

BEFORE THE PROFESSIONAL CONDUCT COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS

v

DR MICHAEL JAMES KETTLE MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON FINDING OF FACTS AND
DISGRACEFUL CONDUCT

Charges

1. The Respondent faced the following charges:

That, being registered in the Register of Veterinary Surgeons, and whilst in practice at a veterinary practice in Enterprise Park, Freiston, Boston PE22 OJZ, you:

1. *On Friday 23 October 2020, in relation to a Shih Tzu dog named Bella belonging to Mr L, used unnecessary force towards Bella and/or failed to handle Bella with sufficient care, more particularly in that you:*
 - i. Grabbed Bella, when she was in a kennel; and/or*
 - ii. Failed to take sufficient care to ensure that Bella did not fall from her kennel;*
 - iii. Hit Bella with your hand and/or a muzzle;*
 - iv. Carried Bella only by her collar and/or scruff;*

AND that, in relation to the above, whether individually, or in any combination, you are guilty of disgraceful conduct in a professional respect.

Summary of Evidence

2. In advance of the hearing, the Committee was provided with the inquiry bundle and a copy of the CCTV footage which captured the incident. The Committee read through the inquiry bundle and viewed the CCTV footage before the hearing commenced. The inquiry bundle included the following:
 - a. Witness statement of Ms JB, who, at the material time was a student veterinary nurse at the Marshlands Veterinary Centre (the Practice), part of the Independent Vetcare Limited (IVC) Evidensia Group and was present with the Respondent at the time the incident occurred;
 - b. Witness statement of Ms MP, who, at the material time was a student veterinary nurse at the Practice, and who was present for part of the time of the incident occurring;
 - c. Witness statement of Ms AB, who, at the material time was the Practice Manager. She was informed about the incident by Ms JB, and as a result, investigated the incident and viewed and secured the CCTV footage of it. On 12 November 2020, she held an investigation meeting with the Respondent at which Ms SB was also present;
 - d. Witness statement of Ms SB, who, at the material time was the head veterinary nurse at the Practice. On 24 October 2020, she became aware of the incident with Bella through messages sent by Ms JB on Facebook Messenger. She advised Ms JB that she should report it to the Practice Manager, Ms AB. Ms SB was also present at and took notes of the investigation meeting conducted by Ms AB with the Respondent;
 - e. Witness statement of Ms NL, who, at the material time was a Human Resources (HR) Manager at IVC Evidensia and was the regional HR Manager whose area covered the Practice. On 25 November 2020, she attended the disciplinary hearing for the Respondent as the minute taker, and produced a set of typed minutes of the meeting;
 - f. Witness statement of Mr JL; who, at the material time was a qualified veterinary surgeon and was an IVC Evidensia Group Veterinary Advisor. In this role he offered support to veterinary practices within IVC Evidensia. On 25 November 2020, he conducted a disciplinary hearing with the Respondent following which it was his decision to issue the Respondent with a final written warning;
 - g. The clinical notes and medical history of Bella from 2013 to 2021;
 - h. Photographs taken by Ms AB of areas of the Practice;
 - i. A copy of the meeting minutes, dated 12 November 2020, held between Ms AB, Ms SB and the Respondent;
 - j. A copy of the IVC Evidensia's Disciplinary Policy and Procedure in force at the time;

- k. A copy of the letter inviting the Respondent to a disciplinary hearing, dated 20 November 2020;
 - l. A copy of the notes of the disciplinary meeting;
 - m. Correspondence between the RCVS and the Respondent.
3. In advance of the hearing, the Committee was also provided with a Respondent's bundle, which included:
 - a. The Respondent's witness statement, dated 2 February 2024;
 - b. Character evidence in the form of witness statements from past and current professional colleagues and pet owner clients;
 - c. Testimonials from past and current professional colleagues and pet owner clients.

Admissions by the Respondent

4. At the outset of the hearing, following the charges being read, the Respondent admitted all of the factual particulars and that, both individually and collectively, he was guilty of disgraceful conduct in a professional respect.
5. Under Rule 23.5 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 (the Rules), the Committee accepted the factual admissions made by the Respondent, and accordingly found the facts proved.

Background

6. The Respondent qualified as a veterinary surgeon in 1996. He joined a veterinary surgery in Boston as an assistant veterinary surgeon and predominantly undertook small animal work. In around 2006 or 2008, he purchased his own practice, Marshlands Veterinary Centre, where he was the Practice Director until he sold the Practice to IVC Evidensia in 2020. Having sold the Practice, the Respondent remained employed there as a veterinary surgeon until he left in 2021.
7. The matter relates to an incident that took place on 23 October 2020, at the Practice when the Respondent was working at the Practice in the capacity of veterinary surgeon. On that day he treated a Shih Tzu dog named Bella.
8. Bella was first registered with the practice on 2 September 2013 and was seen in the practice 19 times during the course of 2020, largely in relation to ongoing treatment for an eye condition, which included a corneal ulcer, which was being treated with eye drops and subsequently required surgery. Bella's clinical notes did not record any incidents of bad behaviour or aggression on her part.

