



**Royal College of Veterinary Surgeons**

**RVN Preliminary Investigation Committee Manual**



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### **Veterinary Nurse Preliminary Investigation Committee Manual**

Guidance to members of the Veterinary Nurse Preliminary Investigation Committee in considering concerns raised about Registered Veterinary Nurses and guidance and information about the procedures for the handling of concerns raised with the RCVS.

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## 1. Foreword

The RCVS's Veterinary Nurse Preliminary Investigation Committee (VNPIC) was set up under the powers derived from the RCVS Supplemental Royal Charter of 2015. This Charter confirmed the College's duty to keep a register of veterinary nurses, and enabled the College to make rules as to the removal of names from that register. Rules were duly implemented pursuant to the Charter, making provision for the investigation and determination of allegations that a registered veterinary nurse (RVN) is guilty of serious professional misconduct or has been convicted of an offence which renders that person unfit to practise as a RVN. These Rules are the Veterinary Nurse Conduct and Discipline Rules 2014 ("the VN Conduct Rules"). They were drafted in anticipation of the grant of the Supplemental Charter, and implemented on the date of the grant, namely 17 February 2015. The VN Conduct Rules give the VNPIC powers to carry out a preliminary investigation into every "disciplinary case"<sup>1</sup> and decide whether the case should be referred to the Veterinary Nurse Disciplinary Committee ("VNDC"). It is essential that the VNPIC acts properly and proportionately and in accordance with the relevant legal framework when exercising its powers.

This Manual outlines the procedures to be followed when concerns are raised with the RCVS, and provides information and guidance on the roles of those involved in the processing of concerns. It also provides guidance for the functioning of the VNPIC, and information about procedural and practical matters, ranging from the constitution of Stage one and Stage two VNPICs to decision-making processes and available options. Where appropriate, it includes references to Protocols which set out in more detail the processes that are followed in particular areas. VNPIC members and RCVS staff are expected to be familiar with the Manual.

It is also hoped that the Manual will enable all those who are involved or interested in the RCVS's handling of concerns about veterinary nurses to understand the processes that have been put in place to enable the VNPIC to discharge its function.

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<sup>1</sup> A "disciplinary case" is defined in the VN Conduct Rules as "*a case in which it is alleged that a registered veterinary nurse's name is liable to be removed from the register, or that that person's entry in the register is liable to be suspended, at the direction of the Veterinary Nurse Disciplinary Committee*".

## 2. Introduction

### The legislative powers and duties of the VNPIC and VNDC

1. The Veterinary Surgeons Act (“the Act”) sets out the powers and functions that Parliament has granted to the RCVS to regulate the veterinary profession in the United Kingdom. The main regulatory responsibilities are set out in the Act, although the RCVS also has powers and responsibilities by virtue of its Royal Charters of 1844 and, more recently, 2015.
2. The 2015 Charter sets out clearly the objects of the RCVS, namely:

*“to set, uphold and advance veterinary standards, and to promote, encourage and advance the study and practice of the art and science of veterinary medicine, in the interests of the health and welfare of animals and in the wider public interest”.*
3. The responsibilities set out in the 2015 Charter include maintaining a list of veterinary nurses eligible to practise in the United Kingdom (to be known as the register of veterinary nurses), regulating veterinary education and regulating professional conduct. Paragraph 16 of the 2015 Charter provides for disciplinary proceedings in relation to Veterinary Nurses, in accordance with any relevant Bye-laws or rules. The relevant Bye-laws are set out in the Charter’s Schedule, at paragraphs 13 to 15. These provide that the College’s Council, either itself or via RVN Council/other RCVS Committees, *“shall make rules as to the investigation and determination of allegations that a registered veterinary nurse is guilty of serious professional misconduct or has been convicted of an offence which renders that person unfit to be a registered veterinary nurse.”* The College duly implemented the VN Conduct Rules (referred to in the Foreword above). The VN Conduct Rules establish the VNPIC for the purpose of conducting a preliminary investigation into every allegation raised about a Registered Veterinary Nurse (RVN) that might result in their removal or suspension from the RCVS register and deciding whether that allegation should be referred for a hearing in front of the VNDC. This decision will be made by the Stage two VNPIC (further details of this are set out below).

4. The VN Conduct Rules provide as follows:

***Investigation of complaints***

*3. There shall be a Veterinary Nurse Preliminary Investigation Committee which shall carry out a preliminary investigation into every disciplinary case and decide whether the case should be referred to the Veterinary Nurse Disciplinary Committee.*

*4. The Veterinary Nurse Preliminary Investigation Committee shall be appointed by the Veterinary Nurses' Council. The Committee shall not include members of the Preliminary Investigation Committee, the Disciplinary Committee, or the Veterinary Nurse Disciplinary Committee.*

*5. The quorum of the Veterinary Nurse Preliminary Investigation Committee shall be three, to include:-*

- a lay member, a registered veterinary nurse and a veterinary surgeon; or*
- a lay member and two registered veterinary nurses.*

*6. The Veterinary Nurse Preliminary Investigation Committee shall adopt, with any necessary modifications, the practices and procedures of the Preliminary Investigation Committee.*

5. The VN Conduct Rules, at paragraph 7, also establish the VNDC, explaining that the VNDC is to “*adjudicate any disciplinary case referred to it and any application for restoration following removal or suspension at the direction of the Committee*”. The VNDC’s powers, are contained in Sections 11 to 13 (and 19 to 22) of the VN Conduct Rules. Rule 11 of the VN Conduct Rules sets out those circumstances in which the VNDC may direct that a person’s name should be removed or suspended from the RCVS register:

***Removal of names from register for crime or disgraceful conduct***

*11. If a registered veterinary nurse*

- has been convicted of a criminal offence which in the opinion of the Veterinary Nurse Disciplinary Committee renders that person unfit to practise as a veterinary nurse, or*

*- is judged by the Veterinary Nurse Disciplinary Committee to have been guilty of disgraceful conduct in any professional respect, the Committee may, if it thinks fit, direct the removal of that person's name from the register, or direct that that person's entry in the register shall be suspended, that is to say, it shall not have effect during a period specified in the direction.*

Paragraph 13 of the VN Conduct Rules provides that the VNDC shall adopt, with any necessary modifications, the rules and procedures of the Disciplinary Committee which was set up by the Act in relation to veterinary surgeons. The rules and procedures of that Veterinary Surgeon Disciplinary Committee are governed by a statutory instrument, namely the “*Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004* (“the 2004 DC Procedure Rules”). Paragraph 13 of the VN Conduct Rules in effect provides that the VNDC should follow the 2004 DC Procedure Rules.

6. The VNDC has powers under the Schedule to the Charter (paragraph 14) and the VN Conduct Rules (paragraph 11) to remove or suspend a veterinary nurse’s right to practise. By virtue of adopting the 2004 DC Procedure Rules, the VNDC also has the power to impose a reprimand or warning. In order for any of those sanctions to be open to the VNDC, it must first determine that the veterinary nurse either has a conviction that the VNDC considers renders them unfit to practise, or that they are guilty of disgraceful conduct in a professional respect. The VNDC’s powers to make such a finding and/or impose a sanction must be exercised properly and proportionately, and in accordance with the Charter, the VN Conduct Rules and the 2004 DC Procedure Rules.
7. When a matter is referred to the VNDC, it is dealt with by means of a hearing. VNDC hearings are held in public, unless the VNDC decides that, as a result of specific circumstances, it is in the interests of justice that part or all of the hearing should be heard in private (provision is made for this in Rule 21 of the 2004 DC Procedure Rules).

### **Role of the VNPIC**

8. The role of the VNPIC is to investigate and consider referring to the VNDC any allegation which might mean that a veterinary nurse is liable to have their name removed or suspended from the RCVS register of veterinary nurses as a result of a

criminal conviction that renders them unfit to practise, or disgraceful conduct in a professional sense.

9. The RCVS has implemented a two-stage system for VNPIC. This Manual describes in more detail below how the Stage one VNPIC should assess and investigate concerns, and how the Stage two VNPIC should arrive at the decision of whether or not to refer a case to the VNDC. In short, the Stage One VNPIC will investigate the concerns and, if they are unable to conclude that there is no “realistic prospect” of a finding of disgraceful conduct (or of proving the existence of a conviction that would affect fitness to practise), then they will adjourn the matter for consideration by the Stage two VNPIC. The Stage two VNPIC must then decide whether or not there is a realistic prospect of a finding of disgraceful conduct being made by the VNDC. If it considers that test to be met, it will decide whether a referral to the VNDC should be made in the public interest.
10. The VNPIC, as a committee of the RCVS, is required to act in the public interest, which in this context includes the protection and promotion of the health and welfare of animals and the protection of public health. In addition, the wider public interest includes the protection of the reputation of the profession, upholding and maintaining professional standards, and the maintenance of public confidence in the profession.

