Disgraceful Conduct

1. The Committee must now decide as to whether, on the basis of the facts found proved or admitted, the Respondent is guilty of disgraceful conduct in a professional respect. The Committee has received submissions from the College as to what constitutes disgraceful conduct in a professional respect, and has received the advice of the Legal Assessor. The Committee accepts the submissions of the College in this regard, and the advice of the Legal Assessor. The Committee proceeds on the basis that disgraceful conduct in a professional respect means conduct which falls far short of that to be expected from a member of the veterinary profession, or conduct which constitutes serious professional misconduct.

2. The question as to whether the Respondent has been guilty of disgraceful conduct is a matter for the professional judgement of the Committee.

Charge 1

3. Charge 1(A) provides that between 1 July 2016 and 31 August 2017 the Respondent practised as a veterinary surgeon in the United Kingdom when she was not registered with the College to do so, in relation to locum work at six veterinary practices during this period. This Charge is admitted in its entirety. The Committee has found that the Respondent’s conduct in relation to this charge was objectively misleading to the Respondent’s employer and or clients at the relevant practices. The allegation of dishonesty was found not to be proved. The Committee considered that the
Respondent’s approach to her registration status was careless, but the Committee did not consider that it was intentional or deliberate, and did not consider that it was motivated by financial gain. The Committee also found that the Respondent freely provided her RCVS registration number to all the practices at which she worked.

4. The Committee found that the primary responsibility for transparency on registration status lay with the Respondent. The College submitted that the carelessness of the Respondent in relation to her registration status was not acceptable and amounted, on any view, to a serious departure from an acceptable standard of professional conduct. It submitted that registration is a fundamental aspect of regulation and all registrants, including the Respondent, have an obligation to ensure that they are properly registered. Counsel for the Respondent accepted that it was the responsibility of the Respondent to register correctly, but stressed that there had been no intention to mislead in this case, and that her conduct amounted to an oversight due to youth and inexperience. He submitted that there was no detriment to employers or clients as a result of the Respondent’s conduct. There was no risk of loss, or any actual loss, as a result of the Respondent’s actions.

5. Counsel for the College referred the Committee to the case of Nandi v. General Medical Council (2004) EWHC (Admin), to the effect that serious professional misconduct may take the form, not only of acts of bad faith or other moral turpitude, but also of incompetence or negligence of a high degree. The Committee was also referred to the case of R (Calhaem) v General Medical Council (2007) EWHC 2606(Admin), in which it was stated that mere negligence does not constitute “misconduct” under the Medical Act, but, nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to “misconduct”. It was also stated that a single negligent act or omission is less likely to cross the threshold of “misconduct” than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission if particularly grave, could be characterised as “misconduct”.

6. The Committee considered this matter in the light of these authorities. The Committee accepted that the Respondent’s conduct was not intentionally misleading. The Committee, taking the evidence as a whole, considered that the Respondent’s objectively misleading behaviour in relation to her registration status amounted to professional misconduct. This is because the Committee had no doubt that it was the responsibility of the Respondent to ensure that her registration status was accurate at the material time. However, in the judgement of the Committee, her conduct was not sufficiently serious or grave so as to constitute disgraceful conduct in a professional respect. In reaching this decision, the Committee considered the following factors: the fact that the Respondent had not acted dishonestly for the reasons stated in the Decision as to Facts, and the lack of intention to mislead. The Respondent had been consistent in providing her employers with her correct RCVS number, and her registration status had never been queried during the relevant period.

Charge 2
7. Charge 2 provides that between 1 October 2016 and 31 July 2017, the Respondent made posts on social media which included photographs of and/or comments about animals being treated at practices at which the Respondent worked, without the consent of the owner of that animal and/or the practice at which it was being treated, in relation to six separate posts. The Respondent has admitted this Charge in its entirety.

8. Counsel for the College referred the Committee to the relevant provisions of the Code of Conduct for Veterinary Surgeons, as follows:

2.6 Veterinary Surgeons must not disclose information about a client or the client's animals to a third party, unless the client gives permission or animal welfare or the public interest may be compromised;

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 was also referred to the Supporting Guidance, which provided, inter alia, as follows:

28.6.e When using social media, veterinary surgeons should:

maintain and protect client confidentiality by not disclosing information about a client or client's animal which could identify them on social media unless the client gives explicit consent.

9. The Respondent admits that she did not read the Code of Conduct, or the Supporting Guidance at the material time. However, she accepts that she should have done so.

