



Department  
for Business  
Innovation & Skills

**SMALL BUSINESS APPEALS  
CHAMPIONS AND NON-ECONOMIC  
REGULATORS**

The Appointment of Small  
Businesses Appeals Champions  
(SBACs)

**IMPACT ASSESSMENT**

MARCH 2014

<b>Title:</b> The Appointment of Small Businesses Appeals Champions (SBACs) <b>IA No:</b> <b>Lead department or agency:</b> Department for Business, Innovation & Skills <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 11/02/2014
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> Richlove Mensah 020 7215 5163

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£16.40m	-£5.16m	£0.50m	Yes   IN

**What is the problem under consideration? Why is government intervention necessary?**  
Evidence from the Government's Focus on Enforcement Reviews and supplementary research has shown widespread inadequacy in the provision of appeals and complaints mechanisms by national non-economic regulators – including an absence of transparent, effective procedures and poor explanation and signposting. Intervention is necessary to correct this failure and reduce the risk that poor enforcement decisions are left standing because of businesses' – and particularly small businesses' – inability to challenge them effectively

**What are the policy objectives and the intended effects?**  
The overall aim is to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. The key objective of this specific measure is to provide assurance to business and Government that regulators are delivering against the goals relating to appeals and complaints set out in the new statutory Regulators Code<sup>1</sup>.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Option 1. Do nothing, relying on the new Code, but making no provision for assurance of compliance.  
Option 2. Legislate to appoint an independent Small Business Appeals Champion within each non-economic regulator, responsible for delivering that assurance. (Preferred option)  
Option 3. Appoint such an officer by agreement with each non-economic regulator, without any legislative basis.  
Option 4. Create a single stand-alone body to deliver assurance in respect of all non-economic regulators.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 10/2017					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY: Hiroko Plant (SCS) Date: 11/02/14

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262915/13-1016-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262915/13-1016-regulators-code.pdf)

# Summary: Analysis & Evidence

# Policy Options 2 and 3

Description: The Appointment of Small Businesses Appeals Champions (SBACs)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -32.81	High: -5.37	Best Estimate: -16.40

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.6	5.4
High	0.6	3.7	32.8
Best Estimate	0.3	1.9	16.4

### Description and scale of key monetised costs by 'main affected groups'

Regulators - Total annual costs of £1.27m (costs of employing Champions and their support staff, net of costs passed to business)

Businesses - Total annual costs of £0.60m (pass through costs from regulators), voluntary one-off costs of £0.28m (familiarisation costs)

### Other key non-monetised costs by 'main affected groups'

There are no additional non-monetised costs associated with this option.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

At this stage we do not identify any monetised benefits arising directly from the appointment of the Champions

### Other key non-monetised benefits by 'main affected groups'

The creation of Small Business Appeals Champions will ultimately result in a simpler, more effective, more transparent, less costly and better understood series of processes by which businesses are able to challenge regulators' decisions and behaviour. The impact of any changes will be assessed in impact assessments and assessments under Accountability for Regulator Impact, and so is not estimated here.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The costs of employing Appeals Champions are based on the Non-Executive Director (NED) jobs that are currently advertised on the Cabinet Office website. The Cabinet Office NED jobs are not necessarily the same as the Champion jobs and hence the costs may differ. The weighted average of the amount of cost recovery undertaken by regulators (32%) is based on a 2012 Survey. Regulator behaviour may have changed since then. We will test this assumption during the consultation period. The voluntary familiarisation costs are also sensitive to the number of businesses that will familiarise, the amount of time spent, and the hourly wage of the relevant staff. The consultation should also aid our understanding of these familiarisation costs.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.5	Benefits: 0	Net: -0.5	Yes	IN

## Evidence Base (for summary sheets)

### Executive Summary

1. The 2012 Autumn Statement announced a package of 5 measures to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. The package addresses a set of specific issues identified through a series of Focus on Enforcement Reviews and consultations such as that on the Regulators' Code. The package also builds upon the Transforming Regulatory Enforcement Strategy in 2011, with a renewed emphasis on regulators being accountable and contributing to growth as part of the Government strategy to make the UK the best place to start, finance and grow a business.
2. The package comprised of a variety of policy interventions designed to achieve a sustained change in regulators' behaviour. This measure aims to address the shortcomings in regulators' appeals mechanisms identified in the *Focus on Enforcement Reviews*.
3. Businesses - and in particular small businesses - need to be confident that they can ask for an explanation or challenge a regulator's decision without fear, disproportionate cost or long delays. Evidence gathered under the Focus on Enforcement programme<sup>1</sup> shows that this is not always the case.
4. The new Regulators' Code<sup>2</sup>, which is expected to take effect in April 2014, will set Government's expectations of regulators' treatment of appeals and complaints by non-economic regulators. The Government believes that this needs to be accompanied by a new form of assurance that regulators are delivering against these goals.
5. However, the Government recognises that there is a varied and broad range of statutory remits, enforcement regimes, and types of intervention against which a business may wish to appeal or complain. For that reason, it believes that the most efficient means of improving businesses' experience of appeals and complaints is to ensure that each regulator has its own arrangements for audit and scrutiny.
6. For this reason, the Government announced in December 2013, in *Small Business: GREAT Ambition*<sup>3</sup>, its intention to consult on the proposal to create in law and appoint within each non-economic regulator an independent Small Business Appeals Champion. The Government proposes that these Champions should be senior appointments, and anticipates that in many cases, where possible, they would be Non-Executive Directors (NEDs) of the Regulator. The consultation is seeking views on this proposal. To ensure the needs of businesses - and particularly small businesses - are taken into account and for them to have confidence in the Champion, such Champions would need to be independent. And to be effective they would also be likely to need legal powers and duties to:
  - scrutinise the transparency, operation and effectiveness of regulators' appeals and complaints processes;
  - obtain data and information from regulators;
  - publicly report on their findings; and make recommendations for changes and improvements, also in public
7. The Government expects Regulators to comply with such recommendations for improvements to their processes, or explain why they have chosen not to.
8. Small Business Appeals Champions will be expected to discharge their role with a particular focus on the impact and performance of the regulator in respect of small businesses. This is because the Government believes that appeals and complaints procedures that are fit for purpose for small businesses are also likely to work well for businesses of all sizes. Therefore, businesses of all sizes are expected to benefit from the appointment of Appeals Champions.
9. The Government does not propose to give Appeals Champions any powers in respect of individual decisions made by regulators. To do so would be to depart from the objective of the policy – the improvement of overall processes and policies – and would be very likely to run into significant legal complexity. Champions will therefore not have powers to overrule or in any other way intervene in individual cases.

