

ROYAL COLLEGE OF VETERINARY SURGEONS

V

MR WILLIAM ANGUS BAIRD

JUDGMENT ON RESTORATION APPLICATION

This is the ruling of the Committee on Mr Baird's Application for Restoration to the Register made by email on 25 June 2008.

Material Facts

Before addressing the question of what the correct sentencing decision should be, it is necessary to set out the facts material to the decision of the original Disciplinary Committee to order that Mr Baird's name be removed from the Register.

At that Hearing which took place, on 19 July 2007, Mr Baird faced a single charge as follows:-

"That being registered in the Register of Veterinary Surgeons and whilst in practice at the Happy Pet Veterinary Clinic, 37 Grass Royal, Yeovil, he:

1. *on 22 February 2005, failed to provide adequate 24 hour emergency cover for Cassie, a German Shepherd cross bitch belonging to Mr and Mrs McConnell, more particularly in that he failed to attend Cassie at Mr and Mrs McConnell's home address when he knew or ought to have known that such a visit was necessary;*

and that in relation to the facts alleged, he had been guilty of Disgraceful Conduct in a Professional Respect".

As has been confirmed by Mr Baird, in answer to questions put to him by the Committee, he had returned to New Zealand after the events of 22 February 2005 and was still there when the original Hearing took place. It was his decision not to attend that Hearing and he additionally decided not to be legally represented. That may have been based on an assessment that he would not receive the sanction of removal from the Register or even an Order of Suspension. Whatever the reason, his assessment was, in the view of this Committee, misplaced. In the light of his intimation to the original Disciplinary Committee that he did not intend to put in an appearance and that he was content for the Hearing to proceed in his absence, that Committee, understandably, resolved to determine the issue in his absence.

The facts underlying the Charge had to be proved by the College to the Committee's satisfaction and so that it was sure of the facts that it found. The Committee then had to proceed to consider whether the facts, as found proved, revealed conduct which amounted

to Disgraceful Conduct in a Professional Respect. In order to so satisfy the Committee the College had to adduce evidence through its witnesses. That it did by calling Mr and Mrs McConnell and, in addition, the veterinary surgeon, Mr Watson, who attended on their dog Cassie at the McConnell's home, when Mr Baird refused to do so at the McConnell's home: (i) despite being told of the dire condition of their dog; (ii) despite their inability on account of their age, state of health and the weight of their dog to transport it to Mr Baird's clinic; and (iii) despite being informed by Mr Watson that he had an obligation to attend on the dog given its perilous condition.

This account was supported by the contents of the witness statements which had been served on Mr Baird. However, during the course of the Hearing Mr Watson proffered an additional piece of evidence concerning the response which his entreaty, that Mr Baird should attend on Cassie at the McConnell's home, provoked from Mr Baird. That additional evidence was that Mr Baird had responded by saying:

"I can remember his very words. He said to me 'I am not going to do a visit. I don't give a stuff. If you want to go, you go'".

In Mr Baird's absence from the Hearing the Committee enquired further into the reasons why Mr Watson had omitted this piece of evidence from the letter which he first wrote to the College setting out his account of what had passed between him and Mr Baird on the night in question. This was done so that the Committee could satisfy the requirement that it had to be sure of the truthfulness of the witness and of the accuracy of the account being given from the witness box under oath. As is clear from the Transcript, and as is confirmed by those members of this Committee who were present at the original Hearing and determined the issue, Mr Watson gave a clear and compelling explanation as to why he had not made mention of this additional piece of evidence when he provided his witness statement. His explanation was as follows:

"There is a reason. I quite felt that the proceedings would never get as far as this, which is why I did not initially put it in there. Perhaps that sounds a very strange thing to say, but it would seem such an awful thing for a professional person to say, such an uncaring thing to say, that I felt rather as if I did not want to bring it up when it might never have got to this stage. Since things have proceeded to this stage, I was determined that I would tell the truth, as I have done under oath today. This is exactly what he said. If there is a sensible reason, that is the reason it was not mentioned in my original letter".

