

# **Complaints Review 2008-09**

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## **Investigating Committee Chair's Statement**

I am pleased to be able to present to you this, the third of our Annual Complaints Reviews, which provides all of our key stakeholders with important information about the number and nature of complaints made about the private hearing aid profession in the UK in the previous year.

I would like you to take two key messages away from this document this year. First of all, I am particularly pleased to report a reduction in the number of complaints made to the HAC over the past year. This provides an indication of the very real efforts made by the profession to improve the quality and effectiveness of its service and I congratulate all involved.

It is important to stress one thing about the level and nature of complaints referred to the Hearing Aid Council about dispensers and dispensing companies. In absolute terms, the number of complaints is small and will not be a true picture of the level of consumer complaints out there. Many complaints will be dealt with by dispensers and dispensing companies and will never reach the Hearing Aid Council. However, I am saddened to report that the same types of complaints still dominate the statistics – in audiology and advice provided - despite continued efforts to make improvements.

As we move into the Health Profession Council (HPC), such complaints will become ever more significant and so I urge all those dispensers who have not looked at their processes and practice or undertaken training to continue their professional development to do so in the next year. It is for this reason that I have also asked the question in this report, which I know many dispensers are also asking, "what would happen if we were part of the HPC?" I hope this will give you a useful indication of what is to come in twelve months' time so that you can be better prepared.

Finally, I would like to extend my heartfelt thanks to my colleagues on the Investigating Committee for the professionalism and dedication they have shown in investigating the complaints before them; to our colleagues on the Disciplinary Committee and to the Executive for their administrative support.

I believe that having a robust complaints' procedure is an essential element in raising the standards of the dispensing profession and in providing the best standard of service and care to the hearing aid user. I firmly believe that the HAC's work in this area has made a real difference and I hope it will continue to do so in the next twelve months.

Denise Yates

**Chair of Investigating Committee**

## Registrar's Statement

In July 2008, Her Majesty the Queen gave her assent to the Health and Social Care Act. The Act contains provision for the dissolution of the Hearing Aid Council and transfer of its registration and regulation functions to the Health Professions Council. The second piece of legislation necessary to affect this change is currently the subject of a formal consultation by the Department of Health, and this major change in the regulation of hearing aid dispensers should be made by 31st March 2010.

In this review and in its two predecessors, the Hearing Aid Council has set out the key areas of poor performance across the profession, as evidenced in our complaints' referral data. The Council has also set out the primary areas of risk for consumers in the process of dispensing. Where these two points meet: the quality of audiological care, record keeping and ethical business conduct, is where we as a regulator want to focus our activity. The Hearing Aid Council wants to ensure that performance across the profession is improved before the regulation of dispensers is transferred to the Health Professions Council.

The regulation of dispensers by the Health Professions Council is the biggest change in the regulation of the profession since the introduction of the Hearing Aid Council in 1968. This change will both increase the level of protection afforded to consumers and reduce the cost of regulation for dispensers. The new regulatory framework, including each specific standard required of dispensers, is available now. It is essential that dispensers and dispensing companies assess their current clinical and business practices against these standards and take action where they might fall short of the requirements that will be placed on them from 1<sup>st</sup> April 2010. The new regulatory framework includes:

- protection from Unfair Consumer Trading Regulations 2008;
- schedule 3 of the Data Protection Act 1998;
- Health Professions Council standards, including:
  - standards of proficiency for hearing aid dispensers;
  - standards of ethics, conduct and performance;
  - standards of continuing professional development; and
  - standards of education and training (for those dispensers involved with student/trainee dispensers).

There are ten months before the transfer to the Health Professions Council, which is plenty of time for all dispensers and dispensing companies to read, understand and follow these new standards.

Chris O'Leary  
Registrar and Director of Policy

## Executive Summary

### Introduction

The Hearing Aid Council is the UK-wide statutory registration and regulation body for Hearing Aid Dispensers and their employers. Hearing Aid Dispensers (or Hearing Aid Audiologists) are healthcare professionals who test and assess someone's hearing, make recommendations on the type, model, power, function and programming of hearing aids (a hearing aid prescription), fit aids and provide some post-fitting rehabilitation work.

As part of this ongoing strategic work, the Council has produced this Annual Complaints' Review. It is the third such review, and draws on analysis, findings and recommendations in previous reviews and on analysis of data from 2008-9. The key data analyses underpinning this work are:

- analysis of the two registers maintained by the Hearing Aid Council (one of dispensers and one of employers), including changes over the year in numbers registering for the first time and being removed from the registers;
- analysis of data on the number of complaints, on those who complain to the Council and on the work of the Council's Investigating Committee (the committee which has a statutory duty to consider complaints made against dispensers and employers); and
- analysis of data on the number of disciplinary cases held against dispensers and employers, the type of charges involved in such cases and the work of the Council's Disciplinary Committee (the committee which has a statutory duty to consider disciplinary cases brought against dispensers and employers).

The key objectives of this report and of the Council's strategic work are to:

- improve standards within the Hearing Aid Dispenser profession;
- ensure that consumers are afforded appropriate levels of protection when buying a hearing aid; and
- prepare the profession for regulation by the Health Professions Council.

### Findings

The key findings arising from this work are that:

- there has been a net increase in the number of people registered as Hearing Aid Dispensers in 2008-9, up three per cent over the year;

- there has been a large increase in the number of people whose eligibility to register was gained through undertaking an approved degree (rather than the company-based training route);
- in the 2009-10 retention process, nearly forty per cent of registrants did not meet their legal duties to pay their retention fee by 1st April;
- the majority of dispensers and employers meet our standards, but there are some repeat offenders;
- the number of complaints has halved. The Council received 68 complaints in 2008-9 compared to 133 in 2007-8 and 76 in 2006-7. Despite this reduction, the number of complaints per registrant is still higher than for other regulated healthcare professionals;
- minor issues of clinical practice continue to represent a large proportion of complaints and disciplinary work;
- in 2008-9, eight cases (twenty per cent of the total) involved failure to give 'best advice' or failure to make the client aware that an aid may not be of use to them;
- the complexity and seriousness of caseload continues to grow;
- in 2008-9, twelve cases (out of a total of forty) involved poor ethical practice or failure of management action by a registered employer<sup>1</sup>. This is up from two out of twenty cases in 2007-8; and
- poor record keeping continues to be an issue.

There are some common threads across the three annual complaints' reviews published by the Council since 2006-7, reflected in the findings outlined above. These findings also raised some concerns with the Council as a regulator, and it is important that these are set out for both consumers and the dispensing profession.

### **Key issues of regulatory concern**

There are five key issues of regulatory concern arising from the analysis undertaken for this report. These are:

- client records and data protection;
- poor quality of audiological care;
- best advice;
- unethical behaviour; and
- perception of 'lighter touch' regulation in the future.

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<sup>1</sup> Cases involving a found breach of clauses 1, 2 or 12 of the Code of Practice.

## **Client records and data protection**

In its 2007 Annual Complaints Review, the Investigating Committee raised two related areas of regulatory concern. These areas were based on an analysis of complaints received over the previous year, and covered:

- the quality of records held by dispenser and dispensing companies concerning the hearing health of their clients; and
- the governance and management arrangements in place to ensure that data held on clients is managed in line with the requirements of the Data Protection Act 1998 and best practice.

The Investigating Committee is disappointed that, on the face of our experience in 2008-9, it seems that there has been little or no improvement in the quality of client records. The quality of client records is important for three reasons:

- It is evidence of high quality clinical care.
- It enables continuing professional development.
- The requirements placed on dispensers in terms of record keeping will increase significantly when our register is transferred to the Health Professions Council.

## **Quality of audiological care**

A core function of dispensing is audiological diagnosis and treatment planning. In 2007-8, almost fifty per cent of disciplinary cases involve breaches of clause 9 of our Code of Practice, which relates to the quality of audiometry (testing someone's hearing). In 2008-9, this figure was just under forty per cent. Clause 9 covers the most basic of standards in relation to audiometry. It is therefore disappointing that the proportion of disciplinary cases involving this clause is so high, though perhaps encouraging that there has been a fall over the period.

## **Best advice**

One of the few principle-based regulations governing the dispensing of hearing aids in the UK is clause 3: the requirement that dispensers give best advice to clients with regards to their hearing aids and use. Best advice means that dispensers should take action to ensure that they:

- give the highest level of audiological care they can;
- should make recommendations on aids that take account of:
  - the nature and extent of a person's hearing loss
  - their lifestyle and means
  - their overall health and well being; and
  - their likely usage of the aids.

Between one fifth and one quarter of our disciplinary cases involve breaches of clause 3.

### **Ethical behaviour**

Dispensers are in a position of trust when they dispense hearing aids. In 2008-9, the Disciplinary Committee found against dispensers in nine cases (out of forty) where trust had been broken or where the dispenser acted in such a way as to question their ethical behaviour.

### **'Lighter touch' regulation under the HPC**

On a number of occasions recently, it has been suggested that the Health Professions Council will be a 'light touch' or allow self regulation of dispensers. The suggestion has been made that the Health Professions Council will let dispensers 'get away' with more than under the Hearing Aid Council.

Further, concern has also been raised about the possible impact on standards of the end of specific regulation of employers of dispensers and the introduction of a voluntary code of conduct governing commercial issues related to the dispensing of hearing aids.

While these might be the views of a small minority of dispensers and employers, the Hearing Aid Council believes it is essential to make it clear that the Health Professions Council takes very seriously the level of trust it places in the professions it regulates and takes appropriate action where that trust is breached. The Health Professions Council publishes the outcome of disciplinary cases involving its registrants via its website. An examination of one area of disciplinary work, around ethical conduct, might help to displace any belief that the Health Professions Council is a 'lighter touch' compared to the Hearing Aid Council.

### **Recommendations**

The Investigating Committee, based on the analysis undertaken for this review and taking account of the concerns raised in the previous section, have a number of recommendations. These recommendations are for:

- the Hearing Aid Council, with regards to its policy and preparation for the transfer of its functions to the Health Professions Council; and
- the dispensing profession (including professional bodies, dispensing companies and individual dispensers). These recommendations are focused on the profession's continuing development and its preparation for regulation by the Health Professions Council.

