

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

MPHO DONALD LESOLLE, MRCVS

COMPLETE DECISION OF THE DISCIPLINARY COMMITTEE

1. The Charges

1.1 The Respondent faced the following Charges:

“That, being registered in the Register of Veterinary Surgeons, and whilst in practice:

1. *In relation to your position as Official Veterinarian, with regards to export health certificates, you:*

*(a) On or around 20 May 2021 signed an Export Health Certificate (“EHC”) number **21/2/272672** relating to animal feed supplements and in doing so;*

(i) failed to inspect the said animal feed supplements before signing the said EHC;

(ii) failed to include details in the said EHC of the region of origin (section 1.8 of the said EHC) and/or the region of destination (section 1.10 of the said EHC);

*(b) On or around 28 June 2021 signed an EHC Number **21/2/307994** for cooked frozen beef and in doing so:*

(i) declared that the said beef had originated from a slaughterhouse approved by the Agri-Food and Veterinary Authority of Singapore (“the AVA”) when the slaughterhouse from which it originated had not been so approved;

(ii) declared that the said beef had been inspected and found to be fit for human consumption, when you had not inspected the said beef;

(iii) failed to include in Part IV (d) of the said EHC the details of the country/ies and/or zone/s where the said beef had originated;

(iv) failed to stamp the said EHC with a fan stamp, such a stamp being required for meat exports to areas outside the European Union;

(v) undertook the certification process for the said EHC remotely without the consent of the Animal and Plant Health Agency (APHA) to do so;

(vi) failed to send to the APHA a certified copy of the said EHC within seven days of it being signed;

(c) On or around 11 August 2021, signed an EHC number 21/2/367823 relating to live birds and in doing so:

(i) declared (in section IV para 1 a (i) of the said EHC) that the live birds derived from the United Kingdom where the highly pathogenic avian influenza had not been recorded in domesticated and captive birds for at least 12 months prior to export, when this was not correct;

(ii) deleted Section IV para 7 of the said EHC relating to isolation and testing of birds, when this section was applicable to the birds subject to the said EHC and should have been completed;

(iii) failed to stamp the said EHC with a fan stamp, such a stamp being required for live bird exports to areas outside the European Union;

(iv) inserted detail into a table at paragraph I of the said EHC without crossing out the remaining blank sections of the table;

(v) left blank paragraph II c) of the said EHC, without the words “not applicable” or “N/A” or equivalent;

(vi) failed to include the words “none given” or equivalent at paragraph IV.5 of the said EHC;

(vii) included a schedule at the end of the said EHC without giving the certificate reference number;

(d) On or around 23 August 2021, signed an EHC number 21/2/389327 relating to animal feed supplements and in doing so:

(i) failed to inspect the said animal feed supplements before signing the said EHC;

(ii) left blank sections 1.6 (person responsible for the load in the EU) of the said EHC and/or 1.12 (place of destination) of the said EHC without inserting the words “not applicable” or “N/A” or equivalent;

(iii) in section 1.7 of the said EHC stated that the country of origin was “UK” when it should have been recorded as “United Kingdom-GB”;

(iv) failed to delete the words “either/or” at section 11.3 of the said EHC;

*(e) On or around 14 September 2021, signed an EHC number **21/2/404305** relating to live birds and in doing so:*

(i) failed to stamp the said EHC with a fan stamp, such a stamp being required for live bird exports to areas outside the European Union;

(ii) included a schedule at the end of the said EHC, without giving the certificate reference number on that schedule;

(f) Between 12 April 2022 and 23 May 2022 failed to send to APHA certified copies of EHCs numbered 21/2/139027 and/or 21/2/411936, despite requests from APHA for the same;

(g) Your conduct at 1 (a) to (f) above risked undermining procedures and/or regulations and/or rules designed to protect animal welfare and/or avian welfare and/or public health;

(h) Your conduct at 1 (a) to (d) above was:

(i) dishonest;

(ii) misleading;

AND THAT in relation to the facts alleged above, either individually or in any combination, you have been guilty of disgraceful conduct in a professional respect.

2. Representation.

2.1 Ms Stevens, Counsel, appeared on behalf of the College; Mr Saad, Counsel, appeared on behalf of the Respondent.

3. Admissions

3.1 The Respondent admitted Charges 1 (a)- (g) in full.

- 3.2 He also admitted Charge 1 (h) (ii), namely that his conduct was misleading, in relation to Charges 1 (a) (i), 1 (b) (i) and (v), 1 c (i) and (ii) as to Section IV para 7 (b) only, and 1 (d) (i) and (iii).
- 3.3 The Respondent denied Charge 1 (h) (i), namely that his conduct in relation to Charges 1(a)- (d) was dishonest.
- 3.4 Ms Stevens told the Committee that the College no longer pursued allegations that the Respondent's conduct was dishonest and/or misleading in relation to Charges 1 (c) (iv), (v), (vi) and (vii) and 1 (d) (ii) and (iv).

