

VDS Response to the CMA Vet Provisional Decision Report

Complaints and Redress

Figure 9.1

- The source of the overview table is attributed to the VDS which is not correct.

Remedy 14

- Footnote 324 – this suggests the term ‘pet owner’ is extended to include the legal owner and any other person in charge of the pet or who presents it to the practice and that any of these individuals should be able to raise a complaint against a practice. Legally, practices owe a duty of care and confidentiality to their registered client (more often than not this person will be the pet owner but not always). It is undeniable that anyone presenting a pet to a practice, whether they are the owner and/or the registered client or a third party acting as their agent, should expect to receive a high level of service. However when pets are presented by third parties on behalf of the owner/registered client, in order to avoid breaching client confidentiality (and the RCVS Code of Conduct), practices will not be in a position to respond to complaints without their registered client’s consent unless there are animal welfare concerns or the request comes via an authority such as a police officer.
- The timeframe of 8 weeks for providing a full response to ‘actionable’ complaints includes reference to offering a ‘commensurate remedy’ if there is some merit to the complaint. This would not be appropriate for complaints which include an allegation of professional negligence and conflicts with the framework provided in the Professional Negligence Pre-Action Protocol (PNPAP) of the Civil Procedure Rules (CPR), which allows a period of up to three months and twenty one days before a formal response is due. Practices are obliged to carry professional indemnity insurance (for the benefit of consumer protection) and the proposed remedy should not act as a discouragement for practices to rely on their professional indemnity insurance policy where appropriate. The timeframe of eight weeks should therefore be disapplied for complaints which amount to a claim for compensation based on an allegation of professional negligence and in which professional indemnity insurers have been instructed by the practice to deal with the matter on their behalf. This safeguard would not affect the majority of complaints seen in practice, which do not involve allegations of professional negligence.
- 9.15 (d) Pet owners’ awareness of other routes of redress should include them being made aware that when professional negligence is alleged, the practice has the right to deny it if the allegation is considered to be unjustified, whereafter the correct route of address is through civil litigation, more often than not via the small claims court, which is cost-efficient to the owner.
- 9.27 VDS should be included as a stakeholder in assisting to create a template complaint handling policy.

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Remedy 15

- VDS is broadly supportive of mandatory mediation but only for those complaints which do not include an allegation of professional negligence. Enforcing a blanket approach to all complaints may in some cases serve to delay pet owners receiving appropriate financial compensation from a professional indemnity insurance provider. This may result in unintended adverse consequences for animal welfare if, for example, a patient requires immediate referral for remedial treatment due to a negligent act and a practice's professional indemnity insurer would have agreed to pay the associated costs direct.
- 9.72 The VCMS is funded currently by the RCVS which in turn is funded largely by registrant fees (veterinary surgeons and registered veterinary nurses) see 9.75 and footnote 389 which makes reference to the Dental and Optical Complaints Service. Registrant fees (and other costs incurred in handling complaints) are a business overhead cost, which will inevitably be reflected in fees charged to pet owners ultimately. The concept of this remedy remaining 'free to the pet owner' is therefore an oversimplification, and potentially misleading.
- 9.77 and 9.78 There is no reference to a proportionate reduction in RCVS registration fees if the proposed funding models were to be adopted. Independent practices, owned by veterinary surgeons would therefore appear to be disadvantaged by the proposed funding models and would effectively be paying twice compared to practices which are owned by non-vets.

Remedy 16a

- VDS is supportive of the development of a 'decision tree' with the caveat that in situations where a pet owner is making an allegation of professional negligence and requesting financial compensation, the right of a practice to refer such complaints to its professional indemnity provider must be preserved. This route for resolution should be included in any decision tree.
- 9.85 'Court Proceedings' should be described instead as the ability of an owner to submit a formal legal claim to a practice (which is likely to be forwarded to the practice's professional indemnity insurer for handling and to be subject to the PNPAP of the CPR).
- 9.86 VDS is concerned that if a binding redress scheme is introduced and mandated, this will add another layer of complexity and introduce delays in resolution for those cases where professional negligence has been identified. It also circumvents the PNPAP and the well-established legal framework that surrounds claims involving allegations of professional negligence.

Remedy 16b

- VDS is supportive of analysing information from complaints in terms of trends, causes of complaints etc in order to obtain insights and drive a culture of learning and improvement. It would however be helpful to have clarity on what information is envisaged as being required to be shared by practices with the RCVS within the anonymised complaints log. There should also be sufficient assurance for the profession that this data would not be used to pursue a professional misconduct investigation.

- 9.113 VDS would not be in a position to share confidential information about its membership and data on complaints with the RCVS. Much of this information would attract litigation privilege and sharing data with the Regulator would run the risk of impacting our relationship with our members by reducing their trust in the Society. Instead VDS would provide data to practices to enable them to comply with any requests from the Regulator.

We consider all the remedies being proposed under the Complaints and Redress section should apply to FOPs, referral centres and OOH providers to ensure fairness across the profession. It is unclear why the initial recommendation is for these remedies, if actioned, to only apply to FOPs.

Binding redress scheme

- This should not be mandatory in order to avoid the risk of circumventing the established legal framework that exists to deal with claims involving allegation of professional negligence.
- Who will run such a scheme and how will it be funded?
- Figure 9.1 refers to cases being referred to the scheme where mediation was not considered appropriate. What cases are envisaged as being appropriate for the binding redress scheme but not for mediation?
- There is reference to cases already being dealt with by the Courts being inappropriate for any redress scheme. Would this include cases being dealt with by the practice's professional indemnity provider or a firm of solicitors acting on behalf of the practice? If so, this requires further clarification within the document.
- Complaints which include an allegation of professional negligence should not be determined under a binding redress scheme unless it is envisaged that providers of the scheme will abide by the PNPAP, using appropriate independent expert veterinary evidence where necessary to determine negligence and/or the quantum of damages.
- If the aim of the scheme is to only consider low level complaints, and if the cost of the scheme falls to the practice on a per case basis, there is a danger practices may opt to 'pay off' such complaints on a pragmatic basis, even when there might be no merit to the complaint, in order to avoid having to engage with the scheme. This will inevitably lead to increased costs at the practice level which ultimately will be passed on to the consumers.

General observations

- Remedies 5a and 5b appear to only apply to FOPs and the RCVS. We consider these remedies should also apply to referral centres and OOH providers, particularly given the potential for costs in such practices to be considerably higher when compared with what pet owners would be more used to in FOPs.
- Remedy 6 should apply to all practices and not only FOPs.
- Remedy 7 should also apply to referral centres.
- Remedy 9 should also apply to all OOH providers and referral centres as many will already be supplying own brand medicines.

- Remedy 13 should also apply to referral centres and OOH providers.
- It is also very important to bear in mind that veterinary professionals are required to uphold animal welfare above all else. Any suggested remedy must not introduce an unintended conflict of interest between a professional's duty towards their customers and the animals entrusted to their care. The conflict between a professional's view of the best interests of an animal and the preferences of the pet's owner is a real and common issue in day-to-day veterinary practice. We are concerned that implementing a Consumer Duty obligation without considerable thought around the conflicts which may arise as a result could be very problematic and have detrimental consequences for animal welfare.

Meeting with CMA

Given the VDS's comprehensive knowledge of complaints and claims in the UK veterinary market, we believe a meeting with the CMA to explain our thinking in more detail would be beneficial.

13.11.2025