



Hilary Term

[2020] UKPC 6

Privy Council Appeal No 0060 of 2018

JUDGMENT

Elefterescu (Appellant) v The Royal College of Veterinary Surgeons (Respondent)

From the Disciplinary Committee of the Royal College of Veterinary Surgeons

before

Lord Kerr

Lord Carnwath

Lord Kitchin

JUDGMENT GIVEN ON

10 February 2020

Heard on 17 October 2019

Appellant

Respondent

Althea Brown

David Bradley

(Instructed by Forest & Co Solicitors)

(Instructed by Bates Wells Braithwaite LLP)

LORD KITCHIN:

1.

This is an appeal by Dr Horia Elefterescu against a direction made by the Disciplinary Committee (“the Committee”) of the respondent, the Royal College of Veterinary Surgeons, that his name be removed from the Register of Veterinary Surgeons on the ground that he has been guilty of disgraceful conduct in a professional respect. He now appeals to Her Majesty in Council as of right under [section 17 of the Veterinary Surgeons Act 1966](#).

The background

2.

Dr Elefterescu is a highly qualified veterinary surgeon. He was awarded a Bachelor of Veterinary Medicine by the Faculty of Veterinary Medicine, Cluj-Napoca, Romania in 1985; a PhD in Veterinary Sciences by the Faculty of Veterinary Medicine of Iasi, Romania in 1995; and a Bachelor of Veterinary Science by Charles Stuart University, New South Wales, Australia in 2016. From 1988 to 2010 he

worked for the Department of Surgery of the Faculty of Veterinary Medicine at the University of Bucharest, Romania, including as an Associate Professor.

3.

From 2009 until 2015 Dr Elefterescu did not practise as a veterinary surgeon. However, in September 2015 he was recruited by an agency based in the United Kingdom and joined CVS (UK) Ltd (“CVS”) as an employee. He worked for this company as a veterinary surgeon at various practices: the Ark Veterinary Practice (the Burgess Hill and Hassocks branches) from 2 September 2015 to early October 2015; the Farthings Veterinary Practice (Horsham) from early October 2015 to early January 2016; and Coopers Veterinary Practice (Hastings) from 18 January 2016 until 29 February 2016. His employment was then terminated due to concerns about his performance.

4.

The proceedings arose as a result of complaint to the respondent by Mr Tim Davies, a director of CVS. On 1 March 2018 Dr Elefterescu was given formal notice that the respondent’s Preliminary Investigation Committee had referred a case to the Committee for a formal inquiry into seven charges against him, and as to whether the conduct forming the subject matter of those charges amounted to disgraceful conduct in a professional respect.

The charges

5.

In light of the submissions made to the Board on this appeal we must set out the substance of the charges that Dr Elefterescu faced and, in due course, a summary of the reasoning of the decisions of the Committee. The charges alleged the following failings by Dr Elefterescu:

1. In relation to Kitty Brown, a male cat:

(a) on 2 September 2015 and/or 10 September 2015, he failed to undertake an adequate examination prior to surgery;

(b) on 10 September 2015, he undertook an unnecessary laparotomy.

2. On 2 February 2016, in relation to Storm Page, a male cat, he:

(a) failed to undertake an adequate clinical examination prior to anaesthesia; and

(b) made dishonest and/or misleading entries in the clinical records to the effect that he had undertaken a full clinical examination when he had not done so.

3. On 2 February 2016, in relation to Sampson Page, a male cat, he:

(a) failed to undertake an adequate clinical examination prior to anaesthesia;

(b) made dishonest and/or misleading entries in the clinical records to the effect that he had undertaken a full clinical examination when he had not done so.

4. In relation to tibial plateau levelling osteotomy (“TPLO”) surgery which he performed on 4 February 2016 on Lucy Allen, a female Bichon Frise, he:

(a) failed to undertake adequate examinations and/or investigations into the possibility of a cranial cruciate ligament rupture (“CCLR”), or failed to record the same;

(b) performed the said TPLO surgery with insufficient clinical justification for doing so;

(c) performed the said TPLO surgery inadequately; and more particularly:

(i) the osteotomy was not centred appropriately;

(ii) the tibial plateau was significantly over-rotated;

(iii) the fibula was fractured;

(d) having obtained post-operative radiographs showing the matters set out in 4(c) above, failed to take adequate steps to address those factors and/or alert others to the need for those factors to be addressed;

(e) on or around 4 February 2016, made dishonest and/or misleading entries in the clinical records, more particularly that he had:

(i) performed an arthrotomy when he had not done so;

(ii) found a partial tear of the anterior cruciate ligament ("ACL") when he had not done so;

(iii) removed meniscal tissue when he had not done so;

(f) in a letter to the Royal College of Veterinary Surgeons dated 7 August 2016, made dishonest and/or misleading comments, more particularly that:

(i) he had performed a visual examination of the meniscus when he had not done so;

(ii) the lateral meniscus had been irretrievably affected when this was not the case.