4. Background

- 4.1 The Respondent qualified as a veterinary surgeon in 1991. From at least 2013 onwards he was engaged as an Official Veterinarian ("OV"), contracted to undertake certain responsibilities on behalf of the Animal & Plant Health Agency ("APHA"), an executive agency set up to safeguard animal and plant health for the benefit of people, the environment and the economy. As an OV, the Respondent's responsibilities included completing and signing Export Health Certificates ("EHC" s) in respect of meat, animal feed and live birds. These certificates provided information as to the nature of the consignment being exported and, in particular and amongst other matters, its provenance, destination and condition.
- 4.2 On 5 July 2021 a consignment of cooked frozen beef was exported to Singapore under an EHC completed and signed by the Respondent. The consignment was rejected at Singapore because, contrary to the statement on the certificate, the meat did not originate from a slaughterhouse approved by the Agri-Food and Veterinary Authority of Singapore("AVA"). As a result, an audit of the Respondent's work as an OV was carried out by APHA and a number of cases were identified in which certificates completed in 2021 were found not to be compliant with mandated practice.
- 4.3 In addition to Charge 1 (b), which relates to the cooked frozen beef rejected at Singapore, Charges 1(a), (c), (d) and (e) relate to two certificates in respect of animal feed and two certificates relating to the export of live birds. The investigation undertaken by APHA revealed that in relation to the certificates relating to cooked frozen beef and animal feed, the Respondent had not himself inspected the consignments. These certificates also contained various errors in the way in which they had been completed. In relation to the certificates involving live birds, the Respondent had in one case certified that the birds derived from the United Kingdom where the highly pathogenic avian influenza had not been recorded in domestic and captive birds

for at least 12 months prior to export. This certification was incorrect as the pathogen had been recorded in the United Kingdom within the preceding 12 months. In the same certificate he also deleted a section relating to isolation and testing which was applicable to the birds. There were a number of other errors in relation to the way in which both certificates had been completed.

- 4.4 During its investigation, APHA asked the Respondent to produce certified copies of two further EHCs that he had completed. The Respondent was unable to produce these certified copies. This formed the basis for Charge 1(f).
- 4.5 The Respondent admitted from the outset of the investigation that he had made a number of errors in his certification. He also admitted that he was unable to produce the two EHCs that he was required to produce. He admitted that his conduct in relation to these matters risked undermining procedures and/or regulations and/or rules designed to protect animal welfare and/or avian welfare and/or public health.
- 4.6 As a result of the investigation, the various APHA authorisations which enabled the Respondent to act as an OV and complete EHCs were revoked for a period of three years; that period is due to expire in October 2025. At that time, it will be open to the Respondent to apply for revalidation as an OV.
- 4.7 APHA referred the issues raised by its investigation to the College as a matter of professional concern.

5. Evidence: The College's evidence

- 5.1. The Committee received in evidence a written witness statement from Dr Amy Smith, MRCVS, Veterinary Advisor at APHA. The contents of her statement were agreed. Dr Smith was asked to investigate the concerns that had arisen in relation to the Respondent's certification. In her witness statement, Dr Smith explained that OVs are practising members of the RCVS who have gained one or more accredited "authorisations", through previous experience and/or specific training, that are relevant to the discharge of their responsibilities as an OV. In addition to specific training, OVs are also able to access online "OV Instructions" and guidance on the Department for Environment, Food & Rural Affairs ("DEFRA") website and utilise a readily accessible telephone enquiry service.
- 5.2 Dr Smith explained that when nominated by an exporter to certify an export consignment, an OV is responsible for obtaining a copy of the current EHC and the associated Notes for Guidance ("NFG"). This allows the OV to familiarise themselves with the necessary actions for export and to carry out examination, inspection, testing,

sampling and treating in accordance with applicable APHA instructions and the specific requirements of the EHC and NFG. Dr Smith produced the export certificates referred to in Charges 1 (a)- (e) and the NFG applicable to each certificate.

- 5.3 Dr Smith also referred to, and produced, the College's "*10 Principles of Certification*", which set out best practice in veterinary certification and which, she said, OV's should follow when completing EHCs. She emphasised that in accordance with these "*Principles*" a certifying OV should familiarise themselves with the form of certificate that requires their signature and any accompanying NFG. The Introduction to the *Principles* includes the following statements:

"21.3 Veterinary certification plays a significant role in the control of animal health and welfare, the continuity of European and international trade and the maintenance of public health. Veterinarians have a professional responsibility to ensure the integrity of veterinary certification. The simple act of signing their name should be approached with care and accuracy.

21.4 Veterinarians must certify facts and opinions honestly and with due care, taking into account the 10 Principles of Certification set out below. They should not sign certificates which they know or ought to know are untrue, misleading or inaccurate. This applies equally to hand-written, printed and electronic certificates.

21.5 Veterinarians should also familiarise themselves with the form of certificate they are being asked to sign and any accompanying Notes or Guidance, instructions or advice from the relevant Competent Authority".

