

## Executive summary: BVA and BVNA response to RCVS legislative reform consultation

- 1) We strongly support RCVS's commitment to progressing as a modern, fit for purpose regulator. We consider that any proposed changes must be based around the principles of right-touch regulation, as identified by the Professional Standards Authority (PSA), and ensure that the level of regulation is proportionate to the level of risk.
- 2) Many of the recommendations are inextricably linked and careful consideration must be given to a holistic approach and the chronology of change. This must be underpinned by a culture shift at RCVS which fosters trust and ensures that the changes are embraced by all as being beneficial to animal health and welfare and the professions. Accountability and transparency must feature as key principles in the transition.
- 3) Appropriate resourcing must also form a key element of the final package. Some of the proposals are extremely ambitious and will necessitate significant funding and administrative resourcing. It is essential that the College ensures the proposals can be funded adequately and appropriately such that the desired outcomes are realised. Approaches to funding must also be transparent to the professionals who pay to be on the Registers and should not result in a financial burden for members.

### Embracing the vet-led team

#### **RCVS Recommendation 1.1 – Statutory regulation of the vet-led team**

At present, RCVS is the statutory regulator of veterinary surgeons, and also regulates veterinary nurses via the RCVS Royal Charter. The LWP is proposing that RCVS should be able to regulate additional allied professions, with their agreement, with the aim of protecting animal health and welfare and public health via the assurance of standards and providing greater clarity for the public and the professions.

- 4) We strongly support moves to improve standards of animal health and welfare through the regulation of allied professions and see this as being an appropriate primary driver for progressing the regulation of some groups. We support the recommendation that cattle foot trimmers, physiotherapists, and equine dental technicians should be regulated as associates of the College.

#### **RCVS Recommendation 1.2 – Flexible delegation powers**

By default, acts of veterinary surgery are reserved for veterinary surgeons. LWP is recommending that RCVS should be able to determine which tasks should be eligible for delegation by a veterinary surgeon where such delegation can be fully justified and evidenced, subject to rules concerning consultation requirements and approval by the Secretary of State.

- 5) We support the proposal providing flexibility is supported by appropriate checks and balances, including full, timely, and transparent consultation with the professions.

#### **RCVS Recommendation 1.3: Separating employment and delegation**

At present, Schedule 3 of the Veterinary Surgeons Act 1966 (VSA) restricts delegation to veterinary

nurses who are employed by the delegating veterinary surgeon. LWP is recommending the removal of this restriction.

- 6) We support the proposal to separate employment and delegation, subject to all RVNs continuing to work under the direction of a vet as part of the vet-led team.

#### **RCVS Recommendation 1.4: Statutory protection for professional titles**

RCVS already has a longstanding recommendation that the title 'veterinary nurse' should be protected to prevent its use by unqualified, unregulated individuals. LWP is reaffirming this recommendation and recommending that protection of title should be extended to any new allied professions who fall under the RCVS regulatory umbrella.

- 7) We strongly support the proposal and we also support the recommendation that protection of title should be extended to any new allied professions regulated by the College.

## **Enhancing the VN role**

#### **RCVS Recommendation 2.1: Extending the VN role in anaesthesia**

LWP is supporting the retention of a previous RCVS Council-approved recommendation to increase the role of RVNs in the induction and maintenance of anaesthesia via reform of Schedule 3. The proposal would allow RVNs to "assist in all aspects of anaesthesia under supervision".

- 8) We support the proposal in principle although further clarity is needed in relation to accountability, and further work is needed in relation to RVN training.

#### **RCVS Recommendation 2.2: Allowing VNs to undertake cat castrations**

RVNs are currently prohibited from carrying out cat castrations as a direct result of a provision introduced to prevent lay people from undertaking acts of veterinary surgery. LWP is recommending that RVNs should be able to undertake cat castrations under veterinary direction and/or supervision on the basis that as regulated and extensively trained professionals the restriction is not appropriate.

- 9) Although we broadly support the proposal, we feel strongly that an opportunity has been missed to develop a framework for the enhancement of the role post-registration, which would include domestic cat castrations as one example of additional tasks RVNs could be permitted to do with additional training.

