Disciplinary Committee Manual

Guidance on the constitution and referral of cases to the Disciplinary Committee, the role of the Chairman, Legal Assessor and Clerk, members’ responsibilities and an introduction to Committee procedures.

September 2013

This manual should be read in conjunction with the Disciplinary Committee Procedure Guidance (September 2013)
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**Foreword**

Professional regulation has a long history and regulation of the veterinary profession dates back to 1844 when the first Royal Charter was granted. The last 15 years, however, have brought about unprecedented changes. It was always the case that professions were required to take steps to ensure the privileges of their protected status were not abused. In the 21^st^ century there has been increased emphasis on patient and consumer protection and on openness and transparency of process. Indeed, 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 and it is right that justice should be seen to be done.

The Disciplinary Committee has statutory powers to remove or restrict a veterinary surgeon’s right to practise if he is found guilty of disgraceful conduct in a professional respect, or is convicted of a criminal offence which renders him unfit to practise, and it is vital that these powers are exercised properly and proportionately, in accordance with the Statutory Rules. The Committee first issued comprehensive written guidance on its procedures in December 2007, to supplement the Statutory Rules. This aimed to clarify existing practice and to act as an aid to fair, impartial, transparent and consistent decision-making, thus helping to maintain public confidence in the profession and in professional standards. The Disciplinary Committee Procedure Guidance has been updated and accompanies this Manual together with the relevant Disciplinary Committee legislation.

This Manual seeks to provide an introduction to the Disciplinary Committee and includes guidance on the conduct and roles of those involved in the functioning of the Committee; Chairman, members, Legal Assessors and Clerk, and on the procedural and practical matters ranging from the constitution of the Committee, to the decision-making process and available sanctions. Disciplinary Committee members are expected to be familiar with both the Manual and the Disciplinary Committee Procedure Guidance. The RCVS provides face to face induction training for new members, as well as annual training for Chairmen and Vice Chairmen and an annual two day training session for all Committee members, Legal Assessors and the Clerk.

The Chairman’s responsibility is to provide the leadership to ensure that the proceedings and decision-making processes are fair and independent and conducted in accordance with the Statutory Rules and the Disciplinary Committee Procedure Guidance. It is hoped that this Manual and the accompanying Disciplinary Committee Procedure Guidance will help members to act without fear or favour in seeking to find the best outcome for all concerned in what can be difficult circumstances.
Introduction

1. The Veterinary Surgeons Act 1966 (‘the Act’) sets out the powers and functions which Parliament has granted to the RCVS to regulate the veterinary profession and veterinary surgeons in the United Kingdom. The main regulatory responsibilities are set out in the Act although the RCVS also has powers and responsibilities by virtue of its Royal Charter established in 1844.

2. These statutory responsibilities include maintaining a Register of veterinary surgeons eligible to practise in the United Kingdom, regulating veterinary education and regulating professional conduct.

3. In order to ensure such regulation, the Act establishes a Disciplinary Committee to hear cases referred to it by the RCVS Preliminary Investigation Committee, and provides the Disciplinary Committee with statutory powers to remove or restrict a veterinary surgeon’s right to practise if he is found guilty of disgraceful conduct in a professional respect or found guilty of a conviction that renders him unfit to practise. These powers, however, must be exercised properly and proportionately, in accordance with the Statutory Rules.

4. The function of the Disciplinary Committee is set out Section 15 of the Act, which at Section 15(2) and 15(3) reads:

   15(2) “There shall continue to be a committee of the Council known as the Disciplinary Committee charged with the duty of considering and determining
      a. any disciplinary case referred to them by the Preliminary Investigation Committee; and
      b. any other case of which the Disciplinary Committee has cognisance under Section 18 of the Act (Restoration of Members to the Register)
   15 (3) The provision of Part 1 of Schedule 2 to this Act shall have effect with respect to the constitution of the preliminary investigation and disciplinary committees, and the provisions of Part II of that Schedule shall have effect with respect to the procedure of the disciplinary committee”

5. In the proper exercise of its function, the Disciplinary Committee must also adhere to the Statutory Rules governing the procedural aspects of its hearings. These include 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”), which outline the format of the hearing and available sanctions, and the Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI 1967/684) (“the Legal Assessor Rules 1967”) which set out the role of the Legal Assessor, including the provision of advice to the Disciplinary Committee by the Legal Assessor.
6. The Disciplinary Committee has the duty to hear a case, if it is referred from the Preliminary Investigation Committee.

7. The Disciplinary Committee acts in the public interest, which is stated in the Disciplinary Committee Members’ Guidance document at paragraph 8 as:

“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”
Constitution and referral of cases to the Disciplinary Committee

8. The Legislative Reform (Constitution of Veterinary Surgeons Preliminary Investigation and Disciplinary Committees) Order 2013 (the LRO) sets out the constitution of the Disciplinary Committee. It amended Schedule 2 of the Veterinary Surgeons Act 1966 (the Act), so that with effect from 1 July 2015 all members of RCVS Council will cease to be eligible to serve on the Disciplinary Committee. (Transitional arrangements apply between 2013 and 2015).

9. Under transitional arrangements, the current total membership of the Disciplinary Committee is 16, comprising both veterinary surgeons and lay members. This number is set to rise to 20 by 2015. The quorum for a meeting of the Disciplinary Committee is 5 of whom two must be lay persons and two must be veterinary surgeons. However, in practice, usually a total of seven veterinary and lay members sit to consider a case before the Disciplinary Committee, to ensure that if a member becomes unavailable during the hearing, the Inquiry is not compromised.

10. Generally, the Chairman of the Disciplinary Committee will be a lay member. Members are appointed for a term of 4 years, though this may be renewed.

How cases are referred to the Disciplinary Committee

11. Cases are referred to the Disciplinary Committee by the Preliminary Investigation Committee and, as with the Disciplinary Committee, the statutory authority for the Preliminary Investigation Committee is provided for in the Act. The constitution of the Preliminary Investigation Committee is also set out in the LRO. It requires at least a third of members to be lay persons, and at least a third of members to be registered veterinary surgeons independent of the RCVS. (Between July 2013 and July 2015 transitional provisions apply where some members remain appointed from RCVS Council). Currently, six veterinary surgeons and three lay members are appointed to the PIC each year. The quorum for a meeting of the PIC is three (of whom one must be lay and one must be a registered member).

12. The Chairman of the Preliminary Investigation Committee provides a report to the RCVS Council at the Council’s three meetings each year.

13. The Preliminary Investigation Committee considers complaints in a three-stage process and each stage has a protocol for the decision-making. There is detailed information on the complaints procedure available from the Professional Conduct Department. In brief, the three stages are:
Stage 1

The complaint is ‘assessed’ and, if it has the ‘potential’ to amount to disgraceful conduct in a professional respect, an allegation is raised against the veterinary surgeon complained about. There is a low threshold for identifying allegations, which may be also be referred to as ‘issues’.

Stage 2

Following investigation, there is ‘case examination’ of the complaint, the veterinary surgeon’s response to the complaint, and any other relevant evidence. The complaint is passed to the Preliminary Investigation Committee (stage 3) if there is an ‘arguable case’ against him or her.

Stage 3

The complaint is considered by the Preliminary Investigation Committee. There is a protocol for consideration of complaints, which gives guidance on which types of conduct, or behaviour are likely to be considered fundamentally incompatible with the individual continuing to be a veterinary surgeon. The Preliminary Investigation Committee will refer a complaint to the Disciplinary Committee only if there is a ‘realistic prospect’ of proving the case against the veterinary surgeon.

14. The ‘realistic prospect’ test applies to both the factual allegations and whether, if established, the facts would amount to disgraceful conduct (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 Disciplinary Committee when it is bound to fail, and the Preliminary Investigation Committee may properly decline to refer such cases. Equally, cases which indicate disgraceful conduct are for the Disciplinary Committee to decide.

