

BEFORE THE PROFESSIONAL CONDUCT COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS

v

DR ROBERT WILLIAM RUSSELL MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON FINDING OF FACTS AND FITNESS
TO PRACTISE

The Conviction

1. On 23 May 2023, at the Southampton Magistrates' Court, the Respondent was convicted, following a guilty plea, of:
 - i. making an indecent photograph / pseudo-photograph of a child x3 (namely making 104 Category A images, 40 Category B images, and 132 Category C images),
 - ii. possessing a prohibited image of a child (namely possessing 2,280 prohibited images) and
 - iii. possessing extreme pornographic image / images portraying an act of intercourse / oral sex with a dead / alive animal (namely 109 extreme pornographic images portraying sexual acts with an animal)
2. On 13 June 2023 at Winchester Crown Court, the Respondent was sentenced to a two-year community order, comprising a 30-day rehabilitation requirement and 150 hours of community service.
3. In addition, a Sexual Harm Prevention Order was imposed for five years. He was also placed on the barring list by the Disclosure and Barring service and was required to register with the police pursuant to the Sexual Offences Act 2003 for a period of five years. There was an order for forfeiture and destruction of the laptop computer which had been used for the purpose of the offences. The Respondent was also ordered to pay prosecution costs in the sum of £425 and a victim surcharge of £60.
4. The certificate of conviction appears at pages 2-1 to 2-3 of the Inquiry Bundle.

The Facts underlying the Conviction

5. The transcripts of the sentencing proceedings at Winchester Crown Court appear at 3-1 to 3-10 of the Inquiry Bundle.
6. The Respondent, in email correspondence with the College's solicitors prior to the Hearing, has in effect suggested that he is not guilty of the offences. However, the Respondent's guilty plea in Court constitutes a formal acceptance that he was indeed guilty of those offences; and his counsel's mitigation, presented on his behalf at the sentencing hearing, confirms to the Committee's satisfaction that acceptance. The mitigation advanced on his behalf made repeated reference, for example, to his remorse (3-5 and 3-6).
7. In any event, the Respondent cannot now go behind the conviction. He has lodged no appeal against it nor sought to retract his guilty plea.
8. The Committee accepts that the Prosecution's opening submissions at that Hearing, together with the Judge's sentencing remarks, form the basis on which the Respondent was convicted and sentenced.
9. As appears from the transcript, prosecution counsel explained that on 9 June 2020, police officers attended the Respondent's home in Lyndhurst to execute a search warrant. A number of digital devices were seized. Later analysis of those devices found that three of them contained illegal images. There were 104 category A indecent images of children, 40 category B indecent images of children, 132 category C indecent images of children, 2,280 prohibited images of children, and 109 extreme pornographic images portraying sexual acts with an animal (3-2).
10. The children depicted in the images seized from the devices at the Respondent's home ranged from between 4 years old and 16 years old, and the images also included moving images of bestiality and category C indecent images of children (3-2).
11. The analysis showed a user history indicating that there had been searches on the devices using search terms involving both children in a sexual context and bestiality.
12. The Respondent was interviewed twice by police, on 9 January 2020 and 16 January 2023. He made no comment to most of the questions asked of him in each interview (3-2).
13. Prosecution counsel confirmed that the Respondent had no previous convictions (3-3).
14. The Respondent's counsel then presented mitigation on his behalf. She referred to the Respondent's remorse (3-5 and 3-6), and his previous good character. As part of the mitigation, she referred to the Respondent's profession as a veterinary surgeon:

"...he is also a great veterinary doctor, which perhaps in the context of some of the offences doesn't particularly help, but it does seem to me, as the probation report seems to identify in this case, that, that there is a different persona of the Defendant when he appears to be searching the internet, as opposed to the person that he appears to be at work, and within the society as well."
15. Defence counsel also referred to the significant delay before the Respondent was charged with the offences. She referred to the fact that he had lost his practice and would be unable to return to work.
16. In sentencing the Respondent, His Honour Judge Feest stated:

“When the police came to your house in January of 2020, they found nearly 2,500 illegal images on your media devices. A whole range of material, images of children, images of adult, and pseudo images. There were category A images, the most serious, 104 of them, although no movies at that category. You pleaded guilty at the first opportunity, and you will get your maximum one third credit for that.

