

The Environment Agency

A review of progress since its
Hampton Implementation Review

February 2010

Summary and conclusions

This review assesses the progress made by the Environment Agency since the Environment Agency's full Hampton Report. It was carried out by two of the members of the original review team (Ron Gainsford and Eve Salomon, see the Appendix of the full Hampton Report for their biographies) and was supported by staff from the Better Regulation Executive.

What we found

Overall, the review team were impressed with the Environment Agency's (EA) progress towards the implementation of the Hampton principles.

In particular, the review team found significant evidence of cultural change within the EA since the original review two years ago, which was clearly linked to the forward strategic plan. The review team also found significant progress in the culture of the EA, which is increasingly driven by outcomes rather than processes. By embedding the Better Regulation principles within the corporate strategy, the EA has ensured that these changes are not merely a temporary shift.

In addition, the review team found much more confidence amongst staff, who were working better internally and externally. Relationships with business have also improved and the principles and language of Better Regulation were now in general usage throughout much of the organisation.

On this basis, the review team is confident that the EA is an example of a good-practice regulator that is currently well placed to successfully implement new and innovative enforcement initiatives.

The structure of this report

This report is structured according to each 'issue for follow-up' identified in the full Hampton Report followed by an updated finding.

Focus on environment priorities

Previous findings:

Issue to be addressed	Hampton symptom
<p>At a corporate level the EA is clear about the environmental outcomes it is trying to deliver. Its Board monitors progress on these outcomes and the EA publishes documents which explain the latest state of play, showing that many of these outcomes are being achieved.</p> <p>The EA believes that its day-to-day regulatory activities, encompassing, for example, inspections and data collection, contribute towards achieving the outcomes. The EA was unable, however, to provide firm evidence to support this causal link.</p> <p>Some regulatory regimes, for example, have historically been heavily reliant on inspection as a tool to ensure compliance, and the EA has sought to take a more risk-based approach and has removed a number of activities from regulation altogether, as mentioned above. But absolute levels of inspection remain high relative to other regulators, and while many EA staff feel strongly that there is a link between inspection frequency and securing environmental outcomes, the EA did not supply us with any evidence of this. Similar issues apply to data collection. The EA needs to clarify the rationale behind the numbers of inspections and audits it undertakes and the data it collects (or requires business to collect), and to communicate this to its staff, businesses and other stakeholders.</p>	<ul style="list-style-type: none"> • The regulator focuses its greatest inspection effort on businesses where risk assessment shows that both: <ul style="list-style-type: none"> – there is a likelihood of noncompliance by businesses; and – the potential impact of noncompliance is high • Regulatory activity can be linked to the achievement of outcomes

Updated findings:

1. Link of activities to outcomes

1.1 The review team found a significant and positive shift of emphasis to outcome focused service levels. This has at least in part resulted from the establishment of an effective 'line of sight' from the top of the organisation to the bottom of the organisation regarding the objectives and emphasis

of the soon-to-be-published corporate strategy for 2010-2015.

1.2 The review team also found many examples of a 'blended approach' where staff from different specialisms and areas were working together better. For example lawyers, policy officials and officers work together with businesses to develop user-friendly guidance. All staff appeared to

be focused on environmental outcomes rather than inputs such as number of inspections. Many staff were aware of the impact of their work on their customers' businesses.

1.3 The recently established Better Regulation science programme also appears to be a strong addition to the EA's existing evidence base regarding the link between the EA's activities and achieving environmental outcomes. The review team commend this programme and note that the results of the program are being shared with other regulators through the 'RHING' group. The review team recommend that the results continue to be shared with other regulatory agencies.

1.4 The review team found that businesses that we spoke to were aware of changes in the approach of the EA. In particular, businesses welcomed the EA's move away from a 'tick-box' approach to inspections.

2. Levels of inspection

2.1 The review team were pleased that, in general, levels of inspection have dropped over the last two years.

2.2 In particular, front-line inspection officers recognised the change in the approach of the EA to focus on outcomes. One officer noted a "step change" in approach from a target culture to focusing on the actual results to be achieved. Another commented on how front line officers were now allowed more discretion on difficult sites so could allocate more time to them.