9. Ms JB was a student veterinary nurse at the practice and was working on 23 October 2020. She assisted the Respondent in his eye examination of Bella that afternoon. At approximately 4 pm, the Respondent entered the dog ward at the practice where Ms JB was already present and he approached Bella's kennel. By the Respondent's own admission, he was angry when he entered the ward because the nurses had not already taken Bella out of the kennel ready for the eye examination.
10. Ms JB described that the Respondent "*without any hesitation or introducing himself to Bella*", reached into the kennel which Ms JB considered made Bella "*fearful*", and as a result Bella went to bite the Respondent. Ms JB then saw the Respondent:

"push Bella's head down to the kennel floor to prevent her from biting him. Bella tried to roll over to get [the Respondent's] hand off the back of her neck, but [the Respondent] kept pushing her down. As Bella was trying to fight back and get out of [the Respondent's] grip, she kept hitting her head on the side of the kennel. During the struggle, she passed both urine and faeces in fear. This struggle lasted about 10 seconds."
11. Ms JB then described the Respondent as pulling Bella across the kennel and that Bella "*then fell to the floor*". When Bella landed on the floor, she ran to the opposite corner of the room. Whilst in the corner of the room, the Respondent hit Bella repeatedly, first with his hand, and then, with a muzzle that had been handed to him by Ms JB. The Respondent, then picked Bella up by her collar or scruff of her neck, and carried her through to the treatment room, which Ms JB described as being about a five second walk along the corridor. Ms JB described that once the Respondent had placed Bella on the treatment table, she could see that Bella's tongue had turned blue before returning to normal after a few seconds, as the collar had been cutting off Bella's airway. During the eye examination Bella sat very still.
12. The Respondent's actions in the dog ward were captured on CCTV, which was positioned in the kennel area.
13. On Monday 26 October 2020, Ms JB reported the Respondent's conduct to the Practice Manager, Ms AB, who viewed the CCTV footage and conducted an investigation. On 12 November 2020, Ms AB held a meeting with the Respondent, of which Ms SB, who was also present, took notes. During that meeting, the Respondent initially denied the complaint, but then admitted his actions and said that he should not have done it.
14. On 25 November 2020, the Respondent attended a remote formal disciplinary meeting with the Human Resources (HR) Manager, Ms NL, and the Group Veterinary Advisor, Mr JL. Ms NL took a note of the meeting and recorded that the Respondent said that Bella had bitten him earlier in the day, and that when he went to get her out of the kennel in the afternoon, she bit him again, and "*unfortunately, I lost it, bless it, I did grab it, I did hit it, did carry her by the collar. I admit my guilt.*" The Respondent described himself as being "*angry*" and "*cross*" over a build-up of things. He described feeling "*guilty*" and "*ashamed*".

15. The matter was subsequently referred to the RCVS.

Stage 2, Disgraceful Conduct in a Professional Respect
Application to hear parts of the Respondent's evidence in private

16. Having admitted the facts, which were found proved by the Committee by way of admission, the Respondent gave evidence at stage 2. Having heard that the Respondent would be giving evidence about his health and personal circumstances at the time, the Committee directed that such evidence should be heard in private under Rule 21.2. It was satisfied that it was in the interests of justice to do so, in order to protect the Respondent's right to private life.

College's Submissions on Disgraceful Conduct in a professional respect

17. Ms Shepherd-Jones, on behalf of the College, submitted that the admitted facts did amount to disgraceful conduct in a professional respect. She directed the Committee's attention to the case of *MacLeod v RCVS PC 88 of 2005* and submitted that the Respondent's failures fell far below the standards expected of a veterinary surgeon. She drew the Committee's attention to the declaration of every veterinary surgeon, since 2012, on being admitted to membership of the RCVS, namely:

"I PROMISE AND SOLEMNLY DECLARE that I will pursue the work of my profession with integrity, and accept my responsibility is to the public, my clients, the profession, and the Royal College of Veterinary Surgeons, and that, ABOVE ALL, my constant endeavour will be to ensure the health and welfare of animals committed to my care."

18. Ms Shepherd-Jones also drew the Committee's attention to the requirements set out in the Code of Professional Conduct and submitted that the following were relevant:

"1.1 – Veterinary surgeons must make animal health and welfare their first consideration when attending to animals";

"1.3 – Veterinary surgeons must provide veterinary care that is appropriate and adequate";

"6.5 – Veterinary surgeons must not engage in any activity or behaviour that would be likely to bring the profession into disrepute or undermine public confidence in the profession".

