

ROYAL COLLEGE OF VETERINARY SURGEONS

DISCIPLINARY COMMITTEE GUIDANCE

**GUIDANCE ON THE DISCIPLINARY COMMITTEE'S PURPOSE AND FUNCTION,
DECISION-MAKING, INDICATIVE OUTCOMES AND SANCTIONS,
REASONS FOR DECISIONS AND PROCEDURES**

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TABLE OF CONTENTS

CHAPTER	PAGE
INTRODUCTION: PURPOSE AND FUNCTION	3
DECISION MAKING – THE THREE-STAGE DUTY	7
OUTCOMES AND SANCTIONS	17
REASONS FOR DECISIONS	23
PROCEDURAL MATTERS	25

INTRODUCTION: PURPOSE AND FUNCTION

1. The Disciplinary Committee has adopted this guidance as an aid to fair, impartial, transparent and consistent decision-making. Fair and transparent disciplinary proceedings help maintain public confidence in the profession; and in professional standards.
2. The Veterinary Surgeons Act 1966 ('the Act')¹ sets out the powers and functions Parliament has given to the RCVS to regulate the veterinary profession, and practitioners, in the UK. The Act makes:

‘provision for the management of the veterinary profession, for the registration of veterinary surgeons and veterinary practitioners, for regulating their professional education and professional conduct and for cancelling or suspending registration in the cases of misconduct; and for connected purposes’.

3. Under the Act, disciplinary proceedings cover three areas:
 - a) where the member has been convicted of a criminal offence and it is alleged that the nature and circumstances of the offence are such as to render him or her unfit to practise veterinary surgery;
 - b) where it is alleged that the practitioner is guilty of disgraceful conduct in a professional respect; and,
 - c) in the case of a fraudulent entry of the name of the offender being entered on the statutory register of the RCVS.
4. The Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 (SI 2004/1680) ('The Procedure and Evidence Rules 2004') sets out the procedural rules for disciplinary proceedings, including:

¹ 1966 c.36

- a) Notification of the hearing and charges against the respondent veterinary surgeon;
 - b) Procedures to be followed at the hearing, including submissions, and examining and cross-examining witnesses (witness summons may be sought from the High Court); and,
 - c) The standard of proof (see paragraph 13).
5. The Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI 1967/684) sets out the role of the legal assessor, including the provision of advice to the Disciplinary Committee by the legal assessor (see paragraph 56).
 6. There is additional guidance to assist the practice and procedures of the Disciplinary Committee, included within the Disciplinary Committee Manual.
 7. The Disciplinary Committee acknowledges that the fundamental principle of professional practice is set out in the oath that veterinary surgeons declare upon entry to the profession, which includes:

‘I PROMISE above all that I will pursue the work of my profession with uprightness of conduct and that my constant endeavour will be to ensure the welfare of the animals committed to my care.’

In addition, veterinary surgeons ‘are expected to conduct themselves generally in accordance with the standards of professional men and women’.²

The Public Interest

8. It is in the public interest that veterinary surgeons protect and promote the health and welfare of animals and conduct themselves in a professional manner. The protection of the public health is clearly in the public interest. The protection of the profession’s reputation, and upholding and maintaining standards within the profession are also in the public interest.

² *Kirk v RCVS: PC 51 of 2002.*

The Human Rights Act

9. The RCVS is a public authority for the purposes of the Human Rights Act 1998, which therefore applies Article 6 of the European Convention on Human Rights to the proceedings of the Committee. Such proceedings are civil in nature. Article 6 includes the following:

‘Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.’

Composition of the Disciplinary Committee

10. The Act establishes a Disciplinary Committee to determine disciplinary cases referred to it by the RCVS Preliminary Investigation Committee. The twelve members of the Disciplinary Committee are appointed from the RCVS Council, usually for their full term of office on Council (4 years). Normally, if an RCVS Council member has been a member of the Preliminary Investigation Committee, he or she is not appointed to the Disciplinary Committee until after 3 years have passed. Generally, each committee sitting will include veterinary surgeons and Lay members.³
11. All members are invited to sit on each disciplinary case; the quorum of the Disciplinary Committee is five members, of whom at least one must be an elected member of the RCVS Council.⁴ The practice is that at least seven members are listed to sit for each

³ *Lay members of the RCVS Council are appointed by the Privy Council or nominated by one of the six Universities with veterinary schools*

⁴ *Paragraph 2(6) of Part 1 of Schedule 2 of the Act.*

Inquiry. There are a number of reasons why members might not sit on a specific disciplinary case, for example, where there is a conflict of interest. The Disciplinary Committee hears and determines disciplinary cases independently of the Preliminary Investigation Committee and the RCVS Council and its other committees.