2.3 The EA also supplied data indicating significant reductions in the number of inspections for, for example, waste management and the Pollution

Prevention and Control regime (both showing a 40% reduction since 2007).

2.4 The review team's remaining concerns relate to the style of inspections rather than to the extent of inspections.

2.5 Firstly, while the review team were confident that most officers approached inspections constructively, the style of a minority of officers should change to create a "no surprises" culture. Where non-compliance is identified the officer should notify the business immediately, face-to-face where possible, and not in writing after leaving the premises.

2.6 Specifically, frontline officers appear to recognise the value of outcome-focused service levels. Stakeholders also recognised an improvement in inspection regime but that it could still be inconsistent. Much depended on the individual officer, with some less able officers amongst a generally good group of staff.

2.7 Some stakeholders queried whether, as well as being encouraged by the mechanism of issuing statutory warnings, this type of behaviour reflected a lack of confidence in the officers when asserting their concerns at the time of an inspection. Nevertheless, these concerns are raised in the context of what the review team regards as a good and improving inspection regime.

2.8 In addition, where inspections are reduced, some form of face-to-face contact should be offered to businesses. Stakeholders noted that, while a reduced number of inspections had benefits, they also wanted to maintain contact with an officer, for purposes of advice. The review team

were encouraged that the EA also recognised the tensions between a reduction in the number of inspections and some firms' desire to see Environment Agency officers on the ground.

3. Levels of data collection

- 3.1 The review team noted that steps have been taken to reduce the amount of data collected. Nevertheless, there is still potential to reduce data collection much further. Among the other strong areas considered in this review, this particular aspect appeared to be one of the limited number of weaker areas of progress for the EA.
- 3.2 For example, stakeholders commented on several occasions that they had to submit data more than once and in some cases had to submit data in a paper rather than electronic form.
- 3.3 Businesses also need to be reassured that the confidentiality of their data is paramount. The review team notes that the EA is aware of this issue and that this is in part an on-going issue relating to communication with businesses.
- 3.4 Businesses also need to be reassured that submitting data adds value to their relationship with the EA. For example, stakeholders commented that they would like to know what the data they submit is used for and if it is used at all.
- 3.5 The review team have concluded that data collection and retrieval could be improved by having a coherent, centralised database, ideally with a CRM system. In particular, staff and stakeholders said that data is stored in different pockets of the EA which is why data has sometimes to be

submitted several times. Staff commented that it can be difficult to find data within the EA.

- 3.6 The review team also recognise that centralised databases tend to have high setup costs. Therefore the review team recommend that the EA work with its funding bodies towards a strategy for centralising data to reduce the data burden on businesses and to increase the utility of the data for the EA.

4. Rationale behind the numbers of inspections and the data collected

- 4.1 The review team were very encouraged by the significant internal work to ensure that no visit is made without a reason. Nevertheless, as noted above, a lack of transparency exists from the perspective of businesses about why inspections take place.
- 4.2 The review team suggests that the difference between internal and external perceptions originates from communication with business.
- 4.3 In addition, some stakeholders observed that inspection levels in some areas remained high. For example, a farmer noted how he received inspections once every six months. He compared this to his Irish colleagues, who received equivalent inspections once every three years. For this specific example, the review team welcomes possible changes to the way in which farms are inspected that the EA is considering implementing shortly.
- 4.4 Businesses also say they greatly value the advice provided by the EA and would like a mechanism for receiving this even if inspection levels are reduced. The review team

therefore suggests that further work could be done to offer businesses a more informal means of contact with the EA, short of a full inspection or audit.

Maximising the impact on regulatory outcomes

Previous findings:

Issue to be addressed	Hampton symptom
<p>In some areas, such as waste management licensing, there is a danger that the EA focuses disproportionate energy on those who are largely compliant with the law rather than businesses who operate illegally or on developing innovative ways to improve environmental outcomes.</p> <p>In part, this appears to result from the charging regime, under which the EA is unable to use funds from licensees for activities to target those businesses operating illegally outside the permitting, licensing and registration regimes. The charging regime incentivises the EA to ‘provide a service’ to licensees, even where the impact on environmental outcomes may be marginal. We also found some evidence that the charging regime may constrain the EA’s ability to develop more innovative approaches to regulation, such as marketing campaigns and providing advice.</p> <p>The EA, the Department for Environment, Food and Rural Affairs (Defra) and HM Treasury should explore how the charging regime might be made more flexible.</p>	<ul style="list-style-type: none"> • Regulators should concentrate resources on the areas that need them most • Regular offenders should be identified quickly

Updated findings:

5. Targeting businesses who operate illegally

5.1 This previous finding was one of the review team’s principal concerns before the start of progress review. However, the review team found significant advances in this area within the legal constraints placed on the EA.

