

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

1. Unfortunately a hospital commitment prevents my presence at the Council meeting on 21st March. I am however more than aware of the concerns that various members of the Council have expressed about the evidence submitted to the Health Select Committee. We had a first reading of the issue at Strategy Executive Committee and I undertook it to prepare a personal report to Council.
2. First I think it is important to state the perspective that the Hearing Aid Council (HAC) needs to adopt in the presentation of its views to Government. The Hearing Aid Council is not an industry body, rather our authority derives from the protection of consumers. It is unfortunate that over the years, we have not pressed the Government harder in ensuring the boundaries of our regulatory powers were extended to keep abreast of changing consumer markets, and in lobbying for public policy changes as regards to the supply of hearing aids and hearing tests.
3. We do however have an opportunity of redressing this in a pyrrhic manner through ensuring that we help shape the future regulatory framework in the interest of consumers, and our discussions at Council need to be guided by this principle.
4. As regards to the evidence which was sent in the HAC's name to the Health Select Committee I have looked at the following issues:
 - a) Did those who sent the evidence have appropriate authority to do so?
 - b) Was the evidence properly grounded in policy which the Council had already agreed?
 - c) Was the evidence appropriately presented in a way which promoted the Hearing Aid Council's post abolition aims?
 - d) Are there any steps which the Hearing Aid Council ought to take in the light of the Select Committee's hearing to develop and enhance the evidence already presented?

a) Did those who sent the evidence have appropriate authority to do so?

5. In November 2006, the Health Select Committee decided to undertake a short inquiry in the 2006-07 session into audiology services in the UK. The Council became aware of this in December 2006 through ongoing media and background market sector research. At that time, the terms of reference, arrangements and likely dates for the inquiry were unknown. The Chairman wrote to the Chairman of the Health Select Committee, the Rt Hon Kevin Barron, outlining the role of the Council and its work towards developing a new regulatory framework for hearing aid audiologists.
6. The terms of reference for this inquiry were published on 12th January 2007. The terms of reference were:
 - whether accurate data on waiting times for audiology services are available;
 - why audiology services appear to lag behind other specialties in respect to waiting;
 - whether the NHS has the capacity to treat the numbers of patients waiting;
 - whether enough new audiologists are being trained; and
 - how great a role the private sector should play in providing audiology services.

The terms of reference did not include the current or regulatory framework covering hearing aid audiologists. The terms of reference stated that written evidence should be submitted by 8th February 2007 and that oral evidence would be taken on 8th March.

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

7. At the January meeting of the Council, Chris Raine alerted the Executive Team of the publication of the terms of reference for the inquiry. The Chief Executive mentioned the terms of reference in her verbal report, and suggested that the Council ought to submit evidence.
8. Council instructed the Director of Policy and Communication to draft and submit a memorandum of evidence to the Health Select Committee. It was recognised that the timescale for doing so was short (Section 6.19/6.20 of the Exempt Minutes of the 140th meeting of the Council).
9. Indeed the timescales were even shorter than the Council had anticipated as the Director of Policy and Communication was on annual leave the week commencing 28th January 2007. The normal process would have involved the preparation of an internal draft for circulation to Council members, but given the time available, the paper was finalised through Chair's action. This may not have been ideal, but it was nevertheless a proper procedure and I therefore conclude that the evidence was properly submitted.
10. However there does appear to have been a failure in communication following the finalising and submission of the evidence. The Chief Executive is clear that she thought a copy of the evidence was circulated by email to Council members at the time that it was submitted. However it does not appear that this reached Council members who were alerted to the evidence when it appeared on the Council's website. Whilst email usually has the advantage of speed it is questionable whether this should have been the only form of communication, and it would have been helpful if hard copies had been sent out to members at the same time as the evidence went to the Health Select Committee.

b) Was the evidence properly grounded in policy which the Council had already agreed?

11. The evidence was some six pages long and addressed three specific areas:

Background to the Council, its statutory responsibilities and powers, and the current nature and size of the regulated market.

12. The first section outlined the background to the Council, and gave an overview of its statutory functions. This is based on text included in the 2005-6 annual report and review, submitted before Parliament in July 2006. That text was in turn entirely based on the 2004-5 annual report.
13. The second section outlined the current state of the market. This is based on ongoing analysis of data collected by the Council for regulatory purposes, including:
 - analysis of movements of the two Registers;
 - analysis of notification of trainees to the Council, submission of exam application forms and first registration forms. This analysis is undertaken on a cross sectional and longitudinal basis;
 - background analysis, undertaken during the investigation of complaints; and
 - market analysis, undertaken on a monthly basis, including print, broadcast media searches and standard research.