The Investigating Committee makes the following policy recommendations for the Hearing Aid Council:

- the analysis set out in this report does not suggest the Council needs to make changes to the focus of its regulatory work, including to Statement of Regulatory Intent;
- the Council should provide feedback and support to dispensing companies and professional bodies on the outcome of this work and in making changes to their policies, procedures and practice;
- the Council should provide focused information to individual registered dispensers on the outcome of this report; and
- the Investigating Committee should undertake a similar review of complaints referred in 2009-10.

The Investigating Committee makes the following recommendations for the dispensers, dispensing companies and dispensing professional bodies:

- dispensers should consider the outcomes of this report and reflect on whether the issues raised here are relevant to their individual practice;
- dispensing companies and professional bodies should reflect on the information contained in this report and the concerns raised, to ensure their company or profession-wide education and training programmes are focused on the key issues that need improvement;
- all the information necessary and the Standards that will apply when dispensers are regulated by the Health Professions Council are now available and published. All dispensers should take time as soon as possible to read, understand and ensure they can follow these standards; and
- where some changes to practice might be necessary, dispensers and dispensing companies can take time to implement these changes in time for the transfer.

## Introduction

The Hearing Aid Council is the UK-wide statutory registration and regulation body for Hearing Aid Dispensers and their employers. Hearing Aid Dispensers (or Hearing Aid Audiologists) are healthcare professionals who test and assess someone's hearing, make recommendations on the type, model, power, function and programming of hearing aids (a hearing aid prescription), fit aids and provide some post-fitting rehabilitation work. The nature of their work, the clinical risks arising from it and the vulnerability of many hearing aid consumers is such that dispensing has been statutorily regulated since the passage of the Hearing Aid Council Act 1968 (as amended).

The year to 31<sup>st</sup> March 2009 has been one of great change for the regulation of Hearing Aid Dispensers. In 2008, the Government proposed amendments to the Health and Social Care Bill to enable the Hearing Aid Council to be dissolved and its functions transferred to the Health Professions Council. That legislation received Royal Assent in July 2008 and in March 2009 the Government published for consultation the secondary legislation necessary to affect this change<sup>2</sup>. The Council expects this changeover to take place by 31<sup>st</sup> March 2010.

During 2008-9 much work has been undertaken to prepare for the dissolution of the Hearing Aid Council and the change in the regulation of Hearing Aid Dispensers. The key changes undertaken were:

- introduction of the Foundation Degree as the minimum level of education and training necessary for registration as a dispenser and closure of the company-based training route;
- the approval of a number of degree courses in audiology as a route to registration with the Hearing Aid Council. In 2006, only one degree course was approved as a route to registration. By 31<sup>st</sup> March 2009, eleven degree courses were approved and a further three were pursuing approval;
- a joint consultation with the Health Professions Council on the Standards of Proficiency for Hearing Aid Dispensers: new standards of professional competence expected of all those practising as dispensers; and
- introduction of new Standards of Continuing Professional Development, from 1<sup>st</sup> April 2009, which mirror those required of all Health Profession Council registrants

In addition, the Hearing Aid Council has continued its strategic work to improve standards across the Hearing Aid Dispenser profession. As part of this work, the Council

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<sup>2</sup> The regulation of private hearing aid dispensers by the Health Professions Council: a paper for Consultation (April 2009) Department of Health

has previously published a Statement of Regulatory Intent<sup>3</sup>, setting out the key areas where evidence suggests poor performance or key areas of risk to consumers, where the Council will focus its limited resources and what actions the Council will take to improve standards. The Council has also previously published two annual reviews of complaints, setting out analysis of complaints made to the Council, the actions taken to investigate these complaints and key regulatory issues arising from this disciplinary work.

Outside the regulatory work of the Hearing Aid Council, there have been other changes that affect dispensing. The most significant of these is the changes to general consumer protection framework. In May 2008, the Consumer Protection Regulations came into force, which require that all consumers are treated fairly. These regulations significantly improve the protection afforded to consumers. The Hearing Aid Council has published guidance on these regulations and information has also been provided to dispensers through BSHAA's members' magazine.

There are other issues affecting the private hearing aid market which are outside the direct concern of the Hearing Aid Council as a regulator but that nonetheless have impacted on dispensing in 2008-9. The first of these is the recession. Anecdotal evidence suggests that there has been a downturn in the number and price of aids dispensed in since October 2008. The second issue is the improvements in audiology services provided by the NHS. It is suggested that investment in audiological services has increased access to services and also reduced the average time from referral to provision of aids. Both of these factors are likely to have a downward effect on the size and nature of the market for private hearing aids and could impact on clinical and commercial standards of dispensers and dispensing companies.

As part of this ongoing strategic work, the Council has produced this Annual Complaints Review. It is the third such review, and draws on analysis, findings and recommendations in previous reviews and on analysis of data from 2008-9. The key data analyses underpinning this work are:

- analysis of the two registers maintained by the Hearing Aid Council, including changes over the year in numbers registering for the first time and being removed from the registers;
- analysis of data on the number of complaints, on those who complain to the Council and on the work of the Council's Investigating Committee (the committee which has a statutory duty to consider complaints made against dispensers and employers); and
- analysis of data on the number of disciplinary cases held against dispensers and employers, the type of charges involved in such cases and the work of the

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<sup>3</sup> Statement of Regulatory Intent 2007-9 (2007) Hearing Aid Council

Council's Disciplinary Committee (the committee which has a statutory duty to consider disciplinary cases brought against dispensers and employers).

The key objectives of this report and of the Council's strategic work are to:

- improve standards within the Hearing Aid Dispenser profession;
- ensure that consumers are afforded appropriate levels of protection when buying a hearing aid; and
- prepare the profession for regulation by the Health Professions Council.

This report is structured to provide general information, guidance and advice for dispensers and dispensing companies on those areas of clinical and commercial practice that should be reviewed and where standards could be improved through education and training. The report is set out as follows:

- key findings from this work, covering changes to the register, the number of complaints received during 2008-9 and the work of the Investigating Committee, and the outcome of Disciplinary Cases;
- key issues of regulatory concern to the Hearing Aid Council, including areas of concern identified in previous reports
- recommendations from the Investigating Committee, both to the Hearing Aid Council in terms of its policy work and to the dispensing profession in terms of its practice and development; and
- the data analysis underpinning this report.

The appendices include specific information on the decisions of the Disciplinary Committee, giving both an overview of cases and information on each case.

## Key findings

In developing this report, the Council has undertaken analysis of four types of data and information:

- policy and strategic reports and documents published by the Hearing Aid Council and other regulators;
- data from the two registers maintained by the Council, the Register of Hearing Aid Dispensers and the Register of Employers of Hearing Aid Dispensers;
- data on the number and type of complaints referred to the Hearing Aid Council, and the workload of the Investigating Committee; and
- data on the number and type of cases considered by the Disciplinary Committee, and the transcripts and bundles for those cases.

The output from these analyses is set out in detail at the end of this report. In this section, the Council highlights the key findings arising from these analyses. The key findings are:

### Registers continue to grow

- There has been a net increase in the number of people registered as Hearing Aid Dispensers in 2008-9, up three per cent over the year. This compares to a net increase in 2007-8 of 4.5 per cent, four per cent in 2006-7 and three per cent in 2005-6. As of 31st March 2009, 1546 individuals were registered as Hearing Aid Dispensers in the UK.
- There has been a large increase in the number of people whose eligibility to register was gained through undertaking an approved degree (rather than the company-based training route). Around a third of the roughly 150 individuals registering for the first time completed an approved degree or passed an aptitude exam to be registered.
- There has been a net increase in the number of organisations registering as Employers of Hearing Aid Dispensers. The level of net increase was negligible, with an increase from 314 registered employers on 1st April 2008 to 317 by 31st March 2009 (an increase of less than one per cent).
- The year-on-year net increase in registered employers has slowed considerably in 2008-9, reflecting changes in the market, which include some consolidation in the latter half of the year.
- In the 2009-10 retention process, nearly forty per cent of registrants did not meet their legal duties to pay their retention fee by 1st April.

### **The majority of dispensers and employers meet our standards**

- Only a small proportion of dispensers and employers are involved in complaints referred to the Hearing Aid Council.
- There are some repeat offenders, and some dispensers and employers who are found guilty of breaching the same standard on a number of different occasions.

### **Number of complaints has halved**

- The Hearing Aid Council received 68 complaints in 2008-9 compared to 133 in 2007-8 and 76 in 2006-7. This reduction is to be welcomed. There may be a number of factors that have influenced this, and it is not possible to identify which were most important. The Investigating Committee hopes that strategic work by the Hearing Aid Council since 2005 may have impacted in some way on this reduction.
- Despite this reduction, the number of complaints per registrant is still higher for Hearing Aid Dispensers than for other regulated healthcare professionals. In 2007-8, for instance, the Health Professions Council received 422 allegations (complaints) and regulated 177,000 individuals (a rate of 0.23 per cent). In 2008-9, the Hearing Aid Council received 68 complaints and 1863 registrants<sup>4</sup> (a rate of 3.65 per cent).
- Minor issues of clinical practice continue to represent a large proportion of complaints and disciplinary work. In 2008-9, around forty per cent of Disciplinary Cases involved poor quality audiometric testing, down from forty eight per cent in 2007-8. These cases, breaches of clause 9 of the Code of Practice, involved dispensers who failed to follow British Society of Audiology recommended procedures, or failed to record in the client notes the reason why they departed from these procedures.
- In a quarter of 2008-9 Disciplinary Cases, consumers were not treated fairly, a similar level to 2007-8. In 2008-9, eight cases (twenty per cent of the total) involved failure to give 'best advice' or failure to make the client aware that an aid would not be of use to them.

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<sup>4</sup> Includes registered employers and registered dispensers. The Health Professions Council only registers individuals).

**Complaints are made by consumers and their families**

- The majority of complaints are made by consumers or their families. In 2008-9, fifty four of the sixty eight complaints were made by this group. This level of consumer referral was similar to previous years. However, it is in contrast with other healthcare professionals, where the majority of referrals are from employers.

**Complexity and seriousness of caseload continues to grow**

- In 2008-9, twelve cases (out of a total of forty) involved poor ethical practice or failure of management action by a registered employer<sup>5</sup>. This is up from two out of twenty cases in 2007-8. This is a change in the case load from ten per cent in 2007-8 to thirty per cent in 2008-9.
- In 2008-9, six of the forty Disciplinary Cases resulted in suspension or erasure from the Council's Registers, the most serious sanction available and used only in the most serious cases. This compares with two erasures from twenty cases in 2007-8.

