

**ROYAL COLLEGE OF VETERINARY SURGEONS
INQUIRY RE:**

JAMES DEAN GRACEY

**DECISION AND REASONS ON ABUSE OF PROCESS AND ADMISSIBILITY
ARGUMENT**

1. At the outset of proceedings Ms Bruce on behalf of the College sought to amend Charge 4 so that the date read 'on or about 2 July 2019' instead of 'on or about 2 July 2017'. This was consistent with the evidence served. The application was not opposed by Mr Eissa QC. The Committee having been informed in advance of the proposed application to amend, acceded to it.

The Charges

That, being registered in the Register of Veterinary Surgeons, and whilst in practice, you:

1. *On or about 15 December 2016, signed a Food Chain Information form in relation to a cow with ear tag number UK 523709500992, when:*
 - (i) *the said cow belonged to or was kept by your father and there was therefore a conflict of interest or potential conflict of interest in you so signing;*
 - (ii) *you did not add sufficient details to your signature in relation to contact details of you and/or your practice;*
 - (iii) *the certificate did not provide sufficient detail as to the extent of the animal's condition*
2. *On or about 30 March 2017 signed a Food Chain Information form in relation to a cow with ear tag number UK180685400992, stating that the said cow was lame in its hind leg but weight bearing and fit for travel when:*

(i) *the said cow belonged to or was kept by your father and there was therefore a conflict of interest or potential conflict in you so signing;*

(ii) *you did not add sufficient details to your signature in relation to contact details of you and/or your practice;*

3. *On or about 6 April 2017, in relation to a cow with ear tag number UK521481600828:*

(i) *signed an Emergency Slaughter form for the said cow when that cow belonged to or was kept by your father and there was therefore a conflict of interest or potential conflict of interest in you so signing;*

(ii) *signed an Emergency Slaughter form to state that you had not administered any treatment to the cow when you had in fact administered Marbanor and/or Ketapofen within the previous seven days of you signing the said form;*

(iii) *either:*

(a) *diagnosed the said cow with a fractured leg on 5 April 2017 and left it overnight before slaughtering it; or*

(b) *told an Official Veterinarian (OV) that you had diagnosed the fracture on 5 April 2017 when in fact you had diagnosed it on 6 April 2017;*

4. *On or about 2 July 2019 in relation to a cow with ear tag number UK523375503411, signed a Food Chain Information form stating that the said cow was fit for travel when:*

(i) *the said cow was not fit for travel;*

(ii) *you did not add sufficient details to your signature in relation to contact details of you and/or your practice;*

5. *Your conduct:*

(a) *in relation to 1 and/or 2 and/or 3 and/or 4 above risked undermining procedures designed to promote public health and animal welfare;*

(b) *in relation to 3(ii) and/or 3(iii)(b) and/or 4(i) was dishonest;*

(c) *in relation to 3(ii) and/or 3(iii)(b) and/or 4(i) was misleading;*

And in relation to the facts alleged, either individually or cumulatively you have been guilty of disgraceful conduct in a professional respect.

2. At the start of the hearing, the Respondent admitted the following charges: Charge 1(ii), Charge 3(ii).

Background

3. The Committee convened to decide allegations that had arisen in relation to the Respondent completing and signing various forms, in relation to cattle owned by his

father and another person, prior to the animals' transport and/or slaughter. The forms related to animal welfare and had food safety and public health implications. In addition there was a fitness to travel certificate completed and signed by the Respondent.

