

**ROYAL COLLEGE OF VETERINARY SURGEONS**

**INQUIRY RE:**

**VICTOR DANIEL POUSADA GARCIA MRCVS**

---

**DECISION OF THE DISCIPLINARY COMMITTEE**

---

1. The Respondent appeared before the Disciplinary Committee to answer the following charge:

**That, being registered in the register of veterinary surgeons:**

1. On 26 September 2017, at the Nottingham Magistrates' Court, you were convicted (following a guilty plea) of:

**Contrary to sections 2(1) and (2) of the Protection from Harassment Act 1997, between 30 September 2016 and 27 December 2016 at Nottingham, pursuing a course of conduct which amounted to the harassment of B and which you knew or ought to have known amounted to harassment of her, in that you sent offensive text messages, visited her place of work, attempted to contact her through social media, went to her address and drove past her address;**

**in relation to which conviction on 26 September 2017 you were sentenced to prison for 6 weeks suspended for 12 months; received a restraining order (in force until further order) prohibiting you (amongst other restrictions) from contacting directly or indirectly B; ordered to pay £1000.00 compensation, a £115.00 surcharge to fund victim services and £300.00 in costs to the Crown Prosecution Service ("CPS");**

**AND THAT it is alleged that the above conviction renders you unfit to practise veterinary surgery.**

2. The Respondent admitted the charge and that the conviction renders him unfit to practise veterinary surgery.

#### **Preliminary Issue on whether to admit additional evidence**

3. Counsel for the College made an application to admit additional evidence concerning the Respondent's behaviour towards the victim of the harassment by the Respondent which predated the period the subject of the charge. The evidence was contained in the victim's statements to the police dated 23<sup>rd</sup> December 2016 and 3<sup>rd</sup> January 2017, handwritten notes from the Magistrates Court and a letter from the CPS setting out the basis on which the CPS "opened" the case at sentencing after the Respondent had entered a guilty plea to the above charge. The evidence concerned some 5 incidents. Counsel relied upon the following rules of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 (SI 2004/1680) ('the Procedure and Evidence Rules 2004'):

*Rule 11((b): in a conviction case, shall address the Committee and may adduce evidence and make submissions, to show that if the conviction alleged is proved or admitted, the nature and circumstances of the offence are such as to render the respondent unfit to practise veterinary surgery.*

*Rule 23.1: The Committee may receive oral evidence whether or not under oath, documentary evidence, or other evidence of any fact which appears to it relevant to the inquiry into the case before it. Subject to any other provision of these Rules, the Committee may receive evidential material prior to the hearing of an inquiry.*

4. Counsel argued that the Magistrates had taken into account the matters which were the subject of this additional evidence when sentencing the Respondent, that the additional matters were effectively admitted by him before the Magistrates and that the burden had been on him to raise any objections to any of this material going before them. He had not done so. Relying on R v. Tolera [1999] 1 Cr. App. R.29 she argued that

*In the ordinary way sentence will (then) be passed on the basis of the facts disclosed in the witness statements of the prosecution and the facts opened on behalf of the prosecution, which together we shall call the "Crown case", unless the plea is the subject of a written statement of the basis of the plea which the Crown accept.... The initiative rests with the defence which is asking the court to sentence on a basis other than that disclosed by the Crown case."*

She acknowledged that the witness statements were not before the Magistrates but that the CPS letter reflected the contents of the redacted passages of the witness statements of Ms B.

5. The Respondent by Counsel resisted the application and argued that the inquiry by the Disciplinary Committee should be confined to matters set out in the charge. This

was limited to a period of time and to specific incidents. She did not accept that the breadth of the Committee's enquiry could or should be widened to include other matters arguing that the sentence was on the basis of the charge the whole of which was admitted. In consequence there was no room for a basis of plea argument. She argued that the case of R v. Tolera concerned facts about the actual charge not additional allegations.