The first of the 10 Principles states that:

"A veterinarian should certify only those matters which:

a) are within their own knowledge;

b) can be ascertained by them personally;

c) are the subject of supporting evidence from an authorised veterinarian who has personal knowledge of the matters in question; or

d) are the subject of checks carried out by an Officially Authorised Person (OAP)".

- 5.4 In relation to the Respondent's veterinary experience, Dr Smith stated that the Respondent practised as a sole veterinarian from premises in Staffordshire. In 2021 he held specific OV authorisations in "*Essential Skills*", "*Exports (General)*",

“*Companion Animal Exports*”, “*Product Exports*” and “*Avian Exports*”. The first four of these authorisations were granted to the Respondent in or about 2013 because of his previous work as a Local Veterinary Inspector, which included export certification. The Respondent obtained his “*Avian Exports*” authorisation following specific training. The authorisations had to be revalidated from time to time through successful participation in APHA’s training programme, run by a nominated supplier. The Respondent revalidated the authorisations received because of his previous work in 2019. Export certification was a significant proportion of his business.

- 5.5 Dr Smith also produced three advisory letters that had been sent to the Respondent between 2013 and 2015. These letters identified failings in EHCs issued by the Respondent and reminded him of the importance of the NFG accompanying each EHC and of the guidance to be found on the relevant website in the section devoted to *Official Veterinarians/OV Instructions/Exports*. He was also reminded of the guidance to be found in the *RCVS Code of Professional Conduct for Veterinary Surgeons*. The letter of 11 August 2015 specifically drew his attention to the principles of certification in general and to the requirement only to certify those matters which are within his own knowledge.
- 5.6 So far as the individual EHCs specified in the Charges were concerned, Dr Smith stated that, in relation to the consignment of cooked frozen beef, the Respondent had certified that the products were prepared in an establishment accredited by the AVA. This was not the case, as the Respondent could have discovered if he had referred to the link to the relevant search tool identified in the NFG. When interviewed, the Respondent also confirmed that he had not inspected the consignment or the premises from which it came, either in person or virtually. There was in any event no provision in the NFG in relation to this export which permitted virtual inspection.
- 5.7 In relation to the two certificates relating to animal feed supplements, Dr Smith stated that the Respondent had confirmed that he had not inspected the supplements and in one case had failed to include details of the region of origin and destination. In the other he had made various errors in completing the certificate which the College no longer contended were misleading or dishonest.
- 5.8 In one of the certificates relating to live birds the Respondent had wrongly declared that the birds which formed the consignment derived from the United Kingdom and that Highly Pathogenic Avian Influenza (HPAI) had not been recorded in the United Kingdom for at least 12 months. This latter statement was factually incorrect. In making this declaration, the Respondent had omitted to seek confirmation from APHA of the

HPAI status of the relevant area. The NFG required him to seek this confirmation, but he had not consulted the NFG. He should have received written confirmation on a Notifiable Disease Clearance Form (“NDCF”) in respect of this before completing the EHC. In addition, on the same certificate, he had wrongly deleted an applicable section regarding isolating and testing of the live birds, as well as making some further less significant errors in the way the certificate was completed.

- 5.9 In relation to both certificates he had failed to stamp with a fan stamp, as was required for export outside the EU, and each certificate included a schedule without including the certificate reference number.
- 5.10 Dr Smith stated that the Respondent’s OV Instructions, which she produced, required an OV to retain a copy of a signed EHC and any supporting documentation for a period of two years. The Respondent was unable to produce copies of two certificates issued within this timeframe when required to do so.
- 5.11 The Committee also received in evidence a written statement from Dr David Collins MRCVS, Veterinary Head of Field Delivery, Western England Delivery Area at APHA. The contents of his statement were agreed. He was a member of the two-person panel which reviewed Dr Smith’s investigation and determined the outcome. He confirmed that the panel of which he was a member had revoked all the Respondent’s APHA authorisations for a period of three years and had informed the Respondent that his case would be referred to the RCVS as a cause for concern.

6. Evidence: The Respondent

- 6.1 The Respondent submitted a detailed witness statement and gave oral evidence. He accepted that he had made several serious errors in his certification. He said that in the early stages of his practice as an OV he had been careful to follow proper procedure. In his oral evidence he said, “*at first, I would do things by the book.*”. However, with the passage of time, often dealing with the same exporters, he had become complacent and thought that he knew all that was required when, as he now realised, this was far from being the case. As a result, he had not troubled to read the relevant NFG in relation to each of the certificates in question. He accepted that on occasion parts of his certificates were misleading. He denied any dishonesty.
- 6.2 In relation to the consignment of cooked frozen beef, the Respondent said that he worked regularly for the exporter and, prior to the Covid-19 pandemic, would visit their premises every quarter to inspect the premises and processing plant and whatever was being exported on that day. If exports did not coincide with his visit, he would

complete an EHC remotely. During the pandemic he had not been able to visit, and he knew that a visit was long overdue. In his oral evidence, the Respondent said *“I had repeatedly told them I needed to go in, audit and inspect. They kept me at bay. I should have been more robust.”* Nevertheless, he considered the exporter to be a *“slick operation”* and he had not identified any previous problems. He had not read the NFG and so did not realise there was a search tool which would have enabled him to establish whether the slaughterhouse used by the exporter was approved by the AVA or not. He assumed it was.

