

HEARING AID COUNCIL PROCEEDINGS

**Meeting of the
DISCIPLINARY COMMITTEE**

Held at:

70 St Mary Axe
London EC3A 8BD

On

Tuesday, 2nd February 2010

PRESENT:

HUW VAUGHAN THOMAS

(THE CHAIR)

Panel Members:

MR MARK GEORGEVIC

MR PETER OMEROD

Legal Assessor:

MR ALAN GOGARTY

MR HARDING appeared on behalf of the **Hearing Aid Council**.

MS AMICIE KNOWLES clerk to the Disciplinary Committee.

In the matter of:

MR DAVID ADAMS

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Tuesday, 2nd February 2010

CHAIR: Good morning. This is a meeting of the Hearing Aid Council Disciplinary Committee.

My name is Huw Vaughan Thomas, I am chairing the Committee today and I am accompanied by Mark Georgevic and Peter Ormerod. Legal assessor Mr Alain Gogarty and Mr Harding is appearing on behalf of the Hearing Aid Council.

MR HARDING: Yes.

CHAIR: Mr Harding, as I understand it a meeting of the Disciplinary Committee on 24th November 2009 found the case against Mr Adams proved.

MR HARDING: Yes.

CHAIR: They did, however, adjourn and we are, in a sense, the adjourned Disciplinary Committee into the matter of sanctions.

MR HARDING: Yes.

CHAIR: I therefore invite you to address us on that issue.

MR HARDING: Sir, I am going to take it fairly shortly. That is exactly the position as I see it as well. Sir, I think you have had an opportunity to look at the transcript of the last hearing, so I am not going to remind you of the facts. The position last time was that having found the allegations proven the Panel were minded to impose a more serious sanction than the one that was suggested in the fast track procedure and that is why the case has been adjourned for Mr Adams to make further representations. He did that, Sir, and you will see in your bundle a letter 6th December that you will find at (ii). He states that it was not his intention to mislead the Council and thereby denies any dishonesty on his part.

Sir, you will note that the allegation as have been found do not plead dishonesty, and in my respectful submission you can't go behind that and that cannot be reopened because those findings have been made. Therefore, you are left to consider the issue of

sanction. The sanctions are set out under Rule 7(3) of your Rules and section 7(3) of the Act. You have powers to post admonishments, impose a monetary penalty of not more than £5,000 on each charge, direct suspension of the Registrant's registration or direct that the Registrant's name be erased from the Register. In deciding which penalty to impose, the purpose of imposing a penalty is not punitive, but to protect the public. There are other wider considerations as well in terms of maintaining public confidence in the regulatory process and upholding proper standards of conduct. So in deciding what penalty you impose you should also have in mind the principle of proportionality in deciding the appropriate penalty.

In relation to costs, you have the power to award costs. You have been provided with a cost schedule which shows the costs of this hearing to be £2,520 in relation to legal costs and you also have a schedule of means, which you need to take into account. Those are my very short submissions. If I can be of any further assistance, please let me know.

CHAIR: Can I just enquire: has the schedule of costs been served on Mr Adams?

MR HARDING: No, it has not.

CHAIR: I have asked this on previous occasions with fast track: as far as he is aware is the letter he signed at fast track which referred to 2000 one which can be varied?

MR HARDING: In theory yes it can be varied, Sir, but it has not been. The allegations as set out in the fast track procedure at page D2 were found to be proven at the last hearing. I can put it colloquially, you are rather stuck with that position.

CHAIR: Indeed. Mr Gogarty, any advice you wish to offer us before we adjourn?

LEGAL ASSESSOR: Mr Harding has adequately set out the course available to this Panel and the approach that you should adopt.

In relation to the history of these proceedings, it has been conceded by Mr Harding that the Registrant has not been adjudicated as having been in breach of a charge alleging

dishonesty and to invite the Panel to, when deciding the issue of sanction to have regard exclusively to the documentation before it and not to speculate on it in relation to the question of dishonesty. Various explanations have been given and described as an error in the papers, and in that regard the Panel should approach it on the basis of a failure to complete the CPD.