6. The Committee received advice from the Legal Assessor who drew its attention to the note in the memorandum of conviction document which read as follows:

*Committed to prison for 6 weeks suspended for 12 months. Reason: Offence so serious. Reason for custody: repeated events over significant period, ongoing harm, offensive texts and behaviour.*

7. The Committee determined not to allow the College to introduce the additional evidence. It had read the redacted statements of Ms B. It noted that the facts concerning the charge were supported by Ms B's evidence in those statements. It considered that if the College wished to rely upon further allegations, further allegations could have been made. It did not find that the additional material could properly be described as relating to *the nature and circumstances of the offence* (Rule 11(b)), nor that it was *relevant to its inquiry* (Rule 23.1).

8. Counsel for the College opened the case as follows:

- a. Mr Pousada Garcia is a qualified veterinary surgeon. On 26 September 2017, after entering a guilty plea, Mr Pousada Garcia was convicted of an offence contrary to sections 2(1) and 2(2) of the Protection of Harassment Act 1997 in relation to B, a receptionist at the Vets4Pets Netherfield where Mr Pousada Garcia had worked as a locum.
- b. The charge relates to a course of conduct between 30 September 2016 and 27 December 2016.
- c. The Committee has the benefit of sight of some of the text messages with B; text messages from B's boyfriend which failed to deter Mr Pousada Garcia, and messages on social media. B provided two witness statements to the Police which are relied upon by the College.
- d. Mr Pousada Garcia admits that he was convicted of the aforementioned offence. The question for this Committee is therefore whether or not the conviction renders Pousada Garcia unfit to practise veterinary surgery.

#### **The Code of Professional Conduct for Veterinary Surgeons 2012**

- e. The five principles of practice include "honesty and integrity".
- f. A veterinary surgeon's responsibilities to the public include:

Section 4 – "Veterinary surgeons and the veterinary team must work together with others in the veterinary team and business, to co-ordinate the care of animals and the delivery of services.

- g. *Veterinary surgeons must not engage in any activity or behaviour that would be likely to bring the profession into disrepute or undermine public confidence in the profession.*

### **Supporting Guidance**

- h. Counsel also relied upon supporting guidance as follows:
- i. The Code of Professional Conduct is underscored by supporting guidance, which includes (in force, August 2015): Chapter 28 “Social Media and Online Forums”:

### **Good practice when using social media**

28.7

*When using social media veterinary surgeons should avoid making, posting or facilitating statements, images or videos that:*

- a. ...
- b. cause undue distress or provoke anti-social or violent behaviour
- c. are offensive, false, inaccurate or unjustified (Remember that comments which are damaging to an individual’s reputation could result in a civil claim for defamation for which veterinary surgeons could be personally liable. Defamation law can apply to any comments posted online made in either a personal or professional capacity)
- d. abuse, bully, victimise, harass, threaten or intimidate clients, colleagues, staff or others (the Codes of Professional Conduct states that veterinary surgeons and veterinary nurses should not speak or write disparagingly about another veterinary surgeon or veterinary nurse. This covers all forms of interaction and applies to comments about individuals online)
- e. ...
- f. bring the veterinary profession into disrepute (veterinary surgeons should be mindful that their online persons can have a negative impact on their professional lives)

*NB: Please note that this is not an exhaustive list. There are many different types of social media misuse. (emphasis added).*

