IN THE ROYAL COLLEGE OF VETERINARY SURGEONS

DISCIPLINARY COMMITTEE

INQUIRY RE:

EMMA KATHLEEN BOWLER

DECISION ON DISGRACEFUL CONDUCT IN A PROFESSIONAL RESPECT

Proceeding in Absence

1. The Respondent was not present. She was represented again by Ms Malhotra. There was no additional medical evidence produced on her behalf. She was aware that the hearing was taking place and Ms Malhotra remained instructed by her. Both parties invited the Committee to continue to proceed to hear the adjourned hearing in the Respondent's absence.

2. The Committee agreed to continue to hear the case in the Respondent's absence. It decided to do so for the same reasons as in its previous decision and in the absence of further evidence.

Summary of submissions

The College's submissions

3. Mr Mant on behalf of the College submitted that the allegations found proved against the Respondent, individually and cumulatively, amount to “disgraceful conduct in a professional respect”.

4. Mr Mant submitted that in respect of Charge 2, the following requirements of the Code of Professional Conduct for Veterinary Surgeons which was in force at the time were breached:

> *1.2 Veterinary surgeons must keep within their own area of competence and refer cases responsibly.*
> *1.3 Veterinary surgeons must provide veterinary care that is appropriate and adequate.*
> …
> *2.1 Veterinary surgeons must be open and honest with clients and respect their needs and requirements.*
> *2.3 Veterinary surgeons must provide appropriate information to clients about the practice, including the costs of services and medicines.*
> *2.4 Veterinary surgeons must communicate effectively with clients, including in written and spoken English, and ensure informed consent is obtained before treatments or procedures are carried out.*
> *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.*

5. Mr Mant submitted that in respect of Charge 3 the misleading statement included an allegation about a colleague’s failings that was untrue and was liable to undermine confidence in the profession (contrary to paragraph 6.5 of the Code). More generally, the failure to provide true and accurate information to the owner was a grave matter. The Respondent did not take reasonable care to ensure that the information she provided was accurate and this resulted in a serious loss of trust (contrary to paragraphs 2.1, 2.4 and 6.5 of the Code).

6. Mr Mant further submitted that the clinical failings in Charge 1 breached paragraph 1.3 of the Code; the failure to keep adequate records breached paragraph 2.5; and all the failings were likely to undermine public confidence in the profession in breach of paragraph 6.5.

7. Mr Mant further relied on the expert opinion of Dr Bush. Mr Mant submitted that the Respondent's conduct undoubtedly caused unnecessary suffering to animals under her care (including Sky Oliver, Dolly Blue Smart, Ryobi Gilbert, Tommy Hadden and Toby Teasdale). The Respondent demonstrated a lack of understanding of the basic principles of orthopaedics and limited technical surgical ability in the cases before the Committee.

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8. Mr Mant summarised the opinion of Dr Bush, 'that the Respondent's CPD does not suggest an active appetite for knowledge in the field of veterinary orthopaedics. Her radiography skills fell far below the level expected of a reasonably competent veterinary surgeon. On occasions when suitable images were obtained, her interpretation of the images and surgical procedures showed a lack of understanding of basic orthopaedics. The cases of Sky Oliver and Tommy Hadden showed rank incompetence'.

The Respondent's submissions

9. Ms Malhotra on behalf of the Respondent submitted that 'whilst the Respondent's belief is that this case crosses the line' in that it amounts to disgraceful performance, she asked the Committee to exercise its judgment in determining if its findings of fact amounted individually or cumulatively to disgraceful conduct in a professional respect.

10. Ms Malhotra submitted that a number of mitigating factors should be taken into consideration when assessing where on the scale of seriousness the misconduct fell. In summary she submitted the following factors reduced the seriousness of the conduct and these were:

    i) a busy workload
    ii) significant personal pressures
    iii) ill-health at the time
    iv) the first national lockdown and the resulting repercussions
    v) that there was no financial gain
    vi) her inexperience
    vii) open and frank admissions to a number of allegations
    viii) subsequent efforts to avoid repetition

ix) a significant lapse of time since the incidents

x) demonstration of insight

xi) personal character and testimonials.

11. Ms Malhotra also asked the Committee to take into account that the Respondent veterinary surgeon was a junior surgeon and that "*post qualification development is necessarily iterative; and there is an inevitable and irreducible element of trial and error whilst new skills are mastered"* . She invited the Committee to conclude that the Respondent's clinical shortcomings were limited to her clinical practice, 'unalloyed with the sorts of moral and personal failings that are generally part of a finding of serious professional misconduct but because she was practising in a very difficult set of circumstances, although likely to constitute disgraceful conduct in a professional respect, they should be characterised as towards the lower end of the spectrum of seriousness'.

