

Privy Council Appeal No. 51 of 2002

Maurice John Kirk

*Appellant*

v.

The Royal College of Veterinary Surgeons

*Respondent*

FROM

**THE DISCIPLINARY COMMITTEE OF THE ROYAL  
COLLEGE OF VETERINARY SURGEONS**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 19th January 2004

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*Present at the hearing:-*

Lord Hoffmann

Lord Rodger of Earlsferry

Sir Philip Otton

*[Delivered by Lord Hoffmann]*

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1. On 29 May 2002 the Disciplinary Committee of the Royal College of Veterinary Surgeons directed that the name of the appellant Mr Maurice Kirk be removed from the register. The sentence was imposed pursuant to a finding of the Committee that Mr Kirk had been convicted of 11 criminal offences which rendered him unfit to practise veterinary surgery. The Committee also directed that he be suspended from the register for 6 months for a separate incident in respect of which it had found that he was guilty of disgraceful conduct in a professional respect. Mr Kirk appeals to Her Majesty in Council against the findings and directions.
2. This is a very unusual case. Mr Kirk has an inherited love of veterinary surgery (his father was a veterinary surgeon) and there is no question about his dedication and competence. On the contrary, he appears to be one of a small number of veterinary surgeons

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practising in Wales who is willing to be called out any time of the day or night to a sick creature. He will sometimes even use his own light aircraft to get there. No animal has any ground for complaint against him.

3. Mr Kirk's problem is with people. He combines independence of spirit and a passion for justice with a flaming temper and complete insensitivity to the feelings of others. He sees conspiracies under every bush and believes on principle that all members of the police and legal profession are dishonest and corrupt. He can be abrasive with animal owners and abusive - sometimes violent - towards any of the substantial number of people whom he regards as enemies of justice. The result of this explosive mixture of admirable and less admirable qualities has been a long series of incidents which have brought Mr Kirk into conflict with the law. They have also produced a succession of complaints to the Royal Veterinary College. Over the years Mr Kirk, without legal assistance, has defended himself against literally dozens of prosecutions and at least two previous disciplinary proceedings. On many such occasions he has been successful and when he has not, he has indomitably paid fines and undergone imprisonment, only to return to the fray. But now the College has had enough and the Disciplinary Committee has decided that his behaviour has been such as to make him unfit to practise.

4. The first time Mr Kirk was arraigned before the Disciplinary was in 1984. On that occasion the College relied upon 17 convictions, including assault occasioning actual bodily harm (6 months imprisonment suspended), imperilling the safety of an aircraft while under the influence of drink (6 months imprisonment) and assaulting two police officers (3 months imprisonment). All the convictions were proved but the Committee found that only the assault causing actual bodily harm (throwing a tenant of his upstairs flat down the stairs) was such as to render him unfit to practise as a veterinary surgeon. It dismissed the other charges. In view of the fact that the assault had taken place 8 years earlier, the Committee decided to make no order other than to warn Mr Kirk as to his future conduct. The chairman told him that "continued conflict with authority must inevitably affect not only yourself, but also your profession by bringing it into disrepute".

5. The next proceedings were in 1988. Mr Kirk was then living in the Channel Islands. This time there were three convictions for

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contempt of court in Guernsey and an incident in which he had erected what was said to be an offensive sign outside his veterinary surgery. The Committee found that one of the convictions for contempt of court (trying to make a "citizen's arrest" of a magistrate in court) was such as render Mr Kirk unfit to practise as a veterinary surgeon. But the incident had taken place before the 1984 warning and the Committee took into account the severity of the sentence of imprisonment which had been imposed by the courts in Guernsey. The Committee decided to make no immediate order but to postpone judgment for two years. After a further postponement the Committee was told that Mr Kirk had moved from the Channel Islands to South Wales and it received testimonials from colleagues in the area. It made no order but again warned Mr Kirk as to his future conduct.

6. Before recounting the details of the convictions relied upon by the Disciplinary Committee in the proceedings under appeal, their Lordships must state the legal effect of a statute such as section 16(1)(a) of the Veterinary Surgeons 1966 Act, which entitles the Disciplinary Committee to find that a conviction for a criminal offence renders a registered veterinary surgeon unfit to practise. The effect of the statute is to preclude the practitioner from denying the truth of any facts necessarily implied in the conviction. As Viscount Simon LC said in *General Medical Council v Spackman* [1943] AC 627, 634-635:

"... the decision of the council is properly based on the fact of the conviction, and the practitioner cannot go behind it and endeavour to show that he was innocent of the charge and should have been acquitted."

