



# The regulation of private hearing aid dispensers by the Health Professions Council

## Consultation Questions

**Please fill in and/or tick the appropriate response.**

Response form

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### Freedom of Information

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. The relevant legislation in this context is the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties. However, the information you send us may need to be passed on to colleagues within the UK Health Departments and/or published in a summary of responses to this consultation.

I do not wish my response to be passed to other UK Health Departments

I do not wish my response to be published in a summary of responses

Please indicate all the countries to which your comments relate:

**UK-wide**  *and/or*  
**England**  **Northern Ireland**   
**Scotland**  **Wales**

Are you responding: ~~- as a member of the public~~  
~~- as a health or social care professional~~  
*- on behalf of an organisation*

If you are responding as a member of the public, please supply the following details:

Profession

If you are responding as a health or social care professional, please supply the following details:

Profession

**Country of qualification**

Please indicate as appropriate:

**UK**            **Other EEA**            **Rest of World**

**Area of work**

**NHS**  
**Social Care**  
**Private Health**  
**Voluntary**  
**Regulatory Body**

**Professional Body**  
**Education**  
**Union**  
**Local Authority**  
**Trade Body**  
**Other** (please give details)

**If you are responding on behalf of an organisation, please supply the following details:**

**NHS**  
**Social Care**  
**Private Health**  
**Voluntary**  
**Regulatory Body**  
~~**Professional Body**~~ \_\_\_\_\_  
~~**Education**~~ \_\_\_\_\_  
~~**Union**~~  
~~**Local Authority**~~  
~~**Trade Body**~~ \_\_\_\_\_  
~~**Other**~~ (please give details)

The General Optical Council (GOC) welcomes the opportunity to comment on the Department of Health consultation on reform to the mechanisms for the regulation of private hearing aid dispensers.

The GOC is one of 13 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals. We are the regulator for the optical professions in the UK. The Council currently registers around 23,500 optometrists, dispensing opticians, student opticians and optical businesses. A growing number of optical businesses now employ private hearing aid dispensers.

The GOC is constituted under the Opticians Act 1989 (amended 2005). The Act regulates function as well as title:-

**Section 24** of the Opticians Act 1989 restricts the ~~testing~~ of sight to a registered medical practitioner or registered optometrist.

**Section 36** of the Act states : *References in this Act to testing sight are references to testing sight with the object of determining whether there is any and, if so, what defect of sight and of correcting, remedying or relieving any such defect of an anatomical or physiological nature by means of an optical appliance prescribed on the basis of the determination.*

**Section 26** defines the duties to be performed when testing sight including the issuing of a prescription (if one is needed).

**Section 25** of the Act restricts the fitting of contact lenses to registered medical practitioner or registered optometrist or registered dispensing optician.

**Section 27** of the Act restricts the sale and supply of optical appliances and contact lenses including zero powered lenses to be by or under the supervision of registered dispensing opticians, registered optometrists or registered medical practitioners.

Exemptions apply in each of the above Sections.

The GOC recently took a Fitness to Practise case against Boots Opticians and others relating to matters of supervision and I direct you to the determination in this case, which is available on our website at [www.optical.org](http://www.optical.org), as it might serve to clarify what our position is in relation to the meaning of 'supply' and the start and end of the dispensing process.

The GOC's mission is to protect the public by promoting high standards of education, conduct and performance amongst opticians. Our work is built on a foundation of six core values. These values are based on the Better Regulation Commission's criteria for good regulation:

- Proportionality.
- Accountability.
- Consistency.
- Transparency.
- Targeted.
- Organisational Excellence.

We make the following responses to your specific questions in your hearing aid consultation document:

# The regulation of private hearing aid dispensers by the Health Professions Council

## Consultation Questions

### The new regulator

**Q1: Do you agree that the Health Professions Council is the most appropriate regulatory body to replace the Hearing Aid Council as the regulator of private hearing aid dispensers? If not, why not and who instead should regulate private hearing aid dispensers?**

**Support**      ( )

**Not Support** ( )

**Unsure**      ( x )

### **Comments**

The Hearing Aid Council is the first regulator which has been subsumed into the Health Professions Council. While the economies of scale are noted and the Department's desire to reduce the number of health care regulators is achieved with this reform, the GOC urges that caution be exercised to ensure that this change does not lead to a loss of specificity in the regulation of hearing aid dispensing, to the detriment of public protection.

