

Royal College of Veterinary Surgeons

v

Mr Andrew D Illing MRCVS

Decision on Sanction

1. In reaching its decision on sanction the Committee adopted the following approach.
2. The Committee had in mind that the primary purpose of the sanctions available is not to punish the Respondent, BUT to seek: to protect the welfare of animals, to maintain public confidence in the profession and to declare and uphold proper standards of conduct.
3. It reminded itself that the sanction which it applies must be proportionate to the nature and extent of the conduct and must weigh the public interest with the interests of the Respondent.
4. The Committee took account of the matters urged in mitigation, the character of the Respondent as described by the witnesses called on his behalf and the testimonials produced.
5. The mitigation advanced in this case on behalf of the Respondent involved:
 - i) The evidence given by Ms Mayers.
 - ii) The evidence given by Mr Illing himself to which further reference will be made hereafter.
 - iii) The evidence of his practice partner, Mr Stockton, concerning the disciplinary inquiry that the Respondent had instituted against one of his employed veterinarians, the prolonged nature of that inquiry, the outcome of the disciplinary inquiry and the effect which that outcome had on the Respondent. In substance the outcome of that disciplinary inquiry was that the employed veterinarian was permitted to continue in employment with a reduction in his working hours and with no responsibility for the large animal side of the practice. Mr. Stockton considered that the Respondent was already doing up to 10 to 15% more work than any of the other three veterinarians in the practice and formed the view that the Respondent was under a lot of pressure. The result of the disciplinary procedure was that the Respondent would be required to do still more work than he was already performing.
 - iv) The evidence of Mr Bannock who had known the Respondent since they were at university together and who had been the Respondent's best man at his wedding. Mr Bannock stated that although he had not worked in the same practice as the Respondent, Mr Illing had a very good reputation in the locality. Mr Bannock described the other responsibilities which the Respondent had undertaken for

organisations in the community and said that he was very surprised to learn of the charges the Respondent was facing.

- v) The contents of the many written testimonials which have been collated into the Bundle which Counsel for the Respondent had placed before the Committee.
6. The Committee had full regard to the various points urged on it by Mr Edis QC during his closing submissions which made reference to the evidence the Committee had heard and read. Counsel for the Respondent concluded his submissions by accepting that neither a reprimand nor a postponement of sanction could be considered to be appropriate in this case, and the Committee considers this to be a realistic approach. He contended that the sanction of erasure from the Register would be excessive and disproportionate having regard to the conduct revealed by the evidence in this case and the mitigation on which the Respondent was entitled to rely. In this regard he relied upon the judgment of the Privy Council in Walker. The nub of Mr. Edis' submissions was that the only appropriate sanction available to the Committee was one of suspension and that, having regard to the cases of Parry and Walker which set the 'bracket' for the present case, Mr Illing's case should be placed at the bottom end of the 'bracket'.
 7. At the beginning of his submissions Mr. Edis, correctly, in the Committee's view, stated that previous decisions of differently constituted Disciplinary Committees were no more than a useful guide as to what might be the appropriate sanction in any subsequent case and that, in principle, there was no reason why two differently constituted Committees could not properly reach different decisions as to sanction in any particular case without either necessarily falling into error. This was because the overriding criterion was that the sanction imposed in each case must be proportionate and reasonable.
 8. It was further suggested by Mr Edis that there were a number of core propositions which pertained to all certificates which are required to be signed by veterinary surgeons. First that all such certificates are of importance. Second that no instances of false certification can be regarded as trivial. Third that there is a spectrum of gravity in relation to false certification cases and that it was a task of this Committee to decide where this case fell, within that spectrum of gravity.
 9. We turn now to the mitigatory factors which were urged on the Committee on behalf of the Respondent. Whilst a number of these factors undoubtedly do constitute mitigation on which the Respondent is entitled to rely, the Committee was not persuaded that all of the matters referred to were sound propositions.
 10. The Committee accepts that although this Respondent is now to be sentenced in relation to two separate charges they should be regarded as arising, in effect, out of a single incident. Accordingly there is no aggravating feature arising from the fact that, in this instance, the Respondent is to be dealt with for two instances of false certification. The Committee also acknowledges that the Respondent has not sought to assert at any stage that his conduct in relation to these horse passports was acceptable conduct. Instead he accepted the entirety of the facts supporting the charges brought against him, albeit the College was required to formally satisfy the Committee that his conduct amounted to Disgraceful Conduct in a Professional

Respect. Further, it is right to acknowledge the fact that, from the outset of the correspondence with the College, the Respondent accepted that he had knowingly falsified these two horse passports and accepted responsibility for his decision to falsify them. The explanations that he advanced in that correspondence with the College and again at this Hearing are dealt with below.