Abuse of Process and Admissibility Argument by the Respondent

4. Before the Committee heard any evidence, Mr Eissa QC submitted that the disciplinary proceedings should be stayed as an abuse of process. In summary, he submitted that the Committee should find an abuse of process on the basis of the following matters, individually or in combination, impairing the fairness of the proceedings:
 - i) unconscionable delay and the practical effect of delay and/or;
 - ii) evidential and investigative defects and/or;
 - iii) evidence of [REDACTED] due to [REDACTED] character and non-disclosure.
5. Mr Eissa QC submitted that his application was made both in the interests of fairness and to safeguard the Respondent's rights under Article 6 of the European Convention on Human Rights. He further submitted that the Respondent could not receive a fair hearing irrespective of any attempt to remedy the failures through exclusion or limitation of evidence or charges.
6. Mr Eissa QC submitted that evidential and investigative defects amounted to an abuse of process making a fair hearing impossible because:
 - i) The evidence gathered was tainted by the absence of safeguards appropriate to the fair investigation of suspected criminal offences as set out in the Police and Criminal Evidence Act 1984 and associated Codes (PACE). Mr Eissa QC highlighted to the Committee those portions from PACE that he submitted were breached. In particular Mr Eissa QC relied on the fact that:
 - (a) 'interviews' of the Respondent were conducted by Ruth Lafuente on 6 April 2017 and 11 April 2017 informally without appropriate safeguards but were to be used in these disciplinary proceedings
 - (b) An 'interview' of the Respondent conducted by Oana Tataru on 13 April 2017 was conducted informally without appropriate safeguards but was to be used in these disciplinary proceedings.
7. Mr Eissa QC submitted in summary, that in respect of delay the Committee should find that there was substantial delay which individually and/or cumulatively caused prejudice to the Respondent because:
 - (i) there was an unexplained delay in reporting matters to the College between 15 December 2016 and May 2019 (when matters were reported to the College);
 - (ii) the delay impacted on the recollection of witnesses including the Respondent;
 - (iii) CCTV was now unavailable and would have shown the state of the animal which is the subject of Charge 4;

- (iv) it was not possible to locate or call abattoir workers as witnesses.
8. Mr Eissa QC submitted that [REDACTED] had pleaded guilty to an offence of bribery in a court [REDACTED]. He submitted that [REDACTED] would not have qualified as a vet and would not have been able to work as an Official Veterinarian at the time particularised in Charge 4. He submitted that reliance on [REDACTED] evidence amounted to an abuse of process including for the following reasons:
- i) [REDACTED] purported to give expert evidence as to the condition of an animal presented for slaughter
 - ii) [REDACTED] was guilty of an offence of dishonesty and [REDACTED] criminal conviction brought the administration of justice into serious disrepute
9. In the alternative, Mr Eissa QC argued that if the Committee found there was no abuse of process, the Disciplinary Committee should exclude the following evidence:
- (i) The evidence of [REDACTED]
 - (ii) The 'interview' of the Respondent conducted by Ruth Lafuente on 6 April 2017 and 11 April 2017
 - (iii) The 'interview' of the Respondent Oana Tataru on 13 April 2017
 - (iv) The evidence of Michael Park
 - (v) Those portions of the expert report of Professor Jonathan Statham that rely for their factual foundation upon the other evidence to which objection is taken.

The College's response to the Abuse of Process and Admissibility Argument

10. Ms Bruce, in her response to Mr Eissa QC's arguments, submitted in summary, that the bar for abuse of process is set extremely high. She also asked the Committee to have regard to the public interest and the importance of having serious allegations for a veterinary surgeon who had responsibility for animal welfare determined on their merit. Further, she asked the Committee to note that the purpose of regulatory proceedings is to protect the public interest and to uphold the reputation of the profession. Ms Bruce submitted that a stay of the proceedings for an abuse of process would be manifestly disproportionate and contrary to the public interest since a stay should only happen in exceptional cases. She submitted that in this case the Respondent could have a fair hearing.
11. Ms Bruce highlighted that the charges were largely determined on documents and so any delay would not preclude a fair hearing because the memory of witnesses was less important to the case overall. She provided a chronology to the Committee which showed when concerns were first submitted to the College in May 2019 and that the Respondent was first notified of those concerns on the 19 August 2019. She submitted that the College had not caused any undue delay in its proceedings.
12. Ms Bruce further submitted that any delay and/or the conduct of the investigation caused no prejudice to the Respondent, let alone serious prejudice which the caselaw required for a stay to be granted due to an abuse of process. She submitted that a fair hearing was possible and that the matters raised by the Respondent provided no basis

upon which to conclude it would be unfair to hear the case. Further, Ms Bruce did not accept that a stay was necessary on the basis that the proceedings would offend 'the court's sense of justice and propriety' in the particular circumstances of this case.