**Poor record keeping continues to be an issue**

- In around half of all Disciplinary Cases, the responding dispenser or employer is unable to give the age or date of birth of the consumer involved.
- In around ten per cent of cases, dispensers and employers have been sanctioned for failing to provide records when asked by the Council.
- The requirements placed on dispensers (and their employers) in relation to the keeping and management of client records will significantly increase following transfer to the Health Professions Council.

There are some common threads across the three annual complaints reviews published by the Council since 2006-7, reflected in the findings outlined above. These findings also raised some concerns with the Council as a regulator, and it is important that these are set out for both consumers and the dispensing profession.

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<sup>5</sup> Cases involving a found breach of clauses 1, 2 or 12 of the Code of Practice.

## Key issues of regulatory concern

This is the third Annual Complaints Review published by the Hearing Aid Council. It is one of a number of documents in which the Council has set out why we regulate, what we hope to achieve from regulation, our key concerns as a regulator and the evidence underlying these concerns, and the focus of the Council's regulatory work.

A significant strategic document for the Council is our Statement of Regulatory Intent (SORI). This was developed from analysis underpinning previous complaints' reviews and from work with key stakeholders in the dispensing profession, groups representing hearing aid users and people experiencing hearing loss.

Through these documents, the Council has identified for consumers and the dispensing profession the areas of poor performance. It has set out where we want to see improvements in clinical practice and commercial arrangements. The Council has set out where we intend to focus the use of our resources to ensure that hearing aid consumers are treated safely and fairly.

In this section, the Council sets out some of these areas and relates them directly to the analysis undertaken for this complaints review. There are five key issues of regulatory concern arising from the analysis undertaken for this report. These are:

- client records and data protection;
- poor quality of audiological care;
- best advice;
- unethical behaviour; and
- perception of 'lighter touch' regulation in the future.

Each of these concerns is discussed in the following sections.

### Client records and data protection

In its 2007 Annual Complaints Review, the Investigating Committee raised two related areas of regulatory concern. These areas were based on an analysis of complaints received over the previous year, and covered:

- the quality of records held by dispenser and dispensing companies concerning the hearing health of their clients; and
- the governance and management arrangements in place to ensure that data held on clients is managed in line with the requirements of the Data Protection Act 1998 and best practice.

In its 2007 review, the committee set out the basis for its assessment of poor standards and gave guidance on what would be expected in terms of client records and data protection. Despite this, the quality and coverage of client records held by dispensers involved in the investigative process remains poor. So, for example, in 2008-9, over half of those dispensers involved in investigations were unable to provide basic information on those clients that had made complaints, including the age and date of birth. Further, a number of dispensers and one employer have recently been found guilty by the Disciplinary Committee of failure to keep and provide records<sup>6</sup>. In the most recent case, on 21st April, Hidden Hearing was fined £4500 for failing to provide audiological records about the care of clients involved in complaints against dispensers employed by that company. Similarly, in November 2008, Hearing Health Ltd was fined £1500 for failing to provide records when requested and in June 2008, Darren Malone was erased from the Register for similar offences.

The Investigating Committee is disappointed that, on the face of our experience in 2008-9, it seems that there has been little or no improvement in the quality of client records. The quality of client records is important for three reasons:

- It is evidence of high quality clinical care.
- It enables continuing professional development.
- The requirements placed on dispensers in terms of record keeping will increase significantly when our register is transferred to the Health Professions Council.

Each of these reasons is explored in more detail below.

### **1. Evidence of high quality clinical care**

Good quality records are the cornerstone of high quality clinical care. Good quality records enable continuity of care for clients, both in terms of their ongoing relationship with an individual dispenser but also where there is a change in the responsible dispenser. They enable dispensers and others to:

- understand previous clinical decisions;
- track changes in the nature and extent of hearing loss over time;
- ensure aids recommended are appropriate and can maximise an individual's hearing gain; and
- ensure that future diagnosis and treatment planned is appropriate and rooted in evidence.

Further, good quality client records enable dispensers to demonstrate to others (including regulators) why they have made decisions and recommendations. All healthcare professional regulators (including the Hearing Aid Council) give significant

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<sup>6</sup> See appendix for details.

weight to the recollections of the client, for whom the purchase of an aid is a unique event, as opposed to the memory of a dispenser.

## **2. *Enabling continuing professional development***

Continuing professional development (CPD) is a process by which professionals reflect on their practice and undertake education and training to maintain their clinical standards and develop their practice.

The Hearing Aid Council has required all dispensers to meet standards of continuing professional development since April 2005. Meeting these requirements is necessary to maintain registration as a Hearing Aid Dispenser. Similarly, the Health Professions Council sets standards of continuing professional development which all its registrants must meet in order to maintain their registration.

A key part of continuing professional development is reflective practice. Reflective practice involves a healthcare professional thoughtfully considering their own experiences in applying knowledge to practice. It has been described as an unstructured approach directing understanding and learning, a self-regulated process, commonly used in health and teaching professions.

Clinical audit is a significant tool in terms of reflective practice. Clinical audit is a "quality improvement process that seeks to improve patient care and outcomes through systematic review of care against explicit criteria and the implementation of change"<sup>7</sup>. As such, CPD is dependent on clinical audit and good clinical audit requires high quality client records.

## **3. *Client records as 'health records'***

There are legal and regulatory standards that all dispensers will need to comply with following the dissolution of the Hearing Aid Council and transfer of responsibilities to the Health Professions Council. Currently, all dispensers are required to comply with the general provisions of the Data Protection Act 1998 and with the specific requirements set out in the Code of Practice 2008. However, additional provisions within the Data Protection Act and the standards required by the Health Professions Council will increase the requirements placed on dispensers and their employers.

The legal obligations arise from s69 of the Data Protection Act and from the Access to Health Records Act 1990. Section 69 of the Data Protection Act extends the definition of 'health professional' to anyone registered with the Health Professions Council (s69(1)(h)). As such, records that relate to the physical or mental health of an individual which has been made by or on behalf of a health professional in connection with the care of that individual are deemed to be 'health records' under the Data Protection Act. The impact of this is that any data that are held in a health record are considered to be sensitive personal data and, in addition to the general

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<sup>7</sup> Principles of best practice in clinical audit (2002) National Institute of Clinical Excellence

provisions of the Act (to which dispensers and dispensing companies should already be complying) dispensers and their employers will need to comply with the specific requirements set out in schedule 3 to the Act.

In addition, the provisions of the Access to Health Records Act 1990 (and the additional provisions in the Data Protection Act relating to access to health records) will also apply. Over and above the access rights that individuals already have in terms of the data that might be held on them, this Act gives additional rights to access and places requirements on relevant professionals to provide explanations of the records held.

The Health Professions Council then sets standards in relation to how health records are maintained. These are set out in standard 10 of the Standards of Conduct, Ethics and Performance and also in the generic standards contained within the Standards of Proficiency.

### **Quality of audiological care**

A core function of dispensing is audiological diagnosis and treatment planning: the assessment and testing of the nature and extent of a person's hearing loss and the making of recommendations as to the model, power, function, fit and programming of a hearing aid in order to maximise that person's hearing gain. As well as being core to dispensing, the diagnosis and treatment planning functions also pose the greatest clinical risks to consumers.

As diagnosis and treatment planning are such core functions of dispensing, it is perhaps to be expected that issues relating to audiological care will be a significant part of the Council's disciplinary work. So, for instance, in 2007-8, almost fifty per cent of disciplinary cases involve breaches of clause 9 of our Code of Practice, which relates to the quality of audiometry (testing someone's hearing). In 2008-9, this figure was just under forty per cent. Clause 9 covers the most basic of minimum standards in relation to audiometry. It is therefore disappointing that the proportion of disciplinary cases involving this clause is so high, though perhaps encouraging that there has been a fall over the period.

### **Best advice**

One of the few principle-based regulations governing the dispensing of hearing aids in the UK is clause 3: the requirement that dispensers give best advice to clients with regards to their hearing aids and use. Best advice means that dispensers should take action to ensure that they:

- give the highest level of audiological care they can;
- should make recommendations on aids that take account of:

- the nature and extent of a person's hearing loss
- their lifestyle and means
- their overall health and well being; and
- their likely usage of the aids.

Between one fifth and one quarter of our disciplinary cases involve breaches of clause 3.

### **Ethical behaviour**

Dispensers are in a position of trust when they dispense hearing aids. The trust given by clients includes:

- trust that the dispenser is competent to assess and test their hearing;
- trust that the aids recommended by the dispenser are right for the client, in terms of their hearing loss, their needs and lifestyle and their budget;
- trust that the dispenser will not take advantage of the vulnerability of the client, the vast majority of whom are elderly and have suffered with hearing loss for some time; and
- trust when the dispenser visits the home of the client.

In 2008-9, the Disciplinary Committee found against dispensers in nine cases where trust had been broken or where the dispenser acted in such a way as to question their ethical behaviour. In one case, for example, a dispenser was found to have falsified a training record and thereby someone's eligibility to register. In that case, held in June 2008, the dispenser was admonished.

In another case, held in November 2008, a dispenser was erased having been found guilty of frequently selling second-hand aids as new ones and defrauding his employer of money from these sales.

### **'Lighter touch' regulation under the HPC**

On a number of occasions recently, it has been suggested that the Health Professions Council will be a 'light touch' or allow self regulation of dispensers. The suggestion has been made that the Health Professions Council will let dispensers 'get away' with more than under the Hearing Aid Council.

Further, concern has also been raised about the possible impact on standards of the end of specific regulation of employers of dispensers and the introduction of a voluntary code of conduct governing commercial issues related to the dispensing of hearing aids.

While these might be the views of a small minority of dispensers and employers, the Hearing Aid Council believes it is essential to make it clear that the Health Professions Council takes very seriously the level of trust it places in the professions it regulates

and takes all reasonable, appropriate and proportionate action where that trust is breached. The Health Professions Council publishes the outcome of disciplinary cases involving its registrants via its website.

It is, of course, impossible to make comparisons between the two different regulatory regimes operated by the Hearing Aid Council and the Health Professions Council. Not only is there a significant difference between the serious misconduct powers of the Hearing Aid Council and the fitness to practise powers of the Health Professions Council, there are also differences in the range of sanctions available to each body. The tables below list the sanctions available to each of these regulators, in ascending order (less serious sanctions first).

