

**ROYAL COLLEGE OF VETERINARY SURGEONS**

**INQUIRY RE:**

**PAUL STUART THOMASON MRCVS**

---

**DECISION OF THE DISCIPLINARY COMMITTEE**

---

1. The Respondent appeared before the Disciplinary Committee to answer the following charges:

**That being registered in the register of veterinary surgeons and whilst in practice at Thomason, Ritchie & Harding Limited, Station House, Station Road, Elworth, Cheshire, you:**

- 1. On 8 April 2016, undertook a pre-purchase examination (“PPE”) of a horse named Reba (or Rebel Bell) on behalf of a prospective purchaser, SK, when:**

**(i) the vendor of Reba was a client of the practice and / or your personal friend and you therefore had a potential and / or actual conflict of interest;**

**(ii) you failed to inform or take adequate steps to inform SK before the PPE that Reba’s vendor was a client of your practice and / or a personal friend;**

**And it is alleged that in relation to the above matters, whether individually or in any combination, you are guilty of disgraceful conduct in a professional respect.**

2. The Respondent denied both the charges, but on Day 3 (8<sup>th</sup> August 2018), he changed his plea and admitted them in their entirety. He did not admit disgraceful conduct in a professional respect. At that stage all the oral evidence had been called, save that of Mr Ian Camm BVSc Cert EP MRCVS, the expert on behalf of the Respondent.
3. Counsel for the Defence explained the basis of the Respondent’s change of plea to the effect that there was no admission that the PPE (“the vetting”) which the Respondent carried out for Dr Kazmi on the grey mare “Reba” on 10<sup>th</sup> April 2016 was in any respect improper or not done entirely with the prospective purchaser’s interests in mind. Counsel for the RCVS (“the College”) accepted that basis of plea.

4. Prior to the change of plea, Counsel for the College opened the case.
5. He explained that the case concerned a PPE of a horse named Reba which the Respondent carried out for Dr Kazmi, a prospective purchaser. At the time he had a professional relationship as the veterinary surgeon for the vendor, Mrs Hankey, and he also had a long standing close personal friendship with her and her husband. That professional relationship and that personal relationship were not disclosed to Dr Kazmi by or on behalf of the Respondent before the vetting took place on 10<sup>th</sup> April 2016. In consequence she had no knowledge of it. She discovered it when she read the vetting certificate at home which the Respondent had prepared. This included a declaration that "*the seller IS a client of my veterinary practice*". Dr Kazmi was surprised and shocked. She had had a similar experience some years before and the horse that she had purchased had gone lame. She complained to the Respondent about the non-disclosure of his professional relationship and later to the Royal College. Although she came to know about the personal relationship after the vetting on 8<sup>th</sup> April 2016, she did not complain about that.
6. In fact the Respondent did have a system in place which was designed to inform prospective purchasers of the fact, if it be the case, that the vendor was a client of his practice. It failed to work on this occasion and neither the practice nor the Respondent told Dr Kazmi that Mrs Hankey was their client before booking the PPE. The Respondent had no system in place to disclose the fact that he and Mrs Hankey were personal friends.
7. The parties rely on expert evidence. For the Royal College Mr Simon Knapp LVO BVetMed BSc MRCVS expresses the view that in these circumstances the Respondent should not have undertaken the vetting for Dr Kazmi at all; at the very least he should have disclosed the facts of his professional relationship and his personal relationship with Mrs Hankey to Dr Kazmi, so that she could decide. For the Defence, Mr Camm BVSc Cert EP MRCVS expresses the view that, as there was no specific guidance in respect of PPEs concerning the disclosure of a personal relationship with the vendor, the Respondents only obligation was to disclose his professional relationship with the vendor to the prospective purchaser as set out in the Guidance at para 7 of the Code of Conduct and the BEVA/RCVS guidance on the Examination of a horse on behalf of a prospective purchaser (as amended 2012). As the Respondent did not consider there was a conflict of interest, as he was entirely confident he could perform the vetting properly & impartially, he was under no obligation to disclose his personal relationship with the vendor to the prospective purchaser. He was entitled to make that judgement himself.
8. Counsel for the College called the following witnesses:
  1. **Dr Sarah Kathryn Kazmi MRCS MA (Cantab) MB BChir ("Dr Kazmi")**. She confirmed the contents of her witness statement dated 19 July 2017. She explained that she had been entirely unaware at the time of the vetting which she arranged with an administrator of the Respondent's practice that the Respondent was the vendor's vet or that he had a personal relationship with her. When she made the booking she explained that she had been recommended to the practice by Mrs Hankey. She discovered the connection when she looked at the PPE certificate when she returned home. Later she discovered from Facebook entries that the vendor and the Respondent were close friends. She complained to the Respondent about his not disclosing his professional

relationship to her, and later to the Royal College. She did not complain about his not telling her that he was friends with the vendor. She denied the proposition that she should have realised this from the conversation which the Respondent and the vendor were having in her presence and that of her agent Ms Anna Ogilvie on the occasion of the vetting on 8<sup>th</sup> April 2016. She was surprised and shocked by her discoveries about the Respondent's relationship with the vendor. She had had an experience of organising a vetting before when the vet had likewise been the vendor's vet. That horse had subsequently gone lame. She said that if she had known of the Respondent's relationship with Mrs Hankey, she would have chosen another vet.