You are now in your 60s and this is the first time, sadly, that you have come before the Court. You will no longer be able to claim you are a man of previous good character, which you were up until now. Although it has been rightly recognised on your behalf, that is your own fault because of the activities you took part in, the internet searches, the internet behaviour that you carried out over a long period of time.

In sentencing you, I take account of everything that is set out in the Pre-Sentence Report and in the numerous references that I have read which speak very highly of you indeed. I have a regard to the guidelines which rightly have been put before me which for category A images say that as a starting point, not a finishing point of course, but as a starting point, a 1 year custodial sentence should be looked at. Importantly, I look at the imposition of community and custodial sentence guidelines. This is a case which the custody threshold has been crossed, but I then must ask myself whether it is unavoidable that a sentence of imprisonment be imposed.

It is submitted correctly on your behalf that if I look at the table under suspended sentences, there is here a realistic prospect of rehabilitation and there is strong personal mitigation. None of the factors which go against a non custodial sentence apply. Clearly, there already has been, and I suspect will continue to be an impact, whether it is significant or not may be a different question, but an impact upon others of your behaviour. I have to ask myself whether I should send you to prison today.

Looking at those guidelines, taking into account your early guilty pleas, the remorse that you have expressed, and all the other matters I have mentioned, I can avoid imposing a custodial sentence. It seems to me, in your case, that a Community Order will provide sufficient restriction on your liberty by way of punishment, whilst also addressing your rehabilitation, and importantly, in a case like this, preventing future crime. To that end, I am also going to make a Sexual Harm Prevention Order, which will limit and control your internet activities.

My judgment in this case, a Community Order as set out in the Pre-Sentence Report is appropriate. For each of these counts concurrent, you will have a 24 month Community Order. As part of that order, you will do up to 30 days rehabilitation activity requirement which will be, in the main part, you undertaking the Maps for Change programme, but it is up to the probation service to direct you as they see appropriate.

You will do 150 hours of unpaid work. I see no reason why you should not pay the costs of £425 which will be paid within one month. This is a case to which the statutory surcharge applies in the sum, I believe I am right in saying, of £95. 2 year Community Order. If you breach any of the terms of that order, if you do not do your unpaid work, if you fail to attend or cooperate with the Rehabilitation Act Tier II requirement days, you will come back to this Court, and you can be re-sentenced for these offences. Having been given a chance, if you are re-sentenced, you may find that whoever re-sentences you may not take the same view that I have taken today.

Everything I have read about you, I hope indicates you will not be back. Because of the sentence I have imposed, the requirement for you to remain on the Sexual Offenders Register will last for 5 years. That is also the period of time that I make the Sexual Harm Prevention Order for, a period of five years. That is from today. If you breach that order,

you are liable for a sentence of imprisonment of up to 5 years. Make sure you understand the terms of that order. Make sure you comply with it immediately and going forward, and if you do, you will hear no more of it.”

The College’s Knowledge and Involvement

17. On 14 June 2022, the Police alerted the College to its investigation into the Respondent (5-3 to 5-4) and indicated that it would keep the College informed of any convictions subsequently entered (5-2).
18. After being informed of the Respondent’s conviction, the College wrote to him by letter dated 17 August 2023, asking him for his responses (5-6 to 5-7). He did not reply. His first communication in relation to this matter occurred after the matter was referred to the Disciplinary Committee, and consists of email communications in which he denies the offences underlying the conviction.
19. The College obtained a certificate of conviction and transcript of the Crown Court proceedings. The College also sought disclosure from the Hampshire Constabulary of any relevant material relating to the conviction. Material obtained as a result is included at Divider 4 of the Inquiry Bundle. It is heavily redacted but includes an indication that the Respondent, at the time of the search of his home on 9 January 2020, denied knowledge of any indecent images of children (4-4/28).
20. The College submitted that the Committee can be sure, on the basis of the certificate of conviction and the transcript of the criminal proceedings, that the Respondent was indeed convicted of the offences as set out in the Notice of Inquiry.

