



## **regulation for excellence:**

supporting LACORS and the improvement of  
local authority regulatory services

# **Tributaries not chains: a policy position paper for LACORS**

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## Introduction

1. Few official reports get a response that matches that received by the recently published Stern report on climate change. It was both lauded and rubbished.
2. In the autumn of 2006 a bid by the Better Regulation Commission (BRC) to prompt a debate about our increasingly risk averse culture was well received. Yet at the same time a tragic incident in which a baby was killed by a dog prompted widespread calls for more regulation, another Dangerous Dogs Act.
3. These are just two examples of the context in which local councils have to carry out their regulatory responsibilities. It is a contested area of public policy. And it is one on which both businesses, individuals and communities depend for reasons of health, equity, vitality and financial viability.
4. For many years local government's regulatory services have had a relatively low profile. That looks set to change. In part because of the contested nature of the policy background and in part because of changes in society.
5. A study on the future of local governance carried out for the then Office of the Deputy Prime Minister by the Tavistock Institute (*All Our Futures*, London: ODPM 2006) concluded that a key change in society between now and 2015 would be greater diversity and difference within and between communities. In that context the study identified regulation and licensing as a major function of local governance and argued that these functions would have an increasingly high profile and greater political salience.
6. This policy paper is intended to explore the implications of this context and these trends for local government and its regulatory services. It draws on the findings of **regulation for excellence: supporting LACORS**, a study the Tavistock Institute has carried out with LACORS to help it think about what more it can do to support and drive improvement in local regulatory services, as part of the wider local government improvement agenda.

LACORS (the Local Authorities Coordinators of Regulatory Services) provides advice and guidance to help support local authority regulatory and related services. It was set up in 1978 to coordinate the enforcement activities of trading standards. Since 1991, LACORS has also worked on food safety and is currently responsible for a range of other regulatory and related services.

LACORS' work covers a variety of local authority services, principally enforcement, including: alcohol and public entertainment licensing; animal health and welfare, both for farmed animals and animal establishments; civil registration, including the births, deaths, marriages, civil partnerships and citizenship issues; environmental protection of air, land, water and noise; food safety and standards, including labelling, sampling and analysis; food imports and exports; gambling reform; health and safety enforcement at work; private sector housing; and trading standards.

## A paradoxical world

7. In many ways the petrol pump says it all. None of us who uses a car questions the accuracy of the gauge on the petrol pump when we fill up. It is not an issue. It is not an issue because the accuracy of those gauges is regularly tested by local authority trading standards officers. Few, if any of us know that; yet the necessary levels of consumer confidence have been created in part by many years of effective enforcement.

8. This is just one of a number of paradoxes in the world of regulatory services.

9. Two of the most dominant drivers of change in society today are globalisation and the impact of new technology. Aspects of these trends include the growth of the Asian economies, the impact of the internet and new patterns of migration. These global trends can have very local impacts: the demand for African bush meat or Polish Fanta; the need to protect consumers' interests in internet commerce; the spread of Vietnamese nail parlours.

10. Local councils have the job of grappling with these issues in ways which balance law enforcement, the needs and cultures of changing local communities and the importance of nurturing local economies. To use a new piece of jargon, regulatory services are truly glocal.

11. There is also a tension between the national and the local. There is a tendency to treat regulatory services as a national service, with nationally-led initiatives on topics such as under-age sales or cowboy builders. This tendency is reinforced by the “*Today* programme syndrome” in which the media and politicians reinforce perceived needs for national – as opposed to local – action.

12. Regulation, like many other council services, has been the subject of accusations of a postcode lottery. Most would agree that there are minimum standards of consumer protection, food safety etc which should apply irrespective of locality, but are those standards sufficiently well articulated? Too often they are expressed in terms of inputs and outputs – such as inspection levels – and not outcomes which have a meaning and relevance to consumers and businesses. There is likely to be a “business confidence” indicator for local regulators as a consequence of the Hampton report. But where are the equivalent indicators for consumers?

