



MEETING	COUNCIL
DATE	3 JUNE 2010
TITLE	Preliminary Investigation (PI) Committee - Lay Observers' Report to Council
CLASSIFICATION	Unclassified
SUMMARY	Attached is a copy of the June 2010 PI Committee Lay Observers' Report for RCVS Council, together with the PI Committee's response
DECISIONS REQUIRED	None
ATTACHMENTS	None
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PRELIMINARY INVESTIGATION COMMITTEE, LAY OBSERVERS' REPORT 2010

[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 eleventh report of the Lay Observers.**
- 2. Lay Observers are appointed by the RCVS following public advertisement. The three of us are tasked with helping and examining complaints and to contribute to the work of the Preliminary Investigation Committee (PIC). Our role is to ensure that the public's voice is heard clearly and that all complaints are investigated thoroughly. While the Veterinary Surgeons' Act does not give Lay Observers any voting powers, this has not been a significant issue and we are able to influence the Committee's findings in a positive and constructive way. Nevertheless we would like this position to change so that Lay Observers are full voting members of the PIC so as to ensure that the public voice is firmly at the heart of the College's decision making. We accept that this will require legislation.**

The PIC considers that the Lay Observers are invaluable to the work of the Committee and assuring the profession that the PIC is independent of RCVS Council and the public that it is not biased towards the profession. The PIC endorses the view that the Lay Observers should be full members of the PIC. As the Lay Observers state, this will require a change to the Veterinary Surgeons Act 1966 and the RCVS is seeking this change through a regulatory reform order.

- 3. The number of complaints received by the RCVS is small when taking into account the tens of thousands of consultations carried out by some 16,896 home-practising registered veterinary surgeons in the UK. As in previous years, poor communication lies at the heart of many complaints. As members of the public grow even more discriminating about which consumer services to use (and arguably more vocal in voicing their concerns) it seems to us that it makes good business sense for practices to invest time and resources to ensure that their communications with the public are monitored and action is taken to address any training needs or review documentation, protocols etc. We accept the huge demands placed on practitioners and where the reality of the "bottom line" will dominate, but dealing with complaints speedily and in an open and transparent manner can do much to minimise the likelihood of the public to submit a formal complaint to the College.**

The PIC endorses the view that complaints handling by practices is important and the RCVS Guide to professional Conduct provides that:

'1H. Your responsibilities when things go wrong

(The Veterinary Surgeons Act 1966 imposes on the Preliminary Investigation Committee responsibility for considering every complaint made against a veterinary surgeon, and where the allegations might justify removal or suspension from the Register, referring the complaint to the Disciplinary Committee.)

1. All clients should be actively encouraged in the first instance to discuss any problems which they may have with the veterinary surgeon treating their animal, or to ask for an appointment to talk to the practice principal
2. A sympathetic approach should be used in response to a complaint rather than immediate denial and defensiveness. An expression of sorrow that an animal has died or that someone is distressed by what has happened is appropriate and does not in itself amount to an admission of liability
3. Veterinary surgeons must:
 - a. respond promptly and constructively to any request from the RCVS for comments in relation to any allegation or complaint made against them. Failure to do so may in itself be held to amount to professional misconduct
 - b. be prepared to explain and justify to clients or colleagues any action or decision taken in the course of their professional activities.'

The PIC considers that if veterinary surgeons are open and frank about any problems and provide copies of clinical records on request, clients will understand that sometimes errors occur (which may or may not be due to the negligence of a veterinary surgeon or practice). A defensive response to a complaint can increase a clients concern and make a bad situation worse.

- 4. In the last year for reporting purposes a total of 653 complaints were closed by the College. Of these 71 (11%) were not progressed by the complainants, 175 (27%) were**

closed by case managers because they failed to cross the threshold for potential Serious Professional Misconduct and 271 (42%) were closed by Case Examiners because there was no arguable case of Serious Professional Misconduct. In some cases Case Examiners gave advice to the vet, for example, on communications handling. The PIC considered a total of 127 (19%) of cases referred to it by the Case Examiners. Finally 9 (1%) of cases were referred by PIC to the Disciplinary Committee. It is in this context that the public and the profession more widely can be assured that the overwhelming majority of veterinary surgeons give attention to the animals under their care to the high standards demanded of them. Where practitioners fail to meet these standards the RCVS has robust yet fair procedures in place to investigate and take disciplinary action as necessary.

