

## Introduction

We respond to this consultation as **legal academics**, specialising in **animal law and veterinary ethics**, based at the University of Liverpool's School of Law and Social Justice. We are acting on behalf of our Health Law and Regulation Unit, which has close research ties with the School of Veterinary Science at the University of Liverpool. We are currently working on funded research projects concerning regulation of dog rescue, and legal responses to pet loss and bereavement.

We are also dog owners, with many years experience of having our own dogs cared for by a range of vets. Additionally, we have both volunteered with a variety of dog rescues in the north of England and for several years we were both **trustees of North West English Springer Spaniel dog rescue** - a breed specific rehoming charity based in the Manchester/Lancashire area.

Our response strongly endorses the CMA's Vets provisional decision in terms of both its analysis and proposals. We believe that this represents a long overdue intervention into the provision of veterinary services and contains an important suite of proposals, which if accepted and implemented will serve to widen access to services

Given our professional expertise, which is in the field of legal regulation and issues of consent to treatment we wish to comment specifically on the following issues – the importance of legislative reform, the role of the RCVS, consent to veterinary treatment and, more generally, the importance of ensuring fair pricing, transparency and the fostering of competition. We would just like to stress that fair pricing and a choice of vets is crucial for dog rescues and charities as well as individual pet owners

### 1. Legislative reform

We strongly endorse the conclusion that '[e]ffective regulation is essential and the current regulatory regime, set up in 1966, is not fit for purpose.' There is no other major profession which is regulated by a statutory framework dating from the 1960s. Unsurprisingly, this outdated legislation wholly fails to reflect the reality of how contemporary veterinary services are provided, and back in 1966 when the Veterinary Surgeons Act was passed Parliament simply could not have contemplated the growth in and current dominance of the large corporate practices.

For decades it has been apparent that the law needs reform, and it has therefore been disappointing that the RCVS has not been more proactive in lobbying for reform of the profession. We believe it to be a largely ineffective regulator, due in part to the lack of effective separation between its professional leadership role and its regulatory responsibility to protect pets and owners.

The fact that vets remain primarily self-regulated is clearly no longer defensible. Anecdotal evidence suggests that *'many clients dissatisfied with veterinary performance lack remedies, while veterinarians are given scant incentive to improve and courts are left to grapple with*

*outmoded legal concepts'* - see M. Fox, 'Law and Veterinary Ethics' in C. Wathes et al (eds) *Veterinary and Animal Ethics*, Oxford: Wiley, Blackwell, 2012; 245-60 at 254; and P. Hobson-West and S. Tommin 'Animals and anomalies: an analysis of the UK veterinary profession and the relative lack of state reform' (2015) 64 *Sociological Review* 47-63

The need for legislative reform is particularly acute in the veterinary context given the paucity of negligence cases, which means that the judiciary have a limited role in holding veterinary professionals accountable, in comparison to the human medical field - see S. Schnobel, 'Regulating the Veterinary Profession: taking seriously the best interests of the animal,' (2017) 33(4) *Professional Negligence* 239.

We strongly agree that revised legislation must put in place a mechanism for oversight of those businesses which own or control the majority of vet practices in the UK. This must require them to provide accessible information about quality and clinical standards and to provide an effective complaints framework which is clearly communicated to clients. Across the animal welfare sector it is clear that effective implementation and enforcement of legislation is critical. In that regard we agree with the CMA that a range of sanctions must be available and that smaller vet businesses should be allowed more time to comply. However ultimately sanctions will need to be enforced if there is a failure to comply. We also believe that in the future it may be necessary to consider more radical measures including requiring LVGs to divest some practices.

## **2. The Role of the RCVS**

Given its lack of effectiveness to date, we have significant reservations about the CMA's preliminary conclusion that the RCVS is the body best placed to take actions to support its proposed remedies. In our view the RCVS voluntary Practice Standards Scheme lacks teeth. However, given its status within the profession, and until Parliamentary time is available for legislation and there has been the necessary consultation, we can see that it makes sense to accord a monitoring and guidance role to the RCVS. In line with responsive regulation theory we would suggest that, while more hardline statutory measures are ultimately required to address the issues identified in the investigation, in the short term the RCVS can play a role. This they have a role in monitoring the implementation of these measures and providing support and guidance to veterinary practices on how to improve. The prospect of pending statutory regulation in the near future may also help to drive up standards.

Furthermore, given how debates are currently dominated by the bigger stake holder we are much in agreement that in the longer term a new regulatory body that is more independent of the profession is required.

## **3. Consent to veterinary treatment**

We agree with the central conclusion that it is important that clients pay a fair price when they visit a vet and that they can choose treatments that best suit their (and their pet's) circumstances. We are not surprised that the CMA investigation found evidence that this was not always the case in practice. We would suggest that, legally, a failure to provide pricing information and alternatives may invalidate client consent to treatment, since this

information is material to a valid informed consent. See Gray, C. Fox, M., Hobson-West, P. "Reconciling Autonomy and Beneficence in Treatment Decision-Making for Companion Animal Patients" (2018) 39 *Liverpool Law Review* 47-69.

We also agree that on the issue of **cremations** there are specific concerns around pricing and consent. Events organised under the auspices of the Pet Loss Network have suggested that pet owners are often too upset to enquire re pricing and that vets are reluctant to discuss finances at this time or to explain the difference between individual and communal cremations.

#### **4. Encouraging Competition and access to services**

More generally as regards the other proposals in this preliminary decision, we are very supportive of the encouragement of choice and competition since our experience of volunteering with small dog rehoming organisations clearly highlighted that many dogs are surrendered to rescues because owners are unable to afford necessary veterinary services.

At NWESSR the charity's major financial outlay after the costs of kennelling for dogs who could not be placed in a foster home was on veterinary costs. In part we feel this was attributable to a lack of choice given the dominance of one of these large companies in the region. More generally we would suggest that the CMA should also be mindful of how a lack of choice and competition can negatively impact rehoming organisations, which play such a crucial role in dealing with the fall out of dogs being abandoned on health grounds. We therefore strongly support the need for veterinary services to deliver competitively priced options for charities, including fixed prices for prescriptions and routine interventions such as vaccination as well as pet owners, since otherwise there will be a negative impact on animal welfare.

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