5. On 9 February 2016, in relation to Kipper Morley, a male cat, he:

(a) failed to take and/or record a sufficiently detailed history;

(b) failed to undertake and/or record an adequate clinical examination;

(c) having been alerted to Kipper having black stools and very pale mucous membranes and having noted the possibility of anaemia, failed to make arrangements for investigations to be undertaken on a sufficiently urgent basis;

(d) having decided to administer intravenous fluids to Kipper, failed to make arrangements for this to be undertaken on a sufficiently urgent basis;

(e) failed to keep sufficiently clear, accurate and detailed clinical records.

6. Between 1 September 2015 and 28 February 2016, he failed to keep clear, accurate and appropriately detailed clinical records, more particularly:

(a) on or around 10 September 2015, in relation to Finn Earl, a male cross-breed dog;

(b) between 3 September 2015 and 26 September 2015, in relation to Tia Howe, a female cross-breed dog;

(c) between 26 January 2016 and 2 February 2016, in relation to Takanni Palmer, a female Husky dog;

(d) on 4 February 2016, in relation to Dax Parham, a male cat;

(e) in relation to Lucy Allen with regard to TPLO surgery on 4 February 2016;

(f) in relation to Henry Brooks with regard to TPLO surgery on 4 February 2016;

(g) in relation to Babe Attrell with regard to TPLO surgery on 27 January 2016.

7. On 14 February 2016, in relation to Chino Biggs, a male Siamese cat, he:

(a) failed to undertake an adequate clinical examination of Chino prior to vaccinating him;

(b) dishonestly made entries in the clinical records to the effect that he had undertaken aspects of an examination when he had not done so.

The hearing

6.

The hearing itself lasted for seven days. The respondent was represented by counsel. Dr Elefterescu appeared in person and gave evidence and made submissions on his own account. The Committee also heard evidence from eleven witnesses called on behalf of the respondent. Four of them (Mr Paul Cooper, Ms Fiona Stephens, Ms Alison Richards and Ms Hannah Temple) were veterinary surgeons employed by CVS. Two (Ms Kelly Page and Ms Cassey Simpson-Foord) were veterinary nurses employed by CVS. Two (Mr Simon Gilbert and Mr Michael Farrell) were veterinary surgeons who gave evidence of fact. One, Caroline Biggs, was the owner of Chino Biggs. Two (Mr Grant Petrie and Professor Eithne Comerford) were veterinary surgeons who gave expert opinion evidence.

The first decision

7.

The Committee gave three decisions in writing. The first, promulgated on 8 May 2018, concerned an objection by Dr Elefterescu to the participation of Mr Nick Blayney as a member of the Committee. Mr Blayney explained that he was professionally acquainted with Mr Cooper in that they both were members of the Code of Conduct Committee of the National Office of Animal Health. The Committee considered the objection with care and rejected it. It formed the view that a fair minded and independent observer would conclude that there was no real possibility that the Committee (including Mr Blayney) was biased.

The second decision

8.

The second decision, promulgated on 16 May 2018, was on the facts. The Committee directed itself that the burden of establishing each of the charges lay upon the respondent and that, before any allegation of fact was found to have been proved, it had to be satisfied so that it was sure that the allegation was true. So far as the charges included allegations of dishonesty, the Committee reminded itself that it should make a finding as to Dr Elefterescu's knowledge of the relevant facts and then ask whether he had acted dishonestly, applying the objective standard of ordinary, reasonable and honest people: *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67; [2018] AC 391. The Committee also made clear that Dr Elefterescu was previously of good character and that this should be taken into account in weighing his evidence and his credibility, and in assessing the likelihood of his acting improperly. The Committee was also properly conscious that, at the time of the alleged misconduct, Dr Elefterescu had only recently arrived in the United Kingdom; and further that English was not Dr Elefterescu's first language and that he had not found the complaint process, including the disciplinary hearing, easy to manage.

9.

The Committee proceeded to make a number of general findings from which it is plain that it considered that Dr Elefterescu was an unsatisfactory and unreliable witness. It held (at para 24) that he did not adequately address the issues when asked about them; that he was unwilling to accept responsibility for his own failings; that his explanations were at times at odds with objective evidence from several other sources; that on several occasions he demonstrated a preparedness to change his account of events; and that in many respects he was a wholly unreliable witness.

10.