15. A case will only come before the Disciplinary Committee if referred by the Preliminary Investigation Committee save in rare cases where the Council may refer a case directly to the Disciplinary Committee under Section 14 of the Veterinary Surgeons Act 1966 (“fraudulent entry” cases).

16. The Disciplinary Committee and the Preliminary Investigation Committee are independent of each other. It is the duty of the Disciplinary Committee (as it is for members of the Preliminary Investigation Committee) to observe absolute confidentiality in respect of any case past, present or future.
Types of complaints (conduct, conviction and fraudulent entry)

17. The following are statutory definitions of Disciplinary offences that will come before the Committee:

The “Conduct” Case

18. This means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee, where it is alleged that the Respondent has been guilty of disgraceful conduct in a professional respect.

19. The RCVS Code of Professional Conduct for Veterinary Surgeons 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 Code, it is (subject to appeal to the Privy Council) the final arbiter of what constitutes disgraceful conduct in a professional respect, and is not bound by the provisions of the Code to Professional Conduct.

The “Conviction” Case

20. This means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee where it is alleged that the Respondent has been convicted in the United Kingdom, or elsewhere, of a criminal offence rendering him or her unfit to practise veterinary surgery.

The “Fraudulent Entry” Case

21. This means a case which has been referred to the Disciplinary Committee, where it is alleged that the name of a person has been fraudulently entered on the Register. The Register in this case means the Register maintained under Section 2 or Section 8 of the Act.

The role of the Chairman

22. A hearing taking place before the Disciplinary Committee will require the involvement of various parties. These have been set out in detail below starting with the Chairman of the Disciplinary Committee.

23. The Chairman of the Disciplinary Committee has a number of specific powers under the Procedure and Evidence Rules 2004.
24. “The Chairman” is defined as “the Chairman of the Committee designated pursuant to paragraph 1(5) of the LRO, or a member of the Committee who presides in his absence pursuant to Rule 3 of these Rules;”

Specific Duties

25. The Chairman’s role includes:

   Presiding at any meeting, or in his absence, such member of the Committee as the Committee may choose, or have chosen. In practice, this will generally be one of the two Vice-Chairmen of the Disciplinary Committee (rule 3).

   a. Before the commencement of a hearing, to direct that the Notice of Inquiry may be amended, unless it appears to the Chairman that the required amendment cannot be made without injustice. The Chairman could, if he or she considered that the circumstances require it, postpone or adjourn the Inquiry (rule 5.6).

   b. Before the hearing date, the Chairman may consent to the Solicitor and the parties referring any legal issue to the Legal Assessor for him to advise the Committee on that issue (rule 9.2).

   c. The Rules give the Chairman the duty of announcing the Committee’s findings at the various stages of the process, including findings of fact/conviction, the decision in fraudulent entry cases (rule 18.4) and at resumed hearings (rule 19.3). The Chairman may ask the Legal Assessor to announce or read out any decision on his behalf.

   d. Where judgment stands postponed in any case and it appears to the Chairman that the Respondent has failed to comply with an undertaking given to the Committee, or that the proceedings should be resumed for any other reason, the Chairman may direct that the proceedings shall be resumed (rule 19.1).

   e. The Chairman or the Committee may, on their own initiative or upon the application of any party or the Solicitor, postpone or adjourn a hearing for such a period as appears to them to be reasonable (rule 22.1).

   f. The Chairman and the Committee are given supplementary powers of a general nature to waive any procedural requirement of the Rules where the parties consent or the interests of justice require, or to determine the procedure for any aspect of proceedings for which there is no specific provision in the Rules (rule 28).

26. In practice, the responsibilities of the Chairman of the Disciplinary Committee are far wider than the provisions of the Rules indicate. At the hearing, the Chairman leads and manages the Committee, both in private and public session. The Chairman also manages the running of the hearing in public session, assisted by the Legal Assessor.

27. The Chairman’s responsibility is to lead and manage the Disciplinary Committee to ensure that disciplinary hearings are operated fairly, consistently and transparently. The Chairman will
encourage a culture which upholds the highest standards of integrity and probity. He or she will provide a clear direction and focus for the other Committee members.

28. The Chairman will ensure that all members of the Committee are able to contribute constructively to Committee discussions, to the hearing process and to the decision making process. The Chairman will lead the Committee in private deliberations, ensuring that each member has a proper opportunity to contribute to the discussion and to ensure that at each stage of the process, a clear decision or consensus is reached.

29. In public session, the Chairman leads the proceedings and sets their tone. The Chairman holds the balance between the two sides in the case and ensures, guided by the Legal Assessor, that the hearing is conducted fairly and in accordance with the procedural rules.

30. The Chairman should seek to ensure that witnesses are comfortable and can be heard by members of the Committee, the shorthand writer and the press and to intervene as necessary to ensure this. The Chairman should also ensure that any special arrangements are made for vulnerable witnesses.

31. At each stage of the hearing, and after the Legal Assessor has given advice as to the propriety and relevance of the questions where necessary, the Chairman ensures that all Committee members have an opportunity to ask questions of the witnesses in open session.

32. During the decision making stages of the hearing, the Chairman leads the Committee discussion and ensures that the decision making process at each stage is approached in a structured manner and that the Committee’s reasoning is fully explored and appropriately recorded.

33. In terms of the practical aspects of management of the hearing, the Chairman works with the Clerk to the Committee on matters of time management and practical arrangements, allowing the Clerk to keep the parties, witnesses, press or other relevant persons appropriately informed.
The role of the Legal Assessor

34. At all hearings before the Disciplinary Committee, a Legal Assessor will be present to advise the Committee on questions of law, procedure and admissibility of evidence.

35. The Legal Assessor is appointed by the Council or the Disciplinary Committee. The Legal Assessor is a legally qualified person who has at least 10 years experience, and in practice will often be much more experienced. The Legal Assessor sits with and advises the Committee during the hearing and when the Committee retires into private session for discussion and decision-making.

36. The Legal Assessor is independent of the parties in the case. It is important for all those involved in the hearing to understand that the role of the Legal Assessor is to advise the Committee and that he does not participate in the decision-making. This is strictly the role of the Chairman and Committee members.

37. The Legal Assessor Rules 1967 set out the specific responsibilities of the Legal Assessor. These are:
   a. to advise the Committee on any questions of law and the admissibility of evidence which the Committee may refer to him
   b. to advise the Committee immediately of any procedural irregularity that comes to his attention
   c. to advise the Committee, whether asked or not, if it appears to him that, but for such advice, there is a possibility of a mistake of law being made.

38. The Legal Assessor Rules provide that the Legal Assessor's advice shall be given to the Committee in the presence of the parties. There is an exception where the Committee refers a question to the Legal Assessor whilst it is deliberating in private. However, should this occur, the Legal Assessor is required to inform the parties of the question put to him, and of his advice, as soon as possible which permits submissions to be made by the parties on any advice given. If requested by any party, the advice must be put in writing and a copy made available to the parties.

39. Although not specifically required by the Legal Assessor Rules, it is now accepted good practice that the Legal Assessor will give his advice to the Committee at each relevant stage of the hearing process in public before the Committee retires to consider its decision. This enables the parties' representatives to hear the advice and to have the opportunity to make submissions upon it before the Committee reaches a decision on the issue, rather than afterwards.
40. Should the Committee ever decide, unusually, not to accept the Legal Assessor's advice, the Legal Assessor Rules require that a record is kept of the question, the advice given, the refusal to accept it and the reasons for such refusal. A copy of the record must be given to every party (Legal Assessor Rules, paragraph 6).

