

Disciplinary Committee Manual

Guidance on the constitution and referral of cases to the Disciplinary Committee, the role of the Chair, Legal Assessor and Clerk, members' responsibilities and an introduction to Committee procedures.

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This manual should be read in conjunction with the Disciplinary Committee Sanctions Guidance ([August 2020])

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Foreword

Professional regulation has a long history and regulation of the veterinary profession dates back to 1844 when the first Royal Charter was granted. The last 15 -20 years, however, have brought about unprecedented changes. It was always the case that professions were required to take steps to ensure the privileges of their protected status were not abused. In the 21st century there has been increased emphasis on patient and consumer protection and on openness and transparency of process. Indeed, it is in the public interest that veterinary surgeons protect and promote the health and welfare of animals and conduct themselves in a professional manner and it is right that justice should be seen to be done.

The Disciplinary Committee has statutory powers to remove or restrict the right of a veterinary surgeon to practise if they are found guilty of disgraceful conduct in a professional respect, or are convicted of a criminal offence which renders the veterinary surgeon unfit to practise. It is vital that these powers are exercised properly and proportionately, in accordance with the Statutory Rules. The Committee first issued comprehensive written guidance on its procedures in December 2007, to supplement the Statutory Rules. This aimed to clarify existing practice and to act as an aid to fair, impartial, transparent and consistent decision-making, thus helping to maintain public confidence in the profession and in professional standards.

This Manual should be read in conjunction with the Disciplinary Committee Sanctions Guidance and the relevant Disciplinary Committee legislation. The Manual seeks to provide an introduction to the Disciplinary Committee and includes guidance on the conduct and roles of those involved in the functioning of the Committee; Chairs, members, Legal Assessors and the Clerk and on the procedural and practical matters including the constitution of the Committee and the decision-making process. Disciplinary Committee members are expected to be familiar with both the Manual and the Disciplinary Committee Sanctions Guidance.

RCVS provides induction training for new members, as well as annual training for Chairs and Vice-Chairs and at least two days annual training sessions for all Committee members, Legal Assessors and the Clerk.

1. Introduction

2. The Veterinary Surgeons Act 1966 ('the Act') and the Legislative Reform (Constitution of Veterinary Surgeons Preliminary Investigation and Disciplinary Committees) Order 2013 (the LRO) set out the powers and functions which Parliament has granted to RCVS to regulate veterinary surgeons in the United Kingdom. The main regulatory responsibilities are set out in the Act although RCVS also has powers and responsibilities by virtue of its Royal Charter established in 1844 and Supplementary Charter granted in 2015.
3. These statutory responsibilities include maintaining a Register of veterinary surgeons eligible to practise in the United Kingdom, regulating veterinary education and regulating professional conduct.
4. In order to ensure such regulation, the Act establishes a Disciplinary Committee to hear cases referred to it by RCVS Preliminary Investigation Committee, and provides the Disciplinary Committee with statutory powers to remove or suspend a veterinary surgeon's right to practise if they are found guilty of disgraceful conduct in a professional respect or found guilty of a conviction that renders them unfit to practise. These powers, however, must be exercised properly and proportionately, in accordance with the Statutory Rules.
5. The function of the Disciplinary Committee is set out Section 15 of the Act, which at Section 15(2) and 15(3) reads:

15(2) "There shall continue to be a committee of the Council known as the Disciplinary Committee charged with the duty of considering and determining

 - a. any disciplinary case referred to them by the Preliminary Investigation Committee; and
 - b. any other case of which the Disciplinary Committee has cognisance under Section 18 of the Act (Restoration of Members to the Register)

15 (3) The provision of Part 1 of Schedule 2 to this Act shall have effect with respect to the constitution of the preliminary investigation and disciplinary committees, and the provisions of Part II of that Schedule shall have effect with respect to the procedure of the disciplinary committee"
6. In the proper exercise of its function, the Disciplinary Committee must also adhere to the Statutory Rules governing the procedural aspects of its hearings. These include the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 (SI 2004/1680) ('The Procedure and Evidence Rules 2004'), which outline the format of the hearing and available sanctions, and the Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI 1967/684) ("the Legal Assessor Rules 1967") which set out the role of the Legal Assessor, including the provision of advice to the Disciplinary Committee by the Legal Assessor.
7. The Disciplinary Committee has the duty to hear a case, if it is referred from the Preliminary Investigation Committee.

8. The Disciplinary Committee acts in the public interest, the meaning of which is explained in the Disciplinary Committee Sanctions Guidance as follows:

“It is in the public interest that veterinary surgeons protect and promote the health and welfare of animals and conduct themselves in a professional manner. The protection of the public health is clearly in the public interest. The protection of the profession’s reputation, and upholding and maintaining standards within the profession are also in the public interest”

In the context of disciplinary proceedings, the public interest is defined as having three elements:

- *protection and promotion of the health and welfare of animals and the protection of public health;*
- *promotion and maintenance of public confidence in the veterinary profession;*
- *promotion and maintenance of proper professional standards and conduct in the veterinary profession.*

In RCVS disciplinary proceedings, references to the public interest are to be read as including these elements. The Disciplinary Committee will have regard to these three elements in its consideration of cases before it, in particular when considering the question of an appropriate sanction”.

2. Constitution of the Disciplinary Committee

9. The LRO sets out the constitution of the Disciplinary Committee. It amended Schedule 2 of the Veterinary Surgeons Act 1966 (the Act), so that with effect from 1 July 2015 all members of RCVS Council ceased to be eligible to serve on the Disciplinary Committee.
10. The current total membership of the Disciplinary Committee under the LRO is no fewer than 20 and no more than 40, comprising both veterinary surgeons and lay members. The quorum for a meeting of the Disciplinary Committee is 5, of whom two must be lay persons and two must be veterinary surgeons. Current practice in cases listed for 5 days or less is that a total of 5 veterinary and lay members usually sit to consider a case. Where a case is listed for more than 5 days, 7 members will usually sit.
11. Generally, the Chair of the Disciplinary Committee will be a lay member. Members are appointed for a term of 4 years, though this may be renewed once.

3. How cases are referred to the Disciplinary Committee

12. Cases are referred to the Disciplinary Committee by the Preliminary Investigation Committee and, as with the Disciplinary Committee, the statutory authority for the Preliminary Investigation Committee is provided for in the Act. The constitution of the Preliminary Investigation Committee is also set out in the LRO. It requires at least a third of members to be lay persons, and at least a third of members to be registered veterinary surgeons independent of RCVS. Currently, 7 veterinary surgeons and 6 lay members are appointed to the PIC. The quorum for a meeting of the PIC is 3 (of whom 1 must be lay and 1 must be a registered member).

13. The Preliminary Investigation Committee (PIC) considers concerns in a two-stage process. See stage 1 and 2 guidance <https://www.rcvs.org.uk/concerns/a-concern-has-been-raised-about-me/information-for-veterinary-surgeons/guidance-on-making-decisions/>. Detailed information on the concerns procedure is available from the Professional Conduct Department. In brief, the stages are:

Stage 1 – PIC

This is the investigation stage where the allegations made, along with, in most cases, the veterinary surgeon's response to the complaint, and any other relevant evidence are considered. The quorum for the Committee is 3. The Committee will decide if it can close the case (with or without advice) on the basis that there is no 'realistic prospect' of the concerns raised being proved and of them amounting to serious professional misconduct. If it cannot do so, then the case is referred on to the Stage 2 PIC for further investigation.

Stage 2 PIC

Generally, the committee will be made up of 5 members at this stage though the quorum is 3 as indicated above. The guidance referred to in paragraph 13 above gives guidance on which types of conduct or behaviour are likely to be considered fundamentally incompatible with the individual continuing to be a veterinary surgeon. The Preliminary Investigation Committee will refer a complaint to the Disciplinary Committee only if there is a '**realistic prospect**' of proving the case against the veterinary surgeon and it is in the public interest to do so.

