

Regulatory reform – Standard of proof and fitness to practise meeting

Thursday 3 December 2020, 10am
Zoom meeting

Attendees

Julian Wells – Chair
David Catlow – BVA member
Ryan Davis – Society of Practising Veterinary Surgeons
Daniella Dos Santos (part) – BVA Senior Vice President
Amelia Findon – BVA Head of Policy & Governance
Julie Gibson – PhD student
Dr Judith Hulf – non-vet
Malcolm Morley – Policy Committee
Catherine Oxtoby – BVA member
Gudrun Ravetz - BVA representative on RCVS LWP
Peter Robinson – BVA member

Apologies: Izzie Arthur – Association of Veterinary Students, Maddy Campbell – Ethics and Welfare Advisory Panel, Cath Grimsey – Veterinary Management Group,

Minutes of the last meeting

1. The minutes of the meeting held 6 November 2020 were accepted as an accurate record.
2. It was noted that the webpages for all five of the working groups were live, with minutes of the meetings being added as they became available. Updates had been circulated to Policy Committee and Ethics and Welfare Advisory Panel and no significant issues had been raised. The wider membership was being encouraged to feed in views as part of the wider pre-Council communications, and an article had also appeared in BVA News. The webinar earlier in the week had also provided an important opportunity to engage with the wider profession and encourage engagement with the process.
3. It was agreed that the advice from the working group in relation to LWP recommendations 4.1 – 4.5 (paragraph 17 of the minutes) was appropriate and did not require any further discussion unless Policy Committee or Council identified an issue.
4. The working group agreed that further discussion on LWP recommendation 4.6 'Introduce the power to require disclosure of information' might be useful if further clarification on perceived blockers could be obtained from the College.

Action: Secretariat to request more detail from the College.

Standard of proof

5. At the last meeting it had been agreed that it would be useful to have more detail from other veterinary regulators regarding approaches to standard of proof. Enquiries had identified that veterinary regulators in Australia, New Zealand, and Canada all applied the civil standard of proof and, as this had been the case for a significant period of time, it had not been possible to obtain any assessment of impacts. Enquiries had also been made via the FVE Statutory Bodies Working Group and responses had been received from France and Italy. Although comparisons were difficult with disciplinary systems which were significantly different to the UK, it was noted that the approach taken in France where complainants might be charged costs if it was found the vet had no case to answer, was interesting as a means of reducing vexatious claims. It was agreed that it was difficult to argue a case for retaining the criminal standard given the findings

from other veterinary regulators, however, the key question was the package of measures which should precede such a change.

6. Changes to the standard of proof in human healthcare had been introduced in 2008, 4 years after fitness to practise, and following six reports from Dame Janet Smith between 2002 and 2005 as a result of her independent enquiry into Shipman. The move to a civil standard had been a significant change for the medical profession and at the time many doctors had expressed concerns as it was perceived that it would make it easier to be sanctioned. However, the legal view was that the civil standard still required proof - a burden which rested with the regulator. By the time the change to the standard of proof had been made the fitness to practise regime had been in place for four years and continuing audit had demonstrated no change in the numbers of medical practitioners restricted, suspended, or struck off. This had continued to be the case, with numbers all publicly reported on the GMC website. It was generally agreed that the package of changes had been positive, with improved outcomes for patients. While there were still improvements to be made, and it was a continually evolving process, the application of the civil standard of proof was no longer the subject of expressed opposition.
7. In discussion the following points were made:
 - The key driver of protection of the public, as had been the case following Shipman, was not a strong argument for introducing the civil standard for the veterinary profession. However, protection of animal health and welfare was a valid argument, and it was important not to play down the value of veterinary patients.
 - Chronology was important. A change to the civil standard should be the last thing to change, once a fitness to practise regime and other associated measures had been introduced and had become established. The BVA response to the College should be clear on this point.
 - The summary of arguments from the Solicitors Disciplinary Tribunal consultation on standard of proof was a useful and relevant summary of the key points for and against.
 - The possibility of the civil standard being imposed on the profession was an important consideration and it was right and appropriate to consider the issues and be able to demonstrate the rationale for whatever approach was settled on.
 - An unintended consequence of such a change could be an increase in defensive medicine, although it was recognised that an increased fear response would be a product of poor understanding of the disciplinary process.
 - The approach taken by the GMC appeared to represent best practice in terms of chronology of change. This should be considered carefully by the College.

