

**ROYAL COLLEGE OF VETERINARY SURGEONS
INQUIRY RE:**

JAMES DEAN GRACEY (Respondent)

DECISION AND REASONS ON ADMISSIBILITY AND FINDINGS OF FACT

Admissibility of Photos

1. The Committee had ruled in response to an abuse of process application by the Respondent and an argument on admissibility, that there was no abuse of process and that [REDACTED] statement was inadmissible on the basis that it would be unfair to rely on it where [REDACTED] character and a conviction [REDACTED] was unclear. In its ruling it also said

“For the avoidance of doubt, the Committee found no reason to exclude the photographs taken on 2 July 2019 or the fitness to travel certificate dated 2 July 2019 on the basis that it is documentary evidence”.

2. Mr Eissa QC submitted that since the Committee had ruled the statement of [REDACTED] as inadmissible, it could not rely on the photos despite what it had said in its ruling. He submitted that once [REDACTED] statement had been ruled inadmissible, photographs [REDACTED] produced could not be relied upon. Mr Eissa QC stated that the provenance of the photos could not be proved in the absence of [REDACTED] statement being admitted. Mr Eissa QC explained that he was not asking the Committee to exclude the photos but rather he was objecting to their admission because the provenance of them was not proved.
3. Ms Bruce submitted that the Committee were entitled under Rule 14.1 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, to rely on relevant and admissible evidence subject to the requirement of fairness. She submitted that the Committee had already ruled that the photos were admissible and the provenance of them was set out within the bundle. She therefore submitted in response that the photos were admissible as per the Committee’s previous ruling.

Decision and Reasons re photos

4. The Committee accepted the advice of the legal assessor which was that it was entitled to accept in evidence the photos produced by [REDACTED] under Rule 14.1, if they were satisfied that it was fair to admit them and they were relevant and admissible and there was no factual challenge to them, they could admit them. [Razzaq v GMC 2006 [2006 EWHC 1300 (Admin)]. The Committee were also referred to Rule 33.6 Civil Procedure Rules which states that “*The rule is designed to facilitate the proving of the fact that the plan, photograph or model is what it purports to be and to enable evidence as to this to be dispensed with at trial... Where the party to whom notice of evidence in the form of a plan, photograph or model is given is dissatisfied with it, believing it to be (for example) misleading because it is inaccurate or incomplete, they may wish to prepare their own evidence*”.
5. Mr Eissa QC commented on the legal advice by saying that the Committee could not rule the statement of [REDACTED] as inadmissible and also rule that [REDACTED] could still produce the photos. Ms Bruce commented on the legal advice that the Committee could so rule and it had ruled the photos as admissible despite them having been produced by [REDACTED] as it was entitled to do.
6. The Committee decided that the photos were admissible. Although it had excluded the statement of [REDACTED] it had made plain in its reasons that it was not excluding the photographs [REDACTED] produced. [REDACTED] was not the only producer of all of the photos. [REDACTED] produced 13 photos, the ante-mortem ones of which were taken by Mr Laing. Mr Park also produced 10 of the 13 photos which [REDACTED] produced. Mr Park remained a witness in the case. Furthermore the Committee noted that the 3 photos that [REDACTED] produced that Mr Park did not produce were taken by [REDACTED] (post mortem photographs) (annotated J, I and C).
7. The Committee noted that there was no factual challenge by Mr Eissa QC to the admissibility of the photos, rather he appeared to challenge them on a ‘technicality’. The Committee was satisfied that all of the photos were relevant and admissible and it decided to admit them. It did not choose to revisit its previous ruling following the further submissions made by the parties. It concluded that it would decide what weight it would give the photos in due course when deciding on its findings of fact.

The Committee’s Finding on Facts

8. The Respondent faced the following charges:

That, being registered in the Register of Veterinary Surgeons, and whilst in practice, you:

1. *On or about 15 December 2016, signed a Food Chain Information form in relation to a cow with ear tag number UK 523709500992, when:*
 - (i) *the said cow belonged to or was kept by your father and there was therefore a conflict of interest or potential conflict of interest in you so signing; **proved***
 - (ii) *you did not add sufficient details to your signature in relation to contact details of you and/or your practice; **proved***
 - (iii) *the certificate did not provide sufficient detail as to the extent of the animal's condition **not proved***

2. *On or about 30 March 2017 signed a Food Chain Information form in relation to a cow with ear tag number UK180685400992, stating that the said cow was lame in its hind leg but weight bearing and fit for travel when:*
 - (i) *the said cow belonged to or was kept by your father and there was therefore a conflict of interest or potential conflict in you so signing; **proved***
 - (ii) *you did not add sufficient details to your signature in relation to contact details of you and/or your practice; **proved***

3. *On or about 6 April 2017, in relation to a cow with ear tag number UK521481600828:*
 - (i) *signed an Emergency Slaughter form for the said cow when that cow belonged to or was kept by your father and there was therefore a conflict of interest or potential conflict of interest in you so signing; **proved***
 - (ii) *signed an Emergency Slaughter form to state that you had not administered any treatment to the cow when you had in fact administered Marbanor and/or Ketapofen within the previous seven days of you signing the said form; **proved***
 - (iii) *either:*
 - (a) *diagnosed the said cow with a fractured leg on 5 April 2017 and left it overnight before slaughtering it; or **not proved***
 - (b) *told an Official Veterinarian (OV) that you had diagnosed the fracture on 5 April 2017 when in fact you had diagnosed it on 6 April 2017; **not proved***

4. *On or about 2 July 2019 in relation to a cow with ear tag number UK523375503411, signed a Food Chain Information form stating that the said cow was fit for travel when:*
 - (i) *the said cow was not fit for travel; **proved***
 - (ii) *you did not add sufficient details to your signature in relation to contact details of you and/or your practice; **withdrawn by the College***

5. *Your conduct:*

(a) *in relation to 1 proved and/or 2 proved and/or 3 proved and/or 4 proved above risked undermining procedures designed to promote public health and animal welfare;*

(b) *in relation to 3(ii) proved and/or 3(iii)(b) not proved and/or 4(i) not proved was dishonest;*

(c) *in relation to 3(ii) proved and/or 3(iii)(b) not proved and/or 4(i) not proved was misleading;*

And in relation to the facts alleged, either individually or cumulatively you have been guilty of disgraceful conduct in a professional respect.

9. At the conclusion of the College's case, Ms Bruce on behalf of the College asked the Committee to strike through Charge 4(ii) on the basis that there was insufficient evidence to prove this to the required standard. The Committee therefore did not consider Charge 4(ii).

