

IN THE CARDIFF COUNTY COURT

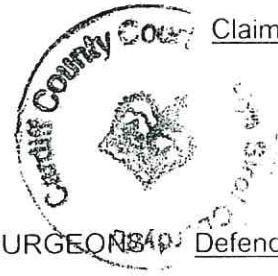
9CF04115

BETWEEN:-

MR MAURICE KIRK

Claimant

- and -

THE ROYAL COLLEGE OF VETERINARY SURGEONS Defendant


---

WITNESS STATEMENT ON BEHALF  
OF DEFENDANT

---

I, GEOFFREY HUDSON, Solicitor and Partner of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, say as follows:

1. I am a partner in the firm of Penningtons Solicitors LLP and I have conduct of this matter on behalf of the Defendant in this action, the Royal College of Veterinary Surgeons. I make this witness statement in support of the Defendant's application for an order (1) that the Statements of Case (the Claim Form and the Particulars of Claim) in this claim be struck out as disclosing no reasonable grounds for bringing the claim and/or as an abuse of the Court's process; and/or (2) granting the Defendant summary judgment in respect of the claim.

### Background

2. The Defendant is the body charged by the Veterinary Surgeons Act 1966 with the regulation of the veterinary profession, and in particular for the purposes of this claim, the Defendant is responsible for keeping the Register of Veterinary Surgeons. This responsibility includes the processes by which veterinary surgeons secure entry of their name on the Register and, in the event of their receiving criminal convictions which render them unfit to practise veterinary surgery or being found guilty of disgraceful conduct in a professional respect (if

appropriate), their removal from the Register on a temporary (suspension) or permanent (erasure) basis.

3. These powers are exercised by the Disciplinary Committee under section 16 of the Act and there is a right of appeal from the Disciplinary Committee to the Judicial Committee of the Privy Council under section 17. By section 17(3) any such direction takes effect within 28 days of its being made unless, within that period, the registrant appeals in which case the direction takes effect (if at all) when the appeal is withdrawn, struck out or dismissed. Section 18 of the Act provides the Disciplinary Committee with the power to restore a former registrant to the Register. A former registrant can make an application to the Disciplinary Committee ten months after any decision to remove his or her name or, for second and subsequent applications for restoration, ten months after a previous unsuccessful application for restoration.
4. The Claimant's name was removed from the Register of Veterinary Surgeons by direction of the Disciplinary Committee on 10<sup>th</sup> June 2002 as a result of disciplinary proceedings brought against him in respect of both criminal convictions and disgraceful professional conduct. The Claimant's appeal against the decision was dismissed by the Judicial Committee on 19<sup>th</sup> January 2004 and his name was then removed from the Register of Veterinary Surgeons. Since that date the Claimant has been unable to practise in this country as a veterinary surgeon. It is the Claimant's inability to practise as veterinary surgeon which forms the basis of this claim.
5. The Claimant has made a number of applications for restoration, six in all, each one effectively on the expiry of the period of ten months after the previous application. Each of these applications has been unsuccessful. On 7<sup>th</sup> November 2005, in order to assist the Claimant, the Disciplinary Committee gave him some guidance as to the matters he needed to address. The Defendant has refused to comply with this guidance. The manner in which his repeated applications for restoration were made resulted in the Disciplinary Committee's decision on 6<sup>th</sup> October 2006 that any future applications would be considered and, if lacking prospects of success, dismissed by the Chairman alone on paper without the need to convene a full hearing of the Disciplinary Committee. This case

management procedure was sanctioned by Lloyd Jones J in a judgment delivered on 16<sup>th</sup> August 2008 in proceedings brought by the Claimant for judicial review. In approving this procedure, Lloyd Jones said: 'It seems to me that the Defendant was entitled to take such a course. It must be entitled to protect its procedures from abuse.'<sup>1</sup>

6. In addition to applications for restoration, the Claimant has also (as indicated above) made applications to the High Court for judicial review of the decisions of the Disciplinary Committee to refuse his applications for restoration. There have been three of these in all. They have all been unsuccessful. In the course of the Claimant's dealings with the High Court, two Extended Civil Restraint Orders have been made. The first was made by Collins J on 27<sup>th</sup> January 2006, for the maximum period of two years; the second was made by Mr James Goudie QC sitting as a Judge of the High Court, as recently as 15<sup>th</sup> June 2009, again for the maximum period of two years. Both Extended Civil Restraint Orders were made of the Court's own motion.
7. The process for the imposition of this second Restraint Order was started by order of Dobbs J who, on refusing the Claimant's application for permission to proceed for judicial review on paper on 17<sup>th</sup> March 2009, ordered that 'the Court should fix a hearing for consideration by the Court of its own motion of the imposition of a further Civil Restraint Order, to be listed at the same time if there is a renewed application for permission'. It was completed at the renewed hearing before Mr Goudie QC on Monday 15<sup>th</sup> June 2009. This claim was issued on 29<sup>th</sup> May 2009 and the Defendant received it late on Friday 12<sup>th</sup> June 2009. The Claimant has issued this claim in the County Court, it is assumed in full knowledge that the High Court was going to consider the imposition of an order which would, if made, prevent him from doing so.
8. A chronology setting out the detail of the Claimant's applications to the Disciplinary Committee and the High Court is attached to this witness statement as Exhibit "GH 1". His activities have caused the Defendant considerable expense: as a result of the costs orders made by the Privy Council and the High

---

<sup>1</sup> R (on the application of Maurice Kirk) -v- Royal College of Veterinary Surgeons [2008] EWHC 2258 (Admin), paragraph 7

Court he is indebted to the Defendant in the sum of £70,537.81. Legal costs incurred by the Defendant have effectively to be met from the subscriptions of those who are on the register. To date the Claimant has made no payments to the Defendant in respect of these orders of the Court. The likelihood is that he has no intention of making any payments and the Defendant cannot be confident that enforcement proceedings will be successful. The claim which is the subject of this action has resulted in further expense to the Defendant.