The Committee's decision and reasons on disgraceful conduct in a professional respect.

12. The Committee noted that the test for considering whether behaviour found proved amounts to disgraceful conduct in a professional respect is whether the conduct of the veterinary surgeon falls far short of that which is expected of a member of the veterinary profession. The Disciplinary Committee Sanctions Guidance (updated August 2020) states that this is conduct described as 'serious professional misconduct'. The Committee had regard to the relevant provisions of the Code of Professional Conduct for Veterinary Surgeons.

13. The Committee took into account the oral and written submissions made by Mr Mant and Ms Malhotra. The Committee also re-read the Respondent's statement.

14. The Committee considered which aggravating and mitigating factors were relevant to its decision at this stage before deciding whether in its judgment the conduct amounted to disgraceful conduct in a professional respect.

15. In the Committee's judgment the matters it had found proved amounted to disgraceful conduct in a professional respect, both individually and cumulatively.

Aggravating factors

16. The Committee referred to the Disciplinary Committee's Sanctions Guidance (updated August 2020) paragraphs 27 and 28. It decided in respect of Charges 1 and 2 that the conduct it had found proved was aggravated by several animals having suffered unnecessary injury. Where there was no evidence before it that animals had been injured, the Committee decided there was undoubtedly a risk of injury. In total these charges encompassed 18 animals (Charge 1 and Charge 2).

17. It also concluded that in respect of Charge 2, the Respondent had acted recklessly in performing the revision surgery for Bear given at this stage she should have recognised she was significantly beyond her surgical ability particularly after everything that had happened in the first surgery.

18. For Charges 3 and 4, the Respondent's conduct was aggravated by her lack of integrity in relation to Dr Devon Michael (MRCVS).

19. Overall, the misconduct in this case spanned approximately 3 years 8 months and involved repetition of egregious failings. The length of time over which the misconduct took place was an aggravating factor.

Mitigating factors

20. The Committee noted at this stage it should only consider those matters which were relevant to the circumstances of the charges and not purely personal mitigation. It found limited mitigation relevant to the Respondent's misconduct.

21. The Committee found in mitigation that the Respondent worked in a busy practice. Whilst this was not an explanation or reason for the proven misconduct the Committee accepted the Respondent's written statement, supported by other witnesses, that she had been working in an atmosphere that generated a highly pressurised working environment, which was also somewhat unsupportive to her e.g. in respect of her request to senior management for assistance or to other veterinary surgeons at satellite surgeries for contact before referring cases into the main hospital hub. However, on the evidence before it the Committee concluded that these factors could only provide a context for her misconduct and were not the cause of it. Her surgical competence in orthopaedic work and her decisions regarding radiographs (including their interpretation) were not dependent upon her working environment however difficult that was for her.

22. The Committee accepted that with regards to clinical record keeping the Respondent had less time available due to her heavy workload. It also accepted that her personal circumstances which included [redacted] and a pregnancy were bound to exacerbate the pressures she faced at work. However, the Committee was not persuaded that these factors are pertinent in determining whether the proven misconduct amounts to disgraceful conduct in a professional respect.

23. Further, the Respondent accepted in her written statement that when she delegated tasks such as radiography it was ultimately her responsibility to ensure that they were properly and adequately carried out.

24. The Committee acknowledged that the Respondent had general surgical competence and had performed many other surgeries without reported concerns and that she had worked during the pandemic in difficult circumstances. It noted that she was furloughed and on maternity leave between April 2020 and 2 July 2020.

25. The Committee also noted that the Respondent was six years qualified in 2018 and that she was working in a senior role as a lead veterinary surgeon within the practice and therefore it determined that inexperience could not be a mitigating factor.

26. As for the matters set out at paragraphs 10(vii)-10(xi) it did not find these were relevant mitigating factors to take into consideration at this stage but rather they were relevant to the sanction stage.

27. The Committee relied on some parts of the expert evidence given by Dr Bush, instructed by the College, in assessing whether the charges found proved amounted to disgraceful conduct in a professional respect.