Charter Case Protocol

8. The CCP had been proposed as a means of dealing with cases which weren't suitable for the health or performance protocols but where there was a strong public interest or reputational driver to address them and where the likely outcome was either a finding of misconduct and no further action, a reprimand, or a warning. The examples given in the RCVS Council papers from June 2020 included: failings in CPD; failings in Indemnity Insurance; minor convictions; minor social media failings; confidentiality issues.
9. The proposed CCP would give PIC the option to refer cases to the CCP for disposal where the threshold for DC had been crossed. The CCP would require the RCVS to establish a Charter Case Committee (CCC) which would have a defined and limited range of disposals available to it, which could include public, or private, warnings or advice. Prior to making a decision to refer a matter to CCC, PIC would invite representations from the vet or RVN concerned. Views of the complainants could also be sought. While both would be considered, neither would be determinative.
10. The working group considered the draft of the proposed CCP and in discussion the following points were made:

- It did not seem credible that the examples given would cross the threshold for referral to the disciplinary committee. Further clarity on the thresholds was needed.
- It was unclear what the perceived issue was and how CCP represented a solution. The driver could be a perceived need to improve public confidence, a need to expedite the disciplinary process, or something else, but it needed to be clear.
- It was recognised that PIC was currently unable to issue formal warnings and that the CCP could provide an alternative route for disposing of cases.
- CCP was an interim measure intended to act as a stop gap ahead of the introduction of mini-PICs and Case Examiners.
- The current 'under the radar' approach to dealing with minor transgressions seemed more proportionate as a stop gap.
- CCP seemed to be an extension of the existing punitive system and did not offer a restorative approach. There was no indication of how CCP would contribute to rehabilitating professionals and keeping them in practice.
- The proposal did not support remedial action or provide safeguards. The focus was apportioning blame.
- Paragraph 50 of the June RCVS Council paper offered a useful summary of proposed publishing decisions in relation to warnings and advice.
- It was recognised there should be some transparency in relation to warnings and advice in order to benefit the wider profession who could learn from the mistakes of others. It was agreed this could be done without the need to name individuals.
- GMC dealt with most cases via Case Examiners and whilst warnings and interim orders were published, they were also kept under review.
- The CCP proposal was very much weighted towards supporting public confidence.
- Publication of warnings could disproportionately impact on veterinary businesses, meaning the impact was potentially much wider than the individual vet. The negative impact of social media campaigns against individuals and businesses was an important consideration.
- Public naming and shaming for low level complaints was associated with suicide. It was agreed data should be obtained from Vet Life.
- GMC data showed similar correlation, but crucially GMC had put in place a raft of support schemes for doctors in the disciplinary system.
- A Johns Hopkins study found that public shaming led to mistakes being hidden, which was ultimately worse for patient outcomes.
- The cost impacts needed careful consideration as the proposal appeared to be admin heavy and those costs would need to be recouped.
- The principle of finding an alternative approach to dealing with minor transgressions was supported, but the process had to be right, with a focus on remedial action.
- An approach for filtering vexatious complaints, or for dealing with individuals who repeatedly made the same minor mistakes would be useful.
- It would be better to develop a coherent package of measures and take the time to get it right, rather than introduce quick fixes which could do more harm than good.
- There were some concerns that the CCP could be initiated even where the complainant and/or the defendant did not consent.

Action: Secretariat to obtain data from Vet Life and GMC.

11. It was agreed that more detail was needed on the perceived issue and the evidence to support it before the appropriate solution could be progressed. The proposal did not seem to support a remedial rather than punitive approach, and it was agreed that a stop gap which perpetuated a blame culture was not in line with compassionate regulation, nor would it represent an appropriate use of resources. In particular, public naming and shaming for minor transgressions was strongly opposed, and RCVS should carefully consider available research on links between suicide and punitive disciplinary processes.

