

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 **Friday, 29th January 2010**

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11 PRESENT:

12 MR CHRISTOPHER HUGHES OBE

13 **(THE CHAIR)**

14 **Panel Members:**

15 MR MICHAEL BISHOP

16 MR DAVID PYLE

17 MR TONY CORCORAN

18 MR PETER INCE

19
20 **Legal Assessor:**

21 MR ALAN GOGARTY
22 -----

23 MS SOPHIE KEMP appeared on behalf of the **Hearing Aid Council**.

24 MS AMICIE KNOWLES Clerk to the Disciplinary Committee.
25 -----
26

27 **In the matter of:**

28 ANTONY CUNNINGHAM
29

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2 **Friday 29th January, 2010**

3 MS KEMP: So, the next matter I would ask you to consider is the matter of Antony
4 Cunningham. I think I can see that all the Panel members have the bundle before
5 them. There is also one supplementary document, an email dated the 19th August
6 2009 which appears to be from Mr Cunningham addressed to Mr John Harding of
7 Kingsley Napley and is in some way a statement of mitigation, just to check that you
8 have it.

9 If I firstly deal with registration, you can see at what is referred to as page B of the
10 bundle, Mr Cunningham's registration details and his registered address which is an
11 address in Cheshire. Turning then to service of the Notice of Proceedings, you can
12 see, hopefully it is marked on your bundle as page A, it is not in fact marked in my
13 bundle but if it was it would be page A. It is the Notice of Proceedings dated the 14th
14 January 2010 notifying Mr Cunningham that the hearing will take place on today's
15 date and again that is sent to the same address in Congleton. I would invite the
16 Panel to find that good service has been effected.

17 CHAIR: Thank you, the Committee is so satisfied.

18 MS KEMP: Thank you, Sir. I then will read the allegation that the dispenser faces and you
19 can see the allegation is at page F of the bundle. The allegation reads:

20 "You breached Code 1A of the Code of Trade Practice 2008, particulars of
21 that breach are that on and around the 21st January 2009 you took an
22 unauthorised person on home visits to clients."

23
24 (The Committee withdrew)

25 CHAIR: In this matter, the Disciplinary Committee of the Hearing Aid Council has
26 considered one charge against Mr Cunningham, who has been a registered Hearing
27 Aid Dispenser since 1998.

28 What is charged against him - and he has acknowledged - is that he has been in

1 breach of paragraph 1A of the Code of Trade Practice, which is a failure to conduct
2 his professional business to a high standard ethical standard. In particular, it is that
3 on or around 21st January 2009, he took an unauthorised person on home visits to
4 his clients. It is important, in looking at this case, to understand the significance of
5 home visits and the hazards which attend to them. In fact, it is fair to say that the
6 whole regulatory framework for hearing aids arose out of concerns in the 1960's
7 about vulnerable consumers being subject to aggressive sales techniques during
8 home visits. That concern, widely shared, particularly by the RNID, led them to work
9 with Laurie Pavitt MP for Brent South, to bring forward a Private Members Bill, which
10 started the regulation of Hearing Aid Dispensers by the Hearing Aid Council Act
11 1968. Since that time, there has clearly been many changes in the technology,
12 practice and the professionalism of Hearing Aid Dispensers.

13 Indeed, over the last ten years or so, the proportion of Hearing Aid Dispensers
14 practicing within a settled retail environment in a high street base, as opposed to
15 peripatetic practice during home visits, has risen markedly. Now, the norm for
16 professional practice is to work from a high street shop rather than to visit vulnerable
17 consumers in their homes.

18 On this occasion, the - a customer complained about Mr Cunningham's conduct and
19 behaviour to his employer, the David Ormerod Hearing Company. This company,
20 which in recent years, has become a quite prominent company within the hearing aid
21 market, partially because of the acquisition of a company a few years ago which had
22 historically relied almost entirely on home visits, then carried out a thorough
23 investigation and considered all the issues raised by that investigation in its
24 disciplinary procedures.

25 Mr Cunningham co-operated fully with that disciplinary proceeding. In the course of
26 that proceeding, it became clear that there were deficiencies in his practice which
27 gave rise to concern for his employer. But the key issue there identified and which
28 he admitted to was that he had taken his girlfriend with him on various home visits to

1 patients. In their investigation, the employer properly identified a number of matters
2 of concern which arose from this breach of company policy. There are some they
3 identified which are very proper matters of commercial concern to them, but they also
4 very properly identified the professional and ethical issues which arise. It is helpful to
5 consider what they said, they were concerned about their duty of care to the client,
6 that the client had not been informed that any third party would be attending, that
7 there was a breach of confidence with respect to the client and that the whole
8 question of the protection of vulnerable adults was raised by the introduction into
9 someone's home of a person who was not a professional doing their proper
10 professional job.

11 I think it is fair to say that Mr Cunningham did not understand the nature of his
12 professional obligations and showed a significant lack of insight into his own conduct
13 and the implications of his actions. It is unsurprising that his employer dismissed
14 him. As I have indicated, the question of home visits and the need to protect
15 vulnerable clients is the heart and driving force which has been behind the whole
16 regulatory framework for 40 years as it has evolved. It must be of concern that a
17 home visit such as this can still take place and that the rights of the potential
18 customer in their home have not been recognised. It is interesting to note that the
19 rights of such customers have recently been further enhanced in general consumer
20 legislation so that now the rights - the cancellation rights with respect to contracts
21 entered into even on prearranged visits, as opposed to unsolicited visits, have been
22 enhanced and they are now equal to the rights of individuals to terminate contracts
23 entered into during cold call visits. There is therefore a whole range of public
24 policy concern and professional concern about how such visits are carried out. It is
25 of deep concern that a professional person in 2009 should not understand the nature
26 of these concerns and should not ensure that their professional practice is at all times
27 ethical, thoughtful and responsible with respect to entering into the homes of
28 vulnerable patients.

1 In considering what the appropriate sanction should be, the Committee has taken full
2 account of the educational process which Mr Cunningham has now undergone
3 through the disciplinary procedure of his former employer and the consequences of
4 his entirely justified dismissal by his employer. As a Regulator, we now need to take
5 due account of what steps are needed for the future to ensure proper public
6 protection. As I have said, we have taken into account the impact on him of his
7 employers's actions. We further admonish him with respect to his unprofessional
8 and unacceptable conduct in the past. We require a qualified promise from him that
9 within the next three months he undergo appropriate continuing professional
10 development with respect to patient confidentiality and his obligations to respect the
11 human rights and dignity of his patients, and in particular how those obligations arise
12 with respect to vulnerable patients. We impose a financial sanction of £500 to be
13 paid within three months and we award costs in the sum of £1121.

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