

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

RCVS

v

DR NIKOLAY KIRILOV RADEV MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON FINDING OF FACTS

1. Dr Radev is a qualified veterinary surgeon. At the material times, Dr Radev practised at Vets4Pets, his own practice in Portishead and Vets4Pets in Longwell Green, Bristol.
2. The case brought by the College, in summary, was that Dr Radev had allegedly failed to provide appropriate and adequate care to Brooke, an American Bulldog female, over a period from 19 September 2021 to 24 September 2021. It was further alleged that Dr Radev had failed to take adequate and/or appropriate clinical records, and that his conduct in relation to the records had been either misleading and/or dishonest. The College's case was that Dr Radev was guilty of disgraceful conduct in a professional respect.
3. Brooke's owner had contacted Dr Radev on 17 September 2021 and Dr Radev had conducted an examination of the dog at the owner's home. Brooke was reported by the owner as lethargic and having vomited. Dr Radev administered medication and gave advice. The following day Dr Radev had visited again and conducted an ultrasound, using equipment belonging to the owner. Further treatment was administered, and advice given to bring Brooke to the Portishead Vets4Pets clinic the next day.
4. At the Portishead Clinic on 19 September 2021, X-ray images taken were consistent with a blockage in the colon. Intravenous (IV) fluids were administered, and surgery was undertaken. Dr Radev was unable to move the blockage and made an incision

into the colon, to remove a mass. Post-surgery, an injection of meloxicam was administered; it was in dispute whether this had been once or on multiple occasions.

5. That day, after the surgery, Brooke was transferred to another veterinary surgery, Vale Vets (Vale), as an Out Of Hours service, where she received IV fluids and further treatment. Dr Radev assessed Brooke as improving and the dog was returned to the owner's address by Dr Radev. On 21 September 2021, Dr Radev conducted a further home visit and reported that the dog looked happier. Another visit was agreed for 23 September 2021.
6. On 23 September 2021, Brooke's owner reported that she had not been eating and had been sick. He was advised to monitor her. On 24 September 2021, Brooke's condition had deteriorated. The owner took Brooke to Dr Radev at his Longwell Green practice. Dr Radev examined the dog and conducted an ultrasound scan. He also took blood and urine samples and submitted these to analysis. Having seen the results, he sought advice from a veterinary surgeon at IDEXX reference laboratories ('IDEXX').
7. On 24 September 2021, Brooke was returned to Vale a second time, for overnight care. In advance of Brooke's arrival at Vale, Dr Radev spoke to Dr Norton, a veterinary surgeon, by telephone to hand over Brooke to their care. There was a dispute whether Dr Radev had mentioned that surgery had taken place or that the ultrasound had revealed 'free fluid' in Brooke's abdomen. Soon after the arrival of Brooke, another veterinary surgeon, Dr Duquesnoy, replaced Dr Norton on duty. She sought and obtained further information on Brooke and her clinical history from Dr Radev and Vale's own clinical practice records. Dr Duquesnoy then undertook another ultrasound scan and as a results aspirated fluid from Brooke's abdomen.
8. Dr Duquesnoy diagnosed septic peritonitis definitively. Dr Duquesnoy again contacted Dr Radev, and then Brooke's owner directly. She recommended emergency surgery or euthanasia. The owner asked to wait until morning, but, sadly, Brooke died later that night.
9. Dr Radev admitted that his clinical notes from the Portishead clinic for 19 and 20 September 2021 were written up on 24 November 2021, he said due to work pressures.

Charge

10. The College served on Dr Radev Notice of Inquiry dated 19 January 2024 for the hearing commencing 17 June 2024. Ms Alexis Hearnden, counsel, represented the Royal College of Veterinary Surgeons (“the College”). Dr Radev attended and was represented by Ms Eleanor Sanderson, counsel.

11. The Charge brought by the College, following amendments to the Charge granted by the Committee, was as follows:

That, being registered in the Register of Veterinary Surgeons, and whilst in practice at Vets4Pets Portishead inside Pets at Home, Wyndham Retail Park, Old Mill Road, Portishead BS20 7BX and Vets4Pets Longwell Green, 129/133 Bath Road, Longwell Green, Bristol, Gloucestershire, BS30 9DD:

1. Between 19 and 24 September 2021 you failed to provide appropriate and adequate care to Brooke, an American Bulldog, in that you:

(a) Between 19 and 24 September 2021, repeatedly administered meloxicam to Brooke when she had recently undergone intestinal surgery and when she had a recent history of vomiting;

(b) On 24 September 2021, either:

i. failed to recognise free fluid in the abdomen as shown on an ultrasound scan, or

ii. Having recognised the said free fluid failed to take adequate and appropriate action;

(c) On 24 September 2021, either:

i. failed to recognise the possibility of septic peritonitis in Brooke, or

ii. failed to take adequate and appropriate action with regards to the possibility of septic peritonitis in Brooke, more particularly:

- failed to aspirate the abdomen and/or*
- failed to consider euthanasia;*
- failed to offer euthanasia.*

(d) *On 24 September 2021, failed to take adequate steps as set out in (c) above, despite being told by a colleague of the possibility of septic peritonitis;*

(e) *On 24 September 2021, failed to provide a full medical history when referring Brooke to Vale Vets Portishead;*

2. *You failed to take adequate and/or appropriate clinical records, more particularly in that you:*

(i) *wrote the notes (for 19-21 September 2021) approximately two months after the event; and/or*

(ii) *failed to include any reference in the records to the colonotomy surgery performed on 19 September 2021*

3. *Your conduct at 2 above was:*

(i) *misleading; and/or*

(ii) *dishonest;*

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.

