

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

DAVID EDWARD SMITH MRCVS

**DECISION ON PROCEEDING IN ABSENCE AND ON
DISGRACEFUL CONDUCT AND FITNESS TO PRACTISE**

Proceeding in Absence

1. At the outset of the hearing today the Committee was told that Mr Smith would not be in attendance. The Committee was given a copy of an email that Mr Smith sent to the College this morning, 13 March 2017, letting the College know he would not be attending today.
2. Counsel for the College invited the Committee to proceed in Mr Smith's absence.
3. The Committee considered the contents of that email carefully. It noted that Mr Smith did not ask for an adjournment and made reference to the fact that it was "now time for me to retire and move on...."
4. Mr Smith was in attendance when the decision of facts was handed down and the case was adjourned part heard so that parties could attend to make submissions in respect of this stage of the proceedings.

The Committee took account of the advice of the Legal Assessor who referred the Committee to the factors considered in the case of R v Jones and the case of Adeogba v GMC and in particular the observation of Sir Brian Leveson;

"Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

5. The Committee took into account that Mr Smith is aware that the Committee has the power to proceed in his absence as this was a matter highlighted to him earlier in these proceedings.
6. The Committee was of the view that there would be no useful purpose in adjourning the case as there was no guarantee that Mr Smith would attend another day given his views expressed in the email. Additionally, Mr Smith is fully aware of the nature structure and timing of these proceedings. Despite being encouraged by the Chair to remain throughout he has consciously absented himself from key parts of the process. The Committee therefore decided that it was appropriate and in the interests of justice to proceed in Mr Smith's absence.

Determination on Disgraceful Conduct in a Professional Respect and Unfitness to Practise

7. The Committee accepted the test for considering disgraceful conduct in a professional respect is as set out by the Legal Assessor, namely whether the conduct falls far short of that which is expected of a member of the veterinary profession. In respect of the conviction the Committee also went on to consider whether that conviction rendered Mr Smith unfit to practise as a veterinary surgeon.
8. The Committee noted that it was entitled to take into account the aggravating and mitigating factors in the case provided they did not amount to personal mitigation. The question of whether conduct amounts to disgraceful conduct in a professional respect is a matter of judgement for the Committee, not a matter which is to be decided on a burden or standard of proof.
9. In coming to its decision, the Committee took into account the submissions of Counsel for the College. Although Mr Smith was not here the Committee carefully considered the detailed submissions which Mr Smith made earlier in these proceedings. Those submissions were also in writing and the Committee reviewed them again. It also took into account and read all the testimonial evidence that Mr Smith provided to the Committee following the findings of fact the day before.
10. Counsel for the College invited the Committee to find that the facts found proved amounted to disgraceful conduct in a professional respect and that Mr Smith's conviction renders him unfit to practise.
11. Mr Smith in his email to the College stated that he was disappointed with the Committee's findings on fact. He stated that he gave " a simple and correct version of events and (had) no reason to be untruthful". It was clear from his oral submissions in respect of the criminal conviction that he continues to believe he is innocent. The testimonials he provided to the Committee are from friends and clients and many were prepared for sentencing in the Crown Court. The Committee determined that these documents were not relevant to its consideration at this stage in relation to charges A-

E that were found proved. The Committee did take them into account when considering whether Mr Smith's conviction rendered him unfit to practise.

12. The Committee had regard to the legal advice and it also took into account the Code of Professional Conduct for Veterinary Surgeons (the Code) together with the Supporting Guidance provided by the RCVS. The Committee took into account aggravating and mitigating factors relevant to the conduct found proved in Charges A-E. It considered separately whether the conviction in Charge F rendered Mr Smith unfit to practice veterinary medicine.
13. In considering whether the conduct amounted to disgraceful conduct in a professional respect the Committee had regard to the public interest which includes protecting the health and welfare of animals, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.
14. The Committee also accepts that not every breach of the Code amounts to disgraceful conduct in a professional respect.
15. The Committee considers that the following paragraphs of the Code of Professional Conduct for Veterinary Surgeons had been breached by Mr Smith:
 - 1.1 *veterinary surgeons must make animal health and welfare their first consideration when attending to animals.*
 - 1.3 *Veterinary Surgeons must provide veterinary care that is appropriate and adequate*
 - 1.4 *Veterinary Surgeons in practice must take steps to provide 24 hour emergency first aid and pain relief to animals according to their skills and the specific situation*
 - 1.5 *Veterinary Surgeons who prescribe, supply and administer medicines must do so responsibly.*
 - 2.5 *Veterinary surgeons must keep clear, accurate and detailed clinical and client records*
 - 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*

The Committee also took into account the Supporting Guidance to the Code provided by the RCVS, in particular:

Chapter 3:

3.3 Veterinary Surgeons in practice are required to take steps to provide 24 hour emergency cover.

3.4 This does not mean that veterinary surgeons must personally provide the service They are however required to ensure that when off duty, or when otherwise unable to provide the service, clients are directed to another appropriate service.