13. A national focus on issues such as the sale of fireworks or alcohol can undoubtedly reinforce and support the impact of local enforcement and educational activity. Yet local communities and economies vary significantly, as do the issues and challenges they face. *All our Futures* suggests that this diversity and difference will grow over the next ten years – a trend which is likely to enhance the importance of the local on this national-local spectrum.

14. The last 20 years have seen a plethora of “deregulation” initiatives designed to “cull” and “streamline” unnecessary “red tape”. The Better Regulation Office, the Hampton Review and the Local Better Regulation Office are the most recent manifestations of this. Commitments to slash red tape make good media copy, as do stories about occasional examples of inflexible or inappropriate enforcement. The overall impression is that regulation is a negative, stultifying, bureaucratic and burdensome activity.

15. On the other hand, there are equally strong pressures for more regulation. This is most often seen in response to developments such as bird flu, foot and mouth disease and individual incidents, often tragic ones. This trend was highlighted in the recent Better Regulation Commission report, *Risk, Responsibility and Regulation: Whose Risk is it Anyway?*, which called on government to lead a debate about these issues, including the importance of “separating fact from emotion and emphasising the need to balance necessary levels of protection with preserving reasonable levels of risk.”

16. As the petrol example shows, effective protection is often taken for granted and, as a consequence feeds the “less regulation” lobby. The recent tragic deaths in Corfu, which at the time of writing appear to have been caused by shoddy heating arrangements in holiday accommodation, should cause us in the UK to be very wary of lowering current levels of protection in areas such as this.

17. This is a confusing and paradoxical environment. Yet it is clear that at their best councils’ regulatory services are more than capable of understanding this context, working with it and delivering a high quality service for the communities and businesses they serve. Take just two examples.

18. First, a council with a very mixed population, and where issues such as the illegal sale of bush meat are very real. The authority’s frontline regulatory services staff are very well aware of the impact insensitive enforcement action could have on community cohesion, and that is one of the issues they take into account in their judgement about what action to take, how and when.

19. Second, a rural council where food processing dominates the local economy. The regulatory services staff are in no doubt that a key part of their role is to support that industry, to help it to comply with the relevant legislation and regulations and to take a lead in inter-authority work on issues to do with food processing.

20. Councils have a wide array of regulatory tactics at their disposal, ranging from advice and support through to warnings and ultimately to prosecution. The sensitivity with which decisions about how to deploy that array of tactics, and the quality of the data and understanding which are used to inform those decisions, are what distinguish excellence, competence and poor performance in this group of council services and functions.

## **The future**

21. The context in which councils and their regulatory services functions work looks set to become more rather than less complex. *All Our Futures* identified four main building blocks of society over the next ten years:

- More households and more varied types of household;
- A more diverse society with, for example, more elderly and more disabled people, and wider differences in household wealth and ethnic divides;
- Continued technological development and global economic change, including the growth of the Asian economies;
- The impact of more “extreme” weather and growing environmental pressures ranging from land use to pollution.

Underpinning this was an overall conclusion would see the development of greater diversity and difference within and between communities.

22. The study concluded that one consequence of these pressures would be an increase in the need for regulation of various forms, ranging from vehicle access to town centres to drink and entertainment licensing and the need to respond to ever-growing environmental pressures.

23. The report went on: "Such regulation will be acceptable, and will work, only if there is public support for it. The precise scope, nature and intensity of the regulation will vary from area to area – which means that the decision-making process should be at the same level. As a consequence of this, the importance of local regulatory services looks set to increase. This is a potentially significant development. Councils' regulatory responsibilities have not had a particularly high profile and have not been treated as political priorities. The introduction of the new licensing legislation has changed all that, and our analysis would suggest that its profile will remain high. Meaningful public engagement in shaping those regulations is critically important. It may be helpful to view regulation as one side of a coin, the other side of which is action by citizens, individually and collectively to help meet the needs of their local community. Meaningful local consultation and political debate on regulatory matters will be as important as technology or enforcement."

