



Neutral Citation Number: [2024] EWHC 1997 (Admin)

Case No: AC - 2023 - BHM - 000258

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Birmingham Civil and Family Justice Centre
33 Bull Street,
Birmingham, B4 6DS

Date: 31/07/2024

Before:

MR JUSTICE EYRE

Between:

Andrew Bagnall
- and -
The Farriers Registration Council

Appellant
Respondent

John Hardcastle (instructed by **Equine Law**) for the **Appellant**
Louis Weston (instructed by **Capsticks LLP**) for the **Respondent**

Hearing date: 17th July 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 31st July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE EYRE

Mr. Justice Eyre:

Introduction.

1. The Appellant is a farrier. As such he is subject to the provisions of the Farriers (Registration) Act 1975 (“the Act”). Following a hearing on 30th and 31st October 2023 the Disciplinary Committee (“the Committee”) of the Respondent found an allegation of serious misconduct proved against the Appellant. The Committee then imposed the sanction of removal of the Appellant from the register maintained under the Act (“the Register”) and directed that he was not allowed to apply for restoration to the Register for a period of 12 months.
2. The Appellant appeals both the finding of misconduct and the sanction imposed.
3. The proceedings arose out of an incident on 8th October 2022 when the Appellant attended at the home of Mr and Mrs Davies and of their 13 year old daughter, Sophie. The Appellant was trimming the hooves of Sophie’s pony, Shakira, in the presence of Sophie and her mother when the pony bit his head. The allegation was that the Appellant responded to being bitten in that way by repeatedly punching the pony to her head and followed that with a further attack in which he kicked the pony several times and punched her again. The Appellant denied having either punched or kicked the pony saying that, other than in the course of the trimming, his only physical contact with the pony had been as he lifted his elbow to protect himself in response to being bitten.
4. The Committee found that the first alleged episode (of punching) was not established but that the second episode (of kicking and punching) had happened. It found that this behaviour amounted to serious misconduct for which the only appropriate sanction was removal from the Register. The Committee’s findings and reasoning were set out in its determination (“the Determination”).

The Legislative Framework.

5. The structure of the Act and of the relevant rules was explained by Morris J in *Craig v Farriers Registration Council* [2017] EWHC 707 (Admin) at [10] and following. As a result I can summarise the position shortly.
6. The Respondent was established by section 2 of the Act.
7. By section 3 the obligation to establish and maintain the Register was imposed on a registrar to be appointed by the Respondent.
8. The Committee was established by section 14 of the Act.
9. Section 15 addressed the removal of names from the Register and provided for an appeal against such removal. The relevant provisions said:
“(1) Where—
 - (a) a person who is registered by the Council is judged by the Disciplinary Committee to be guilty of serious misconduct in any professional respect; or
 - (b) the Disciplinary Committee is satisfied that such a person was not qualified for registration at the time he was registered; or

(c) such a person has been convicted of an offence involving cruelty to animals;

(d) ...

the Committee may, if it thinks fit, direct that the person's name shall be removed from the register or that his registration therein shall be suspended, that is to say, it shall not have effect during a period specified in the direction:

Provided that, in any case falling within paragraph (b) of this subsection, where the application for registration was referred to the Disciplinary Committee under section 9 of this Act, the Committee shall not direct that a person's name shall be removed from the register except upon evidence which was not before the Committee when it considered the application

...

(3) A person in respect of whom a direction is made under subsection (1) of this section may, within twenty-eight days after notice of the direction was given to him, appeal against the direction to the High Court, or, in Scotland, to the Court of Session

...

(5) On the hearing of the appeal the Court may make such order as it thinks fit, and its order shall be final

...

(7) A person whose name is removed from the register in pursuance of a direction of the Disciplinary Committee under this section shall not be entitled to be registered in the register again except in pursuance of a direction in that behalf given by the Committee on the application of that person; and a direction under this section for the removal of a person's name from the register may prohibit an application under this subsection by that person until the expiration of such period from the date of the direction (and where he has duly made such an application, from the date of his last application) as may be specified in the direction."

10. By section 16 it is a criminal offence for a person who is not included in the Register to carry out any farriery.
11. The procedure to be followed by the Committee is laid down in the Farriers Registration Council Disciplinary Committee (Procedure) Rules Approval Instrument 1976.
12. The Respondent has published a Disciplinary Committee Manual ("the Manual"). This contains guidance derived from the Act, the 1976 Approval Instrument, and the Farriers Registration Council (Disciplinary Proceedings) Legal Assessor Rules 1976 together with the Council's listing policy and a process diagram. Sections 15 – 21 of the Manual provide guidance on the approach to be taken to sanctions. These identify aggravating and mitigating factors at section 16 and then, at sections 17 – 21, identify the sanctions available and the circumstances in which they will be appropriate. Removal from the Register is addressed in section 21 which says:

"Removal from the Register may be directed where the respondent Registered Farrier's behaviour is so serious that removal of professional status, and the rights and privileges accorded to this status, is the only means of protecting equine welfare, the reputation of the profession and the wider public interest. It is not imposed as a punitive measure, although it will almost invariably adversely affect the respondent Registered Farrier,

A Disciplinary Committee should not feel bound to remove from the Register:

"an otherwise competent and useful [practitioner] who presents no danger to the public in order to satisfy [public] demand for blame and punishment."

Equally, the reputation of the profession is more important than the interests of one Registered Farrier and Lord Bingham, Master of the Rolls stated:

"The reputation of the profession is more important than the fortunes of an individual member. Membership brings many benefits, but that is part of the price."

Proven dishonesty has been held to come at the 'top end' of the spectrum of gravity of misconduct in a professional respect. In such cases, the gravity of the matter may flow from the possible consequences of the dishonesty as well as the dishonesty itself.

Removal from the Register may be appropriate where behaviour is fundamentally incompatible with being a Registered Farrier, and may involve any of the following (the list is not exhaustive):

- serious departure from professional standards as set out in Farrier, Approved Training Farrier & Apprentice Code of Professional Conduct;
- deliberate harm to an animal or deliberately risking such harm
- causing serious harm, or causing a risk of serious harm, to animals or the public, particularly where there is a breach of trust;
- offences of a sexual nature;
- offences involving violence and/or loss of human life;
- evidence of a harmful deep-seated personality or attitude problem;
- dishonesty, including false certification, particularly where persistent or concealed."

13. The Respondent has published a Code of Professional Conduct ("the Code of Conduct"). The Code of Conduct "sets out the professional responsibilities of Registered Farriers and offers supporting guidance to them" (paragraph 1). The Code of Conduct begins with the following "guiding principles":

"Registered Farriers are expected to make horse welfare their first consideration, with due regard to a safe working environment, and to fulfil their professional responsibilities by upholding the following guiding principles:

- ensure that all horses under your care are treated humanely and with respect
- maintain and continue to develop your professional knowledge and skills
- uphold the good reputation of the farriery profession
- recognise the limits of your professional competence
- be honest and trustworthy
- communicate openly with clients and behave professionally at all times
- foster and maintain a good relationship with your clients, earning their trust, respecting their views and protecting client confidentiality
- foster and endeavour to maintain good relationships with your professional colleagues
- respond promptly, fully and courteously to complaints and criticism
- understand and comply with your legal obligations

- avoid situations both within and outwith the professional context which could be in breach of criminal law, or may call into question your fitness to practise”
14. Reference was made to the following provisions of the Code of Conduct in the course of the Determination.
- i) Paragraph 12(a) which states:
“Farriers must treat all horses humanely, with respect, and with welfare as the primary consideration.”
 - ii) Paragraph 16(c) saying:
“Farriers must not engage in any activity or behaviour that would be likely to bring the profession into disrepute.”
 - iii) Paragraph 24 namely:
“Farriers are advised not to commence or continue working with an animal if it is felt that the present temperament of the horse, or the conditions the horse is kept in, are unfavourable to a successful outcome and/or that the health and safety of the farrier or others, including the horse, may be compromised by proceeding. The farrier may request the horse owner or keeper to seek assistance from a veterinary surgeon.”

The Cases as advanced to the Committee.

