

ROYAL COLLEGE OF VETERINARY SURGEONS:

INQUIRY RE:

HORIA ELEFTERESCU MRCVS

**DECISION OF THE DISCIPLINARY COMMITTEE ON THE ALLEGATION OF
APPARENT BIAS AGAINST Dr NICK BLAYNEY MRCVS**

1. Prior to the commencement of this hearing, Dr Nick Blayney MRCVS, was listed to sit as a member of the Disciplinary Committee scheduled to hear this Inquiry into alleged disgraceful conduct on the part of Mr Elefterescu ("the Respondent"). Dr Blayney had previously notified the College by email of his professional acquaintance with Dr Paul Cooper one of the factual witnesses to be called on behalf of the RCVS.
Dr Cooper and Dr Blayney both sit on the Code of Conduct Committee of The National Office of Animal Health (NOAH). Dr Blayney had also forwarded an email from the secretary of NOAH which listed the dates upon which they had sat together on hearings.
2. Dr Blayney was asked to expand on their acquaintance before the start of the hearing. He explained that NOAH is the voluntary representative body for the veterinary pharmaceutical industry. The Code of Conduct Committee of which both Drs Blayney and Cooper are members reviews veterinary advertising material according to the published code of practice in the event of a dispute between member organisations. Both individuals sit as independent veterinary surgeons within the twenty strong committee (approx.) which includes industry vets and industry senior executives as well as lay members. Dr Blayney was appointed around 2008 and does not know how long Dr Cooper has been sitting on the committee. Dr Blayney referred to his email, copied here:

*"June 2013 - both attended, Aug 2016 - both attended, Oct 2016 - both attended,
The other years i.e. 2014/2015/2017 you attended alternate meetings"*
3. He pointed out that it revealed little overlap in that they had jointly attended in total three hearings each lasting about three hours. Dr Blayney went on to describe his degree of

association with Dr Cooper in that, apart from exchanging pleasantries and discussing practice circumstances, they had not spent a great deal of time in conversation, their time in each other's company largely being spent discussing the (NOAH) case being heard.

4. Dr Blayney stated to the hearing that he did not believe that his professional association with Dr Cooper would affect his impartiality in this case.
5. Mr Elefterescu indicated to the Committee that he objected to Dr Blayney sitting as a member of the Committee by reason of his acquaintance with one of the factual witnesses in this case. He felt that there was a risk of apparent bias on the part of Dr Blayney, and that he would ideally wish that no Committee members had any prior knowledge of witnesses in this case. He did not seek to challenge Dr Blayney's honesty or objectivity.
6. The College did not object to Dr Blayney continuing to hear the case.
7. The Committee sought legal advice from the Legal Assessor. He advised the Committee that it was for the Committee as a whole to consider this allegation (in the absence of Dr Blayney). He advised that Committee must apply the following test:

"The question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal [in this case the Committee member] was biased." Porter v Magill (2002) 2 AC 357, at para 103 per Lord Bingham.

8. The Legal Assessor referred to the Privy Council case of **Holmes v Royal College of Veterinary Surgeons [2011] UKPC 48**, in which, at paragraph 24 of the Judgment, Lord Wilson, having referred to the above test, and referred to the case of **Helow v Secretary of State for the Home Department [2008] UKHL 62**, in which Lord Hope described the attributes of a fair-minded and informed observer in the following terms:

[1] The fair-minded and informed observer is a relative newcomer among the select group of personalities who inhabit our legal village and are available to be called upon when a problem arises that needs to be solved objectively...

[2] *The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious Her approach must not be confused with that of the person who has brought the complaint. The "real possibility" test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.*

[3] *Then there is the attribute that the observer is "informed". It makes the point that, before she takes a balanced approach to any information she is given she will*

take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as their headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgement.”

9. The Legal Assessor advised the Committee that they should apply the principles laid down by Lord Hope, when considering all the relevant information disclosed by the member of the Committee, and deciding whether or not it is necessary for him to recuse himself from sitting to hear this case.
10. He advised further that, If an objection is made as to a Committee member’s lack of impartiality, it is the duty of the Committee to consider the objection and exercise their judgment upon it, but:

“[the Committee] would be as wrong to yield to a tenuous or frivolous objection as it would to ignore an objection of substance” (***Locabail (UK) Ltd v Bayfield Properties Ltd and Anor (2000) QB 451***).
11. Finally, the Committee was advised to bear in mind that the veterinary profession is small, and it is inevitable that one or more of the veterinary members of the profession will have some acquaintance on a professional level with factual or expert witnesses in cases that Committee is convened to hear. That alone would not normally give rise to a perception of bias on the part of a Committee member.
12. The Committee retired to consider this matter in the absence of Dr Blayney. The Committee duly applied the “fair-minded and informed observer” test, as explained by Lord Hope. It was of the view that Dr Blayney’s acquaintance with the Dr Cooper was an entirely professional one, and a limited and fairly tenuous one in any event. Such an acquaintance with professional witnesses was inevitable from time to time in a small profession. The Committee considered that the fair-minded and informed observer would conclude, having considered the facts, that there was no real risk that Dr Blayney was biased in this case. Accordingly, the Committee decided that there was no reason for Dr Blayney to recuse himself in this case.

By the Disciplinary Committee

8 May 2018