13. Ms Bruce asked the Disciplinary Committee to place evidence into its proper context. She submitted that the matters raised by the Respondent related to the weight to be afforded to evidence rather than to its admissibility. She asked the Committee not to exclude any evidence where issues raised could be dealt with through the hearing process. In particular, she submitted that Rule 14.1 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 states that the College's proceedings are in the nature of civil proceedings and that there was no requirement in disciplinary proceedings to comply with the Police and Criminal Evidence Act 1984 (PACE) or its codes of practice.
14. In relation to the evidence of ██████████ Ms Bruce stated that full disclosure had been made by the College concerning ██████████ character. She submitted that the College had determined to await the outcome of ██████████ appeal in ██████████ before deciding on whether ██████████ would be the subject of disciplinary proceedings by the College. She argued that ██████████ could be cross-examined about all matters relating to ██████████ credibility as part of the hearing process. Ms Bruce therefore asked the Committee to find that the Respondent's defence did not justify a stay of proceedings or excluding ██████████ evidence.
15. Finally, Ms Bruce submitted that Ruth Lafuente and Oana Tataru were gathering information to inform any investigation by the College or by the local authority. She submitted that there was no obligation on those witnesses as veterinary surgeons to ensure that the Respondent's 'interviews' with them were conducted in accordance with PACE or its codes of practice.

The Committee's Decisions on Abuse of Process and Admissibility

16. The Committee considered the oral and written submissions of both Mr Eissa QC and Ms Bruce. It considered the various authorities relied upon. It took into account and accepted the advice of the legal assessor. It paid careful regard to the chronology which was agreed between the parties.
17. The Committee had regard to the fact that the purpose of the College's regulatory process was to safeguard animal health and welfare, a need to declare and uphold proper standards of professional conduct within the profession and to maintain public confidence in the profession.
18. The Committee considered whether the matters raised by Mr Eissa QC amounted to an abuse of process either because:
 - (a) it would be impossible to give the Respondent a fair hearing (Category 1 abuse)
 - or

(b) a hearing would offend 'the Court's sense of justice and propriety' in the particular circumstances of the case and that it would not be fair for the Respondent to be heard. [AG ref (no.1. of 1990)[1992] QB 630] (Category 2 abuse)

19. The Committee noted that the caselaw indicated a high bar is set to stay proceedings for either category of abuse and to grant a stay would be an exceptional course for a Disciplinary Committee to take.

Category 2 abuse

20. Dealing firstly with whether the proceedings would offend the Committee's sense of justice and propriety and whether it would be unfair to try the Respondent, the Committee decided that there was no abuse of process under Category 2 which would justify a stay of the proceedings.
21. The Committee took into account that it was bound by the rules of fairness and Rule 14.1 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004. The Committee did not consider that the evidence before it was such that to allow the proceedings to continue would offend the Committee's sense of justice and propriety. It considered carefully all of the evidence highlighted by Mr Eissa QC in his oral and written submissions but it decided that all of it could be managed as part of the hearing process and that none of it offended the Committee's sense of justice and propriety so that a stay was necessary. It found that the Respondent could be given a fair hearing.
22. Mr Eissa QC had highlighted matters which he submitted were irregular and out of the ordinary, such as delay in reporting matters to the College, the investigative process and the evidence of [REDACTED]. However, the Committee did not consider that any of those matters amounted to an abuse of process.
23. The Committee was further satisfied that those matters raised by Mr Eissa QC in his submissions individually and cumulatively did not amount to an abuse of process such that a stay was necessary to protect the integrity of justice. It concluded that the Committee could address each of the issues raised as part of the disciplinary process either by excluding material or by taking into consideration the issues raised when determining whether the College had proved its case. It was satisfied that it was fair for the Respondent to face disciplinary proceedings before the Committee notwithstanding all of the matters raised by Mr Eissa QC.

Category 1 abuse

24. The Committee was satisfied that the Respondent could have a fair hearing (Category 1 abuse) having taken into consideration all of the matters raised by Mr Eissa QC.
25. The Committee was satisfied that the disciplinary process would allow for the issues raised by Mr Eissa QC to be considered either as part of the evidential decision-making process or by the exclusion of evidence so that the Respondent could have a fair

hearing. It was not persuaded that individually or cumulatively the effect of those issues impaired the fairness of the proceedings.