19. Ms Shepherd-Jones took the Committee to the RCVS Disciplinary Committee Guidance (the Guidance) and the list of potential aggravating factors set out within it. She submitted that the aggravating factors engaged in this case included:

- a. Actual injury to an animal or human: Ms JB had stated that when the Respondent released Bella onto the treatment table, having carried her by the scruff or collar, she saw that Bella had turned blue on her tongue as the collar had been cutting off her airway.

- b. Risk of injury to an animal or human: The Respondent himself had volunteered that his actions in carrying Bella by the scruff or collar would have increased the eye pressure, which, in turn, would have increased the risk of rupture.

Submissions on behalf of the Respondent

- 20. Mr Jamieson, on behalf of the Respondent, accepted that the admitted facts amounted to disgraceful conduct in a professional respect. He acknowledged that it was a matter for the Committee's judgement but invited the Committee to find that the admitted facts did amount to the charge of disgraceful performance in a professional respect. He further invited the Committee to identify the aggravating and mitigating features relevant to this stage of the proceedings.
- 21. Mr Jamieson submitted that the following features of mitigation, relevant to stage 2, were present on the facts of this case:
 - a. The circumstances of the incident: The Committee had received uncontroversial evidence of the extent of the workload, the Respondent's working conditions, and the threats and abuse he had received on social media. Whilst acknowledging that none of this amounted to an excuse for the Respondent's conduct, Mr Jamieson submitted that it provided a context of the extraordinary circumstances in which the Respondent had fallen so far from his usual standards.
 - c. No financial gain: The incident was of no benefit to the Respondent in any respect;
 - d. Single and isolated incident: There had been no other complaints or failings across the Respondent's long career. The incident was more than three years old and could properly be characterised as isolated. His subsequent practice was of the highest standard as attested to by the references from current professional colleagues and pet owners;
 - e. Decision taken without the full opportunity for reflection: This was an instinctive reaction to challenging circumstances. The Respondent had fully admitted his approach was wrong from the outset and he should have stepped away once Bella tried to bite him for the first time, but his actions had not been premeditated.
- 22. In terms of aggravating factors, whilst Mr Jamieson accepted that there was evidence of risk of harm, he invited the Committee to consider whether there was sufficient evidence of actual harm having occurred.

Decision and Reasons of the Committee on Disgraceful Conduct in a Professional Respect

- 23. The Committee had regard to the written and oral submissions of both parties. It heard and accepted the advice of the Legal Assessor. The Committee understood that the test for considering whether the conduct or behaviour amounted to disgraceful conduct

in a professional respect, was whether the veterinary surgeon had fallen far short of what was expected of a member of the veterinary profession and that this decision was a matter for the Committee's independent judgement. The Committee bore in mind that not every breach of the Code will necessarily amount to disgraceful conduct in a professional respect.

24. The Committee first considered how the Respondent had come across in his oral evidence. It was of the view that he had been honest, open and reflective and his oral evidence was consistent with his witness statement. The Committee considered that the Respondent was genuinely remorseful regarding his actions and had not sought to minimise or play down his actions in any way. It considered that through his considerable reflection he had gained real and genuine insight into his behaviour, and it was to his credit that his reflections included why he had initially denied his behaviour, which he recognised was an immediate response of defensiveness and cowardice. The Committee concluded that the Respondent was a credible witness and accepted his evidence, including in respect of the pressures on him at the time of the incident.
25. The Committee went on to assess what it considered to be the aggravating and mitigating factors, as set out in the Guidance.
26. In terms of aggravating factors, the Committee considered that actual injury had been caused to Bella due to the Respondent's actions. The Committee had regard to the evidence of Ms JB, who described that Bella's tongue had turned blue for a few seconds, following him having carried Bella by the scruff or collar to the treatment room. The Committee considered that this was evidence of actual harm as was the exacerbation of pain caused by each element of the Respondent's actions in removing Bella from the kennel and taking her to the treatment room. The Committee considered that the description of Bella's responses, namely her stillness in the treatment room and the subsequent soiling of herself, all evidenced actual harm caused by the Respondent to her.
27. In relation to risk of injury, the Committee considered that each of the four elements of the incident presented a risk of harm to Bella, from the way that the Respondent handled her in the kennel; from failing to take sufficient care to ensure she did not fall from the kennel to the floor; from striking her in the face; to the forceful carrying of her by the scruff and/or collar to the treatment room. The Committee noted that the Respondent himself had volunteered the risk of harm of this last element, given Bella's condition, in that it would have increased the pressure to her eyes, with a consequent risk of rupture.
28. The Committee considered whether or not the aggravating factor set out in the Guidance of the conduct being "*sustained or repeated over a period of time*" was present in this case, given that there were four elements of using unnecessary force towards Bella, each of which had the potential to cause injury to her. Further, in respect of each element, the Committee was of the view that the Respondent would have been able to stop and reappraise the situation. Nevertheless, in the Committee's judgement, whilst there were four elements of unnecessary force, it was appropriate to characterise the incident as a single episode in respect of a single animal, where the