There followed a consideration by the Committee of each of the charges. Its findings may be summarised as follows. As for the first charge, concerning Kitty Brown, it observed that Dr Elefterescu had admitted the allegations in the course of his oral evidence.

11.

As for charges 2 and 3, concerning Storm and Sampson Page, the Committee heard and accepted the evidence given on behalf of the respondent by Kelly Page, the owner of the cats, Mr Cooper and Mr Petrie. Both cats were anaesthetised and neutered without any prior examination. Further, the notes of the operations made by Dr Elefterescu were materially incorrect in that they recorded examinations which had not taken place. The Committee rejected a suggestion that Dr Elefterescu had not had time to update those notes and found that he had made them dishonestly. The Committee therefore found both of these charges proved.

12.

Charge 4 concerned Lucy Allen. The Committee heard evidence on behalf of the respondent from Mr Cooper, Mr Gilbert and Mr Farrell, and expert evidence from Professor Comerford and found that all elements of the charge had been established. In broad summary, Dr Elefterescu failed properly to assess Lucy's condition and took no radiographs; performed the TPLO operation without a clinical justification for doing so in that the cranial cruciate ligament and menisci were normal and intact when, at a later stage, Lucy was examined and corrective surgery performed; carried out the TPLO surgery to an inadequate standard involving what Professor Comerford characterised as major technical errors; and failed properly to identify the deficiencies in his surgery or take steps to have them remedied. In addition, and importantly, the clinical records made by Dr Elefterescu were misleading and dishonest.

13.

As for charge 5, concerning Kipper Morley, the essence of the complaint was that the animal displayed serious symptoms suggestive of haemorrhagic anaemia and which ought properly to have been a cause for alarm, but Dr Elefterescu failed to take a detailed history; failed to undertake a proper and full examination; failed to make a proper or adequate clinical record and failed to take the necessary urgent action and administer intravenous fluids. The Committee heard and accepted the evidence of Mr Cooper and the expert evidence of Mr Petrie and found that all elements of the charge had been established.

14.

Charge 6 concerned Dr Elefterescu's alleged failure to maintain clear, accurate and appropriately detailed clinical records between 1 September 2015 and 28 February 2016. The Committee began by observing that the duty to maintain clear and accurate records is a longstanding one and that it ensures that other veterinary surgeons can see what has gone before. The Committee then addressed each of the seven elements of the charge. Paragraph (a) concerned Finn Earl, a male cross-breed dog. Here Dr Elefterescu accepted that he had failed to make a proper record of a procedure he carried

out on 10 September 2015. Paragraph (b) concerned Tia Howe, a female cross-breed dog. In this case the Committee found that Dr Elefterescu failed to make proper records of the examination or treatment of Tia between 3 and 26 September 2015 and noted that he accepted aspects of this failure. Paragraph (c) related to Takanni Palmer, a female Husky dog. Here the Committee found that Dr Elefterescu's notes of one appointment on 27 January 2016 were inadequate and contradictory and that his notes of an examination and radiographs carried out on 1 February 2016 were wholly insufficient. Paragraph (d) concerned Dax Parham, a male cat and this was dismissed. Paragraph (e) related to Lucy Allen. Aspects of the clinical records concerning this animal have been referred to above in considering the fourth charge. But the Committee found here that the clinical notes were inadequate in further respects because they provided no information about the poor positioning of the osteotomy or the inaccurate position of the tibial surface, matters which Dr Elefterescu admitted. Paragraph (f) concerned Henry Brooks, a Lhasa Apso dog. Dr Elefterescu performed a TPLO procedure on Henry on 4 February 2016. The medical records of this procedure were deficient in several important respects, as Dr Elefterescu accepted. The final element, the subject of paragraph (g), concerned Babe Attrell, a Labrador Retriever. Dr Elefterescu performed a TPLO procedure on Babe on 27 January 2016 but once again his medical notes were deficient in important respects, as he accepted.

15.

Charge 7 concerned Chino Biggs. Here the Committee found that Dr Elefterescu saw Chino for a routine vaccination on 14 February 2016. He recorded in the clinical notes that he had conducted a proper examination of Chino before vaccinating him. The Committee found that he had not carried out such an examination and that his clinical notes to the contrary were dishonestly made. In this regard the Committee preferred the evidence of the animal's owner, Ms Caroline Biggs, to that of Dr Elefterescu.

16.

In the result the Committee found all the charges proved, with the exception of paragraph (d) of charge 6 concerning Dax Parham.

The third decision

17.