15. Before me there were competing contentions as to the way in which the parties’ cases had been put before the Committee. In particular there was disagreement as to the way in which the Appellant’s case had been put. Mr Hardcastle’s argument as to how the Appellant’s case had been put was an important aspect of his contention that the finding of fact was wrong and in that regard he said that the Committee had failed properly to understand or to address the Appellant’s case.
16. It is necessary to establish how the cases were put before the Committee so as properly to understand the context of the Determination. It was incumbent on the Committee to have regard to the matters put before it and in particular to the nature of the Appellant’s response to the allegations against him. Provided that was done the Determination was inevitably and necessarily to be formulated by reference to the arguments addressed to the Committee and is to be considered in the context of those arguments.
17. It is also necessary to determine how the cases were put before the Committee because it is not normally permissible for a party to raise on appeal an argument not advanced below. Still less is it normally open to an appellant to criticise the decision-making body for failing to take account of matters which were not put before it. In large part this is a matter of common sense. If a party has put his or her case in a particular way then he or she cannot criticise the decision-making body for having addressed the matter on that basis and having formulated its decision with regard to that case rather than another which had not been advanced. To the extent that authority is needed for that approach see per Haddon-Cave LJ in *Singh v Dass* [2019] EWCA Civ 360 at [15] – [17] and per Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114] saying “the trial is not a dress rehearsal. It is the first and last night of the show”.
18. Mr Hardcastle submitted that the Appellant’s primary case before the Committee had been that Mrs Davies and Sophie had misconstrued what had happened. In particular, in respect of the allegation that the Appellant had kicked Shakira, Mr Hardcastle

submitted that the Appellant's case had been that the witnesses had mistaken the movement of his apron for kicks. The references to the evolution of the evidence of those witnesses was, Mr Hardcastle said, to be seen against the background of that primary submission. The evolution of the evidence was indicative of the unreliability of that evidence because it was indicative of the potential innocent contamination of the evidence as a result of discussions between Sophie and her mother. He submitted that to the extent that it was suggested that there had been deliberate fabrication of the evidence of Mrs Davies and/or Sophie or deliberate exaggeration of what had happened this was a subsidiary argument. This analysis was the basis of Mr Hardcastle's submission that the Committee had erred by failing to address the Appellant's primary case.

19. I do not accept that analysis of how the case was put before the Committee. The approach taken by the Appellant in his own evidence and on his behalf in the questioning of Mrs Davies and of Sophie and in the closing submissions of his solicitor was not only that he had not kicked Shakira. In addition the Appellant contended that Mrs Davies and Sophie had deliberately given a false account saying that he had kicked the pony when he had not done so. The Appellant did say that there had been misinterpretation of his initial action in raising his elbow but that was in respect of the alleged initial punching and even in that regard he asserted that there had been collusion. His position in respect of the alleged kicking was different. In that regard to the extent that it was said that there had been innocent misinterpretation of what had happened that was very much a subsidiary part of the Appellant's case. I derive this conclusion from the following analysis of the proceedings before the Committee. The same conclusion follows when one stands back and looks at the core allegation. Mrs Davies and Sophie gave evidence that they saw the Appellant launch a number of kicks which connected with Shakira's belly. It is unrealistic that such evidence could have been the consequence of an innocent misunderstanding or that those witnesses could have mistaken the movement of an apron for deliberate and repeated kicks.
20. In her statement Mrs Davies gave evidence of the first incident of punching and then said at [24] – [29]:
 - “24. Mr Bagnall then turned around so that his right shoulder was facing Shakira's back end, stood at Shakira's right shoulder and swung his left leg right back behind his body, and kicked Shakira in the stomach on her right-hand side between the last rib and the flank. The toes of his left foot made contact with Shakira each time. He repeated this action and kicked her three times, whilst leaning his right arm on Shakira so that he could swing his leg back and forth. Each time he swung his leg back, he seemed to do so quite slowly and as far back as he could so he could kick Shakira hard.
 25. Mr Bagnall always wears light-brown shoes which go just above his ankle, and he has told me previously that the shoes have steel toe-caps (which I understand most farriers wear in case the horses stand on them). He also wears chaps. At this point, Mr Bagnall was facing me and the field and I could see the left-hand side of his face, which was still bright red. He looked so angry and I have never seen him look like that before, as he is usually a really upbeat person. At page 5 is an annotated photograph showing where Mr Bagnall was stood and where he kicked Shakira.
 26. Shakira did not move and she could not move as she was already at the end of her rope. She could perhaps have moved sideways, but she was pulling backwards. During the kicking, Shakira made a different noise to the grunting noise she made when she was being punched, it sounded almost like air was being expelled out of her. I have never heard anything like it.

27. It felt like it was happening in slow motion. I have never been in a violent situation before and was not sure what to do. Sophie was looking at me in horror, and I froze.

28. I walked towards Mr Bagnall whilst he was kicking Shakira so that I could see clearly what he was doing, and I started shouting. There was nothing in between me and Mr Bagnall to block my view of what was happening. I said, 'what the bloody hell are you doing? Stop it, get off her' or words to that effect. When he stopped kicking her, I thought, 'thank god he's stopped' and thought that the fact that I had shouted at him may have worked.

29. However, Mr Bagnall then moved around back to Shakira's head, and grabbed her head collar again. He punched her again very hard five times in the same place on the right side of her head (the top of her neck and around the ear and eye) using his left hand. I thought, 'he's not going to stop'. At this point, I could only see the back of Mr Bagnall's head again."

21. Mrs Davies gave evidence about her communication with her vet which I will address below.

22. When she was cross-examined Mrs Davies repeated the contention that the Appellant had kicked Shakira and Mrs Dark for the Appellant then said (transcript p54):

"I put to it you that that didn't happen. I can't explain why the evidence has been embellished. Mr Bagnall's case, as you know, is that the evidence has been embellished, but Mr Bagnall's evidence certainly is that that isn't something that happened - "

23. Shortly after that Mrs Dark said (transcript p55):

"The overall theme or the overall reasoning from what the only explanation, I suppose, that Mr Bagnall could come up with is that this is an embellishment but he doesn't understand why, hence why I've read through some of what Mr Bagnall says are over exaggerations. Is it possible, Mrs Davies, that you heard Sophie's overreaction to something and you have reacted to her?"

24. In her witness statement Sophie Davies said, at [19] and [20]:

"19. When Mr Bagnall stopped punching Shakira, he still held onto her head-collar with his right hand, but his left arm was down by his side. He turned and stood on Shakira's right-hand side, and started kicking Shakira in the belly on the right-hand side, a few centimetres behind her girth area where her ulcers would have been previously. I think he kicked her around three to five times and think he used his left leg. He kicked her really hard. I remember that he kicked her several times, but not as many times as he punched her. I think that his toe area made contact with Shakira. I am not sure for certain, but I think he was wearing shoes with steel toe[1]caps as I understand farriers do. Between each kick, he swung his leg back to kick her harder and kicked her in the same place each time. I cannot recall if he put his leg back down on the floor in between each kick, but do remember him swinging his leg back. He was kicking her as hard as he could. As he had turned around, I could see his face and that he was angry - I could see this from the expression on his face, and his face was red. My view of Mr Bagnall at this point was the same as described above during the punching, as I had not moved from the edge of the concrete pad (though as noted above, Mr Bagnall had turned around to kick Shakira).

20. Mr Bagnall then started punching Shakira again. He was still holding the head-collar with his right hand and was punching with his left hand. I do not remember how many times he punched her this time. It was not as many as before (i.e. it was not more than ten times), but was still several times. I think he may have punched her lower down on her

head this time, but am not sure. My view of Mr Bagnall at this point was the same as described above, as I remained stood on the edge of the concrete pad.”

25. When she was cross-examined about the initial punching episode it was put to Sophie that she had misconstrued the Appellant’s actions. However, when the cross-examination turned to the allegation that the Appellant had kicked Shakira there was the following exchange (transcript pp82 – 83):

“Q. I’m asking you how many times did he kick her?

A. I didn’t count them but I think around three.

Q. Okay. The evidence that you’ve given is very specific and it’s very similar to the evidence that your mum has given in terms of the head collar being held in a certain place with the right hand and the punch taking place with the left hand. Are you sure that you recall seeing that, very specifically?

A. Yes.

Q. And then you talk about the pony being kicked three times?

A. Yes.

Q. That didn’t happen, did it?

A. Yes, it did.

Q. And then you describe the pony being punched on the second occasion after the kicking.

A. Yes.

Q. And that didn’t happen, did it?

A. Yes, it did”

26. Sophie was then cross-examined about differences between her evidence and that of her father. After Sophie had given an explanation of those differences Mrs Dark said (transcript p85):

“Sophie, that evidence simply doesn’t match either your witness statement or your father’s witness statement and I put it to you that you’ve embellished that in order to exaggerate, for whatever reason, what you saw on the day?”

27. Mr Davies gave evidence but as he did not see the incident his evidence was of limited relevance.

28. It was not disputed that within about 30 minutes of the incident Mrs Davies had telephoned her vet. The receptionist at the veterinary practice passed on a message asking a vet to contact Mrs Davies and reporting Mrs Davies as saying that the Appellant had “punched and kicked [Shakira] several times”. Michelle Lawrence was the vet to whom the message was passed. She telephoned Mrs Davies recorded the latter as being concerned about Shakira having suffered possible harm as a result of having been kicked.