14. The 'realistic prospect' test applies to both the factual allegations and whether, if established, the facts would amount to disgraceful conduct (or, for convictions, would render the veterinary surgeon unfit to practise). It reflects not a probability, but rather a genuine (not remote or fanciful) possibility. It is in no-one's interest for a case to be referred to the Disciplinary Committee when it is bound to fail, and the Preliminary Investigation Committee may properly decline to refer such cases. Equally, cases which indicate disgraceful conduct are for the Disciplinary Committee to decide.

15. A case will only come before the Disciplinary Committee if referred by the Preliminary Investigation Committee save in rare cases where the Council may refer a case directly to the Disciplinary Committee under Section 14 of the Veterinary Surgeons Act 1966 (“fraudulent entry” cases).
16. The Disciplinary Committee and the Preliminary Investigation Committee are independent of each other. It is the duty of the Disciplinary Committee (as it is for members of the Preliminary Investigation Committee) to observe absolute confidentiality in respect of any case past, present or future.

4. Types of complaints (conduct, conviction and fraudulent entry)

17. Set out below are statutory definitions of Disciplinary offences that will come before the Committee. These terms are further explained in the Disciplinary Committee Sanctions Guidance.

The “Conduct” Case

18. This means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee, where it is alleged that the Respondent has been guilty of disgraceful conduct in a professional respect.
19. RCVS Code of Professional Conduct for Veterinary Surgeons identifies the key responsibilities of veterinary surgeons to their patients, clients, the public and professional colleagues, and obligations under the law, and also provides guidance on aspects of practice. Although the Disciplinary Committee generally accepts the provisions of the Code, it is (subject to appeal to the Privy Council) the final arbiter of what constitutes disgraceful conduct in a professional respect, and is not bound by the provisions of the Code to Professional Conduct.

The “Conviction” Case

20. This means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee where it is alleged that the Respondent has been convicted in the United Kingdom, or elsewhere, of a criminal offence rendering them unfit to practise veterinary surgery.

The “Fraudulent Entry” Case

21. This means a case which has been referred to the Disciplinary Committee, where it is alleged that the name of a person has been fraudulently entered on the Register. The Register in this case means the Register maintained under Section 2 or Section 8 of the Act.

5. Participants in the hearing

The Chair

22. The Chair of the Disciplinary Committee has a number of specific powers under the Procedure and Evidence Rules 2004.
23. The Chair is defined as “the Chairman of the Committee designated pursuant to paragraph 1(5) of the LRO, or a member of the Committee who presides in his/her absence pursuant to Rule 3 of these Rules”.

Specific Duties

- a. The Chair’s role includes presiding at any meeting. In the Chair’s absence, such member of the Committee as the Committee may choose, or have chosen will preside. Before the commencement of a hearing, the Chair may direct that the Notice of Inquiry may be amended, unless it appears to the Chair that the required amendment cannot be made without injustice. The Chair could, if they considered that the circumstances require it, postpone, or adjourn the Inquiry (rule 5.6).
 - b. Before the hearing date, the Chair may consent to the Solicitor and the parties referring any legal issue to the Legal Assessor to advise the Committee on that issue (rule 9.2).
 - c. The Rules give the Chair the duty of announcing the Committee’s findings at the various stages of the process, including findings of fact/conviction, the decision in fraudulent entry cases (rule 18.4) and at resumed hearings (rule 19.3). The Chair may ask the Legal Assessor to announce or read out any decision on his/her behalf.
 - d. Where judgment stands postponed in any case and it appears to the Chair that the Respondent has failed to comply with an undertaking given to the Committee, or that the proceedings should be resumed for any other reason, the Chair may direct that the proceedings shall be resumed (rule 19.1).
 - e. The Chair or the Committee may, on their own initiative or upon the application of any party or the Solicitor, postpone or adjourn a hearing for such a period as appears to them to be reasonable (rule 22.1).
 - f. The Chair and the Committee are given supplementary powers of a general nature to waive any procedural requirement of the Rules where the parties consent or the interests of justice require, or to determine the procedure for any aspect of proceedings for which there is no specific provision in the Rules (rule 28).
24. In practice, the responsibilities of the Chair of the Disciplinary Committee are far wider than the provisions of the Rules indicate. At the hearing, the Chair leads and manages the Committee, both in

private and public session. The Chair also manages the running of the hearing in public session, assisted by the Legal Assessor.

25. The Chair's responsibility is to lead and manage the Disciplinary Committee to ensure that disciplinary hearings are operated fairly, consistently and transparently. The Chair will encourage a culture which upholds the highest standards of integrity and probity and will provide a clear direction and focus for the other Committee members.
26. The Chair will ensure that all members of the Committee are able to contribute constructively to Committee discussions, to the hearing process and to the decision-making process. The Chair will lead the Committee in private deliberations, ensuring that each member has a proper opportunity to contribute to the discussion and ensuring that at each stage of the process, a clear decision or consensus is reached.
27. In public session, the Chair leads the proceedings and sets their tone. The Chair holds the balance between the two sides in the case and ensures, guided by the Legal Assessor, that the hearing is conducted fairly and in accordance with the procedural rules.
28. The Chair should seek to ensure that witnesses are comfortable and can be heard by members of the Committee, the shorthand writer and the press and to intervene as necessary to ensure this. The Chair should also ensure that any special arrangements are made for vulnerable witnesses.
29. At each stage of the hearing, and after the Legal Assessor has given advice as to the propriety and relevance of the questions where necessary, the Chair ensures that all Committee members have an opportunity to ask questions of the witnesses in open session.
30. During the decision-making stages of the hearing, the Chair leads the Committee discussion and ensures that the decision-making process at each stage is approached in a structured manner and that the Committee's reasoning is fully explored and appropriately recorded.
31. In terms of the practical aspects of management of the hearing, the Chair works with the Clerk to the Committee on matters of time management and practical arrangements, allowing the Clerk to keep the parties, witnesses, press or other relevant persons appropriately informed.

Committee members

32. Hearings before the Disciplinary Committee involve matters of great importance to the Respondent. Most of those who appear before the Committee have had no previous experience of its proceedings, or

perhaps of any legal proceedings. It is important for Committee members always to have in mind the gravity of the matters at stake for the Respondent and also, for the witnesses who give evidence.

33. Members must also be aware when they sit at a hearing that they are in the public gaze. They are fulfilling a judicial role and to those who otherwise have little experience of RCVS, the Committee members represent its public face. The proceedings are open to the public and often attract press attention. Reports of proceedings may appear in the veterinary and other press.
34. The Committee's reputation depends on the conduct of its members, as well as on the decisions it makes. Any lapse by an individual member is likely to reflect on the standing of the Committee as a whole and therefore of RCVS. Some instances of inappropriate conduct during a hearing can constitute grounds for appeal. High standards of conduct and integrity are essential characteristics for a sitting Disciplinary Committee member.
35. Below are set out some of the issues Committee members should keep in mind in the course of fulfilling their duties.

Questioning and not appearing to show partiality

36. During the hearing the Chair of the Disciplinary Committee will invite members to ask questions. In most cases, the practice is for the Committee to retire to discuss the questions they wish to ask. This gives the Legal Assessor an opportunity to give advice if there is any doubt about whether the question is appropriate or relevant.
37. Members' questions should be for clarification of any points that remain unclear after the advocates' questions, or may be questions which have not been asked. The purpose is not to go over all the evidence of the witness again or to ask questions which have already been answered.
38. Members should avoid indicating, or implying in their tone of voice, or phraseology of the question, that they have reached a conclusion one way or the other. Questions should be phrased in a neutral manner. Generally, "open" questions which lead the witness to give their own explanation are more appropriate than "closed" or leading questions which suggest an answer.

Conflict of Interest/bias issues

39. Members should consider their declarations of interest and general RCVS Council policy on these issues.
40. Where a member becomes aware of a potential conflict of interest or bias issue before the hearing date, it is essential that the Chair and the Clerk to the Committee should be notified as soon as possible. For such a matter to come to light for the first time at a hearing may disrupt the process and mean that the hearing cannot proceed. Members selected for sittings are asked well before the hearing whether they know the Respondent. The members of the Committee should read any papers provided in advance with care, in case they trigger some recollection or awareness of such a conflict of interest.