### **3. Constitution of VNPIC and role of Chair**

11. The quorum for both a Stage one and Stage two VNPIC meeting is three, which must include at least one lay member and one veterinary nurse member (see paragraph 4 above, referring to Rule 5 of the VN Conduct Rules). Schedule 2 of the Veterinary Surgeons Act 1966 provides for the constitution of the Preliminary Investigation Committee and Disciplinary Committee for veterinary surgeons. The College has adopted the same position for VNPIC and VNDC, namely that VNPIC members will be appointed for a term whose duration is to be determined by VN Council. The College also applies the Preliminary Investigation Committee and Disciplinary Committee Protocol 2021 (the 2021 Protocol) [<https://www.rcvs.org.uk/document-library/preliminary-investigation-committee-and-disciplinary-committee/>] to VNPIC and VNDC members. Pursuant to the 2021 Protocol, VNPIC members are appointed for a term of up to four years. Any person appointed may not serve more than two terms, nor may any member of the VNPIC sit on the VNDC until 3 years after ceasing to be a member of the VNPIC.



12. The Chair of the PIC is, by custom, a veterinary nurse member. The 2021 Protocol establishes that the RCVS Council may from time to time designate one or more members of PIC to be Vice-Chairs, and may at any time remove such a designation. The College adopts the same approach to VNPIC, with VN Council making the relevant designations and removals of Chairs and Vice-Chairs of VNPIC.
13. In practice, there are usually more than three members sitting in Stage two VNPIC meetings. The Chair or Vice-Chair of the VNPIC usually presides at the Stage two VNPIC meetings, ensuring that discussions are appropriate and fair, and that all members of the Stage two VNPIC have been given an opportunity to contribute to the decision-making process. If, during the course of a meeting, the person presiding ceases to be able to do so by reason of indisposition, conflict of interest or some other cause, such other member of the VNPIC as the members present may choose shall preside for the rest of the meeting or part of the meeting as appropriate.
14. A report of the VNPIC's activities is provided regularly to the RCVS VN Council.

#### **4. VNPIC Members' conduct and standards**

15. The RCVS Council has stipulated, in the 2021 Protocol, conditions as to fitness to serve as members of its committees, together with the ability of Council to remove Committee members for breaches. As noted above, the College has adopted the 2021 Protocol in relation to the VNPIC (and the VNDC). Individuals are ineligible to serve as committee members if they have criminal convictions for dishonesty, deception, animal welfare offences or convictions which led to a sentence of imprisonment or detention (unless those convictions are spent). There are similar disqualifications regarding bankruptcy, fitness to practise findings, and barred lists. There are further requirements regarding minimum attendance at meetings, training and appraisals, and provisions regarding inability to perform duties as a result of adverse health. The RCVS VN Council has the power (pursuant to paragraph 11 of the Protocol, applied by adoption) to remove VNPIC members for breach of conditions, or where their membership would for any other reason be liable to undermine public confidence in the regulation of the veterinary nursing profession. For full details of the conditions, please see the 2021 Protocol.
16. Members of the VNPIC are expected to behave in a way that commands the respect and trust of the public and the profession and they are expected to abide by the seven principles set out in the first Report of the Committee on Standards in Public Life 1995,

otherwise known as "the Nolan Principles". These are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

### **Conflicts of interest**

17. It is understood that people putting themselves forward for public work may have their own personal, professional or business interests. In a small profession such as veterinary nursing, the potential for conflicts of interest is exacerbated and VNPIC members are required to be particularly mindful to avoid participating in VNPIC discussions about cases in which they have an actual or perceived conflict of interests.
18. Upon appointment, VNPIC members are required to submit a Declaration of Interest Form<sup>2</sup> (<https://www.rcvs.org.uk/who-we-are/committees/preliminary-investigation-committee/>) disclosing relationships and/or posts held that could potentially result in a conflict of interest. Information should be given about the following specific categories of interest:
  - Current or previous employment or practice
  - Professional qualifications
  - Memberships of other organisations or bodies
  - Links with local, national and community organisations
  - Consultancies and directorships
  - Shareholdings.
19. Declarations of interest need to be kept up to date, by reporting any changes as and when they arise – see Code of Conduct for Council and Committee members and Code of Conduct for Managing Potential Conflicts of Interest [Conflicts of Interest Policy - Professionals \(rcvs.org.uk\)](#)
20. In addition to completing and regularly updating the Declaration of Interest Form, members of the VNPIC must declare any interest in a particular case, as soon as they identify their potential conflict of interest and in any event before they commence consideration and decision making of the case.
21. Where a VNPIC member identifies an actual or perceived conflict of interest in relation to a case which has been allocated to them at Stage one, they must immediately

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<sup>2</sup> Each PIC member's declared interests are visible from their profile on the RCVS website – see <http://www.rcvs.org.uk/about-us/committees/preliminary-investigation-committee/>

disclose that conflict or perceived conflict to their Stage one PIC colleagues and recuse themselves from involvement (unless it is subsequently established that the interest should not prevent participation in the case). If an actual or perceived conflict is identified, or even suspected, the VNPIC member should not enter any comments on to the investigation plan on the system (please see later for further detail on the process). If there is a clear conflict the VNPIC member must recuse themselves immediately and the Case Manager (see paragraph 40 for more information on the Case Manager's role) will reallocate the matter to a differently constituted Stage One VNPIC. Any queries as to whether the situation does give rise to a potential conflict should be communicated by the Case Manager to the Chair of VNPIC and the Head of Department for further discussion, prior to any work being carried out on the case.

Where the conflict is identified before or at the Stage two VNPIC meeting, the VNPIC member should disclose it to the Chair, and it will be considered by the Chair and other VNPIC members at the meeting, with legal advice given by the Head of Professional Conduct. At whatever stage the conflict is disclosed, no discussion of the case should take place (or in the case of Stage One VNPICs, entries added to the investigation plan) until a decision has been taken about whether the declared conflict or potential conflict prevents the member from deliberating on the case. Decisions about member participation are recorded in the Stage one VNPIC investigation plan, or minutes of the Stage two VNPIC meeting as relevant.

22. As noted above at paragraph 17, it is not unusual for people putting themselves forward for public work to have their own personal and/or professional interests. It is accepted that there will be some rare cases where for example, the RVN who is the subject of the allegation is well known within the profession, and/or a number of members of the VNPIC will know them in a professional capacity (for example, through having been part of the same professional body). It is also the case that many veterinary practices are now owned by the same corporate organisations. Such situations will not necessarily mean that those VNPIC members should not participate in the VNPIC's decision-making process. The general principle should be applied in such a situation, that the declared conflict or potential conflict is discussed, and a decision reached and recorded as to whether the relevant member should continue to participate in the discussion. The test for bias is that laid out in the case of Porter v Magill [2001] UKHL 67; namely whether a "fair minded and informed observer", having considered the facts, would conclude that there was a "real possibility" of bias.

## **Confidentiality**

23. VNPIC Members are required by the Code of Conduct for Council and Committee members to maintain confidentiality in respect of information that has been designated as private or confidential. All VNPIC meetings are held in private and all information relating to allegations currently or at any time previously under consideration by VNPIC members (whether at Stage one or Stage two VNPIC) is designated as private and confidential. This duty of confidentiality continues even after the VNPIC has concluded its consideration of the case.
24. VNPIC Members must on no account discuss with third parties the cases they are considering or have considered in their capacity as members; they must not allow third parties to have access to any of the documentation with which they are provided nor to information held on computers or in electronic form.

If VNPIC members misuse information gained by virtue of their position, the RCVS may be liable for breach of the provisions in the UK General Data Protection Regulation and Data Protection Act 2018, which impose high standards of data security on data controllers such as the RCVS, and for breach of confidentiality under common law.

25. If a VNPIC Member becomes aware of any unauthorised disclosure (deliberate or inadvertent) they must immediately inform the Head of Professional Conduct (and Chair of the VNPIC if appropriate). The disclosure and steps to be taken in consequence of it will then be considered in line with the RCVS's breach policy.