Application to amend the Charge

12. At the outset of the hearing, Ms Hearnden made two applications to amend the Charge notified in the Notice of Inquiry. Ms Hearnden submitted that an amendment should be made, inter alia to clarify the Charge in accordance with the evidence and following a meeting of the parties' experts at which they produced a Joint Expert Agreement. Ms Sanderson raised no objection to the proposed amendments.

13. The Legal Assessor advised the Committee that it had power to amend the charge, pursuant to Rule 14.1 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 ("the Rules"). The Legal Assessor advised the Committee that it should bear in mind its duties to avoid undercharging and to be fully apprised of the reasons for effectively withdrawing any charges, in accordance with the decisions of the court in *PSA v NMC & X* [2018] EWHC 70 (Admin) and *CHRE v GMC & Ruscillo* [2004] EWCA Civ 1356.

14. The Committee decided to allow the amendment to the charges which clarified them and accorded with the Joint Experts Agreement evidence, save for the proposed inclusion of identification of Dr Radev's clinics in charge 2(i) and 2(ii). The Committee was of the view that allowing the amendments otherwise did not result in any injustice to Dr Radev, save for the proposed separation of the clinical records by reference to the location of the clinic at which they were made.

Admissions

15. Dr Radev, through his counsel, Ms Sanderson, admitted the following facts of the Charge, as amended: charges 1(b)(ii), 1(c)(ii) (solely in respect of aspiration) and 2(a) (which following amendment became 2(i)).

16. The Committee received an Inquiry Bundle, containing the College's evidence and also the evidence of the Respondent in answer to the Charge. The College relied on the witness statements of a number of witnesses, who were not required to attend for cross-examination by the Respondent. These were:

- i. Dr C S J Duquesnoy MRCVS
- ii. Ms J J M Dann SVN
- iii. Dr E Poleac MRCVS
- iv. Dr E J Gover MRCVS
- v. Ms R A Vernon RVN
- vi. Ms R L Clapp, Practice Manager
- vii. Ms S D Radeva, Practice Manager
- viii. Dr Y L McGrotty MRCVS

17. In addition, the College called the following witnesses to give evidence, the witnesses having also provided their signed witness statements in advance:

- i. Mrs S L Jackson RVN
- ii. Dr P Norton MRCVS
- iii. Ms D Shellard SVN
- iv. Ms K L Woodman, Client Care Advisor

18. Both parties relied on expert evidence. Dr C Shield BVM&S MRCVS was called by the College and Dr M G Hall MA VetMB MRCVS was called by Dr Radev. Both experts provided their written reports and gave oral evidence at the hearing.

19. Dr Radev gave evidence in response to the Charge. He provided a written witness statement and also gave oral evidence to the Committee.

Application for Further Amendment of the Charge and Withdrawal of Charge 1(d)

20. Ms Hearnden applied on behalf of the College at the end of the College's factual evidence for further amendment to the Charge in charge 1(d). She submitted that the Committee had power to grant an amendment pursuant to Rule 14.1.

21. Charge 1(d) as currently drafted read:

"On 24 September 2021, failed to take adequate steps as set out in (c) above, despite being told by a colleague of the possibility of septic peritonitis"

22. Ms Hearnden proposed that this charge should be amended to read:

"On 24 September 2021, failed to aspirate the abdomen despite being told by a colleague that Brooke's abdomen appeared to be full of fluid and he should aspirate the abdomen"

23. Ms Hearnden submitted that the Committee's role was to adjudicate on the Charge. The College had reflected on the evidence heard so far and it considered that the current wording did not capture the evidence. Ms Hearnden submitted that as a result the public interest may not be served, as the charge currently stood, as it would be likely to fail.

24. Ms Hearnden submitted that, based on the evidence which the relevant witness had given, there was still support for an allegation of disgraceful conduct in a professional respect.

25. Ms Hearnden submitted that relevant factors which the Committee should take into account were: fairness to the Respondent; consideration of the public interest; the stage of the hearing, in that the Committee had yet to hear from either expert witness or the Respondent; the fact that the content of Mrs Jackson's evidence was well-known in advance to the Respondent on the basis that the evidence had been served on him. In addition, she submitted, there would be no need for additional witnesses or documentation to be sought by the Respondent, if the amendment was allowed.

26. Ms Hearnden referred the Committee to the case of *PSA v HCPC & Doree [2017] EWCA Civ 319, CA*. She submitted that the case was authority that amendment could be made late on into the hearing. Ms Hearnden submitted that the application in the Respondent's case was being made at an earlier stage than in *Doree*. Ms Hearnden

submitted that the amendment would ensure that the gravity of the alleged conduct was reflected in the Charge.