41. The Procedure and Evidence Rules 2004 set out the process to be followed at hearings before the Disciplinary Committee. These Rules contain few express references to the role of the Legal Assessor. The parties may, with the permission of the Chairman, refer any preliminary question of law to the Legal Assessor for advice before the commencement of the substantive hearing. The Legal Assessor, as well as the Committee, may ask questions of the parties or any witness during the hearing and, subject to the requirements of the Legal Assessor Rules, where the Committee deliberates in private, this may be with, or without, the presence of the Legal Assessor. In practice, in RCVS proceedings, the Legal Assessor will always be present during the Committee's private deliberations.

42. Beyond the specific points above, the Legal Assessor Rules, in common with the rules for the Legal Assessors of most other regulatory bodies, do not otherwise prescribe the duties of the Legal Assessor. However, the role of the Legal Assessor is an important one, which in practice extends beyond the express functions set out in the Rules.

43. In general terms, as an experienced lawyer used to legal and hearing processes, the Legal Assessor is able to provide valuable support and guidance to the Disciplinary Committee, and in particular to the Chairman. In addition to his duty to advise on questions of law and admissibility of evidence, the Legal Assessor will provide helpful advice on procedural issues and on the practicalities of managing the hearing, matters with which Committee members may be less familiar. However, the Legal Assessor will always be conscious that his role is purely to give advice, not to participate in the actual decision making, which is purely the remit of the Committee itself. The Legal Assessor and the Committee members should be mindful of this distinction during the hearing process.

Advising the Disciplinary Committee Members on conflicts of interest

44. The Committee members will have been given guidance by RCVS on dealing with a situation where they find that they have prior knowledge of one of the parties, or of a witness in a case, or where they identify some other potential conflict of interest.

45. The RCVS now routinely asks all members of the Committee in advance of the hearing if they are aware of any matters capable of giving rise to a conflict of interest. This advance checking enables any issues to be dealt with in advance of the hearing. In appropriate circumstances the Chairman may seek the advice of the Legal Assessor on the membership of the Committee in advance of the hearing. It is still possible that such an issue may not come to the attention of a Committee member until the first morning of the hearing, or even as the evidence is given during the course of the hearing. The important point is that the member must promptly bring
this to the attention of the Chairman and the Legal Assessor. The Legal Assessor will then be able to investigate the issue, and advise on whether it does indeed create a problem and how the Committee should proceed. This may involve the Legal Assessor consulting with the parties’ representatives to explain the difficulty and consider whether it might be resolved.

On the day of the hearing

46. Before the first day of the hearing, the Legal Assessor will have received a copy of the charge and all the relevant documents in the case. He or she may have been provided with papers not yet submitted to the Disciplinary Committee members. This enables him to have a complete picture and overview of the case.

47. The Legal Assessor will meet with the Chairman and Committee members for a pre-hearing meeting before the formal commencement time. At this meeting, the hearing and the procedure can be discussed along with any potential issues raised.

48. Whilst it is appropriate for the Legal Assessor to keep some distance from the parties’ legal representatives, there are occasions when it can be helpful for the Legal Assessor to speak to the legal representatives about any preliminary issues before the hearing begins, or during adjournments in the hearing as such matters arise. Such discussions can facilitate the smooth running of the hearing when in public session, although ultimately all applications by either party must be made to the Committee in public session. However, such preliminary discussions with the Legal Assessor take place, they should usually be in the presence of both parties, in the interests of fairness.

49. There may be occasions when a Respondent attends the hearing without legal representation. An unrepresented Respondent is naturally likely to find the prospect of representing himself at the hearing daunting and will be unfamiliar with hearing procedure. The Legal Assessor may assist such a Respondent before the hearing, and during the hearing process itself, by providing guidance on how the hearing process works and the different stages. However, the Legal Assessor will not take on the role of advising the Respondent on the merits of his case, or how to present it. Any discussion with the Respondent should usually take place in the presence of the RCVS legal representative.

During the hearing

50. In RCVS disciplinary proceedings, it is usual for the Legal Assessor to read out the charge at the opening of the hearing. He will also ask the Respondent for his plea, that is whether the Respondent admits or denies the particulars of the charge.

51. The Legal Assessor also swears in the witnesses, that is, as each witness is called to give evidence, the Legal Assessor begins by taking the witness’ religious oath or affirmation.
52. Following this stage, the public hearing process is led by the Chairman of the Committee. However, he may refer to the Legal Assessor for guidance when necessary at any point during the hearing. Many Legal Assessors keep as full a note as possible of the evidence given, which can assist the Committee when considering the case at later stages.

53. When each witness has given his evidence-in-chief, and has been cross-examined by the opposing party, the Committee members have the opportunity to ask questions. The Committee usually retires briefly to formulate its questions. The Legal Assessor will retire with the Committee and will provide assistance in the formulation or advice on the appropriateness of the questions, if requested.

54. As indicated above, the Procedure and Evidence Rules 2004 envisage that the Legal Assessor is also able to ask questions of witnesses. This will happen relatively infrequently. This would be appropriate if the Legal Assessor is aware of an important issue which has not been elicited through questioning by the representatives or the Committee, or where an important point needs to be clarified. Again, if the Respondent is unrepresented, the Legal Assessor may offer some assistance to him during the hearing, but will be careful not to take on the role of acting as the Respondent’s advocate.

55. Before the Committee retires to consider its decision at each stage of the decision making process (facts, disgraceful conduct and sanction), the Legal Assessor will usually give the legal advice relevant to the particular stage in public, in the presence of the parties, before the Committee retire. For example, at the first stage on facts, the Legal Assessor will give advice on the law to be applied, and identify the issues which arise for the Committee’s consideration.

56. At the final stage, he will explain the approach the Committee should take to deciding on the appropriate disciplinary sanction, including explaining the range of options available, and will direct the Committee to refer to the “Disciplinary Committee Procedure Guidance” where it deals with the question of sanction.

57. It is usual practice in most cases for any legal advice to be given before the Committee retire to reach a decision. This ensures that the parties have the opportunity to hear the advice which the Legal Assessor will give to the Committee and, should they disagree or require the Legal Assessor to advise on another issue, they will have the opportunity to make submissions.

**During the Committee’s private deliberations**

58. The usual practice in RCVS disciplinary hearings is for the Legal Assessor to retire with the Committee and remain with them during their discussions.
59. The Committee members’ discussion will be led by the Chairman. The Legal Assessor will not usually intervene in these discussions, and should be careful not to give the Committee any indication of his opinion of the witnesses or the evidence either verbally, or by his body language.

60. The Legal Assessor usually assists by keeping a note of the Committee’s discussions, which can then be used to assist in the drafting of the Committee’s written decision.

61. The Legal Assessor’s note of the evidence given during the hearing will enable him to remind the Committee of the evidence, should the need arise.

62. If it proves necessary for further legal advice to be given to the Committee as a result of an issue arising during their private discussions, then any further advice must be given to the parties in public session. The Legal Assessor Rules 1967 provide that this may be done when the Committee resumes again in public session, having reached its decision. However, usually, and certainly if the advice is on a new or particularly significant issue, it may be wise for the Committee’s discussions to be interrupted and for the hearing to resume in public session so that the Legal Assessor can give the advice in public, to the parties.

**Drafting the decision**

63. It is now accepted as standard and good practice in regulatory proceedings, including those of RCVS, that committees will give written decisions with reasons at each of the relevant decision making stages. This topic is covered in more detail in the Disciplinary Committee Procedure Guidance.

64. As has previously been stressed, it is fundamental that the decision and the reasons must be those of the Committee, and not those of the Legal Assessor. However, it is appropriate for the Legal Assessor to take the lead in the formulation and writing up of the decision and reasons on behalf of the Committee. The Legal Assessor will be guided by the Committee as to the content of the decision and the reasons, and will be aided by the notes he has kept of the Committee’s discussions.

