

## Regulatory reform – Standard of proof and fitness to practise meeting

Thursday 7 January 2021, 10am  
Zoom meeting

### Attendees

Julian Wells – Chair  
Izzie Arthur – Association of Veterinary Students  
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  
Fabian Rivers – recent graduate  
Peter Robinson – BVA member

Apologies: David Catlow – BVA member

### Minutes of the last meeting

1. The minutes of the meeting held 3 December 2020 were accepted as an accurate record.
2. It was noted that a blog series and a BVA News article promoting working group activity would be published shortly, with a view to engaging the wider membership on thinking to date.

### Interim measures

3. Since the last meeting the draft themes document on interim measures not requiring primary legislation had been developed and circulated on Glasscubes for further input. Working group members were invited to review the draft and advise on the identified outstanding issues. In discussion the following points were made:

#### Standard of proof

- Introductory comments: bullets 1 and 4 could be interpreted as contradictory. Care should be taken to ensure clarity in the final response.
- A move to the civil standard of proof was reasonable but only as the final step in a package of measures. This was a key point to stress in the final response.
- The conflict of duty for vets and how this was not a feature for counterparts in human healthcare was clear and relevant. Other distinctions of note included the absence of focus on human counselling in veterinary undergraduate training, which was embedded for medics. Veterinary work also incorporated a significant amount of business focus which was generally not present for medics in the same way.

#### Charter Case Protocol

- Repeated errors or omissions tended to be broadly limited to clinical issues. It would therefore seem pragmatic, and in the public interest, to address these through training rather than punishment. In exceptional cases limited licensure could be appropriate.

- It was unclear how the proposal would achieve the desired outcome of expediting the process for minor transgressions.
- The stated aim of creating a mechanism for sanctioning such transgressions was recognised.
- It was unclear why Case Examiner Groups could not dispose of such cases if it was clear they would be unlikely to progress beyond PIC.
- The proposal was creating a layer of bureaucracy which was unlikely to achieve the desired outcomes, particularly in the absence of appropriate resourcing.
- The administrative issues in the existing system should be addressed first.
- There would be costs associated with creating a CCP. It was agreed it would be better to invest in properly resourcing the existing system.
- It was recognised that RCVS considered the ‘under the radar’ approach to be undesirable. However, the working group agreed that this approach to dealing with minor transgressions seemed more proportionate as a stop gap than the CCP proposal.
- The CCP proposal did not mention consensual outcomes, nor did it include a process for formal representation. These should be incorporated if the proposal was progressed.

#### Mini-PICs

- Views from two individuals with extensive experience on PIC had been sought ahead of the meeting. Both were satisfied that the recruitment, induction, training, and appraisal process for PIC members was thorough and appropriate. However, mixed views had been received in relation to the mini-PIC proposal – one view was that consideration of complaints would not be compromised by moving to small groups providing the more serious matters were handled by the full PIC of five veterinary surgeons. The contrasting view was that the mini-PIC model as proposed would import delays as limited experience of the wide range of employment of vets and species treated would mean PIC members having to seek expertise from outside their group.
- It was agreed that the more limited breadth of experience under the mini-PIC proposal was an important consideration.
- It was unclear whether the training for PIC members included root cause analysis and whole systems thinking. This was critical.
- Although reassurance had been received that the system of peer review was robust, without the detail it was difficult for the group to give full support.
- Appropriate resourcing was essential. The implementation of any remedial system was necessarily complex and resource heavy and would be bound to fail without proper provision in place.
- It was agreed that the response to the College should indicate support for the stated objectives but be clear that any changes to the existing system must be accompanied by culture change, a modernised approach to ways of working, transparency, and external scrutiny. Without this wholesale shift piecemeal changes would simply revert to the status quo.

#### **Fitness to practise**

4. Since the last meeting the draft themes document on LWP recommendations relating to fitness to practise had been developed and circulated on Glasscubes for further input. Working group members were invited to review the draft and advise on the identified outstanding issues. In discussion the following points were made:

#### **Recommendation 4.1: Introducing the concept of ‘current impairment’**

- The draft themes document was supported with no further comments made.