29. In his witness statement the Appellant had said, at [20], that he could not “believe the extent of [Mrs Davies’s] untruthful and exaggerated allegations”. However, he also referred, at [25], to the incident having been “misconstrued”.

30. When he was cross-examined the Appellant said that he thought that Mrs Davies had misinterpreted his action in raising his elbow as having been him punching the pony. The Appellant was then asked whether there was anything which he had done which would explain the fact that Mrs Davies had telephoned the vet saying that he had kicked and punched Shakira and there was the following exchange (transcript p114)

“A. I think she’d have just been a little bit annoyed that I hadn’t done all four ponies that were booked in that day. When I said to her that I was going to leave, so obviously I left before, if you like, the job was complete.

Q. Right. So you - in answering my question, you’ve said two things. First, you think she would have made this up, yes, because you hadn’t done all four ponies and the second is that she has confused the action of you defending yourself —

A. Yes.

Q. -- for something else, yes?

A. Yes, correct”

31. Later in the cross-examination the Appellant was asked to explain how the raising of his elbow could have been misinterpreted. He accepted that the raising of an elbow looked nothing like a punch and this exchange then occurred (transcript pp118 - 119):

“Q. So why, when Ms Davies and Sophie were asked about it, why do you think they say what you say happened didn’t happen?

A. Well, I can only suggest that they’re colluding with a story for whatever reason and, like I say, whether it’s because I didn’t complete the whole job that I was booked in to go and do, or whether it was a case of I totally get, and I’m not saying this in a condescending way, it is their precious pony and, unfortunately, an incident happened that, obviously, they didn’t like, so they’ve blown it all out of proportion.

Q. Well, it’s not a question of blowing something out of proportion, they’re saying something radically different happened, aren’t they?

A. Yes, they are, yes.

Q. Right. So that’s not blowing it out of proportion. It’s not embellishing anything. It’s saying something different, do you understand that?

A. Yes.

Q. Right. And you’re now suggesting that Sophie, then 13 now 14, has come here on her half-term, a year after the event, gone through the stress of sitting there and just said a load of stuff that her mother’s told her to say, is that what you’re saying?

A. Partially, yes.

Q. Right. And you’re saying that her mother has made that up in less than 20 minutes and has stuck to that story for a year, told the police, told the Council, told the RSPCA and pursued it, yes?

A. Yes.”

32. At p124 in the transcript there was a further exchange in which the Appellant suggested that the flailing of his apron could have been mistaken for him kicking the pony.

33. In her closing submissions on behalf of the Appellant Mrs Dark addressed the Committee about the differences between the accounts which Sophie had given over the time since the incident. Mrs Dark noted in particular the differences between a note which Sophie had prepared at some time closer to the incident and the statement prepared for the proceedings. She said that by the time of that statement “there [were] some quite staggering similarities” between the statements of Mrs Davies and Sophie. Then referring to those witnesses she said (transcript p143):

“The long and short of it is that Mr Bagnall’s position is that they have, for reasons that he actually does not know and he has tried his best but he does not know why they have made the evidence up, he is not sure whether they realise the importance, particularly Sophie, whether Sophie realises the importance of this procedure. But, ultimately, his evidence is that they have made it up and he would ask that on the findings of fact that you believe his evidence”

34. It follows that the Committee was correct to approach the allegation that the Appellant had deliberately kicked Shakira on the basis that the Appellant was saying that this had not happened and that Mrs Davies and Sophie had made up their evidence in that regard.

The Committee's Determination.

35. After the closing submissions the Committee's legal assessor gave directions as to the burden and standard of proof; the approach to be taken to conflicts of evidence; the relevance of contemporaneous documents; and the fact that demeanour was an unsafe guide to the reliability of witness evidence. The directions were in unexceptionable terms. The parties' representatives had been given an opportunity to comment on the directions and had chosen not to do so. Save to some extent in ground 1 the Appellant's case is not that there was any error in those directions but rather that the Committee failed to apply them properly.
36. In the first section of the Determination the Committee summarised the evidence.
37. In Section 2 the Committee set out its findings of fact.
38. At 2.2 the Committee explained that it had found that the Council had not discharged the burden of proof so as to establish the first alleged incident of punching. In doing so it noted that the incident would have happened quickly and would have been upsetting for Mrs Davies and for Sophie. In light of that it concluded that it was "a realistic possibility" that the movement of the Appellant's elbow could have been misinterpreted as punching.
39. However, the Committee then found that the Appellant had kicked and then punched the pony explaining its reasoning thus:
- “2.3 However, the Committee considered it to be highly improbable that Mrs. DD and Ms. SD would collude together to produce an entirely false account of the respondent kicking the pony several times and then punching the pony. The Committee noted that Mrs. DD and Ms. SD distinctly remembered and referred to the sound made by S after she had been kicked. In the Committee's judgement this was a telling detail.
- 2.4 Further, the account given by Mrs. DD and Ms. SD is supported by three important and undisputed pieces of contemporaneous evidence.
- 2.5 First of all, there is no dispute that Mrs. DD reported that her pony had been punched and kicked (emphasis added) to a veterinary practice shortly before 10.36 am on 8 October 2022. This report was made almost immediately after the episode described by Mrs. DD and her daughter.
- 2.6 Secondly, the note of advice given by the veterinary surgeon, Ms. MLT, stated that Mrs. DD was concerned about trauma to S's belly. It is difficult to see why Mrs. SD would have been concerned about potential injury in this area if the pony had not in fact been kicked there.
- 2.7 Thirdly, there is no dispute that the respondent left the premises without seeking payment for any of the work he had done. In the Committee's judgment this fact indicates an acceptance on his part at that time that things had gone wrong during this appointment. It is conduct that is very difficult to reconcile with the respondent's evidence that he had completed the trimming of S and another pony without any fault on his part. On the balance of probabilities, it suggests, in the Committee's judgment, that there was cause for complaint about the way in which he had behaved on 8 October 2022.

2.8 Taking into account these pieces of undisputed contemporaneous evidence, and the evidence given by both Mrs. DD and Ms. SD, the Committee is satisfied that the respondent did kick S and also punched her after he had kicked her. It rejects the implausible suggestion that Mrs. DD and her daughter have, because the respondent failed to complete the trimming for which he had been engaged, colluded to produce a fabricated account of these events."

40. In section 3 the Committee considered whether the facts proved amounted to serious misconduct. It noted that Mr Weston for the Respondent had referred to paragraphs 12(a) and 16(c) of the Code of Conduct; to the presence of a child during the Appellant's actions; and to a previous severe reprimand for striking a horse which the Appellant had received in October 2000. It noted that through Mrs Dark the Appellant had accepted that the facts found against him amounted to serious misconduct. The Committee referred to paragraph 24 of the Code of Conduct. It then said this:

"3.6 In the Committee's judgment the respondent had sought to dominate the horse by repeated kicks and punches. The Committee accepted Mr. Weston's description of the kicks and punches administered as punitive and retributive. The pony was injured.

3.7 A significant feature of the case was that this behaviour took place in the presence of a 13-year-old child, as well as the owner of the pony. It was conduct liable to cause serious damage to the reputation of the profession.

3.8 The Committee concluded that the facts found proved clearly amounted to serious misconduct in a professional respect. It reached this decision independently of the existence of a previous severe reprimand."

41. The Committee then considered the appropriate sanction setting out its reasoning in section 4 of the Determination. It summarised the aggravating and the mitigating factors saying that the former were of more weight than the latter.

42. At 4.8 the Committee explained why it was not appropriate to take no further action saying:

"4.8 The Committee concluded that this was much too serious a case in which to take no further action. A pony had been deliberately injured and such conduct was liable to bring the profession into disrepute."

43. At 4.10 the Committee said:

"4.10 The Committee concluded that a warning or reprimand would not be sufficient in view of the seriousness of the case. The misconduct in this case was not at the lower end of the spectrum of seriousness and the Committee could not be confident that there was no future risk to animals or the public in view of the limited insight shown by the respondent. The Committee reached this conclusion without regard to the previous severe reprimand."

44. Then at 4.11 – 4.12 the Committee explained why it had concluded that suspension was not appropriate and why it was necessary to remove the Appellant from the Register saying:

"4.11 The Committee next carefully considered the sanction of suspension. It had regard to the Indicative Sanctions Guidance. In view of all the circumstances, the Committee was not satisfied that this sanction would adequately meet the public interest. A reasonable and fully informed member of the public would, in the Committee's judgment, be appalled by the respondent's conduct. Nor was the Committee confident

that there was no significant risk of repeat behaviour or that the respondent farrier was now fit to return to practice after a period of suspension.