65. There are benefits to the Legal Assessor dealing with the drafting of the decision, not least that, as a lawyer, he is likely to have the experience and skills to draft a decision in suitable terminology and in suitable form for public consumption. He will also be able to ensure that the decision covers all the necessary areas and is drafted in a form that will withstand legal scrutiny in the event of any appeal. Whilst all the Committee must participate in the decision making process, and it is important that the decision is indeed that of the whole Committee, group drafting is notoriously difficult and it is more efficient to prepare the first draft for review by the Committee Members. They will then discuss amendments, until they are in agreement about the final version to be given to the parties.
The role of the Clerk

66. The Clerk to the Disciplinary Committee is appointed by the Registrar under the Procedure and Evidence Rules 2004.

67. The Clerk may be an employee of the RCVS, but not a member of the Council (rule 4).

Specific Duties

68. The Clerk’s role includes:

a. Responsibility for serving the Notice of Inquiry (from the Registrar) and a copy of the rules on the Respondent and other parties in the case (rule 5).

b. Responsibility for issuing any Notice by post (in practice the letter is sent by first class recorded delivery) to the Respondent’s registered address, or to his last known address if it appears to the Registrar that such service will be more effective (Section 26 of the Act).

c. Receiving the Respondent’s acknowledgement of the Notice of Inquiry and his indication of intentions regarding attendance at the hearing and representation (rule 6).

d. Receiving bundles of evidence from the RCVS and Respondent and notification of the Respondent’s intended plea in advance of the hearing (rule 9).

e. In a case where judgment has been postponed and the Chairman directs that the proceedings shall be resumed, responsibility to send the parties notice of the resumed hearing and copies of information received since the Inquiry (rule 19).

f. Responsibility for serving any Notice of Direction (from the Registrar) (Section 16(2) of the Act) and any associated reasons (rule 18.5) of any decision of the Committee.

g. Receiving any applications to vary a suspension (Section 18(2) of the Act 1966).

h. Receiving and listing within 3 months, applications for restoration of a veterinary surgeon’s name to the Register, or for early removal of a suspension of registration (rule 20).

i. Receiving any application for the postponement of a hearing which has been listed before the Disciplinary Committee must be made (rule 22). The Clerk must notify the Respondent and the parties of any decision to postpone or adjourn an Inquiry and any new date.

j. Arranging for the recording of public Disciplinary Committee hearings and the provision of a copy of the transcript to a party (rule 26).

Additional Responsibilities

69. The Clerk has responsibility for setting hearing dates for the earliest convenient or appropriate date. In addition, the Clerk ensures a quorate and a properly constituted Disciplinary Committee is arranged for the date fixed. In practice the Clerk invites all members to sit on hearings and ensures that at least seven members are listed to sit on each hearing. The Clerk ensures that arrangements are made for a suitably qualified Legal Assessor to attend each hearing and that members and Legal Assessors are aware of the appropriate expense and loss or earnings or remuneration, as relevant.
70. The Clerk ensures that notices of times and hearing dates, bundles of evidence and papers are sent out at appropriate times in advance of the hearing date. The Clerk ensures that a suitable venue and accommodation for the hearing is arranged. On the day of the hearing, he or she ensures that the hearing room is correctly laid out and all necessary arrangements are in place. The Clerk ensures that a copy of the appropriate legislation and guidance are available to the Committee and the Legal Assessor for each hearing.

71. At the hearing itself, the Clerk ensures that the hearing runs smoothly and provides support to the Chairman and the Committee. The Clerk liaises between the Chairman and the Committee and the parties and witnesses, keeping them advised of progress and timings (for example when the Committee are deliberating in private session), and explaining any delays, to ensure that parties, their representatives and witnesses are available as needed at the appropriate times and not inconvenienced unnecessarily. The Clerk will also liaise with members of the public and press present at the hearing.

72. The Clerk ensures that a transcript of the hearing is kept. He or she will also assist with press enquiries about hearings along with the RCVS Communications Department.

73. After a hearing, the Clerk ensures that the hearing room is cleared of discarded papers and that such papers are properly destroyed.

74. In advance of the hearing, the members of the Committee are provided with the following information, the Notice of Inquiry, whether the Respondent admits the charge or not, and, if agreed between the parties, bundles of evidence and skeleton arguments. In practice what is to be included in the bundle of evidence from the RCVS is usually agreed by the parties, where it is not, the evidence which the Respondent does not agree should be in the bundle is not included. It is unusual for skeleton arguments or the Respondent's bundle of evidence to be provided in advance of the hearing.

75. The Legal Assessor is provided with the material made available to the Committee and may also be provided with other evidence from either the RCVS or the Respondent, for example, where there is a dispute as to the admissibility of the evidence.

76. If the Clerk requires any legal advice about the listing or management of the case, advice should be sought from the Registrar or Legal Assessor for the Inquiry. In any event, the Legal Assessor will be provided with any material provided to the Committee.
Members’ responsibilities

77. Hearings before the Disciplinary Committee involve matters of great importance to the Respondent. Most of those who appear before the Committee have had no previous experience of its proceedings, or perhaps of any legal proceedings. It is important for Committee members always to have in mind the gravity of the matters at stake for the Respondent and also, for the witnesses who give evidence.

78. Members must also be aware when they sit at a hearing that they are in the public gaze. They are fulfilling a judicial role and to those who otherwise have little experience of the RCVS, the Committee members represent its public face. The proceedings are open to the public and often attract press attention. Reports of proceedings may appear in the veterinary and other press.

79. The Committee’s reputation depends on the conduct of its members, as well as on the decisions it makes. Any lapse by an individual member is likely to reflect on the standing of the Committee as a whole and therefore of the RCVS. Some instances of inappropriate conduct during a hearing can constitute grounds for appeal. High standards of conduct and integrity are essential characteristics for a sitting Disciplinary Committee member.

80. Below are set out some of the issues Committee members should keep in mind in the course of fulfilling their duties.

Conduct at hearings

81. On the matter of dress, Committee members attend the hearing wearing robes, as does the Legal Assessor and the parties’ advocates. This lends dignity and solemnity to the hearing and emphasises the importance of the proceedings. Members should dress appropriately under their robes as well. In tribunal proceedings, as in the courts, formal and smart dress is usual and expected and demonstrates that the Committee members are treating the hearing with appropriate seriousness.

82. During the hearing (and on the way in and out of the hearing room) members are in the public gaze and that of the parties. Members are fulfilling a judicial role and should behave accordingly. It can be easy to forget how closely one can be observed. Excessive informality gives the impression to the parties that the case is not being accorded respect.

83. Generally, Committee members should try to appear relatively neutral in facial expression and alert, with their attention focused on the proceedings. It may well go without saying that private conversations between members, or inappropriate laughter, obvious lack of attention, eating or falling asleep are likely to undermine confidence in the process!

84. Members of the Committee at hearings should scrupulously avoid informal contact with the parties, their witnesses and representatives. It would be wise for any member of the Committee who encounters anyone involved in the case to avoid any discussion or even informal contact.
during the hearing. If this situation arises inadvertently, then the member should tell the Legal Assessor and Chairman immediately.

**Questioning and not appearing to show partiality**

85. During the hearing the Chairman of the Disciplinary Committee will invite members to ask questions. In most cases, the practice is for the Committee to retire to discuss the questions they wish to ask. This gives the Legal Assessor an opportunity to give advice if there is any doubt about whether the question is appropriate or relevant.

86. Members’ questions should be for clarification of any points that remain unclear after the advocates’ questions, or may be questions which have not been asked. The purpose is not to go over all the evidence of the witness again or to ask questions which have already been answered.

87. Members should avoid indicating, or implying in their tone of voice, or phraseology of the question, that they have reached a conclusion one way or the other. Questions should be phrased in a neutral manner. Generally, “open” questions which lead the witness to give their own explanation are more appropriate than “closed” or leading questions which suggest an answer.

