



Federation of Small Businesses
The UK's Leading Business Organisation



Changing the Perception of Regulation

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Edited by Andrew Cave





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Introduction

A third of FSB members view regulation as the most significant obstacle faced by their businesses. This Government has pledged to only introduce the most necessary and proportionate regulation. However, as we have seen with previous administrations, efforts to slow down the creation of new regulation in Whitehall have not been translated into real or perceived improvements for overburdened small businesses.

The FSB is committed to helping this Government to succeed where others have failed, but this will require more than target setting in Whitehall. There needs to be a complete overhaul of the regulatory regime; including the role of inspections, which are the human face of regulation for most small businesses. Raising the standard of inspections and making the process of inspection a positive experience is the cheapest and fastest route to improving the overall perception of the regulatory burden. The FSB believes the Local Better Regulation Office (LBRO) has a pivotal role to play in this process.

When an inspection is done well it can be helpful and practical, when it is done badly it can place a massive burden on the small firm and fail to improve compliance. The LBRO was designed to improve the quality and usefulness of local authority inspections, and the FSB was supportive of its creation but from the start we felt that it was not given the remit and the powers that it needed to make a tangible difference.

This paper outlines what the LBRO could become and what powers it needs in order to achieve real change for our members. We want the LBRO to be given the power to drive improvement in the regulatory advice services provided by local authorities, as well as developing a formal complaints procedure for small firms to use when they wish to make comments about the way in which they have been inspected.

The LBRO needs to become a body that all small firms recognise and turn to in situations where inspections fail to meet the required standard. Equally, the LBRO should become a centre of excellence, ensuring quality in the inspection regime and leading change through the promulgation of

best practice. We believe that the changes recommended by the FSB in this paper are constructive, affordable and realistic. Furthermore, these changes could help to change the way in which regulation is perceived by the small business community, turning the inspection regime from an unpleasant burden into a helpful and welcome resource. We hope that the Government will consider these proposals as they undertake their review.

Clive Davenport

Chairman

Trade and Industry Committee

August 2010

Changing the Perception of Regulation

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The FSB welcomes many of the moves made by the new Government to tackle this business burden. The 'one in one out' system, Star Chamber and proposed increased scrutiny of regulation during the policy development process should decrease the amount of regulation that businesses need to comply with.

It is important that as part of these regulatory reform measures the actions of regulators at a local level are also reviewed and improved. The Local Better Regulation Office (LBRO) was a creation of the last Government and one which the FSB welcomed. There is a role for a body whose purpose it is to support and represent the views of business on the issue of regulation within local authorities. Yet this body was not given the remit or the powers that it needs to make a real difference to small firms on the ground.

The contact that most small firms have with their local authority is through their regulators. The relationship that they have with them can therefore affect the relationship that they have with the whole authority.

The current LBRO

The LBRO was created in order to stimulate and support effective performance in environmental health, fire safety, licensing and trading standards. Their specific brief is to reduce the regulatory burdens on business, while maintaining or even enhancing the current levels of public and environmental protection.

It's LBRO was created as part of the drive towards compliance rather than enforcement driven regulatory services and is there to help local authorities better engage and understand business.

The role of inspections

Our members tell us that a good quality inspection can be useful as a learning experience. The FSB believes this should become the norm for all inspections. In 2007, 46 per cent of our members told us that they found their recent health and safety inspection helpful and the advice given practical.¹ Therefore we need to find a way to ensure that there is a fundamental change in the relationship between the inspector and the business. Firms need to see the visiting inspector as a service available for them to use; they need to see a distinct move away from an enforcement culture and towards compliance.

Suggested key changes to be made to the LBRO

The LBRO is the ideal body to help facilitate an improved relationship small businesses; but to do so it will need to be reformed in the following ways:

- The LBRO's remit needs to be extended to cover all areas of local authority regulation and not just the five that it currently covers.
- The LBRO should have its powers extended so that it is able to:
 - Help enforce a regime of compulsory booked inspections for all routine inspections. The FSB accepts that in certain higher risk regulatory areas, such as perhaps food, there may be a thorough justification for the need for unannounced inspections; this could be made the exception to the rule. Those that are done as a result of a complaint should continue to be undertaken unannounced.
 - Ensure that all firms are proactively directed to a single point of contact within their local authority to deal with or field any regulatory concerns or questions.
 - Order that routine inspections cease during times of national emergency in areas where businesses are affected (especially staffing levels) such as snow and swine flu.
 - Join up risk assessments. Under the guidance of the LBRO, risk assessments performed by local authority regulators should be more joined up to ensure that inspections are coordinated and that businesses are not inspected more than twice a year by local authority inspectors.
 - To capture informal complaints from business and use the information on formal complaints kept by local authorities to score each authority, each year on their regulatory service. The aim will be to drive improvement and highlight best practice.
 - Help ensure that all local authorities have a 'good' score on their compliance with the Services Directive. The online portal for applications for licences and permissions is an excellent way to reduce the burden on some regulatory compliance for business.

Better communication between the local authority inspection regime and local businesses will be at the heart of these suggested changes

¹ *Whatever Happened to Common Sense?: Occupational Health and Safety in small businesses report 2007*, Federation of small businesses, 2007

We envisage that the powers that the LBRO have to enforce these measures should be a last resort, a backstop power. Through a higher profile and a more authoritative reputation the LBRO should be able to ensure that these measures are put in place without resorting to any formal actions.