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<sup>1</sup> <http://discuss.bis.gov.uk/focusonenforcement>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262915/13-1016-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262915/13-1016-regulators-code.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/small-business-commitment>

10. The creation of Champions will not, of itself, create monetised benefits for business. However, as Regulators adopt Champions' recommendations, businesses will start to experience the benefits. These will take the form of resolution of the shortcomings listed above.
11. As a result of those reforms businesses overall are expected to spend less time in challenging decisions thanks to simpler, more accessible processes, and fewer poor decisions that impact negatively on the business will be left to stand. Given the great variety of regulators' remits and enforcement regimes, this is likely to result in a mix of fewer formal appeals in some cases (for example if as a result of a Champion's recommendations alternatives to costly and complex appeals are created), and a larger number of more effective appeals in others.
12. The Government firmly expects the benefits to business to be substantial. There may also be benefits for regulators arising from simpler, more transparent appeals processes or reductions in enforcement costs arising from a more proportionate approach. However it would be inappropriate to quantify the benefits in this assessment because:
  - there is insufficient evidence to assess the likely pattern of recommendations which Champions might make, and regulators' approach to implementing them; and
  - each change will be subject to a separate Impact Assessment (or, for changes not affecting legislation, an assessment under the Accountability for Regulator Impact – ARI – scheme). Quantification in this assessment would therefore constitute double counting.
13. The main costs of this measure arise from the salaries of the Champions and the regulator staff supporting them. Some of these costs are likely to be passed on to businesses through fees and charges; these costs are considered as direct costs for the purpose of this analysis. As a result of the appointment of Champions there are also likely to be very small voluntary one-off familiarisation costs to businesses. The net costs to business involved in engaging with Champions are likely to be nil or negligible, as we expect that businesses will use existing fora to engage with the relevant regulators. In addition, those businesses that do engage with the Champions are likely to be those who would expect to benefit so the net cost to engaging on a regular basis is expected to be zero.
14. Table 1 summarises the impacts.

**Table 1 – Summary of impacts**

	<b>Low estimate</b>	<b>Best estimate</b>	<b>High estimate</b>
Net annual impact on regulators	-£0.42m	-£1.27m	-£2.55m
Total annual pass through costs to business	£0.20m	£0.60m	£1.20m
Total one-off voluntary familiarisation costs to business	£0m	£0.28m	£0.57m

### **Risks/sensitivities and issues**

15. The estimates given in this paper are sensitive to assumptions made about the wage rates to be paid to Champions and the regulator staff supporting them, and the extent of their time commitment. The figures above represent the best estimates based on available evidence. Further evidence will be sought during the consultation process. Any eventual changes made by regulators arising from the recommendations of the Champions would be assessed either through an impact assessment or Accountability for Regulatory Impact assessment that would set out the relevant costs and benefits including any expected impact on the overall number of appeals made.

**Key Assumptions**

<b>Subject</b>	<b>Assumption</b>	<b>Source/Comment</b>
Number of Champions	58	Assumed equal to the number of national regulators
Percentage of Regulators passing on costs	49% (15% full recovery, 34% partial recovery)	2012 Regulator Questionnaire
Median daily wage rate of Champions	£450	Based on average daily wage rate of NEDs from: <a href="http://publicappointments.cabinetoffice.gov.uk/">http://publicappointments.cabinetoffice.gov.uk/</a>
Median number of days worked per year by Champions	36	Based on average days worked by NEDs from: <a href="http://publicappointments.cabinetoffice.gov.uk/">http://publicappointments.cabinetoffice.gov.uk/</a>
Mean hourly wage for support staff	£28.91	ASHE 2012, uplifted for non-wage costs (17.8%)
Number of days per month of support staff	3	Assumption based on time commitment of Champions
Number of businesses in UK with 5+ employees	491,305	Business Population estimates 2013
Mean hourly wage for business	£28.91	ASHE 2012, uplifted for non-wage costs (17.8%)
Time taken by affected businesses to familiarise	0.25 hours	Assumption, based on time taken to read Annex C.
Proportion of businesses expected to familiarise	8%	Based on 2013 Regulatory Enforcement Survey

## **Problem under consideration**

16. Evidence from the Focus on Enforcement Reviews found that:

- Businesses often let what they consider to be poor regulator decisions stand, rather than appeal, as they are afraid of the consequences of ‘ruining their relationship’ with their regulator;
- Many companies do not want to confront their regulators; they simply want to understand how a decision has been reached and why – but in many cases there is no regulator ‘safe space’ for companies to air concerns or discuss them informally;
- SMEs suffer particularly acutely as they are ill-equipped to challenge poor decisions adequately, or at all;
- Damage to company growth, reputation and competitiveness results from unchallenged poor decisions;
- Dysfunctional aspects of non-economic regulator appeals and wider regulatory systems are perpetuated as without challenge, regulators lack incentives to introduce necessary reforms;
- There is insufficient transparency and proper scrutiny of regulators in this space;
- Private and public sectors bear unnecessary costs, which can escalate when tribunals (that could have been avoided) become involved;
- There are inconsistent terminologies and contradictory signposting and advice when it comes to regulators’ appeals mechanisms. The terms “appeals” and “complaints” can sometimes be used interchangeably within and across regulatory bodies leading to confusion about which route to take, particularly where businesses are subject to regulation by more than one body;
- Even where appeal routes exist, confusion about how to access them leads to costly delays which could potentially damage a business (and give advantage to competitors) in the meantime, with companies second guessing what to do rather than being able to challenge the decision.

17. Further information about the evidence base arising from the Reviews and other sources is given at Annex A.

## **Rationale for intervention**

18. The Government believes that all parts of the public sector should prioritise, with real urgency, support for economic growth. The evidence outlined in the previous section suggests that the current practice of many regulators in dealing with appeals is inhibiting businesses in taking action which could contribute to growth.

19. The Government has announced plans to replace the former Regulators’ Compliance Code with a new Regulators’ Code<sup>4</sup>, to take effect in April 2014. It is shorter, easier to follow, and provides a framework for how regulators, ranging from national organisations to local authorities, should engage with those they regulate.

20. The new Code takes account of the findings in respect of appeals outlined in the previous section. It sets new goals for regulators’ treatment of appeals and complaints by non-economic regulators. These include

- a clearly-explained route of appeal against decisions;
- impartiality in how appeals are heard;
- signposting and explanation of available appeals mechanisms;
- transparency over data and customer feedback on, inter alia, their performance on appeals.

21. The Government believes that the Code needs to be accompanied by a new form of assurance that regulators are delivering against these goals. It also believes that action is needed on two further goals which were not appropriate for inclusion in the Code:

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262915/13-1016-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262915/13-1016-regulators-code.pdf)

- where appropriate, giving businesses a route to get an informal “second opinion” from the regulator before considering a formal challenge; and
- increasing the consistency of terminology for appeals and complaints used by different regulators.

### **Policy objective**

22. Ministers’ objective for the Better Enforcement Programme is to drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate. This will enable regulators to be consistent in playing their part in creating a business environment that promotes growth and enterprise. Taken together, the package will stimulate and incentivise changes to the way regulators go about delivering the protections they provide, so that they can support businesses and foster economic growth more effectively.

