

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

SIMON LEROY HUTTON MRCVS

**DECISION OF THE DISCIPLINARY COMMITTEE
ON FACTS AND
DISGRACEFUL CONDUCT IN A PROFESSIONAL RESPECT**

1. The Respondent, Mr Hutton, is a registered veterinary surgeon, working as a sole practitioner practising as Hutton Equine Limited. Ms A was the owner of a horse, Angel, in respect of whom she engaged Mr Hutton's services.
2. The essence of the charge was that, on 12 February 2021, Mr Hutton had attended Angel at a livery yard in Sheffield. During the course of his examination of the horse, it was alleged that Angel had kicked Mr Hutton with her left hind leg, whereupon Mr Hutton had kicked Angel to her abdomen.
3. The College alleged that this conduct fell far below the standard to be expected of a veterinary surgeon and it therefore amounted to disgraceful conduct in a professional respect.

Charges

4. The particulars of the charge were as follows:

"That being registered in the Register of Veterinary Surgeons, and whilst in practice at Hutton Equine Limited, you:

1. *On 12 February 2021, at Hood Hill Farm Equestrian Centre, Sheffield, in relation to a horse named Angel belonging to Ms A kicked Angel to her abdomen:*

AND that in relation to the above you are guilty of disgraceful conduct in a professional respect.”

Admissions

5. At the start of the hearing, through his counsel Ms Sanderson, Mr Hutton indicated that he admitted the facts in paragraph 1 of the Allegation. Ms Sanderson said that the allegation of disgraceful conduct in a professional respect was a matter for the Committee.
6. The Committee exercised its power under Rule 23(5) of the Rules, noted the admission to the facts and dispensed with further proof of them.
7. The Committee also noted that there was a dispute between the parties as to the exact manner in which the kick had been administered and also whether the conduct amounted to disgraceful conduct in a professional respect. The parties had both obtained the opinion of experts, which were not in agreement as to whether there had been a serious falling short of professional standards in Mr Hutton's actions.

Background

Summary of the College's case

8. Ms A stated that she had purchased Angel on 04 November 2020. She said that the horse had looked neglected and appeared to have lost weight. Nevertheless, Ms A bought the horse and placed her at a livery yard in Sheffield. Ms A stated that Mr Hutton regularly visited that yard. Mr Hutton had attended Angel at the yard on two occasions to vaccinate the horse at Ms A's request, in November and December 2020.
9. Ms A stated that she did not know Angel's history but thought that her demeanour indicated that she may have been mistreated in the past. Ms A believed that Angel was 'coming on well' and the horse was well-behaved when the dentist checked her teeth in December 2020.
10. In January 2021, Ms A stated, she had moved Angel to a different livery yard, Hood Hill Farm Equestrian Centre, because it had better facilities. Mr Hutton remained as

Angel's vet. Ms A stated that, after the move to the new yard, Angel's behaviour had deteriorated. She stated that Angel, "*did not seem comfortable - she seemed tight and protested under her saddle*". Ms A stated that she consulted Mr Hutton by telephone. He offered to perform a 'five-stage vetting'. Ms A stated that she knew this involved a leg-flexion test, but Angel was "*protective of her back legs*", so she did not think the horse would tolerate the examination.

