Royal College of Veterinary Surgeons

Disciplinary Committee Procedure Guidance

Guidance on the Disciplinary Committee’s purpose and function,
Decision-making, indicative outcomes and sanctions,
Reasons for decisions and procedures

September 2013

This guidance should be read in conjunction with the Disciplinary Committee Manual (September 2013)
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Introduction: purpose and function

1. The Disciplinary Committee has adopted this guidance as an aid to fair, impartial, transparent and consistent decision-making. Fair and transparent disciplinary proceedings help maintain public confidence in the profession; and in professional standards.

2. The Veterinary Surgeons Act 1966 (‘the Act’)

1 sets out the powers and functions Parliament has given to the RCVS to regulate the veterinary profession, and practitioners, in the UK. The Act makes:

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

3. Under the Act, disciplinary proceedings cover three areas:

a. where the member has been convicted of a criminal offence and it is alleged that the nature and circumstances of the offence are such as to render him or her unfit to practise veterinary surgery;

b. where it is alleged that the practitioner is guilty of disgraceful conduct in a professional respect; and,

c. in the case of a fraudulent entry of the name of the offender being entered on the statutory register of the RCVS.

4. The Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 (SI 2004/1680) (‘The Procedure and Evidence Rules 2004’) sets out the procedural rules for disciplinary proceedings, including:

a. Notification of the hearing and charges against the respondent veterinary surgeon;

b. Procedures to be followed at the hearing, including submissions, and examining and cross-examining witnesses (witness summons may be sought from the High Court); and,

c. The standard of proof (see paragraph 13).

5. The Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI 1967/684) sets out the role of the legal assessor, including the provision of advice to the Disciplinary Committee by the legal assessor (see paragraph 67).

6. There is additional guidance to assist the practice and procedures of the Disciplinary Committee, included within the Disciplinary Committee Manual.

1 1966 c.36
7. The Disciplinary Committee acknowledges that the fundamental principle of professional practice is set out in the oath that veterinary surgeons declare upon entry to the profession, which includes:

‘I PROMISE AND SOLEMNLY DECLARE that I will pursue the work of my profession with integrity and accept my responsibilities to the public, my clients, the profession and the Royal College of Veterinary Surgeons, and that, ABOVE ALL, my constant endeavour will be to ensure the health and welfare of animals committed to my care.’

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

The Public Interest

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

The Human Rights Act

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

‘Right to a fair trial

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

Composition of the Disciplinary Committee

10. The Act establishes a Disciplinary Committee to determine disciplinary cases referred to it by the RCVS Preliminary Investigation Committee. Currently, a total of 16 members have been appointed to the Disciplinary Committee under the transitional provisions which apply between July 2013 and July 2015. This number is set to rise to 20 members by 2015.

11. All members are invited to sit on each disciplinary case; the quorum of the Disciplinary Committee is five members. However, the practice is that seven members are listed to sit for each Inquiry to ensure that if a member becomes unavailable during the hearing, the Inquiry is not compromised. There are a number of reasons why members might not sit on a specific disciplinary case, for example, where there is a conflict of interest. The Disciplinary Committee hears and determines disciplinary cases independently of the Preliminary Investigation Committee and the RCVS Council and its other committees.
Decision making – the three-stage duty

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

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

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

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

A. Deciding the facts charged

Standard of Proof
13. The standard of proof to be applied by the Disciplinary Committee is specified in the Procedure and Evidence Rules 2004. The standard is that the Disciplinary Committee should be ‘satisfied to the highest civil standard of proof, so that it is sure’ \(^3\) (which is tantamount to applying the ‘criminal standard’).

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

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

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\(^3\) Rule 23 (5) and (6).
'In the case of most professions the prohibition is framed in different terms from disgraceful conduct in a professional respect, that which is most commonly found being serious professional misconduct. At its hearing the [RCVS] Disciplinary Committee was advised by its legal assessor that disgraceful conduct in a professional respect is conduct which falls far short of that which is expected of the profession. Their Lordships consider that that was an appropriate definition and that the Committee was correctly advised.\footnote{4} 

