

Royal College of Veterinary Surgeons

Disciplinary Committee Sanctions Guidance for Veterinary Surgeons cases

Guidance on the Disciplinary Committee's functions,
decision-making, and approach to sanctions.

August 2020

This guidance should be read in conjunction with the Disciplinary Committee Manual

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A. 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 Courts have recognised the benefits of sanctions guidance in promoting fair and consistent sanction decisions. However, in determining the issue of sanctions, the Disciplinary Committee is not bound by this guidance document: its discretion to determine disciplinary cases remains in accordance with the relevant statutory rules and the exercise of its own judgment according to the circumstances of each case.
3. 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'.

4. 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.
5. 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;

¹ 1966 c.36

- 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 paragraphs 20 and 21).
6. 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.
7. There is additional guidance to assist the practice and procedures of the Disciplinary Committee in the Disciplinary Committee Manual.
8. 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'.²

The Public Interest

9. 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.
10. In the context of disciplinary proceedings, the public interest is defined as having three elements:
 - protection and promotion of the health and welfare of animals and the protection of public health;
 - promotion and maintenance of public confidence in the veterinary profession;

² *Kirk v RCVS: PC 51 of 2002.*

- promotion and maintenance of proper professional standards and conduct in the veterinary profession.

11. In RCVS disciplinary proceedings, references to the public interest are to be read as including these elements. The Disciplinary Committee will have regard to these three elements in its consideration of cases before it, in particular when considering the question of an appropriate sanction.

The RCVS Code of Professional Conduct for Veterinary Surgeons

12. The RCVS Code of Professional Conduct for Veterinary Surgeons (“the Code”) sets out veterinary surgeons’ professional responsibilities. Supporting guidance provides further advice on the proper standards of professional practice. The Code and supporting guidance are essential for veterinary surgeons in their professional lives and for RCVS regulation of the profession

13. The Code, together with its Supporting Guidance 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.

14. In considering cases, the Disciplinary Committee will consider the alleged conduct of the veterinary surgeon against the principles set out in the Code. However, not every breach of the Code will be found to amount to disgraceful conduct in a professional respect. Equally, it is not necessary for there to have been a breach of any specific provision of the Code for the Disciplinary Committee to find that a veterinary surgeon has been guilty of disgraceful conduct in a professional respect. These are matters for the judgment of the Disciplinary Committee. Although the Disciplinary Committee generally accepts the provisions of the Code³, 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.

The Human Rights Act

³ *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 **Allcock**: RCVS Disciplinary Committee, January 2005; **Wilson**: RCVS Disciplinary Committee, May 2006; and **Macleod v RCVS**: PC 88 of 2005.*

15. 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

16. The Act establishes a Disciplinary Committee to determine disciplinary cases referred to it by the RCVS Preliminary Investigation Committee. The Legislative Reform (Constitution of Veterinary Surgeons Preliminary Investigation and Disciplinary Committees) Order 2013 specifies that the Disciplinary Committee may consist of no fewer than 20 and no more than 40 members.
17. The quorum of the Disciplinary Committee is five members. Current practice is that where a hearing is listed for 5 days or less, 5 members are listed to sit on the Disciplinary Committee. If the hearing is listed for more than 5 days, 6 members will sit. 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.
18. The Disciplinary Committee hears and determines disciplinary cases independently of the Preliminary Investigation Committee and the RCVS Council and its other committees.

B. Decision making – introduction to the three-stage process

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

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 in accordance with the legal burden and standard of proof, and to announce its findings;

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 whether in the judgment of the Disciplinary Committee 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,

Deciding the outcome or sanction

Where any head/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).

C. Deciding the facts charged

Burden and Standard of Proof

20. The burden of proving the charges is upon RCVS which brings the case against the respondent veterinary surgeon. The respondent does not have to prove his innocence of the charges.
21. The standard of proof to be applied by the Disciplinary Committee in determining whether the facts alleged in the charge are proved 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'⁴. This means that the standard of proof which the Disciplinary Committee applies is equivalent to applying the criminal standard of proof.