Background

10. The Respondent faced concerns related to various aspects of his conduct about documents submitted with animals going for slaughter, on four occasions between December 2016 and July 2019. The Respondent and his father are largely engaged in the business of purchase, care and feeding of what are regarded as 'cull cattle' for subsequent slaughter for human consumption. They operate separate farms.
11. The charges refer to four forms which are submitted with the cattle to inform various parties including the haulier, the Official Veterinarian (OV) and those processing the cattle at the abattoir about the health and condition of the animal. The forms were Food Chain Information forms (Charges 1, 2 and 4) and an Emergency Slaughter form (Charge 3). The forms related to animal welfare and had food safety and public health implications.
12. The concerns were brought to the College's attention in a joint report made in May 2019 and then subsequently in July 2019 by the Animal and Plant Health Agency (APHA) and Food Standards Scotland (FSS).
13. The Respondent works part-time as a veterinary surgeon at Meadows Veterinary Centre. The majority of his time was spent working with his father (Mr Wesley Gracey) on his father's farm and/or on his own farm. The Respondent, Mr James Gracey, is also an OV authorised by APHA to undertake testing for tuberculosis, brucellosis and anthrax on its behalf.
14. The Committee considered, as part of the College's case, edited statements and/or oral evidence from the following witnesses:

- Michael Andrew Park BVMS PhD MRCVS – Dr Park is employed by the APHA. He gave evidence regarding the context of the Charges.
- Ruth Lafuente Pascual MRCVS. In 2017, Ms Lafuente was an OV, providing OV services for FSS. Her role was to protect public health and animal welfare by ensuring that the relevant legislation was complied with. In 2018 she moved to APHA to become a Senior Veterinary Inspector. Ms Lafuente gave evidence in relation to animal UK521481600828 the subject of Charge 3.
- Oana Elena Tataru MRCVS. Ms Tataru is employed by APHA. She is currently the APHA's Veterinary Advisor for Border Controls and EU Exit for Scotland. Ms Tataru provided evidence in respect of Charge 2 in relation to animal UK180685400992, and Charge 3 in relation to animal UK521481600828.
- Mihai Laurentiu Patea MRCVS – joint complainant (Divider 3). Dr Patea was formerly employed by FSS. He has worked as a Veterinary Adviser for the Department for Environment, Food and Rural Affairs (DEFRA) since January 2022. He provided evidence in respect of Charges 1 to 4.
- George Catalin Matei MRCVS. Mr Matei was formerly an Official Veterinarian, providing OV services for FSS. He provided evidence in respect of both animals in relation to Charges 1 and 2.
- Professor Jonathan Statham MA VetMB DCHP FRCVS provided expert evidence on Charges 1-4.

15. The Committee considered the following evidence as part of the Respondent's case:

- James Dean Gracey (the Respondent)
- Dr Richard James Sibley BVSc, HonFRCVS

16. The Committee asked to be provided with the clinical history of the four animals, the medicines record in relation to Charge 3 and the call log in respect of Charge 4. Parts of these documents were provided by agreement between the parties and were considered by the Committee.

Summary of the College's case

17. Ms Bruce, on behalf of the College, referred the Committee to RCVS of the Code of Professional Conduct for Veterinary Surgeons (the Code).

18. The Code states as Section 6.2 (relevant at the time of the Charges) states as follows:

“Veterinary surgeons must certify facts and opinions honestly and with due care, taking into account the 10 Principles of Certification. Generally speaking, conflicts of interest should be avoided. Veterinarians signing certificates should not allow commercial, financial or other pressures to compromise their impartiality.”

Section 21.7 states:

“A certificate is a written statement made with authority; the authority in this case coming from the veterinarian’s professional status”.

Section 21.8 states:

“It should be noted that not all certificates contain the word ‘certificate’. Some documents (for example forms, declarations, insurance claims, witness statements and self-certification documents) may involve the same level of responsibility even if they do not contain the word certificate.”

Principle 2 of the 10 Principles of Certification at section 21.11 of the Code states:

“Veterinarians should not issue a certificate that might raise questions of a possible conflict of interest”

“Generally speaking conflicts of interest should be avoided. Veterinarians signing certificates should not allow commercial, financial or other pressures to compromise their impartiality.”

19. She submitted that the Respondent had signed forms in his official capacity as a veterinary surgeon in respect of cattle owned by his father and that each of the forms were Veterinary Certificates. Further, she submitted for Charges 1, 2 and 3 that there was either a conflict of interest or alternatively a potential conflict of interest due to the familial relationship between the Respondent and his father whereby the Respondent certified important matters in respect of his father’s cattle facilitating financial gain for his father. The Charges did not specify that the Respondent had gained financially or otherwise. However Ms Bruce submitted that there were competing and overlapping considerations of commerce, animal welfare and food safety.
20. She also submitted that the various forms lacked important details and that by signing the forms and including a veterinarian’s postnominals the Respondent had the potential to ‘minimise’ the condition of animals that were arriving at the abattoir for processing.
21. Further, Ms Bruce submitted that the evidence given by the OVs, Ms Lafuente and Ms Tataru in respect of Charge 3(iii) was accurate, neither of them having any ulterior reason to give evidence that was inaccurate. She submitted that their evidence could be relied upon in determining whether the Respondent had authorised an emergency slaughter on the farm for an animal in which he had diagnosed a fracture on the previous day.

22. Ms Bruce further submitted in respect of Charge 4 that the animal was not fit for travel due to the Respondent's diagnosis of twisted intestine. She submitted that the Respondent had sent it to the abattoir when he should have considered either an emergency slaughter or urgent euthanasia on the farm.
23. Ms Bruce relied on the expert opinion of Professor Statham who said that there was a conflict of interest (in respect of Charges 1-3) when the Respondent signed a form and the animal belonged to his father due to the familial relationship between them and because they worked together on his father's farm. He said this "*contravenes principle 2 of the Principles of Certification in the RCVS Code of Conduct relating to guidance clearly advising veterinary surgeons NOT to issue certificates that might raise questions of a possible conflict of interest: "Veterinarians should not issue a certificate that might raise questions of a possible conflict of interest"*".
24. Professor Statham also opined on whether it was appropriate to perform emergency slaughter on the animal referred to in Charge 3. He said "*Fundamentally, if Mr Gracey had made a definitive diagnosis of a fracture then slaughter should have been performed as soon as possible and not delayed until potentially commercially beneficial the following day, as welfare of the animal should have been the paramount consideration*" and "*In addition, there appears to have been chronic disease and multiple treatment events acknowledged by Mr James Gracey prior to the emergency slaughter, confirmed at post-mortem from documentation*".
25. Further, Ms Bruce relied on his opinion to support her case regarding the seriousness of the omission by the Respondent to declare medicines that had been administered in respect of the animal referred to in Charge 3. Professor Statham stated "*veterinary medicines present a specific area of professional responsibility for veterinary surgeons as residues of certain medicines represent a hazard for humans such as regarding allergies and hypersensitivities if unknowingly consumed, but also potentially increases the risk of development of antimicrobial resistance and associated global threat to human health.*"
26. In respect of Charge 4, Ms Bruce relied on Professor Statham's opinion when he stated "*It is my opinion that the conduct and actions of Mr Gracey were inappropriate in this case. Firstly, transporting animal **UK523375503411** when the condition of mesenteric torsion*"..... "*This condition is acutely painful and can progress very rapidly. Having diagnosed a clear and stated clinical suspicion of this condition, in my opinion it was then inappropriate to transport this animal, additionally when it could appropriately qualify for emergency slaughter with no prior treatment or residues. A rapid resolution of its condition was necessary either by attempting surgery or slaughter in order to safeguard the threat to this animal's welfare*".

