

Draft Performance Protocol and related provisions of the new Code of Professional Conduct

A CONSULTATION

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Background

The Royal College of Veterinary Surgeons (RCVS) has a duty to act in the public interest in its role as regulator of veterinary surgeons and registered veterinary nurses in the United Kingdom. There is an expectation that veterinary surgeons and registered veterinary nurses are already reviewing their clinical work in the workplace. However, only in those relatively rare cases where performance concerns remain, despite steps taken within the workplace, or because appropriate steps are not taken, the RCVS should take proportionate action to address these concerns in the public interest.

The RCVS recognises that addressing performance issues can be a sensitive issue that doesn't lend itself to a complaints-based procedure and that it will sometimes be in the public interest to deal with ongoing concerns about the professional performance of veterinary surgeons and registered veterinary nurses without referring a case to the Disciplinary Committee (DC). According to [independent legal advice](#) sought by the RCVS, such an approach is appropriate and necessary for the RCVS to fulfil its regulatory responsibilities.

The RCVS Preliminary Investigation Committee (PIC) and Advisory Committee (AC) have been working together to produce the following draft Performance Protocol, which is intended to form part of the supporting guidance to the new draft Code of Professional Conduct and draft Code of Professional Conduct for Veterinary Nurses. The relevant background is set out in a [paper](#) which was considered by the AC and the draft Protocol follows legal advice that supported the implementation of the RCVS Health Protocol. Both protocols clarify parallel RCVS jurisdictions relating to health and performance-related concerns

The draft Performance Protocol aims to address issues of performance which may be so severe, or sustained, that they are a risk to animal health and welfare, but in appropriate cases, without referral to the DC. This will formalise and build on the way cases involving ongoing performance-related concerns are already dealt with by the RCVS and introduce new measures, including supervision and undertakings. The proposed Protocol would provide that veterinary surgeons whose cases might otherwise be referred to the DC can be invited to give undertakings which may, for example, limit the extent to which they may practise. Cases may also be monitored by the RCVS through workplace supervisors.

Under the draft Protocol, the RCVS will work together with the public and the profession to protect the welfare of animals and the public interest. This will enable the RCVS to manage ongoing professional performance concerns relating to veterinary surgeons and registered veterinary nurses appropriately and bring the RCVS into line with other professional regulators. Where there is no indication of disgraceful conduct in a professional respect, advice will still be given to veterinary surgeons and registered veterinary nurses.

There will also be underpinning provisions included in the draft Code of Professional Conduct as follows:

Principles of practice

Veterinary surgeons seek to ensure the health and welfare of animals committed to their care and to fulfil their professional responsibilities, by maintaining five principles of practice:

- a. Professional competence*
- b. Honesty and integrity*
- c. Independence and impartiality*
- d. Client confidentiality and trust*
- e. Professional accountability*

The RCVS Code of Professional Conduct and supporting guidance should be considered in the context of the five principles of practice.

Veterinary surgeons and the profession

3.1 Veterinary surgeons must take reasonable steps to address adverse physical or mental health or performance that could impair fitness to practise; or that results in harm, or a risk of harm, to animal health or welfare, public health or the public interest.

3.2 Veterinary surgeons who are concerned that a professional colleague is unfit to practise must take steps to ensure that animals are not put at risk and that the interests of the public are protected.

It is intended that similar underpinning provisions will also be included in the new draft Code of Professional Conduct for Veterinary Nurses, which is currently the subject of a separate consultation exercise.

RCVS Council has now agreed to the draft Performance Protocol being the subject of a period of consultation. Therefore comments are sought from the public and the profession on the proposed Performance Protocol, the approach it sets out and the underpinning provisions in the draft Code. A summary of all responses received by the end of the consultation will be reviewed by the AC at its meeting on 24 January 2012 and the PIC at its meeting on 25 January 2012. RCVS Council will then consider the draft Performance Protocol at its meeting on 1 March 2012.

Comments should be sent by email by Friday 13 January 2012 to Simon Wiklund, Advisory Manager, at the RCVS Professional Conduct Department – s.wiklund@rcvs.org.uk.

November 2011

Draft Performance Protocol

Dealing with ongoing concerns about the professional performance of veterinary surgeons and registered veterinary nurses

The RCVS performance protocol aims to protect animals and the interests of the public by helping veterinary surgeons and registered veterinary nurses whose fitness to practise may be impaired because of ongoing concerns about their professional performance.

There is an expectation that veterinary surgeons and registered veterinary nurses will take part in a regular system of performance review and self-assessment designed to plan development and address any performance issues. This should be supported by the other members of the veterinary team or business.

Only in those relatively rare cases where concerns remain despite the steps taken, or because appropriate steps are not taken, will it be in the public interest for the RCVS to deal with these concerns.

Why does the RCVS need a performance protocol?