D. Deciding whether the facts proved amount to disgraceful conduct in a professional respect or, in conviction cases, render the respondent veterinary surgeon unfit to practise

⁴ Rule 23 (5) and (6).

22. The Disciplinary Committee next decides whether any facts it has found proved amount to 'Disgraceful conduct in a professional respect'. This is a matter of judgment for the Disciplinary Committee, not a matter which is to be decided according to the legal standard of proof.⁵

The meaning of Disgraceful Conduct in a Professional Respect

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

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

24. 'Disgraceful conduct in a professional respect is not limited to conduct involving moral turpitude or to a veterinary surgeon's conduct in pursuit of his profession, but might extend to conduct which, though reprehensible in anyone, was in the case of a professional person, so much more reprehensible as to merit the description disgraceful in the sense that it tended to bring disgrace on the profession he or she practised.'⁷ Disgraceful conduct is also not limited to matters described in the RCVS Code of Professional Conduct.⁸

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

25. 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.

Relevance of aggravating and mitigating factors

26. The Disciplinary Committee must consider and take account of aggravating and mitigating factors at the appropriate stages of a case.

⁵ *CRHP v GMC and Biswas (2006) EWHC 464 (Admin)*

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

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

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

27. Mitigating factors may in certain circumstances be relevant when the Disciplinary Committee is deciding whether the facts proved in each head of charge amount to disgraceful conduct in a professional respect or render the respondent veterinary surgeon unfit to practise (for convictions). This would be where a mitigating factor is relevant to the circumstances of the charge and is not purely personal mitigation.
28. If the Disciplinary Committee reaches 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, the Disciplinary Committee will next consider whether to impose a disciplinary sanction.. Aggravating and mitigating factors, including purely personal mitigation, should also be taken account of by the Disciplinary Committee at the sanction stage (See further paragraphs 38-46 of this guidance.)

E. Outcomes and sanctions

The purpose of sanctions

29. The purpose of imposing a disciplinary sanction upon a veterinary surgeon is not to punish him/her, though a sanction may well have a punitive effect. The purpose of sanctions is to protect the public and address the public interest. Where the Disciplinary Committee has found that a veterinary surgeon has fallen below the required standards, its task is to consider whether he or she may pose a risk to those who use veterinary services in the future and what steps are needed to protect the public. The Disciplinary Committee must also consider the wider public interest, which includes the maintenance of public confidence in the veterinary profession and the deterrent effect upon other registered veterinary surgeons.

Proportionality

30. 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.
31. 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.’⁹

32. 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 profession¹⁰, 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.’¹¹

33. 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

34. 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

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*

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.)*

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

35. However, it is accepted that generally in the disciplinary jurisdiction, there is no formal system of precedent and each case should be decided on its own facts and circumstances. In a recent case¹⁵, Sharp LJ said:

“I should add that decisions in this jurisdiction are of course fact sensitive, and I have not found the reference to the facts of other cases where lesser or different penalties were imposed to be of any assistance. As was observed in *Law Society v Emeana and ors...*, sentences imposed in this jurisdiction are not designed as precedents”.

36. In a case, which involving dishonesty¹⁶, the Privy Council commented on the punitive and deterrent element of sanctions, stating:

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

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*

¹⁵ See *Scott v SRA [2016] EWHC 1256 (Admin)*,

¹⁶ See *Walker V RCVS PC 16 2007*

‘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.’¹⁷

37. The Committee may adopt a new approach to any type of case with appropriate explanation in its written reasons.

Aggravating and Mitigating Factors

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

39. Aggravating factors may include:

- a. Actual injury to an animal or human
- b. Risk of injury to an animal or human
- c. Dishonesty, lack of probity or integrity
- d. Recklessness
- e. Premeditated misconduct
- f. Financial gain
- g. Breach of confidentiality or client trust
- h. Predatory behaviour towards a client or colleague
- i. The involvement of a vulnerable client
- j. Discriminatory behaviour
- k. Sexual misconduct