Summary of the Respondent's case

27. Mr Eissa QC on behalf of the Respondent submitted that in respect of Charges 1-3, the documents were not veterinary certificates by the insertion of the Respondent's postnominals.

28. In relation to any potential or actual conflict of interest, Mr Eissa QC submitted that the Respondent was able to make his own judgement about conflict as a professional and he relied on Dr Sibley stating that he could do so by acting professionally and by distancing himself from any conflict 'by having a conversation with himself in his head'. Further, Mr Eissa QC submitted that the Respondent and his father were well known to the abattoirs where they sent cattle and if there was a conflict of interest or potential conflict of interest in respect of the Respondent signing as a veterinary surgeon for his father's cattle then the fact that it had never been identified by an OV such as Ms Lafuente or anyone else before these events was significant. He submitted that both the Respondent and his father and their relationship were well known locally and so the Respondent could readily be identified and linked to the animals sent for slaughter. He submitted that the Respondent's signature with his postnominals added would not alter the contents of forms or make them veterinary certificates when they were not intended to be such.
29. Mr Eissa QC further submitted that, if the documents were signed by the Respondent in his personal capacity as Mr W Gracey's son, then the Respondent, the veterinary surgeon, could not be found guilty of a breach of the Code. Mr Eissa QC submitted that the Code did not specifically rule out veterinary surgeons certifying documents for family members and therefore he said it was allowed. He submitted that the Respondent had been transparent in seeking to manage any conflict or potential conflict.
30. In respect of Charge 3, Mr Eissa QC invited the Committee to discount the evidence of Ms Lafuente and Ms Tataru because the delay in making formal statements meant that the recollections contained in their statements were incorrect and should not be relied upon. Further, important documents that could have shed light on the content of conversations between the Respondent and Ms Lafuente and Ms Tataru were not available (a diary that Ms Lafuente used to make notes in at the abattoir and a treatment history given by the Respondent to Ms Tataru re the animal referred to in Charge 3).
31. Mr Eissa QC submitted that the Respondent's decision to certify the animal in Charge 4 as fit for travel was reasonable in the circumstances taking into account the time it would take and the distance to travel to the abattoir and the fact that CCTV (which was now no longer available) had in the Respondent's opinion shown that the animal walked willingly off the trailer into the lairage. He submitted that there was no evidence that the animal was unfit for travel.
32. The Respondent relied on Dr Sibley's expert opinion to support his case. Dr Sibley did not accept that the forms were converted into veterinary certificates by a veterinary surgeon signing them. His view was that the contents of the declarations contained in those documents were for the keeper to make and not the veterinary surgeon. He said "*The documents were neither drafted nor designed as veterinary certificates and would probably not comply with the guidance provided by the RCVS ten principles of certification which would generally be considered when drafting veterinary certificates*".

He stated that veterinary surgeons face conflicts of interest on a daily basis with paying clients and they are able to navigate those situations properly by making sure they act properly without regard to any financial pressures that clients may wish to impose on them. He said that as a professional a veterinary surgeon the Respondent could address the conflict by being aware of it and acting professionally.

33. Dr Sibley said in relation to the animal concerned in Charge 4, the animal was managed by Mr Gracey appropriately in the circumstances. He said that the arrangement for slaughter was well managed, involving a short trip to a local slaughter house. In his report Dr Sibley stated *“there is no requirement to provide any certification for fitness to transport for the transport of animals from holdings to slaughter.”* *“...Although there is some guidance as to what defines fitness and suffering, there are many grey areas where judgement is required.”* He said *“In practice, a short journey to a slaughter house which has the facilities, resources and expertise to safely and humanely slaughter it can be the best option for a chronically lame or infirm animal, rather than it remaining on the farm in the belief that one day it will be fully recovered. Similarly, a short trip to a place of humane slaughter with the appropriate facilities can be the most appropriate outcome for an animal with an acute condition that requires rapid euthanasia”.*
34. Dr Sibley stated that the animal could not have been dealt with by way of an emergency slaughter since there was no accident.

Committee’s Decision and Reasons

35. The Committee carefully considered the submissions made by both Ms Bruce and Mr Eissa QC. It accepted the advice of the legal assessor.
36. The Committee noted that both parties agreed that in order to find the particulars of Charge 5(c) proved, the Respondent had to be found to be intentionally misleading. Ms Bruce further submitted that there was little distinction between being dishonest and being intentionally misleading.
37. The Committee noted that each of the experts in this case were well qualified to give their opinions. They decided that both had complied with their duties as an expert. However, for the majority of the charges the Committee preferred the opinion of Professor Statham over the opinion of Dr Sibley.

Charge 1(i), 2(i)

38. In respect of the forms which Charge 1 and Charge 2 referred to, the Committee noted that the forms requested information on the following significant matters:
- the keeper’s name and address
 - the keeper’s holding number (where the animal is kept)
 - the haulier and driver’s name
 - the vehicle registration number

- the owner's contact number
- time the animal was loaded
- the time of arrival at the abattoir
- time animal unloaded at the abattoir
- the planned arrival time

39. The forms for Charges 1 and 2 also have a section entitled Food Chain Information declarations which includes:

- *Withdrawal periods have been observed for all veterinary medicines and other treatments administered to the animals on this holding and previous holdings.*
- *To the best of my knowledge the animals are not showing signs of any disease or condition that may affect the safety of meat derived from them.*
- *No analysis of samples taken from animals on the holding or other samples have shown that the animals in this consignment may have been exposed to any disease or condition that may affect the safety of meat or to substances likely to result in residues in meat.*
- *If the animals do not fulfil all the above statements, tick this box to provide additional information overleaf.*

40. The forms for Charges 1 and 2 also contain a declaration which states:

- *All the relevant criteria as set out in ABP UK's Terms and Conditions have been met*
 - (a) *The cattle listed have resided on an unbroken chain of farm assured holdings for a minimum of 90 days immediately before delivery*
 - (b) *All cattle are accompanied by a valid passport and are double tagged prior to arrival at ABP UK*
 - (c) *All animals were fit for transport at the time of loading*
- *To the best of my knowledge the cattle listed have not been treated with Quinolones or 3rd or 4th generation Cephalosporins.*

The declaration was signed by the keeper, W Gracey and dated 15.12.16 for Charge 1 and dated 30.03.17 for Charge 2.

