

ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS COUNCIL 2007

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

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

- 1) This is the eighth annual report of the Lay Observers.**
- 2) During the last year Susan Pyper, who had been a Lay Observer since the introduction of the role to the Preliminary Investigation Committee (PIC), retired and we welcome Chris Mattinson, who has joined us. This is the start of a rolling programme for the appointment of Lay Observers, which will, we believe, provide an increase in public confidence in the way this role is exercised.**

The Committee wishes to express sincere thanks to Susan Pyper for her commitment to the Committee and the College, and her assistance with the development of the complaints procedures over the last six years. The Committee welcomes the new Lay Observer, Chris Mattinson. The introduction of a rolling programme for the appointment of Lay Observers will see Lay Observers appointed for a 3-year period, which may be renewed. Generally, Lay Observers will serve no more than 6 years.

- 3) In the past year in addition to interviewing at the College certain veterinarians who have been the subject of a complaint, the committee has continued to make visits to practices. We feel that the reports of these visits have assisted the committee by obtaining more detailed information, which has often helped the committee to understand the circumstances surrounding the matter at issue. In several cases this has enabled the committee to close the complaint. Another beneficial development has been the increasing practice of also visiting the complainant at the same time as the veterinary surgeon. We welcome this even-handed approach which often proves to be helpful to all parties to the complaint.**

The Committee agrees that visits to practices and complainants are useful in the investigation process. Practice visits gain more information about a complaint and the veterinary practice. In addition, they provide a personal interface between the College and the veterinary surgeon and give an opportunity to answer any questions about the College's jurisdiction, powers or procedures. As indicated by the Lay Observers, this year the visits to practices have increasingly included visits to the respective complainants. Visits to complainants also provide more information and a personal interface; they also demonstrate an even-handed approach to investigations, between veterinary surgeons and complainants.

This year, the Committee carried out a review of its procedures, based on the discussions and recommendations in Fifth Report of the Shipman Inquiry, which was published in December 2004. Consideration of the report waited until the publication of the various subsequent reports, in particular the Chief Medical Officer's report '*Good doctors, Safer patients*' published in July 2006. (The subsequent reports culminated in the publication in February 2007, of the Government White Paper, '*Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century*'). However, the later reports focused on the broader political and general 'better regulation' issues, rather than investigative procedures. The decisions following the Committee's review are attached as annex A.

One of the review decisions is particularly relevant to visits. The Committee decided that Committee members should become less involved in visits, and these visits should be undertaken by suitably trained veterinary surgeons, accompanied by members of the Professional Conduct Department when appropriate. This is not new and has been a method of investigation agreed by the Committee on

occasions in the past, particularly when specific veterinary expertise has been needed. Reducing the involvement of Committee members in investigations gives a greater degree of separation between the investigation and prosecution functions of the Committee. This separation of functions cannot be achieved fully under the current statutory framework, where the Committee is responsible for the investigation of all complaints. (The police investigating and the Crown Prosecution Service (CPS) prosecuting is an example of separate investigation and prosecution functions.)

4) In our last report, we mentioned the importance of more lay involvement at all stages of the PIC process, to provide the transparency in evaluating complaints, which is rightly expected by the public. In other regulatory organisations, changes have been made to committee structures to accommodate a greater lay presence. However the RCVS is constrained by the terms of the Veterinary Surgeons Act in respect of the membership of both the PIC and the Disciplinary Committee. If there is not to be a new Act in the foreseeable future, we would welcome proposals from the College to agree a more defined lay role at all stages of the complaints process. In addition we consider it would be beneficial if members of the profession, suitably trained, could become involved in the resolution of complaints either through mediation, mentoring or practice visits.

The Committee places considerable importance on lay involvement in the complaints procedures and Lay Observers are given access to all stages of the procedures; Lay observers are present at practice visits, visits to complainants, interview of veterinary surgeons and the discussion of Committee procedures this year. At the review, the Committee decided there should be more formal lay input in the early stages of complaints handling and decided that a Lay Observer should confirm any closure of a complaint at the screening stage (and at the re-assessment stage) – in effect, the Lay Observer will indicate whether he or she agrees with the (veterinary surgeons') decision to close the complaint. If the Lay Observer is not satisfied the complaint should be closed, he or she will be able to refer the complaint to the Committee. This will lengthen the time taken to consider complaints, but will give lay endorsement to the closing of these complaints.