The Committee promulgated its third decision on 17 May 2018. This contained its findings as to whether Dr Elefterescu's professional conduct was so deficient as to be disgraceful. It observed (at para 3) that for professional misconduct to be disgraceful it must be serious or fall far below the standard of conduct of a reasonably competent member of the veterinary profession. It also noted (at para 6) that Dr Elefterescu had arrived in the UK only shortly before the conduct in issue and that some allowance had to be made for this. However, it continued, he represented to CVS that he was a proficient and experienced surgeon with a particular interest and skills in orthopaedic surgery. The Committee also held (at para 8) that Dr Elefterescu had a wholly unjustified confidence in his knowledge and skills; was unable to apply his own professional judgment; was unable to carry out a proper examination; was unable to identify when radiographs were required and (when they were available) to read them; and was unable to perform the operative procedures in which he claimed expertise. He was also unable to make a proper record of what he had been told by animal owners, of the results of the investigations he had carried out or what he had done in terms of treatment; and this led him to make false and misleading records.

18.

The Committee then reviewed the findings it had made on each of the charges. It held that Dr Elefterescu's conduct the subject of charges 1, 5 and paragraphs (a) and (b) of charge 6 fell below but not far below the standards of a reasonably competent veterinary surgeon. However, it found all of the conduct the subject of the other charges, so far as proven, fell far below the standards of such a surgeon.

19.

The significant findings of the Committee included the following. In relation to charges 2 and 3, the Committee held (at paras 12 to 16) that the duty to undertake adequate clinical examinations of animals prior to anaesthesia was a cornerstone of the duty of a veterinary surgeon. Here, the recording of elements of an examination which had not taken place was undoubtedly misleading. Further, Dr Elefterescu had acted dishonestly and this undermined the trust of other veterinary surgeons and nurses and the trust of the general public in the profession. It was conduct which brought the profession into disrepute and fell far below the standards to be expected.

20.

As for the matters the subject of charge 4, concerning Lucy Allen, the Committee held (at paras 19 to 23) that these reflected grossly incompetent management from start to finish by Dr Elefterescu who, without justification, held himself out as capable of performing the procedure, and in doing so put the interests of animal welfare at risk. Indeed, animal welfare was seriously compromised. The Committee continued (at para 20):

"She [Lucy Allen] should never have been subjected to this procedure, to the extent that the joint was normal, and having subjected her to it the respondent [Dr Elefterescu] both did it incompetently (at a level as bad as Mr Farrell has ever seen), and failed to recognise that this was the case from post-operative radiographs he took. The respondent should never have held himself out as capable of performing this procedure and should not have done it for that reason. The respondent's claim that there was a lack of time for a proper review of the radiographs is no excuse, as this was an integral part of the procedure that he had undertaken. As a consequence of the respondent's incompetence Lucy required a second major operative procedure under general anaesthetic. It is to be noted that at the time of this procedure the respondent had completed a full five months of practice in the UK."

21.

The Committee also held (at paras 21 and 22) that the case involved cutting and pasting records with only a minimal attempt to individualise the result, creating not only a misleading but also a meaningless record of a serious event for the animal. Dr Elefterescu's doing so, dishonestly, was likely intended to enable him to cover up his own failings at the expense of animal welfare.

22.

The deficiencies in Dr Elefterescu's record keeping, the subject of charges 6(c) and (e) to (g), fell far below the requisite standard. Here Dr Elefterescu had resorted to cutting and pasting the notes from one case to another, a practice which was inherently dangerous.

23.

As for the matters the subject of charge 7, these too were such as potentially to compromise animal welfare. This feature and the proven dishonesty of Dr Elefterescu rendered the standard of his conduct well below that of a reasonably competent veterinary surgeon.

24.

The Committee turned finally to the appropriate sanction to impose on Dr Elefterescu. It considered aggravating and mitigating factors. After rejecting the possibility of issuing a reprimand or imposing a suspension, the Committee concluded (at para 43):

“The findings in this case include proven dishonesty which has been held to come at the top end of disgraceful conduct in a professional respect. The respondent’s misconduct involved very serious departures from the professional standards set out in the RCVS Code of Conduct of Veterinary Surgeons. In particular, the unnecessary surgery (both the initial and revision) carried out on Lucy Allen constituted very serious harm to an animal. The Committee considers that the respondent’s lack of insight into his failings, and his wholly unjustified confidence in his abilities constitute an ongoing risk to animal welfare. In these circumstances, the Committee has determined that the only sanction which is appropriate and proportionate, in order to ensure the welfare of animals, the public interest and the reputation of the profession, is to direct the respondent’s removal from the Register ...”

The appeal

25.

