

BRITISH HALLMARKING COUNCIL

Minutes of a meeting of the Council held at the Sheffield Assay Office at Guardians Hall, 2 Beulah Rd, Sheffield S6 2AN, on Monday 10 October 2016 at 11 a.m.

PRESENT: Mr Christopher Jewitt (Chairman)

Mr Simon Batiste

Mr Malcolm Craig

Ms Louise Durose

Ms Helen Forder

Mr Robert Grice

Ms Kate Hartigan

Mr Peter Hayes

Mr Andrew Hinds

Mr Noel Hunter

Ms Harriet Kelsall

Mr Michael King

Mr Tom Murray

Sir David Reddaway

Mr David Sanders

Mr John Stirling

IN ATTENDANCE: Mr Ashley Carson (Assay Master – Sheffield Assay Office (SAO))

Dr Robert Organ (Deputy Warden – London Assay Office (LAO))

Mr Scott Walter (Assay Master – Edinburgh Assay Office (EAO))

Ms Marion Wilson (Birmingham Assay Office (BAO))

Ms Carol Brady (Birmingham Assay Office)

Ms Geraldine Swanton (Secretary)

1. WELCOME AND APOLOGIES

Apologies were received from John Pearce, Neil Carson, Bryn Aldridge and Stella Layton. The Chairman welcomed Louise Durose, Harriet Kelsall, Malcolm Craig and Michael King to the Council. There was no representative from the Regulatory Delivery Directorate (RDD) in attendance.

2. **DECLARATION OF INTERESTS**

Noel Hunter declared an interest in item 5 and the assay-office nominated members declared an interest in item 9.

3. **MINUTES OF THE COUNCIL MEETING ON 15 APRIL 2016**

Subject to a minor amendment, the minutes of the meeting were accepted as a true and accurate record.

4. **ELECTION OF NEW CHAIRMAN FOR A THREE-YEAR TERM**

Noel Hunter was elected Chairman and in view of the matters arising under item 9, it was agreed that Christopher Jewitt would remain the Chairman until a decision on the use of distinguishable hallmarks overseas was taken which, at the latest, would be April 2017. Noel Hunter left the meeting for the duration of the discussion and vote. The Council acknowledged the work of Christopher Jewitt as Chairman to date, which was described as "outstanding".

5. **APPOINTMENT OF SECRETARY**

The Secretary indicated her intention to resign as Secretary to take effect on conclusion of the April meeting in 2017. The role required a level of administration which, in her view it was not cost-effective for the Council to be provided by a lawyer. She indicated that she would be happy to provide legal advice to the Council thereafter as the need arose.

6. **MATTERS ARISING**

6.1 **Internet sales/sales on eBay** (par 5.2 of previous minutes)

Scott Walter reported that a number of low-cost articles have been purchased and had been sent for testing. Significantly more money would need to be invested in order to purchase articles of high value.

6.2 **Guidance on Mixed Metals** (par 5.3 previous minutes)

This guidance has been incorporated in the new guidance on hallmarking issued by the assay offices.

6.3 **Price maxima** (Paragraph 7 of previous minutes)

The new document was intended not to change the maximum prices but to simplify their presentation. It was agreed that the reference to parcel prices was unnecessary and should be removed.

6.4 **Review of local authorities' regulatory functions** – (Paragraph 7 of previous minutes)

Carol Brady reported that the initiative to cut red tape had been abandoned.

7. **CHAIRMAN'S REPORT**

7.1 Small Business, Enterprise and Employment Act 2015/ Enterprise Act 2016 – Business Impact Target (BIT)

The Chairman reported on a meeting with members of the Regulatory Policy Committee in August, to discuss the application of the BIT to the Council. He noted however that the subordinate legislation required to impose the duty had not yet been enacted.

7.2 Small Business, Enterprise and Employment Act 2015 – Small Business Appeals Champions

Nothing to report.

7.3 Deregulation Act 2015 – Growth Duty on Regulators

Nothing to report.

8. **REPORT FROM THE TECHNICAL COMMITTEE**

The Technical Committee reported that it was in discussion with Peter Edwards regarding up-dating the Hallmarking Act, the new hallmarking guidance had been well received and the RDD has produced an up-dated list of countries whose hallmarks were recognised in the UK.

9. **REPORT FROM THE JOINT ASSAY OFFICE COMMITTEE**

The minutes were referred to as a record of the matters which the JAOC was concerned.

9.1 **Draft Standing Orders**

The Council approved the draft standing orders, agreeing a quorum of five members.

10. **REPORT FROM THE APPLICATIONS COMMITTEE**

Louise Durose and Michael King were appointed to the Applications Committee. The Secretary recommended that the control requirements set out in the sub-office application form and related guidance be reviewed.

