



[2014] UKPC 13
Privy Council Appeal No 0030 of 2013

JUDGMENT

**Royal College of Veterinary Surgeons (Respondent)
v Samuel (Appellant)**

**From the Disciplinary Committee of the Royal College of
Veterinary Surgeons**

before

**Lord Clarke
Lord Toulson
Lord Hodge**

JUDGMENT DELIVERED BY

Lord Toulson

ON

16 April 2014

Heard on 26 March 2014

Appellant
Jeffrey Jupp

(Instructed by Howells
LLP)

Respondent
Alison Foster QC

(Instructed by Penningtons
Manches LLP)

LORD TOULSON:

Introduction

1. Dr Gary Samuel is a registered veterinary surgeon with a practice in Leeds. He also owns a property at 7 Corporation Road, Cardiff, which is let to tenants. On 10 July 2011 an incident happened between Dr Samuel and the next door neighbours, Ms Heather Jackson and Mr Hamish Harvey, which resulted in Dr Samuel pleading guilty at Cardiff Magistrates' Court on 22 November 2011 to three offences – theft of a camera and memory card (contrary to sections 1 and 7 of the Theft Act 1968), common assault on Ms Jackson (contrary to section 39 of the Criminal Justice Act 1988) and using threatening, abusive or insulting words or behaviour towards Ms Jackson and Mr Harvey (contrary to section 4 of the Public Order Act 1986). He was sentenced to concurrent terms of 28 days' imprisonment for theft and common assault and 12 weeks' imprisonment for the public order offence, all suspended for 12 months. He was also ordered to carry out 140 hours' unpaid work and to pay £75 compensation to Ms Jackson and to pay costs of £625 to the Crown Prosecution Service.

2. On 18 June 2012 the Royal College of Veterinary Surgeons gave notice to Dr Samuel that his case had been referred to the Disciplinary Committee and that an inquiry would be held to consider a charge that his convictions rendered him unfit to practise veterinary surgery.

3. The hearing was on 18 February 2013 and the Committee found Dr Samuel unfit to practise. On the following day it considered the question of sanction and directed that his name be removed from the register. Dr Samuel appeals against both the finding of unfitness to practise and the sanction imposed.

Disciplinary Regime

4. Section 16 (1)(a) of the Veterinary Surgeons Act 1966 provides that if a registered veterinary surgeon is convicted in the United Kingdom or elsewhere of a criminal offence which, in the opinion of the Disciplinary Committee, renders him unfit to practise veterinary surgery, the Committee may, if they think fit, direct that his name shall be removed from the register.

5. The current rules governing the procedure before the Disciplinary Committee are set out in the Veterinary Surgeons and Veterinary Practitioners (Disciplinary

Committee) (Procedure and Evidence) Rules Order in Council 2004 (SI 2004/1680), made under paragraph 5 of Schedule 2 to the 1966 Act. Rules 11.1(b) and 12.3 provide that in a conviction case the College may adduce evidence to show that the nature and circumstances of the offence are such as to render the respondent unfit to practise veterinary surgery; and the practitioner may likewise adduce evidence regarding the nature and circumstances of the offence to show that he is not unfit to practise veterinary surgery.

6. In *Kirk v Royal College of Veterinary Surgeons* [2004] UKPC 4 the Board considered the combined effect of materially identical provisions in the 1967 Rules (SI 1967/659) and section 16 of the Act. Lord Hoffmann said, at para 8:

“Thus both the College and the practitioner may adduce evidence about the underlying facts upon which the conviction is based, provided that the facts which such evidence is relevant to prove are not inconsistent with the finding that the respondent was guilty of the offence. What the practitioner cannot do is to re-litigate the conviction before the Committee.”

7. Rule 23.6 provides that (subject to an immaterial exception):

“any charge which may result in a direction by the Committee that a respondent be removed from the register, shall be proved so that the Committee is satisfied to the highest civil standard of proof; so that it is sure.”

