Royal College of Veterinary Surgeons

Audit and Risk Committee

Agenda (and remaining induction session) for the meeting to be held on Wednesday 17 October 2012 at 9.00 am, in meeting room LG1

1. Meet the RCVS

Dining Room 4th Floor

9.00am Chief Executive - formal welcome to the first meeting. (Nick Stace)
9.05am Head of Legal Services/Registrar - Overview of fitness to practise regulation and RCVS regulation. (Gordon Hockey)
9.20am Head of Finance - Overview of RCVS Finances. (Corrie McCann)

Walk around

9.40am Library/Trust (Cherry Bushell)
9.45am Registration (Christine Fraser)
9.50am Finance (Corrie McCann)
9.55am Corporate Services (Corrie McCann – acting role)
10.00am Education (Freda Andrews) (not available)
10.05am Veterinary Nursing (Libby Earle)
10.10am Professional Conduct (Eleanor Ferguson – acting role)
10.15am Communications (Lizzie Locket)
10.20am Executive Office (Lesley Evans)
10.25am Facilities (Martyn Webster)

(Order subject to confirmation)

2. Apologies for absence

3. Declarations of interest (completed forms to be returned)

4. A note of the informal meeting on 24 September 2012. To be tabled

5. Matters Arising

Items to Note

6. Terms of Reference for the Committee Paper Attached

7. Governance Review Group minutes during 2012; The RCVS Overspend Review (McKelvey) recommendations and
the report of the Past Presidents plus two group

**Items for discussion**

8. RCVS Risk Register  
   Paper Attached

9. RCVS Auditors  
   Paper Attached

10. RCVS Internal Audit  
    Oral Report

11. Council and Committees (Committee paper)  
    Paper Attached

12. General Administration Byelaws (Committee paper)  
    Paper Attached

13. PIC and DC Byelaws (Committee paper)  
    Paper Attached

14. Enforcement of the Code of Conduct for Council and Committee members  
    (Committee paper)  
    Paper Attached

15. Future items for discussion

16. Any Other Business

17. Dates for future meetings

GAH 1 October 2012

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RCVS Terms of Reference for the Audit & Risk Committee

1. Constitution
1.1 The Council has established the Audit and Risk Committee to support the Council by reviewing the comprehensiveness and reliability of assurances and internal controls in meeting the Council’s oversight responsibilities. The Committee is a non-executive committee and has no executive powers except as set out in these Terms of Reference.

1.2 Under the Council’s Scheme of Delegation, the Committee has delegated authority to:
   a) Monitor the Council’s risk management arrangements
   b) Approve the internal audit programme
   c) Advise the Council on the comprehensiveness and reliability of assurances and internal controls, including internal and external audit arrangements, and on the implications of assurances provided in respect of risk and control.

1.3 The Committee may request the attendance of any employee or member, as set out in section 6 of these Terms of Reference, and may incur expenditure for the purpose of obtaining advice in terms of section 8 below.

2. Accountability and Reporting
2.1 The Committee is accountable to the Council. The minutes of each Audit and Risk Committee meeting shall be circulated to the Council. The Committee shall report to the Council annually on its work.

2.2 The Committee may also submit separately to the Council its advice on issues where it considers that the Council should take action. Where the Committee considers there is evidence of ultra vires transactions or evidence of improper acts, the Chair of the Committee should raise the matter at a formal Council meeting.

3. Membership
3.1 The Committee, including its Chair, is appointed through arrangements agreed by the Council. The Committee shall have five members, but may operate with fewer while a vacancy exists, provided the quorum is maintained. The Committee members shall include Council members, excluding the RCVS President and including at least one lay member and one registrant member, and may include up to two external members with appropriate audit and risk management experience.
3.2 The Council will appoint one of the Council members serving on the Committee as Chair, based on relevant background and skills. In the absence of the Chair, the Committee shall elect another of its members to chair the meeting.

3.3 The following members have been appointed to the Audit and Risk Committee:

- Elizabeth Butler - External Member (Chair)
- David Hughes - External Member
- Judith Rutherford - External Member
- Lynne Hill - Council Member (veterinary Surgeon)
- Richard Davis - Council Member (Lay – Privy Council Appointee)

4. Remit

4.1 The duties of the Committee are as follows:

_Governance, Risk Management and Internal Control_

4.2 The Council is the governing body of the RCVS and determines the governance policy and framework for the organisation. The Committee supports the Council by reviewing and advising the Council on the operation and effectiveness of the arrangements which are in place across the whole of the Council’s activities that support the achievement of the Council’s objectives. In particular, the Committee will review the adequacy of:

a) All risk and control related disclosure statements, together with any accompanying internal audit statement, external audit opinion or other appropriate independent assurances, prior to endorsement by the Council;

b) The underlying assurance processes that indicate the degree of the achievement of corporate objectives, the effectiveness of the management of principal risks and the appropriateness of the above disclosure statements;

c) The policies for ensuring compliance with relevant regulatory, legal, governance and code of conduct requirements;

d) The policies and procedures for all work related to fraud and corruption.

4.3 In carrying out this work the Committee will primarily utilise the work of internal audit, external audit and other assurance functions. It will also seek reports and assurances from Department Managers as appropriate, concentrating on the over-arching systems of governance, risk management and internal control together with indicators of their effectiveness.
4.4 In reviewing risk management arrangements, the Committee should draw attention to areas where:

a) risk is being appropriately managed and controls are adequate (no action needed)

b) risk is inadequately controlled (action needed to improve control)

c) risk is over-controlled (resource being wasted which could be diverted to another use)

d) there is a lack of evidence to support a conclusion (if this concerns areas which are material to the organisation’s functions, more audit &/or assurance work will be required).

Internal Audit

4.5 The Committee shall:

a) Ensure that there is an effective internal audit function that complies with any applicable standards and provides appropriate independent assurance to the Council, Audit and Risk Committee, and Chief Executive and Registrar;

b) Consider the appointment of the internal auditors, the cost of the service and any questions of resignation or dismissal and make appropriate recommendations to the Council;

c) Ensure that the Manager of Human Resources makes adequate resource available to the internal audit function;

d) Review the internal audit strategy, operational plan and work programme;

e) Consider the major findings of internal audit work, and management’s response;

f) Ensure co-ordination between the internal and external auditors;

g) Annually review of the effectiveness of internal audit.

External Audit

4.6 The Committee shall:

a) Consider the appointment and performance of the external auditor, the audit fee and any questions of resignation or dismissal and make appropriate recommendations to the Council;
b) Discuss and agree with the external auditor, before the audit commences, the nature and scope of the audit as set out in the external audit plan and their local evaluation of audit risks;

c) Review the work and findings of the external auditor, consider the implications and management's responses to their work;

d) Review all external audit reports, including agreement of the annual audit letter before submission to the Council and any work undertaken outside the annual audit plan, together with the appropriateness of management responses.

Financial Reporting
4.7 The Committee shall:

a) review the annual financial statements, focusing particularly on:

i. The statement on internal control and other disclosures relevant to the Terms of Reference of the Committee;

ii. Changes in, and compliance with, accounting policies and practices;

iii. Unadjusted mis-statements in the financial statements;

iv. Major judgmental areas;

v. Significant adjustments resulting from the audit.

b) Ensure that the systems for financial reporting to the Council, including those of budgetary control, are subject to review as to completeness and accuracy of the information provided to the Council.

5. Quorum

5.1 A quorum shall be three members of the Committee.

6. Attendance

6.1 Only Committee members shall be entitled to attend meetings of the Committee. The Chief Executive and/or the Registrar, Head of Finance and representatives from the internal auditors shall normally attend meetings. Representatives from the external auditors shall attend meetings as required for relevant items. The President and other Council members may attend meetings at the invitation of, or with the agreement of, the Chair of the Committee.
6.2 The Committee may request any employee or member to attend a meeting to assist with its discussions on any particular matter or to provide any information it may reasonably require in order to fulfil its remit. All employees and members are directed to co-operate with any reasonable request made by the Committee.

6.3 The Committee may ask any or all non-members to withdraw for all or part of a meeting if it so decides. In such an instance, the Chair shall ensure that a proper record is made of the meeting.

7. Access

7.1 The senior representatives of internal audit and external audit shall have free and confidential access to the Chair of the Committee. At least once a year, the Committee should provide an opportunity to meet privately with the external and internal auditors.

8. Authority

8.1 The Committee is authorised by the Council to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any employee and all employees are directed to co-operate with any request made by the Committee.

8.2 The Committee may obtain legal or other independent professional advice and secure the attendance of external advisers with relevant experience and expertise if it considers this necessary, within the budget approved by the Council.

9. Secretariat

9.1 The Chief Executive and/or Registrar shall ensure that appropriate secretariat support is provided to the Chair and Committee.

10. Frequency of Meetings

11.1.1 The Committee shall meet not less than three times a year. The external or internal auditors may request a meeting if they consider that one is necessary.

Terms of Reference agreed by the RCVS Council March 2012
ROYAL COLLEGE OF VETERINARY SURGEONS

GOVERNANCE REVIEW GROUP

MINUTES OF THE MEETING HELD ON 21 MARCH 2012

Those present:
Sir David Barnes
Mr B Jennings
Professor W McKelvey

In attendance:
Mr G Hockey

Apologies for Absence
1. There were no apologies. The Chairman welcomed Gordon Hockey to the meeting.

Declarations of Interest
2. Professor McKelvey confirmed his membership of the BVA’s Veterinary Policy Committee.

Minutes of the Meeting held on 6 September 2011
3. These were accepted as a correct record.

Minutes of the March Council Meeting
4. The Group noted RCVS Council's discussions at its November and March meetings and noted that reference to the discussions would arise under the agenda items, as appropriate.

Enforcing the Code of Conduct for Council and Committee members
5. It was noted that RCVS will be seeking legal advice on enforcement of the Code and the Group indicated its willingness to comment on the enforcement procedures and sanctions proposed following receipt of that legal advice. The Group indicated that it was important for adjudication of complaints against Council members to be carried out by those who are independent of RCVS politics, particularly if the sanction is removal from Council.

Limiting the Tenure of RCVS Council members
6. The Group noted its previous recommendation that elected members of Council should consider adopting a convention to limit the number of terms they serve, which would be consistent with good practice for public appointments; noting that the Universities and the Privy Council generally limit the number of terms served by the appointed members.

7. The Group recognised that the Veterinary Surgeons Act provides unlimited tenure of Council, but was uncomfortable with this and considered that elected members may wish to review their position following the introduction of revised RCVS governance arrangements.
8. The Group noted in the minutes of the February 2012 meeting of the Planning and Resources Committee the record ‘that the way some Council members deal with staff is distasteful and inappropriate, even bullying’ and that ‘Concern was expressed that if nothing is done it might appear that such behaviour is condoned.’ The Group noted that procedures had been put in place to involve Committee Chairmen as an interface between staff and Council members and asked the Acting Registrar to keep the Group informed of developments.

Project Management Protocol

9. The Acting Registrar confirmed that the Project Management Protocol had been adopted by the RCVS as a working document. The Group noted that its recommendations would be included in the Protocol, with appropriate templates and a checklist, and was satisfied with progress to date. There was discussion of spending authorities for the Chief Executive Officer and Registrar and Heads of Department and the interface between Council, as the governing body and the Executive. The group was of the view that it is unhelpful for the President, Vice Presidents and Treasurer as senior non-executives to be described as Officers; a term normally used for senior executives, such as the Secretary (CEO) and the Registrar (as provided by the RCVS Charter).

10. The Group considered that the Protocol should provide for the CEO, rather than the Registrar to provide relevant authorisations; the thresholds for projects should be £25K, £50K, £100K and £150K; those projects of less than £25K that are provided for in the annual Budget should be authorised by the CEO; and those between £25K and £50K should require the additional signature of the Treasurer. The Group was satisfied that the existing arrangements for reporting revenue expenditure were satisfactory.

11. The Group endorsed the new CEO job description, but commented that the roles and responsibilities of the Treasurer and CEO are unclear and it is important to ensure that the Executive and Non Executive roles of the CEO and Treasurer, respectively, are more clearly defined.

Proposed new Committee Structure

12. The Group endorsed the PP+2 Paper and Officers’ introduction and the Council discussion on RCVS governance and indicated it was greatly encouraged by progress to date. The Group indicated that the review of structure and the implementation of the Legislative Reform Order (LRO), together with the corresponding Byelaw changes were welcome developments. Noting the proposed timetable, the Group indicated its view that it is for Council to determine its own governance arrangements and progress on these issues should not be delayed.

13. The Group noted its own previous suggestion of a Board-like structure to run the business of the RCVS, which appeared to be endorsed by Council and encouraged a clear distinction between the roles and functions of the executive and non-executive members of any such board that was positioned between Council as the governing body and RCVS staff.

RCVS Overspend Review (McKelvey Report) and the Audit and Risk Committee

14. The Group commended the RCVS for the current progress to adopt and introduce an audit and risk committee, following the recommendation in the RCVS Overspend Review (the McKelvey Report) and encouraged the Acting Registrar to address the remaining recommendations in the
Report; endorsing the composition of the audit and risk committee as agreed by Council, the terms of reference for the committee; the appointment of external committee members at arms length; a separate budget for the committee and the committee’s authority to request the attendance of staff members, as appropriate.

15. There was discussion on the external recruitment process and the Group indicated that the Chairman and two external committee members could be appointed as part of one recruitment exercise, provided that this was clear to all from the start of the exercise; and RCVS could be advised as appropriate by the recruitment consultants. The Group suggested that the Chairman of the Group might be part of the appointments panel together with other laypersons associated with RCVS. The Acting Registrar indicated that RCVS Officers had suggested that Sir David (Chairman of the Group) might Chair a panel that included a Lay Observer sitting with PIC and a layperson who sits on Council and DC; the Group endorsed this.

16. The Group acknowledged that in due course, the audit and risk committee would take over the work of the Governance Review Group.

Legislative Reform Order (LRO)

17. The Committee noted the ongoing Defra consultation on the LRO and the recent Council discussion on a formal response to Defra. The Acting Registrar informed the Group of the recent appeal to the Privy Council by Mr Joseph Holmes (against the Disciplinary Committee’s direction that his name is removed from the Register) and the Privy Council’s endorsement of PIC and DC governance arrangements and support for the separation of PIC, DC and Council memberships.

18. The Group was informed that Defra had asked for an outline of the RCVS committee structure and main Byelaw changes before the LRO was considered by Parliament and agreed to meet before the next Committee round in May to be able to comment on any proposed structures that would be reviewed by Council in June; and any other matters ready for the committee round in May and Council in June.

Ongoing Reviews

19. The Group noted that on going issues included:

i. Enforcement of the Code of Conduct for Council Members, along with the Code of Conduct for Managing Conflicts of Interest;
ii. Implementation of the Project Management Protocol with Council’s acceptance of GRG views and revisions;
iii. The proposed RCVS Committee structure to be taken forward by Council;
iv. Implementation of the audit and risk committee (which in due course will take over the work of the Group);
v. The remaining recommendations from the RCVS Overspend Review (McKelvey Report) including authorisation levels for the Treasurer and CEO; and,
vi. The Committee structure and Byelaws to support the Legislative Reform Order.