II. **Anna Daniele Ogilvie** ("Ms Ogilvie"). She confirmed the contents of her witness statement dated 9 September 2017. She explained that she had "found" Reba for Dr Kazmi through Mrs Hankey. She had attended with Dr Kazmi when she first went to see Reba on 2<sup>nd</sup> April 2016 and was present at the vetting. She did not believe she had ever been informed that the Respondent was the veterinary surgeon for Mrs Hankey's horses in the sense that he cared for them. She might have understood that he had been engaged to carry out vettings at her yard for her in the past, but she was not prepared to accept that she understood or should have understood that this signified that the Respondent was Mrs Hankey's vet, nor that she had any obligation to pass on this information to Dr Kazmi.

III. **Mr Terence Boulton ("Mr Boulton")**. He confirmed the contents of his witness statement dated 20<sup>th</sup> August 2017. He explained that he was an administrator employed by Thomason, Ritchie & Harding Equine Limited of Station House, Station Road, Elworth, Cheshire and took a call from Dr Kazmi on 3<sup>rd</sup> April 2016 when she was arranging a vetting of a horse which she wanted to buy. She told him that the practice and the Respondent in particular had been recommended by Mrs Hankey. He assumed that Dr Kazmi knew that the horse in which she was interested, namely Hunting Field Belle (as he had been told her name) was owned by Mrs Hankey. He said he had checked and found no history for this horse but thought it very unlikely that he did tell her that Mrs Hankey was the client in these circumstances.

IV. **Dr Tim Brazil BVSc PhD Cert EM (Internal Medicine) DECEIM MRCVS**. In a witness statement dated 29 August 2017 he exhibited 5 reports on Reba which he had prepared from 22<sup>nd</sup> April to 25<sup>th</sup> November 2016. They related to clinical matters.

V. **Mr Simon Knapp LVO BVet Med BSc MRCVS**. He confirmed the contents of his report dated 3<sup>rd</sup> July 2018:

- a. In his opinion the Respondent had a perceived and actual conflict of interest based on his close professional and personal relationship with the vendor which should have been disclosed to Dr Kazmi.
- b. This close personal relationship gives rise to the perception and reality of lack of independence and impartiality and hence results in the Respondent failing to meet the needs and requirements of Dr Kazmi in a situation exacerbated by his lack of communication between parties prior to the examination.
- c. The Respondent had a conflict of interest which he failed to disclose by failing to communicate with Dr Kazmi before the examination to ascertain her requirements and needs and failing to inform Dr Kazmi that Mrs Hankey was not only a client of the

practice and the Respondent in particular, but that he was also a close friend of Mr and Mrs Hankey. This highlighted a total lack of transparency.

- d. In his opinion the conduct of the Respondent fell far below the standard required of a reasonably competent veterinary surgeon by failing to be open and disclose his close professional and personal relationship with the vendor prior to undertaking the pre purchase examination hence propagating an actual and perceived conflict of interest. Furthermore, this attempt to attribute blame for his lack of communication to both his administrative staff and the vendor is unacceptable.
- e. He believed the Respondent engaged in behaviour that fell far below the standards expected of a member of the Royal College of Veterinary Surgeons and brought the profession into disrepute resulting in Dr Kazmi's confidence in the profession being undermined.
- f. In answer to questions in chief, Mr Knapp stated in respect of Mr Camm's report:
  - (i) It is not possible to separate out the fact that Mrs Hankey was a client of the Respondent and a close friend. Both are highly relevant to the complexity of the scenario.
  - (ii) He did not agree that the professional relationship trumps the personal relationship or that once the professional relationship had been revealed, it was not necessary to disclose the personal relationship. Guidelines establish that a vet can carry out a PPE on a horse owned by a vendor client if the prospective purchaser is put in the picture although it is far from ideal. But it is more important to disclose a personal relationship which can lead to a conflict of interest.
  - (iii) There is always a potential conflict if there is a relationship with a client vendor. The degree of conflict depends on the extent of the relationship with the client. Even so it would have been alright to proceed if the vet was open and honest.
  - (iv) A vet can make a judgment as to whether there is a conflict of interest which should be disclosed, but he did not believe this issue as to whether the outcome (i.e. whether the vet should act) should be determined by the veterinary surgeon. It should be determined by the prospective purchaser.
  - (v) He disagreed with Mr Camm's view that as the Code of Conduct did not refer to personal relationships; disclosure to the prospective should only be made if the vet believes there is a real conflict of interest. If the veterinary surgeon is aware of a potential or actual conflict of interest, he is morally bound to point it out to the prospective purchaser before he undertakes the PPE.
  - (vi) He disagreed that the veterinary surgeon could proceed with the PPE if he is confident that he can carry out the examination independently. That is not a decision the vet should make. Veterinary surgeons should point out the conflict of interest to the purchaser for the purchaser to make the decision. It comes back to transparency.
  - (vii) He understood the point which Mr Camm made that using the vendor's vet for a PPE can provide a greater degree of protection. However it is now common practice for purchasers to require the clinical history of the horse.