### **Conviction renders him unfit to practise veterinary surgery**

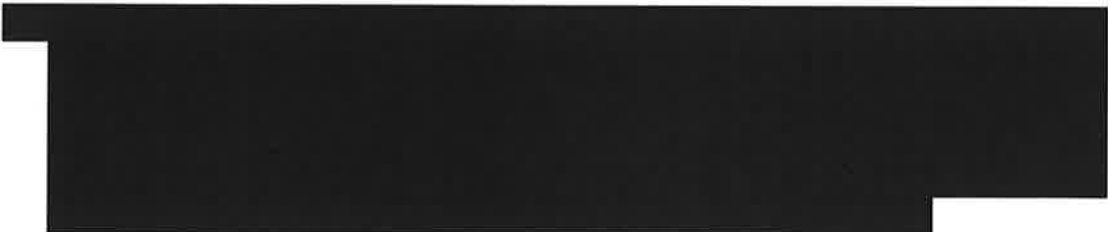
- j. Counsel argued that the Respondent’s conviction renders him unfit to practise veterinary surgery (s.12, Veterinary Surgeons Act 1966). The question whether the facts of the conviction render him unfit to practise is a matter for the Committee’s judgment. There is no burden or standard of proof at this stage.
- k. With regards to the conviction, it is of note that the conduct does not have to be directly linked to a Respondent’s practice or professional work in order to constitute serious professional misconduct (or the equivalent test) (Roylance v

General Medical Council (2) (2000) 1 AC 311; Kirk v Royal College of Veterinary Surgeons (2004) UKPC4.

- I. A course of conduct amounting to harassment in respect of a junior colleague, both inside the workplace and outside, plainly has the potential to bring the profession into disrepute: his conduct would be regarded as deplorable by fellow veterinary surgeons and renders Mr Pousada Garcia unfit to practise veterinary surgery.
9. Counsel drew the Committee's attention to the actions of the Respondent as set out in the conviction and to several of the text messages. She noted that they included references to a physical characteristic of Ms B, that they were abusive, that they persisted notwithstanding indications from Ms B that she was not interested in communicating with the Respondent either by silence or by directly telling him as much. Counsel noted that they continued notwithstanding that the Respondent was told in no uncertain terms to desist from sending the text messages by Ms B and her boyfriend and notwithstanding a police harassment warning issued to him on the telephone in October 2016. Some of the messages appeared to challenge Ms B to involve the police. The tone of the messages deteriorated towards the end of the period.

#### **Procedure**

10. The Committee acceded to the request of Counsel to hear stage 2 (the inquiry as to whether the conviction renders the Respondent unfit to practise veterinary surgery) and stage 3, if reached (the issue of what if any sanction to impose) together. To facilitate that, the Respondent gave evidence under oath after Counsel for the College's opening.
11. In chief the Respondent relied upon his signed Insight Statement. He stated that until he was arrested he did not appreciate how serious his behaviour had been. He accepted his messages to Ms B were not ok. He realised he should not have contacted her. He referred to his positions as a veterinary surgeon to date starting in 2013 in an abattoir, and thereafter doing locum work. He explained that he was still working at a locum position and had other work arranged in the UK and had made applications to work for the government in Spain and for a position in France. He stated that his frequent references to a facial characteristic of Ms B had much to do with his admiration for Salvador Dali and that they were not meant to be pejorative. He had viewed this as a sort of joke between himself and Ms B.



13. In cross-examination, the Respondent stated that he first met Ms B in August 2016. He stated that he had disclosed the conviction and the disciplinary proceedings to the agency which found him work, but not directly to the practice where he was a locum. He instructed the agency to do that and believed they had done it. He accepted that there was nothing in his medical records which amounted to a clinical explanation for his behaviour towards Ms B. He stated that his behaviour was a form of flirtation with Ms B. He understood her to be behaving in a way designed to attract him. He said that he would avoid doing these sort of things now. He was taken through several of the text messages. He said that he was not respectful at the time. He did not take the threat to go to the police seriously. He accepted now that Ms B was very uncomfortable. He accepted that she had blocked his messages and that she did not reply and that her boyfriend had told him to stop. Again he did not take that seriously at the time. He said he was not really aware of the situation. He stated that his move to an address near where Ms B resided was not to be close to her. It was an address which the estate agents had found for him.