The wording of this rule is confusing, particularly in view of the decision of the House of Lords in *In re B (Children) (Care Proceedings: Standard of Proof)* (CAFCASS intervening) [2008] UKHL 35, [2009] 1 AC11, that the civil standard of proof is in all cases on the balance of probabilities, although that was not universally understood at the time when the rule was drafted. The phrase “is satisfied . . . so that it is sure” is the standard form of wording used to direct juries in criminal cases, and Ms Foster on behalf of the College properly accepted that the Rule is intended to require the same standard of proof as in a criminal case.

8. For a conviction to render a person unfit to practise veterinary surgery it need not necessarily relate to conduct in his professional practice.

9. In *Roylance v General Medical Council* (No 2) [2000] 1 AC 311 the Board considered the meaning of “serious professional misconduct” in the case of a medical

practitioner. It recognised that behaviour remote from the carrying on of a professional practice may be sufficiently disgraceful to constitute serious professional misconduct. In deciding whether it does, a matter of particular concern is the potential damage caused by the person's conduct to the public reputation of the profession. The same may be said in relation to conduct of a veterinary surgeon which involves the commission of a criminal offence. If allowing the person's name to remain on the register would prejudice the reputation of the profession in the eyes of ordinary members of the public and harm their confidence in it, the Disciplinary Committee is entitled to conclude that a charge of unfitness to practise is made out.

Hearing before the Disciplinary Committee

10. At the disciplinary hearing the College was represented by counsel (not Ms Foster). Dr Samuel represented himself. The Committee had been provided in advance with an inquiry bundle which contained the prosecution's evidence in the criminal proceedings, a victim impact statement from Ms Jackson, the Memorandum of Conviction, the notification of disciplinary proceedings given to Dr Samuel and his response in a letter dated 23 January 2012. Shortly before the hearing Dr Samuel supplemented his written response with witness statement by himself and by another person who did not give oral evidence.

11. Counsel for the College outlined the case as it appeared from the prosecution witness statements. According to them, Ms Jackson and Mr Harvey returned home during the evening of Sunday 10 July to find that builders had entered their back garden to prepare for work on a construction at the back of Dr Samuel's property. They had previously asked the builders not to come onto their property.

12. Fed up with being ignored, Ms Jackson decided to take photographs to use as evidence. She walked into a lane at the rear of her property and took some pictures on her digital camera. As she was walking away, she was approached by Dr Samuel who was shouting at her not to take his photo. She replied that what he was doing was against the law and that he should have planning permission.

13. According to Ms Jackson's account, she walked away but Dr Samuel grabbed her from behind. He twisted her right arm and she released her camera. He took the camera and put it in his pocket saying that she was very lucky and telling her not to do anything like that again. She asked for the return of the camera but he refused. Dr Samuel then walked away. She followed him asking for her camera but he shouted abuse at her. She then shouted "Call the police".

14. At this point Mr Harvey arrived. Dr Samuel was standing in the doorway of the structure at the back of his house with a large piece of wood in his hand. Ms Jackson

said that it had a nail on the top of it. Dr Samuel held it up, waved it at Mr Harvey who was only a few feet away, and shouted words to the effect “Do you want me to attack you?” Mr Harvey telephoned 999 and asked for the police. Dr Samuel retired to his house. A few minutes later a neighbour appeared and gave Ms Jackson her camera but the memory card was missing.

15. That was the prosecution’s version. The police arrived and arrested Dr Samuel. At the police station he was searched and the memory card from the camera was found in his possession. He was interviewed. His account was that there had been ill-feeling between himself and his neighbours for several years. Ms Jackson had constantly harassed him when he had been doing work on his property. On the evening of the incident there was a dispute between them about what he was doing. He denied that he or the people working for him had been over the fence or intruded on Ms Jackson’s land. When she started taking photographs of him he objected and asked her to erase them. She removed the SD card, waved it and said “This is my evidence you black bastard”. At that point he lost his self-control and snatched it from her. He had a hammer in his hand but denied threatening anybody.