5.2 Nevertheless, the targeting of illegal businesses was one of the main concerns raised by stakeholders. Therefore, the review team recommends that the EA continue to work with DEFRA and the Treasury to maintain and, where possible,

increase the allocation of resources directed to targeting illegal businesses.

5.3 The reviewers welcome the EA’s use of crime analysts, intelligence gathering and of Memex. The reviewers find this approach to be very encouraging and it exemplifies the EA’s targeting of high risk illegal operations.

6. Developing innovative ways to improve environmental outcomes

6.1. The use of additional sector groups appears to be improving the breadth and depth of innovation.

- 6.2. As noted previously, evidence exists that there is a 'clear line of sight' to the new corporate strategy from multiple levels within the EA. emphasis on advice and guidance be maintained.
- 6.3. As a result of discussions with HMT and DEFRA, more flexibility on funding for innovative projects exists.
- 6.4 It is an encouraging sign that the internal sharing of best practice has also improved.
- 6.5 Senior management and staff were able to give practical, albeit theoretical, examples of when expanded sanctioning powers could have improved environmental outcomes, had such powers been in use by the EA. This suggests that the EA's culture would be supportive of implementing new and innovative enforcement initiatives in a proportionate, targeted and risk based manner.
7. Use of funds to target businesses operating illegally
- 7.1 The review team is reassured that, as a result of discussions with HMT and DEFRA, more flexibility has been agreed on how funds from licensees can be used.
- 7.2 Nevertheless, maintaining existing levels of activity against illegal operators is vital to retain business' buy-in to compliance and the EA's reputation. The review team would therefore urge that the EA ensure that there is no reduction in the amount of grant-in-aid or use of funds from the charging regime for this purpose.
- 7.3 The EA's use of advice and guidance, and the marketing of its availability, has been widely welcomed by business. The review team welcomes this finding and urges that this

The impact of the EA's activities on business

Previous findings:

Issue to be addressed	Hampton symptom
<p>The EA has put in place processes to improve consistency in the way that regulations are implemented. This was in part a necessary result of the EA's formation from the merger of the previous regulatory bodies and their respective regulatory regimes, as well as a response to concerns raised by business.</p> <p>We met some very impressive, confident and experienced local enforcement staff who worked with businesses to improve environmental outcomes whilst minimising the regulatory burden. Our work also highlighted instances where enforcement at a local level is seen by regulated businesses as being over-rigid, with little consideration of the impacts on business or the relationship to the actual benefit to the environment of enforcement activities. This may in part be due to constraints within legislation.</p> <p>In addition, in some specific areas of the EA's business, principally the Pollution Prevention and Control (PPC) regime, businesses raised significant concerns about perceived differences in how sites were treated. In part, this results from the permitting regime, where there is a legacy of permits with differing conditions. Over time, this problem will resolve itself, but the EA should consider accelerating the pace of change.</p> <p>We recognise that there will always be an inherent tension between delivering national consistency whilst also being able to respond to specific circumstances.</p> <p>We also saw that the EA has processes in place for the resolution of tensions through communication between environment and policy officers. However these processes are not as widely understood or used by Environment Officers as they might be.</p>	<ul style="list-style-type: none"> • Enforcement actions are proportionate to the seriousness or persistence of, and potential commercial gain from, the compliance breach. • Where appropriate, businesses are given the opportunity to respond to and suggest alternatives to proposed enforcement action.

