

## ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS COUNCIL 4 NOVEMBER 2004.

### THE LAY OBSERVERS' REPORT TO COUNCIL AND THE PRELIMINARY INVESTIGATION COMMITTEE'S RESPONSE

#### SUMMARY

In June 2004 Council requested a Preliminary Investigation Committee (PIC) response to the Lay Observers' reports to Council, on the basis that the practice and procedures of the PIC are of legitimate interest to Council; as distinct from the decisions made in individual complaints. The PIC response to the Lay Observers' 2004 report to Council is set out below.

[The text of the Lay Observers' report is set out below in bold, followed by the PIC response to each paragraph.]

#### RESPONSE

- 1) **This is the fifth annual report of the Lay Observers.**
- 2) **Since last year's report, there has been an encouraging improvement in the time taken to bring complaints to the Preliminary Investigations Committee. However it is disappointing that a few veterinary surgeons do not reply to the College on a timely basis, which is a cause of further frustration for the complainant as well as the Committee. Formalisation of the required response times would be helpful.**

The information provided to veterinary surgeons asked to respond to a complaint is attached as Annex A. This requests a response in 14 days. At least one reminder is issued before a complaint is referred to screeners, who can then refer the complaint to the PIC for consideration. In the 2004 Annual Report, RCVS published the average times taken to deal with complaints. Although a small number of veterinary surgeons do not reply to the College on a timely basis, the vast majority of veterinary surgeons respond promptly, as the statistics suggest. In addition, there is provision in the Guide to Professional Conduct to make "failure to respond" the basis of a charge at a Disciplinary Inquiry. The PIC is keen that veterinary surgeons respond promptly to complaints and where appropriate does charge serious professional misconduct (disgraceful conduct in a professional respect) on the basis of non-response. The Inquiry into Mr M A P Simons in 2001 included such a charge, to which he pleaded guilty.

- 3) **A large number of complaints considered by the Committee highlight areas of incompetence and negligence rather than professional misconduct. A number of such files have been kept open in case the incident complained of is not an isolated problem but rather part of a pattern which could, if future complaints are received by the College, amount to misconduct.**

For issues relating to negligence please see the response to the next paragraph.

Incompetent veterinary surgeons who have carried out acts or omissions that may amount to serious professional misconduct can be referred by the PIC to the Disciplinary Committee. However, there are practical difficulties using conduct procedures to deal with veterinary surgeons against whom it is alleged are incompetent or unfit to practise. A practitioner may be unfit to practise through medical problems or a lack of skill, and this can be addressed through conduct procedures only by alleging that specific acts or omissions (conduct) amount to serious professional misconduct. Partly for this reason, the General Medical Council introduced performance and health procedures, in addition to conduct procedures, to deal with medical practitioners who it is alleged are unfit to practise. By holding open such types of complaints, PIC hopes to establish whether they are one-offs, or part of a pattern of behaviour that might be addressed by conduct procedures.

**4) Over the past year we have been pleased to see that the replies to complainants from the Professional Conduct Department, following consideration of such cases, have highlighted the possibility of negligence. We have sensed some frustration on the part of complainants that the College has no power to take action in such cases nor provide the technical expertise to complainants in their discussions with the veterinarian's insurer.**

RCVS has difficulty convincing some complainants that an allegation of fault against a veterinary surgeon relates to alleged negligence and, even if proved, could not amount to serious professional misconduct (that the complaint does not affect the veterinary surgeon's fitness to practise veterinary surgery). However, gross negligence can amount to serious professional misconduct; no moral turpitude is required for a finding of serious professional misconduct. This is a similar position to that faced by other professional regulators, although those that have wider powers under newer legislation may be able to address negligence-type complaints in other ways, for example as performance issues. The Disciplinary Committee Inquiry into Mr Swift in 2001 indicated that any alleged negligence must be extremely serious before it is likely to amount to misconduct, although subsequent Disciplinary Inquiries may have affected this view, particularly the second Inquiry into Mr Swift in September 2004.

Under current procedures, if PIC considers there is no indication of serious professional misconduct against a veterinary surgeon, it may issue advice to the veterinary surgeon and/or suggest that the complaint is an allegation of negligence. For some complainants this does not adequately address their complaint.

Some complainants want a finding of fault on the part of the veterinary surgeon, which may not be possible unless the facts are decided by a trial or are admitted. RCVS cannot take formal disciplinary action against a veterinary surgeon without a charge of serious professional misconduct. A new Veterinary Surgeons Act might change this, although, even the current proposals for a new Veterinary Surgeons Act do not seek to give RCVS power to adjudicate on allegations of negligence.

