



BRITISH HALLMARKING COUNCIL

RESPONSE OF THE BRITISH HALLMARKING COUNCIL
TO THE DEPARTMENT OF TRADE AND INDUSTRY
CONSULTATION PAPER ENTITLED:

“REDUCING ADMINISTRATIVE BURDENS - THE
CONSUMER AND TRADING STANDARDS AGENCY”
DATED 5 JULY 2005

3 October 2005

1. CONTENTS

Section	Title	Page
1	Contents	2
2	Introduction	3
3	Overview	4
4	Hampton Compliance	5
5	Key Issues for future structures	6
6	Structural options	7-8
7	Specific Consultation questions	9-12
8	Further Information	13

2. INTRODUCTION

This is the response of the British Hallmarking Council to the Department of Trade and Industry consultation document entitled “ Reducing Administrative Burdens - the Consumer and Trading Standards Agency” dated 5 July 2005.

This response has been prepared by a Committee of the Council appointed at a Council meeting on 16 September 2005. The Chairman of the Council, Tom Murray, chaired the Committee, which was comprised of six BHC members and the Secretary. This response was circulated in draft to members of the Council who had the opportunity to comment on its terms prior to its completion and submission to the Department of Trade and Industry.

Henceforth in this response:

- **The British Hallmarking Council** will be referred to as “**BHC**”
- **The Department of Trade and Industry** will be referred to as “**DTI**”
- **The Office of Fair Trading** will be referred to as “**OFT**”
- The report entitled “**Reducing Administrative Burdens**” by Philip Hampton dated March 2005 will be referred to as “ **Hampton**”
- The proposed **Consumer and Trading Standards Agency** will be referred to as “**CTSA**”
- **The Hallmarking Act 1973** will be referred to as “**the Act**”

3. OVERVIEW

BHC is supportive of the Government's commitment to establish CTSA in line with the recommendation contained in Hampton, and welcomes the opportunity to respond to the DTI consultation document.

BHC supports the Government's desire that the CTSA will co-ordinate all aspects of the work of the Trading Standards Service. BHC also supports CTSA being established to provide: advice to business; consumer education; a co-ordinated performance framework for the Trading Standards Service; priority setting for Trading Standards and consistency of inspection and enforcement.

BHC currently has a statutory power to enforce the provisions of the Act which also imposes a statutory duty on the Trading Standards Services to enforce the Act within their area. BHC do not use their power directly, relying wholly on Trading Standards Departments to undertake this activity (with support from the Assay Office about technical aspects). BHC would be content for its statutory power of enforcement to be transferred to CTSA, recognising that this could result in a more consistent and more effective level of enforcement activity.

In addition to its enforcement function, however, BHC has a number of other functions which, in BHC's submission, must continue to be performed in the future. BHC:

- has direct access to the Secretary of State on matters covered by the Act and on hallmarking issues generally;
- supervises the activity of hallmarking in the UK, both ensuring that there are adequate facilities available (including giving approval to the establishment of sub Offices of the Assay Offices where appropriate) and also by setting the price maxima which Assay Offices may charge;
- affords a forum for technical liaison between the Assay Offices ensuring that a consistent approach is taken by them and also ensuring that technical advances can be used for the benefit of business and consumers;
- advises the Government on the international aspects of hallmarking both in connection with the EU and in connection with the International Convention on hallmarking;
- is a standing committee made up of stakeholders from all areas of the jewellery and precious metals sector, and as a result is uniquely capable of carrying out its functions;
- is funded entirely by the Assay Offices with no cost to the taxpayer.

BHC contends that in the interests of the continuing existence of an efficient market in precious metals, for the benefit of both manufacturer and consumer, it is essential that the efficient carrying out of these functions is not lost as a consequence of the implementation of Hampton, and, on the contrary, is safeguarded for the future.

4. HAMPTON COMPLIANCE

Hampton identifies the reduction of “administrative burdens on business” as a key policy objective. As part of the analysis the burdens on business resulting from the unnecessarily repetitive forms to be completed, and, in connection with law enforcement activity, unnecessarily repetitious and unfocussed visits by regulators, were identified as requiring remedy.