Updated findings:

9. Rigidity of enforcement at a local level

- 9.1 The review team notes progress in this area. Nevertheless, businesses still expressed a wish for further improvement in this area.
- 9.2 In particular, the EA consistently emphasised its change of approach to that focused on the actual outcomes for the environment. This was seen at all levels in the organisation. For example, assessment of staff is now aligned with the corporate objectives and the progression criteria of staff are now based on behaviour traits rather than achieving process targets, such as number of inspections.
- 9.3 The review team also applauds the set-up of sector groups, which have been seen as a great success by business where they exist. The account management scheme for larger businesses is popular with those businesses that use it.
- 9.4 The review team nevertheless notes particular areas for development in the EA's enforcement approach.
- 9.5 Firstly, the review team notes a clear call from business for the expansion of the account management scheme and more sector groups.
- 9.6 In addition, some businesses value a visit from a specialist officer and others value a visit from generalists. It should be possible to better align business preferences with the EA's operational needs in this regard.
- 9.7 Therefore, the review team recommends that the EA continue to

align available resources with the manner of inspection desired by business while still focusing on the EA's desired environmental outcomes.

- 9.8 A risk also exists that management control mechanisms could stifle the responsiveness of front line officers.
- 9.9 The reviewers were pleased to hear numerous examples from the EA about incidents in which officers were able to use their discretion in order to achieve environmental outcomes while taking into account a business's circumstances. Nevertheless, variability still exists between the ability of officers to use discretion. This is likely to be a result of lack of confidence as much as technical expertise. This should be assessed as part of learning and development appraisals.
- 9.10 Training should also provide offices with an understanding of businesses. The potential for two-way 'Trading Places' secondments between business and the EA should be explored.

10. Accelerating the pace of change of PPC

- 10.1 Overall the PPC scheme appears to work well, but the time taken to approve permits, and variations to permits seems unduly long. For example, stakeholders gave examples of where minor variations of permits could take up to eight months to complete. The review team notes that the EA is aware of timeliness as a potential problem of its service to business.
- 10.2 The review team notes however that the legal obligations can affect the EA's timeliness. In particular, the

- EA described how the issue of certain types of waste permit was not possible before the grant of corresponding planning permission by local authorities. Therefore the review team recommend that the Government works to decouple the granting of an EA permit from the granting of planning permission. This would increase the responsiveness of the EA to businesses.
- 10.3 It is also suggested that enhanced joint working between the EA and local authorities, particularly on planning matters, could improve issues of timeliness. In any event, attention should be given to the resourcing of the permitting regime and whether any additional resourcing could improve the EA's timely service to industry.
- 10.4 In addition, consistency in PCC conditions and guidance between sectors is welcomed, but sector-specific guidance nevertheless remains useful and valuable, especially when produced jointly with industry.
11. Resolution of tensions through communication between environment and policy officers
- 11.1 The review team welcomes the apparent significant improvement in this area. Nevertheless, the reviewers would emphasise a need to take care that responsibility is not removed from front-line staff.
- 11.2 At the same time, front line staff require the confidence to be able to communicate findings during an inspection - a "no surprises" approach. Where they require additional expertise or second opinions, they should alert businesses to this fact and give them a clear timetable by when any additional points will be raised.
- 11.3 In this context, a suggestion that middle managers remain the most difficult group to target with the Better Regulation agenda was made to the review team. Recently developed assessment and training mechanisms hold promise in this area, but the review team suggests that this aspect could be an area for further development by the EA.

Operator and Pollution Risk Appraisal (OPRA)

Previous findings:

Issue to be addressed	Hampton symptom
<p>As a framework for assessing risk, there is a great deal of support from business for the principles underpinning OPRA. The model has also been recognised as 'best practice' in the Hampton Report and by the European Commission. The review team feels, however, that more could be done to ensure that OPRA is used to its full potential. As it is currently formulated, improved compliance does not always have a significant impact on a business's OPRA score and therefore on its levels of inspection or fees. There is therefore scope for OPRA to offer a greater incentive for increased compliance, for example if there was a greater differential in fees and inspection levels between compliant and non-compliant businesses of a similar nature. We recognise, however, that incentives in charging schemes are difficult to apply where the principle of cost-recovery is rigidly applied.</p>	<ul style="list-style-type: none"> Compliance records/good performance are taken into account, with good performers visited less frequently.

Updated findings:

12.1 Regarding the OPRA (Operator and Pollution Risk Appraisal) system, although this system is good, improvements are required. OPRA is still too weighted towards complexity of a process rather than competence, with the result that good performance is not taken into account enough.