Decision of the Committee – Stage 1 Findings of Fact

21. The Respondent has not attended this Hearing to submit any evidence to substantiate the contention advanced in his email dated 4 March 2024 that he was not guilty of the offence charged by the Crown Prosecution Service. The Committee notes that he has not suggested that he has applied to withdraw his guilty plea to that charge nor has he suggested that he has appealed his conviction. The Respondent has had an opportunity to appear today before the Committee but has chosen not to do so.
22. Based on the certificate of conviction placed before it by the College the Committee is satisfied so that it is sure that the Respondent is guilty of the offence laid by the College. The contents of the Transcript of the Sentencing Hearing before His Honour Judge Feast confirms that, through his counsel, he was then accepting the correctness of his conviction.
23. In these circumstances the Committee is satisfied so that it is sure that the Respondent is guilty of the offence confirmed by the Certificate of Conviction placed before it.

Fitness to Practise – Stage 2

24. At this Second Stage of the Proceedings, the Committee has to consider and determine whether, the facts found to be proved render the Respondent unfit to practice veterinary surgery.
25. The Committee has had full regard to the Advice given by the Legal Assessor which it accepts. Accordingly, when considering whether a conviction renders a Respondent unfit to practice, the Committee has applied the same test as it is required to do when

assessing whether the behaviour amounts to disgraceful conduct in a professional respect.

26. Disgraceful conduct in a professional respect means conduct which falls **far** short of that which is to be expected in a member of the veterinary profession. This is a test which was approved in the decision of the Privy Council in McLeod v. RCVS [2005].
27. There is no burden or standard of proof involved in the Committee's determination of the issue of fitness to practice - it is a matter for the Committee's judgment.
28. The Committee accepts that for a conviction to render a person unfit to practise as a veterinary surgeon, it need not relate to conduct in his professional practice. This is confirmed by the contents of the Disciplinary Committee's Procedure Guidance (August 2020) which provides (paragraph 25):

"A conviction may be related to professional or personal behaviour and whether it renders a respondent veterinary surgeon unfit to practise is a matter of judgment for the Disciplinary Committee. Behaviour unconnected with the practice of veterinary surgery can cause concerns about the protection of animals or the wider public interest."
29. In its Written Submissions the College has set out a number of propositions of law which the Committee endorses and accepts.
30. The "*wider public interest*" referred to in the Procedure Guidance of 2020 includes upholding the reputation of the profession of veterinary surgeons and maintaining public confidence in the profession. A veterinary surgeon may be unfit to practise as a result of conduct which is of such an egregious nature that it has the potential to bring the profession into disrepute and undermine public confidence in the profession.
31. As observed by Lord Clyde in the case of Roylance –v- General Medical Council [2000] 1 A.C. 311, serious professional misconduct may arise where the conduct was "*quite removed from the practice of medicine but is of a sufficient immoral or outrageous or disgraceful character*".
32. Further, the Privy Council in the case of Kirk v Royal College of Veterinary Surgeons [2004] UKPC 4, Lord Hoffmann stated (para.33): "*veterinary surgeons as professionals have wider duties than the care of animals. They are expected to conduct themselves generally in accordance with the standards of professional men and women and failure to do so may reflect upon the reputation of the profession as a whole...*
33. The Committee has taken into account aggravating and mitigating factors at this Second Stage, but only in so far as those factors relate directly to the circumstances of the conviction itself (and are not, for example, purely personal mitigation). In this case the Committee considers the following to be relevant aggravating factors at the unfitness to practise stage (paragraph 39 Procedure Guidance):
 - a. *Actual injury to an animal or human (here animals and children)*
 - b. *Risk of injury to an animal or human (here animals and children)*
 - e. *Premeditated misconduct*
 - i. *The involvement of a vulnerable client (here a non-client)*
 - k. *Sexual misconduct.*
34. The Committee considers that each of these aggravating factors is present in this case. There was an actual injury to child victims portrayed in the images. There was a risk of injury to the animals which were the victims in the bestiality images. The conduct covered by the Charge entailed an element of premeditation given the use by the

