

FARRIERS REGISTRATION COUNCIL

DISCIPLINARY COMMITTEE

HELD AT THE FARRIERS REGISTRATION COUNCIL, 14 SWAN COURT, FORDER WAY, CYGNET PARK, HAMPTON, PETERBOROUGH PE7 8GX

INQUIRY RE:

MR ANDREW BAGNALL DIPWCF

1. THE CHARGE

1.1 *“That being registered under the Farriers (Registration) Act 1975 (as amended) (“the Act”), you:*

1. *On 8 October 2022, having attended an appointment at an address in Coventry to trim horses belonging to Ms. DD, used unnecessary force towards a horse named S, more particularly by punching and/or kicking S;*

And that in relation to the facts alleged above, whether individually or in any combination, you are guilty of serious misconduct in a professional respect”.

1.2 Mr. L Weston, instructed by Capsticks, appeared on behalf of the Council. Ms. J Dark, of Equine Law, appeared on behalf of the Respondent.

1.3 The respondent denied the Charge.

The Evidence

1.4 The Committee heard oral evidence from Mrs. DD, Ms. SD and Mr. RD.

1.5 The Committee read an agreed witness statement from Ms. MLT, a veterinary surgeon.

1.6 The Committee also heard oral evidence from the respondent.

1.7 Mrs. DD endorsed the account of events given in her witness statement. She told the Committee that the respondent had been her farrier for some four years before the incident in question. She said that she had always got on well with him and looked forward to his visits. On 8 October 2022 he was engaged to trim four horses and S was the second pony to be trimmed. She said that she was on her way to fetch a third pony and had her back to S and the respondent when she heard the sound of hooves on concrete and her daughter crying. She turned around and said that she saw the respondent punching S four times on the neck and above the eye. She said he was holding the pony’s head collar with his right hand and punching with his left. She thought she was about 10 metres away at this time and with a clear view of the respondent and the pony. She said that she noticed that the back of the respondent’s head and neck was red as if he was angry. She said that the respondent then swung his left leg back and kicked the pony three times in the stomach. She remembered the pony making a sound as if air was being expelled from her. She began to move towards the pony and shouted and swore at the respondent to get him to stop but the respondent grabbed the pony’s collar and punched the pony a further five times on the head, after which he tied her up tightly. When she asked the respondent what he thought he was doing, the respondent told her that the pony had bitten him and showed her a mark on the top of his head where there was a lump and a graze.

- 1.8 Mrs. DD said that she thought it unlikely that she had misinterpreted what she had seen and did not think that what she had seen was consistent with the respondent seeking to control the pony by using his left arm, with the elbow in a raised position, to try to gain control of the pony's head. She said that she was frightened by the situation and did not know how to deal with it. She now regretted that she had allowed the respondent to finish trimming S, but denied, when it was put to her, that she had tried to restrain the respondent from leaving after this episode had occurred. She now felt that she should have asked him to leave straightaway and not allowed him to finish trimming the pony. In any event the respondent left without taking any payment for the work he had done, and she telephoned her veterinary surgeon for advice. She also reported the matter to the police on the same day and, after speaking to the police on 10 October 2022, contacted the Farriers Registration Council on 14 October 2022.
- 1.9 Ms. SD was 13 years old at the time of events on 8 October 2022. She is now 14. She endorsed the account she gave in her witness statement. She remembered seeing the respondent grab the pony's head collar with his right hand and punch the pony between her eye and ear about 10 times with his left hand. She said that she was standing about 3 metres from the pony, on the same side of the animal as the respondent (contrary to the respondent's evidence), and also with a clear view. She said that she saw the respondent kick the the pony, she thought three to five times, and then punch the pony again, several times, though not as often as on the first occasion. She remembered that the respondent appeared angry and tied the pony up tightly. She said that he asked her whether the pony had ever bitten or kicked her and said words to the effect of "*what do you do give her, a carrot or a treat or something*". She responded that she did not "beat her up and kick and punch her repeatedly in the head as hard as I can". She confirmed that the respondent had driven away without taking any payment for the horses he had trimmed.
- 1.10 Mr. RD confirmed that he had not seen the incident but had come out of the house when he heard a commotion outside.
- 1.11 Ms. MLT, a veterinary surgeon, produced a WhatsApp message she had received from a receptionist at her practice, dated 8 October 2022, which included the words "... S but(sic) her farrier this morning while being shod, and the farrier punched and kicked her several times..." She also produced a manuscript record of the advice she gave which recorded that Mrs. DD was worried that trauma to S's belly might cause internal bleeding.
- 1.12 In his oral evidence the respondent confirmed the account given in his witness statement. He said that as he was trimming S's right hind leg, having previously trimmed the right fore leg, S bit him on the head. He said that the pain was excruciating, and he instinctively responded by raising his left arm which caught the pony on the jaw. He said that S continued to show signs of aggression and so he adjusted the lead rope to tie her closer to the wall. As he was doing this, he was using his left elbow to stop the pony from biting him again. He denied that he had punched or kicked S at all and said that Mrs. DD had initially been sympathetic when he showed her the bite mark on his head. She had gone to fetch another horse and only then asked him why he had hit S after she had returned with the other horse. He said that he was taken aback by this turn of events and asked Mrs. DD whether she wanted him to leave the yard. He said that he was going to leave when Mrs. DD asked him to finish trimming S and also asked him, as he was leaving, when he was coming back to trim the other ponies.