23. Within that overall goal, their objectives for this measure are that

- it should provide assurance to business and Government that regulators are delivering against the goals relating to appeals and complaints set out in the Code, and complement the Code and other aspects of the Better Enforcement Programme;
- it should also promote greater use of second opinions, and greater consistency of terminology, as described in the preceding section;
- the chosen mechanism should take into account the substantial diversity in the circumstances of regulators and of the businesses they regulate;
- it should not undermine (or be perceived to undermine) regulators’ independence of Government, or their delivery of their primary duties; and that
- its costs to regulators and businesses should be kept to the minimum necessary.

### **Options considered**

24. Any assurance mechanism for appeals and complaints processes will need to have the ability to

- obtain data and information from regulators;
- obtain feedback from businesses about the operation of regulators’ appeals and complaints mechanisms;
- scrutinise the operation and effectiveness of appeals and complaints processes, and recommend improvements;
- publish findings and recommendations.

25. Four options have been considered to deliver the required assurance:

Option 1 – do nothing;

Option 2 – legislate to appoint an officer responsible for delivering that assurance – a “Small Business Appeals Champion” – within each non-economic regulator;

Option 3 – appoint such an officer by agreement with each non-economic regulator, without any legislative basis;

Option 4 – create a single, stand-alone body to deliver assurance in respect of all non-economic regulators.

26. The following paragraphs consider the options in more detail.

#### **Option 1 – Do nothing**

##### **Assumptions**

27. This option would involve relying on the provisions of the new Regulators’ Code, without making any provision for assurance that regulators will comply with them.

##### **Achievement of objectives**

28. If all regulators had been motivated in the past to deliver good service to the businesses they regulate, many of the issues identified in the “problem under consideration” section above would already have been resolved. The new Regulators’ Code may go some way to improving regulators’ behaviour, but it is difficult to predict the pace of change. However the Government’s call for the

whole public sector to promote growth is urgent. It does not allow time to wait for evidence of the effectiveness of the Code.

29. Evidence from the Focus on Enforcement reviews has shown that regulators' approach to the businesses they regulate varies widely. Some demonstrate excellent practices; others have much further to go. It is particularly important that the performance of this latter group should be improved quickly – but they are the group whose motivation to improve is likely to be weakest. Thus the “do nothing” approach is likely to have its weakest effect on this key group.
30. Under a “do nothing” approach, many of the issues identified in the “problem under consideration” section above would therefore continue. It is not possible to estimate the cost to business of continuation of these deficiencies, as we cannot know how many would have resisted regulator decisions if they felt empowered to do so or indeed how many would have been successful. (46% of businesses said there was no point in appealing against a regulator's decision)
31. A “do nothing” approach would also fail to address the two further goals not included in the code (see paragraph 21).

### **Costs and benefits**

32. There are no costs or benefits associated with this option as it creates no new requirements: it is the null hypothesis against which the costs and benefits of other options are assessed.

### **Options 2 and 3 – Appoint a Champion within each regulator**

#### **Assumptions**

33. These options would both involve the appointment of a Champion within each of the national non-economic regulators subject to the Regulators' Code. Their duties would be to scrutinise the transparency, operation and effectiveness of regulator appeals and complaints processes. Each Champion will produce an annual report
  - describing any concerns of business relating to the regulator's policies and processes for appeals and complaints;
  - setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.
34. Regulators would be under no obligation to implement whatever recommendations for reform might be made, but would be expected to provide a public explanation justifying any decision not to do so.
35. Champions would be expected to undertake the following activities:
  - **scrutinise** the transparency, operation and effectiveness of regulators' appeals and complaints processes;
  - **engage with business** representatives (e.g. Trade Associations) often through fora already run by regulators;
  - **obtain data** and information from regulators;
  - **publicly report** on their findings; and make recommendations for changes and improvements, also in public, describing any concerns of business relating to the regulator's policies and processes for appeals and complaints and how they are operating in practice, and setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.
36. Champions' reports should be driven by the evidence of their regulators' impact on businesses. Some of that evidence (about regulators in general, and sometimes about the Champion's own regulator) will come from Government. Champions would augment this with other sources of information relevant to their own regulators, notably engagement with relevant businesses and their representatives (eg Trade Associations).
37. Recommendations on matters outside the Regulator's control (for example, to amend the law) should be made to Ministers. Other recommendations should be made to the Regulator itself.
38. The Government proposes that a Champion's report should be laid before Parliament by the Secretary of State within three months of receipt. This will allow observations of the Secretary of State and the Regulator to be published at the same time.
39. The time required for a Champion to undertake these activities will depend on the size and complexity of the regulator. We estimate that for the most complex regulators, 3 days per month

will be sufficient; for the smallest regulators, 1 day per month may be sufficient. But because this is only an estimate, we have chosen to assume that the Champion for each regulator works for 3 days per month, in line with the average for the NED jobs advertised by on the Cabinet Office website. We will test this assumption with regulators during the consultation period.

40. The Champion would typically be a Non-Executive Director (NED) of the regulator or of comparable seniority. Several Regulators would be permitted to share a Champion: this might be appropriate for smaller regulators which regulate similar businesses. The estimated costs have not been adjusted for this: the cautious assumption has been made that the full costs would arise at each regulator. However in practice there might be some savings – e.g. from engagement with the same businesses being relevant to more than one regulator.
41. Regulators will recover some of their costs from businesses, in accordance with their existing practices. Where our evidence indicates costs are partially recovered, or only recovered in some circumstances, we have assumed 50% recovery.
42. Although this measure does not require any action of businesses, we assume that a small proportion will choose to familiarise themselves with its provisions. We would expect only those businesses that believe they will gain from familiarising themselves with the Champion's role would do so. The net effect to them is therefore likely to be zero, but since we are not able to estimate the benefits at this stage, a small amount of familiarisation costs is included.
43. Annex C includes material for a web page which the Department might use to inform businesses about this measure. We have assumed 15 minutes familiarisation time per business in our best estimate. In our best estimate we have also assumed that no business with fewer than 5 staff will read the web-page, along with 8% of larger businesses (5+ employees). As a low estimate, we assume that no businesses will feel the need to familiarise themselves with the change at the point of implementation, while for a high estimate we assume 16% of business do. From the 2013 Regulatory Enforcement Survey, 16% of businesses said that they had ever disagreed with a regulator's decision or intervention.<sup>5</sup> We therefore take this group as an upper bound to the percentage of businesses that are most likely to familiarise themselves with the Champion's role as they represent the group of firms who have expressed difficulties with the process previously. We then adjust this to 8% and 0% for the best and lower bound estimates. The consultation process will aid our understanding of the way businesses are likely to familiarise themselves with the Champions.
44. We assume that engagement with business will impose nil or negligible additional costs on businesses as the Champion is likely to use fora already run by regulators. Once again, we intend to use the consultation process to test these assumptions with business.