In relation to the principle of proportionality it requires the Panel to look at the sanctions that have been described by Mr Harding in ascending order of severity and once this Panel reaches a sanction which it believes adequately protects the public the Panel should stop at that particular sanction.

In relation to the costs, the costs should not exceed a figure that the Registrant could not afford to pay. That is my advice to the panel.

CHAIR: Is your advice, therefore, that we should set aside any issue relating to dishonesty and work purely on the basis of the findings as of the last Panel?

LEGAL ASSESSOR: Yes, because the last Panel adjudicated there was no charge of dishonesty before it. There has been various explanations in the papers as to what may have happened in this case, whether there was an error, a mistake. Now that that is not an issue, this Panel has not been asked to decide whether or not there was dishonesty in this case.

CHAIR: Thank you.

MR GEORGEVIC: Can I just clarify this issue on dishonesty, please? The charge is breach of clause 1(A). The clause 1(A) is falling beneath the high standards of ethical conduct. To what extent is dishonesty relevant at all in relation to this?

MR HARDING: I can only come back to what I said earlier. I hope I am being helpful here. Dishonesty has not been pleaded in the allegation.

MR GEORGEVIC: It does not need to be though, does it?

LEGAL ASSESSOR: It does because there is jurisprudence to say that dishonesty is at the

higher end spectrum of misconduct and if it's to form part of proceedings it requires to be specifically pleaded, and it has not been in this case.

MR GEORGEVIC: Clause 1(A) is quite specific, it does not mention the word "dishonesty" at all.

MR HARDING: No, it does not. I think I can only adopt what the legal assessor is saying; that dishonesty is right at the top and as such would need to be pleaded. One can breach 1(A) without being dishonest, in my respectful submission, by not paying enough attention and so on.

CHAIR: It was open to the last Panel to have taken a decision not to take a view and to refer such matters for further consideration. They did not. They took a decision and we are therefore bound by that.

LEGAL ASSESSOR: That is correct.

MR ORMEROD: The previous Panel - I am just reading the transcript here - "were not satisfied with the sanction that has just been canvassed, Mr Adams, which is indicated that an appropriate proportionate response to the circumstances of the case." We have to bear that in mind, do we not?

LEGAL ASSESSOR: Thank you for the advice. This Panel is entirely free to adopt whatever sanction you feel appropriate based on your consideration of the case and not bound by the comments in relation to sanction by the previous Panel.

MR ORMEROD: We are bound by their decision?

LEGAL ASSESSOR: Yes.

MR ORMEROD: But we are not bound by their comments?

LEGAL ASSESSOR: On sanction.

MR ORMEROD: On sanction, yes.

CHAIR: Thank you. I think at that stage we adjourn in order to consider the sanction and costs.

(The Panel retired to consider)

CHAIR: In the matter of Mr Adams we have been asked to consider the extent of sanctions which should apply. We consider that the £500 fine which the Investigating Committee recommended is not a proportionate response to Mr Adams' failure to both undertake CPD and in terms of his mis-recording of the CPD that he did complete. We therefore substitute for that IC recommendation a fine of £1,000, together with a qualifying promise that Mr Adams will, over the next two years, bring his CPD up-to-date. This will be a matter, of course, which will need to be looked at at the point of renewal each year to check that suitable progress is being made.

In relation to costs we have taken into account the fact that Mr Adams did sign a document indicating £2,000 costs. We are also aware of the fact that his case was originally to have been concluded on 24th November 2009 and we have taken into account his statement of means. We therefore make an order of costs of £2,000. Mr Adams should, within a period of 28 days, reach agreement with the Registrar as to the pattern of repayment of these costs and fine.

I think, unless Mr Harding has any other business, that that concludes the matters before us.

MR HARDING: It does indeed. Thank you very much.

CHAIR: Thank you.