

1 THE CHAIR: The Disciplinary Committee has very carefully considered all the
2 circumstances relating to Mr Borland and the charge, which has been found proven
3 against him. We take full account of the evidence that the audiological care of his
4 two clients in this matter does not appear to have been compromised. We have also
5 taken account of the matters he has raised in his correspondence. The sanctions
6 available to the Committee are censure, a fine, a suspension or erasure. The
7 Committee has taken a grave view of the circumstances of this case, where a
8 systematic pattern of deception was practiced over a period of years, starting with
9 the sale of aids as new, when in fact they had been sold previously, and involving
10 obtaining services from Siemens, to wit the remaking of the casing, in order to
11 enable that sale to go ahead. There has subsequently been a sustained pattern of
12 false statements made to Siemens, as to the ownership of those aids. There has,
13 furthermore, in the way Mr Borland has responded to the investigation launched on
14 behalf of the HAC, being a matter which does raise cause for concern, in the
15 circumstances the need to protect the public and to maintain proper standards
16 within the regulated profession, mean that censure or a simple financial penalty
17 would be inadequate.

18 The Committee has considered vary carefully arguments as to whether erasure was
19 the appropriate sanction. However, in the light of the lack of damage to the
20 audiological care of the two clients concerned, and the steps, inadequate though
21 they be, that Mr Borland has taken to put the second client in the position to which
22 she thought she had always been, the Committee has concluded that a substantial
23 period of suspension is the appropriate sanction. Accordingly Mr Borland is
24 suspended from the register of the HAC for a period of 12 months.

25 (Committee adjourns)

26 THE CHAIR: Thank you. We are now called to deal with the question of what, if any

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costs, should be awarded against Mr Borland. The solicitor for HAC seeks an award of cost in excess of £16k. The Committee has probed the detail of those figures, and is satisfied that they are robust, and a sum in that amount could probably be awarded as costs against Mr Borland. We have considered the matter of Mr Borland's ability to pay, and recognised that that is likely to be diminished by his suspension from the register for a period of 12 months. Any award of costs needs to be fair and proportionate to the litigation in which they arise, and the issues which are raised in that mitigation. On this occasion we find that an award of costs of that magnitude would be entirely proportionate given the gravity of the circumstances, and the efficient and effective way in which the litigation has been conducted.

We recognise the tension between imposing the entire costs on the registrant, on a polluter pays principle, and the extent to which all registrants should bear at least some of the burden of the costs of disciplinary action by the registration body. In the light of the probable effect on Mr Borland's means, and those arguments, the disciplinary committee has decided to award costs in favour of the HAC in the sum of £12k. These costs to be paid within 28-days from the date of service, unless within that time Mr Borland makes written application to the Disciplinary Committee for time to pay, with specific proposals for that time period, and an indication, more detail as to his means, capital assets, and other such matters. If he makes such an application within 28-days, then payment is suspended until the Disciplinary Committee has had an opportunity to consider that application, and make a determination on the further information available. I think that concludes the business of the Committee for today.