10. The College submits that, even if the Respondent had not considered the Code, the injunctions and prohibitions contained within it are a matter of basic courtesy and common sense. The Respondent has admitted that she was at all material times aware of her obligations to obtain consent from the owners of animals, before taking photographs of them and posting them on social media, together with descriptive text. The College has submitted that the Respondent was on occasion prepared to permit her enthusiasm for her social media activities to override these basic requirements. While some of the owners involved did not mind, the Respondent was not able to tell in advance whether they would or not. The danger of her attitude is demonstrated by the evidence of those witnesses in this case who were very upset, when they learned that their animals had been used for the Respondent's social media purposes – describing their perception of a breach of the trust they had invested in the veterinary practice in question. One of those owners decided not to use the veterinary practice again, a decision which would have financial and potentially reputational consequences for the practice. The College submits that these were serious breaches of the Code and its Supporting Guidance, amounting to a disregard of the interest of the owners and the practice employing the Respondent, in favour of her
own interests. It was also a breach of the trust which the owners, as clients, had placed in the practice.

11. Counsel for the Respondent submitted that it was the usual practice of the Respondent to request consent from the owners. Her posts did not include the names of the owners or their animals. In her oral evidence, the Respondent showed insight in relation to those cases where she had not obtained consent, and the owners had been distressed as a result. She expressed regret that these incidences had occurred. However, Counsel submitted that the Respondent’s conduct was not sufficiently serious to amount to disgraceful conduct in a professional respect.

12. The Committee accepts the submissions of the College in relation to the importance of the relevant provisions of the Code and the Supporting Guidance. The need to obtain client consent to post photographs of animals on social media is obviously necessary in order to maintain and protect client confidentiality, avoid client distress, and maintain public confidence in the profession.

13. The Committee notes that the Respondent was at all times well aware of the need to obtain client consent for her social media activities. She has admitted that she failed to obtain the requisite consent in relation to these six posts, and has apologised for the upset that she has caused to certain clients.

14. The Committee, in its judgement, has concluded that the Respondent’s conduct in relation to Charge 2 did fall far short of the behaviour to be expected of a member of the veterinary profession, and/or amounted to serious professional misconduct. The Committee considers that all members of the profession are obliged to ensure that they comply with the provisions of the Code of Conduct, and the Supporting Guidance, in relation to the use of the internet and social media. Unauthorised posting of photographs of animals being treated by a veterinary surgeon on social media may well cause distress to the owners, and damage to the reputation of the profession as a whole, and to the reputation of individual practices.

Charge 3(i)

15. This Charge involves posting a photograph with accompanying text of a dog “Gandalf”, whilst Gandalf was an inpatient of the Goddards Veterinary Hospital, without the consent of the treating and/or operating veterinary surgeon. This Charge is admitted by the Respondent.

16. The College accepts that this charge does not involve owner consent, but submits that it does involve basic professional courtesy. The College submits that professional courtesy required the Respondent to ask whether she could make the posting in question on social media.

17. The Committee considers that this was, indeed, a matter of professional discourtesy, but does not consider that it amounted to serious professional misconduct.

Charge 4
18. This Charge provides that, in July 2017, the Respondent told Elliot Kirwan that she had obtained the consent of owners of animals to take photographs of them at Barn Lodge and post those photographs on social media when she had not always obtained such consent. The Respondent has admitted this charge and admitted that her conduct was dishonest and misleading.

19. This incident occurred when Elliot Kirwan telephoned the Respondent to enquire whether she had obtained permission from owners to post photographs of patients at Barn Lodge on social media. The Respondent lied in response to that enquiry.

20. The College submits that ‘Honesty and Integrity’ constitute one of the five principles of veterinary practice identified in the Code of Professional Conduct. The Respondent’s professional obligation was to respond to Mr Kirwan’s enquiry honestly and accurately.

21. Counsel for the Respondent submitted that this was an instinctive denial on the part of the Respondent just after she had arrived on a flight to Poland. He said she had panicked when she was suffering from stress. Counsel also submitted that the lie was short lived and not sustained. Counsel submitted that the Respondent had made no financial gain from this dishonesty, and that this was at the lowest level of dishonesty.

22. The Committee, in its judgement, considers that this was a dishonest act on the part of the Respondent, and that by choosing to lie in response to a genuine professional enquiry about her conduct, her behaviour fell far short of that to be expected from a member of the veterinary profession, and constituted serious professional misconduct.

Sanction

23. The Committee next considered what if any sanction to impose. The Committee took account of the submissions made by both Parties. Counsel for the College said that the Respondent had had no previous findings of disgraceful professional conduct made against her.

24. Counsel for the Respondent submitted that under the provisions at paragraph 34 of the Disciplinary Committee Procedure Guidance the Committee should take no further action. He submitted that the finding that the Respondent was guilty of disgraceful conduct in a professional respect was of itself sufficient sanction.

25. Counsel for the Respondent further submitted that;

   a. The Respondent had matured considerably since the misconduct was committed in 2016/17
   b. The investigation and prosecution for the alleged misconduct had taken over a year and a half and that this had been very stressful and not a process the
Respondent would forget. It’s effect was not merely salutary but in itself punitive.
c. There was no risk of repetition of the behaviour

26. Counsel for the Respondent took the Committee to the evidence of the Respondent’s current employer in Warsaw, Nina Stepien, which recounted her very favourable view of the Respondent’s current ethical standards in general and acute awareness of the requirements for consent of owners in relation to postings related to their animals on social media.

