

British Hallmarking Council ("the Council")

Procedure for appealing to the British Hallmarking Council against a decision by an assay office to refuse to hallmark any article

1. INTRODUCTION

The Hallmarking Act 1973 s4(5) provides that where an assay office has refused to hallmark an article submitted to it for hallmarking, the person who submitted the article may refer the matter in writing to the Council for consideration and, if the Council is of the view that the assay office in question acted unreasonably in refusing to hallmark the article, it shall direct the assay office to strike the article with the approved hallmarks. The Hallmarking Act 1973 s4(6) further provides that the assay office has a duty to comply with the direction issued by the BHC under Hallmarking Act 1973 s4(5).

At its meeting on the 7 April 2014, the Council agreed that appeals under Hallmarking Act 1973 s5(2) should be considered in accordance with this procedure

2. SUBMITTING AN APPEAL

- 2.1 The appellant must submit an appeal in writing to the Secretary to the Council at No.1 Colmore Square, Birmingham B4 6AA, identifying the relevant assay office, the dates on which the article was submitted for hallmarking and refused accordingly, any reasons provided by the assay office as to why the article should not be hallmarked, any information provided to the relevant assay office at the time the article was presented for hallmarking and any further information that the appellant considers relevant. The appeal should be submitted within a reasonable time of the refusal and in any event within three months.
- 2.2 The article, which is the subject of the refusal and hence the appeal, must be provided to the Secretary for inspection by the Council, usually when the details of the appeal are submitted under paragraph 2.1, in default of which it must be provided within five working days of the Secretary's request to do so. In the event of a failure by the appellant to provide the article, the Council shall have no obligation to consider the appeal. The provisions relating to insurance below under paragraph 5 shall apply to any article provided to the Council under this procedure.
- 2.3 The Secretary will request from the relevant assay office written reasons for refusing to hallmark the item where those reasons have not already been provided to the appellant or where in the reasonable view of the Secretary, further information regarding the grounds of refusal is required from the assay office, a copy of which will be provided to the appellant. Any representations in respect of the further information provided should be made to the Secretary within five working days of the date on which a copy of that information was sent to the appellant.
- 2.4 The Secretary will acknowledge receipt of the appeal usually within five working days of receipt of the information under paragraph 2.1.
- 2.5 The details of the appeal provided under paragraphs 2.1 and 2.3, together with the article concerned, will be provided to the Technical Committee of the BHC for initial consideration usually within 5 working days of receipt by the Secretary of all relevant information required under this paragraph 2.

3. APPEAL PROCEDURE – CONSIDERATION BY THE TECHNICAL COMMITTEE

- 3.1 The Technical Committee of the Council shall:
 - consider the information provided by the appellant;

- consider the information provided by the assay office including any additional information requested by the Secretary;
- inspect the article and/or conduct any assaying/analysis that the Technical Committee reasonably considers appropriate in the circumstances;
- assess whether the requirements for hallmarking provided by the Hallmarking Act 1973 s4 were met in relation to the article; and
- make a recommendation to Council as to whether the assay office acted reasonably in refusing to hallmark the article, supported by reasons.

3.2 The recommendation and supporting reasons shall be provided to the Secretary to the Council usually within 15 working days of the date on which the information and the article were sent to the Technical Committee in accordance with paragraph 2.5.

3.3 The assay master representing the assay office which is the subject of the appeal shall play no part in deliberations set out in paragraph 3.1

3.4 The Secretary will provide to the appellant an account of the Technical Committee's recommendation and a summary of the reasons within five working days of the receipt of the information from the Technical Committee. Where the Technical Committee has considered the matter other than at a meeting (i.e. by email and by individual rather than collective inspection, assaying and/or other analysis), the timescale for notification of the appellant under this paragraph shall run from the date on which the last communication was received by the Secretary from the members of the Technical Committee. Where clarification of any aspect the recommendation and/or supporting reasons has been sought by the Secretary, the five working days will run from the date on which the final clarification was received by the Secretary.

3.5 The appellant may submit to the Secretary a written response to the Technical Committee's recommendation within five working days or in advance of the next meeting of the Council, if a meeting is scheduled before the five-day period elapses.

4. **APPEAL PROCEDURE – CONSIDERATION BY THE COUNCIL**

4.1 The original appeal, the Technical Committee's recommendation and supporting reasons, together with any additional representations made by the appellant shall be circulated to the Council for consideration at its next meeting usually seven days in advance of that meeting.

4.2 The article which is the subject of the appeal shall be made available to the BHC for inspection at the meeting.

4.3 The Council may address queries to the Technical Committee in respect of its recommendations and/or in relation to any further representations made by the appellant under paragraph 3.5

4.4 Following consideration of the information provided under this paragraph 4, the Council shall issue a decision as to whether the assay office acted reasonably in the circumstances. Where the Council concludes that the relevant assay office acted unreasonably, it shall issue a direction requiring that assay office to strike the article with the approved hallmarks by a specified date.

4.5 The Council's decision shall be final and it, together with any direction issued to the assay office concerned, will be provided to the appellant usually within five working days of the Council meeting.

5. **LIABILITY AND INSURANCE**

5.1 Risk in the article/s which is/are the subject of this appeal will always remain with the appellant and the Council and/or its agents have no liability whatsoever for any loss and/or damage to the article/s. It is therefore the responsibility of the appellant to

take out appropriate insurance cover for the full replacement value of the article/s and such insurance should remain in place until the article/s has/have been received by the appellant following conclusion of this procedure.

6. **GENERAL**

6.1 While the Council and its Technical Committee will take reasonable steps to comply with the timescales set out in the procedure, they are approximate and may be extended when circumstances reasonably require. Appellants will be informed if timescales are likely to be exceeded.

6.2 The procedure set out in paragraph 4 shall be conducted by email where:

6.2.1 the Secretary or Chairman of the Council is satisfied following any representations made by the appellant that the delay in referring the appeal to the next meeting of the BHC under paragraph 4.1 would have adverse consequences for the appellant; and

6.2.2 on the advice of the Technical Committee, a visual inspection of the article by the Council is not reasonably required for the purposes of assessing the reasonableness of the refusal to hallmark because, for example, an assay report provides sufficient information, the procedure shall be conducted by email to the Council members.

Geraldine Swanton
Secretary to the British Hallmarking Council
7 April 2014