41. Further, page 2 of the forms for Charges 1 and 2 requested the following additional food chain information: cattle:

- *Information about animals showing signs of a disease or condition that may affect the safety of meat derived from them*
- *Identification of animals*
- *Describe the abnormality, disease or condition, or diagnosis if a veterinary surgeon has examined the animal*
- *Has the withdrawal period been observed for all veterinary medicines and other treatments administered to the animal while on this holding and previous holdings? If not please give details below*

- *Details of analysis of samples taken from animals on the holding or other samples that have shown that the animals in this consignment may have been exposed to any disease or condition that may affect the safety of meat, or to substances likely to result in residues in meat.*
42. The Committee referred to Section 21 of the Code which deals specifically with certification. It noted specifically that the Code said that “*not all certificates contain the word ‘certificate’. Some documents (for example, forms,.....) may involve the same level of responsibility even if they do not contain the word ‘certificate’.*”
 43. The Committee decided that the parts of the forms completed and signed by the Respondent were written statements made with the authority of a veterinary surgeon. The Committee found that the use of the Respondent’s postnominals on the form gave authority to that part of the form completed by the Respondent, which said “*Describe the abnormality, disease or condition or diagnosis if a veterinary surgeon has examined the animal*”. On the form relevant to Charge 1, the Respondent had written ‘*overgrown lame left hind, weight bearing and no treatment given*’ and on the form relevant to Charge 2 the Respondent had written ‘*Lame hind limb, weight bearing and fit to travel, no treatment given*’.
 44. The Committee was satisfied that by completing those parts of the form, by then signing the form and adding his postnominals, the Respondent gave the authority of a veterinary surgeon to those details on the form, particularly since the form specified ‘*if a veterinary surgeon has examined the animal(s)*’. It was sure that in so signing, the Respondent was acting as a veterinary surgeon and not simply the keeper of the animal. It concluded that those forms were veterinary certificates because they were written statements made with authority and signed by a veterinary surgeon with his postnominals.
 45. The Committee noted the differences in expert opinion on these matters. It preferred the opinion of Professor Statham because his view was consistent with the Committee’s interpretation of the Code.
 46. The Committee did not accept the distinction made by Dr Sibley, that the document was not a veterinary certificate because ‘if that was the case any time a veterinary surgeon signed a document with postnominals it would mean the document became a veterinary certificate and that had wider implications’. The Committee did not accept that was correct. It paid careful regard to the specific documents involved in this case and their purpose. It did not consider possible wider implications of its decisions as Dr Sibley suggested because as a Disciplinary Committee it was tasked only with considering the specific facts of these Charges and the specific forms and evidence in relation to them. It found that the use of postnominals on a Food Chain Information forms directly connected with animal health, welfare and public health could be distinguished from the examples given by Dr Sibley of using postnominals on a Christmas card.

47. The Committee's decisions were made in respect of the documents relating to Charges 1 and 2 only and it specifically noted that the part completed by the Respondent related to the health and condition of an animal on a food chain information form going to an abattoir. The Committee therefore found the documents referred to in Charge 1(i) and Charge 2(i) to be veterinary certificates. The Committee was further satisfied that those considering the form would note that the information on that part of the form had been made by a veterinary surgeon and that it was likely that they would therefore impart greater significance to the statement.
48. The Committee went on to consider whether there was a conflict or potential conflict of interest as a result of the Respondent signing those forms as a veterinary surgeon when the animals belonged to his father. The Committee considered the relevant and applicable Code of Professional Conduct for Veterinary Surgeons. The Committee noted that it was a question of judgement as to whether a conflict of interest could arise. In the Committee's opinion a conflict might arise where a set of circumstances creates a risk that a veterinary surgeon's ability to apply judgement or act in a professional role is or could be impaired or influenced by a secondary interest. Conflicts could occur if a veterinary surgeon has a direct or indirect financial interest, non-financial or personal interests or competing loyalties between something they owe a primary duty to; such as welfare of animals or towards some other person or entity. The existence of an actual (or perceived) or potential conflict of interest does not necessarily imply wrongdoing. However, in the Committee's view any private, personal or commercial interests which give rise to such a conflict of interest must be recognised, disclosed appropriately and either eliminated or properly managed. The Committee considered that a financial interest is where the individual receives or may receive direct financial benefit for the consequences of the action. Indirect financial interest is where an individual has a close association with another person who has a financial interest in the outcome of an action, for example a spouse, partner, or close relative.
49. Having considered how it viewed a conflict of interest, the Committee concluded that there was a potential conflict of interest for the Respondent in completing the forms as a veterinary surgeon (in respect of Charges 1 and 2) without properly managing the potential conflict of interest.
50. The Committee was satisfied that there was a financial benefit to the Respondent's father, as keeper of the animals, for it being declared as suitable to enter the food chain. Therefore, by the Respondent completing and signing the form as a veterinary surgeon instead of his father, the Committee found that there was a conflict of interest. The Committee was satisfied that there was a blurring of the distinction between the Respondent acting in a professional capacity certifying the health and condition of an animal which was to be slaughtered and belonging to his father, was a conflict of interest due to the relationship.
51. The Committee was satisfied that this was a conflict of interest which the Respondent had not managed, because the Respondent was endorsing the stock of his father

without being fully transparent about their relationship and the nature of their working relationship. This was, in the Committee's view, necessary because he was signing the form in his capacity as a veterinary surgeon.

52. The Committee also considered whether the Respondent had been transparent when signing the forms. This could have been mitigation for conflict of interest risks. The Committee noted that the signature on the forms could not be deciphered and that the Respondent's name was not written on the forms. By adding the postnominals to the forms on the section which detailed the health and condition of the animal(s), that section was, in the Committee's view, given greater authority because it was filled out by the Respondent as a veterinary surgeon. The Committee concluded that because a veterinary surgeon had signed the food chain information form certifying the health and condition of the animal, there was less likely to be an inquiry about that animal entering the food chain.
53. The Committee noted that Dr Sibley agreed that veterinary surgeon signing for his father could give rise to a conflict. However he said the fact of the relationship could be managed by the veterinary surgeon taking account of this before considering whether he should complete and sign the relevant parts of the form about the health and condition of the animal. The Committee was not persuaded this approach was sufficient to address any conflict or potential conflict. It considered that full transparency was one method of addressing this particular conflict. However Professor Statham said that the Respondent "*had reasonable opportunity to re-direct certification requests regarding his father's cattle to practice colleagues*".
54. The Committee was also not persuaded by the Respondent's evidence when it explored his understanding of a conflict of interest and examples of where he had managed such conflicts. It found that the Respondent's understanding of a conflict of interest was lacking. The Committee accepted Mr Eissa QC's submission that the Respondent had been honest about the condition of the animal (because there was no other evidence to the contrary). However, the Committee found that this did not address the conflict or potential conflict that existed due to the Respondent's familial and working relationship.
55. The Respondent also gave evidence to the Committee, that his relationship with his father was well known at the abattoirs across Scotland, as was his professional status. However, the Committee was not persuaded that this would address any conflict or potential conflict because in the Committee's view, the conflict should be addressed transparently on the certificate itself rather than relying on local knowledge. Furthermore, since there was no identifiable name or relationship to the keeper shown on the forms, the Committee decided there was a conflict of interest because the nature of their relationship had not been disclosed.
56. The Committee therefore found Charge 1(i) and Charge 2(i) proved.

