

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

JAMIE FRANCIS RUSHTON, MRCVS

COMPLETE DECISION OF THE DISCIPLINARY COMMITTEE

1. The Respondent faced the following charge:

“That being registered in the Register of Veterinary Surgeons:

1. On 9 December 2022, at Wood Green Crown Court, you were convicted following a guilty plea of:

i. Sexual assault on a female;

and in respect of the above conviction, on 30 May 2023, at the Wood Green Crown Court, you were sentenced to 18 months’ imprisonment, made subject to a Restraining Order, a Sexual Harm Prevention Order for a period of 10 years until further order under section 103 of the Sexual Offences Act 2003, ordered to be on the Sex Offenders Register for 10 years and ordered to pay £3000.00 costs and a £140.00 victim surcharge;

AND THAT it is alleged that the above conviction renders you unfit to practise veterinary surgery”.

2. Ms Nicole Curtis appeared on behalf of the Royal College; the Respondent did not appear and was not represented.

3. Service of Notice of Inquiry and proceeding in absence

3.1 The Committee decided that the Notice of Inquiry had been properly served and that it was in the interests of justice to proceed in the absence of the Respondent. The Committee’s reasons for these decisions appear at Annex 1.

4. Background

- 4.1 The background is taken from the remarks of the sentencing Judge at Wood Green Crown Court. On 24 June 2017 the Respondent attended a professional conference. Ms S also attended. The Respondent and Ms S were colleagues in a veterinary practice. Ms S was junior to the Respondent. During the course of the evening, which included a formal dinner, Ms S consumed a significant quantity of alcohol and woke up the following morning in the Respondent's room, lying on his bed. The Respondent was sitting in the room. Ms S was still wearing the red dress that she had worn the previous evening. She had limited recollection of the previous evening and had no recollection of going to the Respondent's room. She was unaware that anything untoward had occurred. She assumed that the Respondent had simply given up his bed for her as an act of kindness.
- 4.2 In 2019 a number of images (both moving and stills) were discovered on a memory stick belonging to the Respondent. These included images showing a woman in a red dress asleep on a bed and the Respondent touching her and adjusting her body so that he could see and feel her genitalia. After a two-year period, Ms S was eventually identified by the police as the woman asleep on the bed. After being contacted by the police, and learning what had occurred, she was very distressed. In her victim impact statement she described herself as suffering a whole range of emotions including anger, shame and sadness. Although she considered herself to be a resilient individual, Ms S thought of these events almost every day and they have affected her relationships with others, mainly her partner.
- 4.3 The respondent initially denied having committed any offence. He maintained that he derived no sexual gratification from what had occurred and that he had a reasonable belief that Ms S had consented to his activity. He maintained this denial until three days before the trial was due to begin, on 12 December 2022.
- 4.4 At his trial, the Respondent pleaded guilty to the offence of which he was convicted, albeit that he maintained that he had been involved in a consensual sexual relationship with Ms S. This was not accepted by the prosecuting authority and this issue was the subject of a hearing before the trial judge. The Judge concluded that there had been no consensual sexual relationship and that, before Ms S passed out, it was highly likely that her condition was such that she was not in a position to give consent to any sexual activity.
5. The Committee's findings of fact
- 5.1 Ms Curtis referred the Committee to the Certificate of Conviction and to the Judge's sentencing remarks.

- 5.2. After dealing in outline with the nature of the evening function, the Judge recorded his view of the evidence given by the Respondent in relation to the offence. The Judge observed *“I do not detect any real remorse in you but that is perhaps in part because I do not really get the impression that [you] think you have really done anything wrong. Your guilty plea is an acceptance that you broke the law but from what you said on 15 May it is not an acceptance that what you did was wrong.....it is clear from your evidence that you remain in denial about your offending. Your basis of plea accepts that you gained sexual gratification from these actions; this was previously denied by you.... Your actions on 25 June 2017 were clearly driven by your own sexual desires and have nothing to do with capturing a moment with a person you deeply cared about”*.
- 5.3 The Judge also observed that Ms S was particularly vulnerable as she was drunk (“to the point of passing out”) and that the Respondent’s offending involved a breach of trust not only between colleagues but also between a superior and a subordinate. Ms S had placed herself in a vulnerable position, in the care of the Respondent who had proceeded to take advantage of the situation.
- 5.4 The Committee accepted the advice of the Legal Assessor. He reminded the Committee that rule 23.3 (a) of the *Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004* provides that a conviction may be proved by the production of a certified copy of the Certificate of Conviction and that the Committee needed to be sure of the fact of conviction if that matter was to be found proved.
- 5.5 The Committee had regard to the Certificate of Conviction and the transcript of the Judge’s sentencing remarks. It had regard to the standard of proof which was required. It found that the fact of the Respondent’s conviction, as alleged in the charge, was **Proved**.
6. Unfitness to practise veterinary surgery by reason of the conviction
- 6.1 Ms Curtis submitted that the conviction involved a sexual assault on a vulnerable woman. It had occurred at a professional function arranged by their employer and in the context of a professional relationship. It had involved an abuse of trust. It was liable to bring the profession into serious disrepute.
- 6.2 Ms Curtis further submitted that the seriousness of the offending was reflected in the significant custodial sentence that the Judge had imposed.