41. If a member becomes aware of a potential conflict on the day of the hearing, or once a hearing has begun, it is important to disclose this promptly to the Chairman and the Legal Assessor who will advise on how to proceed. On occasions, the matter can be stated openly to the parties at the beginning of the hearing. This transparency may result in a satisfactory outcome so that the case can proceed as planned.
42. A conflict of interest may result in the appearance of bias against a Respondent. If there is a reasonable likelihood of the perception of bias, a member should not sit with the Committee. The legal test of bias is “whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”.

Can a member use their own expertise or specialist knowledge?

43. It has been said many times by the courts that the professional members of a disciplinary tribunal may and should use their own expertise in deciding on the issues before them. This is particularly relevant when considering clinical issues and the standards adopted by the profession.
44. As far as any member of the Committee is concerned, during the hearing itself, it is most important that any doubts or questions that come to mind are expressed to the parties. If the member remains silent then those doubts, go unanswered. They must be brought out and put to the parties, usually in questions, so that the parties have the opportunity to deal with these matters. Such doubts or opinions should not be voiced for the first time in private when the Committee is considering a decision. Similarly, if any member wishes to look up a reference in a textbook, the procedure is to ask for that textbook to be produced during the hearing and to refer to the passage required. It has been held to be unjust for the Committee to ask for a reference book when deliberating in private and to follow it without any opportunity for the parties to know that there was that doubt, or that the answer was provided in that reference book.

Confidentiality

45. Although Disciplinary Committee hearings are held in public, and so are in the public domain, Disciplinary Committee members should not discuss cases which they have heard, or comment on cases, even if they did not sit on the particular case.

As far as papers submitted by the parties for the hearing are concerned, the rule is that documents submitted by the parties are for use only for the purposes of that hearing. They are not provided for use of any kind by anyone without the parties' consent outside the hearing.

46. The Committee has facilities for the confidential disposal of papers and members should take great care in returning papers for that purpose or disposing of them in an appropriate manner themselves.
47. Importantly, there must be complete confidentiality about how the decision was taken and about all the Committee's deliberations in private session. These discussions should remain confidential. A division of opinion in the Committee should not be disclosed. The Disciplinary Committee's procedural rules provide for majority decisions to be reached by a voting process and there is no place for any form of “dissenting judgment” by a member who disagrees with the decision of the majority, as members might have seen in the decisions of the courts.

Appearing before the Committee

48. A member of the Committee should not give advice to the Respondent or RCVS on a case. It would also be inappropriate for a member to take any role, for the Respondent or RCVS, in the investigation of a complaint, or preparation of a case that may be put before a Committee in the future. It goes without saying that it would be incompatible with membership for a member to appear in support of any party before the Committee.
49. However, membership of the Committee does not deprive a member of their ability to be a witness to fact at a hearing (at which they are not sitting), although it is only on rare occasions that this is likely to occur. A member of the Disciplinary Committee should not agree to act as an expert witness in a case, other than in exceptional circumstances

Speaking to the press

50. A member of the Committee *may* speak to the press about the general nature of their committee work. This does not mean that they should go out of their way to do so and it is strongly advised that the member concerned only did so on notice to the Chair of the Disciplinary Committee and Registrar of RCVS.
51. However, no comment whatsoever should be made by a member to the press about a case in which that member was involved personally, as a sitting member, or to any other case which came before the Committee of which they have knowledge. When dealing with the press, members should remember that anything they say, even in a casual aside, is likely to be quoted or, worse still, misquoted and attributed to them.
52. Members who have retired from the Committee will know that their opinions carry more weight because of their previous service on the Committee. They should not offer their opinions or criticisms about the way the Disciplinary Committee operates generally, or has done in any particular case. If the former member feels strongly about any such matter, they should consult privately with the Registrar of RCVS and not through the media.

Not taking Advantage of Membership

53. Members should not seek to gain advantage for themselves by their membership of the Disciplinary Committee. This also applies to members who have recently retired from the Committee. It would not be appropriate, for example, for members to advertise their role as a Disciplinary Committee member.

The Legal Assessor

54. At all hearings before the Disciplinary Committee, a Legal Assessor will be present to advise the Committee on questions of law, procedure and admissibility of evidence.
55. The Legal Assessor is appointed by the Council or the Disciplinary Committee. The Legal Assessor is a legally qualified person with significant experience, and. The Legal Assessor sits with and advises the Committee during the hearing and when the Committee retires into private session for discussion and decision-making.

56. The Legal Assessor is independent of the parties in the case. It is important for all those involved in the hearing to understand that the role of the Legal Assessor is to advise the Committee and not to participate in the decision-making. This is strictly the role of the Chair and Committee members.
57. The Legal Assessor Rules 1967 set out the specific responsibilities of the Legal Assessor. These are:
- a. to advise the Committee on any questions of law and the admissibility of evidence which the Committee may refer to them
 - b. to advise the Committee immediately of any procedural irregularity that comes to the attention of the Legal Assessor
 - c. to advise the Committee, whether asked or not, if it appears to the Legal Assessor that, but for such advice, there is a possibility of a mistake of law being made.
58. The Legal Assessor Rules provide that the Legal Assessor's advice shall be given to the Committee in the presence of the parties. There is an exception where the Committee refers a question to the Legal Assessor whilst it is deliberating in private. Should this occur, the Legal Assessor is required to inform the parties of the question put to them and of the advice they gave as soon as possible so that the parties are able to make submissions about the advice if they wish to do so. If requested by any party, the advice must be put in writing and a copy made available to the parties.
59. Although not specifically required by the Legal Assessor Rules, it is accepted good practice that the Legal Assessor will give advice to the Committee at each relevant stage of the hearing process in public *before* the Committee retires to consider its decision. This enables the parties' representatives to hear the advice and to have the opportunity to make submissions upon it before the Committee reaches a decision on the issue, rather than afterwards.
60. Should the Committee decide not to accept the Legal Assessor's advice, the Legal Assessor Rules require that a record is kept of the question, the advice given, the refusal to accept it and the reasons for such refusal. A copy of the record must be given to every party (Legal Assessor Rules, paragraph 6).
61. The Procedure and Evidence Rules 2004 set out the process to be followed at hearings before the Disciplinary Committee. These Rules contain few express references to the role of the Legal Assessor. The parties may, with the permission of the Chair, refer any preliminary question of law to the Legal Assessor for advice before the commencement of the substantive hearing. The Legal Assessor, as well as the Committee, may ask questions of the parties or any witness during the hearing and, subject to the requirements of the Legal Assessor Rules, where the Committee deliberates in private, this may be with, or without, the presence of the Legal Assessor. In practice, in RCVS proceedings, the Legal Assessor is present during the Committee's private deliberations.

62. Beyond the specific points above, the Legal Assessor Rules, in common with the rules for the Legal Assessors of most other regulatory bodies, do not otherwise prescribe the duties of the Legal Assessor. However, the role of the Legal Assessor is an important one, which in practice extends beyond the express functions set out in the Rules.
63. In general terms, as an experienced lawyer used to legal and hearing processes, the Legal Assessor is able to provide valuable support and guidance to the Disciplinary Committee, and in particular to the Chair. In addition to the duty to advise on questions of law and admissibility of evidence, the Legal Assessor will provide helpful advice on procedural issues and on the practicalities of managing the hearing, matters with which Committee members may be less familiar. However, the Legal Assessor will always be conscious that their role is solely to give advice and not to participate in the actual decision-making, which is the remit of the Committee itself. The Legal Assessor and the Committee members should be mindful of this distinction during the hearing process.

Advising the Disciplinary Committee Members on conflicts of interest

64. The Committee members will have been given guidance by RCVS on dealing with a situation where they find that they have prior knowledge of one of the parties, or of a witness in a case, or where they identify some other potential conflict of interest.
65. RCVS now routinely asks all members of the Committee in advance of the hearing if they are aware of any matters capable of giving rise to a conflict of interest. This enables any issues to be dealt with in advance of the hearing. In appropriate circumstances the Chair may seek the advice of the Legal Assessor on the membership of the Committee in advance of the hearing. It is still possible that such an issue may not come to the attention of a Committee member until the first morning of the hearing, or even as the evidence is given during the course of the hearing. The important point is that the member must promptly bring this to the attention of the Chair and the Legal Assessor. The Legal Assessor will then be able to investigate the issue, and advise on whether it does indeed create a problem and how the Committee should proceed. This may involve the Legal Assessor consulting with the parties' representatives to explain the difficulty and consider whether it might be resolved. If the issue is able to be resolved, in the interests of transparency it should be declared in public at the beginning of the hearing so that it is on the record of proceedings.