11. Ms A stated that another person suggested that Angel might be in foal. Ms A therefore asked Mr Hutton to attend Angel at the yard, to perform a pregnancy test. Ms A said that during the rectal pregnancy examination, she and Mr Hutton were in the stable with the horse, with Mr Hutton's partner and two others just outside.
12. Ms A stated that Mr Hutton had administered a sedative to the horse and afterward performed a rectal examination. They then lifted Angel's feet, Ms A lifting the front right and back right. Ms A stated that Mr Hutton then lifted Angel's left hind leg and whilst this was happening, Angel kicked out, striking Mr Hutton on his leg.
13. Ms A said that Mr Hutton moved forward and punched Angel's backside slightly, then stepped back and swore. She stated that he then ran up and kicked Angel once on her belly, using the sole of his shoe. Ms A angrily asked Mr Hutton to leave the stable.
14. Under cross-examination, Ms A did not accept that she had not sufficiently warned Mr Hutton about the risk of being kicked before he undertook the rectal examination. She said that, as a veterinary surgeon he would know of the risks. She did not agree that Mr Hutton had put Angel's foot down before the kick, as she thought she would have seen this.
15. Ms A said she recalled Mr Hutton punching Angel after he was kicked. She said he had taken two steps back. She was definite that Mr Hutton had kicked Angel with the sole of his foot. Ms A did not accept that she had inadequately warned Mr Hutton of the danger with regard to Angel's behaviour.
16. Mr Gliddon, the expert called by the College provided his written report dated 23 May 2022. Mr Gliddon's opinion was that, if delivered instantaneously and instinctively, in response to Angel's kick, this would be conduct falling below but not far below the relevant standard expected for veterinary surgeons.
17. Mr Gliddon said in his report that if the Committee preferred Ms A's account, that the kick was not instinctive and instantaneous, then the matter was more serious. He stated that, if Mr Hutton had sufficient opportunity to decide on his course of action, it

was deliberate. He stated that the fact of a kick being administered to the horse as a reprimand was behaviour falling far below the standard expected of a reasonably competent veterinary surgeon.

18. Under cross-examination, Mr Gliddon accepted that the available research showed that those working with horses were subject to a high risk of injury. He agreed that it was possible to reduce risks by warnings and by training.
19. Mr Gliddon agreed that attitudes to physical reprimands had changed over time. In his report he stated that a reprimand administered by a veterinary surgeon that may have been considered acceptable by a significant body of the veterinary profession some decades ago, would no longer be regarded as such now, in his opinion. In re-examination, he stated that, in his opinion, there was not a reasonable body of veterinary opinion which would consider kicking a horse as an acceptable form of negative reinforcement of behaviour. He said that it would not be good for the welfare of animals. If the general public thought that vets were using kicking as a means of negative reinforcement, its opinion of the profession would not be as high as currently. He agreed that some methods of physical restraint involved discomfort to the animal.

Summary of the Respondent's case

20. Mr Hutton stated that he had gone to examine Angel at Hood Hill Farm on 12 February 2021, along with his life partner, Ms B. He stated that he had a number of clients at the yard. He said that he had sedated Angel without difficulty. The rectal examination had been uneventful. They then discussed Angel's behavioural issues.
21. Mr Hutton stated that Ms A had then asked if 'we' could try picking up Angel's feet. He understood this to mean that Ms A was asking him to assist. Mr Hutton stated that after Ms A had lifted Angel's right feet, he had slipped his hand down Angel's fetlock then lifted the left hind leg with his other hand. Mr Hutton stated that he held Angel's leg up for about five seconds before putting it down again.
22. Mr Hutton stated that he had stepped back when Angel suddenly kicked out with her left leg. He was hit very hard just above the left knee. Mr Hutton said he was shocked and in pain. Mr Hutton said he had pushed himself off Angel, stepped back, steadied himself by putting his hand on the stable wall, and then moved towards Angel and kicked her once using the top side of the toes of the right foot. He said this had occurred a matter of seconds after the horse kick and had been an instinctive action.