24. A futures event organised as part of the Tavistock Institute's work for LACORS identified a series of challenges which councils' regulatory services are likely to face over the next decade. In terms of broader societal change priority issues include: environmental pressures, primarily associated with climate change; population diversity, new patterns of migration and different cultures and norms; the continued growth of the information society and economy, with major implications for the retail industry and communication; a consumerist ethos with implications both for people's expectations of councils and regulatory services and of retailers, service providers, restaurants etc.

25. If this picture of society in 10 years time is accurate it means that regulatory services will need to be even more flexible than the best of them currently are. The issues they will need to address, for example in relation to the environment or web-based trading, will not fall neatly into one organisational or geographical slot. Partnership working between agencies, within councils and between councils will become even more important.

26. The media and Parliament are likely to retain pressure for national consistency, talking about postcode lotteries rather than postcode choice. But faced with the uncertainty of globalism, local communities will look for services which reflect their particular local needs and circumstances. Consumerist pressures will reinforce the desire to cut red tape; while concerns about "extreme" weather or health will heighten demands for effective regulation.

27. The recently published local government white paper, '*Strong and Prosperous Communities*', proposes more powers to, for example create by-laws to tackle local issues. Will these powers cover areas which are normally regarded as national issues? This would allow different approaches to risk and regulation to be tested in different contexts.

28. In short the world in which regulatory services has to operate has the potential to become more rather than less paradoxical. And the real challenge for this part of local

government is to balance these pressures in such a way as to provide genuine protection, support the local, national and global economy and provide public reassurance. This is both a professional and a political challenge, and a crucial first step must be to engage local political leaders in this debate.

## **Excellence today**

29. There is an encouraging synergy between this picture of the future and the characteristics of competence in regulatory services which the Tavistock Institute identified during its work with LACORS;

30. The Institute concluded that a competent regulatory services function is:

- In touch, fast and reflexive;
- Strategic, well-led and intelligence-led;
- Understands risk and uses the full array of tactics available to it (from education through to prosecution) in an intelligent and sensitive way;
- An effective and enthusiastic Home Authority.

31. Such a function has:

- Empowered staff, satisfied customers and engaged members;
- A high internal profile;
- Good specialist and generalist staff.

It also promotes and benefits from both:

- Inter-authority collaboration; and
- Intra-authority collaboration.

32. In its work the Institute makes a distinction between competence and a move beyond competence. In a report for the LGA and IDeA (*Beyond Competence 2005*) it argued that councils need to make that move beyond competence to be effective in the current policy and political climate. The same is true of councils' regulatory services functions, and the Institute's identification of the characteristics of an excellent function and of a poorly performing function are helpful in identifying the areas in which improvement and development are required.

33. An excellent function, the Institute concluded, is:

- Strategic;
- "Glocal" (capable of working with and understanding the local and the global);
- Reflexive;
- Integrated;
- Balanced;
- Communicative;
- Collaborative;
- Autonomous.

34. The characteristics of a poorly performing regulatory service are as instructive, revealing the areas in which improvement is needed across the sector if local communities are to get the support they deserve. The Institute concluded that a poorly performing function had:

- Bored and/or stressed staff;
- A silo structure and mentality;

- No real strategy and little use of intelligence;
- A focus on national performance measures on its only criteria and a narrow menu of tactics;
- Scant member contact and a low profile.

35. The question of resources was raised frequently during the Institute's study, in relation to individual councils and LACORS itself. The perception is that these functions have been the target for savings, that the professionalism of the services is not respected and that they are often neglected functions.

36. The Institute's conclusion on this issue was that the response to resource questions often lies not in more cash, but in inter and/or intra council collaboration and different, more collaborative relationships with partner organisations. These ways of working are also crucial to the relationship between regulatory services and broader local authority and community concerns and to enabling them to meet the challenges of the next ten years. National prescription of minimum levels of resourcing inevitably results in an emphasis on inputs and outputs and not outcomes. It also runs the risk of levelling down performance and removing incentives for innovation and collaboration.