Any Other Business

20. Committee membership of the Group was raised and it was noted that two members are due to step down this year. In view of the imminent introduction of the RCVS audit and risk committee,
which will take over the Group’s work, the Group suggested the RCVS might not wish to make reappointments for such a limited period of time.

Date of Next Meeting
21. The date for the next meeting was suggested [and subsequently agreed as 25 April].

GAH 27 March 2012
Royal College of Veterinary Surgeons

Governance Review Group

Minutes of the meeting held on 25 April 2012 in LG2 at 12.30pm

Those present:
Sir David Barnes
Mr B Jennings
Professor W McKelvey

In attendance:
Mr G Hockey

Apologies for Absence

1. There were no apologies for absence.

Declarations of Interest

2. There were no additional declarations of interest.

Minutes of the meeting held on 21 March 2012

3. The minutes of the last meeting on 21 March 2012, which had been agreed, were confirmed as a correct record of the meeting.

Matters Arising

4. There were no matters arising that were not covered elsewhere in the agenda

Enforcement of the Code of Conduct for Council and Committee Members

5. The Acting Registrar indicated that the formal legal advice had not been received and the GRG decided to adjourn consideration of the enforcement of the Code of Conduct for Council and Committee members until such time as it was available.

The Remaining McKelvey Recommendations and the Project Management Protocol

6. The GRG noted that the remaining identified issues were: finalising the Project Management Protocol with suggested changes previously identified by the Group; finalising authority limits for the CEO and Non-Executive members, in particular the
Treasurer and the Executive management team; the skills matrix for appointed Council members; the appointment process for RCVS auditors, and internal audit.

7. The GRG indicated that projects should be approved as part of the annual budget, usually the capital budget and the financial control of the project managed by a full-time employee of the RCVS who is answerable to the CEO. GRG considered that projects should be approved in detail and reports back to the Planning and Resources Committee or a Board should be by exception. GRG noted as set out in the paper that the routine work of the RCVS provided for in the revenue budget is not project work, but that approved suppliers should be subject to a formal tendering process of selection.

8. GRG considered that the roles of the CEO and the (currently described) Officers, including the Treasurer, should be set out clearly as part of a Board structure running RCVS business, which was discussed later in the agenda under the heading of RCVS Committee Structure. It was suggested that the current practice of the non-executives signing cheques should cease and the executive should have full responsibility for managing budgets approved by Council and the Board as appropriate; noting that the chief financial officer or Head of Finance and the CEO have a crucial role to control commitment and monitor financial expenditure.

9. It was noted that the skills matrix of appointed members of Council was a matter for consideration by the Nominations Committee. The GRG commented that the skills of the Treasurer should be appropriate to the role and that, unless the role is essentially honorary, the appointment of a Council Member with no formal financial experience or qualification was not appropriate.

10. It was also noted that the Audit and Risk Committee would consider internal audit and the appointment of RCVS auditors to carry out external audit. GRG commented that a key role of internal audit is to identify the key risks and maintain and update a risk register, which the Acting Registrar indicated is carried out by the RCVS Management Team and the Planning and Resources Committee.

Supporting Bye-Laws to the LRO

11. The GRG noted with approval the proposals for the Byelaws to support the introduction of the Legislative Reform Order (LRO) suggesting clarification that when the Disciplinary Committee sits as a panel to hear a case, a Vice Chairman may Chair the hearing.

12. The Acting Registrar indicated that the consultation period had closed and the only major issue arising from the consultation was the quorum for hearings: the British Veterinary Association had not supported the quorum of three, which was proposed by Defra, at the request of the RCVS; and that as a matter of strategy and to give the LRO the greatest prospect of success he would be proposing to Officers that RCVS should
accept a decision by Defra to continue with the existing quorum of five. LRO’s by definition must be uncontentious. The GRG agreed that this was a pragmatic decision.

Audit & Risk Committee – recruitment of members

13. The GRG noted progress on the recruitment of the three independent members of the new Audit and Risk Committee and Sir David confirmed that he would be chairing the selection panel. The Acting Registrar confirmed that ‘independent’ meant independent of Council and that the independent members could be veterinary surgeons or not, but must have appropriate experience of audit and risk.

14. With regard to the wording of the terms of reference for the Audit and Risk Committee, the GRG noted that the CEO and Head of Finance would normally attend the committee.

RCVS Committee structure

15. The GRG noted draft proposals for revised RCVS General Administration Byelaws, which include provision for the management of Council and Committees and any enforcement of the Code of Conduct for Council members. It was noted that the proposed Byelaws do not describe the Committees or their terms of reference, which can be agreed by Council without inclusion in Byelaws.

16. The GRG endorsed the Board structure proposed by current RCVS Officers and Council and suggested that it might include the Chairmen of the major committees, including the Veterinary Nursing Council, but should not be confused with a meeting of all committee chairmen, which would mean there would be too many people on the Board. The GRG suggested the Board could include the President and two Vice Presidents; the Treasurer; the CEO; the Chairmen of the Advisory or Standards Setting Committee, the Education Committee and, after July 2013, the Oversight or Liaison Committee; and, if desired, the Chairman of the Veterinary Nursing Council; with the Registrar/Head of Legal and the Head of Finance to attend the Board meetings, which the GRG suggested should meet monthly. The GRG considered that if there is a need for Committee Chairmen to meet, they could do so separate to Board meetings.

17. With regard to the proposed timetable for implementation, agreed by Council in March 2012, the GRG considered it was important for RCVS Council to adopt a Board structure at the earliest opportunity, to ensure the good governance of the RCVS; and to wait until 2013 to do so was inappropriate. The GRG indicated that the roles of the Board members including the CEO and Treasurer should be made clear and that with the introduction of the Board, the Planning and Resources Committee ceased to have a role.
Any Other Business

18. The Acting Registrar indicated that Professor McKelvey had been invited to take part in the forthcoming RCVS Annual Report, to highlight the RCVS Overspend Review (otherwise known as the McKelvey Report) and its response to the report, for example, setting up of an Audit and Risk Committee. While agreeing that it was appropriate to highlight the Report and the RCVS response, the GRG considered that it was better that one of its members was not featured in the Annual Report. GRG suggested the President or Acting Registrar could take on this responsibility.

Date of Next Meeting

19. The date of the next meeting has been agreed as Friday 15th June 2012.
Royal College of Veterinary Surgeons

Governance Review Group

Minutes of the meeting held on 15 June 2012

Those present:
Sir David Barnes
Mr B Jennings
Professor W McKelvey

In attendance:
Mr G Hockey

Apologies for Absence

1. There were no apologies for absence.

Declarations of Interest

2. There were no additional declarations of interest.

Minutes of the meeting held on 25 April 2012

3. The minutes of the last meeting on 25 April 2012, which had been agreed, were confirmed as a correct record of the meeting, subject to one typographical correction.

Matters Arising

4. There were no matters arising that were not covered elsewhere in the agenda

Enforcement of the Code of Conduct for Council and Committee Members

5. There was discussion of the legal advice received by the RCVS, the paper on the issue and the decision of the RCVS Planning and Resources Committee (P&RC). The Committee considered that the legal advice was not as definitive as suggested in the paper and allowed for the introduction of a scheme to remove Council members from office in appropriate circumstances, for example, to protect the RCVS from any reputational damage that it might suffer if such members were to continue to hold office, or remain members of Council, or to seek to stand for re-election. The Committee considered that the external advice should be reviewed so as to confirm this interpretation was correct.

Supporting Bye-Laws to the Legislative Reform Order
6. The Governance Review Group (GRG) noted with approval the broad outline of the proposed RCVS Byelaws, to support the Legislative Reform Order (LRO) proposals and was encouraged to note the ongoing dialogue with Defra on the issue.

**RCVS Committee structure**

7. The GRG noted the paper considered by the P&RC on 10 May together with a copy of the relevant minutes and noted with disappointment that the proposal to establish a Board to manage the RCVS had been deferred pending the arrival of the new CEO. The GRG considered that when the Board was established, the P&RC would no longer be necessary with its functions being redistributed as appropriate to either the Board or the Audit and Risk Committee (A&RC).

8. The GRG was also disappointed to note that the P&RC had decided that the RCVS auditors could be reappointed even though they had served for more than 10 years without recourse to a fresh tendering process. In the absence of such a re-tender, good governance required that the audit personnel were changed.

**CEO Recruitment**

9. The GRG noted Nick Stace’s appointment and wished him all the best.

**RCVS implementation of the iMIS computer system**

10. [The Report was considered confidentially but has since been disclosed to the public] The GRG noted the report and expressed the hope that lessons had been learned from the mistakes. The GRG indicated that the mistakes were by no means unique to the RCVS.

**Any Other Business**

11. There was discussion of the RCVS Council decision to revisit the composition of the A&RC at the July 2012 meeting of Council. The GRG indicated that from the start its preference had been for a majority lay presence on Council and after considering the paper to be considered by Council on 1 March 2012 had made the following comments:

   The GRG welcomes the establishment of the Audit and Risk Committee which clearly satisfies what was previously a major omission from the college’s governance structure. It also recognises the wish that it assume responsibility also for all governance matters. Such an architectural frame is appealing. But this could not happen with the presently proposed membership structure for that committee. This is because Council should appoint a group independent of council membership to review Governance matters (see the Council minute and discussion for the establishment in the first instance of the present GRG and the McKelvey Report).
12. The GRG noted that these comments had been provided to Council at its meeting on 1 March 2012.

13. The GRG was concerned that it was now proposed to change the balance of the A&RC from that previously agreed by Council at its meeting on 1 March 2012.

14. The GRG commented that the concern that external members of the new A&RC might have insufficient knowledge of the organisation was not relevant because induction training should be provided by the RCVS and, in addition, senior members of RCVS staff should be present at the committee’s meetings, including the CEO, Registrar and Head of Finance. The GRG also commented that the profession needed the reassurance offered by the majority of committee members being external to the RCVS.

**Date of Next Meeting**

15. It was agreed that a future meeting date should not be set because the new A&RC is due to take over the functions of the GRG in early autumn 2012.

16. The Chairman expressed his appreciation and thanks to his fellow committee members for their contribution to the work of the GRG, as well as their forbearance of his chairmanship.
**Meeting** | Council  
---|---  
**Date** | 1 March 2012  
**Title** | Report of the Governance Review Group  
**Classification** | Unclassified  
**Summary** | Attached is a report from the Governance Review Group, which considered the following papers from the Planning and Resources Committee (P&RC) agenda, 9 February 2012:  
1. RCVS ‘Overspend’ Review and audit and risk  
2. Enforcing the Code of Conduct for Council and Committee members  
3. RCVS Project Management Protocol  
4. The Past Presidents’ +2 (PP+2) Report, with covering paper from RCVS Officers  
P&RC asked for legal advice to be sought on enforcing the Code of Conduct for Council and Committee members, and accepted the RCVS Project Management Protocol as a document that will develop and be reviewed next year;  
Audit and risk, the PP+2 Report and the LRO are dealt with in separate papers at this meeting.  
**Decisions required** | None  
**Attachments** | None  
**Author** | Gordon Hockey  
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Governance Review Group Report for RCVS Council on 1 March 2012

1. There has not been any meeting of the Governance Review Group since the last meeting of Council due to a number of factors, the principal ones being:

   i) The resignation of the Registrar
   ii) The necessary priority given to The McKelvey Report, Professor McKelvey being one of the GRG members
   iii) Diary conflicts between the members of the GRG.

However, the GRG has been kept informed of the response to the McKelvey Report, the draft proposals for an Audit & Risk Committee, the work of the PP+2Group, the development of a RCVS Project Management Protocol, proposals for the Enforcement of the Code of Conduct for Council and Committee Members, as well as progress with the LRO. Since it is likely that most of these matters are likely to be discussed by Council at its meeting on 1st March the following preliminary comment is offered:-

Enforcing the Code of Conduct for Council and Committee Members

2. At the GRG meeting held on 6th September 2011, the Group was pleased to note that Council had accepted the proposed Code of Conduct; further it asked that it be kept informed of evidence that the Code was being followed. It follows that the Group very much welcomes this paper. In particular, the GRG wishes to endorse the conclusions reached in paragraph 18 as well as the suggested wording used in paragraph 19 [PRC Feb 12 AI 10 - Enforcing the Code of Conduct for Council and Committee members].

Project Management Protocol

3. The GRG welcomes these proposals in principle which reflect the concerns identified in the McKelvey Report. There is some concern that the proposals are possibly overly stringent and elaborate, particularly in terms of value steps. An alternative might be steps of over £50k, over £100k, and over £150k.

4. There is no mention of how capital items below £50k are to be sanctioned and monitored. Presumably each department will prepare a capital budget on a one or more year basis for approval by Council. Once accepted by Council will the power to sanction those items included in the under £50k step fall to the Head of Department?

5. More importantly: perhaps, the document/protocol deals with control of expenditure once a project has been sanctioned: the GRG believes that the sanctioning authority(ies) need to be set out in the same document.

6. Is there not also a need to set out in similarly clear way the procedure to be followed for revenue expenditure? In addition, there need to be clear plans of delegated authority that are
reviewed regularly by the Audit & Risk Committee.

The PP+2 Report: The RCVS Structure Review

7. It makes most sense to look at these two documents together as they are so closely inter-linked. The GRG is in full accord with the need to consider the structure of the RCVS and its committees. Indeed at the GRG meeting of 6th September, Minutes 13 and 14 suggested some possible changes and that it might be best to ‘start afresh’ and consider what the ideal Scheme of Organisation would be.

8. The PP+2 Report and Structure Review taken together provide a very strong basis for the preparation of such a Scheme of Organisation. The other important initiatives covered in this commentary, such as the proposed LRO could be incorporated into such a Scheme. As the RCVS byelaws and regulations were the subject of scrutiny by the GRG in its earlier work programme, and brought fully up to date at that time - (but will need to be changed to fit in with any new committee structure adopted) - this could well be the ideal point of time to prepare such a suggested Scheme.

Audit Risk and Governance Committee

9. The GRG welcomes the establishment of the Audit and Risk Committee which clearly satisfies what was previously a major omission from the college’s governance structure. It also recognises the wish that it assume responsibility also for all governance matters. Such an architectural frame is appealing. But this could not happen with the presently proposed membership structure for that committee. This is because Council should appoint a group independent of council membership to review Governance matters (see the Council minute and discussion for the establishment in the first instance of the present GRG and the McKelvey Report).

LRO

10. GRG notes that the proposed LRO was opened for comment in early January, and continues to hope that this will be finalised as early as possible, and hopefully in 2012.

11. Incidentally the time taken to reach this point indicates how difficult - perhaps totally impractical - it would be to seek to make many different changes to the present VS Act through this procedure.

Sir David Barnes
Prof William McKelvey
Mr Brian Jennings
Recommendations from the McKelvey Report, presented to RCVS Council on 3 November 2011

The Group’s remit was “to look at all aspects that relate to the RCVS budgeting and expenditure processes and to propose lessons that should be learned”.