4.12 The Committee concludes that the only proportionate sanction in this case is that of removal from the register. The deliberate causing of injury by repeated kicks and punches to a tethered horse requires this sanction, notwithstanding the inevitable serious impact that such a sanction is likely to have upon the respondent. The Committee concludes that this is the only sanction which will properly satisfy the public interest. Although the Committee is bound to regard the previous warning as an aggravating factor, the Committee would have concluded that removal from the register was appropriate even in the absence of the previous warning in view of the punitive and retributive nature of the kicks and punches and the presence of a child at the time."

The Grounds of Appeal.

45. The Appellant advanced five grounds of appeal.
46. Grounds 1 – 4 related to the finding of serious misconduct. The Appellant accepted and accepts that the deliberate kicking of a tethered pony would amount to serious misconduct. Accordingly, the appeal in respect of the finding of misconduct is as to whether the Committee had been right to find that the Appellant had kicked Shakira. Grounds 1 – 4 challenge that finding.
47. Ground 1 alleged an error of law in two related respects namely:
 - “a) By failing to take into account when reminding itself of the burden and standard of proof that the Appellant was faced with a very serious allegation of professional misconduct (see: [2.1] of the Disciplinary Committee's Written Determination)
 - b) By failing to have regard to the seriousness of the allegation the Disciplinary Committee failed to apply and follow a long line of authority (up to and including the House of Lords/UK Supreme Court e.g. *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563] to the effect that - in cases where the civil standard of proof applies - serious allegations require cogent evidence before the allegation”
48. Ground 2 alleged the following material error:
 - “a) Adopting an incorrect reading of para [24] of the *'Farrier, Approved Training Farrier & Apprentice Code of Professional Conduct'* which is expressed in advisory terms rather than the mandatory terms adopted by the Disciplinary Committee thereby potentially influencing the Disciplinary Committee's considerations (see: [3.5] of the **Disciplinary Committee's Written Determination**).
 - b) Accepting that the pony had been injured without receiving or identifying cogent evidence of injury or giving any reasons for accepting actual injury as a fact (see: [3.6] of the **Disciplinary Committee's Written Determination**).
 - i. The absence of evidence of injury was raised as an issue in the Appellant's witness statement (at paras [26] to [28] of the witness statement of Mr Andrew James Bagnall DipWCF).
 - ii. Whether or not the pony had suffered injury was therefore in issue and demanded a finding of fact and/or actual cogent evidence.

iii. The Disciplinary Committee's bare acceptance of the fact of injury in the absence of reasons or actual evidence was a material error.”

49. Ground 3 was that:

“The Disciplinary Committee drew illegitimate and unjustified inferences from facts to support the conclusion that the Appellant had attacked and injured the pony:

1. The inferences drawn from the facts were illegitimate and unjust and the Appellant will rely upon the following matters:

a) The Complainant and her daughter both reported that the pony had made a sound despite: (a) differences in their written accounts and (b) the accepted fact that the pony was in the process of being restrained after it had bitten the Appellant [see: **[2.3] of the Disciplinary Committee's Written Determination)**;

b) The complainant had simply contacted a veterinarian and reported that the pony had been kicked in the stomach area and punched in the head - the veterinarian did not attend, did not examine the pony and did not have any further material dealings with the Complainant or the pony in relation to the material matter beyond that initial telephone call and as such this was not proof of injury [see: **[2.5] and [2.6] of the Disciplinary Committee's Written Determination)**; and,

c) The Appellant left the Complainant's premises without taking any payment. The Appellant had not completed the work that he had been contractually engaged to complete and he was faced with an unhappy customer [see: **[2.7] of the Disciplinary Committee's Written Determination)**).

2. The finding that the allegation was proved by reason of these inferences [see: **[2.8] and [2.9] of the Disciplinary Committee's Written Determination)** is all the more perverse given: [i] the seriousness of the allegation, and [ii] that the inferences are made against the backdrop of the Disciplinary Committee having acknowledged that:

a) It was a dynamic situation and one where the Complainant and her daughter could have been under a mistaken impression of what was happening; and,

b) Some of the Complainant's and her daughter's evidence had therefore been rejected and part of the allegation had been found not proved (see: **[2.2] of the Disciplinary Committee's Written Determination)**).

50. Then at ground 4 the Appellant asserted unreasonableness as follows:

“In finding the charge proved the Disciplinary Committee reached a decision that no reasonable tribunal could have reached based upon the evidence (or the lack of evidence) before it and the Appellant will rely upon the following matters:

a) The Disciplinary Committee expressed the prejudicial view that some injury would be inevitable in the event of kicks or punches being delivered to the pony (see: **[4.5] of the Disciplinary Committee's Written Determination)**).

b) Notwithstanding that 'Findings of Fact' are set out in Section 2 of the Determination the Disciplinary Committee accepted as a fact that the pony had been injured despite no evidence or insufficient evidence to support that as a fact (see: **[3.6], [4.5] and [4.8] of the Disciplinary Committee's Written Determination)**).

c) There was no cogent corroborative evidence before the Disciplinary Committee that the pony had in fact suffered any injury and the Disciplinary Committee gave no reasons for having accepted as fact that the pony had been injured.

d) The Appellant was therefore condemned by combined reason of:

- i. The Disciplinary Committee's bare acceptance - without any or any sufficient evidence - that the pony had in fact been injured; and;
- ii. The prejudicial position adopted by the Disciplinary Committee on the inevitability of injury in the event of the pony being kicked and punched.

e) In consequence of:

- i. Being of the view that injury was inevitable in the event of kicks/punches; and,
- ii. Without any investigation as to the fact of or cause of injury; and,
- iii. Accepting as fact without any or any sufficient evidence that the pony actually suffered injury; and,
- iv. In the absence of giving reasons for accepting the fact of injury;

The Disciplinary Committee's finding was perverse and a decision that no reasonable Disciplinary Committee could reach.”

51. In ground 5 the Appellant submitted that the sanction of removal from the Register was “disproportionate and unjust” because the Committee:

“a) Fell into error by accepting that the pony had been injured and taking this into account when determining sanction despite no or insufficient evidence of injury (see: **[4.8] of the Disciplinary Committee's 5 18 Written Determination**)

b) Unfairly criticised what it referred to as the Appellant's 'limited insight and considered that the Appellant posed a risk to animals and the public as a result (see: **[4.10] of the Disciplinary Committee's Written Determination**).

c) Fell into error in considering that the Appellant posed a significant risk of repeat behaviour despite no concerns about his conductor behaviour over the previous 23 years of service as a farrier (see: **[4.11] of the Disciplinary Committee's Written Determination**).

d) Gave some weight to a previous finding from at least 23-years earlier (see: **[4.5] and [4.12] of the Disciplinary Committee's Written Determination**).

e) Failed to give sufficient weight to the mitigation (see: **[4.2] and [4.6]- [4.7] of the Disciplinary Committee's Written Determination**).

f) Should have had regard and factored into the decision on the sanction the strength (or otherwise) of the evidence upon which the finding had been made.”

52. In his skeleton argument for the Appellant Mr Hardcastle submitted that the Committee had failed to give reasons for some aspects of the Determination (such as the rejection of the Appellant's case and of his contention that there had been collusion and/or contamination of the evidence) and that inadequate reasons had been given for its findings. In the course of submissions it was clarified that the Appellant was not seeking to advance a separate reasons challenge (for which amendment of the grounds of appeal would have been needed). Rather the alleged inadequacy of the reasoning expressed by the Committee was being advanced as a factor in support of the contention that its finding of fact and its conclusion as to sanction were wrong.

The Nature of the Appeal and the Approach to be taken.

53. The effect of CPR rule 52.21(1) and the omission of appeals under section 15(3) from the list at CPR PD52D paragraph 19.1 is that the appeal is to be by way of review (see also the explanation given by Morris J in *Craig* at [28]).
54. The finding that the Appellant kicked Shakira was a finding of primary fact akin to those with which Morris J was concerned in *Craig*. At one point Mr Weston characterized that finding as being the result of an exercise of evaluative judgement of the kind considered by the Court of Appeal in *Bawa-Garba v GMC* [2018] EWCA Civ 1879, [2019] 1 WLR 1929. I do not accept that analysis. It is true that the finding of the kicking was the result of evaluation of the evidence and of an exercise of judgement but it was not an evaluative judgement of the kind the Court of Appeal was contemplating. In *Bawa-Garba* the tribunal had been engaged in considering whether suspension rather than erasure was the appropriate sanction for the appellant's failings. As the court said at [60] that was "an evaluative decision based on many factors, a type of decision sometimes referred to as 'a multi-factorial decision'. This type of decision a mixture of fact and law, has been described as 'a kind of jury question' about which reasonable people may reasonably disagree". The finding that the Appellant had kicked Shakira was not decision of that kind. It was a finding of primary fact as to whether something had happened or not. Doubtless there could be disagreement about that but it was a question to which there could only be one correct answer.
55. Ground 5 was a challenge to the Committee's determination that the appropriate sanction was the removal of the Appellant from the Register. That was indeed an exercise of evaluative judgement akin to that with which the Court of Appeal was concerned in *Bawa-Garba*.
56. The question to be asked in respect of both the finding of fact and the determination as to sanction is the same, namely whether it was either wrong or unjust because of a serious procedural or other irregularity in the proceedings before the Committee. However, the approach to be taken to answering that question is different in relation to the finding of fact and to the determination of the sanction.
57. In the case of the challenge to the finding of fact there is little difference between an appeal by way of review and one by way of rehearing. That is because of the deference to be accorded to findings of primary fact on an appeal by rehearing.
58. Morris J explained the approach to be taken in *Craig* and in *Byrne v GMC* [2021] EWHC 2237 (Admin),
59. In *Craig* at [28] – [32] Morris J summarised a number of principles applicable to appeals from professional disciplinary bodies thus:

"28. First, CPR 52.10 and 52.11 apply to an appeal to this Court from the Disciplinary Committee. It is common ground that such an appeal is an appeal by way of review and not by way of rehearing: see the fact that special provision for a s.15(3) appeal is not made in CPR Practice Direction 52D. (See, by analogy, discussion in *O v Secretary of State for Education* [2014] EWHC 22 (Admin) §54). However where the appeal court is being asked to reverse findings of fact based on oral evidence, there is little, if any, difference between "review" and "rehearing": see *O* supra, §56 and *Assicurazioni Generali SpA v Arab Insurance Group* [2002] EWCA Civ 1642 §§13, 15 and 23. Ultimately the question for this court is whether the decision below was "wrong" or "unjust because of a serious procedural or other irregularity in the proceedings [below]".

29. Secondly, as to the approach of this Court on appeal in relation to findings of fact, whilst in a case such as the present, the lower court or tribunal is the primary decision maker, the High Court will correct material errors of facts on various grounds, including insufficient evidence or mistake. The degree to which the appeal court will show deference to the lower court will depend upon the nature of the issues determined by the court below. Greater deference will be shown where the conclusions are based upon the view formed of oral evidence of witnesses, than where conclusions also involve analysis of documents or where conclusions are based on inference. Much will depend upon the extent to which the judge below has an advantage over the appellate court: see *Assicurazioni* supra, §§14 and 15.

30. Thirdly, as regards the specific issue of findings based on preferring the account of one oral witness over that of another, there is a degree of disagreement between the parties. The Appellant supports the analysis in my judgment at paragraph 58 in the case of *O*, supra. In that case, I stated, in particular, that the starting point is that the lower court is in a better position to assess credibility and reliability of witnesses; that demeanour of witnesses is a significant, but not always conclusive, factor and that it may not be sufficient to explain or justify the conclusions of the court below. This analysis is founded ultimately upon the passage in the speech of Lord Thankerton in *Thomas v Thomas* [1947] AC 484 at 487-488.

31. The Council on the other hand relies on the case of *Bhatt v. General Medical Council* [2011] EWHC 783 at §§6 and 9, (and certain passages in the *Assicurazioni* case) to support the contention that the scope for interference with findings of fact based on oral evidence heard by the Disciplinary Committee is more restricted than suggested in paragraph 58(5) of *O*. Findings of fact founded upon credibility of witnesses are “close to being unassailable” and “must be shown with reasonable certainty to be wrong if they are to be departed from”. This submission is based upon the approach of Leveson LJ in *Southall v General Medical Council* [2010] EWCA Civ 407 at §47 and has been subsequently followed in a number of first instance decisions.

32. In my judgment, the distinction between these two approaches may be a fine one, and in any event, on the facts of this case, little will turn upon it. Without undertaking a detailed analysis of the substantial number of potentially relevant previous cases, for present purposes I will apply, in the Appellant’s favour, the approach identified in paragraph 58 of my judgment in *O*. Suffice it to say that both my decision and that in *Bhatt* can be traced back to the speech of Lord Rodger in *Gupta v General Medical Council* [2002] 1 WLR 1691 at §10. That speech, in turn, expressly cites with approval the passage in the speech of Lord Thankerton in *Thomas v Thomas* referred to in paragraph above 30. *Thomas v Thomas* itself was also cited with approval in *Benmax v Austin Motor Co Ltd* [1955] AC 370 which, in addition to *Gupta*, is relied upon by Leveson LJ in *Southall*.”

60. It appears that in *Byrne Morris J* had the benefit of rather more extensive citation of authority (which he listed at [10]) and at [11] – [15] he summarised the effect of the authorities to which he had been referred as being:

“11. The issue is as to the circumstances in which an appeal court will interfere with findings of fact made by the court or decision maker below. This is an issue which has been the subject of detailed judicial analysis in a substantial number of authorities and where the formulation of the test to be applied has not been uniform; the differences between formulations are fine. I do not propose to go over this ground again in detail, but rather seek to synthesise the principles and to draw together from these authorities a number of propositions.

12. First, the degree of deference shown to the court below will differ depending on the nature of the issue below; namely whether the issue is one of primary fact, of secondary

fact, or rather an evaluative judgment of many factors: *Assicurazioni Generali* at §§16 to 20. The present case concerns findings of primary fact: did the events described by the Patient A happen?

13. Secondly, the governing principle remains that set out in *Gupta* §10 referring to *Thomas v Thomas*. The starting point is that the appeal court will be very slow to interfere with findings of primary fact of the court below. The reasons for this are that the court below has had the advantage of having seen and heard the witnesses, and more generally has total familiarity with the evidence in the case. A further reason for this approach is the trial judge's more general expertise in making determinations of fact: see *Gupta*, and *McGraddie v McGraddie* at §§3 to 4. I accept that the most recent Supreme Court cases interpreting *Thomas v Thomas* (namely *McGraddie* and *Henderson v Foxworth*) are relevant. Even though they were cases of "review" rather than "rehearing", there is little distinction between the two types of cases for present purposes (see paragraph 16 below).

14. Thirdly, in exceptional circumstances, the appeal court will interfere with findings of primary fact below. (However the reference to "virtually unassailable" in *Southall* at §47 is not to be read as meaning "practically impossible", for the reasons given in *Dutta* at §22.)

15. Fourthly, the circumstances in which the appeal court will interfere with primary findings of fact have been formulated in a number of different ways, as follows:

- where "*any advantage enjoyed by the trial judge by reason, of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusions*": per Lord Thankerton in *Thomas v Thomas* approved in *Gupta*;
- ~ findings "*sufficiently out of the tune with the evidence to indicate with reasonable certainty that the evidence had been misread*" per Lord Hailsham in *Libman*;
- findings "*plainly wrong or so out of tune with the evidence properly read as to unreasonable*" per in *Casey* at §6 and Warby J (as he then was) in *Dutta* at §21(7);
- where there is "*no evidence to support a ... finding of fact or the trial judge's finding was one which no reasonable judge could have reached*" : per Lord Briggs in *Perry* after analysis of *McGraddie* and *Henderson*.

In my judgment, the distinction between these last two formulations is a fine one. To the extent that there is a difference, I will adopt, in the Appellant's favour, the former. In fact, as will appear from my analysis below, I have concluded that, even on that approach, I should not interfere with most of the Tribunal's primary findings of fact."

61. Account is also to be taken of the summary of the applicable principles expressed thus by Warby J, as he then was, in *R (Dutta) v GMC* [2020] EWHC 1974 (Admin) at [21] – [22]:

"21. Bearing that in mind, the points of most importance for the purpose of this case can be summarised as follows:

- (1) The appeal is not a re-hearing in the sense that the appeal court starts afresh, without regard to what has gone before, or (save in exceptional circumstances) that it re-hears the evidence that was before the Tribunal. "Re-hearing" is an elastic notion, but generally indicates a more intensive process than a review: *EI Dupont de Nemours & Co v S T Dupont (Note)* [2006] 1 WLR 2793 [92-98]. The test is not the "Wednesbury" test
- (2) That said, the appellant has the burden of showing that the Tribunal's decision is wrong or unjust: *Yassin* [32(i)]. The Court will have regard to the decision of the

lower court and give it “the weight that it deserves”: *Meadow* [128] (Auld LJ, citing *Dupont* [96] (May LJ)).

(3) A court asked to interfere with findings of fact made by a lower court or Tribunal may only do so in limited circumstances. Although this Court has the same documents as the Tribunal, the oral evidence is before this Court in the form of transcripts, rather than live evidence. The appeal Court must bear in mind the advantages which the Tribunal has of hearing and seeing the witnesses and should be slow to interfere. See *Gupta* [10], *Casey* [6(a)], *Yassin* [32(iii)].