'Disgraceful conduct in a professional respect is not limited to conduct involving moral turpitude or to a veterinary surgeon’s conduct in pursuit of his profession, but might extend to conduct which, though reprehensible in anyone, was in the case of a professional person, so much more reprehensible as to merit the description disgraceful in the sense that it tended to bring disgrace on the profession he or she practised.\footnote{5} Disgraceful conduct is also not limited to matters described in the RCVS Code of Professional Conduct.\footnote{6} The question of whether conduct amounts to disgraceful conduct in a professional respect is a matter of judgment for the Disciplinary Committee, not a matter which is to be decided on a burden or standard of proof.\footnote{7} 

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

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

**Aggravating and Mitigating Factors**

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

\footnote{4} See the Judicial Committee of the Privy Council in *Macleod v RCVS*, PC 88 of 2005
\footnote{5} *Marten v Disciplinary Committee* [1966] 1 QB 1, [1965] 1 All ER 949. (As cited in Halisbury’s Statutes No. 28 page 785 under Section 16 of the Veterinary Surgeons Act 1966)
\footnote{6} *Marten v Disciplinary Committee* [1966] 1 QB 1, [1965] 1 All ER 949.
\footnote{7} *CRHP v GMC and Biswas* (2006) EWHC 464 (Admin)
17. Generally, a finding that a respondent veterinary surgeon is guilty of disgraceful conduct in a professional respect or has been convicted of a criminal offence that renders him or her unfit to practise, will lead to the exercise of the Disciplinary Committee’s powers.

The RCVS Code of Professional Conduct for Veterinary Surgeons

18. The RCVS Code of Professional Conduct for Veterinary surgeons together with its Supporting Guidance ("the Code") sets out principles that may be applied to all areas of veterinary practice. The Code 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\textsuperscript{8}, it is (subject to appeal to the Privy Council as to which see paragraph 57) the final arbiter of disgraceful conduct in a professional respect, and is not bound by the provisions of the Code.

\textsuperscript{8} The committee’s application of the Code of Professional Conduct for Veterinary Surgeons (formerly the Guide to Professional Conduct) in disciplinary proceedings is addressed, for example, in \textit{Allcock}: RCVS Disciplinary Committee, January 2005; \textit{Wilson}: RCVS Disciplinary Committee, May 2006; and \textit{Macleod} v RCVS: PC 88 of 2005.
C. Deciding the outcome or sanction

Proportionality

19. The Disciplinary Committee exercises discretion in deciding on the appropriate outcome or sanction. In so doing, it must be satisfied that its action is proportionate in all the circumstances of the case. This will involve the Committee giving consideration to such matters as:
   a. The existence of any aggravating or mitigating factors of the offence or conduct;
   b. The respondent veterinary surgeon’s personal circumstances and any personal mitigation offered; and,
   c. References and testimonials.

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

   ‘the application of the doctrine of proportionality is to ensure that a measure imposes no greater restriction upon a Convention right than absolutely necessary to achieve its objectives.’

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

   ‘The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee. … The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards.’

9 Chaudhury v GMC [2002] UKPC 41
10 See Archbold v RCVS PC 26 of 2003.
11 Evans v General Medical Council (unreported) Appeal No 40 of 1984, which was quoted in Macleod v RCVS, PC 88 of 2005
22. However, the courts have indicated a greater willingness to intervene in cases which do not rely on professional knowledge:

‘As must be obvious, when it comes to questions of professional competence the committee’s views are to be accorded the very greatest of weight. When it comes to decisions which do not so much depend upon professional expertise, this court may be in a better position to be able to form a judgment for itself. But this court must never act unless it is plain that in the circumstances the decision was one which, as I would put it, is clearly wrong.’ 12

**Consistency and the punitive and deterrent element of sanctions**

23. The Disciplinary Committee will expect the barristers or solicitors presenting the case and defending the respondent veterinary surgeon to address the Committee on relevant previous decisions (including those from other disciplinary committees), to assist the Committee in making consistent decisions on outcome or sanction. 13 On consistency, the Privy Council has stated:

‘In principle, mitigation has less effect in a disciplinary jurisdiction than in ordinary sentencing, but the reasoning of the Disciplinary Committee in … [two previous cases] shows RCVS disciplinary committees giving significant weight to mitigation in situations comparable with the present. [Name].. is in the Board’s opinion entitled to ask why his offending should attract so different and severe an attitude.’ 14