Recommendations for future Capital Building Projects

We would make the following recommendations with regard to the future management of capital building projects and the authorisation of expenditure:

The College should urgently review its protocols for the agreement of business plans and project specifications, the processes for sign-off of those plans, the procedures for tendering and agreement of contracts, and the methodology for timeous reporting of progress, against agreed milestones, to Officers and to Council. This should include a review of written authorisation limits for expenditure at all levels. These limits should be approved by Council, and regularly reviewed.

The RCVS General Administration Bye Laws indicate that the Treasurer is ultimately responsible, on behalf of Council, for the oversight of capital projects and for their delivery on budget. Day-to-day responsibility should be formally devolved to the Chief Executive, Project Manager or Facilities Manager, according to their limits of authority. They should be required to provide regular and timeous reports in an agreed format, against project milestones, to the Treasurer, and thereby to Council, throughout the project. We suggest that a standard Red/Amber/Green (RAG) reporting system would be a useful start.

The Treasurer should be set clear guidelines, with respect to his/her devolved level of authority from the Council, to amend plans, alter budgets or agree contractual changes on behalf of the College once initial contracts have been signed.

The College should consider the skills sets available within the current College staffing compliment with regard to the management of major capital building projects. As the management of major capital building projects is not a regular requirement of the College staff, the College may wish to consider the appointment of professional Project Managers to oversee major capital building projects in future.

The College should carefully consider the pivotal role of the Treasurer in ensuring not only financial accountability, but also in ensuring that best practice standards are regularly reviewed across all College operations through internal audit and external benchmarking of business processes. The skills set required for the Treasurer should be formally reviewed and the appointment process should take due consideration of these skills requirements.
Recommendations regarding future IT projects

The Treasurer should have the overall responsibility for the delivery of IT projects on budget on behalf of the Council, with day-to-day authority devolved for project delivery to the Chief Executive and the Head of Corporate Services.

The Planning and Resources Committee (PRC) and the Council should clarify the limits of authority that the Treasurer has to change project specifications, alter an existing contract, or increase expenditure, without formal reference to the PRC and to the Council.

Improved routes of communication require to be established for consultation with members of PRC regarding project expenditure outwith normal PRC meeting schedules.

We would recommend that lines of communication are formalised and strengthened with written project milestones and regular written progress reports, against agreed milestones, provided by the Executive staff for Officers. Variances from plan should be easily identifiable.

The College should review the skills available within the core College staff compliment and consider the appointment of an independent Project Manager to oversee the specification, evaluation, tendering and delivery of major IT investments.

Implications for Governance – general observations

During the course of our discussions with staff and with Officers we have made a series of observations with regard to procedures and governance within the College. In terms of the prevention of future “overspends” we have a number of recommendations to make which we would hope will be given due consideration by the Governance Review Group and by the RCVS Council.

Audit and Risk

During the course of our investigations of the “overspends”, it became clear to us that the Planning and Resources Committee is, de facto, acting as both a Finance and General Purposes Committee, and as a quasi Audit Committee. In our view this is entirely inappropriate and does not reflect best governance practice. It became clear to us that the PRC did not interrogate projects in detail, received post-hoc information, and at times exhibited a ‘them and us’ culture which was not conducive to open, challenging, and transparent governance.

We were unable to determine the current criteria for the appointment of the “independent auditor” who is an ex officio member of the PRC, nor were we able to establish the exact remit for that role. However, it is clear to us that the role is not as fully independent as might properly be expected, and the skills requirements of the post are ill defined.

We are very concerned that a formal internal audit function does not exist in the College, and therefore appropriate benchmarking of procedures and practices is not regularly undertaken through independent external assessment. Without such assessment we are unclear as to how members of the Council can
satisfy themselves with regard to ensuring best practice across the College’s various statutory and business functions

We are firmly of the view that an Audit and Risk Committee, fully independent of the Finance and Planning portfolio, should be formed. The Audit and Risk Committee should take oversight of both external and internal audit procedures and maintain the Risk Register.

We understand (from anecdotal accounts) that a similar recommendation was made some years ago following a similar investigation of an overspend on a buildings project, and that the Registrar and Head of Finance supported this recommendation. However the Council has failed, for whatever reasons, to act on that recommendation.

**Reporting mechanisms**
During the course of our investigations we have been unable to determine exactly how Executive staff report to Officers. Current mechanisms appear to be somewhat *ad hoc* in relation to management reports. We would recommend that these routes of communication are formalised and that Minutes of Management Team meetings, with action points, are made available to Officers.

**Project Planning and Management**
As noted above, we were unable to determine, for the Lower Ground Floor project, where ultimate responsibility lay for agreement of plans, contracts and budgets. We would recommend that in future this is formally set down and recorded and that one person takes overall responsibility for these matters. In this respect the paper which was presented to PRC on 12 May 2011, from the Facilities Manager, on “Management of major projects” forms the rudimentary basis of such a project management framework. We recommend that this is further developed by the PRC, benchmarked externally, and implemented as soon as possible.

**Commitment and Authorisation of Expenditure**
During the course of our investigations we were unable to clearly determine the limits for commitment and authorisation of expenditure that is currently held by Officers or staff. We strongly recommend that clear limits for both the commitment, and for the authorisation of the expenditure, are formally recorded and implemented as a matter of urgency, and that these are reviewed annually by the Audit and Risk Committee.

**Council Skills Matrix**
Whilst we fully understand and appreciate that the skills portfolio inherent in the Council is essentially determined through an electoral process, we would recommend that the College gives due consideration to the co-option and appointment of non-elected members of Council through a defined skills matrix approach. This is particularly relevant with regard to the role of the Treasurer and our proposal to form an Audit and Risk Committee so that there is independent external assessment with regard to best practice in management and governance processes.
**External Auditors**

The current external auditors have been contracted for the provision of audit services for a significant period of time (apparently more than ten years). In our view this is inappropriate and is a significant failing on behalf of the Council to ensure proper governance. We were unable to determine the criteria for tendering for the reappointment of auditors. We would recommend that this matter requires urgent attention by the Council and the Audit and Risk Committee in order to comply with acceptable governance practice. An Internal Audit process should also be put in place as soon as possible.

**Overall Conclusions**

Weaknesses exist in the governance of the RCVS which pose significant risks to the proper conduct of its business. Executive staff have not been provided with a robust governance framework by the Council, and this has led to a number of unnecessary misunderstandings between Executive staff and Non Executive members of Council. These matters should be urgently addressed by Council in order to ensure that the confidence of ordinary members of the profession in their College can be restored.
<table>
<thead>
<tr>
<th>Meeting</th>
<th>Council</th>
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<tbody>
<tr>
<td>Date</td>
<td>1 March 2012</td>
</tr>
<tr>
<td>Title</td>
<td>RCVS Structure Review – The PP+2 Report, a discussion document</td>
</tr>
<tr>
<td>Classification</td>
<td>Unclassified</td>
</tr>
<tr>
<td>Summary</td>
<td>The PP+2 Report considers future possibilities for the RCVS committee structure and related issues. The PP+2 Group initially comprised 5 Past Presidents of the RCVS and, subsequently (after July 2011), included the most recent Past President and two lay members of RCVS Council, Mr R Davis and Mrs J Webb. RCVS Officers (without the most recent Past President who is a member of the PP+2 Group) have provided a covering paper and welcome the Report as a discussion document.</td>
</tr>
<tr>
<td>Decisions required</td>
<td>To debate the issues and give consideration to the future structure of the RCVS. To decide that Council and Officers will now take forward consideration of the issues.</td>
</tr>
<tr>
<td>Attachments</td>
<td>Annex 1: The PP+2 Report</td>
</tr>
</tbody>
</table>
| Author          | Gordon Hockey  
|                 | Acting Registrar |
|                 | E. g.hockey@rcvs.org.uk |
Background

1. On 26 November 2010, the five most recent Past Presidents had the first of a number of meetings and agreed the following terms of reference:

   To serve as a ‘think-tank’ to capture recent presidential experience and positively and proactively inform and advise on strategic development of the College, especially with respect to its structure and function.

2. After the RCVS Annual General Meeting in July 2011, the most recent Past President joined the group, as well as two Lay members of Council (PP+2).

3. On 5 August 2011, PP+2 met and revised its terms of reference to the following:

   A time limited, remit specific group to review the management and governance structure of the RCVS and to bring forward recommendations.

4. Subsequently, the PP+2 Group was asked to consider the RCVS ‘Overspend’ Review (otherwise known as the McKelvey Report), dated 4 October 2011.

5. In November 2011 (the afternoon closed session), Council considered and commented on an initial report from the PP+2 Group. Council members were invited to provide any further comments they might have to the Group.

6. In November 2011, RCVS Council decided that an audit and risk committee should be introduced as a priority. On 9 February 2012, the Planning and Resources Committee (P&RC) approved the details of an RCVS audit and risk committee and a separate paper is before this meeting of Council.

7. In November 2011, RCVS Council gave Officers a remit to appoint an interim Registrar and take steps to seek a new Chief Executive of the RCVS. Saxton Bampfylde has been selected to assist with the process; an appointments panel was established and job specification drafted for the new Chief Executive and circulated to Council.

8. On 9 February 2012, the Chairman of the selection panel provided a progress report to P&RC. The advertisement and briefing pack for the role of RCVS Chief Executive & Secretary can be downloaded from the RCVS website www.rcvs.org.uk/about-us/work-for-us/.

9. On 7 and 9 February the Veterinary Nurses Council and P&RC respectively, considered the PP+2 Report; the minutes of these discussions have been provided to Council as part of the papers for this Council meeting. P&RC decided that the Council discussion of the Report should be in open session, which was the desire of Officers and the PP+2 Group.

10. The immediate Past President is on the PP+2 Group and is also an Officer. He has assisted in producing the Group’s Report and, therefore, has not commented on it with other Officers.
Issues (in relation to the PP+2 Report)

The PP+2 Report is the subject of the debate; Officers have provided the following comments and observations on the issues raised in the Report, to assist Council’s deliberations.

Audit and Risk

11. Audit and risk is the subject of a separate paper before Council.

Appointment of the Chief Executive and Secretary

12. The appointment process for a new Chief Executive is underway and it is hoped the new incumbent will be in place by the summer to prepare for the changes in 2013.

Registrar/Head of Legal

13. The role of the Chief Executive and Secretary (as part of the recruitment process) states that: *The appointment of Registrar/HofLS and Assistant Registrars shall be made by Council, on the recommendation of the Chief Executive & Secretary, after consultation with the Officers.*

The Concept of a Board

14. The Officers currently function in a similar capacity to a Board and the Executive Committee or Board described by PP+2 appears to be similar to this. When considering the function of any Board, Council will need to consider the roles and functions of the Officers and the Treasurer.

   i. **Officers’ role:** Further consideration will need to be given to the role of Officers. The Registrar is an Officer of the RCVS under the Charter. The roles of the President and two Vice Presidents are provided for in the Veterinary Surgeons Act and are naturally assumed to be Officers of the RCVS; this is confirmed by the General Administration Byelaws (paragraph 11). The role of Officers is detailed in the General Administration Byelaws (Schedule 3). Council can change the Byelaws, but the Charter is more difficult to change, so any immediate change to the RCVS Committee structure must comply with the Charter. In the longer term, Council may seek revisions to the Charter.

   ii. **Treasurer’s role:** Further consideration will need to be given to the role and function of the Treasurer, because the role is set out in the Charter and detailed in the General Administration Byelaws. It is likely that external legal advice will need to be sought to clarify this and in the longer term, Council may seek revisions to the Charter. The RCVS ‘Overspend’ Review also comments on the role of the Treasurer.

Committee Structure

15. It may be helpful to articulate any problems or issues that exist with the current RCVS committee structure (other than those identified by the RCVS ‘Overspend’ Review), so that Council can consider whether any proposed changes will address those problems or issues.
One issue that is likely to arise – a future issue rather than a past problem – is the introduction of independent Preliminary Investigation and Disciplinary Committees, which will mean that Council is likely to desire greater oversight of the policies and procedures adopted by those committees and therefore their fairness, susceptibility to appeal and expenditure: hence the proposal by PP+2 for such an Oversight Committee. Other issues for consideration include:

i. **Powers delegated by Council**: Consideration will need to be given to the delegated powers of Council in accordance with paragraph 6 of the Charter; delegated powers and duties may be ‘to such committees or sub-committees and to any of its own number and the officers and servants and agents of the College’. Detailed terms of reference will be needed for any new committees and subcommittees, as well as detailed delegated powers to the Treasurer and the Chief Executive and other senior executive Officers. The need for clearly delegated responsibilities was identified in the RCVS ‘Overspend’ Review.

ii. **The future of the P&RC Committee**: Given that the function of an audit and risk committee is very different from a planning and resources committee, the future functions of P&RC will need consideration. In addition, Committee Chairmen are currently represented on P&RC and there are regular meetings of Chairmen (and sometimes Vice-Chairmen) with the Officers. The proposed structure does not propose anything similar.

iii. **Financial responsibility**: The RCVS already employs a Head of Finance. If that role and the CEO are to take delegated responsibility for RCVS finances, this will represent a significant transfer of responsibility from the current Non-Executive (Treasurer and P&RC) to the executive members (staff) of the organisation. As stated, the position of the Treasurer under the Charter needs to be clarified.

iv. **Integration of VN functions**: The proposals put forwards by PP+2 bring responsibility for veterinary nursing into a Veterinary Education Committee and suggest that the Chair of VN Council becomes a member of the Management Board. The views of the Veterinary Nurses Council on 7 February 2012 should be taken into account.

**Costs**

16. The costs of the proposals both in terms of staff and committees, particularly an audit and risk committee with its own budget, need to be considered. The costs and timescale of a new Charter will need to be considered, if this is an option desired by Council.

**Timescale**
17. The timescale of the proposed changes are:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2012</td>
<td>Council is expected to establish an Audit and Risk Committee;</td>
</tr>
<tr>
<td>Summer 2012</td>
<td>The new Chief Executive should be in place to assist the changes;</td>
</tr>
<tr>
<td>Late 2012/early 2013</td>
<td>The LRO is anticipated;</td>
</tr>
<tr>
<td>Late 2012/early 2013</td>
<td>Council revises its committee structure/Byelaws at least to support the independent PIC and DC;</td>
</tr>
<tr>
<td>July 2013</td>
<td>LRO should be in force and the transitional phase begins.</td>
</tr>
</tbody>
</table>

**Conclusion**

18. Council is asked to consider the PP+2 Report, debate the issues and give consideration to the future structure of the RCVS.

19. Officers are grateful to the members of the PP+2 Group who have assisted the debate, which will now be taken forward by Council.

