

HEARING AID COUNCIL  
PROCEEDINGS  
**Meeting of the**  
**DISCIPLINARY COMMITTEE**

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

On  
Tuesday, 25 November 2008

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PRESENT:

Mr CHRISTOPHER HUGHES (The Chairman)

Panel Members:  
PROFESSOR NORMA BROOK CBE  
MR TONY COCORAN  
MR MICHAEL BISHOP  
MR PETER INCE

Legal Assessor:  
MR PETER JENNINGS

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MR HYWEL JENKINS appeared on behalf of the Hearing Aid Council  
MR GRAHAM HILL assisted the counsel for the Hearing Aid Council

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**In the matter of:**  
**MICHAEL JOHN BOOTON**

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**DECISION**

1  
2 THE CHAIR: In this case the Disciplinary Committee of the HAC is considering three  
3 charges against Mr Michael John Booton. The charges arise out of a course of  
4 events happening between May and July 2007. In May 2007 he visited a client, Mr  
5 Hains, and persuaded him to buy some new Oticon Delta hearing aids. He took Mr  
6 Hains' existing Siemens Pro 102 hearing aids, apparently in part-exchange. At that  
7 stage those aids became the property of his employer, Prestige Hearing Limited.  
8 However, from his own account he only surrendered one of those aids to his  
9 employer, one which he had broken during his attendance on Mr Hains. He  
10 therefore retained possession of an aid, of whose existence Prestige were not  
11 aware, but which was their property. We find that retention of the hearing aid to be  
12 unlawful. Later on in July of that year, he was responsible for the audiological  
13 care of a Mrs Pembury. He attended on Mrs Pembury, and sold her the aid which  
14 had formerly belonged to Mr Hains. She was aware that this was an old aid, but  
15 she did not realise, and we are satisfied of the evidence on this point, that it was a  
16 second hand aid. If she had known it was a second hand aid she would not have  
17 bought it. The reason why she would not have bought it could be many, but to this  
18 Committee there are many obvious disadvantages of a person in her position  
19 buying an aid of this nature, because it would not be subject to the manufacturer's  
20 warranty, and on the evidence it was clear that she was not entitled to the backup  
21 from Prestige. What is clear is the money she paid did not enter into Prestige's  
22 accounts. We, accordingly Mrs Pembury bought an aid she would not otherwise  
23 have bought, and Prestige had an aid that they, which belonged to them, sold to her  
24 without any of the proceeds of the sale coming to Prestige.

1 In the course of this transaction, Mr Booton retained Mrs Pembury's old aids, old  
2 aid, and did not pass it on to his employer, Prestige. This course of events gives  
3 rise to three charges that Mr Booton failed to maintain a high standard of ethical  
4 behaviour, in all his business dealings. In connection with the sale to Mr Hains,  
5 retaining the, Mr Hains' original aid. In connection with the sale to Mrs Pembury,  
6 not disclosing that the aid was second hand and had been used by another  
7 individual, taking £200 cash and retaining it when it was not his to sell, and also  
8 selling the property of, in our view, Prestige to Mrs Pembury when he should not  
9 have done so. The charge as pleaded states that he should have known that the  
10 property, the hearing aid was still the property of Mr Hains, it is the view of the  
11 Committee that this is wrong in law, and that the aid was at this stage the property  
12 of Prestige. We are, however, satisfied with respect to Clause 1 and Clause 2 that  
13 they both amount to substantial breaches, amounting to breaches of Clause 1(a) of  
14 the Code in force. Similarly with respect to Charge 3, which was retaining Mrs  
15 Pembury's old aid rather than passing it on to his employer, we again find a breach  
16 of the responsibility of maintaining a high standard of ethical behaviour.  
17 Accordingly all three charges against Mr Booton are established. With respect to  
18 Charge 1, the charge was unlawfully retaining Mr Hains hearing aids, in our view  
19 one is unlawfully retained, and not two, but all three charges are established.

20 In this case the Disciplinary Committee has been satisfied to a very high  
21 probability that Mr Booton has been in breach of the obligation to maintain a high  
22 standard of ethical conduct in respect of three charges. Each one of those charges  
23 involves significant elements of dishonesty with respect to goods or cash. In the  
24 circumstances, the, it would be inappropriate for a regulator simply to admonish  
25 Mr Booton. We have carefully considered all his submissions as with respect to

1 his means and the circumstances of the events, in many parts of these we find what  
2 he has said largely incredible, as is shown by the adverse finding of breach.  
3 However, where possible we have taken into account his comments. Given the  
4 gravity of what is proven against him, not only an admonishment but also a  
5 financial sanction, or suspension for a limited period of time, would not reflect the  
6 gravity of the circumstances, the need to protect the public, and the need to  
7 maintain the reputation and good standing of the regulated profession.  
8 Accordingly in respect of each charge we erase Mr Booton from the register of the  
9 HAC.

### 10 COSTS

11 THE CHAIR: In the case of the HAC against Mr Michael Booton, costs of £13,789.40  
12 have been identified as incurred by the HAC in bringing this matter to trial. The  
13 Committee has considered those costs, and is satisfied that these are costs which  
14 have properly been incurred. The Committee has taken into account the guidance  
15 of its Legal Assessor, and has also considered the various information, which Mr  
16 Booton has provided in different letters to those bringing the case before the  
17 Committee. The Committee notes that on Mr Booton's account, which has on  
18 other occasions today been found to be unreliable, he has no immediate prospect of  
19 paying any award of costs. The Committee therefore needs to consider carefully  
20 what award of costs it should make, and what arrangements, if any, it should make  
21 for periodical payment of those costs.

22 In a case such as this, the burden of regulation falls either to be borne by the  
23 registered community at large, or by the registrant who has misconducted himself.  
24 On this occasion, given the repeated serious infractions of the Code of Conduct of  
25 its primary provision, the maintaining of ethical conduct, the Committee sees no

1           reason why the registered community at large should bear the costs of regulation.  
2           We have made a discount for late amendments and changes to the case brought by  
3           the HAC, this is not to criticise those bringing the case for their conduct of it, and  
4           we award costs of £13k to the HAC. Given the uncertainty of Mr Booton's current  
5           financial position, we require payment of that sum within six months from today.  
6           This should provide him reasonable opportunity to make appropriate arrangements  
7           for payment of that sum.