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

‘The Board also reminds itself of the guidance given by Sir Thomas Bingham MR (as he was) in Bolton v. Law Society [1994] 1 WLR 512 with regard to the proper approach by, and to orders of, professional disciplinary tribunals. Speaking in the context of lawyers, he emphasised that any lawyer "shown to have discharged his professional duties with anything less than complete integrity, probity and complete trustworthiness must expect severe sanctions" (p.518B). Orders could include a punitive element. But often they would not, e.g. where a criminal penalty had already been imposed, in which case it would be unjust to punish again (p.518F-G). The order would then be primarily directed (a) to ensuring that the offender

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

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

14 See Walker v RCVS PC 16 2007
does not have the opportunity to repeat the offence and/or (b) more fundamentally, to maintaining the reputation of and sustaining public confidence in the profession “as one in which each member may be trusted to the ends of the earth”; for this reason “considerations that would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences passed in mitigation” (p.519B).

‘The correctness of veterinary certificates is also a matter of importance, and can in some contexts bear on animal and indeed human health. The RCVS’s Guide to Professional Conduct (2002 edition) underlines the obvious need for truthfulness and accuracy, in the interests of both clients and third parties. The public and bodies such as the Jockey Club have in various contexts to rely on the accuracy of veterinary certificates. The reputation of and confidence in the integrity of the profession of veterinary surgeon is important in a manner which bears an analogy to, even if it is not precisely the same as, that described by Sir Thomas Bingham in Bolton v. Law Society. But that is not to say that it would be correct to bracket all cases of knowingly inaccurate veterinary certification into a single group and to treat them as equivalently serious. That would not be right when considering either how far an offender needs to be deprived of the opportunity of practice in order to prevent re-offending, or what sanction is necessary to maintain or restore public confidence in the profession. Deterrence is an important consideration, but it must be deterrence in the light of the particular circumstances of the offence to which any deterrent sanction is directed.”

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

**Aggravating and Mitigating Factors**

24. The Disciplinary Committee will assess culpability on the basis of each head of charge, or the charge, taking into account any relevant aggravating or mitigating factors present.\(^\text{16}\)

25. Aggravating factors may include:
   a. Actual injury to an animal or human
   b. Risk of injury to an animal or human
   c. Dishonesty
   d. Recklessness
   e. Premeditated misconduct
   f. Financial gain

\(^{15}\text{See Walker v RCVS PC 16 2007}\)

\(^{16}\text{See the Professional Standards Authority guidance available at http://www.professionalstandards.org.uk/docs/s29-general/s29-risk-factors.pdf?sfvrsn=0}\)
g. Breach of confidentiality or client trust
h. The involvement of a vulnerable client
i. Sexual misconduct
j. Any relevant increased position of trust or responsibility
k. Misconduct sustained or repeated over a period of time
l. Conduct contravening advice issued by the RCVS, including the Preliminary Investigation Committee and Professional Conduct Department, or other appropriate authority
m. Blatant or wilful disregard of the role of the RCVS and the systems that regulate the veterinary profession
n. No insight into the offence or disgraceful conduct
o. Previous convictions
p. Previous adverse findings of the Disciplinary Committee
q. Previous findings of another regulator or similar body

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

27. Mitigating factors may include:
   a. The circumstances of the incident, including the promotion of the health or welfare of an animal
   b. No actual harm or any risk of harm to an animal or human
   c. No financial gain
   d. Single and isolated incident
   e. Decision taken without the opportunity for full reflection
   f. Youth and inexperience
   g. A long and unblemished career
   h. Open and frank admissions at an early stage (for example, in the respondent veterinary surgeon’s dealings with the client, RCVS Professional Conduct Department and the RCVS Preliminary Investigation Committee)
   i. Ill health at the time the disgraceful conduct, or criminal offence, was committed
   j. Subsequent efforts to avoid a repetition of such behaviour
   k. Significant lapse of time since the incident
   l. Demonstration of insight into the offence or disgraceful conduct committed

This is not an exhaustive list of mitigating factors.