A civil court adjudicating on negligence will decide facts and any fault in the context of negligence. So, why are some complainants so dissatisfied with complaints involving alleged negligence? Why do complainants not use the current civil court system more frequently? Could the failing be that in some cases the veterinary report needed to support an allegation or claim of negligence will be prohibitively expensive and may be more than any possible damages (compensation)? Could the costs of pursuing a case to court be prohibitive to some, or disproportionate to the losses incurred?

- 5) We understand that there is currently no legal obligation on the part of the veterinary surgeon to disclose clinical records, without which it is difficult for a complainant to identify negligence. We would therefore urge the RCVS to support the full disclosure of clinical records to clients.**

Veterinary clinical records, like medical records, are the property of the practitioner or the organisation employing the practitioner. The Access to Health Records Act 1990 allowed patients to access their own medical records. One reason for the change was that without the Act, patients sometimes needed to initiate legal proceedings against a practitioner simply to access the medical records to be able to decide if they had a case against the practitioner.

Following a specific case involving a veterinary organisation, the Data Protection Registrar indicated to RCVS that veterinary clinical records were subject to the Data Protection Acts, 1984 and 1998. RCVS issued advice in the November 2000 and March 2003 editions of RCVS News. After a House of Lords case at the end of 2003 the advice from the now Information Commissioner (previously the Data Protection Registrar) indicated that veterinary clinical records were not subject to the Act unless and only to the extent that they refer to personal data – usually information about or from the client. Revised advice was issued in the March 2004 edition of RCVS News. Therefore, this year the position has to a large extent returned to that in the 1990s, and a client may need to take formal steps or initiate legal proceedings against a veterinary surgeon to obtain the clinical records, although, now, court procedures generally provide for earlier disclosure of relevant documents.

The RCVS Guide to Professional Conduct encourages disclosure of relevant information from the clinical records and clients to be given sight of the records, but does not require a veterinary surgeon to give a client a copy of the clinical records. The PIC requests that Advisory Committee, in consultation with interested organisations, such as the Veterinary Defence Society, consider whether RCVS advice should be strengthened.

- 6) We have been concerned at a number of complaints against single-handed practices where certain veterinarians appear to have become isolated and are suffering from the absence of peer assessment and contact as well as continuing professional development. The College has no powers to suspend members, pending their retraining, which is unfortunate.**

Advice for sole practitioners was published in the March 2003 edition of RCVS News. Although there is no specific provision in the Veterinary Surgeons Act 1966, or subordinate legislation, the Disciplinary Committee has used its powers to postpone judgement and in effect require members to undergo retraining, for example, the Inquiry into Dr Porter in 2001. Such powers have been formalised in the new Disciplinary Committee rules, but it will not be possible to do more until there is a new Veterinary Surgeons Act.

- 7) Throughout the year members of the Committee have continued to devote a great deal of their time to offering advice, assistance and support to practices which have been visited, where difficulties are being experienced. This helps not only the individual, but also the public's perception of the profession if changes and improvements are made.**

At the request of the (full) PIC, members of the PIC carry out visits to veterinary practices and interviews of veterinary surgeons. Generally, Lay Observers are invited to such visits and interviews and attend them. Interviews may be informal, in which case nothing said by the veterinary surgeon is used against him or her at any subsequent Disciplinary Inquiry, or formal, in which case a verbatim note is taken of the interview, which may be used in evidence against

the veterinary surgeon concerned. Council is informed of the numbers of interviews and visits. [RCVS solicitors interview complainants and prepare a formal statement for use at any subsequent Disciplinary Committee Inquiry.]

- 8) The Committee has received a large number of complaints from veterinary surgeons about the activities of certain individuals and companies, who are supplying Prescription Only Medicines. There is anxiety in the profession about the ability of such suppliers to offer 24-hour cover or to give appropriate consideration to the welfare of the animals. It is to be hoped that this situation is clarified shortly.**

A Disciplinary Inquiry is pending. [There should be no discussion at Council on this paragraph since 12 members of the Council make up the Disciplinary Committee.]

- 9) During the year the review of all the complaints following the Foot and Mouth epidemic was concluded. We can confirm that a considerable amount of time and attention was given to consider fully the complex issues in all these cases in a way that was fair to all concerned.**

The PIC thanks the Lay Observers for these comments.

- 10) In the last year we have been pleased to note the increasingly detailed nature of the replies to complainants from the Professional Conduct Department and hope that this improvement continues.**

The PIC thanks the Lay Observers for these comments.

- 11) In our view, discussions at the Preliminary Investigations Committee about complaints that have been received have been full and open, giving a balance to the views of both complainant and those complained against. We have felt that our 'lay' perspective on all issues has been fully considered.**

The PIC thanks the Lay Observers for these comments and is able to confirm that the comments of the Lay Observers are carefully considered and appreciated and have an impact on PIC decisions.

