

ROYAL COLLEGE OF VETERINARY SURGEONS

-v-

DONAL JOHNSTON (FORMERLY FEGAN)

DECISION ON SANCTION

Stage 3

1. At this Stage the Committee has considered what, if any, sanctions to impose.
2. Ms Curtis for the College confirmed that there were no previous findings against the Respondent and stated that the College had no submissions to make on the issue of sanction, that matter being left to the Committee.
3. The Respondent chose to give evidence under oath. He stated that he was now 32 years of age having taken his degree at University College Dublin in 2013. He worked for 4 years in a mixed veterinary practice and thereafter worked as a locum in various practices throughout the United Kingdom, Northern Ireland and the Republic of Ireland. He worked for the Banbridge Pet Vets practice from 2017 through to April 2019 when his dishonest conduct was discovered. Since 4 May 2019 he worked as a roaming veterinary surgeon across England and Northern Ireland. From May 2019 he has been working in the Republic of Ireland for the Department of Agriculture, working as a temporary veterinary surgeon on a zero hours contract.
4. He then turned to deal with matters pertaining to his personal health. He stated that it was exactly 3 years ago, on 27 April 2019 that he was contacted by his employers with evidence of his dishonest conduct. His health in early 2019 was described in the following terms. He was living through an unimaginable period of his life. It was catastrophic his gambling overtook his life. He was under extreme stress with feelings of hopelessness and despair. Admitting his gambling addiction was his biggest problem.

His gambling addiction necessitated deceptions to his wife, to his family and to himself. The confrontation by his employers was an event which became the catalyst which enabled him to start therapy. As he put it, the prospect of this disciplinary hearing was the trigger that he needed. He went to his wife and to his family to confess an addiction which started when he was 16 years of age. They stood by him. He stated that he approached his General Practitioner in May 2019 for advice and assistance; that practice referred him to a Community Programme in Northern Ireland. He did not find this programme of much use as it did not directly address gambling addictions. He therefore approached an organisation called Dunlewey whose programme he found more helpful and more focused on his particular addiction. This enabled him to embark on 2 sets of counselling. The first started in May 2020, which entailed a 12 week programme of attendances at once per week on an outpatient basis. Once that was completed he suffered a relapse in July 2020. This he attributed to the fact that because of the Covid lockdown restrictions he had no access to counsellors. When questioned by Counsel for the College he stated that the gambling lapse took a different format from the gambling practice he had followed in the past (which had involved online gambling utilising credit) whereas this occasion he had used cash to buy lotto and other gambling tickets. He recommenced the programme which again lasted for 12 weeks and entailed attendances once per week with a counsellor. Since completing that second programme he has been attending Gamblers Anonymous every Saturday. He asserted that he got strength from these meetings of Gamblers Anonymous that he attends and believes that they have assisted him to refrain from a return to gambling.

5. He described his state during the period February to April 2019 when the offences were committed as being one during which he was selfish, a liar, a thief and living a life unimaginable. He contrasted that with his life today which he said was completely different. He maintained being free from gambling since July 2020. He acknowledged that he still had difficult points/periods but his regular attendances at Gamblers Anonymous were helping him to steer clear of his gambling addiction. At the same time he acknowledged that he still had "longer to go".
6. He tendered his sincere apologies to the practice where he had worked time of the commission of these offences and to his colleagues at that practice. He expressed his sorrow to his colleagues more generally in the profession and acknowledged that he had failed them. He accepted that his conduct had undermined the confidence that the public would have in the profession especially in relation to the documents which she had certified as being true and accurate.
7. Since these matters came to light the Respondent caused his name to be removed from the practising register in the United Kingdom and to be placed instead on the non-practising register. In answer to questions put to him by the Committee, the Respondent confirmed that he has been working for the Department of Agriculture in the Republic of Ireland since May 2019 as a temporary veterinary inspector working in a cattle abattoir or

abattoirs. This he was able to do as he is registered with the Veterinary Council in the Republic of Ireland. He is registered there in the surname of Fegan and this was because he said he was not able to change his name on his passport until his new name had been used for a period of at least 2 years. When asked about why he had changed his surname to that of Johnston in March 2020 he explained that this came about as a result of a [REDACTED] which he felt necessitated the need for that name change. He confirmed in answer to questions from the Committee that he had not notified the Veterinary Council in the Republic of Ireland of the facts that he was facing in these current disciplinary charges, nor had he informed his employer, the Department of Agriculture in the Republic of Ireland. Finally he stated that to date he had managed to repay about half of the sums owing to the insurance companies affected by his misconduct; that he had entered into a debt management arrangement with all of his private creditors which has enabled him to repay regular amounts at regular intervals in a way which enables him to meet his ongoing inevitable living expenses. This debt management arrangement was put in place with the assistance of a debt repayment organisation. His overall indebtedness at present amounts to a substantial sum which, on the basis of the debt management agreement he would be repaying for the next 6 to 7 years.