23. Mr Hutton stated that his action had been an instinctive reprimand of the horse. As well as an instinctive reaction, Mr Hutton felt that an immediate reprimand following a serious misdemeanour was something a horse would understand and was appropriate. He stated that Ms A's reaction had been to reassure the horse and she had not appeared to have been concerned about him.
24. In the hearing, Mr Hutton apologised for the incident with Angel. He said it had happened in the heat of the moment. He wished that he had apologised straight away.
25. Mr Hutton said he had been aware of a risk of being kicked when performing a rectal examination. He did not agree that Ms A had said to 'be careful' when lifting Angel's feet. His recollection was that Ms A had said Angel was 'not that bad'. He had understood Ms A to be asking him to help lift Angel's feet.
26. Mr Hutton said that after the kick he had not punched Angel but had pushed himself away. He apologised that he had sworn. He denied using the sole of his foot to kick Angel. Mr Hutton agreed he should have thought about it before kicking Angel. He said he would not have kicked Angel, if he had thought about it. He did not think that he was acting in self-defence and accepted that after he had stepped back following Angel's kick, he had put himself in a safe place.
27. Mr Tremaine, the expert called by Mr Hutton provided his report dated 16 February 2023. He stated that large animals are capable of delivering severe injuries when kicking. He described that receiving such an injury would result in shock, severe pain, rapid assessment of one's own injuries and possible relief if there were none.
28. Mr Tremaine stated that the kick had been an inappropriate action. However, he stated, the single lapse of professionalism, even if irrational, was not serious professional misconduct. He did not condone or defend physical reprimand in the form of a kick, but he accepted the rationale behind physical reprimands as a behaviour-modifying tool in a situation such as led to Mr Hutton's response. He felt that Mr Hutton may have been insufficiently warned by Ms A about Angel's behaviour.
29. In the hearing, Mr Tremaine told the Committee that, since the kick had been an isolated incident, delivered in the heat of the moment, and had occurred in sub-optimal conditions, it was not conduct which fell seriously below the standard expected of a veterinary surgeon.

30. Mr Tremaine stated that, in the case of the minority of veterinary surgeons who used physical reprimands as a means of modifying behaviour, he was not aware that such reprimands would include the use of a kick.

Summary of the College's submissions on Disgraceful Conduct

31. Ms Greaney, counsel for the College, provided written submissions on Disgraceful Conduct, which are a matter of record.

32. In summary, Ms Greaney submitted that Principles 1.1 and 6.5 of the Code were engaged. It was submitted that, on the basis that there had been a deliberate decision by Mr Hutton to kick Angel to the abdomen, he had time to consider his actions.

33. The College submitted that deliberately kicking Angel, either as punishment or teaching or training a horse fell far below the standard expected of veterinary surgeons.

Summary of the Respondent's submissions on Disgraceful Conduct

34. Ms Sanderson provided written submissions on Disgraceful Conduct, which are a matter of record.

35. Ms Sanderson submitted that Mr Hutton accepted that his actions in kicking Angel on 12 February 2021 fell below the standard expected of veterinary surgeons. He left it to the judgement of the Committee whether this conduct fell 'far below' the standard expected of veterinary surgeons.

36. Ms Sanderson submitted that, taking into account all the facts and the expert evidence, it would be quite proper for the Committee to reach a judgement that the conduct was not 'far below' the standard expected of veterinary surgeons.

37. Ms Sanderson submitted that there was evidence that, in some circumstances, a physical reprimand may be acceptable conduct. She warned the Committee against feeling obliged to give a broader view on physical reprimands in general.

38. Ms Sanderson submitted that there was no evidence of Mr Hutton having kicked other animals and nor that this was his instinctive reaction.

The Committee's Finding on Facts and Disgraceful Conduct

39. The panel took into account Mr Hutton's admission of the facts in paragraph 1 and dispensed with further proof by the College, finding the facts proved. It noted that

there was a degree of dispute as to exactly what had happened, and whether this had been far below the standard expected of veterinary surgeons.

