

**ROYAL COLLEGE OF VETERINARY SURGEONS**

**V**

**MR JOHN FRANCIS McKENNA**

**FINDINGS AND REASONS**

**The Charge**

Mr John McKenna appeared before the Disciplinary Committee of the Royal College of Veterinary Surgeons on a charge of improper tail docking of dogs.

The charge against Mr McKenna is: -

**That being registered in the Register of veterinary surgeons while in practice at Pegasus House, 230 London Road, Charlton Kings Cheltenham, Gloucestershire GL52 6HW :-**

ON or about 26 January 2005, you docked the tails of an entire litter of Weimaraner puppies, numbering 11 in all, at the request of their owner Mrs McNaught, when you knew or ought to have known there were no therapeutic or prophylactic reasons within the meaning of the Annexe to the RCVS Guide to Professional Conduct for the procedure, and thereby carried out an unacceptable mutilation of the puppies.

**AND THAT in relation to the facts alleged, you have been guilty of disgraceful conduct in a professional respect.**

**Preliminary Submission**

Our proceedings began with an application by Mr Corless, on behalf of Mr McKenna, that the composition of the Disciplinary Committee gave rise to a real possibility that it was biased (Actual bias not being alleged).

In particular it was submitted that this possibility arose in the case of Martyn Jones MP, our Privy Council appointed member, since in the House of Commons and in the press, he had spoken out strongly in favour of an outright ban on tail docking.

We shall not embark upon any further discussion upon the question as it affects our member Martyn Jones MP, save to say that we felt confident that his customary impartiality if he sat on this case would be unaffected. However, Mr Jones took the matter out of our hands by voluntarily withdrawing from the Committee saying that he did so not because he agreed with Mr Corless' submissions, which he did not, but because he wanted to save the College the costs and trouble of an avoidable appeal. He made a statement explaining his position, which is attached to this Document.

In the second particular, reference was made to a RCVS Council meeting, held on 2 March 2006. The House of Commons was about to debate at Report stage the Animal Welfare Bill which dealt, amongst other things, with tail docking. Advice from the College was being called for. The External Affairs Committee recommended that Council should support a ban on all docking except for therapeutic purposes, subject to a review after five years. This confirmed what was already Council policy, as evidenced in the 2002 DEFRA response. The

Committee had before it the agenda and papers that were before the Council at its meeting that day. The Council with no dissensions, accepted this recommendation from the External Affairs Committee. Miss Shield, Mr Eddy, Mrs Bruce and Dr Chesney (all of whom are on today's Committee) were all present as members of Council on that day, and can be taken to have assented to the recommendation of an outright ban on tail docking of dogs.

Accordingly it was submitted by Mr Corless, relying on the now well established test in law to be applied on such occasions, that the "fair minded and informed observer would conclude that there was a real possibility that the Disciplinary Committee was biased."

After carefully considering the matter, we rejected this submission preferring the submissions made on this issue by Mr Badenoch QC, Counsel for the College. These submissions are set out in his paper dated 12 December 2006, and we adopt them. We would however like to draw attention to three of the submissions contained therein which we think are of especial importance:-

1. The Disciplinary Committee must by law be comprised of Council members. Until that position is changed by further legislation, it is inevitable that its members will sit on Inquiries touching upon matters of policy that have been endorsed by them as Council members. If such members are to be disqualified on that account then potentially the Disciplinary Committee could be rendered incapable of performing its statutory duty of regulating the profession.
2. It is only to be expected that senior members of a profession like ours would have formed views on issues of current debate and importance in our professional worlds. It does not follow that this means that these senior members are unable to decide a conduct case fairly on the basis of the professional rules to be applied to the facts in hand. Furthermore it is of immense importance to such members that its esteemed profession runs its disciplinary proceedings fairly without fear or favour.
3. It is fully accepted that under current legislation and the RCVS rules and guidance, Mr McKenna would be today entitled to dock tails for a prophylactic reason. By simply voting for a recommendation that the prophylactic exception ought to be removed in future legislation, it does not follow – far from it – that members cannot fairly determine whether Mr McKenna conformed to current rules or not.

### **The Evidence**

At the commencement of the case Mr McKenna admitted docking puppies' tails. He admitted that this procedure was not performed for therapeutic reasons, however he denied that this fact made him guilty of disgraceful conduct in a professional respect.

The College made no criticism of Mr. McKenna's clinical competence.