Submission of Evidence in relation to the fourth inquiry objective, namely whether sufficient audiologists were being trained.

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

14. The key points outlined in this section were that:

- different standards of education and training apply in the independent sector and public sectors;
- that this impacts on the operation of the audiology labour market; and
- that this impact is to the detriment of both hearing aid professionals and users.

15. The second section then goes on to outline the Council's work towards developing a common educational qualification (and threshold entry point requirements) that will apply to all hearing aid audiologists in the future.

16. This part of the evidence was based on the following policies, statements and analysis:

- I. Council's vision and strategic objectives, agreed by the Council in July 2005.
- II. The Council's corporate plan, 2005-8, agreed by the Council in September 2005;
- III. The Council's corporate plan, 2007-9, agreed by the Council in January 2007;
- IV. Council approval of proposals for the Foundation Degree, agreed at Council meetings throughout 2006;
- V. The consultation documentation for the formal public consultation on the Foundation Degree proposals, approved by Futures Sub-Committee in October 2006.

Objective four of the Council's vision and strategic objectives states that regulation should ensure that:

'There is equality, timely access and a choice of hearing aid audiology services within a unified market.'

In both the 2005-8 and 2007-9 corporate plans, the Council states:

'Over and above these proposals (in relation to objective 1), there are four areas where the Hearing Aid Council believes that specific work is required. These areas are:

- *training and education. The Hearing Aid Council believes there should be an integrated, multi-level system of training and education, with commonality of requirements and protocols between the NHS and independent sectors;*
- *career pathways should also be integrated, enabling step-on and step-off for professionals between the NHS and independent sectors;*
- *capacity within the independent sectors needs to be assessed, to determine whether there are sufficient numbers of registered hearing aid dispensers to meet demand now and over the medium to long term. Such an assessment should cover whether, and if so how, access and capacity might be improved through the introduction of tiered dispensing; and*
- *facilitating the increase of capacity within the NHS.'*

Submission of Evidence in relation to the fifth inquiry objective, namely how great a role should the private sector play in providing audiology services.

17. The key points outlined in this section are:

- there is no commonality of how and by whom hearing aid audiologists are regulated;
- there are gaps in the regulatory regime, with a mixture of statutory, voluntary and unregulated hearing aid audiology provision; and
- the current HAC framework has significant limitations.

HEALTH SELECT COMMITTEE EVIDENCE REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE

18. Examples are given of the complexity of the regulatory framework that applies to hearing aid audiologists and that this is not in the interests of hearing aid users or professionals.
19. This part of the evidence is based on the following policies, statements and analysis:
 - I. Council's vision and strategic objectives, agreed by the Council in July 2005.
 - II. Submission to the DTI consultation paper 'Reducing Regulatory Burden – establishing the CTSA', agreed by Council in September 2005.
 - III. Submission to call for ideas to the Foster Review of regulation of non-medical healthcare professionals, as instructed by Council in September 2005.
 - IV. Letter to responsible Minister, dated July 2005 and as instructed by Council in June 2005.
 - V. The Council's corporate plan, 2005-8, agreed by the Council in September 2005.
 - VI. The Council's corporate plan, 2007-9, agreed by the Council in January 2007.
 - VII. Ongoing discussions with other regulators, including HPC, HCC and OFT.
 - VIII. Discussions minute at Council meetings during 2002 and 2003.
 - IX. Council press release about the PPP, dated October 2003.

Objective 1 of the Council's vision and strategic objectives states that the aim of regulation should be that:

'There are clear standards of professional practice (including performance, conduct, ethics, education and training, continuing professional development) that are continually developed, implemented, maintained and improved'

In the Council's submission to the two consultation processes in 2005 affecting the future regulation of hearing aid audiologists, the Council made it clear that the current regulatory framework was overly complex and had significant gaps, and as such as *'not fit for purpose'*. The Council explained this by stating:

'The Hearing Aid Council regulates audiologists dispensing hearing aids in the independent sector. Those working in the NHS are currently unregulated, unless they are also a clinical scientist (regulated by the Health Professions Council) or a medical doctor (regulated by the General Medical Council).'

This fractured system makes it difficult for individual users to be informed about the standards of competency they should expect for professionals involved in their care. But it also works against the interests of audiology professionals: there is a lack of recognition of qualifications and competency between different parts of the profession, with the potential to restrict personal professional development.'

In its corporate plans, 2005-8 and 2007-9, the Council stated:

'Currently, different standards operate in the independent and NHS sectors. Standards in the independent sector are determined by the Hearing Aid Council, as a statutory body responsible for regulating the sale of hearing aids. In the NHS, there are a mixture of standards which are determined by professional bodies, local NHS trusts and the Health Professions Council.'