27. Ms Sanderson opposed the application. She submitted that the application to amend had been made too late into the proceedings. The evidence had been in the College's possession for two and a half years, she said. Ms Sanderson submitted that the public interest was also served by those facing proceedings being aware of the charge they faced: the Respondent was entitled to know the case brought.
28. Ms Sanderson submitted that the case stood or fell on the details of verbal exchanges between the persons working within the practice. There was a very clear set of allegations, she said. Therefore, the details of the words which had been spoken had importance.
29. Ms Sanderson submitted that her cross-examination of the witness had been focussed on the particular words alleged in the Charge. It had focussed on the relevant witness' credibility and recollection. It was submitted that the charge specifically alleged that the Respondent had been told about the possibility of septic peritonitis.
30. Ms Sanderson told the Committee that the Respondent had not opposed the earlier applications to amend the charges. However, she submitted, this particular application amounted to a real shift in the case.
31. The case of *Doree* was very different to the current case, both legally and factually, Ms Sanderson submitted. It focussed on amending the case after there had been findings of fact, unlike the current case. Ms Sanderson submitted that this was a case where the evidence had not come up to the charge. It was not appropriate to amend the allegation merely in order to make the charge to fit the evidence.
32. Ms Sanderson submitted that the current charges 1(a) to 1(d) involved allegations relating to clinical matters. It was only in the case of charge 1(d), if considered in isolation, that Dr Shield was of the view that the alleged conduct fell 'far below' the standard expected of a registered veterinary surgeon. If the amendment was not permitted, this aspect of the case would fall away.
33. Ms Sanderson submitted that the proposed amendment resulted in unfairness to the Respondent, had been made late and made a real difference to the allegation of disgraceful conduct in a professional respect.
34. The Legal Assessor advised that Rule 14.1 gave the Committee the power to allow amendments, expressly where it considered the amendment to be appropriate in the

circumstances of the case. The power which the Committee held had to be exercised judicially.

35. The Legal Assessor advised the Committee to bear in mind the public interest and the three strands as set out in the College's Disciplinary Committee Guidance. He said that consideration of Article 6 of the ECHR and principles of natural justice were also relevant in ensuring that the Respondent received a fair hearing.
36. The Legal Assessor advised that in the case of *Doree*, the Court of Appeal had made clear that there would be cases in which an amendment could be made, even at a late stage. In that case, the court had been concerned with whether there had been a serious procedural irregularity due to a lack of amendment of the charge. The court had made reference to the power being exercisable where an amendment could be made without unfairness resulting. He advised the Committee to consider the central issue of fairness, the relation the amendment bore to the gravamen of the allegation, the stage of the proceedings, what prejudice would arise if no amendment was allowed, and any prejudice if amendment was granted.
37. The Committee considered the application with care, taking into account the public interest and the Respondent's right to a fair hearing. The Committee took into account that the application was being made at a late stage in the process, on the basis that the relevant witness' evidence had not come up to stating the actual words in the allegation. The case against the Respondent had been in preparation for a considerable period of time and the College had the opportunity to consider and frame the Charge. The Respondent's right to be informed of the case against him and to have the chance to meet that case was an important part of the right to a fair hearing.
38. The Committee also took into account that, in the Charge as currently particularised, paragraphs 1(a) to 1(d) addressed the Respondent's alleged clinical conduct. Specifically, charge 1(c) dealt with the Respondent's alleged failure to recognise the possibility of septic peritonitis in Brooke and failure to aspirate the abdomen and/or to consider or offer euthanasia. On this basis, the Committee considered, otherwise than in charge 1(d) itself, the Charge still contained allegations surrounding the alleged failure to recognise septic peritonitis, to which charge 1(d) was related. Therefore, the Committee would still be able to consider all of the evidence, including Mrs Jackson's evidence.
39. The Committee considered that charge 1(d) appeared to allege a specific statement made by Mrs Jackson, in relation to this episode in Brooke's treatment. The Committee was of the view that the allegation in 1(d) involved a particular level of

criticism of the Respondent: it alleged that there had been a specific and directed warning to which he had not responded.

40. The Committee decided that, bearing in mind the specific nature of this charge and because there were other relevant charges, as in charge 1(c), it was not appropriate or fair to amend the charge simply on the basis that the witness Mrs Jackson had not allegedly 'come up to proof' on the words said.
41. The Committee concluded that, the charge having been devised by the College and notified to the Respondent some time ago and the witness having given evidence and been cross-examined on the basis of the un-amended charge, the prejudice to the Respondent if the charge is amended outweighed the prejudice to the College.
42. The Committee decided that, on balance, it was not fair to amend the charge and refused the application.
43. Following the close of the College's case at this stage, Ms Hearnden applied to the Committee to withdraw charge 1(d). Ms Hearnden submitted that the application was made on the basis that the College's witness, Mrs Jackson's oral evidence had not been that she had said in terms to the Respondent regarding a "*possibility of septic peritonitis*" in Brooke. She said that withdrawal of the charge would simplify the case. Ms Hearnden submitted that the Committee had acknowledged that the alternative charge in charge 1(c) still contained allegations surrounding the alleged failure to recognise peritonitis.
44. Ms Sanderson made no submission on the application.
45. The Legal Assessor advised the Committee that it had power to consider the allegation, pursuant to Rule 14.1 of the Procedure Rules 2004. He advised that the court had acknowledged the obligation to take a more proactive role than a criminal court, in *CHRE v Ruscillo*. He advised that the Committee should consider whether withdrawal was appropriate and in the public interest. It should also consider whether the withdrawal would leave still a viable allegation.
46. The Committee decided that it was not in the public interest to pursue a charge which it had been submitted was likely to fail because the sole relevant witness had not 'come up to proof'. Further, the Charge without charge 1(d) still remained a viable allegation concerning the particular alleged events and, dependent on the eventual findings, there remained a potential for a finding of disgraceful conduct.