### **Achievement of objectives**

45. Option 2 is expected to deliver a good level of assurance of delivery by regulators. Giving a named individual responsibility and powers to publish their views and findings will ensure that regulators give priority to appeals issues (or face the court of public opinion) while also allowing for internal policing of a regulator's own performance. An internal appeals Champion may also result in quicker reforms as regulators may wish to forestall criticism by the Champion by acting in advance of any publication.
46. Compared with option 3, option 2 will
  - give greater certainty that the appointments will be made;
  - ensure the appointed Champion has genuine and perceived independence from the regulator by virtue of the duties to scrutinise, recommend and publish. This is likely to be key to give small businesses confidence in the role;
  - enable appointments to be made for certain regulators where existing establishing legislation could hamper the appointment of a new Board-level office holder of this sort. The extent of such issues will be tested during the consultation period.
47. Option 3 is therefore likely to be less successful than option 2 in delivering the central goal of the policy. The Government will test this assessment during the consultation process.

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<sup>5</sup> We take the weighted average of responses by firm size – 16% for 5-9 employees, 14% for 10-49 employees and 25% for 50-249 employees. The survey did not cover the largest firms with 250+ employees, so we assume a value of 25% for this group of firms.

48. Both options 2 and 3 will also provide a vehicle to promote the use by regulators of “second opinions”. Through the proposed network of Champions they will also provide a mechanism to promote greater standardisation in the terms used to describe appeals and complaints.
49. Both options would allow each regulator’s appeals Champion to focus their function on the nature of the regulator concerned, reflecting its own unique regime and set of regimes and sanctions, and its reputation and relationships with business.
50. Finally, both options would protect regulator independence, because the assurance mechanism would be part of the regulator rather than externally imposed.

### **Costs and benefits**

51. The appointment of Champions will impose a direct cost to regulators. Some of this will be passed directly on to businesses through fees and charges. We have also considered the possible costs to businesses of familiarising themselves with the Champions arrangements, and of engaging with Champions.
52. The effect of the proposed legislation is to place legal duties on the Secretary of State, on Regulators, and on the Champions. There is to be no legislative requirement of any kind placed on business, nor any change in the incentives faced by businesses. Implementation of the policy will not require businesses to familiarise themselves with the legislation, or with its effect. Therefore, it follows that any such familiarisation by business will be entirely voluntary, and no assessment of monetary costs is therefore required<sup>6</sup>. Familiarisation costs are therefore excluded from the EANCB calculations in response to the RPC Opinion in the draft consultation stage IA although we do include an initial estimate of these voluntary costs within the NPV analysis.
53. Ministers’ policy is that the role of Champion should, by default, be created in substitution for an existing NED post or performed by an existing NED instead of other duties. Alternatively in some cases it might need to be created as an additional post. In the default cases the regulator will face an opportunity cost; otherwise it would be a pressure on its overall budget. However the choice does not affect the overall measurement of impact.
54. Based on the activities of a Champion listed above, we estimate that it would be realistic for the role to be performed on a part-time basis. The amount of work will depend on the complexity of the regulator’s regime and the number of businesses regulated. For a typical regulator a few days’ work per month would probably be sufficient. We have assumed that Champions would be supported by Board Secretariats or the equivalent, with staff committing about the same number of days per month as the Champion.
55. During the consultation period we will seek further information from regulators to establish whether they would be likely to share a Champion with another regulator, whether the Champion role could be subsumed within an existing post, and the likely salaries and working hours to be required of Champions and support staff.
56. In the absence of such information the costs of employing Champions are estimated by assuming that
  - the full costs would arise at each regulator, regardless of any sharing arrangements. However in practice there might be some savings – e.g. from engagement with the same businesses being relevant to more than one regulator.
  - each Champion’s salary is the same as that of a typical NED. The central estimate has therefore been based on the £450 per day mean wage rate of NED roles currently advertised on the Cabinet Office website<sup>7</sup>. Low and high estimates have been constructed on the basis of £150 or £900 per day respectively, reflecting the range of NED wage rates shown on that site.
  - each Champion would work for 3 days a month, in line with the median number of working days for NEDs roles currently advertised on the same website.
  - Champions receive travel and subsistence payments equivalent to 30% of their wages.

<sup>6</sup> Businesses that do familiarise are likely to do so if it leads to benefits that at least outweigh the costs so the net costs could be zero.

<sup>7</sup> <http://publicappointments.cabinetoffice.gov.uk/>

- as a central estimate, staff in each regulator will spend 3 days a month supporting the Champion (8 hours each day) at a salary of £24.54<sup>8</sup> per hour. Low and high estimates have been based on 1 and 6 days per month respectively.
- a non-wage uplift of 17.8% is added to the total wage cost of both Champions and support staff<sup>9</sup>.

57. Evidence about existing cost recovery practices comes from the 2012 Regulator Questionnaire, which attracted 57 responses. It found that

- 51% of regulators do not recover costs of enforcement from businesses;
- 19% recover part of the costs;
- 15% recover the full costs;
- 15% said that recovery practices depended on circumstances.

58. This means that on average 32%<sup>10</sup> of regulators' costs are recovered from business, with the remaining 68% borne by regulators' own budgets.

59. We will test these assumptions during the consultation process.

60. Table 2 summarises the costs to regulators and businesses associated with this option.

61. There are no anticipated benefits to business or regulators arising purely as a result of the appointment of the Champions. Any benefits will only be realised over time as a result of Regulators implementing the recommendations of Champions that improve the small business experience of the appeals and complaints mechanisms. Any analysis of the expected benefits would be covered within the further Impact Assessments or in business engagement assessments carried out as part of ARI.

**Table 2 – Summary of costs for options 2 and 3**

	Best	Low	High	Basis
A Champions' daily wage rate				Assumed comparable to NED rates and number of days. NED data taken from Cabinet Office website.
	450	150	900	
B Number of days per month worked by each Champion				Median days worked by NEDs (source as for A)
	3	3	3	
C Non-wage uplift	1.18	1.18	1.18	Eurostat
D Salary of each Champion	16,200	5,400	32,400	A*B*12
E Salary including uplift	19,100	6,367	38,200	D*C
F Travel and subsistence costs as proportion of wages	0.30	0.30	0.30	Assumption
G Travel and subsistence costs for each Champion	4,860	1,620	9,720	D*F

<sup>8</sup> Annual Survey of Hourly Earnings (ASHE 2012)

<sup>9</sup> A standard 17.8% is added to any wage estimation to account for the employer paying taxes, pensions etc (Eurostat, Labour Cost Index)

<sup>10</sup> We assume that for the 34% (19% + 15%) who recover part of the costs or where the amount of cost recovery depends on circumstances that the amount of cost recovery is 50%. Taking a weighted average across regulators gives an estimate of 32% cost recovery [(0.51 \* 0%) + (0.34 \* 50%) + (0.15 \* 100)] = 32%

