



RCVS

Royal College of Veterinary Surgeons

Review of the Veterinary Surgeons Act

Proposals from RCVS Council

June 2005

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23 June 2005

Dear Colleague

REVIEW OF THE VETERINARY SURGEONS ACT 1966

Two years ago the Royal College of Veterinary Surgeons sought the views of veterinary surgeons on possible changes in the Veterinary Surgeons Act 1966. At the same time veterinary nurses were consulted about options for how they might be regulated as a profession.

There are a number of reasons for taking a fresh look at the way in which veterinary surgeons and veterinary nurses are regulated. Within the framework of the present Act it is difficult for us to bring the professional conduct arrangements up to date in the light of the Human Rights Act 1998 or to respond to current public expectations. Self-regulation by the professions has come under criticism in recent years, particularly as a result of scandals involving doctors, and the Shipman Inquiry has questioned the effectiveness of the General Medical Council's arrangements for protecting patients. Following that inquiry the Chief Medical Officer for England has been commissioned to report to Ministers this year with recommendations for more effective procedures to assure the safety of patients, including a reconfiguration of the role, structure and functions of the General Medical Council. A parallel review is looking at the other human health professions. Other professions have come under scrutiny in recent years, notably solicitors, barristers and other legal professionals whose regulatory arrangements have been examined in the Clementi Report.

Happily the veterinary profession has not yet come under similar pressure, so we have had time to debate how our regulatory arrangements might be improved rather than having change imposed upon us. This document is part of that debate. The object is to find ways to strengthen veterinary self-regulation so that we can be confident that we are protecting the welfare of animals and the interests of the public.

In March last year the RCVS Council took stock of the responses to the 2003 consultations. It took a view on some of the questions before it and commissioned further work on others. One of the major questions for further consideration was how professional regulation might be extended to all those non-veterinarians who provide veterinary services. Now, following discussions with organisations representing some of those service-providers and a further debate in Council, RCVS has identified the broad direction in which it proposes to move. The attached paper explains what we propose. We invite the views of veterinary surgeons, veterinary nurses and other providers of veterinary services.

It is not yet known when the Government will proceed with new legislation. Our aim is to have the proposals of the Royal College ready by the end of this year.

Please send your comments by 1 August 2005. For details of how to respond, please see paragraph 48 of the paper. This paper is available on the RCVS website, www.rcvs.org.uk.

A handwritten signature in black ink that reads "John Parker". The signature is written in a cursive style with a large, looped initial "J". A horizontal line is drawn underneath the signature, extending from the start of the "J" to the end of the word "Parker".

John Parker
President

REVIEW OF THE VETERINARY SURGEONS ACT 1966

I: INTRODUCTION

1. The consultation paper of February 2003 raised a number of questions about ways in which the legislation might be brought up to date. The main issues concerned the composition of the RCVS Council, the arrangements for the supervision of professional conduct, the definition of veterinary surgery, the financing of the activities carried out by the College under the Royal Charter, and the regulation of veterinary nurses and other groups of non-veterinarians providing veterinary services. This note sets out our proposals under three main headings:
 - regulating the veterinary team: this covers possible structures for regulating veterinary surgeons, veterinary nurses and other groups;
 - supervision of conduct and competence: this looks at questions on professional conduct and competence which arise under any regulatory structure;
 - other issues: this picks up three other questions posed in the 2003 consultation paper and not dealt with under either of the previous headings.