BHC was mentioned in Hampton as BHC was given inspection and enforcement powers by section 9 and section 13 of the Act. As has already been confirmed in section 3, BHC is willing to surrender these powers to aid the achievement of the objectives of Hampton. Further, by virtue of section 11 of the Act dealers are required to display a notice designed, approved and supplied by BHC giving information about hallmarks. With reluctance BHC would surrender those powers too if it is thought appropriate as part of the implementation. BHC believes that it is best placed to perform the notice design and approval function, however.

One of the key functions of BHC is the supervision of the Assay Offices in the exercise by them of their statutory hallmarking powers. Following discussion with the Cabinet Office and with DTI it is the opinion of BHC that the activities of the Assay Offices do not fall within the scope of the Hampton review or report - indeed the Assay Offices are not mentioned in Hampton. Accordingly it is also the opinion of BHC that powers of BHC vis a vis the Assay Offices, indeed the whole of the relationship between BHC and the Assay Offices, is outside the scope of Hampton and any changes that result from Hampton.

In these circumstances, BHC contends that save for amendments to sections 9, 13 and possibly section 11 of the Act, Hampton does not require any other changes to BHC’s functions.

During discussions about the future it has been confirmed at Ministerial level by DTI that DTI value the work of BHC and the contribution it makes to Government. Further, for their part the Assay Offices have confirmed that they regard the role and work of BHC as valuable, and certainly not burdensome.

It is against this background, and bearing in mind that the way in which a future BHC engages with the other organisations charged with consumer protection would very much depend on their constitutions and roles, that BHC has considered the structural options which the creation of CTSA might make possible.

5. KEY FEATURES OF FUTURE STRUCTURES

BHC has considered the structural options that might be available to it in connection with the implementation of Hampton, and as a preliminary matter has identified some key features that must, in BHC's view, be satisfactorily provided by whatever structural option is eventually chosen.

The key features are:

- **Direct communication with Ministers.** In line with the traditional importance of hallmarking in the UK, BHC has had a direct relationship with the Secretary of State by virtue of the Act. As a result, BHC has been able to provide focussed advice on request, and also a proactive focus for the early identification of issues of wider concern. This has been beneficial on numerous occasions and most recently in connection with the draft European directive on hallmarking. In future BHC should have a direct relationship with the policy making and legislation drafting body whether that be DTI, CTSA or OFT.
- **The leading role in advising on priorities in the enforcement of hallmarking law.** BHC regards the proposed emphasis on setting priorities and performance standards for Trading Standards Departments as a key benefit of Hampton, and contends that it is vital that BHC should have a leading and direct role in advising the body or bodies tasked with setting the standards and priorities. Indeed, BHC believes that, when implemented, this will be a real improvement in the machinery for enforcement of hallmarking law.
- **Continuity of expertise.** The Act created a structure which gave the Secretary of State ready access to BHC which, through its membership, was and is always able to provide expert advice drawn from a wide range of stakeholders. If the quality of advice available to Government is not to be prejudiced, this continuity must be safeguarded as part of the future structure.
- **Breadth of contribution.** BHC is comprised of members who are either representatives of or who have experience of the working of the Assay Offices, of Central Government, the Trading Standards Departments, Manufacturing, Retailing and Consumers, so that a wide range of expertise and experience is brought to bear on issues relating to the hallmarking of precious metals. Again, the loss of this feature in any future advisory body would be to the detriment of Government.
- **Cost and cost effectiveness.** The cost of the activities of BHC is modest as a result of the largely unpaid work of its members, and as a result of the costs being covered by the Assay Offices. While Hampton was correct in pointing out that BHC's operations have been on a relatively small scale, BHC contends that it would be inappropriate for any new structures to result in greater costs either to the Assay Offices, to Manufacturers, or to the Taxpayer.

6. STRUCTURAL OPTIONS

Three possible structural options for the future of BHC have been considered. Although it is understood that there are sub options within those options, at this stage, early in the implementation planning, it is appropriate to take a broad view of the options, and react to them accordingly.

The options are:

- **One** : Transfer all BHC functions and duties to CTSA.
- **Two** : Retain BHC as a formal or informal advisory body within a CTSA structure to which has been transferred the current duties and functions of BHC.
- **Three** : CTSA assumes the Secretary of States powers under the Act including powers over the BHC.