(4) Where there is no question of a misdirection, an appellate court should not come to a different conclusion from the tribunal of fact unless it is satisfied that any advantage enjoyed by the lower court or tribunal by reason of seeing and hearing the witnesses could not be sufficient to explain or justify its conclusions: *Casey* [6(a)].

(5) In this context, the test for deciding whether a finding of fact is against the evidence is whether that finding exceeds the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible: *Yassin* [32(v)].

(6) The appeal Court should only draw an inference which differs from that of the Tribunal, or interfere with a finding of secondary fact, if there are objective grounds to justify tills: *Yassin* [32(vii)].

(7) But the appeal Court will not defer to the judgment of the tribunal of fact more than is warranted by the circumstances; it may be satisfied that the tribunal has not taken proper advantage of the benefits it has, either because reasons given are not satisfactory, or because it unmistakably so appears from the evidence: *Casey* [6(a)] and cases there cited, which include *Raschid* and *Gupta* (above) and *Meadow* [125-126], [197] (Auld U). Another way of putting the matter is that the appeal Court may interfere if the finding of fact is “so out of tune with the evidence properly read as to be unreasonable”: *Casey* [6(c)], citing *Southall* [47] (Leveson LJ).

22. Ms Hearnden places heavy reliance on another passage from *Southall* [47], where Leveson LJ observed that

‘... it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable.’

However, it is clear from paragraph [47] read as a whole, that this sentence does not purport to represent a distinct principle, imposing a more exacting test than those I have identified. Rather, it is intended to be a distillation of the jurisprudence I have summarised. *Southall* [47] also shows that the passage I have quoted from *Casey* [6(c)] reflects high authority. It is a variation of words used by Lord Hailsham, sitting in in the Privy Council, in *Libman v General Medical Council* [1972] AC217,221F.”

62. Both Morris J in *Byrne* and Warby J in *Dutta* were considering an appeal by way of rehearing rather than review. However, there is no material difference between such appeals for the purposes of an appeal against a finding of primary fact: see per Morris J in *Byrne* at [16].
63. I have regard to the principles which Morris and Warby JJ summarised in that way. The effect is that where there is an appeal against a finding of primary fact by a professional disciplinary body the finding is not to be regarded as unassailable nor does an appellant have to establish a reasonable certainty that the finding was wrong. The court on appeal can, however, only conclude that the finding was wrong if it has had regard to the principles I have summarised and if, having exercised due caution and having had

proper regard to the deference to be accorded to the tribunal which heard the evidence, it has then concluded that the finding was unreasonable and so unsustainable.

64. The decision as to the appropriate sanction to be imposed on the Appellant was an exercise of evaluative judgement of precisely the kind which the Court of Appeal had considered in *Bawa-Garba*. The analysis at [60] and following in that decision is, therefore, applicable. That analysis culminated thus at [67]:

“67. That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts: see *Smech* at [30]; *Khan v General Pharmaceutical Council* [2016] UKSC 64, [2017] 1 WLR 169 at [36]; *Meadow* at [197]; and *Raschid v General Medical Council* [2007] EWCA Civ 46, [2007] 1 WLR 1460 at [18]-[20]. An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide: *Biogen* at 45; *Todd* at [129]; *Designers Guild Ltd v Russell Williams (Textiles) Ltd (trading as Washington DC)* [2001] FSR 11 (HL) at [29]; *Buchanan v Alba Diagnostics Ltd* [2004] UKHL 5, [2004] RPC 34 at [31]. As the authorities show, the addition of “plainly” or “clearly” to the word “wrong” adds nothing in this context.”

65. I have already explained that the alleged inadequacy of the reasons given by the Committee is not being advanced as a separate ground of challenge but as supporting the primary challenge to the Committee’s conclusions. In that regard I respectfully agree with and adopt the point made thus by Morris J in *Craig* at [33]:

“33. Fourthly, a professional disciplinary committee is not a judicial body and it is not required to make a record of everything it has considered in its reasoning, as long as sufficient explanation of reasons is given. It is important not to subject a determination such as that in the present case to a narrow textual analysis: see O supra at §§ 61, 62 and 63.”

The Challenge to the Committee’s Findings of Fact.

66. The finding that the Appellant had kicked and then punched Shakira was a finding of primary fact. The finding can only be overturned if I find that it was wrong after application of the approach set out at [57] – [63] above.
67. The position as it appears on an initial reading of the Determination and of the evidence can be summarised shortly.
68. The Committee was considering two incidents. In respect of the first it concluded that it could not exclude the possibility of misinterpretation and it found that the allegation was not proved. That is indicative of the care with which the Committee approached its task. Mr Hardcastle submitted that the Committee erred in finding that Shakira had been injured and that once it had made that erroneous finding the finding adverse to the Appellant was a “foregone conclusion”. I will deal with the deficiencies in the first part of that submission below but it is clear from its approach to the first incident that the Committee was entirely capable of analysing the issues with care and of dismissing allegations against the Appellant.

69. The Committee approached the second incident on the footing that either (a) Mrs Davies and her daughter were correct to say that the Appellant had kicked Shakira or (b) their evidence in that regard had been fabricated. As I have already explained fabrication taking the form of deliberate exaggeration was the Appellant's primary case. Common sense and inherent likelihood also support the view that this was the choice the Committee had to make. The evidence from Mrs Davies was that she had seen the Appellant resting one arm on the pony to steady himself while kicking the pony with his other leg and doing so a number of times. It is verging on the nonsensical to contend that she could have given that evidence as the consequence of a genuine misunderstanding of what had happened.
70. The Committee then took account of three matters as supporting the evidence of Mrs Davies and of Sophie. It was entitled to do so and the dealings with the vet were of particular significance. If there was realistically no scope for a genuine misunderstanding as to whether the Appellant was kicking the pony there were only two possible explanations for those dealings. The first was that within a very short time of the incident Mrs Davies was expressing her genuine belief that the Appellant had kicked Shakira and was doing so based on what she had seen. The second was that in the same short period Mrs Davies was deliberately setting up support for a false allegation which she had already decided to make. The Committee was entitled to regard the former as the more likely explanation.
71. The reasons for the Committee's conclusions were set out in short but adequate terms. The Committee explained that it was approaching the kicking allegation on the basis that either the allegation was true or that it had been deliberately fabricated in a process of collusion involving both Mrs Davies and her daughter. It then explained the considerations which had caused it to find that the allegation was true.
72. It follows that an initial reading of the Determination in the light of the evidence and the way in which the Appellant's case was put at the hearing does not give rise to any concern and still less to an initial or provisional view that the conclusion reached was wrong. Do the grounds of appeal or the arguments advanced by Mr Hardcastle mean that initial assessment is to be modified?
73. I have explained at [19] and following above my rejection of Mr Hardcastle's submission as to what had been the Appellant's primary case before the Committee. It follows that it cannot be said that the Committee failed to address that primary case.
74. In ground 1 the Appellant asserts that section 2.1 of the Determination revealed an error of law in that the Committee addressed the matter on the basis of the balance of probabilities without qualification. In the ground it is said that because of the gravity of the allegation and because of the inherent improbability that a farrier would strike a horse the Committee should have required cogent evidence before finding that this had happened. This ground was not at the forefront of the Appellant's skeleton argument or submissions to me but it was not abandoned. It was supplemented before me by a contention that the Committee erred in its approach to the assessment of the contemporaneous evidence. The contention is untenable in both its original form and as supplemented.
75. The ground as originally formulated fails for two reasons.