On this appeal Dr Elefterescu has been represented by Ms Althea Brown of counsel. She submits, for reasons to which the Board will come, that the decision of the Committee on the facts is flawed in important and fundamental respects and that its assessment of the character of Dr Elefterescu summarised at para 9 above is not fair. She has also made clear that Dr Elefterescu strenuously disputes the findings by the Committee of his dishonesty and lack of professional competence and submits that there is no adequate basis for them in the evidence. In this regard she emphasises the ruinous consequences of the Committee’s decisions on Dr Elefterescu’s reputation and standing within the veterinary profession. What is more, she continues, in assessing what sanction to impose the Committee failed properly to take into account relevant mitigating factors and the decision to remove him from the Register was in any event disproportionate.

Legal principles

26.

The legal principles relevant to this appeal are well known. The Board must exercise great caution before interfering with decisions made by the Committee on matters of contested fact. This is for sound reasons. The Committee has had the benefit of observing the witnesses, weighing their evidence and assessing their credibility, and this confers an advantage upon it which is not available to the Board. Of course, the Board can refer to the available documentary material, but the evidence of the witnesses may illuminate those documents in important respects and where that is the case the Board must remain conscious of the limitations which its position as an appellate tribunal necessarily imposes.

27.

It is also important to note that the Board will accord an appropriate measure of respect to the judgment of the Committee whether a practitioner’s failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the Committee’s judgment more than is warranted by the circumstances, and it is open to it to consider all of the matters raised by Dr Elefterescu in his appeal and to decide whether the sanction imposed upon him was appropriate or necessary in the public interest or was excessive and disproportionate; and in the latter event either to substitute another penalty or to remit the case for reconsideration: see *Ghosh v General Medical Council* [2001] UKPC 29; [2001] 1 WLR 1915, para 34.

The appeal against the decision on the facts

28.

Ms Brown recognised at the outset of her oral submissions on this topic the great importance of the Committee's findings in relation to Lucy Allen and how fundamental they were to its overall conclusions. She made clear that it was not disputed by Dr Elefterescu that he carried out the TPLO procedure on Lucy on 4 February 2016; that this surgery was not completed competently and that Lucy required revision surgery which was carried out by Mr Farrell. Nevertheless, Ms Brown advanced four principal criticisms of the Committee's other findings.

29.

Ms Brown argued first, that it is clear from the clinical notes that three veterinary surgeons, Mr McNaughton, Ms Barnes and Mr Cooper, inspected Lucy and suspected that she had suffered damage to her cruciate ligament prior to any inspection of her by Dr Elefterescu; that an assessment was made on the basis of these inspections and without any radiographs that Lucy required surgery to rectify that damage; and that this assessment was communicated to Lucy's owner. Ms Brown submitted that any consideration of the alleged failings by Dr Elefterescu ought to have taken into account the involvement of these three veterinary surgeons; the level of their experience; their diagnosis; and their assessment of the necessary corrective action; and yet the Committee's decision failed to do so.

30.

In the course of this appeal the parties have taken the Board to much of the documentary evidence, the witness statements, the expert reports and the oral evidence. We have carefully reviewed those materials. It is necessary at this point to outline some important aspects of that evidence.

31.

The clinical notes record that Lucy was examined by Ms Barnes on 5 November 2015 and was found to have stiffness in her left hind-limb. NSAIDS were prescribed and weight loss advised. Lucy was examined by Ms Barnes once again on 12 November 2015 and it was reported that she was still suffering from stiffness in her hind-limb. No pain was found on neurological and orthopaedic examination and no lameness was recorded.

32.

On 2 December 2015 Lucy was seen by Mr McNaughton and various tests were carried out to investigate left-sided lameness. Radiographs were taken of both sides and these were reported to show "displacement of the tibia in relation to the femur with no significant osteoarthritis". A possible referral to another veterinary practice was noted. Professor Comerford expressed the opinion in her report that the radiographs showed the stifle joints were normal for a dog of this breed. Further, on 4 December 2015 Lucy's owner telephoned the surgery to say that she appeared to have recovered, her walking seemed better and no referral was required.

33.

Lucy then developed a skin rash on her neck. She was seen by Mr McNaughton on 11, 12 and 16 December 2015. She was treated with, among other things, steroids and antibiotics. No lameness was reported.

34.

Lucy was presented to Ms Barnes once again on 18 December 2015 with what is described in the notes as "right hindlimb lameness" after jumping out of a car. Upon examination Lucy was "toe

touching, very uncomfortable” and the cranial drawer test was equivocal. Codeine was prescribed. Lucy was seen by Ms Barnes again on 22 December 2015 by which time she was reported to be vomiting and suffering from lethargy; and she was still toe touching with a marked cranial drawer. Various clinical options, including surgery, were discussed for the treatment of what was suspected to be a CCLR. It seems that Mr Cooper suggested a referral to another local veterinary surgeon with an interest in small animal orthopaedics who might be able to help with CCLR surgery.

35.

