

BEFORE THE PROFESSIONAL CONDUCT COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS

v

MR BRIAN CULLEN BOWLES MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON PROCEEDING IN ABSENCE

Preliminary Issues

1. The Respondent has been notified of the applications which the College has made on all these issues, as well as the Submissions upon which it relies in support of those applications. Notwithstanding the use of his registered postal and email addresses (an email which he used when communicating with his former Employer, XL Farmcare), the Respondent has not communicated with the College and has not attended this Hearing.
2. The College invited the Committee to permit it to amend the Charges by the deletion of Charge 1(iii); the deletion of the words “to you” in Charge 4(i) and (ii); and the addition of the words “with XL Farmcare” in Charge 4(iii); to permit it to adduce in evidence the additional guidance document; and to proceed with this Disciplinary Hearing in the Respondent’s absence.

The relevant Procedure Rules and the Committee's powers

(i) Service of notice

3. The Committee is satisfied so that it is sure that the College has complied with each of the requirements for service as set out in Rule 5 of the 2004 Procedure Rules.
4. The Committee notes that Section 26 of the Veterinary Surgeons Act provides that service of a Notice may be undertaken by post to the Respondent’s registered address, or last known address if it appears to the Registrar that such service will be more effective.

5. The Notice of Inquiry was served on the Respondent on 28 August 2024, containing the information required by Rule 5.2, within the 28 day period required by Rule 5.5; in accordance section 26 of the Act, namely to the Respondent's last known address.
6. In fact the College has gone further in its attempts to bring to the Respondent's attention all of its intentions as regards this Hearing and the applications it has now made. These additional steps consisted of measures taken to serve the documentation on him:
 - (1) at his registered work and home addresses;
 - (2) via his previous defence representative;
 - (3) via his dual registration with the South African Veterinary Council;
 - (4) via Mr Hepper's investigations of addresses registered at Companies House.

iii) Amendment of the Charges

7. The Committee has followed and considered the Advice of the Legal Assessor on this issue. It has noted that by Rule 14.1 of the governing Procedure and Evidence Rules 2004 this disciplinary hearing is in the nature of civil proceedings and the Committee may allow such further evidence, amendments and submissions and give such further directions as it considers appropriate in all the circumstances. Guidance of the manner in which that discretion should be exercised has been provided by the Court of Appeal in the case of Doree [2017] EWCA Civ 319, which guidance this Committee has applied to each of the amendments sought.
8. The deletion of Charge 1(iii) can only be to the Respondent's advantage and is, therefore allowed.
9. Similarly, the deletion of the words "to you" in Charges 4(i) and (ii) do nothing more than clarify the fact that the College accepts that the letters in question were not addressed to the Respondent in person but were, instead, addressed to his then employer. The Committee can see no disadvantage to the Respondent from these amendments and they are, accordingly, allowed.
10. The proposed addition of the words "with XL Farmcare" appears to the Committee to do no more than provide clarity to the allegation advanced against the Respondent namely that he was not suspended by Animal Plant Health Agency ("APHA") in August 2019 but, instead, by XL Farmcare. The suspension by APHA did occur but not until 2020.

11. Applying the guidance contained in the decision in Doree (supra) this Committee considers that it is right and proper that the Charges laid against the Respondent should properly reflect the facts and conduct complained of, as they now do. These modest amendments do not change the substance of the allegations advanced by the College against the Respondent.
12. The thrust of the complaints are that his alleged misconduct took place notwithstanding that he had received a number of warnings about his TB testing methods, had received previous advice concerning the testing methods he deployed and despite the re-training which he had had to undergo. None of the amendments renders the Charges laid more serious. The gravamen of the Charges against the Respondent remain as they were. The amendments merely provide appropriate clarifications of the allegations and material facts.
13. The amendments sought have been made in a timely and appropriate manner, namely before the Charges are formally put before the Committee and following prior notification of them to the Respondent. Accordingly, the Respondent has had ample opportunity to respond to the proposed amendments and to raise any objections he might have. He has not objected to any of them.
14. The Committee can see no unfairness or prejudice to the Respondent were these amendments to be allowed. Accordingly, the College's amendment applications are all granted.

iv) Admission of additional documents

15. Rule 14.1 of the Procedure and Evidence Rules 2004 also governs this application by the College – *“the Committee may allow such further evidence ... and give such further directions as it considers appropriate in all the circumstances”*.
16. This application arises because of the following. When preparing the case for this final hearing the College became aware that the Official Veterinarian instructions, as issued by APHA, for undertaking TB testing were not included in the Inquiry Bundle. Whilst the College considers that it has sufficient information to prove the allegations without the addition of these documents, it recognises that the documents provide useful contextual information which would be of assistance to the Committee in understanding how TB tests are carried out and why they are done in a particular way.