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17 See Williams v RCVS, Privy Council 28 July 2008
18 See Lonsdale: RCVS Disciplinary Committee 2004. The RCVS has no separate or distinct power to deal with impairment to fitness to practise on the part of a veterinary professional through ill-health alone. This factor may be taken into account in proceedings where serious professional misconduct is proven and the committee is considering outcome, or sanction.
28. It can sometimes be difficult to determine whether mitigation is relevant to the circumstances of the charge or purely personal mitigation. The Courts have indicated:

‘As a general proposition it would be surprising if rules governing the disciplinary procedures for the medical profession were to achieve the somewhat startling result that the question whether a practitioner was guilty of serious professional misconduct could be influenced by matters of personal mitigation which went to the appropriate disposal of the complaint. It is in our view elementary that any evidence considered by the Committee should be relevant evidence. Mitigation arising from the circumstances in which the practitioner found himself or herself may be relevant to the level of culpability: once serious professional misconduct is proved, personal mitigation would be relevant to possible penalty. In our judgment, these are distinct issues, to be determined separately on the basis of evidence relevant to them’.\(^{19}\)

In some cases, for example if credibility is in issue, previous good character may be relevant when considering the facts as well as when deciding the outcome or sanction.\(^{20}\)

29. The Disciplinary Committee may take into account aggravating and mitigating factors in deciding whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect or render the respondent veterinary surgeon unfit to practise, if that factor is relevant to the circumstances of a head of charge, or the charge, and is not purely personal mitigation. Of the mitigating factors in paragraph 27, factors ‘f’ to ‘i’ are likely to relate to purely personal mitigation only. Of the aggravating factors in paragraph 25, factors ‘n’ to ‘q’ are rarely relevant to the circumstances of a charge and are normally relevant to the outcome or sanction only.

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

**Purely Personal Mitigation**

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

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\(^{19}\) **R (Campbell) v GMC** [2005] EWCA Civ 250

\(^{20}\) Campbell; Williams – v GMC (2007) EWHC 2603 (Admin); See also **Donkin v Law Society** (2007 EWHC 414 (Admin))
32. Testimonial and personal character reference evidence is often provided in advance of a hearing and, in contested hearings, may not be an accurate assessment of the respondent veterinary surgeon taking into account any facts proved against him or her.

33. Generally, testimonial and personal character reference evidence is heard by the Disciplinary Committee after determining whether each head of charge, or the charge, amounts to disgraceful conduct in a professional respect or that one or more convictions render the respondent veterinary surgeon unfit to practise.\(^{21}\)

\(^{21}\) R (Campbell) v GMC [2005] EWCA Civ 250, See also Donkin v Law Society (2007 EWHC 414 (Admin))
Outcomes and sanctions

Introduction

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

No Further Action

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

Postponement

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

Judgment

c. Reprimand or warning as to future conduct,
d. Direction for suspension of the respondent veterinary surgeon’s name from the register for a specific period usually not exceeding a period of two years,
e. Direction for removal of the respondent veterinary surgeon’s name from the register.

Applications for restoration to the register can be made 10 months after a veterinary surgeon’s name has been removed from the register.

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

Undertakings

35. The Disciplinary Committee has no power to impose practice conditions and has therefore developed a process involving a postponement of sanction or judgment coupled with a formal undertaking by the respondent veterinary surgeon as to his or her future conduct.

36. Normally, undertakings are given in writing and included in the Disciplinary Committee’s written decision to postpone judgment. The respondent veterinary surgeon giving the undertakings must agree to abide by those undertakings for a specified period of time, usually
two years, and agree to any monitoring of the undertakings by the RCVS. Generally, the respondent veterinary surgeon is expected to pay any cost of complying with the undertakings and monitoring.

37. Normally, a postponement of judgment with undertakings from the respondent veterinary surgeon will be appropriate only when most or all of the following apply:
   a. Animals and the public will not be put at risk as a result of the postponement with undertakings;
   b. The respondent veterinary surgeon has demonstrated insight into the seriousness of the misconduct and there is no significant risk of repeat behaviour;
   c. It is possible to formulate undertakings that are capable of being met, appropriate and measurable;
   d. The respondent veterinary surgeon is willing to comply with the undertakings;
   e. Limited aspects of practice are in need of education or training; and,
   f. There is evidence that any underlying medical problem is being appropriately addressed, monitored and reported.