Mr Baird's Reaction

It is manifest that the original Disciplinary Committee, having seen Mr Watson and heard the way in which he gave that evidence accepted the above explanation. This much is clear from the following passage taken from the written Findings of that Committee:

"Although the words, 'I don't give a stuff' do not appear in Mr Watson's previous statements, the Committee was impressed by the way Mr Watson gave his evidence and are sure this account is true".

Not surprisingly, that being its finding the Disciplinary Committee, having found the charge proved, proceeded to take that response from Mr Baird into account when it came to the question of sanction. Its ruling in that regard was:

"The RCVS Guide to Professional Conduct gives ten guiding principles, the first of these is;

“Veterinary surgeons must make animal welfare their first consideration in seeking to provide the most appropriate attention for animals committed to their care.”

The Committee recognises that the charge relates to a one-off incident rather than a course of conduct on the part of Mr Baird. The Committee bears in mind that in considering an appropriate level of sanction its primary purpose is not to punish but to protect the welfare of animals, to maintain public confidence in the profession, and to uphold proper standards of conduct in the profession.

The Committee also considered whether it was appropriate to give Mr Baird a further opportunity to offer any mitigation of his offence before proceeding to a decision on sanction. It took into account the fact that Mr Baird has had ample opportunity to say all he wanted to say about this case, has chosen not to do so, and that what he had said in his letter of 5 July 2007 reinforced its view of his conduct in February 2005; namely that he showed a total disregard of the first guiding principle of the profession.

Not every case of a refusal to make a home visit out of hours, even if unjustified, would merit the severest sanction, but in this case the Committee has been unable to avoid it. Mr Baird’s conduct demonstrated, the Committee judges, a flagrant refusal to acknowledge or abide by the fundamental principle of the profession set out above”.

This issue has been addressed in some detail because it is clear from what Mr Baird has written in the past and has said again to this Committee, albeit in much more moderate and careful terms, that he feels that he was deprived in some way of an opportunity to challenge this evidence from Mr Watson.

That belief is one which this Committee considers to be ill-placed. Mr Baird was given every opportunity to appear at the original Hearing. It was his freely made decision not to attend. Had he taken legal advice or, in the absence of doing so, had he read the published Procedural Rules which govern Disciplinary Hearings before the Disciplinary Committee he would have appreciated that oral evidence always has to be adduced in support of and in proof of a charge of Disgraceful Conduct in a Professional Respect. That being so it is obvious that when giving such evidence witnesses are likely to elaborate upon and further explain the accounts contained in an early letter or even in the witness statement given to the College in support of a Charge. That is precisely what happened on this occasion. In the judgement of the original Disciplinary Committee Mr Watson was a compelling and convincing witness whose explanation was plausible and understandable in the circumstances which he elaborated. Mr Baird can have no justifiable complaint that events turned out the way in which they did.

The opportunities available to Mr Baird to challenge the account given to the original Disciplinary Committee by Mr Watson did not end there. He accepts that he was sent, within the 28 day time allowed for lodging an appeal against the findings and sanction of the Disciplinary Committee, both a copy of the full transcript of the evidence adduced at the Hearing and a copy of the Disciplinary Committee’s Findings and Ruling on Sanction. Accordingly, even though then in New Zealand, it was open to him to seek legal advice on those Findings and to reach a decision on the question of whether or not to lodge an appeal. He chose not to do so. He explained to the Committee that he was at a disadvantage in that it would have been particularly expensive for him to proceed with an appeal in England. Nonetheless he conceded in answer to a question put to him by the Committee that he had not read, as carefully as he should have, the accompanying letter from the College in which his rights of appeal were explained to him, because he failed to notice that the appeal would

be heard before the Privy Council and not by the Disciplinary Committee which had determined the case against him. He said that he therefore considered that it would have been a waste of time to seek to appeal to the Tribunal that had made the original determination. This misapprehension on Mr Baird's part was, again, a self-induced one which he would have avoided had he either taken legal advice or read the documents provided to him by the College with the care that they deserved.

