

BRITISH HALLMARKING COUNCIL

Minutes of a meeting of the British Hallmarking Council (BHC) held in the Boardroom of the National Museum of Scotland, Chamber Street, Edinburgh, EH1 1JF on Monday 13 October 2014 at 11 a.m.

PRESENT: Mr Christopher Jewitt (Chairman)

Mr Bryn Aldridge

Mr Simon Batiste

Mr Robert Grice

Mr Chris Heaton

Mr Andrew Hinds

Mr Derek Lassetter

Mr Eric Melrose

Mr Grant Macdonald

Mr Dick Melly

Mr Tom Murray

Ms Helen O'Neill

Mr David Sanders

Mr John Stirling

IN ATTENDANCE: Mr Peter Edwards (NMO)

Ms Fiona Birchall (NMO)

Ms Stella Layton (Assay Master – Birmingham Assay Office)

Mr Ashley Carson (Assay Master – Sheffield Assay Office)

Dr Robert Organ (Deputy Warden – London Assay Office)

Mr Scott Walter (Assay Master – Edinburgh Assay Office)

Ms Marion Wilson (Marketing Director – Birmingham Assay Office)

Ms Geraldine Swanton (Secretary)

1. APOLOGIES AND WELCOME

Apologies were received from Mr Adrian Levett, Mr John Pearce, Mr David Thurston and Ms Kate Hartigan.

2. DECLARATIONS OF INTEREST

There were no declarations of interest, though the Chairman identified potential conflicts of interest in respect of assay-office appointed members in relation to agenda items 7.2 (application by EAO to open a sub-office) and 8 (application by LAO for a removal of the limit of 2 million imposed in respect of articles marked at its Heathrow sub-office).

3. MINUTES OF THE BHC MEETING ON 7 APRIL 2014

The minutes of the meeting were accepted as a true and accurate record and signed by the Chairman.

4. MATTERS ARISING

4.1 Council website (par 4.2 of previous minutes)

The Chairman indicated that in contrast to the Council, several other NDPBs have retained their own websites and given that the Council's website as controlled by BIS is not user-friendly, thought should be given to re-establishing the Council's own website.

Action: The Chairman will address the matter of the Council's website in more detail at the next meeting.

4.2 Triennial review (par 4.3 of previous minutes)

The Chairman reported that though the Council had commented on the draft review document, which amounted to 24 pages, the process was not yet concluded. As a result of the review, it was proposed that the Council should be required to produce a risk register, a framework document and to publish its minutes on its website.

Peter Edwards informed the Council that the review document is currently being considered by BIS and the NMO is pressing for a decision. He assured the Council that the next review process will be less onerous, given that a review model has now been created, but provided that that it does not change.

4.3 Appointment of additional Council member by BAO (par 20 of previous minutes)

Stella Layton reported that the Birmingham Assay Office has appointed Ms Carol Brady to the Council. Carol is the Chairman of the board of the TSI and will attend the next meeting.

Stella Layton also reported that Marion Wilson will not attend future Council meetings. On behalf of the Council, the Chairman extended his gratitude to Marion for her work for the Council over the years.

4.4 Inspections by Queen's Assay Master (Royal Mint) (par 14 of previous minutes)

The Secretary reported that because of internal problems at the Royal Mint, inspections of the assay offices were not completed in time for reporting to the Council at the April meeting. All inspections were completed shortly thereafter and all were successful. The reports were circulated electronically to the Council in May.

5. CHAIRMAN'S REPORT

5.1 Appeals Champions

The Chairman reported on a proposal by BIS to appoint independent small business appeals champions for each national non-economic regulator, including the Council, to scrutinise appeals and complaints processes, make recommendations and report to the public. His view was that it was not relevant to the Council because the assay offices, whose hallmarking activities were regulated, were members of the Council and therefore had a forum for discussing decisions that affected them.

The matter is with the Better Regulation Development Office, with which the Chairman is in contact, with a view to arranging a meeting with the relevant team for discussion. The Chairman also noted that since re-classification of the Council by the ONS, the Council has been swept up in BIS matters and there appears to be no effective filtering mechanism.