For example, there is a risk that complex questions from both potential registrants and users of the service will be difficult to answer appropriately as profession-specific knowledge that is provided by the current HAC may be lost. Furthermore there is a risk that this change may lead to a lack of innovation and growth specific to the profession as it develops, with an equivalent loss in the ability to adapt to changes in the environment in which the profession exists.

### The amendment to Section 60 of the Health Act 1999

**Q2: Do you agree that there should be no "grandparenting" period when the register of dispensers is transferred from the HAC to the Health Professions Council?**

**Agree**      ( x )

**Disagree**    ( )

Unsure ( )

Comments

**The transferred register**

**Q3: Do you agree that all those dispensers on the HAC register the day before transfer to the Health Professions Council should be automatically transferred to the Health Professions Council's register? If not, why not?**

Agree ( x )

Disagree ( )

Unsure ( )

Comments

**Transitional arrangements – Outstanding Cases**

**Q4: As outlined in Article 5 of the draft Order, do you agree that outstanding Hearing Aid Council fitness to practise cases at the time of transfer should be investigated and determined by the Health Professions Council and the Health Professions Council's rules? If not, why not?**

Agree ( x )

Disagree ( )

Unsure ( )

Comments

**Offence – hearing aid dispensers**

**Q5: Do you agree that any person who is not registered as a hearing aid dispenser with the Health Professions Council and who is not exempt from registration, who assesses, tests or prescribes a hearing aid for an individual with a view to supplying a hearing aid to, or for the use of, that person, should be considered to have committed a criminal offence?**

Agree             ( x )

Disagree         ( )

Unsure           ( )

**Comments**

**Q6: Do you agree with the scope of the definition of “supplying”? If not, why not?**

Agree             ( )

Disagree         ( x )

Unsure           ( )

**Comments**

We note that %supplying+ is defined as supplying by the way of retail sale or by way of hire but does not include a sale to a person acquiring for the purposes of trade. This means that, the offence is not committed by NHS dispensers because they are not supplying the hearing aid for retail sale or hire.

The GOC does not believe that the scope of the definition of %supplying+in this context is adequate:

It is understood that the protected title is ~~h~~earing aid dispenser~~r~~ Furthermore that an offence is committed if any person who is not a registered hearing aid dispenser with the Health Professions Council and who performs the functions

of a dispenser of hearing aids, commits an offence. Those functions are-

- ~ Assessing or testing an individual's hearing; or
- ~ Prescribing a hearing aid for an individual, with a view to supplying a hearing aid to, or for the use of, that individual.

The question we would ask here is: What is the difference between ~~dispensing~~ and ~~supplying~~? Is there clarity in the legislation and why is it not an offence to dispense while not on the register?

It appears to us that the 1968 Act only regulates dispensing of hearing aids via retail sale or hire. The HAC has no power to regulate those providing hearing aids solely through the NHS, because NHS hearing aid dispensers do not supply by way of retail sale or by way of hire. What is the situation therefore if a person who is not registered as a hearing aid dispenser assesses or tests an individual's hearing but argues that this is not with a view to supplying?

The GOC questions where the risk to the public lies? Is there a risk of harm in an un-registered/unqualified person actually performing an ~~assessment~~ or ~~test~~?

Furthermore, what is meant by prescribing? Do the details of the hearing aid need to be written down i.e., ~~pre-scribed~~' before an offence is deemed to have taken place? What is the situation if a verbal instruction is given to the patient, but there is no written instruction?

### **Transitional arrangements – Finance and Audit issues**

**Q7: Are you content with the administrative arrangements for dealing with the closure of the HAC? If not, why not.**

**Agree** ( )

**Disagree** ( )

**Unsure** ( )

#### **Comments**

**No comment.**

We hope these responses are of value to you in the progress of these legislative changes. Should you have any need for further clarification, please do not hesitate to contact us at these offices.

Yours sincerely

Dian Taylor  
Registrar & CEO