With regard to practice visits and the involvement of veterinary surgeons who are not members of the Committee, see the response to paragraph 3.

5) We have been encouraged in the past year to see an increase in the number of veterinary practices involved in the Practice Standards Scheme and we hope that this impetus will be maintained until all practices are taking part. Once the public is more fully aware of the standards and facilities which have to be met to achieve accreditation under the scheme, we feel that this will assist owners in making a more informed choice with regard to the type of service they can expect to receive.

There are 1,856 veterinary practice premises under the ambit of the Practice Standards Scheme. Of these, 1,144 are fully accredited, 630 are awaiting inspection and accreditation under transitional arrangements and 82 are part-way through the application, inspection or accreditation process (information from March 2007). (There are 3,945 practice premises recorded in the RCVS Directory of Practices, May 2007). Veterinary practices continue to join the Scheme. The Standards and Rules of the Scheme are available on the website, and promotional posters and leaflets have been produced for use by practices within the Scheme. The Scheme was launched to the public in March 2006.

The Scheme confirms and promotes veterinary practice standards and aims to provide information about the type of services clients can expect. In a survey, conducted in November 2005, animal owners said they assumed that practices had been regulated in the past and thought the Scheme should be compulsory. The research suggested the key factor in choosing a practice was recommendation by a friend or colleague; although accreditation might influence an animal owner seeking a new practice, or an alternative practice in the event of a problem. The Scheme is voluntary, but practice registration may become compulsory under a new Veterinary Surgeons Act, or, potentially, under the Veterinary Medicines Regulations (VMRs). The Veterinary Medicines

Directorate is consulting on the 2007 VMRs to come into force in November 2007 and these may include some form of veterinary practice registration.

- 6) Throughout the year there have continued to be a large volume of complaints alleging a failure to obtain informed consent for a procedure that was undertaken. We believe more focus needs to be placed on full discussions before as well as ongoing communication throughout the treatment of a condition especially when original estimates as to the cost are being exceeded.**

The Committee shares the Lay Observers' concerns and has recently asked the College's Advisory Committee to consider whether veterinary surgeons should be advised to provide the client with a copy of the signed consent form, in an effort to reduce misunderstandings. In addition, the Committee will ask the Advisory Committee to consider additional or revised guidance to complement the Guide to Professional Conduct provisions on veterinary surgeons' responsibilities to clients (Part 1, D of the Guide); specifically, the responsibility to obtain the client's informed consent to treatment unless delay would adversely affect the animal's welfare, and to provide realistic fee estimates initially and on an ongoing basis.

- 7) With regard to estimates, even though a proforma consent form is contained within the Guide to Professional Conduct, it is disappointing that many practices are failing to utilise documentation that clarifies the extent and likely cost of a procedure. Were this to have been done, a large number of complaints currently being referred to the committee would not arise.**

The Committee agrees that consent forms should record the realistic fee estimates given to clients, and will ask the Advisory Committee to consider this as part of the review referred to in the response to paragraph 6. The Committee considers that more guidance could be provided on the balance to be struck between veterinary surgeons and clients. For example, on the one hand, veterinary surgeons should provide clients with realistic fee estimates, partly because cost may determine the treatment options available to the client. On the other hand, veterinary surgeons should be able to presume that some clients will have some familiarity with the practice pricing structure.

- 8) Unfortunately communication problems continue to feature in virtually all complaints coming before the committee. It seems that good communication often fails at the most critical moments in an animal's and owner's life, when levels of stress and emotion are at their highest. It is to be hoped that more attention is given to the communication challenges faced by practices, perhaps through relevant Continuing Professional Development courses.**

The Committee will ask the Advisory Committee to consider this as part of the review referred to in the response to paragraph 6.

- 9) In this regard, there continue to be a large number of complaints concerning all aspects of euthanasia, from attendance out of hours to procedures which have not proceeded smoothly. In all of these complaints, a failure to communicate appropriately has inflamed a difficult situation.**

The Committee recognises that euthanasia procedures do not always go according to plan, and, to assist understanding of this aspect of practice, will ask the Advisory Committee to produce an Advice Note on the subject, primarily for the assistance of animal owners, but also for veterinary surgeons with regard to communication with clients.