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

39. Suitable undertakings may include reference to the following:
   a. Medical assessment, treatment and reports
   b. Restriction on Possession of Controlled Drugs
   c. Restriction on undertaking certain procedures
   d. Training and CPD
   e. RCVS Practice Standards Scheme
   f. Code of Professional Conduct for Veterinary Surgeons
   g. Appointment of a veterinary mentor (mentors are appointed by the Respondent)
   h. Appointment of a veterinary surgeon by the RCVS (Professional Conduct Department) to report to the Disciplinary Committee (the costs of RCVS appointed veterinary surgeons are borne by the RCVS)
   i. Cost (which are borne by the Respondent unless the Disciplinary Committee decides otherwise (subject to g))
   j. Information to be provided to staff and employers
   k. Consequences of a breach of the undertakings

40. A model form for the Respondent’s undertakings, with a non-exhaustive list of draft undertakings is attached as Annex A.
41. One type of undertaking involves the Respondent agreeing to appoint a veterinary surgeon to visit the Respondent and the practice during the period of postponement of judgment. A mentor, as described at paragraph 39 (g) above, will not be obliged to provide a report to the Disciplinary Committee and does so only at the request of the Respondent. A veterinary surgeon appointed by the RCVS (Professional Conduct Department), as described at paragraph 39 (h) above, will report to the Disciplinary Committee on the Respondent’s practice.

42. The Respondent is encouraged to discuss any proposed undertakings with the RCVS prior to the hearing, or presentation of the proposed undertakings to the Disciplinary Committee.

43. Any veterinary surgeon or other person reporting to the Disciplinary Committee, whether appointed by the Respondent or by the RCVS (Professional Conduct Department), has an overriding duty to the Disciplinary Committee at all times and will be expected to remain objective, impartial and to act with integrity and to report on all relevant matters. The duty (to disclose all relevant matters) overrides any obligation to the person from whom he has received the appointment or instructions, or by whom he is paid as with an expert witness (please see the RCVS Code of Professional Conduct for Veterinary Surgeons; Supporting Guidance Chapter 22 ‘Giving evidence for court’).

44. The Procedure and Evidence Rules 2004 indicate the procedures to be applied where the respondent veterinary surgeon fails to comply with an undertaking. Failure to comply with an undertaking will be taken seriously by the Disciplinary Committee.

Reprimand or Warning as to Future Conduct

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

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22 Rule 19 of the Procedure and Evidence Rules 2004
23 See the ‘Notes for guidance in cases where the Disciplinary Committee decides to postpone judgment’, included in the Disciplinary Committee manual, which is available from the RCVS. See also rule 19 of the Procedure and Evidence Rules 2004.
46. A reprimand or warning may be appropriate where:

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

**Suspension**

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

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

24 See Walker v RCVS PC 16 2007; the previous case mentioned is Sanyal, RCVS Disciplinary Committee 2005.
Suspension is not imposed as a *punitive* measure, although it will almost invariably adversely affect the veterinary surgeon. The Disciplinary Committee has not imposed a period of suspension of longer than 2 years and it would be unlikely to do so.

48. Suspension may be appropriate where some or all of the following apply:
   a) The misconduct is serious, but a lesser sanction is inappropriate;
   b) The respondent veterinary surgeon has insight into the seriousness of the misconduct and there is no significant risk of repeat behaviour;
   c) The respondent veterinary surgeon is fit to return to practice (after the period of suspension).

49. Suspension may not be appropriate where the respondent veterinary surgeon is convicted of a serious criminal offence and should not be permitted to practise until the satisfactory completion of the sentence. [25]

**Removal from the Register**

50. Removal from the register may be directed where the respondent veterinary surgeon’s behaviour is so serious that removal of professional status (and the rights and privileges accorded to this status) is the only means of protecting animals and the wider public interest. Removal is imposed in order to protect animals and the wider public interest. It is not imposed as a *punitive* measure, although it will almost invariably adversely affect the respondent veterinary surgeon. [26]

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

   ‘An otherwise competent and useful [practitioner] who presents no danger to the public in order to satisfy [public] demand for blame and punishment.’ [27]

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

‘The reputation of the profession is more important than the fortunes of an individual member. Membership brings many benefits, but that is a part of the price.’ [28]

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[27] See Dr Willem Bilj v GMC PC 78 2000
[28] See Dr Prabha Gupta v GMC PC 44 2001
52. Proven dishonesty has been held to come at the ‘top end’ of the spectrum of gravity of disgraceful conduct in a professional respect. In such cases, the gravity of the matter may flow from the possible consequences of the dishonesty as well as the dishonesty itself. The Privy Council has, in a case involving dishonesty, provided guidance on the distinction between removal and suspension from the register. (See also paragraph 47)

53. Removal from the register may be appropriate where behaviour is fundamentally incompatible with being a veterinary surgeon, and may involve any of the following (the list is not exhaustive):

   a. Serious departure from professional standards as set out in the RCVS Code of Professional Conduct for Veterinary Surgeons;
   b. Causing serious harm (or causing a risk of serious harm) to animals or the public, particularly where there is a breach of trust;
   c. Offences of a sexual nature;
   d. Offences involving violence and/or loss of human life;
   e. Evidence of a harmful deep-seated personality or attitude problem;
   f. Dishonesty (including false certification), particularly where persistent or concealed.