The Committee heard from Mrs Joanna Louise McNaught, the owner of a family pet, a Weimaraner bitch 'Stella' (Kennel Club name: Jane's Delight). The bitch had whelped 11 puppies on 22 January 2005. During the pregnancy Mrs McNaught had made enquiries with various other Weimaraner owners regarding possible purchasers for the puppies. She was advised that the puppies would be more saleable if they were docked. It was with some reluctance and against her own vet's advice that she decided to have all the puppies docked. She identified via the *Yellow Pages* John Francis McKenna who confirmed his willingness to perform this procedure. Mrs McNaught stated that Mr McKenna's practice did not seek any information from her with regard to either her address or the reasons behind the request for

the procedure. All 11 puppies were docked on 25 January 2005 by Mr John McKenna in the presence of Mrs McNaught. During the surgery Mrs McNaught expressed her concern at the excessive amount of tail that Mr McKenna was removing.

She stated that she paid Mr McKenna £100 in cash and agreed to pay the balance in the immediate future. In the event, one of the puppies suffered post operative complications which resulted in expensive corrective surgery by a specialist surgeon. When Mrs McNaught received a reminder from Mr McKenna that there was a balance due, she wrote to him explaining that she was withholding the payment because she had become unhappy with the results, and indeed, upon reflection, with the procedure itself. Unfortunately two of the puppies subsequently died, although there is no evidence that this was related to the docking.

Eight of the puppies were sold to private pet owners, none of whom required the puppies to be working dogs. The puppy known as 'Tallulah/Lulu' was retained as a McNaught family pet. However, over time, Mrs McNaught became distressed and guilt-ridden about the docking and the sight of Lulu's stubby tail. Eventually Lulu was re-homed.

The Committee heard evidence from Mrs M Johnson, the purchaser of the puppy known as 'Bella'. She had bought Bella as a family pet, and gave evidence regarding complications that had arisen as a direct result of the docking procedure.

The Committee also heard evidence from Alison Jones BVetMed MRCVS who was Mrs McNaught's usual veterinary surgeon. She stated that she had attended Stella during her pregnancy and the whelping of the 11 puppies. She confirmed that she had refused to perform the docking procedure on the puppies, and that she had advised against it. She subsequently undertook the routine care of the litter until they were sold to their new owners. Her clinical records revealed that her practice had treated one of the puppies (Bella) for a discharging sinus tract from the tail.

Professor David Bradley Morton gave evidence as an expert witness, having published a paper on 'Docking of dogs: practical and ethical aspects' (*The Veterinary Record* 1992). He had been asked by the College to address a number of questions which arose in the case against Mr McKenna.

- 1) *"Is it possible that the docking in this case was truly required for therapeutic or truly prophylactic reasons?"*
- 2) *Can a Weimaraner be a working dog?*
- 3) *Why does the guidance apply to Weimaraners?*
- 4) *Does the tail docking, in the circumstances as described in the witness statements ..., in your opinion, amount to unacceptable mutilation within the meaning of the Mutilations Report (an annex of the Guide to) Professional Conduct?"*

Having studied the bundle given to him by the College, Prof. Morton concluded:

- 1) That in his opinion, Mr McKenna was in breach of the *RCVS Guide to Professional Conduct*.
- 2) That there was no therapeutic or genuine prophylactic reason to dock the tails of those puppies, and all were done for cosmetic reasons.
- 3) The Weimaraner is a working gun-dog breed, but obviously not all work as gun dogs.
- 4) That a Weimaraner can injure its tail in other circumstances, e.g. in the home, as well as when being used as a gun dog.
- 5) That tail docking, in the circumstances as described in the witness statements amount to unacceptable mutilation.

Professor Morton also addressed the issue of the possibility of pain and suffering during this process. He advised the Committee that it was his opinion, that docking does inflict both pain and suffering in puppies which undergo this procedure. He stated, "Only when the harms done are outweighed by the advantages realistically sought can docking be justified."

In his defence, Mr McKenna accepted that he did carry out the docking procedure and that it was not for therapeutic reasons. He stated that his grounds for docking the puppies were that he had had a telephone conversation with Mrs McNaught, who had informed him that her own veterinary surgeon had refused to dock the puppies. He added that Mrs McNaught said that she had been advised by other Weimaraner owners that she would find it difficult to sell the puppies if they had not been docked. His description of the procedure which he carried out concurred with that of Mrs McNaught. At this stage Mr McKenna said that he understood that there were no prospective owners for the 11 puppies.