## **5. VNPIC's consideration of concerns raised about a veterinary nurse.**

### **Who can raise a concern?**

26. Concerns about a veterinary nurse may be raised by a member of the public, a fellow veterinary professional, or the RCVS.
27. Where a member of the public wishes to raise a concern, they are required first to contact the RCVS Professional Conduct department either by post/email, via an online Enquiry Form or by telephone, so that Case Managers in the department can assess whether the concern is one that can be dealt with by the RCVS or whether it is more

appropriate for the enquirer to be signposted to the Veterinary Client Mediation Service (for example, because the enquiry relates to customer service issues, or fees). If the department has assessed the concern as being one that the RCVS should properly deal with, because the alleged behaviour potentially falls far short of/far below the standards required of a veterinary nurse (see paragraph 33 below), or where the nature of the concerns is unclear, the enquirer will be sent a link to the web concerns portal or a Concerns Form - "*Raising concerns about a veterinary nurse*" - for completion.

28. The Concerns Form includes a section for the complainant to give consent for the RCVS to notify the veterinary nurse in question about the concerns and for the information submitted to the RCVS (including, therefore, a copy of the form and any accompanying documentation) to be shared with that veterinary nurse and other relevant parties. In general, if consent is not provided, the concern will not be progressed.
29. Concerns may also be raised by a veterinary surgeon, a veterinary nurse or, indeed, a non-qualified person working within the same organisation as the veterinary nurse who is the subject of the allegation. Veterinary professionals may access the Concerns Form from the RCVS website and submit it without going through the initial "enquiry" process. There is guidance in the Code of Conduct for Veterinary Nurses Supporting Guidance (Chapter 20) for veterinary professionals who have concerns about fellow professionals and a confidential reporting line for them to discuss their concerns <https://www.rcvs.org.uk/concerns/im-a-vet-professional-and-i-want-to-raise-a-concern/> .
30. Concerns may be raised in other ways, including the following (in which the RCVS will usually become the complainant for the purposes of the investigation):
  - Following referral by another organisation, such as the Police, the Animal and Plant Health Agency (APHA), or the Royal Society for the Prevention of Cruelty to Animals (RSPCA).
  - Following information available through the media or other means: in such circumstances the RCVS may on the direction of the Registrar and/or Head of Professional Conduct and/or Chair of the VNPIC proactively investigate such concerns.

Following disclosure to the RCVS by a veterinary professional (as required under paragraph 5.3 of the Code of Conduct), of any caution or conviction, including absolute and conditional discharges and spent convictions, or adverse finding which may affect registration, the matter will be referred to the Registrar. In such cases, the Registrar will make a decision as to whether to start an investigation.

### **Disgraceful Conduct in a Professional Respect and Unfitness to Practise**

31. The Stage one VNPIC's primary task is to decide whether it has sufficient information to close the case on the basis that there is no realistic prospect of the concerns amounting to disgraceful conduct in a professional respect (see paragraph 34 below for definition). If the Stage one VNPIC is unable to conclude that there is no realistic prospect, then they must forward the matter to the Stage two VNPIC.
32. The Stage two VNPIC's primary task is to consider whether an allegation made against a veterinary surgeon that could result in their removal or suspension from the RCVS Register should be referred to the VNDC. The two types of case with which the Stage two VNPIC will generally be concerned<sup>3</sup> are where it is alleged that:
  - (a) the veterinary nurse has been convicted of an offence which renders them unfit to practise;
  - (b) the veterinary nurse is guilty of disgraceful conduct in a professional respect.
33. "Disgraceful conduct in a professional respect" is often equated with "serious professional misconduct" – the term that is used in some other regulatory frameworks. The generally accepted definition of "disgraceful conduct in a professional respect" in RCVS matters is "*conduct falling far below that to be expected of a reasonably competent member of the profession*".<sup>4</sup>
34. The conduct complained about does not have to be directly linked to the veterinary nurse's practice in order to amount to disgraceful conduct in a professional respect. It may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. It can also, however, involve conduct of a "morally culpable or otherwise disgraceful kind

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<sup>3</sup> Under the Act, the DC also has power to consider cases about fraudulent registration

<sup>4</sup> *McLeod v RCVS*

which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the [individual] and thereby prejudices the reputation of the profession”.<sup>5</sup> Similarly, a conviction does not have to be directly linked to the veterinary nurse’s practice in order to render them unfit to practise. Whether or not a conviction has that effect is a matter for the VNDC’s judgment in each case, according to the 2004 DC Procedure Rules [[Veterinary Surgeons and Veterinary Practitioners \(Disciplinary Committee\) \(Procedure and Evidence\) Rules Order of Council 2004, SI 2004/1680](#)]

35. The RCVS has published guidance documents to be used by the decision-makers involved in considering allegations prior to their reaching a VNDC hearing. Those guidance documents (“RVN Preliminary Investigation Committee (PIC) decision-making guidance (Stage one)”) <https://www.rcvs.org.uk/concerns/reference-information/rvn-preliminary-investigation-committee-decision-making-guidance/> “RVN PIC decision-making guidance (Stage two)”) <https://www.rcvs.org.uk/concerns/reference-information/rvn-pic-decision-making-guidance-stage-2/>) set out the approach taken by the Stage one and Stage two VNPICs respectively in deciding upon onward referral, detail potential aggravating and mitigating factors, and provide examples of cases that have resulted in onward referral in the past.
36. Any failure to follow the RCVS Code of Conduct could potentially amount to disgraceful conduct in a professional respect, but only if it is serious enough to bring into question whether the veterinary nurse should remain registered with the RCVS. For example, serious professional misconduct/disgraceful conduct in a professional respect is unlikely to include straightforward clinical mistakes, and establishing that there has been negligence is not enough to establish that there has been disgraceful conduct. The Courts’ view is that negligent acts or omissions can only amount to serious professional misconduct if they are particularly grave (serious). A single negligent act or omission is less likely to amount to serious professional misconduct than multiple acts or omissions, but a particularly grave single negligent act could reach that threshold, depending on the circumstances<sup>6</sup>. As serious professional misconduct and disgraceful conduct in a professional respect are often equated, it follows that it is unlikely that an incident of negligence will amount to disgraceful conduct in a professional respect unless it is particularly grave.

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<sup>5</sup> *R (Remedy UK Ltd) v GMC* [[2010] EWHC 1245 (Admin)]

<sup>6</sup> *Calhaem v GMC* [2007] EWHC 2606 (Admin)]

## 6. The Two Stage Process

37. In order to ensure a proportionate approach to the investigation of concerns which are brought to the attention of the RCVS, and only concerns which are capable of amounting to serious professional misconduct are fully investigated, the RCVS has put in place processes whereby the VNPIC considers allegations of disgraceful conduct in two-stages, namely:

- Stage 1: Assessment and Investigation by the Stage one VNPIC and
- Stage 2: Consideration by the Stage two VNPIC

38. Before a case is considered by the Stage two VNPIC, it must first go through the Stage one VNPIC which will assess and investigate the concerns<sup>7</sup>. However, as an exception to this, in certain serious cases, the Head of Professional Conduct in conjunction with the Chair of VNPIC may decide that the matter should be fast-tracked to the Stage two VNPIC without passing through the Stage one VNPIC. The fast-tracking procedure is likely to be used in the most serious cases, including for example, cases of deliberate disregard for animal welfare, cases of serious or persistent breaches of the Code of Conduct, cases of knowingly practising when not on the Register, or cases where a veterinary nurse's own health puts animal welfare at risk.

### **Stage 1: Assessment and Investigation by the Stage one VNPIC**

39. The Assessment and Investigation stage is carried out by the Stage one VNPIC comprising a veterinary nurse, a lay person, and one other (all of whom are members of the VNPIC). There are two Stage one VNPIC groups, the constitution of which will be changed on a regular basis. Each Stage one VNPIC has a lead member, who will guide the decision-making, where necessary, and ensure smooth progress of cases. Cases are allocated to the Stage one VNPIC by an RCVS administrator on a rotational basis.

40. Each case will be allocated to a Case Manager, who will assist the Stage one VNPIC in their consideration and assessment of the case and liaise with the parties to obtain the information necessary for the Stage one VNPIC to consider the case and keep

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<sup>7</sup> There is an exception for criminal conviction matters, which are “fast-tracked” to the Stage two PIC – this is dealt with below.



those involved fully informed. Case Managers are employed within the department and may be legally qualified.

41. The Stage one VNPIC should identify the particular issues to be addressed by the veterinary nurse who is the subject of the allegation (which may or may not align with the specific issues raised by the complainant). The Stage one VNPIC should also consider whether there are matters about which concerns have been raised but which need not, in their view, be addressed because, for example, they could in no circumstances amount to disgraceful conduct in a professional respect.
42. The Stage one VNPIC is asked to consider also whether:
  - There are matters about which concerns have been raised which may, in the first instance, be dealt with more appropriately by another regulatory body or authority, such as the Advertising Standards Authority, or Information Commissioners Office, and
  - There is a concern that is capable of amounting to a criminal offence which might more properly, and in the public interest, be investigated by another organisation (e.g. the police, Trading Standards Office or Veterinary Medicines Directorate (“VMD”)).

