1. This is the Committee’s decision on whether the conduct we have found proved against the Respondent makes him guilty of disgraceful conduct in a professional respect.

2. The constraints of time mean that this Decision will be shorter than would ordinarily be the case. However, we consider that the reasons set out below properly and sufficiently identify the basis of our decisions in relation to each of the Charges which we have found proved.

3. In accordance with the advice of the Legal Assessor, the Committee is required to make a judgement about this matter in the light of its findings, considering the nature and duration of the conduct in those Heads of Charge found proved against the Respondent, but without reference to matters of purely personal mitigation. The Committee has also taken note of the content of the DC Procedure Guidance September 2013 and the Manual of September 2013.

4. The Committee has proceeded on the basis that conduct is disgraceful in a professional respect when it falls far short of that which is to be expected of a member of the profession. In adopting this approach the Committee has examined the issue of whether the Respondent’s conduct in relation to the facts found proved on each of the remaining Charges amounts to serious professional misconduct and declined to reach such a conclusion where it is not so satisfied.

5. The Charges relate to 4 sets of conduct which extend over a period of 3 years, relating to 9 work colleagues and 5 sets of clients and their animals.

6. We shall now set out our decisions on disgraceful conduct in relation to each of the Charges, the facts of which we found proved. As can be seen we have viewed the conduct in relation to each separately and reached a separate finding on each. We have then proceeded to consider the issue of whether any of the other facts pertaining to those charges which, when viewed separately, do not in our judgement warrant a separate finding of disgraceful conduct/serious professional misconduct, to see whether we judge that those facts and that conduct merits a finding of disgraceful conduct in a professional respect/serious professional misconduct having regard to their cumulative effect on this issue.

7. Charges C1, C3 and C4: We have reached the same conclusion as Ms Ding on each. In our judgement the facts identified and found proved in each of these Charges warrants a finding of disgraceful conduct in a professional respect. We confirm and rely on the points made by Mrs Ding in her report and in her oral evidence in support of our conclusions in these respects.
8. Charge C1: As we set out in Paragraph 78 of our Findings of Fact Decision, we find that in relation to Charge C1, Mr Porter conducted himself on this occasion in a manner that the veterinary nurse attending on him considered ‘shocking’. This Committee also finds the failure of Mr Porter to scrub-up shocking and a total failure to following basic hygiene standards. Such an approach to preparations to surgical procedures clearly falls far below the standard to be expected of a competent veterinary surgeon.

9. Charge C3: Mr Porter’s conduct referred to in Paragraphs 89, 94-95, 97 and 98-99 of our Decision, and our Addendum Decision at Paragraph 41, further serves to confirm, in our judgement that Charge C3 amounts to disgraceful conduct in a professional respect. It was Mr Porter’s undoubted duty as a veterinary surgeon to fulfil the requests of a client that his dog be put to sleep, especially when the client was distressed by his dog’s unhappy state. The refusal by Mr Porter to assist resulted in further distress to the client, Mr Kitching, who was thereby compelled to seek an alternative veterinary surgeon very shortly before ordinary closing time. The prospect of having to extend the period of his dog’s distress over a weekend and of having to witness his dog’s paralysis and loss of bodily functions would have been a wholly unacceptable burden to inflict on a client. As we have found Mr Porter was motivated instead by his desire to avoid having to euthanase this dog and, so, he put his personal wishes before his duty to his client. We consider this to be a serious dereliction of duty by a practicing veterinary surgeon.

10. Charge C4: We have found at Paragraph 108 that this rabbit was not sedated or given an anaesthetic. We have also found that the rabbit gave a distressed scream as a result of Mr Porter’s treatment of it. We concur in the view given by Mrs Ding that this rabbit should not have had a gag inserted into its mouth without a prior administration of a sedative or an anaesthetic. To fail to take either of these steps or to provide the client with the option of either was to be guilty of conduct which falls far short of that to be expected of a reasonably competent veterinary surgeon.

11. Charge C2: Whilst the Committee is assisted by the opinion of Mrs Ding on this charge, we have also relied on the experience of the Veterinary Surgeon members of the Committee. In the Committee’s judgement we find that Mr Porter’s actions constitute conduct which falls far below that to be expected of a reasonably competent Veterinary Surgeon, for the reasons set out in our Findings of Fact Decision. We refer in particular to Paragraphs 82 – 87.