Action: The Applications Committee will review the control requirements set out in the sub-office application form and guidance.

11. **REPORT FORM THE IAAO**

Scot Walter reported that members of the IAAO voted unanimously to retain the organisation, despite recent administrative difficulties. He was appointed chairman for one year.

Scott Walter also reported on the recent case in the Court of Justice of the European Union (the CJEU) (*European Commission v Czech Republic C-525/14*) concerning the Czech Republic's practice of requiring all articles of precious metal already hallmarked by WaarborgHolland in accordance with the law of the Netherlands to be further hallmarked on entry to the Czech Republic. The CJEU held that the practice was disproportionate to the objective of protecting consumers, even in circumstances where marks which were applied by WaarborgHolland's overseas sub-office could not be distinguished from marks applied in the Netherlands. The CJEU noted however that the Czech Republic could adopt measures less prejudicial to the free movement of goods which were justified by the protection of consumers, for example, by requiring the importer to provide documentary evidence to show the place where the hallmark in question was applied and the place where the precious metals concerned were put into free circulation and lawfully marketed in the EU. Scott Walter's view was that as a result of this case, hallmarks will need a passport and they will need to be credible.

12. **OVERSEAS SUB-OFFICES – USE OF HALLMARKS**

The Chairman summarised the background to the inclusion of this item for discussion. The law was changed to enable the UK assay offices to compete with EU assay offices whose domestic legislation permitted overseas hallmarking. There was some Parliamentary opposition to the proposed change and Viscount Younger of Leckie was reported in Hansard in January 2013 as giving an undertaking that different marks would be required to distinguish between onshore and off-shore hallmarking operations. The Council was not aware of that undertaking until it was brought to its attention in July 2016 by the Regulatory Delivery Directorate. Further, that undertaking was not reflected in the amendments to the Hallmarking Act, which conferred a broad discretion on the Council to decide the mark that should be applied overseas. When SAO applied to open the first overseas sub-office in 2014, the Council

granted it permission to use its assay office mark in response to cogent submissions made by Simon Batiste. Following BAO's successful application to the Council to open a sub-office in Mumbai, the Council received a large number of submissions from the jewellery trade objecting to the use of the anchor mark there.

The RDD has made clear that given the ministerial undertaking, it now required the Council to issue new guidance on overseas marks and to submit it to public consultation. The Chairman emphasised that the Council had acted within its statutory powers but it was nevertheless appropriate to consider the RDD's request. In particular, the outcome of the referendum on EU membership, the CJEU decision and the views of SAO, EAO and LAO that a distinguishable mark was now desirable required the Council re-examine its current policy.

The Council wished it to be noted that it was very unhelpful that RDD's Sarah Smith, who had indicated that she intended to attend the meeting, was not present to answer questions on the Government's stance on this matter.

A protracted discussion on the issues then took place as follows:

Simon Batiste stated that a distinguishable mark was now appropriate in view of the ministerial undertaking which had come to light. He submitted for approval a distinguishable mark to be used by SAO in Italy. The Council deferred making a decision on the proposed mark until the matter of overseas marks generally was decided.

John Stirling stated that the implications of the CJEU decision were that a different standard of proof can now be required for all stock coming through customs, which can be prevented from entering Europe. Scott Walter's view was that the integrity of UK hallmarks could be questioned and paperwork could be checked by France and the Czech Republic. He noted that the CCM cannot be applied in an overseas sub-office.

Marion Wilson's view was that consumers did not generally understand hallmarks. Having two separate marks could lead consumers mistakenly to believe that items carrying an anchor mark were made in the UK.

Kate Hartigan rejected as unreasonable any suggestion that there was a difference in the hallmarking process in India and the UK. The sub-office regime was a long-established and robust one subject to the scrutiny of the Applications Committee. BAO had acted in reliance both on the LRO and on the Council's policy in making a strategic decision to open sub-offices in India. In any event, BAO was applying a vertical anchor overseas and had been using a horizontal anchor in the UK since 1999. If BAO were required to change its practice it is likely to have adverse financial consequences and would seek compensation. Further, customers did not want to be regarded as second class, which is an inference that would be drawn for separate marks. The objections to BAO's application of the anchor mark overseas came from customers who amounted to only 1.5% of its total hallmarking activities.

Tom Murray stated that the CJEU decision represented a fundamental change in approach to the information provided by hallmarks, which will now need to be supplemented with paperwork. That warranted a change in the Council's position.

Harriet Kelsall's view was that consumers trusted hallmarks generally, but would not interrogate hallmarks so closely that they would conclude that orientation conveyed specific additional information.

Robert Grice expressed a preference for assay office marks to be used overseas but distinguished by means of a surround border.