- (viii) It is for the potential purchaser to decide whether the conflict of interest is significant. In his view being a friend of the vendor substantially adds to the actual or perceived conflict of interest.
- g. In cross examination Mr Knapp maintained his position and stated that the PPE guidance should not be read in isolation to the overarching principles in the code.
- h. In answer to the Committee's questions, Mr Knapp stated:
  - (i) Referring to the general principles of practice including honesty and integrity, independence and impartiality and client confidence and trust and to clause 2.1 of the Code, he said he thought these principles were fundamental. It is important that the client is treated with absolute fairness.
  - (ii) He considered that these principles were not displaced by the matters in clause 7 of the Code.

VI. **Michael David Hepper** (Mr Hepper). He exhibited to his statement dated 7<sup>th</sup> June 2018 the correspondence between the RCVS and the Respondent between 14 February 2017 and 30 October 2017.

### **The Defence Case**

9. Counsel for the Respondent called the following witnesses:

- I. **Mr Paul Stuart Thomason MA VetMB MRCVS**. He confirmed the contents of his witness statement dated 3<sup>rd</sup> July 2018 in which he stated:
  - a. He is fully aware of the RCVS guidelines relating to conflicts of interest (paragraphs 7/8 to 7/11). He is regularly contacted by purchasers asking him to perform PPEs on horses which are being sold by clients of his practice. He therefore ensures that there is no prospect of a conflict of interest. When he undertakes an examination the contract is exclusively between himself and the purchasers regardless of who the vendor may be. He always acts in the best interest of the purchaser.
  - b. He has set up a system for arranging PPEs. He employs 3 staff who deal with the appointments, Layla Sukhorn, Jo Buswell and Terry Boulton. A vetting check list is completed whilst discussing the appointment with the prospective purchaser. When the purchaser mentions the vendor's details, a check is done to see if the vendor is a registered client of the business and if so the purchaser is informed.
  - c. He is close friends with Mr and Mrs Hankey and had known Mr Hankey since 1985.
  - d. He has examined numerous horses for purchasers that have been sold by the Hankeys. He had sat down with the Hankeys and agreed that if they are going to recommend him as someone suitable to examine their horses, they must make sure purchasers were aware that he was also their veterinary surgeon. He is satisfied that ever since then they will have done so. Further Mrs Hankey has assured him that that is what happened in Dr Kazmi's case. He is aware that she also offers the names of two or three other vets in the area and that was the process she had in place.

- e. He was satisfied that all the arrangements were in place and all the necessary information had been disclosed prior to the meeting with Dr Kazmi, and therefore there was no need to speak to her about his relationship with Mrs Hankey.
- f. He considers that it must have been apparent to Dr Kazmi that there was a professional and social relationship between himself and Mrs Hankey from the way they were talking about social events in the local horse community. It was also apparent that he knew his way round Mrs Hankey's yard.
- g. Having completed the PPE, he completed the PPE certificate and the declaration of prior knowledge which states as follows:
  - (i) The seller or the selling agent is a client of his veterinary practice.
  - (ii) He folded it over and handed it to Dr Kazmi.
- h. It was not until 27 April 2016 that Dr Kazmi wrote to him regarding her concerns which included his failure to inform her that the vendor was one of his clients. He replied after his holiday on 17<sup>th</sup> May 2016 explaining how the staff are instructed to advise the purchaser that the vendor is a client of the practice and to look for the clinical history. He explained that he did not consider there was a conflict of interest.
- i. He provided information concerning the PPEs he had carried out in 2016. He believes they demonstrate that he does not allow the relationship he has with a vendor to affect his judgment. He would never undertake a PPE where he did not feel completely confident of being able to advise the purchaser of his findings and views without any influence from the vendor.
- j. This is the first complaint he has ever had of this nature. He has now revised the vetting check list.
- k. He is satisfied that Ms Ogilvie, Dr Kazmi's agent and who was the agent of 2 previous purchasers must have known that Mrs Hankey was a client of the practice as he had filled in the declarations on the respective PPE certificates to that effect. He contends that Ms Ogilvie should have informed Dr Kazmi that Mrs Hankey was a client of his.
- l. He does not accept that his conduct fell below the standard expected of a veterinary surgeon. He does accept that he is responsible for his office administration (and) that on this occasion for some reason it is possible they may not have adequately informed Dr Kazmi at the time of the booking that the vendors of the horse were clients.
- m. In evidence in chief, Mr Thomason stated:
  - (i) He saw the vetting check list before he did the PPE. The line through the history box tells him that that section of information has been dealt with and disclosed to the client. His staff have been trained to do that.
  - (ii) He decided to amend the vetting check list and he discussed it with staff. This was to remove the chance of any ambiguity.
  - (iii) He accepts he is very close friends with the Hankeys.
  - (iv) It has been agreed that she would tell prospective purchasers that he was their vet. He did not rely on that in the performance of his duties. He relied on his office staff.
  - (v) He had never had a purchaser complaining that he was the vendor's vet. He had not known the system fail. He did not therefore think to check that the purchaser knew he