¹⁷ See *Walker v RCVS PC 16 2007*

¹⁸ See the **Professional Standards Authority guidance** available at <http://www.professionalstandards.org.uk/docs/s29-general/s29-risk-factors.pdf?sfvrsn=0>

- l. Any relevant increased position of trust or responsibility
 - m. Abuse of professional position
 - n. Conduct exacerbated by drug or alcohol misuse
 - o. Misconduct sustained or repeated over a period of time
 - p. Conduct contravening advice issued by the RCVS, including the Preliminary Investigation Committee and Professional Conduct Department, or other appropriate authority
 - q. Blatant or wilful disregard of the role of the RCVS and the systems that regulate the veterinary profession
 - r. No, or inadequate, insight into the offence or disgraceful conduct
 - s. Previous convictions
 - t. Previous adverse findings of the Disciplinary Committee
 - u. Previous findings of another regulator or similar body¹⁹
40. The presence of one or more aggravating factors may lead the Disciplinary Committee to consider a more serious sanction.
41. The above 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.
42. 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 committed²⁰
 - j. Subsequent efforts to avoid a repetition of such behaviour
 - k. Subsequent efforts to remediate past misconduct
 - l. Significant lapse of time since the incident
 - m. Demonstration of insight into the offence or disgraceful conduct committed

¹⁹ See *Williams v RCVS*, Privy Council 28 July 2008

²⁰ 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.*

n. Personal character references/testimonials

This is not an exhaustive list of mitigating factors.

43. 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'.²¹

44. 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.²²

45. The Disciplinary Committee may take into account mitigating factors which are relevant to the circumstances of the charge and which do not relate to purely personal mitigation at the stage when deciding whether a head of charge, or the charge, amounts to disgraceful conduct in a professional respect or renders the respondent veterinary surgeon unfit to practise. Purely personal mitigation is relevant only at the sanction stage. Of the mitigating factors in paragraph 27, factors 'f' to 'n' are likely to relate to purely personal mitigation only. Aggravating factors are rarely relevant to the circumstances of a charge and are normally relevant to the outcome or sanction only.

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

Purely Personal Mitigation

47. 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 respondent veterinary surgeon would not solicit testimonials from colleagues or clients, and

²¹ *R (Campbell) v GMC* [2005] EWCA Civ 250

²² *Campbell; Williams – v GMC* (2007) EWHC 2603 (Admin); See also *Donkin v Law Society* (2007 EWHC 414 (Admin))

such inferences might be influenced by untested assumptions about the sort of references that might have been produced.

48. 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.
49. 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.²³

Available outcomes and sanctions

50. 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. Under Rule 18.2 of the Procedure and Evidence Rules 2004, the Disciplinary Committee may decide to postpone its judgment for a period of up to two years. Rule 18.3 provides that the Disciplinary Committee may decide that the postponement of judgement should be subject to undertakings. The undertakings must be accepted by the veterinary surgeon. In the event of non-compliance with the undertakings, the Disciplinary Committee may resume the hearing and either extend the period of undertakings for a further, and final, period of up to two years, or instead, proceed to give judgement (i.e. impose a sanction).

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,

²³ *R (Campbell) v GMC [2005] EWCA Civ 250, See also Donkin v Law Society (2007 EWHC 414 (Admin)*

- 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.)
51. The Disciplinary Committee should adopt a proportionate approach in determining the question of sanction (see paragraphs 30-31, above) and so should consider the available options in ascending order of severity.
52. The Committee therefore first considers whether any sanction is required. If so, it then 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 not sufficient, the Committee considers whether the ultimate sanction of removal from the register is the only appropriate option.
53. When the Disciplinary Committee reaches the sanction it considers is appropriate, it should then look up to the next most serious sanction and explain in its reasons why it considers that sanction would be disproportionate.
54. The Disciplinary Committee is required to provide written reasons explaining why it has rejected sanctions lesser than the sanction it has decided is appropriate. It should also explain why it considers that the sanction it has imposed is the appropriate sanction, and how it provides adequate protection to animals and the wider public interest.