14. In answer to Committee questions, the Respondent stated that, at first, he thought Ms B was playing a game. He didn't recognise how bad his behaviour had been. He realised now that he must not communicate in this way. He has now avoided Ms B. He had admitted that he was now unfit to practise by reason of his conviction and because of the damage to the reputation of the profession. It was not creditable for a veterinary surgeon to behave in his way. He stated that in future he would not pressurise anyone to be in contact with him. He would not try to develop a relationship with anyone at work. He would not joke again. He would not joke about sexual matters. He would only go out with others if there were a group of them.

He explained that he had started the RCVS Certificate in Advanced Veterinary Practice but further progress was in abeyance in the light of these matters.

He was close to his family in Spain and there were other members of his family in Manchester. He also said he would reduce his workload.

15. The Respondent was re-examined by his own Counsel.

16. Counsel for the College and for the Respondent then addressed the Committee.

17. Counsel for the College relied on a number of matters as follows:

- a. The nature of the text messages was plain on their face;

- b. The obvious seriousness of the content is echoed by the fact that Ms B's boyfriend intervened.
- c. The Committee should take into account that the Respondent was issued with a warning by the police on 16 October 2016. Nevertheless, there was subsequent conduct and it resulted in a conviction.
- d. Counsel suggested that although the Respondent has stated that he is insightful, that is a matter which the Committee should judge particularly on the basis of the matters put to him in cross examination. The Magistrates regarded the case as sufficiently serious to impose a custodial sentence albeit one which was suspended for 12 months.
- e. The victim in this case had been a junior colleague.
- f. The victim suffered considerable emotional distress. Counsel referred to the relevant passages in Ms B's witness statements.
- g. The Committee should of course take into account the Respondent's response to the College contained in the bundle and his Insight Statement.

18. Counsel for the Respondent addressed the Committee as follows:

- a. The Respondent does not minimise the gravity of the behaviour or the texts which he sent;
- b. It is recognised that Ms B was badly affected, although Counsel made the point that the Respondent was never her line manager.
- c. She accepted that the Committee ought to find that the conviction renders the Respondent unfit to practise veterinary surgery.
- d. She referred to the context in which these matters occurred. They reflected the time scale of the Respondent's Grandfather's illness.
- e. She stated that the Respondent has presented an explanation as to how these matters occurred and that he had a strategy for addressing them should they ever recur again. He had the necessary insight.
- f. She said that in the greater spectrum of serious criminal matters, this case was nowhere near the most serious.
- g. She referred to the testimonials which came from a variety of sources which spoke highly of him.  
■ She said that this matter occurred because of an unhappy combination of factors. ■  
■
- i. She referred to the strength of the Respondent's own family, 2 members of which had attended the hearing from Spain, his mother and his aunt.
- j. She stated that the Case of Fleischman v. GMC did not impose an inflexible rule that a professional should not be permitted to return to practise until the sentence imposed in the criminal courts was completed.

19. The Legal Assessor advised the Committee. Although the Respondent had accepted that the conviction rendered him unfit to practice, that was a matter which the Committee alone could decide. There was no burden or standard of proof. He referred

to the case of RCVS v. Ms Kerstin Vockert in which it was stated that the test for considering whether a conviction renders a respondent unfit to practise is to all intent and purposes the same as that for assessing whether behaviour amounts to disgraceful conduct in a professional respect, namely whether the conduct falls far short of that which is expected of a member of the veterinary profession. He acknowledged the submission made by Counsel for the Respondent in respect of the case of Fleischman v. GMC and reminded the Committee that the RCVS did not have the jurisdiction to impose an interim order, so that it can happen in RCVS cases that veterinary surgeons and nurses are continuing in practice after such time as a sentence has been imposed in the criminal courts and before such time as it is complete.

**Determination as to the conviction rendering the Respondent unfit to practice.**

20. The Committee found that the conviction renders the Respondent unfit for veterinary practice. It was a serious conviction as demonstrated by the sentence imposed and by the nature of the harassment. It brought distress on Ms B and will have damaged the reputation of the veterinary profession. The Respondent was right to accept that this was the case.

