

BEFORE THE PROFESSIONAL CONDUCT COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS

v

MR BRIAN CULLEN BOWLES MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON FINDING OF FACTS

Precis of the College's Case against the Respondent

1. The Respondent, Brian Bowles, was first registered with the College on 09 May 2003.
2. The Charges laid against him by the College relate to testing cattle for Tuberculosis (an Intradermal Comparative Tuberculin test – “the ICT test”) at a farm in Lincolnshire (“the farm”). The Respondent attended the farm on 12 May 2020 and 15 May 2020 to undertake tests in his capacity as an Official Veterinarian (“OV”) appointed by the Animal and Plant Health Agency (“APHA”).
3. The College alleges that on the first visit, on 12 May 2020, the Respondent failed to measure all cattle using callipers and failed to take and/or record measurements for cattle.
4. On the second visit on 15 May 2020, the College alleges that the Respondent certified results of the ICT test which had not been measured accurately in that, as set out at Charge 1, the cattle had not been measured using callipers and therefore measurements had not been taken and/or recorded which would enable comparison.
5. In relation to the two visits, the College alleges that the Respondent's actions were dishonest, and / or misleading, and/or risked undermining government testing procedures designed to promote public health and/or animal welfare.
6. The Respondent had previously been issued with warnings and/or advice and had been given re-training in relation to previous concerns surrounding his ability to

properly undertake ICT testing. As such his failure to abide by proper process in his roles appears to be a deliberate decision.

Testing for Tuberculosis in Cattle

7. The College stated that in order to keep instances of Tuberculosis (“TB”) in cattle under control, the Government has a system of compulsory testing in certain areas. The testing frequency and type will depend on the area and the number of animals that have been positive (or shown as “reactors”) in previous tests.
8. The standard test for TB in cattle is by way of the Intradermal Comparative Tuberculin (“ICT”) test, which involves an assessment of measurements of skin folds in the neck of the animal on two separate days – see the APHA OV Instructions for undertaking TB testing (“OV Instructions”). The test must be certified by an authorised veterinary surgeon (an Official Veterinarian or “OV”), as authorised by the government’s APHA Agency.
9. On the first day of the test, the OV creates two injection sites on the animal’s neck, an upper site for the injection of avian tuberculin, and a lower site for bovine tuberculin. The OV then prepares the sites by clipping them, before raising a skin fold at each test site, and measuring the thickness of the fold using callipers and recording the measurements in millimetres. The two sets of tuberculin are then injected into the relevant site.
10. On the second day, 72 hours later, the OV looks for a reaction at the injection sites. Where there is a detectable reaction at either site, a measurement of the reaction and the character of the reaction are recorded. This is done by measuring the skin fold using callipers (the same callipers as used on Day 1).
11. As set out in the witness statement of Matthew Lee Barnard MRCVS, Veterinary Adviser-Field Delivery at APHA – and confirmed by Dr David Collins, Veterinary Head of Field Delivery at APHA “...when the cattle TB test is performed, the OV must (emphasis added) make two skin measurements from each animal on day 1, inject tuberculins at the sites measured, and re-measure the same sites 72 hours later. Any lumps or swellings at the sites are referred to as “reactions” and depending on the size and type of these “reactions”, the animal may meet the criteria to be classed as a “Reactor”. Whilst not all “reactions” result in an animal being classed as “Reactor”, all “reactions” must be recorded.”
12. Furthermore, within the investigation findings under “Findings in relation to deviation from OV instructions -TB Test Protocol” it states that the OV instructions clearly

indicate "...to measure the thickness of the [skin] fold with the callipers...and record the measurements in millimetres in the testing record".