DECISION MAKING – THE THREE-STAGE DUTY

12. The Disciplinary Committee has a three-stage duty:

A. Deciding the facts charged

To consider each head of charge, or the charge, and evidence presented to it by the RCVS and the respondent veterinary surgeon; and decide whether each fact (or conviction) alleged has been proved, and to announce its findings;

B. Deciding whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect, or render the respondent veterinary surgeon unfit to practise

Where so proved, to determine the issue of whether each head of charge, or the charge, amounts to ‘disgraceful conduct in a professional respect’ (that is to say ‘serious professional misconduct’); or whether one or more criminal convictions renders the respondent veterinary surgeon unfit to practise; and then,

C. Deciding the outcome or sanction

Where each head of charge, or the charge, is found proved, after hearing any evidence about character, previous history and mitigation, to determine what action needs to be taken within the range of outcomes or sanctions permitted under the Act (and lesser outcomes or sanctions provided for in the Procedure and Evidence Rules 2004).

A. Deciding the facts charged

Standard of Proof

13. The standard of proof to be applied by the Disciplinary Committee is specified in the Procedure and Evidence Rules 2004. The standard is that the Disciplinary Committee should be ‘satisfied to the highest *civil* standard of proof, so that it is sure’⁵ (which is tantamount to applying the ‘criminal standard’).

⁵ Rule 23 (5) and (6).

B Deciding whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect, or render the respondent veterinary surgeon unfit to practise

The Meaning of ‘Disgraceful Conduct in a Professional Respect’

14. ‘Disgraceful conduct in a professional respect’ means conduct that falls far short of that which is expected of a member of the veterinary profession. The Privy Council stated:

‘In the case of most professions the prohibition is framed in different terms from disgraceful conduct in a professional respect, that which is most commonly found being serious professional misconduct. At its hearing the [RCVS] Disciplinary Committee was advised by its legal assessor that disgraceful conduct in a professional respect is conduct which falls far short of that which is expected of the profession. Their Lordships consider that that was an appropriate definition and that the Committee was correctly advised.’⁶

‘Disgraceful conduct in a professional respect is not limited to conduct involving moral turpitude or to a veterinary surgeon’s conduct in pursuit of his profession, but might extend to conduct which, though reprehensible in anyone, was in the case of a professional person, so much more reprehensible as to merit the description disgraceful in the sense that it tended to bring disgrace on the profession he or she practised.’⁷ Disgraceful conduct is also not limited to matters described in the RCVS Guide to Professional Conduct.⁸ The question of whether conduct amounts to disgraceful conduct in a professional respect is a matter of judgment for the Disciplinary Committee, not a matter which is to be decided on a burden or standard of proof.⁹

⁶ See the Judicial Committee of the Privy Council in **Macleod v RCVS**, PC 88 of 2005

⁷ *Marten v Disciplinary Committee* [1966] 1 QB 1, [1965] 1 All ER 949. (As cited in *Halisbury’s Statutes No. 28 page 785 under Section 16 of the Veterinary Surgeons Act 1966*)

⁸ *Marten v Disciplinary Committee* [1966] 1 QB 1, [1965] 1 All ER 949.

⁹ *CRHP v GMC and Biswas* (2006) EWHC 464 (Admin)

The Meaning of ‘a Conviction which Renders the Respondent Veterinary Surgeon Unfit to Practise’

15. A conviction may be related to professional or personal behaviour and whether it renders a respondent veterinary surgeon unfit to practise is a matter of judgment for the Disciplinary Committee. Behaviour unconnected with the practice of veterinary surgery can cause concerns about the protection of animals or the wider public interest.

Aggravating and Mitigating Factors

16. The Disciplinary Committee may take into account aggravating and mitigating factors in deciding whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect or render the respondent veterinary surgeon unfit to practise (for convictions), if that factor is relevant to the circumstances of the charge and is not purely personal mitigation. (See paragraphs 24 to 33 of this guidance.)

