

MEETING	Council
DATE	2 June 2011
TITLE	Preliminary Investigation Committee Lay Observers' Report to Council and the Committee's response.
CLASSIFICATION	Unclassified
SUMMARY	The Lay Observers report annually to Council on the work of the Preliminary Investigation Committee, to give an independent view on the work of the Committee. The Committee responds to the report.
DECISIONS REQUIRED	None
ATTACHMENTS	None
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PRELIMINARY INVESTIGATION COMMITTEE, LAY OBSERVERS' REPORT

1. This is the twelfth report of the Lay Observers.
2. The three Lay Observers are appointed by the RCVS following public advertisement. Our principal role is to examine complaints from members of the public in the main, and to contribute to the Preliminary Investigation Committee's (PIC) decision making. We strive to provide a strong, clear voice on behalf of the public and we ensure that all complaints are investigated thoroughly and the College's procedures are operated robustly and fairly.
3. As we have emphasised in our previous reports, the number of complaints to the College is small when taking into account the tens of thousands of consultations and veterinary interventions that occur each year by some 17,586 home-practising registered veterinary surgeons in the UK.
4. To put this in context, a total of 684 complaints were closed by the College. Of these 14 % were not progressed by complainants, 29% were closed by Case Managers in the Professional Conduct Department because they failed to cross the threshold for potential Serious Professional Misconduct (SPMC). A total of 43% were closed by Case Examiners because there was no arguable case of SPMC. Complaints which reach this stage of the Procedure are examined by a veterinary surgeon who is a member of PIC, and a Lay Observer. In some cases, Case Examiners gave advice to the vet (for example, in relation to communication or the need to revise standard operating procedures). The PIC considered a total of 14% of cases, those referred to it by Case Examiners. Finally, 8 cases were considered by the Disciplinary Committee.
5. We believe that the public and the profession more widely can be confident that in the overwhelming majority of cases veterinary surgeons give attention to the animals under their care to the high standards demanded. We are able to report that, notwithstanding the relatively low incidence of complaints, the College is not complacent and places significant importance on the need to keep the complaints and disciplinary procedures under continual review, introducing improvements as necessary.
6. When we reported last year, we expressed the hope that change to legislation would permit Lay Observers to have equal status with other members of the PIC. We are pleased that good progress has been made in this regard and we welcome the College's intention to seek changes (by means of a Legislative Reform Order) that would permit Lay members of PIC to be full members of the Committee, with voting rights. In saying this, the Committee has always sought the views of Lay Observers before, on the very few occasions, a vote has been called.

7. Council members will know that Parliamentary approval to the LRO will result in the PIC and DC functions becoming independent of the RCVS Council. We support this, as it is in keeping with the direction other Regulators are taking. However, we seek assurances that effective transitional arrangements are put in place to ensure that complaints are handled seamlessly during this period. We look forward to the opportunity of having further discussions with the College on this issue.
8. The Health Protocol continues to be used in appropriate cases, and in our judgement is a welcome addition to the College's capability to deal with vets who regrettably may be suffering through physical or mental ill-health and are unable to provide the standard of service expected. Feedback in a number of cases indicates that, whereas previously vets affected in this way may have been the subject of a disciplinary investigation, they are now responding well to specialist advice and support which permits them to return to practising.
9. We welcome the College's recognition that, as the framework of professional regulation has been evolving in more recent years with a move towards "fitness to practise", it is timely to review current RCVS powers and procedures. Clearly, a balance must be struck between over-regulating the profession, to its detriment, and meeting the legitimate expectations of the public. We feel confident that the College will continue to meet its public duties responsibly and appropriately. We have been kept closely informed of the opinions provided by Timothy Dutton QC in relation to these matters.
10. Many complaints received relate to poor performance, but which fall short of that which would amount to "disgraceful conduct in a professional respect". It is clear to us that poor performance needs to be tackled more effectively through monitoring and investigation against agreed professional standards. This focus on performance would be over and above that expected of practitioners under their contract of employment where this arises. We recognise the challenges this poses in the case of single handed vets. The proposal to develop a "Performance Protocol" with emphasis on the importance of compulsory CPD to rectify deficiencies is essential, in our view. We look forward to further discussion with the College on the outcome of the current review.
11. Complaints about fees are regularly received. The College's position is that these cannot be considered unless the fees charged are deemed to be so excessive as to warrant an investigation. We consider that this position is not sustainable, nor in the public interest. We are aware that other Regulators are tackling this issue and we would support any attempt by the College to issue advice to its Members on charging, and the desirability of greater transparency as to how fees have been calculated. Many practices are already doing good work in this regard, but others fall short.
12. We recognise that the profession is constantly evolving. The growth of large corporate providers, and practices owned by non-veterinary surgeons, presents a particular challenge in terms of effective regulation. Whilst the regulation of individual vets is well established, we believe that the RCVS needs to ensure that the regulation of the corporate sector is equally effective. It must be in the interest of the public and the profession that corporate, charitable

and those practices run by non-veterinary surgeons in particular should appoint a Chief Veterinary Officer who has defined responsibility and can be held accountable for the design, delivery, resourcing and quality of all clinical services.