27. Counsel for the Respondent pointed to the following features as mitigation in the case, the lack of risk of harm or actual harm to an animal or human, the lack of financial gain by the Respondent, her youth and inexperience at the time of the misconduct, her open and frank admissions at an early stage, her subsequent efforts to avoid repetition (as evidenced by Nina Stepien as described above), the lapse of time since the incident and the Respondent’s demonstration of insight into the effects of her postings on some owners.

28. The Committee was directed by Counsel for the Respondent to the positive evidence in relation to the Respondent’s character and veterinary work given by many of the veterinary surgeons and veterinary nurses who had given evidence in the case including; Agnieszka Fracka MRCVS, Clare O’Dwyer RVN and Austin Kirwan MRCVS as well as Samantha Warren, a Director of Black Rock Vets Ltd. Counsel for the Respondent also referred the Committee to the positive views on the Respondent of several clients who gave witness statements including Nicola Till, Lisa Butler and Ashley Steele.

29. In specific relation to Charge 2 Counsel for the Respondent said that the Respondent accepted that she failed to apply her mind correctly at the time of the misconduct to the interface between her social media activities and her professional conduct obligations. The objectives of the Instagram account were however all legitimate, proper and beneficial including promoting knowledge to veterinary surgeons and animal owners, promoting voluntary work overseas in developing countries, encouraging young female vets within the profession and promoting positive mental health.

30. In relation to Charge 4 the Respondent had accepted and admitted her dishonesty. That position had been taken instinctively in panic and was short lived, not maintained when challenged and not for personal gain.

31. In addition to the comments of Nina Stepien and Agnieszka Fracka referred to above the Committee also read the statements provided by Natalia Libera, Tomasz Iracki, Robert Janiack and Roomy Sooroojibly in support of the Respondent.

32. The Committee was advised by the Legal Assessor that the primary purpose of sanction was not to punish but to ensure the welfare of animals, to maintain public
confidence in the profession, and to declare and uphold standards in the profession. The sanction must be proportionate to the misconduct found and must balance the public interest with that of the Respondent. Account should be taken of the submissions of Counsel and the character references and testimonials provided.

33. The sanctions available should be considered as laid out in paragraph 34 of the Disciplinary Committee Procedure Guidance and in that ascending order of severity. The Committee should first consider no further action and only if that were considered inadequate to achieve the objectives of sanction as laid out above should the Committee move on to consider the other sanctions in order i.e. postponement of judgement for a period not exceeding 2 years, reprimand or warning as to future conduct, direction for suspension from the register or direction for removal from the register.

34. The Committee accepted the advice from the Legal Assessor and noted all the submissions made and evidence submitted in mitigation.

35. The Committee considered that in relation to the aggravating factors listed at paragraph 25 of the Disciplinary Committee Procedure Guidance most of those factors that were present were in reality intrinsic features of the misconduct found i.e. dishonesty in relation to Charge 4 and breach of confidentiality or client trust in Charge 2. Charge 2 did involve conduct that was sustained or repeated over a period of time. There was some evidence of failure to take on board advice for example that provided by Ellie Stock Bishop at Goddards in February 2017 in relation to the issues encountered later (in July) at Barn Lodge.

36. The Committee considered that in relation to the mitigating factors listed at paragraph 26 of the Disciplinary Committee Procedure Guidance the following were present; the postings were an attempt to promote the health and welfare of animals, lack of risk of harm or actual harm to an animal or human, no apparent financial gain by the Respondent, her youth and inexperience at the time of the misconduct, her open and frank admissions at an early stage, her subsequent efforts to avoid repetition, the lapse of time since the incident and the Respondent’s demonstration of insight into the effects of her postings on some owners.

37. In relation to Charge 4 her decision to lie to Elliot Kirwan was one taken at the time without the opportunity for full reflection. The Committee accepted that Charge 4 related to a single and isolated incident and was at the less severe end of the spectrum of dishonesty.

38. The Committee considered the available sanctions in order starting with no further action. The Committee did not consider that this was appropriate where the disgraceful conduct found in this case involved dishonesty, even given the mitigating factors relating to that as outlined above, nor in view of the repeated nature of the social media posts without owner consent.
39. The Committee saw no merit in postponing judgement in this case.

40. The Committee determined that a reprimand and warning as to future conduct was the appropriate sanction in the circumstances of this case.

41. Reprimand – The Respondent is hereby reprimanded for her disgraceful conduct in a professional respect in relation to her admitted failure to obtain necessary consent for posts on social media and her dishonesty in communication with Mr Elliot Kirwan.

42. The warning as to future conduct is as follows: In future you must be fully aware of, and comply with, the provisions of the RCVS Code of Professional Conduct and its Supporting Guidance, in particular as it relates to the use of social media, including the need to ensure that you have obtained all the necessary consents from all relevant parties.

DISCIPLINARY COMMITTEE
30 APRIL 2019