## **A fresh approach**

37. Achieving the widespread adoption of these characteristics of excellence across regulatory services would be a major step forward. But it now is an appropriate time for LACORS and the sector to ask more searching questions about the future of local regulation.

38. It was striking that whoever the Institute asked about the purpose of regulatory services the answers were surprisingly consistent. Reference was generally made to level playing fields, fair play, public protection and public redress. Answers such as these reinforce the "competent" sector on the performance spectrum, but they fall short of the imagination and perception necessary to embed excellence and meet the challenges that have been set out in this report.

39. In *Risk, Responsibility and Regulation: Whose Risk is it Anyway?* The Better Regulation Commission sets out to challenge the assumption that government can and should manage all risk. It says: "We want to see a new understanding between government, regulators, the media and the public that we all share a responsibility for managing risk and that, within the right circumstances, risk can be beneficial and should be encouraged."

40. The BRC's decision to prompt this debate is a welcome development, and the extensive, positive media coverage suggests that it is in tune with broader political debate. It is significant, however, that while the report makes many references to government and regulators no-one from councils' regulatory services was involved in preparing the report or contributed to it. One of the challenges LACORS should take on is to ensure that in the future the voice of local regulation features, and features powerfully in debates such as this.

41. The BRC report sheds welcome light on the question of what is regulated and why. There is also scope for a parallel debate about the nature and purpose of regulation itself. The remainder of this paper scopes the possible shape of that debate.

42. The dominant paradox facing regulatory services is the contrast between the attitude of the public and politicians to “red tape” on the one hand, and on the other hand an equally strong desire for protection against food poisoning, bird flu or dangerous dogs. The key to reconciling that paradox today is the way in which councils deploy the array of action available to them, ranging from education, through warnings to prosecution and other enforcement action. Excellent councils are those which deploy these tools in the most responsive and sensitive way.

43. But is that enough?

44. We undoubtedly live in a dangerous world. For example some localities are more at risk of flooding than they were. The growth of international travel means that diseases in both humans and animals can spread more quickly. Internet trading means that consumers in an English town can suffer at the hands of a cowboy trader in another country.

45. As citizens we demand protection from the detrimental impact of these and other contemporary forces. Yet as the BRC has concluded, the response to these trends should not be an increasingly risk averse society. The report points to knee jerk responses, the legislative equivalent of shutting the stable door after the horse has bolted. Blinkered, output (as opposed to outcome) driven regulation can have the same effect.

46. The object must be businesses and individuals who respect their customers and neighbours. Businesses which see profit in providing a good service, in adjusting to demand and in using imagination and entrepreneurship to respond to changes in society and circumstances. Should the primary objective for regulatory services be to foster this spirit so that when problems emerge businesses do the sensible thing and problems are averted, without either the horse bolting or the door being bolted?

47. Is it feasible to imagine re-conceptualising local regulatory services so that their focus was explicitly on supporting the improvement of local businesses and services, the vitality of local economies and the health and cohesion of local communities, as well as tackling infringements of regulations? What would this mean for the shape of these services, and what would the wider implications be?

48. One way of answering this question could be to consider applying to local regulatory services some of approaches being explored in the current debate about the performance management framework for local government. In that arena what is being debated is an enhancement of the objectives of regulation and inspection from public assurance to public assurance *and* the stimulation of improvement and innovation.

49. This is not a trivial suggestion, and if justice is to be done to the topic it would require as much work and effort as went into the recent BRC report.

Such an approach could, for example, involve a new form of relationship between regulatory services and the business community, building on the approaches already being pursued by the best council regulatory services functions.

50. It is businesses which benefit primarily from the “level playing field” which regulatory services help to maintain. Brand and reputation are crucially important for most businesses, and they depend in part on being seen to provide high quality, legitimate and, where appropriate, safe services.

