

## Guidance to the Preliminary Investigation Committee in making decisions at Stage 2 of our concerns investigation process

**Aim:** To guide the decision making process of the Registered Veterinary Nurse Preliminary Investigation Committee (RVNPIC) as it decides whether to refer a case to the RVN Disciplinary Committee (Stage 3).

- 1) The RVNPIC will balance:
  - a) protection of the public from the risk of practice by RVNs who for any reason (whether competence, integrity or health) are unfit to practise; and the maintenance of standards;
  - b) the maintenance of the reputation of the profession and public confidence in the profession; and the legitimate expectation of the public that concerns of a serious nature will be fully and fairly investigated; and,
  - c) the need for legitimate safeguards for the RVN who, as a professional person, may be considered particularly vulnerable to, and damaged by, unwarranted charges against him/her.
- 2) The RVNPIC must decide whether there is a **realistic prospect** of proving that what an RVN has done, or not done, falls far below the standard to be expected of a reasonably competent RVN and could affect his/her fitness to practise, ie serious professional misconduct); or, whether any conviction renders him/her unfit to practise as an RVN (and, for any case, whether relating to conduct or a conviction, that there is a public interest to refer to an RVNDC hearing).
- 3) The RVNPIC is obliged to consider the merits and facts of each individual case and to exercise its own judgement in making decisions. However, this should be exercised within the framework of the statutory legislation and the *RCVS Code of Professional Conduct*.
- 4) The RVNPIC will consider the case in private on the basis of the concerns raised and all information gathered during Stage 1, as well as information gathered during any subsequent investigation it may instigate.
- 5) A case may be referred to the RVNDC where the RVN's alleged conduct or behaviour is fundamentally incompatible with his or her being an RVN. This may involve any of the following (the list is not exhaustive):

- a) very poor professional performance where there are serious departures from standards as set out in the *RCVS Code of Professional Conduct for Registered Veterinary Nurses*;
  - b) causing serious harm (or causing a risk of serious harm) to animals or the public, particularly where there is a breach of trust;
  - c) offences of a sexual nature;
  - d) offences involving violence and/or loss of human life;
  - e) evidence of a harmful deep-seated personality or attitude problem; and/or
  - f) dishonesty, particularly where persistent or concealed.
- 6) The 'realistic prospect' test applies to both the factual allegations and whether, if established, the facts would amount to serious professional misconduct (or, for convictions, render the RVN unfit to practise). It reflects not a probability but rather a genuine (not remote or fanciful) possibility. It is in no-one's interest for a case to be referred to the RVNDC when it is bound to fail, and the RVNPIC may properly decline to refer such cases. Equally, cases which indicate serious professional misconduct are for the RVNDC to decide upon.
- 7) The following is not an exhaustive list, but the RVNPIC:
- a) should bear in mind that the standard of proof before the RVNDC is tantamount to the criminal standard, ie so that it is 'sure';
  - b) is entitled to assess the weight of the evidence, whilst recognising that its role is not to decide or resolve conflicts of evidence in an attempt to decide whether an RVN is guilty of serious professional misconduct;
  - c) should proceed with caution given that, among other considerations, the RVNPIC will work from documents and reports of investigations and will not have the opportunity to hear the responses to questioning, either from the person raising the concerns or the RVN involved.
  - d) should proceed with particular caution in reaching a decision to close a case where the decision may be perceived as inconsistent with a decision made by another authority;
  - e) when considering the public interest to refer a case to the RVNDC, is entitled to consider an RVN's practising status; and, that a greater interest to take a case forward exists where the RVN continues to practise;
  - f) should bear in mind that generally it is more appropriate to take a medical approach to cases involving medical problems;
  - g) should only refer to the RVNDC health or poor professional performance if the case is sufficiently serious that there is a real prospect of establishing serious professional misconduct; and,
  - h) should bear in mind that while there is a public interest in RVNs not being harassed by unfounded concerns, there is also a public interest in the RVNDC hearing cases which do have a real prospect of establishing serious professional misconduct.