## **Assuring practice standards**

#### **RCVS Recommendation 3.1: Mandatory practice regulation**

There is currently no body responsible for regulating veterinary practices in the UK. RCVS considers this is increasingly at odds with a world in which practices are owned by those not regulated by the College. RCVS also considers it is reasonable for the public to expect that all practices are assessed to ensure that they meet at least the basic minimum requirements. LWP is recommending that RCVS should be given the power to implement mandatory practice regulation should RCVS Council decide to complement the existing RCVS Practice Standards Scheme (PSS) with a universally-applied scheme.

- 10) We support the principle of mandatory regulation, although detail on practical implementation is

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needed.

**RCVS Recommendation 3.2: Powers of entry for the RCVS** The RCVS currently has no power of entry and considers this a problem in terms of investigating allegations of serious professional misconduct, including where there are allegations that a vet has breached the rules in relation to minimum practice standards under the existing PSS. LWP is recommending that RCVS should be given powers of entry in order to remedy this perceived omission in the veterinary sector, and to ensure that regulation of practices can be underpinned and enforced, in the interests of animal health and welfare and public health.

- 11) We do not support this proposal. Practice regulation should instead be underpinned by short-notice interim inspections as a condition, where non-compliance with mandatory standards ultimately leads to withdrawal of the premises' license.

### **RCVS Recommendation 3.3: Ability to issue improvement notices**

LWP is recommending that RCVS should be granted the ability to issue improvement notices when a business is failing to fulfil a legal duty, and where improvement is required to ensure future compliance. LWP considers that this would provide better protection for the public, while being a more proportionate response than pursuing a disciplinary case against an individual. Improvement notices would be intended to provide practices with a clear action plan to remedy any deficiencies.

- 12) We support the principle of improvement notices as part of mandatory practice standards, underpinned by appropriate guidance and curative support, with a defined end point.

## **Introducing a modern 'Fitness to practise' regime**

### **RCVS Recommendation 4.1: Introducing the concept of 'current impairment'**

Under the current system, if a vet or RVN is found guilty of misconduct the Disciplinary Committee (DC) proceeds straight to the sanction stage, and the sanction is determined on the basis of that past misconduct. LWP is recommending a change where DC would need to be satisfied that the vet or RVN's fitness to practice is currently impaired before it could proceed to the sanction stage. This means that in circumstances where the vet or RVN has taken steps to remediate their failings and shown significant insight into what has gone wrong, DC may conclude that there is no (or very low) risk of repetition of similar behaviour and as such their fitness to practise is not currently impaired. If DC comes to this conclusion, it must dismiss the case without proceeding to sanction. LWP consider that this approach is more consistent with the aims of regulation, because it focuses on whether the vet or RVN currently poses a risk to animals or the public, rather than whether he or she has posed a risk in the past.

- 13) We support the proposal in the context of the wider package of measures being proposed, but for the package to achieve real change a significant shift in culture will be needed, underpinned by adequate resourcing.

### **RCVS Recommendation 4.2: Widening the grounds for investigation**

At present, RCVS may only investigate where there is an allegation that could amount to serious professional misconduct. This means that the RCVS may not intervene in cases where a practitioner might pose a risk to animals, the public, or the public interest for other reasons. For cases involving allegations of poor performance or ill-health affecting a vet or RVN's ability to practise safely, RCVS has devised the Health and Performance Protocols, which provide a framework for working with an individual towards the common aim of becoming fit to practise. However, these can only be engaged

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with the consent of the individual concerned. Where there is no consent, PIC has no option but to refer such matters to DC. It is being proposed that a more satisfactory solution might be the option to refer such cases to a dedicated 'health' or 'performance' committee that has a range of appropriate and proportionate powers designed to support the individuals in regaining their fitness to practice.

14) We support the principle but more detail on practical application is needed.

#### **RCVS Recommendation 4.3: Introducing powers to impose interim orders**

LWP is recommending that RCVS should have the power to impose interim orders (ie temporary restriction pending a final decision by DC). RCVS considers that the current lack of power to impose interim orders can be problematic during the investigation stage, and during the statutory appeal period of 28 days following a full hearing.

15) We agree that RCVS has a role in implementing interim orders to mitigate significant risk.