Respondent was seeking to take Bella from the kennel to the treatment room and the entire incident had occurred over a period of some 30 seconds. Accordingly, whilst the Respondent's actions were serious individually and cumulatively, the Committee did not find that they were aggravated by being "*sustained or repeated over a period of time.*"

29. In terms of mitigating factors, the Committee considered that the circumstances pertaining at the time of the incident were relevant. Having found the Respondent to be a very credible witness, the Committee accepted that it was a very difficult time for him. It noted, in particular, the loss of locum support from the equivalent of 5 ½ veterinary surgeons down to 2 ½, which added significantly to the pressure of the working environment; the increased pressures of working during the pandemic; and the personal threats and trolling he was receiving on social media triggered by a failed surgery performed by another veterinary surgeon within the Practice. Whilst in no way excusing his behaviour, the Committee did consider that they had affected how he had reacted angrily to Bella on that day.
30. The Committee accepted that there was no element of financial gain to the Respondent's actions.
31. The Committee considered that this was a single isolated incident; it occurred on one day, related to a single animal and involved one event of the Respondent removing Bella from the kennel and taking her to the treatment room. The Committee noted from the clinical records that the Respondent had attended to Bella as her veterinary surgeon for over seven years; on nine occasions prior to this incident and on seven occasions subsequent to it. The Committee heard no evidence of any other such incidents in that time span. Given the extensive, highly positive testimonials attesting to the Respondent's usual high standards of practice, both before and since the incident, the Committee was satisfied that this incident could properly be characterised as isolated. The Committee also bore in mind that the incident had occurred some three years earlier and his subsequent practice had been exemplary, which further satisfied the Committee that the Respondent's conduct had been out of character.
32. The Committee considered whether or not the mitigating factor set out in the Guidance of being a "*decision taken without the full opportunity for reflection*" was present in this case. It noted Mr Jamieson's submissions that the Respondent's actions had been an instinctive reaction to challenging circumstances, which the Committee accepted. Nevertheless, the Committee considered that whilst the incident was short-lived, there had been opportunities for the Respondent to have stepped away at each stage. The Respondent had, himself, identified in his evidence that now, if a dog tried to bite him, he would walk away and try again some 30 minutes later, or call the owner to come in to try to calm the animal or, as a last resort, giving sedatives prior to a rescheduled appointment. The Committee considered that stepping away, once Bella had tried to bite him, and trying again later, was one potential opportunity to reflect which was available to the Respondent at the time. Accordingly, whilst the Respondent's actions were short-lived, the Committee did not find that they were mitigated by being "*decisions taken without the full opportunity for reflection.*"

33. Having considered the aggravating and mitigating factors, the Committee considered that the Respondent had breached requirements 1.1 and 1.3 of the Code:

“1.1 – Veterinary surgeons must make animal health and welfare their first consideration when attending to animals”

“1.3 – Veterinary surgeons must provide veterinary care that is appropriate and adequate”

34. In the Committee’s judgement, during the incident, the Respondent had failed to make Bella’s health and welfare his first consideration, by using unnecessary force towards her and failing to handle her with sufficient care.

35. In respect of the public interest, the Committee considered that the Respondent had also breached requirement 6.5 of the Code:

“6.5 – Veterinary surgeons must not engage in any activity or behaviour that would be likely to bring the profession into disrepute or undermine public confidence in the profession”.

36. In the Committee’s judgement, the Respondent’s conduct was likely to bring the profession into disrepute and undermine public confidence in the profession. The Committee noted that the Respondent himself, in his oral evidence, recognised that his actions could be devastating for the wider profession, because if the general public lost trust in veterinary surgeons, the consequences would be hugely detrimental to animal welfare. The Committee considered that if the public could not trust veterinary surgeons with their pets, then this would undoubtedly undermine public confidence in the profession as a whole.

37. In all the circumstances, the Committee was satisfied that the Respondent’s conduct had fallen far below the standards expected of a veterinary surgeon and had undermined the following fundamental principles of the profession:

- a. Animal health and welfare; and
- b. Public confidence in the profession

38. Accordingly, it is the judgement of this Committee that the Respondent’s conduct constitutes disgraceful conduct in a professional respect.

Disciplinary Committee
13 February 2024