H	Total cost per Champion	23,960	7,987	47,920	E+G
I	<b>Total cost of Champions</b>	<b>1,389,668</b>	<b>463,223</b>	<b>2,779,337</b>	H*58
J	Support staff hourly rate	24.54	24.54	24.54	ASHE 2012
K	Non-wage uplift	1.18	1.18	1.18	Eurostat
L	Support staff days per month	3	1	6	Assume 8 hours per day
M	Annual staff salary costs for each regulator	8,326	2,775	16,652	J*K*3*8*12
N	Total costs of support staff	482,897	160,966	965,795	M*58
O	<b>Total annual gross costs for all regulators</b>	<b>1,872,566</b>	<b>624,189</b>	<b>3,745,131</b>	N+I
P	Proportion of cost borne on regulators' own budgets	0.68	0.68	0.68	2012 Regulator Survey
Q	<b>Total annual net cost to regulators' own budgets</b>	<b>1,273,345</b>	<b>424,448</b>	<b>2,546,689</b>	I * P
R	Proportion of costs passed through to business	0.32	0.32	0.32	2012 Regulator Survey
S	<b>Total annual cost to regulators passed to business</b>	<b>599,221</b>	<b>199,740</b>	<b>1,198,442</b>	O*R
T	Total number of businesses with 5+ employees	491,305	491,305	491,305	Business Population Estimates 2013
U	Proportion of businesses choosing to voluntarily familiarise themselves with this measure	0.08	0.00	0.16	Assumption – Regulatory Enforcement Survey 2013 found 16% SMEs disagreed with regulator's decision
V	Number of businesses choosing to voluntarily familiarise themselves with this measure	39,304	0	78,609	T*U
W	Familiarisation time taken per business (hours)	0.25	0.25	0.25	Assumption
X	Hourly salary cost of business employees (£24.54) responsible for the voluntary familiarisation (incl. uplift)	28.91	28.91	28.91	ASHE 2012
Y	<b>Total one-off (voluntary)</b>	<b>284,064</b>	<b>0</b>	<b>568,127</b>	V*W*X

## familiarisation cost

### Summary of impacts on regulators and business

62. From table 2 above, a summary of the annual costs to regulators and both the one-off and annual costs to business are presented in table 3.

**Table 3: summary of costs**

	Low estimate	Best estimate	High estimate
Net annual cost to regulators (Q)	£0.42m	£1.27m	£2.55m
Total annual pass through costs to business (S)	£0.20m	£0.60m	£1.20m
Total one-off (voluntary) familiarisation costs to business (Y)	£0m	£0.28m	£0.57m

### Net impact on society

63. Taking into account the one-off voluntary familiarisation and annual costs to regulators and businesses outlined in the table above, it is estimated that the net present value (NPV) of options 2 and 3 over 10 years will be **-£16.40m**.

### Option 4 - a single, stand-alone body to deliver assurance

#### Assumptions

64. That a single central body is created to deliver assurance. Its functions would be similar to those assumed for the Champions under options 2 and 3 above.

#### Achievement of objectives

65. This option would give Champions greater perceived independence from their regulators, and therefore increase small businesses' confidence in them. However Ministers have decided that it would be unacceptable in policy terms because it might be seen as threatening the independence of regulators, which is also important to business. Many regulators have been deliberately created as independent entities and creating a new body with a challenge / scrutiny role in opposition to them (rather than within them, as the favoured option does) would inevitably create new frictions. It would also be difficult for a single body to engage the diverse business stakeholders of 58 regulators.

66. This option has other disadvantages and risks:

- It is highly uncertain whether a single body could build the capacity to audit 58 regulators, many of which operate multiple regulatory regimes. Each regime often has its own enforcement and appeals procedures. The range and diversity of appeals processes is therefore vast.
- Creation of a new body to perform this role would cause considerable delay to delivery of the policy.
- Such a body might not be consistent with public bodies policy. It is Government policy that a new public body can be created only if it performs a technical function which needs external expertise to deliver; needs to be, and to be seen to be, delivered in a politically impartial way; or needs to be delivered independently of Ministers to establish facts and/or figures with integrity.

67. Because the perceived impact of this option on regulators' independence was unacceptable, it was ruled out before other aspects of its impact on business were considered.

### Overview of options

68. Table 4 below reviews the four options against the objectives.

**Table 4: summary analysis of options**

Option 1 – do nothing	Option 2 – legislate	Option 3 – for voluntary appointment	Option 4 – central body of
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		Champions	Champions	
Assurance of delivery against Code	No – <b>critical failure</b>	Yes	Partial	Yes
Second opinions/ consistency of terms	No	Yes	Yes	Yes
Takes account of differences between regulators	NA	Yes	Yes	No
Regulator independence	NA	Yes	Yes	No – <b>critical failure</b>
Costs to regulators and businesses	Nil – this is the base case	£1.9m per year plus transition costs (£0.28m)	£1.9m per year plus (£0.28m) transition costs	Not calculated as option fails to meet critical objective.

69. Options 1 and 4 fail to deliver critical objectives, and have therefore been ruled out. Option 2 offers significant advantages over option 3 against the critical objective of assuring delivery against the Code; the two options are otherwise the same. Option 2 is therefore the preferred choice.

### **Wider impact on business**

70. As noted above, it is expected that this measure will have positive implications for businesses, particularly small businesses.

### **Specific impact tests**

#### **Small and Micro Business Assessment**

71. Small and micro businesses will be impacted by this measure. Although the proposal to appoint Small Business Appeals Champions does not directly relate to the regulation of business, some costs will be incurred by business as regulators recover a proportion of the costs from appointing the Champions. It is not possible to exclude small and micro businesses from these costs as cost recovery is applied to businesses of all sizes. However the forecast cost to business of all sizes would be very low. The only mitigating option available would be to try to exclude SMEs from any fee increase. However that would mean a change to the fee structure of most regulators, which would create substantial administrative complexity for both regulators and businesses, and create further costs, some of which would be passed onto larger businesses. The objective of the Champions is to develop a new system of scrutiny and public reporting relating to the complaints and appeals processes of non economic regulators. This will help promote continuous change and enhance the relationship regulators have with business, and particularly with small business. As changes are implemented we anticipate these businesses will benefit from improved appeals mechanisms although we are not able to quantify these benefits at this stage.

### **Competition**

72. We have not identified any specific impacts on competition.

### **Equalities and human rights**

73. We have not identified any negative impact on protected groups or human rights as a result of our proposal. Annex B sets out the arrangements for the appointment of Champions which will follow existing arrangements for senior appointments based on merit.