12. We have reflected on the passage in Mrs Ding’s expert witness report at HB16 – 6, paragraph 13 where she states “Some animals can be reluctant to have their ears handled or cleaned, especially if they have previously experienced problems. By causing this dog pain Mr Porter’s actions may have made it much more difficult to treat any future ear conditions in this animal”.

13. The Committee notes the potential for harm to any dog if unseen ulcerated areas of the ear canal come into contact with surgical spirit. Serious damage and pain can also result if the ear drum is perforated. The Committee’s view is that what Mr Porter did on this occasion is absolutely unacceptable. No dog should, in our view, be placed at risk of potential further injury to the ear by the insertion, deep into the ear, of undiluted surgical spirit. We also consider that Mr Porter’s conduct raised a very real risk that the dog might react violently and bite the assistant who was holding the dog at the material time. There can, in our view, be no warrant for taking the steps taken by Mr Porter and that his standards of treatment on this occasion fell far below that to be expected of a reasonable veterinary surgeon.
14. Charge C5ii: The Committee has considered the opinion of Mrs Ding as set out at HB 16-10, paragraph 38. She there states that she considers Mr Porter’s actions regarding advice and/or instructions on follow up care for the Foster kitten to be moderately below the standards expected of a reasonably competent Veterinary Surgeon. We refer to our Findings of Fact Decision, particularly paragraphs 117 – 121 and concur with the opinion expressed by Mrs Ding. Accordingly, we hold that we do not consider that this conduct amounts to disgraceful conduct in a professional respect.

15. Charge B: We have set out our findings of fact on this Charge at Paragraphs 67 to 71, 73 and 75-76 of our ‘Decision on Findings of Fact’. We consider that, whilst Mr Porter’s conduct was unacceptable conduct, we are not satisfied that this conduct falls far below the standard required. This is not a case where Mr Porter walked off the job leaving the practice and waiting clients in the lurch. We consider that his conduct is reprehensible and he ought to have fulfilled this roster obligation. He aggravated his failure to fulfil a contractual duty by threatening litigation but we are not persuaded, albeit only by a small margin, that this conduct falls far below that to be expected of a veterinary surgeon.

16. Charge D: Our view is that Mr Porter’s conduct does constitute disgraceful conduct in a professional respect. Indeed we consider his conduct which relates to these two sub-charges constitutes a very serious breach of his professional obligations to his regulatory body. We also consider that Mr Porter has a full understanding of why it is necessary for a veterinary surgeon to supply his regulatory body with accurate, up-to-date and effective contact addresses or other means of effective communication so that the RCVS can fulfil its investigatory and policing obligations in order to ensure that the interests of animals and of the public in the activities of the profession are properly maintained and enforced.

17. Charge Di: The gravamen of Mr Porter’s failures lies in the many difficulties that were occasioned to the College when it sought over the period from 7 February 2013 to 21 December 2013 to effect service on him when setting out its requests for responses to the investigatory questions which the complaints which had been received against Mr Porter necessitated. The obligation upon Mr Porter to provide an address for service of the documents from the RCVS, as we have already pointed out in our earlier decisions, is clear – see paragraph 5.4 of the 2012 Code.

18. We have also had regard to our findings as set out in our ‘Decision on Findings of Fact’ at paragraphs 137 to 140. It follows that we are sure that Mr Porter’s failure to respond adequately to communications from the RCVS was the result of a decision on his part not to provide a consistent method of communication to the College and of not responding to the College’s request for information. This was a decision which was reached in an attempt to avoid and delay answering the requests for the provision of information, being requests which he undoubtedly had received. Accordingly, this was a conscious and deliberate decision arrived at by Mr Porter which was persisted in over an extended period of time.