**Conflict of Interest/bias issues**

88. Members should consider their declarations of interest and general RCVS Council policy on these issues.

89. Where a member becomes aware of a potential conflict of interest or bias issue before the hearing date, it is essential that the Chairman and the Clerk to the Committee should be notified as soon as possible. For such a matter to come to light for the first time at a hearing may disrupt the process and mean that the hearing cannot proceed. Members selected for sittings are asked well before the hearing whether they know the Respondent. The members of the Committee should read any papers provided in advance with care, in case they trigger some recollection or awareness of such a conflict of interest.

90. If a member becomes aware of a potential conflict on the day of the hearing, or once a hearing has begun, it is important to disclose this promptly to the Chairman and the Legal Assessor who will advise on how to proceed. On occasions, the matter can be stated openly to the parties at the beginning of the hearing. This transparency may result in a satisfactory outcome so that the case can proceed as planned.

91. A conflict of interest may result in the appearance of bias against a Respondent. If there is a reasonable likelihood of the perception of bias, a member should not sit with the Committee.
The legal test of bias is “whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”.

Can the member use his own expertise or specialist knowledge?

92. It has been said many times by the courts that the professional members of a disciplinary tribunal may and should use their own expertise in deciding on the issues before them. This is particularly relevant when considering clinical issues and the standards adopted by the profession.

93. As far as any member of the Committee is concerned, during the hearing itself, it is most important that any doubts or questions that come to mind are expressed to the parties. If the member remains silent then those doubts go unanswered. They must be brought out and put to the parties, usually in questions, so that the parties have the opportunity to deal with these matters. Such doubts or opinions should not be voiced for the first time in private when the Committee is considering a decision. Similarly if any member wishes to look up a reference in a textbook, the procedure is to ask for that textbook to be produced during the hearing and to refer to the passage required. It has been held to be unjust for the Committee to ask for a reference book when deliberating in private and to follow it without any opportunity for the parties to know that there was that doubt, or that the answer was provided in that reference book.

Consistency in decision making

94. Consistency of approach in the way cases are dealt with is important. If a Respondent is dealt with in a markedly different way from another who committed much the same offence, then there is likely to be an appearance of unfairness and a sense of grievance on the part of the Respondent.

95. Consistency of approach is not always easy and is made more difficult because the composition of the Disciplinary Committee varies and because the frequency of cases is not great. Further, whilst general consistency is important, it is also necessary to have in mind that each case is different and must be decided on its own particular facts and merits. General consistency of approach is promoted by adopting a structured and principled approach to decision making, for example by following the principles set out in the Disciplinary Committee Procedure Guidance. In addition the RCVS barrister and the advocate for the Respondent should address the Committee on previous relevant cases.

96. Criticism of lack of consistency can be avoided by ensuring that there is a real rationale for what may at first appear to be an inconsistent decision and, very importantly, by a clear explanation of the reasons for the decision.
97. Using training sessions to exchange experiences and views between members is useful. Reviewing appeals in regulatory case law is also a good learning process.

Confidentiality

98. Although Disciplinary Committee hearings are held in public, and so are in the public domain, Disciplinary Committee members should not discuss cases which they have heard, or comment on cases, even if they did not sit on the particular case.

99. As far as papers submitted by the parties for the hearing are concerned, the rule to which members should adhere is that documents submitted by the parties are for use only for the purposes of that hearing. They are not provided for use of any kind by anyone without the parties’ consent outside the hearing.

100. The Committee has facilities for the confidential disposal of papers and members should take great care in returning papers for that purpose, or disposing of them in an appropriate manner themselves.

101. Importantly, there must be complete confidentiality about how the decision was taken and about all the Committee’s deliberations in private session. These discussions should remain confidential. A division of opinion in the Committee should not be disclosed. The Disciplinary Committee’s procedural rules provide for majority decisions to be reached by a voting process and there is no place for any form of “dissenting judgment” by a member who disagrees with the decision of the majority, as members might have seen in the decisions of the courts.

Appearing before the Committee

102. A member of the Committee should not give advice to the Respondent or RCVS on a case. It would also be inappropriate for a member to take any role, for the Respondent or RCVS, in the investigation of a complaint, or preparation of a case that may be put before a Committee in the future. It goes without saying that it would be incompatible with membership for a member to appear in support of any party before the Committee.

103. However, membership of the Committee does not deprive a member of his ability to be a witness to fact at a hearing (at which he is not sitting), although it is only on rare occasions that this is likely to occur. A member of the Disciplinary Committee should not agree to act as an expert witness in a case, other than in exceptional circumstances.

Speaking to the press

104. A member of the Committee may speak to the press about the general nature of their committee work. This does not mean that they should go out of their way to do so and it would
be prudent if the member concerned only did so on notice to the Chairman of the Disciplinary Committee and Registrar of the RCVS.

105. However, no comment should be made by a member to the press about a case in which that member was involved personally, as a sitting member, or to any other case which came before the Committee of which they have knowledge. When dealing with the press, members should remember that anything they say, even in a casual aside, is likely to be quoted or, worse still, misquoted and attributed to them.

106. Members who have retired from the Committee will know that their opinions carry more weight because of their previous service on the Committee. They should not offer their opinions or criticisms about the way the Disciplinary Committee operates generally, or has done in any particular case. If the former member feels strongly about any such matter, it is suggested he or she should consult privately with the Registrar of the RCVS and not through the media.

Not taking Advantage of Membership

107. Members should not seek to gain advantage for themselves by their membership of the Disciplinary Committee. This also applies to members who have recently retired from the Committee. It would not be appropriate, for example, for members to advertise their role as a Disciplinary Committee member.

The RCVS Legal Team

108. The practice is for the RCVS to appoint a solicitor to represent it at all Disciplinary Committee meetings identified in the Procedure and Evidence Rules 2004 as “the Solicitor”. The solicitors presently appointed are Penningtons Solicitors LLP. Most professional disciplinary bodies will have one or more firms of solicitors (often depending on the volume of their caseload) to prepare and present their cases, which has the advantage that the solicitors become familiar and experienced, both with the relevant Committee’s procedural processes and with the professional issues in question. The Solicitor may present the case to the Disciplinary Committee, although in practice a barrister, either in house with the solicitors, or in private practice, will usually present the case.

109. The RCVS Professional Conduct Department, Penningtons solicitors, and any external barrister, have a duty to obtain and present to the Committee the evidence upon which it is claimed the allegations are shown to be true. The duty is to present the case on behalf of the RCVS fairly and transparently. The duty is not to secure a particular decision against the Respondent, but to present the relevant facts to the Committee in a fair manner, to enable it to reach a proper decision in the case.
110. The Committee should expect the RCVS Professional Conduct Department, Penningtons solicitors, and any external barrister, to be open and fair in all dealings with the Committee and the Respondent. They have a responsibility to assist the Respondent upon matters of procedure, particularly when the Respondent is unrepresented.

**The Respondent’s representation**

111. The Respondent is the veterinary surgeon against whom the allegations are made. In a fraudulent entry case, the Respondent is the person whose name, it is alleged, is fraudulently entered into the Register.

112. The Respondent is usually represented at the hearing, often paid for by professional indemnity insurance cover through the Veterinary Defence Society. This representation is normally carried out by a solicitor and counsel. Nonetheless, the Respondent may represent him or herself, or alternatively, appear before the Committee with a “friend”. In these last circumstances, the Chairman should make it clear at the outset that only one of them will address the Committee and conduct the case. It is not helpful if both the Respondent and “the friend” are addressing the Committee. A “friend” should also be asked whether he has had an opportunity to familiarise himself with the Committee’s procedures, and it is helpful for the Committee to know what his association with the Respondent is. It is also important to ascertain whether the “friend” intends to give evidence. It is not usually appropriate for an individual representing the Respondent to be a witness on his behalf as well. Usually a “friend” brought to Committee meetings will sit with the Respondent, advise him, take notes for him and give support to him during the case.