For the reasons given in the preceding section, the strong preference of BHC is for option Three. In particular, if as a result of the new structures BHC has direct access to the policy and draft legislation making body and the ability to have real influence through its advice on setting priorities and performance standards in relation to enforcement of hallmarking law, then BHC will be able to be more effective in its work than hitherto. BHC cannot detect any downside in this option, and is excited by its prospect. BHC believes that the working relationship with CTSA would be most productive if CTSA assumed the policy and legislation drafting roles for consumer protection generally and hallmarking in particular. If, however, DTI or OFT had those roles, then BHC believes that it would be able to work effectively with either of those bodies to good effect.

Option One is not thought to be advantageous at all in the context of the key features described in the preceding section. None of those are met by this option, and in particular, the continuity of expertise and breadth of contribution which are fundamental advantages of the existing system would be lost altogether. Further, the economic regulation powers that BHC exercises in relation to the Assay Offices (which are not public sector bodies) would not fit easily in CTSA.

Option Two has been carefully considered, but BHC does not regard it as an appropriate way forward. The reasons for this are:

- It is unlikely that the advisory body would have any impact being, essentially, incidental to the work of a larger body with a much wider remit and priorities;
- If, on the other hand, the advisory body did have an impact, it would create a situation where an extra layer of “red tape” would have been created within CTSA, contrary to the ethos of Hampton;
- BHC does not believe that it would be possible to call on volunteers to play a part in the advisory body in the way that occurs now - in fact BHC believes that potential recruits would regard the advisory body as not being an effective use of time. If, however, the advisory body had a formal role that might help to some extent;
- An advisory body to CTSA would not be able to exercise economic regulation functions with respect to the Assay Offices, so the question of how this function would be performed would still remain;

- This option, and option One, are thought to be likely to generate increased costs , as is mentioned on page 11.

In these circumstances, although BHC cannot recommend option Two, it does regard the variant which gave the advisory body a formal role as being more likely to work than one giving only an informal role.

Accordingly, the strong preference of BHC is option Three, and BHC urges Government to implement a structure embodying that option. Indeed, BHC regards any of the other options as creating an inferior structure to that which applies now, which will be detrimental not only to the interests of all the stakeholders concerned, but also to Government.

BHC understands, however, that the future relationships between CTSA, OFT and DTI need to be worked out. BHC would wish to have a direct relationship with whichever of those bodies was responsible for making policy and draft legislation in the area of hallmarking.

7. SPECIFIC CONSULTATION QUESTIONS

In this section of the response BHC gives its replies to the specific questions which have been asked where, and only where, the BHC considers that the question concerned raises an issue of specific relevance at this time. Where this does not apply, the questions have been passed over, although BHC may wish to respond further in relation to them at a future time.

Chapter 3 - Powers of the CTSA

1. Do you think the powers listed in paragraph 39 are the right powers to carry out effective performance framework co-ordination? Are any of these powers unnecessary?

See 3 below

2. Do you think the application of these powers will be sufficient to achieve the efficiencies / reduction in burdens on business envisaged by Hampton? Do you think they will increase burdens on Local Authorities? If yes, please provide supporting evidence.

See 3 below

3. If you do not think the proposed CTSA powers are sufficient (Q2), what additional or alternative role / powers can be given to allow the CTSA to effectively co-ordinate the performance framework?

In relation to these three questions BHCs response is that the powers do seem appropriate and necessary. BHC notes, however, that no part of the proposals takes account of needs arising in relation to hallmarking and urges that its response as set out above is taken into account during further consideration of the way forward. In particular , BHC urges that the advantages of integrating DTI consumer protection functions within CTSA are fully recognised.

4. Do you think this is the right approach for the CTSA to take in using its powers? If not, what would be better?

Yes, BHC does consider this to be the right approach and in addition is very keen to contribute in relation to advice on performance standards and priority setting in the field of enforcement of hallmarking law.

Chapter 3 - Priority setting for the Trading Standards Service

5. Do you think this is the best process for identifying Central Government priorities for the Trading Standards Service?

