

HEARING AID COUNCIL PROCEEDINGS

**Meeting of the  
DISCIPLINARY COMMITTEE**

Held at:  
70 St Mary Axe  
London EC3A 8BD

On

Thursday, 29 January 2009

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PRESENT:

Mr CHRISTOPHER HUGHES OBE  
(THE CHAIR)

Panel Members:

MR MICHAEL BISHOP  
MR PETER INCE  
MR JOHN OATES  
MR PETER OMEROD

Legal Assessor:  
MR MICHAEL VERE-HODGES

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MR HYWEL JENKINS appeared on behalf of the Hearing Aid Council.  
MRS JANET HAWTHORNE assisted the counsel for the Hearing Aid Council.

MR ROGER HOULKER appeared on behalf of Amplifon Limited.  
MR ANDREW WEBB represented Amplifon Limited.

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**In the matter of:**  
AMPLIFON LIMITED

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1 THE CHAIR: In this case an individual, Mr Booton, was employed by the respondent  
2 employer of hearing aid dispensers. During his relatively brief period with them he  
3 managed to embark on a series of fraudulent practices against his employer and  
4 against various patients for whom he provided services. The issue was identified  
5 by the employer in early November, and on 23 November they suspended Mr  
6 Booton. They were, at this stage, moving with commendable alacrity and they  
7 managed to hold a proper disciplinary interview with him by the end of November,  
8 during which he made substantial admissions with respect to his fraudulent,  
9 unethical conduct, certainly sufficient at that stage for his employer to recognise  
10 that this was gross misconduct, and his resignation from the company was  
11 procured. At that stage it seems to the Committee the employer had been behaving  
12 effectively and appropriately, and had reasonably resolved certain of the issues.  
13 However, the processes of the employer were effectively derailed. The employer  
14 started the process of considering and pursuing the dispenser for outstanding  
15 money now due to the employer, and on or about, by 15 December the Managing  
16 Director of the employing company, Mr Jeff Murphy, had notice of the issue and,  
17 and in a commendably brief email, indicated that a referral of the issue should be  
18 made to the HAC. Unfortunately the practices and procedures in the employer  
19 were here woefully inadequate. The proper and sensible decision of Mr Murphy  
20 was not carried through, and that position continued until it, again, came to the  
21 notice of senior managers in the company, about the middle of March where, again,  
22 a decision was taken, but it was by the Chief Financial Office, that action should be  
23 taken. But, again, because of pressures of circumstances and events the referral to  
24 the HAC was not pursued with the alacrity with which it should have been, so that  
25 a proper referral was only made in the middle of April. So we have a protracted

1 delay in making the obvious and appropriate referral to the regulator, and this is  
2 fully acknowledged by the respondent employer, by its solicitor, and its finance  
3 director, who has given evidence indicating how the failures arose, and very  
4 properly apologising for the delay in making the referral.

5 One of the clear consequences of this failure to refer with reasonable speed is that,  
6 and having heard evidence on the point the Committee is satisfied, if a referral had  
7 been made at the appropriate time, in other words, early/mid December at the  
8 latest, there would have been a letter from the employer saying ‘Mr Booton is  
9 wholly unsuitable to be a registered dispenser, because of this unfortunate  
10 conduct’. That would have arrived that the HAC, and would have meant that Mr  
11 Booton’s application to become a registered hearing aid dispenser would not have  
12 proceeded, and the Committee is entirely satisfied on the evidence that the  
13 consequence in the delay in referring Mr Booton’s conduct to the HAC was that he  
14 was registered, he obtained employment with another employer, and during his  
15 period of employment with that employer he, again, perpetrated a series of  
16 fraudulent practices against his employer and against his patients.

17 In the circumstances, despite the clear good intentions of Mr Murphy and the  
18 proper expression of regret from the Finance Director of the employer, the  
19 Committee has to take a serious view of this systematic failure of the company and  
20 considers that any penalty less than a substantial financial penalty would be wholly  
21 inappropriate. We impose a sanction of £5,000 on the respondent employer, and  
22 we would expect that employer to provide proper assurances to the Registrar of the  
23 Council within one month that it now has in place appropriate procedures for  
24 identifying ethical issues and ensuring they are properly investigated and reported  
25 to the HAC at an early stage, and I think that deals with the sanction.

1                   **JUDGEMENT ON COSTS**

2                   In this application for costs against Amplifon Ltd, the HAC is seeking costs in the  
3                   sum of £13,513.76 plus £6,295.74; a total of just less than £20,000. A number of  
4                   points have been raised around the extent to which these costs are proportionate  
5                   and necessary to the issues, and I think it is appropriate to consider them. By way  
6                   of introduction I should observe that the Committee has noted that the estimated  
7                   costs of the Committee are significantly below the true costs which will have been  
8                   incurred. Mr Houlker in his able submission on costs points out that his client has  
9                   indeed incurred substantial costs carrying out its own investigation of the matter,  
10                  and also that this is a matter where there was a very early indication of a plea, and  
11                  he raises the question of whether the total costs of, as I have said, nearly £20,000  
12                  are fair and proportionate to the issues raised in the litigation, and also pointing out  
13                  that the true driver in this case is Mr Booton, and his client's picking up the costs  
14                  arising from Mr Booton's outrageous conduct.

15                  The Committee has some sympathy with these views. However, on closer analysis  
16                  they are not, perhaps, quite as substantial as they might seem. The difficulty is  
17                  this; the Managing Director of his client gave a very sensible direction quite early  
18                  on, which if followed would have prevented much of the harm which Mr Booton  
19                  has done from arising. It would have saved, indeed as has been pointed out by  
20                  counsel for the HAC, it would have saved the HAC one lengthy investigation with  
21                  respect to Mr Booton, followed by a very uncertain award of costs, and would have  
22                  much circumscribed the costs of investigation, which his clients have undertaken.  
23                  And clearly a referral to the regulator three weeks after the problems started to  
24                  arise, started to be identified, in other words after the suspension and two weeks  
25                  after the formal admissions from Mr Booton, would not, it seems to me, have given

1 rise to any disciplinary proceedings against his client, rather the opposite. So, his  
2 client has brought these costs upon themselves by the serious organisational  
3 failings, which meant that Mr Murphy's instructions were not carried out. The  
4 requirement under Clause 2, to refer unethical and fraudulent conduct to the  
5 regulator, is a very significant part of the regulatory framework. Any profession  
6 needs to ensure that its fellow professionals help maintain not only their own  
7 standards, but those of their colleagues, and the framework of the HAC, embracing  
8 as it does the employer, seeks to give a proper mechanism and a proper set of  
9 duties to underpin that practice of good regulation within the regulating  
10 community. It is, therefore, a matter of significant public concern when one of the  
11 major employers in the regulated community does fall substantially short of its  
12 own expectations as set out by Mr Murphy's direction. We therefore feel that the  
13 costs, the scale of costs is indeed proportionate to the issues raised in the litigation,  
14 and we have considered the costs and concluded that they are properly incurred in  
15 considering and ensuring that this Committee has all the information needed to  
16 properly appreciate the issues raised. Accordingly we make an award of costs in  
17 favour of the HAC in the two sums requested. Thank you very much; 28-days to  
18 pay.