The PIC confirms the figures stated and is determined that its procedures remain fair and robust, to complainants and veterinary surgeons. The procedures are kept under review and the PIC is committed to audit of the procedures and continual improvement, as evidenced by the recent review of the procedures and associated recommendations. Serious complaints against veterinary surgeons must be investigated, complaints which do not suggest a veterinary surgeon has done anything that should adversely affect his or her registration should be closed as soon as this is clear.

- 5. Following consultation the PIC agreed fresh guidance on the Threshold for Complaints. This is a welcome addition to the resources which committee members use when considering complaints and includes guidance as to whether a complaint falls within the College's jurisdiction, the seriousness of the complaint and the likely outcome.**

The PIC endorses the new thresholds guidance which will indicate to veterinary surgeons and complainants how some previous complaints and issues have been decided and how far they progressed in the complaints procedures, to PIC or the Disciplinary Committee or neither.

- 6. As we reported last year, introduction of Case Examiners (one Vet and one Lay Observer) to look at complaints independently has proved successful and has speeded up the overall time taken for the RCVS to respond formally. Additionally, complainants are given full reasons for all decisions taken by the Examiners.**

The introduction of Lay Observers in the case examination stage of the procedures prior to the PIC, where up to 50% of complaints are closed, has introduced a lay oversight and decision-making to many more complaints considered by the RCVS. The PIC is grateful to the Lay Observers for the extra work they have willingly undertaken.

- 7. The PIC Investigation team comprising four widely experienced veterinary surgeons has proved invaluable in assisting the PIC with its work. Following a complaint, and in certain prescribed circumstances, the PI Investigators can make announced and unannounced visits to practices. Complainants and practice staff have the opportunity to meet the Team to discuss the concerns raised. Our feedback indicates that members of the public welcome the opportunity to meet a veterinary surgeon investigating the complaint as do practices which, as a result of the Team's visit, can lead to practice protocols being reviewed or training and development needs being met. PIC receives a detailed report following visits by the Team together with recommendations and these have enabled the Committee to make sound evidenced-based decisions.**

The introduction of PIC investigators has led to greater numbers of complaints investigated by visits and interviews and at an earlier stage in the complaints procedures. An Inspectors' Manual was introduced to guide the work of the PIC Inspectors. The feedback from visits to practices and complainants has been positive and the face-to-face contact assists the early resolution of complaints and demonstrates to the public that complaints are taken seriously. Therefore, the PIC will consider whether visits should be increased and whether PIC investigators and senior RCVS staff should have the option of closing complaints immediately with or without the provision of advice to a veterinary surgeon where there is no arguable case against any veterinary surgeon.

- 8. We view with some concern the small number of cases where overseas vets do not have adequate language skills or there are doubts about their professional standards. While we recognise the sensitivity of this issue, it seems to us that proficiency in the English language is essential and that the RCVS as the regulator must be in a position to satisfy itself that those wishing to practice in the UK can demonstrably meet appropriate professional standards. Following representations made by the General Medical Council as a result of the wholly unacceptable standard of out of hours care provided by a doctor from an EU country resulting in a patient's death, the Health Select Committee has asked government to look again at the legal advice on the EU Directive. The Directive controls how overseas doctors are checked before working in**

the UK. It has been reported that the new Secretary of State for Health is backing the need for more robust regulation in this regard which we welcome. Council members will be aware that in the case of the overseas doctor it was the tick box attitude to regulation that allowed him to practice in the UK. In seeking to reduce its exposure to risk we feel sure that the RCVS will want to keep under review the regulatory regime as applied to overseas vets in the light of developments with the medical profession so as to safeguard animal welfare and retain public confidence. We look forward to a continuing dialogue with the College on this critical issue.