40. The Committee considered the evidence that it had heard from Ms A, Mr Hutton and Ms B, regarding the facts. It considered that those giving evidence had done their best to assist the Committee. It took into account the witness statement of Ms E and the testimonials provided. It accepted the advice of the Legal Assessor. The Committee bore in mind that the events had occurred suddenly and unexpectedly. The Committee took into account Mr Hutton's previous good character as supporting his credibility when assessing his evidence.
41. Mr Hutton's evidence was that he had raised and lowered Angel's left hind leg back to the ground before she delivered the kick. Ms A's evidence had been that Angel kicked Mr Hutton while her leg was still raised. The Committee took into account that Mr Hutton had been close to the horse and directly involved. Ms A agreed that she had been standing in a position behind Mr Hutton. The Committee took into account that Mr Hutton's note in his treatment records stated that he had "*attempted*" to lift the leg. However, this was not consistent with either Mr Hutton's or Ms A's accounts. The Committee accepted his explanation that this had been written in brief and in haste. The Committee concluded that Mr Hutton would have been in a better position to see events and noted Ms A referred to him "*blocking*" her view.
42. The Committee took into account that it would have been easier for the horse to deliver a hard kick if its leg had been free at the time. The Committee determined that, immediately before the kick, Mr Hutton had replaced Angel's leg on the ground and it preferred his account.
43. Ms A suggested that Mr Hutton had reached out and 'punched' Angel immediately after the kick. Mr Hutton said that his reaction had been to push the horse with his arm, in response to the kick. The Committee considered that it was entirely reasonable to expect Mr Hutton to have sought to put distance between himself and Angel, upon being kicked. It accepted that he had pushed himself away from the horse.
44. Ms A's account was that Mr Hutton had thereupon taken a few steps back, then ran up and kicked Angel once to her belly, using the sole of his shoe. Mr Hutton stated he had straightened up and stepped back after the kick, and that the period between kicks had been "*a matter of seconds*". Under cross-examination, Mr Hutton said that he would have taken steps back. He remembered putting his hand on the wall [of the stable]. He agreed that he had moved out of the 'danger zone'.

45. The Committee noted that Ms B had provided a witness statement and attended to give evidence by video, although neither party had felt it necessary to ask further questions of her. The Committee read and took into account her written statement. The Committee noted that Ms B supported Mr Hutton's evidence that he had put down Angel's foot before she kicked him.
46. The Committee noted Ms B's evidence, that the kick "*threw him across the stable*". This accorded with the other two witnesses, to the extent that Mr Hutton moved away from the horse, but not as to the force or distance.
47. The Committee found that, following the kick from Angel, Mr Hutton moved away from the horse, so that he was no longer in immediate danger and that Mr Hutton's kick in response had come after a gap in time, albeit brief. The Committee had doubt that Mr Hutton could have run up to the horse in the time involved and the available space but accepted he had moved towards Angel.
48. The Committee noted that there was a difference between the parties as to which part of Mr Hutton's foot was used in the kick and how it was delivered. The Committee noted that, at 16 hands, Angel was a large horse standing erect. The evidence was that the horse was not physically injured. It was agreed that Mr Hutton had kicked Angel with his right foot and deliberately.
49. As to its findings on Mr Hutton's state of mind when kicking Angel, the Committee noted that it was not in issue that Mr Hutton had intentionally kicked the horse. The Committee also took into account that:
- a. it had found there was a gap in time between Angel's kick and Mr Hutton's kick
 - b. it had found Mr Hutton had moved away from Angel before the kick
 - c. Mr Hutton had accepted that he was no longer in the 'danger area' before he kicked Angel
 - d. Mr Hutton stated that he had stepped forward towards Angel in order to deliver the kick to Angel
50. In his witness statement, Mr Hutton stated that his kick "*was an instinctive reaction to what had happened and an instinctive reprimand for what I felt in the aftermath of the kick from her was malicious behaviour*". Mr Hutton also stated that the reprimand was an appropriate response which a horse would understand, in order to modify its future behaviour.

