

## ROYAL COLLEGE OF VETERINARY SURGEONS

### INQUIRY RE:

**ANNE MULLEN MRCVS**

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**DECISION OF THE DISCIPLINARY COMMITTEE  
ON THE COLLEGE'S APPLICATION TO PROCEED  
IN THE ABSENCE OF THE RESPONDENT**

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1. The Respondent has not attended the hearing. The College invited the Committee to proceed in her absence. The College made written submissions to the Committee in support of the application, attached to which was a bundle of supporting documents running to some 80 pages, relating to the various efforts made by the College to serve relevant documents on the Respondent.

#### **Background and Chronology**

2. On 13 May 2021, the Respondent was informed by letter (sent by email) that allegations had been forwarded to the Disciplinary Committee and that a Notice of Inquiry would be issued in due course. The Respondent replied by email on 26 May 2021, to say that she could not deal with RCVS correspondence and that the matter would have to continue without her input.
3. On 21 October 2021, the Notice of Inquiry was issued, setting dates for the Hearing in December 2021. The Notice was sent by first class post to the Respondent's registered address and by email.
4. On 15, 18 and 19 November 2021, the College's solicitors sent documents including the Inquiry Bundle and Unused Material bundle to the Respondent by email, first class post and special delivery to her registered address.
5. In November 2021, the Chair granted an application to postpone the hearing. The application was based on logistical matters relating to Committee availability.
6. On 17 December 2021 the College served a Notice of Resumed hearing on the Respondent by email and by recorded delivery to her registered address. This set out the new hearing dates (starting on 31 January 2022) and the new location of the hearing. On the same day, the College's solicitors sent her an updated copy of the Inquiry Bundle and a copy of the charges with proposed amendments.
7. On 17 December 2021, Mr Michael Hepper, the College's Chief Investigator, made attempts to serve the Notice of Resumed Hearing and Inquiry Bundle on the Respondent personally, travelling both to her practice address and at her home address. There was no-one at either address. The practice had a sign on the door stating that it was closed from April 2021. He took a photograph of the notice, which gave a telephone number. Mr Hepper was not able to post the documents at either

address as they were too large, and he did not wish to leave them in an unsecured location, so did not do so.

8. On 17 January 2022 Mr Girling, a solicitor for the College, made attempts to telephone the number given on the practice notice, but the calls did not connect. On the same day he telephoned the Respondent's personal number (as on the College's register) and spoke to her. The Respondent made it clear that she would not be attending the hearing. She confirmed her home address (which Mr Hepper had visited) was still her address, and that her email address (as used by the College) was correct. She confirmed that she had received correspondence from the College but had chosen not to open it. Mr Girling noted that the Respondent was articulate and clear in her conversation with him.
9. On 17 January 2022 there was a virtual Case Management Conference. The Respondent did not attend.
10. On 26 January 2022, Mr Girling again made attempts to telephone the number given on the practice notice, but the calls did not connect..
11. There has been no communication from the Respondent since the call on 17 January 2022.

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

12. 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

13. 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"*

14. 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).
15. The Notice of Inquiry was duly served on the Respondent on 21 October 2021, 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. A Notice to Resume was similarly served (17 December 2021) more than 28 days before the new dates and this contained clear details of the location, date and time of the hearing.

ii) Interests of justice

16. 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.”*

17. 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.
18. 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.
19. 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**

20. It was 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.
21. The Respondent’s absence is genuinely voluntary. She has been aware that the College is bringing proceedings against her yet she has chosen not to reply to the College or engage in the process. When she sent an email to the College in May 2021, it was in response to notification that the matter had been forwarded for a hearing. She was therefore clearly aware that proceedings were ongoing. She indicated that the College would have to proceed without her input. When spoken to on 17 January 2022, she made it clear that she had received relevant correspondence from the College but had chosen to ignore it, and that she would not be attending before the Disciplinary Committee.

22. The Respondent has not indicated that she wishes the matter to be postponed, nor that she wishes to seek legal representation. Although there might be prejudice caused to her in continuing in her absence, this is prejudice entirely of her own choosing. 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.
23. Arrangements have been made for a number of witnesses to attend the hearing, either in person or virtually. There would be inconvenience to them if the matter were to be postponed; and delay by virtue of postponement could have an adverse impact on their ability to recall events.
24. The allegations relate to serious animal welfare issues. The Respondent is able to practise until such time as the Disciplinary Committee might decide otherwise. 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 duties to promote and protect animal welfare and uphold the reputation of the veterinary profession.
25. In all the circumstances, the College submitted that it would be in the interests of justice to proceed in the absence of the Respondent.

#### **Decision of the Committee**

26. The Committee has read and considered carefully the submissions of the College and has read and considered the documents in support of the application.
27. The Legal Assessor has advised the Committee that the College's submissions correctly set out and record the relevant facts relating to the background and chronology of this matter, and correctly set out the relevant legal principles which govern the Committee's approach to this application. The Committee accepts this advice.
28. The Committee is satisfied that the relevant Notice of Inquiry, and Notice of the Resumption of the Inquiry have been properly served on the Respondent, and that she is aware that this hearing before the Committee was due to commence on 31 January 2022, as explained above.
29. As to the interests of justice, and applying the relevant principles set out in the cases of *Adeogba*, and *Jones*, the Committee finds that the Respondent's absence from the hearing is deliberate and voluntary, as was most recently made clear to the College in the telephone conversation between the Respondent and Mr Girling on 17 January 2022. The Respondent has made no application for an adjournment, and the Committee is satisfied that, if the Committee were to adjourn the hearing, the Respondent would not attend any future hearing. The Respondent has made no application for and adjournment to seek legal representation.
30. This case involves allegations of serious animal welfare issues, and the Committee has no doubt that it is in the interest of justice for such allegations to be heard as soon as possible.
31. In these circumstances, the Committee is satisfied that it is in the public interest for the case to proceed in the absence of the Respondent.
32. This application is granted.

**Disciplinary Committee**  
**31 January 2022**