51. So could business do more themselves to maintain that level playing field and what would that mean for the way in which regulatory services operate? Could it mean, for example:

- new partnerships between local regulatory services and chambers of commerce, town centre groups and local economic development functions?
- more scope for some self-regulation and enforcement by local trade and business associations drawing, where appropriate on council expertise?
- programmes to promote businesses which meet the needs of different groups and communities, with regulatory and licensing issues (and the cultural dimensions of such issues) addressed from the start?
- some local accreditation system – or regulatory earned autonomy – to empower reputable local business?

In short, if red tape – regulation to prevent – is seen as being a cost, what might green tape - regulation to prevent and improve – look like?

52. This would certainly put regulatory services at the heart of the emerging picture of local councils as place-shapers. It could also contribute to a fundamental shift in the nature of the relationship between central government (and its agencies) and local councils (and their partners).

53. This relationship is frequently portrayed as a “delivery chain”. The analogy reflects the notion that an edict is issued nationally, on, say, the need to address a particular form of regulatory infringement, and action is taken by every local regulatory body. The problem with real chains is that every additional link means that the force of the original tug on the chain is increasingly dissipated until the impact at the ends of the chain are barely detectable. The same happens in practice with resources being devoted to action on issues in areas where they are not a priority. The effort is huge, but the impact is minimal.

54. An alternative analogy, which is more appropriate to the notion of regulation as a driver of improvement and innovation, is that of a river system with a number of tributaries, feeding into major rivers, which in turn flow into an estuary. Action at a local level can be conceived of as a tributary feeding into larger rivers and ultimately into a “national” estuary. The river analogy can be used to illustrate how local action on particular issues, in places where those things are a priority, taken together represent a considerable national effort. It can also be seen as a national intelligence model, as opposed to a command and control approach.

55. Such an approach could also be used to identify areas in which local initiatives were struggling (drying up?) and on which government support – for example national profile – could be helpful. The emphasis, however, would be on action prompted from the bottom up, informing the agenda of government and other national agencies.

56. This would represent a fundamental change in the way in which regulatory services are conceived, but it is important to note that the characteristics we have identified as

being present in excellent regulatory functions and precisely those which would be needed to operate in “green tape” mode.

57. This would also have major implications for LACORS. It would have a new dominant role in collecting that intelligence from councils and their partners, playing it back to them in a national context and pursuing the themes which emerge with government, agencies, business, and the media.

## **The next steps**

58. The context in which council regulatory services operate is changing significantly, and the extent of change looks set to continue for the foreseeable future. The paradoxes identified in this report, particularly between the desire to cut red tape and be protected against risk, will remain. To be truly effective and responsive to local needs, local regulatory services and their national body, LACORS, must aspire to move beyond competence.

59. Articulating a vision of “green tape” and taking the steps necessary to put that vision into practice could provide the impetus needed to make that jump beyond competence. But a number of questions must be answered if this approach is to be effective:

- Is government prepared to act to support the notion of post code choice? Its approach to the scope of the new by-law powers provides a relevant litmus test;
- Are businesses prepared to enter into meaningful partnerships with council regulatory services, working to a common agenda rather than resorting to high profile criticism each time they encounter an example of what it perceives to be over-zealous regulation?
- Do regulatory services professionals have the imagination and determination to develop and promote a new regulatory ethos, regulation to promote rather than regulation to prevent?
- Are local political leaders prepared to engage in this debate and link regulatory issues with the broader place-shaping agenda?
- And is LACORS prepared to use this debate to position itself in the lead of new thinking about the role of regulation today and tomorrow?

60. In the business world there is a growing recognition that strategy-making in a rapidly changing environment needs to be undertaken with care. The strategic approach recommended by many business academics is to establish a broad vision or direction of travel which can be adapted as events unfurl and circumstances change. Green tape may not be the ultimate goal of local regulatory services, but a debate along the lines proposed in this paper could provide the direction of travel they need to make the move beyond competence.