- 6.3 In relation to his failure to inspect, he did not think that he was certifying that he had personally inspected the consignment. He pointed out that the certification was in the following terms: *“I, the undersigned Official Veterinarian certify that... (m) the meat described above was inspected and found fit for human consumption”*. He considered that the exporter, as a reputable business, would have ensured that the meat had been inspected and found fit for human consumption and he said that he knew that meat leaving slaughterhouses was inspected.
- 6.4 He attributed the other errors in the certificate to his failure to read the NFG.
- 6.5 In relation to his failure to inspect either of the consignments of animal feed supplements, the Respondent said that he had previously attended the premises of the exporter, and he had never identified any issues with their consignments. He therefore completed the EHCs in line with the certificates he had completed for previous consignments. He said that he had not believed that he was required to inspect the products and he did not consider, at the time, that he was required to certify that he had inspected the products. He had not consulted the NFG, nor the additional guidance in the OV Instructions Exports section (referred to in the relevant NFG) which he now accepted made clear that personal inspection was required.
- 6.6 In relation to other errors in these certificates he had assumed that the exporter had completed the necessary details.
- 6.7 In relation to the EHC relating to live birds in which he had wrongly certified that the UK was HPAI free, the Respondent stated that he had not read the NFG or the form 618 NDC which defined the sections of the EHC which he was authorised to certify. Instead, he crossed out sections which he was not authorised to certify, thereby arriving at a result which was false. In addition, he said that he *“must have thought”* that he was certifying that the region within the UK from which the birds came (West Midlands) was HPAI free and that his additional erroneous deletion of a section of the form dealing with the isolation of the birds and testing for avian flu followed naturally

from the mistakes he had made in the earlier part of the form. Subsequently he came across a letter which he had written on the advice of APHA and sent to the exporter on the day after completing the form in which he wrote that he had erroneously deleted the section dealing with isolation and testing. He produced the correction letter.

6.8 The other errors in this and the other certificate relating to avian exports stemmed, he said, from his complacency and failure to read the NFG.

6.9 The Respondent accepted that he had been slow to respond to requests for information from APHA and had been unable to locate copies of the two EHCs requested by APHA. He said that his practice was short of staff and his filing system was inadequate. As a result, he had been unable to locate the emails from exporters to which the EHCs would have been attached. He said that had now improved his record-keeping.

7. Findings of Fact.

7.1 The Committee received helpful written and oral submissions from both parties. It accepted the advice of the legal assessor. It recognised that to find any allegation proved it needed to be sure that the allegation was true. Regarding dishonesty, the Committee was referred to the cases of *Ivey v Genting Casinos UK Ltd* [2018] AC 391 and *Uddin v General Medical Council* [2012] EWHC 2669 (Admin).

7.2 The Committee considered each sub-head of charge separately.

7.3 It found the purely factual matters set out at Charges 1 (a) – (f) **Proved** by reason of the Respondent's admissions.

7.4 It found Charge 1 (g) also **Proved** by reason of the Respondent's admission.

7.5 It accepted the College's decision to withdraw allegations that the Respondent's conduct was dishonest and/or misleading in respect of Charges 1 (c) iv-vii and 1 (d) (ii) and (iv).

7.6 In relation to the remaining allegations of misleading and /or dishonest conduct the Committee's findings are as follows.

8. *1(a) On or around 20 May 2021 signed an Export Health Certificate ("EHC") number 21/2/272672 relating to animal feed supplements and in doing so;*

8.1 *(i) failed to inspect the said animal feed supplements before signing the said EHC;*

Misleading Conduct: **Proved**, by virtue of the Respondent's admission.

Dishonest Conduct: Proved. The Committee did not find the Respondent's evidence, that he did not appreciate that he was required to inspect the consignment personally, to be credible. The Committee noted that the Respondent in his witness statement referred to his earlier experience of following procedures carefully. He also referred to the fact that he had made numerous previous inspections at the premises of this exporter to confirm that what he found "*matched the information in the EHC*". The Respondent was an experienced OV who had revalidated the authorisation that enabled him to sign this EHC in 2019, just two years before he signed this certificate. As an experienced veterinarian the Respondent must also have been aware of the first *Principle* in the *10 Principles of Certification*. In the Committee's judgment the Respondent must have been aware that further certification based simply on his knowledge of previous practice at this exporter was contrary to this first *Principle*. The Committee was sure that the Respondent knew that, before signing this EHC, he was required to inspect the consignment himself and that in signing the EHC he was falsely declaring that he had done so.

