

## 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 Preliminary Investigation Committee as it decides whether to refer a case to the RCVS Disciplinary Committee (Stage 3).

- 1) The Preliminary Investigation Committee (PIC) will balance:
  - a) protection of the public from the risk of practice by veterinary surgeons 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 veterinary surgeon who, as a professional person, may be considered particularly vulnerable to, and damaged by, unwarranted charges against him/her.
- 2) The PIC must decide whether there is a **realistic prospect** of proving that what a veterinary surgeon has done, or not done, falls far below the standard to be expected of a reasonably competent veterinary surgeon and could affect his/her fitness to practise, ie serious professional misconduct); or, whether any conviction renders him/her unfit to practise as a veterinary surgeon (and, for any case, whether relating to conduct or a conviction, that there is a public interest to refer to a Disciplinary Committee [DC] hearing).
- 3) The PIC 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 PIC 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 DC where the veterinary surgeon's alleged conduct or behaviour is fundamentally incompatible with his or her being a veterinary surgeon. 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*;
  - 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 (including false certification), 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 veterinary surgeon 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 DC when it is bound to fail, and the PIC may properly decline to refer such cases. Equally, cases which indicate serious professional misconduct are for the DC to decide upon.
  
- 7) The following is not an exhaustive list, but the PIC:
  - a) should bear in mind that the standard of proof before the DC 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 a veterinary surgeon is guilty of serious professional misconduct;
  - c) should proceed with caution given that, among other considerations, the PIC 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 veterinary surgeon 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 DC, is entitled to consider a veterinary surgeon's practising status; and, that a greater interest to take a case forward exists where the veterinary surgeon 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 DC 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 veterinary surgeons not being harassed by unfounded concerns, there is also a public interest in the DC hearing cases which do have a real prospect of establishing serious professional misconduct.
- 8) The PIC may give advice to a veterinary surgeon, or any other appropriate decision, when closing a case, ie when deciding not to refer the case to the DC. The PIC 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 DC. The references are to previous cases before the DC.

### **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 DC hearing would be disproportionate. Advice may be satisfactory in such instances.

11) The following issues, for example, are **unlikely** to result in a referral to the DC:

**Non-referral to a DC hearing**

- a) Convictions of a less serious nature which would not impact on a veterinary surgeon'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).
- b) Veterinary fees and charges unless so extreme as to constitute serious professional misconduct.

12) Examples of convictions and cautions that have resulted in a case being closed with advice to the veterinary surgeon and not referred to the DC might include one-off drink/driving offences where the PIC 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 veterinary surgeons suffering from adverse health without referring a case to the DC 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 PIC and the Professional Conduct Department, or other appropriate authority.
- m) Blatant or wilful disregard of the role of the RCVS and the systems that regulate the veterinary profession.

14) This is not an exhaustive list of aggravating factors and, for example, a failure to observe any undertakings given to the PIC (or DC) might be an aggravating factor or could by itself give rise to a concern leading to referral to a DC 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 veterinary surgeon'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))**