If such matters arise they should be discussed to ensure an appropriate way forward before any actions are agreed.

43. The RCVS retains a statutory duty to regulate notwithstanding an investigation which is being carried out into similar matters by another authority. While the RCVS’s consideration of the matter will often be put on hold pending either the conclusion of the investigation by such other authority or notification from that authority that it does not intend to investigate, a unilateral stay on RCVS proceedings pending investigation by another authority may not always be justifiable. Whether or not it is justifiable will depend on:
  - the extent of overlap of issues,
  - the risk of prejudicing any criminal investigation or other proceedings if the RCVS pursues the matter while it is under investigation by another enforcement body,
  - any prejudice to the public interest resulting from delay, and
  - fairness to the practitioner.

## 7. Investigations

44. Concerns will be assessed and investigated with a flexibility of approach with the aim of ensuring that (i) all matters are dealt with efficiently and promptly; (ii) concerns that are not serious enough to merit referral to the VNDC are resolved speedily, and (iii) VNPIC is enabled to make decisions promptly.
45. Other departments within the RCVS may, where relevant, be consulted for information, for example, Registration in relation to a registrant's practising status, or Education in relation to a registrant's CPD record.
46. The Stage one VNPIC may consider that they have enough information to conclude that, on the basis of the complainant's information alone and taking the complainant's case at its highest, there is no realistic prospect of serious professional misconduct. In such cases, once the decision has been confirmed at the Stage one VNPIC meeting (see below), the Case Manager will draft a record of decision to be agreed by all members of the Stage one VNPIC that will be sent to the complainant to inform them of the decision to close the case without further investigation. The respondent veterinary nurse is informed of the complaint and that no action has been taken.

Alternatively, and more commonly, when identifying those concerns which in their view should be addressed, the Stage one VNPIC will (via the Case Manager) obtain such further information as is required for the purposes of considering those concerns<sup>8</sup>. This usually includes information from the veterinary nurse about whom concerns have been raised.

47. The Stage one VNPIC may also identify information from others which they consider will be relevant for their assessment. Sources of such information may include but are not limited to:
  - the person raising the concern, and family members or friends involved;
  - colleagues of the veterinary nurse about whom concerns have been raised, if they may have been involved in or have knowledge of the matter under consideration. Such colleagues should be informed that their comments may be seen by the

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<sup>8</sup> As set out in the Vet nursing Preliminary Investigation Committee (PIC) decision-making guidance (Stage one)

respondent veterinary nurse and the complainant, and it should be made clear to them if they are potentially a respondent to the complaint, as well as a witness;

- Veterinary professionals in other practices who may have treated the animal or been involved in the matter under consideration. Again, they should be informed that their comments may be seen by the respondent veterinary nurse and the complainant, and made clear to them if they are potentially a respondent, as well as a witness to the complaint;
- other potential witnesses; again, they should be informed that their comments may be seen by the respondent veterinary nurse and complainant, and
- relevant organisations or authorities (e.g. the RSPCA, the police or Trading Standards) if they were involved in the matter.

48. The Stage one VNPIC will also often ask for relevant documents such as clinical records, consent forms, hospitalisation sheets, radiographs, test results and referral letters.

49. When the Stage one VNPIC considers that they have sufficient information, they must decide whether they are able to conclude that there is **no realistic prospect** that the veterinary nurse has been guilty of disgraceful conduct in any professional respect. If the Stage one VNPIC is unable to conclude that there is no realistic prospect, they must forward the allegation to the Stage two VNPIC. The Stage one VNPIC should not (as a matter of policy) conclude that there **is** a realistic prospect; this is for the Stage two VNPIC to determine.

50. If the Stage one VNPIC decides that there is no realistic prospect, they will close the concern and confirm this decision at a Stage one VNPIC meeting; they may in appropriate circumstances give advice (for further information on advice, see paragraph 55 below).

#### *Realistic prospect test for the Stage one VNPIC*

51. The test of whether there is a “realistic prospect” applies to both the factual allegations and whether, if established, the facts would amount to serious professional misconduct (or, for convictions, render the veterinary nurse unfit to practise). It reflects not a

probability but rather a genuine (not remote or fanciful) possibility. There are two limbs to the test that need to be considered by the Stage one VNPIC:

- a) Whether, taking the complainant's case at its highest, the allegations could amount to serious professional misconduct (i.e. whether there is a realistic prospect that the allegations, if proved, could be found to amount to serious professional misconduct); and if so;
- b) Whether there is a realistic prospect of proving the factual aspects of the allegations to the standard required on the basis of the available evidence.

52. The Stage one VNPIC should keep in mind in reaching their decision that:

- It is not their role to resolve conflicts of evidence.
- Where there is a dispute about the facts that could only be resolved by deciding between conflicting accounts of events (and the substantive allegations are serious enough that they might result in a finding of "disgraceful conduct in a professional respect" if proven) the Stage one VNPIC should adjourn the case to be considered by the Stage two VNPIC.

53. Decisions of the Stage one VNPIC can be unanimous or by majority. If members of the Stage one VNPIC cannot agree that there is no realistic prospect, it must adjourn the matter to the Stage two VNPIC. At any stage the Stage one VNPIC may take advice from the Chair of the VNPIC or the Head of Professional Conduct. Any such advice should be given or noted in writing.

54. The "Vet Nurse Preliminary Investigation Committee (PIC) decision-making guidance (Stage one)" <https://www.rcvs.org.uk/concerns/reference-information/rvn-preliminary-investigation-committee-decision-making-guidance/> sets out the types of issues that are either likely or unlikely to result in a decision to adjourn the concern to the Stage two VNPIC. In particular the guidance explains that not all breaches of the RCVS Code of Professional Conduct for Veterinary Nurses will give rise to a realistic prospect, nor will certain categories of fee dispute, service concerns, civil matters, general insurance matters or employment matters. It also explains that establishing negligence is very unlikely to be consistent with establishing that there has been disgraceful conduct in a professional respect (see paragraph 36 above).

## **8. Possible outcomes of a matter considered by the Stage one VNPIC**

55. If the Stage one VNPIC concludes that there is no realistic prospect of serious professional misconduct it may:

- Close the concern with no further action.
- Close the concern with advice to the veterinary nurse.

Advice may be given where the Stage one VNPIC has concluded that the conduct of the veterinary nurse raises concerns in relation to the standards expected under the Code of Conduct for Veterinary Nurses. The advice should generally be given by reference to particular provisions in the Code of Conduct (and/or Supporting Guidance) and will be kept on the registrant's file for two years. As the VNPIC cannot make findings of fact, it follows that it cannot give advice on matters that are significantly in dispute or incapable of proof. Advice can therefore only be given in relation to matters that have been admitted or are not disputed by the respondent, or for which there is a strong evidence base such that the facts are beyond doubt.

Whether closing a case (with or without advice) or adjourning it to a meeting of the Stage two VNPIC, members of the Stage one VNPIC must explain their decision. A formal note of the decision reached by the Stage one VNPIC, together with their reasons for arriving at that decision, should be made on the case record.

## **9. The Stage one VNPIC Meeting**

56. Once the Stage one VNPIC has sufficient information to close a case, a decision will be made by way of a remote meeting, which all Stage one VNPIC members must attend. Stage one VNPIC meetings are held fortnightly on a pre-determined day and time.

57. The Case Manager does not participate in the decision-making but will attend the meeting to answer any queries from the Stage one VNPIC in respect of the investigation and ensure they have all the information required so that this can be communicated to the parties involved. RCVS staff at all times will behave in a manner that supports independent decision-making by the VNPIC.

## **10. Second stage – Stage two Veterinary nurse Preliminary Investigation Committee**

58. When a case has been adjourned to the Stage two VNPIC, the VNPIC will meet to consider the case, decide what (if any) further investigations are required, and decide whether or not to refer the case to the VNDC in the light of all the evidence obtained and any representations made by the veterinary nurse.

59. Stage two VNPIC meetings are generally held eight times a year.

The respondent veterinary nurse(s) and the person who raised concerns are notified that the matter has been referred to a meeting of the Stage two VNPIC. The veterinary nurse will be asked to provide details of their Continuing Professional Development (CPD) record over the previous three years, as well as evidence of their professional indemnity insurance arrangements for the time that the concerns relate to.