20. Officers consider that there could be discussion of any proposals for change with key stakeholders.

21. Officers will bring forward proposals for change for consideration by all Council.
<table>
<thead>
<tr>
<th>Meeting</th>
<th>Audit and Risk Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>17th October 2012</td>
</tr>
<tr>
<td>Title</td>
<td>RCVS Auditors</td>
</tr>
<tr>
<td>Classification</td>
<td>Unclassified</td>
</tr>
<tr>
<td>Summary</td>
<td>Background to the current external audit arrangements</td>
</tr>
</tbody>
</table>
| Decisions required | By the Committee:  
To consider changes to the current external audit arrangements |
| Attachments | None                     |
| Author      | Corrie L McCann          |
|             | Head of Finance          |
|             | 0207 202 0724            |
|             | c.mccann@rcvs.org.uk     |
Background

1. The external auditors of the RCVS and the RCVS Trust are Crowe Clark Whitehill LLP (CCW).

2. The RCVS audit has not been put out to tender for many years and one of the recommendations of the McKelvey report was that this should be carried out. However the Audit Manager has been changed regularly and it is likely the Audit Partner will be changed for the 2012 audit.

3. At the May 2012 Planning and Resources (PRC) Committee meeting the matter was discussed and the following noted -

   The committee were reminded that the ARC would manage the tender process for external auditors and that although the appointment of auditors traditionally took place at the AGM, it was not a requirement for it to do so.

   - although tendering of the audit role was recommended it was not necessarily common practice to put the role out to tender on an annual basis;
   - the timing of a possible tender was considered in the light of other changes at the RCVS and questions asked about managing different change processes concurrently;
   - that seeking different auditors would mean the current auditors would not apply
   - the difference between internal and external audit

   In conclusion the committee decided the current auditors should be confirmed for another year at the July 2012 Annual General Meeting and that the ARC could consider whether current auditors should be excluded from participating in the tendering process

4. The Committee’s terms of reference state:

   4.6 The Committee shall:

   a) Consider the appointment and performance of the external auditor, the audit fee and any questions of resignation or dismissal and make appropriate recommendations to the Council;

5. The Committee is asked to consider the issue.
<table>
<thead>
<tr>
<th>Meeting</th>
<th>All Committees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>October 2012</td>
</tr>
<tr>
<td>Title</td>
<td>Council and Committees</td>
</tr>
<tr>
<td>Classification</td>
<td>Unclassified</td>
</tr>
<tr>
<td>Summary</td>
<td>The paper considers what responsibilities Council might delegate to the proposed Board as a precursor to discussion on committee structure</td>
</tr>
<tr>
<td>Decisions required</td>
<td>Delegations to the Board</td>
</tr>
<tr>
<td>Attachments</td>
<td>Annex A: powers of Officers’ Meetings</td>
</tr>
<tr>
<td></td>
<td>Annex B: terms of reference of Planning and Resources Committee</td>
</tr>
<tr>
<td></td>
<td>Annex C: outline of possible terms of reference of Board</td>
</tr>
<tr>
<td>Author</td>
<td>Gordon Hockey</td>
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<tr>
<td></td>
<td>Head of Legal Services and Registrar</td>
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<td></td>
<td>020 7202 0776</td>
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<td><a href="mailto:g.hockey@rcvs.org.uk">g.hockey@rcvs.org.uk</a></td>
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<tr>
<td></td>
<td>Nick Stace</td>
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<td>Chief Executive and Secretary</td>
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<td></td>
<td>020 7202 0717</td>
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<td></td>
<td><a href="mailto:n.stace@rcvs.org.uk">n.stace@rcvs.org.uk</a></td>
</tr>
</tbody>
</table>
Background

1. The 1967 Charter gives the RCVS Council power "to act by committees or sub-committees and to delegate such duties and powers as it thinks fit from time to time to such committees or sub-committees and to any of its own number and to the officers and servants and agents of the College". At its meeting on 10 May the Planning and Resources Committee (PRC) agreed that Council should be invited to set up a new committee, the Board, to manage the affairs of the College. The Board would consist of the Officers and the Chairmen of the main committees. It would probably meet every two months, but more often if necessary, with meetings being supplemented by electronic communications.

2. The aim in setting up the Board will be to enable Council to focus on its strategic responsibilities, setting the annual budget and strategy plan, while entrusting delivery to a smaller body meeting more frequently and the executive team, with appropriate oversight (notably from the Audit and Risk Committee).

3. In setting up the Board, Council will need to determine its remit. It is proposed that the Board should supersede the Officers' Meetings and PRC. The powers of the Officers' Meetings and the terms of reference of PRC are set out in the General Administration Bye-Laws 2009.

4. There is a trend for healthcare regulators to be governed by increasingly small Councils or Boards, constituted of members appointed by Government. In September 2011, the Council for Healthcare Regulatory Excellence (which will become the Professional Standards Authority for Health and Social Care during 2012) issued guidance on "Board size and effectiveness" and considered "whether there is a case for moving to smaller Councils as a way of delivering more Board like and effective governance". The conclusion of the report includes the following:

   We have been asked whether there is a case for moving to smaller councils as a way of delivering more “board like”and effective governance. The size of the councils of the health professional regulators currently ranges from 12 to 24. From the experiences of CHRE and the literature we have come across, it seems reasonable to suggest that smaller boards, in the range of 8 to 12 members, are associated with greater effectiveness. This strongly indicates to us that a move to smaller councils across the health professional regulators would be possible without compromising effectiveness. It appears that smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones. In addition, they are less likely to suffer from fragmentation and clique-formation and more likely to develop a culture of inclusiveness than their larger counterparts. Finally, since smaller boards struggle to involve themselves in issues that should be delegated to the executive, a smaller size helps them to focus their efforts on core governance issues.

Charter provisions for delegation

5. The Charter, the 1967 Supplemental Royal Charter, provides that Council may delegate duties and powers as follows:
Save as provided in section 15 of and Part II of Schedule 2 to the Veterinary Surgeons Act 1966, the Council shall have power to order its own procedure, to act by committees or sub-committees and to delegate such duties and powers as it thinks fit from time to time to such committees or sub-committees and to any of its own number and to the officers and servants and agents of the College.

Provided that no resolution involving any departure from the previously established policy of the Council which is passed at any meeting of a committee or sub-committee to which the Council has delegated any of its duties or powers shall have any validity or effect unless (a) a majority of the members present at the meeting and entitled to vote are members of the Council or (b) such resolution is confirmed by Council.

Powers of Officers’ Meetings

6. Bye-law 11 says "The Officers of the College (namely the President, the Vice-Presidents, the Treasurer and the Secretary and Registrar), or such of them as shall be available at the time, shall be empowered to meet together to oversee and co-ordinate the despatch of the business of the College, and in particular to deal with the matters set out in Schedule 3 to these Bye-Laws. Any such meeting shall, subject to the provisions of the Act, the Supplemental Charter and these Bye-Laws, have delegated authority under Article 6(1) of the Supplemental Charter to act in the name of the Council and the College on the matters set out in Schedule 3 to these Bye-Laws.” The Schedule is reproduced at annex A.

Terms of reference of PRC

7. The remit of PRC, as set out in Schedule 2 to the bye-laws, is at annex B.

Comments

8. The bye-laws are rather vague, perhaps inevitably so, in summarising the roles of the Officers’ Meetings and PRC. The Officers are charged to "oversee the general management of all College business” and "deal with business not requiring the decision of the Council or of any Committee”. PRC is to "co-ordinate the activities of the College" and "oversee matters of governance and the management of resources”. Broad formulae of this kind serve to give an impression of what is expected but leave the precise extent of delegation unclear.

9. The bye-laws require the Officers to ensure that members of Council are kept informed of developments and provide for PRC to refer certain matters to Council. It must

   - present an annual budget to Council and recommend proposed fee changes;

   - advise Council on corporate governance matters; and

   - present a strategic plan to Council.
10. For the most part, however, the bye-laws give the Officers and PRC jobs to do without saying how far they must consult or report back to Council:

- monitoring management accounts and progress of projects (Officers);

- monitoring income and expenditure through management accounts (PRC);

- receiving reports on matters with major resource implications and overseeing a regular risk assessment and internal audit reviews (PRC);

- meeting with Chairmen of Committees, co-ordinating Council and Committee business and discussing matters relating to governance, rules of procedure, terms of reference and composition of committees (Officers);

- keeping under review the role and composition of sub-committees and working parties (Officers);

- initiating reviews of the strategy plan (Officers), reviewing its implementation (PRC);

- dealing with matters relating to Council elections, keeping under review Schedule 1 to the Act and the Election Scheme (PRC);

11. In respect of other matters the bye-laws give the Officers or PRC reasonably clear power to act on their own authority:

- approving expenditure from the contingency fund, reporting to Council or the relevant Committee and seeking ratification, as necessary (Officers): the implication seems to be that they can act first and explain later;

- dealing with requests for variations from the approved budget or to draw on the contingency fund or the College’s reserves (PRC);

- managing the assets and investments of the College, taking account of advice from any Investment Sub-Committee that may be appointed and from the retained stockbrokers of the College (PRC);

- laying down procedures for budgeting and financial control within the College (PRC);

- approving rates of travelling and subsistence expenses and recompense for loss of earnings (PRC);

- authorising the sealing of documents (PRC);

- adjusting priorities for action as appropriate following review of strategic plan (PRC)
- overseeing appointment of professional advisers to the College (PRC);

- determining external representation and conducting external relations (Officers);

- dealing with all matters relating to registration and membership of the College, overseeing publication of Register and Directory and monitoring composition of profession (PRC); and

- overseeing the activities of the Communications Board.

Possible terms of reference to the Board

12. Annex C outlines a composite of the present powers of the Officers and the terms of reference of PRC. This would not give the Board any wider discretion than the Officers and PRC enjoy under the present arrangements. Committees are invited to consider whether this statement of the Board’s responsibilities would be acceptable in principle.

Further steps

13. It is proposed to put recommendations to Council for a revised committee structure in March 2013, so that committee membership can then be considered by Nominations Committee in May. The new committees can then be in place from July 2013, at the same time as the newly constituted Preliminary Investigation and Disciplinary Committees.
Annex A

Schedule 3 to the General Administration Bye-Laws 2009

Powers of Officers’ Meetings

1. To oversee the general management of all College business.

2. To deal with business not requiring the decision of the Council or of any Committee.

3. To deal with urgent business and approve expenditure from the contingency fund, arising between Council and Committee meetings, reporting to the Council or the relevant Committee and seeking ratification, as necessary.

4. To monitor the management accounts of the College and to monitor the progress of projects.

5. To meet with the Chairmen of Committees; to co-ordinate Council and Committee business and to discuss matters relating to governance, rules of procedure, terms of reference and composition of committees.

6. To ensure that members of the Council are kept informed of developments.

7. To initiate reviews of the strategy plan and make recommendations to the Council and Committees.

8. To oversee the activities of the Communications Board.

9. To determine the representation of the College on various external organisations, speakers at conferences and similar matters.

10. To arrange meetings with members of the College, veterinary associations and other bodies, as appropriate.

11. To keep under review the role and composition of sub-committees and working parties.
Annex B

Extract from Schedule 2 to the General Administration Bye-Laws 2009

The terms of reference of the Planning and Resources Committee are to co-ordinate the activities of the College, to oversee matters of governance and the management of resources and, in particular:

(1) To present to the Council at least annually a proposed Budget and to keep that budget under review;

   (i) To recommend proposed fee changes to the Council, having consulted the relevant Committees;

   (ii) To monitor income and expenditure through management accounts and to deal with any requests for variations from the approved budget, or to draw on the contingency fund or the College’s reserves;

   (iii) To manage the assets and investments of the College, taking account of advice from any Investment Sub-Committee that may be appointed and from the retained stockbrokers of the College;

   (iv) To lay down procedures for budgeting and financial control within the College;

   (v) To approve from time to time rates of travelling and subsistence expenses and recompense for loss of earnings for Council and Committee members and lay observers.

(2) To receive reports on matters which have major resource implications, particularly those which are not sufficiently provided for in the budget, whether they relate to the premises, equipment, staff or policy initiatives and to oversee a regular risk assessment and internal audit reviews;

(3) To prepare and present to the Council a strategic plan, drafted in line with budget priorities, and to review the implementation of the plan as necessary, adjusting priorities for action as appropriate;

(4) To oversee the appointment of professional advisers to the College, including auditor(s), legal advisers, stockbrokers, insurance brokers and such other advisers as may be necessary;

(5) To deal with all matters relating to registration of veterinary surgeons and veterinary practitioners and membership of the College (in consultation with the Education Policy and Specialisation Committee, as appropriate), overseeing the publication annually of the Register and Directory of Practices and monitoring of the composition of the profession by surveys and other means, taking into account advice from any relevant Committees or Sub-Committees;
(6) To advise the Council on all corporate governance matters including keeping under review the Act and regulations made thereunder, the Charter and these Bye-Laws and keeping under review the structure of committees and delegation of powers;

(7) To authorise the affixing of the Common Seal of the College, subject to the provisions of the Charter and these Bye-Laws;

(8) To deal with all matters relating to Council elections, keeping under review Schedule 1 to the Act and the Election Scheme; and

(9) To oversee the discharge of duties imposed on the College by other legislation and to receive reports, as necessary.
Outline of possible terms of reference of Board

General

Oversee the management of all College business and oversee matters of governance and the management of resources.

Matters on which the Board is to report to Council

Present an annual budget to Council and recommend proposed fee changes.

Advise Council on corporate governance matters.

Present a strategic plan to Council.

Matters on which the Board is to report to Council as the Board thinks appropriate

Monitor management accounts and progress of projects, receiving reports on matters with major resource implications.

Oversee a regular risk assessment and internal audit reviews.

Co-ordinate Council and Committee business and keep under review governance, rules of procedure, terms of reference and composition of committees, and role and composition of sub-committees and working parties.

Keep strategy plan and its implementation under review.

Keep under review arrangements for Council elections, Schedule 1 to the Act and the Election Scheme.

Matters for decision by the Board

Lay down procedures for budgeting and financial control.

Deal with requests for variations from the approved budget.

Approve expenditure from the contingency fund or the College’s reserves.

Manage the assets and investments of the College.

Oversee appointment of professional advisers to the College.
Approve rates of travelling and subsistence expenses and recompense for loss of earnings.
Authorise the sealing of documents.

Adjust priorities for action as appropriate following review of strategy plan.

Oversee the activities of the Communications Board.

Determine external representation and conduct external relations.