II: REGULATING THE VETERINARY TEAM

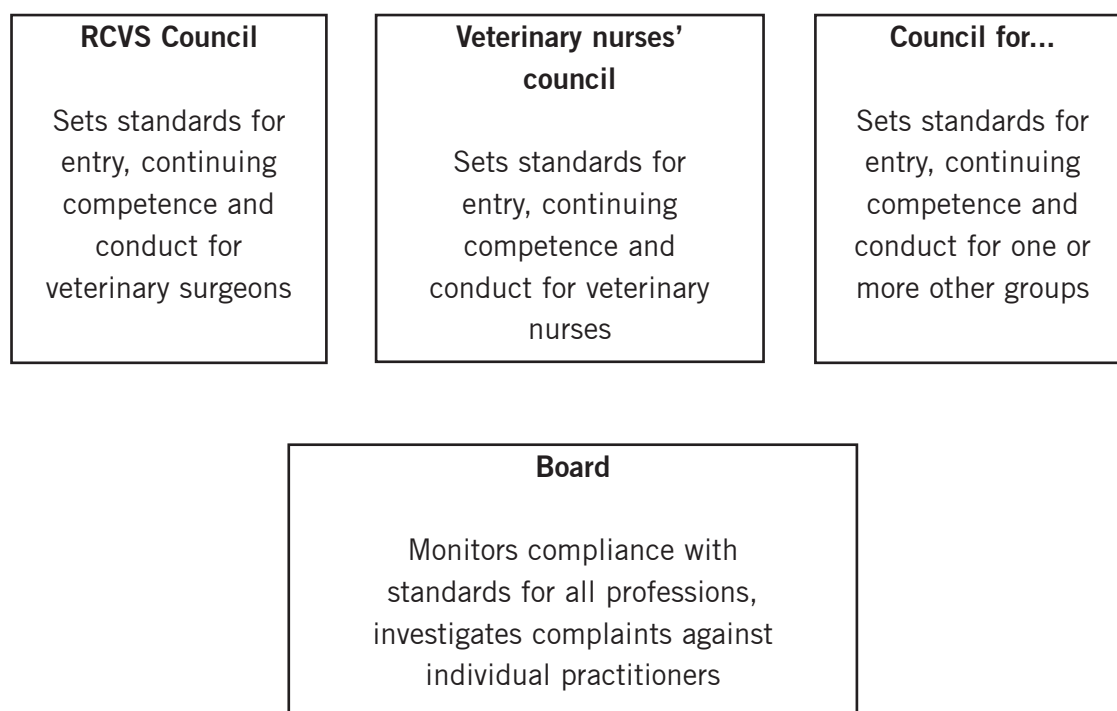
2. The regulation of a profession has traditionally meant two things: standards for admission, with membership of the profession being restricted to people with recognised education and training, and supervision of conduct, to ensure that members observe certain standards of behaviour. The veterinary profession has been subject to statutory regulation since 1881, the Royal College of Veterinary Surgeons being responsible for keeping a register of qualified persons and overseeing their professional conduct. RCVS also keeps the list of qualified veterinary nurses, but their conduct is not statutorily regulated. Other providers of veterinary services such as bovine ultrasound scanner operators, AI technicians, physiotherapists and equine dental technicians are for the most part required to have recognised training, but their work with animals is not subject to full statutory regulation.
3. We take the view that all the disciplines which provide veterinary services ought to be regulated, in the interests of animal welfare and for the protection of the public. All those who provide veterinary services should be competent and accountable for their actions. There is more than one way in which the public could be assured of this, and the different groups are free to pursue whatever regulatory arrangements seem right to them. We do, however, see advantage in veterinary surgeons, veterinary nurses and other practitioners being regulated side by side, with a common point of entry for enquiries or complaints from members of the public. The aim should be for the veterinary team to present a single face to users of veterinary services and the public at large. We have therefore given thought to ways in which the different groups might become self-regulating professions while developing mutually consistent standards.

Some constraints

4. In looking at options we have been guided by a number of principles.
5. One is that we think it is right to keep together the setting of standards for education, registration, clinical performance and conduct. If animal welfare and the public interest are to be protected effectively, practitioners need to be properly qualified, up to date and fit to practise (as regards their conduct, competence and health). We believe that the veterinary profession should be subject to a single, coherent set of standards covering all these aspects of performance, and similarly for veterinary nurses and each of the other new professions. There have been suggestions for regulating education and conduct separately, but we do not think this would work.
6. Setting the standards is one job, ensuring that they are observed is another. Under the present legislation the professional conduct of veterinary surgeons comes under scrutiny only if complaints are received. It will still be necessary to respond to complaints about veterinary surgeons and members of the new professions, but to comply with current public expectations for regulation in other professions we need to move toward arrangements which are more pro-active and give a positive assurance that standards are being met. That could mean, for example, self-certification of compliance with requirements for continuing professional development, revalidation, and periodical inspections under a statutory equivalent of the Practice Standards Scheme. The 2003 consultation paper mentioned that we envisage that the legislation would give power to set up a statutory counterpart of the present voluntary Practice Standards Scheme.
7. The work of ensuring that standards are met could be organised in a number of ways, but there are two considerations which have influenced our thinking.
8. One concerns detachment. Current regulatory practice demands that monitoring and trouble-shooting are managed separately from the writing of the rules, so that both practitioners and the public are assured that performance is assessed fairly and objectively. An independent assessment is in any case necessary when an adjudication may lead to loss of livelihood or other sanctions.
9. The other issue is accessibility for members of the public. If a complaint relates to the work of a team of practitioners belonging to different professions it would not be reasonable for the complainant to have to deal with a multiplicity of regulatory systems. There should be a one-stop shop for anyone with concerns about veterinary services.
10. A further consideration is that many of the occupations aspiring to be professions will wish to regulate themselves. We have had discussions with a number of groups, and they have made clear that they wish to be regulated and are willing to consider regulation alongside the veterinary profession. Self-management presents a practical challenge to the smaller groups - it costs time and money - but it is natural and proper that they should wish to manage their own affairs. That is why RCVS set up the Veterinary Nurses Council as a first step toward self-regulation for veterinary nurses.