<b>Hearing Aid Council</b>
No sanction
Admonishment
Fine (up to £5000 per breach)
Suspension
Erasure

**Table 1: Sanctions available to Hearing Aid Council's Disciplinary Committee**

<b>Health Professions Council</b>
No sanction
Send case for mediation
Caution order
Conditions of practise order
Suspension
Striking Off

**Table 2: Sanctions available to Conduct and Competence Panel of Health Professions Council**

However, an examination of one area of disciplinary work, around ethical conduct, might help to displace any belief that the Health Professions Council is a 'lighter touch' compared to the Hearing Aid Council.

## Recommendations

The Investigating Committee, based on the analysis undertaken for this review and taking account of the concerns raised in the previous section, have a number of recommendations. These recommendations are for:

- the Hearing Aid Council, with regards to its policy and preparation for the transfer of its functions to the Health Professions Council; and
- the dispensing profession (including professional bodies, dispensing companies and individual dispensers). These recommendations are focused on the profession's continuing development and its preparation for regulation by the Health Professions Council.

### Policy recommendations for the Hearing Aid Council

#### ***Recommendation 1: No changes to Statement of Regulatory Intent***

The Hearing Aid Council published a Statement of Regulatory Intent 2007-9 in June 2007. This statement sets out the key issues of concern to the Council and the work it proposed to undertake to improve standards across the profession.

As part of its consideration of the analysis and findings arising from this review, the Investigating Committee has considered whether any changes to the Statement of Regulatory Intent are warranted. A similar review was undertaken by the Council's Strategy Executive Committee when it considered the analysis and findings in June 2009. Neither committee considered that this work suggested changes to the Statement of Regulatory Intent. The Investigating Committee therefore recommends that the Statement of Regulatory Intent be re-adopted for the remainder of the Council's lifetime.

#### ***Recommendation 2: Feedback and support to dispensing companies and professional bodies***

Documents such as this review are published by the Hearing Aid Council for two reasons. First, the information contained within this report and others helps consumers to make informed choices about their hearing health. Secondly, the information helps the dispensing profession to improve standards of clinical and commercial practice.

To achieve this second objective (to improve standards), it is essential that the dispensing profession identifies and understands the implications of this work and implements appropriate changes to practise to address the issues raised. To facilitate this, the Investigating Committee recommends that resources within the Council's policy and communication budget be used to provide feedback on this review to dispensing companies and professional bodies.

***Recommendation 3: Information to registered dispensers***

In addition to providing feedback and support to dispensing companies and professional bodies, it is also important that individuals dispensers know where and how to access the information in this report. The Investigating Committee therefore recommends that sign-posting information to this report is included in the next mail-shot to registrants.

***Recommendation 4: Continuing Professional Development (CPD) audits***

In 2009-10, the Hearing Aid Council will be undertaking two CPD audits. The first will be conducted on a random sample of two and a half per cent of dispensers and will be conducted on compliance in 2007-9 against the old CPD standards. In December 2009, the Council will conduct an audit including five per cent of all registrants. This audit will be focused on the new CPD standards, introduced in April 2009. The purpose of this audit is not to audit compliance but rather progress any key issues faced by registrants in meeting the new standards.

CPD is core to how dispensers take on board the analysis contained in this report and use it as part of their reflective practice and planning their CPD programme. The Investigating Committee is keen that the CPD audit teases out the extent to which information produced by the Council is helpful to dispensers in their reflective practice and recommend that this is included in the review process.

***Recommendation 5: Review of complaints referred in 2008-9***

To date, the Investigating Committee has published three annual complaints' reviews. This review covers the period 2008-9. There is a further year before the dissolution of the Hearing Aid Council by 31<sup>st</sup> March 2010, during which the Council will continue to meet its statutory duty to consider complaints referred to it by consumers, dispensing companies, other public bodies and others. The Investigating Committee therefore recommends that a fourth and final annual complaints review is published, based on analysis of complaints received in 2009-10.

**Practice*****Recommendation 1: Reflective practice***

A core part of Continuing Professional Development is reflective practice: reflecting on your experience to improve action and professional practice. There are a number of ways of undertaking reflective practice: self and peer assessment, problem-based learning, personal development planning and group work can all be used to support a reflective approach. Underpinning each approach should be evidence of the dispenser's experience as a practitioner, and information contained in clinical audits and in reports such as this one are obviously key parts of this evidence-base.

The Investigating Committee therefore recommends that all dispensers read this report and reflect on whether the issues raised here are relevant to their individual practice.

As well as individual CPD and practice development programmes, dispensers may often attend company-wide training sessions or programmes organised by professional bodies. In developing such programmes, the Investigating Committee recommends that dispensing companies and professional bodies reflect on the information contained in this report and the concerns raised, to ensure their programmes are focused on the key issues that need improvement.

***Recommendation 2: Prepare for life with the Health Professions Council***

There are nine months from the publication of this report to the dissolution of the Hearing Aid Council. On 1<sup>st</sup> April 2010<sup>8</sup>, dispensers will be registered with and regulated by the Health Professions Council. At that point, dispensers will be required to be fit to practise, and to meet the:

- Standards of Proficiency for Hearing Aid Dispensers;
- Standards of Ethics, Conduct and Performance; and
- Standards of Continuing Professional Development.

The Standards of Ethics, Conduct and Performance and the Standards of Continuing Professional Development are common to all professions regulated by the Health Professions Council and have been available for some time. The Standards of Proficiency for Hearing Aid Dispensers were formally consulted upon and agreed by both the Hearing Aid Council and Health Professions Council, and subsequently published in April 2009.

The Investigating Committee therefore recommends that all dispensers take time as soon as possible to read, understand and ensure they can follow these standards. Where some changes to practice might be necessary, the committee recommends that dispensers take time to implement these changes in time for the transfer, rather than waiting for the transfer to happen before reflecting on whether changes are necessary.

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<sup>8</sup> Subject to Parliamentary consent and the outcome of the Department of Health's consultation on the future regulation of hearing aid dispensers.

## Analysis underpinning this report

### Register Information

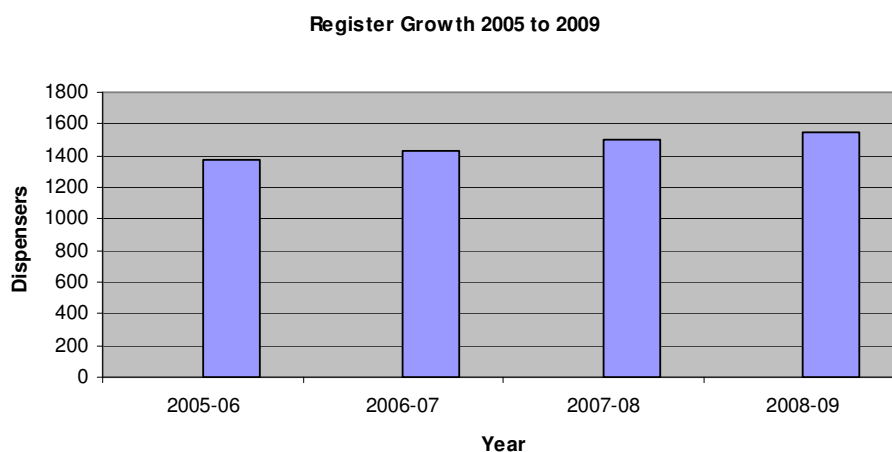
#### About the registers

The Hearing Aid Council has a statutory duty to maintain two registers, a register of persons acting as dispensers of hearing aids (known as the Register of Hearing Aid Dispensers) and a register of persons employing persons to act as dispensers of hearing aids (known as the Register of Employers). Only individuals registered with the Council can lawfully act as dispensers of hearing aids in the UK, and only individuals or organisations registered with us can employ persons to act as dispensers.

This first part of this review was concerned with the composition of these registers during the year. It involved a 'snapshot' of each register at 1<sup>st</sup> April 2008 and also at 31<sup>st</sup> March 2009, as well as analysis of changes over the year. Data were sourced from the Hearing Aid Council's electronic register, Concept.

#### Registered Hearing Aid Dispensers

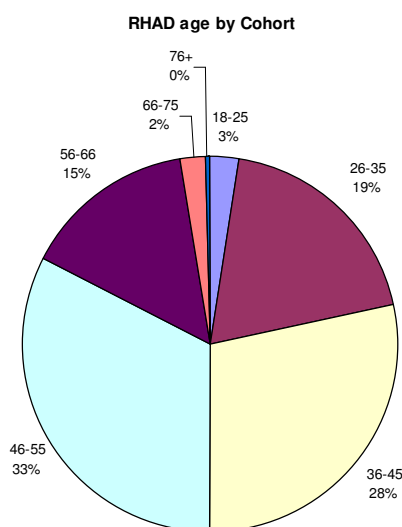
At 1st April 2008, 1501 individuals were registered as Hearing Aid Dispensers (RHADs). Over the year, there was a net growth in individuals registered with us and 1546 individuals were registered at 31st March 2009. This presents as a three per cent net growth over the year. This level of net growth is roughly in line with that experienced in each year since April 2005: by a net three per cent in 2005-6, net four per cent in 2006-7 and net 4.5 per cent in 2007-8. This net growth is illustrated in figure 1 below.



**Figure 1: Annual net growth in registered hearing aid dispensers, 2005 to 2009**

In terms of gender of registrants, the Register is still dominated by men, with 74% (1138 registrants) of RHADs being male and 26% (408 registrants) being female. There has been a slight increase in the proportion of registrants who are women, from 24 per cent at 31st March 2008 and from 23 per cent at 31st March 2007 (408 female registrants at 31<sup>st</sup> March 2009, 369 at 31<sup>st</sup> March 2008 and 330 at 31<sup>st</sup> March 2007).

The average age of the register remains around the 45 years, roughly in line with the figure presented in the previous two reports. Figure 2 presents a breakdown of RHAD age by cohort.



