

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, 29<sup>th</sup> January 2010**

10 -----  
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 ALISON ELLMAN-BROWN  
29  
30

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**Friday 29<sup>th</sup> January, 2010**

MS KEMP: Sir, the next case to consider is that of Alison Ellman-Brown.

CHAIR: There is a supplemental paper with this dated 3rd November.

MS KEMP: That's right. That's a letter that accompanied the fast-track procedure form. I can see that the Panel have the bundle before them and so I will move on to deal with registration, and as you can see at page 2 of the bundle the registered address of the dispenser is an address in Kent. That is the same address which appears on page A of the bundle which is the Notice of Proceedings which notifies the dispenser of the hearing. There appears to be - there are in fact 2 page As - not particularly helpful, the first page A notifies the dispenser that the hearing is due to take place on today's date, 29th January 2010, and we can see that that letter was sent to the same address that appears in the register on 8th January, and I invite you to find that good service has been effected and you can see in any event that there is a signed fast-track procedure document which indicates she is aware of proceeding.

CHAIR: Thank you we find that the service has been effected.

MISS KEMP: I am grateful. I next read out the charges which appears on pages B-D in the bundle. If I start with charge 1, which reads:

"That there was a failure to comply with Clause 5 of the Hearing Aid Council Code of Trade Practice 2004, in that you are a dispenser of hearing aids and not a registered practitioner, and you should not have advised your client to seek medical advice .... anyone or more of the conditions listed below. This advice should have been given at the time the client purported or you found any of these conditions. Where any finding was positive, the client's agreement, a copy of the findings should have been forwarded to the client's GP or appropriate medical specialist..."

and the particular conditions are listed.

"...(e) conductive hearing loss where the audiology shows 25 kHz or greater

1 same gap at two or more of the following frequencies, 500 and 2,000 Hertz.  
2 (f) a lateral hearing loss as indicated by a different and less bright conduction  
3 threshold of 20 decibels or greater, of two or more of the following: 500,  
4 1,000, 2,000, 4,000 Hertz. (g) hearing loss of a sudden 24 hours, or rapid of  
5 90 days onset. (k) unilateral pulsatile or distressing tinnitus within the last 90  
6 days."

7 Turning to page C:

8 "(m) concerned that speech discrimination is significantly poorer than would  
9 be expected for the clients level of hearing."

10 The next matter is the particulars of this breach.

11 "On 20th January 2005, or thereafter, you found Miss T, suffered from the  
12 condition stated in (e), (f), (g), (k) and (m) above, and you did not advise her  
13 to seek medical advice.

14 Charge 2. Failure to carry out audiology according to the recommended  
15 procedures of the British Society of Audiology in breach of Clause 9A of the  
16 Hearing Aid Council Code and Trade Practice 2004. The particulars of the  
17 breach, on 20th January 2005 and 3rd March 2005, you conducted  
18 audiometry on Miss T , and during audiometry you did not carry out  
19 audiometry in accordance with the British Society of Audiology represented  
20 procedure in audiometry.

21 Charge 3, failure to give the best possible advice to your client regarding hearing aids  
22 and their use, in breach of Clause 3 of the Hearing Aid Council Code of Trade and  
23 Practice 2004 and 2008. The particulars of the breach, on 20th January 2005, or  
24 thereafter, you failed to give the best possible advice to Miss T regarding the hearing  
25 aids and their use in you did not refer her for medical advice before dispensing  
26 Phonak Aero 33 hearing aids, and you dispensed the hearing aids without  
27 conducting audiometry correctly."

28

1                   *(The Committee heard evidence from The Hearing Aid Council)*

2 CHAIR: Thank you. Any questions for Miss Kemp? No, okay. The Committee is satisfied  
3 that we have ample evidence and in addition an unambiguous plea of guilty to these  
4 three breaches so we find those three breaches of the Code proved.

5  
6 MS KEMP: I am grateful. The next matter then is sanction and cost. If I deal with sanction  
7 firstly. As I stated earlier to you the purpose of sanction is to protect the public and  
8 not to punish the dispenser. You are primarily again considering if there is any  
9 ongoing risk to members of the public and consumers from this particular dispenser.  
10 Again, the Investigating Committee has recommended a penalty of £1,000 fine per  
11 clause breach, again you are not bound by that and you will see from the letter of the  
12 3rd November 2009 that indeed the dispenser offers in effect a qualifying promise, in  
13 that she will satisfy the Panel by going on a revision course through Robert Rendal in  
14 respect to the appropriate circumstances for referral to a general practitioner. You  
15 may wish to consider that, it's also relevant to consider the length of time that the  
16 dispenser has been practising, and whether this is a matter that she should have  
17 been aware of in any event. You can see at pages 2 to 3 of the bundle that indeed  
18 Miss Ellman-Brown has been a dispenser since 1991. The available sanctions to  
19 you are as I previously outlined and I don't propose to outline them again unless  
20 there is any wish for me to do so. In relation to costs again I have outlined your  
21 powers today. The suggestion by the Investigating Committee, my apologies - Miss  
22 Knowles will hand up the cost schedules and Miss Ellman-Brown has completed the  
23 means form. The recommended costs by the Investigating Committee is costs not  
24 exceeding £2,000. The costs in the cost schedule amount to £1273. You can see  
25 from the means schedule that there is an amount of disposable income. Unless I can  
26 be of any further assistance, those are my submissions.