Charge 1: "On 12 May 2020, when attending, in your capacity as an Official Veterinarian, at [REDACTED] Lincolnshire ("the farm"), to undertake an Intradermal Comparative Tuberculin test ("the test") for cattle belonging to Mr M ("the cattle"):

- (i) **Failed to measure all cattle using callipers;**
- (ii) **Failed to take and/or record measurements for cattle"**

13. Mr M, owner of the farm, provided a witness statement, the contents of which he confirmed when he gave evidence before the Committee. He described that on 15 March 2019, he was advised by APHA that as a result of a TB breakdown within the locality a 3km zone of enhanced TB surveillance was to be implemented. His farm formed part of that zone. A first test took place on 09 April 2019 and on 24 April 2019 it was documented that there was no history of TB in his herd. A further test took place on 12 November 2019. On 15 November 2019, it was again documented that there was no history of TB in the herd.
14. On 14 March 2020, Mr M received a letter from APHA stating that there had been an outbreak of TB within 3km of one of the fields in which his cattle were grazing. The letter required that Mr M organise a test no earlier than 12 May 2020 and no later than 13 July 2020. Mr M arranged a test through Westpoint Farm vets for 12 May 2020.
 - i) *Failed to measure all cattle using callipers*
 - ii) *Failed to take and/or record measurements for cattle*
15. On 12 May 2020, the Respondent arrived at the farm at 9:45am. At the date of testing Mr M had 175 animals. Mr M recalls that the Respondent brought disinfectant and water, a syringe, some clippers and the vaccine. However, he does not recall seeing the Respondent with callipers on either 12 May 2020 or 15 May 2020.
16. Under the Covid-19 guidelines in place at the time, farms could elect not to have animals under 6 months of age tested. Mr M elected to follow this guidance. In total 112 animals were tested, and 63 animals were not tested.
17. On 12 May 2020, Mr M, his brother ("RM") and another local farmer ("SC") were assisting the Respondent. The animals to be tested would first enter a holding pen. They would proceed into the crush to be tested one by one. Once tested, they would

exit the crush into a second holding pen. The second holding pen could accommodate 10-15 animals at one time. Mr M states that he was between 6' and 15' from the Respondent at any time; that he had a clear line of sight; and that he had a clear view of the actions undertaken by the Respondent.

18. Mr M observed the Respondent undertaking the ICT procedure. He observed the Respondent shaving two small areas on the left side of each cow's neck and injecting both sites. He states that he noticed that Mr Bowles was not using callipers and was not measuring the thickness of the animals' skin with his fingers. Mr M recalls commenting on this to SC early in the testing procedure. He told the Committee that he could not recall seeing the Respondent make any written record in relation to each animal. After approximately 3 hours the testing process was completed and Mr M recalls that the Respondent stated he would be back in 3 days time.
19. The Respondent states and accepts in his representations to the RCVS dated 10 February 2021 that callipers were a requirement of the Standard Operating Procedures and that he did not comply with that requirement. *"As anyone knows who does Tb testing, the SOP requires the tester to take a skinfold between the fingers of one hand, and place the callipers over the skinfold and measure the thickness of the skin with the other hand. It is the measuring with the callipers that takes the time, and I have freely admitted that I did not use callipers, for safety reasons."*
20. Based on the above admission by the Respondent that he did not use callipers as required by the OV Instructions, the Committee has no difficulty in concluding that the facts alleged in Charge 1(i) have been proved to the requisite degree. Not having deployed callipers it follows that the Respondent has impliedly accepted that he did not, and could not have, taken or recorded skin test measurements for all of these cattle as required by the terms of the OV Instructions, namely *"Raise a fold of skin between a finger and thumb, using one hand, at each clipped test site, measure the thickness of the fold with the callipers (emphasis added) using your other hand, and record the measurements in millimetres in the testing record"*.
21. The only explanation offered by the Respondent for acting as he did and not using callipers was because of "safety reasons" concerning the alleged poor condition of the crush and the presence of fractious cattle. Independent of making a finding on this assertion the Committee not find this an acceptable excuse for proceeding as he did. This is because the contents of the OV Instructions give clear support and direction to OV's who find themselves in such circumstances: *" An OV is responsible for completing a risk assessment regarding their own health and safety when*

conducting an on-farm testing and inspection for APHA. APHA will support OV's in any appropriately evidenced decision to withdraw from a test on health and safety grounds. It is not appropriate to cut corners on the test procedure on the grounds of health and safety. If the test cannot be conducted properly for health and safety reasons, it should be abandoned".