- 8) The RVNPIC may give advice to an RVN, or any other appropriate decision, when closing a case, ie when deciding not to refer the case to the RVNDC. The RVNPIC may hold open the case for up to two years if the individual concern, although serious, is not sufficient to amount to serious professional misconduct.
  
- 9) The following issues have resulted in a referral to the Disciplinary Committee. The references are to previous cases before the DC. [NB these are primarily cases involving veterinary surgeons and the RCVS Disciplinary Committee for veterinary surgeons, included in this guidance for reference]

### **Breaches of the RCVS Code of Professional Conduct**

- a) The veterinary surgeon has made dishonest representations to the owners of the animal (*RCVS v Mr B (03.04-C076)*, *RCVS v Mr S (12.04-C043)*, *RCVS v Mr S (12.06-C104)*, *RCVS v Dr E (08.12-C023)*, *RCVS v Mr B (04.10-C018)*, *RCVS v Mr B (11.11-C126)*).
- b) The veterinary surgeon has made misleading representations to the RCVS (*RCVS v Mr S (03.05-C016)*, *RCVS v Dr E (05.04-C026)*).
- c) The veterinary surgeon has been dishonest in professional practice particularly in relation to information provided to clients or third parties (insurance companies), certification and treatment of animals (*RCVS v Mr B (03.03-C081)*, *RCVS v Dr W (12.05-C092)*, *RCVS v Mr P (07.07-C054)*, *RCVS v Mr C (11.10-C149)*).
- d) The veterinary surgeon has been reckless in certification (*RCVS v Mr L (07.09-C120)*, *RCVS v Mr P (07.07-C054)*, *RCVS v Mr W (01.07-C097)*).
- e) The veterinary surgeon has failed to communicate with clients on a prolonged and continual basis (*RCVS v Mr T (11.03-C002)*).
- f) The veterinary surgeon has used unnecessary physical force towards animals (*RCVS v Mr C (03.03-C107)*).
- g) The veterinary surgeon has used aggression or violence towards the client or staff (*RCVS v Mrs C (09.98.20C)*).
- h) The veterinary surgeon has failed to provide [take steps to provide] emergency treatment (*RCVS v Mr F (12.00.27C; 01.01.14C)*).
- i) The veterinary surgeon has unreasonably refused to provide emergency first-aid and pain relief (*RCVS v Mr B (04.05-C081)*, *RCVS v Mr K (07.11-C183)*).
- j) The veterinary surgeon has poor practice standards despite numerous warnings (*RCVS v Mr H (07.07-C017)*).
- k) The veterinary surgeon has allowed a non-veterinary surgeon to undertake veterinary procedures (*RCVS v Mr L (06.02.C32)*).
- l) The veterinary surgeon's certification could have caused undue animal suffering and put public health at risk (*RCVS v Mr A (01.02.120C)*).
- m) The veterinary surgeon has failed to treat a client with proper courtesy and respect (*RCVS v Mr H (07.09-C055)*, *RCVS v Mr B (04.10-C018)*).

### **Clinical Matters**

- a) The veterinary surgeon has failed to provide adequate veterinary or professional care (*RCVS v Mr H (07.07-C017)*, *RCVS v Mr S (02.04-C087)*, *RCVS v Mr B (03.03-C081)*).

- b) The veterinary surgeon has carried out unnecessary or inappropriate treatment for financial gain or other reasons (*RCVS v Mr S (02.04-C087)*, *RCVS v Mr S (12.06-C104)*, *RCVS v Mr H (10.09-C179)*, *RCVS v Mr B (05.11-C060)*, *RCVS v Mr H (08.09-C040)*).
- c) The veterinary surgeon has undertaken procedures (tail docking) without clinical justification/legitimate reason to do so (*RCVS v Mr M (06.05-C113)*).
- d) The veterinary surgeon has dishonestly recommended unnecessary treatments (*RCVS v Mr S (12.06-C104)*).
- e) The veterinary surgeon has failed to provide proper anaesthesia to an animal undergoing surgery (*RCVS v Mr P (07.00.111C)*).
- f) The veterinary surgeon has failed to provide treatment in emergency circumstances (*RCVS v Mr B (04.05-C081)*).