11. The Committee further accepts that the acts of the Respondent have not, in this instance, placed the health of any animals at risk. The Committee's decision on sanction has been based on an acceptance that the Respondent's conduct on this occasion was out of character, as the evidence of his character witnesses and the contents of the letters submitted in his support by his clients and other veterinary colleagues assert. On the basis of that evidence, the Respondent has clearly made substantial and valuable contributions to his local community and to the charitable organisations of which he has been a member or which he has served. The Committee also accepts that the Respondent has made a full and frank admission of his wrongdoing and that this should be weighed in the balance as showing an insight into his misconduct and contrition on his part.
12. As to the assertion by Mr Edis that there is no prospect of a repetition of this misconduct by the Respondent, the Committee is prepared to accept, having seen and heard him in the witness box, that Mr Illing's appearance at this Hearing has been a painful experience and salutary lesson such that repetition of his misconduct is unlikely.
13. However, the Committee has experienced some difficulty in accepting all of the submissions advanced on behalf of the Respondent. The Committee does not consider that it is appropriate to treat this incident of falsification of horse passports as the first and only occasion on which the Respondent has engaged in such conduct. He cannot and should not be treated as having an unblemished character. It is right to acknowledge that the information which revealed that the Respondent had, some 17 or 18 years ago whilst a junior veterinarian, falsified a certificate relating to a horse, came to light solely as a consequence of his decision to answer truthfully a question put to him by his Counsel as to whether he had ever falsified a certificate before. The fact remains that this was not the first and only occasion on which the Respondent has behaved improperly in relation to certification matters in his capacity as a veterinary surgeon. He had owned up to a veterinary colleague at the time of his earlier misconduct and ought to have learnt from that experience that such conduct was completely unacceptable from a professional (and every other) perspective. Mr. Edis urges the Committee to treat this voluntary admission of earlier misconduct by the Respondent as something which stands to his credit, because it would not have come to light but for his truthfulness when questioned on his oath. This Committee considers that it would not be appropriate to ignore in its entirety this earlier admission of similar misconduct on the part of the Respondent. It considers, instead, that the correct approach is to give the Respondent some credit for his openness and for the honesty of his answer, whilst taking note of his earlier misconduct, which misconduct occurred at a time when he was a newly qualified veterinarian. The relevance of this factor is dealt with below.
14. The Committee also takes the view that it is not appropriate to deal with this case as if the Respondent had made no financial gain from his misconduct. Whilst it may be

right to say that the Respondent did not act as he did for financial motives, there can be no disputing the fact that, by acting as he did, his practice stood to gain, if only by raising the prospects that these two horse owners would remain clients of the practice. If they remained clients of the practice, the Respondent stood to benefit from, albeit indirectly, the fees (however modest) that they would continue to pay to the practice.

15. More particularly, the Committee cannot accept that the Respondent's decision to falsify these two horse passports was a spontaneous act. Instead the Committee considers that he had ample opportunity to reflect on the propriety of the decision that he had to take in relation to them. He had opened the envelope, in which Ms Mayers had placed these passports, the day before he backdated them. Whatever administrative problems he was facing that day he had the intervening night and the first part of the following day available to him to reflect on what course he was going to follow. Mr Illing knew that Ms Mayers had been pressurised by the owners of these horses to falsify the dates on which they had been vaccinated. In the view of this Committee the act of falsifying them, on the following day, cannot properly be described as a spontaneous act.
16. The Committee considers that the most troubling feature about the Respondent's decision to falsify these horse passports is the fact that at all times he well knew that his junior colleague was turning to him for assistance in dealing with and responding to the improper request that the owners had made of her. She was clearly looking to him for guidance and support; guidance as to how an experienced veterinarian and principal would act when faced with this ethical problem. With his personal knowledge of how he had earlier responded to this ethical problem when he was a young and inexperienced veterinary surgeon the Respondent can have been in no doubt as to how he ought to have guided Ms Mayers. With regard to support, Ms Mayers was undoubtedly looking to the Respondent to refuse to comply with the owners' improper request and to support her decision not to backdate these two passports when requested to do so in the stable yard. Far from giving that obvious guidance and support to his junior colleague, the Respondent set a disgraceful example and wholly failed to provide her with the support to which she was entitled.
17. The Committee is also concerned by the way in which the Respondent dealt with Ms Mayers thereafter. On his own account he spoke to her about her decision to take these passports away from the owners and told her not to do that again. Despite knowing what he had done in the way of backdating these two horse passports, the Respondent said in his evidence that he also told her not to backdate horse passports. Not only can this instruction be described as "audacious", it is a clear instance of a principal saying to his employee "do as I say, not do as I do".
18. In the view of this Committee, the manner in which the Respondent dealt with this problem which his junior employee handed over to him and the way in which he instructed her thereafter is a significant aggravating feature about this case. In inserting false vaccination dates in these two horse passports, the Respondent either knew or ought to have known that he was putting Ms Mayers' integrity at risk. She was the veterinarian who had administered the vaccinations, and who had taken the passports away from the stable yard in an incompletely certified state. It must have been clear to him that by inserting a false date against the signature of Ms Mayers in one of the passports he had created the appearance that she had herself entered her signature

