Privy Council Appeal No 16 of 2007

Dr John Alan Walker *Appellant*

v.

The Royal College of Veterinary Surgeons *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF
THE ROYAL COLLEGE OF VETERINARY SURGEONS

REASONS FOR DECISION OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON COSTS
Delivered the 3rd April 2008

Present at the hearing:-

Lord Walker of Gestingthorpe
Lord Mance
Lord Neuberger of Abbotsbury

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*[Delivered by **Lord Mance**]*

1. The Board by its judgment delivered on 21st November 2007 advised Her Majesty that Dr Walker's appeal against the order of The Disciplinary Committee of the Royal College of Veterinary Surgeons ordering his removal from the register should be allowed, and that there should be substituted in lieu an order for his suspension for a period of 6 months. Dr Walker's appeal was opposed by The Royal College of Veterinary Surgeons, which sought to uphold The Disciplinary Committee's order. Pursuant to the leave given by the Board's judgment, Dr Walker now applies for an order that the Royal College do pay the costs of his appeal to the Board.

2. The Royal College takes three points in relation to this application. First, it submits that it conflicts with a principle to be derived from cases such as *City of Bradford Metropolitan District Council v. Booth* [2000] COD 338, *Gorlov v. Institute of Chartered Accountants* [2001] EWHC Admin 220 and, most recently, *Baxendale-Walker v. The Law Society* [2007] EWCA Civ 233. Secondly, it submits that a split order should be made because of submissions made by Dr Walker, but not accepted by the Board (cf paragraph 14 of its previous judgment), relating to the Disciplinary Committee's view of the Jockey Club's attitude towards offending such as Dr Walker's. Thirdly, it points out that other well-wishing members of the profession organised an appeal fund, as a result of which Dr Walker received considerable financial support to pursue his appeal.

3. As to the first point, the Board, without commenting upon or going into the principle advanced, considers that it cannot bear on the present situation. The authorities relied on concern the different position of costs before disciplinary tribunals or before a court upon a first appeal against an administrative decision by a body such as a police or regulatory authority. In the present case, the Disciplinary Committee made no order for costs in respect of the proceedings before it (in which Dr Walker was represented by counsel), and no-one has challenged that.

4. The present appeal came before the Board under s.17 of the Veterinary Surgeons Act 1966, subs. (2) of which provides that

> "The Council of the College may appear as respondent on any such appeal and, for the purpose of enabling directions to be given as to the costs of any such appeal, shall be deemed to be a party thereto whether they appeared on the hearing of the appeal or not."

5. The Board has in practice made costs orders against the Royal College when an appeal succeeded (cf *Tait v. The Royal College of Veterinary Surgeons* [2003] UKPC 34) and in the College's favour in cases of unsuccessful appeals (cf *Archbold v. The Royal College of Veterinary Surgeons* [2004] UKPC 1 and *Kirk v. The Royal College of Veterinary Surgeons* [2004] UKPC 4). A similar position has applied with appeals from other similar disciplinary committees (cf e.g. *Preiss v. The General Dental Council* [2001] UKPC 36, *Collier v. The Council for Professions Supplementary to Medicine (The Paramedics Board)* [2003] UKPC 72 *Salha v. The Professional Conduct Committee of the General Medical Council* [2003] UKPC 80 and *Dias v. The Professional Conduct Committee of the General Medical Council* [2003] UKPC 75. No order for costs was made in two cases where the appeal failed on liability, but succeeded on penalty (cf *Macleod v. The Royal College of Veterinary*

Surgeons [2006] UKPC 39 and *Agarwal v. The Professional Conduct Committee of the General Medical Council* [2003] UKPC 87.

6. The Board sees no reason to depart from its previous practice. Here, there was no appeal on liability and it was at all times accepted and submitted on Dr Walker's behalf that the appropriate disposal would have been and was suspension for a period such as that which the Board in the event advised should be imposed. The present appeal was at all times also fully and firmly opposed by the Royal College. If Dr Walker has lost, there would been good reason for a costs order against him. As he succeeded, a costs order in his favour seems to the Board in principle fair.

7. The Board therefore turns to the second and third points to see if there are any other reasons why the costs order should be less than complete. The second point does not appear to the Board to represent such a reason. The point about the Jockey Club was but one of a number, and it took virtually no time during the hearing. As to the third point, the appeal fund is said to have raised about half (£21,000) of Dr Walker's appeal costs. The fund was raised on the basis that, in the event of a surplus or of a costs order against the Royal College, there would, according to the relevant contributor's wishes, be either a proportionate return or a proportionate sum forwarded to the Veterinary Benevolent Fund. The appeal fund appears to the Board in these circumstances irrelevant to the present issue.

8. The Board therefore orders that the Royal College of Veterinary Surgeons should pay Dr Walker's costs of the appeal to the Board.