The structure we propose

11. If RCVS, or any other single body, were to regulate veterinary surgeons, veterinary nurses and other professions it would be difficult to ensure that the smaller groups had appropriate responsibility for the decisions which concerned them. We therefore envisage two or more bodies setting standards. The RCVS Council would be the standard-setting body for veterinary surgeons. Another body would do this job for veterinary nurses, and there could be further such bodies for other groups. In this note we refer to these standard-setting bodies as "councils".
12. Monitoring compliance with the standards set by the councils would be the task of a separate body, which we refer to as the "board". There are three main reasons for proposing this separation of functions:
 - the enforcement of standards would be the job of a body with separate terms of reference from those of the councils specifically linked to veterinary surgeons, veterinary nurses or any other group of practitioners;
 - the board would offer a single portal for complaints about the provision of veterinary services by any of the practitioners regulated by the councils, who in any event frequently work together as a team;
 - by providing a common enforcement service the board would make it considerably easier for the smaller groups to achieve self-regulation, in that they would be relieved of a task which can be onerous.
13. This is how the suggested structure would look, in outline:



How standards would be set

14. Each council would regulate entry to the profession(s) for which it was responsible, determining who was entitled to be registered, setting fees and maintaining the register. For veterinary surgeons the accreditation of UK veterinary schools and approval of overseas veterinary qualifications would continue as now, and appropriate procedures would be introduced for the other professions. Each council would issue guidance and make rules for the maintenance of continuing competence (for example through continuing professional development and revalidation) and for professional conduct.

How compliance with standards would be monitored

15. The board would receive and investigate complaints against individual practitioners. Where preliminary investigation of a complaint indicated that there was a case to answer the board would refer the case for adjudication by an independent tribunal, which might be called the Conduct and Competence Committee. To safeguard its independence we envisage that the members of the Conduct and Competence Committee would be selected by an appointments commission set up by the board. Serving members of the councils or the board would probably not be eligible for appointment to the Conduct and Competence Committee.
16. The board would also be responsible for enforcing practice standards through regular inspections and spot-checks and by investigating complaints. In the case of a practice falling below the standards set by an agreed and mandatory Practice Standards Scheme, the practice would either be given advice and a time-frame within which to rectify any problems or, in the case of serious shortfalls, have its licence to operate removed until any such problems had been rectified.

How the councils and the board would be made up

17. There are a number of ways in which a structure of this kind could be implemented, and in particular there is room for debate over the composition of the councils and the board. The legislation would need to build in flexibility to allow it to be varied from time to time. Our present thoughts are set out below.
18. The 2003 consultation invited views on the composition of the RCVS Council: what lay membership would be appropriate, whether organisations representing animal owners should have a right to nominate members to Council, whether the UK universities with veterinary schools should be represented on Council as they are now, and whether there should be regional elections for Council members. Under the structure we propose the Royal College of Veterinary Surgeons would work within a new framework as the body setting standards for veterinary surgeons and would cease to have a responsibility for monitoring and enforcement. The issues debated in 2003 would nevertheless still be relevant. Most respondents thought that a quarter of the seats on the RCVS Council should go to lay members, and that the UK veterinary schools should have reduced representation. There was some support for an electoral scheme which would take account of the various subdivisions of the profession. Respondents did not generally favour giving organisations representing animal owners a right to nominate members to Council but suggested that such bodies could put forward candidates for appointment as lay members on merit through a transparent public process.