Deal with all matters relating to registration and membership of the College, oversee publication of Register and Directory and monitor composition of profession.
<table>
<thead>
<tr>
<th>Meeting</th>
<th>All Committees</th>
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<tr>
<td>Date</td>
<td>October 2012</td>
</tr>
<tr>
<td>Title</td>
<td>General Administration Bye-Laws</td>
</tr>
<tr>
<td>Classification</td>
<td>Unclassified</td>
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<tr>
<td>Summary</td>
<td>The paper proposes that the General Administration Bye-Laws 2009 should be amended so that they no longer lay down the constitution and terms of reference of RCVS committees. It also invites consideration whether the bye-laws should cease to set out the roles and delegated powers of the Officers</td>
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<td>Decisions required</td>
<td>Whether to recommend changes to Council</td>
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<tr>
<td>Attachments</td>
<td>Annex: extract from present bye-laws</td>
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<tr>
<td>Author</td>
<td>Jeff Gill</td>
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<td>Policy Consultant</td>
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<td><a href="mailto:j.gill@rcvs.org.uk">j.gill@rcvs.org.uk</a></td>
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Background

1. Council has powers in the Supplemental Charter to make bye-laws for a number of purposes. The General Administration Bye-Laws 2009 currently do the following main jobs:

   (a) they lay down rules for the orderly conduct of College business;

   (b) they constitute committees, the Officers’ Meetings and the Governance Review Group, delegate powers to those bodies and lay down their terms of reference;

   (c) they determine the procedure of the Annual General Meeting (this is a specific requirement of the Charter); and

   (d) they determine the fee to be paid for the issue of a certificate as to whether or not a certain person is on the register (again, this is a requirement of the Charter).

2. The Charter lays down procedural requirements for bye-laws “for the good order and management of the College”: 21 days notice of proposals for such bye-laws must be given in writing to all Council members, and they must be approved by a two-thirds majority at a Council meeting. The view has been taken in the past that those requirements should apply to RCVS bye-laws generally.

3. There are arguments for making changes in the 2009 bye-laws in respect of the following matters:

   - the delegation of powers to committees and the Officers;

   - the management structure of the College; and

   - minor deficiencies in the existing provisions.

Delegation of powers

4. The Charter allows Council “to act by committees or sub-committees and to delegate such duties and powers as it thinks fit from time to time to such committees or sub-committees and to any of its own number and to the officers and servants and agents of the College”. The Charter does not require any of this to be done through bye-laws, and it would be convenient if Council were able to revise the committee structure from time to time without going through the procedure for amending bye-laws. Revisions of the bye-laws are always liable to lag behind events: thus the 2009 bye-laws still provide for a Public Affairs Committee, even though that Committee no longer meets. Again, Council agreed in June that it would set up a new committee to advise it on the appointment of members of the Preliminary Investigation and Disciplinary Committees (as reconstituted following the proposed legislative reform order), and such a committee needs to be set up in November in order to meet the timetable for recruitment.
5. At their weekend meeting in July the Officers favoured removing the constitution and terms of reference of committees from the GA bye-laws. If this were done, Council would instead need to approve from time to time a paper listing committees and similar bodies and describing their membership and terms of reference.

6. It would similarly be possible to remove from the bye-laws the delegation of powers to the Officers (bye-laws 8, 9 and 11 and Schedule 3). A case can be made for continuing to set out in the bye-laws the arrangements which Council has made for the management of College business, because such arrangements should not be changed every five minutes. If, however, the senior management structure of the College is to be formally promulgated the job needs to be done properly, and on this subject the 2009 bye-laws do not stand up to critical examination. The relevant provisions are discussed below.

Management structure

7. The Act, the Charter and the bye-laws all recognise that the College will have a management structure below the level of the Council, but the structure is not tightly defined. The main provisions are as follows:

- the Act says in section 1(2) that there shall be a President and two Vice-Presidents elected from among themselves by members of the Council. The Act does not say anything about their role, and there is no expectation that one person will progress through the three positions;

- section 9 of the Act requires Council to appoint a registrar to keep the register of veterinary surgeons. Various provisions of the Act give the Registrar specific functions in relation to registration;

- article 9 of the Charter also requires Council to appoint a Registrar and specifies that the Registrar is to be an officer of the College - ie a senior employee - and not a member of the Council;

- article 11 of the Charter gives Council power to appoint a Secretary, who may be the same person as the Registrar;

- article 6(1) of the Charter provides for the Secretary or Registrar to convene Council meetings, article 7 requires one or other of them to take the minutes of general meetings and Council meetings (though they may depute this task), and article 10 requires the Registrar to issue registration certificates. Otherwise the Charter is silent about the functions of the Secretary and Registrar;

- article 8 of the Charter requires Council to elect a Treasurer each year but says nothing about the Treasurer's role;
- bye-law 8 gives the President power to "take such action in the name of the College and of the Council as may be reasonably necessary", "carry out such other functions as customarily adhere to the office", and convene meetings of Council or of committees, consulting the Vice-Presidents, Treasurer and Registrar when possible;

- bye-law 9 requires the Vice-Presidents to deputise for the President "as may be required in accordance with paragraph (1) of this Bye-Law, but not necessarily undertake specific roles assigned to the President by these or other Bye-Laws or Regulations, unless so provided". The meaning of the words quoted is open to debate;

- bye-law 10 gives various jobs to the "Secretary and Registrar", assuming them to be the same person;

- bye-law 11 defines the Officers as the President, Vice-Presidents, Treasurer and Secretary & Registrar, gives them power to meet "to oversee and co-ordinate the despatch of the business of the College", and gives their meetings delegated authority to act in the name of Council and the College on the matters mentioned in the third Schedule to the bye-laws. This authority is conferred on the Officers' meetings, not the Officers as such. The meetings are, however, loosely defined: the bye-law refers to meetings of the Officers "or such of them as shall be available at the time" and does not specify a quorum;

- Schedule 3 to the bye-laws is reasonably clear in relation to workaday functions of the Officers' meetings, such as arranging representation of the College at external events, but vague about the central role: "to oversee the general management of all College business" and "to deal with business not requiring the decision of the Council or of any Committee". The financial responsibilities of the Officers' meetings overlap with the remit of the Planning and Resources Committee, with both having a duty to monitor management accounts and a power to approve expenditure from the contingency fund.

8. The lack of clarity of the bye-laws which confer powers and duties on the Officers of the College perhaps reflects an expectation that they will follow custom and practice and refrain from taking action which might attract criticism within Council. There does not, however, seem to be much point in going through the formality of making bye-laws to specify the roles and powers of the Officers if their responsibilities are left unclear.

Minor changes

9. The present bye-laws could usefully be improved in a number of minor respects:

- bye-law 3 requires the keeping of register of documents to which the Common Seal has been affixed "which shall be available for inspection by any Council member". It
is not clear whether it is the register or the documents which have to be available for inspection;

- bye-law 14 mentions the Head of Finance without defining that position;

- Schedule 1 to the bye-laws deals with procedure for general meetings in paragraphs 1, 2, 4 and 5, as required by the Charter, but paragraph 3 specifies the agenda for the AGM. This seems unnecessary;

- paragraph 13 of Schedule 1 says that Council and Committee minutes "shall be taken as read and confirmed at the next succeeding meeting". It is not clear what this means, or how it fits with the practice of circulating minutes for comment before the next meeting.

Timing

10. If it is agreed that the bye-laws should be amended so as to remove the constitution and terms of reference of committees, and perhaps also the provisions which delegate powers to the Officers, Council can be invited to approve this proposition in principle in November. New bye-laws can then be submitted for ratification by Council in March 2013.
Extract from General Administration Bye-Laws 2009

THE ROYAL COLLEGE OF VETERINARY SURGEONS

GENERAL ADMINISTRATION BYE-LAWS 2009

as amended

Made by the Council on 5 November 2009 under powers conferred by Articles 3, 6(2), 10 and 22 of the 1967 Supplemental Charter

Citation and Commencement

1. These Bye-Laws may be cited as the General Administration Bye-Laws 2009; shall come into immediate effect, and all previous General Administration Bye-Laws, and any amendments to them, shall cease to have effect, but without prejudice to the validity of anything done thereunder.

Interpretation

2. (1) The Interpretation Act 1978 shall apply to these Bye-Laws as it applies to an Act of Parliament and, unless the context requires to the contrary, words and expressions used in these Bye-Laws shall have the same meanings as in the Veterinary Surgeons Act 1966 (“the Act”) and the Supplemental Charter granted on 19th October 1967 (“the Supplemental Charter”).

(2) A reference to ‘the Council’ means the Council of the Royal College of Veterinary Surgeons.

Common Seal

3. (1) The Common Seal of the College shall bear the armorial bearings of the College, as granted by the College of Arms on 1st July 1845.

(2) The Secretary and Registrar shall have custody of the Common Seal, which shall only be affixed as provided in Article 13 of the Supplemental Charter.

(3) The Secretary and Registrar shall keep a register of documents to which the Common Seal has been affixed, which shall be available for inspection by any Council member.

General Meetings

4. The procedure and rules of debate at General Meetings shall, subject to the provisions of the Supplemental Charter, be as set out in Schedule 1 to these Bye-Laws.
Council Meetings

5. The procedure and rules of debate at Council meetings shall, subject to the provisions of the Supplemental Charter, be as set out in Schedule 1 to these Bye-Laws.

Committee Meetings

6. The procedure and rules of debate at Committee meetings shall be as set out in Schedule 1 to these Bye-Laws, and shall also apply where appropriate to meetings of Sub-Committees and Working Parties, at the discretion of the Chairman of the Sub-Committee or Working Party concerned.

7. It shall be permissible for any Committee, Sub-Committee or Working Party to meet by means of telephone conferencing or video-conferencing, at the discretion of the Chairman, and the provisions of Schedule 1 to these Bye-Laws shall be adapted as necessary to any meeting held by either of those means.

President, Senior Vice-President and Junior Vice-President

8. (1) The President may, subject to the provisions of the Act, the Supplemental Charter and these Bye-Laws, take such action in the name of the College and of the Council as may be reasonably necessary. He may carry out such other functions as customarily adhere to the office. He may direct that a meeting of the Council or any Committee or Sub-Committee shall be convened on such date and for such purpose as he thinks fit. In performing his duties under this paragraph the President shall whenever reasonably practicable consult the Senior and Junior Vice-Presidents, the Treasurer and the Registrar.

(2) The Senior Vice-President and the Junior Vice-President shall deputise for the President as may be required in accordance with paragraph (1) of this Bye-Law, but not necessarily undertake specific roles assigned to the President by these or other Bye-Laws or Regulations, unless so provided.

Treasurer

9. (1) The Treasurer shall be responsible for the financial affairs of the College, including the proper maintenance of its accounting records and the preparation of the College’s Accounts for audit and presentation to the Annual General Meeting.

Secretary and Registrar

10. (1) The Secretary and Registrar shall normally attend all General Meetings, Council meetings and Committee meetings (save for the statutory committees). All notices convening General Meetings and agendas for Council and Committee meetings shall be issued over the name of the Secretary and Registrar.
(2) The Secretary and Registrar shall be responsible for the management and administration of the affairs of the College, subject to the provisions of the Act, the Supplemental Charter, these Bye-Laws and the directions of the Council given from time to time. He shall consult the President (or, in his absence, one or both of the Vice-Presidents) on any matter requiring new policy or a substantive change in existing policy.

(3) The Secretary and Registrar shall be responsible for the safe custody of all documents and property belonging to the College. No confidential document shall be made available other than to members of the Council except by order of the President or of the Council or as required by law.

(4) In the event of a vacancy in the post of Secretary and Registrar, or the prolonged absence of the Secretary and Registrar through illness, the duties of the post shall be carried on by an Acting Secretary and Registrar or otherwise, as the President (or, in his absence the Senior or Junior Vice-President) shall direct, subject to the directions of the Council.

Officers' Meetings

11. The Officers of the College (namely the President, the Senior Vice-President, the Junior Vice-President, the Treasurer and the Secretary and Registrar), or such of them as shall be available at the time, shall be empowered to meet together to oversee and co-ordinate the despatch of the business of the College, and in particular to deal with the matters set out in Schedule 3 to these Bye-Laws. Any such meeting shall, subject to the provisions of the Act, the Supplemental Charter and these Bye-Laws, have delegated authority under Article 6(1) of the Supplemental Charter to act in the name of the Council and the College on the matters set out in Schedule 3 to these Bye-Laws.

Accounts and Auditors

12. (1) The Accounts of the College as signed by the Auditors shall be presented to the Annual General Meeting. The Accounts shall be circulated to the members of the College in or with the Annual Report of the Council, either in full form or in summary form. If the Accounts are circulated in summary form a copy of the full Accounts shall be available to any member on request and copies of the full Accounts shall be available at the Annual General Meeting. If the Accounts are made available electronically, hard copies shall be available on request.

(2) The Auditor(s) shall be a chartered accountant who is a registered auditor, or a firm of chartered accountants who are registered auditors, appointed by the Council. The duties of the Auditors shall be to examine the accounts and financial records of the College and to state their opinion on the Accounts of the College.

Appointment of Committees and Boards and Delegated Powers

13. (1) There shall continue to be the following Committees of the Council, the members of which shall be appointed by the Council, and which shall report to the Council:-

(a) the Planning and Resources Committee;
(b) the Public Affairs Committee;

(c) the Education Policy and Specialisation Committee;

(d) the Veterinary Nurses’ Council;

(e) the Examination Appeals Committee;

(f) the Specialist Recognition Appeals Committee;

(g) the Registration Appeals Committee;

(h) the Advisory Committee; and

(i) the Nominations Committee.

(2) Unless appointed to fill casual vacancies, or where other terms have been specifically stated, the members of each Committee shall hold office on a yearly basis from the conclusion of the Annual General Meeting until the conclusion of the next ensuing Annual General Meeting, and shall be eligible to be re-appointed. Members appointed to fill casual vacancies shall hold office until the conclusion of the next ensuing Annual General Meeting. The other provisions relating to the membership of Committees and the terms of reference of each Committee and Board shall be as set out in Schedule 2 to these Bye-Laws.

(3) Each of the Committees named in paragraph (1) shall, except where indicated, have delegated authority, in accordance with and subject to, Article 6(2) of the Supplemental Charter, and subject to the Act and these Bye-Laws, to act in the name and on behalf of the College and the Council in relation to the matters set out in its terms of reference to the extent therein specified, subject to any conditions laid down by the Council from time to time.

(4) It is hereby declared that nothing in this Bye-Law shall be taken to prevent the Council from itself exercising any powers or functions delegated in accordance with Article 6(2) of the Supplemental Charter and this Bye-Law. It is further declared that nothing in this Bye-Law shall be taken to preclude any other delegation of functions by virtue of any other enactment or rule of law.

(5) Each of the Committees referred to in paragraph (1) may appoint one or more Sub-Committees, Working Parties or Boards for such general or special purpose as they may think fit and, in accordance with and subject to Article 6(2) of the Supplemental Charter, subject to the Act and these Bye-Laws, and subject to any contrary direction from the Council, may on behalf of the Council delegate to such Sub-Committees, Working Parties or Boards power to act in the name of the College and the Council in relation to the matters set out in its terms of reference.

**Payments by the College**
14. (1) The authorised signatories for payment of amounts up to £1000 shall be any one of the President, Treasurer, Registrar and Head of Finance. The Council may by resolution approve any other Council member or member of the staff of the College to authorise payment of amounts up to and including £1000 if any of the said signatories are not reasonably available.

(2) The two authorised signatories for payment of amounts exceeding £1000 shall be one of the President or Treasurer, together with one of the Secretary and Registrar or Head of Finance. The Council may by resolution approve any other Council member or member of the staff of the College to authorise payment of amounts exceeding £1000 if any of the said signatories are not reasonably available.

