

An open letter to the President of the Royal College of Veterinary Surgeons.

Dear Niall,

Standard of Proof at Disciplinary Hearings – So as to be Sure.

We are sure that the profession is grateful to you for your open letter of 28th Jan 2020 addressed to the editor of the Veterinary Record and has expressed a collective sigh of relief that no change in the standard of proof for disciplinary hearings is imminent. The news in the Vet Record of 18<sup>th</sup> January 2020 that the College is actively considering down grading the standard of proof from the Criminal Standard to Balance of Probabilities has caused widespread concern and anguish.

The RCVS, as you correctly identify, has made a number of excellent improvements to its disciplinary process in recent years particularly with respect to the workings of the Disciplinary Committee and has achieved a gold standard for others to emulate. On the negative side there are still long delays in resolving the 98% of complaints that do not involve serious misconduct in a professional respect.

In that context we are disturbed at the linking of, *'the possibility of extending the range of options for concluding cases with introduction of a broader (and less severe) range of outcomes,'* to a lowering of the standard of proof from the current being SURE to 'more likely than not'. We see no logic in implying that it is OK to sanction a potentially innocent person for something they have not done just because the sanction is 'less severe'. If any sanction is to be applied surely the RCVS must be sure that they are acting correctly. It is in no one's interest for injustice to be tolerated - even towards veterinary surgeons!

You state that, *'Changing the standard of proof required in our regulatory proceedings from criminal ('so as to be sure') to civil ('on the balance of probabilities') potentially affords this greater level of public protection and confidence'*. This seems an unsupported opinion rather than fact. Recent evidence from the medical profession has clearly demonstrated the adverse impact on patient safety and outcomes from overly intrusive regulatory activity. It is further the case that the RCVS survey you quote shows a higher degree of 'trust' in the veterinary profession than in those adopting the lower standard of proof. Perhaps indicating that 'trust' is acquired by the dedication of professionals working on the ground and not by regulators.

You quote the 2014 report on the regulation of health and social care professionals in England, by the Law Commission in support of your contention that the civil standard is adequate in matters before a professional disciplinary committee. Could we take the opportunity to remind you of the judgement of Lady Hale (sitting in the House of Lords) specifically concerning 'standard of proof' - *"There are some proceedings, though civil in form, whose nature is such that it is appropriate to apply the criminal standard of proof"* (2008) UKHL 2008, 69. This is in respect of civil proceedings where a sanction on the respondent may be the outcome.

We believe that the whole profession would welcome RCVS speeding up and making its investigatory system more efficient. However, any good work could easily be undone if the number of cases referred to the DC were to be artificially increased by manipulation of the standard of proof in an effort to placate a purely speculative distrust of the system by a tiny minority of the public. The RCVS should want to improve its investigatory system simply because it is the right thing to do, rather than offering it as a *quid pro quo* for accepting a draconian change.

A wider range of (less severe) sanctions whilst tentatively welcome would probably require primary legislation as Section 16 of the VSA 1966 is limited in scope, using the Royal Charter to achieve this is working to the extreme limit of what is permissible; we acknowledge that a change in the standard of proof is within Council's existing powers, as the current definition lies in the 2004 Rules of Procedure and Evidence, rather than statute law. Thus, linking the two in one measure might be technically difficult and certainly controversial. Would you undertake to provide

some details as to what these 'less severe' outcomes are, and by what mechanism you envisage them being enacted?

At the current time any action that might adversely affect the mental health and well-being of the profession, let alone such a severe one, is to be approached with great caution - however complete openness and transparency would help allay the fears of hard-working veterinary surgeons.

Yours,

A handwritten signature in black ink, appearing to read 'Richard', with a horizontal line underneath.

On behalf of -

Richard Stephenson	(Former Member RCVS DC and PIC).
Jacqui Molyneaux	(Former RCVS President, DC and PIC member)
Barry Johnson	(Former RCVS President, DC and PIC member)
Mark Elliott.	(Former Vice – Chair RCVS PIC).
Beverley Cottrell	(Former Vice - Chair RCVS DC).
Geoff Skerritt	(Former Vice – Chair RCVS DC).
Catherine Goldie	(Former Member RCVS DC ).
Clare Tapsfield Wright	(Former Chair of RCVS Standards)
Christine O'Rourke	(Former Member RCVS DC)
Nigel Swayne	(Former Member RCVS DC)
Tim Greet	(Former Member RCVS Council)