

## Appeals Circular A13/19

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**Re: Schulze Allen v Royal College of Veterinary Surgeons [2019] UKPC 34**

### Learning Points

- Tribunals should ensure, when considering alleged criminal behaviour committed overseas, that there is conduct which amounts to a criminal offence under that jurisdiction.
- The burden rests with the regulator in proving that there has been a criminal offence committed overseas.
- When considering alleged dishonest behaviour by practitioners in completing documents/application forms, Tribunals should pay close attention to the wording of the questions.

### Background

This was an appeal by a veterinary surgeon ('SA') against a decision of the Disciplinary Committee of the Royal College of Veterinary Surgeons ('the Committee') in January 2018 to remove his name from the register of veterinary surgeons.

In 2010, SA first registered with the RCVS but his name was removed from the register in 2011 following non-payment of the annual renewal fee: it was understood that SA had left the UK to work in the USA. In September 2013, SA pleaded guilty (under a plea bargain) in San Bernardino, California and was convicted of '*petty theft under \$50 without prior*'. SA's offence was stealing superglue with a value of \$1.48. SA was ordered to pay a fine of \$435 plus fees.

In December 2013, SA applied for restoration to the register of veterinary surgeons. In his application form, SA was asked to declare whether he had any cautions or criminal convictions (including absolute and conditional discharges, spent convictions and adverse findings), to which he replied 'no'. SA also submitted a sworn affidavit in which he stated he had never been convicted of any criminal offence in the UK or elsewhere. SA was restored to the register of veterinary surgeons.

In 2016, SA began work in Sussex as a locum. Concerns arose regarding the standard of SA's work, to the extent that they were raised with the RCVS. At the same time SA's conviction became known. In June 2016, in response to the RCVS's request for written comments about his failure to disclose his conviction, SA replied stating that he had no criminal record.

The RCVS brought allegations against SA for:

- his conviction for petty theft;
- three instances of alleged dishonesty regarding his application form, sworn affidavit and written response of June 2016.

At a hearing before the Committee in September 2017, SA submitted evidence that indicated that an offence such as his was considered to be an 'infraction' of the law, rather than a 'criminal offence', under Californian law. The evidence submitted by him included screenshots from websites about criminal offences in California and from an online consultation between SA and a Californian attorney who deemed SA's conduct a 'minor transgression'.

In its facts determination, the Committee noted that SA had given '*no plausible reason...as to why this court record...did not amount to a conviction*' and rejected SA's argument that he had not committed a 'criminal offence': The hearing was then adjourned.

When the hearing resumed in January 2018, SA submitted further evidence: the Committee received it, but noted that its decision on facts had already been made. The additional evidence was a letter, dated November 2017, from the Californian Department of Justice which confirmed that, following a search of SA's fingerprints, no criminal record or history had been recorded. The hearing continued and the Committee elected to remove SA's name from the register of veterinary surgeons.

## **Appeal**

SA appealed against the Committee's decision to the Privy Council, and submitted additional evidence at the appeal hearing. This included a decision by a Judge hearing SA's appeal against the California Veterinary Medical Board's decision to refuse his application for a licence to practise: the decision stated that the issue of whether an infraction was a crime was '*open to interpretation*' and referred to American case law which suggested that infractions were not crimes [para 24].

The Privy Council appeal was heard by Lord Wilson, Lord Carnwath and Lord Lloyd-Jones. They held that the Committee had to be sure, beyond a reasonable doubt,

that SA's infraction for petty theft had been a criminal offence under Californian law [para 21]. They queried how the 'unambiguous statement' from the Californian attorney could have failed to raise a doubt in the Committee's mind as to whether SA's infraction did amount to a crime. They held that the further evidence presented by SA provided further support to his argument that it was not a criminal offence or, at least, demonstrated that the RCVS had not clearly established that it was [para 23].

The Privy Council therefore held that the RCVS had not discharged its duty of proving beyond reasonable doubt that SA had been convicted of a criminal offence [para 26] and SA's appeal was allowed in relation to the allegation of being convicted of a criminal offence.

In relation to the allegations that SA had acted dishonestly in maintaining he did not have a criminal record, the Privy Council held that SA's denials were, strictly speaking, not false [para 37]. The questions asked of SA regarded only criminal offences and did not ask about other matters/findings. In previous case law<sup>1</sup> the decision as to whether there had been dishonest behaviour turned on the interpretation of the relevant form/questionnaire. SA's appeals against these allegations were allowed.

In relation to SA's application form for restoration to the RCVS in December 2013, the Privy Council held that the phrase 'adverse finding' was vague and appeared to be a catch-all term for any negative findings of fact made against an applicant [para 39]. They questioned what a reasonable applicant would have understood the RCVS to mean by the term. However, they concluded that SA's infraction in California clearly amounted to an adverse finding and held that his denial of any adverse finding had been dishonest [para 41].

The Privy Council determined that, with only a finding of dishonest behaviour by SA in relation to his application for restoration, the Committee may have imposed a less extreme sanction. The decision of the Committee to erase SA was quashed and the matter was remitted back to the Committee to consider the appropriate sanction on the single finding of dishonest behaviour only.

Kind regards

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<sup>1</sup>*Afsar v Solicitors Regulation Authority* [2009] EWCA Civ 842; *R v Patel* [2007] 1 Cr App R 12.