28. The Committee firstly considered Charge 2 which it concluded was the most serious of the four charges. It accepted the expert opinion of Dr Bush in that the Respondent:

"was not sufficiently trained or capable of performing a total hip procedure on her own without experienced oversight or capable assistance. I cannot see how the surgery could have been undertaken adequately.
….
The preoperative imaging was inadequate and EKB falls far below the standards expected of a reasonably competent veterinary surgeon.
….

Bear's aftercare was wholly inadequate, and Bear will have suffered unnecessarily as a consequence of this. EKB falls far below the standards expected of a reasonably competent veterinary surgeon.

Bear's post operative radiography was inadequate in terms of the images obtained and the timescale in which they were obtained. EKB falls far below the standards expected of a reasonably competent veterinary surgeon.

In my opinion EKB's management of this case fell far below the standards expected of a reasonably competent veterinary surgeon." [paragraph 55]

29. The Committee determined that the lack of professional competence and the number of failings which it had found in respect of Bear in the initial surgery and in the revision surgery were overall very serious. It concluded that the Respondent's judgment in failing to obtain informed consent for either surgery, failing to offer a referral, carrying out both surgeries, proceeding without an in-person consultation to discuss the possible complications, failing to plan or perform either surgery to the required standard and failing to carry out post operative radiographs adequately or post-operative care adequately; individually and cumulatively amounted to disgraceful conduct in a professional respect.

30. In the Committee's judgment the inability of the Respondent to recognise her failings was exacerbated by repetition when she performed the revision surgery.

31. The Committee noted that the Respondent had completed training in total hip replacements (THR) in December 2018 which included a practical component on a cadaver. She had not undertaken any THR surgery since this training course or any further training until she carried out surgery on Bear in January 2020. She had not practised on a cadaver or worked with a more experienced surgeon, neither had she sought advice or assistance from another veterinary surgeon for either of Bear's surgeries. The Committee therefore concluded that the Respondent's conduct as particularised in charge 2, in respect of the planning for surgery, the surgery itself, and the aftercare fell far below the standard to be expected of a reasonably competent veterinary surgeon. Each of her subsequent actions compounded the errors she had previously made and resulted in a more serious outcome for Bear and a distressing situation for Mr and Mrs Sewell. By way of example the fact that the Respondent had failed to carry out the required pre-operative radiographs meant that she had selected an inappropriate implant size and this led to failure of the first THR surgery.

32. The Committee accepted the opinion of Dr Bush when he stated:

"Total hip replacement surgery is a challenging procedure, and undertaking the procedure as the primary surgeon without sufficient training, which usually includes exposure to the procedure as a surgical assistant, and without sufficient, capable intra-operative surgical assistants is very ill-advised indeed and shows considerable recklessness. Most hip surgeons will have undergone THR training during their formal surgical training programme. They spend several years as an assistant surgeon aiding the primary hip surgeon, and in my experience, most vets would not undertake THR surgery as the primary surgeon until after their surgical residency training programme has been completed and they have qualified as Specialists. At this point they often still want an experienced colleague alongside them when they undertake their first THRs as the primary surgeon. EKB does not appear to have made any attempts to contact a more experienced colleague to provide assistance during her first THR procedure. This is unacceptable." [paragraph 20]

"in a situation where the surgery undertaken is very challenging in nature, the pre-operative imaging is inadequate, the pre-surgical planning is inadequate, the surgeon's surgical experience is inadequate, the intra-operative surgical assistance is inadequate, the post operative imaging is inadequate and the outcome of the surgery is very poor, one cannot expect the surgery to have been undertaken adequately. Furthermore, there is an expectation of a significantly increased level of difficulty in the performance of a revision surgery of a failed hip replacement, and the issues regarding the absence of more qualified and capable supervision applies to an even greater extent here" . [paragraph 22]

"Revision surgery was undertaken on 12th Feb 2020 and it would be appropriate to perform surgery to resolve the previous failed surgery. THR surgeries are challenging and revising a THR complication can be very difficult. As EKB's first THR surgery had gone very badly, it is very difficult to understand why referral to a more experienced colleague was not strongly advised. I would expect a reasonably competent veterinary surgeon to recognise they were out of their depth at this point and to make it clear in the clinical notes that the advice to refer Bear was made and declined." [paragraph 15]

"The complications encountered by EKB in both of the surgeries performed on Bear could in part be directly attributed to the inadequate radiographs leading to an inability to accurately plan the surgery with the consequence of the choice of an inappropriate implant size causing excessive bone loss and fracture." [paragraph 30]