**Figure 2: Dispensers by age band at 31st March 2009**

### Changes over the year

The Hearing Aid Council has a statutory duty to set Standards of Competence for registration as a Hearing Aid Dispenser: minimum standards of education, training and competence required before an individual is deemed to be able to act in a safe, effective and clinically competent manner when dispensing hearing aids. These standards were changed on 31<sup>st</sup> March 2008, and provide four routes to registration as a Hearing Aid Dispenser:

- completion of an approved degree in hearing aid dispensing/audiology;

- completion of a company-based training route (for individuals notified to the Council before 31<sup>st</sup> March 2009 as undergoing training to become a hearing aid dispenser);
- successfully passing an aptitude exam or adaptation period (for individuals with relevant training, education and experience gained in other audiology professions or outside the UK); and
- re-registering as a dispenser, where the individual has voluntarily removed their name from the register within the previous three years or on instruction from the Disciplinary Committee considering an application for restoration under s8 of the Hearing Aid Council Act 1968 (as amended).

The most significant change introduced in the 2008 standards was the introduction of a minimum qualification threshold for registration at foundation degree level. The introduction of the foundation degree qualification in hearing aid dispensing/audiology is a significant step-change in the training of hearing aid dispensers, and one that has been highlighted in the Hearing Aid Council's Annual Report 2007-8. In addition to the introduction of this route to registration, the Hearing Aid Council's Education, Training and Examining Body Committee also approved eight other degrees as routes to registration.

In terms of those individuals registering during 2008-9, 156 individuals who joined the register were newly registering as Hearing Aid Dispensers during the year and 13 individuals re-registering (for instance, where they had previously voluntarily removed their names from the register). A majority of those registering for the first time qualified for registration via the company-based training route identified above. However, the proportion joining from this route reduced significantly over previous years, with many more individuals joining because they had qualified with a degree approved by the Council or having passed an aptitude exam. A further five individuals had their names restored to the register on the instruction of the Disciplinary Committee.

The Hearing Aid Council Act 1968 (as amended) and the Council's Registration Rules 2007 (made pursuant to s2 of the Act) set out the ways in which individuals might be removed from the registers. These include when a Registered Hearing Aid Dispenser:

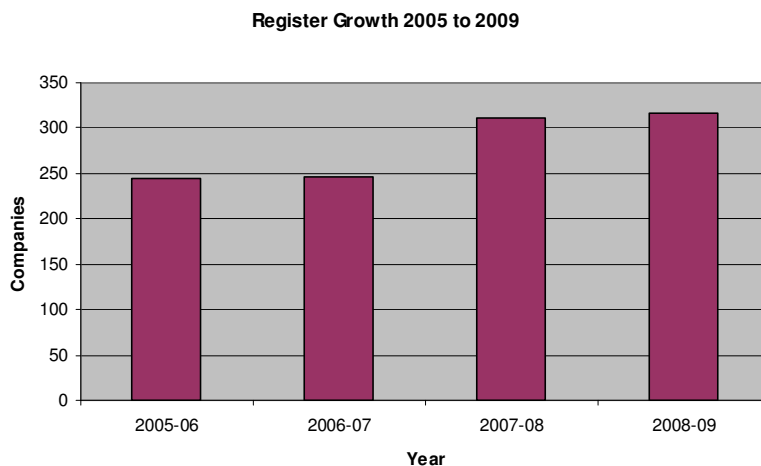
- passes away;
- voluntarily removes their name from the Register, for instance, when they retire or move out of the dispensing profession;
- is removed for non-payment of their retention fees or failure to provide annual retention information; or
- on the instruction of the Disciplinary Committee, pursuant to s7 of the Act.

In terms of those leaving the register, during 2008-9 one Registered Hearing Aid Dispenser passed away, 72 RHADs voluntarily removed themselves from the Register during the period; 50 RHADs were removed for non-payment of retention fees; and six

were removed on instruction of the Disciplinary Committee (four were erased and two were suspended).

## Registered Employers

At 1<sup>st</sup> April 2008 there were 314 Registered Employers and by the 31<sup>st</sup> March 2009 there were 317 Registered Employers. This presents as a net two per cent growth, down from the level of growth between 2006 and 2007. Figure 3 below illustrates this yearly change.



**Figure 3: Net growth in number of registered employers, 2005 to 2009**

A number of factors may affect the net change in the number of registered employers. These include implementation of, or changes in, the business strategy of dispensing companies as well as the impact of the current recession. These factors are largely outside the control of the Hearing Aid Council and are not issues that it routinely monitors.

Unlike with individuals registered as hearing aid dispensers, there are no qualifications required for a person or body corporate to be registered as an employer of hearing aid dispensers. During the period, 29 employers were registered for the first time and three Employers were restored to the register. In terms of those leaving the register, 25 Employers removed themselves voluntarily and four were removed for non-payment of their retention fees. No employer was removed following the decision of a Disciplinary Committee.

### The 2009-10 retention process

Registered Hearing Aid Dispensers and Employers have a legal duty to pay an annual retention fee and provide registration information to the Hearing Aid Council by no later than the 1st April each year. It is the registrant's responsibility to ensure they provide the required information and pay the fees on time. The Council is required to remove from its

registers the names of those individuals and employers who do not fulfil this legal requirement and following proscribed notices.

Notice of the level of retention fees for 2009-10 was published on the Council's website in January 2009 and each registrant was sent a retention pack on 23rd February 2009. The retention pack included information on the level of retention fees, the registration information required and outlined the consequences of failure to pay.

In 2009-10, just over sixty per cent of registrants met their legal duty to pay their retention fee and provide registration information by 1st April, a similar level to that in the 2008-9 retention process and the 2007-8 retention process.

On 16th April, a first reminder letter was sent to all those registrants that had not submitted their retention fees or the registration information required. A small number of registrants had submitted registration information that had been returned to them, usually because they had not completed the continuing professional development declaration or had failed to sign the other declarations required of them. Following this first reminder, the proportion of registrants who had paid their retention fees increased to just over 80 per cent of the c1800 individuals and organisations registered with the Council.

On 1st May, the final reminder letter was sent to those registrants who still had not paid their retention fee or submitted the registration information required of them. This was sent to some 200 individuals and organisations. The Registration Rules require that these letters must be sent by recorded delivery, and the costs involved in doing this were well over £1000 (equivalent to 55p on the annual retention fee).

By 1st June, sixty seven registrants had still not submitted their registration information or paid their retention fee, of whom thirteen were the subject of a formal investigation or disciplinary action by the Council. On 1st June, forty three individuals and eleven employers were removed from the registers for non-payment.

Next year, all dispensers will be required to submit registration information and a retention fee to the Council's successor body, the Health Professions Council. The Health Professions Council has a slightly different approach to the annual retention process, as it does not send reminders to those registrants who have not paid by the registration date. Any individual who fails to pay the retention fee or submit their registration information by the prescribed date will be removed from the Register of Hearing Aid Dispensers. While the HPC process is different, it should be of concern to the dispensing profession that potentially forty per cent of dispensers would have been removed from our registers if done so under Health Professions Council rules on 2nd April. The legal, professional and financial consequences of arising from this risk are so significant that the relevant professional bodies have been asked to consider what actions they might take to improve payment levels.

## Complaints

The Hearing Aid Council has a statutory duty to consider complaints made against dispensers and employers. This duty covers any complaint made which might involve conviction of a serious criminal offence, serious misconduct in the dispensing of hearing aids or training of individuals to act as dispensers of hearing aids, or a breach of the regulations governing the dispensing of hearing aids in the UK (the Council's Code of Practice 2008).

Complaints made that are outside the Hearing Aid Council's statutory remit are not considered. The largest number of such complaints relates to requests for refunds. As with the purchase of any good or service, hearing aid consumers have statutory rights in relation to refunds, and these rights cannot be waived or restricted. During the year, the Council published guidance on this issue, and it was also the subject of a lengthy article in BSHAA's magazine (the membership magazine for the British Society of Hearing Aid Audiology, one of the professional bodies for hearing aid dispensers).

Data included in this review were sourced from the Hearing Aid Council's Legal Contractors, Iodem Health Limited. Data sourced covered the period 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2009. The data included in this review only include those complaints covering matters that were within our jurisdiction.

Complaints made against dispensers and employers are handled in a two stage process, set out in our enabling legislation. The first stage is the Investigating Committee (IC). The IC is charged with the preliminary investigation of complaints to determine whether, prima facie, there is sufficient reason to warrant a referral for disciplinary proceedings. The second stage is the Disciplinary Committee. This is a civil tribunal, and consists of at least three members of the Council (excluding those involved in the Investigating Committee decisions on the case before them).

### Investigating Committee

#### ***Background***

The Investigating Committee (IC) is a statutory committee of the Hearing Aid Council and is charged with the preliminary investigation of all complaints received concerning either a RHAD or a Registered Employer. The IC consists of three members of the Council, one of whom must be a registered hearing aid dispenser, one a medical/technical member and the third a consumer.

The committee's work is governed by the Investigating and Disciplinary Committee Rules 1991 secondary legislation made by the Lord Chancellor under delegated authority from Parliament. Its function is to undertake a preliminary investigation to determine whether a case should be referred to the Disciplinary Committee. In making

this determination, it considers written submissions from the complainant, the audiological records and other client-related information submitted by the dispenser or registered employer, and written statements from the dispenser or registered employer. Audiological records are reviewed by an external screener before being considered by members of the Investigating Committee. The IC meets in private session and its decision making is confidential. This is right and proper, and reflects natural justice as dispensers and employers are innocent until the case is proved against them in front of the Disciplinary Committee.

### Number of complaints

During 2008-9, 68 complaints were received by the Council that were within its jurisdiction. This number was down from 133 in 2007-08 and 76 in 2006-07. Relative to the number of hearing aid dispensers on our register, the number of complaints per registered hearing dispenser has changed significantly over the last three years. Table 3 below illustrates this change,

	2006-7	2007-8	2008-9
Open at beginning of year	90	21	37
New complaints received	76	133	68
Cases closed ( <i>of which</i> )	162	131	68
<i>Referred to Disciplinary Committee</i>	37	51	27
<i>Without further action</i>	125	80	41
Open at end of year	21	37	37

**Table 3: IC workload, 2006 to 2009<sup>9</sup>**

Although there has been a significant reduction in the number of complaints received in 2008-9 compared to previous years, the level of complaints is still considerably higher than those received by the Health Professions Council. Table 4 below illustrates the difference between the number of complaints received by the Hearing Aid Council and the Health professions Council.

The profession regulated by the Health Professions Council with the highest level of complaints per registrant is paramedics. In 2007-8, paramedics accounted for 94 allegation cases and there were 13,624 registered paramedics (a rate of 0.69 per cent).