**Recommendation 4.2: Widening the grounds for investigation** Allow the RCVS to investigate for reasons other than serious professional misconduct (eg poor health, knowledge of English or sustained poor performance)

- It was unclear what types of issues would not already be covered by the existing health and performance protocols, although it was recognised these did not work as well as they might.
- The National Clinical Assessment Service (NCAS) was an organisation that worked towards the resolution of concerns about professional practice in healthcare settings across the UK. The approach looked at the context of practice when considering the performance of an individual and could be a useful model to replicate for the veterinary profession.
- It would be exceptionally difficult for RCVS to implement a proper NCAS style system within its own structures. Outsourcing the provision would relieve RCVS of some of the confusion surrounding a College that regulates, but it was recognised that funding was a key consideration.
- It was essential that the College resolved the issues with the existing health and performance protocols, including a system for support funding for those under investigation.
- The regulation of service delivery was closely linked – the system within which an individual was working impacted on behaviour and must feature in the investigation and assessment process.
- The diversity of working environments complicated the issue.

**Recommendation 4.3 Introducing powers to impose interim orders** Introduce a temporary restriction on a veterinary surgeon or nurse's right to practise pending a final decision by DC where a veterinary surgeon or nurse poses a significant risk of harm to the public or to animals.

- In the medical profession suspension would be on full pay. This would be unlikely in veterinary work and the individual under investigation could lose their job.
- Suspension should only be used in exceptional circumstances.

**Recommendation 4.4 Introduce reviews of suspension orders** Introduce the power to review a suspension order to ensure that the practitioner is in fact fit to practise before they are restored to the Register

- The draft themes document was supported with no further comments made.

**Recommendation 4.5 Introduce a wider range of sanctions** introduce conditions of practice orders (or otherwise restrict a practitioner's practice short of suspension)

- The draft themes document was supported with no further comments made.

**Recommendation 4.6 Introduce the power to require disclosure of information** Introduce the power to require the disclosure of information where that information might assist in carrying out the RCVS's regulatory functions.

- It was noted that the organisations cited by the College included RSPCA and the police, although no further detail had been provided.
- It was agreed that whilst there was no reason not to support the proposal it was highly unlikely to expedite the process.

**Recommendation 4.7 Formalise role of Case Examiners and allow them to conclude cases consensually** Introduce the power to dispose of suitable cases consensually where the threshold for referral is met (so long as the wider public interest can be satisfied by disposing of the case in this way).

- There were resourcing and admin shortfalls in the current system and these needed to be resolved first. Appropriate infrastructure was critical.
- It could be useful to engage an external review to assess culture and resourcing.
- An appropriate breadth of experience was needed. This should also include diversity of background. However, it was also recognised that it was not possible to capture the entire breadth in one small group. The GMC incorporated expert and legal testimony to support the CE model, and although it was costly and cumbersome it was thorough. It was unclear how RCVS would replicate this effectively and this needed to form part of the proposal.
- Many minor transgressions should be dealt with at a practice level. Employers should take more responsibility for addressing issues and taking remedial action.

**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 draft themes document was supported with no further comments made.

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

- The draft themes document was supported with no further comments made.

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

- Although the number of cases being referred should be low, the cases were also the most serious and therefore warranted breadth of experience on the panel.
- It was agreed the wording of the themes document should be changed to reflect that a quorum of three was “acceptable” rather than “appropriate”.
- DC sitting with five was preferable.
- Although some might argue a panel of three could be less intimidating, some might consider that a larger panel increased the odds of an advocate for the defendant
- The objective should be the delivery of a more effective system, not to reduce cost.
- Although other healthcare professions had reduced their quorums the range of species, areas of work, and business models was much greater in veterinary work.
- The current quorum of five allowed for some flexibility providing all parties were in agreement. This flexibility would be lost if the quorum was already as low as possible. Even if the change represented a significant improvement in efficiency, the potential for importing delays through illness or other absence should be factored in.
- It was unclear whether the proposed quorum of three would still be majority vet – this should be clarified.
- Medical panels of three were based on competences and included a mix of medical, lay, and legal. Three was acceptable providing the defined competences were covered.
- A quorum of three should be supported in principle. However, the number itself was less important than the balance of competence, and this was an important consideration which need to be developed before the proposal could be progressed.