17. Generally, a finding that a respondent veterinary surgeon is guilty of disgraceful conduct in a professional respect or has been convicted of a criminal offence that renders him or her unfit to practise, will lead to the exercise of the Disciplinary Committee’s powers.

The RCVS Guide to Professional Conduct

18. The RCVS Guide to Professional Conduct together with its Annexes ("the Guide") sets out principles that may be applied to all areas of veterinary practice. The Guide identifies the key responsibilities of veterinary surgeons to their patients, clients, the public and professional colleagues, and obligations under the law; and also provides guidance on aspects of practice. Although the Disciplinary Committee generally accepts the provisions of the Guide¹⁰, it is (subject to appeal to the Privy Council as to which see paragraph 57) the final arbiter of disgraceful conduct in a professional respect, and is not bound by the provisions of the Guide.

¹⁰ *The committee’s application of the Guide to Professional Conduct in disciplinary proceedings is addressed, for example, in **Allcock**: RCVS Disciplinary Committee, January 2005; **Wilson**: RCVS Disciplinary Committee, May 2006; and **Macleod v RCVS**: PC 88 of 2005.*

C Deciding the outcome or sanction

Proportionality

19. The Disciplinary Committee exercises discretion in deciding on the appropriate outcome or sanction. In so doing, it must be satisfied that its action is proportionate in all the circumstances of the case. This will involve the Committee giving consideration to such matters as:

- a) The existence of any aggravating or mitigating factors of the offence or conduct;
- b) The respondent veterinary surgeon's personal circumstances and any personal mitigation offered; and,
- c) References and testimonials.

20. The Judicial Committee of the Privy Council has said, in the context of disciplinary proceedings before a body like the RCVS, that:

'the application of the doctrine of proportionality is to ensure that a measure imposes no greater restriction upon a [Human Rights] convention than absolutely necessary to achieve its objectives.'¹¹

21. The Courts have acknowledged the necessity of attaching great weight to the decision of a committee, like the Disciplinary Committee, whose members have the expertise and understanding of the appropriate standards and professional competences expected of members of the profession¹², and have indicated:

'The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee. ... The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are

¹¹ *Chaudhury v GMC* [2002] UKPC 41

¹² See *Archbold v RCVS PC* 26 of 2003.

peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards.’¹³

22. However, the courts have indicated a greater willingness to intervene in cases which do not rely on professional knowledge:

‘As must be obvious, when it comes to questions of professional competence the committee’s views are to be accorded the very greatest of weight. When it comes to decisions which do not so much depend upon professional expertise, this court may be in a better position to be able to form a judgment for itself. But this court must never act unless it is plain that in the circumstances the decision was one which, as I would put it, is clearly wrong.’¹⁴

Consistency and the punitive and deterrent element of sanctions

23. The Disciplinary Committee will expect the barristers or solicitors presenting the case and defending the respondent veterinary surgeon to address the Committee on relevant previous decisions (including those from other disciplinary committees), to assist the Committee in making consistent decisions on outcome or sanction.¹⁵ On consistency, the Privy Council has stated:

‘In principle, mitigation has less effect in a disciplinary jurisdiction than in ordinary sentencing, but the reasoning of the Disciplinary Committee in ... [two previous cases] shows RCVS disciplinary committees giving significant weight to mitigation in situations comparable with the present. [Name] .. is in

¹³ *Evans v General Medical Council (unreported) Appeal No 40 of 1984, which was quoted in Macleod v RCVS, PC 88 of 2005*

¹⁴ See *Moody v General Osteopathic Council [2004] EWHC (Admin)* which was quoted in *Macleod v RCVS, PC 88 of 2005*. [See also the Court of Appeal decision in *Fatnani v GMC; Raschid v GMC (2007 EWCA Civ 46)*.]