1. The RCVS is the regulator of veterinary surgeons and registered veterinary nurses in the United Kingdom and has a duty to act in the public interest. This includes safeguarding the health and welfare of animals committed to veterinary care, protecting the interests of those dependent on animals and assuring public health, through the regulation of ethical and clinical standards. The RCVS duty to protect the public interest also includes recognition of a veterinary professional's own interests.
2. The RCVS recognises that sometimes it will be in the public interest to deal with veterinary surgeons and registered veterinary nurses whose fitness to practise may be impaired because of ongoing concerns about professional performance without referring a case to the Disciplinary Committee or Veterinary Nurses' Disciplinary Committee (DC) for a formal hearing. Generally it is more appropriate to take a remedial approach in cases involving these types of concerns.
3. In line with the procedures of other professional regulators, the RCVS Performance Protocol is designed to allow the veterinary profession and RCVS to work together to protect the public interest by responding to ongoing concerns about a veterinary surgeon's or registered veterinary nurse's professional performance. This Protocol provides that veterinary surgeons and registered veterinary nurses whose cases are not referred to the DC can be invited to give undertakings which may, for example, limit the extent to which they may practise. Cases may also be monitored by the RCVS through procedures established and currently used by the PIC which may involve workplace supervisors appointed in agreement with the veterinary surgeon or registered veterinary nurse.

When can the RCVS take action in relation to ongoing concerns about professional performance?

4. The Veterinary Surgeons Act 1966 (the Act) gives the RCVS powers regarding veterinary surgeons who are registered with the RCVS. Under the Veterinary Nursing Rules – Preliminary Investigation and Disciplinary and Restoration Proceedings (the Rules) registered veterinary nurses are subject to a similar regulatory jurisdiction. Under the Act and the Rules, the RCVS can only take action regarding a veterinary surgeon or registered veterinary nurse in the following circumstances:
 - a. where a veterinary surgeon or registered veterinary nurse receives a criminal conviction which could render him or her unfit to practise; and,
 - b. where a veterinary surgeon or registered veterinary nurse's conduct could amount to disgraceful conduct in a professional respect.
5. A veterinary surgeon or registered veterinary nurse's performance may be poor to such an extent that it could amount to disgraceful conduct in a professional respect in the following performance-related circumstances:
 - a. refusal or failure by the veterinary surgeon or registered veterinary nurse to take or demonstrate reasonable steps to address ongoing concerns about professional performance that could impair fitness to practise;
 - b. refusal or failure by the veterinary surgeon or registered veterinary nurse to take or demonstrate reasonable steps to address ongoing concerns about professional performance where there is harm, or a risk of a harm, to animal health or welfare, public health or the public interest as a result;
 - c. refusal or failure by the veterinary surgeon or registered veterinary nurse to comply with reasonable requests by the RCVS, for example, to provide progress reports or give undertakings;
 - d. breach of an undertaking given by the veterinary surgeon or registered veterinary nurse.

When should concerns about a veterinary surgeon's or registered veterinary nurse's performance be reported to the RCVS?

6. Veterinary surgeons or registered veterinary nurses must take or demonstrate reasonable steps to address any ongoing concerns about professional performance which could impair fitness to practise or where there is harm, or a risk of harm, to animal health or welfare, public health or the public as a result. This should include steps to review and monitor performance and undertake any remedial activities.
7. Members of the public coming into contact with veterinary professionals who have concerns that a veterinary professional's performance may be impairing fitness to practise are encouraged to report those concerns to the RCVS as soon as is reasonably practicable.

8. In addition, veterinary surgeons and registered veterinary nurses who are concerned about the performance or competence of another veterinary surgeon or registered veterinary nurse must take steps to ensure that animals are not put at risk and that the interests of the public, including those of their colleague, are protected. This may ultimately mean reporting a colleague to the RCVS where concerns remain despite these steps, or where practice-based options are insufficient to deal with concerns about professional performance.
9. The RCVS has a duty to act in the public interest including recognition of a veterinary professional's own interests and will investigate sympathetically and sensitively any performance-related concerns brought to its attention.

How does the RCVS deal with ongoing concerns about a veterinary surgeon or registered veterinary nurse's performance?

10. Performance concerns may be brought to the attention of the RCVS or may be relevant to a complaint case. All investigations follow similar procedures and timelines to any other complaint received by the RCVS.
11. The RCVS Preliminary Investigation Committee and Veterinary Nurses' Preliminary Investigation Committee (PIC) conduct a preliminary investigation and decide (i) whether there is a realistic prospect of finding disgraceful conduct in a professional respect or a conviction which renders a veterinary professional unfit to practise; and, if so, (ii) whether it is in the public interest to refer the case to the DC for a full hearing. When undertaking both elements of this assessment, the PIC may take into account the ongoing concerns about the professional performance of the veterinary surgeon or registered veterinary nurse, if relevant. PIC meetings are held in private and information will be discussed confidentially.
12. When considering whether a veterinary surgeon or registered veterinary nurse's fitness to practise could be impaired because of ongoing concerns about professional performance, the PIC may refer the case to an appropriate (appointed) veterinary surgeon or registered veterinary nurse and the Case Examiners for further investigations before deciding on an appropriate course of action to recommend to the PIC.
13. If the case is sufficiently serious then referral to the DC will be necessary in the public interest, despite any issues surrounding the veterinary professional's performance.
14. However, once the PIC has investigated a case, it may decide in light of all relevant circumstances, including the veterinary surgeon or registered veterinary nurse's performance, that it is in the public interest not to refer the case to the DC, at least at that time. The PIC may then:

- a. hold the case open for a specified period of time; or,
- b. adjourn consideration of the case for a specified period of time.