- 10) During the course of the last year, there has been a significant change in the way that the business of the PIC is conducted. All members of the committee are now reviewing case papers in a computerised rather than a paper form. We hope that this will assist with the future collection of data, which would be beneficial to the committee and the profession as a whole. In particular we hope it will lead to an ability to analyse more fully the significant components of complaints coming before the committee, not only as regards the subject matter but also the circumstances of the veterinary surgeon who is the subject of the complaint. In this way it may become possible to channel support more effectively to areas of particular risk.**

The Committee is pleased to report that members and Lay Observers receive meeting agendas and papers electronically. Separate to this, the Committee will seek greater analysis of complaints, while at the same time continuing with the existing classification of complaints to ensure continuity of this information.

11) In last year's report we commented on the potential benefits associated with the collection of detailed statistics. As highlighted above, we hope that this will soon be forthcoming and will be reviewed on a regular basis by the committee as well as being made available to the public through the RCVS Annual Report.

The Professional Conduct Department's database and document management system provides statistical information on various aspects of complaints. Each year, the RCVS Annual Report provides information on complaints received, as well as an average timeline for complaints at each of the various stages of the complaints procedures: assessment, re-assessment, screening, Committee consideration on the first occasion and Committee consideration following additional investigation. The Committee has agreed to seek assistance from those with statistical expertise to consider whether further information can be provided.

12) Cases referred to the Disciplinary Committee by PIC are only those which could, if proved, amount to Serious Professional Misconduct (SPMC). This continues to be a source of frustration for many owners whose complaints concern allegations of negligence which, viewed in isolation, do not cross the threshold into SPMC. However, in the past year, there have been cases which, either individually or when viewed as part of a pattern, have warranted a referral to the Disciplinary Committee.

During the year the Advisory Committee has developed Advice Notes on 'negligence' and 'serious professional misconduct' and copies are attached as annex B. These help to explain the difference between the two terms and where there is an area of overlap. The College will investigate any complaint of a clinical nature that raises an issue of conduct, but many such complaints are closed without a Disciplinary hearing. Even if a mistake has occurred, and even if this is the fault of the veterinary surgeon, it will only be referred to the Disciplinary Inquiry if the veterinary surgeon may not be fit to practise. A cavalier or reckless approach to clinical conduct may question a veterinary surgeon's fitness to practise but, generally, an error that could be made by any responsible veterinary surgeon will not.

13) Throughout the year we have been conscious of an ever increasing demand on the staff of the Professional Conduct Department. Notwithstanding a number of staff changes which have occurred, the need to adapt procedures to technological changes and an increasing number of complaints coming to the committee, we are pleased that, in general, complaints are being considered on a timelier basis. This is beneficial to all parties to the complaint at what is a very stressful time for all.

14) Finally we would like to thank the members of the committee and the staff of the Professional Conduct Department for their continuing support to the Lay Observers and their commitment to lay input into the complaints process.

The Committee thanks the Lay Observers for their comments.

Decisions following PIC meeting on 7 March 2007

General

1. The Preliminary Investigation Committee (PIC) procedures to be revised as agreed and then provided to RCVS Council (probably November 2007); as were the DC procedure rules, which were revised in 2004.
2. While mediation between complainant and veterinary surgeon is to be encouraged, this is not the role of the PIC or the Professional Conduct Department.
3. The College should give consideration to facilitating a mediation service by the profession for the use of veterinary surgeons and their clients.
4. It is for legislation to provide protection to employees who complain about employers, not the PIC.
5. At the current time there is no overwhelming need for an Ombudsman to oversee PIC decisions. It was agreed that although an Ombudsman might be helpful, the current Lay Observers, with their annual reports to RCVS Council, provide independent scrutiny of the procedures and confirmation that the PIC carries out its statutory function in the public interest.