The Committee was sure that ordinary, decent people would regard this conduct as dishonest.

- 8.2 (ii) failed to include details in the said EHC of the region of origin (section 1.8 of the said EHC) and/or the region of destination (section 1.10 of the said EHC);

Misleading Conduct: Not Proved. The Committee considered that the word "misleading" normally imported as its meaning some active step that was taken which created an inaccurate understanding of what the facts were. In the present instance the Respondent had simply left two boxes on the form entirely blank. It was not clear to the Committee how this could be said to be misleading, though it might raise legitimate questions regarding these omissions.

Dishonest Conduct: Not Proved. The Committee had regard to its finding in relation to misleading conduct. Further, it considered that the failure to fill in these two boxes was much more consistent with a careless approach to the form than anything else. An ordinary decent person would not regard this failure as dishonest.

9. (b) On or around 28 June 2021 signed an EHC Number **21/2/307994** for cooked frozen beef and in doing so:

- 9.1 (i) declared that the said beef had originated from a slaughterhouse approved by the Agri-Food and Veterinary Authority of Singapore ("the AVA") when the slaughterhouse from which it originated had not been so approved;

Misleading Conduct: **Proved**, by virtue of the Respondent's admission.

Dishonest Conduct: **Not Proved**. The Respondent told the Committee that he assumed the slaughterhouse was approved as he knew it was a reputable establishment. The Committee considered that his evidence in this respect was not implausible, and his certification was therefore culpably careless rather than dishonest.

- 9.2 *(ii) declared that the said beef had been inspected and found to be fit for human consumption, when you had not inspected the said beef;*

Misleading Conduct: **Proved**. The Committee concluded that in signing the certificate the Respondent was representing that he had inspected the consignment, when this was not the case. The Committee noted that the full wording of paragraph (m) of the EHC was "*the meat described above was inspected and found fit for human consumption. Every precaution has been taken to prevent contamination prior to export*". It is impossible to see how the Respondent could properly have certified this in the absence of a personal inspection.

Dishonest Conduct: **Proved**. The Committee refers to its reasoning at Charge 1 (a) (i), which is equally applicable to this sub-head of charge. The Committee did not find the Respondent's evidence that he was entitled to rely upon prior inspections at the slaughterhouse to be credible for the same reasons it has given in relation to Charge 1 (a) (i). Further, as an experienced OV, the Respondent must have realised that the product prepared for export and which was the subject of the EHC was a product that was different to the product assumed to have been inspected at the slaughterhouse.

The Committee was sure that the Respondent was aware of the requirement to inspect the consignment personally. An ordinary decent person would regard his signing this EHC when he had failed to carry out an inspection as dishonest.

- 9.3 *(iii) failed to include in Part IV (d) of the said EHC the details of the country/ies and/or zone/s where the said beef had originated;*

Misleading Conduct: **Not Proved**. The Respondent had simply left this information out. The Committee applied the same approach to that which appears in relation to the Committee's findings at Charge 1 (a) (ii). An entirely blank box is unlikely to mislead, though it may be the subject of legitimate criticism.

Dishonest Conduct: **Not Proved**. For the same reasons as appear in the Committee's findings at Charge 1 (a) (ii).

- 9.4 *(iv) failed to stamp the said EHC with a fan stamp, such a stamp being required for meat exports to areas outside the European Union;*

Misleading Conduct: **Not Proved**. The Committee was unable to see how this failure was misleading.

Dishonest Conduct: **Not Proved**. The Committee was unable to see how this failure was dishonest.

- 9.5 *(v) undertook the certification process for the said EHC remotely without the consent of the Animal and Plant Health Agency (APHA) to do so;*

Misleading Conduct: **Proved**, by virtue of the Respondent's admission.

Dishonest Conduct: **Proved**. The Committee refers to its reasoning at Charges 1 (a) (i) and 1(b) (ii). The Committee was sure that the Respondent knew that he had to inspect the consignment personally and that there was no authorisation for remote certification.

The Committee was sure that that an ordinary decent person would regard the Respondent's conduct in undertaking the certification process remotely, despite his knowledge that this was not authorised, as dishonest.

- 9.6 *(vi) failed to send to the APHA a certified copy of the said EHC within seven days of it being signed;*

Misleading Conduct: **Not Proved**. The Committee was unable to see how this failure could be said to be misleading, though it might be a cause for legitimate concern.

Dishonest Conduct: **Not Proved**. The Committee was unable to see how this failure could be said to be dishonest.

10. *(c) On or around 11 August 2021, signed an EHC number 21/2/367823 relating to live birds and in doing so:*

- 10.1 *(i) declared (in section IV para 1 a (i) of the said EHC) that the live birds derived from the United Kingdom where the highly pathogenic avian influenza had not been recorded in domesticated and captive birds for at least 12 months prior to export, when this was not correct;*

Misleading Conduct: **Proved**, by virtue of the Respondent's admission.