22. That was the only proper and authorised approach that the Respondent was entitled to follow. He did not follow it , and he cannot therefore have recorded measurements "in his capacity as OV" because he did not use callipers.
23. The Committee is satisfied so that it is sure that the facts alleged in Charge 1(i) and (ii) have been proved.

Charge 2 – “On or around 15 May 2020 certified results of the ICT test when the measurements for Day 1 had not all been measured accurately”

24. On 15 May 2020, the Respondent returned to the farm for the second day of testing. Mr M states that the set up was the same as on 12 May 2020. As the cattle proceeded through the crush Mr M recalls the Respondent stating that one animal had "...a big lump". Mr Bowles stated it was a reactor and that he would need to tag it. Mr M did not observe the Respondent using callipers to take any measurement. The Respondent identified nine reactors in total on 15 May 2020. Mr M was present for 8 of the identified reactors.
25. Once the test was completed, Mr Bowles issued Mr M with the requisite paperwork which placed the cattle on the holding under movement restriction. Following the visit, Mr M contacted his own veterinary surgeon and reported his concerns about the lack of calliper measurements by the Respondent. Mr M was advised to make a formal complaint to APHA, which he did by email.
26. Following this test by the Respondent there were 3 subsequent TB tests on Mr M's herd. These did not produce any reactors, although Dr Collins said that this was not unusual. Restrictions were lifted on his herd on 1 September 2020.
27. An investigation was then carried out by XL Farmcare Midlands (APHA's veterinary delivery partner) who had commissioned the Respondent to undertake the tests at the farm, and APHA. As part of this investigation the Respondent's official OV status with APHA was suspended by letter dated 3 July 2020.

28. On 2 July 2020, Kate Bowen MRCVS (veterinary services manager for XL Farmcare) received a statement from the Respondent regarding the test at the farm in which he asserted:
- The facilities at the farm were inadequate
 - The crush was old
 - The cattle were fractious
 - He did not feel safe putting both hands through the bars to measure the skin [of the animals]
 - Animals that were reasonably compliant were measured with callipers
 - Other animals were measured by pinching the skin between the thumb and forefinger and doing an estimated comparison based upon previous experience
 - Callipers were not used on every animal.
29. Mr M contradicts these assertions. He gave evidence that there were no issues with the cattle on the day in question other than one animal which tried to climb over a gate and was easily dealt with. He maintains that the crush was in proper working order, that he had not previously received any complaints about the condition of his crush and that the Respondent did not raise health and safety concerns with him at any time during the test on either day.
30. Kate Bowen MRCVS states in an email dated 2 July 2020 that there have been no previous health and safety incidents logged against this holding.
31. For these reasons, the Committee rejects the excuse which the Respondent has sought to advance for his failure to follow the Instructions issued to him by APHA concerning the precise manner in which he was to test Mr M's cattle on 12th May 2020.
32. The Committee is satisfied so that it is sure that without the use of callipers to measure skin thickness of cattle on both test days the Respondent was not entitled to certify the test. The Committee therefore finds Charge 2 proved.

Charge 3 – “Your conduct in 1 and/or 2 above was:

- (i) **Dishonest;**
- (ii) **Misleading;**

(iii) **Risked undermining government testing procedures designed to promote public health and/or animal welfare”**

33. The College contends that the Respondent’s conduct as alleged in Charges 1 and/or 2 is dishonest and/or misleading and/or risked undermining government testing procedures which are designed to promote public health and/or animal welfare.