¹⁵ See *Walker v RCVS PC 16 2007 for the Privy Council’s review of previous relevant veterinary cases*.

the Board's opinion entitled to ask why his offending should attract so different and severe an attitude.¹⁶

In the same case, which involved dishonesty, the Privy Council commented on the punitive and deterrent element of sanctions, stating:

'The Board also reminds itself of the guidance given by Sir Thomas Bingham MR (as he was) in *Bolton v. Law Society* [1994] 1 WLR 512 with regard to the proper approach by, and to orders of, professional disciplinary tribunals. Speaking in the context of lawyers, he emphasised that any lawyer "shown to have discharged his professional duties with anything less than complete integrity, probity and complete trustworthiness must expect severe sanctions" (p.518B). Orders could include a punitive element. But often they would not, e.g. where a criminal penalty had already been imposed, in which case it would be unjust to punish again (p.518F-G). The order would then be primarily directed (a) to ensuring that the offender does not have the opportunity to repeat the offence and/or (b) more fundamentally, to maintaining the reputation of and sustaining public confidence in the profession "as one in which each member may be trusted to the ends of the earth"; for this reason "considerations that would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences passed in mitigation" (p.519B).'

'The correctness of veterinary certificates is also a matter of importance, and can in some contexts bear on animal and indeed human health. The RCVS's Guide to Professional Conduct (2002 edition) underlines the obvious need for truthfulness and accuracy, in the interests of both clients and third parties. The public and bodies such as the Jockey Club have in various contexts to rely on the accuracy of veterinary certificates. The reputation of and confidence in the integrity of the profession of veterinary surgeon is important in a manner which bears an analogy to, even if it is not precisely the same as, that

¹⁶ See *Walker v RCVS PC 16 2007*

described by Sir Thomas Bingham in *Bolton v. Law Society*. But that is not to say that it would be correct to bracket all cases of knowingly inaccurate veterinary certification into a single group and to treat them as equivalently serious. That would not be right when considering either how far an offender needs to be deprived of the opportunity of practice in order to prevent re-offending, or what sanction is necessary to maintain or restore public confidence in the profession. Deterrence is an important consideration, but it must be deterrence in the light of the particular circumstances of the offence to which any deterrent sanction is directed.’¹⁷

The Committee may adopt a new approach to any type of case with appropriate explanation.

Aggravating and Mitigating Factors

24. The Disciplinary Committee will assess culpability on the basis of each head of charge, or the charge, taking into account any relevant aggravating or mitigating factors present.¹⁸

25. Aggravating factors may include:

- 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

¹⁷ See *Walker v RCVS PC 16 2007*

¹⁸ See the **CHRE guidance** available at http://www.chre.org.uk/Website/our_work/practise/s29_guidance/S29%20Risk%20Criteria%20-%20September%202005.doc

- l) Conduct contravening advice issued by the RCVS, including the Preliminary Investigation Committee and 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
- n) No insight into the offence or disgraceful conduct
- o) Previous convictions
- p) Previous adverse findings of the Disciplinary Committee

26. This is not an exhaustive list of aggravating factors; and some of these factors may, in some cases, comprise the substantive head of charge, or the charge, against the respondent veterinary surgeon.

27. 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
- e) Decision taken without the opportunity for full reflection
- f) Youth and inexperience
- g) A long and unblemished career
- h) Open and frank admissions at an early stage (for example, in the respondent veterinary surgeon's dealings with the client, RCVS Professional Conduct Department and the RCVS Preliminary Investigation Committee)
- i) Ill health at the time the disgraceful conduct, or criminal offence, was committed¹⁹
- j) Subsequent efforts to avoid a repetition of such behaviour
- k) Significant lapse of time since the incident
- l) Demonstration of insight into the offence or disgraceful conduct committed

¹⁹ See **Lonsdale**: *RCVS Disciplinary Committee 2004*. *The RCVS has no separate or distinct power to deal with impairment to fitness to practise on the part of a veterinary professional through ill-health alone. This factor may be taken into account in proceedings where serious professional misconduct is proven and the committee is considering outcome, or sanction.*

This is not an exhaustive list of mitigating factors.