Dishonest Conduct: **Not Proved**. The Committee had regard to the Respondent's explanation for the way in which he had completed the form. It found his evidence in

this respect to be plausible. The Committee concluded that the false statement identified in this charge appeared to be much more consistent with incompetence rather than dishonesty, not least because of the chaotic way in which the form had been completed, which included the apparent certification of parts of sections which were in fact mutually exclusive alternatives.

- 10.2 *(ii) deleted Section IV para 7 of the said EHC relating to isolation and testing of birds, when this section was applicable to the birds subject to the said EHC and should have been completed;*

Misleading Conduct: Proved. The deletion of this entire section was inappropriate and followed the Respondent's inappropriate certification of Section IV para 1 (a) i .

Dishonest Conduct: Not Proved. For the reasons given at 1 (c) (i) the Committee concluded that this inappropriate deletion, which followed inevitably from the inappropriate certification in the previous sub-charge, was more consistent with incompetence rather than with dishonesty.

- 10.3 *(iii) failed to stamp the said EHC with a fan stamp, such a stamp being required for live bird exports to areas outside the European Union*

Misleading Conduct: Not Proved. For the same reasons that appear in relation to Charge 1 (b) (iv) above.

Dishonest Conduct: Not Proved. For the same reasons that appear in relation to Charge 1 (b) (iv) above.

11. *(d) On or around 23 August 2021, signed an EHC number 21/2/389327 relating to animal feed supplements and in doing so:*

- 11.1 *(i) failed to inspect the said animal feed supplements before signing the said EHC;*

Misleading Conduct: Proved, by virtue of the Respondent's admission

Dishonest Conduct: Proved, for the same reasons as appear at Charge 1 (a) (i).

- 11.2 *(iii) in section 1.7 of the said EHC stated that the country of origin was "UK" when it should have been recorded as "United Kingdom-GB";*

Misleading Conduct: Proved, by virtue of the Respondent's admission

Dishonest Conduct: Not Proved. In the Committee's assessment this error is much more consistent with a simple mistake of terminology rather than with any dishonesty.

12. Summary of the Committee's findings in relation to misleading and/or dishonest conduct.

12.1 The Committee found, for the reasons identified in the preceding paragraphs, that the Respondent's conduct was misleading in relation to Charges **1 (a) (i), 1 (b) (i), (ii) and (v), 1 (c) (i) and (ii) and 1 (d) (i) and (iii).**

12.2 The Committee found, for the reason identified in the preceding paragraphs, that the Respondent's conduct was dishonest in relation to Charges **1 (a) (i), 1 (b) (ii) and (v) and 1 (d) (i).**

13. Disgraceful conduct in a professional respect.

13.1 Ms Stevens submitted that the Respondent had been guilty of disgraceful conduct in a professional respect because his conduct had undermined the following fundamental principles of the profession:

(i) the protection of animal welfare and rules designed to protect animal welfare and public health;

(ii) honesty and integrity.

She referred the Committee to section 6.5 of the *Code of Professional Conduct for Veterinary Surgeons* ("the Code") which states that:

"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"

13.2 Ms Stevens submitted that the Respondent's conduct had undermined the structures that had been put in place to protect animal and public health. His certification in respect of matters of which he had no knowledge risked an adverse impact on human health, as well as on animal and avian welfare.

13.3 Ms Stevens also referred the Committee to Section 6.2 of the Code which provides that:

"Veterinary Surgeons must certify facts and opinions honestly and with due care taking into account the 10 Principles of Certification"

She submitted that, as an OV, the Respondent was in a position of trust and he had abused that position by dishonest and careless certification.

13.4 Ms Stevens also referred to two previous findings of disgraceful conduct in a professional respect that had been made against the Respondent. She provided the

Committee with details of these findings, the first of which was made in 2007 and the second in 2015. Ms Stevens submitted that these findings could be treated as an aggravating factor when the Committee came to consider disgraceful conduct in a professional respect. In one case the Respondent had given advice which he ought to have known was wrong in relation to the medication to be given to a racing greyhound; the other case involved findings of dishonesty against the Respondent. As a result of the latter case his registration was suspended for four months.