On the day of the hearing

66. Before the first day of the hearing, the Legal Assessor will have received a copy of the charge and all the relevant documents in the case. The Legal Assessor may have been provided with papers not yet submitted to the Disciplinary Committee members. This enables the Legal Assessor to have a complete picture and overview of the case.
67. The Legal Assessor will meet with the Chair and Committee members for a pre-hearing meeting before the formal commencement time. At this meeting, the hearing and the procedure can be discussed along with any potential issues raised.

68. Whilst it is appropriate for the Legal Assessor to keep some distance from the parties' legal representatives, there are occasions when it can be helpful for the Legal Assessor to speak to the legal representatives about any preliminary issues before the hearing begins, or during adjournments in the hearing as such matters arise. Such discussions can facilitate the smooth running of the hearing when in public session, although ultimately all applications by either party must be made to the Committee in public session. However, should such preliminary should usually be in the presence of *both* parties, in the interests of fairness.
69. There may be occasions when a Respondent attends the hearing without legal representation. An unrepresented Respondent is naturally likely to find the prospect of representing themselves at the hearing daunting and will be unfamiliar with hearing procedure. The Legal Assessor may assist such a Respondent before the hearing, and during the hearing process itself, by providing guidance on how the hearing process works and the different stages. However, the Legal Assessor will not take on the role of advising the Respondent on the merits of their case, or how to present it. Any discussion with the Respondent should usually take place in the presence of RCVS' legal representative.

During the hearing

70. In RCVS disciplinary proceedings, it is usual for the Legal Assessor to read out the charge at the opening of the hearing. The Legal Assessor will also ask the Respondent whether they admit or deny the particulars of the charge.
71. The Legal Assessor also 'swears in' the witnesses, this means that they ask the witness to take either the affirmation or a religious oath promising to tell the truth before they begin giving their evidence.
72. Following this stage, the public hearing process is led by the Chair of the Committee. However, the Chair may refer to the Legal Assessor for guidance when necessary at any point during the hearing. Many Legal Assessors keep as full a note as possible of the evidence given, which can assist the Committee when considering the case at later stages.
73. When each witness has given their evidence-in-chief, and has been cross-examined by the opposing party, the Committee members have the opportunity to ask questions. The Committee may decide to retire briefly to formulate its questions. The Legal Assessor will retire with the Committee and will provide assistance in the formulation or advice on the appropriateness of the questions, if requested.
74. As indicated above, the Procedure and Evidence Rules 2004 envisage that the Legal Assessor is also able to ask questions of witnesses. This will happen relatively infrequently. This would be appropriate if the Legal Assessor is aware of an important issue which has not been elicited through questioning by the representatives or the Committee, or where an important point needs to be clarified. Again, if the Respondent is unrepresented, the Legal Assessor may offer some assistance during the hearing, but will be careful not to take on the role of acting as the Respondent's advocate.

75. Before the Committee retires to consider its decision at each stage of the decision making process (facts, disgraceful conduct and sanction), the Legal Assessor will usually give the legal advice relevant to the particular stage in public, in the presence of the parties, before the Committee retire. For example, at the first stage on facts, the Legal Assessor will give advice on the law to be applied, and identify the issues which arise for the Committee's consideration.
76. At the final stage, the Legal Assessor will explain the approach the Committee should take to deciding on the appropriate disciplinary sanction, including explaining the range of options available, and will direct the Committee to refer to the "Disciplinary Committee Sanctions Guidance".

During the Committee's private deliberations

77. The usual practice in RCVS disciplinary hearings is for the Legal Assessor to retire with the Committee and remain with them during their discussions.
78. The Committee members' discussion will be led by the Chair. The Legal Assessor will not usually intervene in these discussions, and should be careful not to give the Committee any indication of their opinion of the witnesses or the evidence either verbally, or by their body language.
79. The Legal Assessor usually assists by keeping a note of the Committee's discussions, which can then be used to assist in the drafting of the Committee's written decision.
80. The Legal Assessor's note of the evidence given during the hearing enables them to remind the Committee of the evidence, should the need arise.
81. If it proves necessary for further legal advice to be given to the Committee as a result of an issue arising during their private discussions, then any further advice must be given to the parties in public session. The Legal Assessor Rules 1967 provide that this may be done when the Committee resumes again in public session, having reached its decision. However, usually, and certainly if the advice is on a new or particularly significant issue, the Committee's discussions should be interrupted in order to resume the hearing in public session so that the Legal Assessor can give the advice in the presence of the parties.

Drafting the Committee's decision

82. The practice in RCVS disciplinary proceedings is that the Legal Assessor prepares the first draft of the decision for the Committee members to review and amend. It is fundamentally important that the decision and the reasons must be those of the Committee, and not those of the Legal Assessor. However, it is appropriate for the Legal Assessor to take the lead in the formulation and writing up of the decision and reasons on behalf of the Committee. The Legal Assessor will be guided by the Committee as to the content of the decision and the reasons, and will be aided by the notes they have kept of the Committee's discussions.

83. There are benefits to the Legal Assessor dealing with the drafting of the decision, for example they will have the experience and skills to draft a decision in using appropriate terminology and in suitable form to be presented to the public. The Legal Assessor will also be able to ensure that the decision covers all the necessary areas and will withstand legal scrutiny in the event of any appeal. Whilst all Committee members must participate in the decision-making process, and it is important that the decision is indeed that of the whole Committee, group drafting is notoriously difficult, and it is more efficient for the Legal Assessor to prepare the first draft for review by the Committee members. They will then discuss amendments, until they are in agreement about the final version to be given to the parties.

The Clerk to the Disciplinary Committee

84. The Clerk to the Disciplinary Committee is appointed by the Registrar under the Procedure and Evidence Rules 2004.
85. The Clerk may be an employee of RCVS, but not a member of the Council (rule 4).

Specific Duties

86. The Clerk's role includes:
- a. Responsibility for serving the Notice of Inquiry on behalf of the Registrar and a copy of the rules on the Respondent and other parties in the case (rule 5).
 - b. Responsibility for issuing any Notice by post (in practice the letter is sent by first class post and recorded delivery) to the Respondent's registered address, or to their last known address if it appears to the Registrar that such service will be more effective (Section 26 of the Act)
 - c. Receiving the Respondent's acknowledgement of the Notice of Inquiry and their indication of intentions regarding attendance at the hearing and representation (rule 6).
 - d. Receiving bundles of evidence from RCVS and Respondent and notification of the Respondent's intended plea in advance of the hearing (rule 9).
 - e. In a case where judgment has been postponed and the Chair directs that the proceedings shall be resumed, responsibility to send the parties notice of the resumed hearing and copies of information received since the Inquiry (rule 19).
 - f. Responsibility for serving any Notice of Direction on behalf of the Registrar (Section 16(2) of the Act) and any associated reasons (rule 18.5) of any decision of the Committee.
 - g. Receiving any applications to vary a suspension (Section 18(2) of the Act 1966).
 - h. Receiving and listing within 3 months, applications for restoration of a veterinary surgeon's name to the Register, or for early removal of a suspension of registration (rule 20).
 - i. Receiving any application for the postponement of a hearing which has been listed before the Disciplinary Committee must be made (rule 22). The Clerk must notify the Respondent and the parties of any decision to postpone or adjourn an Inquiry and any new date.
 - j. Arranging for the recording of public Disciplinary Committee hearings and the provision of a copy of the transcript to a party (rule 26).