Eric Melrose commented that the basis for the proposal as it applied to the Council was not clear, particularly as there was already a body to whom appeals could be submitted – the Parliamentary and Health Service Ombudsman.

5.2 The growth duty

The Chairman reported that the Deregulation Bill, currently being debated in the House of Lords, proposes to impose on persons exercising regulatory functions (i.e. the Council and the assay offices in so far as they engage in regulatory activities) a duty to "have regard to the desirability of promoting economic growth". In addition, regulators must consider the importance for the promotion of economic growth of taking regulatory action only when needed and proportionately.

The Chairman's view was that the proposed duty was relevant in respect of the Council as a regulator but believed it could not reasonably apply to the assay offices, a view shared by the Secretary. Again he was hoping to discuss the matter further with the relevant team in the BRDO.

5.3 Tax assurance

The Chairman informed the Council of the Treasury's requirements for chairmen of public bodies to be paid by means of a payroll, failing which a fine would be imposed. The Chairman sought an exemption for the Council in view of the fact that it had no employees and hence no payroll mechanism. Two options existed for the Chairman i.e. to be included in the NMO or Sheffield Assay Office payroll. The latter was the option preferred by the Chairman, purely as an administrative mechanism to comply with the Treasury's requirements. The Council generally approved of that option, subject to further enquiries concerning liability for National Insurance payments.

Action The Chairman will consider further the implications of payment of his remuneration being made in conjunction with the NMO and D-BIS.

5.4 Government initiatives

The Chairman drew Council's attention to a document he had prepared outlining the number and range of BIS/government initiatives in which the Council was asked to engage. The Chairman noted that many bore no relevance to the Council.

6. REPORT FROM THE TECHNICAL COMMITTEE

Robert Organ referred the Council to the minutes of a meeting of the Technical Committee, which took place on 2 September 2014.

[Information exempt from publication – prejudice to the conduct of public affairs]

There was a brief discussion of items 7 (inclusion of packaging weights) and 8 (brand protection/fake brands) of the Technical Committee's minutes. The discussion concluded that the former was not a matter that could be resolved by assay offices without incurring unreasonable expense and that inaccurate weights should not be reported; the latter was outside of the reasonable control of the assay offices.

The Technical Committee reported that the dealers' notice was in the process of being amended.

7 THE APPLICATIONS COMMITTEE

7.1 Report from the Applications Committee

Derek Lassiter made the report in the absence of Adrian Levett.

7.1.1 EAO sub-office application

The Applications Committee considered in detail the application from EAO to open a sub-office in Hounslow. The recommendation from the Applications Committee was that the application should be granted. Derek Lassiter noted that objections raised by the London Assay Office were outside of the remit of the Applications Committee to consider.

7.1.2 SAO Milan sub-office

The Applications Committee had also been working with the SAO regarding the detailed operation of its Milan sub-office, following approval by the BHC. The sub-office opened on 12 May 2014 and obtained BSI accreditation on 28 August 2014, within the timescale set for it by the Applications Committee. A further audit will be conducted in 12 months' time.

7.1.3 Transfer of BAO sub-offices to new risk-based system

Following consideration of BAO's risk statements for each of its sub-offices and examination for completeness and control measures, all were transferred by the Applications Committee to the new risk-based system.

SAO's Carrs' and LAO's Greville St and Heathrow sub-offices continue to be governed by the old regime, which is more onerous.

7.1.4 Retiring members of the Applications Committee

Three of the current members of the Applications Committee will retire at the end of 2015. The fourth member will retire in April for personal reasons. In the circumstances, steps need to be taken to appoint and prepare new members and a report will be presented on succession planning at the next meeting.

7.2 EAO application for a sub-office in Hounslow, London

Dick Melly made a submission to Council opposing EAO's application, a summary of which was also set out in a letter to Council dated 30 September 2014. He stated that the EAO application was also linked to LAO's application to remove the limit of 2 million articles on its sub-office at Heathrow. He described EAO's application as ground-breaking, requiring further consideration by the Council. His view was that there already were adequate facilities for hallmarking in London and if the Council permitted another operator to cherry-pick business, it would threaten existing facilities. The application, in his view, was predatory and would have unintended consequences. Further, he regarded the application as an attack on Goldsmiths'; it was aggressive and unwarranted. He exhorted the Council to be mindful of LAO's interests, as a general office open to general customers. He requested that if Council were to grant the application, it should be subject to the condition that was imposed on LAO when its Heathrow application was granted in 2007.