- 13.5 Mr Saad made no submissions in relation to disgraceful conduct in a professional respect, but he reminded the Committee that any finding it made should be based upon the circumstances of this case alone.
- 13.6 The Committee accepted the advice of the legal assessor. He reminded the Committee that the question of disgraceful conduct in a professional respect was a matter for its judgment and that the question for the Committee was whether the Respondent's conduct had fallen far short of that which is expected of a member of the veterinary profession.
- 13.7 The Committee had made four findings of dishonest conduct against the Respondent in relation to three EHCs that he had issued. Each one of these findings was in itself a very serious matter. Honest and accurate certification were responsibilities that were fundamental to the work of any veterinary surgeon, as was made clear by the *Code* and the *10 Principles of Certification*. The Respondent's conduct in this respect had fallen far short of what was expected of any practitioner. It was an aggravating factor that this dishonest conduct had taken place in the context of the Respondent's work as an OV, which was work that involved a special responsibility for the protection of animal welfare and human health.
- 13.8 Further, the Respondent's approach to his work as an OV fell far short of what was expected of any practitioner. His repeated failures to read the Notes for Guidance, as well as his failures to undertake mandated inspections, arose, on his own account, from complacency. The practical consequence of this approach to his work was that he repeatedly failed to discharge his responsibilities properly. In so failing, he repeatedly risked undermining the system of rules and regulations designed to protect animal and avian welfare and public health. The chaotic way in which he had completed the EHC relating to live birds, which formed the subject of charge 1 (c), provided a stark illustration of the risks to which his conduct gave rise.

13.9 The Committee concluded that the Respondent was guilty of disgraceful conduct in a professional respect. In reaching this conclusion the Committee has considered the circumstances of this case alone.

14. Sanction

14.1 Ms Stevens placed before the Committee details of the Respondent's previous regulatory history. In addition to the two previous adverse findings of the Disciplinary Committee, to which reference has already been made, the Respondent had received a letter of advice from the College in 2016 reminding him of his obligation to deal with complaints promptly and, in the same year, had declared a conviction for driving a motor vehicle when his alcohol level was above the prescribed limit. On 31 March 2017 he was reminded of his responsibility to undertake appropriate CPD and to provide the RCVS with Professional Development and CPD Records when requested to do so.

14.2 Mr Saad placed before the Committee a substantial bundle of supportive testimonials. This consisted of 18 letters from professional colleagues and clients. Three of those who had written letters gave oral evidence, via video-link, to the Committee.

14.3 Dr Justin Kirkland, MRCVS, emphasised to the Committee the professional expertise and surgical skill of the Respondent which he had seen during the Respondent's work with racing greyhounds. Ms Jacqueline Howard told the Committee of the caring and sympathetic way in which the Respondent had treated her much-loved dog. Dr Jack Garvey, MRCVS, told the Committee of the help he had received from the Respondent while still studying. He described the Respondent as a very compassionate man who would go out of his way to help others. He said that the Respondent prioritises client and patient welfare over financial gain.

14.4 Mr Saad asked the Committee to bear in mind that the Respondent had already received a significant sanction from APHA, in that the authorisations which enabled him to work as an OV had been revoked and he was unable to reapply for appointment as an OV until October 2025.

14.5 Mr Saad reminded the Committee that the conduct which had resulted in the Respondent's appearance before the Committee had occurred in 2021 when the Respondent's practice was experiencing the pressures and stresses caused by the pandemic. He referred the Committee to the mitigating factors identified by APHA during its investigation and invited the Committee to take these into account. These were that the Respondent was the only veterinary surgeon working at his practice at the time, that the practice was experiencing staffing issues, that access to exporters'

facilities had been limited during the pandemic and that the Respondent had co-operated fully with APHA's investigation and was commended for so doing.

- 14.6 Mr Saad also relied upon the admissions made by the Respondent in these proceedings, which included some admissions of misleading conduct, and the Respondent's willingness to agree the contents of the witness statements of Dr Smith and Dr Collins. He submitted that this showed evidence of insight on the part of the Respondent.
- 14.7 Mr Saad referred the Committee to the CPD undertaken by the Respondent in the last year as evidencing the Respondent's determination to improve his performance in relation to OV work..
- 14.8 Mr Saad noted that the previous findings of the Disciplinary Committee against the Respondent were now of some age. He referred the Committee to paragraph 71 of its Sanctions Guidance and the case of *Walker v RCVS* PC 16 2007, there cited. He submitted that an order for suspension would be appropriate, and that an order for removal from the Register would be disproportionate.
- 14.9 The Committee accepted the advice of the legal assessor.
- 14.10 In considering sanction, the Committee identified the following aggravating factors. The Respondent's conduct had created a serious risk of injury to both animals and humans. Committing errors of certification in so many different respects had been reckless, and the more so as he had received three earlier letters from APHA (or its predecessor) reminding him of his responsibilities as an OV and of the need for scrupulous care in certification.
- 14.11 The charges found proved by the Committee evidenced a pattern of working in 2021 in which the Respondent had decided to cut corners when it came to discharging his responsibilities as an OV. This involved a breach of trust which was sustained and repeated over a significant period of time. It amounted to a pattern of conduct which directly contravened the advice he had been given in three earlier letters.
- 14.12 The Committee considered that the Respondent's insight into the seriousness of his disgraceful conduct was limited. When asked about the impact of his misconduct he referred to the economic damage that might have been caused. He made no reference to the impact this kind of conduct was liable to have upon the reputation of the profession, nor did he recognise the serious impacts that could be caused to both human and animal health and welfare. The Committee considered that his response when asked about the implications of his misconduct was inadequate, particularly

given the impetus for reflection that previous Disciplinary Committee hearings and advisory letters should have created in an experienced veterinary surgeon.