Compulsory booked routine inspections – developing a partnership

Better communication between the local authority inspection regime and local businesses will be at the heart of these suggested changes. The FSB recognises that this relationship has already improved and in some areas can be very good but there is still room for improvement.

Booking routine inspections in advance is an excellent way of achieving these improvements. It will move the inspector away from being seen as ‘out to get’ the firm and instead allow them to build a relationship with the business and for them to be seen as a body that is there to help not hinder them.

Booking routine inspections in advance is not about allowing time for a business to hide non-compliance. The likelihood is that for most small firms non-compliance is as a result of ignorance and they will not have the time to change their practices with only a few days’ notice. By giving a firm notice of a forthcoming inspection it allows them to ensure that they have enough staff present that day to make the most of the inspection. It would also allow a firm time to find and have ready any relevant paperwork. With a more relaxed attitude to the visit both the firm and the inspector will gain more from it. This will save time as both parties are fully prepared for the visit.

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Terminating of routine inspections during national emergencies

Whilst the FSB recognises that in most cases common sense prevails and inspections cease during times of emergency such as pandemic flu when many firms can expect higher than normal absence rates, we need to ensure that this is always the case. The LBRO, which has good working relationships with local authorities, should be the body that ensures that this happens quickly in areas that are affected.

Point of single contact

All small firms should also be provided with one phone number for a single point of contact within their local authority for all regulatory concerns. This should be done proactively; each business should be sent contact details when they set up or move into the area. Their role would be to ensure that they help the firm with questions that they have about regulation, provide them with updates when there are changes, including licence changes and new regulations. If they are not able to help with the query, they need to quickly find someone that can.

This single point of contact team should also ensure that regulatory changes are communicated to those businesses that may be affected, such as when a new licence is introduced. With more firms using emails this task should become easier and in the long-run more efficient. The development of a partnership between the local authority and the business will be further developed through this process.

Feedback

All inspectors should leave a feedback form which would allow the business to make comments to help inspectors improve and to make positive comments where the visit has been helpful. Again this will encourage the attitudinal change when an inspector is aware that their performance is being assessed by their customer. The form would be returned to the local authority, logged and hopefully used. This information will be submitted to the LBRO along with details of any formal complaints they receive and deal with.

The local authority should use this information as part of their self-governance procedures and should be published along with other satisfaction ratings.

Joined up risk assessments

Under the guidance of the LBRO, risk assessments performed by local authority regulators should be more joined up to ensure that inspections are coordinated and that businesses are not inspected more than twice a year by local authority inspectors. Local authority regulators should also be trained to undertake multiple inspections in a single visit, where possible, to reduce the frequency.

Regulatory Rating Annual review

FSB members say they feel that when an inspection has not been satisfactory, some are not sure what recourse actions they have available to them or don't feel confident about the options. Under the current system a firm would need to address concerns with the manager of the inspector, the local authority or eventually with the Local Government Ombudsman.

Some complaints may not be of a nature whereby the firm feels that there is enough reason to make a formal complaint with the local authority. It's important that this type of feedback is reported and in a way that is constructive. There is a need for a system that collects and uses informal complaints in addition to the formal complaint process, to drive improvement.

FSB members say that they fear making a complaint to the same organisation that they are complaining about in case they then 'make life difficult' for them. It is a significant fear and therefore a totally independent body would remove this and ensure that businesses feel able to raise concerns about poor service.

The FSB proposes that whilst the normal formal complaint procedure remains in place within the local authority and then eventually the Local Government

Firms need to know that the LBRO exist to improve the service they receive and that they should go to them with their complaints and concerns on local authority inspections

Ombudsman, the LBRO should run an informal complaints procedure. The formal complaints that are logged by the local authority should be made available to the LBRO each year. The LBRO can then combine both the information that they have collected through their informal process and the formal complaints that local authorities log. With this information they can create a score chart similar to that of the Audit Commission that is fully published and available to the public. Local authorities would be rated excellent, satisfactory or poor in the regulatory services that they provide to local businesses.

The LBRO has a focus on improving regulation across all local authorities; feedback on the performance of inspectors and reports of poor service would allow the LBRO to map the performance of regulators across the country and with that knowledge help authorities to improve based on a useful level of feedback. Their knowledge of the work of all authorities would also allow them to work with regulators that have been reported as poor performers and share the best practice of those they know to have done well. This is a key tool in encouraging attitude change.

More effort does need to be made to ensure that firms know who the LBRO are in order for this to be successful. Firms need to know that the LBRO exist to improve the service they receive and that they should go to them with their complaints and concerns on local authority inspections.

Services Directive

The Services Directive was fully implemented in the UK in winter this year. Despite this, only five per cent of local authorities have a 'good' rating² for how they provide their services on their website. This Directive, when implemented to a high standard, would be an excellent way for local authorities to help reduce the regulatory burden and support compliance of the UK with the Services Directive. This failure by many local authorities demonstrates the lack of understanding of the burden on business and the LBRO should take a key role in getting these websites up to a 'very good' standard as quickly as possible.

Conclusions

Creating a robust and helpful relationship between businesses and regulatory services at a local level should be part of the package of measures that this Government implements to improve the general regulatory environment.

For many small firms it is at this level that most of their regulatory interaction will be and could be an important conduit for information. Small firms like receiving information face to face and as much as possible from a single source. Local regulators should take on more of this role and remove power away from central Government.

2 *'Better Connected for Business: implementation of the EU Services Directive in the UK 1 2010'* Socitm Insight, June 2010

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