12.2 For example, stakeholder comments regarding OPRA included that the OPRA system is a move to a more modern regulator but that it does not currently provide enough incentive to encourage compliance. Other stakeholders commented that OPRA placed a disproportionate weight on the complexity of the industry that the business is involved in (accounting for 94% of the OPRA

score in their case) rather than compliance (accounting for only 6% in their case). It was also commented that there is no independent mechanism of appeal once an OPRA score has been calculated.

12.3 Consideration should also be given to extending the range of rewards for a good OPRA score: differentials in charging do not provide sufficient incentives on their own. Possibilities – which would be welcomed by business – include rewards through earned autonomy and self-certification.

12.4 The review team were reassured that the EA appeared to be aware of the limitations of OPRA and is currently undertaking a review of OPRA. In particular, the EA

considered the fundamentals of the system to be sound but that the system needed tweaking. The EA also indicated that it recognised its limitations in incentivizing particular behaviour by charging and is considering other incentive mechanisms such as providing a choice of regulatory regimes when appropriate such as earned autonomy or self-certification. Businesses said they would very much welcome self-certification, understanding that this would place greater responsibility for compliance on them, with concomitant consequences if they mis-certified.

Relationship with Government and other agencies

Previous findings:

Issue to be addressed	Hampton symptom
<p>As the regulator responsible for implementation, the EA (along with its UK equivalents) has a key role to play in ensuring that regulations are workable. Businesses are looking for greater clarity about implementation timescales for new regulations, how the regulations will impact on them and how any transition arrangements will work.</p> <p>In designing new regulations, where strong project and programme management has been exercised, the EA and Defra have demonstrated the ability to work effectively together, for example in developing the forthcoming Environmental Permitting Programme. We are concerned, however, that this is not routine across all relationships with Defra and other government departments with the result that implementation of new regulations has sometimes been weaker.</p> <p>The EA and Defra should continue to develop their joint working arrangements, and other government departments, along with the EA, should seek to replicate this approach when working together.</p>	<ul style="list-style-type: none"> Where regulations are not designed by the regulator, the regulator uses all means available to shape the regulation.

Updated findings:

13. Clarity about new regulations

- 13.1 The EA has much improved its early engagement with business during consultations and development of guidance. The sectoral approach and account management approach appeared to have contributed to this improvement and the strong performance of both of these initiatives should be maintained and developed further wherever possible.

14. Relationships with Government

- 14.1 The review team welcomes the EA's improved relationships with DEFRA, BIS and CLG. The new relationship with DECC also appears good.
- 14.2 The reviewers were pleased to see the EA's local authority relationship with LACORS working well. The review team recognise efforts made by the EA to build a similar relationship with the LGA and suggest they continue to work to improve LGA's engagement with the EA.

14.3 In particular, the relationship between the EA and local planning authorities appears to be in some instances inconsistent and poor. While the review team appreciates that the EA can only go so far in improving this relationship, the review team would nevertheless emphasise the need to continue to pursue improved relationships in this area on both sides.

15. Joint working with Government

15.1 The EA has made progress in this area, particularly with other national regulators such as the HSE. Many examples of successful joint working with businesses were brought to the attention of the review team.

15.2 Further progress still may be made with local authorities where the EA should seek to develop a “whole site approach” in areas such as petrol stations (similar to the DEFRA whole farm approach).

15.3 Where multiple agencies and regulators have an interest the EA should consider whether it is possible to becoming the Primary Regulator for an entire site.

15.4 Sharing of intelligence with agencies such as Police, Fire and Rescue service and local authorities is of great importance in the unregulated sector. Relationships with Police, Fire and Rescue services appeared good and should be commended.