Charge 1(ii)

57. The Respondent had admitted this charge. The Committee therefore found this charge proved.

Charge 1(iii)

58. The Committee noted the detail provided by the Respondent on the food chain information form. It noted that the Respondent could have given further detail about the degree of the animal's lameness which would have been best practice. However, the Committee was satisfied that the certificate did provide sufficient detail in that the Respondent had written '*overgrown lame left hind, weight bearing and no treatment given*'.

59. The Committee considered the expert opinion of Professor Statham who stated that there was insufficient detail provided about the animal's fitness to travel. However, bearing in mind that the first part of the certificate showed that the keeper had signed that the animal was fit to travel at the time of loading, the Committee was not persuaded that the Respondent was required to provide further. Since there was no evidence that anything he had written on the form was untrue or inaccurate, it was satisfied that he had provided sufficient detail as to the extent of the animal's condition.

60. The Committee therefore found this charge not proved.

Charge 2(ii)

61. The Committee was satisfied that the Respondent failed to add any details to his illegible signature on this form, specifically his name or his contact details or the contact details of his practice. There was no stamp used which could readily identify the veterinary surgeon and his practice with his or the practice's contact details alongside the Respondent's signature. The Committee did not accept that because the Respondent said he was well known and his father's farm address was noted on the form, this obviated the need to complete the form with his professional details and a contact phone number. The Committee therefore found this charge proved.

Charge 3(i) and Charge 3(iii)(a) and Charge 3(iii)(b)

62. The Committee noted that the form in respect of Charge 3 was slightly different from the forms relevant to Charges 1 and 2.

63. The form that Charge 3 referred to, which was entitled 'Food Chain Information' requested information on the following significant matters:

- the keeper's name and keeper's holding address
- the keeper's holding number (where the animal is kept)
- the keeper's contact number

64. The form also required the following declarations:

- Cattle, Sheep, Goats:
 - Animals are properly identified and accompanied by valid documentation
 - **No illegal substances have been given to these animals and withdrawal periods have been observed for all veterinary medicines and other treatments administered to the animals while on this holding and previous holdings.**
 - **To the best of my knowledge the animals are not suffering from any disease or condition that may affect the safety of meat derived from them** (Committee's emphasis)
 - No analysis of samples taken from animals on the holding has shown that the animals in this consignment may have been exposed to any disease or condition that may affect the safety of meat or to substances likely to result in residues in meat
 - I declare that this consignment complies with the above and that I am the owner or owner's agent of the animals listed.
 - Keeper's signature, name and date and **farm assured number** (Committee's emphasis)
 - If the animals do not fulfil all the above statements, tick the box and provide additional information on the back.

65. Further the form had a section to be completed by the Haulier which included and requested the following:

- I declare at the time of loading, all animals were clean and fit to travel
- Vehicle registration
- the haulier and driver's name and signature
- the loading date
- the loading time
- the departure time
- the arrival time

66. On the second page of the form headed Cattle the following details were requested:

- Kill no, official ear tag number, breed, date of birth
- Additional Food Chain Information:
 - Information about animals believed to suffer from a condition that may affect the safety of meat
 - Identification of animals
 - Describe the disease or condition or diagnosis if a veterinary surgeon has examined the animal(s)
 - Record all veterinary medicines and other treatments with a withdrawal period greater than zero administered within the previous 60 days:
 - Name of medicine or product

- Date of administration
- Withdrawal period
- Details of analysis of samples taken from animals that may have been exposed to any disease or condition that may affect the safety of the meat or to substances likely to result in residues in meat.
- Keeper's signature, name and date

67. On an additional page titled 'Appendix B, Model Declaration for Emergency Slaughter for Human Consumption of Bovine Animals Outside the Slaughterhouse'¹ the form included and requested the following information:

- Emergency slaughter of an otherwise healthy animal that has suffered an accident that prevented its transport to the slaughterhouse for welfare reasons
- Owners name and address
- Holding number
- Contact name telephone number and e-mail address of owner/keeper
- Name and address of slaughterhouse to which carcass will be transported
- Animal identification details and tag number

68. This part of the form also contained a section (A)² titled 'Owner/keepers food chain information declaration' which requested the following information:

- **give details and time of occurrence of the accident that required the emergency slaughter of the animal** (Committee's emphasis)
- **withdrawal periods have been observed for all veterinary medicines and other treatments administered to the animal while on this holding and previous holdings** (Committee's emphasis)
- no analysis of samples taken from animals on the holding or other samples has shown that the animal in this consignment may have been exposed to any disease or condition that may affect the safety of meat or to substances likely to result in residues in meat
- Signed by Keeper, name of keeper, date

69. The next section (B) of the form included a Veterinary Surgeon's Declaration and requested the following details:

- Describe the reason for emergency slaughter
- Record any treatment administered by the veterinary surgeon
- Declarations stating:
 - "I confirm that the signs present in the animal are consistent with the accident described in Section A."

¹ Appendix B is derived from the BCVA Guidance for Veterinary Surgeons on the emergency slaughter of cattle (pages 18 and 19).

² This relates to the model food chain information form annexed to the BCVA Guidance for Veterinary Surgeons on the emergency slaughter of cattle (page 16)

- **“After carrying out ante-mortem inspection it is my opinion that the animal was not affected with any disease or condition that may be transmitted to animals or humans through handling or eating meat, and was not showing clinical signs of systemic disease or condition, or emaciation.”** (Committee’s emphasis)
 - Time and date of emergency slaughter
 - Signature, name of veterinary surgeon, practice name, address, telephone number and email address.
 - Veterinary surgeons are advised to ensure that they are aware of the guidance published jointly by BCVA, FCA and Rural Affairs Departments.
70. The Respondent said he completed the Veterinary Surgeon’s Declaration at Appendix B in which he described the reason for emergency slaughter as a ‘broken leg’ and in which he recorded any treatment administered by the veterinary surgeon as ‘none’. Furthermore, the Respondent failed to disclose and/or consider it necessary to disclose the possibility that the onset of a sudden severe lameness might be related to the primary condition (infection in the same limb) which the animal was examined and treated for within the seven days prior to this.
71. The Respondent also signed beneath the two declarations at section B and inserted his name and practice name and address and telephone number.
72. The Respondent accepted in evidence that he had signed this part of the form and that this was a veterinary certificate. Dr Sibley said that only Appendix B was a veterinary certificate.
73. The Committee rejected Dr Sibley’s opinion. It formed the view that this form had to be taken as a whole document including Appendix B. It was a form to be submitted for food chain information purposes. The committee noted that Appendix B was a model declaration which was to be read in conjunction with the Food Chain Information form. It considered that the document needed to be looked at as a whole because the details regarding the identification of the animal were specified only on other parts of the form. The committee therefore preferred the opinion of Professor Statham who stated that this whole document was a veterinary certificate. There was no animal identification on Appendix B so it would have had no value without the form.
74. The Committee went on to consider whether there was a conflict of interest or a potential conflict of interest for the Respondent in signing this form in respect of his father’s cattle. It decided there was a conflict of interest for the same reasons the committee had determined in respect of Charge 1(i) and Charge 2(i) there was a conflict of interest in the Respondent signing this form when his father was the keeper and would be the financial beneficiary of the animal’s acceptance into the food chain.
75. The Committee noted that the keeper of the animal (Mr Gracey’s father) had not timed or dated the accident on the declaration for emergency slaughter form as required at Appendix B. Mr Gracey’s father had written “slipped and broke leg at hock”.