2. DECISION OF THE DISCIPLINARY COMMITTEE ON THE FACTS

- 2.1 The Committee reminded itself that the burden of proving the charge on the balance of probabilities lies upon the Council.

- 2.2 It considered that whatever had occurred was likely to have happened quickly and was also likely to be very upsetting for both Mrs. DD and her daughter. Both were emotionally attached to their pony, S. These considerations were liable to produce differences in detail and could account for a mistaken impression that the respondent was punching the pony immediately after he had been bitten and while he was in fact using his left arm to protect himself from being bitten again. The Committee concluded that this was a realistic possibility and thought it unlikely that the respondent could have punched S initially as many times as suggested by Ms. SD, who was, at that time, closer to the scene than her mother. The Committee concluded that the Council had not discharged the burden of proof in relation to the first episode of “punching” recollected by Mrs. DD and her daughter.
- 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.
- 2.9 There could be no justifiable reason for kicking and punching a pony in the circumstances described by Mrs. DD and Ms. SD. The Committee therefore finds that the respondent used unnecessary force towards S by punching and kicking her.

3. DECISION OF THE DISCIPLINARY COMMITTEE ON SERIOUS MISCONDUCT IN A PROFESSIONAL RESPECT

- 3.1 Mr. Weston referred the Committee to his written submissions and to the contents of the *Farrier, Approved Training Farrier and Apprentice Code of Professional Conduct 2021* (“the Code”). He emphasised that the respondent’s conduct involved serious breaches of the following parts of the Code:

“Farriers must treat all horses humanely, with respect, and with welfare as the primary consideration.” (paragraph 12 (a))

“Farriers must not engage in any activity or behaviour that would be likely to bring the profession into disrepute... (paragraph 16 (c)).

- 3.2. Mr. Weston reminded the Committee that the respondent's conduct had taken place in the presence of a child, as well as in the presence of the owner of the pony.
- 3.3 Mr. Weston also referred the Committee to a previous severe reprimand received by the respondent from the Disciplinary Committee in October 2000. That reprimand arose in circumstances where the respondent, then a young farrier, had struck a horse as a result of a loss of temper.
- 3.4. Ms. Dark made clear that the respondent maintained his denial of the charge but accepted that the conduct found by the Committee would amount to serious misconduct in a professional respect. She referred the Committee to a witness statement prepared by the respondent and a number of attached testimonials which were very supportive.
- 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.
- 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.

4. DECISION OF THE DISCIPLINARY COMMITTEE AS TO SANCTION

- 4.1 Mr. Weston referred the Committee to what he submitted were a number of aggravating features, foreshadowed in the written submissions that he had produced in relation to serious misconduct in a professional respect. In accordance with convention, he did not address the Committee in relation to any specific sanction.
- 4.2 The Committee heard oral evidence from Ms. SC JP, who had also provided a written reference, and who had known the respondent as an apprentice and farrier for some 30 years. She told the Committee that in her experience the respondent had always been caring, dedicated and diligent. She gave concrete examples to support her assessment.
- 4.3 Ms. Dark told the Committee that the respondent had qualified as a farrier in 1997 and was now responsible for about 150 clients. He was also responsible for 25 horses which required remedial farriery where the respondent is working with a veterinary surgeon. She asked the Committee not to attribute significance to the previous reprimand as it was now very old. She pointed out that there had been no other complaints and emphasised that the respondent was a highly skilled farrier who was held in very high regard by his clients and by other professionals. She submitted

that the case could properly be dealt with by taking no further action; failing that, she submitted that a warning or reprimand would be sufficient.

- 4.4 The Legal Assessor reminded the Committee of the Indicative Sanctions Guidance and of the obligation to arrive at a proportionate outcome to the case, having regard to the need to protect the welfare of horses and the reputation of the profession.
- 4.5 The Committee considered that there were a number of aggravating features to be taken into account. Some injury was inevitable in the light of the kicks and punches, and the conduct was such as to create an obvious risk of injury. The Committee remained concerned that the respondent had shown no recognition of the damaging impact on others, particularly children, of behaviour of this type. The presence of a minor was a significant aggravating factor. There had been a previous adverse finding, though many years ago, of the Disciplinary Committee. That finding had arisen in relation to an incident which had some similar features to the present case, in particular an apparent loss of temper and control in a professional setting.
- 4.6 In relation to mitigating factors, the Committee took into account that the behaviour occurred after the respondent had been bitten by the pony and this event triggered a wholly unjustifiable, but impulsive, reaction. The Committee was prepared to accept that the respondent had shown some insight in accepting without further argument the finding of serious misconduct in a professional respect. The respondent was clearly a highly skilled farrier who was respected by clients and other professionals.
- 4.7 In the Committee's judgment the aggravating factors were of more weight than the mitigation.
- 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.
- 4.9 The Committee did not consider that any useful purpose would be served by postponing sanction.
- 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.
- 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.
- 4.13 The Committee determined that it was appropriate to issue a direction under section 15 (7) of the Farriers Registration Act 1975 (as amended). The consequence of this direction is that the

respondent shall not be entitled to apply to be registered in the register again until 12 months have elapsed from the date of today's direction.

- 4.14 If and when the respondent applies to be registered again after the expiry of that period, the Disciplinary Committee will consider his application on its merits and the circumstances at that time.

Note: Section 15(7) of the Farriers Act 1975, as amended, provides as follows:

“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”.

Disciplinary Committee

30 October - 1 November 2023