Chapter 4:

4.3 Veterinary Surgeons ... should prescribe responsibly and with due regard to the health and welfare of the animal.

Chapter 13:

13.1 Clinical and client records should include details of examination, treatment administered, procedures undertaken, medication prescribed and/or supplied, the results of any diagnostic or laboratory tests ..., provisional or confirmed diagnoses and advice given to the client.

16. The Committee considered Mr Smith's whole approach to the horse, Grace, was incomprehensible. The Committee was of the view that a reasonably competent veterinary surgeon would have undertaken a range of examinations as expressed in the expert evidence. If Mr Smith knew at the outset that Grace was very ill, his failure to ensure that Grace was properly cared for, either by himself or another veterinary surgeon only serves to compound the total lack of care that was given to Grace and his indifference to her suffering.

17. Mr Smith should have told the owner that Grace was dying. If he was not sure what the potential diagnosis was he should have done everything reasonable to try and get a diagnosis or, if there was unavoidable suffering he should have advised and carried out euthanasia. The Committee has found that Mr Smith only took Grace's temperature. His inaction led to the unacceptable suffering of Grace. He further failed to provide any ongoing care for Grace.

18. The Committee accepts that often it is not always possible to arrive at the correct diagnosis. However, Mr Smith had 4 telephone calls from Mrs Hammant over a number of hours and the picture she was describing was that of a deteriorating animal. He made no efforts to have someone other than himself attend. He told Mrs Hammant to "stop fussing", which demonstrates a dismissive and condescending attitude. He could have advised her to get a different veterinary surgeon to attend. Mr Smith said to the

Committee; “what could I do?” He should have ensured that Grace was put out of her suffering as soon as possible. The Committee had no hesitation in finding his conduct in relation to his care of Grace was disgraceful in a professional respect.

19. Mr Smith failed to recognise that he was not competent to deal with the case of the cat Maisey in that he lacked the basic and fundamental ability to read a radiograph which was clearly demonstrated in his answers to questions before the Committee. In oral evidence he continued to maintain there was no loss of serosal detail and he continued to state in oral evidence that he could see a mass on both radiographs. This was despite the fact that he had written to the College stating that this could not be viewed on an X-ray. As confirmed by the expert witness Mr Peck MRCVS such a mass cannot be seen on either X-ray and neither could it be seen by the Committee.
20. The Committee also thought that it was an aggravating feature in the case of Maisey that Mr Smith did not use the diagnostic facilities that were available to him at his Practice to assess her. He did not ask colleagues for advice. Mr Smith took inadequate action for a period of almost 2 weeks and thus failed to prevent actual harm and suffering to Maisey.
21. The Committee was particularly appalled with Mr Smith’s treatment of Maisey for diabetes mellitus without undertaking the minimum investigation required to achieve such a diagnosis and without taking a blood glucose test. In his evidence he accepted that he was not familiar with the diagnosis of diabetes. In oral evidence Mr Smith stated that he was not treating Maisey for diabetes but giving her a little dose of insulin which he stated would not do her any harm. He gave anecdotal evidence about how hyperglycaemia affects humans. The Committee considered that it is a fundamental aspect of veterinary medicine to seek a proper diagnosis of diabetes mellitus before instituting insulin treatment and properly informing the owner about how and in what circumstances to administer the insulin. Mr Smith displayed a total lack of understanding of the effect that stress, alone or in combination with the corticosteroid Depo Medrone having been given, could have on blood glucose levels. By insisting on using only insulin Mr Smith deprived Maisey of receiving appropriate care or indeed pain relief. As Mr Smith said in evidence he “doesn’t do diabetes himself”. He utterly failed to recognise his own limitations. Mr Smith’s conduct in relation to his care of Maisey was disgraceful in a professional respect.
22. The Committee has already found that Mr Smith acted dishonestly in seeking to mislead the RCVS in his written communication as to who was the veterinary surgeon treating Maisey on 6 November 2014. The Committee considered that he was clearly seeking to deflect attention from himself and implicate a junior veterinary surgeon. The Committee found this to be particularly abhorrent as he was seeking to put a junior colleague under possible investigation by her Regulator. Such conduct in the Committee’s view is disgraceful.