Additional Responsibilities

87. The Clerk has responsibility for setting hearing dates for the earliest convenient or appropriate date. In addition, the Clerk ensures a quorate and a properly constituted Disciplinary Committee is arranged for the date fixed. The Clerk ensures that arrangements are made for a suitably qualified Legal Assessor to attend each hearing and that Committee members and Legal Assessors are aware of the appropriate expense and loss of earnings or remuneration, as relevant.
88. The Clerk ensures that notices of times and hearing dates, bundles of evidence and papers are sent out at appropriate times in advance of the hearing date. The Clerk ensures that a suitable venue and accommodation for the hearing is arranged. On the day of the hearing, the Clerk ensures that the hearing room is correctly laid out and all necessary arrangements are in place. The Clerk ensures that a copy of the appropriate legislation and guidance are available to the Committee and the Legal Assessor for each hearing.
89. At the hearing itself, the Clerk ensures that the hearing runs smoothly and provides support to the Chair and the Committee. The Clerk liaises between the Chair and the Committee and the parties and witnesses, keeping them advised of progress and timings (for example when the Committee are deliberating in private session), and explaining any delays, to ensure that parties, their representatives and witnesses are available as needed at the appropriate times and not inconvenienced unnecessarily. The Clerk will also liaise with members of the public and press present at the hearing.
90. The Clerk ensures that a transcript of the hearing is kept and, together with the RCVS Communications Department, will assist with press enquiries about hearings.
91. After a hearing, the Clerk ensures that the hearing room is cleared of discarded papers and that such papers are properly destroyed.
92. If the Clerk requires any legal advice about the listing or management of the case, advice should be sought from the Registrar or Legal Assessor for the Inquiry. In any event, the Legal Assessor will be provided with any material provided to the Committee as a minimum.

RCVS' Legal Team

93. The RCVS is entitled to appoint a solicitor to represent it at all Disciplinary Committee meetings, identified in the Procedure and Evidence Rules 2004 as "the Solicitor". The Solicitor may present the case to the Disciplinary Committee, although in practice a barrister will usually do so.
94. RCVS' Professional Conduct Department, external solicitors and any external barrister ('the RCVS legal team') have a duty to obtain and present to the Committee evidence upon which the RCVS says the allegations may be found proven. The duty is not to secure a particular finding against the Respondent, but to present the relevant facts fairly and transparently so that the Committee may reach a proper decision in the case.

95. The RCVS legal team are expected to be open and fair in all dealings with the Committee and the Respondent. Further, they have a responsibility to assist the Respondent regarding matters of procedure, particularly where a Respondent is unrepresented.

The Respondent

96. The Respondent is the veterinary surgeon against whom the allegations are made. In a fraudulent entry case, the Respondent is the person whose name is alleged to have been fraudulently entered into the Register.
97. The Respondent is usually represented at the hearing, often through the Veterinary Defence Society. This representation is normally carried out by a solicitor and barrister.
98. The Respondent may represent themselves, or alternatively, appear before the Committee supported by a "friend". Where the Respondent appears with a friend, the Chair should make it clear at the outset that only one of them should address the Committee and conduct the case. The friend should also be asked whether they have had an opportunity to familiarise themselves with the Committee's procedures, and it is helpful for the Committee to know what their association with the Respondent is. It is also important to ascertain whether the "friend" intends to give evidence. It is not usually appropriate for an individual representing the Respondent also to be a witness.
99. A Respondent who appears without any representation can present a particular challenge in terms of the management of the hearing if, as is likely, they have little or no experience of legal processes and the Committee's procedures. As a result, the Chair and the Legal Assessor should take particular care to explain the process to the Respondent and provide guidance. The RCVS legal team are also expected to explain relevant procedural matters before and during the hearing. Assistance given in such circumstances is only in relation to procedural issues. It is not appropriate for the RCVS legal team to give advice to the Respondent on the substance or merits of their case, or on how to present it.
100. In cases where the Respondent is unrepresented, the Committee will ensure that the Respondent has everything they need to conduct their case properly, which may sometimes involve short adjournments so that the Respondent may collect their notes and thoughts.
101. Where the Respondent is unrepresented, the Chair or the Legal Assessor may consider it appropriate to draw to the Respondent's attention to important points in the case which they (the Respondent) have not addressed.

The shorthand-writer

102. The Procedure and Evidence Rules 2004 require that all public hearings of the Disciplinary Committee should be recorded. A shorthand-writer is therefore present at the hearing in order to provide a verbatim transcript of the proceedings, which is particularly important if there is an appeal. In addition, should there

be any debate during the proceedings about what was said, this can be checked from the shorthand-writer's record which is being kept contemporaneously.

103. No record is kept of the private deliberations of the Committee, as is the case for the majority of professional bodies.

6. The Disciplinary Committee hearing stage

104. In the proper exercise of its functions, the Disciplinary Committee must also adhere to the statutory rules governing the procedural aspects of disciplinary hearings. The Disciplinary Committee has also produced its own Disciplinary Committee Procedure Guidance, first published in December 2007.

Public Hearing

105. The Procedure and Evidence Rules 2004 provide that, in principle, all proceedings before the Committee shall take place in the presence of all parties who appear and shall be held in public.
106. The Human Rights Act 1998 (specifically Article 6 of the ECHR) provides a Respondent with a right to a public hearing. It is regarded as an important principle that regulatory hearings take place in public to provide transparency and ensure accountability for decisions taken. Conducting hearings openly also maintains confidence that the regulatory process is fair and robust.
107. Notwithstanding the above, there are some circumstances where it might not be appropriate for the whole of proceedings to take place in public. As such, the Rules allow the Committee to direct that the public be excluded from the proceedings, or any part of them (other than the announcement of a finding, determination or judgment), where it appears to the Committee to be in the interests of justice to do so.
108. The "interests of justice" are not defined in the Rules and the Committee is likely to interpret this in a narrow sense in light of the need for transparency in all publicly important affairs. Examples of when the Committee might consider that it is not in the interests of justice to hear proceedings in public are where evidence is being given by young children, or where evidence refers to medical records or other confidential data about a person. However, this list is not exhaustive and the Committee should always consider whether the issue could be addressed in other ways, for example by use of anonymisation of witness' names or places, or by hearing only the relevant part of the evidence in private.
109. Arguments such as potential adverse publicity arising from the case, damage to reputation or embarrassment to the Respondent's family or associates will be common to virtually all Respondents who appear before disciplinary committees and as such, are unlikely to be successful.

110. In any event, the Rules provide that the public may **not** be excluded from “the announcement of a finding, determination or judgment of the Committee”, so there is no question of complete confidentiality for the Respondent. In exceptional circumstances the Respondent's identity may be anonymised and/or the hearing may not be publicised ahead of time where it is a possibility that such an application is going to be made. This will however be highly exceptional and a formal application will require to be made for consideration by the Committee
111. Exclusion of the public from the hearing would, of course, include any representatives of the press who are present to report the case. The Committee should be aware that members of the press may object to being excluded from what would otherwise be a public hearing, unless good and sound reasons are given to them. The Committee may consider it is necessary to hear submissions from the press representatives before making a decision to exclude them from the hearing.

7. The pre-inquiry procedure and case management

112. As soon as possible after a disciplinary case has been referred to the Disciplinary Committee by the Preliminary Investigation Committee, the Clerk serves a Notice of Inquiry, together with a copy of the Rules, on the Respondent. The Notice sets out various matters including the charge against the Respondent, when the Committee will hold an inquiry into the charge and that the Respondent may attend the inquiry and be represented. It invites the Respondent to say whether they admit or deny the charge and informs them about the manner in which an application for a postponement of the hearing may be made. It also warns the Respondent that the Inquiry may proceed in their absence.
113. Within 10 days of service of the Notice of Inquiry, the Respondent shall send to the Clerk an acknowledgement of service of the Notice of Inquiry stating (a) that they have received the Notice of Inquiry (b) whether or not they intend to attend the hearing and (c) whether they intend to be represented and, as appropriate, the name of the representative.