## **One-In Two-Out**

74. In response to the RPC Opinion in the draft consultation stage IA, the costs that are recovered from businesses to fund this measure are now considered within the scope of OITO. These costs are therefore included in the EANCB calculations. The EANCB for the “In” is £0.50m
75. Following the RPC Opinion in the consultation stage IA, the voluntary familiarisation costs are now considered to be out of scope for the reasons given in paragraph 52 and are therefore excluded from the EANCB calculations, in line with the guidance on permissive changes in the Better Regulation Framework Manual (paragraph 1.9.21).

## Annex A – Summary of evidence

1. The Government's Focus on Enforcement programme has, since 2012, reviewed businesses' experiences of the delivery and enforcement of regulation in various sectors by national and local regulators<sup>11</sup>. The full range of regulatory interventions applied by all these bodies is enormous. They range from advice on how to comply with the law (where failure to follow the advice may result in a sanction of some kind), licensing decisions, imposition of monetary fines, orders to take specified action, or to stop specified action, and prosecution.
2. During the course of these reviews, some issues were raised by business that appeared to be common to many regulators, and across sectors of the economy. One of these was concerns expressed about the effectiveness of complaints and appeals systems.
3. The Government therefore undertook a separate review of complaints and appeals in order to draw out the principal concerns, pick up further evidence not gathered during the sectoral reviews, and undertook some new survey work to establish quantitative data alongside the qualitative evidence. This exercise considered opportunities for both appeals (including opportunities for informal resolution, such as seeking second opinions outside formal procedures) and complaints.

### Research findings

4. ICF GHK, in collaboration with BMG Research, carried out a survey of micro, small and medium-sized businesses for the Department for Business, Innovation and Skills in 2013<sup>12</sup>. The purpose of the research was to provide further evidence of the impact of regulator activity on business and to aid understanding of how and where regulators can support growth in how they go about their activities. The survey provides some further quantitative evidence in relation to appeals.
5. Headline findings included the following:
  - Sixty-three per cent of businesses surveyed who have at some point disagreed with a regulator's decision have never appealed.
  - Of those businesses that did not appeal against decisions, the most common reasons given were that there was 'no point appealing' (66 per cent) or that they 'have not had enough time' (19 per cent) as their main reasons. A further 10 per cent thought the process was too expensive.
  - Proportionately, micro and small businesses are less likely to appeal than medium-sized enterprises (28 and 36 percent respectively, as against 51 per cent).
  - The findings also support evidence from Focus on Enforcement reviews that regulated business report not wanting to upset their relationship with their regulator.

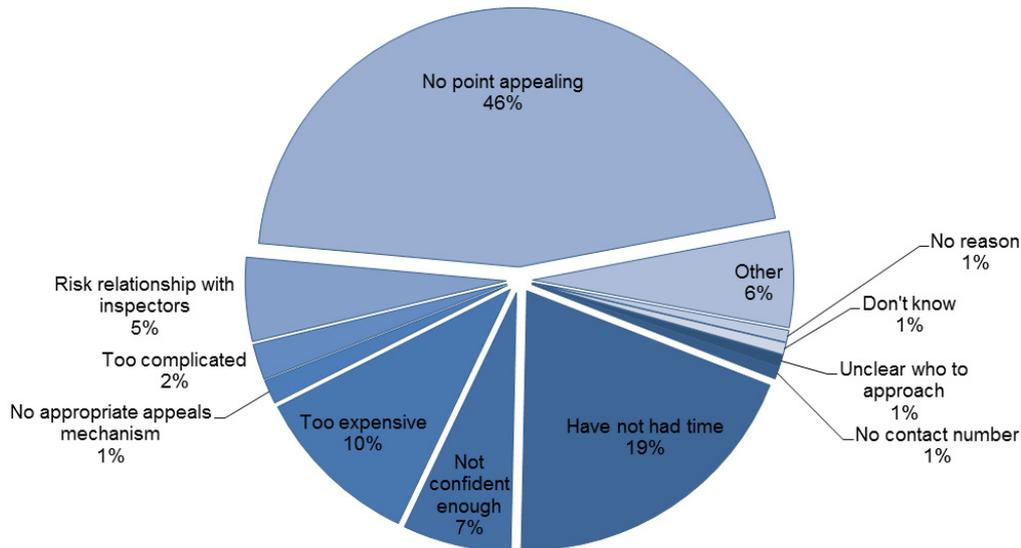
*"Presently, we have no idea whatsoever about our legal standing when it comes to filing complaints, appealing to an unfair outcome or bringing suit in court. We prefer to avoid legal actions against regulators that could backfire in the future. However, if we are assured that no such thing can happen, then we might consider appealing against certain regulatory decisions if need be"*

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<sup>11</sup> <http://discuss.bis.gov.uk/focusonenforcement>

<sup>12</sup> "Regulatory Enforcement Business Survey" - final report submitted to BIS January 2014 by ICF GHK; not yet published at the time of preparation of this Impact Assessment

[Owner: Hair and beauty salon, Central London, with 8 employees. In operation 13 years<sup>13</sup>].



14

### Explanation or advertising of procedures

#### *Publicly available information on regulator web sites - appeals*

6. In order to supplement the evidence gathered during meetings and written submissions from businesses and regulators, in Spring 2013 the review team undertook user-testing of 57 national regulator websites. The exercise found that:
  - 6 national regulators had no easily-found guidance about how to lodge an informal appeal / seek a second opinion
  - 7 national regulators did not appear to have any easily-found information on how to make a complaint
  - 19 national regulators did not appear to have any easily-found information about their formal appeals mechanisms
7. Recognising that this exercise provides a “snapshot” in time this evidence is an illustration that appeals and complaints procedures are less than open or transparent. Several Regulators have pointed out that when enforcement action is taken against a business, their procedures require them to explain rights of appeal, and that it is only at that point that it becomes necessary to understand the process. For example, VOSA (Vehicle Operator and Service Agency) include full details of the statutory appeals process on the forms issued when an infraction occurs. Larger regulators also pointed out that given the range and complexity of their enforcement regimes there was no single process for appealing. Additionally, if procedures are complex, the regulated business may well not understand them properly which is of course a problem in itself.
8. The Government’s view, however, is that this should not mean that information is not made available in public.

#### *Understanding of Complaints Procedures*

9. The 2012 Business Perceptions Survey<sup>15</sup>, which explores businesses’ views on the extent of the burden of regulation, asked businesses whether they had an appropriate channel for complaint. Only a quarter of businesses that responded said they felt there was an appropriate channel through which to complain about the way regulation was enforced. Large businesses were more likely to say there was an appropriate channel for complaints. Businesses which agreed that

<sup>13</sup> ICF GHK Regulatory Enforcement Business Survey January 2014 – Case Study

<sup>14</sup> “Regulatory Enforcement Business Survey” - final report submitted to BIS January 2014 by ICF GHK; not yet published at the time of preparation of this Impact Assessment

<sup>15</sup> NAO/LBRO/BRE (2012) Business Perception Survey 2012

regulation was easy to comply with were more likely to say there was an appropriate channel for complaints.