8. The Respondent's solicitor, Mr Rafferty, in a careful and well-modulated mitigation, advanced the following submissions on behalf of this client. The Respondent's criminal conduct was not sophisticated. It was always going to be uncovered because it was not a clever scheme. The Respondent had shown candour from the outset. His full recognition of the extent of his misconduct reveals his insight into the reasons why he is now before this Committee. He submitted that the Respondent's misconduct was confined to a limited period of time, namely the period between February and April 2019 which occurred at a time when he was feeling "the walls closing in" on him. He submitted that the gambling disorder from which the Respondent suffers is now recognised as a psychiatric disorder. The gambling addiction from which he suffers creates profound stress and that profound stress causes the addict to behave with gross irrationality. That is what occurred here. The confrontation by his employer proved to be cathartic and force him to face the strength of his addiction. Since then the efforts that he has made to address his gambling issues shows that he has made a profound attempt to address them and deal with them. He contended that the Health Service was not best placed to treat gambling addictions and so the Respondent had had to find a different source of help in order to assist him to break out of the cycle of his addiction. As to the fact that he had relapsed in July 2020, relapses have to be recognised as part of the cycle of recovery during which the addict will learn from the relapse experience.
9. Since these matters came to light he has been frank and cooperative with the College. His repayment efforts have resulted in the repayment of some £4000 directly to his former practice. In addition some £2530 has been repaid to one of the defrauded insurance companies. His current status at work is unsatisfactory. Whilst he is lucky to

have some employment the employment he has secured is not ideal, being a zero hours contract. No animals had been put at risk by the Respondent and his clinical expertise has not been put in question. [REDACTED]

[REDACTED] Since July 2020 there have been no further issues arising from his gambling addiction. He is making clear efforts to address that addiction and has tried his best to conquer it.

10. The Committee was invited to take into account that there has been a substantial delay in bringing this matter to a Hearing. The delay that has occurred was not caused by the Respondent in any respect. During this period he has had a proverbial sword of Damocles hanging over him. This has been a very stressful period for the Respondent. Accordingly the committee was invited to take into account this extended period of delay and the effect that that has had upon his client.
11. Mr Rafferty acknowledged that the Committee would have to recognise the obligations which veterinary surgeons owed to the public and to the integrity of their profession. Accordingly he submitted that the Committee should balance all the relevant factors appropriate to the sanction determination, namely such course as would have a deterrent effect, as would establish the gravity of the Respondent's misconduct and as would recognise the insight which the Respondent has shown as regards his gambling addiction and what is required of him to deal with it.
12. In reaching its decision on what is the appropriate sanction in this case, the Committee had full regard to and followed the approach advised by the Legal Assessor. The Committee had in mind that the primary purpose of the available sanctions is not to punish but: (i) to protect the welfare of animals, (ii) to maintain public confidence in the profession and (iii) to declare and uphold proper standards of conduct. It accepts that the sanction which it should apply must be proportionate to the nature and extent of the conduct and to the maintenance of appropriate standards expected of members of the veterinary surgeons' profession and must weigh the seriousness of the professional misconduct and the public interest with and against the interests of the Respondent. In judging such matters the Committee has assessed culpability on the basis of each Paragraph of the Charges, taking into account all relevant aggravating and mitigating factors present.
13. The Committee acknowledges and accepts that the Principle of Proportionality establishes that no greater sanction should be imposed on a registrant than is absolutely necessary to achieve its objectives. It accepts that the sanction which the Committee applies must be proportionate to the nature and extent of the Respondent's conduct. The Committee must weigh the public interest against the interest of the Respondent. It is aware that its role at this stage is not to be punitive but accepts that any sanction may have a punitive effect.