76. In this case, the Respondent had completed and signed an emergency slaughter form on 6 April 2017, and declared 'none' in respect of treatment administered by the veterinary surgeon. The Committee did not accept the Respondent's evidence that he wrote 'none' because he was referring to treatment for a broken leg. The Respondent had treated the same animal on 31 March 2017 when he administered an antibiotic (Marbanor) and an anti-inflammatory (Ketaprofen). He subsequently treated it on 3 April 2017 when he administered another dose of the anti-inflammatory. On 31 March he assessed the animal as being lame with a swollen hock and he administered an antibiotic and an anti-inflammatory. In consequence, the Respondent's admitted failure to declare the previous treatment for a lame leg and the medicines administered meant that the Respondent was certifying that the carcass was suitable to enter the food chain when it was not. In effect, the Respondent had endorsed the information provided by his father, the keeper, regarding the animal's suitability to enter the food chain following an emergency slaughter when the Respondent was aware that he himself had administered medicines to the animal a few days earlier. The form requested information about any treatment and medicines three times without limiting it to the current condition.
77. The Committee also noted that the form had a 'farm assurance number' which was likely to have additional requirements. It further noted that the Farm Medicines record provided to it had a record of the medicines administered by the Respondent and so the Respondent should have referred to this before completing the form. Further, the evidence was that the Respondent had custody of the medicines record when it was asked for by Ms Tataru on the farm visit on 11 April 2017.
78. For the above reasons, it therefore found Charge 3(i) proved.
79. The BCVA Guidance for Veterinary Surgeons on the Emergency Slaughter of Cattle states:
- Is it an Emergency? 'Emergency' implies an event requiring immediate action. Therefore an animal suffering from a chronic condition cannot be eligible for slaughter for human consumption.
 - Was it an Accident? The dictionary definition of 'accident' is 'an unforeseen or unexpected event, especially one causing injury or damage'. When assessing an animal following such an event, the veterinary surgeon must consider its circumstances and establish that it was a true account, The veterinary surgeon completing the veterinary declaration must confirm that the signs present in the animal are consistent with the details of the accident recorded by its keeper at Section A of the veterinary declaration (Appendix B).
 - Was the animal healthy before the accident? The veterinary surgeon must apply professional judgement to assess the condition of the animal before the accident. Equally the animal must remain in a healthy condition up until the time of emergency slaughter and must suffer no deterioration in its health due to the accident.

80. Although the Committee found Ms Lafuente and Ms Tataru to be honest and credible witnesses it could not be satisfied so that it was sure that the Respondent had diagnosed a fracture on 5 April 2017.
81. The Respondent disputed telling Ms Lafuente and Ms Tataru in separate conversations that the leg was broken the day before the emergency slaughter. The Respondent said he had not said there was a fracture on 5 April 2017 nor had he said the fracture took place the day before the emergency slaughter. He said both witnesses were mistaken in recalling a conversation with him in which he suggested the fracture had happened the day before the emergency slaughter.
82. Ms Tataru gave evidence that the Respondent had told her that he had diagnosed a fracture on 5 April 2017 and the emergency slaughter was carried out the following day. There was no contemporaneous records available (for the actual day of the conversation) detailing whether he had diagnosed the broken leg on 5, 6 or 7 April 2017. Additionally there was a dispute about the date the conversation took place, Ms Lafuente saying the 6 April 2017 and the Respondent saying 7 April 2017. Ms Lafuente said she recorded the conversation in the diary at the abattoir but that diary had not been provided to the Committee and Ms Lafuente was not sure how long the diaries were retained for. Ms Tataru stated that the conversation had taken place and she had been provided with the treatment history of the animal by the Respondent but she had not copied it. Although Ms Lafuente had made notes closer to the time of the events, the first note the Committee had by Ms Lafuente was in a report made to the Local Authority dated 6 April 2017. It also had an email she wrote to Ms Tataru dated 11 April 2017. Although the email recorded the Respondent saying he made a diagnosis of a broken leg the day before the slaughter, the report to the local authority did not record that fact. Furthermore, neither the Respondent nor his father had noted the date and time of the accident on the relevant documentation.
83. The Committee did not accept that the Respondent's documentary proof that he had attended an auction on 5 April 2017 was sufficient to prove he could not also have diagnosed the broken leg on that date. In the Committee's view it was possible that he could have done both and diagnosed a fracture on the evening of 5 April 2017. Furthermore although the Respondent admitted being present at the abattoir on 7 April 2017, the Committee was not persuaded that this necessarily proved that he could not have also been present on 6 April 2017.
84. The Committee noted that the email written by Ms Lafuente on 11 April 2017 referred to the Respondent telling her that he had treated the animal for a swollen joint in its hind leg on Friday 31 March 2017. Within that email Ms Lafuente recorded that the Respondent had told her he thought that the animal was improving when he saw it on 3 April 2017. However when he saw it on 5 April 2017 he diagnosed a fractured leg and so he decided to send the animal to slaughter the next day (i.e. 6 April 2017).
85. Since there was uncertainty on the content of the conversations between Ms Tataru and the Respondent and Ms Lafuente and the Respondent about the fracture, the Committee also considered that the delay in those witnesses giving statements about

their recollections meant that it was unsure about how accurate their recollections were although it accepted they were made in good faith.

86. Having taken all matters into account on the evidence before it the Committee is not satisfied so that it is sure that the Respondent had made the diagnosis of a broken leg or told the OV about the broken leg as set out in the charges, the day before the emergency slaughter. It therefore found Charge 3(iii)(a) not proved and Charge 3(iii)(b) not proved.
87. It follows that it found Charges 5(b) and 5(c) in relation to Charge 3(iii)(b) not proved.

Charge 3(ii) and Charge 5(b) and Charge 5(c)

88. The Respondent admitted Charge 3(ii). The Committee found Charge 3(ii) proved.
89. The Committee went on to decide whether the Respondent had been dishonest or misleading in failing to record that he had treated the animal and he had administered Marbanor and Ketapofen within the previous seven days. The form required an answer in three places regarding previous treatment given to the animal. The Respondent stated he made a mistake regarding the withdrawal periods for Marbanor as he confused it with another formulation which had a shorter withdrawal period. However, since he had also administered treatment for a lame leg and swollen hock, a few days before, the Committee was satisfied that his omission to mention the treatment and medication administered on the form was dishonest. Public health required a veterinary surgeon to be scrupulously honest on such a form to ensure that the integrity of information supplied for the food chain was preserved and to ensure that any public health implications were carefully considered.
90. The Respondent has said that his and his father's business was largely based on finishing 'cull cattle', a group of animals that would be more likely to have a higher incidence of disease and need for treatment. In the Committee's view this means that as a farmer of this type of animal and professionally as a veterinary surgeon he would have a greater knowledge of these matters. The Committee decided that his failure to record these important facts on the documentation was both dishonest and misleading because he must have realised that the forms required all treatment and medicines administered to be recorded whenever the current condition occurred.
91. The Committee took into account the Respondent's good character but noted that he was filling in such forms frequently. His explanation that he did not mention it because he believed that the withdrawal periods had expired was not credible because as a prescribing veterinary surgeon he was obliged to consider the Veterinary Medicines Regulations (BMR) and its requirements. Any deviation from the marketing authorisation of a medicine (such as in this case using a medicine for a different condition, or at a higher dose, or in combination with a medicine which is not specified in the marketing authorisation) will have implications on withdrawal periods and the advice contained therein can no longer be relied upon; in this case resulting in an automatic statutory withdrawal period of a minimum of 28 days for meat. This a matter

the Committee is sure the Respondent would have known or would have known where to find the answer if he was not. For the avoidance of doubt it made it all the more important that he include on the form all information about medicines he had administered.