Summary of Evidence

47. The following is a brief summary of the evidence from the witness statements and the oral evidence given at the hearing.
48. Mrs Jackson was a registered veterinary nurse working at the Longwell Green practice. She gave her recollection of the treatment of Brooke at that practice on 24 September 2021. She recalled witnessing a conversation between Dr Radev and Brooke's owner, where Dr Radev allegedly said that the dog's condition was "*nothing to do with the surgery*" or words to that effect. She also gave evidence that she had said to Dr Radev, on being concerned at Brooke's distended abdomen: "*why don't you aspirate her abdomen and see what is in there?*"
49. Ms Woodman worked mainly in the reception of the Longwell Green practice. She also gave evidence of witnessing Dr Radev speaking to Brooke's owner and his being adamant there was no connection between the dog's condition and the surgery.
50. Dr Norton gave evidence concerning the transfer of Brooke to Vale on 24 September 2021 and specifically the handover by Dr Radev. Dr Norton told the Committee that Dr Radev had told her that he had observed 'no free fluid' from an ultrasound, which she found odd because Dr Radev had emphasised his working differential diagnoses as either Leptospirosis or Addison's disease.
51. Dr Radev gave evidence that he had qualified with a Bachelor of Veterinary Medicine in Bulgaria in 2006. He had not practised in Bulgaria but came to the UK, undertaking work experience in order to gain registration, which he achieved in 2009, commencing full-time work as a veterinary surgeon in Oxford in 2015. Dr Radev opened his first practice in Portishead in February 2018, and was a partner in another practice in Longwell Green in September 2018.
52. Dr Radev gave evidence about his treatment of Brooke from 17 to 24 September 2021. He said that this was the first time he had performed the procedure. He told the Committee that specialist referral would have been the preferable option, but the owner did not wish to pursue this course of action. Dr Radev said that he had observed free fluid in Brooke's abdomen during the ultrasound scan on 24 September 2021. He had afterward discussed the case on the telephone with Dr McGrotty at IDEXX. He said that, whilst he recognised the possibility of septic peritonitis he focused particularly on Leptospirosis and Addison's disease, believing now that the call with Dr McGrotty had played a big part in "*looking in this direction*". Dr Radev denied that Mrs Jackson had suggested to aspirate Brooke's abdomen.

53. He stated that he had given a full history to Dr Norton on the handover. His recollection was that he mentioned the surgery on 19 September 2021. He had been aware of Dr Norton's statement and was certain he had told her that Brooke had been an in-patient at Vale on 19 September 2021.
54. Dr Radev regretted that his clinical record-keeping in Brooke's case fell below the required standard. He told the Committee that he had kept handwritten notes at the time, which he had used to write up the clinical records on 24 November 2021.
55. Both experts met and produced a joint written statement of areas of agreement and disagreement on the standards of Dr Radev's conduct, based on the findings of fact to be made by the Committee.

Submissions

56. Ms Hearnden referred the Committee to her written Opening Note and the references there to the RCVS Code of Professional Conduct ("the Code"), which she submitted were engaged. She reminded the Committee that the burden of proof lay on the College, to prove its case so that the Committee was 'sure' of the facts.
57. Ms Hearnden invited the Committee to have regard to the factual context in which the alleged events had occurred. She submitted that there was a factual dispute on the evidence as to charge 1(a) concerning whether meloxicam had been administered once or repeatedly. Ms Hearnden referred the Committee to the evidence which referenced the meloxicam. She submitted that the evidence was clear that multiple administrations would be contra-indicated for Brooke.
58. Ms Hearnden reminded the Committee of Dr Radev's admission to a failure to take adequate action in response to charge 1(b) and submitted that the Committee should find the charge proved. She submitted that both experts agreed that the free fluid would have been obvious on a scan and that Dr Radev should have aspirated it.
59. Ms Hearnden said that the allegations in charge 1(c) were charges in the alternative.
60. In respect of charge 1(e), Ms Hearnden submitted that the key omission had been the failure to tell Dr Norton of the colonotomy and the failure to refer to the ultrasound. She invited the Committee to consider both the oral handover and the clinical records.
61. Ms Hearnden submitted that the notes before 24 November 2021 had plainly been inadequate and had information missing. Dr Radev had admitted adding to the notes

and that this was a failure. She submitted that the College relied on Dr Shield's opinion regarding the failure to note the colonotomy in the clinical notes.