23. In respect of Mr Smith's care of Poppy the dog, the Committee considered that after the second call from Ms Vines it was essential that she should have been advised to take Poppy to a veterinary surgeon. On this second occasion it was clear that there had been a deterioration in Poppy's presentation as described by Ms Vines.
24. The facts of this Charge also demonstrated Mr Smith's dismissive attitude over the telephone to Ms Vines' concerns. Mr Smith failed to take account of the fact that this was a dog with a serious underlying health condition. He failed to take account of the immediate history being provided and he sought to blame the owner for his own failures. Again the Committee was of the view that Mr Smith's care or the lack of care to Poppy was far below the standard of a veterinary surgeon and amounted to disgraceful conduct in a professional respect.
25. The Committee considered the record keeping failures together. It accepts that a single isolated failing to record might be below the standards that are expected of a veterinary surgeon but would not amount to disgraceful conduct in a professional respect. Mr Smith's record keeping failures were sustained and repeated. An aggravating feature of this case was the fact that he was the principal practitioner who should have set a good example to more junior veterinary surgeons. The Committee was of the view that Mr Smith's attitude to his professional obligation to keep notes can only be described as disgraceful.
26. In the case of Grace there was no written record of the attendance of Mr Smith on Grace on 14 August 2014 and there were no notes of the fact of her demise either. It is also of concern that legislation for the prescribing of prescription only medications such as antibiotics requires recent clinical knowledge of the individual animal and effective recording. Mr Smith did neither.
27. The Committee accepts that on occasions there may be 2 sets of notes for one animal in a Practice. However, in the case of Holly the birth and registration date were different. For Holly the lack of records put the subsequent treating veterinary surgeon in a difficult position in not knowing which medications or dosage were used in the previous operation. The lack of such detail had the potential to compromise the care of Holly the dog. This lack of recording in Mr Smith's notes may have been explained in part because he would permit unqualified staff to make decisions about what medications including prescription only drugs, were prescribed and dispensed to the animals post operatively.
28. In respect of the records kept for Maisey the Committee was appalled. There was no history recorded and key information was missing. The notes also demonstrate totally irresponsible prescribing of two prescription only medications. Depo Medrone was administered without proper investigation by Mr Smith. Caninsulin was prescribed having disregarded the history given by the owner in particular that Maisey was at that time not eating and when a diagnosis of diabetes mellitus had not been properly established.

29. The records for Comet were totally inadequate. In evidence Mr Smith said all he did was the remedial operation. There were no complete or contemporaneous notes about the remedial operation. The notes that were there were written a week later by a receptionist. Again no detail of any medications were recorded.
30. Mr Smith's attitude to record keeping in oral evidence demonstrated a disregard for his Regulator describing it as having a "mania" for record keeping. When it was pointed out to him that the date for Comet's operation was incorrect he replied that dates do not matter. He failed totally to see how clinical notes are important and how the lack or inadequacy of them impacts on the care and welfare of animals.
31. The Committee accepts that if a veterinary surgeon is on duty over a weekend that it may not be practicable in every case to write or make a note. However, in the case of Poppy the Committee considered that by not making available information about the contact he had had with Ms Vines, Mr Smith's conduct had fallen seriously short of the standards expected of a veterinary surgeon. He was working a split shift, the health of Poppy was deteriorating and the veterinary surgeon taking over would need to know what had happened without relying on the client. Mr Smith stated he did not think the dog was serious enough to be seen, otherwise he said he would have told Ms Vines to come in to the surgery. However, by this time he had been told that the dog's condition had seriously deteriorated.
32. Having regard to the matters set out above the Committee considers that, taking the charges individually and in combination, Mr Smith's conduct has fallen far short of the standard expected of a member of the veterinary profession and his conduct clearly amounts to disgraceful conduct in a professional respect.

The Conviction

33. The Committee went on to consider whether the conviction renders Mr Smith unfit to practise. The Committee took into account the testimonials that were provided to it by Mr Smith. It is clear from those letters and having read the sentencing Judgment, that Mr Smith has numerous friends and supporters. They speak only to what they consider to be their own particular interests and this Committee must balance those views with its role in protecting the health and welfare of animals and the reputation of the profession.
34. This conviction is for a serious offence involving dishonesty which was sustained over a significant period of time (2008 to 2012). The Committee was particularly concerned because the dishonesty went to the heart of Mr Smith's responsibilities as a veterinary surgeon. His registration as a veterinary surgeon enabled him to take part in the conspiracy, and that role involved him conducting certified examinations on animals and supplying drugs for administration to animals. The dishonesty involved false certification. Reliable and honest certification is a vital element of the veterinary surgeon's public role. The conviction evidence also involved Mr Smith being dishonest

about his provision of drugs and disregarding the important legal requirement for accurate record keeping in the provision of drugs.

35. Mr Smith was described by the Judge as playing 'a key role', without which the conspiracy could not have succeeded. The Judge observed that the involvement of a dishonest vet was essential to the success of the conspiracy. It was at the heart of the conspiracy. The dishonesty involved a breach of trust, namely the trust placed in him as a veterinary surgeon by the purchasers who paid his fees for the examinations. The Judge also said that "it put the lives and safety of riders – often children – and of the horses at risk. 'It was cruel. Several of the horses had to be destroyed'. 'One horse bolted onto a main road where there was traffic ... and several of the horses had to be put down".
36. The conduct for which Mr Smith was convicted breached numerous aspects of the Code: making animal welfare the first consideration, ensuring that all animals are treated with humanity and respect, fostering and maintaining a good relationship with clients and earning their trust, upholding the good reputation of the veterinary profession, ensuring the integrity of veterinary certification and understanding and complying with legal obligations in relation to the prescription and supply of veterinary medicinal products.
37. The Committee concluded that the conviction brings the veterinary profession into disrepute. The facts of the case demonstrated a total abrogation of Mr Smith's professional responsibilities which are to protect the health and welfare of animals maintain public confidence in the profession and declare and uphold proper standards of conduct and behaviour. The Committee considered that Mr Smith's conviction renders him unfit to practise veterinary surgery.

DISCIPLINARY COMMITTEE
14 MARCH 2018