Undertakings

55. Under Rule 18.2 of the Procedure and Evidence Rules 2004, the Disciplinary Committee may decide to postpone its judgment for a period of up to two years. Rule 18.3 provides that the Disciplinary Committee may decide that the postponement of judgement should be subject to undertakings. The undertakings must be accepted by the veterinary surgeon.
56. 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.
57. Normally, a postponement of judgment with undertakings from the respondent veterinary surgeon will be appropriate only when the Disciplinary Committee is satisfied that 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;
- f. A period of re-training and/or supervision is likely to be an effective way of addressing the findings of the Disciplinary Committee;
- g. The respondent veterinary surgeon has the potential to respond positively to remediation, re-training or to their work being supervised;
- h. There is evidence that any underlying medical problem is being appropriately addressed, monitored and reported.

58. 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. The respondent veterinary surgeon must also agree to disclose the undertakings as directed by the Disciplinary Committee (disclosure of undertakings relating only to health would not usually be required).

59. 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 about the undertakings (unless related to health) to be disclosed to colleagues, staff and employers
- k. Consequences of a breach of the undertakings

60. A model form for the Respondent's undertakings, with a non-exhaustive list of draft undertakings is attached as Annex A.

61. 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.

62. 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.
63. 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').
64. The Procedure and Evidence Rules 2004 indicate the procedures to be applied where the respondent veterinary surgeon fails to comply with an undertaking²⁴ Failure to comply with an undertaking will be taken seriously by the Disciplinary Committee.²⁵
65. In the event of non-compliance with undertakings, the Disciplinary Committee may decide to resume the hearing in respect of the respondent veterinary surgeon, when it will consider whether to extend the period of undertakings for a further, and final, period of up to two years, or to proceed to judgement and impose a sanction.

Reprimand or warning as to future conduct

66. 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.
67. 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

²⁴ *Rule 19 of the Procedure and Evidence Rules 2004*²⁵ See the 'Notes for guidance in cases where the Disciplinary Committee decides to postpone judgment', included in the Disciplinary Committee manual, which is available from the RCVS. See also rule 19 of the Procedure and Evidence Rules 2004.

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

wider public interest that requires registration to be restricted. 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

68. 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. Suspension has a deterrent effect and can be used to send a signal to the veterinary surgeon, the profession and the public about what is regarded as disgraceful conduct in a professional respect.

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

inimical to the transparency at which any tribunal engaged in sentencing or sanctioning misconduct should aim.¹²⁶

70. 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.
71. Suspension may be appropriate where some or all of the following apply:
- a) The misconduct is serious, but a lesser sanction is inappropriate and the conduct in question falls short of being fundamentally incompatible with remaining on the register;
 - 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).
72. Suspension may not be appropriate where the respondent veterinary surgeon is convicted of a serious criminal offence and should not be permitted to practise until the satisfactory completion of the sentence.²⁷

Removal from the Register

73. Removal from the register may be directed where the respondent veterinary surgeon's behaviour is so serious that removal of professional status (and the rights and privileges accorded to this status) is the only means of protecting animals and the wider public interest. Removal is imposed in order to protect animals and the wider public interest. It is not imposed as a *punitive* measure, although it will almost invariably adversely affect the respondent veterinary surgeon.²⁸
74. The Privy Council has stated that a disciplinary committee should not feel bound to remove from the register:
- 'An otherwise competent and useful [practitioner] who presents no danger to the public in order to satisfy [public] demand for blame and punishment.'²⁹
75. Equally, the reputation of the profession is more important than the interests of one veterinary surgeon and Lord Bingham, Master of the Rolls stated:

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

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

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

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

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

76. Proven dishonesty has been held to come at the 'top end' of the spectrum of gravity of disgraceful conduct in a professional respect. In such cases, the gravity of the matter may flow from the possible consequences of the dishonesty as well as the dishonesty itself.³¹ The Privy Council has, in a case involving dishonesty, provided guidance on the distinction between removal and suspension from the register.³² (See also paragraph 47)

77. 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. Deliberate or reckless disregard for the professional standards as set out in the RCVS Code;
- c. Causing serious harm (or causing a risk of serious harm) to animals or the public, particularly where there is a breach of trust;
- d. Offences of a sexual nature;
- e. Offences involving violence and/or loss of human life;
- f. Evidence of a harmful deep-seated personality or attitude problem;
- g. Dishonesty (including false certification), particularly where persistent or concealed;
- h. Putting his/her own interests before the health or welfare of animals;

Persistent lack of insight into the seriousness of their actions or the consequences; where the nature and gravity of findings are such that a lesser sanction would lack deterrent effect or would undermine public confidence in the profession or the regulatory process.

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

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

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

F. Reasons for decisions

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

G. Rights of Appeal

79. 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.³⁴ The RCVS has no right of appeal against a decision of the Disciplinary Committee.

H. Applications for Restoration

80. The Procedure and Evidence Rules 2004 provide the procedure for a veterinary surgeon to apply to have his or her name restored to the register.³⁵ An application may not be made within ten months of the date of removal or within ten months of a previous unsuccessful restoration application.

81. The veterinary surgeon's application must be made in writing to the Clerk to the Disciplinary Committee and must set out the grounds for the application and any additional evidence and references relating to the applicant's identity, character and conduct since removal from the register.

82. The application will be considered by the Disciplinary Committee at a hearing. The Disciplinary Committee must consider whether the applicant is fit to be restored to the register and to return to future practice as a veterinary surgeon. The Disciplinary Committee must also consider the public interest.

83. The burden is upon the applicant veterinary surgeon to satisfy the Disciplinary Committee, on the balance of probabilities, that he or she is fit to return to practice.

³³ See paragraph 79 of this document

³⁴ S17 of the Act.

³⁵ Rule 20 of the Procedure and Evidence Rules 2004

84. The Disciplinary Committee will consider all the evidence submitted by the applicant veterinary surgeon, including any testimonials or character references, and any submissions from RCVS.

85. The Disciplinary Committee must consider a number of factors in exercising its judgment as to whether or not to restore a veterinary surgeon to the register; including:

- a. Whether the applicant veterinary surgeon has accepted the findings of the Committee at the original inquiry hearing;
- b. The seriousness of those findings;
- c. Whether the applicant veterinary surgeon has demonstrated insight into his or her past conduct;
- d. The protection of the public and the public interest;
- e. 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;
- f. The length of time off the register;
- g. The applicant veterinary surgeon's conduct since removal from the register;
- h. Evidence demonstrating the 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).

86. The Disciplinary Committee may take into consideration any character references or testimonials submitted on behalf of the applicant veterinary surgeon in support of the application.

87. The Disciplinary Committee will only restore the name of the applicant veterinary surgeon to the register where the applicant has satisfied it that he or she is fit to return to unrestricted practice as a veterinary surgeon and that restoration is in the public interest.

I. General

Equality and Diversity

88. 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.

Disclosure of Information and Public Rights of Access

89. 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. A copy of the record of proceedings before the Disciplinary Committee may be requested by any party who was entitled to be present at those proceedings on application to the Clerk to the Disciplinary Committee and upon payment of the proper charge.³⁶

90. Reports of Disciplinary Committee hearings are posted on the RCVS website.³⁷

The guidance is a living document which will be updated and revised as the need arises.

³⁶ Rule 26.

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

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
August 2020