was the vendor's vet. In hindsight he should have checked. He did not tell the purchaser that he had any sort of non-professional relationship with Mrs Hankey. In the purchaser's presence he did talk to Mrs Hankey about numerous things, including going to Aintree. He thought that Mrs Hankey brought up the subject of a skiing holiday. He could not be certain. He made no attempt to conceal his relationship with Mrs Hankey.

- (vi) At the time of the examination, he was confident that the client relationship was known to Dr Kazmi. He considered his relationship with Mrs Hankey did not affect his ability to undertake the examination and therefore he did not consider it would affect his examination.
  - (vii) If there is or was any obligation to pass on the friendship, it would only be himself who had that obligation, not the staff. They would not have known about it at all.
  - (viii) When he wrote the letter to the RCVS concerning Dr Kazmi's complaint, he was dealing with the allegation that he had not disclosed to her that he was the vendor's vet. There was at that time no allegation that he had failed to disclose his relationship with the Hankeys.
  - (ix) He was clear that his relationship with the Hankeys did not affect his view in the vetting. He had never thought there was a motive in his being nominated. If he thought there was he would not have undertaken the examination.
- n. In cross examination Mr Thomason stated:
- (i) By referring to Mrs Hankey in his letter to the RCVS, he was not suggesting he was relying on her to inform purchasers that he was her vet. This was merely an extra safeguard.
  - (ii) There has been a specific meeting with the Hankeys. There was no specific meeting concerning the Dr Kazmi case. Mrs Hankey always tried to be careful and open with prospective purchasers.
  - (iii) He was not suggesting that others bore responsibility for informing Dr Kazmi that he was Mrs Hayden's vet. His staff had been trained to tell prospective purchasers what the position was, but if that goes wrong he bears the responsibility.
  - (iv) He had believed that Dr Kazmi had no objection to his carrying out the examination as he believed she had been informed that he was Mrs Hankey's vet. But he acknowledged that he did not check with her and accepted that that was a failure on his part.
  - (v) He was not suggesting that Dr Kazmi should have guessed the nature of his relationship with Mrs Hankey on 8<sup>th</sup> April 2016. He was simply saying what happened when he met her.
  - (vi) He accepted that prima facie there is a conflict of interest if he carried out a PPE for a prospective purchaser and the vendor was his client. However he was confident that he could carry out the examination properly. He had failed horses previously for Mrs Hankey without adverse consequences. He had always been impartial.
  - (vii) He did not consider that there was any danger of not being independent on account of his client relationship with the vendor; if he had, he would have declined to proceed.

- (viii) He did not see there was any conflict on account of his being friends with the vendor. In hindsight he accepted that the closeness of the relationship could have added to the perception of a conflict.
- (ix) He acknowledged that he did have a responsibility to abide by the Principles of Practice in the Code of Conduct. In hindsight he accepts that Dr Kazmi may not have been informed that he was the vendor's vet.
- (x) He believed he had responded to Dr Kazmi's needs and had examined Reba in a completely unbiased way.
- (xi) He agreed mistakes were made. But he made no attempt to hide anything from Dr Kazmi. The mistake was a one off, by him. He can only apologise.
- (xii) He accepted Dr Kazmi was entitled to judge whether there was a conflict of interest. He did not consider that the failure to tell Dr Kazmi that he was the vendor's vet had compromise his examination.
- (xiii) The vetting check list was designed to elicit whether the vendor was a client, and if the vendor was that is disclosed to the prospective purchaser. The disclosure should be straight away.
- (xiv) He accepted that Mr Boulton assumed Dr Kazmi knew that Mrs Hankey was a client. The line through the history box on the form did not trigger Mr Bourdon telling Dr Kazmi that Mrs Hankey was his client.
- (xv) Mrs Hankey only assured him afterwards that Dr Kazmi knew that he was her vet.
- (xvi) He stated that if Dr Kazmi had complained earlier he could have arranged a second vetting, he could have offered to pay for a second vetting, he could have given her money back. He would have wanted to do what he could. These would have been gestures of good will. He could not undo what was already done.
- (xvii) He accepted Dr Kazmi was not aware that Mrs Hankey was his client prior to the vetting, but he did not know that at the time.
- (xviii) As to Ms Ogilvie he finds it difficult to accept she was not aware that he was Mrs Hankey's vet in view of her role in past vettings. But this was not relevant to his obligation to inform Dr Kazmi.
- (xix) He admitted that he and his practice had made mistakes.