19. Under the suggested new structure the RCVS Council and the other council(s) would be the bodies through which veterinary surgeons, veterinary nurses and other groups would set standards for themselves, so it would be appropriate for a majority of their members to be drawn from the relevant profession. Most would be elected, but we also see a place for appointed members of the profession who would serve in the public interest and not be perceived as being answerable to an electorate or representing their profession. In the Fifth Report of the Shipman Inquiry Dame Janet Smith put a case for the General Medical Council to have a significant number of appointed rather than elected medical members, and the argument is applicable more widely. There would be a significant proportion of appointed lay members - perhaps a quarter of the total membership, as favoured in the response to the consultation - to represent the viewpoint of users and the public at large. It would also be important for the councils to have some cross-representation to assist communications between them. On the basis of these considerations an RCVS Council of 30 could have, say, 12 elected and seven appointed veterinary surgeons, three members appointed by the other council(s) and eight lay members. The council(s) for veterinary nurses and other professions could be constituted on similar lines.
20. We see the board being made up of lay members and members of the relevant professions, with no one group predominating. There might be 10 members of the different professions and six lay members. They would all have a remit to pursue the public interest, but in doing so the members of the professions would be assisted by their familiarity with different areas of practice. It is for consideration whether the majority of the members of the board should be appointed by the Government, through the usual public appointment process, or by the councils. If most of the members were appointed by the Government we envisage that the board would also include some members nominated by the councils. Our present view is that most of the members of the board should be members of the councils, if only to ensure that the lessons of enforcement are fed into the standard-setting process.

Which professions would be regulated

21. It is not for RCVS to say what form regulation should take for practitioners other than veterinary surgeons. Our object is to put in place a framework which could accommodate different groups if they thought fit to take advantage of it. The legislation would need to provide a mechanism for recognising new groups as professions and specifying their areas of practice. The aim should be to ensure that new groups providing veterinary services are recognised and brought within regulation promptly, for the protection of animals and the public.
22. In the past Government Ministers have made exemption orders, after consultation with RCVS, allowing trained people other than veterinary surgeons to carry out specified minor procedures which amount to the practice of veterinary surgery. Exemption orders cannot regulate conduct, and making them has proved a slow process. To provide an alternative to exemption orders RCVS proposed five years ago that veterinary surgeons "should be empowered to delegate appropriate acts of veterinary surgery, in respect of an animal under their care, to a person holding a qualification recognised by RCVS".
23. Under new legislation the Government might be given power to make orders recognising new professions, establishing their lawful area of practice and bringing them within the

remit of the appropriate council, but in the light of experience with exemption orders there is a question whether this would work quickly enough. It would be helpful for the councils also to have power jointly to recognise new groups in accordance with agreed criteria.