#### **This Claim**

9. On the Defendant's behalf I make the following observations in respect of the factual matters pleaded in support of this claim:-
- (a) paragraphs 2 to 14 all relate to matters which predate the disciplinary proceedings and if (which having regard to the nature of the claims that are made, appears unlikely) there is any substance in them, all go to the validity of the Disciplinary Committee's findings against the Claimant in June 2002. Those findings were the subject of an appeal to the Judicial Committee of the Privy Council which was dismissed;
  - (b) paragraphs 15 to 25 appear to go to the validity of the proceedings before the Disciplinary Committee culminating in the Committee's findings in June 2002. These proceedings were the subject of an appeal to the Judicial Committee of the Privy Council which was dismissed. Further, paragraphs 17 to 19, 21, 24 and 25 appear to amount to a complaint that material was not disclosed to him by the Defendant during the course of the disciplinary proceedings. The Claimant omits to record that during the course of his appeal to the Judicial Committee of the Privy Council he made two applications to the Judicial Committee for disclosure, neither of which resulted in an order for disclosure against the Defendant. The Claimant's contentions that the prosecution misled and/or lied to the Disciplinary Committee (paragraph 21) and to the Privy Council (paragraph 24) and that the legal adviser to the Disciplinary Committee was not fit for purpose are scandalous and not capable of substantiation. Transcripts of all of the Disciplinary Hearings are available should they be

required (and have been produced to the Claimant in the High Court proceedings);

- (c) while paragraph 26 is expressed as relating to the period after the removal of the Claimant's name from the Register, sub-paragraphs (a), (d) and (f) to (k) clearly refer to the Defendant's investigation into the original complaint against the Claimant and the subsequent proceedings, to which the comments made above apply. The Defendant is not aware of a legal adviser ordering it to disclose documents in 2006. Sub-paragraph (c) concerns the Claimant's application to the Information Commissioner, which failed because he was seeking documents which were held by the Commissioner to be subject to legal professional privilege. Sub-paragraph (e) is meaningless. Sub-paragraph (l) relates to the Claimant's unsuccessful applications for the restoration of his name to the Register. These applications are subject to the statutory scheme summarised above. To the extent that the Disciplinary Committee's decisions been challenged by the Claimant, the challenges have been wholly unsuccessful (Lloyd Jones J in June 2008 and Mr James Goudie QC in June 2009 described the challenges which came before them as 'totally without merit'). The procedure whereby the Claimant's applications are considered by the Chairman on paper has, as I have explained above, been expressly approved in the High Court, by Lloyd Jones J in June 2008;
- (d) in a number of the paragraphs the Defendant uses the terms negligence and malice. No particulars have provided in respect of these allegations and they are not therefore adequately pleaded. They are not capable of being substantiated;
- (e) as I have already observed, the overwhelming probability is that these proceedings have been issued in the knowledge that a Civil Restraint Order would be considered by the High Court on 15<sup>th</sup> June 2009. That order will cover future applications for judicial review to the High Court and future actions in the County Court but will not cover this action, in the course of which the Defendant will incur further expense which it may not

be able to recover. The Defendant's view is that these proceedings have been instituted by the Claimant to enable him to continue his campaign of litigation against, and at the expense of, the Defendant.

### **The Defendant's Application**

10. Against this background the Defendant submits that:-

- (a) the Claim Form and Particulars of Claim disclose no reasonable grounds for bringing this claim and amount to an abuse of the Court's process; alternatively
- (b) it is entitled to summary judgment in respect of this claim; and
- (c) the Claimant must pay the costs of this claim, including the costs of this application.

11. As to the submission at paragraph 10(a) above:-

- (a) the Statements of Case disclose no legally recognisable claim: looking at the issue from the perspective most favourable to the Claimant, given that the decisions of the Disciplinary Committee have been upheld by the Courts on every occasion they have been challenged, there can be no basis upon which the consequences of those decisions could sound in damages. While the Claimant has used the term negligence in his Particulars of Claim, it is not possible to categorise the decisions of the Disciplinary Committee as a breach of any duty owed to the Claimant; and there is nothing in the pleading which might conceivably make out a cause of action relating to malice on the part of members of the Committee;
- (b) the Statements of Case amount to an abuse of the Court's process, as (i) the matters relied upon are (and as a matter of fact have been) the subject of the statutory scheme for appeal or amount to public law decisions which are to be challenged by ways of proceedings for judicial review; (ii) they simply repeat allegations made against the Defendant on numerous occasions in the past without success in the Privy Council and

the High Court. They amount to both an attempt to relitigate matters already decided by the Disciplinary Committee and the High Court and a collateral attack upon previous decisions in that Committee and the Court; (iii) they are pointless and wasteful; (iv) they are made by a Claimant who has no respect for orders of the Privy Council and High Court as to costs; and (v) they have been raised with a view to continuing a campaign of vexatious litigation against the Defendant in the face of the High Court considering the imposition of a further Civil Restraint Order.

12. As to the submission at paragraph 10(b) above, for all of the reasons set out above the Claimant has no real prospect of succeeding in this claim.
13. In all of the circumstances I respectfully ask the Court to make orders in the terms of this application.

#### STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed  .....  
GEOFFREY HUDSON

Dated this 8<sup>th</sup> day of July ..... 2009