3(i)-Dishonesty

34. The College alleges dishonesty against the Respondent for the reasons that his testing history, removals of his entitlement to conduct such tests and the retraining courses that he was obliged to undertake before being re-licensed establish that he was well aware of the requirements to take skin measurements and to use callipers on Day 1 and 2 of the ICT. The appropriate way to undertake the skin measurements was to utilise callipers in the manner set out in the OV Instructions. Mr M’s evidence, which the Committee finds credible was that on both 12 and 15 May 2020 he was nearly always able to observe the Respondent’s actions. He was clear that, at no point, did he see the Respondent measure the thickness of the animals’ skin with callipers or estimate it with his fingers. He observed the Respondent shaving two small areas on the left hand side of the cow’s neck and injecting both sites. The Committee accepts his account that the Respondent did not use callipers and did not appear to estimate the thickness of the animals’ skin with his fingers.
35. Further confirmation of Mr M’s evidence is to be found in the Respondent’s response to the RCVS dated 8 Feb 2021 where he states (emphasis added) :

As anyone knows who does Tb testing, the SOP requires the tester to take a skinfold between the fingers of one hand, and place the callipers over the skinfold and measure the thickness of the skin with the other hand. It is the measuring with the callipers that takes the time, and I have freely admitted that I did not use callipers, for safety reasons. I did however, take a skinfold of every animal at the test, sometimes very quickly, but every animal was felt in this way. I am prepared to give evidence under oath to this effect. If the farmer disputes this, then he must also do this under oath. After over 40 years of Veterinary practice, a lot of Tb testing should give one some idea of skin thickness measuring. But I do still agree and freely admit that I was in breach of the SOP and I can only repeat my apologies.

This is the reason I say that I did this test in good faith. I did not pluck skin thicknesses out of the air They were all measured with my fingers, but, because of safety reasons, not with callipers.

36. It is clear therefore that the Respondent did not measure the skin thickness of Mr M's cattle on the days in question. The failure to use callipers also means that measurements could not have been taken and/or recorded. If there were any estimates made with fingers, as suggested by the Respondent, they could not have been relied upon as accurate due to the lack of use of callipers. It follows that such "measurements" as the Respondent risked compromising the efficacy of the test to identify cattle that were more likely to be infected with bovine TB.
37. The law in relation to dishonesty was clarified by the Supreme Court in the case of Ivey v Genting Casinos [2017] UKSC 67. The Committee has considered and applied the test laid down at paragraph 74 of Lord Hughes' judgment: "*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. ... When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*"
38. The Committee accepts that it must therefore decide:
- a. What was Mr Bowles's actual knowledge or genuinely held belief as to the facts?
 - b. Given his actual knowledge or genuinely held belief as to the facts, was his conduct dishonest by the standards of ordinary decent people?
39. The Committee has reflected on the Respondent's previous training, his audit history, his admissions and his own professional obligations as a veterinary surgeon and OV. This history and the knowledge acquired by the Respondent mean that he well knew how the TB tests of Mr M's cattle should have been conducted and, obviously, that he should not estimate skin fold thicknesses. The Respondent has accepted in his written representations that he did not use callipers to measure the skin folds of all of Mr M's cattle. The Respondent's accounts of his actions vary; by one he tested most of the animals with callipers; in another he accepts he did not use callipers at all; he also repeatedly asserts that his certification was valid and his actions justified on the

basis of finding reactors; *"I understand that this is not in strict accordance with OV instructions, but I judged at the time it would not affect the validity of the test and a number of reactors were, in fact, found."* The Committee does not find his accounts consistent or truthful and rejects his assertion that his certification could be valid.

The Committee has heard the evidence of Mr M and finds that he was an honest and accurate witness. It was noted that Mr M did not endeavour to suggest that he saw how the Respondent tested each of his cattle but, instead, confined his evidence to those cattle which he did have in his sight when dealt with by the Respondent. This restraint, when he clearly had concerns about the Respondent's conduct, made Mr M's evidence the more compelling.