o. In re-examination, Mr Thomason stated:

- (i) He had never had any similar complaints.
- (ii) When a vetting form is blank on horse history, he would have checked with the person who filled in the form where there was a history and whether the client had been told that he was the vendor's vet.
- (iii) He does not blame Mr Boulton. Certainly not. If Dr Kazmi was not informed, responsibility lies with him.

p. In answer to Committee questions, Mr Thomason stated:

- (i) He accepted there was a potential conflict of interest, even if there was no actual conflict of interest. He would deal with that by predicting how the client might think and try to take steps to meet her expectations.

- (ii) In hindsight he should have disclosed to the purchaser the relationship with Mrs Hankey. It could have been wrong not to do so. Dr Kazmi thought it was wrong and he agreed that might be the view of the public.
- (iii) So far as any financial dealings with a vendor are concerned, there could clearly be a conflict. Regarding a friendship, the issue is whether he can carry out the vetting fairly and to meet the purchaser's requirements. He felt he was in a perfectly good position to do the vetting fairly. If he had thought otherwise he would not have done it.
- (iv) He understood now that a prospective purchaser who was not informed of the nature of his relationship with the vendor would be concerned. It was a mistake not to tell Dr Kazmi. He did not think that at the time. He should have mentioned it as there was a potential conflict. The fact that he felt he could do a "good" examination does not mean that she should not know that he was the vendor's vet.
- (v) He accepts he should have told Dr Kazmi that he was the vendor's vet.

II. **Layla Sukhon ("Ms Sukhon")**; She confirmed the contents of her witness statement dated 23<sup>rd</sup> July 2018. She explained the system but noted that purchasers often wished to use a seller's vet in order to have access to any relevant clinical history.

- a. Since this complaint, the vetting check-list has been changed to require specific confirmation that a prospective purchaser has been told that the seller is a client.

III. **Debra Marie Hankey ("Mrs Hankey")**. She confirmed the contents of her witness statement dated 23<sup>rd</sup> March 2018.

- a. She explained that she was the vendor of Reba.
- b. She stated that the Respondent initially told her and her husband that he would prefer not to be used for vetting for their horses, but she found that prospective purchasers often wanted to use vendor's vets so that they can get access to the horse's clinical history. She understood this was common practice. If prospective purchasers ask for recommendations of local veterinary surgeons, she always responds as follows:

*The Respondent is my vet, I can highly recommend him. He is an FEI vet, he is very well respected. If you do not want to use our vet, I will text you the numbers of other vets.*

- c. She told Ms Ogilvie that the Respondent was her vet when vetting was discussed for another horse she was selling in 2014 and again in 2016. She felt Ms Ogilvie knew this.
- d. When Dr Kazmi came to discuss vetting in respect of Rebel Belle with her, she is certain she would have mentioned the Respondent and would have referred to him as her own vet. She also had a discussion with Ms Ogilvie about the vetting as Ms Ogilvie was concerned that Dr Kazmi was cautious about using "my vet". This was when Dr Kazmi was riding Rebel Belle.

- e. She stated that on the day of the vetting it must have been obvious that she and the Respondent were friends.
- f. She was strongly challenged on her evidence by Counsel for the Royal College and conceded that she may not have told Dr Kazmi of her personal and professional relationship with the Respondent.

