

APPENDIX 1

An Outline of the Hearing Aid Council's Investigative & Disciplinary Processes

1.0 *Introduction*

- 1.1 Hearing aid users, are vulnerable to a number of potential risks. Often these risks are related to their circumstances, many are elderly, live alone and as a result of their hearing impairment may be isolated from other members of society.
- 1.2 The Hearing Aid Council ('HAC') is a Government body which is responsible for setting standards of professional training, performance and conduct for individuals and companies involved in the assessment of hearing loss and sale of hearing aids in the United Kingdom.
- 1.3 There are currently 1500 dispensers and 314 companies which employ them on the HAC's Register. Only individuals and companies that meet the HAC's standards of professional training, performance and conduct are registered to dispense hearing aids. The Department of Business Enterprise and Regulatory Reform oversees the work of the HAC.

2.0 *Who can complain to the HAC?*

- 2.1 Anyone can make a complaint about a Registered Hearing Aid Dispenser ('RHAD'). However, the HAC can only consider allegations about people who are currently on the Register of Hearing Aid Dispensers and the companies which employ them.
- 2.2 The HAC has no jurisdiction over NHS audiologists, hearing aid manufacturers or marketing companies. This means it cannot investigate complaints involving the NHS or the poor manufacture of a hearing aid. Further, certain types of purchases fall out the with the HAC's jurisdiction. Importantly, it cannot investigate internet sales.

3.0 *What types of complaints can the Council consider?*

- 3.1 The HAC can only consider allegations if they relate to breaches of its Code of Practice. The Code of Practice regulates many aspects of the practice of RHAD's and the companies which employ them. The Code sets out the kinds

of behaviour and standards which the Council expect those involved in the hearing aid industry to follow.

3.2 The Code of Practice allows the HAC to consider the following key activities of RHAD's:-

- i The quality of the hearing test which was conducted.
- ii The advice given about hearing aids including:
 - the choice of aids available given the individual's hearing loss;
 - the types of aid which would be suitable for each individual client;
 - the functions of each aid;
 - the likely benefit which can be expected from a hearing aid;
 - the cost implications of the aids given individual budgets;
 - follow up care provided by RHAD's; and
 - sales techniques operated by RHAD's.

3.3 There is no time limit in which a complaint has to be made, but it should be made as soon as possible and ideally within 5 years of the events which are the subject of complaint.

4.0 *What the Council cannot do*

4.1 The HAC does not have any powers to allow it to take action where the physical or mental health of a RHAD may be impairing their ability to act safely and effectively.

4.2 The Council does not have the power to award compensation to consumers affected by the poor practice of RHAD's or their employers, nor does it have the power to order that consumers are refunded the cost of inappropriate, faulty, damaged or unwanted hearing aids. This is a significant hole in the HAC's armoury. However, the HAC does take into account the overall

consumer experience in considering the professional conduct of RHAD once it has been determined that there has been a breach of the Code of Practice.

5.0 *HAC Disciplinary Process*

- 5.1 The HAC's enforcement procedures are divided into two distinct and separate stages, firstly the investigative stage and secondly disciplinary proceedings.
- 5.2 During the investigation stage, complaints are investigated to assess whether they need to be referred for closer scrutiny by the Disciplinary Committee ('the DC') to determine whether a breach of the Code of Practice has occurred. The Disciplinary stage consists of a formal hearing of those cases in front of a specially convened Committee.
- 5.3 A key aim of the HAC is to protect consumers by improving standards of professional practice across the hearing aid industry. Accordingly, any action which the DC takes following referral by the Investigating Committee, is intended to protect the public and is not intended as a punishment
- 5.4 The outcome of all formal disciplinary action taken by the HAC is published on the website.

6.0 *Investigating Committee ('the IC')*

- 6.1 The IC is a statutory committee established by the HAC to be initially responsible for the preliminary investigation of the complaints.
- 6.2 The Investigating Committee is comprised of three members including a consumer representative, an audiologist and a RHAD. This balance ensures public input into the HAC's decision making process combined with the professional expertise of the HAC's audiological and RHAD advisers.
- 6.3 The IC does not make the decision about whether a complaint is proved. It conducts a paper based examination of the facts which have been gathered by case handlers acting on its behalf including any information submitted by the

RHAD or his employers. RHAD's are not invited to attend in front of the Committee. If the IC considers that there is a prima facie case for the RHAD to answer, then the matter will be referred to the Disciplinary Committee.

7.0 *How are complaints handled?*

7.1 Upon receipt of a complaint against a RHAD, the case will be forwarded to the HAC's case handlers who will conduct the day to administration and handling of the complaint.

7.2 The process applied to each complaint will depend upon the nature of the concerns which are raised by the complaint. An investigation may include:-

- obtaining evidence from dispensers, their employers, the complainant or other parties;
- obtaining programming information for individual hearing aids;
- obtaining witness statements;
- obtaining expert records on audiological matters; and
- obtaining medical records where appropriate

7.3 The RHAD will be contacted during the course of an investigation and provided with a copy of the letter of complaint. The HAC must allow the RHAD 21 days to respond before the case can be put to the IC. The HAC also has power to demand information from RHAD's or their employers if it is relevant to a complaint.

8.0 *Disciplinary Proceedings*

8.1 The disciplinary proceedings brought by the HAC fall into two distinct categories. The HAC has adopted this bipartite approach in order to minimise costs.

8.2 When making a referral to the DC, the IC can offer defendants the choice of fast track proceedings or a full disciplinary hearing.

8.2.1 **Fast Track Disciplinary Proceedings**

In relation to Fast Track proceedings, the IC puts forward proposals to the RHAD against whom the complaint has been made as part of an intended settlement process. The proposals relate to the penalty which the IC believes is appropriate in the event of that person submitting a guilty plea and agreeing to the penalty imposed.

If the RHAD agrees to proposed settlement then the case can be dealt with by way of submissions of agreed facts with the cost of a fully contested disciplinary hearing being avoided. However, the settlement is not binding on the DC and they may adopt a different approach to the case when they sit to consider the case.

8.2.2 **Full Disciplinary Proceedings**

If a dispenser is not prepared to accept the Fast Track procedure, or the case is one which requires a hearing in order that evidential issues can be resolved, then a full disciplinary hearing will be held.

9.0 What happens if the Investigating Committee refers a complaint to the Disciplinary Committee?

9.1 The DC will conduct a formal hearing to determine whether or not the RHAD, or his employer, are in breach of the Code of Practice. A public hearing will take place to consider whether the allegation against the RHAD or his employer is proved. At the end of the hearing, a decision will be taken about what to do.

10.0 Who are the Disciplinary Committee?

10.1 The DC is made up of five members of the HAC. It is chaired by the Chairman of the HAC who is a lawyer. Its membership varies from case to case, but the HAC tries to ensure that membership on each case includes a consumer representative. The DC can sit with three or four members, if the Defendant agrees.

11.0 *What can the Disciplinary Committee do?*

11.1 If the DC decides that the complaint is found proved then it has the following range of options to it:

- I. decide to take no further action;
- II. impose a caution or admonishment;
- III. order the RHAD or his/her employer to pay a maximum fine of £5,000 per charge proven;
- IV. suspend the RHAD registration; or
- V. remove the dispenser's name from the register.

12.0 *Hearings*

12.1 The DC normally holds its hearings in public. However, it can hold a hearing in private if an application is made to the DC Chairman.