



MEETING	Advisory Committee
DATE	25 September 2008
TITLE	Report of the meeting with the OFT on 9 September 2008
CLASSIFICATION	Unclassified
SUMMARY	This paper reports further discussions with the OFT with particular reference to the monitoring of prescriptions from 1 November 2008 to 31 October 2009.
DECISIONS REQUIRED	None
ATTACHMENTS	None
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Report of the meeting between the RCVS and the OFT on 9 September 2008

Introduction

1. The President (Jill Nute), the Senior Vice-President (Bob Moore), the Registrar (Jane Hern) and the Head of Professional Conduct / Assistant Registrar (Gordon Hockey) met Grahame Horgan (Assistant Director, Markets Policy and Remedies), Bob MacDowall, (Team leader, Markets Policy and Remedies) and Sharon Dias (Case Officer) from the Office of Fair Trading to discuss the issues set out in Mr MacDowall's e-mail to the Assistant Registrar of 5 September 2008.

Prescriptions - write in campaign

2. The OFT indicated that the write-in campaign had generated a petition to Parliament of approximately 8,000 signatures and there had been over a hundred letters and e-mails and twenty MPs letters, which was both unusual and significant; the letters complained about the principle of a prescription fee.
3. There was discussion about the write-in campaign and it was confirmed that the 'no discrimination' rule within the Relevant Veterinary Medicinal Products Order 2005 (made under the Fair Trading Act) will remain in force after 31 October 2008; and that the RCVS Guide provisions on prescriptions and pricing in Part 1, D of the Guide, 'Your responsibilities to clients' will remain part of the Guide after 31 October 2008.
4. The RCVS indicated that clients of veterinary practices and those who supply medicines in competition with veterinary surgeons were likely to prefer a zero fee, to any fee, for a prescription.
5. The OFT provided the RCVS with information that had been used to draft standard type responses to those who had written to the OFT and the RCVS provided the OFT with a copy of the updated Advice Note on prescriptions which included the Guide changes to advise the profession that the ban on charging for prescriptions ends on 31 October 2008 and after that time a reasonable charge could be made for them; and that the non-discrimination provision in the Relevant Veterinary Medicinal Products Order 2005 remains in force, on the standard responses

Alleged intimidation by vets/ embarrassment about seeking prescriptions:

6. The OFT stated that alleged intimidation or embarrassment had been cited as a reason why clients did not seek prescriptions and sought clarification from the RCVS because it was not clear to them how this could affect the market. The RCVS indicated that veterinary surgeons deal with sensitive and embarrassing questions and issues on a daily basis, for example, whether a client could afford surgery for an animal, and suggested this was a spurious argument and did not reflect what happened in practice, where clients were free to go to any reasonably local veterinary surgeon for the care and treatment of their animals.

Cartel behaviour and its consequences:

7. The OFT stated that 'vets must not agree between themselves what suitable fees should be.' The OFT stated 'this is strictly prohibited under competition law. An individual, such as a vet, may be guilty of a criminal offence if he/she dishonestly agrees with one or more other individuals to fix prices. A person guilty of such an offence is liable (on conviction or indictment) to imprisonment, a fine or both.'
8. The transparency of veterinary pricing was discussed and the RCVS referred to its guidance to veterinary surgeons on fee estimates, invoicing and the provisions introduced

following the Competition Commission Recommendations. RCVS stated that checks were made on compliance under the voluntary Practice Standards Scheme. The OFT stated that when the retail end of the chain is working properly, there tends to be competition elsewhere in the supply chain.

Monitoring the market past 30 October:

9. The OFT confirmed that they have no current plans for monitoring although they will monitor prescription fees in some way during the year. The OFT indicated that the minimum might be to review information in the public domain such as advertisements and practice information; at the other end of the spectrum, all practice could be asked to provide information.
10. There was discussion about the original recommendation on the zero prescription fee by the Competition Commission. The OFT indicated that the Relevant Veterinary Medicinal Products Order 2005 (made under the Fair Trading Act) was now the relevant provision to consider; and on this basis, it was agreed that the RCVS had no formal responsibility to carry out any monitoring. Also, the OFT indicated that any action, to set the price of veterinary prescriptions might have to flow from a new market reference under the Enterprise Act 2002. OFT cautioned that this was a preliminary view and that it had not considered the legal issues around this. OFT would consult the market on any such proposed action
11. The RCVS indicated that the Society of Practising Veterinary Surgeons (SPVS) had offered to assist, in principle, with the provision of information from its survey of veterinary practices, but wanted assurances about how the information might be used. The OFT response was that the information might be useful, but would provide only a snapshot of process at one time. The OFT stated that it expected the price of veterinary prescriptions to fluctuate initially after 1 November 2008 and then gradually to settle.
12. The RCVS provided the OFT with a copy of the SPVS advice note with guidance about how a practice might calculate an appropriate prescription fee based on the hourly chargeable rate for veterinary surgeons at the practice. The OFT noted the SPVS advice.
13. There was discussion about complaints as a form of monitoring and the advantages and disadvantage of this. The RCVS argued that complaints were often an objection to any charge, rather than a complaint about a specific charge. The OFT indicated that complaints often revealed a healthy market if, for example, complainants indicated that local practices charges a lower fee than the one they had paid, because this indicated variance in prescription fees, usually the indicator of a competitive market.

Any other business:

14. The RCVS invited the OFT to provide an article for RCVS News to advise veterinary surgeons on this issue and other issues relating to the re-introduction of prescription fees, which the OFT was willing to accept.
15. There was discussion about complaints and it was confirmed that the RCVS and OFT will bring to each others attention complaints relating to the zero prescription fee and non-discrimination provision, as appropriate.
16. The OFT suggested a further meeting in March 2009.

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This Statutory Instrument has been made in consequence of a defect in S. I. 2008/2297 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2008 No. 00

MEDICINES

The Veterinary Medicines (Amendment) Regulations 2008

<i>Made</i> - - - -	2008
<i>Laid before Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Secretary of State is a Minister designated(a) for the purposes of making Regulations under section 2(2) of the European Communities Act 1972(b) in relation to measures in the veterinary and phytosanitary fields for the protection of public health.

The Secretary of State has carried out the consultation required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Title and commencement

1. These Regulations may be cited as the Veterinary Medicines (Amendment) Regulations 2008 and come into force on [] 2008.

Amendment to the Veterinary Medicines Regulations 2008

2. The Veterinary Medicines Regulations 2008(d) are amended by adding after paragraph 58 of Schedule 7—

“Fee for the registration of veterinary practice premises

58A. The annual fee for the registration of veterinary practice premises with the Royal College of Veterinary Surgeons to supply veterinary medicinal products is £40 (notwithstanding paragraph 2 of this Schedule, this is payable to the Royal College of Veterinary Surgeons).”.

(a) S.I. 1999/2027.
(b) 1972 c. 68.
(c) OJ No. L31, 1.2.2002, p. 1.
(d) S. I. 2008/2297.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Veterinary Medicines Regulations 2008 by providing for a fee of £40 for the registration of veterinary practice premises.

The fee is already reflected in the impact assessment prepared for those Regulations.