Service of RCVS' evidence

114. Not less than 21 days before the hearing date, RCVS Professional Conduct Department, or the Solicitor, shall send to the Respondent (a) a copy of any documentary evidence on which RCVS intends to rely at the inquiry, (b) a list of the witnesses whom RCVS intends to call to give evidence against the Respondent and (c) for each witness whom RCVS intends to call, a witness statement or, in exceptional circumstances, a summary of the matters on which the witness shall give evidence. If, at a later stage, the Solicitor identifies additional evidence and witnesses whom RCVS wishes to call in support of the disciplinary case, then copies of additional documentary evidence and a witness statement for each additional witness shall be served on the Respondent.

Disclosure of Documents

115. At the same time as RCVS' Professional Conduct Department or the Solicitor serves RCVS's evidence, the Respondent must be sent any formal complaint, statement, admission, explanation, or similar

documents sent to RCVS by any party to the inquiry, and any evidence which may assist the Respondent's case or harm RCVS's case. These are documents which may have been acquired in the course of investigating and preparing the disciplinary case against the Respondent, but which have not already been served.

116. When allegations are made against a Respondent, it is the duty of the Solicitor to inform them what the nature of the case is against him/her and how it will be proved. It is a rule of natural justice that whenever an allegation is made, in order to answer those allegations, the Respondent must know the nature of the case being put against the Respondent. This enables the Respondent to prepare the defence to those allegations. It is the duty of RCVS Professional Conduct Department and the Solicitor to disclose evidence which has come to hand during the investigation of the complaint, or otherwise, which may assist the Respondent's case or harm RCVS's case. This is a rule that is followed in criminal proceedings.

Case Management Protocol

117. In order to supplement the Rules, the Disciplinary Committee has also developed a Case Management Protocol which sets out standard procedural directions for cases. The aim of this protocol is to promote the timely and efficient preparation of cases and the smooth running of hearings. This is in the interest of all parties and the Disciplinary Committee, and parties are strongly encouraged to comply with the protocol.
118. The Case Management Protocol also provides for a Case Management Conference to be held at least 14 days (and often earlier) before the first day of the hearing. The meeting is conducted virtually and is led by the Chair, who is assisted by the Legal Assessor and the Clerk. The parties are expected to participate in the conference.
119. The Case Management Protocol is annexed to this Manual as Appendix 1.

8. The hearing procedure

The reading of the charge

120. Once the charge has been read, the Respondent may object to the charge or to any part of it, in law. The RCVS may respond. The Respondent has the right of reply.

How does the Respondent plead?

121. The Respondent is asked whether they admit or deny the charge, or each head of charge. The Respondent's plea will be recorded, and the hearing will then proceed accordingly. If there are admissions to all or any of the heads of the charge, there may be an agreed basis of plea between the parties which will be presented to the Committee by the RCVS. It may then be necessary for RCVS to call any or some of its witnesses. If the charge is denied in its entirety, or certain parts are denied, RCVS must call the evidence it considers is required to prove the case.

Non-appearance of the Respondent

122. The Committee may proceed in the Respondent's absence if, firstly, it is satisfied that the Notice of inquiry has been properly served and, secondly, that it is in the interests of justice to do so. The notice of inquiry states the date, time and place the inquiry is due to be heard and this is why proof of service is required. Proof of service is normally provided by evidence from the Clerk. There may be additional correspondence with the Respondent which indicates his or her knowledge that the inquiry was to be held that day.

123. Once good service of the Notice has been established, the decision as to whether it is appropriate to proceed in the Respondent's absence should be considered as a separate stage. The Legal Assessor will give advice to the Committee based upon the relevant case law authorities. The Committee should be mindful that the discretion to proceed in absence is not an unfettered discretion and must always be exercised with great caution, with the fairness of the hearing at the forefront of the Committee's mind. This will involve a careful consideration by the Committee of the circumstances of the Respondent's non-attendance and the evidence or information available as to the reason.

Adjournments

124. The Committee or Chair postpone or adjourn any hearing of the Committee for such period as to them appears reasonable. They may do this on their own initiative, or upon the application of any party. When deciding whether to postpone or adjourn a hearing, the Committee must have regard to all the circumstances, to the respective views and interests of the parties and to the interests of justice in the case.

125. When considering an application for an adjournment the Disciplinary Committee, should consider matters such as the chronology of the case, any delays, any previous applications for adjournments, the potential weight of the evidence (if any) that is being sought for the purposes of the adjourned hearing, and the sufficiency (if it is in issue) of the Respondent's medical reasons, the convenience of witnesses, costs, or any other reasons justifying an adjournment. The Legal Assessor will advise on how to approach the decision, in accordance with relevant case law on the issue. There have been several decisions in the regulatory context in recent years, and this is an area that needs thorough and careful consideration whenever it arises.

A conviction case or a conduct case?

126. This makes a difference and affects the manner of the proceedings that follow. In a conviction case, proof of the conviction is normally by production of the certificate of conviction or the admission of the Respondent. The Committee will be required to consider and decide whether the nature and circumstances of the offence are such as to render the Respondent unfit to practise veterinary surgery.

127. If it is a conduct case, and the conduct is not admitted, then the allegations must be proved and the burden of proof is upon RCVS to do so. The requisite standard of proof is equivalent to the criminal

standard, namely 'so as to be sure' (also described as 'beyond reasonable doubt'). This first stage is known as the 'facts' stage. If the facts are found proven, the Committee must then decide whether or not those facts amount to disgraceful conduct in a professional respect. If they decide it does, the Committee must then decide what sanction to impose, if any.

128. The RCVS' barrister will begin by addressing the Committee in an opening statement giving details of the facts, how they are to be proved and what the issues are. Proving the facts usually involves the RCVS calling evidence from one or more witnesses.
129. When called to give evidence, the witness may either be asked questions by RCVS barrister to elicit their evidence or, more commonly, the witness is asked to adopt their written statement and that statement can then be taken as read. The witness may then be asked supplementary questions. This stage is known as "examination in chief". Generally, the RCVS' barrister will not ask leading questions or cross-examine an RCVS' witness. A leading question is one which suggests an answer (e.g., his tie was red, wasn't it?), rather than putting the question in an open manner (e.g., what colour was his tie?).
130. The Respondent (or their representative) may then cross-examine the witness, which involves challenging the witness' account on disputed issues. Leading questions may be asked in cross-examination. RCVS' barrister may then re-examine the witness on any points arising. The Committee members may ask questions of the witness, and may retire to consider what questions to ask.
131. When all of the RCVS' witnesses have been called and any other evidence in support of the RCVS case has been adduced, the RCVS' barrister will generally close the RCVS' case by saying words to the effect: "that is the case for the RCVS".

A submission of 'no case to answer'

132. Under the Procedure and Evidence Rules 2004, when the RCVS has called all the evidence on behalf of RCVS and has closed RCVS's case, the Respondent may make a submission that:
 - a. the RCVS has not adduced sufficient evidence upon which the Committee *could* find the facts in the charge proved, or the conviction proved; or
 - b. even if the facts were proved, they are not such as to constitute disgraceful conduct in a professional respect; or
 - c. the conviction, even if proved, would not render the Respondent unfit to practise veterinary surgery.
133. The RCVS has the right to reply to the Respondent's submissions of no case to answer. The Committee then considers whether or not to uphold the Respondent's submissions in respect of any of the relevant heads of charge. The Legal Assessor will advise the Committee as to how to approach this task, however the legal test usually applied was explained in a criminal case, *R v Galbraith*. That case, (bearing in mind that it uses the terminology of the criminal court) stated:

"If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty – the judge will stop the case. The difficulty arises where there is some evidence but it is of

a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case; (b) Where, however, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally within the province of the jury and where on one possible view of the facts there is evidence upon which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

134. If the submission of the Respondent relates to whether the facts *could* amount to professional conduct in a professional respect, or whether a conviction *could* render the Respondent unfit to practise veterinary surgery, it is for the Committee to make that decision by applying judgement to the facts or the conviction.
135. If the Committee rejects the Respondent's submission the case will continue. If the Committee accepts the Respondent's submission, then the charge will not proceed further and the case will be dismissed.

