

1 HEARING AID COUNCIL PROCEEDINGS

2 **Meeting of the**  
3 **DISCIPLINARY COMMITTEE**  
4

5 Held at:

6 70 St Mary Axe

7 London EC3A 8BD

8 On

9 Monday, 5<sup>th</sup> October 2009  
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11 PRESENT:

12 MR CHRISTOPHER HUGHES OBE

13 **(THE CHAIR)**

14 **Panel Members:**

15 MR PETER INCE

16 MR MICHAEL BISHOP

17 MR HUW VAUGHAN THOMAS

18 MR PETER ORMEROD

19 MR MARK GRORGEVIC

20 **Legal Assessor:**

21 MR DAVID MARSHALL  
22 -----

23 MR CHRIS WHALLEY appeared on behalf of the **Hearing Aid Council**.

24 MS SARAH CLOVER appeared on behalf of **Hidden Hearing Limited**  
25

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27 **In the matter of:**

28 HIDDEN HEARING LIMITED

29 Transcript produced by Sellers Legal Services  
30 76 Chancery Lane, London WC2A 1AA ,Tel: +44 (0)20 7405 4512

Monday 5th October, 2009

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MR WHALLEY: Thank you, sir. Perhaps if we can begin by having the allegations and the charge read out and whether that is admitted or denied by Hidden Hearing.

CHAIRMAN: Yes, thank you.

MR WHALLEY: "Charges: a failure at all times to maintain high standards of reputable conduct in the operation of your practice in breach of Clause 1A of the Hearing Aid Council Code of Practice 2008."

The particulars of that breach:

"In or around July 2008, you failed to maintain a high standard of ethical conduct in the operation of your practice. You published an advertisement in the form of a direct mailing promotion stating, 'Claim a free working hearing aid sample and please post me absolutely free and without obligation details of the special pensioner's hearing aid and a free sample aid for better hearing.'"

Which was misleading because it did not specify that the reader could not take up the offer without the obligation of having a consultation or free hearing test.

I don't know if it needs to be on the record that that is admitted or denied?

MS CLOVER: . It is denied.

CHAIRMAN: Thank you.

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*(The Committee withdrew)*

CHAIRMAN: In this case Hidden Hearing, a registered employer of hearing aid dispensers, faced one charge that it failed to maintain a high standard of ethical conduct in the operation of its practices. The breach alleged was that it published an advertisement in the form of a direct mail promotion stating:

"Claim a free working hearing aid sample."

And:

"Please post me absolutely free and without obligation details of special pensioners' hearing aid and free sample aid for better hearing."

It was alleged that this advertisement was misleading because it did not specify that a reader could not take up the offer without the obligation of having a consultation or free hearing test. In his very helpful evidence Mr Stuart Gitsham, the Marketing Director of Hidden Hearing, gave the Disciplinary Committee details of the Genesis of the advertisement, which has been running in various forms for eleven years and has had very wide circulation and attracted a large number of customers to Hidden Hearing. It is important to - I think - to take note of the argument which Mr Gitsham advanced and which the Committee takes very seriously that Hidden Hearing were clearly attempting to help people by ensuring that people with progressive hearing loss sought assistance with that loss at as early a stage as possible and that through this

1 form of marketing Hidden Hearing sought to bring people forward at an earlier  
2 stage than they might otherwise have done and thus confer the benefit on them  
3 so the motives which Hidden Hearing had in doing this were clearly  
4 commercial, but also part of the fundamental processes of the regulated  
5 industry in bringing people forward to obtain the benefits of the industry. Their  
6 difficulty was that, as Mr Gitsham very clearly explained, in order to get the  
7 hearing aid, individuals were effectively obliged to undergo a hearing test. This  
8 was a free hearing test and in many ways could be seen as a benefit to the  
9 individual. Nonetheless, it was an "obligation," and the Committee is satisfied  
10 that this advertisement was misleading. It is important to bear in mind in  
11 looking at the history of this that standards in the industry and society are  
12 changing. Expectations as to how individuals will be treated and how their  
13 needs will be properly respected are advancing. There has been a series of  
14 changes in the legal basis for consumer protection over the years and the most  
15 recent changes implementing the European directive specifically address how  
16 vulnerable consumers are to be treated and it should be borne in mind that the  
17 consumers to whom Hidden Hearing were addressing their advertisements  
18 were vulnerable. In addition to the obvious disability of hearing loss many of  
19 the elderly population to whom this advertisement was specifically targeted  
20 could well have had other disabilities and other sources of vulnerability. As I  
21 have said standards are rising and no doubt in the future will continue to rise.  
22 Hidden Hearing argue that the advertisement they prepared and which has run

1 forward essentially unchanged for eleven years was appropriate and is  
2 appropriate. They have acknowledged and co-operated fully with the ASA in  
3 amending the advertisement to meet its need and have been very frank and  
4 open in their discussion of their position before this Disciplinary Committee.  
5 In this Committee, matters of what is charged and the sort of conduct brought  
6 under review in considering breaches of Clause 1A of the Hearing Aid Council  
7 Code of Trade Practice are various. There are cases of absolutely outrageous  
8 profoundly unethical conduct, which are charged under this provision. This is  
9 very clearly different from such a case. However, there has been a failure to  
10 maintain the high standard of ethical conduct in the operation of their practices  
11 because Hidden Hearing have not sufficiently considered the changing  
12 environment and the changing expectations of their consumers. Accordingly,  
13 we find Hidden Hearing in breach of Clause 1A of the Hearing Aid Council  
14 Code of Trade Practice with respect to this misleading advertisement.  
15 However, given the conduct of Hidden Hearing with respect to responding to  
16 the ASA and the frank and appropriate way it has responded in the evidence it  
17 has put forward before the Council today, the Council does not consider that  
18 the imposition of any sanction would be appropriate in these circumstances.  
19 This is an evolving and developing area where if the Council had been  
20 continuing no doubt it would have needed to give some systematic thought to  
21 the guidance which should be put out to the registered industry as to how it  
22 should ethically promote and market its service and goods. That is not

1 possible, but we consider it is important for the regulated industry to recognise  
2 the changing environment it is in. We have made a finding against Hidden  
3 Hearing of failure to maintain a high standard of ethical conduct. We do not  
4 impose a sanction and we do not consider that this is a case in which an order  
5 for costs in favour of either party is appropriate

6 MR WHALLEY: Thank you.

7 MS CLOVER: Thank you.

8 *(Adjourned)*

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