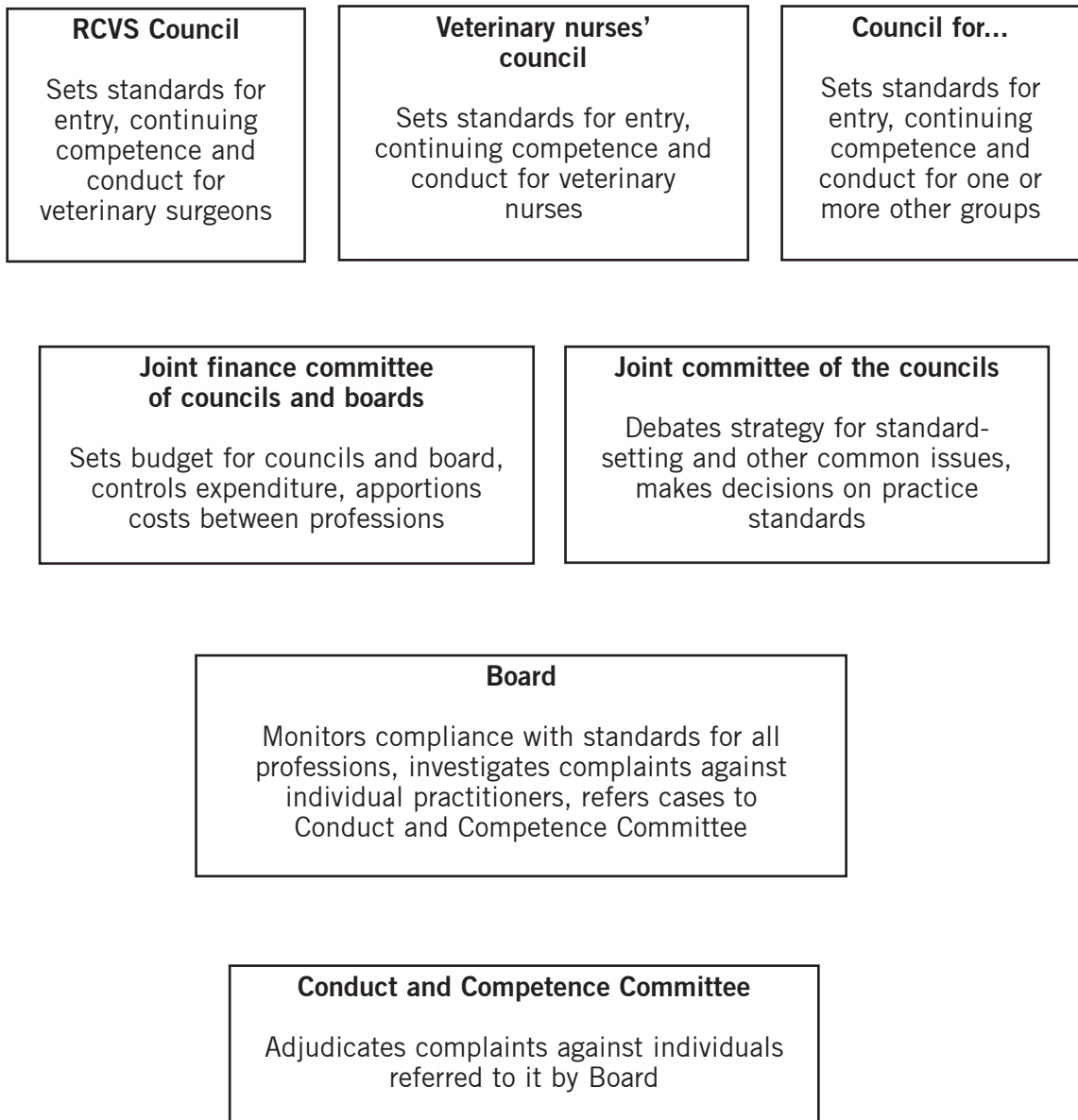
How the board and the councils would relate to each other

24. The new bodies would be independently responsible for doing their defined jobs, but there would need to be important links between them.
25. The councils would want to ensure that the standards set for the different professions were mutually consistent and formed part of a coherent strategy for the regulation of veterinary care. They would also need to act together to set standards for the delivery of veterinary services, because practice standards would apply across all relevant areas of the professions and so could not be the responsibility of one council.
26. The work of the board would be quite different from that of the councils, but liaison and consultation between them would be important and it would be right for the board to offer formal feedback to the councils. In the course of its work it would have to refer repeatedly to the standards which they had set, so it would become aware of any inconsistencies, gaps or lack of clarity. It would also be able to judge how far the expectations of the public were being met, because it would be in the front line dealing with enquiries and complaints.
27. The new bodies would need to be supported by a common administrative structure, with shared staff and accommodation. In theory they could set up separate establishments, but in practice that would be prohibitively expensive. There would need to be a single organisation with systems for controlling expenditure and ensuring co-ordination.
28. What arrangements would give the councils and the board proper responsibility for doing their own jobs while making sure that they worked together? Devising the right structure is a challenge. It would be much easier to say that the different groups should go their separate ways and regulate themselves, or alternatively that they should be regulated together, by a single body, with all questions decided by a simple majority vote. But the first option would not be in the best interests of patients or clients, and the second would not respect the proper desire of the different groups to manage themselves independently as professions. We think it is worth finding a middle course.
29. We propose that the legislation should give the councils and the board their own jobs to do but also stipulate arrangements designed to promote the necessary co-ordination. Such arrangements could include:
 - cross-membership as already proposed, with each body nominating representatives to be involved in the detailed work of its neighbours;
 - a duty on the board to draw the attention of the councils to any respects in which, in its view, the standards set by them individually or jointly fell short of what was necessary for the protection of animal welfare and the public interest; and

- a joint committee of the councils to encourage the development of standards on consistent and coherent lines for the different professions, to act as a forum for consultation on questions of common interest and to make decisions on matters such as practice standards for which the councils were jointly responsible.

30. Financial management could also be the responsibility of a joint committee, but the board too would need to be represented on it. The joint finance committee would control expenditure and decide how costs were to be apportioned between the different professions, while the councils would decide what fees to set in order to finance their contribution.