92. The Committee noted from the Code,

Section 4.1 *“The Responsible use of Veterinary medicines for therapeutic and prophylactic purposes is one of the major skills of a veterinary surgeon and crucial to animal welfare and the maintenance of public health.”*

Section 4.21(d) when prescribing under the cascade provisions *“The veterinary surgeon responsible for prescribing the medicine must specify an appropriate withdrawal period.”*

Section 4.22 *“the development and spread of anti-microbial resistance is a global public health problem that is affected by use of these medicinal products in both humans and animals. Veterinary surgeons must be seen to ensure when using anti-microbials they do so responsibly, and be accountable for the choices made in such use.”*

93. Further, the Respondent’s explanation that he had not included this information on the form because he had actually not administered any treatment for the ‘broken leg’ was not in the Committee’s view credible or believable. The wording on the form was clear: *“Record any treatment administered by the veterinary surgeon”*. It also took into consideration that the Respondent’s omission would in all likelihood have resulted in the animal having a consequential higher value for his father after its slaughter. The Committee concluded that taking all these matters into account it was sure his failure to mention the previous treatment and medication administered in this instance on this form for this animal was dishonest. It was also satisfied that his failure to do so was intentionally misleading. It did not accept his explanation that it was a mistake and it found his explanations to be not credible.

94. The Committee therefore found Charge 5(b) and 5(c) proved in respect of Charge 3(ii).

Charge 4(i)

95. The Committee noted that this form was titled Food Chain Information and requested the following:

- Holding number
- Keeper’s name
- Address of holding
- Telephone number
- Destination

96. It also included the following:

- Farmer Declaration : When filling in the farm assured box. I declare that all the listed cattle are eligible to be sold as “Farm Assured” under the current regulations of the Farm Assured Scheme.
- Cattle Sheep and Goats:
 - All animals are properly identified and accompanied by valid documentation.
 - Animals outwith cleanliness grade 3 will not be dispatched for slaughter
 - No illegal substances have been given to these animals and withdrawal periods have been observed for all veterinary medicines and other treatments administered to the animals while on this holding and previous holding.
 - To the best of my knowledge the animals are not suffering from any disease or condition that may affect the safety of meat derived from them.
 - No analysis of samples taken from animals on the holding has shown that the animals in this consignment may have been exposed to any disease or condition that may affect the safety of the meat or to substances likely to result in residues in meat.

97. The form also included the following declaration: *“I declare that this consignment complies with the above and that I am the owner or owner’s agent of the animals listed.”* The form was then signed by the keeper, a Mr Ross Grieve, and dated with the Farm Assured No.

98. In a further section on the form it said:

- If the animals do not fulfil all the above statements tick this box and provide additional information on the back.
- NB Any animals found not to comply with this declaration after slaughter will be excluded from the food chain and will be the liability of the vendor. This declaration is only for 3 working days from the date of sale.

99. There was a further section to be completed by the Haulier which states:

- I declare that on the time of loading all animals were clean and fit to travel
- Driver’s signature; the name and address of the haulier
- Vehicle registration number
- The loading date
- Time of loading on farm
- Arrival time Inverurie: Lairage staff
- Time of unloading last animal at abattoir: Lairage staff

100. Page 2 of the form including the following information:

- the ear tag number for each animal accepted for slaughter
- Additional food chain Information:
 - Information about animals believed to suffer from a condition that may affect the safety of meat

- Identification of animals
- Describe the disease or condition or diagnosis if a veterinary surgeon has examined the animal(s)
- Record all veterinary medicines and other treatments with a withdrawal period greater than zero administered within the previous 60 days
- Name of medicine or product
- Date of administration
- Withdrawal period.
- Details of analysis of samples taken from animals that may have been exposed to any disease or condition that may affect the safety of meat or to substances likely to result in residues in meat.

101. The Respondent had appended to this form a letter dated 02.07.19 detailing his examination of the animal and noting that it had a “*twisted intestine and bloating*”. The letter further stated “*it is my advice to travel to slaughter as soon as possible due to very poor prognosis. Temperature and vital signs remain fine presently and animal is fit to travel. No treatments given*”.

102. The Committee took into account that the Respondent had swiftly and correctly diagnosed bloat secondary to a ‘twisted intestine’, as supported by the post-mortem photographs. The Respondent judged that the animal was fit to travel.

103. The Committee noted that when giving evidence about this animal the Respondent appeared to put the farmer’s interests before the welfare of the animal. He said that the only options available to him were ‘treatment or transport’ to slaughter and that there was no point in discussing euthanasia with the farmer as he knew that ‘farmers would never countenance that option’. He said he did not believe that emergency slaughter was appropriate as in his view this animal did not meet the criteria set out in the BCVA Guidance. He maintained that the animal ‘ was 100% fit to travel’.

104. The Respondent said that the CCTV had shown the animal to be fit when arriving at the abattoir. The Committee did not have the CCTV available to it and in any case it would not have shown the animal’s condition prior to loading to go to the abattoir which was what the Committee was considering for Charge 4(i). The Committee took into account what the Respondent described from the CCTV but it noted that both of the experts had said that pain in a bovine animal was difficult to assess, Professor Statham saying cows have evolved to be stoical and to show minimal signs of pain. The Committee had decided the Respondent’s judgement on the ‘fitness to travel’ due to pain and suffering was incorrect and therefore it did not accept that his assessment of the same animal at the abattoir would have been correct. The Committee did not accept the Respondent’s contention that moving/transporting a horse with colic had beneficial effects was similarly beneficial to transporting a bovine with a mesenteric torsion.

105. The Committee noted that there were generally three financial outcomes in a case such as this: euthanasia on the farm where the animal has then to be disposed of (at the expense of the farmer), emergency slaughter on the farm, where the animal goes into the food chain (which results in a lower payment than slaughter at the abattoir), or transport of the animal to the abattoir for slaughter to enter the food chain (this having the highest financial benefit to the farmer). The Committee is aware that there are commercial considerations to take into account with a farming business but it emphasises that the primary duty and overriding obligation of any veterinary surgeon is the health and welfare of animals. The Committee found that the Respondent was overly influenced by these commercial considerations at the expense of the health and welfare of the animal.