Yes, although BHC is concerned that its advice to CTSA on performance standards and priority setting should not be lost in a lengthy process involving other bodies and therefore urges that CTSA should be given sufficient powers to carry its wishes into effect.

Chapter 3 - Consistency of Inspection and Enforcement

9. Do you think there are better options not identified here for improving consistency of enforcement by the Trading Standards Service?

No additional reply, although BHC repeats the response to question 4.

Chapter 4 - Quality assurance of third party alternative dispute resolution (ADR) schemes

10. Do you agree that recognition of good quality ADR schemes would be an appropriate role for the CTSA?

BHC welcomes this.

Chapter 4 - Cross border scams

11. Do you agree that distribution of these recovered assets would be an appropriate role for the CTSA?

BHC welcomes this, and is particularly concerned that effective measures to cut down evasion of prosecution through crossing borders should be introduced where possible. This is a specific concern in relation to precious metal jewellery.

Chapter 4 - Representative action

12. Do you agree that the CTSA would be designated as a third party to bring proceedings on behalf of a group of consumers?

BHC welcomes this.

Chapter 5 - Option 1 - the CTSA as a wholly new body

13. Do you think that forming the CTSA as a separate body would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are the reasons for your views?

Yes - BHC believes that this solution would be most likely to achieve the appropriate emphasis for consumer protection and access to Government. This is because BHC believes that if CTSA was combined with OFT, the new body would be of such a size and nature that it would lose focus, and certainly it would be less likely that hallmarking issues would be given real emphasis within Government. On the other hand BHC believes that it could be very effective working together with a self standing CTSA focussed on consumer issues. See also the response to question 22 below concerning Ministerial linkage.

16. Do you agree with the estimates of the costs of forming the CTSA as a separate body, set out in paragraph 78? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.

BHC cannot comment on the generality of the figures although does wish to emphasise that an outcome which sees the Council incorporated within CTSA under either options one or two is likely to generate greater expense than the existing structure. This is because at present the cost of BHC is largely made up of the Chairman and Secretary's fees and fees of the members of the Sub Office Committee which are on an hourly basis. There are no full or part time employees, no premises or IT or other overheads. The considerable amounts of time devoted by Council members to Council meeting and Committee work and drafting, and by the Assay Office Masters, are given on a voluntary basis to the Council as an independent entity. BHC does not believe that this would continue to be the case if Council lost its independence, and believes that the cost of performing the work of Council by CTSA, while impossible to assess precisely, would be necessarily greater than the present cost given the existing structure.

22. If the CTSA is formed as a new body, how close do you think the relationship between that new body and Government Ministers should be? What are the reasons for your views?

As mentioned previously (in section 6), BHC believes that the most effective structure would involve CTSA becoming the policy and legislation drafting body in the field of consumer protection, and, as part of that, having the closest possible relationship with Government Ministers. That would enable BHC to have the most effective relationship with CTSA in relation to hallmarking law and issues.

Chapter 5 - Option 2 - the CTSA as part of the OFT

25. Do you think that forming the CTSA within the OFT would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are the reasons for your views?

No - see above (question 13), although of course if OFT did become the relevant policy / draft legislation making body BHC would wish to have direct access to it.

28. Do you agree with the estimates of the costs of forming the CTSA within the OFT? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.

No additional comment.

Annex C - Partial RIA

30. Do you agree with the costs and benefits of the options for setting up a new CTSA? Where possible, please provide quantifiable evidence.

See the answer to question 16.

31. Do you agree with the costs and benefits of the options for a redress functions within the CTSA? Where possible, please provide quantifiable evidence.

No additional comment.

32. Do you agree with the costs and benefits of the options for improving the consistency of inspection? Where possible, please provide quantifiable evidence.

No additional comment.

8. FURTHER INFORMATION

Should further information or clarification be required please contact

Tom Murray
Chairman
British Hallmarking Council
31 Melville St
Edinburgh EH3 7JQ

T: 0131 225 1677
E: tkm@gillespiemacandrew.co.uk

or

David Gwyther
Secretary
British Hallmarking Council
No 1 Colmore Square
Birmingham B4 6AA

T: 0870 763 2000
E: david.gwyther@martjohn.com