The Hearing Aid Council believes that the current position is not in the best interests of hearing aid users. Hearing aid users have a right to expect a common standard of professional conduct, regardless of how they access hearing aid services. In setting this objective, the Hearing Aid Council seeks to ensure there is a minimum, common set of standards that apply to all hearing aid audiology professionals. This will not be an easy objective to achieve, and cannot be achieved by the Council alone.'

Council minutes in 2002, 2003 and 2004 make it clear that the private-public-partnerships covering hearing aid audiology were discussed at Council and within its committees, both in terms of procurement process and regulatory coverage.

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

20. Finally, this part of the evidence sets out the current limitations of the Hearing Aid Council Act 1968 (as amended). In the Council's submission to the two consultation processes in 2005 affecting the future regulation of hearing aid audiologists, the Council stated that:

'The current Act and the subsequent regulation of the hearing aid market has significant limitations. These limitations include:

- Regulation only occurs where a sale of a hearing aid is involved, and does not therefore apply to the provision of hearing aids via the NHS. As a result, different standards of training and practice have developed, and these are enforced in different ways. Not all individuals involved in provision of hearing aids through the NHS are currently subject to statutory registration or regulation¹;*
- Regulation only occurs where the sale of a hearing aid involves verbal negotiation, and as such does not include sale via channels including mail order and internet. The differing regulatory frameworks covering the provision of hearing aids is confusing both for consumers and for professionals;*
- The Council has limited scope to take action against individuals whose conduct falls below its published standards. Essentially, the Council can either admonish, fine, suspend, or remove an individual from the register. The current legislation does not provide for a risk-based approach to inspection or enforcement; and*
- the Council is a stand-alone regulator, which has significant disadvantages in terms of the costs of regulation (which are borne by registrants) and the consistency of its standards with those required by other regulatory bodies.'*

21. The conclusion I draw is that the evidence does indeed attempt the bringing together of the various strands of activity and policies which the Council has agreed to, and that it contains nothing novel. Through the process of synthesising these various strands into one short, summary document a degree of sharpness has been introduced.

c) Was the evidence appropriately presented in a way that promoted the Hearing Aid Council's post abolition aims?

22. Most of the criticisms that I am aware of about the evidence fall into this category. They relate to:

- The number of spelling mistakes
- The inaccuracy of the market sector analysis
- The disparaging of current RHAD training
- The comments made about PPP regulation
- The impression given about current HAC regulation of the private sector.

23. It is clear from reading the document that it suffers from inadequate proof reading which can entirely be ascribed to the speed with which it had to be produced.

¹ Audiologists (except those who are also clinical scientists or doctors) are one of the few professional groups that are not covered by a regulator body. It is possible that, as part of the review of the nine healthcare professional regulator bodies, Andrew Foster may recommend that audiologists are included as a regulated profession.

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

24. The criticism that has been received about the market analysis concerns two sentences.

'In the past three years, aggressive market share development has been undertaken by a new entrant to the marketplace. By the end of this year, it is expected that this new entrant will be the largest company in terms of employees, turnover and volume of sales'.

25. I have to say that I personally cannot see anything remiss with this statement, and do not consider that it detracts in anyway from the Hearing Aid Council. In any event it was not apparently referred to in the course of the Select Committee hearing. However, the section would have benefited from a description of the consumer market e.g. current penetration of hearing aid users and size of potential market compared with other EU members.

26. It has been alleged that the document “dismisses” current RHAD training as work-based. My reading does not support this. Indeed use of the term “dismisses” is itself pejorative. Work-based is a term widely used in education and skills to describe training undertaken at employer’s premises whether or not that training is subsequently formally examined. That is indeed the correct description of the current system and the document goes on to outline the new Foundation Degree which development was picked up and commented on positively at the Select Committee

27. Most criticism expressed focussed on the statements made in the section about the role the private sector should play in providing audiology services. It needs to be stated again that it is not the role of the HAC as a regulator to promote the private sector and the following two paragraphs do indeed summarise the Council’s declared position.

28. The current regulation of hearing aid audiologists is simply not fit for purpose and is not consistent with Government policy in relation to the regulation of health care professionals. Currently, different standards operate in the independent and NHS sectors. Standards in the independent sector are determined by the Hearing Aid Council, as a statutory body responsible for regulating the sale of hearing aids. In the NHS, there are a mixture of standards which are determined by professional bodies, local NHS trusts, voluntary registration bodies² and the Health Professions Council³. This means that hearing aid users cannot easily determine whether an audiologist is covered by a statutory regulation regime, and if so by which regulatory authority.