113. A Respondent who appears without any representation can present a particular challenge in terms of the management of the hearing if, as is likely, he has little or no experience of legal processes and the Committee’s procedures. It is usual that the Chairman and the Legal Assessor will take particular care to explain the process to the Respondent and to guide him through it. The RCVS Professional Conduct Department, Penningtons solicitors, and any external barrister, are also expected to explain relevant procedural matters before and during the hearing.

114. Assistance given in such circumstances is only in relation to procedural issues. It is not appropriate for the RCVS Professional Conduct Department, Penningtons solicitors or any external barrister to give advice to the Respondent on the substance, or merits, of his case, or how to present it. The Disciplinary Committee will ensure that the Respondent has everything he needs to conduct the case properly, which may sometimes involve short adjournments so that he may collect his notes and thoughts. On occasions, where the Respondent is
unrepresented, the Chairman, or the Legal Assessor, may consider it necessary to draw to his attention to the important points in the case which he may not have addressed.

**The shorthand writer**

115. The Procedure and Evidence Rules 2004 require that all public hearings of the Disciplinary Committee should be recorded. A shorthand writer will be present at the hearing. The purpose is to provide a verbatim transcript of the proceedings, which is particularly important if there is an appeal. In addition, there is the benefit that, should there be any debate during the proceedings about what was said and how it was said, this can be checked from the record which is being kept contemporaneously by the shorthand writer.

116. No record is kept of the private deliberations of the Committee, as is the case for the majority of professional bodies.

**Hearing procedure**

117. In the proper exercise of its function, the Disciplinary Committee must also adhere to the statutory rules governing the procedural aspects of disciplinary hearings. The Disciplinary Committee has also produced its own Disciplinary Committee Procedure Guidance, first published in December 2007.

**Public Hearing**

118. The Procedure and Evidence Rules 2004 provide that, in principle, all proceedings before the Committee shall take place in the presence of all parties who appear and shall be held in public.

119. The Human Rights Act 1998 (specifically Article 6 of the ECHR) provides a Respondent with a right to a public hearing. It is regarded as an important principle that regulatory hearings take place in public to provide transparency and ensure accountability for decisions taken. Conducting hearings openly, in public, promotes the confidence of the profession and the wider public that the regulatory process is fair and robust.

120. There are nevertheless cases where it would not be in the interests of justice for the proceedings to take place in public. The Rules allow the Committee to direct that the public be excluded from the proceedings, or any part of them (other than the announcement of a finding, determination or judgment), where it appears to the Committee to be in the interests of justice.
121. The “interests of justice” are not defined in the Rules and the Committee is likely to interpret this in a narrow sense, in view of current thinking about the need for transparency in all publicly important affairs. On occasions, in the particular circumstances of the case before them, the Committee may consider that it is not in the interests of justice to hear evidence in public from young children, or where medical records or other confidential data about a person are in issue and being given in evidence.

122. Arguments such as potential adverse publicity arising from the case, or embarrassment to the Respondent’s family or associates, will be common to virtually all Respondents who appear before disciplinary committees and are very unlikely to be successful.

123. The Rules provide that the public may not be excluded from “the announcement of a finding, determination or judgment of the Committee”, so there is no question of complete confidentiality for the Respondent.

124. Exclusion of the public from the hearing would, of course, include any representatives of the press who are present to report the case. The Committee should be aware that members of the press may object to being excluded from what would otherwise be a public hearing, unless good and sound reasons are given to them.

The Pre-inquiry Procedure

125. As soon as possible after a disciplinary case has been referred to the Disciplinary Committee by the Preliminary Investigation Committee, the Clerk shall serve a Notice of Inquiry, together with a copy of the Rules, on the Respondent. The Notice sets out various matters including the charge against the Respondent, when the Committee will hold an Inquiry into the charge and that the Respondent may attend the Inquiry and be represented. It invites the Respondent to say whether he admits or denies the charge and informs him about the manner in which he may apply for a postponement of the hearing. It warns him that the Inquiry may proceed in his absence.

126. Within 10 days of service of the Notice of Inquiry, the Respondent shall send to the Clerk, an acknowledgement of service of the Notice of Inquiry stating (a) that he has received the Notice of Inquiry (b) whether or not he intends to attend the hearing and (c) whether he intends to be represented and, as appropriate, the name of the Solicitor representing him.
Service of the RCVS's evidence

127. Not less than 21 days before the hearing date, the RCVS Professional Conduct Department, or the Solicitor, shall send to the Respondent (a) a copy of any documentary evidence on which the RCVS intends to rely at the Inquiry, (b) a list of the witnesses whom the RCVS intends to call to give evidence against the Respondent and (c) for each witness whom the RCVS intends to call, a witness statement or, in exceptional circumstances, a summary of the matters on which the witness shall give evidence. If, at a later stage, the Solicitor identifies additional evidence and witnesses whom he wishes to call in support of the disciplinary case, then copies of additional documentary evidence and a witness statement for each additional witness shall be served on the Respondent.

Disclosure of Documents

128. At the same time as the RCVS Professional Conduct Department or the Solicitor serves the RCVS's evidence, the Respondent must be sent any formal complaint, statement, admission, explanation, or similar documents sent to the RCVS by any party to the inquiry, and any evidence which may assist the Respondent's case or harm the RCVS's case. These are documents which may have been acquired in the course of investigating and preparing the disciplinary case against the Respondent, but which have not already been served.

129. It will be observed that, in common with court proceedings and most other professional bodies' proceedings, when allegations are made against a Respondent it is the duty of the Solicitor, in this case in the role of a prosecutor, to inform the Respondent with as much particularity as can be managed, what the nature of the case is against him and how it will be proved. It is a rule of natural justice that whenever an allegation is made, in order to answer those allegations, the Respondent must know the nature of the case being put against him. This enables him to prepare his defence to those allegations. It is the duty of the RCVS Professional Conduct Department and the Solicitor to disclose evidence which has come to hand during the investigation of the complaint, or otherwise, which may assist the Respondent's case or harm the RCVS's case. This is a rule that is followed in criminal proceedings.

The Procedure of the Disciplinary Inquiry

The reading of the charge

130. Once the charge has been read, the Respondent may object to the charge or to any part of it, in law. The Solicitor may respond. The Respondent has the right of reply.

How does the Respondent plead?

131. The Respondent is asked whether he admits or denies the charge, or each head of charge. His plea will be recorded and the hearing will then proceed accordingly. If there are admissions to all or any of the heads of the charge, there may be an agreed basis of plea between the parties
which will be presented to the Committee by the Solicitor. It may then be unnecessary for the RCVS to call any or some of its witnesses. If the charge is denied in its entirety, or certain parts are denied, the RCVS must call the evidence it considers is required to prove the case.

Non appearance of the Respondent

132. The Committee may proceed in the Respondent's absence if it is satisfied that the Notice of Inquiry was properly served and that it is in the interests of justice to do so. Proof of service is normally provided by evidence from the Clerk. If the Notice of Inquiry is proved to have been served then it will have stated the date and place where the Inquiry is to be held. There may have been other correspondence with the Respondent which indicates his or her knowledge that the Inquiry was to be held that day.

Adjournments

133. The Committee, or Chairman, may on their own initiative, or on the application of any party, postpone or adjourn any hearing of the Committee for such period as to them appears reasonable. When deciding to postpone or adjourn a hearing, the Committee must have regard to all the circumstances, to the respective views and interests of the parties and to the interests of justice in the case.