Tom Murray responded to Dick Melly's representations. He stated that LAO's application in 2007 was ground-breaking. The assay offices were located in London, Sheffield, Edinburgh and Birmingham for historical reasons. That climate has now changed and the notion that each assay office has its own hinterland is no longer the case. Assay offices are in competition and the Council is vulnerable to judicial review if it interferes in that competition.

David Sanders commented that the assay offices were expected to compete. He queried whether the host preserved EAO's independence. Scott Walter confirmed that the host was a logistics company and has no power to persuade customers to use EAO. It was similar to LAO's arrangement at Heathrow. Given that arrangement and SAO's relationship with Ferrari, EAO was simply responding to a trend.

Simon Batiste's view was that in 2007 the concern was that Heathrow was the gateway to the UK and there was potential for creating a monopoly position. It was, however, more difficult now to justify objections on the basis of geography. There was nothing novel in EAO's application and SAO had no objection to it or to LAO's application to remove the limit.

Robert Organ said the issue was one of cost base. LAO was based in London and paying London wages. An EAO sub-office was able to charge less and both SAO and EAO had a significant number of London-based business. The result may be the erosion of LAO's business and a threat to adequacy.

Tom Murray responded by indicating his concerns of a monopoly position at Heathrow. He stated that Council could not assess the way each assay office ran its business or the way it assessed its cost base. It was not a matter for Council to consider.

Eric Melrose urged Council not to confuse competition and adequacy.

The Secretary reminded Council that its statutory duty was not to act in the interests of individual assay offices. Decisions were required to be made within the ambit of its statutory powers, in particular a duty to ensure the adequacy of hallmarking, and they did not permit it to take steps to ensure undistorted competition. She reminded Council that any restriction imposed on an assay office was required to be justified as a benefit to the consumer and should go no further than was necessary to achieve that benefit.

Peter Edwards noted that assay offices can now set up an assay office anywhere in the world, which was not the case in 2007 when LAO made its application.

John Sterling encouraged Council to note the Secretary's advice regarding the Council's powers which was included in the bundle and to observe the principles regarding removal of assay office representatives from participation in further debate and from voting. The Secretary advised Council that its standing orders required those with conflicts of interests to remove themselves, which was consistent with the public law rule against bias.

Council resolved to consider EAO's application to establish a sub-office at Hounslow together with the next item on the agenda viz. LAO's application to remove the 2 million limit on articles hallmarked at its Heathrow sub-office.

The assay-office appointed members together with attendees from the assay offices left the meeting at this point.

7.3 **LAO application**

LAO's application to remove the 2 million limit on articles hallmarked at its Heathrow sub-office was set out in letters dated 6 May and 16 September 2014 to Council.

Outcome: Council:

- (i) accepted the recommendation of the Applications Committee and granted EAO's application to open a sub-office at Hounslow; and
- (ii) granted LAO's application to remove the 2 million limit on articles hallmarked at its Heathrow sub-office with immediate effect.

The assay-office appointed members together with attendees from the assay offices re-joined the meeting.

8 TOUCHSTONE AWARD

Robert Grice referred the Council to his report on the initiative which was included in the bundle.

Marion Wilson acknowledged the great value of the Touchstone Award, but her view was also that much work was yet to be done. Only three entries were received for 2014 and none responded to the brief. She exhorted the BHC to encourage Trading Standards Depts to support it.

Stella Layton stated that the strapline needed to be amended to make it more realistic and recommended removing the word "innovative". Marion Wilson suggested substitution of the word "effective" for "innovative". There was general agreement with this proposed change.

David Sanders highlighted the crisis of resources within Trading Standards and expressed the view that many Depts will not prioritise hallmarking. He stated that he was however pleased to be involved and recognised that every initiative takes time to develop.