7. On the other hand, rule 8 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules 1967 (SI 1967 No 659) provides in paragraph (1)(b)(ii) that the College may –

"adduce evidence, with regard to the nature and circumstances of the offence, to show that ... the convictions ... are such as to render the respondent unfit to practise veterinary surgery"

and, in paragraph (2)(b), that the respondent may –

"adduce evidence with regard to the nature and circumstances of the offence, to show that he is not unfit by reason thereof to practise veterinary surgery."

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 relitigate the conviction before the Committee.
9. Their Lordships will consider first the four convictions for assault or related offences, of which the Committee said that any one taken alone would be sufficient to support the finding that Mr Kirk was unfit to practise as a veterinary surgeon.
10. The first was in 1995. Mr Kirk was convicted by the Vale of Glamorgan Magistrates of common assault upon Nicola Andrews, the 17-year-old daughter of a former tenant of residential premises which he owned opposite his surgery. The magistrates clearly took a serious view of the matter and sentenced him to three months imprisonment. He appealed to the Cardiff Crown Court against both conviction and sentence. It appears that he cross-examined Nicola for more than a day but the appeal against conviction was dismissed. The sentence of imprisonment was however set aside and a fine of £500 and an order for payment of £350 compensation to Nicola was substituted.
11. The College called Detective Constable Susan Sidford, who had investigated the complaint by Nicola's mother. She said Nicola was distressed and crying and had a bruise on her arm. Mr Kirk's evidence to the Committee was that Nicola's mother had been his tenant and that she, or others occupying the property with her consent, had caused a good deal of damage. He produced photographs which demonstrated this to be the case. Mr Kirk said that he had found Nicola on the premises after it had been vacated and grabbed her because he thought she was a thief.
12. It is clear that these matters were exhaustively investigated by the magistrates and the Crown Court, which found the charge of assault proved. Although the Crown Court did not think that it merited so severe a punishment as the magistrates had imposed, the amount of the fine shows that the court did not regard the incident as trivial.
13. The next assault case was in 1997, when Mr Kirk was convicted by the Bristol Magistrates of common assault and threatening behaviour (under section 4 of the Public Order Act 1936) arising out of an incident at the Plume and Feathers Public

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House in Bristol. The complainant was Mr Christopher Ebbs, who had done some work on an aircraft belonging to Mr Kirk. It appears that Mr Ebbs was exercising a lien on the aircraft's logbooks and other documentation as security for a bill of about £22,000. They arranged to meet in the public house. Mr Ebbs said in evidence that this was with a view to exchanging the aircraft documentation for a cheque. He said that while they were having a drink, Mr Kirk swung a fist at him, knocked him to the ground, kicked him in the ribs and tried to extract the documents from his coat pocket. This was the basis of the charge of common assault. He was also alleged to have said "I've got a shotgun and I know where your parents live". As a result of this threat, Mr Ebbs went to the police who moved his parents into a hotel and provided them with armed protection. This threat was the basis of the charge of threatening behaviour. Mr Kirk's evidence was that he asked for his papers and reached over expecting to receive them, but Mr Ebbs fell off his chair. As Mr Kirk tried to help him up, a drunken customer grabbed him. He denied kicking or punching Ebbs or making threats against his parents.

14. The Bristol magistrates convicted on both charges and imposed fines of £600 for the assault and £500 for threatening behaviour, together with an order to pay Mr Ebbs £100 compensation. Mr Kirk appealed to the Bristol Crown Court but the appeal was dismissed. He also brought a number of applications for judicial review, alleging that the trial had been an abuse of process. One ground was that there had not been proper disclosure of relevant statements made to the police and another was that he had been unable to obtain the medical records of Mr Ebbs, which would show that he had psychiatric problems. A judge had made an order for disclosure of Mr Ebbs's medical records by the prosecution if he was willing to allow them to be produced. But he was not willing. None of the applications for judicial review was successful.