28. The Disciplinary Committee may take into account aggravating and mitigating factors in deciding whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect or render the respondent veterinary surgeon unfit to practise, if that factor is relevant to the circumstances of a head of charge, or the charge, and is not purely personal mitigation. Of the mitigating factors in paragraph 27, factors 'f' to 'l' are likely to relate to purely personal mitigation only. Of the aggravating factors in paragraph 25, factors 'n' to 'p' are rarely relevant to the circumstances of a charge and are normally relevant to the outcome or sanction only.
29. It can sometimes be difficult to determine whether mitigation is relevant to the circumstances of the charge or purely personal mitigation. The Courts have indicated:

'As a general proposition it would be surprising if rules governing the disciplinary procedures for the medical profession were to achieve the somewhat startling result that the question whether a practitioner was guilty of serious professional misconduct could be influenced by matters of personal mitigation which went to the appropriate disposal of the complaint. It is in our view elementary that any evidence considered by the Committee should be relevant evidence. Mitigation arising from the circumstances in which the practitioner found himself or herself may be relevant to the level of culpability: once serious professional misconduct is proved, personal mitigation would be relevant to possible penalty. In our judgment, these are distinct issues, to be determined separately on the basis of evidence relevant to them'.²⁰

In some cases, for example if credibility is in issue, previous good character may be relevant when considering the facts as well as when deciding the outcome or sanction.²¹

²⁰ **R (Campbell) v GMC** [2005] EWCA Civ 250

²¹ **Campbell; Williams – v GMC** (2007) EWHC 2603 (Admin); See also **Donkin v Law Society** (2007) EWHC 414 (Admin)

30. Generally, the Disciplinary Committee will explain its reliance on mitigating or aggravating factors when giving reasons for decisions.

Purely Personal Mitigation

31. Inferences should not necessarily be drawn from an absence of testimonial and personal character reference evidence, because there may be cultural or other reasons why a registrant would not solicit testimonials from colleagues or clients, and such inferences might be influenced by untested assumptions about the sort of references that might have been produced.

32. Testimonial and personal character reference evidence is often provided in advance of a hearing and, in contested hearings, may not be an accurate assessment of the respondent veterinary surgeon taking into account any facts proved against him or her.

33. Generally, testimonial and personal character reference evidence is heard by the Disciplinary Committee after determining whether each head of charge, or the charge, amounts to disgraceful conduct in a professional respect or that one or more convictions render the respondent veterinary surgeon unfit to practise.²²

²² **R (Campbell) v GMC** [2005] EWCA Civ 250, See also **Donkin v Law Society** (2007 EWHC 414 (Admin))

OUTCOMES AND SANCTIONS

Introduction

34. The outcomes or sanctions available to the Disciplinary Committee (its powers) are:

No Further Action

- a) In certain cases, the Committee may consider a finding that a respondent veterinary surgeon is guilty of disgraceful conduct in a professional respect, or that a conviction renders him or her unfit to practise, is sufficient to protect animals and the wider public interest, without a reprimand or warning as to future conduct; in such cases, the Committee may decide to close the case with 'no further action'.

Postponement

- b) Postponement of judgment for a period not exceeding two years (the Committee may postpone judgment for a second and final period not exceeding two years), which may be subject to undertakings from the respondent veterinary surgeon (this is considered first under Rule 18.2 of the Procedure and Evidence Rules 2004), and then, in the following order of consideration,

Judgment

- c) Reprimand or warning as to future conduct,
- d) Direction for suspension of the respondent veterinary surgeon's name from the register for a specific period not exceeding two years,
- e) Direction for removal of the respondent veterinary surgeon's name from the register. (Applications for restoration to the register can be made 10 months after a veterinary surgeon's name has been removed from the register.)

The sanctions are considered in ascending order of severity. The Committee considers whether a reprimand or warning is sufficient to protect animals and the wider public interest; if not sufficient, the Committee considers whether a suspension is sufficient to protect animals and the wider public interest; if this is not sufficient, the Committee

considers whether the ultimate sanction of removal from the register is the only appropriate option.

Undertakings

35. The Disciplinary Committee has no power to impose practice conditions and has therefore developed a process involving a postponement of sanction or judgment coupled with a formal undertaking by the respondent veterinary surgeon as to his or her future conduct. One type of formal undertaking may involve the respondent agreeing to the appointment of a visitor to assist him or her and report to the Disciplinary Committee on his or her practice.²³
36. Normally, undertakings are given in writing and included in the Disciplinary Committee's written decision to postpone judgment. The respondent veterinary surgeon giving the undertakings must agree to abide by those undertakings for a specified period of time, usually two years, and agree to any monitoring of the undertakings by the RCVS. Generally, the respondent veterinary surgeon is expected to pay the cost of the undertakings and monitoring.
37. Normally, a postponement of judgment with undertakings from the respondent veterinary surgeon will be appropriate only when most or all of the following apply:
- a) Animals and the public will not be put at risk as a result of the postponement with undertakings;
 - b) The respondent veterinary surgeon has demonstrated insight into the seriousness of the misconduct and there is no significant risk of repeat behaviour;
 - c) It is possible to formulate undertakings that are capable of being met, appropriate and measurable;
 - d) The respondent veterinary surgeon is willing to comply with the undertakings;
 - e) Limited aspects of practice are in need of education or training; and,
 - f) There is evidence that any underlying medical problem is being appropriately addressed, monitored and reported.

