



The British Veterinary Union in Unite submission to the RCVS Consultation on the Draft Performance Protocol

This evidence is submitted by the British Veterinary Union, a professional section of Unite the Union - the country's largest trade union. The union's members work in a range of industries & professions including manufacturing, financial services, print, media, construction and not-for-profit sectors, local government, education and health services.

Unite represents approximately 100,000 health sector workers. This includes seven professional associations – the Community Practitioners and Health Visitors' Association (CPHVA), the Guild of Healthcare Pharmacists (GHP), the Medical Practitioners' Union (MPU), the Society of Sexual Health Advisers (SSHA), the Hospital Physicists' Association (HPA), the College of Health Care Chaplains (CHCC) and the Mental Health Nurses' Association (MNHA). Also, members in occupations such as allied health professions, healthcare science, nursing, applied psychology, counselling and psychotherapy, dental professions, audiology, optometry, building trades, estates, craft and maintenance, administration, ICT, support services, ambulance services, and, most recently, the British Veterinary Union which represents Veterinary Professionals and allied staff. This diverse membership includes a range of members who are involved in public health functions including the professional body of health visitors, and Unite members who work in the specialist public health workforce where the Unite/MPU has public health doctors in membership and Unite is the main union for non-medical public health consultants.

Executive Summary

The BVU welcomes the opportunity to contribute to this RCVS consultation. The RCVS is producing a barrage of new regulations on the back of a proxy mechanism based on unverified "independent legal advice" rather than on the grounds of proper statutory powers. The RCVS should use this mechanism with caution and only where the need is unequivocal. There is a feeling that the RCVS consultations are just to seek confirmation of what it would want to do any way. It is suggested that the RCVS should consult with the wider profession for the need of new regulations before the actual process is initiated. There is a growing concern that the tone of the new regulations undermines the dignity of the great

majority of veterinary professionals, which the RCVS should address appropriately. With regards to the Draft Performance Protocol, the RCVS has failed to produce any evidence explaining the need for this new regulation, which should be made available before proceeding further with the process. Similarly, contrary to the specific requirements laid out by the “independent legal advice”, the Protocol fails to identify the criteria needed to judge professional performance. It is recommended that performance related concerns should first be reported to the initial administrators of a veterinary professional and the RCVS should not “encourage” public to report but make them “feel free to report genuine concerns” especially if they are not satisfied with the response from administrators of the work place. While investigating a complaint, the working conditions & environment of the defendant should also be investigated as potential contributors to the cause of poor performance. Also, there is no indication as to how “appropriate” investigators will be appointed. The Protocol should ensure that the principle of “innocent until proven guilty” would be upheld under all circumstances. In the case of a defendant being unsatisfied with the decision of the PIC, they should have the right to appeal. Similarly the defendants should have a right to representation by a union representative or legal advisor during the entire course of investigation.

Introduction

Unite/BVU welcomes the opportunity to contribute to the consultation on the *Draft Performance Protocol and Related Provisions of the new Code of Professional Conduct*. Subsequent to an internal consultation on the subject, the BVU submits the observations and recommendations given below in the hope that the RCVS will pay due attentions to these submissions.

Lack of genuine statutory authority

Over the past year the RCVS has pushed a barrage of tightening regulations on its members, starting with the Health Protocol, followed by the Codes of Conduct for veterinary Surgeons and Veterinary Nurses, the subject of Specialisation in the profession and now the Performance Protocol.

These regulations are being produced on the basis of a proxy mechanism based on “independent legal advice” of a private law company rather than a proper statutory mandate of a new Veterinary Surgeons Act, which the RCVS and the profession has failed to secure.

The RCVS appears to be pushing boundaries with the new regulations.

The concern is that if in the future a decision based on the new regulations is contested and the very basis of these regulations - the “independent legal advice” - does not withstand the tests of a judicial scrutiny, all the

regulations based on this "advice" will have a potential to tumble down, leading to yet another expensive fiasco for the RCVS.

Therefore, it is recommended that the RCVS use this newly adopted mechanism with extreme care and only for unequivocally justifiable needs, rather than as a proxy Veterinary Surgeons Act.

Autocratic approach

Given the fact that the RCVS is producing the new regulations without a proper statutory authority, it would have made sense that before proceeding with the process of developing new draft regulations, the RCVS sought the opinion of the wider profession as to the need of specific new regulations. A consensus within the profession would provide a strong justification for the need of any new piece of regulation and indirectly confer more legitimacy to the processes used to create the new regulations.