On or about 23 January 2016 Lucy was brought in for a re-evaluation and was seen by Dr Elefterescu. Mr Cooper gave evidence that after the consultation Dr Elefterescu told him that he had presented various surgical options to the owner. Later and at the request of Mr Cooper, Dr Elefterescu telephoned the owner to advise her as to the appropriate procedure to adopt, and they, that is to say Dr Elefterescu and the owner, agreed that a TPLO procedure should be carried out. In the course of his cross examination at the disciplinary hearing Dr Elefterescu agreed that it was for him to decide what was wrong with Lucy and the appropriate treatment. He had to take into consideration what Mr Cooper thought and have it in mind, but it was, in his words, “100%” his own judgment.

36.

On 4 February 2016 Lucy was admitted for surgery. Professor Comerford explained that the clinical notes contained no mention of any abnormalities having been found in the course of the pre-operative assessment and contained no reference to any pre-operative radiographs. She also observed that the surgical report described, among other things, a “mediolateral approach”, a partial tear of the ACL, debridement and removal of a torn lateral meniscus. The report went on to describe the osteotomy, the insertion of a TPLO plate and the closure of the joint capsule. Post-operative radiographs were taken and reported upon, but in Professor Comerford’s view the report was incorrect and not sufficiently critical of the surgery that had been performed. This is a matter to which the Board will return in a moment.

37.

Lucy was discharged on 5 February 2016. On 16 February Dr Elefterescu saw her and reported she was “doing well”. However, on 1 March 2016, Lucy was reported as not using her right hind-limb except at slow speed. Mr Cooper was concerned and approached another surgeon, Mr Simon Gilbert, who expressed concerns about the surgery. Mr Cooper then approached Mr Farrell. In his evidence to the Committee, Mr Farrell said that it was clear from the post-operative radiographs that there had been several important surgical errors in the procedure Dr Elefterescu had carried out on Lucy and so he agreed to carry out revision surgery. When he undertook that surgery, he found that there had been no injury to the ACL and that the menisci were present and normal. Further, there was no evidence of any debridement. He was of the view that Dr Elefterescu cannot have observed what he had reported in the medical history. He said that from a technical perspective “the surgery was as bad as I have ever seen”. The post-operative radiographs were “the type of x-ray that would make an orthopaedic surgeon gasp”. It was also his opinion that, had he not carried out the revision surgery, Lucy would have been permanently disabled. Professor Comerford completely agreed with Mr Farrell’s description of the post-operative radiographs and the deficiencies in Lucy’s surgery which they revealed.

38.

It is the opinion of the Board that the Committee therefore had ample evidence before it to justify its principal conclusions that Dr Elefterescu failed properly to assess Lucy’s condition before operating upon her; carried out the TPLO procedure without a proper justification for doing so; carried out the

procedure to a wholly inadequate standard; and failed properly to identify from the post-operative radiographs the deficiencies in the surgery or take steps to have them remedied. Of equal if not greater importance, the Committee had abundant evidence to justify its finding that the clinical records made by Dr Elefterescu were misleading and dishonest. He must have appreciated that he had not removed the meniscus and that there was no tear in the ACL, as he had reported. So too he must have been well aware that he had carried out no debridement.

39.

Against this background the Board is wholly unpersuaded that the Committee failed to take proper account of the assessments and opinions of Ms Barnes, Mr Cooper and Mr McNaughton, or the actions they took. Their involvement largely preceded that of Dr Elefterescu and, as he accepted, it was for him to exercise his own clinical judgment about the appropriate treatment for the right hind-limb lameness that Lucy was exhibiting when he examined her, and that is what he did. In the Board's view, any opinions other veterinary surgeons held and advice they may have given were peripheral. Moreover, it is striking that, although Ms Barnes and Mr Cooper plainly suspected that Lucy had a CCLR in the stifle of her right hind-limb and that surgery might be required, there was no mention in the records of them ever having made a decision to that effect or having told or recommended to the owner or to Dr Elefterescu that this should be treated by a TPLO procedure; that was a matter for Dr Elefterescu to decide. Certainly, the respondent does not accept and the Committee made no finding that Dr Elefterescu was told or encouraged to carry out this procedure by any other veterinary surgeon. Mr Cooper's evidence was to the contrary. He explained in his witness statement that he said to Dr Elefterescu that if he agreed with the diagnosis of Mr McNaughton then he should book Lucy in for surgery. Mr Cooper continued that Dr Elefterescu told him that he had given the owner various surgical options, to which Mr Cooper responded that the owner would need to be guided by Dr Elefterescu. It will be noted that this evidence reveals a confusion in the mind of Mr Cooper. As the Board has explained, Mr McNaughton saw Lucy on 2 December 2015, on which occasion Lucy was exhibiting lameness, but at this point it was left-side lameness, and this lameness had resolved itself within a few days. But this confusion, such as it is, does not assist Dr Elefterescu. He had access to the notes and must have appreciated that when he was treating Lucy she was suffering from lameness in her right hind-limb, and that this was the result of her jumping out of a car between 16 and 18 December 2015.