**Decision as to Sanction**

21. The Committee considered the following to be aggravating factors in the case:

- a. The conviction, whilst not being at the high end of criminal behaviour, represented serious harassment, as reflected in the custodial sentence imposed albeit it was suspended. The Committee noted that the sentence imposed by the Magistrates did not, by its nature, mean that the Respondent was precluded from practising for a period of time. It also recognised that a conviction of this kind damages the reputation of the profession and public confidence in it.
- b. The behaviour of the Respondent occasioned distress to the victim, Ms B. Moreover, some of the text messages could be interpreted as threats to harm. The Committee noted that there was no recent statement from Ms B and that the Magistrates ordered the Respondent to pay to her £1,000.00 compensation.
- c. The behaviour of the Respondent continued after he had received a warning from the police, albeit the warning was delivered to him orally on the telephone. Indeed it had continued after Ms B and her boyfriend asked him to stop sending her text messages.
- d. The Respondent visited the practice and, on that occasion, Ms B was really frightened
- e. There was a sexual element to the text messages although the Committee recognised that this was not a conviction for "sexual harassment".
- f. The pattern of behaviour was sustained over a period of 3 months. It only came to an end with his arrest.



- g. As set out in Counsel's opening, the Respondent's behaviour contravened the principle of behaving with integrity and the "Social Media and Online Forums" guidance.

22. The Committee considered the following to be mitigating factors in the case:

- a. The context of his behaviour over the 3 month period was his Grandfather's sudden and severe illness which led to his death. The effect on him of this matter may perhaps be seen in the medical records for 21 November 2016. [REDACTED] Moreover, the Committee accepts that this was a lonely period in the Respondent's life. He was working on his own carrying out locum work.
- b. Social ineptitude was a factor in the case. He did not recognise the rejection which he received from Ms B.
- c. He admitted the charge before the Nottingham Magistrates and before this Committee.
- d. He has avoided repetition of his behaviour since the arrest and seems to have developed strategies for recognising any danger of repetition of his behaviour and addressing it. [REDACTED]
- e. Testimonials suggest that he is a capable veterinary surgeon who may have the ability to go on to achieve advanced veterinary practice.
- f. The Committee accepted that his insight has developed since the events in question. He is able to rely upon his own family for support.
- g. There was a variety of good testimonials. The Committee noted that there were no testimonials from his present employment, nor from the agency which engages him in locum positions, but it recognises that these sources do not necessarily have the knowledge to write testimonials.

23. The Committee recognised that the purpose of imposing a sanction is not to punish, although a sanction may have a punitive effect. It also recognised that it should impose the least severe sanction consistent with its obligations to meet the public interest. Any sanction should be proportionate.

24. The Committee considered that to take no further action would be entirely inappropriate. It relies on the reasons set out in relation to why the conviction renders the Respondent unfit for veterinary practice.

25. The Committee saw no merit in postponing judgment. There was no reason why the decision as to sanction should not be made in this hearing. Neither Counsel suggested that this was a case for postponing judgment.

26. The Committee considered whether to impose a reprimand and / or warning. It determined that this would be inappropriate as this was a conviction for harassment of sufficient seriousness to warrant a custodial sentence of 6 weeks, albeit suspended, there was extensive use of social media and text messaging in disregard of the RCVS

guidance and the Respondent's behaviour continued after the remonstrations from Ms B and her boyfriend and the police warning.

27. The Committee has determined to suspend the Respondent's registration for a period of 5 months. This sanction reflects the seriousness of the conviction and the concerns expressed by the Committee in this determination. It will send a message to the Respondent and to the profession that conduct such as this is unacceptable. It will afford an opportunity to the Respondent to reflect further on his behaviour.

**DISCIPLINARY COMMITTEE**

**19 DECEMBER 2017**

---