62. Ms Hearnden submitted that the clinical notes were misleading because they omitted clinical details and in places were difficult to understand. The failure to mention the surgery was also misleading. Ms Hearnden clarified that dishonesty was only pursued in respect of the retrospective making of the clinical notes and was alleged because it was impossible that Dr Radev could have correctly recalled the detail which he had entered in the clinical records.
63. Ms Sanderson relied on her written submissions, which she expanded on in closing submissions. She submitted that, save in respect of the allegations which had been admitted, the evidence fell short of establishing the alleged facts to the required standard.
64. In respect of two charges the evidence was not in dispute, but it did not meet the required standard. Where the evidence was in dispute, Ms Sanderson submitted that the Committee could not be satisfied of the facts so that it was sure.
65. Ms Sanderson submitted that charge 1(b)(ii) had been admitted, and there was therefore no need to consider charge 1(b)(i). She submitted that the same applied where Dr Radev had admitted charge 1(c)(ii) and so charge 1(c)(i) need not be considered.
66. Ms Sanderson submitted that there could be no doubt that Dr Radev had considered the 'possibility' of septic peritonitis; the College's three 'live' witnesses had all referred to conversations indicating Dr Radev having discounted his surgery as having caused Brooke's condition.
67. Ms Sanderson submitted that charge 2(a) (amended to charge 2(i)) had been admitted, and the matter of gravity was for a later stage.
68. Ms Sanderson submitted that the clinical notes did not show a number of doses of meloxicam having been administered, with reference to charge 1(a), even though the chargeable items listed a number of doses. She submitted that there was no evidence to support repeated administration.
69. With regard to charge 1(c)(ii) and euthanasia, Ms Sanderson submitted that the evidence did not establish this as a failure and the agreed evidence of Dr Duquesnoy supported Dr Radev's position.

70. Charge 1(e), Ms Sanderson submitted, focused on the information provided by Dr Radev to Dr Norton, in charge, whether or not (a) Dr Radev had said there was “no free fluid” and (b) Dr Radev had not told her that he had previously performed colon surgery.
71. Ms Sanderson submitted that there was a clear contradiction in the evidence of Dr Norton and Dr Radev. She said that the Committee should have regard to the surrounding circumstances, in making its assessment, including the possibility of misunderstanding. It was Ms Sanderson’s submission that, given the conflict of evidence, the benefit of doubt should resolve in Dr Radev’s favour.
72. With regard to charge 2(ii) Ms Sanderson submitted that, even if there was an omission, the evidence did not support the allegation of a ‘failing’.
73. Concerning charge 3, Ms Sanderson recommended the Committee to first consider the allegation of dishonesty. She reminded the Committee of the College’s supplementary guidance on Clinical and Client records and that this provided for retrospective writing up. She submitted that Dr Radev’s conduct fell short of dishonesty.
74. Ms Sanderson submitted that Dr Radev’s conduct had not been misleading.

Legal Advice

75. The Legal Assessor advised the Committee that the burden of proving the facts is on the College. Dr Radev has no burden of proving anything. He advised the Committee that the standard of proof, per the Rules, was the ‘higher civil standard’, which meant that, to find any fact proved, the Committee must be ‘sure’ that it occurred. He advised that, in weighing relevant factors, the matter of ‘inherent likelihood’ was a factor for consideration, but the standard of proof remained as being ‘sure’ of a fact.
76. The Legal Assessor also advised that, since Dr Radev had admitted some of the factual allegations, it was open to the Committee to accept his admissions as proving those facts admitted.
77. The Legal Assessor advised the Committee concerning the approach to the assessment of evidence, as set out by the courts in the cases of *R(Dutta) v GMC* [2020] EWHC 1974 (Admin) and *Byrne v GMC* [2021] EWHC 2237 (Admin). He advised that a number of the charges alleged that Dr Radev had ‘failed’ in some professional respect. He advised that this required the Committee to be satisfied that

(i) there had been an obligation on Dr Radev and (ii) he had not met that obligation, either at all or appropriately in the circumstances. The Legal Assessor also advised the Committee of the test to be applied to the matter of 'dishonesty' in relation to the allegation of dishonest conduct in charge 3(ii), in accordance with the test set out by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 62.

Decision on Facts

78. The Committee carefully considered all the evidence before it, including the oral evidence, the written witness statements, and the documentary evidence which included Brooke's clinical notes and records. The Committee took into account the opinion evidence of both experts and the relevant parts of the Code and section 13 of the Supporting Guidance: '*Clinical and Client Records*'.

79. The Committee considered that all the witnesses who gave evidence had attempted to assist it with the best of their recollections. The witnesses who gave oral evidence were now speaking to matters which had taken place almost three years ago, although the witness statements had been prepared closer in time, between one year and 18 months after the events.

80. The judgment of the court in the case of *Dutta* was very much in the Committee's mind when making its assessment and to that end, where possible, it looked closely at the clinical notes where these were contemporaneous with events.

Charge 1(a)

81. The Committee considered the documentary evidence. It noted that the generic drug meloxicam might also be referred to as Metacam and Rheumocam. The Committee noted that the sole clinical record regarding the administration of Meloxicam was the Hospital Cage Card for 19 September 2021, which recorded a single administration at 16:10hrs. This accorded with Dr Radev's evidence to the Committee, that he administered only the one dose.

82. The sole document which supported the case as to repeated administration was the practice dispensing invoice record, which contained details of apparent repeated instances of Meloxicam. The Committee noted that it had received very limited information on how the 'Rx Works' practice management system, in which the multiple records of Meloxicam were recorded, actually worked. The expert witnesses were unable to assist the Committee in this respect. Dr Radev said that the system produced

the record of invoiced items as a result of his completion of the clinical record but was unable to explain how the same medication appeared multiple times. The Committee noted that this was not the only medication for which there were multiple entries in the clinical record for which there was a lack of correlation with the recorded medications administered.

83. The Committee took into account that none of the witnesses for the College had given evidence of having witnessed multiple injections of meloxicam or of having administered it themselves, and therefore the allegation rested solely upon the invoicing drug record. Considering the record, the Committee had raised in the hearing questions as to how the same 'batch' number appeared against the same medications on a number of occasions and also for different medicine.