Michael King commented on the RDD's letter to the Council requiring a commitment from the Council to issue and consult on new guidance. He counselled caution as it was not the Council's role to enforce debates reported in Hansard, but to act within the law. The starting point was the Hallmarking Act. He also queried the rationale for claiming that hallmarking was tainted by overseas sub-offices or for claiming that a mark

applied in an overseas location was inferior. The hallmark was a quality/fineness mark and the same standards were applied overseas and in the UK. Multiple marks would be confusing for consumers.

David Sanders stated that the Applications Committee and the Council acted in accordance with the law in respect of overseas hallmarks. If, however, the UK left the EU and wished to trade with it, there may be a need for different overseas marks for traceability purposes. Traceability was a key issue in product safety.

Carol Brady cautioned against a knee-jerk reaction to this issue. She understood that the NAJ had a different view from that expressed by those members of the trade who objected to the use of the anchor mark overseas. The Council acted lawfully as a regulator and needed to consult the trade before it made a decision.

John Stirling referred to the responsibility of the Council under the Hallmarking Act s13 to ensure adequacy of hallmarking. He reiterated the concern that the CJEU judgment could create a barrier to customers marketing to the EU and hence it created a risk for all UK hallmarks. In view of the changing circumstances, he requested that the Council exercise its power under the Hallmarking Act s13 (2) (g) to issue directions regarding procedures to require distinguishable hallmarks to be applied by BAO in its overseas sub-offices.

Marion Wilson stated that it would be difficult for BAO to explain to its customers why the anchor mark could not be used overseas. It was for the Council to satisfy itself that proper procedures were being applied overseas. In her view, the CJEU judgment had not changed anything and was consistent with her understanding of the way such matters always worked. Scott Walter disagreed and stated that the implications of the case were that all UK hallmarks would be damaged if overseas marks were not distinguished. Kate Hartigan's view was that rejecting all UK hallmarks would be disproportionate.

Simon Batiste adduced the example of the French barring products from SAO's Milan sub-office. As a result of the CJEU case, SAO would require a distinguishable mark in Milan to preserve the main assay office. He emphasised however that there was no suggestion that hallmarking in overseas sub-offices was inferior. Ashely Carson informed that Council that he had spoken with French officials when the articles were barred and they did not accept arguments of equivalence of processes.

Sir David Reddaway accepted the discretion conferred on the Council by the Hallmarking Act but urged the Council not to underestimate the pressure being exerted on the Government by a small minority.

Robert Organ's view was that steps should be taken to protect the UK's premium brand. Protection would not be afforded by Indian law.

Louise Durose expressed sympathy for BAO's position. She believed it needed to be thought of as a British issue and that there was a need for future audits to show that hallmarking in overseas sub-offices was the same as that carried on in the UK.

The assay-office members and other attendees left the meeting for the purposes of further discussion by the remaining members and for a decision to be made on the matter of overseas hallmarks.

The Council resolved as follows:

- To conduct a consultation process on draft guidance proposing a distinguishable mark for use in overseas sub-offices;
- To approve BAO's use of its vertical anchor mark in its overseas sub-offices until a final decision was made by the Council on the policy to be adopted following completion of the consultation exercise

- If necessary, to convene an extraordinary meeting of the Council to decide the matter of overseas marks

13. **TOUCHSTONE AWARD**

14. Robert Grice referred to his report which had been circulated in advance of the meeting. He expressed his thanks to those who helped with the work which was re-iterated. The Chairman also expressed his thanks to Robert Grice for his considerable efforts in making the Award the undoubted success it was.

Council agreed to run the Touchstone Award in 2017 which would be officially launched at the training event at Goldsmiths' Hall in November for this year's winner. The Chairman also thanked the assay offices for their continued support

15. **FOREIGN HALLMARKS – LIST OF APPROVED HALLMARKS**

The list was noted.

16. **COMPLAINT REGARDING MICRO HALLMARKING**

The complaint was referred to the Technical Committee for consideration

17. **DEALERS' NOTICES**

Charges by the assay offices were approved

18. **ACTIVITY AND ENFORCEMENT REPORTS FROM THE ASSAY OFFICES**

LAO reported a worldwide slump. The Brexit referendum has already had adverse consequences for some of LAO's business.

EAO reported that it had closed its Heathrow Airport sub-office as a result of the outcome of the Brexit referendum. Otherwise business was stable.

SAO had an increase in marking of gold articles. There was little activity on enforcement. SAO also reported that the Royal Mint intended to visit sub-office operations.

BAO reported activity levels as "patchy".

19. **BHC COSTS**

The up-dated costs were noted

20. **DATES AND VENUES FOR MEETINGS IN 2017**

7 April – London

13 October – Birmingham

Provisional dates for possible additional meetings to discuss overseas hallmarking were:

13 January 2017 and 10 February, both in London