Mini PICs

12. The College had proposed that the current system of Case Examiner Groups (CEGs), which essentially sifted complaints and decided whether to refer to PIC, should be removed and instead all cases would be referred to one of five new mini-PICs. Each mini-PIC would have all the 'powers' of PIC and could make any and all of the decisions open to the existing larger PIC of five. The College had also suggested that if this was too big a step straight away that a system could be introduced such that 'simple cases' (ie those not involving external statements and input from experts) were dealt with by the mini-PICs, and 'complex cases' referred by the mini-PICs to a PIC of five members. It was noted that the introduction of mini-PICs would not require any legislative change and could be implemented immediately.
13. In discussion the following points were made:
 - Many cases which were currently referred to PIC were referred because there was an arguable case rather than because the issue was serious.
 - The proposal seemed to be a pragmatic solution to expediting the disciplinary process, although it was recognised that delays in the system were multi-factorial and included issues outside the control of the College (eg gathering evidence from third parties).
 - Continued failure to meet KPIs for the disciplinary process was an issue that needed to be addressed.
 - It was unclear how decisions would be quality controlled, or peer reviewed, across the proposed mini-PICs. There needed to be a process for ensuring consistency of decision-making.
 - It was unclear how current PIC members were trained and assessed.
 - More detail was needed on how mini-PIC members would be appointed, trained, and appraised.
 - Mini-PIC members should 'look like' the profession. Diversity and inclusion was an important consideration and should feature in the recruitment process.
 - More groups would necessitate more administrative resources which the College would need to support. Cost was a factor.
 - The proposal was an interim measure, ahead of LWP recommendation 4.7 relating to Case Examiners.

Action: Secretariat to follow up PIC member recruitment and training processes with RCVS and / or previous PIC members.

14. The principle of expediting the disciplinary process was supported. However, more detail was needed on the practical application of the proposal including recruitment, training, and appraisal of mini-PIC members, mechanisms for ensuring continuity and quality control, and associated costs and resourcing.

Case Examiners

15. The current RCVS sifting process took the form of Case Examiner Groups (CEGs) although the College did not operate a true Case Examiner (CE) model. In the case of other regulators that used the CE model, CEs made decisions in pairs (one registrant and one lay) and, in some cases, one or both were employees of the regulator. CEs also had powers that allowed them to

dispose of suitable cases consensually where the threshold for referral had been met, providing the wider public interest could be satisfied by disposing of the case in this way. LWP had recommended that the role of Case Examiners should be formalised such that they were allowed to conclude cases.

16. The CE model was used by the GMC, with lay and medically qualified individuals, from a range of disciplines, working in pairs. They were employed directly by GMC, usually on a part-time basis, which could work as part of a portfolio career. The appointment, training, and appraisal process was rigorous, and a buddying system was in place for the probationary period for new CEs. Generally, CEs stayed in post for several years, and continuity and stability was important. Consistency and quality control was managed via regular meetings and case based discussions. As employees of GMC, CEs had access to advice from senior lawyers and doctors. GMC was moving towards a system of consensual disposal, which had been very successful to date and was expected to develop further.
17. In discussion the following points were made:
 - To introduce a true Case Examiner model would require significant investment and resourcing. The College did not currently have an infrastructure that could support the proposal.
 - The principle of consensual disposal should be supported.
 - The CE model was part of the bigger picture about the long-term strategy for disciplinary reform.
 - Any new system should be designed with longevity in mind and should be fit for purpose now and in the future.
 - More information was needed on the support processes that would underpin the CE model such that it could promote remedial action and help prevent reoccurrence of the issue.
 - It was unclear from the proposal exactly what the desired outcomes were, although a more agile and faster process should be supported in principle.
 - It would be useful to see more detail, including discussions at LWP, although it was also recognised that the consultation was intended to be principles based.
18. It was agreed that the principle of a CE model should be supported. Long-term, and as part of a package of measures designed to foster remedial action, development towards the model, including consensual disposal, would be a positive move.