- 12) Finally, we would like to record our thanks to all members of the Committee and members of the Professional Conduct Department for their support to us throughout the year. We have witnessed instances where both committee members and Professional Conduct staff have been subjected to unpleasant personal harassment from parties to a complaint. It is to their credit that they have maintained their high professional standards and good spirits in the face of such abuse.**

The PIC thanks the Lay Observers for these comments and notes that there is a tendency by some complainants to use the complaints procedures for purposes beyond the conduct of individual members of the profession.

## **INFORMATION FOR A VETERINARY SURGEON WHO IS THE SUBJECT OF A COMPLAINT**

### **What is this about?**

1. The College has received a complaint against you or your practice. A copy of the complaint is enclosed.
2. Also enclosed is the College's standard letter that identifies issues of professional conduct and requests your comments on the complaint.
3. The College has a statutory duty to investigate all complaints within its jurisdiction – those that raise an issue of professional conduct - however trivial they may seem.
4. At this stage the College has not had the opportunity to hear your full answer to the complaint. It is therefore important that you respond to the allegations in as much detail as possible and include copies of all relevant documents e.g. clinical records / notes, consent forms etc.

### **Your response to the complaint**

5. Please respond to the College within 14 days. If for any reason this is not possible, you should contact the Professional Conduct Department (Tel. No. 020 7222 2001; the direct line to the Professional Conduct Department is 020 7202 0789).
6. Prior to Preliminary Screening, a copy of your response will be sent to the complainant, unless you state otherwise. Please note that there are certain circumstances, for example judicial review of the College's decision, in which the complainant will have access to your response in any event.

### **Preliminary Screening**

7. Once your response and that of any other party approached (e.g. a veterinary surgeon who has been involved subsequently) are received by the Professional Conduct Department, all papers relating to the complaint will be passed to Preliminary Screeners – the Chairman and one other member of the Preliminary Investigation (PI) Committee – for consideration.
8. If the Preliminary Screeners close your complaint it will be closed with **no indication of serious professional misconduct against you**. This process may take 2 months from receipt of your response.

9. Either one of the Preliminary Screeners may refer the complaint to the PI Committee. If the complaint against you is referred to the PI Committee, you will be informed of the date of the Committee meeting at which the complaint will be considered. Please note that generally the preliminary screeners (and PI Committee) will only close a complaint if there is sufficient information to explain why there is no reason to pursue it further.
10. If, by this stage, you have not already done so, you are strongly encouraged to seek advice from your professional indemnity insurers (e.g. the Veterinary Defence Society). If your insurers are unable to help, you may wish to seek the advice of a solicitor.

## **Preliminary Investigation (PI) Committee**

11. The PI Committee may (initially or after further investigation): -

**Close** the complaint on the basis that **there is no indication of serious professional misconduct against you**. You may be given **Advice** regarding your future actions/conduct.

12. The PI Committee may

**Investigate further**; either through the Professional Conduct Department or the College's solicitors. Formal **statements** may be taken from witnesses

13. As part of the investigation process the PI Committee may decide to invite you for interview/interview under caution. PI Committee may also request a visit to your practice. (Interviews are carried out by members of the PI Committee. A Lay Observer may be present during an interview or visit). You are not obliged to attend an interview or to agree to a practice visit.

14. The PI Committee will receive a short report of any interview or practice visit and a verbatim transcript of any interview conducted under caution. The verbatim transcript may be used in evidence against you if the complaint is referred to the Disciplinary Committee (DC). What you say at informal interview will NOT be used in evidence against you.

15. The PI Committee will consider all the evidence obtained. Witness statement will be forwarded to you for your comments.

16. If you have a health problem you are strongly encouraged to contact the Veterinary Surgeons Health Support Programme.

17. The PI Committee may: -

**Hold** the complaint open for a period of time not exceeding two years to allow a complaint to be pursued at a later date, if appropriate.

**Refer** the complaint to the DC for a public hearing.

18. Unless the complaint is referred to the DC, a letter will be sent to the complainant explaining the decision. You will receive a copy of this letter.

19. An outline of the College's procedures for handling complaints and other useful information may be found in the current version of the Guide to Professional Conduct, (see the College's website at [www.rcvs.org.uk](http://www.rcvs.org.uk)). [From receipt of the complaint against you to its conclusion may take 6 months or longer depending on the investigation.]
20. These are general procedures, which may be varied as necessary for any individual complaint.
21. If you need more information please telephone the College and ask to speak to the caseworker who has written to you.

Professional Conduct Department August 2003