(3) All payments by the College may be made by cheque, direct debit, standing order, BACS (the Bank Automated Clearing System) or any other method approved by the College’s Auditors, and any sum may be paid in Euros or through a Euro Bank Account. Payments below the amount of £100 may also be made from the Petty Cash Account.

Fee for Certificates of Registration

15. The fee to be charged, in accordance with Article 10 (as amended) of the Supplemental Charter, for the Secretary and Registrar to certify under his hand whether a person is registered in any of the registers maintained by the College, shall be £3, together with the value-added tax thereon.

SCHEDULE 1

PROCEDURE AND RULES OF DEBATE FOR GENERAL MEETINGS AND COUNCIL AND COMMITTEE MEETINGS

Convening of General Meetings

1. Annual and Special General Meetings of the College shall be convened in accordance with Articles 3 and 4 respectively of the Supplemental Charter. The notice of the meeting shall state clearly the business to be transacted at the meeting. No accidental omission to give notice to a member shall invalidate the meeting.

Quorum of General Meetings

2. Subject to the succeeding provisions of this paragraph, the quorum for any general meeting (including any adjournment thereof) of the members of the College shall, in accordance with Articles 3 and 4 of the Supplemental Charter, be twelve members personally present. If the necessary quorum is not present within fifteen minutes after the time fixed for the commencement of the meeting, the meeting shall be adjourned to a date and time fixed by the Chairman, with the agreement of the members present. At the adjourned meeting, if twelve members are not present within fifteen minutes after the time fixed for the commencement of the meeting, then the members present shall be deemed to constitute a quorum in any event. If any general meeting ceases to be quorate during the course of
the meeting, the meeting shall be adjourned and the provisions relating to a meeting for which no quorum is present at the commencement of the meeting shall apply to such an adjourned meeting.

Business of the Annual General Meeting

3. Subject to the Chairman's discretion to vary the order of business as he thinks fit, the business and order of business of the Annual General Meeting shall be as follows:-

   (1) The notice of the meeting shall be read by the Registrar, unless the meeting consent to this being taken as read;

   (2) The minutes of the immediately preceding general meeting shall be read, or taken as read with the agreement of the meeting, confirmed, and signed by the Chairman of the meeting;

   (3) The names shall be announced of those persons appointed to the Council by the Privy Council under Section 1(1)(b) of the Act and by universities in the United Kingdom under Section 1(1)(c) of the Act;

   (4) The names shall be announced of those persons elected to the Council under Section 1(1)(a) of, and Schedule 1 to, the Act;

   (5) An address shall be given by the President;

   (6) Honours and awards shall be presented;

   (7) The Annual Report of the Council and the Accounts of the College shall be received;

   (8) The President and Vice-Presidents who have been elected to take office at the conclusion of the meeting shall be invested with the Badges of their respective offices; and

   (9) Such other business specified in the notice of the meeting shall be taken in the order decided by the Chairman.

Chairmanship of General Meetings

4. The President shall take the Chair at all general meetings but if he be not present the Chair shall be taken by the Senior Vice-President. If both the President and the Senior Vice-President are not present the Chair shall be taken by the Junior Vice-President. If the President and the Senior and Junior Vice-Presidents are not present the members shall choose a Council member present to take the Chair.

Adjournment of General Meetings
5. Each general meeting shall have power to adjourn from time to time, and from place to place, by agreement of the members present. No business shall be transacted at the adjourned meeting other than business left unfinished at the immediately preceding session of the meeting.

Convening of Council Meetings

6. Subject to the provisions of Article 22 of the Supplemental Charter, at least ten days’ notice shall be given of every Council meeting, unless the President shall have directed that a shorter period shall be permissible. The agenda for the meeting shall state clearly the business to be transacted at the meeting. Subject to paragraph 10, no other business shall be transacted other than that so stated, without the leave of the Council as a matter of urgency.

Quorum of Council Meetings

7. The quorum for any Council meeting shall be nine members personally present, in accordance with Article 6(1) of the Supplemental Charter. If no quorum is present within fifteen minutes of the time fixed for the commencement of the meeting the meeting shall stand adjourned to a date and time to be fixed by the Chairman, with the agreement of the members present. If the meeting ceases to be quorate during the course of the meeting it shall be adjourned likewise.

Chairmanship of Council Meetings

8. The Chair at Council meetings shall be taken by the President. If the President be not present the Senior Vice-President shall take the Chair. If both the President and the Senior Vice-President are not present the Junior Vice-President shall take the Chair. If the President and the Senior and Junior Vice-Presidents are not present, the Council members shall choose one of their number to take the Chair.

Adjournment of Council Meetings

9. Each meeting of the Council shall have power to adjourn to a future date and time, by agreement of the members present. No business shall be transacted at the adjourned meeting other than that left unfinished at the adjournment of the immediately preceding session of the meeting, with the exception of urgent business designated as such by the President, and of which notice shall have been given to each Council member.

Council Members’ Motions

10. A Council member who wishes to raise any subject for discussion, or to move a motion, at any Council meeting shall, as soon as possible after receipt of the notice of the meeting, and in any case not later than three days prior to the date of the meeting, give notice thereof to the Secretary and Registrar. That subject or motion, as the case may be, shall then be added to the agenda of the meeting, notwithstanding the provisions of paragraph 6. No motion which in the opinion of the Chairman is the same in substance as a motion previously rejected by the Council shall be moved
within six months of the date of the meeting at which it was previously rejected, except with the agreement of the Council.

**Convening of Committee Meetings**

11. At least ten days’ notice shall be given of every Committee meeting, save that the Chairman of the Committee may direct that a shorter period is permissible. The agenda for the meeting shall state clearly the business to be transacted at the meeting.

**Chairmanship of Committee Meetings**

12. The Chairman of the Committee shall take the Chair at every meeting of a Committee. If the Chairman of the Committee be not present, the Vice-Chairman of the Committee shall take the Chair. If both the Chairman of the Committee and the Vice-Chairman of the Committee are not present, the members of the Committee present shall choose one of their number to take the Chair.

**Minutes**

13. Minutes shall be taken of every meeting of the Council and of its Committees and Sub-Committees. The minutes shall be taken as read and confirmed at the next succeeding meeting of the Council or of the Committee or Sub-Committee concerned.

**Rules of Debate**

14. Subject to the discretion of the Chairman to regulate the proceedings as he thinks fit, the following rules of debate shall apply to general meetings of the members of the College and to meetings of the Council and, with necessary adaptations, to meetings of Committees and Sub-Committees:

**Motions**

(1) No motion shall be discussed before it has been seconded, and no member shall speak more than once to any motion, except with the leave of the Chairman. The seconder of a motion may reserve his speech until later in the debate. The mover of the motion shall have the last word in the debate, but shall confine himself to answering points made by previous speakers and shall not introduce new material in the debate. No motion may be withdrawn, except by leave of the Chairman. The withdrawal of a motion shall not preclude it from being moved on a later occasion. Where a Council member presents to a Council meeting a report from a Committee the recommendations contained in that report shall be taken to be the motions before the meeting and in presenting the recommendations the member concerned shall be taken to be moving the reception and adoption thereof. In such circumstances, where the member presenting the recommendations indicates that the Committee wishes to modify the proposals, they shall be deemed to be amended accordingly and the motions presented to the Council in that form.

**Speeches**
(2) All speeches should be directed to the Chair, and made from a standing position. No member shall speak for more than five minutes on any one occasion, except with the leave of the Chairman.

Voting

(3) Subject to the provisions of the Supplemental Charter, all questions before a general meeting shall be decided by a simple majority of the members present and voting, and all questions before a meeting of the Council shall be decided by a majority of the members present, whether voting or not. Subject to the succeeding provisions of this sub-paragraph, voting shall be by show of hands. Immediately prior to the question being put to the meeting, the Chairman, or the Registrar at his direction, shall read the text of the question to be voted upon, but this shall not be necessary where the text of a motion or of an amendment is printed in the notice or agenda of the meeting or has otherwise been circulated in writing to members. The Council may direct that a secret ballot shall be held for the elections to the offices of President, Senior Vice-President and Junior Vice-President and (if requested by at least 6 members) may also direct that a record be made of votes cast in an open ballot and that this list of names should be published.

Amendments

(4) Amendments to motions must be relevant to the motion and within the scope of the motion. An amendment shall be for one of the following purposes:-

(a) to omit words;

(b) to omit words and insert or add others in substitution thereof;

(c) to insert or add words;

(d) in the case of a meeting of the Council, that the subject-matter of the motion be referred to a Committee

No amendment shall be discussed before it has been seconded. Only one amendment may be discussed at any one time, but the Chairman may permit more than one amendment to be discussed at the same time if he considers that this will assist the meeting. If an amendment is carried, the motion as amended shall then become the substantive motion before the meeting, and may be further amended. The mover of an amendment shall have no right of reply to the debate on his amendment, but the mover of the original motion shall have the right of reply to the debate on the amendment. The seconder of an amendment may reserve his speech to a later stage in the debate on the amendment, but shall have no right of reply to the debate on the amendment.

Closure of Debate
(5) A member who has not spoken in the debate may move the closure of the debate by moving either:-

(a) that the question be now put; or

(b) that the meeting do proceed to the next business

A motion to close the debate must be seconded. Neither the proposer or seconder of a closure motion shall speak to the closure motion and there shall be no debate on it. If a proposal that "the question now be put", is carried, the question before the meeting shall then be put to the meeting forthwith, save that the mover of the original motion shall have a right of reply to the debate before the question is put. If it is agreed to proceed to the next business the original debate is closed without any question being put.

Points of Order

(6) A member may raise a point of order at any time during the meeting and shall be heard forthwith. A member wishing to raise a point of explanation in relation to a previous speech of his in the debate shall raise it as a point of order. The ruling of the Chairman on a point of order shall be conclusive and shall not be questioned in any way, except by way of substantive motion.

Chairman’s Casting Vote

(7) The Chairman of the meeting shall have a second, or casting, vote, which he may exercise whether or not he has exercised his personal vote.

SCHEDULE 2

MEMBERSHIP AND TERMS OF REFERENCE OF COMMITTEES

Membership

1. Subject to paragraph 2, not less than half of the members of each Committee shall consist of Council members. The Chairman of each Committee shall normally be a Council member. Subject to paragraph 2, each Committee with the exception of the Specialist Recognition Appeals Committee shall have no fewer than six and no more than 16 members, exclusive of ex officio members.

2. The Disciplinary Committee and Preliminary Investigation Committee shall be constituted in accordance with Schedule 2 to the Act. The Registration Appeals Committee shall be constituted in accordance with section 5D of the Act and the Veterinary Surgeons (Registration Appeals) Rules 2008. The Veterinary Nurses’ Council and the Governance Review Group shall be constituted as set out in paragraphs 8 and 9 below.
3. The Chairmen of all Committees shall, if not already members of the Committee, be ex officio entitled to attend and speak at meetings of the Planning and Resources Committee, but shall not be entitled to vote thereat or be counted as part of the quorum for any meeting of that committee.

4. The Council may fill any vacancy on any Committee, or subject to paragraph 1 add to the membership of any Committee (with the exception of the Disciplinary and Preliminary Investigation Committees) at any time.

5. The quorum for a meeting of a Committee shall be three, or such higher figure as the Council may decide in any case. Ex officio members of Committees shall not be counted as part of the quorum for that Committee.

6. (1) The Chairman, Vice-Chairman and members of Committees shall be appointed by the Council on the recommendation of the Nominations Committee, with the exception of the Veterinary Nurses’ Council and the Governance Review Group.

(2) Where an external panel appointed by the Governance Review Group has found a Council Member to be in breach of the Code of Conduct for Managing Conflicts of Interest the external panel may direct that membership of one or more committees shall be suspended for a period of time.

7. (1) The President, Senior Vice-President and Junior Vice-President shall be ex officio members of all Committees of the Council, with the exception of the Disciplinary Committee, the Advisory Committee, Governance Review Group and the Veterinary Nurses’ Council, save where specifically appointed to serve on the Veterinary Nurses’ Council.

(2) The Treasurer shall be ex officio a member of all Committees and Sub-Committees of the Council, with the exception of the Disciplinary and Preliminary Investigation Committees, Governance Review Group and the Veterinary Nurses’ Council, save where specifically appointed to serve on the Veterinary Nurses’ Council.

8. (1) The Veterinary Nurses’ Council shall consist of the following members . . .


Terms of Reference of Committees

Advisory Committee

10. The terms of reference of the Advisory Committee are . . . [etc]

SCHEDULE 3

POWERS OF OFFICERS’ MEETINGS
1. To oversee the general management of all College business.

2. To deal with business not requiring the decision of the Council or of any Committee.

3. To deal with urgent business and approve expenditure from the contingency fund, arising between Council and Committee meetings, reporting to the Council or the relevant Committee and seeking ratification, as necessary.

4. To monitor the management accounts of the College and to monitor the progress of projects.

5. To meet with the Chairmen of Committees; to co-ordinate Council and Committee business and to discuss matters relating to governance, rules of procedure, terms of reference and composition of committees.

6. To ensure that members of the Council are kept informed of developments.

7. To initiate reviews of the strategy plan and make recommendations to the Council and Committees.

8. To oversee the activities of the Communications Board.

9. To determine the representation of the College on various external organisations, speakers at conferences and similar matters.

10. To arrange meetings with members of the College, veterinary associations and other bodies, as appropriate.

11. To keep under review the role and composition of sub-committees and working parties.
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Introduction

1. In June Council gave broad approval to recommendations for the content of bye-laws setting the framework within which the Preliminary Investigation and Disciplinary Committees (PIC and DC) will operate when the proposed legislative reform order (LRO) is in operation. The Veterinary Surgeons Act as amended by the LRO will provide that, after a two-year transitional period, members of the RCVS Council will cease to be eligible to serve on PIC and DC. It is hoped that the LRO will be approved by the end of the year, with the new arrangements being implemented from 1 July 2013. It is envisaged that Council will be invited to make the new bye-laws at its March meeting.

2. The proposals for the bye-laws have now been revised to some extent in the light of a change in the draft LRO and further discussion of some issues. The recommendations accepted by Council are summarised below, with some suggested modifications.

Selection of committee members

3. Council agreed that the bye-laws should call for it to set up a selection committee to recommend candidates for appointment, and that the selection committee should not include members of Council. It was also agreed that the bye-laws should formalise the current convention that a person who has served on PIC should not be appointed to DC within three years of the earlier appointment coming to an end, and that the normal term of office for a committee member should be four years.

Fitness to serve

4. The draft order as it stood in June required Council to lay down “requirements about fitness to be a member” of PIC or DC. This has been changed in the latest draft, which provides that members of the committees will serve for such term as may be determined by Council and so long as they “satisfy such conditions about fitness to be a member” as may be determined by Council. This means that the bye-laws can, as originally envisaged, list grounds for disqualification - such as offences of dishonesty, bankruptcy or poor attendance - rather than spelling out positive requirements to behave well, deal promptly with committee business and the like. The suggested provisions are summarised in the annex.