40.

Ms Brown submits, secondly, that the position was, however, exacerbated because on various occasions it was put to Dr Elefterescu in the course of his cross examination that radiographs of Lucy were taken on 18 December 2015 and that in some way these radiographs played or ought to have played a relevant part in the history of Lucy's treatment. The Board has been taken by Ms Brown to the relevant part of the cross examination and she is clearly right to say that Dr Elefterescu was at one stage questioned about radiographs said to have been taken on that day. It is also common ground that in fact there were no such radiographs. So, the questioning was indeed based upon an erroneous assumption. But the Board does not accept that this error had any material impact on the decision making of the Committee. It is true that the Committee referred at para 54 of its decision to the evidence of Professor Comerford concerning a radiograph on "21 December 2015" but it is apparent from a review of Professor Comerford's report that she had in mind the radiographs of both hind limbs taken on 2 December 2015, neither of which, in her view, showed any evidence of a CCLR. At no point does her evidence refer to a radiograph taken on 18 December 2015, as the Committee must have been aware.

41.

One of the issues at the oral hearing was whether Dr Elefterescu took any pre-operative radiographs and he maintained in cross examination that he did although it seems that no such radiographs were found and none was produced in these proceedings. However, in developing her third criticism, Ms Brown points to what she argues was highly relevant evidence of a practice nurse, Ms Eldon, which the respondent's solicitor obtained on about 11 May 2018, after the hearing had begun. It appears from an attendance note made by the solicitor that Ms Eldon recalled being present during the course of a conversation between Dr Elefterescu and Mr Cooper about Lucy's radiographs before Dr Elefterescu performed the procedure. She remembered that the radiographs showed that the tear to Lucy's ligament was not straightforward and that this was a matter of concern for Dr Elefterescu. She also recalled him raising the possibility that a second opinion might be needed. To the best of her recollection, Mr Cooper responded that time was "getting on" and pressured Dr Elefterescu to start the surgery. Dr Elefterescu duly began the operation and asked her, as the practice nurse, to take some photographs on her mobile telephone of the inside of Lucy's joint. She did, but she could no longer access those photographs because her telephone was broken.

42.

These inquiries and their substance were disclosed by the respondent to Dr Elefterescu at the reconvened hearing on 14 May 2018 and he was invited to make an application if he wished to call Ms Eldon or Ms Mardell, another practice nurse (who had no recollection of the events), as a witness. He decided not to do so. Ms Brown submits that the Committee was not adequately advised of the substance of this further evidence or its potential significance and that Dr Elefterescu, as an unrepresented party, invited to make an application to the Committee for an adjournment at such a late stage, did not understand the importance of the evidence or of the decision he was being asked to make. In the result, the Committee did not have the benefit of highly relevant material which would have undermined the respondent's case against him.

43.

Mr David Bradly, counsel for the respondent, has drawn the Board's attention to a number of important matters in this regard. First, Dr Elefterescu was served with the bulk of the evidence on which the respondent wished to rely more than one year prior to the commencement of the hearing. Dr Elefterescu therefore had ample time to investigate the matters in issue and to approach any potential witnesses, including Ms Eldon and Ms Mardell, if he so wished. But he chose not to do so. Secondly, the respondent disclosed the attendance note of its solicitor's conversation with Ms Eldon both to Dr Elefterescu and to the Committee as soon as practicable after that conversation had taken place. The Committee was given the attendance note, as was Dr Elefterescu. Thirdly and as mentioned, Dr Elefterescu was invited to make an application for an adjournment if he wished to call Ms Eldon as a witness. Again, he chose not to do so. Fourthly, the transcript shows that the Committee and the legal assessor took proper steps to ensure that Dr Elefterescu was aware of and understood the nature of the proceedings, how they were being conducted, and how he should challenge the evidence of a witness with which he disagreed and present his case. In short, reasonable steps were taken to ensure that he was not unduly disadvantaged by appearing in person. In all these circumstances the Board cannot accept that the respondent had any obligation to call either Ms Eldon or Ms Mardell as a witness or that the proceedings and their outcome were rendered unfair or unjust by its decision not to do so.

44.