#### **Other matters including criminal convictions and cautions**

- a) The veterinary surgeon has been convicted of an offence relating to animal welfare (*RCVS v Dr O-G (08.11-C067)*).
  - b) The veterinary surgeon has been convicted of an offence of a sexual nature (*RCVS v Mr S (05.04-C130)*).
  - c) The veterinary surgeon has been convicted of an offence involving violence (*RCVS v Mr K (08.12-C171)*).
  - d) The veterinary surgeon has multiple convictions demonstrating a disregard for lawful authority (*RCVS v Mr K (06.01C122; 01.02.C62)*).
  - e) The veterinary surgeon has been convicted of an offence relating to the dishonest appropriation of controlled drugs (*RCVS v Mr K (07.98.121C)*).
  - f) The veterinary surgeon has convictions for causing death by dangerous driving (*RCVS v Mr H (01.07-C125)*).
  - g) The veterinary surgeon was fraudulently entered on the RCVS Register of veterinary surgeons (*RCVS v Mr N (03.08-C080)*) (*RCVS v Mr O (12.07-C034)*).
  - h) The veterinary surgeon was convicted of offences of fraud by abuse of position relating to pet insurance claims (*RCVS v Mr C (04.12-C203)*, *RCVS v Mr M (06.13-C138)*).
- 10) There may be a presumption that some action should be taken when the concerns relate to dishonesty. There are, however, some cases alleging dishonesty that are minor in nature so that referral to a RVNDC hearing would be disproportionate. Advice may be satisfactory in such instances.
- 11) The following issue, for example, is **unlikely** to result in a referral to the RVNDC:

#### **Non-referral to a RVNDC hearing**

- a) Convictions of a less serious nature which would not impact on an RVN's fitness to practise, such as minor domestic disturbances or minor road traffic offences, unless there are

exceptional aggravating features (please note that some minor offences may result in a referral if they have been numerous and there are aggravating circumstances).

12) Examples of convictions and cautions that have resulted in a case being closed with advice to the RVN and not referred to the RVNDC might include one-off drink/driving offences where the RVNPIC is satisfied that there are no underlying health concerns. If there are health concerns, we recognise that sometimes it will be in the public interest to deal with RVNs suffering from adverse health without referring a case to the RVNDC for a formal hearing. More information about the RCVS Health Protocol is available online at <http://www.rcvs.org.uk/health>

13) Aggravating and mitigating factors may be taken into account and could include, for example:

**Aggravating factors**

- a) actual injury to an animal or human;
- b) risk of injury to an animal or human;
- c) dishonesty;
- d) recklessness;
- e) premeditated misconduct;
- f) financial gain;
- g) breach of confidentiality or client trust;
- h) the involvement of a vulnerable client;
- i) sexual misconduct;
- j) any relevant increased position of trust or responsibility;
- k) misconduct sustained or repeated over a period of time;
- l) conduct contravening advice issued by the RCVS, including the RVNPIC and the Professional Conduct Department, or other appropriate authority; and/or,
- m) blatant or wilful disregard of the role of the RCVS and the systems that regulate the veterinary nursing profession.

14) This is not an exhaustive list of aggravating factors and, for example, a failure to observe any undertakings given to the RVNPIC (or RVNDC) might be an aggravating factor or could by itself give rise to a concern leading to referral to a RVNDC hearing.

15) Mitigating factors may include:

- a) the circumstances of the incident, including the promotion of the health or welfare of an animal;
- b) no actual harm or any risk of harm to an animal or human;
- c) no financial gain;
- d) single and isolated incident; and/or
- e) decision taken without the opportunity for full reflection

16) A distinction can be drawn between circumstantial mitigation (relating to the specific events that are said to have occurred) and personal mitigation (relating to the RVN's character, professional career or personal circumstances).

**NB for details of any of the cases referred to in this document, please contact the Professional Conduct Department (020 7202 0789 / [profcon@rcvs.org.uk](mailto:profcon@rcvs.org.uk))**