#### **RCVS Recommendation 4.4: Introduce reviews of suspension orders**

At present, DC has no power to review the suspension orders it imposes, which means that a vet suspended for six months is automatically restored to the Register once that time has elapsed. To circumvent this issue DC will remove individuals from the Register completely where there are concerns about fitness to practise, in order to retain control over restoration. LWP is recommending that DC should be empowered to review suspensions and, if necessary, extend the suspension or impose conditional registration as part of that review.

16) The proposal is pragmatic but must be implemented in a way that is genuinely curative and forward-looking.

#### **RCVS Recommendation 4.5: Introduce a wider range of sanctions**

The range of sanctions available to DC is limited to reprimand, warning, suspension or removal of an individual from the Register. LWP is recommending that DC should be given the power to impose conditions of practice as a less onerous sanction in suitable cases, whilst still adequately protecting animals and the public.

17) We support the proposal on the basis that it appears to be in line with a less punitive and more curative approach and will allow corrective measures to be put in place.

#### **RCVS Recommendation 4.6: Introduce the power to require disclosure of information**

Other regulators, including the healthcare regulators, have statutory power to require disclosure of information where that information may be relevant to a fitness to practise investigation. RCVS has no such power and instead must rely on the cooperation of the relevant parties which can hinder investigations. LWP is recommending that this issue is remedied.

18) Whilst we are content to support the proposal it is highly unlikely to expedite the process, and without a defined requirement on time frames it is unclear whether statutory powers will change much in practice.

#### **RCVS Recommendation 4.7: Formalise role of Case Examiners and allow them to conclude cases**

RCVS currently operates a 'case examination' stage, but it does not operate a true Case Examiner (CE) model. In the case of other regulators that use the CE model (eg the General Medical Council

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(GMC), the General Dental Council (GDC), Nursing and Midwifery Council (NMC) and General Optical Council (GOC)), CEs make decisions in pairs (one registrant and one lay) and, in some cases, one or both are employees of the regulator. CEs also have powers that allow them 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). This model is more cost effective than convening the Preliminary Investigation Committee (PIC) for all decisions (NMC has recently reported a year-on-year decrease in FTP spending and has attributed this, in part, to the introduction of CEs). It allows for quicker and more consistent decision-making and is less stressful for the respondent if the case is subject to consensual case conclusion. The CE model may be particularly useful in health and performance cases where undertakings or conditions are used (similar to the result achieved by the RCVS Health and Performance Protocols).

- 19) We support the principle of the CE model as part of the long-term strategy for disciplinary reform and support the desired outcome of a more agile process.

## Modernising RCVS registration processes

### RCVS Recommendation 5.1: Introduce provisions to allow limited/restricted licensure in principle

In the context of the veterinary profession, 'limited' or 'restricted' licensure' refers to the concept whereby a suitably qualified individual would be licensed to undertake less than the full range of activities that could be considered to be acts of veterinary surgery, or work that would otherwise require someone to be registered as a veterinary surgeon. LWP is recommending that limited licensure should be permitted for UK graduates where disability prevents them from being able to undertake all aspects of a veterinary degree and veterinary practice, such that they can complete the relevant education for a branch of veterinary surgery and become MRCVS. The LWP report also notes that in future there may be an appetite for RCVS Council, after due consultation, to introduce limited licensure for overseas veterinary graduates whose degree does not qualify them for a general UK licence, as a means of addressing workforce shortage. However, this is not a specific recommendation from LWP.

- 20) We strongly support the motivations behind the proposal, however, we consider that limited licensure is the wrong mechanism. The omnicompetence/omnipotential of UK veterinary graduates should be maintained.

### RCVS Recommendation 5.2: Empower the RCVS to introduce revalidation

Under the VSA, providing that conditions of registration are satisfied, a person may continue to be registered for the whole of their life (providing they pay their fees and are not removed by DC or for lack of response). There is no requirement to revalidate. LWP recommends that the RCVS be empowered to introduce a system of revalidation in future, should RCVS Council decide to do so.

- 21) We support the principle that the veterinary profession should be required to demonstrate continued professional competence. However, in order to design an effective system, the desired outcomes must first be identified.