The PIC endorses proactive regulation. The PIC is concerned that overseas veterinary surgeons do not always appear to have a good grasp of the English Language and would welcome the introduction of objective criteria to establish this, as part of the registration process. The PIC considers that formal visitation or evaluation reports of veterinary courses in Europe should also be taken into account during the registration. It may be that appropriate requirements could be introduced following a revised interpretation of the relevant EU directives, or, in the case of language, by the introduction of appropriate provisions to the RCVS Guide to Professional Conduct and this will be explored in the next year.

- 9. We remain concerned that individuals may attempt to fraudulently misrepresent themselves to the public. The Oakes case has been widely reported. We have been assured it was an isolated case and that the Professional Conduct and Registration Departments have tightened up procedures. The Nemeth case is also important; that an overseas veterinary surgeon was able to register with the College using a false letter of good standing which purported to come from his overseas authority. The College may wish to commission an external audit of the risks associated with the registration procedures so that the public and the profession can be confident that all reasonable steps are being taken to prevent abuse.**

The RCVS has revised its registration procedures and relevant information is now passed from the Professional Conduct Department to the Registration Department to seek to avoid another Oakes-type case. In addition, the Chairman of the PIC and senior RCVS staff will meet with the police officers who investigated Mr Oakes and consider the risks associated with its procedures, with a view to ensuring that the internal procedures of the RCVS, including those of registration, are sufficiently robust to counter those who might seek to misrepresent themselves to the RCVS and subsequently the public. The

PIC invites the Lay Observers to send a representative to these meetings. The PIC suggests that after these meetings, the RCVS should consider whether an external audit of the risks associated with registrations from different countries might strengthen the RCVS registration procedures.

10. The PIC approved the Health Protocol, and we were pleased to be fully consulted. The Protocol is designed to deal firmly but sympathetically with those vets whose fitness to practice is affected by their physical or mental health. We believe that the public will support the College's approach to encourage practitioners to seek advice and treatment while accepting that the College will monitor progress by means of an appointed medical assessor. This approach is a mature and humane way of supporting veterinary surgeons through difficult times and is in keeping with best occupational health practice. Equally it is right that vets who, without good reason, do not cooperate with the treatment and monitoring programmes could face disciplinary action. We recognise that this issue may cause concern within the profession. However a clear communications strategy will assist with gaining acceptance that this approach is the way forward. We look forward to its formal adoption following the necessary changes to the RCVS Guide to Professional Conduct.

The PIC endorses the Lay Observers views and considers the proposed Health Protocol is significant shift in RCVS jurisdiction and regulation of the profession. It is hoped that the necessary changes to the RCVS Guide to Professional Conduct will be made in November later this year and the Health Protocol will be adopted formally by the RCVS before the end of the year.

11. We welcomed the College's decision to commission an external audit of the disciplinary and preliminary investigation procedures and the opportunity to contribute our views. We have read the Penningtons' report with close interest. With our collective knowledge and practical experience of working with other regulatory bodies, we were confident that the College would fare well as indeed has proved to be the case.

The PIC has commented separately on the external and independent audit (undertaken by the RCVS solicitors) and is delighted that the review confirms the RCVS procedures are fair and robust and has welcomed the majority of the recommendations made within the review.

- 12. There are a number of important recommendations arising from the Penningtons' report which if accepted will result in a shift in the way the College regulates the Profession. We agree that there are strong public interest arguments for the College to be more pro-active in the way it regulates (without the need for legislation) in line with other regulatory bodies. A regime which is underpinned by identifying and dealing with risk and which focuses more on prevention rather than reaction, as the report identifies, is the right way forward.**

The PIC and the RCVS are seeking further legal advice on the full extent of the RCVS jurisdiction, following the advice on the Health Protocol. This advice indicated that regulation of professions has moved on sufficiently in the last ten or so years that what might not have been within the RCVS statutory jurisdiction ten years ago is now within its jurisdiction. The PIC is assured that the legal advice will seek guidance on the extent that the RCVS can be proactive in the identification of complaints and the extent to which the RCVS has jurisdiction on fee complaints and the poor clinical performance of veterinary surgeons.