Further LWP recommendations

19. In addition to the key recommendations discussed to date, there were a series of further recommendations from LWP under Section 4 Fitness to Practise which had been described in the RCVS consultation as minor housekeeping changes. The working group discussed them in turn, making the following points:

Recommendation 4.8: Futureproofing of the disciplinary process In line with the Health & Care Act 1999, allow future reform of the DC process via Ministerial Order or a less onerous mechanism.

- The proposal seemed sensible and should be supported.
- It should be recognised that some would consider the proposal too flexible and open to interpretation. For that reason, the College should be careful to communicate that consultation with the profession would precede any future changes and that RCVS Council would still need to give their approval.

Recommendation 4.9: Statutory underpinning for the RCVS Health and Performance Protocols Introduce a formal procedure for dealing with health and performance cases.

- Currently the protocols were not working as well as had been hoped, however, it was recognised that the nature of the issues being addressed under the protocols was likely a limiting factor.
- Cost was currently a factor and would continue to be, although the College did not seem to recognise this.
- The priority should be good regulation and potential cost impacts on individuals should not water down the aspiration. However, steps to make good regulation as cost-effective as possible should be factored in.

Recommendation 4.10: Reduce the DC Quorum to three Reduce the quorum in line with other regulators.

- The proposal should be supported as a pragmatic measure for streamlining the disciplinary process.
- The aim of DC sitting with five, but a quorum of three was appropriate.

Recommendation 4.11: Reformed restoration periods Extend range of options for minimum period before which a veterinary surgeon or nurse can apply to be restored to the register following removal.

- An increased range of options for minimum periods would give flexibility to apply proportionate measures and should be supported.

Recommendation 4.12: Allow voluntary removal Allow voluntary removal of practitioners under investigation for disgraceful conduct in certain circumstances

- The proposal might not represent an acceptable outcome for the complainant as it could allow individuals to avoid accountability.
- If voluntary removal was agreed by both parties then it could be an acceptable option.
- It might not be appropriate to allow an individual to step away from the profession at a time of stress when they might benefit from curative support.
- Any vet subsequently choosing to return to the profession should be required to go through the outstanding disciplinary process before being allowed back onto the Register.
- The approach was currently only used for vets approaching retirement. The proposal would be a significant extension of the current application.
- It was unclear what checks and balances would be in place if a vet choosing voluntary removal went on to work in another profession where their alleged misconduct might impact on their fitness for the role.
- In the medical profession the GMC could refuse an application for removal if they felt there was a public interest in taking forward a disciplinary hearing.
- Members would be likely to support the proposal on an individual basis. However, the appetite of the profession for proper accountability and care for the wider image of the profession should not be underestimated.

20. The remaining recommendations 4.13 to 4.18 would be discussed on Glasscubes.

Action: Secretariat to circulate a prompt on Glasscubes.

Next steps

21. The BVA secretariat would:

- Circulate the minutes of the meeting
- Carry out the necessary research identified by the group and circulate findings for further discussion on Glasscubes

- Share the advice to date with Policy Committee and Ethics and Welfare Advisory Panel for input
 - Find a date for a third meeting of the working group in early January.
 - Develop an emerging themes document summarising the advice to date from the working group, including any areas of difficulty for further consideration.
- 22.** It was noted that BVA Council would be invited to review the activity of all five working groups at the meeting on 9 December. This represented the primary opportunity for BVA Council to discuss the issues, although they would be encouraged to engage further via Glasscubes, particularly in early January when the emerging themes documents from all five working groups became available and the draft BVA position had been formulated. It was noted that the ideal would be a consensus response from BVA on behalf of the veterinary profession, although it was recognised that some individuals and groups would also likely make their own submissions.
- 23.** Working group members were thanked for their participation and considered input.

Date of the next meeting

- 24.** A date would be confirmed for early January shortly (NOTE: subsequently confirmed for 7 January 2021 at 10am)