- 14.13 The Committee recognised that the previous adverse findings of the Disciplinary Committee were now of some age, particularly in respect of the earlier of those findings. Nonetheless, there were very concerning features in relation to these earlier findings which were echoed in the matters before the Committee. The 2007 case involved the Respondent believing that he knew what advice to give to clients following a treatment he had dispensed when in fact this was not the case. In the present case the Respondent had identified complacency and a belief he “knew it all” as being at the root of his misconduct. The later finding, in 2015, involved findings of serious dishonesty in his responses to his professional regulator. A number of other findings of dishonesty had been made in the present case. In its assessment the Committee concluded there was a significant risk of repetition.
- 14.14 So far as mitigating features were concerned, the Committee recognised that the Respondent had co-operated with APHA’s investigation, that a number of admissions had been made in these proceedings and that the Respondent had accepted the evidence contained in the witness statements of Dr Smith and Dr Collins.
- 14.15 The Committee also accepted that 2021 was a stressful period due to the continuing impact of Covid-19, but this was the case for all OVs and veterinary practices in general, albeit that stresses may have been magnified in smaller practices such as the Respondent’s. For OV’s those pressures may have been magnified by the impact of Brexit and consequential changes in export procedures.
- 14.16 The Committee accepted that the testimonial evidence it had read and heard showed that the Respondent was a skilled veterinary surgeon, held in high regard by a number of clients and colleagues.
- 14.17 However, in considering both aggravating and mitigating factors it was, in the Committee’s judgment, inescapable that the former significantly outweighed the latter.
- 14.18 The Committee had regard to the principles contained in the Sanctions Guidance. It recognised that the purpose of sanction was not to punish but to arrive at a proportionate outcome to the case, having regard to the need to protect animal and public welfare and address the public interest. The Committee considered the available sanctions in ascending order.
- 14.19 In the Committee’s judgment this was much too serious a case in which to take no further action.

- 14.20 No purpose would be served by a postponement.
- 14.21 In the Committee's judgment the case was also much too serious for a warning or reprimand to be a proportionate outcome.
- 14.22 The Committee next considered whether a suspension order was a proportionate sanction. It noted in particular the guidance at Paragraph 71 of the Sanctions Guidance that:

"Suspension may be appropriate where some or all of the following apply:

- a) The misconduct is serious, but a lesser sanction is inappropriate and the conduct in question falls short of being fundamentally incompatible with remaining on the register;*
- b) The respondent veterinary surgeon has insight into the seriousness of the misconduct and there is no significant risk of repeat behaviour;*
- c) The respondent veterinary surgeon is fit to return to practice (after the period of suspension)".*

- 14.23 The Committee considered that these features, which might make suspension appropriate, were not present in this case.

- 14.24 In the Committee's assessment, the Respondent's disgraceful conduct, particularly when seen in the context of previous adverse findings of the Disciplinary Committee and earlier advisory letters, was at the top end of the spectrum of gravity. The Respondent has not developed a satisfactory level of insight into the seriousness of his misconduct, in particular:

- The potential for disease outbreak or public health concerns arising from his actions;
- Potential damage to international trade;
- The impact on the reputation of the profession;
- His position as an officially authorised agent of the UK Government and the associated need to maintain standards.
- The public interest.

There remained a significant risk of repeat dishonest behaviour in his practice.

- 14.25 The Committee considered the available guidance in relation to Removal from the Register. It noted, from Paragraph 77 of the Guidance, that this may be appropriate where the Respondent's behaviour is fundamentally incompatible with being a veterinary surgeon. A number of potential examples of such behaviour are given.

Those which, in the Committee's judgment, are applicable in the present case are as follows:

a. Serious departure from professional standards as set out in the RCVS Code of Professional Conduct for Veterinary Surgeons;

b Deliberate or reckless disregard for the professional standards as set out in the RCVS Code;

c Causing serious harm (or causing a risk of serious harm) to animals or the public, particularly where there is a breach of trust;

f. Evidence of a harmful deep-seated personality or attitude problem;

g. Dishonesty (including false certification) particularly where persistent or concealed;

h. Putting his /her own interests before the health or welfare of animals.

14.26 The Committee regarded this case as a particularly serious case of false certification. It involved repeated dishonesty and occurred in the context of the Respondent's specific responsibilities as an OV. His approach to these responsibilities, which involved both dishonesty and carelessness, created a risk of serious harm to animals and the public. His approach also involved putting his own interests before the health and welfare of animals and of the public. Against the background of the Respondent's previous regulatory history, it evidenced a serious attitudinal problem. In the Committee's judgment the Respondent's conduct was fundamentally incompatible with remaining on the Register. Suspension was therefore inappropriate.

14.27 The Committee therefore directs the Registrar to remove the Respondent's name from the Register of Veterinary Surgeons.

Disciplinary Committee

30 August 2024