84. The Committee took into account the evidence, agreed by both parties and the experts, that meloxicam was contra-indicated for animals with intestinal issues, but a single administration might be acceptable as pain relief. It took into account that Dr Radev was an experienced vet, and his evidence was that he had considered that he was able to give Brooke a single dose of meloxicam.

85. The Committee concluded that, considering all the evidence in the round, it was not satisfied so that it was 'sure' that there had been repeated administrations of meloxicam, because it considered that this was inherently improbable in the circumstances and the invoicing drug record was not sufficiently reliable on its own to prove that repeated administrations had occurred.

86. The Committee found charge 1(a) not proved.

Charge 1(b)

1(b)(i)

87. Charge 1(b) concerned Dr Radev's treatment of Brooke solely on 24 September 2021. It was not in dispute that Dr Radev carried out an ultrasound scan on that date. The College's case that Dr Radev had failed to recognise the free fluid in Brooke's abdomen relied on the evidence of Dr Norton, who said that Dr Radev had told her in their telephone conversation that there was 'no free fluid'.

88. Dr Radev's account was that he had told Dr Norton that a free fluid had been observed. Both the expert witnesses were in agreement that free fluid would have been apparent on ultrasound scanning of Brooke's distended abdomen. The Committee noted that it

was part of the College's evidence that Dr Duquesnoy had spoken to Dr Radev approximately an hour after he had spoken to Dr Norton on 24 September 2021. Dr Duquesnoy's evidence was that she had been told by Dr Radev that he had seen fluid in the abdomen. Dr Duquesnoy's evidence was supported by her note in the clinical record.

89. The Committee took into account that there was conflicting evidence in the College's case from which to infer whether Dr Radev had failed to recognise the free fluid. Considering this with the lack of inherent probability that an experienced veterinary surgeon would miss such an obvious clinical sign and also Dr Radev's own evidence, the Committee was not satisfied that Dr Radev had failed to recognise the presence of free fluid in Brooke's abdomen on 24 September 2021.

90. The Committee found charge 1(b)(i) not proved.

1(b)(ii)

91. Dr Radev, through his counsel Ms Sanderson, had admitted charge 1(b)(ii). The Committee noted that both expert witnesses agreed that having observed free fluid in Brooke's abdomen, Dr Radev should have aspirated it. The Committee took into account Mrs Jackson's evidence, that she was very sure that she had asked Dr Radev "*why don't you aspirate*".

92. The Committee took into account the advice that an allegation of 'failure' required both an obligation and a failure to meet the obligation, either at all or appropriately in the circumstances. It considered that the evidence was clear as to Dr Radev having an obligation to have aspirated Brooke's abdomen in the circumstances of the animal's presentation and also that the failure by him amounted to a failure to provide appropriate and adequate care to Brooke.

93. The Committee accepted Dr Radev's admission to this charge. It found paragraph 1(b)(ii) proved by virtue of his admission.

Charge 1(c)

1(c)(i)

94. Charge 1(c) also concerned Dr Radev's actions on 24 September 2021. The College specifically alleged that Dr Radev had 'failed to recognise the *possibility* of septic peritonitis' (emphasis added). The Committee took into account the expert evidence,

in which the experts agreed septic peritonitis is a well-recognised complication of surgery of the large intestine.

95. The Committee also took into account that both Mrs Jackson and Ms Woodman, who were called as witnesses by the College, gave evidence that Dr Radev had spoken with Brooke's owner on 24 September 2021. They both had said that Dr Radev had told the owner that he did not consider that Brooke's condition was connected with the surgery which Dr Radev had performed. The Committee considered that, in the circumstances that Brooke had become unwell so soon after the surgery, it was very likely that her owner would have asked whether there was a link with that surgery. Dr Radev's evidence was that the possibility of septic peritonitis had occurred to him at the time, but he was very focused on his differential diagnoses of Leptospirosis or Addison's disease.

96. The Committee considered the above evidence in conjunction with the witness statement of Dr McGrotty, a veterinary surgeon and recognised internal medicine specialist with the IDEXX reference laboratories. The Committee considered that Dr Radev had eventually moved towards differential diagnoses that Brooke's condition was due to either Leptospirosis or Addison's disease. However, it accepted that, as part of his initial consideration Dr Radev had at least considered the possibility of septic peritonitis. This was indicated by the comments to Brooke's owner. Accordingly, the Committee was not persuaded that Dr Radev had failed to recognise septic peritonitis as a possibility.

97. The Committee found charge 1(c)(i) not proved.

1(c)(ii)

98. The Committee noted that Dr Radev admitted charge 1(c)(ii), so far as the charge related to his having failed to aspirate Brooke's abdomen. The Committee considered that, having found charge 1(b)(ii) proved by virtue of the charge admitted failure to aspirate as above, this charge 1(c)(ii) now effectively related to the same conduct.

99. The Committee decided that the position was the same as regards an obligation to have aspirated Brooke's abdomen in the circumstances, and also that the failure amounted to a failure to provide appropriate and adequate care to Brooke.

100. The Committee next considered the position with regard to the alleged failure to have either considered and/or offered euthanasia for Brooke. It took into account the

evidence of, and clinical records made by, Dr Duquesnoy following her telephone conversation with Dr Radev on 24 September 2021, which included (at 22:21hrs):

“History - ST Nikolay - o not wanting surgery here and also not prepared to put dog to sleep, Advised in a very poor state and has deteriorated since being here and very worried will not make it through the night and if she does will not be in a state to survive surgery.