Mr Baird's final self-induced misapprehension was that he considered, because he was informed by the College that he could apply for restoration of his name to the Register after 10 months had elapsed, that there was no need for him to appeal, and that having served a 10 month period off the Register he would have served his punishment, as he put it, and would thereafter be entitled to resume practice on re-application. This final misapprehension is perhaps the most serious of all. This Committee wishes to make it clear that, an order for removal of a name from the Register being the most serious of the sanctions available to the Disciplinary Committee, it should be understood by the profession that it is only in circumstances where the Applicant can satisfy the Committee that he is a fit and proper person to have his name restored to the Register, (the Charge or Charges which led to the order for removal notwithstanding), that restoration will be permitted. On this issue, this Committee has made a full allowance for the fact that Mr Baird even today appears not to have taken legal advice or thought particularly carefully about how he was going to set about satisfying the Committee that it is appropriate that his name should be restored to the Register.

Clearly, it was open to Mr Baird to appeal any Findings or ruling on Sanction with which he was dissatisfied. That he did not do so was the result of his own failure to read the relevant Procedural Rules or to ask for advice. As a result he did not have a proper understanding of the consequences of not lodging an appeal and has, it seems, harboured an ill-founded feeling that he suffered some disadvantage, injustice even, by reason of the original Disciplinary Committee's finding that he did respond to Mr Watson in the terms described above.

However, in the circumstances explained above, this Committee considers that Mr Baird should have acknowledged that, whatever his initial response might have been to the Findings and ruling on sanction by the original Disciplinary Committee, the reasons it made those findings and reached that ruling were justified on the evidence adduced before it, which remained unchallenged by him – either at the time or by way of the appeal procedure available to him. He did not proffer this acknowledgement and this has, therefore, given the Committee some pause for thought about the extent to which he has accepted its original decision. This will be addressed further, below.

The Approach Adopted

The Committee has given careful consideration to the contents of Mr Baird's application. It was impressed by the approach adopted in that document and the acceptance in it that:

- 1) He should have realised that it was his obligation, both morally and professionally, and a requirement as a veterinary surgeon that he should promptly attend at the McConnell's home.
- 2) He realised that the veterinary profession is different from other professions, in that it is seen as a caring profession whose first priority is the welfare of animals in the veterinary surgeon's care, that this status must be maintained and that it is the duty of the College to see that its members do so, and to discipline and advise its members accordingly.

- 3) He accepted that his failure to attend to Cassie at the McConnell's home may have led to the McConnells having a bad impression of the profession and to undue suffering for the dog, Cassie.
- 4) He was truly sorry that he had caused such distress for the McConnells and to Cassie and that he may have brought the profession into disrepute in their eyes.
- 5) He understood and accepted why the charge of Disgraceful Conduct in a Professional Respect was laid and found proved.
- 6) He was seeking Restoration to the Register because he would in the future respond favourably to a similar situation and would endeavour to uphold the public perception of the veterinary profession and its laws.

The Committee has also taken account of the fact that the College has chosen not to oppose Mr Baird's application.

However, what was of concern to the Committee was the somewhat contradictory sentiments expressed in the correspondence bundle which Mr Baird chose to produce during the course of this Hearing. This consisted of correspondence written to the Veterinary Review following the original Hearing and a further letter which Mr Baird wrote to the Editor of that journal following a response from the President of the College. The contents of the first letter to the Editor and the follow up letter from Mr Baird appeared to be at odds with the content and approach adopted by Mr Baird in his application. Its relevance, in the view of the Committee relates to the question of whether he accepted the Findings of the original Disciplinary Committee. This curate's egg approach was taken further by Mr Baird when he made his submissions in support of his application, during the course of which he expressed himself in somewhat intemperate terms and language. It was for these reasons that he was asked a number of questions by the Committee to enable it to arrive at an assessment of what Mr Baird's real attitude was to the Findings of the original Disciplinary Committee and its ruling on Sanction. This is an issue which will be dealt with shortly.