Respondent of search terms involving both children in a sexual context and bestiality. Both sets of victims can properly be regarded as falling within the category of vulnerable non-client or victim. The conduct in question clearly amounted to sexual misconduct of the most serious kind, as indicated by the submissions of Counsel for the Prosecution and the Sentencing remarks of the Crown Court Judge. It is also to be noted that the conduct covered by the Charge covered a span of dates which extended back to at least 6 years [3-3 of the Inquiry Bundle at B-C] and the Sentencing Judge stated that the conduct in question was carried out "over a long period of time" [3-8 of the Inquiry Bundle].

35. The Committee has also had regard to the decision in The Council for the Regulation of Health Care Professionals v General Dental Council (Fleischmann) [2005] EWHC 87 (Admin) (which is referred to at paragraph 49 of the Disciplinary Committee Procedure Guidance) where Newman J stated: "*I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.*"
36. In this case, the Respondent is subject to a two-year community penalty that does not expire until June 2025; and five-year sexual prevention and barring orders that do not expire until June 2028.
37. The Committee also considers that it is important to note that the Respondent's conduct does not relate to one single image. Instead, they run into the thousands in terms of prohibited images in total. There were 104 category A indecent images of children, 40 category B indecent images of children, 132 category C indecent images of children and 2,280 prohibited images of children. Some of the children depicted in the images were as young as 4 years old. In the College's submission, possession of such images is disgraceful conduct of the most grievous and reprehensible kind.
38. The College has contended that there are serious concerns about animal welfare and the reputation of the profession in terms of promoting animal welfare. The Respondent was convicted of possessing 109 extreme pornographic images portraying sexual acts with an animal. Such acts are by their very nature abusive and run contrary to the very heart of the profession of veterinary surgery.
39. Although the Respondent has not attended this Hearing nor submitted evidence before it in any of the usual forms he has asserted in his emails to the College that he is proud of many things that he has done during his long period as a veterinary surgeon. The Committee has considered whether this could be a contention that the public interest does not require a finding that this conviction renders the Respondent unfit to practice - because the protection and promotion of the health and welfare of animals and the protection of public health was not and will not be put at risk by reason of this conviction.
40. However, in the context of disciplinary proceedings, public interest has also been defined as having 2 additional components: namely, (1) the promotion and maintenance of public confidence in the veterinary profession; and (2) the promotion and maintenance of proper professional standards and conduct in the veterinary profession.
41. The Committee has considered whether there are any relevant mitigating factors. The Respondent has submitted for consideration by the Committee a series of medical records detailing his current state of mental health. Such matters relate to purely personal mitigation factors and are not relevant to the issue of whether the conviction has rendered the Respondent unfit to practice.

Conclusion

42. The Committee has considered whether the conduct to which the Respondent has pleaded Guilty in the Crown Court is of such an egregious nature that it has the potential to bring the profession into disrepute and undermine public confidence in the profession; whether his conduct as proved by his conviction "*is of a sufficient immoral or outrageous or disgraceful character*" as to amount to serious professional misconduct; and whether such aggravating factors as it has found proved warrant a finding that, in the Committee's judgement, this Respondent is unfit to practice veterinary surgery.
43. The Committee considers that, when consideration is given to the nature and the number of the images underlying these convictions, members of the public would find it abhorrent for a veterinary surgeon to have acted in this way.
44. Possession of indecent images of children and of bestiality is so inherently deplorable and shocking that it must constitute conduct falling **far** short of that to be expected of a member of the profession; and is certainly liable to bring the profession into serious disrepute and undermine public confidence in the profession.
45. The finding of the Committee is that the Respondent is unfit to practise veterinary surgery.
46. It will now proceed to consider Sanction.

Disciplinary Committee
12 March 2024