IV. **Ian Camm BVSc Cert EP MRCVS** He confirmed the contents of his report dated 25<sup>th</sup> July 2018 as follows:

- a. A conflict of interest has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's primary professional interest and a secondary personal interest.
- b. The veterinary surgeon's primary professional interest in the case of a PPE is the duty of care to the purchaser. His secondary personal interest in the case of a PPE is not limited to financial gain but could include such things as personal advancement or wish to do favours for family and friends.
- c. The RCVS has specific guidelines regarding the transparency required of a veterinary surgeon when vetting a horse that belongs to an existing client.
- d. The secondary personal interest of friendship as a conflict of interest is not binary. It will be a matter of judgment as to what level the conflict of interest there is. This will be determined partly by the closeness of the friendship/relationship but also by the ability of the individual to work blinkered to the sole requirements of the client (purchaser) on the day.
- e. He referred to the RCVS code of professional conduct, in particular paragraphs 2.1, 2.2 and 7.
- f. The RCVS guide to professional conduct in relation to conflict of interest at a PPE gives guidance on how to minimise any real or perceived conflict of interest. This is also carried forward into The BEVA/RCVS Guidance notes on the PPE which were drawn up between the British Equine Veterinary Association, The RCVS, The Veterinary Council of Ireland and Veterinary Ireland. It is clear from these guidance notes that it is perfectly acceptable for a veterinary surgeon to carry out a PPE on horses that are owned by another client providing safeguards are put in place. Many purchasers use the practice to their advantage as they know that any medical history held by the practice will be assessed and reported to them.
- g. In reality the choice of veterinary surgeon to conduct the PPE who is also the veterinary surgeon for the vendor can afford a greater degree of protection due to constraints placed on the veterinary surgeon regarding disclosure of any known clinical history
- h. The Respondent assumed that Dr Kazmi knew prior to the PPE that Mrs Hankey was a client of his and that he and his practice had no prior knowledge of Reba on the basis that:
  - (i) Ultimately it is the responsibility of the veterinary surgeon conducting the PPE to ensure that their client, the purchaser, is aware of the fact that the seller is also a client and that all parties are happy for the examination to proceed. There was a shortcoming on this occasion prior to the PPE.

- i. There is a responsibility on the veterinary surgeon to inform a client of any personal acquaintance with another client.
- j. He understands that the Respondent believed that the conflict of interest in relation to Mrs Hankey being a client meant that any conflict of interest due to Mrs Hankey being a friend would not add to this.
- k. He did not consider in this situation that it was obligatory for the Respondent to inform Dr Kazmi that Mrs Hankey was a personal friend.
- l. He did not consider that the evidence suggests that there was any intent to mislead Dr Kazmi or to hide the fact that Mrs Hankey was a client and indeed a friend of the Respondent.
- m. He did not believe that the Respondent's behaviour was in any way likely to bring the veterinary profession into disrepute or undermine public confidence in the profession. He believed that the Respondent must shoulder vicarious responsibility for any shortcomings by his reception team in the communication with Dr Kazmi prior to the PPE. He did not however consider that in this regard his failings fell far short of that which is expected of a member of the veterinary profession.
- n. He did not accept Dr Knapp's view that owing to the close personal relationship between the Hankeys and the Respondent, the Respondent should have unequivocally declined to undertake the examination.
- o. If one carries out a PPE where the vendor is a client and / or a friend, the examining veterinary surgeon must ensure that they can confine their thought process to the requirements of the purchaser only. It is clear that the Respondent does this on a regular basis and does not "pass" a greater percentage of Mrs Hankey's horses than those of others; in fact he fails a greater percentage.
- p. In cross examination Mr Camm maintained that:
  - (i) It is for the veterinary surgeon to determine whether there is a conflict of interest;
  - (ii) If he considers there is a conflict of interest, he should not act.
  - (iii) If he does not consider there is an actual conflict of interest, he can act.
  - (iv) He was not persuaded that there was a conflict of interest in this case simply by virtue of the fact that the Respondent had a personal relationship with the vendor.
  - (v) There is no need to appraise the prospective purchaser of the conflict of interest.
  - (vi) But there is a requirement of disclosure of a vendor / veterinary surgeon professional relationship.
  - (vii) The Guidance in paragraph 7 of the Code and in the BEVA/ RCVS Guidance on the Examination of a Horse on Behalf of a Prospective Purchaser (amended 2012) represent the matters which a veterinary surgeon should consider when being asked to undertake a PPE. The guidance does not address personal relationships between vendor and vet. In consequence they do not need to be notified to the client. They are "trumped" by the more significant aspect, namely the matter of a professional relationship between vendor and the veterinary surgeon.

#### **Determination of Disgraceful Conduct in a Professional Respect**

- 10. By his admission of the charges, and in particular the admission that the vendor of Reba was a client of the practice and a personal friend of the Respondent, the Respondent acknowledged that

he had a potential and / or an actual conflict of interest. There were therefore 2 aspects to this case. They both concerned the failure of the Respondent to disclose information to the prospective purchaser of a horse before a PPE. The first concerned his failure to disclose that the vendor was his client; the second that he was a personal friend of the vendor.

