

HEARING AID COUNCIL

PROCEEDINGS

**Meeting of**

**FAST-TRACK DISCIPLINARY COMMITTEE**

held at

70 St Mary Axe  
London EC3A 8BD  
on

17 August 2007

PRESENT:

MR CHRIS HUGHES (Chair)

MR TONY CORCORAN  
MR MIKE BISHOP  
(Committee Members)

---

MS SIOBHAN GOODRICH: Legal Assessor  
MRS JANET HAWTHORNE: Council's Solicitor  
MS SANDRA VERKUYTEN: Registrar  
MS AMICIE KNOWLES: Committee Administrator

---

Case of: MR GUY OXLEY

---

The respondent did not attend.

---

Transcribed by Ubiquis  
Cliffords Inn, Fetter Lane, London, EC4A 1LD  
Telephone 020 7269 0370

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DECISION REGARDING SANCTION

CHAIR: The Disciplinary Committee has considered the evidence and the admissions of Mr Oxley. The story is relatively simple. The patient came to see him in the second half of August 2006 with the intention of purchasing an improved digital hearing aid. When it was fitted at the end of August 2006 she was fitted with a hearing aid which was in all essentials identical to her existing analogue aid. Furthermore, in carrying out the audiological assessment, which Mr Oxley was required to do at the first appointment, he failed to comply with Section 7(i) of the British Society of Audiology recommended procedures for puretone air and bone conduction.

Accordingly, Mr Oxley was in breach of the Code of Conduct by failing to provide best advice and by failing to carry out audiology appropriately. In this case, the tribunal did not have the benefit of the presence of Mr Oxley. This was of some difficulty to the tribunal in coming to its decision.

The Investigating Committee had suggested with respect to Charge 1 of the fact which is the failure to provide best advice the imposition of a financial penalty of £1,000. Given all the circumstances of the case, which are clearly set out in the letter of charge, and which is admitted to by Mr Oxley, the tribunal has concluded that a financial penalty of £1,000 is inadequate to meet the gravity of this substantial breach of duty to the patient.

The Committee has considered whether it should adjourn to enable Mr Oxley to provide further information or mitigation with respect to an increased financial penalty. However, the Disciplinary Committee has concluded that the additional costs which would fall on Mr Oxley of adjourning to enable him to make

1 such representations would inevitably be significantly greater than any additional  
2 financial penalty which the Committee might impose. Furthermore, there would be  
3 also significant additional costs on the Hearing Aid Council which would be  
4 unlikely to be fairly awardable against Mr Oxley.

5 Accordingly, because his private interest of minimising his costs and the  
6 public interest of minimising the cost of the Hearing Aid Council are best served by  
7 not adjourning the case, the Disciplinary Committee has concluded that to properly  
8 reflect the gravity of his breach it should impose a penalty of £2,000 for failure to  
9 provide best advice. It also awards costs in that case of £1,000. With respect to  
10 the poor audiometry, the Disciplinary Committee having fully considered the  
11 representations that Mr Oxley has made in this matter imposes a penalty of £1,000  
12 and costs of £1,000. This produces a total penalty of £3,000 and costs of £2,000, a  
13 total of £5,000 payable by Mr Oxley.

14 Are there any observations or submissions with respect to time?

15 COUNCIL'S SOLICITOR: I think he might need some time to pay and I think the Legal  
16 Assessor might want to say something.

17 LEGAL ASSESSOR: Earlier on in giving my advice I had indicated that the issue of costs  
18 was to be considered separately and I think formally it should have been with a  
19 presentation by the solicitor for the Council of the costs applicable for this case and  
20 questioning, if appropriate, in relation to the issue of proportionality and  
21 reasonableness.

22 The other matter that indeed applies to all of these cases under the fast-track  
23 procedure is whilst it is a fundamental tenet of any application for costs, not only  
24 that the person should know about, and in this case it is the case that the applicant  
25 knew that there would be an application for costs, it's fundamental that the person  
26 should also know how much is asked for, and should also be given the opportunity

1 to say what he or she is able to say about ability to pay because ability to pay is a  
2 matter that must be considered by the Committee. Those are matters on which I  
3 would have advised the Committee as a separate part of the procedure in relation to  
4 costs.

5 CHAIR: The Respondent was notified of a costs award being sought in the sum of £2,000  
6 and has signed...

7 LEGAL ASSESSOR: There is a difference between an Investigating Committee  
8 suggesting what it though the appropriate costs are and a Registrant being given a  
9 breakdown of the costs and being given the ability to make a comment on those  
10 costs. At the time the Investigating Committee made its observations in relation to  
11 costs, the costs hadn't even been incurred. They were prospective costs, perhaps on  
12 a common-sense basis. But the reality of costs, if they are to be ordered on a  
13 judicial basis is that they must have actually been incurred, they must be reasonable,  
14 and they must be proportionate. The Registrant must have the opportunity to know  
15 what exactly the costs are that are sought against him as actual expenditure, the  
16 ability to comment on it, and fundamentally the ability to tell the Committee of his  
17 ability to pay. Without those safeguards, there is a risk of injustice being done.

### 18 19 DECISION REGARDING COSTS

20 CHAIR: The Committee has further considered the question with respect to the costs of  
21 Mr Oxley. Adopting the methodology of splitting the overall costs of the day and  
22 of the preceding Investigating Committee proportionately, the total costs for those  
23 two aspects of the costs are £2,177.23. The Committee calculates the costs relating  
24 to Mr Oxley specifically on the separate schedule at £169.33, which leaves the total  
25 of £2,346.56. This is significantly in excess of the amount indicated to Mr Oxley.  
26 However, the Committee does not consider it appropriate to impose the level of

1  
2  
3  
4  
5  
6  
7  
8

costs beyond the £2,000 previously indicated to him. Thank you.

The Committee directs that the total sums due be paid within three months. In the event that Mr Oxley finds this impossible or unduly burdensome he should make application to the Registrar for further consideration by the Registrar of an appropriate payment schedule.

That concludes the matter with respect to Mr Oxley.

[The hearing concluded]