6.3 Ms Curtis referred the Committee to section 6. 5 of the *Code of Professional Conduct for Veterinary Surgeons* which provides that:

“Veterinary surgeons must not engage in any activity or behaviour that would be likely to bring the profession into disrepute or undermine public confidence in the profession”.

Ms Curtis submitted that the Respondent had been guilty of a very serious breach of this requirement. In her submission, a number of the aggravating factors detailed in the Disciplinary Committee’s *Sanctions Guidance* (August 2020) were applicable and should be considered when assessing the seriousness of the Respondent’s criminal Conviction. Ms Curtis submitted that the Respondent’s actions had caused actual injury and a risk of injury to Ms S. His behaviour had been predatory and directed towards a vulnerable colleague. It concerned sexual misconduct and the abuse of a position of increased trust and responsibility.

6.4 Ms Curtis also reminded the Committee of the guidance given in *Council for the Regulation of Health Care Professionals v General Dental Council (Fleischmann)* [2005] EWHC 87 (Admin) in which it was stated that, as a general principle, a practitioner should not be permitted to resume practice while still subject to the terms of a sentence imposed for a serious criminal offence. Ms Curtis pointed out that the Respondent was subject to a ten-year Sexual Harm Prevention Order that will not expire until May 2033 and he was required to remain on the Sex Offenders’ Register until that date.

6.5 The Committee accepted the advice of the Legal Assessor. He reminded the Committee that the question of whether the Respondent’s conviction rendered him unfit to practise veterinary surgery was a matter for its judgment, having regard to the public interest in safeguarding the reputation of the profession and declaring and upholding proper standards of conduct for members of the profession.

6.6 The Committee accepted Ms Curtis’ submission that the Respondent’s criminal Conviction, very serious in itself, included the aggravating factors to which she had referred.

6.7 It was evident from the Judge’s sentencing remarks that Ms S had been seriously affected by the knowledge of what had occurred on that evening. That knowledge was bound in itself to be very distressing and according to the victim’s impact statement had a long- lasting impact on the victim’s self-esteem, resilience and relationship with others. The victim’s level of distress can only have been increased

by the knowledge that the Respondent had filmed and/or photographed his activity while she was unconscious and that the images were included on a memory stick which contained a number of other voyeuristic images.

- 6.8 Her distress must have been further increased by the delay in the criminal proceedings occasioned by the Respondent's denial of any offence until three days before a rearranged trial in December 2022, and the need for a hearing to establish the nature of the offence, which was necessitated by the Respondent's false assertions. (The victim impact statement recorded "Every time he pled not guilty, each time opened up the wound, revisiting all those images, guilt, shame and fear that I have done something wrong").
- 6.9 The Committee was satisfied that the Respondent's behaviour had caused Ms S significant psychological injury and carried with it a risk of causing such injury.
- 6.10 The Committee was also satisfied that Ms S was especially vulnerable because of the significant quantity of alcohol that she had consumed. In the circumstances that evolved, she was in the Respondent's care. The Respondent abused the position of trust and responsibility that he occupied. He was a senior colleague, at a professional conference. Instead of taking appropriate steps to secure the welfare of Ms S, he used the position in which he found himself to engage in predatory sexual misconduct. Furthermore, his behaviour was opportunistic and, as the Judge said, "clearly driven by [his] sexual desires."
- 6.11 The Committee considered that the Respondent was in serious breach of section 6.5 of the Code. His offending was in itself very serious. It had taken place at a professional conference and within the context of a professional relationship. It was liable to undermine the reputation of the profession and public confidence in the profession.
- 6.12 The Committee therefore concluded that the Respondent's criminal Conviction was such as to render him unfit to practise veterinary surgery.