<sup>9</sup> Numbers do not add up as there is a complex relationship between number of complaints, and registrants involved, charges and cases.

Year	Health Professions Council <sup>10</sup>			Hearing Aid Council		
	Complaints	Registrants	Rate	Complaints	Registrants	Rate
2006-7	322	177,230	0.18	76	1681	4.52
2007-8	422	178,289	0.24	133	1815	7.32
2008-9	483	185,554	0.26	68	1863	3.65

**Table 4: Comparative rates of complaints for HAC and HPC, 2006-7 to 2008-9**

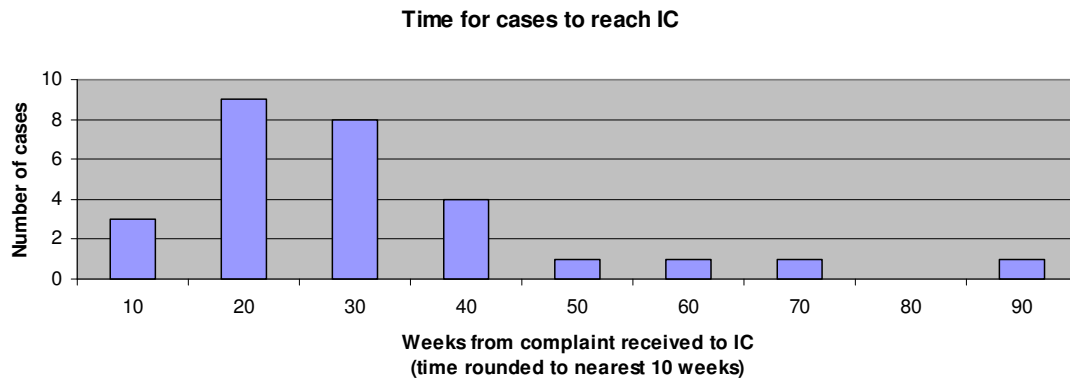
During 2008-9 the IC met nine times. At 1st April 2008, 37 cases were open and by the end 37 cases were open. The IC received 68 cases during the period; it closed 68 cases, of which 41 cases were closed with no further action and 27 were referred to the Disciplinary Committee. This means that around forty per cent of cases were referred for disciplinary proceedings. This figure is in line with the referral rate for 2007-8 and higher than the referral rate for 2006-7 (when around a quarter of cases were referred for disciplinary proceedings).

This referral rate is lower than the equivalent rate for the Health Professions Council: in 2007-8, 62 per cent of cases considered by the Investigations Panel were found to have a 'case to answer' and were referred to either the Competence and Conduct Panel or the Health Panel. However, the case to answer rate for allegations made by the public to the Health Professions Council was lower at 29 per cent.

On average, it took around twenty eight weeks for a complaint to be investigated and a decision to be made by the IC on whether or not to refer for disciplinary proceedings. This average time was slightly higher than in 2007-8 and in 2006-7, and in part reflects an increase in the complexity and seriousness of complaints being considered by the committee. Figure 4 below gives more detailed information on the average time taken from a complaint being received by the Council to a decision by the Investigating Committee. This average turn-around time is slightly shorter than the equivalent time taken by the Health Professions Council. In 2007-8, it took an average of thirty two weeks for the Health Professions Council to process an allegation (complaint) from receipt to a decision on whether to refer by the Investigation Panel<sup>11</sup>.

<sup>10</sup> Fitness to practise annual report 2007-8 (2008) Health Professions Council

<sup>11</sup> Ibid.



**Figure 4: Average Time for Cases to Reach Investigating Committee**

### Complainants

In terms of who complains to the Council, 54 of those complaints were received from members of the public, nine were referred from the Registrar, three were referred by Registered Employers, and two were from other public bodies (in both cases, local authority trading standards departments).

As noted in previous reviews, this profile is different to most other healthcare professionals, where the majority of referrals to the relevant regulator are made by employers and not by members of the public. The three referrals received from registered employers, as a proportion of overall complaints, is a marked increase on previous years. However, it is still significantly below the level received by other healthcare professional regulators, such as our successor body the Health Professions Council (although some professions regulated by the Health Professions Council do have similar or higher proportions of overall complaints made by the public).

Of the 54 public complaints, 37 of those were from male complainants and 16 from female complainants. There was one complaint where the gender of the complainant was not recorded. Where the gender of the complainant was known, almost seventy per cent of complaints were made by men in 2008-9, compared to 55 per cent in 2006-7. This proportion was not recorded in 2007-8.

## **Disciplinary Committee**

### ***Background and powers***

The Disciplinary Committee (DC) is a statutory committee of the Hearing Aid Council and is constituted pursuant to s6 of the Hearing Aid Council Act 1968 (as amended). It is a civil tribunal, and its role is to consider charges referred by the Investigating Committee and evidence submitted by registrants and others. As with most civil tribunals, the presumption of the Disciplinary Committee is that the defendant is innocent unless those acting for the Council can prove (on a civil burden of proof) that the registrant before it has:

- “been convicted by any court in the United Kingdom of any criminal offence, which renders him unfit to have his name on the register;
- is judged by the Disciplinary Committee to have been guilty of serious misconduct in connection with the dispensing of hearing aids or the training of persons to act as dispensers of hearing aids; or
- is judged by the Disciplinary Committee to have contravened the Code of Practice <sup>12</sup>.

To ensure that the Disciplinary Committee acts in a fair, unbiased, proportional and legal manner, a legal assessor is appointed to support both the committee and the registrant.

The Disciplinary Committee meets in one of two ways. In some instances, there is agreement between the Council and the registrant involved around the facts of the case and the charges set out. In such cases, the registrant might want to submit some form of mitigation, providing some form of explanation as to why they broke the rules. In such circumstances, the Disciplinary Committee might consider the case as a Fast Track. They will take account of registrants’ acceptance of the facts of the case and the charges levelled against them (although, as with any court, they might still find that the charges have not been proven) and will take account of the mitigation offered by the registrant.

Where there is not agreement between the Council and the registrant as to the facts of the case, or where the registrant does not accept the charges laid against them, the Disciplinary Committee will hear the case in full. This means that both the Council and the registrant have an opportunity to present their case in front of the committee.

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<sup>12</sup> Section 7, Hearing Aid Council Act 1968 (as amended).

In addition to its role as a civil tribunal, the Disciplinary Committee also has a role to consider certain applications for registration as a hearing aid dispenser or employer. The Disciplinary Committee only considered applications for registration where:

- the applicant has previously been removed from either the register of hearing aid dispensers or register of employers following non-payment of retention fees;
- the applicant has previously been removed from either register following instruction by the Disciplinary Committee; or
- the applicant is appealing a decision of the Registrar to refuse an application for registration as a dispenser of hearing aids.

### **Sanctions**

When a case is proven against a registrant the Disciplinary Committee can impose a number of different sanctions. These sanctions are set out in s7 of the Hearing Aid Council Act 1968 (as amended). They are listed in terms of increasing severity. In line with other regulators, more severe sanctions should only be imposed in the most serious of cases. The sanctions available to the Disciplinary Committee are:

- admonishment;
- fine;
- suspension from the register; and
- erasure from the register.

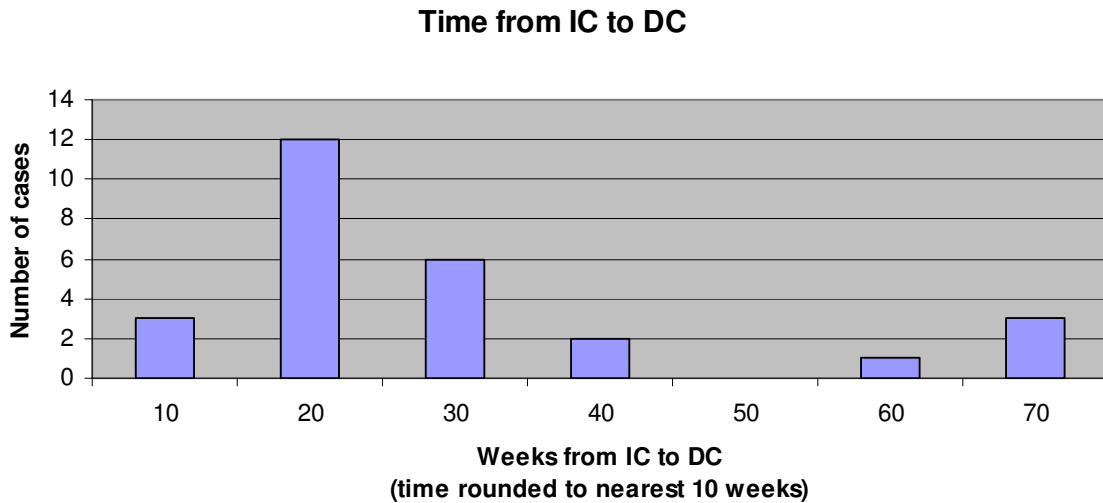
The committee may also halt proceedings if they believe there is no case to answer, decide to take no action even if the case is proven or find the registrant not guilty of the charges laid before them.

### **Workload**

During 2008-9, the Disciplinary Committee met **11** times and considered **40** cases. Of these forty cases, **35** involved individual Registered Hearing Aid Dispensers and **5** involved Registered Employers (one case involved Specsavers and four cases involved Amplifon). The key findings are:

- of the 40 cases heard in 2008-9, 29 disciplinary cases were considered as 'fast track' cases and the remaining 11 were considered in full;
- during 2008-9, the Disciplinary Committee met to consider eight applications for restoration to the registers. In each case, the application for restoration was made following the removal of that hearing aid dispenser or employer for non-payment of their retention fees; and
- on average, it took around 25 weeks from the decision of the Investigating Committee to refer a case to its being concluded by the Disciplinary Committee.

Figure 5 sets out the average times in more detail. The equivalent figure for the Health Professions Council is 50 weeks.