134. When considering an application for an adjournment the Disciplinary Committee, should consider matters such as the chronology of the case, any delays, any previous applications for adjournments, the potential weight of the evidence (if any) that is being sought for the purposes of the adjourned hearing, and the sufficiency (if it is in issue) of the Respondent's medical reasons, the convenience of witnesses, costs, or any other reasons justifying an adjournment. The Legal Assessor will advise on how to approach the decision, in accordance with relevant case law on the issue. There have been several decisions in the regulatory context in recent years, and this is an area that needs thorough and careful consideration whenever it arises.

A conviction case or a conduct case?

135. This makes a difference and affects the manner of the proceedings that follow. In a conviction case, proof of the conviction is normally by production of the certificate of conviction or the admission of the Respondent. The Committee will be required to consider and decide whether the nature and circumstances of the offence are such as to render the Respondent unfit to practise veterinary surgery.

136. A conduct case, if it is not admitted, will be approached differently. If the conduct is not admitted, then it has to be proved and the burden of proof is upon the RCVS throughout.
137. The RCVS barrister will commence by addressing the Committee in an opening statement giving details of the facts, how they are to be proved and what the issues are. Proving facts usually involves the RCVS barrister calling evidence from one or more witnesses for the RCVS as to the facts of the incident.

138. A statement of each witness may have been provided to the Committee. The Committee are often provided with bundles of evidence prior to the hearing. Usually, the contents of these are not agreed, but they are provided so the Committee can read in advance and can be prepared. Bundles can only be provided to the Committee if both parties agree.

139. When called to give evidence, the witness may either be asked questions by the RCVS barrister to elicit his evidence, or, as happens often now, his written statement may be taken as read and the witness may simply be asked to adopt the statement, (that is, confirm that it is his statement and represents his or her evidence about the matter). The witness will then only be asked questions by the RCVS barrister about the disputed, or particularly important, areas of his statement. This stage is known as the witness’ “examination in chief”. Generally, the RCVS barrister will not ask leading questions or cross-examine his own witness. A leading question is one which suggests an answer, rather than putting the question in an open manner.

140. The Respondent or his representative may then cross-examine the witness, which involves challenging the witness’ account on disputed issues. Leading questions may be asked in cross-examination. The RCVS barrister may then re-examine the witness on any points arising. The Committee members may ask questions of the witness, and may retire to consider what questions to ask.

141. When the RCVS barrister has called all the witnesses in support of the allegations this is normally indicated by the words, or something similar to, “that is the RCVS’s case”.

A submission of ‘no case to answer’

142. Under the Procedure and Evidence Rules 2004, when the RCVS barrister has called all the evidence on behalf of the RCVS and has closed the RCVS’s case, the Respondent may make a submission:

- that the barrister has not adduced sufficient evidence upon which the Committee could find the facts in the charge proved, or the conviction proved;

- that, even if the facts were proved, they are not such as to constitute disgraceful conduct in a professional respect, or that the conviction, even if proved, would not render the Respondent unfit to practise veterinary surgery.

143. The RCVS barrister has the right to reply to the Respondent’s submissions of no case to answer. The Committee then considers whether or not to uphold the Respondent’s submissions
in respect of any of the relevant heads of charge. The Legal Assessor will advise the Committee as to how to approach this task.

144. It is useful at this point to be mindful of the burden of proof in the case, which is upon the RCVS represented by the RCVS barrister. The Respondent does not have to prove his innocence. The question is, when the RCVS barrister has called all of the evidence on behalf of the RCVS, whether the charge could be proved by that evidence?

145. In terms of a decision on the facts alleged in the heads of charge, the legal test usually applied was explained in a criminal case, *R v Galbraith*. That case, (bearing in mind that it uses the terminology of the criminal court) stated:

“If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty – the judge will stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case; (b) Where, however, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’ reliability, or other matters which are generally within the province of the jury and where on one possible view of the facts there is evidence upon which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

146. The Committee will also be reminded of a further explanation in the case of *R v Shippey*, where it was stated that the requirement to take the prosecution evidence at its highest did not mean “picking out all the plums and leaving the duff behind”. The Committee should assess the evidence and if the evidence of the witness upon whom the prosecution case depended was self contradictory and out of reason and all common sense, then such evidence was tenuous and suffered from inherent weakness. It is necessary to make an assessment of the evidence as a whole. It is not simply a matter of the credibility of individual witnesses, or of evidential inconsistencies between witnesses. In *Brooks v DPP*, it was stated that questions of credibility of witnesses, other than in the clearest of cases, do not normally result in a finding that there is no prima facie case.

147. If the submission of the Respondent relates to whether the facts could amount to professional conduct in a professional respect, or whether a conviction could render the Respondent unfit to practise veterinary surgery, it is for the Committee to make that decision by applying judgement to the facts or the conviction.

148. If the Committee rejects the Respondent’s submission the case will continue. If the Committee accepts the Respondent’s submission, then the charge will not proceed further and the case will be dismissed.
The Respondent's Case

149. After the close of the RCVS's case, the Respondent may present his case. There is no obligation on the Respondent to serve his case on the RCVS in advance, and generally he does not do so. He should, however, serve any expert evidence on which he proposes to rely in advance of the hearing. He may give sworn evidence himself, in which case he may be cross-examined by the RCVS barrister and questioned by the Committee. Alternatively, he may make a statement without going into the witness chair and without making an oath or affirmation. In these circumstances, he may not be cross-examined, but may still be questioned by the Committee. Generally, less weight will be afforded to what a Respondent says if he has not given sworn evidence which has been subjected to cross-examination.

150. The Respondent may call witnesses to give evidence in support of his case. Usually, the Respondent should give his evidence before any other witness called by him. The same approach may be adopted as in relation to the RCVS witnesses, namely the witness's statement may stand as his evidence in chief. The witness may be cross-examined by the RCVS barrister. The Respondent may then re-examine the witness on any points arising. The Committee members may ask questions of the witness, and may retire to consider what questions to ask.

151. The Respondent may adduce documentary evidence either by agreement, or following successful application to the Committee. The Respondent or his advocate may then make submissions as to the facts. On some occasions, the Respondent or his advocate may feel it appropriate to make submissions as to facts and misconduct together at this stage. The RCVS barrister is entitled to make submissions by way of reply to the Respondent's case (either facts and misconduct together, or separately at different stages, depending on the approach taken by the Respondent). The Respondent or his advocate then has a right to make a final reply. In practice, the RCVS usually makes its closing submissions first, followed by the Respondent.

Decision-making including sanction

The Decision making stages

152. Detailed guidance on how to approach the three stage decision making process can be found in the document “Disciplinary Committee Procedure Guidance”. This guidance sets out the three stages – (1) facts, (2) disgraceful conduct in a professional respect or conviction rendering unfit to practise and (3) sanction. It also sets out the issues to be considered at each stage and gives guidance on how to approach the decision-making process. Members of the Disciplinary Committee should have this document to hand at hearings and refer to it during the decision making stages.


Stage 1 – Facts

153. After all the evidence and closing speeches are heard, the Committee will deliberate in private about whether they find the facts on a conduct case proved, or whether they find the conviction renders the Respondent unfit to practise veterinary surgery. It is important for the Committee to consider each head of the charge separately, if there is more than one. The Committee must consider the evidence against the requisite standard of proof and remember that the burden of proving the allegation is on the RCVS.

154. The decision will usually include the factual basis for the findings, including determinations of substantial evidential disputes.

155. The Committee, as currently composed, contains within its membership considerable practical experience, both of veterinary practice and in human affairs generally. Each Committee member should offer his own views and listen carefully to those of other members.

156. The Chairman will announce the Committee’s findings when the Committee returns to the Council chamber.

Stage 2 – Disgraceful conduct/Conviction rendering unfit to practise veterinary surgery

157. In a conduct case, once the Committee has found the facts proved, the next stage will be to decide on whether those facts constitute disgraceful conduct in a professional respect.