10. Sampling of the websites of both regulators and local authorities has suggested that in most cases there is more information on how to complain about an inspector's behaviour than on how to appeal against a decision. Complaints procedures were often easy to find and clearly set out. In some cases, separate teams were in place to handle the complaint, minimising the perception that the complaint might not be given fair and due regard.

#### *Inconsistent terminology and contradictory signposting and advice*

11. The terms "appeals" and "complaints" can sometimes be used interchangeably within and across regulatory bodies leading to confusion about which route to take, particularly where businesses are subject to regulation by more than one body.
12. For example, to appeal against an Ofsted rating following an inspection of a childcare provider such as a childminder or nursery, the business uses the complaints mechanism. The same mechanism is also used for complaints about the conduct of an inspector. However a challenge to a registration decision taken by the regulator has a separate process which is termed "appeal".
13. Even where appeals routes clearly exist, confusion about how to access them leads to costly delays which could potentially damage a business (and give advantage to competitors) in the meantime, with companies second guessing what to do rather than being able to challenge the decision.
14. Businesses in the chemicals sector subject to "COMAH" (Control of Major Accident Hazards) regulations reported several different ways of appealing an enforcement decision by the Competent Authority (jointly the Environment Agency and Health and Safety Executive), and low levels of awareness of the differences between them, or how they operate.

#### *Lack of clarity over appeals against local enforcement decisions*

15. Although the proposals in this consultation relate to the national regulators only, Focus on Enforcement has uncovered considerable evidence of concerns relating to local authority appeals and complaints. For example, during the appeals review several local authority regulatory services cited the Local Government Ombudsman (LGO) as the backstop authority to whom businesses could take appeals should they not be satisfied with the response of the relevant local authority. However, the LGO when consulted, explained that its primary purpose was to consider cases from individuals but not from businesses, although sometimes they could exercise discretion and do so. Similarly, during the Focus on Enforcement review of small businesses in food manufacturing, some environmental health officers suggested that ultimately complaints and appeals could be referred to the Food Standards Agency (FSA) for adjudication. This is not the case: the FSA has no formal locus in intervening in local authority enforcement cases.

#### **Collection and Publication of Data**

16. Government policy on transparency and use of public data is clear. As the Cabinet Office guidance<sup>16</sup> sets out, there are many reasons why Government data is useful: it introduces transparency – in a democracy it sheds light on what the Government and its agencies are doing. In addition, data about public services' performance is a good way of measuring the effectiveness of the Government's policies..
17. The Focus on Enforcement programme conducts an annual survey of the non-economic regulators. In 2012/13 the survey included a question on appeals and complaints.
18. There are examples of good practice. For example, the Marine Management Organisation (MMO) conducts an annual customer satisfaction survey, the results of which are published on its website. It also publishes quarterly data on the number of complaints received and responded to.
19. The data provided suggests that something in the order of 401,358<sup>17</sup> separate enforcement actions (not including advice provision) were taken in the last year for which records were available. 41,168<sup>18</sup> appeals, requests for determinations, and complaints were addressed to the same group of regulators. Clearly not all of these will have been related to the regulatory

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<sup>16</sup> <https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>

<sup>17</sup> Focus on Enforcement Regulators' Questionnaire 2012/13, Better Regulation Executive, BIS

<sup>18</sup> Focus on Enforcement Regulators' Questionnaire 2012/13, Better Regulation Executive, BIS

interventions (e.g. a complaint may have been made about a competitor's activity, or by a member of the public about a business), and more than one appeal or complaint may have been made in respect of a given intervention, so caution should be exercised in correlating the two sets of figures. However, they demonstrate the overall volume both of activity undertaken by regulators, and of their need to respond to dissatisfaction from those they regulate (or wider society) about their performance.

20. The Focus on Enforcement Regulators' Questionnaire data showed that for the 53 regulators responding, in the most recent year for which data was available:

- Three regulators said they did not collate the data so have a lack of management information about how many complaints or appeals are being lodged against them
- One regulator could not distinguish between complaints and appeals data
- 20 regulators stated that they had not received any appeals or complaints and 50% of those regulators had issued sanctions of one form or another in the year being reported upon
- 3 regulators that operate through Local Authorities reported that they did not collate complaints or appeals data centrally and that the Local Authorities did not have that information either.

### **Opportunity for problems to be resolved informally**

21. A theme that has emerged from several Focus on Enforcement reviews has been the desire on the part of businesses – usually small businesses – for a “safe space” in which to discuss, better understand, and possibly challenge, outside a formalised process, a decision. Some suggested this could take the form of a “second opinion” from a different source within the regulator. Several different reasons for not wanting to appeal formally were given. For example, some businesses reported being concerned about the asymmetry in resource and legal clout between themselves and the regulator; others were simply unsure as to whether they had a strong case and wished to discuss it.

22. This problem was also raised by Lord Heseltine in his report “No Stone Unturned<sup>19</sup>” which included a recommendation that, “all non-economic regulators should publish policies showing how their customers can ask, without prejudice, for an independent second opinion on a regulatory decision or requirement”.

23. Focus on Enforcement reviews have found many examples of businesses who would have preferred to have been given the opportunity to resolve issues outside formal processes. For example, some childcare providers reported a lack of opportunity to discuss the outcome of an inspection before the verdict was given formally via a report or rating. There was some scope to correct factual inaccuracies in reports but relatively trivial breaches mentioned in the report which remains on the public record could have been put right in discussions between the inspection and report.

24. Businesses in the pharmaceutical sector said they had been asked to appeal to regulators via correspondence only, rather than via the telephone and this led to delays. Simple issues were handled in writing meaning there was no opportunity to talk through minor points.

25. Companies in the chemicals sector reported that what they perceived to be an inability to seek a second opinion in a non-confrontational manner was a real issue for them. In addition, businesses in that sector observed that a fear exists that if an issue is raised with the Competent Authority and takes some time to resolve, it can result in higher charges under the cost-recovery model. That in itself was cited as a reason not to appeal.

26. Regulators have pointed out that in some cases the expertise of the staff involved is drawn from a very small pool, and that this inevitably limits availability of people other than those who took the original decisions. For example, HSE hazardous chemicals experts take decisions and consider any subsequent appeal. This understandable need for expertise also inevitably limits the field of people who could be called upon to offer a second opinion.

### *Lack of alternative to the Courts*

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<sup>19</sup> No Stone Unturned in Pursuit of Growth, The Rt Hon the Lord Heseltine of Thenford CH, October 2012

27. Some businesses have raised the issue of there being no apparent alternative to bringing an appeal against a regulator's action via a judicial route. This is often the direct result of legislation that sets out grounds and procedure for appeal.
28. Businesses that wanted to appeal against an intervention from a Fire and Rescue Authority for example appear to have only two possible routes: to ask for a Secretary of State determination or to take the issue to the courts which would have been costly. No second opinion or informal resolution process appeared to exist. In some cases (eg certain Care Quality Commission decisions), the Judicial Review process is the only apparent option for appealing a decision. This route can be expensive, unduly confrontational and time consuming.
29. Some appeals against regulatory interventions are prescribed by statute. Although this would appear to preclude alternative, less formal or purely administrative options, it could be argued that there could be an opportunity for formal resolution as a first stage. There appears to be a lack of suitable opportunities for parties to resolve differences of opinion without having to use more formal or statutory routes.

