

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 SANCTION

Stage 3

1. The Committee has had full regard to and followed the approach advised by the Legal Assessor. The Committee had in mind that the primary purpose of the available sanctions is not to punish but: (i) to protect the welfare of animals, (ii) to maintain public confidence in the profession and (iii) to declare and uphold proper standards of conduct. It accepts that the sanction which it should apply must be proportionate to the nature and extent of the misconduct and to the maintenance of appropriate standards expected of members of the veterinary surgeons' profession and must weigh the seriousness of the professional misconduct and the public interest with and against the interests of the Respondent. In judging such matters the Committee has assessed culpability on the basis of the Particulars of each Charge, taking into account all relevant aggravating and mitigating factors present.
2. The Committee acknowledges and accepts that the principle of Proportionality establishes that no greater sanction should be imposed on a registrant than is absolutely necessary to achieve its objectives. Accordingly, it has followed the advice that it should consider the available sanctions in reverse order to their seriousness and only if and when the Committee determines that it is not sufficient to protect the welfare of animals and serve the public interest to impose a sanction at a lower level, that it should go on to consider the next level of sanction available.
3. As stated in its Stage 1 and 2 Decisions the Committee finds that the Respondent has shown scant regard for the requirements of the OV Instructions that he was engaged

to follow. It concludes that the Respondent considers that his testing methods were as reliable as those prescribed by APHA. This conclusion is confirmed by his attempts at justifying the sufficiency and accuracy of the unauthorised methods he adopted once a complaint had been registered concerning his conduct in May 2020. He persisted in adopting his own testing methods even after he had been subjected to unannounced audits which he failed and after he had been required to undergo re-training before regaining his OV status. He had also twice been deemed suspended from being an authorised OV, in 2014 (by APHA) and again in 2019 (by XL Farmcare). As late as 2019 he had been required to undertake OV re-training. None of this experience persuaded him of his obligation to comply with the OV Instructions. His conduct put Mr M's cattle at risk and risked undermining the validity of APHA's certified test results, designed to identify animals with positive TB reactions. Both consequences constitute unacceptable conduct for a veterinary surgeon, and especially one trusted to undertake matters on behalf of the UK government.

4. The respects in which the Respondent breached the certification requirements set out in the RCVS Code of Conduct have been identified in the Committee's Stage 2 Decision. They are numerous and serious. His misconduct impacts not only on the integrity of the APHA certifying process in terms of its potential to affect adversely public health but also animal health and welfare more generally. APHA relies on OVs to implement faithfully its test procedures. Members of the public rely on APHA to set and safeguard procedures designed to detect the presence of TB in cattle. This is why the level of trust in OVs to carry out their test procedures fully and accurately is understandably high. When an OV does not carry out the APHA test procedures with an adequate level of care, but goes so far as to act dishonestly in submitting test results he knows are not compliant with the OV Instructions, the tester must know that such conduct may risk his registration to practice in a professional capacity. After the number of warnings that the Respondent had received about the inadequacy of his testing procedures over the period since 2014, the Respondent must have known that his authorisation to undertake APHA tests may have been at risk if he continued to transgress. Knowing all that, the Respondent persisted in non-compliance. This was despite reflecting in his CPD log, at the conclusion of re-training, that the course had "*emphasise[d] the need for being meticulous*".
5. Against this history and factual backdrop the Committee's view is that the Respondent's conduct in refusing to follow the OV Instructions when testing Mr M's cattle in May 2020 constituted conduct of an egregious kind. In addition, there are several aggravating elements which can be applied to his misconduct, including a risk

to animal or human health; his lack of probity and integrity in certifying test results which he knew were non-compliant and unreliable; recklessness in reaching a conscious decision to ignore the OV Instructions; his failure to comply with the requirements of the position of trust and responsibility which attached to his APHA authorisation; and against a backdrop of sustained pattern of behaviour that displayed blatant disregard of the system that regulated TB testing by OVs. It also follows that the Respondent manifested no insight into the seriousness of his misconduct when acting as an OV.

6. The Committee has given careful consideration to the question of whether there are mitigating factors which the Respondent could have raised had he been present at this Hearing. The Respondent did not secure any financial advantage by conducting himself as he did. He has had a long career as a veterinary surgeon prior to this appearance before the Committee but in the light of the history of his non-compliance with the test requirements of APHA as evidenced in the audit outcomes and requirements for re-training as an OV, the Committee places little weight on this as a mitigating factor.
7. The Committee notes that there was no actual harm occasioned to animals by reason of the Respondent's conduct. Whilst there have been some late admissions of misconduct by the Respondent when he tendered an apology, his explanations at best lack consistency and indeed he initially sought to assert that he had used callipers throughout when testing Mr M's cattle. Accordingly the Committee also places little weight on this as a mitigating factor.
8. No Further Action: This is not a matter in which it could reasonably be argued that "no further action" reasonably arguable. The conduct of the Respondent is of such an order of seriousness that it cannot be appropriate to follow this course. Right thinking members of the public would be most concerned at such an outcome, especially given the potential effect on animal welfare and public health inherent in the Respondent's unauthorised and inadequate test procedures.
9. Postponement: Similarly, "Postponement" would serve no useful purpose. This is not a case concerning professional standards or competency where a postponement can have some value. The Respondent has been the subject of repeated re-training and advice and neither has deterred him from continuing to undertake TB tests in his own preferred and unauthorised manner.