19. We have already found in our ‘Decision for proceeding in the absence of the Respondent’ that Mr Porter maintained a like stance when the point came when he was served with Notice of this Inquiry. Even at that late stage Mr Porter was seeking to evade service by maintaining that he had not received documents at addresses that he had provided to the College as being his relevant address, his current email address and his current mobile telephone number. We have previously found and we continue to hold to the conclusion that Mr Porter’s conduct in this
connection establishes a pattern of behaviour by him over an extended period of time whereby he has sought to manoeuvre himself into a position whereby he would provide no responses to the Colleges enquiries and requests whilst he proceeded to advance his own allegations against members of the college staff and other complainants – see paragraphs 10 and 14 of our above-mentioned Decision.

20. We are obliged to note that even now Mr Porter is refusing to provide an address for receipt of communications from his governing body and has been asserting that he will not accept telephone communications because he wanted “proof in my hand” - see his document at E6 23-161, paragraph 4. Further, he stated yesterday before this Committee that he was using 3 email addresses at the current time but had not received “anything for three months”. We find that statement unbelievable but, more importantly, it confirms that it is Mr Porter’s approach that it is open to him to dictate how and when he will receive communications from his regulatory body.

21. We consider that it is wholly unacceptable for a member of the veterinary profession to adopt such a stance for, if others were minded to follow suit, the duty of maintaining the integrity of the Register and of policing the conduct of veterinary surgeons in the interests of the public and of animal welfare would become unmanageable, if not impossible. Mr Porter’s stance is entirely incompatible with good governance of the members of the members of the veterinary profession. We have no hesitation in concluding that Mr Porter’s conduct in this respect, being the result of a conscious and deliberate decision on his part, constitutes serious professional misconduct in that it falls far below the standard to be expected of a competent and responsible veterinary surgeon.

22. Charge Dii: Our findings are set out in paragraphs 143 and 146 of our ‘Decision on Findings of Fact’. We consider these to be both material and significant to our decision as to whether the facts pertaining to this charge constitute disgraceful conduct in a professional respect. We have found that, even at the commencement of this Hearing, save in relation to the production of his Bachelor of Veterinary Science Certificate from the University of Pretoria, Mr Porter had not provided any documentary proof of the other registrable qualifications which he has asserted in his CV that he had gained. Even today, at the conclusion of this Hearing, Mr Porter has not provided any documents to support his assertion that he secured a BSC and/or DVM degree.

23. Mr Porter’s contention in his submissions is that he had provided such documentation on some unidentified occasions in the past to the College. We are of the view that, even if he had provided such documentation in the past, that is and can be no answer to his failure to provide them in response to the specific request made of him by the College during the period covered by this charge namely from July 2014.

24. As regards the claims he makes in his CV it remains the case today that no documentary evidence has been provided to support many of the claims that he has made in that document concerning the courses he has attended. In short, it has not been possible for the College to carry out an audit of his clinical experience.

25. Again, we consider it to be wholly unacceptable for a veterinary surgeon to fail to cooperate with its regulatory body over such an extended period of time in relation to wholly legitimate requests for confirmation of the claims made in a practising professional’s CV. The need for the College to be able to obtain such confirmation is obviously necessary in order to protect the interests of the public and animals in ensuring that those professionals who claim particular
qualifications or experience have indeed secured those qualifications or that experience. In
addition members of the veterinary profession are entitled to be able to place confidence in the
fact that their regulatory body has secured confirmation of such qualifications or experience
when they are considering employing a veterinary surgeon or agreeing to work alongside a
veterinary surgeon, particularly when operating on animals and particularly when operating on
animals in emergency situations.

26. We consider that the requests made of Mr Porter by the College are essential for securing the
integrity of the RCVS register and the obligation on the College to set and maintain standards
and occupational competence of those practising as veterinary surgeons.

27. We are additionally satisfied that Mr Porter also understands the importance of the regulatory
role of the College and its ability to make contact with its members, for he has sought to deploy
the investigatory powers of the College in relation to those many instances where he has been
minded to lodge complaints against other veterinary surgeons. It was his expectation that the
College’s investigatory powers would be exercised and effective addresses for service of such
documents as the College might demand of those against whom he complained would be an
essential part of an effective investigatory process. As we found previously, we are satisfied
that it was part of Mr Porter’s ‘plan’ that he would require the College to investigate his
complaints before he would contemplate responding to the College’s investigation of the
complaints made against him, Mr Porter.

