

HEARING AID COUNCIL
PROCEEDINGS
Meeting of the
DISCIPLINARY COMMITTEE

Held at:
The Hearing Aid Council
70 St Mary Axe
London EC3A 8BD

On
Thursday, 25 September 2008

PRESENT:

MR CHRISTOPHER HUGHES
(Chair)

Panel Members:
MR TONY CORCORAN
MR MARK GEORGEVIC

Legal Assessor:
MRS SIOBHAN GOODRICH

MR LOUIS WESTON appeared on behalf of the Hearing Aid Council
MR STUART PARKER assisted the counsel for the Hearing Aid Council
MS SARAH LAMBERT appeared on behalf of Mr Tranter
MS ANGHARAD PERCY assisted the counsel for Mr Tranter

In the matter of:
BEN TRANTER

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1 THE CHAIR: In this case the registrant, Mr Tranter, saw a client on 31 August 2007. The
2 lady, a youthful 61, had already been seen by a RHAD on 2 August, and the first
3 dispenser had dispensed a hearing aid. From the evidence before us it is clear that
4 the client very rapidly concluded that she did not like the aid she had been
5 originally dispensed, and due to circumstances beyond the control of herself and
6 the first dispenser, she was unable to contact him with the speed which one would
7 wish on these occasions. If she had been able to do so the outcome might have
8 been different. As it was, she became settled in her conviction that the aids were
9 not suitable, and she consulted another dispenser, Mr Tranter. By this stage she
10 had already started to exercise her contractual and statutory rights to reject the first
11 hearing aid, and it was acknowledged on behalf of the HAC that in the
12 circumstances it would be wholly inappropriate for the DC to conclude that she
13 would have any substantial difficulty in exercising those rights and recovering, if
14 not the whole, then at least the very large proportion of the sum which she had paid
15 in order to obtain those aids.

16 On seeing Mr Tranter on 31 August, Mr Tranter took a somewhat different view of
17 her needs, and proposed to dispense a different sort of hearing aid. It seems
18 entirely possible to the Committee that either aid might have appropriately met the
19 client's need. As it was the client took the aids which Mr Tranter proposed, made a
20 trial of them, and in October purchased the aids from him for a sum somewhat
21 larger than the sum she had paid for the first aids, but with the key distinction that
22 she was now satisfied with the hearing aids that she had received. In the course of
23 events she very quickly recovered the sums she had paid to the first dispenser, and
24 returned the aids to him.

25 The charge before the Committee is that Mr Tranter failed to demonstrate the
26 highest ethical standards in his dealings. In considering such a charge, one has to

1 look at the circumstances in which an individual acted, one has to consider the
2 hazard and risk which the rule is designed to obviate, and one has to consider the
3 possible consequences which the dispenser might have foreseen by his conduct.
4 Mr Tranter is said to have been motivated by commercial reasons. The DC agrees
5 commercial reasons are an entirely proper motivation for an individual in
6 commerce. The issue is: was the relationship with his client unethical? Did he
7 treat her unfairly to such an extent that his conduct should be stigmatised before the
8 dispensing community and the world as being unethical? And the clear answer is
9 no. There is no evidence before this Committee that Mr Tranter's conduct could in
10 any conceivable circumstances amount to unethical conduct. It is certainly
11 arguable that in circumstances similar to this there could be some criticism of him
12 if he had not pointed out to the client what her rights were. However, she was
13 aware of her rights, and she had autonomously made her own decision as to what
14 dispenser she wanted to treat her, and she had autonomously made her own
15 decision to seek different hearing aids. A regulatory body dealing with a market
16 must, it seems to the Committee, be careful when sure that in its protection of the
17 rights of clients, which is the primary cause for its existence, it does not unduly and
18 unnecessarily interfere with proper competition between practitioners. On this
19 occasion it does not seem to the Committee either that Mr Tranter appeared
20 unethically or that his commercial practices vis-à-vis the other dispenser were
21 improper. The charge under 6(3) is not established.

22 THE CHAIR: In this case we have a costs application from the respondent dispenser, Mr
23 Tranter, in a sum of approximately £21k. We have heard persuasive arguments on
24 the part of Mr Tranter, and a robust rebuttal by Mr Weston, who largely bases his
25 case on the case of Baxendale-Walker against the Law Society, and in particular the
26 judgement of Lord Justice Moses when he said that 'absent dishonesty or lack of

1 good faith a cost order should not be made against a regulator unless there is good
2 reason to do so. That reason must be more than the other party had succeeded. In
3 considering an award of costs against a public regulator, the court must consider on
4 the one hand the financial prejudice to the particular complainant, weighed against
5 the need to encourage public bodies to exercise their public function of making
6 reasonable and sound decisions, without fear of exposure to undue financial
7 pressure'. Now, attempting to apply that principle to this case, we are aware of the
8 considerable costs which Mr Tranter has incurred in defending himself. We are
9 also aware that the HAC has a statutory obligation to properly and fairly investigate
10 matters that come to its attention, in order to satisfy itself that the public interest is
11 being properly protected, and that it is fairly and proportionately and appropriately
12 discharging its regulatory functions. In these circumstances we consider that it is
13 appropriate that the HAC makes some contribution to Mr Tranter's quite
14 substantial costs, and we award costs in his favour in the sum of £12k.