27 LEGAL ASSESSOR: If I may give the Panel some very brief advice. Miss Kemp has  
28 accurately set out the advice to the Panel and the approach that you should adopt.

1 As I said earlier this morning that you must have regard to the the principal of  
2 proportionality and that the purpose of sanctions is not to be punitive. What that  
3 means is once you reach a sanction that you think adequately protects the public you  
4 must stop. I would also ask the Panel to have regard to the dispenser schedule of  
5 3rd November and to the mitigating factors set out in that letter. Obviously this Panel  
6 is not bound by the recommendation of the Investigating Committee. Should you  
7 decide to depart from that recommendation, I invite the Panel to adjourn the  
8 proceedings. That concludes my advice.

9 CHAIR: Thank you very much we will now withdraw and consider.

10 (The Committee withdrew)

11 CHAIR: In this case Alison Ellman-Brown, a registered hearing aid dispenser for well over a  
12 decade, faced three charges arising out of her care for a patient dating back to 2005.  
13 She saw this patient and carried out audiometry on her. Despite the clear evidence  
14 from the patient she did not make the recommendation to the patient that she consult  
15 her GP about aspects of her hearing loss. In this she was in breach of clause 5 of  
16 the Hearing Aid Council Code of Practice in force at the time. In carrying out  
17 audiometry it must have been immediately apparent to her that the hearing loss was  
18 complicated and she did not carry out audiometry in accordance with the British  
19 Society of Audiology recommended procedures. In particular, she did not carry out  
20 audiometry with bone masking. Given this lady's length of experience and the  
21 presentation of the patient which she recorded, this was a very significant falling  
22 away from the standards which can properly be expected of her. As a consequence  
23 of this failure to follow Clause 9 of the Code of Practice with respect to audiometry it  
24 is wholly unsurprising that there was a further breach in that the advice she gave to  
25 her patient was not the best possible advice with regard to hearing aids since she  
26 had not carried out the proper audiometrical investigation of the hearing loss, nor had  
27 she made the appropriate contact with the GP. It would be surprising indeed if the  
28 prescription and treatment was appropriate to the circumstances. In her letter of 3rd

1 November she indicates that she is accepting the charges and she indicates that  
2 she is prepared to undergo further training from a recognised trainer in the field. The  
3 training that she seeks - indicates that she is seeking, is with respect to Clause 5 of  
4 the Code of Trade Practice referable conditions. While training in that area may be  
5 desirable, this is not the worst case with respect to breach of Clause 5 the  
6 Disciplinary Committee has seen. We are much more concerned about the quality of  
7 audiometry. In order to properly secure future protection of the public, therefore, we  
8 require her to give a qualified promise to undergo retraining in aspects of audiometry  
9 including the appropriate use of masking within 28 days of today. In addition, we  
10 impose financial sanctions of £500 with respect to the failure to make the appropriate  
11 referral. £1,000 with respect to poor audiometry. £500 with respect to the failure to  
12 give proper advice.

13 We have also, before us, have a schedule of costs from the solicitors to the Council.

14 We have considered that schedule of costs and find that it is properly incurred and  
15 proportionate to the issues raised. Accordingly, we impose costs in the sum of  
16 £1273.

17 In this case, we have a schedule, I think, of an expenditure for Miss Ellman-Brown, and  
18 we find that schedule full and convincing. In the light of her assertion that she has  
19 uncommitted disposable income per month, we direct payment of the total sum due,  
20 which is £3,121, at the rate of £1,000 per month. The first payment to be made  
21 within 28 days of today. If that, or any subsequent payment, is not made then all  
22 sums immediately become due and payable.

23 I think that concludes the business of the Committee for today.

24 I give my thanks to our Legal Assessor, Mr Gogarty, Miss Kemp and Miss Knowles,  
25 and our colleagues who have so diligently typed away in the corner. Thank you very  
26 much.

27 (Adjourned)