5. The bye-laws should give Council power to remove existing committee members on the ground that they no longer satisfy the conditions as to fitness to serve.

Chairmanship

6. The LRO will require Council to designate a Chairman for each committee. The bye-laws should in addition give Council power to designate Vice-Chairmen, with power to chair proceedings.
7. The bye-laws should require meetings of PIC to be chaired by its Chairman or one of the Vice-Chairmen. If, during a meeting, the person in the chair has to stand down and neither the Chairman nor one of the Vice-Chairmen is present, the other committee members present should choose one of their number to take over. The bye-laws do not need to say anything about the chairing of DC proceedings because this is covered in the statutory procedure rules.

8. It is envisaged that the recruitment process will be designed so as to select some persons who are thought to be suitable for appointment as chairmen or vice-chairmen.

**Convening of PIC meetings**

9. The bye-laws should require the Registrar to appoint a clerk for PIC and the clerk should convene proceedings, acting in consultation with the Chairman or, in the absence or incapacity of the Chairman, the Vice-Chairmen. The clerk should give ten days notice of meetings, unless whoever is to chair the meeting authorises a shorter period of notice. Again, for DC all this is covered in the procedure rules.

**DC panels**

10. The bye-laws should authorise the practice of DC conducting inquiries through panels made up of less than full membership of the committee. The statutory quorum should apply to panel meetings.

**Appraisal**

11. The paper which went to Council proposed that the bye-laws should require PIC and DC to devise their own arrangements for appraisal and submit them to Council for approval. The Chairman and Vice-Chairmen of DC have, however, taken the view that Council should determine the appraisal system. They have suggested that appraisals should be managed by the Chairman of each committee assisted by one other person, possibly a legal assessor. This important subject needs to be considered further. It may be appropriate for the bye-laws initially to remain silent about appraisal, so that arrangements can be agreed with the newly constituted committees when they are in place.

**Reporting to Council**

12. PIC and DC should be required to report to Council from time to time on the way in which they discharge their statutory functions.
Suggested bye-law provisions on fitness to serve as a member of PIC or DC

The suggested provisions are modelled on the General Medical Council (Constitution) Order 2008, SI 2008/2554.

Eligibility to serve

Persons would be eligible to serve as members of PIC so long as they satisfied the following conditions:

- at no time convicted of an offence involving dishonesty or deception in the United Kingdom, or where the final outcome of the proceedings was a sentence of imprisonment or detention, the conviction not being a spent conviction;

- at no time removed from the office of charity trustee or trustee for a charity on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person contributed to or facilitated by their conduct;

- at no time removed from office as the chair, member, convenor or director of any public body on the grounds that it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold that office;

- at no time adjudged bankrupt or had sequestration of their estate awarded, the person not having been discharged;

- not the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order;

- had not at any time made a composition or arrangement with, or granted a trust deed for, their creditors, not having been discharged in respect of it;

- not disqualified from being a company director;

- not included in a barred list under statutory provisions for the safeguarding of vulnerable groups;

- at no time subject to any investigation or proceedings concerning fitness to practise by any licensing body, the final outcome having been suspension from a register held by the licensing body, that suspension not having been terminated, or erasure from such a register, or a decision that had the effect of preventing practice of the profession licensed or regulated by the licensing body, or only allowing practice subject to conditions which had not been lifted;
- at no time removed from the register of veterinary surgeons under section 16 of the Veterinary Surgeons Act 1966 and not currently suspended from the register; and

- not subject to any investigation or proceedings concerning fitness to practise by any licensing body or the RCVS, or at any time convicted of an offence elsewhere than in the United Kingdom, the RCVS Council being satisfied that their membership of PIC or DC would in view of that investigation or those proceedings or that conviction be liable to undermine public confidence in the regulation of the veterinary profession.

**Removal from office**

The RCVS Council would have power to remove from office any member of PIC or DC if the Council was satisfied that:

- they did not satisfy the conditions mentioned above;

- their attendance at meetings of the committee fell below a minimum level of attendance acceptable to the Council;

- they had failed to undertake satisfactorily any required education or training or comply with requirements as to appraisal;

- they could no longer perform their duties because of adverse physical or mental health; or

- their continued membership of the committee would be liable to undermine public confidence in the regulation of the veterinary profession.
| **Meeting** | Planning and Resources Committee  
Audit and Risk Committee |
|---|---|
| **Date** | Planning and Resources Committee  11 October 2012  
Audit and Risk Committee  17 October 2012 |
| **Title** | Enforcement of the Code of Conduct for Council and Committee members |
| **Classification** | Unclassified |
| **Summary** | The Governance Review Group has asked for a review of the legal advice on the enforcement of the Code of Conduct for Council and Committee members. |
| **Decisions required** | Whether the concerns expressed by GRG are sufficient to change the RCVS position agreed at June Council 2012. |
| **Attachments** | Annex A  Field Fisher Waterhouse Legal Advice  
Annex B Code of Conduct for Council and Committee Members |
| **Author** | Gordon Hockey  
Head of Legal Services  
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Introduction

1. This paper reviews the question of the enforcement of the Code of Conduct for Council and Committee Members.

2. Legal advice on the RCVS’ power to impose sanctions against Council members for breaches of the Codes was sought from Field Fisher Waterhouse LLP (FFW) on 25 April 2012 attached as Annex A. In May 2012, the Planning and Resources Committee (P&RC) considered a paper on enforcement of the Code of Conduct of Council Members, which included consideration of FFW’s legal advice. P&RC was advised that while there is an argument for an enforcement system that could remove members from Council, it was likely that the courts would consider this beyond the RCVS powers under the Veterinary Surgeons Act 1966 and the Charter. The P&RC was referred to an informal enforcement system, which was approved by Council in early June. Attached as Annex B is the current Code of Conduct for Council and Committee members with informal enforcement system (paragraph 15 of Annex B).

3. In mid June, the Governance Review Group (GRG) discussed the legal advice received from FFW, the paper on enforcement and Council’s decision. The GRG considered the legal advice was not as definitive as suggested in the paper and allowed for the introduction of a scheme to remove Council members from office in appropriate circumstances. Accordingly, the GRG considered the advice from FFW should be reviewed to confirm the interpretation was correct.

June 2012 Paper

4. The paper considered by Council in June, earlier this year, stated

   Briefly, the legal advice is that the College would be at risk of legal challenge if it removed or suspended a Council member for failure to comply with the relevant codes of conduct. Such a challenge would be likely to succeed (even though it is anticipated that the courts would sympathise with the College’s reasons for wishing to back up the codes of conduct with appropriate sanctions). Council members who are veterinary surgeons are of course subject to the jurisdiction of the Preliminary Investigation and Disciplinary Committees, but the relevant conduct might not amount to disgraceful conduct in a professional respect (serious professional misconduct).

   It is open to Council to consider imposing sanctions short of removal or suspension from membership of Council: for example public censure and removal from committees. The systems for such enforcement do not need to be so formal, where there is no removal from the Council. The P&RC recommends that the procedure is described briefly, rather than in detail, and that the President and Chief Executive have the authority to deal with complaints and determine who investigates them, as appropriate to the nature and circumstances of the complaint. The suggested procedure allows for a complaint to be dealt with informally by the President and Chief Executive, in which case, if concerns remain, a complainant can bring the matter to
the attention of the Audit and Risk Committee; or to be dealt with more formally, by a
three-person panel, in which case the panel makes a recommendation to RCVS
Council.

The P&RC considered that the powers and sanctions for a breach of the Code of
Conduct for Council and Committee Members should be the same as those for the
Code of Conduct for Managing Conflicts of Interest. This is broadly the case, since
the current RCVS General Authority Byelaws provide that the Governance Review
Group (GRG) may appoint an external panel to consider alleged breaches of the
Code of Conduct for Managing Conflicts of Interest, which may direct that
membership of one or more committees shall be suspended for a period of time
(paragraph 6(2)). It seems sensible for the procedure to be the same as well,
particularly as the GRG will be superceded by the Audit and Risk Committee.

Financial Implications / PR Implications

The costs associated with the proposed enforcement system should be minimal
where complaints are dealt with informally. The costs of the formal system will
depend on the number and complexity of hearings before the group of persons who
hear a complaint; loss of earnings and expenses should be paid in accordance with
the policy, for Council members for those hearing the complaint.

On the basis that recommendations to Council by the group of three-persons may be
in the public domain, the PR implications of the enforcement system are both positive
and negative: positive because the RCVS is seen to be seeking to ensure its own
governance and negative due to allegations against a Council member requiring
investigation and sanction.

Recommendation

The P&RC recommends that the RCVS should refrain from introducing procedures for
removal or suspension of membership of Council, in view of the serious risk of loss of
reputation and financial loss in the event of a legal challenge.

RCVS Council Decision

5. The draft Council minutes record the discussion and decision in June, earlier this year, as
follows:

The Acting Registrar was asked to introduce the paper and he reminded Council that
the Code of Conduct for Council and Committee members was approved in March
2011, with enforcement procedures to be added at a later date.

He said that PRC had initially considered enforcement of the Code of Conduct for
Council and Committee members. PRC had also seen the legal advice on the matter,
which was that any enforcement procedure could be open to legal challenge. The
College would be likely to lose any such challenge even though the judge would be likely to be sympathetic to the College. Given this, PRC had recommended the informal enforcement procedures outlined in paragraph 8 of the report. The Acting Registrar added that the Code of Conduct for Managing Potential Conflicts of Interests is currently enforced by the Governance Review Group (GRG) but as the GRG would soon be replaced, Council were also asked to approve the second Code to be enforced in the same way when the GRG had been dissolved and the General Administration Bye laws changed.

A member asked what powers Council would have following a referral of a complaint from A&RC as indicated in paragraph 8 of the report. The Acting Registrar replied that referral to Council represented in effect an appeals route and that it was for Council to decide what to do in response to the complaint. It was noted that there was precedent for Council discussing a complaint about one of its members. It was noted that a complaint could be brought to the Disciplinary Committee, assuming that the individual was a veterinary surgeon and the complaint within DC jurisdiction. He added that if a DC case against a veterinary surgeon Member of Council was upheld and the person was removed from the Register then that would, by default, also remove their Council Minutes Classification: membership of Council and that in rare cases, this action had been undertaken by other regulators. The Acting Registrar said that the DC route was not an alternative to robust discussion and argument.

A discussion followed and on a vote the paper was adopted.

**GRG minutes**

6. The GRG minutes record that:

   There was discussion of the legal advice received by the RCVS, the paper on the issue and the decision of the RCVS Planning and Resources Committee (P&RC). The Committee considered that the legal advice was not as definitive as suggested in the paper and allowed for the introduction of a scheme to remove Council members from office in appropriate circumstances, for example, to protect the RCVS from any reputational damage that it might suffer if such members were to continue to hold office, or remain members of Council, or to seek to stand for re-election. The Committee considered that the external advice should be reviewed so as to confirm this interpretation was correct.

**Discussion**

7. The conclusion of the legal advice was (paragraph 4.1 and 4.2) as follows:

   Legal analysis of the Council’s powers strictly suggests that the Charter cannot be used to impose sanctions against RCVS Council members for breach of the Codes of Conduct.
However, in order to meet the principles of modern regulation and to ensure Council members are fit to hold office, the Council can adopt lines of argument – whilst acknowledging the risk of challenge - to adopt an investigatory and disciplinary scheme for Council members under an implied or inherent power. This would fill the gap in the existing legislative regime which could lead to both legal and reputational risks of having an outmoded and inadequate mechanism which is incapable of ensuring that those who govern the profession are fit to hold office.

8. In considering the comments from the GRG the Committees may wish to have regard also to the assessment of the arguments and the risks in the body of the advice. Paragraphs 3.3 and 3.4 of the advice note that neither the Act nor the Charter contains an express power to introduce a disciplinary regime for Council members, and they also do not contain any express provision (of a kind which is common in modern legislation) allowing the College to do anything which is incidental or conducive to the discharge of its functions. In the absence of any such provisions the advice considers (paragraphs 3.5 - 3.7) whether it might be argued that the College has an "implied or inherent power" to govern its business and ensure that Council members observe appropriate standards of behaviour. Paragraph 3.7, however, says that there is "considerable force" in the counter-argument that the provisions of the Act concerning Council membership leave no room for such an "implied or inherent power". Paragraph 3.8 observes that "this would appear to be the preferable argument on a strict legal basis".

9. The advice goes on to acknowledge that the resulting situation is unsatisfactory, and it considers two further lines of argument that could be used to support the introduction of an investigatory and disciplinary scheme for Council members. One argument (considered in paragraphs 3.10 - 3.12) is that "there is an implied/inherent power under the Act to incorporate and enforce a scheme for removing members because it is implicit that someone appointed under the provisions of the Act as a Council member must be a fit and proper person to hold public office and that if he or she fails to conduct himself in accordance with the standards and principles of public life it is proper for action to be taken by the RCVS". Paragraph 3.12 notes, however, that in the face of a legal challenge the courts might reject that argument, for the reasons already discussed. The second argument, discussed in paragraphs 3.13 to 3.15, would rely on article 5 of the Charter, which makes Council responsible for directing and managing the affairs of the College. Paragraph 3.13 of the advice describes this second argument as "possibly weaker and more challenging to support on a legal basis".

10. The concluding paragraph of the advice, which says that "the Council can adopt lines of argument – whilst acknowledging the risk of challenge - to adopt an investigatory and disciplinary scheme for Council members under an implied or inherent power" - is not inconsistent with the discussion of the issues which precedes it. It is, however, clear from that discussion that the risk of failure, in the event of a legal challenge, would be more than theoretical.

11. The issues remain as discussed previously and relate to the risk of introducing an enforcement scheme that may be beyond the powers of the RCVS. Those powers include possible disciplinary proceedings against veterinary members of Council, peer pressure which might result in resignations in appropriate cases, and the replacement of appointed Council
members by the appointing body. On the other side, there are reputational risks for the RCVS if a person considered unfit for the role remains as a Council member.

Conclusion

12. The Audit and Risk Committee and P&RC are asked if the concerns expressed by the GRG are sufficient to change the RCVS position agreed at June Council 2012.
1. **Introduction**

1.1 In the paragraphs below we review and advise on whether the Royal College of Veterinary Surgeons (RCVS) can rely on the Royal Charter of 1844 and the Supplementary Royal Charter of 1967 (the Supplementary Charter) to impose sanctions against a member of the RCVS Council for breaches of the Code of Conduct for Council and Committee Members (Code of Conduct), which was approved by the RCVS Council in March 2011.

1.2 This advice is separated into the following parts:

* Part 1 – this introduction;
* Part 2 – reviews the relevant features of the legislative regime in which the RCVS operates;
* Part 3 – considers the legal options, arguments and risks for the RCVS in operating a process to sanction members of the Council for breaches of the Code of Conduct for Council and Committee Members; and
* Part 4 – contains our concluding comments.