7. Sanction

- 7.1 Ms Curtis informed the Committee that there were no previous regulatory findings against the Respondent.
- 7.2 The Legal Assessor reminded the Committee of the *Sanctions Guidance* and of the need for proportionality when considering sanction. A structured consideration of any applicable aggravating and mitigating factors would help to ensure a proportionate

outcome. The Committee was also reminded to approach the available sanctions in ascending order until it arrived at what it assessed to be a proportionate outcome.

- 7.3 The Committee has already identified a number of aggravating factors to this criminal Conviction at paragraphs 6.7- 6.10 of this Determination.
- 7.4 The Committee carefully considered whether any mitigating factors in relation to the conviction could be identified. It had regard to the matters set out in the Sanctions Guidance at paragraph 42. It was unable to identify any mitigating factor in relation to the Matters which led to the Conviction.
- 7.5 The Committee did note that the Respondent was an experienced veterinary surgeon and that there had been no previous regulatory finding against him. Prior to this Conviction he was of previous good character.
- 7.6 The Committee turned to consider sanction in ascending order.
- 7.7 It was clearly inappropriate to take no further action in view of the serious nature of this Conviction and its potential impact on public confidence in the profession.
- 7.8 There was no material before the Committee which suggested that any useful purpose would be served by postponing sanction.
- 7.9 In the Committee's judgement a warning and/or reprimand would also be a wholly insufficient response to a criminal Conviction of this type.
- 7.10 The Committee next considered a suspension order. In the Committee's judgment the Respondent's Conviction was so serious that a suspension order would not be a proportionate response. Further, and as an entirely separate consideration, the Committee noted that the *Sanctions Guidance* suggests that suspension may be appropriate in cases where:

"The respondent veterinary surgeon has insight into the seriousness of the misconduct and there is no significant risk of repeat behaviour". (Paragraph 71 b)

There was no material before the Committee to demonstrate that the Respondent truly appreciates the potential impact of a criminal Conviction of this type either on the victim or upon public confidence in the profession. Indeed the account he proffered right up to the point of sentencing almost six years after the event and which was rejected by the sentencing Judge ("capturing a moment" with a person you "deeply cared" about) suggests that at that time his insight was poor. The

Respondent has not placed any material before the Committee to suggest that this situation has changed.

7.11 The Committee also had regard to the case of *Fleischmann* and the guidance that it contained in relation to professionals who were still subject to sentences passed by the criminal courts. The Respondent, now released on licence, was still subject to the sentence of imprisonment imposed by the sentencing Judge and subject to a Sexual Harm Prevention Order which would not expire until 2033. In the Committee's assessment it was inappropriate for him to practise as a veterinary surgeon while subject to these restrictions.

7.12 The Committee next considered the only remaining sanction which is that of removal from the Register. It concluded that a number of the factors set out in the Sanctions Guidance as being potentially incompatible with continued registration as a veterinary surgeon were present in this case. These were

a. Serious departure from professional standards as set out in the RCVS Code of Professional Conduct for Veterinary Surgeons

c. Causing serious harm (or causing a risk of serious harm) to...the public, particularly where there is a breach of trust.

d. Offences of a sexual nature

f. Evidence of a harmful deep-seated personality or attitude problem.

7.13 In view of the previous paragraphs of this Determination which deal with the circumstances surrounding the criminal Conviction, sub-paragraphs *a.*, *c.*, and *d.*, as referred to above, do not require further elaboration.

7.14 So far as sub-paragraph *f.* is concerned the Committee noted, in particular, the observation of the sentencing Judge who said "*I do not detect any real remorse in you but that is perhaps in part because I do not really get the impression that [you] think you have really done anything wrong. Your guilty plea is an acceptance that you broke the law but from what you said on 15 May it is not an acceptance that what you did was wrong*".

7.15 In this context the Committee also noted that the Respondent maintained a plea of Not Guilty until three days before a rearranged trial was due to take place, and subsequently advanced an account of what he said was his relationship with Ms S which the Judge found to be false.

- 7.16 Taking all of these factors into account, the Committee is satisfied that removal from the register is the only proportionate outcome to this case. This sanction is necessary to declare and uphold appropriate standards of conduct for members of the veterinary profession and to maintain public confidence in the profession.
- 7.17 The Committee therefore directs that the Respondent' s name is removed from the register of veterinary surgeons.

Disciplinary Committee
11 June 2024