40. Based on the above findings and the Respondent's own acceptance that he did not use callipers as required during the test, when taken together with all the guidance and retraining measures to which the Respondent was subjected in the period prior to these Test Days the Committee has reached the clear conclusion that the Respondent well knew that he had to use callipers when undertaking TB tests; that he had to use them to accurately measure skin folds and record the same; and that he ought not to proceed with such tests if he considered it would be unsafe to do so. The Respondent having resolved to ignore the Instructions issued to him, the Committee has concluded that he knew he should not carry out the test on Mr M's cattle in the manner that he did and that the consequences of proceeding as he did would render the outcome of his tests inaccurate and invalid for the purpose of compliance with APHA testing requirements. His decision to conduct the test in the manner that he did was to his knowledge manifestly impermissible conduct on the part of a certifying OV.
41. The Committee finds that the Respondent did not hold an honest belief that his testing procedures were permissible or that they produced results which could properly be relied upon. Further, the Committee has no doubt that, given his knowledge of the invalidity of the testing procedures he carried out, his conduct on these Test Days was dishonest by the standards of ordinary decent people.

3(ii)-Misleading

42. Given the gravamen of Charge 3(i) and the findings of the Committee as set out in Paragraph 40-41 above, this Charge Particular is of lesser significance. Nonetheless it is incumbent on the Committee to set out its findings in this respect.
43. The Committee has considered the explanation advanced by the Respondent, that he was purporting to measure the skin folds of Mr M's cattle using his hands and

basing his findings on his previous experience, as he set out at in his letter to XL Farmcare and that none of the animals went “...*completely un-measured...*”. However, the Committee finds that such actions and purported test results, constituted misleading conduct as the purported measurements were not carried out as required by the OV Instructions. It follows that the estimates made, certified and submitted to APHA by the Respondent could not be relied upon to be accurate and were, therefore, misleading. The Committee therefore finds the facts alleged in Charge 3(ii) proved.

3(iii) - Risked undermining government testing procedures designed to promote public health and/or animal welfare

44. The Committee accepts the College’s contention that the Respondent’s actions as set out in Charges 1 and 2 risked undermining Government testing procedures which are designed to promote public health and/or animal welfare. The stringent nature of TB testing procedure confirms that TB is a serious disease which affects cattle and other farm animals. It is transmissible from animals to humans. Milk from TB reactor cattle is unfit for human consumption and is a large part of the reason that milk is pasteurised in the UK. The implications of bovine TB for farmers are both financially and reputationally considerable. It is for these reasons that TB testing needs to be as accurate as possible. It is also the reason why only veterinary surgeons and approved Tuberculin Testers (“ATTs”) are permitted to undertake such tests and why a veterinary surgeon’s certification of test results is of such importance to the public. Dr Collins of APHA explains this “*Non-adherence to TB testing protocols is particularly important because such action undermines the government’s efforts to find and eradicate disease ...*”.
45. It also follows that, where improper or inadequate measurements have been taken or measurements have not been taken at all, some cattle may have been incorrectly identified as reactors and others, potentially, missed. The conduct and omissions of the Respondent may therefore have wide ranging implications both for human health and for animal health, for Mr M (both financially and reputationally) and for the reputation of the governmental test procedures and the public’s confidence in their suitability for safeguarding animal welfare and human health.

Charge 4 – “Your conduct in 1 and/or 2 above took place despite a number of warnings and/or advice and/or retraining given to you by the Animal and Plant Health Agency or associated organisations, namely as reflected in the following communications:

- i) **A letter dated 8 December 2014, suspending your Official Veterinarian status;**
- ii) **In a letter dated 4 October 2016, setting out non-compliant matters relating to Intradermal Comparative Tuberculin tests in September 2016;**
- iii) **In August 2019, suspension of your Official Veterinarian with XL Farmcare pending further training**

46. Charge 4 covers and concerns the warnings issued to the Respondent and re-training he was required to undertake over a lengthy period. Mr Barnard MRCVS sets out a detailed timeline of the registration, audits, suspensions and re-training of the Respondent with XL Farmcare and APHA. The following measures were taken to attempt to ensure that the Respondent was apprised of the requirements of the Government as regards TB testing procedures:

- a. In 2014 there were two non-compliant audits that resulted in APHA suspending the Respondent's OV status. This was communicated to his then employers, Tyndale Vets, Ltd., in a letter dated 08 December 2014 in which he was informed of his non-compliance. His failure to measure all skin reactions was classified as a critical non-compliance. The letter also details the corrective action required of him. However, this suspension appears not to have taken place as the Respondent informed APHA that he was retiring to South Africa.
- b. In 2015, the Respondent applied for OV authorisation under grandfather rights. These were initially refused and then later granted following a successful appeal.
- c. In April 2016, the Respondent was registered on the new APHA system.
- d. In August 2016, while the Respondent was working for Meadows Farm Vets, some concerns over testing were identified. As a result of these concerns an unannounced audit took place on 22 September 2016. The Respondent failed this audit and a letter dated 04 October 2016 set out areas of non-compliance and advised Meadow Farm Vets that the matter would be escalated to APHA and XL Farmcare.
- e. A further audit took place on 31 October 2016 which again revealed some non-compliances. The results of the audit were again sent to the Respondent's employer. It is unclear if any action resulted from this audit.

However the results of the audit, which included information regarding the non-compliances, was again sent to the Respondent's employer.

- f. In March 2019, the Respondent enrolled on the full TT authorisation course. This course involved an online training module, an online examination and a practical assessment.
 - g. In June 2019 XL Farmcare decided to undertake an unannounced audit on Mr Bowles which occurred on 22 July 2019. Again, a number of non-compliances were identified in the audit report. One of these concerned the Respondent's measurement techniques his measurement techniques. Advice was given concerning the correct procedures to be followed. Westpoint Ashbourne Vets were advised that the results of the audit would be passed to XL Farmcare Company's quality management.
 - h. On 5 August 2019, Alistair Macpherson, XL Farmcare Midlands wrote to Westpoint Ashbourne Vets to ask them to suspend the Respondent from TB testing and for him to revisit the online training. The Respondent enrolled in the training on 12 August 2019 and records the following in his CPD log: *"Done the TT revalidation course, passed. Very useful. Emphasises the need for being meticulous"*. Mr Bowles was subsequently audited on 20-23 August 2019 and full compliance was demonstrated.
 - i. No further concerns were raised between August 2019 and May 2020 until Mr Bowles attended Mr M's farm. During this time the Respondent submitted test results on 185 occasions.
 - j. Following the concerns raised by Mr M, the Respondent was suspended from testing on behalf of XL Farmcare ("VDP") on 02 July 2020.
 - k. On 03 July 2020 APHA suspended the Respondent's OV authorisation pending further investigation.
47. The Committee finds that the detailed training and audit history of the Respondent confirm that he both understands OV instructions and their rationale, and that he is plainly capable of undertaking the testing process properly but that, instead, he chooses to cut corners. Indeed in his letter to his employer he stated: *"I realise now this was a serious error of judgement for which I apologise. I should either have performed the test exactly as required by the instructions to Ovs, or I should have abandoned the test ..."*. His conduct undoubtedly poses a risk to public health and

significantly undermines the role of the OV in this key process for animal welfare and the protection of public health.

48. The Committee finds that Charge 4 reflects and embodies the warnings, audits and re-training requirements issued to the Respondent over an extensive period. Having been subjected to additional audits and re-training in connection with the Government's TB testing procedures and requirements as recently as August 2019, the Respondent's conduct and the improper and unacceptable testing procedures deployed on Mr M's cattle in May 2020 was cavalier. The Committee is entirely satisfied that in acting as he did the Respondent made a conscious and deliberate decision to ignore his Skin Testing Procedure training, the instructions of APHA concerning the test methods he was required to implement and the previous warnings he was given about the consequences of ignoring such instructions and the re-training he had previously been required to undergo.
49. In these circumstances the Committee is satisfied to that it is sure that the facts alleged in Charge 4 (i)-(iii) are proved.

Conclusion

50. Having found all the Charges proved, the Committee will now proceed to hear submissions on Stage 2, namely whether the conduct comprised within the proven Charges constitutes Disgraceful Conduct in a Professional Respect.

Disciplinary Committee
9 October 2024