### RCVS Recommendation 5.3: Underpin mandatory continuing professional development (CPD)

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The VSA does not give RCVS the power to enforce a CPD requirement except through the disciplinary process. Veterinary surgeons and veterinary nurses are asked to certify that they have satisfied the CPD requirement as part of the annual renewal process. However, if they do not, there is no power to refuse renewal of registration. LWP is recommending that RCVS should be able to refuse renewal of registration if a regulated professional fails to meet their minimum CPD requirement.

- 22) In principle, we support the proposal. We agree that CPD should be relevant and impactful and support the move to compulsory reflective practice from January 2022. The impacts of this change should be reviewed and assessed to help inform next steps.

#### **RCVS Recommendation 5.8: Separation of registration and licence to practise.**

RCVS considers that separating these two stages will be necessary in order to introduce revalidation. It would mean that the 'non-practising' register would become obsolete. LWP is recommending underpinning this separation in legislation.

- 23) In principle we support the proposal to separate registration and licensure.

#### **RCVS Recommendation 5.9: Temporary registration - nomenclature**

'Temporary registration' currently has a wide application. LWP is recommending that legislation is needed to underpin both temporary and limited registration.

- 24) We agree that provisions for temporary registration should be clearer than at present and more tightly defined to ensure that individuals practising in the UK under temporary registration are practising for a clearly defined, limited period of time.

## **Additional LWP recommendations**

#### **RCVS Recommendation 8.4: Retaining a Royal College that regulates**

LWP is recommending that RCVS continues to be a 'Royal College that regulates' on the basis that this unique arrangement allows RCVS to take a holistic approach to public assurance and ensures that the Royal College functions are properly funded.

- 25) We support the LWP recommendation, taking the view that a separation of the regulatory and Royal College functions would be costly, would likely result in the loss of self-regulation in the process, and should not be recommended without good reason. Evolution is certainly needed, but a physical split of functions and multiplicity of organisations, is not necessarily the solution.

## **Interim proposals not requiring primary legislation**

#### **RCVS Recommendation - Standard of proof**

RCVS is in a small minority of UK regulators – and the only major regulator apart from the Scottish Solicitors' Discipline Tribunal – that still applies the criminal standard of proof. RCVS considers that the civil standard of proof is an integral aspect of a Fitness to Practise regime. Changing the standard

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of proof can be achieved without the need for a change in primary legislation, therefore LWP did not make a recommendation on this issue beyond asking RCVS Council to consider it. RCVS Council subsequently agreed that changing the standard of proof should be consulted on.

- 26) We do not support a change to the standard of proof being taken forward in isolation. The change should instead be reconsidered after a package of measures which foster a curative rather than punitive disciplinary system, based on whole systems thinking.

#### **RCVS Recommendation - Charter Case Protocol**

The CCP is being proposed as a means of dealing with cases which are not suitable for the health or performance protocols and still meet the threshold for a full Disciplinary Committee hearing. However, they are cases that may be concluded without a public hearing and are likely to attract a low sanction such as a finding of misconduct and no further action, a reprimand, or a warning. Public interest and reputation of the profession appears to be a key driver for this proposed protocol.

The examples given in the RCVS Council papers from June 2020 include: failings in CPD; failings in indemnity insurance; minor convictions; minor social media failings; and confidentiality issues. Another important factor mentioned by the RCVS is that suitable cases may include those where factors such as insight or remediation have been shown.

The proposal would give PIC the option to refer cases to the CCP for disposal where the threshold for DC has been crossed. The CCP will require the RCVS to establish a Charter Case Committee (CCC) which will 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.

- 27) We broadly support the principle of finding an alternative approach to dealing with minor transgressions, but the process must be right, with a focus on remedial action. We are unable to support the proposal as it stands. More detail is needed on the perceived issue and the evidence to support it before the appropriate solution can be progressed. The proposal does not seem to support a remedial rather than punitive approach and a stop gap which perpetuates a blame culture is not in line with compassionate regulation, nor does it represent an appropriate use of resources.

#### **RCVS Recommendation - Mini-PICs**

The College is proposing that the current system of Case Examiner Groups (CEGs), which essentially sift complaints and decide whether to refer to PIC, is removed and instead all cases are 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. It has also been 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) are dealt with by the mini-PICs; with 'complex cases' being referred by the mini-PICs to a PIC of five members.

- 28) Although we support the stated objectives, 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 will simply revert to the status quo.

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