15. Mr Ebbs made a statement to the Disciplinary Committee and was cross-examined by Mr Kirk about his mental records and other collateral matters which the Committee's legal assessor (Sir John Wood) ruled to be irrelevant. Both the magistrates and the Crown Court accepted Mr Ebbs as a witness of truth. The judge in the Crown Court said:

"We were satisfied that Mr Ebbs was an honest and truthful witness. He is a man of good character. He appeared to us to be mild-mannered and not aggressive. His account of the

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incident was supported by an independent witness, Mr Westlake. He said that he saw Mr Ebbs on the floor, with Mr Kirk bent over him holding his collar.

We rejected the account given by Mr Kirk. We agreed with the suggestion put to him by [counsel] that he was a bully and that he assaulted Mr Ebbs because he refused to return the documents.”

16. Mr Ebbs again gave evidence before the Disciplinary Committee and was cross-examined by Mr Kirk in a manner which the Committee called rigorous and some of its members would have described as bullying. But the Committee also accepted Mr Ebbs as a truthful witness and rejected Mr Kirk’s account of the meeting as false.

17. In the documents which Mr Kirk has produced to the Board, there are several about Mr Ebbs. A Mr Timothy Wiltshire of Lincolnshire, who was being sued by Mr Ebbs (who had obtained ex parte relief) describes him in uncomplimentary terms. A Mr Bennett of Cornwall says that he lied about his qualifications as a aircraft engineer and falsified the records of an aircraft. The South Wales Police, in a letter to Mr Kirk’s constituency MP Mr John Smith in June 1998, say that Mr Ebbs was being prosecuted by the CAA for various offences but that, according to the CAA, “the prosecution is presently suspended as Mr Ebbs is in receipt of psychiatric treatment”. Allegations and counter-allegations by and against Mr Ebbs were also being investigated by other police forces. None of this information was tested either in the courts or before the Committee.

18. The acceptance of Mr Ebbs as a truthful witness is something which has probably riled Mr Kirk more than any other feature of this case. But the fairness of the court proceedings was not a matter for the Committee to investigate. It was something which Mr Kirk was entitled to, and did, raise by way of appeal and judicial review. This is the very kind of situation in which the *Spackman* principle applies. The Committee cannot retry the case and decide that Mr Kirk’s version should have been accepted.

19. A similar point arises in connection with the next assault case, which was in 1999. Mr Kirk was convicted by the Newcastle and Ogmere Magistrates of using threatening words, common assault and resisting a constable in the execution of his duty. The offences were committed at the 1998 Vale of Glamorgan Show at Fonmon

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Castle. Mr Kirk had been on duty as an Honorary Veterinary Surgeon and wore an identificatory badge, although at the time of the incident he had gone off duty and had been having a drink in the bar. Mr Howard Davies, a retired police inspector, said that he was with his wife at the show when Mr Kirk came up and started shouting obscenities at him. He appeared to be hysterical and Mr Davies slapped him in the face. They were then parted by two security officers, one of whom said that, seeing Mr Kirk's badge, he tried to appeal to his better nature as a professional man. But Mr Kirk fought with him and injured his shoulder. Mr Kirk was then escorted out of the show grounds by two policemen and put in a panda car to wait for a police van. When the van came, Mr Kirk refused to leave the panda car and struggled with the policemen, who eventually subdued him with a spray of CS gas.

20. The magistrates convicted and imposed fines of £150 for threatening words, £300 for common assault and £300 for resisting a constable in the execution of his duty. Once again Mr Kirk appealed to the Crown Court, which dismissed the appeal. Further unsuccessful proceedings for judicial review followed.

21. Mr Kirk, in his evidence to the Committee, disputed the facts on which the conviction was based. He said that Mr Davis slapped him without any provocation, the security officer knocked him to the ground, his arrest by the police was unlawful and he was therefore entitled to resist. Their Lordships consider, however, that none of these assertions are consistent with the findings of the courts that he was guilty of the offences charged. It was therefore not open to the Committee to reinvestigate these facts. The Committee regarded this incident as particularly grave because Mr Kirk had come to the show ground in his capacity as a veterinary surgeon.