Scott Walter noted that Trading Standards activity in the realms of hallmarking had increased since the Touchstone Award was created.

The assay offices confirmed their willingness to fund the Touchstone Award for another year. The Chairman thanked the Touchstone committee members for their work.

Outcome: The Touchstone Award will continue for another year.

9 ACTIVITY AND ENFORCEMENT REPORTS FROM THE ASSAY OFFICES

All the assay offices reported growth in hallmarking activity. Both Stella Layton and Ashley Carson concluded that there was a return to 2009 levels. Robert Organ reported low enforcement activity. By contrast, Scott Walter noted an increase and Ashley Carson stated that West Yorkshire Trading Standards were actively engaged in enforcement activity in Bradford.

Ashley Carson provided a brief report on the Milan sub-office. Before its opening on 12 May 2014, SAO was required by the Italian authorities to obtain various consents to enable it to operate. It is certified to the ISO 9001:2008 standard. Currently the sub-office has five employees – a UK manager, two UK assistants and two Italian members of staff. It is inspected by Ashley Carson monthly and weekly activity reports are generated. Monthly hallmarking statistics now include output from the Milan sub-office.

10 GUIDANCE NOTES – BONDED GOLD

The BHC approved the amended wording highlighted in the guidance on bonded gold.

Action: The Secretary will replace the current guidance with the amended version

11 MISLEADING DESCRIPTIONS

Scott Walter reported that the BJA approached him for guidance on reducing the likelihood of misleading the consumer when referring to precious metals in descriptions of items of jewellery. Council agreed that some guidance would be useful and delegated responsibility to the Technical Committee to draft that guidance for Council's approval at the next meeting.

Action The Technical Committee will produce draft guidance on misleading descriptions for submission to Council in April 2015.

12. PUBLICATION SCHEME

Council noted the amended Publication Scheme drafted under the Freedom of Information Act in accordance with the definition document issued by the Information Commissioner.

13. BHC BUDGET

Council noted the up-dated budget.

14. DATES AND VENUES FOR MEETINGS IN 2015

The meetings in 2015 will be held as follows:

London Assay Office – 13 April

Birmingham Assay Office - 12 October

15. ANY OTHER BUSINESS

15.1 Proposal from Apple

The Chairman reported on correspondence he had received from a compliance manager at Apple UK regarding a proposal to apply hallmarks by means of software rather than physically. The Chairman also noted that the proposal was not set out in any great detail and that in any event, given the time remaining, insufficient time was available for a full discussion, save to note comments from the Technical Committee members that the form of hallmarks and the process of hallmarking are clearly prescribed by the Hallmarking Act. Any deviation from the statutory provisions would require an amendment to the Act. The Chairman recommended seeking further details of the Apple proposal for further consideration by the Technical Committee, with a report to Council.

Action: The Chairman will seek further details of the Apple proposal for referral to the Technical Committee.

15.2 **Fake cast hallmarks**

Robert Organ summarised email correspondence which he received from an individual who runs an "internet monitoring agency". The individual was concerned that sales on eBay included medals with fake cast hallmarks and consequently sought authority from Council to enforce the Hallmarking Act. Following some discussion, Council concluded that it did not have the power to delegate responsibility for hallmarking and in any event did not exercise its discretionary power to enforce the Act. It was agreed that Robert Organ would write to the individual to explain Council's position.

Action Robert Organ will respond on behalf of Council setting out its position.

15.3 **Recognition of Spanish and other EEA hallmarks**

These items were not discussed in the order provided for in the agenda (i.e. under 6.1 and 6.2).

Marion Wilson queried whether the UK is now recognising Spanish hallmarks. Peter Edwards explained that the list of recognised hallmarks issued in 2004 continues to be valid unless and until there is good reason to remove any country from it. Removing any or all countries from the list without due process was not acceptable.

In the circumstances, the Technical Committee was drafting a set of criteria to assess independence, equivalence and intelligibility of EEA hallmark, liaising with the NMO which is the responsible body for any necessary intra-government contacts.

The Spanish marks currently recognised in the UK are A1, V1, M1, C1 and C2.