Returning to the matter of the approach which the Committee adopted in relation to this application, it was to accept and follow the advice of the Legal Assessor. That is:

- 1) To consider the Findings and Reasons of the original Disciplinary Committee. These are material to the questions of the seriousness of those Findings; the need for protection of the public; and the future welfare of animals in the event of the Applicant veterinary surgeon being permitted to have his name restored to the Register.
- 2) To consider what the appropriate length of time off the Register would probably have been regarded as appropriate by the original Disciplinary Committee in the light of the Findings and rulings of that Committee.
- 3) To consider what this Committee judges to be the length of time for which it would be appropriate that the Applicant should have his name removed from the Register for the purposes of deterrence and, most importantly, in order to maintain public confidence in the profession, bearing in mind all the while that, as the original Disciplinary Committee was advised, the primary purpose of any decision as to Sanction should not be punishment but to protect the welfare of animals, to maintain public confidence in the profession and to declare and uphold proper standards of conduct in the profession.
- 4) To consider whether the Applicant veterinary surgeon can satisfy the Committee that he is fit to be restored to the register and, in exercising its judgement as to whether or not to restore a veterinary surgeon to the Register, to consider, in particular:
 - a) Whether the Applicant veterinary surgeon has accepted the Findings of the Committee at the original Inquiry Hearing;

- b) The Applicant veterinary surgeon's conduct since removal from the Register;
- c) The efforts by the Applicant veterinary surgeon to keep up-to-date in terms of knowledge, skills and developments in practice, since removal from the Register (accepting that he must not practise as a veterinary surgeon);
- d) The impact on the Applicant veterinary surgeon of having his name removed from the Register; and,
- e) The public support expressed for the Applicant veterinary surgeon.

Conclusions

As to the first three of the above considerations, the Committee has taken note of and reflected on the fact that the charge on which Mr Baird was found guilty, that of Disgraceful Conduct in a Professional Respect concerned a single incident relating to the response that he should have made to a request that he attend on a dog at its home whilst it was clearly in distress. In other words the charge did not relate to his clinical performance.

However, Mr Baird's conduct on the night in question revealed, in the view of this Committee as it did in the Findings of the original Disciplinary Committee, a serious breach of his paramount duty as a veterinary surgeon to attend to the welfare of animals registered with his practice and therefore under his care, and that this breach was so serious as to warrant the removal of his name from the Register, despite it being a one-off failure of duty.

The failings on Mr Baird's part were, at one level, a failure to communicate properly with the client or to listen to the client's concerns and requests for assistance and having listened carefully to those concerns and requests, to respond to them as a caring professional should.

Those matters are material to the issue of how long a period of time off the Register is appropriate in order to reflect the Committee's concerns that proper standards of professional conduct be maintained and to the question of whether there is a continuing need for the welfare of animals to be protected. There is no evidence before the Committee that members of the public would be at risk from Mr Baird. That deals with Issues 1-4 above.

As to Issue 4(b), the Committee has heard nothing to suggest that the Applicant has behaved inappropriately since the order was passed for his name to be removed from the Register. In particular there is no reason to conclude that he has not obeyed the requirement that he should not practise as a veterinary surgeon. Mr Baird's own account was that he has since worked as a manager of his wife's veterinary practice in New Zealand.

The impact which the removal of his name from the Register has had upon him [Issue 4(d) above] is perhaps obvious. He has not been able to practice as a veterinary surgeon for the last 13 ½ months. As to this Mr Baird has expressed himself thus in his application:

"I seek restoration to the Register because, after an unblemished record of 29 years in a profession I love, and am proud to be a member of, I miss practising in it".

Mr Baird's account of what he has done in the period intervening, since his removal from the Register, to keep up to date in terms of knowledge, skills and developments in practice, is that he has maintained his previous practice of reading extensively on veterinary matters and developments and has continued to be a subscriber to VIN (Veterinary Information Network) an internet veterinary service; but that he has not undertaken any formal CPD course training. This he explains on the basis that until he knows whether he is to be restored to the Register this would be, in effect, a step too far.