against the false date. The first step in any inquiry as to the authenticity and accuracy of the entries in these horse passports would have had to commence with the identity of the veterinary surgeon who had administered the vaccinations and that would turn the inquiry spotlight on Ms Mayers. The consequence of the Respondent's decisions was that Ms Mayers had to be interviewed by representatives of the College when a complaint was lodged about the authenticity of these passports and was obliged to make a witness statement in connection with that inquiry. It is of course the case, as mentioned above, that the Respondent immediately acknowledged his misconduct when approached by the College and accepted sole responsibility for that which had occurred. Nonetheless, Ms Mayers should not have been placed at any risk of involvement in a disciplinary inquiry. Had the Respondent set the right example and had he provided the right support to Ms Mayers he would have instructed her to insert the correct dates in these passports and assured her of his full support should the owners raise any complaint.

19. The Committee has also considered most carefully the explanations advanced by the Respondent for his decision not to insert the correct vaccination dates in these two passports. As encapsulated by his Counsel, the explanation was that the Respondent could not face another conflict at that time. He had had to deal with a difficult disciplinary inquiry which produced a result that he found difficult to understand and which caused considerable difficulties for his surgery. The employee complained about was no longer going to have to carry out any large animal work. This meant that the Respondent would have to deal with this aspect of the practice largely by himself. His other two veterinary employees would have to carry a greater workload and would still have to deal with a colleague whom they found difficult. His receptionist had experienced personal difficulties with that employee and Mr Illing knew that all of the employees would be unhappy with the outcome of the disciplinary inquiry. There can be no doubting the fact that all these were unwelcome problems which the Respondent would have to face up to and deal with. No doubt his difficulties were added to by the fact that he had recently sustained a painful injury to his knee. These factors would have caused additional stress, but there is no suggestion in the evidence that the Respondent's mental state was such that he required a medical referral or indeed any medication. The Committee notes that Mr. Stockton's evidence on this issue fell somewhat short of clear support for the Respondent's account of the level of stress under which he was operating. In his final answers to questions put to him, Mr Stockton said that he had surmised that the Respondent was under stress. He himself found the additional work tiring and stated that he would be very surprised if Mr Illing was not feeling pressured. This Committee considers that there is a significant difference between inappropriate decisions taken at a time when a professional person is working under pressure and an instance where a professional person is making decisions at a time when that person is suffering from medically identified clinical stress.
20. In conclusion, this Committee is unable to accept the Respondent's contention that his stress overbore his normal way of dealing with certification matters. Instead it is driven to the conclusion that this was a consciously dishonest decision reached by the Respondent after he had had a period of overnight reflection. It was a decision reached in clear disregard of the contents of the Guide to Professional Conduct of which the Respondent was well aware. (This is spelled out in the Ten Guiding Principles at principle (f); it is listed as one of the veterinary surgeon's responsibilities

to the general public in part 1.E; it is dealt with separately at part 2.G which spells out the fact that a certificate is 'a written statement of fact made with authority, the authority in this case coming from the veterinary surgeon's professional status'; and certification is also the subject of the 12 Principles of Certification drafted by the RCVS, the BVA and Defra, which has been adopted by the Federation of Veterinarians of Europe.) His decision necessitated the involvement of a vulnerable veterinary assistant. The fact that she turned to him for guidance and support, to which she was entitled by reason of the Respondent's position of authority in the practice over her, places the Respondent in a position of trust. The Respondent knew that his employee had said that she would not falsify these passports, yet he was prepared to falsify them. This decision was reached after the considerable publicity in the veterinary press that was attendant on the initial decision of the Disciplinary Committee to order the erasure of Dr. Walker's name from the Register and after the decision of the Privy Council to order his suspension from practice for a period of six months.