²³ See the guidance on the 'Appointment of visitors in cases where judgment is postponed', which is included in the Disciplinary Committee manual, available from the RCVS.

38. In deciding to postpone judgment with undertakings from the respondent veterinary surgeon, the Disciplinary Committee must be satisfied that this will be sufficient to protect animals and the wider public interest.

39. The Procedure and Evidence Rules 2004 indicate the procedures to be applied where the respondent veterinary surgeon fails to comply with his or her undertakings.²⁴ Failure to comply with an undertaking will be taken seriously by the Disciplinary Committee.²⁵

Reprimand or Warning as to Future Conduct

40. Where the Disciplinary Committee is minded to issue a reprimand or warning as to future conduct, it will consider whether a reprimand or warning provides adequate protection to animals and the wider public interest, bearing in mind that a reprimand or warning has *no* direct effect on the right to practise. A reprimand might be appropriate if the disgraceful conduct in a professional respect, or conviction that renders the respondent veterinary surgeon unfit to practise, is at the lower end of the spectrum of gravity for such cases and, for example, there is no risk to animals or the wider public interest that requires registration to be restricted.

41. A reprimand or warning may be appropriate where:

- a) The misconduct is at the lower end of the spectrum of seriousness and;
- b) There is no future risk to animals or the public; and,
- c) There is evidence of insight.

Suspension

42. Suspension may be appropriate where the misconduct is sufficiently serious to warrant more than a reprimand but not sufficiently serious to justify removal from the register. The Privy Council has given guidance on when a suspension is appropriate, as opposed to removal from the register, indicating:

²⁴ Rule 19 of the Procedure and Evidence Rules 2004

²⁵ See the 'Notes for guidance in cases where the Disciplinary Committee decides to postpone judgment', included in the Disciplinary Committee manual, which is available from the RCVS. See also rule 19 of the Procedure and Evidence Rules 2004.

‘First, the two differ both in their impact on the veterinary surgeon and in the public eye. Second, it would be wrong to associate the practical effect of an order for removal with that of an order for suspension for 10 months, for several reasons: (a) 10 months is no more than the period before which an *application* for restoration can be made. It can take a good deal longer to resolve any such application (cf the case of [previous case]). (b) Secondly, any application for restoration will come before a freshly constituted disciplinary committee whose views cannot be predicted, and in the meanwhile the practitioner will be kept in uncertainty as to his or her long term future, as well as subject in the public eye to the greater disgrace of having been struck off. (c) Thirdly, an application may in some contexts be facilitated by evidence of fresh circumstances and efforts to address the problems that led to the original removal (as in [previous case], where evidence of retraining was evidently adduced). But in other cases, of which [name] is one, nothing is likely to have changed. It is not suggested that [name] needs retraining, or that his remorse and determination never again to lapse in such a way are not genuine or reliable, or that any other relevant development might occur before any application for restoration. The Committee hearing the original charges against [name] was in reality as least as well placed as, and probably better placed than, any fresh committee to decide for how long he should be removed from practice for the purposes of punishment and deterrence and to maintain public confidence. A fresh committee might well ask itself why it should be prepared to take any different attitude to that which the original Committee thought appropriate. Any argument that it is appropriate to pass the maximum sanction, having regard to the fact that it can be, and is likely to be, reduced in impact after 10 months is also one which is in the Board’s view inimical to the transparency at which any tribunal engaged in sentencing or sanctioning misconduct should aim.²⁶

²⁶ See *Walker v RCVS PC 16 2007*; the previous case mentioned is *Sanyal, RCVS Disciplinary Committee 2005*.