28. It is these factors that have driven the Committee to the conclusion that the facts set out and
found proved in relation to Charge Dii most certainly amount to disgraceful conduct in a
professional respect.

29. Charges A1 – A4: Mrs Ding has not expressed an opinion on these charges.

30. Charge A1: We refer to the contents of Paragraphs 38 to 42, 44-45 and 46 of our ‘Decision on
Findings of Fact’ in this regard. The obligation on Mr Porter to foster and endeavour to
maintain good relationships with professional colleagues and not to speak disparagingly about
another veterinary surgeon is set out in the 2010 Guide. The effect of his conduct and the
aggressive manner in which he spoke on this occasion to Ms Walker was considerable. Even
the robust Mr Bentley was taken aback by the vehemence with which Mr Porter responded to
his request that he leave the practice.

31. We are therefore satisfied that Mr Porter’s responses on these occasions were both
unwarranted and wholly unacceptable and they constitute clear breaches of the 2010 Guide to
Professional Conduct in the respects we have identified in our above-mentioned Decision.

32. Charge A2: Our views and findings in relation to this Charge are set out in Paragraphs 53, 54
and 55 of our ‘Decision on Findings of Fact’. What we find concerning about Mr Porter’s
conduct on this occasion is that he was shouting out his views in the presence of a junior
member of staff. Such members of staff would rightly and properly have expectations that a
professional person would set a good example as regards behaviour in the workplace. It is our
view that Mr Porter’s conduct on this occasion, when making allegations of widespread
untrustworthiness on the part of fellow professionals and practice managers with whom
veterinary surgeons regularly work, fell far below that standard of behaviour properly to be
expected of a responsible veterinary surgeon.
33. Charge A3: As set out in Paragraph 61 of our ‘Decision on Findings of Fact’, we heard the tape recording of the telephone conversation in question and have been able to judge for ourselves the tone and manner in which Mr Porter expressed himself to Ms Fiorani, the practice manager of the Clent Hills Veterinary Group. He had clearly decided that he was not going to undertake any out of hours work and he was intent on a path of compelling Ms Fiorani to accept his refusal. There was no call for his approach. His disagreement with Ms Fiorani could have been dealt with in a sensible and rational exchange. Instead Mr Porter adopted a tone and manner which was very aggressive. We consider that his behaviour on this occasion was behaviour which fell far below the standard of behaviour properly to be expected of a responsible veterinary surgeon.

34. Charge A4: Our findings of fact are clearly set out in Paragraph 66 of our Decision. Such an outburst should not have occurred at a Tribunal Hearing. However, we accept that Mr Porter’s reaction was probably brought on in the heat of the moment and his disappointment at the ruling of the Employment Tribunal Judge. Accordingly, we do not consider that, when viewed separately and in isolation, such conduct on the part of a veterinary surgeon (as opposed to, say, a lawyer) constitutes disgraceful conduct in a professional respect.

35. Our conclusions on disgraceful conduct in a professional respect in relation to the separate parts of Charge A are, therefore, that when viewed separately and independently Mr Porter is guilty of disgraceful conduct in a professional respect in relation to the findings of fact made by this Committee on sub-charges A1, A2 and A3. If and when viewed in combination our decision on disgraceful conduct in a professional respect is reaffirmed. We are also of the view that the finding we should make in relation to Charge A4, when viewed cumulatively with the conduct found proved in relation to charges A1, A2 and A3, is that Mr Porter is guilty of disgraceful conduct in a professional respect in relation to all elements of Charge A. We are reinforced in this view when having regard to the fact that Mr Porter’s behaviour in these respects reveals a course of conduct and of unconstrained behaviour and language by him over a substantial period of time, and behaviour which was directed towards both fellow veterinary surgeons and subordinate members of staff.

Conclusion

36. We find that Mr Porter has been guilty of disgraceful conduct in a professional respect on Charges A1 to A4, C1, C2, C3 and C4, Di and Dii. Based on the views taken on these Charges, which it has explained above, the Committee has no hesitation in finding the Respondent guilty of conduct that was disgraceful in a professional respect. It follows that the Committee absolves Mr Porter of disgraceful conduct in a professional respect on Charge B and C5ii.

DISCIPLINARY COMMITTEE
6 OCTOBER 2015