There is an overwhelming feeling within the profession that the RCVS will do what it wants to anyway regardless of the overall wishes of its registrants. The way the RCVS conducts its business feeds directly into these perceptions. The consultations sought by the RCVS, as in the case of the recent new pieces of regulation, appear to be a formality seeking confirmation of already done deals.

This traditional approach of the RCVS will continue to alienate its members/registrants, as reflected by the dismal participation of the members in its consultation exercises or the election of its Council.

It is recommended that the RCVS shun its traditional autocratic approach and truly involve its members in the decision making process rather than attempt to seek approval of *fait accompli*.

Contemptuous tone

A growing number of veterinary professionals consider the tone of the recent regulations contemptuous as they appear to impart the impression that there are unscrupulous, unhealthy and incompetent veterinary professionals out there who the public need to sniff out. Whilst these regulations may install public trust in the RCVS as a regulator, in the current form they are likely to inculcate a sense of distrust regarding the veterinary professionals and undermine the veterinary profession.

It is recommended that due care should be taken to uphold the dignity of the great majority of veterinary professionals who would never become the subjects of these protocols and an introductory paragraph of the Performance Protocol and such other regulation should make it clear that

it is only exceptional that a veterinary professional may fall below the high standard expected of them.

Lack of evidence

It appears to be a hallmark of the new regulations that none or very little factual information is provided to inform on the actual need of the new regulations.

The consultation document proposes “ongoing concerns about the professional performance of veterinary surgeons and veterinary nurses” as the reason for the need for new regulation, but does not provide any factual evidence to elaborate upon the existence, nature and magnitude of the alleged “concerns”.

The “Performance Jurisdiction Paper” referred in the consultation document to deal with the “background” for the proposed performance protocol discusses many other aspects, but fails to provide any substantial facts and figures to determine the need for a separate protocol to deal with “performance” of vets and nurses.

According to the “Paper” it appears that this initiative of performance protocol has been instigated by the lay observers of the PIC.

The only professional references to the issue made in the statement is that “there is increasing number of competence cases being dealt with since 1966” and citing of a “thesis” plus a case of a vet having “forgotten to remove the ovaries and uterus” whilst spaying a cat!

There is no evidence that the RCVS has consulted its members or any of the other organisations within the profession regarding the need for this new regulation.

Obviously, the RCVS is once again flexing its regulatory muscle on unfounded grounds.

It is recommended that before proceeding any further with this process, the RCVS produce the facts and figures to prove beyond doubt that there is need for this regulation.

Lack of criteria to judge performance

Several references are made by the “independent legal advice” in the “RCVS Jurisdiction Paper” that the need for specific criteria for acceptable or unacceptable performance is essential. The Jurisdiction paper states: -

- *“provided the college has published clear criteria by which it will judge matters of performance and decide whether or not it will bring a*

complaint before PIC and the DIC it is open to the college to set out the criteria which it will consider for the purpose of such a complaint"

- *"The first step therefore is for the College to set out in clear terms in the form a performance protocol what criteria it will apply to the professional performance issue"*
- *"The legal advice is clear that an essential part of the RCVS review and re-interpretation of its jurisdiction is advice to the profession so that it is clear to the veterinary surgeons and veterinary nurses what is expected of them."*

Yet the Draft Performance Protocol states the following:

"A veterinary surgeon or registered veterinary nurse's performance may be poor to such an extent that it could amount to disgraceful conduct in a professional respect in the following performance related circumstances: -

- *Refusal or failure by the veterinary surgeon or registered veterinary nurse to take or demonstrate reasonable steps to address ongoing concerns about professional performance that could impair fitness to practise;*
- *Refusal or failure by the veterinary surgeon or registered veterinary nurse to take or demonstrate steps to address ongoing concerns about professional performance where there is harm, or risk of a harm, to animal health or welfare, public health or public interest as a result;*
- *Refusal or failure by the veterinary surgeon or registered veterinary nurse to comply with reasonable requests by the RCVS, for example, to provide progress reports or give undertakings;*
- *Breach of an undertaking given by the veterinary surgeon or registered veterinary nurse.*

Instead of laying out clear cut criteria to judge professional performance as explicitly required by the underpinning "legal advice", the protocol revolves round a hypothetical descriptor "ongoing concerns" about the professional performance of vets and veterinary nurses. The protocol fails to provide a definition or explanation of what is meant by "ongoing concerns".

Obviously, there is no match whatsoever between what the "independent legal advice" requires and the RCVS fabricated criteria, which do not meet the objectives of the independent legal advice in any sense.