Suspension is not imposed as a *punitive* measure, although it will almost invariably adversely affect the veterinary surgeon.

43. Suspension may be appropriate where some or all of the following apply:

- a) The misconduct is serious, but a lesser sanction is inappropriate;
- b) The respondent veterinary surgeon has insight into the seriousness of the misconduct and there is no significant risk of repeat behaviour;
- c) The respondent veterinary surgeon is fit to return to practice (after the period of suspension).

44. Suspension may not be appropriate where the respondent veterinary surgeon is convicted of a serious criminal offence and should not be permitted to practise until the satisfactory completion of the sentence.²⁷

Removal from the Register

45. Removal from the register may be directed where the respondent veterinary surgeon's behaviour is so serious that removal of professional status (and the rights and privileges accorded to this status) is the only means of protecting animals and the wider public interest. Removal is imposed in order to protect animals and the wider public interest. It is not imposed as a *punitive* measure, although it will almost invariably adversely affect the respondent veterinary surgeon.²⁸

46. The Privy Council has stated that a disciplinary committee should not feel bound to remove from the register:

‘An otherwise competent and useful [practitioner] who presents no danger to the public in order to satisfy [public] demand for blame and punishment.’²⁹

Equally, the reputation of the profession is more important than the interests of one veterinary surgeon and Lord Bingham, Master of the Rolls stated:

²⁷ See *CHRE v GDC and Fleischman* [2005] EWHC 87 (Admin)

²⁸ See *Bolton v Law Society* [1995] 1 WLR

²⁹ See *Dr Willem Bilj v GMC* PC 78 2000

‘The reputation of the profession is more important than the fortunes of an individual member. Membership brings many benefits, but that is a part of the price.’³⁰

47. Proven dishonesty has been held to come at the ‘top end’ of the spectrum of gravity of disgraceful conduct in a professional respect. In such cases, the gravity of the matter may flow from the possible consequences of the dishonesty as well as the dishonesty itself.³¹ The Privy Council has, in a case involving dishonesty, provided guidance on the distinction between removal and suspension from the register.³² (See also paragraph 42.)
48. Removal from the register may be appropriate where behaviour is fundamentally incompatible with being a veterinary surgeon, and may involve any of the following (the list is not exhaustive):
- a) Serious departure from professional standards as set out in the RCVS Guide to 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;
 - f) Dishonesty (including false certification), particularly where persistent or concealed.

³⁰ See Dr Prabha **Gupta** v GMC PC 44 2001

³¹ See **Tait** v RCVS PC 67 of 2002; and **Archbold** v RCVS PC 26 of 2003

³² See **Walker** v RCVS PC 16 of 2007

REASONS FOR DECISIONS

49. Whatever the Disciplinary Committee decides in a case, it will explain its reasons in a concise statement. The public, witnesses and the respondent veterinary surgeon should be able to see why the Committee has taken a particular course. Moreover, the respondent veterinary surgeon may have the right to appeal against the Committee's decision.³³ A clear explanation of the reasons for the decision will help the veterinary surgeon decide whether to exercise that right and will help the Court which has to consider any appeal. This will also assist a veterinary surgeon removed from the register who subsequently applies for restoration of his or her name to the register.

50. The Disciplinary Committee's reasons will usually include, as appropriate:

- a) Recital of each head of charge, or the charge, against the respondent veterinary surgeon;
- b) Reference to the jurisdictional basis, the Act; the burden and standard of proof; and, this guidance document;
- c) Confirmation of any legal advice given by the legal assessor, unless this is recorded on the transcript of the hearing;
- d) The factual basis of the findings, including determinations of substantial evidential disputes;
- e) If relevant, why each head of charge, or the charge, amounts to disgraceful conduct in a professional respect, or why the conviction renders the respondent veterinary surgeon unfit to practise; and,
- f) A summary of reasons for the outcome or sanction (the sanctions are considered in ascending order of severity).

51. As appropriate, the Disciplinary Committee will make a decision on the facts, and then decide whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect (or the conviction renders the respondent veterinary surgeon unfit to practise) and finally, decide the outcome or sanction. Generally the practice of the Committee is to give written reasons in two documents:

³³ See paragraph 57 of this document

'Findings of Fact' and 'Judgment'. The Committee gives reasons in the written Judgment both for the decision on whether each head of charge, or the charge, admitted or found proved, amounts to disgraceful conduct in a professional respect or that the conviction renders the respondent veterinary surgeon unfit to practise; and for the outcome or sanction.