The role of advice and guidance

Previous findings:

Issue to be addressed	Hampton symptom
<p>The EA has taken forward some good initiatives to provide better advice and guidance to business, for example the National Customer Contact Centre and the NetRegs website. These initiatives seem, however, to have been developed in a piecemeal way without any sense of an overall strategy for the provision of advice and guidance. Market penetration levels for initiatives such as NetRegs remain very low and the EA's own website is currently inadequate as a source of quick and effective guidance, either externally or for EA staff. We are also concerned that some local enforcement staff do not see offering advice as part of their role.</p> <p>The EA should urgently deliver its planned improvements to its website and act to improve business awareness of where to go for advice and guidance. It also needs to develop a broad strategy for advice and guidance – something which it is in the early stages of developing – which ensures that businesses can and do receive quality practical advice on what to do to comply.</p>	<ul style="list-style-type: none"> • Advice and guidance are accessible and accessed. • The regulator is aware of businesses' preferred information sources, and a strategy for disseminating/marketing guidance which takes into account these preferences is in place.

Updated findings:

16. Strategy for the provision of advice and guidance

16.1 A real improvement in the provision of advice and guidance was apparent. In particular, several stakeholders were very complimentary about the quality of guidance provided by the EA. The review team welcomes the increasing appreciation by the EA of the use of guidance as a compliance tool.

16.2 As noted previously, advice should accompany inspections where not already happening. See comments

above for improving the ability of frontline staff to give advice on-site, and to inform businesses where the advice will follow later.

16.3 The review team noted that guidance is generally well targeted and the range and quality has improved.

16.4 The review team also notes that sector specific guidance is highly valued by business. Businesses and EA staff both greatly value joint working on guidance. This should be continued and extended.

17. The website and Market penetration for NetRegs

- 17.1 The review team welcomes the significant improvement in the EA's website, the increase in the resilience of the website at peak usage and the more user-friendly search functionality of the website.
- 17.2 The review team also welcomes the improvement in the NetRegs website. NetRegs also received some positive stakeholder comments. However, according to the EA's own market surveys, penetration remains low especially amongst certain sectors and efforts should continue to be made to increase awareness and usage amongst businesses.
- 17.3 The review team also notes that the EA recognised that different forms of communication are required for different sectors. For example, the EA cited its recognition of the difficulties of communicating with farmers, many of whom do not use computers.
- 17.4 Finally, the review team notes that the EA is aware of questions about the sustainability of three websites in this space, i.e. those of the EA, NetRegs and businesslink.gov.uk. The review team suggests that these questions be further considered by the EA, in particular considering whether a post-2010 Varney convergence will affect business usage. It is likely that the EA's customer journey mapping work currently underway will inform this consideration.

18. Advice as part of the role of enforcement staff

- 18.1 The review team found a clear change in this area. In particular, the review team found no evidence of enforcement staff now not appreciating the provision of advice as being as central to their role.
- 18.2 In addition, internal tensions between the centre of the EA and the front line appear to have been resolved.

Other issues

Updated findings:

19. Other comments about guidance

19.1 The EA has made good progress in developing guidance jointly with businesses in certain sectors. This should be extended to other sectors.

19.2 Good work has been done to ensure that there are no differences between internal and external guidance. Nevertheless, the EA should continue to ensure that new guidance issued should follow this practice.

19.3 Finally, complex sites should be inspected by appropriately experienced and qualified staff if advice is to be of use to businesses.

20. Economic progress

20.1 The review team found evidence that staff do take account of the need to encourage economic progress and have a clear understanding of the needs of businesses. However, the EA could further make this more explicit, especially during the current time of economic difficulty.

20.2 In particular, the EA was able to produce several examples of how they had been able to take a company's business needs into account. For example, the EA has taken a national enforcement position not to take action against businesses who store certain waste materials, without causing harm, above the legal limit in the light of the severe economic downturn, prevailing market conditions and the relatively low level of risk to people

and the environment arising from this activity.

20.3 The EA also pointed to its permitting system that, while it can take a significant time to complete, the EA will accelerate the processing of a permit when asked to do so for business reasons.

20.4 An example of "*extraordinary good practice*" by the EA highlighted by a stakeholder was the implementation of particular new significant cross-European environmental regulations. In particular, enforcement of the newly-implemented regulations was described as involving inspections targeted by research and intelligence rather than random inspections on the ground. The implementation of these regulations was also recognized by the EA as being a successful programme.

21. Internal communication

21.1 This has improved but, nevertheless, further room for improvement exists. Specifically, as noted previously quite a few of the perceived shortfalls of the EA as reported by stakeholders could be prevented by better communication.

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