60. At the meeting, the Stage two VNPIC will consider the case on the basis of the information gathered at Stage one.

61. Although the Stage one VNPIC is likely to have gathered the relevant evidence prior to referring the matter to the Stage two VNPIC, additional information or issues may be identified by the Stage two VNPIC which will mean that further investigation is required before the Stage two VNPIC can determine whether or not to refer the case to the VNDC. In such circumstances the Stage two VNPIC will adjourn its decision as necessary to obtain sufficient information to make a fully informed decision. The Stage two VNPIC may ask for (this is not an exhaustive list):

- a. formal witness statements to be obtained – usually through the RCVS's external solicitors (see below);
- b. an expert witness to be instructed to report on whether the registrant's actions fall far short of the standards to be expected.
- c. In certain circumstances, visits by the RCVS's investigators (see paragraphs 100 to 102 below) to the person who raised concerns, and/or the veterinary nurse who is the subject of the concerns, and/or other potential witnesses.

62. Where the Stage two VNPIC has asked for formal witness statements to be taken, once these have been signed, they are sent to the veterinary nurse who is the subject of the concerns and they are given an opportunity to make any comments prior to the Stage

two VNPIC's next consideration of the case. The witness statements are not (save in exceptional circumstances) sent to the person who raised concerns (except for that person's own statement), to preserve the independence of the evidence given by the witnesses.

All the information that is obtained and that will be taken into consideration by either Stage one or Stage two VNPIC when making its decision should be disclosed to the respondent.

*Realistic prospect test for the Stage two VNPIC*

63. When the Stage two VNPIC considers that it has all the information it needs to decide whether or not the case should be referred to the VNDC, it must then reach a decision about:

- i. whether there is a "**realistic prospect**" of a finding by the DC that
  - (i) all or some of the factual allegations are proved, and
  - (ii) these factual allegations (individually or cumulatively) amount to disgraceful conduct in a professional respect (in other words, fall far short of the standard expected) or (in the case of a conviction or convictions) that it or they individually or cumulatively render a veterinary nurse unfit to practise;

and if so

- ii. whether it is in the **public interest** to refer the case to the VNDC for a full hearing.

64. As detailed above at paragraph 51 above, the "*realistic prospect*" test requires a *genuine* (not a *remote* or *fanciful*) *possibility*; it does not require a *probability* that the VNDC will find disgraceful conduct.

65. In making its decision as to whether there is a realistic prospect in a particular case, the Stage two VNPIC will bear the following in mind:

- d. that the standard of proof that will be applied by the VNDC is equivalent to the criminal standard ("beyond reasonable doubt" or "so as to be sure");

- e. that, although the Stage two VNPIC is entitled to assess the *weight* of the evidence, its role is not to decide conflicts of evidence (the VNPIC does not hear oral witness evidence, so it is not able to reach judgments about different witnesses' credibility);
  - f. that the Stage two VNPIC is working only from documents and reports and will not have the opportunity to hear witnesses (including the person who raised concerns and the veterinary nurse) and their responses to questions, and
  - g. that it should proceed with particular caution in reaching a decision to close a disciplinary case where such decision may be perceived as being inconsistent with a decision made by another authority.
66. The Stage two VNPIC should not seek to resolve disputed factual issues itself in any case where the allegations are serious enough for there to be a realistic prospect of a finding of disgraceful conduct being made if the facts were found proved at a hearing. However, there will be cases where, having considered the totality of the evidence it is clear, and without seeking to resolve any conflicting accounts, that there is no realistic prospect of a finding of disgraceful conduct. This could be, for example, because the chance of one witness being believed over another or others could be properly described as fanciful or highly unlikely, or the lack of coherence in the RCVS's witness evidence indicates clearly that proof to the requisite standard could never be met.
67. When deciding whether there is a realistic prospect of the VNDC making a finding of disgraceful conduct in a professional respect, the Stage two VNPIC may take into account both **aggravating** and **mitigating** factors, as long as those factors relate to the circumstances of the conduct itself (and are not, for example, purely personal mitigating factors).

The aggravating factors which may be taken into account when considering whether there is a realistic prospect of the VNDC finding disgraceful conduct in a professional respect include:

- Actual injury to a human or an animal
- Repeated incidents of the conduct under consideration
- Dishonesty, recklessness
- Pre-meditated misconduct
- Breach of confidentiality or client trust; involvement of a vulnerable client



- Financial gain
- Sexual misconduct
- Contravening advice given by RCVS or other similar authority; blatant or wilful disregard of the role of the RCVS

And the mitigating factors include:

- The circumstances of the incident, including the promotion of the health or welfare of an animal
- No actual harm or risk of harm to human or animal
- No financial gain
- Single and isolated incident
- Decision taken without the opportunity for full reflection
- Coercion, or lack of necessary equipment or resources in the practice, through no fault of the veterinary nurse, or huge workload, not the fault of the veterinary nurse, which meant they were struggling to manage, and led to the events in question.

Note: the Stage two VNPIC should ensure the mitigation is agreed/not in dispute before relying on it; for example, the RCVS might dispute an assertion that a veterinary nurse was overworked. If there is a conflict of evidence, the Stage two VNPIC should take the RCVS's case at its highest.

68. If mitigating facts played no part in the events themselves, and had no impact on them, they will not usually be relevant to the issue of misconduct. Such factors are sometimes called 'purely personal mitigation' and are relevant only to sanction. Examples of purely personal mitigation, such as are unlikely to be relevant to the issue of misconduct include: the veterinary nurse's current personal difficulties, such as divorce or other family problems, lapse of time since the incident, admissions, insight, efforts to avoid a repetition of the conduct, long and unblemished career, and good character references.
69. Having concluded that there is a realistic prospect of the facts being found proved, and of disgraceful conduct in a professional respect being found, the Stage two VNPIC must go on to consider whether it is in the **public interest** to refer the case to the VNDC. It is at this stage that mitigating and aggravating factors not directly relevant to the conduct itself (as noted in paragraph 67 above) may become relevant. If the Stage two VNPIC has decided that there is a realistic prospect of a finding of serious professional misconduct being made, it may consider that the public interest can be served by an

alternative disposal that properly reflects the seriousness of the conduct, while simultaneously addressing any risks. It may be the case, for example, that the veterinary nurse's current state of health is very poor, or the alleged misconduct would be better addressed by managing poor performance, to the extent that it would not be in the public interest to refer the matter to the veterinary nurse Disciplinary Committee. (For health and performance matters see para 87 below).

70. The issue for the Stage two VNPIC at this stage is to consider whether there are strong and compelling public interest reasons why the case should not be referred. These reasons should be weighed carefully against the seriousness of the allegations and the public interest factors in favour of a referral (see paragraph 72 below). Matters such as ill health, lapse of time since the incident, remorse and insight may be of particular relevance at this stage.
71. When assessing the public interest in referring a matter to the VNDC, the VNPIC should undertake a balancing exercise, considering on the one hand any concerns about:
- h. Future risk to animal welfare
  - i. Professional standards being compromised
  - j. Public confidence in the profession being undermined
  - k. Reputation of the profession being undermined.

And on the other hand:

- l. Ill-health of the respondent, if relevant
  - m. Insight
  - n. Remorse
  - o. Single, isolated incident
  - p. Unlikelihood of repetition
  - q. Willingness to engage with the RCVS.
  - r. Willingness to improve performance
72. If the Stage two VNPIC decides that there is a real prospect of a finding of serious professional misconduct (or 'disgraceful conduct in a professional respect'), but that it may not, on the basis of current information, be in the public interest to refer a case to the VNDC, it may instead invite the practitioner to take part in the Health Protocol or the Performance Protocol (see paragraph 86 below). It should make clear in doing so that if the Health or Performance Protocol does not adequately address the concerns

(for example, because the practitioner declines to take part or fails to engage at any stage), the Stage two VNPIC may reconsider the case and may refer it to the VNDC.

## **11. The Charter Case Committee**

73. In other cases where the Stage two VNPIC considers that there is a realistic prospect of a finding of serious professional misconduct, but that it is not in the public interest to refer a case to the VNDC, it may refer the matter to the Charter Case Committee (CCC). The CCC is an independent Committee set up under the Royal Charter that allows for the disposal of cases without a public hearing. The rules can be found here: <https://www.rcvs.org.uk/concerns/charter-case-committee-decisions/>
74. Matters will be suitable for consideration by the CCC where it may not be considered appropriate or proportionate to refer to the VNDC, for example, because the issues alleged, while crossing the threshold of serious professional misconduct, are at the lower end of the scale in terms of gravity, or because the respondent has already shown significant insight and/or taken steps to address the issues involved and avoid repetition.

