted will clearly not suffice. Reliable evidence is needed' ([Corporate Behaviour: Enforcement, Support or Ethical Culture](#), Professor Christopher Hodges, April 2015).

Mechanisms that might facilitate this judgement and trust include membership of professional associations with high standards of practice, auditing and ongoing training and consistent adherence to voluntary codes of practice, standards and assurance schemes which have transparent and robust criteria. Businesses which make use of these mechanisms will move up the scale and earn the trust of regulators.

Although much progress has been made in applying these general principles over the last decade, we think there is still more work to be done, particularly in exploring the potential of self regulation and co-

regulation to build trust. CTSI are committed to being at the forefront of this agenda and are working with BSI and others to explore this further. We hope that this work will help to inform the government's deregulation agenda and build trust between regulators and businesses while ensuring there are robust processes in place to maintain standards and protect customers.

Rationalising the current legal framework

As well as recognising the key role that local authority trading standards services play in supporting businesses on a daily basis, this review presents an opportunity to rationalise the legal framework upon which all regulation is based. This framework has built up over a long period of time – the oldest act which imposes statutory duties upon local authority trading standards dates back to 1875 (Explosives Act) – and there is opportunity for some consolidation to create a framework fit for the 21st century trading environment. However, it is important to understand the different categories of regulation, including what drives them and what they are trying to achieve, in order to rationalise the legal framework.

We have worked with our colleagues in ACTSO and devised a simple framework of three categories for local authority regulation: people, product and place.

People – where activities carried out by an individual or group require regulation to protect the public and businesses. The ability to deal with the criminality of traders who deliberately break the law, put unsafe products on the market or commit fraud is essential to protect the most vulnerable.

Product – with a focus on the composition, labelling and safety of food and goods throughout the supply chain. Some technical regulations here could be rationalised and streamlined to focus on overarching high level principles which are broadly applicable such as the duty to ensure goods are safe.

Place – where the focus or subject of the regulation is a physical locality or premises of some kind and require inspections. Some of the processes involved could be simplified by taking whole place approaches, but government should recognise the principle that local authorities are best placed to know what works in their local area.

The legal frameworks for regulation of people must be maintained to allow local authority enforcers to deal with serious criminality, including organised criminal gangs. This ability to enforce against those at the bottom of the scale is equally as important as supporting businesses that want to comply and should not be underestimated. Anecdotal evidence from our members as well as academic theory suggest that respect for the rules is undermined when others are clearly allowed to flout them without punishment, and it is important that rules are enforced evenly and fairly. It follows that local authority regulators must have the capacity as well as appropriate legal frameworks to ensure legislation can be consistently enforced.

By contrast, the regulation of product comprises some general principles layered with a large number of technical regulations. The complex layering of prescriptive rules and regulations designed to deal with every circumstance is known to crowd out a focus on principles and create a short-sighted focus on the detail of individual rules. It can create safe harbours and lead to a failure to undertake objective risk assessments and audits. This approach moreover is cumbersome and slow to respond to innovative and disruptive technology. Principle based legislation should be sufficient to deal with the most serious failures of product – for example the general duty to supply safe goods.

Some of the more technical regulations – including for example precise requirements for labelling of some products – could be dealt with by civil penalties where there is no great risk of harm to the public. However in some areas it will be appropriate to retain criminal sanctions for statutory technical regulations, particularly where the security of the supply chain is weak or where the end user is more vulnerable – these judgements should be made on the basis of risk.

There is room for exploring the role of standards, accreditation and assurance schemes, and codes of practice in the area of product regulation. Voluntary standards for example can be used by businesses to demonstrate they are applying best practice for a particular product and complying with their obligations to ensure the safety of those products. Equally, recognised and accredited schemes could share data about the businesses they audit with regulators to build trust that they are fulfilling their obligations. Mapping out some of this landscape in theory and practice will form the basis of CTSI's work with BSI on deregulation in the future.

Reducing the burden on business from the regulation of place should focus on simplifying the process – for example joining up registration and licensing systems to take a whole place approach. Some of these processes are required by statute and are overly complex.

Twenty-first century regulation

Alongside these broad principles for revising the regulatory framework, it is necessary to recognise recent and future changes in the trading environment. One of the biggest challenges for consumer protection in the 21st century is the globalisation of trade and the role of the internet. This requires cross border policing of trade and cooperation with international partners.

A key issue that is frequently raised by our members in relation to the challenge of regulating online trading is the role of intermediaries. To what extent should intermediaries and platforms be responsible and liable for the products and services whose sale they are facilitating? Clearly this question has implications for a number of areas within the remit of trading standards, including age restricted sales and product safety. It has been discussed on multiple occasions by the Consumer Protection Partnership as well as the [EU Internal Market Sub-Committee](#) in the House of Lords. We would encourage government to consider what measures could be put in place to address some of the concerns and challenges raised.

Conclusion

CTSI are committed to working with the government and other stakeholders to ensure they have the information and evidence needed to revise the regulatory framework and make it fit for the 21st century. We will share the results of our work in collaboration with BSI as they emerge and hope they will help to inform the review process. Please contact us if you would like further information on any of the points raised in this submission.

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