13. In last year's report we raised a range of concerns in relation to the registration of overseas and European vets. Over the years, Mr Oakes and others – the numbers are small - have attempted to fraudulently misrepresent themselves to the public. We also expressed concerns about the standard of English spoken by these vets, and whether the College's existing powers enabled it to be satisfied that they were competent to the standards required of those vets who graduated from UK universities. We are grateful to the Registrar, Jane Hern, for agreeing to meet us together with the Head of Registration and the Head of Professional Conduct, to discuss our concerns. It is clear to us that the College has taken significant steps to tighten up its internal vetting procedures to minimise the risk of fraudulent applications being approved. Communication between the relevant College departments has improved, and advice and guidance has been sought from the Police and other authorities as to how the College may more effectively tackle attempts to defraud.
14. In relation to our concerns about the competency and standards of English spoken by overseas and European vets, we accept that the College is not permitted to implement its own literacy and other tests under current EU legislation. The GMC and other regulators face similar challenges and, unless the Government has the political will to address this issue, no change will be forthcoming. It will, however, continue to be the responsibility of employing practices to ensure that all staff appointed are competent and can speak English to an acceptable standard. We welcome the proposed revision to the Guide to Professional Conduct which will underline the need for practices to take full responsibility for this issue and to be called to account where failings are uncovered. It is simply not acceptable to the public to have to deal with a veterinary surgeon who is unable to speak adequate English so that, for example, detailed instructions about ongoing care cannot be clearly understood, and who require other practice staff to translate for them.
15. It is noticeable that PIC is dealing with an increasing number of complex complaints, with substantial documentation and other evidence to be considered. This is placing an increasing demand on the time of PIC members and the resources of the Professional Conduct Department. We believe that, as the College continues to improve its investigation of complaints, this trend will continue. We understand the financial pressures facing the College, but we seek assurances that the resourcing of complaints handling will continue to be given the priority that the public has every right to expect.
16. We are pleased to report that Jill Nute (Chair of PIC) and Gordon Hockey (Head of Professional Conduct), assisted by Penningtons Solicitors, designed and facilitated an excellent two day training event which brought together all those involved with investigating complaints. The opportunity to practise our skills, gain knowledge and share experiences, was invaluable.

17. The Lay Observers would like to place on record our thanks to Jill Nute for the skill with which she chairs PIC, and her inclusive approach to decision making.

18. Finally, our grateful thanks go to Gordon Hockey and all members of staff in the ProfCon Department who, together with other College staff, support us so ably and with such good humour and patience.

Chris Mattinson

Jane Ramsey

Judith Alderton

(PI Committee Lay Observers)