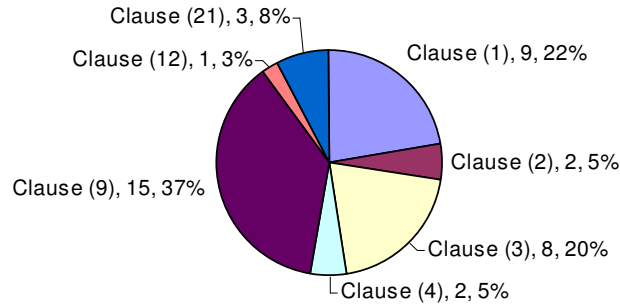


**Figure 5: Average time for cases from IC to DC**

**Charges found against registrants**

In each case considered by the Disciplinary Committee, responding registrants were charged with breaches of specific clauses in the Code of Practice. This Code sets out the minimum standards required of dispensers and their employers, and includes requirements in terms of ethics and conduct, management responsibility, clinical standards, commercial standards, training and supervision of students and responding to requests for information from the Council. Analysis conducted for this review found that the three major clauses breaches found at Disciplinary Committee are Clause 9 (Audiometry) with 15 clause breaches; Clause 3 (Best Advice) with 8 clause breaches; and Clause 1 (un-ethical behaviour) with 9 clause breaches. The chart overleaf illustrates the number of cases found against registrants by clause breach.

**Upheld DC charges by clause breach**



**Figure 6: Number of cases found against registrants by clause breach**

The pattern illustrates in the diagram above is similar to that for previous years. Table 5 compares the charges found by clause in 2007-8 compared to 2008-9.

	2007-8		2008-9	
	Number	Per cent	Number	Per cent
<b><i>Relationship with regulators</i></b>				
Clause 21	3	12.0	3	8.1
<b><i>Treating customers fairly</i></b>				
Clause 3	6	24.0	8	21.6
Clause 1	2	8.0	9	24.3
<b><i>Clinical practice</i></b>				
Clause 9	12	48.0	15	40.5
Clause 4		0.0	2	5.4
Clause 5	2	8.0		0.0
<b>Total</b>	<b>25</b>	<b>100</b>	<b>37</b>	<b>100</b>

**Table 5: Charges found at DC in 2007-8 and 2008-9**

### **Sanctions imposed by the Disciplinary Committee**

Of the 35 cases brought before the Disciplinary Committee concerning Registered Hearing Aid Dispensers in 2008-9, two were found not guilty. Of the 33 found guilty by the Disciplinary Committee:

- six were admonished;
- 21 were fined;
- two were suspended; and
- four were erased.

In addition, six Hearing Aid Dispensers agreed to undertake further training to address competency issues identified through the disciplinary process. These agreements are made as a 'qualifying promise' as set out in our regulations.

Our successor body, the Health Professions Council, has very different powers to the Hearing Aid Council in terms of its disciplinary processes. The Hearing Aid Council is concerned with serious misconduct: has the registrant breached our regulations or committed a serious criminal act. The Health Professions Council has 'fitness to practise' powers. It is not only concerned with whether its standards have been breached, but whether that breach affects the registrant's fitness to practise his or her profession.

These differences in disciplinary powers and sanctions make comparisons between the two regulators difficult. However, the Health Professions Council does have a similarly increasing severity in terms of its sanctions, and the proportion of different sanctions imposed on registrants in terms of this severity is of a similar level to the figures outlined above.

In terms of comparing the outcomes of the two processes undertaken by the Health Professions Council and the Hearing Aid Council, in 2007-8, around 45 per cent of all Health Professions Council's disciplinary cases resulted in the erasure or suspension of the registrant. The equivalent figure for the Hearing Aid Council in 2008-9 is fifteen per cent.

More significant in this comparison is the area of misconduct. In 2007-8, 26 of the 91 cases (28 per cent) concerning misconduct considered by a Conduct and Competence Panel of the Health Professions Council resulted in erasure. For the nine such cases considered by the Disciplinary Committee of the Hearing Aid Council in 2008-9, 4 resulted in erasure (44 per cent).

The table below sets out the outcome of the disciplinary process for the Health Professions Council in 2007-8<sup>13</sup>.

	Struck off	Suspension	Conditions of practice	Caution	No further action	Not found	Total
Misconduct	26	15	6	21	3	20	91
Lack of competence	0	10	1	4	0	2	17
Conviction caution	11	4	0	5	0	3	23
Health	0	5	0	0	0	1	6
Incorrect entry	0	0	0	0	19	0	19
Total	37	34	7	30	22	26	156

**Table 6: outcome of disciplinary process at HPC, 2007-8**

One of the key differences between the sanctions available to the Hearing Aid Council's Disciplinary Committee and the Conduct and Competence Panel of the Health Professions Council is in relation to fines. The Hearing Aid Council's Disciplinary Committee can impose fines: the HPC cannot. In terms of fines awarded in 2008-09, figure 7 below sets out in more detail the distribution of the financial penalties awarded against RHADs and Registered Employers during the period. The figure indicates that the significant majority of financial penalties (19 out of 21 fines) were lower than or equal to £1000.

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<sup>13</sup> Op. cit.

**Fines at DC**

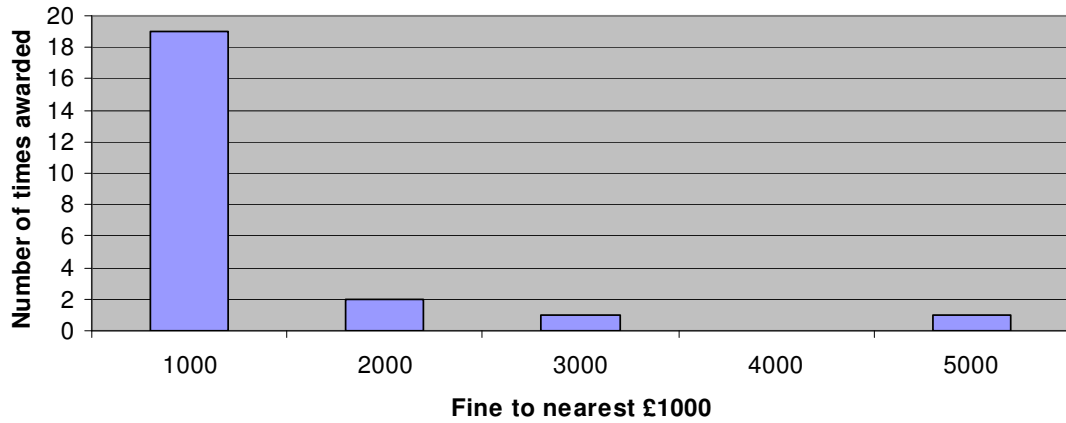


Figure 7

Finally, in relation to the five cases brought against registered employers, one involved Specsavers and four involved Amplifon. In each case, the employer was found to have breached our regulations. Two admonishments were imposed by the Disciplinary Committee and three fines were also imposed in relation to cases found against employers.

## Appendices

### DC Case by Case by Employer

Registrant	Date	Employer at time of events giving rise to charges (if appropriate)	Costs	Penalty	Qualifying Promise	Notes
<b>Relationship with Regulator</b>						
<b>Clause 21 – Failing to respond to Regulator’s requests for information</b>						
Amplifon	27/11/2008		£2000	£2000	None	
Amplifon	24/06/2008		£9328.32	Admonishment	None	Meeting re: costs from previous year
Christopher Elcocks	24/04/2008	Hidden Hearing	£1896.70	£1000	None	
<b>Clause 12 – Employer failing to alert regulator to possible breaches</b>						
Amplifon	24/04/2008		£2000	£1000	None	
<b>Clause 2 – Employer failing to alert regulator of un-ethical behaviour</b>						
Specsavers	24/03/2009		£2000	Admonishment	None	
<b>Treating Clients Fairly</b>						
<b>Clause 3 – Failure to give best advice</b>						
Stephen Barnes	18/03/2009	Amplifon	£0	Not Guilty	None	Case involved charges on clause 1 and 3
David Rayment	27/11/2008	Kind Hearing	£1500	£250	None	
Anthony Berg	19/08/2008	Amplifon	£2000	£500	None	
Eamon O’Neill	24/06/2008	St John’s Hearing	£2027.83	£1000	Yes	
Brian Bingham	24/06/2008	Hidden Hearing	£1996.33	£1000	None	
Richard Bell	24/06/2008	Amplifon	£2027.83	£500	Yes	
Geoffery Knowles	24/06/2008	Hidden Hearing	£2850.94	£1000	None	
James O’Neill	24/06/2008	St Johns Hearing	£1752.36	£500	Yes	
<b>Clause 1 – Unethical behaviour</b>						
Stephen Barnes	18/03/2009	Amplifon	£0	Not Guilty	None	Case involved charges on clause 1 and 3
Jason Saunders	09/02/2009	Specsavers	£33432.72	Erasure	None	
Michael Booton	27/11/2008	Amplifon	£13789.40	Erasure	None	
Russell Borland	28/06/2008	Regional Hearing Services	£12000	Suspension	None	
Darren Malone	26/06/2008	Amplifon	£969.30	Erasure	None	DC held in absentia of plaintiff
Andrew Harris	26/06/2008	Hidden Hearing	£4000	Admonishment	None	

Jonathan Hobbs	26/06/2008	Hidden Hearing	£8087.40	Suspension	None	
Michael Hobbs	26/06/2008	Hidden Hearing	£6467.03	£1000	None	
Victoria Dixon	25/06/2008	Specsavers	£10000	Admonishment	None	
Robert Maitland	25/06/2008	Specsavers	£5000	Erasure	None	
<b>Clause 4 – Failing to advise client that aid may not be of benefit</b>						
Ian Rogerson	19/08/2008	The Hearing Company	£2000	£300	None	
Bruce Sturdy	24/06/2008	Mansel Hearing	£2338.41	£500	None	
<b>Clinical Practice</b>						
<b>Clause 9 – Poor audiometry</b>						
Leonard Warne	09/02/2008	Hidden Hearing	£800	£500	None	
Andrew Bird	27/11/2008	Sole Trader	£750	Admonishment	None	
Dennis Holder	27/11/2008	Sole Trader	£2000	£750	None	
Samuel Rossiter	27/11/2008	Sole Trader	£2000	£500	None	
Frances Downing	25/09/2008	Amplifon	£2000	£2000	Yes	
Anthony Berg	19/08/2008	Amplifon		Admonishment	None	Case involved charges on clause 3 and 9
Jean Murphy	19/08/2008	Amplifon	£2000	£500	Yes	
Philip Ellams	24/06/2009	Hidden Hearing	£3091.19		None	Meeting re: costs from 2007-8
Eamon O'Neill	24/06/2009	St Johns		Admonishment	None	Case involved charges on clause 3 and 9
Brian Bingham	24/06/2008	Hidden Hearing		Admonishment	None	Case involved charges on clause 3 and 9
Sadie Brain	24/06/2008	Hidden Hearing	£5639.99	£500	None	
Stephen Toon	24/06/2009	Ambicare Hearing	£1131.90	£500	Yes	
Helen Tenwolde	24/06/2008	Sole Trader	£1800	£1000	None	
Stephen Roll	24/06/2008	Sole Trader	£3000		None	Meeting re: costs from 2007-8
Graham Day	24/04/2008	Sole Trader	£2000	£500	None	

## Statement of Regulatory Intent

### Treating consumers fairly and safely: statement of regulatory intent 2007-9

#### Background

The Hearing Aid Council is the statutory body that registers and regulates individuals and organisations involved in dispensing hearing aids in the UK. The Council exists because dispensing (assessing the nature and extent of a person's hearing loss, advising on suitable hearing aids to adjust for this loss, selling and fitting aids and helping individuals to adjust to using an aid) creates risks to consumers that the Government believes should be addressed through regulation. These risks arise from the clinical work involved in dispensing a hearing aid, because of the highly technical nature of hearing aids and because of the perceived risk of vulnerability of hearing aid clients. The Council's regulations set out minimum standards of practice for dispensers and employers to mitigate the impact of these three risks on consumers.