76. The first is that the Appellant's representative was given an opportunity to make submissions as to the directions given to the Committee by the legal assessor and chose not to do so. Those directions explained that the matter had to be approached on the balance of probabilities and did not refer to any need for any particular level of evidence. Having accepted the directions which were given the Appellant cannot now say that the Committee was in error to apply them.
77. The second and principal reason the argument fails is that it is wrong both in law and on the facts. In ground 1 the Appellant invoked the approach articulated in *Re H* [1996] AC 563. However, the approach set out there by Lord Nicholls is now to be seen in the light of the explanation of it given by Lord Hoffmann and Lady Hale in *Re B* [2008] UKHL 35, [2009] 1 AC 11. It is not the law that the more serious the allegation the stronger the evidence which is needed to establish it on the balance of probabilities. Instead, and as a matter of common sense, the fact-finding tribunal has to be conscious that the more unusual the conduct alleged then in normal circumstances the less likely it is to have occurred. However, in assessing the effect of that consideration the fact-finding tribunal has to have close regard to the particular circumstances of the case being considered and the standard of proof remains the balance of probabilities. The question for the Committee here was not the abstract one of whether it is more likely than not that a farrier will strike a horse. Instead it was the specific question of whether in the circumstances of this case seen as a whole it was more likely that the Appellant had kicked Shakira or that Mrs Davies and her daughter had fabricated the allegation that he had done so. In undertaking that exercise the Committee was entitled to take account of the inherent improbability of such deliberate fabrication. It follows that there was no error of law in this regard.
78. The Appellant's contention in this regard was supplemented by the argument (overlapping to some extent with ground 3) that the Committee had erred in law in failing to follow the legal assessor's direction as to the approach to be taken to the contemporaneous evidence.
79. The legal assessor had given an impeccable direction telling the Committee that contemporaneous evidence could be powerful evidence but that it was not to be accepted uncritically and that care was needed in deciding the inferences which it was safe to draw from such evidence.
80. The Appellant said that the Committee did not apply this approach when drawing inferences from the fact of the dealings between Mrs Davies and the vet. Mr Hardcastle submitted that those dealings did not prove that the Appellant had kicked Shakira and that the Committee erred in attaching weight to them. That contention misses the point. The relevance of the exchanges between Mrs Davies and the vet derived from both the timing and the content of the exchanges. As I have explained at [70] above the timing and content of the exchanges were highly relevant to the issue of whether Mrs Davies's account of kicking by the Appellant had been fabricated. The Committee was entitled to take them into account as potent support for the evidence of Mrs Davies and as a potent indication that there had not been fabrication by her. The evidence of exchanges did not operate as direct evidence of whether the Appellant kicked the pony and were not treated as doing so. Instead they provided evidence of which the Committee took account when considering the reliability of Mrs Davies's evidence and in particular when addressing the question of whether the allegation of kicking had been fabricated.

There was no error of law in that approach and this argument does not advance the Appellant's case.

81. In ground 2 the Appellant contends that the Committee erred in its interpretation of paragraph 24 of the Code of Conduct. This does not advance the challenge to the Committee's finding of fact. The Committee took paragraph 24 into account in considering whether the facts it had found proved amounted to serious misconduct but there is no basis for the assertion that this had any influence on the finding as to the facts.
82. In grounds 2 and 4 the Appellant contends that the Committee erred in finding that Shakira had been injured. The challenge to this finding was a major theme in Mr Hardcastle's skeleton argument and in his oral submissions. He said that the finding that Shakira had been injured was a "key issue" for the Committee. The Appellant's contention is that the Committee found that Shakira had been injured when there was insufficient evidence to justify the finding and without giving an adequate explanation of why the finding had been made. It is said that the effect of this finding permeated the Determination making the finding of misconduct a foregone conclusion.
83. Despite the emphasis placed on this point it is misconceived and is based on a misunderstanding of the Committee's reasoning.
84. As Mr Weston explained succinctly and correctly this was not a case where the Committee found that there had been an injury to the pony and then found as a consequence that there must have been kicking by the Appellant. Rather the position was that the Committee found as a fact that the Appellant had kicked Shakira and having made that finding it then accepted the evidence that the pony had been injured.
85. The fact of the injury to the pony played no part in section 2 of the Determination nor in the finding that the allegation of kicking had been established. The only reference to injury in that part of the Determination occurred where the content of Mrs Davies's comments to the vet was noted.
86. Having found that the Appellant had kicked the pony repeatedly it is not surprising that the Committee then accepted that there had been some injury. It would have been surprising if the Committee had not accepted the evidence of injury in those circumstances. The Committee then took the fact of injury into account in assessing whether the Appellant's actions amounted to serious misconduct and what sanction was appropriate. Mr Hardcastle was right to point out that there was no explanation of the basis for the finding that Shakira had been injured and no analysis equivalent to that in section 2 where the Committee explained why it had concluded that the Appellant had kicked the pony. That would have been a potent criticism if the Committee's approach had been to use the finding that the pony had been injured as an element in the reasoning leading to the conclusion that the Appellant had kicked her. However, as I have just explained that was not the process in which the Committee engaged. It follows that the absence of an explanation for this finding cannot provide support for the challenge to the Committee's finding of fact. I will consider below its relevance to the conclusions reached as to the gravity of the misconduct and as to the appropriate sanction.
87. In ground 3 the Appellant asserts that the Committee had based the finding that he kicked Shakira on "illegitimate and unjustified inferences". The Appellant criticized

the weight which the Committee gave to the evidence that the pony had made a noise and to the dealings between Mrs Davies and the vet. In addition he criticized the interpretation placed by the Committee on the fact that the Appellant left without seeking payment. I reject those criticisms. They are based on a mischaracterization of the exercise in which the Committee was engaged as well as being flawed in terms of the analysis of these items.

88. The Committee's finding that the Appellant had kicked the pony was not an inference drawn from other facts. Instead it was a finding of primary fact in which the Committee was considering which of the competing accounts given by the Appellant and by Mrs Davies and her daughter was the more likely. The conflict was resolved by the acceptance of the evidence of Mrs Davies and of Sophie as to the kicking. The matters to which the Committee referred in section 2.3 – 2.7 of the Determination were not facts from which inferences were being drawn but factors which were regarded (together with the inherent improbability of fabrication) as supportive of the evidence of Mrs Davies and of Sophie and in particular as making their account the more likely. The Committee was entitled to approach the case in that way and to regard those facts as supportive of the evidence of kicking.
89. Mr Hardcastle mounted a sustained critique of the evidence of Mrs Davies and of Sophie as to hearing Shakira make a sound. His skeleton argument contained an impressive analysis of the evolution of that evidence with a view to contending that the evidence on that point in its final state and as put before the Committee was not reliable. The contention was that the Committee should not have accepted this evidence as reliable and still less should it have regarded it as a "telling detail". The analysis undertaken by Mr Hardcastle was impressive but the difficulty is that this was a point which was not raised before the Committee. Although Mrs Davies and Sophie were cross-examined about other changes in their statements and although Mrs Dark did submit that there had been embellishment and collusion in her closing submissions this was not in relation to the hearing of Shakira making a noise. It follows that neither Mrs Davies nor Sophie were able to address the changes in their evidence and that the Committee was not able to consider the point. It is not open to the Appellant to advance this argument now let alone to say that these matters mean that the Committee should not have accepted the evidence that Shakira made a noise. It follows that it was open to the Committee to accept that evidence. Having done so the Committee were entitled to regard it as providing significant support for the allegation that the Appellant had kicked the pony. The Committee was entitled to regard the hearing of a noise from the pony as indicative of that animal's response to having been kicked.
90. I have already addressed the relevance of the evidence of the dealings between Mrs Davies and the vet and explained that the Committee was entitled to regard that as an indication that there had not been deliberate fabrication.
91. The Committee's reference to the fact that the Appellant departed without payment comes closest to being a matter of drawing inferences. Mr Hardcastle was right to say that there were a number of possible explanations for why the Appellant had left without payment. However, an acceptance by the Appellant that things had gone wrong was clearly one potential explanation. The conclusion that this was the most likely explanation was very much within the remit of the Committee composed as it was of farrier and lay members and given that it had heard the oral evidence of Mrs Davies, of Sophie, and of the Appellant. In the third sentence of section 2.7 the Committee did

explain why it had taken this view. The explanation was short but sufficient and it was not necessary for the Committee to rehearse the other possible explanations and then to set out its reasons for rejecting them. Having reached that conclusion as to why the Appellant left without payment then the Committee was entitled to regard it as a matter which supported the evidence of Mrs Davies and of Sophie.

92. In ground 3(2)(b) and in Mr Hardcastle's submissions the Appellant contends that the Committee erred in failing to make a finding as to the credibility of the witnesses. It is said that this failing was all the more significant in circumstances where the Committee had rejected the evidence of Mrs Davies and of Sophie in respect of the first incident.
93. That criticism is not tenable in circumstances where the finding of fact in section 2 of the Determination is in reality an express assessment of the credibility and reliability of the witnesses. The Committee addressed the contention that there had been deliberate fabrication by Mrs Davies and by Sophie and rejected it. The Committee gave its reasons for rejecting the contention. It was not necessary for the Committee then to add in some form of formulaic mantra words to the effect of "and as a consequence the Committee finds Mrs Davies/Sophie to be an honest witness".
94. The fact that the Committee found that the first incident had not been proved despite rejecting the Appellant's allegation that there had been deliberate fabrication by Mrs Davies and Sophie is an indication of the care with which it approached its task. The finding that the evidence was not sufficient to prove the first incident does not undermine the Committee's acceptance of the evidence of Mrs Davies and Sophie about the second incident. Matters would have been different if the Committee had concluded that Mrs Davies and/or Sophie had been deliberately giving untrue evidence about that first incident. If that had been the position then it would have been necessary for the Committee to explain why the evidence about the second incident was nonetheless being accepted. However, that was not the position. The rejection of the evidence in relation to the first incident was not on the basis of the honesty of the witness but on that basis that the possibility of confusion or misunderstanding could not be ruled out. There was no scope for misunderstanding in relation to the second incident and having rejected the allegation of deliberate fabrication the Committee was entitled to accept the evidence of Mrs Davies and of Sophie.
95. In ground 4 the Appellant alleges that in finding the charge proved the Committee reached a decision which was perverse and not open to it acting as a reasonable tribunal. This ground is founded on the Appellant's challenge to the finding of an injury which is said to have been unwarranted and to have permeated the Determination. I have addressed this argument at [82] and following above and consider it further at [101] and following below. For the reasons I give there it has no substance and is to be dismissed.
96. The position, therefore, remains as it appeared from the initial consideration of the Determination. The appeal in grounds 1 – 4 against the finding that the Appellant kicked Shakira is to be dismissed.