16. In his letter to the College in response to the notification of the disciplinary proceedings Dr Samuel repeated his account of having been provoked by racial abuse. He concluded by saying, “I am not happy regarding my actions and I have expressed regret, but I however do not think this episode affects my ability to work as a Vet Surgeon.”

17. After the College’s counsel had opened the case, Dr Samuel gave evidence and read out his witness statement as his evidence in chief. In it he explained his pleas of guilty by saying that he accepted that the snatching of the memory card from Ms Jackson’s hand amounted to theft; that his snatching of it from her hand also involved assault; and that he had used words which were threatening. He denied taking the camera but said that he had pleaded guilty to theft of both the card and the camera on legal advice, because the prosecution would not accept anything less. He said in his statement by way of mitigation:

“During the incident Ms Jackson referred to myself as a ‘black bastard’ and this triggered a response due to the racial provocation that I was exposed to.

I stand before the Committee to say that I am not proud of my actions that day, that if this was to occur again I would have dealt with things differently. I think the incidents taught me to reform my actions and perceptions even in the face of adversity.

Since the incident in 2011 I have not been involved in any similar incident. I do not think this isolated incident affects my ability to practise as a veterinary surgeon.

I have also paid my dues to society, having paid a fine of £700 and done 140 hours of services to the community. I worked in an animal sanctuary during my period of community service.

I hope the Committee can understand the mitigating circumstances that led to my action, understand that I have reformed and regret these actions. I have not been involved in broken (sic) the laws of the land and I would like to put this incident behind me and continue to practise as a veterinary surgeon.

...

I had nothing to gain from stealing the SIM card. I took it from her because she was racist towards me. As a human, if you are faced with racial provocation, it is almost as a reflex action.”

18. In cross examination Dr Samuel denied twisting Ms Jackson’s arm or taking the camera, but he accepted that he had pleaded guilty to the theft of the camera. He denied using a weapon. It was put to him at cross examination that no racial insult had been used by Ms Jackson. He insisted that she had and he referred again to the fact that there had been an ongoing problem between them.

19. In its adjudication on the issue of fitness to practise the Committee stated:

“The respondent has admitted the three convictions set out in the charges and in the certificate of conviction from Cardiff Magistrates’ Court, to all of which he pleaded guilty. The Committee is not permitted to go behind the convictions and the findings of the court, which are articulated in the certificate of convictions. Although the respondent admits the convictions, by his letter to the College at investigation stage, and by his evidence today, he seeks to dispute his guilt on some of the charges as set out above. The Committee has to proceed in this matter on

the basis of the findings of the court set out in the certificate of conviction.

The Committee allows the possibility that the respondent may have been subjected to offensive abuse in the course of these incidents, but does not accept that this justified the actions that he took and of which he was convicted . . . The Committee is of the view that the respondent's continuing attempts to dispute the court's findings, in spite of his pleas of guilty to the offences charged, demonstrate a lack of insight on his part.

The Committee considers that the offences of which the respondent was convicted, and to which he pleaded guilty, were serious, as is reflected in the suspended sentences, community service orders, fines, restrictions and penalties imposed by the court. For the reasons set out above, the Committee takes the view that the nature of the convictions is such that they damage the reputation of the profession and undermine the public's confidence in it. Accordingly, in the judgment of the Committee the convictions set out in the charges and the associated conduct, which falls far short of the standard to be expected of a veterinary surgeon, render the respondent unfit to practise veterinary surgery.”

20. On the question of sanction, the Committee in its decision accepted that Dr Samuel had a clean professional record and was a man of previous good character. It noted testimonial evidence which he had submitted. He runs a small animal veterinary practice in a deprived area of Leeds, which employs four people and provides veterinary services to a multi-ethnic community in the city. The Committee stated that it took into account that any sanction which affected his ability to practise would prevent this service being provided and damage his ability to earn a living.