15. Where the PIC has decided to hold a case open or adjourn consideration for a period of time, it may also take reasonable steps in the circumstances to protect the public interest, for example, it may:

- a. invite the veterinary surgeon or registered veterinary nurse to agree to be visited and interviewed by representatives of the RCVS, for example, a Senior Case Manager and/or a veterinary investigator;
- b. invite the veterinary surgeon or registered veterinary nurse to provide progress reports to the PIC, which may be at his/her expense;
- c. invite the veterinary surgeon or registered veterinary nurse to embark on a course of professional development recommended by a mentor or workplace supervisor at his/her expense; and,
- d. invite the veterinary surgeon or registered veterinary nurse to give undertakings to the PIC.

16. If the PIC decides to invite the veterinary surgeon or registered veterinary nurse to give undertakings, it must ensure that any such undertakings are proportionate, targeted, workable and measurable. The PIC may draft and refer to a list of possible undertakings which will be made available to the public and regularly reviewed. The types of possible undertakings are not limited to those set out in the list of undertakings but may include, for example:

- a. undergoing a course of professional development at the veterinary surgeon or registered veterinary nurse's own expense;
- b. supervision by a workplace supervisor appointed by the RCVS; who may be a suitable colleague in the same practice;
- c. specific undertakings to address concerns identified by the RCVS or the workplace supervisor, for example, relating to the veterinary surgeon or registered veterinary nurse's practice or the specific facts of the case;
- d. undertakings allowing the sharing of information between relevant persons, for example, the veterinary surgeon or registered veterinary nurse's employer, workplace supervisor and the RCVS; and,
- e. submitting to performance or competence assessments and observation.

17. An undertaking is a formal promise given in writing and signed by the veterinary surgeon or registered veterinary nurse. A veterinary surgeon or registered veterinary nurse giving undertakings will be notified that at the discretion of the PIC, breach of an undertaking could result in referral of the breach to the DC and that the original case considered by the PIC may also be referred to the DC.

18. The undertakings relating to a specific veterinary surgeon or registered veterinary nurse are not made public by the PIC, unless there is an overriding public interest in disclosure. Similarly, once

undertakings have been given by a veterinary surgeon or registered veterinary nurse, managing compliance with those undertakings takes place in private, unless there are overriding public interest reasons for disclosure.

19. When monitoring a held-open or adjourned case, the PIC adopts a pro-active approach to ensure compliance with undertakings. This involves regular liaison between the veterinary surgeon or registered veterinary nurse and the RCVS, usually a Senior Case Manager, and any other relevant individuals, such as a workplace supervisor. The PIC may also direct, where appropriate, that any reports or similar documents should be submitted and considered by a Case Examiner, Case Manager, the Chairman of PIC or at a full meeting of the PIC.
20. The PIC may invite an appointed veterinary surgeon or registered veterinary nurse or workplace supervisor or other relevant individual to attend a PIC meeting and report in relation to the veterinary surgeon or registered veterinary nurse. The veterinary surgeon or registered veterinary nurse will be informed when any person has been asked to attend a PIC meeting and be invited to comment on the attendance by that individual. A written note of the individual's report to the PIC will be made available to the veterinary surgeon or registered veterinary nurse after the PIC meeting.
21. A held-open or adjourned case may be further held open or adjourned by the PIC for as long as it is considered to be necessary in the public interest. Monitoring will be carried out until such time as the PIC considers that the case may be closed or that it should be referred to the DC. In any event the PIC will formally review individual cases at least once every 12 months.

What happens if a veterinary surgeon or registered veterinary nurse does not co-operate with the PIC when it investigates a performance case or where undertakings are breached or where further matters arise?

22. A failure to cooperate with the PIC or a breach of undertakings could each amount to disgraceful conduct in a professional respect. At the discretion of the PIC, such cases may be referred to the DC on their own, with or without the original case that was considered by the PIC.
23. If additional matters, for example, concerns resulting from information provided in compliance with undertakings, or a conviction or other conduct complaint cases come to the attention of the PIC during the course of its management of a held-open or adjourned case, the PIC may decide to refer all or any cases to the DC, following any additional investigation that is considered necessary.

What if the public interest requires a veterinary surgeon or registered veterinary nurse's name to be removed from the Register?

24. The PIC may always refer cases involving ongoing concerns about professional performance to the DC if it considers it to be appropriate and just, having regard to its duties.

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