

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, 22nd 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 MARK GEORGEVIC

19
20 **Legal Assessor:**

21 MR MICHAEL VERE HODGE QC

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

24 MS AMICIE KNOWLES Disciplinary Committee Clerk
25 -----
26

27 **In the matter of:**

28 MR DAVID FISHER

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1 **Friday, 22nd January, 2010.**

2 CHAIR: The Disciplinary Committee today consists of myself Chris Hughes Chairman, Mr
3 Michael Bishop, Mr David Pyle, Mr Mark Georgevic and Mr Tony Corcoran. We are
4 assisted by Michael Vere Hodge as legal assessor. The Hearing Aid Council in its
5 prosecutory mode is represented by Mr Chris Whalley, assisted by Miss Amicie
6 Knowles.

7 MR WHALLEY: As you have indicated Sir, Mr Fisher is not in attendance today. Perhaps if I
8 can begin by reading the charges out which you will find at pages B to C of the bundle.
9 The first charge is failure to give best possible advice to your client regarding hearing
10 aids and their use in breach of clause 3 of the Hearing Aid Council Code of Trade
11 Practice 2004. The particulars of that breach are that between June 2005 - sorry, 20th
12 June 2005 and 16th November 2005 you failed to give the best possible advice to Client
13 M regarding hearing aids and their use in that you dispensed a monaural Atlas+ CIC
14 hearing aid which was inappropriate for their hearing loss.

15 The second charge failure to carry out audiology in breach of clause 9A of the
16 Hearing Aid Council Code of Trade Practice 2004. The particulars of that breach:
17 "On 20th June 2005 you undertook audiometry on Client M and you failed to follow
18 British Society of Audiology recommended procedure by not testing the required
19 frequencies for not masked bone conduction by placing the not masked bone
20 conduction symbols/vibrator on the incorrect mastoid."

21 Before I briefly go into the facts of the case, I remind you it is the Hearing Aid Council
22 who bring the case today and the burden of proof is on them to prove their case. The
23 burden of proof is a civil standard which the balance of probabilities.

24 As you are aware this is a fast-track hearing and Mr Fisher has admitted the
25 charges. They have been returned. Within the bundle you will find a signed
26 admission at pages F and G. G is the signature on 1st October 2009, and you also

1 received hopefully this morning I think it was given to you, a letter from Mr Fisher
2 which is dated 10th January 2010 where he outlines again the admissions that he
3 has made and he provides some mitigation there.

4 *(The committee heard submissions and considered an application to amend the*
5 *particulars of the second charge by The Hearing Aid Council.)*

6 CHAIR: The Disciplinary Committee has considered your application to amend the
7 particulars of each by deleting the word vibrator, the Committee is satisfied that this is a
8 minor amendment which does not effect the substance of the issue to which the
9 Respondent has pleaded guilty and as a result of his representations on that point
10 accordingly now satisfies that such an amendment is appropriate and in the interests of
11 justice.

12 MR WHALLEY: Thank you Sir.

13
14 *(The committee adjourned to discuss if the breaches were proved)*

15
16 CHAIR: The Committee is satisfied that the charges are proved.

17
18 MR WHALLEY: In relation to sanction, Sir, as I indicated a short time ago, the Investigating
19 Committee recommended financial penalty of £1,000 per clause. Of course, you are not
20 bound to follow this recommendation. For the purposes that the sanction should be set
21 in the interest of public protection, and not a punitive sanction, you will be aware that the
22 sanctions available to you are admonishment, qualifying promise, a financial penalty not
23 exceeding £5,000 per charge, suspension of Mr Fisher from the Register or removal
24 from the Register, Sir.

25 CHAIR: Thank you.

26 CHAIR: Mr Vere Hodge, any advice to give the Panel before it retires?

1 LEGAL ASSESSOR: Sir, only this, you are of course are aware of the range of penalties that
2 are available to you. It is a question of striking a balance between the gravity of the
3 breaches as you perceive them to be and the mitigation that is put forward and the view
4 that you take as a regulatory body as to the extent to which a penalty needs to reflect the
5 upholding of the professional standards. I do not think I can give further advice than
6 that.

7 CHAIR: Thank you very much. The Committee will retire to consider.

8 (Committee retire)

9 CHAIR: In 2005 Mr David Fisher, a registered hearing aid dispenser, carried out audiology
10 and prescribed a hearing aid for a patient. The aid he prescribed was at the very
11 boundaries of its effective operation for the hearing loss of his patient. Given the
12 progressive nature of much hearing loss, the failure of Mr Fisher to advise of this and
13 that the aid was barely capable of correcting the hearing loss the patient currently had,
14 was a failure to provide best advice to the patient.

15 In the carrying out of the audiometry, Mr Fisher carried out bone conduction testing,
16 however he did not carry it out fully and he did not record it properly in accordance with
17 the British Society of Audiology procedure. In considering the response to these two
18 breaches of the Code of Conduct the Committee has been alert to ensure that the public
19 interest is properly protected and professional standards are appropriately upheld.

20 Mr Fisher has pleaded guilty to both charges. He has provided an explanation of how
21 he came to make his errors with respect to recording the bone conduction audiometry
22 and he has undertaken training courses in audiometry to improve his practice. In the
23 light of this, the Committee has concluded that a financial sanction is appropriate with
24 respect to both charges.

25 With respect to failure to provide best advice, we impose a financial penalty of £1,000
26 and with respect to the poor audiometry, in recognition of the explanation he has given

1 and the steps he has taken to improve his practice, we impose a sanction of £500. We
2 have seen nothing with respect to his means or representation that he requires any time
3 to pay. Accordingly we direct payment of these sums within 28 days of his notification of
4 the outcome of this hearing. Mr Whalley have you an application to make?

5 MR WHALLEY: Yes, Sir, there's an application for costs under rule 10(3) of the Hearing Aid
6 Council Act 1968 where you have a power to award costs against any party in the
7 proceedings. The Investigating Committee recommended costs not exceeding £2,000.
8 Hopefully having schedules handed to you, Mr Fisher has also returned a completed
9 means form which will assist with the costs if they are imposed. Clearly the Hearing Aid
10 Council costs exceed the recommended cost award by the Investigating Committee and
11 that is clearly a matter for yourself yourselves.

12 CHAIR: Just to be clear, Mr Whalley, in what sum are you seeking your costs? In the sum of
13 £2,000 or £2,100?

14 MR WHALLEY: Being fair to Mr Fisher the letter he was sent was not exceeding £2,000 so
15 on that basis the application is for costs of £2,000.

16 *(The committee adjourn to consider the issue of costs)*

17 CHAIR: In this matter with Hearing Aid Council in its prosecutory mode seeks costs in the
18 sum of £2,000 against Mr Fisher. The Committee has considered the schedule of costs
19 that have been incurred in the preparation and bringing of proceedings before the
20 Disciplinary Committee. The Committee is satisfied that the total costs sought are
21 properly incurred and the costs are proportionate to the matter before the Committee.
22 The Disciplinary Committee therefore awards costs in the sum slightly less than the
23 costs actually incurred and awards costs of £2,000 in favour of the Hearing Aid Council.
24 The Committee has considered the schedule of income and expenditure of Mr Fisher
25 and notes that he has a quite substantial income from hearing aid dispensing. The
26 Committee therefore directs that he pay the costs of today within three months of the

1 date of notification of the outcome of the hearing.

2 *The hearing concluded.*