The Respondent's Case

136. After the close of RCVS' case, the Respondent may present their case. There is no obligation on the Respondent to serve their case on RCVS in advance, however any expert evidence on which they intend to rely should be served in advance of the hearing. The Respondent may give sworn evidence, be cross-examined by the RCVS' barrister and questioned by the Committee. Alternatively, the Respondent may make a statement without going into the 'witness box' and without making an oath or affirmation. In these circumstances, the Respondent may not be cross-examined, but may still be questioned by the Committee. Generally, less weight will be afforded to what a Respondent says if the evidence they give is not given under oath or tested by cross-examination.
137. The Respondent may call witnesses to give evidence in support of their case. Usually, the Respondent should give evidence before any other witnesses they intend to call. The same approach may be adopted as in relation to RCVS' witnesses, namely the witness's statement may stand as their evidence in chief. The witness may then be cross-examined by the RCVS' barrister and re-examined by the respondent on any points arising from cross-examination. The Committee members may ask questions of the witness, and may retire to consider those questions before they do so.
138. The Respondent may adduce documentary evidence either by agreement, or following successful application to the Committee. The Respondent may then make submissions as to the facts. On some occasions, the Respondent or the advocate may feel it appropriate to make submissions as to facts and misconduct together at this stage. RCVS barrister is entitled to make submissions by way of reply to the Respondent's case (either facts and misconduct together, or separately at different stages, depending on the approach taken by the Respondent). The Respondent or the advocate then has a right to make a final reply. In practice, RCVS usually makes its closing submissions first, followed by the Respondent.

Evidence

139. The Procedure and Evidence Rules 2004 provide that the Committee may receive oral evidence, documentary evidence, or other evidence of any fact which appears relevant to the case in question. This might include, for example, video tape, audio tape, DVD, or, if justified, a view of the scene.
140. The Rules provide that all documents put before the Committee shall be deemed authentic, unless proved otherwise to the satisfaction of the Committee. Where the decision of any court or tribunal is relevant to an issue, a conviction, or judgment, may be proved by the production of a certified record of the conviction or judgment from the relevant court. The finding of another disciplinary tribunal may be proved by production of a certified record of the findings and judgment.
141. The Committee, or Chairman, may waive any procedural requirement of the Rules where the parties consent, or the interests of justice so require. It will be a rare occasion when waiver occurs without the parties' consent.
142. The burden of proving the facts alleged is upon RCVS. The Respondent does not have to prove their innocence. As to the standard of proof, the Rules provide that the charge shall be proved so that the Committee is satisfied so that it is sure.
143. It is good practice to apply the burden and standard of proof consciously in every case before coming to a final conclusion.

9. The decision-making stage

Voting

144. The Procedure and Evidence Rules 2004 provide that "all acts of the Committee shall be decided by a majority of the members present".
145. Generally, the Committee reaches a unanimous decision. If not, the decision is put to the vote. When this course of action is taken, the matter is to be put in the form of a motion by the Chairman. The Chairman may vote for or against the motion.
146. Where on any question the votes are equal, the Chairman shall not have a casting vote. The Rules require that the question be resolved in favour of the Respondent, except under Restoration of Names after Removal procedure under Rule 20. Therefore, if an applicant is applying to have their name restored to the Register and votes are equal upon the question, the Respondent applicant shall not be restored to the Register.
147. For the avoidance of doubt, a decision to postpone judgment is to be regarded as a decision in favour of the Respondent, unless s/he has indicated that they oppose postponement of judgment.

Decision-making

148. Detailed guidance on how to approach the three-stage decision making process can be found in the Disciplinary Committee Sanctions Guidance.
149. The Sanctions Guidance sets out the three stages – (1) facts, (2) disgraceful conduct in a professional respect or conviction rendering unfit to practise and (3) sanction. It also sets out the issues to be considered at each stage and gives guidance on how to approach the decision-making process.
150. Committee members should have the Sanctions Guidance to hand at hearings. The Committee should refer to it during the decision-making stage and confirm that it has done so in its written determination.
151. Sanctions guidance is only “guidance”. However, the use of such guidance in relation to decisions at the sanction stage in disciplinary proceedings has been approved by the Courts. The Committee is not *bound* by RCVS’ Sanctions Guidance, but if it decides to depart from it, it should explain in its written reasons why it has done so.
152. As appropriate, the Disciplinary Committee will make a decision on the facts, and then decide whether the facts proved in each head of charge, or the charge, amount to disgraceful conduct in a professional respect (or the conviction renders the respondent veterinary surgeon unfit to practise) and finally, decide the outcome or sanction. Generally, the practice of the Committee is to give written reasons in two documents: ‘Findings of Fact’ and ‘Judgment’. The Committee gives reasons in the written Judgment both for the decision on whether each head of charge, or the charge, admitted or found proved, amounts to disgraceful conduct in a professional respect or that the conviction renders the respondent veterinary surgeon unfit to practise; and for the outcome or sanction.

10. Drafting the committee’s written decision

153. It is now accepted as standard and good practice in regulatory proceedings, including those of RCVS, that committees will give written decisions with reasons at each of the relevant decision-making stages.
154. The Disciplinary Committee records in writing *every decision, determination, direction, finding and judgment* during a hearing, whether in respect of preliminary or other applications during the course of the hearing, or the substantive three-stage decision on facts, misconduct and outcome or sanction.¹ Preliminary decisions or those in response to applications may be recorded in writing as part of the shorthand writer’s verbatim note of the proceedings. Substantive decisions such as the ‘Findings of Fact’ and Judgment (the latter includes the decision on misconduct and sanction) are usually given as separate written decisions and are usually provided when the decision is given.

¹ See Rule 27 of the Procedure and Evidence Rules.

155. The purpose of producing a written decision is both to ensure that a record of the proceedings is kept and to inform the Respondent, other interested parties in the case, the veterinary surgeons' profession and the public at large, of what has taken place during the disciplinary hearing and the decisions the Disciplinary Committee has made. Written decisions demonstrate how the Committee is exercising its functions in the public interest and help to illustrate to the profession the standards of conduct expected of veterinary surgeons.
156. The Disciplinary Committee's written decisions are not required, or expected to be, a verbatim or a detailed record of everything which took place during the hearing, or of all the evidence given. For that purpose, there will always be a complete, verbatim transcript of the hearing produced by a shorthand writer who is present throughout the hearing. If necessary, in the event of a query about evidence which has been given, the shorthand writer's record can be referred to. The verbatim transcript is also important where an appeal against a decision is lodged.
157. The Committee's written decisions should stand alone, so that a third party reading them would be able to understand what the hearing was about, what decisions were made and why.
158. The Disciplinary Committee should be mindful in drafting written decisions that it clearly explains to the Respondent, other interested parties in the case, the veterinary surgeon's profession and the public at large when reading it why it has reached the decision it has made.
159. The Disciplinary Committee's reasons will usually include, as appropriate:
- a. Recital of each head of charge, or the charge, against the respondent veterinary surgeon;
 - b. Reference to the jurisdictional basis, the Act; the burden and standard of proof; and, this guidance document;
 - c. Confirmation of any legal advice given by the legal assessor, unless this is recorded on the transcript of the hearing;
 - d. The factual basis of the findings, including determinations of substantial evidential disputes;
 - e. If relevant, why each head of charge, or the charge, amounts to disgraceful conduct in a professional respect, or why the conviction renders the respondent veterinary surgeon unfit to practise; and,
 - f. A summary of reasons for the outcome or sanction (the sanctions are considered in ascending order of severity).

Who Should Draft?

160. The Legal Assessor prepares the first draft of the decision for the Disciplinary Committee to consider. While the rules of RCVS do not provide expressly for the Legal Assessor to draft decisions, common law indicates that, provided the important distinction is maintained between the two roles (decision-making and legal advice), there is no objection to the decision maker receiving advice on the drafting of the decision from the Legal Assessor.² This practice is common to other regulators.

² *R v Wandsworth LBC, ex parte Dodias (1998) 30 HLR 562*

161. The Disciplinary Committee is mindful that the Legal Assessor is not the decision-maker and the decision and the reasons recorded must be those of the whole Committee, not the Legal Assessor. Once a draft decision has been produced with the assistance of the Legal Assessor, the whole Committee review and approve it and ensure that their views are accurately represented by the written reasons.