17. The College therefore seeks to add these documents to the Bundle. The information in question has been referred to by the Respondent himself in his communications with the College. The College submitted therefore that it cannot be said that this is information that the Respondent is not aware of. Out of an abundance of caution and in order to be open-handed with the Respondent, the College has put the Respondent on notice that it would be making this application. This was done by sending the same to the Respondent at his registered email address.

18. The Committee agrees that, whilst this additional documentation is not strictly necessary in order for the College to proceed with these Charges, it contains helpful information for the members of the Committee which enables them to the better understand the instructions given to TB testers, like the Respondent, as to the steps they are required to follow when undertaking such work and before issuing any subsequent certificates.

19. In those circumstances the Committee grants the College the right to add to the Inquiry Bundle the instruction document in question, which will be added as Divider 5.

ii) *Proceeding in the Absence of a Respondent*

20. The Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules 2004 provide, at Part III, Rule 10.4:

"If the respondent does not appear, the Committee may decide to proceed in the respondent's absence, if it is satisfied that the notice of inquiry was properly served and that it is in the interests of justice to do so."

iii) *Interests of justice*

21. The approach taken by the Committee when considering whether to proceed in the absence of a registrant is that set out by the Court of Appeal in *Adeogba –v- General Medical Council* (2016) EWCA Civ 162. Sir Brian Leveson, giving the judgment of the Court, stated:

"Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware, with fairness to the practitioner being a prime consideration, but fairness to the GMC and the interests of the public also taken into account. The criteria for criminal cases must be considered."

22. The “*criteria for criminal cases*” include the following (i) the nature and circumstances of the defendant’s absence (and in particular whether the absence is deliberate or voluntary), (ii) whether an adjournment might result in the defendant attending voluntarily, (iii) the likely length of any adjournment, (iv) whether the defendant wishes to be represented, (v) the extent of any disadvantage to the defendant in proceeding in his absence, (vi) the general public interest in a trial taking place within a reasonable time, and (vii) the effect of any delay on the memories of witnesses.
23. The Court in Adeogba also noted that Disciplinary Hearings had to be guided by the Regulator’s main statutory objective, namely the protection, promotion and maintenance of the health and safety of the public. In this case, the College’s objective is the promotion and protection of animal welfare; and there is a linked public interest in maintaining public confidence in the profession and upholding the reputation of the profession.

The Committee’s Decision

24. It is for the Committee, therefore, to decide whether, in all the circumstances, it is in the interests of justice to proceed in the absence of the Respondent.
25. The Committee is satisfied that the Respondent’s absence is voluntary. When he had knowledge of his employer’s concerns about his testing procedures at Mr M’s farm in May 2020 the Respondent communicated with them via his email address - as he did with the College in his email of 8 February 2021. He has not asked for any adjournment, nor has he objected to the Hearing going ahead in his absence.
26. The Committee considers that an adjournment would serve no purpose, as the Respondent has given no indication that he would attend a disciplinary hearing at any point in the future. On the contrary, he has stated that he does not see any point in attending any such hearing; on 16 February 2021 he stated he does not intend to undertake any veterinary work in the future, being then 78 years of age; and that he intended to apply to the College for his name to be removed from the Register.
27. The allegations contained in the Charges laid against the Respondent relate to matters of a serious kind. It is in the public interest for serious allegations such as these to be heard as soon as possible, in line with the College’s public interest duties to safeguard the health and welfare of animals, to uphold professional standards, the reputation of the veterinary profession and public confidence in the profession and the College’s Regulator.

28. The Committee also had regard to fairness to the College and its witnesses. The costs of bringing this matter to this Hearing are not insubstantial and an adjournment would add considerably to those costs. Further delay is not in the interest of the College's witnesses. The Committee cannot see that it would be fair to the College or to its witnesses to adjourn this matter further.
29. Given the Respondent's non-engagement to date there would not be any additional disadvantage to him to proceed with this Hearing now. For all the above reasons the Committee concludes that it is in the interests of justice that this hearing should proceed without further delay and in the Respondent's absence.
30. The Committee will therefore proceed to consider whether the Facts alleged in the Charges which have been laid against the Respondent can be proved by the College.

Anonymisation of Witness' Details

31. Mr M has requested that his name and the name of his farm be not identified in the Decisions of this Committee. He considers that he and his farm may suffer reputational prejudice were he to be identified in proceedings of this nature.
32. The Committee is satisfied that this request would not adversely affect the Respondent's interests and has no impact on the fairness of these proceedings.
33. Accordingly this application is granted.

Disciplinary Committee
8 October 2024