PROCEDURAL MATTERS

Directions

52. The Procedure and Evidence Rules 2004 provide that disciplinary proceedings are in the nature of civil proceedings and the Disciplinary Committee may allow such further evidence, amendments and submissions and give such further directions as it considers appropriate in all the circumstances (Rule 14.1). Also, under Rule 28.2, the Committee or Chairman shall determine the procedure for any aspect of the proceedings for which there is no specific provision. It is the practice of the Disciplinary Committee that generally this power is exercised only after taking advice from the legal assessor.

Hearings in Public

53. Disciplinary Committee hearings take place in public, although the Committee has discretion to exclude members of the public for all or part where this would be in the interests of justice. The discretion to give such directions may be used to put in place special measures at the hearing for vulnerable witnesses; or where sensitive medical records are being disclosed, even though decisions may refer to such evidence.

Adjournments and Postponements.

54. In deciding whether to adjourn, the Disciplinary Committee shall have regard to all of the circumstances and to the interests of justice (Rule 22.4).³⁴

55. Any request for postponement must be made in writing to the clerk, (accompanied by medical certificates if a postponement or adjournment is requested on the grounds of ill health).

The Role of the Legal Assessor

56. A legal assessor is available to advise the Disciplinary Committee on matters of law or procedure, although he or she will take no part in making decisions. The legal assessor is an experienced lawyer and the role of the legal assessor is set out in detail in Statutory

³⁴ See *Tait v RCVS PC 67 of 2002*; *R v Jones (Anthony) [2002] 2 WLR 524*, and *Morris: RCVS Disciplinary Committee, April 2007*

Rules.³⁵ In addition, a guidance document, 'The Role of the Legal Assessor', is included in the Disciplinary Committee Manual, which provides further information on the involvement of the legal assessor in disciplinary proceedings.

Rights of Appeal

57. A right of appeal against a decision of the Disciplinary Committee (to remove ('strike off') or suspend a veterinary surgeon from the register) lies to the Judicial Committee of the Privy Council.³⁶ The RCVS has no right of appeal against a decision of the Disciplinary Committee.

Disclosure of Information and Public Rights of Access

58. The Procedure and Evidence Rules 2004 provide that all public hearings of the Disciplinary Committee shall be recorded and that every decision, determination, direction, finding and judgment of the Committee or the Chairman shall be recorded in writing. Reports of Disciplinary Committee hearings are posted on the RCVS website³⁷ and transcripts of the proceedings since 2000 are available to view in the RCVS library.

Applications for Restoration

59. The Procedure and Evidence Rules 2004 provide the procedure for a veterinary surgeon applying to have his or her name restored to the register.³⁸ The obligation is on the applicant veterinary surgeon to satisfy the Committee that he or she is fit to be restored to the register. The Committee will consider a number of factors in exercising its judgment as to whether or not to restore a veterinary surgeon to the register; such as:

- a) Acceptance by the applicant veterinary surgeon of the findings of the Committee at the original inquiry hearing;
- b) The seriousness of those findings;
- c) The protection of the public;

³⁵ *The Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI1967/684)*

³⁶ *S17 of the Act.*

³⁷ <http://www.rcvs.org.uk>. Copies of earlier decisions are available on written request from the RCVS.

³⁸ *Rule 20 of the Procedure and Evidence Rules 2004*

- d) The future of the welfare of animals in the event of the applicant veterinary surgeon being permitted to have his or her name restored to the register;
- e) The length of time off the register;
- f) The applicant veterinary surgeon's conduct since removal from the register;
- g) Efforts by the applicant veterinary surgeon to keep up to date in terms of knowledge, skills and developments in practice, since removal from the register (accepting that he or she must not practise as a veterinary surgeon);
- h) The impact on the applicant veterinary surgeon of having his or her name removed from the register; and,
- i) The public support for the applicant veterinary surgeon.

60. The Disciplinary Committee is not bound by this guidance document and its discretion to determine disciplinary cases remains in accordance with the relevant statutory rules and legal precedent.

RCVS Disciplinary Committee

19 December 2007