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29 See Tait v RCVS PC 67 of 2002; and Archbold v RCVS PC 26 of 2003
30 See Walker v RCVS PC 16 of 2007
Reasons for decisions

54. Whatever the Disciplinary Committee decides in a case, it will explain its reasons in a concise statement. The public, witnesses and the respondent veterinary surgeon should be able to see why the Committee has taken a particular course. Moreover, the respondent veterinary surgeon may have the right to appeal against the Committee's decision.\textsuperscript{31} A clear explanation of the reasons for the decision will help the veterinary surgeon decide whether to exercise that right and will help the Court which has to consider any appeal. This will also assist a veterinary surgeon removed from the register who subsequently applies for restoration of his or her name to the register.

55. The Disciplinary Committee’s reasons will usually include, as appropriate:

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

56. As appropriate, the Disciplinary Committee will make a decision on the facts, and then decide whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect (or the conviction renders the respondent veterinary surgeon unfit to practise) and finally, decide the outcome or sanction. Generally the practice of the Committee is to give written reasons in two documents: ‘Findings of Fact’ and ‘Judgment’. The Committee gives reasons in the written Judgment both for the decision on whether each head of charge, or the charge, admitted or found proved, amounts to disgraceful conduct in a professional respect or that the conviction renders the respondent veterinary surgeon unfit to practise; and for the outcome or sanction.

\textsuperscript{31} See paragraph 68 of this document
Written records of decisions

57. The Disciplinary Committee records in writing *every decision, determination, direction, finding and judgment* during a hearing, whether in respect of preliminary or other applications during the course of the hearing, or the substantive three-stage decision on facts, misconduct and outcome or sanction. Preliminary decisions or those in response to applications may be recorded in writing as part of the shorthand writer’s verbatim note of the proceedings. Substantive decisions such as the ‘Findings of Fact’ and Judgment (the latter includes the decision on misconduct and sanction) are usually given as separate written decisions and are usually provided when the decision is given.

58. The purpose of producing a written decision is both to ensure that a record of the proceedings is kept and to inform the Respondent, other interested parties in the case, the veterinary surgeons’ profession and the public at large, of what has taken place during the disciplinary hearing and the decisions the Disciplinary Committee has made. Written decisions demonstrate how the Committee is exercising its functions in the public interest and help to illustrate to the profession the standards of conduct expected of veterinary surgeons.

59. The Disciplinary Committee’s written decisions are not required, or expected to be, a verbatim or a detailed record of everything which took place during the hearing, or of all the evidence given. For that purpose, there will always be a complete, verbatim transcript of the hearing produced by a shorthand writer who is present throughout the hearing. If necessary, in the event of a query about evidence which has been given, the shorthand writer’s record can be referred to. The verbatim transcript is also important where an appeal against a decision is lodged. The Committee’s written decisions should stand alone, so that a third party reading them would be able to understand what the relevant matters or hearing was about, what decisions were made and why.

60. The Disciplinary Committee should be mindful in drafting written decisions that it clearly explains to the Respondent, other interested parties in the case, the veterinary surgeon’s profession and the public at large when reading it why it has reached the decision it has made.

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32 See Rule 27 of the Procedure and Evidence Rules.
Who Should Draft?

61. The Legal Assessor assists the Disciplinary Committee to draft the decision. While the rules of the RCVS do not provide expressly for the Legal Assessor to draft decisions, common law indicates that, provided the important distinction is maintained between the two roles (decision-making and legal advice), there is no objection to the decision maker receiving advice on the drafting of the decision from the Legal Assessor. This practice is common to other regulators.

62. The Disciplinary Committee is mindful that the Legal Assessor is not the decision-maker and the decision and the reasons recorded must be those of the whole Committee, not the Legal Assessor. Once a draft decision has been produced with the assistance of the Legal Assessor, the whole Committee review and approve it and ensure that their views are accurately represented by the written reasons.