26. The Committee found no prejudice would be caused to the Respondent such that he could not have a fair hearing and it also found no 'bad faith' by the College. The Committee was satisfied that the charges related to the welfare of animals and included possible implications to human health. The Committee decided these are serious matters, which weighed against the issues raised by Mr Eissa QC and could be heard fairly in a disciplinary hearing.

Evidence of [REDACTED]

27. The Committee considered carefully the submissions made regarding the character of [REDACTED]. There was agreed evidence between the parties that [REDACTED] had been convicted of an offence relating to bribery [REDACTED]. This related to [REDACTED] having bribed an official after [REDACTED] had failed a veterinary exam (on two occasions) so that [REDACTED] could pass on re-taking it. The exam was 'Practical Work in Food Processing and Slaughtering Units'. [REDACTED] had informed the College that the case was subject to an appeal [REDACTED] but it was not clear on what grounds. Further it was unclear and not agreed between the parties as to whether [REDACTED] had pleaded guilty, or whether [REDACTED] admitted bribing the official or whether [REDACTED] admitted the facts of [REDACTED] conviction.
28. The Committee decided that the evidence of [REDACTED] did not amount to an abuse of process. It noted that [REDACTED] evidence related only to Charge 4. The Committee did not consider that reliance by the College on [REDACTED] evidence meant that either category of abuse was made out. It considered that there were circumstances in regulatory proceedings where a witness of 'bad character' could give evidence against another professional. The Committee decided that the overall public interest in this case supported the decision by the College to rely on [REDACTED] as a witness and reliance on [REDACTED] did not amount to an abuse of process. However, the Committee decided that in all the circumstances, the statement of [REDACTED] should be excluded from the disciplinary proceedings.
29. The Committee determined that the perception of fairness was as important as fairness within the proceedings overall. It found that the difficulties in understanding the extent of [REDACTED] 'bad character' was not the fault of the College, but it did consider the difficulties in understanding exactly the circumstances surrounding [REDACTED] conviction meant that [REDACTED] statement should be excluded. The lack of clarity surrounding [REDACTED] conviction [REDACTED], related to whether [REDACTED] had pleaded guilty and whether [REDACTED] now accepted admissions contained within the unused material and attributed to [REDACTED]. Furthermore, the fact that [REDACTED] was appealing [REDACTED] conviction and the reasons or grounds of appeal meant that the Respondent could not effectively challenge [REDACTED] about matters due to the lack of clarity on the papers served as part of disclosure. Although [REDACTED] could be questioned about these matters, the Committee considered it unfair in all the circumstances for [REDACTED] character to be dealt with in that way, where there would be no independent evidence against which to assess [REDACTED] credibility.

30. Further, the Committee decided that there was a lack of clarity about the date of [REDACTED] conviction. Records in the unused material read to the Committee referred to bribery taking place in 2016, a conviction in 2017 and an appeal ongoing in 2022. This cast some doubt about [REDACTED] professional status at the time of Charge 4. The Committee was also concerned that [REDACTED] may not have reported the conviction to the College and/or [REDACTED] employer when [REDACTED] should have done. The Committee noted that [REDACTED] evidence related only to Charge 4 but it decided bearing in mind all these matters that the Respondent could not effectively challenge [REDACTED] credibility. It also considered there was a risk that [REDACTED] evidence might appear to be compromised. [REDACTED] was yet to be investigated by the College in respect of the conviction and [REDACTED] was being asked by the College to give evidence in a case; the College having decided to proceed with the investigation of [REDACTED] only after [REDACTED] appeal [REDACTED] was concluded.
31. For the reasons set out above, the Committee therefore decided that to ensure fairness in the proceedings and the perception of fairness by members of the public who would consider these proceedings, [REDACTED] statement should be excluded. The Committee concluded that the admission of the statement of [REDACTED] would have such an adverse effect on the proceedings that it should not be admitted. It decided to exclude the statement of [REDACTED] including the hearsay remarks [REDACTED] attributed to those working alongside [REDACTED] in the abattoir on that date. It would also exclude reliance by the experts instructed by the College and by the Respondent on [REDACTED] statement.
32. For the avoidance of doubt, the Committee found no reason to exclude the photographs taken on 2 July 2019 or the fitness to travel certificate dated 2 July 2019 on the basis that it is documentary evidence.