**The operational independence of the person considering the complaint or appeal.**

30. Even when a business does feel the need to lodge a formal complaint or appeal, perceptions about the independence of the person who would consider it can be a factor. A (quite possibly unfounded) worry that challenging the decision of a regulator could alter working relationships with inspectors, might result in unfavourable treatment in future, and scepticism about the impartiality of those hearing the complaint or appeal can combine to make the prospect of such a challenge unappealing.
31. Chemicals businesses covered by the COMAH regime suggested that there was a perception that if the business is raising issues within an established line management chain it is presumed unlikely that a team member's judgement will be overturned – In essence, that they would be 'asking the police to police themselves'. There is also a fear of damaging the relationship with the regulator and local inspectors.
32. Until the revised Regulators' Code comes into force, subject to Parliamentary agreement, in April 2014 no cross-cutting statutory requirement exists for national regulators to ensure that appeals are heard and / or considered by individuals outside the direct management chain of the person who took the original decision.

## Annex B

### About the Champions

1. The Government's intention is that objective of a Small Business Appeals Champion should be to encourage the regulator to improve the impact on business of its policies and processes for appeals and complaints. In this context "business" should include both regulated businesses and others – such as their customers or suppliers – which could be affected by the regulator's decisions. Champions should have regard to the Regulators' Code and the duty on regulators to consider economic growth<sup>20</sup>. This objective would be set out in statute.
2. In the light of the evidence set out in Annex A, the Government intends that guidance should invite the Champions to focus on six areas. The first four of these are identified in the Regulators' Code
  - whether there is a clear and impartial route to appeal or complain;
  - whether there is those who consider appeals or complaints have sufficient operational independence;
  - whether options for appeal or complaint are explained clearly to businesses;
  - whether the regulator publishes adequate data on appeals and complaints
3. The remaining three areas are:
  - whether there is, or should be, an opportunity for businesses to ask the regulator for a "second opinion" before considering whether to make a formal appeal or complaint; where there is more than one route to appeal or complain, whether they are all necessary and whether in combination they are sufficiently simple to understand and use
  - whether terminology distinguishing appeals and complaints is comprehensible
4. Issues (vi) and (vii) were not identified in the Code because resolving them will often require changes to legislation, which are outside the power of the regulators to whom the Code is addressed.
5. The Government also wants to hear views on the overall scope of the scrutiny role – ie whether there are types of appeal or complaint that they should not be able to scrutinise.

### The Champions' duties

6. The Government proposes that a Champion's key duty should be to produce an annual report
  - describing any concerns of business relating to the regulator's policies and processes for appeals and complaints;
  - setting out any recommendations for improvements to policies or practices, including changes in primary or secondary legislation.
7. Champions' recommendations should not consider or influence individual decisions.
8. Champions' reports should be driven by the evidence of their regulators' impact on businesses. Some of that evidence (about regulators in general, and sometimes about the Champion's own regulator) will come from Government – for example the evidence at Annex A. The Government would expect Champions to augment this with other sources of information relevant to their own regulators, notably engagement with relevant businesses and their representatives (eg Trade Associations). The Government does not believe that statutory provisions are necessary to require the Champion to seek such evidence. It does propose that regulators should be under a duty to provide evidence requested by a Champion relevant to his scope.
9. The Government recognises that recommendations on matters outside the Regulator's control (for example, to amend the law) should be made to Ministers. Other recommendations should be made to the Regulator itself. The Government therefore proposes that the Champion's report should be addressed both to the relevant Secretary of State and to the Regulator. The duty to report to the Regulator cannot be reflected in law if the Regulator is not already recognised in statute: in such circumstances, the obligation to report to the regulator will be reflected in guidance.

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<sup>20</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/263264/13-684-growth-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263264/13-684-growth-consultation.pdf)

10. The Government proposes that a Champion's report should be laid before Parliament by the Secretary of State within three months of receipt. This will allow observations of the Secretary of State and the Regulator to be published at the same time.

### Seniority and Credentials

11. The Government believes that the Champion should be of sufficient seniority to attract the confidence of business and of the regulator's leadership team, and should where possible have a business background in the relevant sector.
12. The regulators affected by this proposal have a variety of governance arrangements. The role will typically be equivalent to that of a Non-Executive Director (NED) of the regulator. The actual status of the role will need to be considered on a case-by-case basis.

### How should Champions be appointed?

13. Champions will need to be, and to be seen to be, independent of their regulators. It should therefore be for the person who appoints the regulator – typically the relevant Secretary of State - to appoint a Champion.
14. The term "regulator" encompasses a very wide range of bodies. Some are recognised in law as legal entities in their own right, some are not. The means by which senior appointments are made to them vary considerably. This variety requires an approach that allows for flexibility to reflect individual circumstances, but which conforms to the overall policy intention that appointments should be made to each body.
15. As noted above, the Government envisages that in many cases the role of Champion may be grafted on to an existing post. To make this possible the Government proposes that Champions' contracts should be based on existing legal arrangements – for instance, those for the appointment of NEDs. Terms and conditions – including remuneration, hours of work and arrangements for resignation or dismissal – would be set in that context.
16. The Commissioner for Public Appointments is the guardian of the process used by Ministers to make senior appointments based on merit. Most appointments to regulators are already governed by the Commissioners' arrangements. If a Champion's role is to be grafted on to an existing post within the regulator, the appointment would be expected automatically to be subject to the Commissioners' arrangements. The Government's presumption is that such arrangements should also apply to other appointments of Champions.

## Annex C

Example of how an announcement of the appointment of a Small Business Appeals Champion might appear on a website

# ***Small Business Appeals Champion***

We are pleased to announce the appointment of a Small Business Appeals Champion. This person, who was appointed by the Secretary of State and will be independent of the regulator, will assess whether our appeals and complaints processes are as clear and effective as they should be. They will hold us to account by checking that businesses can easily find and use our appeals and complaints routes. The Secretary of State has asked that in particular the champion should investigate whether we have:

- a clear and impartial route to appeal
- appeals considered by the person who took the original decision
- a comprehensible explanation of the right to appeal or complain
- data on appeals and complaints
- a route to get a second opinion
- complex/multiple appeal procedures
- inconsistent terminology for appeals and complaints

The champion will publish their findings annually, laying their report in Parliament and publishing it on our website. We will carefully consider the recommendations and explain what action we have decided to take as a result. The champion will not deal with individual cases and there will be no immediate change to our appeals processes.

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