11. The evidence established that the Respondent had put in place a system which was designed to inform prospective purchasers of horses, who were seeking to make arrangements for him to do a PPE, that, if it was the case, he was the vendor's veterinary surgeon. That system was not designed to disclose to the prospective purchaser that he was a personal friend of the vendor. The Respondent had no system for informing the prospective purchaser of that fact. On the facts of this case, he did not meet or speak to the prospective purchaser, Dr Kazmi, until the day and occasion of the PPE on 8th April 2016.
12. In the event, the system broke down and in consequence Dr Kazmi did not know that the Respondent was the vendor's veterinary surgeon when she arranged the PPE on 3<sup>rd</sup> April 2016 and when the vetting took place on 8<sup>th</sup> April 2016. Nor did she know that the vendor and the Respondent were personal friends. The Respondent did say that their friendship might have been discerned by Dr Kazmi from the nature and topics of the conversation in her presence between Mrs Hankey and the Respondent at the time of the vetting, but he acknowledged in his evidence that he did not expect her to second guess that fact.
13. Thus it was that Dr Kazmi experienced surprise and disquiet when she read the certificate concerning the vetting when she returned home on 8<sup>th</sup> April 2016 and the declaration thereon that the seller (or the seller's agent) IS a client of the Respondent's veterinary practice. She had undergone a similar experience when she purchased her first horse, which had gone lame. In due course she complained to the Respondent about the non-disclosure of his professional relationship with the vendor, and, in the fullness of time, she complained to the Royal College to like effect. She did not in fact complain about his not having disclosed the personal friendship, although she became aware of that fact after the vetting as well. However the Royal College identified this as a matter which should be charged.
14. It is clear from the above narrative that the Respondent had sought to establish a system which would disclose his professional relationship with the vendor to a prospective purchaser of a horse arranging a PPE and that that system was not robust. In fact it had not before broken down, to his knowledge. In consequence of it breaking down in respect of the vetting Dr Kazmi was arranging, the Respondent failed to discharge his obligations to her in that regard.
15. The Respondent's admission of charge 1(ii) in regard to his non-disclosure of this professional relationship with the vendor is that

*He failed to inform or take adequate steps to inform Dr Kazmi before the PPE that Reba's vendor was a client of his practice.*

16. His obligation so to do is to be found by reference to the Code of Professional Conduct for Veterinary Surgeons 2012 which provides:

*Veterinary surgeons must provide independent and impartial advice and inform a client of any conflict of interest.*

17. Further guidance on the issue is provided by the RCVS in Paragraph 7 which concerns Equine pre-purchase examinations as follows:

*Conflict of interest*

*7.8 Generally, a person intending to purchase a horse will seek a PPE by a veterinary surgeon and for this purpose, becomes that veterinary surgeon's client.*

*7.9 Ideally veterinary surgeons should not carry out PPEs where the vendor is an existing client because of the conflict of interest. However, if, for practical or other reasons, veterinary surgeons do, they should follow additional safeguards to ensure the examination is not only fair, but perceived to be fair, by the client requesting the PPE.*

*7.10 These additional safeguards are:*

- a) The veterinary surgeon makes the purchaser aware that the vendor is also a client and potential purchaser has no objection. If there is an objection, the veterinary surgeon must not act;*
- b) The vendor agrees to permit disclosure of relevant clinical / case records. If permission cannot be obtained the vendor's veterinary surgeon should not act. If the records reveal a factor which is likely to be prejudicial to the purchaser's intended use, the purchaser should be informed with the vendor's permission in advance of the examination; and, it is made clear to both parties that in this instance the veterinary surgeon is acting on behalf of the purchaser.*
- c) It is made clear to both parties that in this instance the veterinary surgeon is acting on behalf of the purchaser.*

18. And by the BEVA / RCVS Guidance Notes on the Examination of a Horse on Behalf of the Prospective Purchaser which provide so far as is material to this determination:

*If as a result of such information (i.e. the identity of the seller and the name of the horse), the veterinary surgeon feels any conflict of interest, which means he / she cannot act wholly in the interests of the purchaser, the veterinary surgeon should decline to perform the examination. If the veterinary surgeon feels able to act without conflict, the fact that the seller is an existing client of the veterinary surgeon's practice should be declared to the purchaser in advance of the examination.*

19. The position therefore in respect of the professional relationship is that there were obligations upon him to disclose his relationship, he sought to comply with those obligations but he failed to do so. He acknowledges that the responsibility for that failure is his and his alone.
20. The Respondent's admission of charge 1(ii) in regard to his non-disclosure of the personal friendship with the vendor is that:

*He failed to inform or take adequate steps to inform Dr Kazmi before the PPE that Reba's vendor was a personal friend.*

21. The obligation to make that disclosure stems, in the Committee's view from paragraph 2.1 and 2.2 of the RCVS Code of Professional Conduct for Veterinary Surgeons. Paragraph 2.2 is above cited. 2.1 reads as follows:

*Veterinary surgeons must be open and honest with clients and respect their needs and requirements.*