31. The suggested structure would look like this:



32. There is more than one way in which the suggested arrangements could be put in place. The legislation could establish the new councils and board as legally independent bodies while requiring them to set up joint machinery and consult and co-operate with each other. It would be simpler, however, to take the existing RCVS Council as the starting point and require it to set up the new bodies as statutory committees with their own defined areas of autonomy. That is how the present Act deals with the supervision of the professional conduct of veterinary surgeons. The legislation requires the RCVS Council to have a Preliminary Investigation Committee and a Disciplinary Committee which carry out certain functions in their own right. PI Committee decides whether or not to refer cases to the Disciplinary Committee, which in turn decides whether or not to direct removal or suspension from the Register. Because the Act specifically gives those tasks to the Committees, they are not answerable to the RCVS Council in respect of them. Similarly, the council(s) for veterinary nurses and other groups and the board, and the joint committees proposed above, could all be, formally speaking, committees of the RCVS Council without reporting to it or being controlled by it. This approach would be a natural development from the present arrangements, in that the Veterinary Nurses Council as it stands is a committee of the RCVS Council. Under the new legislation it would continue to have that status but would become the final arbiter of matters within its defined remit. The RCVS Council would continue to be the formal employer of staff and provider of other resources.
33. Would a structure of this kind work? With goodwill and mutual respect we think it could. We would like to know the views of veterinary surgeons, veterinary nurses and members of the other groups aspiring to become professions.

III: SUPERVISION OF CONDUCT AND COMPETENCE

34. The questions concerning the supervision of professional conduct which were discussed in the 2003 consultation paper would continue to arise if the structure set out above were adopted. The independent Conduct and Competence Committee would be the counterpart of the present RCVS Disciplinary Committee but with a broader jurisdiction. The arrangements for investigating complaints would be a matter for the board to decide, but it would probably choose to set up a body corresponding to the present Preliminary Investigation Committee to determine which cases should be referred to the Conduct and Competence Committee. The Preliminary Investigation Committee would consist of members of all the professions being regulated and appointed lay members from which the Board would appoint panels of, say, three to five persons to investigate complaints. The balance of professional membership of the panels would reflect the profession of the person being investigated.

Investigation of complaints

35. The present legislation does not give RCVS any special powers to look into allegations against a veterinary surgeon. We have considered the investigatory powers available to other regulatory bodies and concluded that it would be reasonable for the board to have power to require persons other than the respondent to disclose information relevant to a preliminary investigation. This power would not extend to the respondent, in order to avoid self-incrimination. The practitioner who was the subject of a complaint ought, however, to answer the allegations. We therefore propose that the Conduct and

Competence Committee should be free to draw an adverse inference from any failure by the respondent to answer enquiries or any refusal to comply with reasonable requests for information.

Preliminary proceedings

36. The 2003 consultation proposed that the Preliminary Investigation Committee should have power to issue a formal warning, by agreement with the respondent, instead of referring a case to the Disciplinary Committee. The proposal was strongly supported. We therefore envisage that the board (or any counterpart to the Preliminary Investigation Committee which it might set up) should have such a power. It should also have power to dispose of a case by giving advice without the respondent's agreement, so long as the advice was not such as to imply a finding of fault.
37. There will be cases which the board (acting through whatever machinery it sets up) decides not to refer to the Conduct and Competence Committee, whether because the facts alleged would not fall within the Committee's jurisdiction or because the evidence is insufficient to establish that there is a case to answer. Present experience is that in such cases the complainant often feels aggrieved. We propose that the legislation should at least provide the power to set up arrangements through which complainants could seek an independent review of decisions not to refer matters to the Conduct and Competence Committee. Whether the power will be needed will depend on the demand. The reviewer could call for the decision to be reconsidered if there were specific grounds for regarding it as flawed, for instance procedural irregularities.

Composition of the Conduct and Competence Committee

38. It would not be appropriate for the main legislation to lay this down in detail: it should be specified in regulations made by the board, subject to Ministerial confirmation. The Act should, however, require the Committee, as constituted for a particular hearing, to include at least one member of the same profession as the respondent and also at least one lay member. We see advantage in including also a member of a profession other than the respondent's, for the sake of a wider perspective, but this would be for the board to consider.
39. The regulations might provide for the appointment of a Committee with more members than would be needed for a particular hearing, panels being constituted for hearings as necessary. The regulations might also give the Committee discretion to form panels with reduced numbers and limited disposal powers to deal with cases not thought to call for the more serious sanctions such as preventing a member from practising. A full panel, for serious cases, might have five members and a reduced panel three.