The fourth and final matter relied upon by Dr Elefterescu in relation to this aspect of his appeal concerns two expert reports of Dr Angus Anderson obtained by the respondent but upon which it decided not to rely. Dr Anderson's views about Dr Elefterescu's professional competence differ in material respects from those of the experts who did give evidence on behalf of the respondent, and particularly so in relation to the treatment of Lucy Allen. Ms Brown submits that these were matters that the Committee ought to have considered, particularly in considering the issue of Dr Elefterescu's honesty.

45.

The Board does not find these submissions persuasive. The respondent has explained, without challenge, that it provided these reports to Dr Elefterescu at the time it served its expert evidence upon him. They were provided as part of a bundle of what it described as "unused material", and it explained that the bundle contained material upon which it did not propose to rely but which it had gathered during its investigation. It also made clear that Dr Elefterescu could review the bundle and that it was open to him to rely upon any part of it or follow it up if he wished to do so. In the Board's view the respondent has behaved entirely properly, and it was not obliged to do more. Dr Elefterescu could have contacted Dr Anderson and sought to call him as an expert; or he could have relied upon the reports themselves for what they are worth and drawn the attention of the Committee to any passages within them which he considered might assist him. He did neither and it is now far too late to complain that the Committee ought to have attached weight to them. Further, the second of the two reports, dated 26 July 2017, was in any event by no means wholly supportive of Dr Elefterescu's case. Dr Anderson observed in connection with the procedure carried out on Lucy Allen that he had never encountered such a discrepancy between the primary surgeon's account and that of someone who later had to undertake revision surgery. Dr Anderson continued that he did not see how this situation could have arisen except through grossly inaccurate recording or falsification of the clinical notes.

46.

Ms Brown also sought to challenge the Committee's findings of dishonesty in respect of the matters the subject of charges 2 and 3 concerning Storm and Sampson Page, and those the subject of charge 7 concerning Chino Biggs. As for the former, Ms Brown submits that the owner of the cats, Ms Page, was an experienced cattery nurse at the practice and would have been well aware of the health of the cats and whether they were fit for surgery. Further, she administered premedication to the cats before she presented them to Dr Elefterescu. In other words, Ms Brown continues, Ms Page knew that the cats had not been examined and was not concerned; and in any event the cats had been partially anaesthetised before Dr Elefterescu had any opportunity to examine them.

47.

Attractively though this submission was presented, the Board cannot accept that the Committee fell into error. The cats had not been examined by Dr Elefterescu before he began the surgery and they should have been. However, the more serious finding is that of dishonesty and here the matters relied upon by Ms Brown are not remotely exculpatory. Dr Elefterescu wrote in the notes that he had examined the cats, and he had not, as he must have known. Whether he knew Ms Page or whether he was, as he claims, doing her a favour is neither here nor there.

48.

The Board is also satisfied that the Committee was entitled to find that Dr Elefterescu acted dishonestly in relation to Chino Biggs. Here the clinical notes made by Dr Elefterescu record that he examined Chino, but Ms Biggs gave evidence that he did no more than feel the cat through its jumper.

On this issue, the Committee preferred the evidence of Ms Biggs to that of Dr Elefterescu and no basis for interfering with its finding has been shown.

The appeal against the decision as to the appropriate sanction

49.

Dr Elefterescu also challenges the Committee's decision to direct his removal from the Register. In her written case Ms Brown argues that the Committee failed properly to engage with the importance or gravity of Dr Elefterescu's wrongdoing, was too harsh in its assessment of potential aggravating factors, did not give adequate weight to relevant mitigating factors and failed to distinguish between lack of competence, on the one hand, and misconduct, on the other.

50.

It is the opinion of the Board that these criticisms are not well founded. The Committee considered with care Dr Elefterescu's proven and admitted conduct in relation to each of the charges and whether it fell below or far below the standard to be expected. It is to be noted in this regard that a number of the charges which were either admitted or upheld were not the subject of any challenge on this appeal. Overall, the Committee found that Dr Elefterescu's clinical failures were very serious, involved failures in the basics of animal care, resulted in animal suffering and involved widespread breaches of the respondent's code of professional conduct. It also expressed particular concern about its findings of dishonesty, and rightly so. That conduct was, in its view, "at the top end" of disgraceful conduct in a professional respect. What is more, Dr Elefterescu had a lack of insight into his failings and a wholly unjustified confidence in his abilities which constituted an ongoing risk to animal welfare. These were findings which the Committee was clearly entitled to make and, in the light of them, the Board is firmly of the view that the decision of the Committee to direct the removal of Dr Elefterescu's name from the Register cannot be impeached. The Board rejects the criticisms made of the Committee's reasoning and the conclusions to which it came. The direction that Dr Elefterescu's name must be removed from the Register was appropriate and proportionate.

Conclusion

51.

For all of these reasons, the Board will humbly advise Her Majesty that this appeal should be dismissed.