

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

MARK KOMBERT MRCVS

**DECISION OF THE DISCIPLINARY COMMITTEE
RE. PROCEEDING IN THE ABSENCE OF THE RESPONDENT**

1. The Respondent has not attended the hearing. The College invites the Committee to proceed in his absence, and relies on the following facts and submissions.
2. The Notice of Inquiry has been properly served. The Respondent has been in communication with the College and its solicitors, and has confirmed that does not wish to attend the hearing, either in person or via Skype. He has also confirmed that he does not wish to be represented.

Background and Chronology

3. The Notice of Inquiry was sent on 11 November 2019, by first class post and recorded delivery to the Respondent's registered address. On 12 November 2019, the Notice was sent by email. On 14 November 2019 the Respondent acknowledged receipt of the Notice, sending an email confirming that he was not in the United Kingdom and would not attend the hearing, but was "*comfortable with the inquiry proceeding in [his] absence.*" The Clerk to the Disciplinary Committee responded by email the same day, suggesting that it might be possible for him to attend via Skype or similar internet link
4. On 18 November 2019 the Respondent emailed the clerk to say that he did not wish to attend via Skype. He also signed and returned the Notice of Inquiry acknowledgement form to indicate that he would not be attending the hearing, and would not be legally represented. He confirmed this again in an email to the Clerk of 25 November 2019, and further stated that he intended to admit all charges.
5. On 21 November 2019, the College's solicitors served the Inquiry Bundle and Unused Material Bundle on the Respondent. On 28 and 29 November 2019 they sent further material to be added to the Inquiry Bundle. The Respondent replied by email on 28 and 29 November 2019, confirming receipt and confirming that he did not require any of the College's witnesses to give oral evidence to the Committee. He also confirmed that he was content for the Inquiry Bundles to be provided to the Committee and that he did not have any further documents for the Committee to consider.

6. Following a Case Management Conference on 2 December 2019, the solicitors asked the Respondent for clarification in relation to his plea, and again asked whether he had any documents for consideration by the Committee. He responded on the same day (3 December 2019), confirming that he accepted that the facts amounted to disgraceful conduct in a professional respect, and again confirming that he had no documents to submit to the Committee.

The Committee's powers to proceed in the Respondent's absence

7. The Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules 2004 provide, at Part III, Rule 10.4:

"If the respondent does not appear, the Committee may decide to proceed in the respondent's absence, if it is satisfied that the notice of inquiry was properly served and that it is in the interests of justice to do so."

(i) Service of notice

8. Rule 5.1 of the 2004 Rules provides:

"As soon as may be after a disciplinary case has been referred to the Committee by the Preliminary Investigation Committee, the clerk shall serve a notice of inquiry, together with a copy of these Rules, on the respondent in accordance with section 26 of the Act"

9. Rule 5.2 sets out the various matters that should be included in the notice. Rule 5.5 provides that, unless the Respondent agrees otherwise, the Inquiry should not be heard less than 28 days after the Notice is served. Section 26 of the Veterinary Surgeons Act provides that service of a Notice may be undertaken by post to the Respondent's registered address (or last known address if it appears to the Registrar that such service will be more effective).

10. The Notice of Inquiry was duly served on the Respondent, containing the information required by Rule 5.2, within the 28 day period required by Rule 5.5; and in accordance section 26 of the Act.

(ii) Interests of justice

11. The approach to be taken by a professional regulatory tribunal when considering whether to proceed in the absence of a registrant was set out in the Court of Appeal in Adeogba – v- General Medical Council (2016) EWCA Civ 162. Sir Brian Leveson, giving the judgment of the Court, stated:

"Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware, with fairness to the practitioner being a prime consideration, but fairness to the GMC and the interests of the public also taken into account. The criteria for criminal cases must be considered."

12. The "criteria for criminal cases" (ie. factors for considering whether to proceed in the absence of a defendant in a criminal trial) were set out in R v Jones (Anthony) (2002) 2 WLR 52. The relevant factors include the nature and circumstances of the defendant's absence (and in particular whether the absence is deliberate and voluntary), whether an adjournment might result in the defendant attending voluntarily, the likely length of any adjournment, whether the defendant wishes to be represented, the extent of any

disadvantage to the defendant in proceeding in her absence, the general public interest in a trial taking place within a reasonable time, and the effect of any delay on the memories of witnesses.

13. The Court in Adeogba noted that although the factors set out in Jones were a useful starting point, there were differences between continuing a criminal trial and continuing a disciplinary hearing. The latter had to be guided by the regulator's (in that case the GMC's) main statutory objective, namely the protection, promotion and maintenance of the health and safety of the public. In this case, the College's objective is the promotion and protection of animal welfare; and there is a linked public interest in maintaining public confidence in the profession and upholding the reputation of the profession.
14. Leveson J in Adeogba further noted:

"It would run counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process...Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

The College's submissions

15. It is submitted that (i) the Notice of Inquiry was properly served; and (ii) applying the test in Adeogba and the factors in Jones to this case, it is in the interests of justice to proceed.
16. The Respondent's absence is genuinely voluntary. He is aware of the hearing, has been contacted on a number of occasions and has confirmed that he agrees for the hearing to proceed in his absence. He has further confirmed that he does not wish to be legally represented.
17. The Respondent has been offered the possibility of attending via Skype or similar connection, but has declined.
18. The allegations relate to theft of controlled drugs from the veterinary practice at which the Respondent worked. It is in the public interest for serious allegations such as these to be heard as soon as possible, in line with the College's objectives to promote and protect animal welfare and uphold the reputation of the veterinary profession.
19. No purpose would be served by adjourning the matter, as there is no suggestion that the Respondent has any intention of attending in the future.
20. In all the circumstances, it would be in the interests of justice to proceed in the absence of the Respondent.

The Decision of the Disciplinary Committee on proceeding in the absence of the Respondent

21. The Committee has considered carefully the evidence in the Proceeding in Absence Bundle, and the submissions of the College. The Respondent has been in correspondence with the College, and made it clear that does not wish to attend the hearing, or to be represented. He is content for the case to proceed in his absence. He was given the option of attending the hearing by Skype, but declined to do so. He has stated that there is no other written material that he wishes the Committee to consider. The Committee has no doubt that the Respondent has voluntarily absented himself from this hearing. The Respondent has not requested that the hearing should be adjourned.

22. The Committee has been advised by the Legal Assessor that the submissions of the College as to the Committee's powers to proceed in the absence of the Respondent, and the legal principles to be applied, are correct. The Committee accepts the submissions of the College as set out above. The Committee is satisfied that the Notice of Inquiry was properly served on the Respondent in accordance with Rule 5 of the 2004 Rules. The Committee has applied the test in the case of *Adeogba*, and the factors in *Jones* to this case, and it is satisfied that it is in the interests of justice for this case to proceed, for the reasons set out in the College's submissions.
23. Accordingly, the hearing will now begin.

DISCIPLINARY COMMITTEE

16 December 2019