14. The Committee took into account aggravating and mitigating factors identified in this case. These were serious offences as the Committee has already stated and they were premeditated, carefully planned and not without sophistication. The dishonest scheme involved the creation of numerous and extensive clinical records of the animals in question in order to give an appearance of credibility when submitted in support of the fraudulent claims that he made against insurance companies in question. In doing so he implicated another innocent veterinary surgeon who was a colleague in the same practice. The fraud was dishonest from its inception and could not be described as opportunistic. The dishonest conduct was repeated more than once. The fraudulent conduct secured for the Respondent a significant financial gain in the sum in excess of £13,200. The fraudulent conduct involved serious breaches of trust – the trust reposed in him by his client (Ms McMillan), by his veterinary colleague (Dr Macguire), by his employers and by the insurance companies with whom the false claims were lodged. It follows that the Respondent's dishonest conduct entailed, in effect, the production of fraudulent certificates. That misconduct contravened fundamental tenets of the profession. Not only did it jeopardise the reputation of his professional colleagues but it will, inevitably, have undermined public trust in the profession. To this summary can be added the other findings of the Committee as set out in its Decision on Stage 2, Disgraceful Conduct in a Professional Respect.
15. Turning to the mitigating factors which the Committee accept apply to this case, these are as follows. There were early admissions to his employer; to the College in March 2020 when the respondent was first contacted; and again when approached by the College once more in February 2022. These 2 documents are to be found in the Inquiry Bundle at Pages 316 and 340 and the Committee has taken fully into account the nature and content of the terms of those admissions and acceptances of responsibility. The Committee notes that the Respondent has not yet notified his present employer or his Regulator in the Republic of Ireland of the charges which he faces in this Disciplinary Hearing notwithstanding the fact that he has always intended to admit the misconduct which now forms the basis of the charges which have been put to him in this Hearing. It has been submitted that these are steps which the Respondent will take once the outcome of this hearing is known. The Committee anticipates, in any event, that the Royal College of Veterinary Surgeons will notify its counterpart in the Republic of Ireland of the outcome of this Hearing and of the Sanction referred to hereafter.
16. The Committee accepts that there has been an attempt at remediation in this case involving some repayments of the sums lost by the practice and insurers.
17. The Committee also accepts that there has been a significant delay in bringing this matter to a Hearing. The College has explained the reasons for this delay in the Written Opening of Ms Curtis. Without going into the full details of why this case has taken so

long to come to a Hearing, it is apparent that the Covid lockdown and difficulties securing the necessary witness evidence explain the delays that have occurred.

18. However, as is apparent from what has been said above, it is not the case that the Respondent has been unable to practice during the intervening period. Instead, as confirmed in his statement dated 2 February 2022, he has been able to and has worked as a veterinary surgeon in the Republic of Ireland since May 2019. It follows that the Respondent has not been deprived entirely of any opportunity to follow his profession. That said, it is clear to the Committee that the veterinary work that he has been able to secure has not been satisfactory in amount or in the levels of pay which he ordinarily could have secured.
19. The Committee has followed the advice of the Legal Assessor that it should consider the available sanctions in reverse order to their seriousness and only if and when the Committee determines that it is not sufficient to protect the welfare of animals and serve the public interest to impose a sanction at a lower level, that it should go on to consider the next level of sanction available.
20. The sanction of “no further action” is not reasonably arguable in this case. The conduct of the Respondent is of such an order of seriousness that it cannot be appropriate to follow this course. Right thinking members of the public would be most concerned at such an outcome.
21. The Committee next turned to consider the sanction of Postponement. It also considered whether the provision of Undertakings should be provided during any period of postponement. This possible course of action was raised with the Respondent’s legal representatives at the Hearing on 28 April 2022. The Chairman informed the Respondent the Committee would need to look at the issue of whether medical evidence to confirm the existence of a gambling addiction would be provided together with evidence of a strong support network to be accompanied by progress reports from independent third parties and a plan for mitigating financial risks associated with the Respondent’s gambling addiction. There would need to be full disclosure to his employers and his regulatory bodies of the Committee’s findings of Disgraceful Conduct in a Professional Respect. These steps the Committee considered were necessary to demonstrate that the Respondent will no longer be a risk to the profession, to his colleagues to the public and, in this instance, to insurance companies by reason of his gambling addiction. Having taken instructions Mr Rafferty informed the Committee that he wished an adjournment so that these matters could be considered and steps taken to seek to satisfy the Committee that a Postponement supported by suitable Undertakings could meet the requirements and objectives indicated by the Chairman.
22. An adjournment was granted and the Committee reconvened on 1 November 2022 to

consider and reflect on the additional steps taken by the Respondent's representatives to produce supportive medical and other specialist reports. The reason for the delay in reconvening this Hearing lies in the fact that the medical and other reports took some time to secure and, thereafter, securing a date which was available to all members of this Committee.