- 13. Many of the complaints received relate to poor professional performance which falls short of serious professional misconduct but which (in our view) the public would expect to be addressed. We share the report's conclusion that consideration needs to be given to making CPD and Practice Standards mandatory. We have long held the view that helping the public frame their complaints (whether by College staff or independent adviser) so that they are focused on the key issues of dispute will save time and resource for both the College, veterinary practices and the public. We would welcome the opportunity to explore with the College the proposal to resource a mediation or conciliation service for complainants. We would advise against binding arbitration which is more appropriate in the industrial relations context. Such a service provided by (say) carefully selected "senior" members of the Profession and/or lay persons could prove cost effective in reducing the numbers of complaints formally registered. There is no doubt in our minds that one of the unforeseen benefits of the interviews conducted by PIC Investigators in the course of gathering evidence following complaints, has been a greater and more realistic understanding by the public of the very real challenges faced by vets in their work. We believe that the RCVS should call on this experience if it decides to explore the recommendations. Finally we support the majority of the procedural recommendations.**

The PIC has been informed that consideration of mediation, arbitration and conciliation for the resolution of disputes between veterinary surgeons and clients will be considered by an RCVS working party, which will include lay representation. The PIC welcomes consideration of these issues and looks forward to the working party's consideration of the different methods of alternative dispute resolution.

- 14. Once again, the Chair of PIC and the Head of Professional Conduct designed and facilitated an excellent and challenging two day training course which brought together all those involved with investigating complaints. For example bringing together members of PIC and PIC Investigators to discuss respective roles proved invaluable. The opportunity to develop our competences and broaden our knowledge and understanding of regulatory issues was most welcomed.**

The PIC also wish to commend the training provided to PIC members, Lay Observers, PIC Investigators, staff of the Professional Conduct Department; and in addition the induction training provided to PIC Investigators earlier last year.

- 15. The Committee receives regular and detailed data on complaints. There are no major issues of concern which the Lay Observers wish to report.**

The PIC approves the monthly standard reports provided to PIC which provide an indication of the work of the Professional Conduct Department and the progress of complaints handling on a monthly basis and cumulative for the year; and the additional reports provided at the request of the Committee. The PIC will consider any reasonable proposal to use the data for research purposes, where appropriate guarantees can be provided that the sensitive data held by the RCVS will remain confidential.

- 16. We would like to place on record our appreciation of the work of the Chair of PIC, Mrs Lynne Hill, who steps down this year. Dealing with potential serious professional misconduct within a comparatively small profession brings its own particular challenges. Lynne Hill has led the Committee with integrity, drive and enthusiasm through a period of significant reform in the way we deal with complaints. We wish her well for the future.**

The PIC endorses the outstanding work of Mrs Lynne Hill, the current Chairman of the PIC as she has guided the Committee through significant changes in the way complaints are investigated, the introduction of PIC Investigators, how the PIC manages its business,

the increased efficiency and speed of complaints handling, the increased data about complaints and the increased involvement of Lay Observers in decision-making of complaints at Case Examination.

- 17. We should also like to thank Catherine Harvey, one of our Lay Observers. After many years of living and working in the UK, Catherine is returning to her native Australia. She brought to the Committee a wealth of regulatory experience in a range of sectors, and her thoughtful and insightful contributions will be missed. We wish her well for the future.**

The PIC also wishes to thank Catherine Harvey for commitment to regulation of the veterinary profession and the considerable additional work she has undertaken to ensure that complaints are examined speedily and thoughtfully and with understanding and concern for both complainants and veterinary surgeons.

- 18. Finally, we should like to thank all members of the Prof Con Department and other College staff who most ably help and support us in our work.**

The PIC endorse the hard work and commitment of the staff of the Professional Conduct Department who deal ably with those who are often understandably upset or concerned by the events that are the subject of a complaint.

Chris Mattinson
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Jane Ramsey
(PI Committee Lay Observers)

May 2010