## **12. Convictions, cautions and adverse findings**

75. Veterinary nurses and those applying to be registered as veterinary nurses are required under section 5.3 of the Code of Conduct for Veterinary Nurses to disclose to the RCVS any caution or conviction or adverse finding by an equivalent regulator, including absolute and conditional discharges and spent, non-protected convictions, but excluding convictions for certain minor offences exempted from disclosure by the RCVS<sup>9</sup>. Similarly, veterinary nurses must disclose any caution or conviction as part of their annual renewal or registration. The way in which the RCVS handles such notifications is set out in the Protocol on Handling of Convictions, Cautions and Adverse Findings Declared by Veterinary Surgeons (Protocol on Handling of Convictions) <https://www.rcvs.org.uk/concerns/reference-information/rcvs-protocol-on-handling-of-convictions-cautions-and-adverse/>
76. Convictions and cautions may also come to the attention of the RCVS by reports made by the police or other prosecution authorities, or by members of the public.

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<sup>9</sup> See Code of Professional Conduct for Veterinary Nurses 5.3

77. When the RCVS receives notification (from whatever source) that a veterinary nurse has been convicted of an offence, a concerns file is opened. As set out in the Protocol for Action on Handling of Convictions (see above), all offences disclosed are considered by the Registrar, who will decide whether or not a complaint should be registered on behalf of the RCVS. If the Registrar decides that an RCVS complaint should be raised, the matter will be referred straight to Stage two VNPIC.
78. Before making their decision, the Registrar may decide that the case should be further investigated and/or comments sought from the convicted veterinary nurse.
79. Conviction cases are generally allocated to the Solicitors (Disciplinary Cases), or the Chief Investigator, who will apply to the relevant court for a copy of the certificate or memorandum of conviction and information about the sentence imposed. In Crown Court cases, they may also ask the Court for a transcript of relevant sections of the hearing, for example the Prosecution opening, Defendant's mitigation and/or the Judge's sentencing remarks. They may also (and particularly in relation to Magistrates' Court convictions, for which there is no transcript) ask for relevant documents from the police or other prosecuting authority, such as the RSPCA or Trading Standards.
80. Criminal proceedings resulting in conditional or absolute discharges are not, for regulatory purposes, to be considered as convictions. Offences which led to a discharge of either kind – or which led to a caution – can only, therefore, be dealt with as allegations of disgraceful conduct in a professional respect. Whilst in the case of convictions, the RCVS may rely on a certificate of conviction to prove that the offence was committed, for conditional or absolute discharges, the RCVS must prove the underlying facts to the requisite standard, which means that it may be necessary to gather relevant documentary and witness evidence.
81. Some convictions may occur against a background of underlying health problems (e.g. a conviction for driving with excess alcohol may occur in circumstances where the registrant has an alcohol dependency). In such cases, the Health Protocol [<https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/health-protocol/>] may need to be followed. The Registrar may seek preliminary information about the veterinary nurse's health once notified that either the nature of the offence or the circumstances in which it was committed suggest that they may have an alcohol or drug dependency or other physical/mental health problem that may be impacting on their fitness to practise,

before reaching their decision about whether or not the conviction should be referred to the Stage two VNPIC as set out above.

82. Some convictions may be directly related to the veterinary nurse's practice or position as a veterinary nurse, for example:
  - a. Offences relating to animal welfare
  - b. Fraudulent entry on the RCVS Register
  - c. Veterinary Insurance fraud.
  
83. A conviction, however, does not have to be directly related to veterinary practice for the necessary threshold to be reached. Convictions for the following, for example, have been found to render veterinary nurses unfit to practise because they affect the registrant's integrity and/or because they are so serious that they bring the profession into disrepute:
  - a. Offences of a sexual nature;
  - b. Offences involving violence;
  - c. Offences involving harassment;
  - d. Offences involving assault.
  
84. The Veterinary nurse PIC decision-making guidance (Stage Two) (<https://www.rcvs.org.uk/concerns/reference-information/rvn-pic-decision-making-guidance-stage-2/>) provides examples of convictions that are unlikely to result in referral to the VNDC, such as convictions for minor domestic disturbances or minor traffic offences and one-off drink drive offences where there are no concerns about underlying ill-health.
  
85. In considering whether or not there is a realistic prospect that the VNDC will find that a particular conviction renders the veterinary nurse unfit to practise, the Stage two VNPIC will consider any aggravating or mitigating factors of the conviction.

### 13. Possible outcomes of a matter considered by the Stage two VNPIC

86. If the VNPIC decides not to make a referral to the VNDC it has a number of choices. It may:
- a. Close the concern with no further action.
  - b. Close the concern with advice to the veterinary nurse.

Advice may be given where the Stage two VNPIC has concluded that the conduct of the veterinary nurse raises concerns in relation to the standards expected under the Code of Conduct for Veterinary Nurses. The advice should generally be given by reference to particular provisions in the Code of Conduct for Veterinary Nurses (and/or Supporting Guidance) and will be kept on the registrant's file for two years. As the VNPIC cannot make findings of fact, it follows that it cannot give advice on matters that are significantly in dispute or incapable of proof. Advice can therefore only be given in relation to matters that have been admitted or are not disputed by the respondent, or for which there is a strong evidence base such that the facts are beyond doubt.

- c. Refer the matter to the Charter Case Committee (see para 74 above).
- d. Adjourn the case pending completion of particular actions, for example, attendance by the registrant on a course, or compliance with improvements requested by Stage two VNPIC.
- e. Refer the registrant to the Health Protocol

In cases where the ongoing ill health of a veterinary nurse is relevant to a criminal conviction, or their professional conduct, and the *realistic prospect* test is met, the VNPIC may when considering whether or not it is in the public interest to make a referral to the VNDC, consider the possibility of dealing with the case by referral to the RCVS Health Protocol [<https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/health-protocol/>] instead of by referral to the VNDC.

It should be noted that a referral to the Health Protocol requires the agreement of the veterinary nurse under investigation and that the Stage two VNPIC must in such cases, take into account the seriousness of the conduct/conviction concerned: as the Health Protocol makes clear, if the case is sufficiently serious, referral to the VNDC will be necessary in the public interest, despite any issues surrounding the veterinary nurse's health. The procedure is described in more detail at paragraphs 113 - 117 below.

- f. Refer the registrant to the Performance Protocol

Where the Stage two VNPIC has identified a realistic prospect of a finding of disgraceful conduct in a professional respect, it may consider that the public interest is better served by referring the respondent to the Performance Protocol [<https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/performance-protocol/>].

The Performance Protocol aims to protect animals and the interests of the public by assisting, in a process of remediation, veterinary nurses whose fitness to practise may be impaired because of ongoing concerns about their professional performance.

As with the Health Protocol, the agreement of the veterinary nurse in question is required, and if the allegations are so serious that the public interest may require removal of the respondent's name from the Register, the Stage two VNPIC should not seek to manage the professional performance of the respondent by the Performance Protocol but should refer the case to the VNDC.

The Performance Protocol is described in more detail at paragraphs 118 to 123 below.

#### **14. Types of Case considered by the Stage two VNPIC**

87. Each case will be considered by the VNPIC on its individual facts. There are, however, certain types of case that frequently arise and it may be helpful to have regard to the way in which cases of a similar nature have been approached in the past. The following are the kinds of allegations which have been referred by the Stage two VNPIC (or its previous equivalent) to the VNDC for a hearing. It should be borne in mind that the following list is by no means definitive or exhaustive:
  - a. Physical force, aggression or violence - towards animals, clients or staff
  - b. Dishonesty or making seriously misleading representations - in professional practice (regarding, for example, information provided to clients or third parties), or in representations to the RCVS
  - c. Dishonesty or recklessness in certification
  - d. Serious departures from the standards set out in the RCVS Code Professional Conduct for Veterinary Nurses
  - e. Dishonest recommendations of unnecessary treatments

- f. Carrying out of unnecessary or inappropriate treatment for financial gain
- g. Convictions relating to animal welfare, domestic violence or sexual offences
- h. Serious or Repeated failures in provision of adequate veterinary or professional care
- i. Refusals of emergency treatment or emergency first aid and pain relief
- j. Failure to obtain informed consent or to discuss a range of treatment options
- k. Repeated failure to comply with CPD or PII requirements.

The Stage two VNPIC will be provided with the veterinary nurse's previous history in terms of concerns raised with the RCVS (consistent with the College's retention policy). If advice has been issued to a practitioner for a similar matter that has then, apparently, been disregarded, this could form the basis of a head of charge if the new matter were to be referred to VNDC.