21. However, the Committee stated that it considered that there were serious aggravating factors. The offences were serious, as was reflected in the penalties imposed. The assault resulted in injury to the victim. The threatening behaviour involved a risk of injury and the conviction of theft involved dishonesty. It considered that Dr Samuel's conduct was reckless and repeated that he had displayed very limited insight into his behaviour.

22. As to mitigation, the Committee stated that it “allows the possibility that the respondent was provoked by the taking of photographs and by offensive abuse of the

sort described in the earlier decision”. It considered that he had acted impulsively and lost control of his actions. It noted that he had said that he regretted his actions and that such behaviour would not happen again. However, it took the view that, in spite of the available mitigation, the respondent should not have allowed himself to lose control of his actions in the way that he did.

23. The Committee accepted that this was not a case in which the welfare of animals had been put at risk, but it took the view that a serious sanction was required in order to uphold the reputation of the veterinary profession and public confidence in it and to uphold proper standards of conduct and behaviour on the part of its members. It concluded that the only proper sanction was to direct the removal of his name from the register.

The appeal

24. On Dr Samuel’s behalf, Mr Jupp submitted that the Committee failed to deal properly with the issue of racial provocation and those other parts of the complainants’ account of events which Dr Samuel disputed, and he submitted that the finding of unfitness to practise was inappropriate. On the issue of sentence, he submitted that the order for the removal of Dr Samuel from the register was disproportionate to his conduct, taking account of all the mitigating factors. Ms Foster submitted that the Committee was entitled to approach the evidence in the way that it did and to reach the conclusions which it did.

25. Mr Jupp concentrated primarily on the way in which the Committee dealt with the issue of provocation by racial abuse. He submitted that this was a highly relevant matter when considering the question of Dr Samuel’s fitness to operate as a veterinary surgeon but that the Committee wrongly failed to reach a clear finding about it. All that the Committee said by way of conclusion about it was:

“The Committee allows the possibility that the respondent may have been subjected to offensive abuse in the course of these incidents, but does not accept that this justified the actions that he took and of which he was convicted.”

26. In Mr Jupp’s submission, this was inadequate. From the outset of the disciplinary proceedings Dr Samuel had made his case plain that he had been provoked by racial abuse and had responded in a way that he regretted, albeit that he did not accept the full details of the account advanced by Ms Jackson and Mr Harvey. Dr Samuel gave evidence to that effect, and, although it was formally put to him in cross examination that there had been no such abuse, the College did not seek to call either of the complainants to give evidence on the subject. In saying that it allowed the “possibility”

that the respondent may have been subjected to offensive abuse the Committee did not reject his evidence as incredible but it left the matter in the air. Since the burden of proof was on the College to a criminal standard, since Dr Samuel's evidence on the subject was on its face credible and since there was no oral contradictory evidence, the Committee ought to have approached the question of his fitness to practise on the basis that he acted under provocation as he said. Instead, the Committee not only left the matter undecided but immediately downplayed its possible significance by adding that it did not justify the actions that he took. Dr Samuel had never suggested that it justified his conduct, but it was submitted that it was highly relevant in considering whether he was fit to practise.

27. Ms Foster accepted that the way in which the Committee expressed itself could have been improved, but she submitted that the proper way of reading its decision was that in approaching the question of his fitness to practise the Committee accepted that he was provoked by racial abuse in the way that he described.

28. The Board is unable to accept that submission. It is contrary to the natural meaning of the words used. The Board is left with the clear impression that the Committee, while recognising it as a possibility that Dr Samuel may have been provoked, reached no further conclusion one way or the other; and that the Committee did not think it necessary to do so because, if Dr Samuel was provoked as he described, this was no excuse for what he did.

29. The Board accepts Mr Jupp's submission that the Committee was wrong to adopt that approach. Fairness required that Dr Samuel's evidence on the point should be accepted in the absence of contrary evidence.