Complaints handling and investigation

6. There will continue to be no preconditions to complaints.
7. The RCVS will continue to give advice, as appropriate, about the probable outcome of a complaint; with a preference that such advice is based on previous complaints reported to Council or heard by the Disciplinary Committee. It was recognised that such advice should not pre-empt Committee decisions or prejudice the outcome of any ongoing or subsequent complaint.
8. The RCVS will confirm if a veterinary surgeon's conviction is under consideration or referred to the Disciplinary Committee.
9. A reference advice library is desirable for past decisions of the Committee and other aspects of Committee procedures (there are advice notes already on negligence and serious professional misconduct).
10. Standard forms will be drafted for the assessment and screening stages, which may include various checklists for additional information/investigation and formalise the practice of referring complaints direct to the Committee at the (initial) assessment stage e.g. for an allegation of drug abuse.
11. A veterinary surgeon's previous complaints history will be checked at the assessment stage.
12. A complaint against a veterinary surgeon relating to a practice, will be disclosed, on a routine basis, to the senior veterinary surgeon at the practice with a request for relevant information e.g. other complaints against the veterinary surgeon known by the practice. This to be subject to any issues arising under the Data protection Act.
13. The RCVS will, if appropriate, talk to the complainant or employer to find out more information at the assessment stage.

14. The Committee will ask the Advisory Committee to consider whether veterinary surgeons or employers should keep a record of complaints against them/the practice, which relate to the fitness to practise of veterinary surgeons at the practice.
15. Prior to a PIC meeting, when the PIC papers are under consideration by Committee members, all requests for further information by PIC members and Lay Observers will be acted on only with the approval of the Chairman of the Committee and/or the Assistant Registrar.
16. It is preferable for the investigation of complaints to be by non-committee members – for both interviews and practice visits. The Committee agreed that appropriate veterinary surgeons to assist investigations are those who are also Practice Standards Scheme (PSS) inspectors, although this role should be carried out independently of the PSS.
17. The Committee should continue to manage or direct investigations (subject to the current practice that the Chairman of the Committee or Assistant Registrar may direct appropriate investigation and report this to the Committee).
18. Health and performance type complaints will be investigated in the same way as any other complaint, within the context of the conduct based complaints system. Thus, such complaints should be investigated to see if serious professional misconduct is present and if arising, the complaint will be referred to the Disciplinary Committee.
19. The assessment, screening and Committee consideration stages of the complaints procedures all need protocols on decision making (to assist the Committee and make the process clearer to veterinary surgeons and complainants), perhaps to include sample cases such as those reported to Council over time. The protocols for assessment, screening and the Committee to be drafted by the Professional Conduct Department for consideration by the Committee.
20. The assessment and screening of complaints will continue to be carried out by Committee members, but there will be increased lay involvement in both stages: a Lay Observer will confirm closure of a complaint at the screening stage and the re-assessment stage; if the Lay Observer is unable to confirm closure, the complaint will be considered by the PIC.
21. If a complaint is closed at the re-assessment or screening stages and the complainant appeals or is dissatisfied, the complaint will be referred automatically to PIC.
22. That guidance on 'standards, criteria and thresholds' will be considered in the context of new protocols, and the Committee will ask the Advisory Committee to consider this at the next revision of RCVS Guide to Professional Conduct (perhaps if/when the Guides for veterinary surgeons and veterinary nurses are combined); taking into account the extent to which the medical profession has pursued these recommendations from the Fifth Report of the Shipman Inquiry.

Review/audit of procedures

23. The RCVS will open complaints files and statistical information to appropriate research, on a confidential basis.
24. An external view on the complaints procedures drafted as a result of this review will be helpful, perhaps from external consultants or the RCVS solicitors. This may also help to assess whether complaints are investigated fully in appropriate circumstances and whether investigations are proportionate.
25. That the Committee should audit complaints which are closed without Committee consideration

Promoting good practice

26. The Committee will ask the **Practice Standards Group** to consider a greater emphasis on clinical audit and governance within the Scheme.