21. Against that background the Committee has reflected on the decisions reached in each of the cases referred to by the College and the points made by Counsel for the Respondent in connection with them. It appears to be common ground that the decision in Jones is clearly distinguishable. This Committee considers that the case of Parry contains a number of features which serve to differentiate it from the Respondent's case. The error by the veterinarian in that case, was to allow the task of clinical examination and testing to be undertaken by a junior veterinarian, when that examination and testing should have been undertaken by the certifying veterinary surgeon. It was accepted that Mr Parry had delegated those tasks to competent veterinarians and that, therefore, these examinations and tests had been properly carried out. There also existed the following special circumstances that Mr Parry operated his practice in an area of the country where there was little veterinary cover and any extended period of suspension would have had a significant detrimental effect on the welfare of animals belonging to the local farming community.
22. The Committee has considered the decision in Walker in depth. It commenced its analysis of that decision with Mr Edis' own observation that no two cases are precisely alike. Their Lordships decided that Dr Walker should suffer a sanction of no more than suspension for six months. The Committee's understanding of their reasoning included the following; as regards the accuracy of veterinary certificates, the reputation of, and confidence in the integrity of, the profession is important in a manner which bears an analogy to that described by the Master of the Rolls in Bolton. What was said in Bolton was that any lawyer "shown to have discharged his professional duties with anything less than complete integrity, probity and complete trustworthiness must expect severe sanctions" and that sanctions could include a punitive element. Reference was also made to the fundamental importance of "maintaining the reputation of and sustaining public confidence in the profession as one in which each member may be trusted to the ends of the earth". This Committee would wish to endorse and emphasise those statements.
23. Their Lordships were of the view that not all instances of false certification should be bracketed into a single group, in which each is treated as equivalently serious. Regard had to be paid to the factors of how far the offender needed to be deprived of the opportunity to practice in order to prevent reoffending, and what sanction was

necessary to maintain or restore public confidence in the profession. This Committee accepts that guidance.

24. Their Lordships considered that, although Dr Walker issued certificates calculated to mislead the Jockey Club, he did so misguidedly, in order to be helpful, to avoid restarting a primary course of injections which had no medical purpose and would have entailed some degree of extra risk. The Privy Council accepted Dr Walker's account that the horses in question were also fully protected against equine influenza and tetanus even despite the delay in administering the booster injections. Their Lordships noted that the decision to backdate the certificates was not the result of client pressure and was therefore self-imposed. It was not his responsibility to ensure that the horses were vaccinated within a year, this was the responsibility of the owners. Further, Dr Walker did not act as he did for financial gain. The Privy Council was impressed by the character evidence submitted on behalf of Dr Walker, his previous high standing and unblemished record in the veterinary profession. In the circumstances their Lordships considered that these factors would "make the punishment the greater and the disgrace the greater" for him to bear. There was no actual harm to human or animal health. There are clear parallels with the present case, in which those mitigatory factors also appear.
25. It was these factors which persuaded the Privy Council that the nature and circumstances of Dr Walker's offending placed it in a lower category of seriousness than the other reported cases to which reference had been made in argument before it. They considered these factors made his case distinct from those cases where there was a deliberate misleading of insurers, purchasers or export agencies about the physical status or condition of an animal, or where there was a risk to animal or human health. The Privy Council noted that Dr Walker had never disputed the facts pertaining to the charges levied against him and that the decisions he took "were taken very quickly without full reflection..." The question of whether Mr Illing had available to him a period of reflection is dealt with hereafter.
26. It was also their Lordships opinion that "the picture is not, on any view, one of the most serious offending. It is rather of relatively unthinking ante-dating on two isolated occasions, in the course of a long and otherwise unblemished and excellent career". They also had regard to the financial impact that a period of suspension would have on Dr. Walker's earnings. Finally they pointed out that Dr. Walker had had to carry "the strain, uncertainty and public ignominy of being subject to an outstanding order for a removal of his name from the Register" for a period of at least 11 months. Their Lordships clearly regarded this as a significant penalty in itself. This Committee considers that not all of these features are present in the case of Mr Illing. His decision to backdate these two passports was not done in a relatively unthinking way. He read Ms Mayers' note of what had occurred in the yard. He said his first reaction was a feeling of sickness. He had a conversation with Ms Mayers on the following day about her problem. It was after this interval that he backdated these passports. Further, whilst Mr Illing has had to live with this pending Hearing, he has not had to bear the ignominy of living with an initial order of disbarment from the profession.
27. The falsification of certificates which impact adversely upon this country's ability to conduct international trade or which have the effect of putting the health of animals or of members of the public at risk is a matter of the utmost seriousness. The Committee