23. The additional documentation provided by the Respondent includes the following: a report from Dr Niall Quigley dated 13 August 2022 following an examination of the Respondent on 27 July 2022; letter from Fiona Geary, Gambling coordinator at Dunlewey Addiction Services dated 26 February 2020; a further letter from the same organisation was time dated 24 January 2022 also signed by Fiona Geary; a letter from an Addiction Counsellor at Helplink Mental Health Counselling, Mr Liam O'Grady dated 21 July 2022; a letter from PayPlan dated 10 October 2022;
24. In essence this additional documentation confirmed that the Respondent had been diagnosed by Dr Niall Quigley, Consultant Psychiatrist as suffering from a medically recognised Gambling addiction and that he had co-operated with Dunlewey Addiction Services and thereafter had complied with the advice and requirements of the Helplink Counselling Service. The PayPlan letter confirmed that the Respondent had registered with that organisation and entered into a repayment arrangement which will enable him to clear all his private gambling debts. The Respondent's wife has asserted that she is confident that he has refrained from all forms of gambling since his one lapse in August 2020. She also considers that the fact that [REDACTED] [REDACTED] will ensure that he will refrain from this addictive behaviour which led to the commission of the frauds referred to in the Charges to which he has accepted.
25. The Respondent has also provided personal references from members of his family, a veterinary nurse with whom he has worked and a veterinary surgeon with whom he qualified. The letter from his wife, contains a detailed account of her intention to ensure that the Respondent continues to attend the counselling courses recommended for him, her "policing" of his spending (to ensure that any lapses into his addiction are immediately recognized) and the implementation of GamBan, an anti-gambling software, on his mobile telephone and all other devices in their house. To this end she confirms that he has registered with and attends Gamblers Anonymous meetings.
26. Documentation has also been provided of the fact that the Respondent has registered with GamStop, a registration programme which notifies subscribing gambling organisations of a person's gambling difficulties. He registered back in May 2019 for a period of 5 years. Accordingly, this blockage on his gambling activities will end in May 2024. The need for re-registration has been addressed in the proposed Undertakings which have been produced by the Respondent's advisers for the Committee's consideration.

27. The final document provided by the Respondent's advisers is a proposed set of Undertakings which he is willing to enter into in the event that they meet the Committee's requirements.
28. The proposed form of Undertakings was very largely acceptable to the Committee and the few changes suggested were readily acceded to by the Respondent.
29. Having regard to the mitigating evidence advanced by the Respondent, which the Committee is satisfied can, in this instance, be accepted as true and accurate, it has concluded that this is an appropriate case in which to postpone sanction on the basis of the Undertakings now offered by the Respondent. These are intended to ensure that the Respondent refrains from involvement in any form of gambling, is subject to a close regime of support and supervision over which the Committee will have oversight. Further they are designed to ensure that the Respondent has the opportunity to repay the sums which he defrauded.
30. In reaching this conclusion the Committee wishes to make it clear that it has taken an exceptional course in this case. Ordinarily conduct of the type covered by the Charges which this Respondent has accepted will merit the imposition of a sanction of removal from the Register or a period of Suspension from the Register. In this instance the Committee has found it possible to take the course that it has because it is satisfied that the Respondent was, at the time, suffering from a recognisable psychiatric compulsive addiction as confirmed by Dr Quigley in his Report of August 2022 and that the fraudulent attempts by the Respondent to obtain funds with which to gamble would not have occurred but for this psychiatric condition.
31. The Committee further considers that the Undertakings offered by the Respondent will serve to reduce the risk that he will relapse into gambling again, for his conduct will be closely monitored and he will accept continuing support and guidance from the organisations currently assisting him.
32. The Committee is also satisfied of the requirements that neither animals nor the public will be put at risk by this proposed course of action; that the Respondent has demonstrated insight into the seriousness of his misconduct and that there is currently no significant risk of repeat behaviour; that his practicing standards are not in need of improvement so long as he continues to fulfil his CPD obligations; that the undertakings offered are capable of being met, are appropriate and are measurable; that there is evidence that his underlying medical problem is being appropriately addressed, will be monitored and reported on; and that he has responded positively to the opportunities for support and counselling which have been offered to him.
33. In the event that the Respondent should fail to comply fully with the terms of the

Undertakings it is obvious that the Committee will re-convene and will commence a further consideration of the entirety of the sanctions available to it under the Act. The Respondent should be under no illusions about the almost inevitable course that would be taken in such an eventuality.

34. It is the decision of the Committee, therefore, that sanction should be Postponed for the full period of 2 years. This is to ensure that the Respondent is subjected to the longest period of supervision and support permitted by the Rules. At the conclusion of this period there will be a Resumed Hearing to review the totality of the Respondent's progress and compliance with the Undertakings he has provided to the Committee. In the event, which it is anticipated is unlikely to occur, it is discovered that the Respondent has not so complied, the Committee will have available to it the whole range of sanctions permitted under the Act. Should the Respondent fail to take advantage of the opportunity now afforded to him, he can be under no illusions about the end result in such an eventuality.

Disciplinary Committee

1 November 2022