88. The Stage two VNPIC may also deal with cases involving unresponsive veterinary surgeons, or those who fail to comply with reasonable requests from the RCVS as part of the regulation of the profession<sup>10</sup>. Where such behaviour falls so far below the standard expected of a reasonably competent member of the profession it may merit referral to the VNDC. Where there is flagrant or extreme disregard for the RCVS regulatory system by a veterinary nurse, this also might of itself be sufficient to amount to disgraceful conduct.

## **15. The Stage two VNPIC Meeting**

89. At least ten days' notice (usually much more) is given of every Stage two VNPIC meeting, unless the Chair (or other PIC member who is to preside at the meeting) directs that a shorter period is permissible. Meetings can be held in person, or remotely, or a hybrid of the two.
90. The Stage two VNPIC members are responsible for making decisions. Members of the Professional Conduct department attend VNPIC meetings solely to assist the members, for example by way of reminder of where relevant facts are to be found within the case papers or, where appropriate, providing legal advice. Professional Conduct department staff may also assist by reminding the VNPIC of all the relevant aspects of the case requiring a decision and reminding them, where appropriate, of the need to

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<sup>10</sup> Section 5.4 of the Code of Conduct requires veterinary nurses to comply with reasonable requests from the RCVS as part of the regulation of the profession and to comply with any undertakings they give to the RCVS.



provide adequate reasons for reaching their decision. The decision is always made by the Committee itself and the Professional Conduct department staff do not participate in the VNPIC's deliberations or decision-making process. RCVS staff at all times will behave in ways that support independent decision-making by the VNPIC.

**16. The roles and responsibilities of VNPIC members.**

**91. At Stage one:**

The Veterinary nurse/surgeon Stage one VNPIC member's responsibilities include: giving veterinary advice to the Stage one VNPIC, and (in conjunction with the other members of the Stage one VNPIC): identifying issues of concern in relation to a case; as appropriate, directing the Case Manager to obtain further relevant information; and considering whether the matter should (a) proceed to the stage two VNPIC, (b) be closed (with or without advice) and/or (c) referred to another organisation.

92. The Lay Stage one VNPIC member's responsibilities include (in conjunction with the other members of the Stage one VNPIC): identifying issues of concern in relation to a case (particularly to ensure that the lay perspective is considered); as appropriate, directing the Case Manager to obtain further relevant information; and considering whether the matter should (a) proceed to the Stage two VNPIC, (b) be closed (with or without advice) and/or (c) referred to another organisation.

**At VNPIC meetings**

*Veterinary nurse/surgeon Members of the VNPIC*

93. The responsibilities of veterinary members of the VNPIC include reading the case papers in advance of the meeting, contributing effectively to discussions at the meetings, listening to the views of other members, offering veterinary/nursing advice on areas where they have sufficient knowledge and experience, participating fully in the VNPIC's discussions and participating in the decision-making process in order to reach a fair and proportionate decision in the public interest.

### *Lay Members of the VNPIC*

94. The responsibilities of lay members of the VNPIC include reading the case papers in advance of the meeting, contributing effectively to discussions at the meetings, listening to the views of other members, offering the lay perspective on the matters before the Committee, participating fully in the VNPIC's discussions and participating in the decision-making process, in order to reach a fair and proportionate decision in the public interest.

### *Legal Advice*

95. The VNPIC may be given legal advice, either at its specific request or proactively on the part of the lawyers advising it. The Head of Professional Conduct and the Solicitors - Disciplinary Cases (see para 99) routinely attend Stage two VNPIC meetings and, where necessary and appropriate, will give legal advice (or procure external legal advice) either on request or if they consider such advice is necessary in order to ensure the VNPIC proceeds on a correct procedural basis. Any legal advice given to the VNPIC must be recorded.
96. The decisions of the Stage one and two VNPICs are a matter for them and them alone, but it will be important for them to have taken into account any legal advice given prior to reaching a decision.

### **The Chair/Lead of the VNPIC (and the Vice-Chair if they are chairing any meeting/part meeting)**

97. The role of the Lead VNPIC member at Stage one VNPIC, or the Chair at Stage two VNPIC is to ensure that the PIC fulfils its statutory responsibilities, by directing the deliberations of the VNPIC and ensuring that the objectives of the meeting are met. The Chair/Lead also participates in discussions and the decision-making process. The Chair/Lead should aim to chair meetings effectively and decisively and in accordance with the Chair/Lead's Guide to Effective Management of the Preliminary Investigation Committee.

## **17. The roles of department staff.**

### *Case managers.*

98. The Case Managers' role is to assist the VNPIC in considering cases by assessing and summarising information received, obtaining further evidence as agreed by the VNPIC, liaising with the parties, and communicating the decisions made by the VNPIC to those involved in the case. Case Managers may be legally qualified.

### *Solicitors – Disciplinary Cases (SDC).*

99. The SDCs' role is to assist in the preparation and progression of cases at Stage two, in the event that the Stage two VNPIC considers that further investigation or information is required. The SDCs attend Stage two VNPIC meetings to assist the Committee in its decision-making. As with Case Managers, they do not play an active part in the decision-making itself, but they may be called upon to provide legal advice or guidance as necessary. This should always be recorded. The SDCs liaise with expert witnesses and the College's external solicitors to prepare cases for decision at Stage two and, if referred, to progress matters to Stage three.

### *Investigators*

100. The Chief Investigator works within the department and is involved principally in investigating conviction cases and liaising with external agencies (for example, the police, the Veterinary Medicines Directorate, Trading Standards, etc) to assist either their investigations or those of the College. The Chief Investigator is legally qualified, and will attend Stage two VNPIC meetings to assist the Committee. As with Case Managers and the Solicitors – Disciplinary Cases, the Chief Investigator does not play an active role in the decision-making itself, but may be tasked with investigating matters or seeking assistance from other organisations.
101. Veterinary Investigators are veterinary surgeons who have been appointed to assist the VNPIC by investigating and progressing cases. They work with the Chief Investigator by providing veterinary knowledge and guidance, for example, if joint investigations are being carried out by the College and other organisations (as above).

102. In exceptional circumstances the Stage two VNPIC may ask the Chief Investigator and the Veterinary Investigators to visit the subject veterinary nurse's practice and/or the complainant/other witnesses to obtain further information (for example, to view clinical records, etc). Such visits are coordinated by the Chief Investigator and a written report will then be submitted to the Stage two VNPIC to assist its deliberations.

### **18. Taking formal witness statements**

103. As part of an investigation, the Stage two VNPIC may consider it appropriate for formal written statements to be taken from relevant witnesses.

104. In most cases, external solicitors are instructed by the SDCs in the Professional Conduct department, following a request by the Stage two VNPIC to take statements. Once they are instructed, the SDCs will liaise with the parties to identify the names and contact details of the witnesses. The process of obtaining statements will then be conducted by external solicitors, overseen by the relevant SDC. Once all the witness statements have been signed, and the Respondent has had an opportunity to read and make comments thereon, the Stage two VNPIC will be asked to re-consider the case.

### **19. Expert Evidence**

105. The Stage two VNPIC may ask for an expert report in order to assist its consideration of a particular case.

106. An expert may properly be asked for an opinion on veterinary nursing technique or on standards of performance within the profession (referring to the Code of Conduct for Veterinary Nurses as applicable) and whether the particular facts alleged in a case (if proved) fall far below the standards expected, so as to enable the Stage two VNPIC (and, if forwarded, in due course the VNDC) to understand, if the facts alleged are made out, where on the spectrum of behaviour in a professional context, they fall.

107. The respondent must be given the opportunity to see any expert evidence (and provide rebuttal evidence if appropriate) before the Stage 2 VNPIC makes any decision.

## **20. Corporate entities and multiple respondents**

### *Concerns about corporate entities*

108. On occasion, concerns are raised about a corporate entity or practice rather than about a named individual veterinary nurse. The Stage two VNPIC and VNDC can only deal with registered veterinary nurses; neither the Act nor the Charter gives the RCVS jurisdiction to bring proceedings for disgraceful conduct against practices or organisations. When concerns have been raised against a corporate entity, the Stage one VNPIC will consider whether there is an identifiable individual registrant who has responsibility for that entity; and, if so, the concerns will be treated as having been raised against that individual rather than the practice as a whole.