Mr McKenna told the Committee that he owns his own practice, which employs an assistant and support staff. He described his practice as a "non-docking" practice, however, he had carried out the procedure on three occasions in the last two years. He stated that he supported the College position on tail docking, and had only carried out the procedure on what he believed to be working-breed dogs. He added that he did not perform the operation on, for example, boxers or rottweilers.

Mr McKenna went on to say that in his opinion, the RCVS guidance on docking was ambivalent and that he had understood it to mean that docking for therapeutic reasons was always acceptable and that in working breeds, prophylactic docking was acceptable for all dogs. He emphasised that he had seen a large number of dogs which had been docked badly and in which further restorative procedures were necessary, and numerous cases in which undocked dogs had suffered injury to their tails. He further added that he would support a ban on docking.

In his reply to the letter from Mrs McNaught on 8 April 2005, Mr McKenna wrote, "*I considered all 11 pups suitable for docking – the interference is less traumatic the earlier the process is carried out (after 3 days). I would not prejudice a puppy's chance of survival in the interests of what is, after all, a cosmetic exercise.*"

When challenged, Mr McKenna claimed that the use of the word cosmetic was used by him to signify that the process of tail docking was of a minor surgical nature, the College challenged him on this on the grounds that he knew that when he was writing the letter to Mrs McNaught, she and her partner were medical professionals and must have known that the use of the word cosmetic would be understood in the usual way.

In the course of his evidence, it became clear that Mr McKenna held the view that the Royal College was not enforcing the guidance on the tail docking of dogs.

### **The Committee's Findings**

The Committee finds Mr McKenna guilty of the charge and of disgraceful conduct in a professional respect for the following reasons:

- 1) On the subject of docking, the 1996 and 2004 RCVS Guides to Professional Conduct state, "*Docking cannot be defined as prophylactic unless it is undertaken for the necessary protection of the **given dog** from risks to **that dog** of disease or of injury which is likely to arise in the future from the retention of an entire tail. The test of*

**likelihood** is whether or not such outcome will **probably** arise in the case of **that dog** if it is not docked.

*Similarly, docking cannot be described as prophylactic if it is undertaken merely on request, or just because the dog is of a particular breed, type or conformation. Council considers that such docking is unethical."*

Mr McKenna admitted that he was unfamiliar with this part of the guidance and that had he been familiar with it, he would have been in no doubt that he was in error when he docked Mrs McNaught's 11 puppies.

- 2) The Committee does not accept Mr McKenna's assertion that the risks of later injury in some dogs justifies the docking of all puppies of breeds which may be worked. Similarly, the Committee does not accept that the fact that some puppies may be injured through illegal docking by lay persons justifies 'prophylactic docking'.
- 3) Mr McKenna ought to have known the full extent of the RCVS guidance on the docking of dogs' tails.
- 4) Mr McKenna's opinion that the guidance was ambivalent is not accepted by the Committee because the RCVS took particular care to define the exact meaning of its separate parts, "for the avoidance of doubt".
- 5) While defined as a working breed Weimaraners are not extensively used to work in the field. Mr McKenna should have known that it was unlikely that all 11 puppies would end up as working dogs.
- 6) By Mr McKenna's own admission, neither Mrs McNaught nor he had any knowledge of the puppies' future owners or the likelihood of their becoming working dogs. He agreed that he docked all the puppies because he thought that there was a **possibility** that some of the dogs **may** become working dogs and **might** be injured.
- 7) Mr McKenna made no attempt to explore Mrs McNaught's feelings on the subject of docking, or to suggest that perhaps it might be preferable to dock only a few of the puppies as it was unlikely that all 11 puppies would go to working homes. We know from her evidence that Mrs McNaught had reservations about the procedure before, during and after the dockings and a proper discussion of the subject might well have resulted in a different outcome for the puppies.
- 8) As Mrs McNaught was a dentist and her husband was an ophthalmic surgeon, Mr McKenna went on to explain that he always tried to be especially efficient and correct when dealing with other medical professionals and that he took particular care with both the docking procedure and the wording of his written reply to Mrs McNaught's letter of complaint. The Committee cannot accept therefore, his assertion that when he used the word 'cosmetic' he meant 'minor'. We believe that in the context of the letter he used the word 'cosmetic' in the commonly accepted way and that he knew he was docking to conform to fashion and for no truly prophylactic reason.