106. The Committee had regard to both experts; with both Professor Statham and Dr Sibley stating that the animal would have been suffering although it acknowledged that they disagreed on the extent of the suffering. Dr Sibley said "*The unfortunate animal was undoubtedly suffering and in some discomfort, and possible pain, as is inevitable with such an abdominal catastrophe.*" Professor Statham said "*This condition is acutely painful and can progress very rapidly. Having diagnosed a clear and stated clinical suspicion of this condition, in my opinion it was then inappropriate to transport this animal.*"

107. Professor Statham said that having diagnosed a 'twisted intestine' it was inappropriate to transport the animal; it qualified for Emergency Slaughter and therefore it should either have been dealt with surgically or slaughtered/euthanased on the farm. Dr Sibley said the animal needed swift euthanasia but that it was acceptable for the animal to travel a short distance and that doing so did not cause unnecessary suffering.

108. The Committee had regard to the BCVA Guidance for Veterinary Surgeons on the Emergency Slaughter of Cattle³, at page 10, which set out the guidelines for the transport of live cattle:

- *Rules on fitness to transport (Council Regulation (EC) No. 1/2005)*
 1. *No animal shall be transported unless it is fit for the intended journey, and all animals shall be transported in conditions guaranteed not to cause them injury or unnecessary suffering.*
 2. *Animals that are injured or that present **physiological weaknesses or pathological processes shall not be considered fit for transport** and in particular if: (a)they are unable to move independently without pain or to walk unassisted; (b)they present a severe open wound, or prolapse; (Committee's emphasis).*

³ Both experts had stated they had each contributed to different versions of this publication.

This supported the Committee's view and Professor Statham's opinion that the animal was not fit to travel.

109. The Committee decided that transport, even in the early stages of a 'twisted intestine,' would cause the animal significant pain and unnecessary suffering. Although the Respondent made the decision to have the animal transported to an abattoir a relatively short distance away, the Committee did not accept the Respondent's view that this was appropriate unless pain relief had been administered, which it had not. Had the animal received pain relief it could not have been sent to the abattoir in any event because it would have been no longer suitable to enter the food chain. In the Committee's view the animal needed to be either subject to an emergency slaughter on the farm or euthanased on the farm as stated by Professor Statham.
110. The Committee was satisfied so that it was sure, having considered the extent of the bloat (from the photographs taken by Mr Laing), and the painful condition of mesenteric torsion that the cow was suffering from, that even in its early stages it was not potentially fit for transport. The Committee did not accept the Respondent's evidence that the animal did not appear to be showing any signs of pain bearing in mind its condition of a 'twisted intestine' and bovine stoicism. It considered that the Respondent's swift diagnosis was to his credit and his decision to advise that the animal be slaughtered, could not be criticised. However, it preferred the opinion of Professor Statham who said it was not fit to travel. The Committee was sure that the animal was unfit to travel because both experts had said the animal was suffering. It rejected the view of Dr Sibley that a short journey to an abattoir would not cause the animal unnecessary suffering.
111. The Committee considered that the Respondent should have been able to euthanase the animal on the farm even if he was not prepared to carry out emergency slaughter. It accepted, as Dr Sibley had said, that there were health and safety and resource considerations in euthanasing an animal, but the Committee decided that these were neither uncommon nor insurmountable for a reasonably competent veterinary surgeon accustomed to working with cattle.
112. The Committee went on to consider whether the Respondent had been dishonest or intentionally misleading when declaring that the animal was fit to travel when the Committee had found it was not fit to travel. The Committee concluded that the Respondent was not dishonest or intentionally misleading when completing the form. It concluded this was an error of judgement by the Respondent but one which came about most likely because the Respondent was overly influenced by the commercial outcome for the farmer rather than prioritising the animal's welfare.
113. It therefore found Charges 5(b) and 5(c) in relation to Charge 4(i) not proved.

Charge 5(a)

114. Finally the Committee considered Charge 5(a) in respect of the Charges it had found proved.
115. It first considered whether having found Charge 1(i), Charge 2(i) and Charge 3(i) proved, this risked undermining procedures designed to promote public health and animal welfare. The Committee found a conflict of interest for Charge 1(i), Charge 2(i) and Charge 3(i). The Committee further decided that a potential conflict or actual conflict between the veterinary surgeon signing Food Chain Information forms or an Emergency Slaughter form risked undermining procedures which were designed to promote public health and animal welfare. The forms would be viewed more favourably because they were signed by a veterinary surgeon and the information contained in those forms undermined procedures designed to promote public health and animal welfare because they were 'tainted' by the unaddressed potential conflict of interest or actual conflict of interest.
116. The Committee considered whether Charge 1(ii) and Charge 2(ii), as proved, risked undermining procedures designed to promote public health and animal welfare. It was satisfied that the omission of the veterinary surgeon's name, practice name and contact details meant that anyone involved in the food processing chain could not readily contact the veterinary surgeon if they wished to discuss the form and the animal sent for processing.
117. The Committee next considered whether Charge 3(ii) as proved, risked undermining procedures designed to promote public health and animal welfare. It decided that it did. Where the Respondent had completed the form stating 'none' in answer to the question "record any treatment administered by the veterinary surgeon" when he knew that he had administered treatment and medicines within the previous few days, this unquestionably risked undermining procedures designed to promote public health and animal welfare.
118. The Committee heard expert evidence from Professor Statham and Dr Sibley about whether the residues of the medicine Marbanor⁴ (which is a critically important anti-microbial to human health) in an animal put into the food chain could risk public health. Professor Statham said it could because of the importance of preventing anti-microbial resistance and ensuring that those who ate meat did not have any allergies triggered. He said the role of the veterinary profession was to ensure food chain integrity and public health. Dr Sibley said that the impact on public health was minimal because by the time the animal was slaughtered it was six days after the Marbanor had been administered so any residues would be small but he did agree the importance of preventing anti-microbial resistance and ensuring that those who ate meat did not have any allergies triggered. The Committee decided that Professor Statham's opinion was to be preferred on the impact to public health. It did not agree

⁴ A fluoroquinolone

with Dr Sibley because the measure of whether there was a risk to procedures designed to promote public health and welfare was addressed by the Veterinary Medicines Regulations governing withdrawal periods which made clear that there was a risk.

119. Finally the Committee considered Charge 4(i) as proved, and whether by signing the Food Chain Information Form stating the said cow was fit to travel when it was not, that risked undermining procedures designed to promote public health and animal welfare. It decided that it did because the animal did not fulfil the BCVA Guidance based on the rules for fitness to transport (*Council Regulation (EC) No. 1/2005*).

120. Accordingly the Committee found Charge 5(a) proved in relation to Charge 1(i), Charge 2(i), Charge 3(i), Charge 1(ii) and Charge 2(ii), Charge 3(ii) and Charge 4(i).

Disciplinary Committee

22 July 2022