Delay

33. The Committee considered what prejudice, if any, it had found had been caused to the Respondent through any delay in the commencement of the disciplinary proceedings. The Committee decided that any delay could be addressed within the disciplinary process by the Committee taking it into consideration when deciding upon the evidence and in determining if the College had proved the charges. When balancing the seriousness of the charges and the public interest in the charges being heard against the delay, the Committee decided that there was no abuse of process caused by the delay and that a fair hearing was possible, particularly since much of the case depended on documentary evidence.
34. The Committee decided that although there had been some delay between the events set out in Charges 1-3 and the reporting to the College, it concluded that the delay occasioned was not sufficient to amount to an abuse of process. It noted that the length of time it had taken for matters to be formally reported to the College was around 2½ years after the events set out in Charges 1-3. Although there was no reason advanced for the delay, the Committee was satisfied that the delay overall did not cause prejudice to the Respondent. The Committee found that any period of delay, including the first period of over two years, was not exceptional for a case such as this. The Committee

decided that the delay in referring the case to the College was not unduly lengthy having taken into account that two other agencies had been involved in considering these matters; the Food Standards Scotland and Animal Plant and Health Agency (APHA).

35. The Committee took into account that much of the case centred on documents. The Committee decided that in due course it could consider the effects of the passage of time and any difficulties in recollection as part of the hearing process and as part of its deliberations when deciding if the College had proved its case.
36. The Committee further decided that the effect of delay on the evidence was a matter which it could take into account when determining the credibility of a witness. It was not persuaded that the delay was so excessive or that it caused prejudice to the Respondent bearing in mind the case largely turned on documents.
37. The Committee also carefully considered evidence no longer available to the Respondent, (CCTV and the absence of witnesses from the abattoir) and whether those evidential deficiencies caused prejudice to the Respondent. However, the Committee decided that all of the evidential deficiencies were matters it could take into account when deciding whether the College had proved its case. It did not consider that the absence of the CCTV when there was photographic evidence amounted to an abuse of process. It also noted that witnesses from the abattoir may have assisted the Respondent but it was speculation as to whether they would have. In any case the hearsay remarks attributed to them in [REDACTED] statement has now been excluded.

Breaches of PACE

38. The investigation was commenced by the College once matters were reported to it in May 2019. The Committee was not persuaded that the information gathering carried out in respect of the charges at the time they came to light required similar safeguards as afforded to defendants under PACE. The Committee considered that the information which was gathered did not require the Respondent to be cautioned or for him to be offered notes of any interview for checking by either Ms Lafuente or Ms Tataru. It therefore decided that the matters raised relating to the accuracy of any 'interview' or notes taken were matters the Committee could take into consideration when deciding on the evidence overall. It did not find that the absence of compliance with the safeguards contained in PACE, meant that the evidence of Ruth Lafuente or Oana Tataru resulted in any abuse of process or was evidence that should be ruled inadmissible.
39. The Committee decided that as part of the disciplinary process it could take into consideration the way conversations took place and the time it took before witnesses recalled or recorded matters when determining the evidence.
40. Finally, the Committee considered the evidence of Mr Park. It noted that he reported concerns about the Respondent to the College and he provided commentary which explained and gave context that was necessary to understand the working arrangements and circumstances surrounding the Charges. Whilst the Committee

accepted the submission made by Mr Eissa QC that Mr Park was not an expert witness and so he should not give expert evidence, it considered that appropriate redactions were capable of being agreed between the parties without completely excluding Mr Park's statement. Mr Park could also be cross examined by Mr Eissa QC about any matters that the Respondent challenged. If the parties are unable to agree suitable redactions to Mr Park's statement consistent with the Committee's decision then the Committee will hear further submissions on the matter.

Disciplinary Committee
13 July 2022