158. In a conviction case, the decision for the Committee is whether that conviction renders the Respondent unfit to practise veterinary surgery (the facts giving rise to that conviction having already been proved in the relevant Court).

159. The parties may both make submissions putting forward their arguments on these issues.

160. This decision is not decided in accordance with the legal standard of proof, but according to the judgement of the Committee.

Stage 3 – Final outcome - Sanction

161. At this stage of the proceedings the Respondent will generally introduce matters of general mitigation and character evidence. These will need to be carefully considered and taken into account by the Committee. After these submissions are made the Committee will retire and consider its decision in private.
162. At stages 2 and 3, it is important to consider the Disciplinary Committee Guidance. This sets out factors that may be “aggravating” or “mitigating” and therefore may be applicable at stages 2 and 3, or only at stage 3. Usually the relevant aggravating and mitigating factors at each stage should be identified in the written reasons.

Sanctions

What may the Committee do by way of sanction if the case is proved?

163. The Committee should consider the Disciplinary Committee Procedure Guidance. This explains that in deciding on the appropriate sanction, it should begin consideration at the “lowest” end of the range of sanctions, in order to comply with the requirement of proportionality.

164. The first option is that the Committee may decide that it is appropriate to apply no sanction. If the Committee decides a sanction is required, it will next consider whether to postpone judgment for a period not exceeding two years. This course is often appropriate when the Committee wishes to monitor the professional conduct of the Respondent over a period of time.

165. If the Committee postpones judgment, then it may invite undertakings from the Respondent about his conduct in the future before judgment is finally given. The Respondent must be willing to give these undertakings (they cannot be imposed upon him) and generally, the undertakings should be set down in the written record of the Committee’s determination, usually at the time of the hearing. It is crucial that clear language is employed so that the Respondent knows what is required. This is important because where a judgment stands postponed and it appears to the Chairman from information received since the Inquiry, that the Respondent has failed to comply with any undertaking given to the Committee, then he may order that the proceedings be resumed as soon as practicable. At any such resumed hearing, the RCVS barrister may adduce evidence about the conduct of the Respondent since the previous Inquiry. The Respondent is entitled to call whatever evidence he thinks is relevant and to address the Committee on its next determination. At that point, the Committee may postpone judgment again if appropriate, or deal with the matter by other means. The Rules provide that a judgment may be postponed for two years on two occasions.

166. The next alternative is that the Committee may give its judgment forthwith. If the Committee does not postpone judgment, it will consider the available sanctions in the order set out below.
   a. the Committee may reprimand and/or warn the Respondent as to his future conduct; or
   b. direct that the Respondent’s registration be suspended for a specified period. This is a lesser sanction than being struck off the Register. In the case of suspension, it should be noted that the Respondent will not be required to apply to be restored to the Register because restoration is automatic at the end of the specified period of suspension; or
   c. direct the Registrar to remove the Respondent’s name from the Register. The Disciplinary Committee Guidance provides information on the applicability of each sanction or outcome.
167. The Disciplinary Committee has no jurisdiction to award costs or compensation against either party.

Evidence and voting

Evidence, and Burden and Standard of proof

168. The Procedure and Evidence Rules 2004 provide that the Committee may receive oral evidence, documentary evidence, or other evidence of any fact which appears relevant to the case in question. This might include, for example, video tape, audio tape, DVD, or, if justified, a view of the scene.

169. The Rules provide that all documents put before the Committee shall be deemed authentic, unless proved otherwise to the satisfaction of the Committee. Where the decision of any court or tribunal is relevant to an issue, a conviction, or judgment, may be proved by the production of a certified record of the conviction or judgment from the relevant court. The finding of another disciplinary tribunal may be proved by production of a certified record of the findings and judgment.

170. The Committee, or Chairman, may waive any procedural requirement of the Rules where the parties consent, or the interests of justice so require. It will be a rare occasion when waiver occurs without the parties’ consent.

171. The burden of proving the facts alleged is upon the RCVS. The Respondent does not have to prove his innocence.

172. As to the standard of proof, the Rules provide that the charge shall be proved so that the Committee is satisfied so that it is sure.

173. It is good practice to apply the burden and standard of proof consciously in every case before coming to a final conclusion.

Voting

174. The Procedure and Evidence Rules 2004 provide that “all acts of the Committee shall be decided by a majority of the members present”. 
175. Generally, the Committee reaches a unanimous decision. If not, the decision is put to the vote. When this course of action is taken, the matter is to be put in the form of a motion by the Chairman. The Chairman may vote for or against the motion.

176. Where on any question the votes are equal, the Chairman shall not have a casting vote. The Rules require that the question be resolved in favour of the Respondent, except under Restoration of Names after Removal procedure under Rule 20. Therefore, if an applicant is applying to have his name restored to the Register and votes are equal upon the question, the Respondent applicant shall not be restored to the Register.

177. For the avoidance of doubt, a decision to postpone judgment is to be regarded as a decision in favour of the Respondent, unless he has indicated that he has opposed postponement of judgment.

Applications for restoration and appeals

178. Following the conclusion of a disciplinary hearing, the legislation provides for appeals and applications for restoration by the Respondent.

Appeals

179. A Respondent may, at any time within 28 days from the date of service on him of notice of the Committee’s decision, appeal against that decision to the Privy Council. The Council of the RCVS may appear as the Respondent on any such appeal. If no appeal is brought against the decision within the 28 days, then the Committee’s decision takes effect on expiration of the appeal period.

Restoration Applications

180. Pursuant to Rule 20 of the Procedure and Evidence Rules 2004, where a person’s name has been removed from the Register in pursuance of a Committee’s Direction, then that person may apply to have his name restored. Any such application shall not be made to the Committee within 10 months of the date of removal, or within ten months of a previous application.

181. Upon an application for restoration, the burden of proof is on the Applicant to satisfy the Committee that he or she is fit to be restored to the Register. Factual assertions by the Applicant (who was the Respondent at the initial hearing) may be proved on the balance of probabilities.
182. At an application for restoration hearing the Committee will be concerned to learn of the character and conduct of the Applicant since his name was removed from the Register. Every case is different and no list can be exhaustive, but reference should be made to the list of relevant factors in the Disciplinary Committee Procedure Guidance. Common matters include the following, in no particular order; the Applicant’s remorse; whether on the known facts there is a likelihood of repetition and if so, what steps have been taken to guard against that; whether the Applicant has kept himself sufficiently up to date with techniques of practice since his removal from the Register, and the repercussions of the disciplinary offence that led to his removal.

183. Where health is an issue, the Committee will consider it important that the ailment or addiction as the case may be is under control and/or can be suitably monitored without endangering animals or undermining the public’s confidence in the profession. In this respect it may require medical reports which deal with the issues fully. It is essential for the Committee to proceed cautiously and to adjourn as necessary, inviting the Applicant to provide any further evidence, for example upon questions that arise in relation to his character and conduct since his name was removed. Inviting evidence of proper medical support for the Applicant is also a good ground for an adjournment. In health cases there is an inherent risk that the Applicant will relapse and since the Committee is unable to police this it will need to feel confident that some monitoring mechanism is in place, particularly when the veterinary surgeon in question will be working alone.

184. The Committee will be concerned to judge the weight of the case which led to the decision in the first place. In opening the case the RCVS barrister will provide the Committee with details of the case that led to the removal. The Applicant or his solicitor or barrister shall be entitled to address the Committee and adduce evidence and make such submissions on the question as he wishes. Likewise the RCVS barrister shall be entitled to address the Committee, adduce evidence and make submissions.

185. The same members of the Committee who originally considered the case may sit to consider the application for restoration. Their detailed knowledge of the circumstances of the original case can be valuable at a restoration hearing. However, this will be subject to the practicalities of arranging for the same members to sit and may not always be possible.