22. The last assault conviction was the result of an appearance by Mr Kirk in Bristol Magistrates' Court in January 2000. After the magistrate had retired, Mr Kirk is alleged to have gone up to Ms Clare Brown, the CPS representative in court, and said to her in a threatening manner: "If you don't stop being obstructive I will turn you upside down and use you like a moneybox". Ms Brown was alarmed and Mr Kirk was charged under section 4 of the Public Order Act 1986. He was convicted six months later and fined £300. His appeal to the Crown Court was dismissed in January 2002, shortly before his appearance before the Disciplinary Committee. He told the Committee that he was contemplating an application for judicial review.

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23. Their Lordships now turn to two convictions for what may loosely be called public health offences. The first was a contravention of section 34(1) of the Environmental Protection Act 1990 by failing to prevent the deposit of controlled waste. In the summer of 1995 it appears that a number of the inhabitants of Llantwit Major were using a site next to the public lavatories as an unofficial dump for black plastic bags of rubbish. The fact that the council periodically removed the bags, which would otherwise have been a danger to health, only served to encourage the practice. Finally the council decided to examine the bags on site to try to identify their origin and take steps against the owners. Miss Jane Matthews, a senior cleansing inspector and Mr Robert Hilson, the area foreman, had the unpleasant task of going through the bags. They were able to find some evidence of origin in 15 bags. One of these contained needles, syringes, swabs and other such clinical waste, as well as bloodstained cotton wool, animal fur and a poster advertising Mr Kirk's Animal Health Centre.

24. None of the other people suspected of dumping bags was prosecuted. Either they accepted formal cautions or the council did not think that the evidence to identify them was strong enough and no further action was taken. Mr Kirk's case went to court. There was a committal hearing which lasted a day and a half and then eight days before a judge and jury at the Cardiff Crown Court. Mr Kirk vigorously contested the allegation that he had dumped the bag. He brought evidence of his system for dealing with clinical waste. He said that there had been building works at his premises and (as often accompanies building works) a couple of burglaries. He said that it was extraordinary that a poster (which had been made without his approval) should have been included in the bag and suggested that the bag had been planted by someone else. Nevertheless, the jury convicted and the Recorder fined him £500.

25. Mr Kirk applied for judicial review; according to Astill J, who heard the application for leave with Rose LJ, on 19 grounds. The court refused leave. Astill J said that the judge was "meticulous in pointing out any weakness in the prosecution case".

26. Before the Committee, Mr Kirk cross-examined a representative of the Vale of Glamorgan County Council, with a view to suggesting that he had not been in any way responsible. But this is exactly the kind of thing which the rule that one cannot go behind a conviction is intended to prevent. After an eight day trial and judicial review proceedings, there cannot be yet another re-examination of the verdict of the jury. The conviction is

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inconsistent with any conclusion other than that Mr Kirk, in the terms of the statute, "failed to prevent the deposit of controlled waste". It is not a finding that he deliberately dumped the waste himself and the £500 fine suggests that the Recorder did not regard the offence as the most serious of its kind.

27. The other offence was even less serious. In March 1998 Mr Kirk completed some building work to extend his premises in Lantwit Major by creating a new lobby and lavatory at ground floor level. He says that the extension was modest compared with a more ambitious design for which the Vale of Glamorgan Council refused planning permission. There is every reason to believe Mr Kirk's evidence that the planning application gave rise to highly contentious disputes on a wide front between himself and the planning and legal services departments of the council. Once the extension had been built, the Building Control Officer came round to inspect. He noted a number of matters which he thought to require attention and spoke to Mr Kirk on the telephone. But these works were not done and Mr Kirk says that he was eventually prosecuted before the magistrates on a "string of charges". One of these, to which he pleaded guilty, was having the soil and ventilation pipe from the new lavatory less than 900mm above the first-floor window. He resisted the other allegations (of which the only one he mentioned was having a washbasin the wrong place) and they were dismissed. The magistrates imposed a fine of £25 in respect of the soil pipe.

28. The remaining convictions were for road traffic offences and their Lordships do not think it necessary to discuss them in great detail because the Committee said that taken by themselves they would not have justified a disciplinary charge. They merely noted that they demonstrated (if further demonstration were needed) Mr Kirk's attitude to the police. They included an occasion on which Mr Kirk, when stopped by the police, was said to have locked himself in his car and pretended to be asleep so that the police had to break in. Mr Kirk says (and there is no reason not to believe him) that they represent isolated successes for the South Wales Police in the course of prosecuting Mr Kirk, year in and year out, on a very large number of road traffic charges. The others were either dismissed by the magistrates or the Crown Court or set aside on judicial review.