May 2011

**PRELIMINARY INVESTIGATION COMMITTEE'S RESPONSE
TO THE LAY OBSERVERS' REPORT**

1. The Preliminary Investigation (PI) Committee is grateful to the Lay Observers for the work they do, reassuring the public about veterinary regulation; and is grateful for their positive and supportive comments. RCVS regulation is increasingly a shared activity between veterinary surgeons and lay persons, to the benefit of the profession and the public. The Legislative Reform Order sought by the RCVS will enhance this and confirm to the public the distinction and necessary independence on decision-making between RCVS Council, which approves formal guidance for veterinary surgeons tantamount to the profession's rules, the PI Committee which investigates complaints and decides whether a complaint should be referred to the Disciplinary Committee, and the Disciplinary Committee, which carries out a judicial function deciding whether a veterinary surgeon's name should remain on the register.
2. The PI Committee is confident that the ongoing move to 'fitness to practise' procedures is legally robust, given the legal opinion on the health protocol and the recent legal opinion on RCVS Jurisdiction, and the Chairman of the PI Committee will be meeting with the Chairman of the Advisory Committee to explore the feasibility of a performance protocol to complete this process. Poor performance which falls far short of expected professional standards is subject to RCVS jurisdiction, but there may be circumstances where it is not appropriate to refer such complaints to the Disciplinary Committee, if suitable undertakings are given by the veterinary surgeon, for example, to undertake appropriate CPD, which protect the public interest.
3. The external solicitors review /audit of complaints and disciplinary procedures (5 February 2010) included a number of recommendations relating to investigations and the Committee. The PI Committee is able to report that implementation of the recommendations will be completed by 2 June 2011, the date of the Council meeting. These include guidance for the Chairman and a protocol for internal audit. The internal audit may be undertaken by the Chairman and/or the Head of Professional Conduct and is currently undertaken by the Chairman, who reviews at least 10% of closed complaints including those closed at assessment and case examination. The audit includes consideration of closing letters in accordance with the following criteria:
 - i. Has the author identified the relevant stage of the complaints process?
 - ii. Has the author identified the person[s] making the decision?
 - iii. Has the author included the decision?
 - iv. Has the author explained the reasons for the decision?
 - v. Has the author explained the reasons for the decision in a clear and concise manner?
 - vi. Has the author explained any action taken or advised as part of the decision?
 - vii. Has the author informed the complainant and/or veterinary surgeon about any further options available, for example, a request for a review of the decision?
4. With regard to fees and pricing of veterinary services, this is generally a matter between veterinary surgeons and their clients, although the current RCVS Guide gives advice to

veterinary surgeons to give fee estimates and to keep clients informed of ongoing costs. The recent legal advice suggesting that the RCVS may seek to give veterinary surgeons additional advice on costs will need to be considered by the RCVS Guide Working Party, which has prepared a draft Code of Professional Conduct to replace the Guide. The draft Code is currently subject to consultation.

5. The Guide Working Party has also considered the RCVS advice for corporate practices - practices that are wholly or partly owned by non-veterinary surgeons. The Guide Working Party considered whether to require such practices to appoint a Chief Veterinary Officer, to strengthen the current advice in the RCVS Guide (Annex F), but decided that a flexible approach was preferable, where veterinary surgeons in a business are accountable to the extent of their influence or responsibility (see paragraphs 28 -31 of the Guide Working Party meeting on 11 January 2011). The PI Committee is confident that either approach will provide suitable regulation of the profession. The draft Code that is currently subject to consultation includes the following provisions:

Veterinary surgeons with ownership or control of the veterinary business, or with management or other responsibilities associated with the veterinary team or business, have a greater responsibility to ensure professional colleagues, or staff within the organisation or practice, comply with responsibilities in the RCVS Code of Professional Conduct.

Veterinary surgeons must ensure that there is appropriate veterinary management or supervision of the veterinary team, and appropriate support and assistance for newly registered veterinary surgeons, including those who qualified elsewhere in Europe, or overseas.

6. The draft Code also includes a provision requiring that veterinary surgeons must be able to communicate using the English language, which is welcomed by the Committee. This is as follows:

Veterinary surgeons must be able to communicate effectively, using the English language in the UK, as appropriate to the audience and context.

This and the draft Code inclusion of the health protocol and the need for veterinary surgeons to provide an adequate standard of veterinary care reflect current complaints and disciplinary procedures and as the Lay Observers indicate demonstrate a move towards a fitness to practise jurisdiction – one which includes health and performance as well as conduct.

7. The Professional Conduct Department and the PI Committee continue to manage a high caseload and the Lay Observers and the public may be assured that resources are kept under review and the investigation and management of cases are not compromised by cost issues; while at the same time recognising that members' registration fees must be spent wisely and efficiently. The four Veterinary Investigators assist the RCVS with investigations and the increasing use of electronic communications and laptops means that the Senior Case

Manager is able to work while 'on the road'. During short periods of high workload the RCVS external solicitors can be asked to give greater assistance with investigations. In addition, for bigger one-off investigations, the costs may be met from reserve funds.

8. The PI Committee also endorses the annual two-day training given to Committee members, lay Observers, veterinary investigators and others involved with complaints and investigation process.

9. Finally, with regard to registration issues, the Committee endorses the outcome of the meeting to which the Lay Observers refer. It was agreed that there will be appropriate training for RCVS staff (from the Professional Conduct, Registration and Education Departments) on how to seek to detect fraudulent applications to the RCVS; that there will be increased communication between the Professional Conduct Department and other departments so that the College as a whole can make use of the data held by the Professional Conduct department, as appropriate to individual members of staff and their roles; and that there will be additional information on professional conduct issues and the potential pitfalls of practice provided to those registering with the RCVS from overseas or Europe; to seek to equal the information given to UK undergraduates in the lectures they receive from the RCVS President and Head of Professional Conduct/Assistant Registrar.