51. In giving oral evidence, Mr Hutton apologised for his behaviour (as he had done previously) and said that his kick had occurred in “*an emotional haze*”. He said that he had not been thinking straight and that his kick had been a natural reaction to having just been kicked.
52. Mr Hutton was asked whether he had been seeking to defend himself. He said that he was not sure, but then said “*I don’t think so*”. He agreed that, at the point of going to kick Angel, he had not been in a situation where the horse was causing him continued pain and he was not being subjected to any force.
53. Mr Hutton was asked about his comment on “*immediate reprimand*”. He stated that he used what had been available at the time. He was not sure why he had kicked rather than anything else.
54. Mr Hutton said that his reaction related to things he had learned 20 years ago. He realised now it was “*not the way forward*”. In the last two years, he said he had learned to be more controlled.
55. Mr Hutton said that it had been after the event that he had justified the kick to himself as a training method. He had been very surprised when Angel kicked out, as she had not been experiencing any noxious stimuli at that moment. He thought he had gone through the ‘danger point’ when Angel’s foot went back down. He had formed the view the horse had acted maliciously.
56. The Committee took into account its findings as above, as to the physical distance between Mr Hutton and Angel before he kicked her, as well as the gap in time, albeit brief. It also took into account the evidence that Mr Hutton had spoken, with expletive, after the kick, which he apologised for but did not dispute. Taking all this into account, the Committee found that Mr Hutton had not reacted instantaneously, but had the chance to make a conscious decision to kick Angel.
57. The Committee noted that Mr Hutton had himself referred to his state of mind being in “*an emotional haze*” at the time. It accepted that he had clearly been in pain and that, momentarily, as he put in his witness statement, he had been fearful of a fracture to his left leg.
58. The Committee noted that Mr Hutton also referred to his kick having been as a reprimand to Angel for her kick. It therefore considered the expert evidence as to the appropriateness of a kick as a physical reprimand to Angel, even if delivered with little time for detailed consideration.

59. The Committee took into account Mr Gliddon's evidence in his report. Mr Gliddon's opinion was that, if delivered instantaneously and instinctively, in response to Angel's kick, this would not be conduct falling far below the relevant standard expected of veterinary surgeons. However, the Committee had found as a fact that Mr Hutton's kick had not been delivered instantaneously and instinctively.
60. Mr Gliddon's opinion otherwise was that, if Mr Hutton's kick was delivered after a sufficient opportunity to decide a course of action, a kick delivered as a reprimand to a horse fell far below the standard expected of veterinary surgeons.
61. Mr Gliddon accepted, under cross-examination, that there was a body of veterinary surgeons who still practised physical reprimand as a means of negative reinforcement. The Committee was shown and Mr Gliddon accepted that some negative reinforcement involved application of physical force and in some cases discomfort to the horse.
62. Mr Gliddon's evidence was that he was not aware of a body of veterinary opinion which would accept kicking a horse as an acceptable method of physical reprimand.
63. Ms Sanderson submitted to the Committee that it should not be seeking to make a wholesale judgement on the appropriateness of physical reprimand as a method of negative reinforcement.
64. Ms Sanderson submitted that, if there was a body of veterinary surgeons who accepted physical reprimand as such a method, and there were no guidelines which dictated what forms of physical reprimand were or were not appropriate, the Committee was at liberty to consider whether the use of a kick as a physical reprimand was below or far below the standard expected of veterinary surgeons. She submitted that Mr Hutton accepted that a kick was 'below' but it was for the Committee to decide, if it was 'far below' the standard expected of veterinary surgeons.
65. Mr Tremaine had stated that the kick delivered by Mr Hutton had been inappropriate and could be deemed as unprofessional. However, in Mr Tremaine's opinion, the kick was not far below the standard expected of veterinary surgeons, because of three main factors.
66. Mr Tremaine stated that the isolated nature of the incident, the fact that it had been an instantaneous reaction and the sub-optimal circumstances of the examination had rendered it not 'far below' the standard.