GAH April 2007

ADVICE NOTE 2:

NEGLIGENCE

- 1) In veterinary practice, negligence may arise where:-
 - a) the veterinary surgeon owes a duty of care – the normal skill and judgement that would be expected of the average or reasonably competent veterinary surgeon. A veterinary surgeon is expected to exercise a reasonable degree of care and skill in his or her practice. A duty of care would be owed to all clients and patients and, on occasion, to third parties; and
 - b) there is a breach of that duty - a failure to maintain the standards expected of an average or reasonably competent veterinary surgeon; and
 - c) In considering the duty and alleged breach, various factors may be taken into account, for example:
 - i) the standards of the profession at that time;
 - ii) there may be more than one accepted approach to the clinical management;
 - iii) the veterinary surgeon's level of expertise;
 - iv) The veterinary surgeon is not necessarily expected to have the latest journal article on the topic; and the practice is not necessarily expected to have the latest equipment.
 - d) loss or damage was suffered and was caused by the breach of duty; and
 - e) the loss or damage was reasonably foreseeable.
- 2) The outcome of surgery or treatment is not certain and diagnosis is an imprecise art often based on the balancing of probabilities. Therefore, an unsuccessful outcome may not be because the veterinary surgeon has been negligent. In addition, some procedures are inherently risky; some procedures are riskier than others.
- 3) Negligence is not confined to things that have been done (or not done); advice (or a failure to advise) can be negligent. Financial loss may justify a claim in negligence as much as physical injury.
- 4) Claims for negligence may be resolved between the client and veterinary surgeon, sometimes with the involvement of the veterinary surgeon's professional indemnity insurers, for example, the Veterinary Defence Society. If not, the claim may be taken to the civil courts, where any facts in dispute are decided by the court on the 'balance of probabilities'. The civil courts will adjudicate on the claim of negligence and may award compensation or damages.
- 5) The RCVS has no jurisdiction to adjudicate on claims of negligence and no powers to award compensation or damages and most other professional bodies are in the same position.
- 6) If you think you may have a negligence claim against a veterinary surgeon in the civil courts, you are advised to seek legal advice from your solicitor.

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ADVICE NOTE 3

SERIOUS PROFESSIONAL MISCONDUCT

- 1) In general terms **unethical or unprofessional behaviour** is behaviour that falls short of the ethical or professional standards, guides or codes of conduct, accepted by a particular profession. Unethical or unprofessional behaviour is essentially a departure from the standard of behaviour expected as the normal among members of the profession.
- 2) For a veterinary surgeon, unethical or unprofessional behaviour might mean a failure to follow the guidance or advice within the RCVS Guide to Professional Conduct.
- 3) Such a failure will not amount to **serious professional misconduct**, unless it is serious enough to question whether the veterinary surgeon should remain registered with the RCVS i.e. question whether he or she is fit to practise or work as a veterinary surgeon. Examples of serious professional misconduct are false certification, dishonesty and fraud.
- 4) Disciplinary action by an employer might be a parallel: a failure to follow a staff manual, guidance or rules will not result in an employee losing his or her job, unless the failure is serious enough to question whether the employee is fit to do the job. This is sometimes known as 'gross misconduct'. Examples of 'gross misconduct' are corrupting the database or stealing from the employer.
- 5) Serious professional misconduct may include the treatment of an animal if that **treatment was seriously deficient** - inadequate such that the veterinary surgeon is unfit to practise. Examples are a veterinary surgeon's reckless care of an animal or a veterinary surgeon's repeated errors. Serious professional misconduct does not include straightforward clinical mistakes, but if a veterinary surgeon misleads a client about what happened this could amount to serious professional misconduct. An example of this is an Inquiry on 10 March 2004, which may be viewed on the RCVS website.
- 6) The test for seriously deficient work is a higher than the test for negligence. In addition, the test for seriously deficient work relates primarily to the work carried out, not the outcome. For negligence, the outcome – the loss or damage – is of primary importance.
- 7) Serious professional misconduct **may overlap with negligence**, where, for example, the negligence is sufficiently gross. Lord Denning famously said that negligence 'may amount to misconduct, but only if it is inexcusable and is such as to be regarded as deplorable by his fellows in the profession'.
- 8) Disciplinary Inquiries since 2000 may be viewed on the RCVS website and examples of recent Inquiries involving the treatment of animals include: (1) an Inquiry on 4 September and 10 November 2006, and (2) an Inquiry on 2 October 2006.

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