**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.

- The draft themes document was supported with no further comments made.

**Recommendation 4.12: Allow voluntary removal** 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 draft themes document was supported with no further comments made.

**Recommendation 4.13: Case Management Conferences** Formalising the role of Case Management Conferences (CMCs)

- The proviso in the themes document was important as some professional indemnity providers did not provide representation.

**Recommendation 4.14: Recommend that DC should be given power order costs.** Provision to allow DC to make costs orders, for instance for unsuccessful restoration applications, as per other healthcare regulators.

- The proposal was supported for exceptional circumstances (eg repeated unsuccessful restoration attempts) It was important that cost recovery did not become the norm.
- Informal guidance was already provided to the defendant. This should be formalised if the power to order costs was progressed.

**Recommendation 4.15: Appeals against DC decisions to be heard by the High Court instead of the Privy Council** DC appeals to the Privy Council against suspension or removal should be moved to the High Court.

- The draft themes document was supported with no further comments made.

**Recommendation 4.16: Appeals mechanism for reprimands and findings of misconduct** Introduce a right of appeal against a decision to reprimand or a finding of disgraceful conduct.

- There was a possible downside for the College as there was a risk of increased costs.

**Recommendation 4.17: Automatic removal offences** Introduce a presumption in favour of removal from the register if a vet or veterinary nurse is convicted of certain extremely serious criminal offences, eg rape and murder

- The proposal was in the public interest.
- The list should be definitive, not open-ended.
- In the medical profession there was still a requirement for tribunal to rubber-stamp the removal.
- If registration and license were separated, then automatic removal offences would need to be removal of registration as removal of license would only impact on those in clinical practice.

**Recommendation 4.18: Power to appeal unduly lenient decisions** Right of appeal if RCVS believes the DC has made a decision that is too lenient.

- The disciplinary system should work, and therefore an appeals process should not be necessary.
- It was unclear who would be responsible for instigating any such appeal.
- The proposal was not supported.

## Miscellaneous LWP recommendations

5. It was noted that there were a number of 'miscellaneous recommendations' in the LWP report. In discussion the following points were made:

**Recommendation 8.2: Empower the RCVS to set the annual renewal fee.** At present the RCVS requires Privy Council approval to amend the annual renewal fee. Other regulators are not required to do this. The requirement is burdensome and makes budgeting uncertain. The LWP recommends that powers to amend the annual renewal fee and format are delegated to the RCVS.

- The current system of Privy Council rubber-stamping the renewal fee was arcane and unnecessary.
- It was important that the process for setting the renewal fee was transparent, particularly given the current raft of proposals which would require resourcing.
- The proposal was supported subject to transparency of process.

**Recommendation 8.4: Preserve the Royal College/Regulator relationship.** The LWP recommends that 'Royal College that regulates' model continues.

- The different functions of RCVS were not well understood.
- A separation of the regulatory and Royal College functions would be costly and should not be recommended without good reason.
- There needed to be better clarity of functions so that trust in RCVS was fostered. A culture change would allow the articulation of the Royal College function.
- Perception and lack of trust was a key blocker.
- Evolution was needed, but a physical split of functions was not necessarily the solution.
- The workings of RCVS Council and committees were perceived as secretive. This was perpetuated by the confidential nature of most documents. A culture shift towards a policy of openness and transparency was needed.
- It was agreed that multiplicity of organisations did not represent a solution, whereas clarity of role and function could.

## Next steps

6. The BVA secretariat would:
- Circulate the minutes of the meeting
  - Update the themes documents in line with the discussions and circulate for further comment on Glasscubes.
  - Share all of themes documents across all five working groups.
  - Share all of the themes documents to date with Policy Committee, Ethics and Welfare Advisory Panel, and Council for comment.
  - Make the themes documents available to the wider membership via the website.
7. Working group members were thanked for their participation and considered input. A particular note of thanks was recorded for Julian Wells for chairing the group.