29. The Hearing Aid Council believes that the current position is not in the best interests of hearing aid users. Hearing aid users have a right to expect a common standard of professional conduct, regardless of how they access hearing aid services. The Council has therefore recommended to Government that all audiologists should be registered with and regulated by a statutory body to a single set of standards. The Council believes that the Health Professions Council (HPC) is the most appropriate regulator in this regard, and is working with the Department of Health and the HPC towards this end.

30. As regards the “not fit for purpose” statement, Council will be aware there are considerable problems with HAC current regulatory powers - which problems were listed in the evidence:

- no fitness to practice powers;
- no externalisation/separation of investigations and disciplinary functions;
- limited scope for disciplinary action;
- limited scope for risk-based regulation;
- limited inspection and direction powers;

² For example, the Registration Council for Clinical Physiologists is a voluntary registration body for clinical physiologists, including those involved in the provision of hearing aids. The Health Professions Council has recently made a recommendation to the Secretary of State for Health pursuant to the provisions of the Health Act 1999 that Clinical Physiologists be covered by statutory registration and regulation.

³ The Health Professions Council regulates clinical scientists, including those involved in provision of hearing aids.

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

- regulation focused on sale with oral negotiation, and may exclude internet and direct mail sales; and
 - functions cover employers and individual professionals.
31. Council has also heard from the Better Regulation Taskforce and HPC, as well as the Hampton and Foster reports, that we are indeed deficient as a modern regulatory body, and it would be a disservice to consumers to pretend otherwise.
32. Reference is made in the evidence to PPP as an example of where the current regulatory framework is deficient. There is, as Council has discussed before, a regulatory problem in that unless the NHS procurement contract specifies how regulatory matters should be dealt with neither the HAC nor the NHS provisions apply and the consumer has a less than satisfactory route to obtain remedy. I have read this section several times and I cannot fault its factual accuracy; however it might have been helpful if the evidence had included a further example of the other side of this coin - namely, NHS professionals whose activities in dispensing hearing aids go beyond NHS regulation and stray into HAC areas. This would have served to better drive home the message that the current situation is confused and needs urgent attention.
33. The section of the Council's evidence on PPP was not directly or indirectly referred to at the Health Select Committee. Discussion focused around the national framework for PPPs, locally negotiated PPPs, and the Government's plans for future delivery of NHS services via PPPs. The Minister made reference to 'Improving Access to Audiology Services in England', a policy statement published by the Department of Health two days before the committee meeting.
34. The last area of criticism refers to the impression left by the HAC evidence about current regulation of the private sector. One MP asked the Minister whether it was "sour grapes" on the part of the Council as it is being abolished. Though the Minister did decline to comment, Sue Hill in her evidence was positive about how the HAC was approaching abolition, and referred to ongoing discussions between the DTI and DOH to ensure hearing aid audiologists should in future be regulated by the HPC.
35. Of more concern to Council should be the fact that the HAC was not invited to give evidence orally. This perhaps can be attributed to the low profile the HAC has adopted for most of its existence and its lack of proactive engagement with policy and consumers interests, but it might also reflect the fact that the evidence did not sufficiently stretch a forward vision which might have caught the Select Committee's eye. Again this may have been an inevitable result of the speed of drafting, but it is unfortunate that the paper ends on a downbeat

(d) Are there any steps which the Hearing Aid Council ought to take in the light of the Select Committee's hearing to develop and enhance the evidence already presented?

36. Whilst the paper is in my view a factually correct description of the current regulatory position, I am concerned that it too narrowly interpreted the request for evidence. Select Committees need to both examine matters and make recommendations for the way ahead. Had there been time a further section describing the abolition process and the future vision would have made for a more rounded document.
37. The Select Committee ended with the usual request for any last minute supplementary memoranda. This of necessity will need to be against the clock since any such memoranda need to be in within days if not hours if it is to have any impact on Committee deliberations. This is an opportunity the HAC should seize, but the only practical way to progress this is by the Chair once again signing it off as wider circulation of an early draft might cause undue delay in submission.

**HEALTH SELECT COMMITTEE EVIDENCE
REPORT BY HUW VAUGHAN THOMAS CHAIR OF STRATEGY EXECUTIVE COMMITTEE**

Conclusions

38. Having reviewed the evidence submitted and taken account of views expressed by e-mail and at SEC, my overall conclusions are as follows:

- The evidence was correctly submitted
- It drew on existing Council policy
- It suffered from being drafted at too short a notice
- It did correctly describe the current regulatory position.
- It would have benefited from a more details outline of the Council's vision on how abolition can be used to improve regulation of hearing aids in the consumer interest.
- The opportunity should be taken to submit a supplementary memorandum to remedy this.

Huw Vaughan Thomas