30. Ms Foster submitted that even if the Board were to consider that the way in which the Committee expressed itself regarding Dr Samuel's assertion of loss of self-control through provocation was unclear and unsatisfactory, it did not follow that there was anything wrong in the Committee's determination that he was unfit to practise. The Committee was entitled to conclude, as it did, that Dr Samuel's convictions were such as to damage the reputation of the profession and undermine the public's confidence in it, and on that basis it was entitled to conclude that he was unfit to practise. Ms Foster submitted that the instinctive response of ordinary members of the public on being told that he had been convicted of offences of theft, assault and using threatening words or behaviour, and had received a suspended prison sentence, would be that someone guilty of such behaviour ought not to be allowed to practise as a veterinary surgeon.

31. Ms Foster may be right in that submission. But if so, it goes to prove the adage that a little learning can be a dangerous thing. Criminologists who have conducted research into public attitudes to crime have often shown that the views expressed by the

public in answer to very broad questions about different types of offending and the appropriate sentences may be very different from the views of the same people when given detailed factual information about particular offences and offenders. In this case if members of the public were told that the offences occurred in the context of an angry flare-up between neighbours, in which Dr Samuel lost his self-control after Ms Jackson had refused to delete photographs which she had been taking of him and had insulted him with a racial epithet, they might well think that this had little bearing on his fitness to practise as a veterinary surgeon.

Conclusion

32. For the reasons which we have given, the Board concludes that the Committee's finding of unfitness to practise cannot fairly stand. The Board has a discretion whether simply to quash the determination or to remit the matter to the Committee. In reaching that decision the Board is entitled to form its own view of the gravity of the case.

33. It is apparent from the reasons given by the Committee, both on the question of fitness to practice and on the question of sanction, that it was considerably influenced by the fact that the magistrates imposed a suspended prison sentence. The reasons recorded in the Memorandum of Conviction for a custodial sentence are "victim targeted, assault, theft and threats of violence" and "profound effect on victim". The Board has difficulty in understanding the reference to "victim targeted". On any view, what happened was a spontaneous outburst in the course of an angry quarrel between neighbours. The assault was a common assault in which the degree of force used according to Ms Jackson was that Dr Samuel twisted her arm when snatching her camera. As to the "profound effect" on the victim, it was a nasty occurrence but not one which would be expected to cause a profound effect and the Board has noted that the compensation awarded to Ms Jackson was £75. The snatching of the camera, which led to the conviction for theft, was done with the aim of removing the SIM card recording the photos which Ms Jackson had taken. It was not an act carried out for financial gain. The SIM card was recovered from Dr Samuel when he was searched at the police station. The camera itself had been found and returned to Ms Jackson at the scene. Although Dr Samuel pleaded guilty to the theft of the camera and he was not entitled to go behind his plea, it is nevertheless difficult to understand on the evidence how the prosecution would have proved that there was an intent permanently to deprive Ms Jackson of it. In all the circumstances, it is hard to conceive that the court would have considered that the offences truly passed the custodial threshold for a person of good character, if it had not had the power to suspend the sentence. The Board is therefore not greatly influenced in its assessment of the gravity of the case by the fact that the magistrates imposed a suspended sentence of imprisonment.

34. Dr Samuel's conduct was thoroughly reprehensible, but the Board does not consider that its gravity was such that it would be in the interests of the public now to remit the case to the Committee.

35. As to the other points on which Dr Samuel disputed the accounts of Ms Jackson and Mr Harvey, the Committee was entitled to form the view that these did not materially affect the overall question of Dr Samuel's fitness to practise, but it is unnecessary to discuss those matters in further detail in the light of the conclusion to which the Board has come. For the reasons given, the appeal against the finding of unfitness to practise is allowed and the determination quashed. The Board adds that if it had upheld that decision, it would have concluded that the sanction of removing his name from the register was disproportionately severe.