29. The incident in respect of which Mr Kirk was charged with disgraceful conduct in a professional respect occurred on a freezing January day on the aptly named Cold Knap beach at Cardiff.

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Members of the public found a dog in a distressed state and thought it had fallen off a cliff. They contacted the RSPCA who said they would send someone. In fact, for one reason or another, it was over three hours before the police, to whom the message had been passed on, asked Mr Kirk to attend. Mr Kirk went immediately, collected the dog (as well as another injured dog which happened to be there) and carried them off in his van to his surgery. In the course of doing so, he gave vent to noisy abuse of the RSPCA, ignored the police and members of the public who had been looking after the dog and generally behaved in an irrational and intimidating way. The witnesses before the committee were a policeman and policewoman who had been present and one member of the public. Mr Kirk said that the College had not called other members of the public who had given statements which were less condemnatory of his behaviour.

30. In particular, a Miss Williams told Mr Kirk that she thought that her evidence supported Mr Kirk's rather than condemned him. In her statement she had said that Mr Kirk's "concern for the injured dog was in no doubt". But, as their Lordships have observed, Mr Kirk's dedication to animal welfare is not in issue. It is his behaviour towards people which has given rise to difficulties.

31. In view of the fact that the committee dealt separately with the incident at Cold Knap beach and imposed a sentence of 6 months suspension, their Lordships do not think it necessary to say more than that there was in their opinion evidence to support the committee's view that Mr Kirk had been guilty of disgraceful conduct in a professional respect and that they could not regard the sentence as excessive. But this aspect of the case pales into insignificance compared with the other charge based on the convictions.

32. Mr Kirk has a number of supporters. Mr Richard Leigh, a senior Prison Officer, wrote to the Committee on his behalf saying that he was a fine practitioner "whose reputation as an outstanding surgeon is passed on by word of mouth throughout South Wales". He describes him as an "eccentric with a fiery temper" whose "antics" are sometimes "questionable" but says that he has a very special gift of being able to do miracles for sick animals. Two veterinary surgeons nominated him for election to the Council of the College in 2003 and he received 1025 votes, 373 behind the last successful candidate. Mr Walter Sweeney, a solicitor and former member of Parliament for the Vale of Glamorgan, wrote a long and thoughtful letter testifying to Mr Kirk's "dedication and

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enthusiasm for his work", his pro bono work in the community and the rapid response he provided "around the clock, week in and week out". He also said that in his five years in Parliament he had not received any constituency complaints against Mr Kirk, compared with many against members of the medical and legal professions and the police.

33. Their Lordships have given the most anxious consideration to these and other similar letters. They are very conscious that deprivation of Mr Kirk's services as a veterinary surgeon will be a loss to the animal-owning public in South Wales. This can be said to be contrary to the public interest. On the other hand, 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. If, for example, Mr Kirk had been found guilty of serious dishonesty, there can be no doubt that the Committee would have been entitled to take the view that he was unfit to be a member of the profession.

34. In the present case, Mr Kirk has not been found guilty of dishonesty, although the Committee took into account the fact that in the incident involving Mr Ebbs, he had been disbelieved on his oath by the magistrates, the Crown Court and the Committee itself. But their Lordships find it difficult to say that violent or anti-social behaviour of the kind involved in Mr Kirk's convictions cannot in principle be a ground for a finding that he is unfit to practise as a member of the profession.

35. That being so, their Lordships must have regard to the fact that the disciplinary function has in the first instance been entrusted by Parliament to the Disciplinary Committee. Their Lordships exercise an appellate jurisdiction but will not reverse a decision of the Committee unless satisfied that it was wrong. In the present case, their Lordships cannot say that (taking into account the two sets of earlier proceedings) the Committee was wrong in finding that Mr Kirk had shown himself unfit to practise or in directing that he be removed from the register. But their Lordships permit themselves to hope that Mr Kirk may yet be persuaded to offer undertakings to the Committee which will enable him to be restored to the register after the lapse of the statutory period of 10 months: see section 18(3)(a) of the Veterinary Surgeons Act 1966. They will humbly advise Her Majesty that the appeal should be dismissed with costs.

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