33 *R v Wandsworth LBC, ex parte Dodias (1998) 30 HLR 562*
Procedural matters

Directions

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

Hearings in Public

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

Adjournments and Postponements

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

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

The Role of the Legal Assessor

67. A legal assessor is available to advise the Disciplinary Committee on matters of law or procedure, although he or she will take no part in making decisions. The legal assessor is an experienced lawyer and the role of the legal assessor is set out in detail in Statutory Rules.35 In addition, a guidance document, ‘The Role of the Legal Assessor’, is included in the Disciplinary Committee Manual which provides further information on the involvement of the legal assessor in disciplinary proceedings.

35 The Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI1967/684)
Rights of Appeal

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

Disclosure of Information and Public Rights of Access

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

Applications for Restoration

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

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

36 S17 of the Act.
37 http://www.rcvs.org.uk. Copies of earlier decisions are available on written request from the RCVS.
38 Rule 20 of the Procedure and Evidence Rules 2004
Witnesses

71. Witnesses are vital in assisting the RCVS with its statutory functions in relation to professional misconduct disciplinary proceedings.

Prior to the Hearing

72. A representative from the RCVS will liaise with the RCVS witnesses prior to the hearing on the time and dates of attendance, travel arrangements, expenses and other issues. Generally, a witness summons from the High Court is issued to RCVS witnesses (except expert and professional witnesses).

Special Requests and Vulnerable Witnesses

73. It is understood that the process of appearing as a witness and giving evidence can be daunting and the RCVS provides written information as set out in the ‘RCVS Witness Information’ pack for witnesses. This pack sets out detailed information on those involved in the disciplinary process, Court procedures, giving evidence, adjournments, and the conclusion of the proceedings. A witness information pack is provided routinely to RCVS witnesses but can be provided to any witness. If any witness feels that there are any further issues or concerns, he or she may raise them with an RCVS representative prior to the hearing.

74. The RCVS provides rooms for witnesses who are giving evidence during the disciplinary proceedings. Generally, one room is provided for witnesses giving evidence for the RCVS and another room for those giving evidence for the Respondent. An RCVS witness may be concerned about meeting the veterinary surgeon against whom he or she is giving evidence. Generally, an RCVS witness will not meet the respondent veterinary surgeon himself or herself while waiting to give evidence, but will meet the Respondent when giving evidence at the hearing. However, the Respondent veterinary surgeon is usually represented by a solicitor or barrister who asks the questions on his or her behalf and the questions are asked in a relatively formal setting.

75. In certain circumstances, it may be necessary for the RCVS to make special practical arrangements for witnesses including separate waiting areas, interpretation services or providing screens. In some cases, the RCVS will provide for the use of technology such as video link and teleconferencing to enable a witness to give evidence.

76. Pursuant to paragraph 28 of the Procedure and Evidence Rules 2004, the Committee has supplementary powers to deal with matters which are not specifically referred to in the ambit of the legislation. These may include, for example, applications to deal with special requests and vulnerable witnesses within disciplinary proceedings.
77. Paragraph 21.1 of the Rules provides that proceedings before the Disciplinary Committee will be heard in public in the presence of all parties. In certain circumstances, however, applications for proceedings to be heard in camera may be made. The Disciplinary Committee has the power to allow such applications pursuant to paragraph 21.2 of the Rules. Such applications may be made in advance of the hearing and the interests of justice will determine whether the application is allowed.

78. Once a witness has finished giving evidence, usually, he or she will usually be released as a witness by the Disciplinary Committee and will be free to leave the building, although he or she may stay in the hearing room in the public area and listen to the remainder of the proceedings.

79. Generally, RCVS witnesses will be informed of the outcome of the hearing once the Inquiry has finished.

**Equality and Diversity**

80. The RCVS is committed to treating everyone involved with its disciplinary proceedings fairly, regardless of their ethnic origin, race, colour, gender, religion, disability, sexual orientation or age.

81. RCVS staff should remain objective and impartial when dealing with all parties. A witness is not under any type of investigation and is there to support the disciplinary process.

**General**

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

A model form for the respondent's undertakings, with a non-exhaustive list of draft undertakings.

i. Heading

**Undertaking made by ……………………. to the Disciplinary Committee of the Royal College Of Veterinary Surgeons following the hearing held on …………………….**

I, ………………….. MRCVS, pursuant to the Disciplinary Committee decision at the conclusion of the hearing held on ……………………. hereby undertake as follows:

ii. Medical assessment, treatment and reports

To attend upon (Dr name of doctor/consultant/clinic) (once every month for the first 3 months) (quarterly) for (1 or 2 years).