The jurisdiction and disposal powers of the Conduct and Competence Committee

40. The current Act defines the jurisdiction of the RCVS Disciplinary Committee quite narrowly. The only grounds for removal or suspension from the Register are a criminal conviction which renders the member unfit to practise, disgraceful conduct in a professional respect, and fraudulent registration. We propose that the Conduct and

Competence Committee should have a broader scope, covering criminal convictions relevant to fitness to practise, professional conduct, clinical performance and health.

41. The Committee should also have wider disposal powers. It should have power to conclude a case with a warning, impose conditions or restrictions on continued practice by the member, or direct that the member should cease to practise for a period or indefinitely. In the light of the response to the consultation, however, we do not propose that there should be power to impose financial penalties.

Interim orders

42. The consultation proposed giving the present Preliminary Investigation Committee power, where very serious allegations had been made, to suspend a member during investigations and pending a disciplinary hearing or inquiry. This raised difficult issues and respondents expressed strong views, but on balance the proposal was supported, subject to safeguards. The General Medical Council has a similar power, and also a power to suspend following professional conduct proceedings with immediate effect. Normally striking off or suspension comes into effect only following the expiry of the time during which an appeal may be lodged. If an appeal is made the respondent may continue to practise until it is dealt with, which can take several months.
43. We propose that the Conduct and Competence Committee should have power to make an interim order pending proceedings, on the application of the board. The order could suspend the respondent or impose conditions or restrictions on continued practice by the respondent. The Committee should also have power to suspend or impose conditions or restrictions with immediate effect following proceedings. Such powers would be for use in exceptional cases, in the public interest or in the best interests of the respondent. Normally the respondent would remain free to practise pending any appeal.

Restoration to the Register

44. The consultation paper suggested that a member removed from the Register should have to wait for longer than the present period of ten months before applying to be restored. This proposal was not generally supported and we do not propose to take it further. The applicant would still have to satisfy the Conduct and Competence Committee that restoration was appropriate.

IV: OTHER ISSUES

45. The consultation paper of 2003 asked whether the Act should apply to all animals, including fish, that regularly enter the human food chain or are kept for commercial or sporting purposes or as companion animals. The current legislation does not define "animal", but it says that animals include birds and reptiles. This is unnecessary, since birds and reptiles are clearly animals, and it creates uncertainty over the status of other

groups of species. We therefore propose that new legislation should apply to animals in general and refrain from defining this expression.

46. The consultation paper also asked whether it would be possible to improve the statutory definition of "veterinary surgery". The Act says that this means "the art and science of veterinary surgery and medicine", and it goes on to give examples of the major veterinary activities. The significance of the definition is that it determines the area of activity within which people other than veterinary surgeons can only practise with specific legal authority. Most respondents thought the definition satisfactory, and after considering various possible amendments we have concluded that it is better to leave it alone. It is broadly sound, and any amendment would be liable to have unexpected effects.
47. Finally, the consultation paper asked whether, for veterinary surgeons, membership of RCVS might be separated from the licence to practise, with separate membership and registration fees. The reasons for suggesting this specifically concerned the financing of the statutory and Charter functions of the College, but we see other advantages and not only for veterinary surgeons. We propose that being registered by the appropriate council would signal membership of the relevant profession, and allow the use of the post-nominals, but not of itself confer the right to practise. For this it would be necessary to hold a current licence to practise, and that would mean satisfying whatever were the requirements at the time in respect of continuing competence. Distinguishing registration from licensing in this way would make it possible for people to continue to play a part in their profession after retiring from practice or choosing other employment. Practitioners would normally hold a general licence but there could also be limited licences to cover, for example, new graduates or visiting overseas practitioners and licences for recognised specialists. Following conduct or competence proceedings, a licence to practise might be withdrawn or made subject to conditions or restrictions. In some cases it might be appropriate for the Conduct and Competence Committee to direct removal from the register as well as revocation of the licence to practise, if the conclusion of the proceedings was that the respondent was not fit to be a member of the profession.

V: INVITATION TO COMMENT

48. Comments on the proposals set out in this paper are invited by 1 August 2005. Please e-mail j.gill@rcvs.org.uk (telephone 020 7202 0735) or write to:

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