considers that the falsification of certificates which impact only on national affairs is also a matter of the utmost seriousness. This is because the falsification of certificates which operate in the national sphere undermine the value that can be placed on certificates which operate in the international sphere. If the view is gained that little credence can be placed upon national certificates, the value of certificates issued in this country which affect international trade will also carry little value. It is only by upholding the importance of each and every certificate issued by a member of the veterinary profession that public confidence in such certificates can be maintained.

28. The Committee again notes that Ms Mayers had flagged up for the Respondent the problem that the owners of these horses had presented. The situation had arisen in the presence of witnesses at the livery yard who were aware of the request to backdate these passports and would be aware of the outcome. Accordingly, this potential outcome was in the public domain. Indeed the complaint to the College was made by a third party. This state of affairs therefore impacts directly on the reputation of the veterinary profession. In dealing with the problem in the way that he did the Respondent not only let himself down but more importantly let his assistant down. The Committee considers that it is important to consider those young veterinary surgeons in practice up and down the country who are entitled to look to their principals for support on occasions such as those which Ms Mayers had to face. As the Respondent acknowledged in his evidence, acting as he did, he let his fellow veterinary surgeons down, he let his practice down, he let the Royal College of Veterinary Surgeons down and finally he let himself down.
29. This conduct on the part of the Respondent is all the more inexplicable and unacceptable when regard is had to the fact that he was a veterinary surgeon who was entitled to issue export certificates. He was an LVI, he was the honorary veterinary surgeon at the Royal Norfolk show for seven years, he was a JMB Horse Measurer and helped out at Great Yarmouth Horse Races occasionally and at local point to points. In the result, this Committee is satisfied that no veterinary surgeon was better placed to understand the total unacceptability of false certification by a member of the veterinary profession. In the view of this Committee, that fact deprives this Respondent of the right to seek to excuse his misconduct on this occasion on the grounds of subclinical stress. If, as he says, he was operating under such a degree of stress that he could not make a decision as to how he should deal with the dating of these two horse passports, he had the opportunity to ask any one of his other partners to respond to Ms Mayers' plea for assistance, guidance and support.
30. These are features which are absent from the case of Walker and serve to counterbalance the fact, emphasised on behalf of the Respondent, that Dr Walker signed two false certificates at intervals of three years. The Committee also notes that Dr Walker had been subject to the very real prospect of erasure from the Register throughout the 11 month period that elapsed between the decision of the Disciplinary Committee and the ultimate decision of the Privy Council. That was an additional significant burden which had to be borne by that veterinary surgeon which has not had to be borne by this Respondent.
31. Having regard to all the above matters, the Committee accepts that suspension would cause the Respondent to suffer a degree of financial hardship. However, that financial

loss was a readily foreseeable likely consequence in the event that his acts of falsification should come to light and is an entirely proportionate outcome.

32. Acts of falsification involve acts of dishonesty by a professional person acting in a professional capacity. It was said in the case of Tait, a decision of the Privy Council, that proven dishonesty comes at the top end of the spectrum of gravity for misconduct and that the gravity of the matter arises not simply from the dishonesty but also from the possible consequences of the false certification. Their Lordships agreed that the imposing of the sanction of removal from the Register could be required to enable the Disciplinary Committee to fulfil properly its stated duties to uphold the honour and reputation of the veterinary profession.
33. When asked what value he put on a veterinary surgeon's signature, Mr Illing himself said, 'a veterinary surgeon's signature is a veterinary surgeon's signature – full stop.'
34. This Committee holds that irrespective of the spectrum of gravity of the potential consequences arising out of a falsely certified document, members of the public and members of the profession must be able to rely on the signature of a veterinary surgeon in all circumstances, and on all documentation, or a veterinary surgeon's signature is worthless.
35. Without significant mitigating circumstances, false certification will result in removal from the Register.
36. In Mr Illing's case, having regard to all the evidence, both the oral and written testimonials, and taking into account all the aggravating and mitigating circumstances detailed above, the Committee has decided to suspend Mr Illing's name from the Register for a period of six months.