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Rt Hon Ed Miliband MP  
Minister for the Cabinet Office  
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31 August 2007

**Draft Regulators' Compliance Code**

I am sorry to trouble you but there seem to us to be two potentially serious and far-reaching flaws in the draft Regulators' Compliance Code. Accordingly, and as the consultation closed on August 15<sup>th</sup>, a direct approach to you seems warranted.

The Hampton Report's principal recommendation was that regulatory activity should in future be guided by comprehensive risk assessments. It appears from the draft Code, however, that the risk assessments regulators will carry out need not be comprehensive. In particular they are likely to exclude 'specific intelligence' about dangers and regulatory breaches (see paragraphs 4.3 and 6.1). If this is the case, it is difficult to see how such risk assessments can be reliable, let alone comprehensive. To avoid this result, we suggest that the Code be redrafted to make reference to the relevance of intelligence from customers, whistleblowers or competitors in any risk assessment that regulators are expected to carry out.

We also suggest that that the provision on random inspections in paragraph 6 be revisited. While we see no difficulty with the point that only a small number of these should be used to test the regulator's risk methodology as Hampton recommended, the present draft is likely to be misread as suggesting that unannounced inspections are generally undesirable. Such a result would thwart policy, conflict with Hampton and risk undermining public and business confidence as unannounced inspections (a) are one of the main ways that practical and timely advice is given to regulated bodies, and (b) have a deterrent effect - in much the same way that the bobby on the beat does.

We hope you will agree that these two points should be addressed before the Code is finalised. Finally, we would be grateful if your officials could ask the BRE to include us on its consultation list in future.

Guy Dehn  
Director

**Making whistleblowing work**

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**DEPARTMENT FOR BUSINESS  
ENTERPRISE & REGULATORY REFORM**

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**Lord Drayson**

MINISTER OF STATE FOR BUSINESS AND  
REGULATORY REFORM

Your ref:

Our ref: RT/14331

4 October 2007

*Dear Mr Dehn*

Thank you for your letter of 31 August to Ed Miliband, and follow up letter of 21 September, about the draft Compliance Code. Responsibility for the Compliance Code has now moved from the Cabinet Office to the Department for Business, Enterprise and Regulatory Reform (BERR). I am responding as this matter falls within my portfolio.

As you acknowledged, our public consultation ran to 15 August. However, I did pass on your comments and I am grateful for your interest, and clearly detailed review of the provisions of the Code.

You raise specific concerns about information from whistleblowers (and similar) being considered in risk assessments and about unannounced inspections.

*Information from whistleblowers*

I hope you will be reassured to know that it is not the intention of the Code to exclude relevant information provided by whistleblowers from risk assessments. Indeed, the Code states that risk assessment should be

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based on "*all relevant, good-quality data available*" (paragraph 4.2). Paragraph 4.3 also states that regulators' risk methodologies should give consideration "*to all relevant factors*". It then lists certain factors that should be included but this is not a comprehensive list.

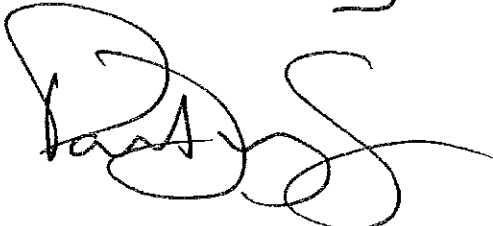
Section 6, on inspections and visits, requires that inspections are planned and targeted according to risk assessment. The exception in paragraph 6.1, to which you refer, is actually to ensure that regulators can carry out visits justified by other information, which on its own may not be considered robust enough for inclusion in some risk assessment methodologies. Some complaints, for example, may fall into this category.

*Unannounced inspections*

On your other point, thank you for pointing out, in your view, that the Code might be misread to mean that unannounced visits are not desirable. The Code is silent on whether visits should be announced or not; this is a matter for the regulators. Where visits are "random", it means only that risk assessment is not used by regulators to decide which organisations to visit. We will consider how to ensure that this is understood.

In your letter of 21 September, you also ask about this issue in relation to a recommendation made by the Committee on Standards in Public life in December 2005. Liaison with Cabinet Office colleagues is necessary to answer your question, and I will write separately in response to you on this matter.

Thank you for your concern and for taking the time to write.

Your sincerely  


LORD DRAYSON

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30 October 2007

Your Ref RT/14331

*Dear Lord Drayson*

Thank you for your helpful letter of 4<sup>th</sup> which has just arrived after a long delay in the post.

It is reassuring to know that it is not the Government's intention that the Compliance Code should either

- a) be taken to exclude from regulatory risk assessments information from whistleblowers in, or
- b) be thought to signal that unannounced inspections by regulators are undesirable.

We think it a racing certainty that the Code's final provisions will be reviewed by regulators, businesses and their advisers with at least as much detail as we applied in our own consideration of the draft. For this reason, we are pleased that you are considering how these points can best be understood by others to avoid any such confusion.

While we imagine there will be little enthusiasm to achieve this by amending the Code provisions themselves, we hope you will agree that in the light of their significance these points should be made clear in the supporting text to the Code or at least during its Parliamentary consideration. In any event I would be grateful if you or your officials could give us some indication of how you will clarify this as we will be happy to liaise with parliamentarians who are interested in this issue.

Finally, I look forward to your forthcoming reply to my letter of 21 September to Ed Miliband about the White Paper's response on whistleblowing and regulation.

*Yours sincerely*

A handwritten signature in black ink, appearing to read "Guy Dehn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Guy Dehn

**Making whistleblowing work**