67. The Committee noted that, under cross-examination, Mr Tremaine stated that, in the case of the minority of veterinary surgeons who used physical reprimands as a means of modifying behaviour, those reprimands would not include use of a kick.
68. The Committee concluded that there was no meaningful difference between the two experts as to the use of a kick not being an appropriate method of physical reprimand to modify an animal's behaviour.
69. The Committee considered the specific evidence of the actual kick administered by Mr Hutton to Angel and it did not consider physical reprimands more broadly. In addition the Committee did not consider that it was bound to find any kick was 'far below' the standard expected of veterinary surgeons simply because it rejected the kick as immediate and instantaneous. The Committee was careful to consider all the circumstances around the kick itself and any justification given for it.
70. The Committee accepted the submission that there was no evidence of Mr Hutton having used or being trained to use a kick as a physical reprimand generally. There was no allegation that he had ever used a kick before. The Committee were solely focussed on the appropriateness of the kick delivered in this single instance.
71. The Committee accepted that it was entitled to take into account mitigating factors around the incident, which were not purely personal in nature, in deciding whether conduct was 'disgraceful conduct'. The College's guidance set this out in terms.
72. The Committee accepted that the kick was an isolated incident. It took into account the testimonials provided which indicated that Mr Hutton is capable of dealing with horses, including those with difficult temperaments, very well.
73. The Committee also took into account that the incident occurred within a very short space of time, although it did not find Mr Hutton's reaction had been instantaneous, and therefore it was not 'instinctive'. The Committee considered that, as the professional, it had been incumbent on Mr Hutton to address any issues which affected his ability to treat Angel safely and appropriately.
74. The Committee accepted the view from the experts, that there was no reasonable body of veterinary opinion in support of the use of a kick as a physical reprimand. It took into account that no physical harm had actually been caused to Angel.
75. The Committee took into account the following provisions of the RCVS Code of Professional Conduct:

- a. *Principle 1.1: Veterinary surgeons must make animal health and welfare their first consideration when attending to animals.*
- b. *Principle 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.”*

76. The Committee took into account that no expert evidence was provided in support of a professional rationale for the application of a kick as a physical reprimand. Despite the lack of physical harm to the animal, the Committee accepted Mr Gliddon’s evidence of potential risk of mental harm to the animal, albeit that he had not been able to refer to any particular literature.
77. The Committee noted the evidence that there was a potential risk to the animal’s physical and mental welfare and it was satisfied that the kick had not been in the interests of the welfare of the animal. It noted that Mr Hutton had accepted that he would now no longer repeat such an action. The Committee also noted that, even in the case of physical reprimands, the experts agreed that there was no body of opinion in support of kicking. The Committee concluded that Principle 1.1 had been breached.
78. The Committee accepted Mr Gliddon’s opinion in his report that it is important for professionals dealing with horses to set a good example, because their behaviours can significantly influence how others behave around horses. It took into account that there was no suggestion of Ms A’s consent having been obtained prior to this physical action.
79. The Committee took into account that Mr Hutton had taken the decision to kick Angel when he himself was no longer in danger. It was neither necessary nor unavoidable as an action. He had apparently formed a view as to the horse’s malicious intent, but not considered alternative reasons for its behaviour, such as pain or anxiety. Mr Hutton now accepts that he acted inappropriately and would not do so again. The Committee determined that, whether it had been caused by Mr Hutton’s “*emotional haze*”, or an intention to reprimand, there had been no justification for Mr Hutton to kick Angel as he had.
80. The Committee took into account that this act took place in front of Ms A, Angel’s owner, who had been distressed. It considered that other members of the public would also be concerned at witnessing or learning of this conduct. Therefore, the matter also affected public confidence in the profession.

81. The Committee determined that taking all the circumstances and its findings into account this conduct was a single, but serious failure on the part of Mr Hutton. Taking into account the discussion of disgraceful conduct in the College's guidance document (*Disciplinary Committee Sanctions Guidance for Veterinary Surgeons cases (Aug 2020)*) the Committee determined that this had been conduct which "*fell far short of that which is expected of a member of the veterinary profession*": *Macleod v RCVS* PC 88 of 2005.
82. The Committee found the facts proved amounted to Disgraceful Conduct in a Professional Respect.

Disciplinary Committee

23 February 2023