22. The Respondent admitted in the course of his oral evidence that he did have an obligation to disclose to Dr Kazmi his personal relationship with the vendor before the PPE. He did not admit this in his witness statement and he initially denied this charge. Nor in his witness statement did he explain why he had not disclosed this information to Dr Kazmi.
23. An explanation was advanced by Mr Camm, the Defence expert, as to why the Respondent did not have this obligation. Broadly this was to the following effect. The guidance in relation to PPEs only dealt with the issue of conducting a PPE for a prospective Purchaser when the vendor is a client. There was no specific guidance on disclosure where the vendor is a friend. Therefore there is no need to disclose a friendship.
24. As a matter of fact, it is correct that there is no specific guidance on disclosing friendship in the Guidance above cited. But the Committee find that it is perverse to construe, from the absence of any specific guidance on the matter in that guidance, the broad proposition that a veterinary surgeon is not under any obligation to disclose a personal relationship in these circumstances. Paragraph 2.1 of the Code makes it clear that veterinary surgeons must be open and honest. The 5 Principles of Practice include:
- a. Honesty and integrity
  - b. Independence and impartiality
  - c. Client confidentiality and trust
25. Moreover Paragraph 2.2 of the Code provides that veterinary surgeons must inform a client of any conflict of interest. The Committee is in no doubt that a reasonable and well informed member of the public would consider that there would be a conflict of interest if the veterinary surgeon undertaking a PPE was a personal friend of the vendor, the more so if he is also the vendor's vet.
26. In the Committee's view, the prospective purchaser had every right to expect that the veterinary surgeon whom she was approaching to carry out a PPE would disclose to her both the fact that he was the veterinary surgeon to the vendor and that they were personal friends. It also finds that the Respondent was acting entirely inappropriately in arrogating unto himself alone the decision as to whether he could act for the purchaser. He deprived the purchaser of her right to choose another veterinary surgeon and of any opportunity to do so. The Committee has concluded that it was a very serious matter that the Respondent did not make those disclosures, and that he was in breach of paragraph 2 of the Code and the Principles above cited.

27. It was apparent that, in the course of his evidence, the Respondent was brought to realise that he should have disclosed not only his professional relationship with the vendor but also his personal relationship. He quite rightly changed his plea. Belated insight is not a matter which this Committee can take into account when considering whether the conduct in question amounts to disgraceful behaviour in a professional respect. But it is of importance that the Committee should recognise that the Respondent simply did not think at the material time that he was under the obligation to disclose that the vendor was a personal friend.
28. Whilst the Committee concluded that the Respondent's view of his obligations to disclose both the professional and personal relationships he had with the vendor was mistaken, it did not find any improper motivation on his part. It has already noted that he sought to disclose to the prospective purchaser through his system the fact that the vendor was a professional client of his. It entirely accepts that the Respondent carried out a competent PPE on Reba for Dr Kazmi. It entirely accepts that he did not enquire of Dr Kazmi on 8<sup>th</sup> April 2016 whether she knew that Mrs Hankey, the vendor, was a client of his because he believed she would have been told that by his staff. It entirely accepts he made no attempt to cover up the matters which he should have disclosed and that he may well have believed that his conduct on the day of the PPE would have demonstrated that the vendor and he were friends. It has noted that the matters brought to the attention of the RCVS relate to one PPE only.
29. Further the Committee noted the evidence which the Respondent gave that he felt entirely confident that he could perform a PPE with competence and impartiality for Dr Kazmi. There is no suggestion that he did not. He never received any criticisms or recriminations from the Hankeys concerning his failing any of their horses. He contends that he had no reason to believe his impartiality was compromised by his personal relationship with the Hankeys nor by his professional position with them. He did recognise his overt obligations under the guidance and "sat down" with the Hankeys some time ago (before April 2016) and extracted, as he saw it, an undertaking that they would always inform potential purchasers for whom they recommended his services to carry out a PPE that he was their vet. He never had any reason before the Dr Kazmi case to believe that this was not always done.
30. The Committee must decide whether on the basis of the charges found proved, and in the light of these facts, the Respondent is guilty of disgraceful conduct in a professional respect. It must take into account aggravating and mitigating factors which are relevant to the circumstances of the charge since they tell on culpability, blameworthiness. It has already identified mitigating factors. So far as aggravating factors are concerned, it does consider there was a breach of client trust – that was the nature of the charge and was occasioned by lack of thought on the Respondent's part as to what his obligations were, not by a deliberate flouting of the Code.
31. The Committee has weighed all these matters very carefully. It is for the client to determine whether or not to proceed with a PPE when in possession of all relevant facts in relation to any potential conflict of interest. It is not for the veterinary surgeon to determine this on behalf of the client. The autonomy of the client must be respected. The Committee also determined that discrete parts of the Code should not be read in isolation but must be seen in the context of the entire document. The Committee was firmly of the opinion that a failure to comply with the Code is very

serious. However taking into account the particulars of this case the Committee does not consider that the actions of the Respondent amount to disgraceful conduct in a professional respect.

**DISCIPLINARY COMMITTEE**

**9 AUGUST 2018**