2. **Legislative framework**

2.1 The RCVS is both a regulatory body with statutory powers, functions and duties and a Royal College with Charter powers and responsibilities.

2.2 The RCVS's statutory powers are contained in the Veterinary Surgeons Act 1966 (the Act) and related subordinate legislation.

2.3 The Charter powers are derived from the Royal Charters, most particularly the Supplementary Charter together with the Bye-Laws, which underpin the charter scheme, and include the General Administration Bye-Laws (the Bye-Laws) made by Council in accordance with the provisions of Article 22 of the Supplementary Charter.

2.4 Whilst the Charter and Bye-Laws are adopted under royal prerogative and the Act has royal assent, the Act prevails over any conflicting provisions in the Charter and Bye-Laws.

2.5 The Act contains provisions specifying the composition of the Council and the tenure of office of Council members (see section 1(1), 1(3) and Schedule 1 of the Act).

(a) Section 1(1) states that there should continue to be a Council of the College to manage the affairs of the RCVS and sets out the membership constitution for the Council.

(b) Section 1(3) provides that Schedule 1 shall have effect with respect to:

(i) tenure of office

(ii) election and appointment

(iii) other matters relating to Council.

(c) Schedule 1 contains a number of provisions regarding the Council, including that:

(i) the term of office for a Council member is four years (in effect) (para 1)

(ii) a Council member may resign office at any time with written notice (para 3)
(iii) an elected Council member or a member of Council appointed by a university who is a member of Council shall cease to hold office if he ceases to be a member of College (para 4).

2.6 The Supplementary Charter governs the transaction of Council business and provides for the Council to be managed as constituted under the Act.

(a) Article 5 states that:

(i) the College shall be "directed and managed" by the Council, as constituted under the Act

(ii) the Council shall have the "entire management of and superintendence over the affairs, concerns and property of the College" (other than in respect of removal, suspension or restoration to the register).

(b) Article 22 empowers the Council to make Bye-Laws for the good order and management of the College (other than in respect of preliminary investigation and disciplinary committee matters).

2.7 Neither the Act nor the Supplementary Charter expressly provides for the Council to investigate or impose sanctions against Council members for breaches of the Code of Conduct for Council and Committee Members.

3. Legal options, arguments and risks for the RCVS

3.1 The RCVS may:

• only do that which it is empowered by statute or Charter to do, and
• must do that which the statute or Charter requires it to do.

3.2 If the RCVS was to act outside of its statutory or Charter remit, it would be acting unlawfully – or ultra vires. Such action could be challenged by way of a judicial review claim through the Administrative Court. A successful claim for judicial review could have cost and reputational consequences for the RCVS. As a consequence, this Part considers what arguments – if any – available under the RCVS’s Charter powers or the Act permit it to impose sanctions against a Council member for a breach of the Code of Conduct. The paragraphs below review whether:

(a) there is any express provision to power the RCVS to take action, and
(b) any implied power exists or an inherent power can be claimed.

Express Provision

3.3 Neither the Act nor the Supplementary Charter contains a power which expressly permits the RCVS to introduce a separate investigatory or disciplinary regime where concerns are raised about a Council member’s fitness to hold public office.

3.4 Further, neither the Act nor the Charter contains a provision which permits the RCVS to do anything which is incidental to, facilitative of or conducive to the discharge of its other functions, duties and responsibilities, which the RCVS could have considered invoking to introduce an investigative and disciplinary scheme for Council members.

Implied or Inherent Power

3.5 Whilst there is no express legal power under the Act and the Charter, consideration should be given as to whether the RCVS can argue that it has an implied or inherent power to govern its business and to ensure both the proper regulation of Council members and the adoption of the standard and principles of public life (also known as the 'Nolan Principles’) through a scheme to sanction and potentially remove members who fail to meet the appropriate standard of conduct and character. Such a scheme would embrace good principles of regulation.
3.6 If such a power is implied or claimed there is always the possibility that the scheme can be challenged by judicial review. However, failure to adopt principles of modern regulation could equally lead to criticism and to difficulties in governing members.

3.7 In considering whether there could be an implied or inherent power, there is, unfortunately, considerable force in the argument that because section 1 and Schedule 1 of the Act expressly deal with tenure of office - albeit in a brief and unsatisfactory manner for a modern regulator - Parliament has:

(a) determined that the Act (rather than the Charter) should establish the circumstances in which Council members may hold office - meaning that whether a Council member can be investigated and sanctioned for a breach of the Code of Conduct is a question of statutory rather than Charter powers, and

(b) specified the (only) three circumstances in which Council membership may be lawfully terminated, namely, expiry of term, resignation and failure to meet office requirements – meaning that there is a significant risk that a court will judge that the Act is not 'silent' on the issue of sanctions against Council members and has expressly limited the circumstances for removal with the consequence that it would be *ultra vires* for the RCVS to imply an ability to add a fourth circumstance, namely, breach of the Code of Conduct.

3.8 Whilst this would appear to be the preferable argument on a strict legal basis, it is an unsatisfactory position (including reputationally) for a regulator that wishes to demonstrate openly that it embraces principles of modern regulation, has a process in place to ensure those holding public office as Council members are fit and proper to do so and acts to uphold public confidence in the profession in the public interest. It is acknowledged that staff members may have claims against the RCVS as its employer if action is not taken to deal with other internal management issues such as failing to prevent bullying in the workplace.

3.9 There are two potential lines of argument explored below that could be adopted as an alternative to the approach identified above – namely, that as the Act contains terms regarding tenure of office and other matters relating to the Council (and necessarily usurps the Supplementary Charter in that regard), the RCVS may only remove a Council member in the limited express circumstances. Whilst the lines of argument are available to introduce an investigatory and disciplinary scheme for Council members, there is a risk of them being rejected by a court should there be a judicial review challenge – even though a judge may have considerable sympathy with the RCVS's objectives in establishing such a scheme.

*First Argument - Implied Power under the Act*

3.10 The first argument is that there is an implied/inherent power under the Act to incorporate and enforce a scheme for removing members because it is implicit that someone appointed under the provisions of the Act as a Council member must be a fit and proper person to hold public office and that if he or she fails to conduct himself in accordance with the standards and principles of public life it is proper for action to be taken by the RCVS.

3.11 In support of this argument is the long-standing court endorsement (set out in case law) of the principle that a statutory body will not be held to be acting unlawfully by doing that which is fairly described as incidental to those things which it is authorised to do under legislation, provided there is no statutory prohibition.

3.12 Should a challenge be mounted, there is a risk that, for the reasons set out above, a court will hold that there is a statutory prohibition, or a limit, on the action that can be taken against a
Council member such that an implied power cannot be inferred and is not available to justify an investigating and disciplinary scheme against Council members.

Second Argument - Council's Management Power extends to Council Members

3.13 The second argument, which is possibly weaker and more challenging to support on a legal basis, runs that because (i) the Act specifically states that the Council shall have a statutory purpose of managing the affairs of the RCVS and (ii) this is underscored with the provisions of Article 5 of the Supplementary Charter (see paragraph 2.6 above), the Council can introduce a scheme to deal with breaches of the Code of Conduct as part of its interlinking statutory duty and charter responsibility.

3.14 However, given that management duties and responsibilities are given to the Council to manage the affairs of the College, it is necessary to rely on an expansive argument that runs: in order for the Council to manage the affairs of the College, it must be fit to manage. As the Council is constituted with members, those members must be fit to manage. If members are not fit to manage – owing to a breach of the Code of Conduct or otherwise – then the Council should be permitted to take action as to do otherwise would mean that it was unable properly to carry out its duties and responsibilities of managing the affairs of the College.

3.15 If this argument was adopted by the RCVS (and either there was no challenge or the judicial review claim was successfully defended), Article 22 empowers the Council to make Bye-Laws for the good order and management of the College (other than in respect of preliminary investigation and disciplinary committee matters and provided the addition does not offend the Charter). A scheme for investigation and discipline of Council members could, therefore, be introduced through an amended set of Bye-Laws.

Other Options

3.16 The RCVS can, and we understand is, considering other options which stop short of the introduction of a scheme for investigating and disciplining breaches of the Code of Conduct and, therefore, do not engage the question of vires or lawfulness, including:

(a) Using the statutory disciplinary process to take action against Council members who are also registrants – although the limitations of this option are recognised, particularly the fact that:
   (i) a breach of the Code of Conduct may not properly form the basis of an allegation of disgraceful conduct in any professional respect, and
   (ii) even if such an allegation is made out it may not result in removal (which would then mean the Council member did not meet the office requirements).

(b) Speaking with the appointing body for non-elected members to secure resignation or to the elected members themselves to encourage resignation for serious matters.

(c) Using a 'name and shame' mechanism.

(d) Limiting a member's involvement in Council business through a suspension from Committees under Bye-Law paragraph 6(2) of Schedule 2.

(e) Asking members to enter into an agreement regarding compliance with the Codes of Conduct at the beginning of each year – although such agreement is necessarily voluntary and data protection and confidentiality issues should be considered.

(f) Ensuring comprehensive training is available which is aimed at raising awareness of the role of a Council member and the principles and standards of public life.

3.17 It is recognised that all these options are of limited value in comparison to a proper scheme to investigate and discipline members for breaches of the Code of Conduct.
4. Conclusion

4.1 Legal analysis of the Council's powers strictly suggests that the Charter cannot be used to impose sanctions against RCVS Council members for breach of the Codes of Conduct.

4.2 However, in order to meet the principles of modern regulation and to ensure Council members are fit to hold office, the Council can adopt lines of argument – whilst acknowledging the risk of challenge - to adopt an investigatory and disciplinary scheme for Council members under an implied or inherent power. This would fill the gap in the existing legislative regime which could lead to both legal and reputational risks of having an outmoded and inadequate mechanism which is incapable of ensuring that those who govern the profession are fit to hold office.

Field Fisher Waterhouse LLP
25 April 2012

Annex B

CODE OF CONDUCT FOR COUNCIL AND COMMITTEE MEMBERS

Role of the RCVS
1. The Royal College of Veterinary Surgeons has statutory and Charter functions, and through the RCVS Trust, charitable functions. These are set out more fully in the Handbook for Council and Committee Members, the Guide to the Constitution and in the Charter, Veterinary Surgeons Act 1966 and the Trust’s Memorandum and Articles of Association.

Purpose of this Code
2. ‘The Council is the guardian of the good standing of the profession and, in order to maintain this position and the powers of self-regulation, it is important that the College, Council and all Council and committee members behave in a way that commands the respect and trust of the public. This must involve high standards of integrity, fairness, impartiality, openness and accountability, to both the public and the profession.’ (Paragraph 13 of the Guide for Council and Committee Members)

3. The purpose of this Code is to help ensure that high standards are met and that those who act in the name of the RCVS are beyond reproach in the way that they conduct themselves and the business of the College.

Scope of this Code
4. This Code of Conduct applies specifically to Council Members, although its principles should apply generally to those who sit on Committees, sub-committees, etc.
General Guidelines
Council and Committee members are expected:

a) to act in good faith
b) to treat others equally, fairly and with respect
c) to behave in a business and professional manner
d) to work collaboratively with colleagues (including staff)
e) to act in accordance with the 7 principles of public life, as set out by the Committee on Standards in Public Life [recited in the Code of Conduct for Managing Conflicts of Interest and at www.public-standards.gov.uk ]

Specific Guidelines
Understanding of the Role
5. Council Members are responsible for ensuring that they have a clear understanding of their role and the role of the RCVS, as set out in the Veterinary Surgeons Act 1966 and the Royal Charter: see paragraphs 8 & 9 of the Guide for Council and Committee Members. Having been elected or appointed they are expected to make themselves available for meetings and other commitments in so far as personal and professional obligations allow and be diligent in reading papers, researching and thinking about issues to ensure that they are making decisions on a fully informed basis.

Legal Liability
6. Acting collectively Council Members may have their decisions challenged in the courts and the Code of Conduct for Managing Conflicts of Interest sets out a number of examples of decisions which could be subject to Judicial Review. Council members also have a collective and individual responsibility for the College’s finance and governance arrangements and may also be personally liable in certain circumstances: see paragraphs 11 & 12 of the Guide for Council and Committee Members.

Confidentiality
7. Council Members must not disclose information which has been shared with them but designated by the College as private or confidential, within the terms of the Freedom of Information Act and its Publications Scheme: see paragraph 24 of the Guide for Council and Committee Members; nor should they use information obtained in their role as Council or Committee Member for personal gain. Subject to these constraints Council Members should be open and transparent about what they do and about what the College does.

Conflicts of Interest
8. Under the Code of Conduct for Managing Conflicts of Interest all Council and Committee members are required to file a Declaration of Interest, to keep it up to date and to declare additional interests as necessary at each meeting.

Communications
9. Council Members have a role in communicating with the public and profession about what the College does but should take care to ensure that what they say is accurate and
consistent with established policies and procedures. If in doubt they should consult with the Communications Department. In any event any communication with the media should be discussed in advance, wherever possible in the interests of achieving coordinated and consistent messages. Council Members should be particularly wary of expressing a view on a matter which may end up being referred to Preliminary Investigation or Disciplinary Committees. Members of those two Committees should also be cautious of saying things which in the context of subsequent debate in Council or Committee could be construed as indicating a prejudice or less than open mind.

10. Communications between Council Members on the internet should be conducted with the same courtesy as a face to face meeting and with an awareness of who else might be copied into the messages and the fact that such communications could be subject to disclosure under the Freedom of Information Act or in court proceedings.

Conduct /Personal Behaviour

11. All College Members and Fellows make a declaration on being admitted to the College

"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."

12. Council Members, whether veterinary surgeons or not, have a responsibility for upholding the College’s reputation and integrity and should try and avoid acting in a way that could bring the College into disrepute. In short their behaviour should conform to the standards expected of holders of public office: see the reference to the principles of public life above. Council Members are encouraged to discuss with the President or Chief Executive any incident in their personal or professional life that might impact on their role with the College.

13. Council Members are expected to contribute freely to discussion and debate to enable a robust and informed decision to be made. It is accepted that there will sometimes be dissenting views but once a final decision has been made all members are expected to respect that collective decision. Any public dissent should be measured and due consideration given to the impact this might have on the College, its staff, Council and other Council Members.

Feedback / Appraisal

14. Council Members can seek feedback from the President or their Chairman at any time. In any event they will have an annual opportunity to feedback experiences as a Council or Committee member to the President [on the reverse of the Committee Preferences Form].

Enforcement

15. Complaints that an RCVS Council or Committee Member has breached the Code of Conduct for Council and Committee Members should be made at the earliest opportunity to the RCVS President and Chief Executive, who together, subject to the rules of natural
justice, have discretion to deal with the complaint informally, for example, by conciliation or advice from the President, or formally, by establishing a group of three-persons, who may be Council Members, to hear the complaint and make recommendations to Council, including suspension from committee membership. In the event that the complaint is dealt with informally and concerns remain, complainants may report the matter to the Chair of the Audit and Risk Committee, who will report to the Audit and Risk Committee, and the Committee may refer the matter to the Council.

17 February 2012 revised June 2012