Spoke to O subsequently who confirms does not want surgery here and will take his chances and wait for Nikolay to operate in the morning.”

101. Dr Radev’s evidence was that he had offered Brooke’s owner the options of either a specialist referral or euthanasia for Brooke on 24 September 2021, but the owner wanted neither. Dr Radev’s evidence was therefore consistent with Dr Duquesnoy’s note of her conversation with him on 24 September 2021, that the owner had refused euthanasia. The Committee considered that it had no evidence on which it could properly infer that Dr Radev had lied to Dr Duquesnoy.

102. The Committee took into account Dr Shield’s evidence to the effect that her criticism of Dr Radev relied in part on how forceful Dr Radev might have made the suggestion to Brooke’s owner. However, the Committee was not persuaded on the allegation that Dr Radev neither considered nor offered euthanasia and found this aspect of charge 1(c)(ii) not proved.

103. The Committee accepted Dr Radev’s admission to charge 1(c)(ii). It found paragraph 1(c)(ii) proved by virtue of his admission, solely in relation to the failure to aspirate.

Charge 1(e)

104. In relation to charge 1(e) the Committee took into account the advice that an allegation of ‘failure’ required both an obligation and a failure to meet the obligation, either at all or appropriately in the circumstances.

105. The Committee considered the circumstances in which the requirement to provide a medical history had arisen and therefore what amounted to a ‘full medical history’. It was not in dispute that, until Dr Radev had written the clinical notes in November 2021, there had been no written history to pass on to Vale.

106. There was a distinction to be made as to the history to be provided, in the view of the Committee, between a situation where an animal was being referred for treatment at another veterinary practice and where an animal was being transferred for out of

hours care. The Committee bore in mind that both expert witnesses agreed that if Dr Norton had been correct that Dr Radev had not passed on information that Brooke had been operated on, there had been a failure in care.

107. The Committee considered that the obligation on Dr Radev, in transferring Brooke for overnight care, had been to provide to Vale sufficient information for the purposes of the 'out of hours' service to care for Brooke.

108. The Committee noted that the College's case rested on the allegations that Dr Radev had told Dr Norton that he had observed 'no free fluid' when providing a history to Dr Norton and additionally that he had not made her aware that Brooke had undergone a colonotomy on 19 September 2021. Both these allegations relied on the evidence of Dr Norton.

109. There was a dispute between Dr Norton and Dr Radev as to how long he had spoken with her in the telephone call. It was her evidence that she had been unwell on 24 September 2021, had been busy when he called and had not accessed the Vale records. The Committee noted that consulting these records would have put Dr Norton on notice of the surgery on 19 September 2021.

110. The Committee also took into account that, having heard from Dr Radev, it noted that he does have an accent and English is not Dr Radev's first language. It considered that these matters, together with the fact that this was a telephone call from a mobile phone in a car, had the potential to create a risk of mis-communication or misunderstanding.

111. It was notable, in the Committee's view, that in her witness statement, Dr Norton had stated that Dr Radev had put a lot of emphasis on Brooke having Leptospirosis and the necessary biosecurity precautions. She said that she had felt patronised by the delivery of the information. Dr Norton stated that Dr Radev had told her about Brooke's medications, and also that he had performed an ultrasound. Dr Norton stated that she had found this "*an odd thing to say*" whilst talking about Leptospirosis.

112. The Committee noted that on Dr Norton's evidence, there was no mention that she had queried any of the information, such as to ask why an ultrasound had been performed. Dr Norton told the Committee that she had not accessed Vale records for Brooke.

113. The Committee had already reached a decision, in relation to charge 1(b)(i) that it had not found proved that Dr Radev failed to recognise the presence of free fluid in the ultrasound scan. It was common ground between the expert witnesses that the presence of free fluid would have been obvious from the scan.
114. The Committee therefore was not able to be sure of a case that Dr Radev had specifically said to Dr Norton that there was “*no free fluid*”. This was quite clearly contrary to the actual findings, and was inherently unlikely for a qualified and experienced veterinary surgeon to do. Further, taking into account either Dr Norton’s account that the telephone call was short, but that a lot of information was apparently given in it, together with the other circumstances, the Committee could not exclude a real possibility that there had been a mis-communication or misunderstanding in the call.
115. The Committee considered that it was of note that, when speaking shortly after with Dr Duquesnoy about an hour later, she had noted that Dr Radev had told her that he had indeed seen free fluid.
116. It was apparent from the evidence of Dr McGrotty, Mrs Jackson and Ms Woodman mentioned above that Dr Radev had been very focused on his differential diagnoses of Leptospirosis or Addison’s disease. At the same time, he appeared to turn away from a connection to the surgery as linked to Brooke’s condition.
117. The Committee had, to this end, the benefit of Dr Norton’s contemporaneous note of the referral, which contained no reference to the surgery. Accordingly, the Committee did decide that, in the telephone call with Dr Norton, Dr Radev had not mentioned the fact that Brooke had undergone surgery. However, the Committee also had the notes taken by Dr Duquesnoy in which she noted her own telephone call with Dr Radev on 24 September 2021 at 21:40hrs. However, the Committee also had the notes taken by Duquesnoy in which she noted that Dr Radev had mentioned the surgical procedure in her own telephone call with him.
118. The Committee bore in mind that Vale’s records which were available to Dr Norton would have confirmed to her that the surgery had occurred. The Committee considered that, having given the information to Dr Duquesnoy concerning the surgery, this had satisfied the obligation to provide a full medical history from which Dr Duquesnoy was able to provide the appropriate care for Brooke.
119. The Committee found charge 1(e) not proved.