### *Multiple Respondents*

109. Sometimes, concerns are raised against more than one veterinary nurse with regards to the same incident or animal. Where concerns against more than one veterinary nurse are founded on the same alleged facts, they should usually be considered at the same time as each other (for example by the same Stage one VNPIC and at the same Stage two VNPIC meeting). Care must be taken, however, to ensure that the case against each veterinary nurse is considered on its own merits.
110. Under Rule 18 of the 2004 DC Procedure Rules it is possible for a single DC hearing to be held in relation to two or more veterinary nurses, where the allegations arise out of the same facts. If the Stage two VNPIC considers this to be appropriate, it should make the referral jointly.
111. On occasion, concerns are raised against a veterinary surgeon and a registered veterinary nurse (“RVN”) jointly. There is no provision for joint consideration of such cases by the Stage two PIC and the RVN PIC, nor for a joint hearing before the DC and the RVN PIC. Each case must be considered separately by the respective PIC (and, where referred, the respective DC).
112. When, in respect of the same facts, the Stage two PIC has referred a veterinary surgeon to the DC and the RVN PIC has referred a RVN to the RVN DC, each case will be considered at separate hearings by the respective DC. Witnesses may therefore

have to give evidence twice. As a matter of practice, the DC hearing in respect of the veterinary surgeon should ordinarily be dealt with first in time.

## **21. Health Protocol**

113. The Code of Professional Conduct for Veterinary Nurses (3.1) requires veterinary nurses to take reasonable steps to address adverse physical or mental health or performance that could impair fitness to practise. There is also a positive obligation for veterinary nurses who are concerned about a professional colleague's fitness to practise to take steps to ensure that animals are not put at risk and that the interests of the public are protected (3.2) and a breach of the Code in these circumstances has the potential to amount to serious professional misconduct.
114. As set out in paragraph 86 above, having concluded that the realistic prospect test is met, the Stage two VNPIC may still conclude that it is in the public interest *not* to refer a case involving a veterinary nurse's ill-health to the VNDC (at least at that time). If the Stage two VNPIC reaches that decision, it may adjourn the case whilst inviting the veterinary nurse to provide various forms of assurance as set out in paragraph 86 above.
115. It should be made clear to the veterinary nurse that, although the Stage two VNPIC is willing to liaise with them with a view to the matter being dealt with under the Health Protocol, ultimately the concerns may still be referred to the VNDC if the Stage two VNPIC considers that such referral would be in the public interest; and that any information obtained by the RCVS as part of the liaison with regards to the Health Protocol may ultimately be used at the VNDC, if it is in the public interest to do so.
116. Similarly, it should be made clear to the veterinary nurse, at the outset of discussions regarding the Health Protocol, that the Stage two VNPIC may consider that any undertakings which the veterinary nurse agrees to give (if less onerous than any undertakings suggested by the Stage two VNPIC) are insufficient to address concerns; and that the Stage two VNPIC may in such circumstances refer the original concerns matter to the VNDC.
117. For further detail on the operation of the Health Protocol, please see the Protocol itself [\[https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/health-protocol/\]](https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/supporting-guidance/health-protocol/).

## 22. Performance Protocol

118. The Code of Professional Conduct for Veterinary Nurses (3.1) also requires veterinary nurses to take reasonable steps to address any ongoing concerns about their professional performance which could impair their fitness to practise and/or, where there is harm, or a risk of harm, to animal health or welfare, public health or the public as a result. This should include steps to review and monitor performance and undertake any remedial activities.
119. Having concluded in a particular case that there is a realistic prospect of a finding of serious professional misconduct being made against a respondent in relation to their clinical performance but that it is not in the public interest to refer such a case to the VNDC (at least at that time), the Stage two VNPIC may adjourn it whilst inviting the veterinary nurse to provide various forms of assurance as set out in paragraph 86 above. This would amount to a referral to the Performance Protocol, whose aim is the management and remediation of the deficient performance.
120. However, if the case is one where there is a realistic prospect of a sanction of suspension or removal from the register being imposed, referral to the VNDC is likely to be necessary in the public interest.
121. It should be made clear to the veterinary surgeon that although the Stage two VNPIC is willing to liaise with them with a view to the matter being dealt with under the Performance Protocol, ultimately the concerns may still be referred to the VNDC if the Stage two VNPIC considers that this would be in the public interest; and that any information obtained by the RCVS as part of the liaison with regards to the Performance Protocol may ultimately be used at the VNDC, if it is in the public interest to do so.
122. Similarly, it should be made clear to the veterinary nurse, at the outset of any discussions regarding the Performance Protocol, that the Stage two VNPIC may consider that any undertakings which the veterinary nurse agrees to give (if less onerous than any undertakings suggested by the Stage two VNPIC) are insufficient to address concerns; and that the Stage two VNPIC may in such circumstances refer the original concerns to the VNDC.
123. For further detail on the operation of the Performance Protocol, please refer to the Protocol itself - [\[https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-](https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-)

## **Reviews of decisions of the Stage one and Stage two VNPIC**

### *Reviews of decisions of the Stage one VNPIC*

124. Where either the person who raised the concern (or less commonly the veterinary nurse who is the subject of the concern – for example because they have been given advice), considers that there is a significant error in the decision of the Stage one VNPIC, or a party has new evidence which may affect the outcome of the case, they may request a review of that decision.
125. The procedure on a review is set out in full in the Protocol for Reviews. In summary, a person seeking a review of a decision made by the Stage one VNPIC should request such a review within 28 days' of receiving the record of decision, setting out in writing the reasons why they consider that there was a significant error in the decision made and/or supplying any new or additional information that was not considered previously by the Stage one VNPIC. A link to the form for requesting reviews is sent out within the closing letters.
126. Reviews are carried out by the Chair of the VNPIC and the Head of Professional Conduct. If the Chair of the VNPIC identifies that they have a conflict of interest in dealing with the review the Vice Chair or other member of VNPIC will be asked to participate in the review in their place.
127. The aim is for reviews to be concluded within eight weeks of receipt of the written request for a review.
128. In carrying out the review, the Chair of VNPIC and/or the Head of Professional Conduct may direct that, prior to making a decision, further enquiries should be made as relevant.
129. Having reviewed the Stage one VNPIC's decision, the Chair of VNPIC and Head of Professional Conduct may conclude that:
  - a. There was no significant error in the Stage one VNPIC's decision and/or no new evidence such as would affect the outcome of the case, and the case should remain closed, or



- b. That the Stage one VNPIC's decision to give/not give advice was potentially wrong, in which case the matter should be referred back to that Stage one VNPIC to be reconsidered at the next available meeting; or
- c. That the Stage one VNPIC was wrong to conclude that there was no realistic prospect of serious professional misconduct, such that the matter should be referred to Stage two for consideration.

#### *Review of Decisions made by the Stage two VNPIC*

130. Where a party requests a review of a decision made at by the Stage two VNPIC, the Head of Professional Conduct and the Chair of VNPIC will jointly decide if the case should be referred back to the Stage two VNPIC. Before making such a decision the Chair of VNPIC and/or the Head of Professional Conduct may direct that further investigations are undertaken or information sought.
131. If the matter is to be referred back to the Stage two VNPIC, it should be considered at a meeting of the Stage two VNPIC as soon as practicable (allowing for the gathering of further relevant information, where necessary), and notification of the date when it is to be considered sent to both the subject veterinary surgeon and the person raising concerns. The parties will be notified that this is to happen, and the date of the meeting at which the Stage two VNPIC will consider the case.

The Stage two VNPIC will reconsider its previous decision in the light of submissions made in the review request and/or any additional information.

#### **Challenge to Decisions: Judicial Review**

132. A decision of the Stage one or Stage two VNPIC may be challenged by way of judicial review, once internal review mechanisms have been exhausted. A judicial review is not an appeal or re-hearing of a case, but a review of the lawfulness of a decision that has been made.

#### **Useful links**

- Code of Professional Conduct for Veterinary Nurses
- <https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-nurses/>
- Veterinary Surgeons Act 1966

<https://www.rcvs.org.uk/how-we-work/royal-charter-and-legislation/government-legislation/>

- Royal Charter 2015

<https://www.rcvs.org.uk/how-we-work/royal-charter-and-legislation/royal-charter-and-byelaws/>

## **PROTOCOLS**

Preliminary Investigation Committee and Disciplinary Committee Protocol 2021

<https://www.rcvs.org.uk/document-library/preliminary-investigation-committee-and-disciplinary-committee/>

Code of Conduct for Council and Committee members approved 2017

<https://www.rcvs.org.uk/document-library/code-of-conduct-for-council-and-committee-members/>

Health Protocol <https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-nurses/supporting-guidance/health-protocol/>

Performance protocol <https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-nurses/supporting-guidance/performance-protocol/>

Protocol on Handling of Convictions, Cautions and Adverse Findings Declared by Veterinary Surgeons Link to website <https://www.rcvs.org.uk/concerns/reference-information/rcvs-protocol-on-handling-of-convictions-cautions-and-adverse/>