10. Reprimand or Warning as to Future Conduct: Such a response would, in the view of this Committee, not be appropriate in the case of this Respondent. He has received several warnings as to the inadequacy of his preferred testing methods in the past, as identified in the Decisions on Stages 1 and 2. They have proved wholly ineffective at bringing about compliance with the requirements for TB testing as stipulated by APHA. Further, the Committee has found that the Respondent's misconduct comprised acts of dishonesty for which a Reprimand or Warning as to Future Conduct would not sufficiently reflect the seriousness of his misconduct.
11. Suspension: Turning to the next prospective sanction in order of seriousness the Committee finds that the regulatory requirement for certification by an OV is intended to give the public confidence that the system will be properly operated and public health and animal welfare objectives will be protected. The system therefore places a considerable degree of trust in the veterinary surgeon to carry out his duties competently and truthfully. The Respondent's conduct on this occasion constituted a clear breach of that obligation which it was his public duty to fulfil.
12. His conduct risked undermining in a most serious way public confidence in the reliability of testing as a means of promoting animal health and welfare. In addition the Respondent's actions risked adversely affecting public health and animal welfare, both of which are of great importance to members of the public. His actions have served to undermine the reliability of the government's testing procedure which has, as its ultimate desirable aim, the eradication of TB in cattle.
13. The Committee concludes the Respondent lacks insight into the gravity of his misconduct. It finds he considers that full compliance with the requirements of the OV Instructions is unnecessary and that he believes his interpretation of estimated skin thickness values is sufficient for him to classify any reactions to the TB tests that he performs. Continuing to hold that view, despite having twice lost his OV status and despite the many audits and re-training processes he has been required to undergo, confirms the conclusion that the Respondent has scant regard for the responsibilities and obligations of an authorised OV.
14. The Committee has found that the Respondent acted as he did on 12 and 15 May 2020, not as a result of any mistake or uncertainty as to the procedure he was to implement when testing Mr M's cattle, but because he considered the OV Instructions to be unnecessarily stringent and time-consuming. He believes that his testing methods are adequate and he has attempted to justify those methods as being sufficient to detect TB in cattle.

15. The Committee considers that a welfare issue for animals did arise in this case in that cattle may have been incorrectly classified on the basis of the Respondent's test results and that there was therefore a risk of spreading infection both within this herd and elsewhere. APHA's testing regime is designed to eliminate such risks to the health of cattle.
16. In addition to the aggravating factors identified in paragraph 5, the Committee also reflected upon the potential impact that the Respondent's conduct had on the commercial business of the affected client, namely Mr M. It has no clear or direct evidence to confirm that there were any significant financial consequences for him. Some of Mr M's cattle were sent to slaughter as a result of the Respondent's unauthorised estimates of whether they were reactors but there is no way of knowing whether those decisions would have been arrived at had the Respondent carried out the tests on those particular cattle with callipers as he was required to do by APHA. However, it remains the case that the Respondent's test procedures did cause Mr M to conclude that his certified test results were not reliable. Not surprisingly APHA took the same view and took steps to ensure that the Respondent's authorisation as an OV was revoked.
17. The Committee concludes that a Sanction of Suspension would not be sufficient in this case. As in relation to Reprimand or Warning, the Respondent's history in response to advice and re-training gives no confidence that his response to suspension would result in future compliant conduct.
18. Moreover, the Committee considers the Respondent's misconduct to be so serious that it amounts to conduct which is fundamentally incompatible with his entitlement to remain on the Register of the RCVS.
19. Removal from the Register: The reasons why the Respondent's behaviour is considered fundamentally incompatible with being a veterinary surgeon are many.
20. The correctness of the "certification" is of fundamental importance to the legitimacy of all certified TB test results and the Committee considers that any veterinary surgeon who fails to appreciate and to acknowledge that must lack full insight into the seriousness of his conduct.
21. The Committee considers that the Respondent's conduct represents a serious departure from the professional standards as set out in the RCVS Code of Professional Conduct for Veterinary Surgeons. In relation to the finding of dishonest

conduct by the Respondent, the Committee concludes (for the reasons spelt out in its Decision on Findings of Fact and Decision of Disgraceful Conduct in a Professional Respect) that his conduct, when completing and submitting the TB test results of May 2020, was deliberate and followed from a decision to ignore requirements of the OV certification procedures and the government's TB control system.

22. Given the amount of advice received and re-training which the Respondent was required to undertake he has already had ample opportunity to remediate his practice but has not done so. The Committee is therefore concerned that there is a very real risk of further repetition of this conduct in the future were he to be permitted to remain on the Register. The Committee's concern in this regard stems from the fact that the dishonesty of which the Respondent has been found guilty, was not dishonesty committed on the spur of the moment. The Respondent had ample opportunities for reflection before resolving to act as he did. This places his acts of dishonesty in the most serious category.
23. The public is entitled to expect that it can have confidence in the certifications of a veterinary surgeon who is carrying out a public duty on behalf of that public body. Indeed that is the whole purpose behind the requirement that OVs undertake additional and specialised training before being permitted to undertake OV duties.
24. The Committee also considers that other registered veterinary surgeons who undertake OV duties would, similarly, have a well-founded expectation that all OVs would fulfil their certifying obligations in accordance with the strict requirements of the certification process.
25. Ultimately, the Committee was driven to the conclusion that the public's desire to see the implementation of proper certification standards in relation to activities which impact on animal welfare and public health, and which did not occur on 12 and 15 May 2020, must outweigh the interests of the Respondent.
26. This Committee considers that it would be failing in its public duty to protect the wider public interest in upholding proper standards in the profession and confidence in the RCVS as its regulator, if the Respondent's right to practise were not removed.
27. It is, therefore, the conclusion and decision of this Committee that the only proper Sanction that can be imposed in this case is that the Respondent's name should be removed from the Register and it directs the Registrar accordingly.

Disciplinary Committee
11 October 2024