Therefore, it is recommended that the Protocol should include clear criteria by which it will judge matters of performance and identify what may amount to performance that could impair fitness to practice.

“Encouraging” public to report to RCVS directly

The draft protocol reads as follows: “Members of the public coming into contact with veterinary professionals who have concerns that a veterinary professional's performance may be impairing fitness to practise are encouraged to report those concerns to the RCVS as soon as is reasonably practicable.”

Unlike the NHS doctors and their patients, the relations between vets and their clients are complicated by the financial interests of the parties involved - the clients, the veterinary practice and even in some cases by the individual vets themselves.

Furthermore, the members of the public have no guidance as to what might constitute legitimate concerns for complaints of this sort.

Therefore, there is a potential that some clients may abuse this option of reporting veterinary professionals to the RCVS to settle their financial grudges, say for example attributing normal post op complications to poor surgical technique.

There is a concern that the RCVS would open gates for a flood of complaints, many of which may prove to be spurious or unjustifiable, causing unnecessary stress to the concerned veterinary professionals and wastage of precious resources of the RCVS.

It is therefore recommended that the words “encouraged” should be avoided and replaced by words like “members of public may feel free to report genuine concerns about the performance of a veterinary professional”. It is also recommended that guidance is devised for and published, including examples of what does and what does not constitute legitimate concern.

Reporting complaints to practice administrators

The consultation document states that:

“In ‘relatively rare cases’ the Preliminary Investigations committee may take remedial steps to correct performance problems. These would be cases when the internal mechanisms of a veterinary business have proved insufficient and there is no realistic prospect of finding a disgraceful conduct.”

It is obvious that the RCVS does rightly assume that most cases will have been dealt with internally (within the practice administration) before they might be reported to the RCVS. But surprisingly, the draft protocols do not provide the advice that complaints could first be reported to the immediate administrators of a veterinary professional.

It would make more sense for complaints to be dealt with by the immediate administrators at the work place, as would be a norm in any organisation. This would reduce the number of complaints RCVS may otherwise receive from clients, many of which may be unjustifiable or even spurious.

Therefore, it is recommended that the Protocol should provide a clear guidance that the members of the public and colleagues may report poor performance to the RCVS if they are not satisfied by the response from the administrators of a work place or if the concerned veterinary professional be the administrator itself.

Factors contributing to professional performance

There is little doubt that some performance problems will arise as a result of poor working conditions & environment and may simply not be an individual's fault.

Examples of contributing factors like inadequate consulting time, excessively long working hours, lack of the provision of rest periods (breaks) during a working day, lack of funding and time for keeping abreast with new knowledge and skills, lacking or inadequate diagnostic facilities, surgical tools and anaesthetic monitoring equipment etc have been cited.

There is a considerable concern that the draft protocol makes no mention that the working conditions and working environment of the accused will be taken into account.

Where poor working conditions or environment proves to be a significant contributing factor to poor performance, the protocol should clearly establish that the remedial measures will be directed at the managers of the establishment providing the service.

Additionally, in these circumstances, it would be inappropriate for a workplace supervisor to be appointed by the PIC to monitor and report on the response of the professional involved, as this would represent a conflict of interest.

Presumption of innocence until proven guilty

There is also confusion whether the protocol will allow investigators to start imposing sanctions and ask for undertakings before a decision on a complaint of poor performance has been reached.

It is recommended that the Protocol should make it clear that no sanctions will be imposed or undertakings asked for until a decision has

been made to uphold the common principle of presumption of innocence until proven guilty.

Who will be the judges?

The draft Protocol refers to the appointment of an appropriate veterinary surgeon or registered veterinary nurse to aid in an investigation. The criteria by which such a person is deemed 'appropriate' should be published so as to address concerns that our members might be judged by standards difficult to achieve in ordinary practice or specialist veterinary professionals may be judged by veterinarians with inadequate qualifications and experience necessary for investigations in particular cases

Possibility of an appeal

In cast the defendant veterinary professional is dissatisfied with the judgement of the Preliminary Investigations Committee (PIC), the Protocol does not provide any means of appeal against the decision of the PIC.

It is recommended that a right to appeal should be acknowledged in the protocol and a system be created to consider the appeal.

Representation by union / legal representative

There is no provision in the Draft Protocol for the defendant to have the right of representation by a union representative or legal advisor.

It is recommended that this right must be acknowledged and necessary provisions be created within the Protocol to facilitate representation by a union representative or legal advisor.

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