Consistency in decision making

162. Consistency of approach in the way cases are dealt with is important. If a Respondent is dealt with in a markedly different way from another who committed much the same offence, then there is likely to be an appearance of unfairness and a sense of grievance on the part of the Respondent.
163. Consistency of approach is not always easy and is made more difficult because the composition of the Disciplinary Committee varies and because the frequency of cases is not great. Further, whilst general consistency is important, it is also necessary to have in mind that each case is different and must be decided on its own particular facts and merits. General consistency of approach is promoted by adopting a structured and principled approach to decision making, for example by following the principles set out in the Disciplinary Committee Procedure Guidance. In addition, RCVS barrister and the advocate for the Respondent should address the Committee on previous relevant cases.
164. Criticism of lack of consistency can be avoided by ensuring that there is a real rationale for what may at first appear to be an inconsistent decision and, very importantly, by a clear explanation of the reasons for the decision.
165. Using training sessions to exchange experiences and views between members is useful. Reviewing appeals in regulatory case law is also a good learning process.

Applications for restoration and appeals

166. These topics are dealt with in the Disciplinary Committee Sanctions Guidance.

Appendix 1

RCVS Disciplinary Committee Case Management Protocol

1. The Veterinary Surgeons Act 1966 ('the Act') sets out the powers and functions which Parliament has granted to the RCVS to regulate the veterinary profession and veterinary surgeons in the United Kingdom.

2. In order to carry out the regulatory function, the Act establishes a Disciplinary Committee to hear cases referred to it by the RCVS Preliminary Investigation Committee and provides the Disciplinary Committee with statutory powers to remove or restrict a veterinary surgeon's right to practise if he is found guilty of disgraceful conduct in a professional respect or found guilty of a conviction that renders him unfit to practise.

3. The function of the Disciplinary Committee is set out Section 15 of the Act, which at Section 15(2) reads:

15(2) "There shall continue to be a committee of the Council known as the Disciplinary Committee charged with the duty of considering and determining

(a) any disciplinary case referred to them by the Preliminary Investigation Committee; and

(b) any other case of which the Disciplinary Committee has cognisance under Section 18 of the Act (Restoration of Members to the Register)"

4. In the proper exercise of its function, the Disciplinary Committee must also adhere to the Statutory Rules governing the procedural aspects of its hearings. These include the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004 (SI 2004/1680) ('The Procedure and Evidence Rules 2004'), which outline the format of the hearing and available sanctions, and the Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967 (SI 1967/684) ("the Legal Assessor Rules 1967") which set out the role of the Legal Assessor, including the provision of advice to the Disciplinary Committee by the Legal Assessor.

5. This protocol by the Disciplinary Committee supplements the Procedure and Evidence Rules 2004 by setting out standard procedural directions for cases to be heard by the Disciplinary Committee with the aim of promoting the timely and efficient preparation of cases and the smooth running of hearings. This is in the interests of all parties and the Disciplinary Committee. Parties are strongly encouraged to comply with the protocol.

Service of evidence - College

1. The Notice of Inquiry is issued in accordance with Rule 5, which requires that the Respondent shall have at least twenty-eight **[28]** days notice of the hearing. Rule 6 provides that the Respondent shall reply to the Notice of Inquiry.

At least twenty-one **[21]** days before the date of the hearing, the Solicitor for the Royal College of Veterinary Surgeons ('the College') shall send to the Respondent and any other party in the case (in accordance with Rule 7.1):-,

- (a) any statements of evidence, expert reports or other documents upon which the College intends to rely on at the hearing in support of the College's case;
- (b) any formal complaint, statement, admission, explanation or similar document sent to the College by any party to the Inquiry (as described in Rule 8 (a) to (c)) and any evidence or documents in the possession of the College (other than documents for which privilege is claimed) which, whilst not relied upon in the College's case, may assist the Respondent's case or harm the College's case;
- (c) a list of witnesses whose evidence is (or whose oral evidence will be) relied on by the College in support of its case.

2. The Notice of Inquiry will be issued as soon as practical after the complaint has been referred to the Disciplinary Committee. Where the Notice of Inquiry has been issued more than twenty eight **[28]** days before the hearing, the College shall send the statements or other information to the Respondent as soon as is reasonably practical and, in any event, at least twenty-one **[21]** days before the date of the hearing.

3. The College shall disclose unused evidence in accordance with Rule 8, at the same time as the College sends any statements or other information to the Respondent. The requirement to disclose unused evidence is ongoing up to and during the Inquiry.

4. The service of additional statements or information shall be in accordance with Rule 7.2

Service of evidence - Respondent	
5.	<p>Within a reasonable time before the hearing, the Respondent shall serve on the College —</p> <ul style="list-style-type: none"> (a) any statements of evidence (including witness statements), expert reports or other documents upon which the Respondent intends to rely in support of the respondent's case; (b) a list of witnesses whose evidence is (or oral evidence will be) relied upon in support of the Respondent's case;
6.	<p>As soon as is reasonably practical before the hearing, the Respondent shall notify the Clerk to the Disciplinary Committee and the College whether he or she intends to admit or deny the charge, and whether he or she intends to admit any fact or conviction alleged in the charge.</p> <p>Rule 9.3 states that not less than seven [7] days before the hearing, the Respondent shall inform the Clerk of the Disciplinary Committee and the College whether he or she intends to admit or deny the charge and any fact or conviction alleged in the charge.</p>
Disclosure of documents and bundles of evidence to the Disciplinary Committee	
– College and Respondent	
7.	<p>When the College serves its evidence on the Respondent (at least 21 days before the hearing date, see point 1), the College shall inform the Respondent of its intention to provide that evidence to the Disciplinary Committee at least seven [7] days before the hearing for pre-reading.</p>
8.	<p>When the College serves its evidence on the Respondent, it will at the same time, ask the Respondent if there is any objection to the Disciplinary Committee receiving a copy of the evidence in advance of the hearing for pre-reading.</p>
9.	<p>The Respondent shall inform the College of any objection to the pre-reading of the College's evidence not less than fourteen [14] days before the hearing. At the same time, the Respondent may serve on the College any evidence that he or she intends to provide to the Disciplinary Committee in advance of the hearing for pre-reading.</p>

10.	The College shall notify the Respondent of any objection to the pre-reading of the Respondent's evidence not less than seven [7] days after receiving it.
11.	<p>Unless the parties are able to agree the evidence to be provided to the Disciplinary Committee in advance of the hearing, any objections shall be notified to the Chairman of the Disciplinary Committee before the evidence is due to be provided. The Chairman, advised by the Legal Assessor shall decide whether the Committee should receive all or part of the evidence in advance of the hearing for pre-reading.</p> <p>Whenever there is a litigant in person the Chairman, advised by the Legal Assessor, will review the College's evidence and decide whether whole or part of that evidence shall go to the Disciplinary Committee in advance of the hearing for pre-reading,</p>
12.	Where no objections have been made to providing evidence for pre-reading to the Disciplinary Committee, alternatively where the Chairman has decided which evidence shall be provided, the parties shall provide their evidence to the Clerk of the Disciplinary Committee not less than seven [7] days before the date of the hearing.
Case Management Conferences	
13.	A Case Management Conference (CMC) will be listed at least 14 days before the date of the hearing and will be conducted by video conference / telephone by the Chairman. The purpose of the CMC is to confirm the respondent's intended plea, review the stated time estimate and to identify any potential issues that may need to be heard or resolved before the inquiry begins. The Clerk will facilitate the CMC and all parties (including the Legal Assessor) are expected to attend. In appropriate cases, to ensure the smooth running of the hearing, more than one CMC may be required, Details will be supplied to all parties by the Clerk as above
General – Variation	
14.	The Disciplinary Committee or Chairman may, if it considers it appropriate to do so, vary the above directions upon receipt of a request in writing from the College or the Respondent.

15.	If evidence is served by a party in breach of the provisions of this protocol, the Disciplinary Committee or Chairman, on the advice of the Legal Assessor, may in the interests of justice request an explanation from that party which shall be provided in writing before the hearing.