He was asked by the Committee whether he had read the current Guide to Professional Conduct and was familiar with its contents. The answers given suggested to the Committee that Mr Baird had not paid a great deal of attention to that requirement. In other circumstances, particularly had this case concerned findings of incompetence on the part of the Applicant, the Committee would have taken a serious view of such a failing. However, other questions put to Mr Baird revealed to the Committee's satisfaction that he does now have a proper understanding of his obligations in relation to out of hours visits and that he would today approach the problem which occurred on 22 February 2005 with a proper understanding of his duties to the sick animal.

On the issue of whether the public supported Mr Baird's Application for Restoration to the Register [Issue 4(e) above], it appeared to the Committee that he had in this regard also failed to read and consider the Rules governing such Hearings and to apply his mind to this question. The approach which a Disciplinary Committee will adopt in relation to applications such as this are published on the College's Website and were, therefore, available to Mr Baird. He was compelled to accept that he had not addressed this issue at all.

This leaves to the end the Committee's conclusions on the issue identified and mentioned above, that of whether Mr Baird has shown an acceptance of the Findings of the Committee at the original inquiry Hearing [issue 4(a)]. The Committee observed a definite modulation of the manner in which Mr Baird expressed his views about the way in which the Hearing before the original Disciplinary Committee had been conducted. It was, in the view of this Committee, unfortunate that Mr Baird had not reflected more carefully on this issue before he commenced his submissions to the Committee. It considers that had he done so he would have chosen not to suggest that others, rather than he, were responsible for the way in which matters unfolded at that original Hearing.

Nonetheless Mr Baird acknowledged without equivocation the evidence which the McConnell's had given and the reasons for their expressions of upset. He accepted that he had acted inappropriately on the night in question, that his performance as a veterinary surgeon fell far short of that which was to be expected of a competent and caring veterinary surgeon and that he now realises that on the day in question he was wrong and regrets his response to the McConnell's request that he attend at their house to treat their distressed and dying dog. It is also the view of the Committee that Mr Baird has accepted the paramount importance of dealing with an animal's welfare in all situations and that any failure to do so will inevitably reflect badly on the standing of the profession in the eyes of members of the public. Most importantly the Committee is satisfied that Mr Baird accepts that the Guide states in clear terms what a veterinary surgeon's duty is in circumstances such as arose on the night of 22 February 2005 and that his response that night was entirely unacceptable. In this connection the Committee stresses the importance of the obligation on all veterinary surgeons to be familiar with the contents of the latest version of the Guide to Professional Conduct. In addition, the Committee would wish to draw attention to the Special Report from the College on how to avoid becoming the subject of a complaint. This should be read by every veterinary surgeon and practitioner.

Therefore, despite the Committee's initial concerns that Mr Baird might not fully recognise the seriousness of his failings on the night in question, it has concluded that Mr Baird's concerns were confined to the fact that additional oral evidence was adduced at the original Disciplinary Committee Hearing beyond that set out in the witness statement of Mr Watson. On careful consideration of this issue the Committee has concluded that the Applicant has

failed to understand the Disciplinary Hearing process in that he did not trouble to take advice on the governing Rules of Procedure or to read them for himself. In the experience of this Committee it is not unusual for witnesses, when giving evidence, to add details to their witness statements for a variety of reasons. This simply lends force to the conclusion that all veterinary surgeons who face disciplinary proceedings are well advised to seek legal assistance before deciding not to attend a Hearing to which they are the Respondent. In summary, this Committee considers that Mr Baird has shown a level of naivety in his approach both to the original Hearing and to this Application for Restoration.

The Committee recognises Mr Baird's willing acceptance that he breached his clear duty to provide 24 hour cover for his patients and to attend on his patients personally where such personal attendance at the client's home was necessitated by the condition of the animal and its level of distress. In these particular circumstances, the Committee has been prepared not to hold against Mr Baird the unnecessary and ultimately irrelevant issues of dispute raised by him and his failure to prepare this Application for Restoration to the Register in a way which addressed all the relevant issues.

Result and Ruling

It is the decision of the Committee that, in the light of the matters identified above, it is appropriate to allow this Application. It will therefore order that Mr Baird's name be restored to the Register.

DISCIPLINARY COMMITTEE

4 SEPTEMBER 2008