To consent to (Dr…..) providing a statement of progress to the Clerk to the Committee after each visit. (Specify dates of reports and particular information to be included e.g. that the respondent has been drug free/any tests required and whether the doctor should be a general practitioner or relevant consultant.)

[Note: In the event of an adverse report or in the absence of a report your case may be restored for hearing.]

iii. Controlled drugs

Not to obtain, store, supply or use specified controlled drugs, as defined by the Misuse of Drugs Act 1971 and Misuse of Drugs Regulations 2001 as amended (in particular……... usually Schedule 2 drugs and other drugs subject to misuse) until permitted by the Disciplinary Committee to do so/or for a specified period not exceeding 2 years.

iv. Restriction on undertaking certain procedures

To refrain from carrying out (for a period of 1 or 2 years) any (specified) procedures whatever, whether this involves entry into a body cavity or not (with the exception of the administration of medicinal products in accordance with their veterinary data sheets / and anaesthetic for the purpose of euthanasia), save as may be permitted under Schedule 3 of the Veterinary Surgeons Act 1966; and to refer such cases to another veterinary surgeon.’
v. **Training And CPD**

(RCVS recommended minimum = an average of 35 hours of CPD a year or 105 hours in 3 years)

In addition to the recommended minimum 35 hours annual CPD:

To complete at least X hours of appropriate and verifiable CPD per quarter for (1 or 2 years) according to the following CPD Plan

Respondent’s CPD plan to be inserted

To submit quarterly reports of courses completed with details of the course provider, copies of course content and any certificates achieved; to the Clerk to the Committee at the end of (…. months x 4).’

To complete a course or courses of re-training in ….. procedures during the next (1 or 2 years) (specific courses to be referred to or require courses to be approved by the Chairman of the Committee, for example the BVA pharmacy course or similar event;).

vi. **RCVS Practice Standards Scheme**

(The RCVS Practice Standards Manual sets out the standards that must be achieved for a practice to register with the voluntary scheme.)

To join/continue membership of the RCVS Practice Standards Scheme for (1 or 2 years) (and provide to the Committee the report of the next inspection of the practice to be carried out on ……..) or (to arrange for an annual inspection of the practice to be carried out under the Scheme in (month) (each year) and the report of the inspection to be provided to the Committee by the scheme).

vii. **RCVS Code of Professional Conduct for Veterinary Surgeons**

To read and abide by the current RCVS Code of Professional Conduct for Veterinary Surgeons and in particular the advice at (quote a section of the Code).’

viii. **Appointment of a veterinary mentor**

To appoint a mentor to provide advice and guidance to me on my practice and to provide the mentor with a copy of the decision given by the Disciplinary Committee.
ix. **Appointment Of A Veterinary Surgeon By The RCVS To Report To The Disciplinary Committee**

‘To allow a veterinary surgeon appointed by the RCVS (Professional Conduct Department), to attend my practice at quarterly intervals, by appointment or unannounced, for (1 or 2 years), to review any aspect of my professional practice, including the patient and client records, the records of surgical and other procedures carried out, with details of the outcomes, practice protocols and their application, practice facilities, practice standards and the care of patients; and to observe me performing (specified) surgical and other procedures; and provide reports to the Disciplinary Committee.

x. **Costs**

I agree to pay for the cost of complying with the undertakings including the appointment of a mentor, medical assessments/treatments and reports, training, CPD and specific courses (but not a veterinary surgeon appointed by the RCVS (Professional Conduct Department).

xi. **Information To Staff And Employers**

To provide a copy of this undertaking to any veterinary surgeon and nurse (whether Registered, Listed or not) at practice/clinic (addresses to be given) or for (1 or 2 years) and, of applicable, the chief executive of my employer(s).

xii. **Consequences of breaching the undertakings**

I understand that any adverse report or breach of these undertakings may result in the hearing being resumed at a date earlier than the date of the end of the period of the adjournment and that at any resumed hearing, the Committee may decide to postpone judgment again, on the same or different terms, or reach a final judgment.’

xiii. **Signature** ........................................................................................................

Print Name...........................................................................................................

Dated.......................................................................................................................

Legal Representative (If any)..............................................................................

RCVS Disciplinary Committee
September 2013