The Finding of Serious Misconduct.

97. At the hearing before the Committee the Appellant accepted that the kicking of a pony in the circumstances found by the Committee amounted to serious misconduct. However, in the grounds of appeal and in Mr Hardcastle's skeleton submissions issue

is taken with aspects of the approach which the Committee adopted in section 3 of the Determination. It was said in ground 2(a) that the Committee had adopted an incorrect reading of paragraph 24 of the Code of Conduct in that it had failed to appreciate that this paragraph was advisory rather than mandatory. The second criticism was of the Committee's acceptance that Shakira had been injured.

98. There is no substance in either of these criticisms of the conclusion that the Appellant's actions amounted to serious misconduct. The conclusion that the acts of the Appellant which the Committee had found as a matter of fact amounted to serious misconduct was an exercise of evaluative judgement. It follows that the approach set out in *Bawa-Garba* is applicable. For the following reasons there was neither any error of principle in the approach taken by the Committee nor can it be said that the conclusion reached was outside the range of those reasonably open to the Committee.
99. The Committee referred to paragraph 24 of Code at section 3.5 of the Determination where it said:

“3.5 The Committee reminded itself that the Code, at paragraph 24, makes clear that a farrier faced with a difficult horse should not commence or proceed with the farriery. It is not the function of a farrier to dominate and punish the horse to allow farriery to take place.”
100. That passage does not show any misreading of the Code of Conduct and still less one which vitiated either the Committee's approach or the conclusion reached. The reference to paragraph 24 was an introduction to the more general proposition in the second sentence of section 3.5. That proposition was not dependent on a view as to whether paragraph 24 was advisory or mandatory. It was a proposition as to the function of a farrier and to proper procedures which the Committee as a specialist adjudicative body containing farrier members was fully entitled to articulate and on the basis of which it was entitled to proceed.
101. The Appellant also criticizes the finding that the pony was injured and the account which was taken of this in sections 3 and 4 of the Determination. As I have already explained the question of whether the pony had been injured played no part in the reasoning leading up to the finding that the Appellant had kicked her. Nor was it relevant to the assessment that the Appellant did so in order to punish the pony. It follows that the Appellant intended at the least to cause Shakira pain. The acceptance of the fact that some injury was suffered follows almost inevitably from that finding combined as it was with the conclusion that Mrs Davies and Sophie were not engaged in deliberate fabrication.
102. If the Committee's approach had been to treat the degree of injury (rather than the fact of some injury) as being a material factor then it would have been necessary for it to explain the reason for its conclusion as to a particular degree of injury. It is, however, clear that this was not the position. The factor which was relevant was the existence of some injury and it is apparent that this was, at most, a supplementary element in the Committee's reasoning as to the gravity of the misconduct and the appropriate sanction. Acceptance of the fact that there had been some injury was, as just noted, an almost inevitable consequence of the other findings. In those circumstances the failure to articulate why the Committee had reached that conclusion was not a material error of principle in the approach to the evaluative exercise and for the Committee to take

account of the fact that there had been some injury did not take its conclusions outside the range of those properly open to it.

The Challenge to the Sanction Imposed.

103. The Committee's decision on the appropriate sanction was an exercise of evaluative judgement by a specialist adjudicative body and so the challenge to it is to be judged by reference to the twofold test set out in *Bawa-Garba* at [67].
104. The Appellant contends that the sanction imposed was disproportionate and unjust in light of the six matters I have quoted at [51] above.
105. There is no substance in the contention that the Committee erred in accepting that the pony had been injured and in taking this into account as relevant to the sanction to be imposed. I have already explained why I am satisfied that the Committee was entitled to take account of the fact that Shakira suffered injury. That was a consideration which was clearly relevant to the degree of sanction and which the Committee was entitled to take into account. The relevant factor was not the degree of any injury suffered but the fact that there was some injury and that the harm was inflicted deliberately. It is to be noted that at section 21 the Sanctions Guidance in the Manual expressly identified "deliberate harm to an animal or deliberately risking such harm" as behaviour which was "fundamentally incompatible with being a Registered Farrier" and which might make removal from the Register appropriate.
106. The Appellant takes issue with the finding at section 4.10 of the Determination that his insight was limited and that as a consequence the Committee could not be confident that there was no future risk to animals or the public. The Appellant contends that the Committee should have regarded his acceptance that for a farrier deliberately to kick a horse was serious misconduct as an indication of insight on his part. The Appellant is not to be penalised for requiring the allegations against him to be proved. Nonetheless, it is relevant that his contention before the Committee was not only that he had done nothing wrong but also that the allegation that he had kicked Shakira had been fabricated. The Committee was entitled to regard that as an indication that such insight as he had was limited and to take that into account when considering the prospect of future risk. It is to be noted that the Committee approached the matter on the basis that the Appellant's insight was limited rather than that he had no insight and that it expressly accepted, at section 4.6, that his acceptance that kicking a pony amounted to serious misconduct showed some insight.
107. There is similarly no force in the Appellant's contention that the Committee did not have sufficient regard to the fact that he had practised as a farrier for 23 years without complaint since the one previous finding against him. It is said on behalf of the Appellant that if proper account had been taken of this consideration the Committee would not have found that there was a significant risk of repeat behaviour. A number of points arise. The first is the question which the Committee was asking was not whether there was a significant risk of such behaviour but rather whether it could be confident that there was not such a risk. Next, the Committee expressly acknowledged that the previous finding had been "many years ago". It noted, at section 4.3, the points made by Mrs Dark as to the length of the Appellant's practice and took into account, at section 4.6, that he was "clearly a highly skilled farrier who was respected by clients and other professionals". Therefore, it cannot be said that the Committee did not have

regard to those matters. The weight to be given to particular factors was very much a matter for the specialist judgement of the Committee as was the question of whether the Committee could be confident that there was no future risk. The gravity of the Appellant's conduct has to be remembered and it cannot be said that the failure to give this aspect of the mitigation more weight or to regard it as meaning that there was no future risk was an error of principle nor that it took the decision on sanction outside the range of those properly open to the Committee.

108. The Appellant contends that the Committee wrongly attached weight to the previous finding against him even though it said that this had not affected its decision. The Appellant asks why the previous finding was mentioned if no account was being taken of it. Again there is no substance in this point. The explanation and reasons given by the Committee are to be accepted and taken at face value in the absence of some cogent indication that they were not correct and that this matter was taken into account despite the assertion to the contrary. At section 4.10 the Committee expressly said that it had reached its conclusion as to the inadequacy of a warning or reprimand "without regard" to the previous finding. At section 4.12 it rightly said that the previous finding was an aggravating factor but again expressly said that it would have concluded that removal was appropriate even without that matter. At section 4.12 the Committee identified the factors which meant that removal would have been appropriate regardless of the previous finding. There is nothing to indicate that these explanations were not genuine and this criticism falls away.
109. The Appellant says that insufficient weight was given to his mitigation. I have already noted that the Committee took account of his mitigation. The weight to be given to that mitigation was again very much a matter for the specialist judgement of the Committee. It cannot be said that there was any error in the approach taken and still less that the Committee went outside the range of the conclusions properly open to it in failing to regard the mitigation as necessitated a different sanction.
110. The contention that the Committee erred in failing to have regard to the strength of the evidence when considering the appropriate sanction is misconceived and can be dismissed shortly. Having made its findings of fact and having found the allegation proved in respect of the second incident the Committee was to proceed on the basis that the Appellant had done the things which it had found that he had done. The strength or otherwise of the evidence against the Appellant was wholly irrelevant when the Committee was at the stage of considering the appropriate sanction.
111. There was no error of principle in the approach which the Committee took. It adopted a stage by stage approach by reference to the guidance and the circumstances of the case. It reached a reasoned conclusion as to each potential level of sanction on an ascending scale of severity. Having applied that approach the conclusion it reached was unimpeachable. The reasoning set out at section 4.10 of the Determination is compelling and it cannot be said that the conclusion reached was outside the range properly open to the Committee.

Conclusion.

112. It follows that there is no substance in the grounds whether considered separately or cumulatively and the appeal is to be dismissed.