33. The failure to take appropriate orthogonal radiographs pre-operatively in the Committee's view resulted in the Respondent being unable to adequately assess Bear for surgery. Likewise the failure to take appropriate post-operative radiographs after the failed first THR surgery (to plan for the revision surgery) was ill-advised. The failure to take orthogonal post-operative radiographs immediately after the revision surgery meant that the Respondent was unable to assess the adequacy of that revision surgery. Furthermore, after the revision surgery the Respondent did not make plans for routine post-operative radiographs to be taken at the six to eight week post-operative stage. The Committee found this was particularly serious given that Bear's recovery was not straightforward and

his owners were repeatedly reporting concerns. The Committee accepted the opinion of Dr Bush when he stated,

"[by]25th March (six weeks post op) concerns were raised that Bear was struggling to stand, not fully loading the operated limb and placing excessive load on his right hind limb. Another vet notes Bear is not using the limb well at all when walking and cannot sit down. This is a grave concern at this stage after THR and suggests an urgent problem. At this point there should be an expectation of normal limb use without lameness. The information was relayed to EKB who chose to evaluate a video to make a clinical decision, rather than physically examine the patient herself. She commented that there was no obvious dislocation on the video. I have many years of experience of total hip replacement surgery as a primary surgeon and I would not be able to make that judgment on the basis of a video recording of a lame dog. A physical examination and radiography are mandatory at this point. Recommending hydrotherapy is wholly inappropriate." [paragraph 44]

"It is unclear why follow-up radiographs were not scheduled in an appropriate timeframe. These were not performed despite the knowledge that the revision surgery had had significant complications, the recovery from the procedure was very poor and the surgeon was inexperienced with this technique.

When the failure of the revision surgery is identified, a recommendation of amputation or euthanasia is made. This is not appropriate as it is accepted that dog's hind limb may function adequately following a correctly performed THR explantation.

It should also be noted that at no point did EKB seek the advice of a vet experienced in this technique to discuss the plan for surgery, the complications encountered or the progress of the case. This is a very troubling mind-set for an inexperienced surgeon". [paragraphs 47-49]

"it is inconceivable that a competent surgeon would not take post operative views following a failed implantation of a total hip replacement where there is a view to revise the surgery at a future date as was the case here. There is no justifiable reason for failing to take adequate immediate post operative radiographs following a total hip replacement. [paragraph 52]"

34. The Committee found that the Respondent had breached the Code of Veterinary Surgeons and in particular the following requirements: 1.2, 1.3, 2.1, 2.3, 2.4, 2.5 and 6.5.

35. The Committee went on to consider Charge 1 which it found to be the second most serious charge. In particular it noted that the Respondent failed to adhere to basic principles for the taking of radiographs. It had accepted Dr Bush's opinion that "*A magnification marker is essential in the assessment of radiographs and their use in planning procedures in veterinary orthopaedics and orthogonal views are essential for accurately assessing cases, both before and after surgery. …….Where orthogonal views have not been taken there is a very high risk of missing important information concerning planning for the surgery that is to be undertaken or assessing the quality of the surgery that has taken*

place. To not obtain orthogonal views falls far below the standards expected of a reasonably competent veterinary surgeon undertaking orthopaedic surgery."

36. The Committee also found that there were repeated mistakes as noted by Dr Bush in his expert report when he stated:

"Throughout the case series there is ample evidence of a very limited knowledge and understanding of the principles of orthopaedics, with a couple of recurring errors:

- *A minimum of six cortices should be engaged by screws in each fracture fragment*
- *Bone plates should be as long as possible. The plate applied to a bone should ideally span the whole length of the bone, or as much as can be safely accessed*
- *Accurate and appropriate sizing. As noted above, a bone plate is secured to the bone by placing screws through the plate and bone to compress the plate onto the bone. There is an optimum size of screw that should be used in bone….. One can only accurately determine the optimum size of the screw to use if one knows the true dimensions of the bone in question which requires the presence of a magnification marker. In several cases, EKB has attempted to stabilise fractures of the humeral condyle…… It is very inadvisable to stabilise this type of fracture without placing a transcondylar (TC) screw, and to not place a TC screw will run a very high risk of a poor outcome. If a TC screw was not used, for whatever reason, then the alternative implants used to stabilise the fracture would need to be very rigid in order to provide sufficient stability to allow the bone to heal without callus formation. This cannot be achieved with the technique employed EKB." [paragraphs 59-60]*

37. Further, the Committee noted and accepted the opinion of Dr Bush who stated the following regarding the Respondent's competence:

"Throughout this series of cases, EKB demonstrates a lack of understanding of the basic principles of orthopaedics and limited technical surgical ability. In general, to have such a lack of understanding and ability is a shame but not a cause for concern, as her level of understanding is probably on a par with most general practitioner vets that do not have an interest in veterinary orthopaedics, and perhaps on par with a newly qualified vet. This is effectively the case as EKBs orthopaedic training and further education all but stops at the point of qualification as a vet. EKB's lack of understanding and ability is a grave concern however because EKB presents herself as a capable, experienced surgeon, and in doing so, clients may not consider the need for referral to more experienced, well-trained and genuinely capable colleagues who would be able to manage these cases with greater understanding and ability, and as a consequence, have a significantly better chance of achieving a successful outcome. EKB does not record the offer of referral to any of her clients" [paragraph 331]

38. The Committee also accepted the opinion of Dr Bush who stated that "*the cases of Sky Oliver and Tommy Hadden showed rank incompetence."*

39. The Committee has found the following facts proved which in its judgment amount individually and cumulatively to disgraceful conduct in a professional respect in respect of Charge 1:

a) Failure to ensure that adequate pre-operative and/or post-operative radiographs were taken in all 17 cases (Charge 1(a)-(g), (j)-(s)). The Committee accepted the evidence of Dr Bush that it was not possible to plan orthopaedic surgery accurately without a magnification marker and that orthogonal views were essential for assessing cases accurately pre-surgery and post-surgery. Failure to use a magnification marker and failure to take orthogonal views was conduct that fell far below expected standards (Decision paragraph 109).

b) Failure to adequately undertake the surgery in four cases (Charge 1(c), (e), (k) and (n)):

   i. In the case of Dolly Blue Smart, the surgery was poorly planned and executed. These failings, combined with post-operative failings (summarised below) caused the animal to suffer unnecessarily and fell far below expected standards (Decision paragraph 117).
   ii. In the case of Harvey Jamieson-Bailey, the Respondent accepted that the surgery was not adequate (Decision paragraph 125).
   iii. In the case of Ryobi Gilbert, the plate was positioned incorrectly and it was likely that an incorrect screw size was used (Decision paragraph 148). These failings, combined with post-operative failings (summarised below) fell far below expected standards (Decision paragraph 149).
   iv. In the case of Tommy Hadden, the fracture had not been appropriately stabilised, with the bone plate failing to bridge the fracture (Decision paragraph 163). The Committee agreed with Dr Bush's assessment that the surgical repair of this fracture was "appalling" (Decision paragraph 164).

c) Failure to adequately investigate and/or manage the animal post-operatively (in ways other than, or in addition to, the failure to obtain adequate post-operative radiographs) in three cases (Charge 1(c), (k), and (r)):

   i. In the case of Dolly Blue Smart, the radiographs that were taken showed an obviously loose screw which the Respondent failed to identify or address. There was unnecessary delay in investigation as to why the animal remained non-weight bearing (Decision paragraph 116).

ii. In the case of Ryobi Gilbert, there were several opportunities to intervene and manage the case properly that were missed. When radiographs were eventually taken, the surgical errors were not identified or acknowledged (Decision paragraph149).

iii. In the case of Toby Teasdale, the Respondent failed to identify that a screw had been mal-positioned during the surgery and failed to take adequate steps to revise the surgery (Decision paragraph184).

d) Failure to adequately record the surgical procedure undertaken in five cases (Charge 1(d), (g), (k), (o) and (s)).

40. Finally, the Committee considered Charges 3 and 4 and decided that in respect of the matters found proved, where the Respondent admitting making misleading statements to a client, this conduct fell far below the standard of a reasonably competent veterinary surgeon. It noted that the misleading statements included an allegation about a colleague's failings that was untrue and was liable to undermine confidence in the profession (contrary to paragraph 6.5 of the Code).

41. In particular the Committee was concerned about the Respondent's willingness to blame a colleague and her lack of integrity in doing so. It noted that either she had not checked the full clinical record or having done so failed to take reasonable care to ensure the information she provided to a client was accurate before she provided it. In the Committee's judgment this could undermine the client's trust in both her, her colleague and in the veterinary profession more generally.

42. The Committee therefore decided that the matters found proved both individually and cumulatively amounted to disgraceful conduct in a professional respect. It concluded that overall the matters were serious and did not fall at the lower end of the spectrum for misconduct.

DISCIPLINARY COMMITTEE
28 FEBRUARY 2025