#### What is a statement of regulatory intent?

This statement of regulatory intent sets out the Council's position in relation to how it regulates dispensers. In particular it sets out what we hope to achieve through regulating: the objectives or principles underlying the Council's regulations. It sets out where we want to focus our work and why these are our areas of concerns. It sets out how we intend to raise standards in these areas: of the work we intend to carry out.

This statement of regulatory intent does not replace the Council's regulations. Dispensers and their employers are required in law to comply with all of the standards we set, as well as other laws and regulations covering clinical and commercial practices.

#### What are we trying to achieve?

The Hearing Aid Council wants to ensure that consumers are treated fairly and safely when they buy hearing aids from a UK dispenser. To do this, we need to ensure:

- dispensers maintain good **clinical standards**: their knowledge is up to date, they work within their area of experience and always work in a safe and effective way;

- dispensers and their employers **treat consumers fairly**, through being open with consumers about what hearing aids are recommended and on what terms and by enabling consumers to make informed choices about managing their hearing loss;
- employers take appropriate **responsibility** for the work of their dispensers and those training to be dispensers, ensuring they comply with our standards and with other laws and regulations governing their clinical and commercial practices, can identify when standards are not met and take appropriate action to rectify this; and
- there is an open, honest and transparent **relationship** between the Council and those it regulates.

### **Why are we trying to achieve this?**

There are other objectives underlying the Council's regulations. But the four objectives outlined above are where the Council wants to focus its activities. We are focusing on these four objectives because they:

- are key to ensuring our overall aim: that consumers are treated fairly and safely when they buy hearing aids from a dispenser in the UK;
- address the greatest areas of risk of harm to consumers; and
- will enhance current standards across the industry.

The Hearing Aid Council has published information on what work it wants to do to improve standards. This is set out in documents such as our corporate plan, and includes work around improving how dispensers are trained and improving how consumers are enabled to make informed choices. It has worked with others in developing this statement of regulatory intent.

The Hearing Aid Council has published information on poor performance across the dispensing industry. This is based on information we collect when individuals are working towards registering with us ie they are being trained to be dispensers. It is information we collect each year when people register and re-register with us. This information suggests that dispensers tend to be aged over 35, and tend to be men. It suggests variable standards of dispenser training and supervision. There are different levels between training companies of supervision of trainees and in the number of trainees who pass their exams first time. There are issues with how trainees demonstrate they have met our requirements. It also suggests that a number of dispensers do not keep us up to date on where they live or for whom they work, making it difficult for us to contact them when needed. Finally, it suggests that we do not produce information that is helpful to consumers, dispensers or employers.

It is also information we collect when we investigate complaints made by consumers and when we take disciplinary action against dispensers and their employers. This information suggests that most complaints:

- are made by consumers. This is different to other healthcare professions, where the majority of complaints are made by employers or by professionals themselves;
- are made by elderly women who live alone;
- are made by consumers who have used aids before;
- are by consumers who want a refund: they are not satisfied with the service they received or their experience of using the aid dispensed or because their expectations have not been met;
- are likely to be made about dispensers whether they have been practising for a short or long time; and
- are made against male rather than female dispensers.

This information suggests that the areas of poor performance across the industry are the same as those areas where there is greatest risk of harm to consumers.

#### **What work will we do to achieve this?**

Achieving the four objectives outlined in this statement of regulatory intent will involve dispensers and their employers making improvements to the quality of their work. It will involve employers and the professional bodies taking responsibility for assessing the quality of dispensing and taking appropriate action where standards are not being improved or met. It will involve the professional bodies taking a more substantive role in advising dispensers on how to meet the obligations placed on them by our regulations.

The Hearing Aid Council will advise, support and work with others where they are focused on achieving the four objectives set out in this statement of regulatory intent and do so to ensure that consumers are treated fairly and safely when they buy hearing aids in the UK. The Hearing Aid Council intends to work in four areas to achieve the objectives set out in this statement of regulatory intent. These four areas are set out overleaf.

We will work to achieve the objectives set out in this document by:

- producing **information** that enables consumers to make informed choices and improves how dispensers and their employers understand and comply with the requirements placed on them by the Council's regulations.
- improving how we **monitor** performance against our standards by dispensers and their employers;
- changing how dispensers develop and maintain their skills, through **training** and continued professional development;
- using the Council's current **enforcement** powers more effectively and improving self-regulation within the industry.

The Hearing Aid Council has worked with professional bodies, dispensers and their employers, consumer advocacy groups and others in the development of this statement of regulatory intent. This was important work. It ensures that everyone involved understands why we are focusing our work on the four objectives set out in this document, what is expected of them and how the Council will work to improve standards. It also ensures that everyone – dispensers, their employers and consumers – understand what will happen if standards do not improve.

The Hearing Aid Council cannot improve standards on its own. It needs to work with professional bodies, dispensers and their employers, consumer advocacy groups and others to achieve the objectives set out in this document. In particular, the Council needs to support, encourage and facilitate the professional bodies as they develop their capacity and competences in the work they do for and on behalf the dispensing profession. For its part, this statement of regulatory intent sets out where the Council will focus its work to achieve the objectives set out in this document and thereby improve standards.

The table in the appendix to this document sets out specific areas of work for the Council. This is focused work, intended to help us meet the four objectives set out in this document. It sets out our work through to March 2009, when we will transfer our responsibilities to other regulators. The Council will measure its success in meeting the four objectives set out in this document by how well it does in each of these areas of work. It will report regularly on progress towards meeting these objectives, so that dispensers and their employers, consumer advocacy groups and others know what progress is being made and what further work is needed. By doing this work, we hope to achieve our overall mission: to ensure that consumers are treated fairly and safely when they buy hearing aids in the UK.

**Appendix – our work to improve standards and meet our objectives**

	<i>Clinical standards</i>	<i>Treating consumers fairly</i>	<i>Management responsibility</i>	<i>Relationship between the Council and those it regulates</i>
<b>Information</b>	<p>Publish good practices guides in areas where there is current poor performance, including: best advice, audiometry and record keeping,</p> <p>Encouraging professional bodies as they work to develop clinical skills and knowledge of their members.</p>	<p>Publish information that helps consumers when making decisions about managing their hearing loss.</p> <p>Publish information in different ways and through consumer advocacy groups.</p> <p>Ensure dispensers know where to get information on consumer protection regulations.</p>	<p>Improve understanding of management responsibility requirements under Council's regulations.</p> <p>Supporting the professional bodies as they prepare the industry for changes in how they are regulated.</p> <p>Produce better information on disciplinary cases, so that dispensers can learn how to address poor performance and to help consumers make choices.</p>	<p>Improve regular communication with dispensers.</p> <p>Continue to attend professional body and other meetings to get message out as wide as possible.</p> <p>Ensure all dispensers and employers understand why Council needs up to date information including publishing IC bulletin.</p>
<b>Monitoring</b>	<p>Use CPD audits and complaint information to identify poor standards across the industry.</p> <p>Routinely request NOAH programming specification when investigating complaints</p>	<p>Encourage professional bodies to use customer satisfaction surveys.</p> <p>Work with other regulators to identify areas of poor performance.</p>	<p>Make better use of information on complaints and disciplinary cases to identify where poor standards may be result of management responsibility.</p>	<p>Make better use of Council's data to understand where and why problems arise.</p>

	against dispensers.			
	<b>Clinical standards</b>	<b>Treating consumers fairly</b>	<b>Management responsibility</b>	<b>Relationship between the Council and those it regulates</b>
<b>Training</b>	Support professional bodies focus training and CPD in areas of greatest need.	Ensure dispensers and companies understand what is expected of them and how they might use training to improve standards.		
<b>Enforcement</b>	Consider using clause 12 where poor standards are company-wide.  Using qualifying promises to ensure training where dispenser performance is low.	Encourage self-regulation and enforcement by professional bodies and employers.  Make referrals to other regulators, including trading standards, Office of Fair Trading and the Advertising Standards Authority.	Consider using current inspection and direction powers if training systems do not improve.  Considering using clause 1(a) where companies fail to comply with other laws and regulations.	Use thematic ICs and IC bulletins.
<b>Current regulations where performance is poor*</b>	Clause 3 – best advice Clause 5 – medical referral Clause 9 - audiometry	Clause 3 – best advice Clause 11 – fair terms Clause 18 - servicing	Clause 12 – management responsibility	Rule 9 – up to date registers Clause 21 – responding to requests following complaint

\* Based on the analysis set out in the annual report from our Investigating Committee. The Investigating Committee has a statutory duty to consider all complaints made against dispensers and their employers, to decide whether any of our regulations may have been breached and whether disciplinary action should be taken. Our regulations are set out in three parts: a Standards of Competence, which sets out the minimum education and training needed by someone that wants to register as a dispenser of hearing aids, a Code of Practice, which sets out the minimum standards of clinical and commercial practices required of dispensers and their employers and Registration Rules, which set out how our registers are maintained. In this section, clause refers to a specific regulation set out in our Code of Practice and Rule refers to a specific regulation set out in our Registration Rules.