Charge 2

2(i)

120. Dr Radev admitted the charge that he had failed to take adequate and/or appropriate clinical records, in that he wrote the notes for 19-21 September two months after the event. It was self-evident from the clinical records that they had been completed on 24 November 2021. Both expert witnesses had agreed that this was a failure.

121. The Committee accepted Dr Radev's admission of charge 2(i) and found it proved.

2(ii)

122. Charge 2(ii) alleged that Dr Radev had failed to include any reference in the records to his having performed the colonotomy surgery on Brooke on 19 September 2021 and alleged that this amounted to a failure to take adequate and appropriate clinical records.

123. The Committee had been provided with the exhibited clinical records for the Portishead clinic, for 19 September 2021. It noted an entry in the following terms in the clinical record:

"Lateral images taken on the abdomen-Looks [like] a blockage about 15cm area in the cranial colon. Decided to continue with a surgery straight away-The O gave consent in the morning and signed a Consent form. Proceeded with the surgery... removed the mass...closed the colon".

124. The entry in the clinical records to this effect appeared to the Committee to be a clear reference to surgery having occurred.

125. The Committee found charge 2(ii) not proved.

Charge 3

126. Charge 3 alleged that Dr Radev's conduct in relation to charge 2 had been either misleading and/or dishonest. The Committee had not found charge 2(ii) proved and as a result it was not required to consider charge 3 further, in that regard. The Committee therefore considered charge 3 solely in relation to charge 2(i) and the retrospective making of Brooke's notes for 19-21 September 2021, two months after the events.

3(ii)

127. The Committee first considered whether Dr Radev's conduct had been dishonest. It was aware of the requirement of the test in *Ivey*, that it must first consider Dr Radev's state of knowledge or belief as to the facts and then decide whether his conduct had been dishonest, according to the objective standards of ordinary, decent people.
128. The Committee took into account the guidance issued by the College, as explanatory guidance to the Code. It noted that Dr Radev's clinical notes for the period in the charge were clearly marked as having been entered on 24 November 2021. They bore Dr Radev's initials as the maker of the notes.
129. The Committee took into account that it was not in dispute that Dr Radev had completed these notes retrospectively, having been contacted by the College about the issues with Brooke's treatment. The Committee accepted Dr Radev's evidence that he had not completed the notes as an oversight. It took into account that the Code allowed for retrospective completion of notes, provided their retrospective nature was patent.
130. The Committee considered the detail of the notes, as exhibited in the hearing. The College's case was that the Committee had to infer from the late completion that there was information contained which would be incorrect, because Dr Radev could not have remembered the detail over the two-month period until completion.
131. Having heard Dr Radev give evidence and be cross-examined, however, the Committee was satisfied that these events relating to Brooke were singular in nature and likely to have stuck in his memory. It also accepted that he had kept handwritten notes of his recorded values for Brooke. The information in the clinical records accorded with the evidence given by Dr Radev and other evidence.
132. The Committee, having made findings as to what it regarded had been Dr Radev's state of mind when he made the clinical records for 19-21 September on 24 November 2021, next considered whether ordinary, decent people would consider him to have been dishonest by their standards.
133. The Committee considered that, on the basis that Dr Radev had been open as to the retrospective nature of the records, had been doing his best to recover the information and since it accepted his assertion that he had used recorded values he had kept on

his contemporaneous handwritten notes, concluded that ordinary, decent people would not consider this conduct to be dishonest.

134. The Committee found charge 3(ii) and the allegation of dishonest conduct not proved.

3(i)

135. The Committee next considered whether Dr Radev's conduct had been misleading. It had already found, in relation to charge 3(i) that it was not satisfied as to any intention to deceive, to confuse or to be otherwise misleading.

136. The next question for the Committee was whether, objectively speaking, the clinical records had been misleading. It considered that this might arise if any of the contents of the clinical notes gave false or misleading information, or if the late completion of the notes might mislead or had misled anyone. The Committee had examined the notes and made conclusions regarding the likelihood of their being correct as above.

137. There was no evidence provided to the Committee, in its view, that any of the witnesses for the College had been misled by the information presented in the clinical notes, or the date of completion. Any potential to mislead arising from the confusing information in the dispensing invoice record did not result from the fact that it was completed two months after the events in question, as suggested by the charge.

138. The Committee took into account that the notes had not existed at all in the practice records, until 24 November 2021. It concluded that there had been no risk of anyone being misled from 19 September 2021 until 24 November 2021, because there was an absence of any notes. The Committee concluded that it did not consider the content of the clinical records for the date charged was misleading.

139. The Committee found charge 3(i) as regards misleading conduct, not proved.

140. The Committee found charge 3 not proved.

141. The Committee therefore found the following charges proved: 1(b)(ii), 1(c)(ii) (in part – insofar as it related to the failure to aspirate only) and 2(i). The remainder of the factual charges against Dr Radev were found not proved.