

## Conclusions and recommendations

### I The 'conditions'

84. In considering whether the 'conditions' to which the 1948 Act (as amended and extended)<sup>1</sup> applies prevail we are required by our terms of reference to limit consideration to 'conditions which prevail or may prevail by virtue of arrangements or practices (falling within section 2(4) of the Act of 1965) whereby two or more persons supplying the relevant services accept restrictions on the advertising of such services'. This means that we can find the 'conditions' to prevail if we are satisfied that the supply of veterinary services in the United Kingdom is, to the extent of at least one-third, by or for two or more persons who, whether voluntarily or not, and whether by agreement or arrangement or not, accept restrictions on the advertising of such services and thereby so conduct their respective affairs as in any way to prevent or restrict competition in connection with the supply of veterinary services (whether or not they themselves are affected by the competition and whether the competition is between persons interested as persons by whom, or as persons to whom, services are supplied).

85. We have described in chapter 2 the severe restrictions on advertising which practising veterinarians are advised by the Royal College to observe. In the *Guide to Professional Conduct* these restrictions are expressed in the form of advice but are accompanied by a reminder that 'the Veterinary Surgeons Act has given the College jurisdiction over the professional conduct of every veterinary surgeon and veterinary practitioner in the country' (see paragraph 35). Although there are no doubt cases where some veterinarians fail to observe the precise letter of some of the paragraphs of the Guide, we are satisfied that in general all suppliers of veterinary services in the United Kingdom accept the restrictions on advertising as laid down in the Guide. The restrictions prevent every veterinarian from using advertising as a form of competition to obtain business. It can hardly be denied that the use of that form of competition, if it were available, could be expected to result in some shift of business from one veterinarian to another; and it is indeed the prospect of advertising being used for this purpose that the Royal College itself regards as one of the strongest arguments against advertising. For immediate purposes, however, we are not concerned with the question whether the kind of competition that would arise if there were freedom to advertise would be desirable or undesirable. We are satisfied that the restrictions on advertising of veterinary services must have some restrictive effect on competition among the suppliers of those services.

86. We conclude therefore that the 'conditions' prevail as respects the supply in the United Kingdom of veterinary services by virtue of arrangements or practices of the kinds specified in the reference, as described in paragraph 84.

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<sup>1</sup>Since the reference was made before the commencement of the Fair Trading Act 1973, we are required (by paragraph 7 of Schedule 11 to that Act) to make our report in accordance with the enactments under which it was made, ie the 1948 Act as amended and extended.

## II The public interest

87. The matters on which we are required to form a judgment as to their effects upon the public interest are limited to those of which we have taken account in reaching our conclusion as to the prevalence of the 'conditions'. In other words, in considering whether the conditions, or any things which are done by the parties concerned as a result of or for the purpose of preserving those conditions, operate or may be expected to operate against the public interest, we are required to limit our judgment to the effects on the public interest of the arrangements or practices restricting the advertising of veterinary services. In forming our judgment, however, we are entitled to take account of the general context in which these services are supplied.

88. There are approximately 1,500 veterinary practices in the United Kingdom (see paragraph 24). The area within which any one practice can provide its services is likely to be limited. Most of the clients of an urban practice probably live within a mile or two of the surgery; and few urban animal owners are likely to have a wide choice of veterinary practices within what they would normally regard as a reasonable travelling distance. Veterinary services to farmers and other owners or groups of owners of animals kept for special purposes (such as horses for racing, show-jumping etc and greyhounds for racing) are often provided on a regular basis, involving domiciliary visits by the veterinarian; but although some country practices may extend over wider areas than a normal urban practice the average farmer's choice of practitioners within a convenient distance is probably little wider than that of the town dweller.

89. Under the Veterinary Surgeons Act, 1966, no person whose name is not entered in one of the registers kept by the Royal College may practise veterinary surgery<sup>1</sup> in the United Kingdom. The Act does not place any limit upon the number of persons who may be so registered. But it provides for the attainment of the equivalent of a university degree in veterinary surgery as a condition of normal registration; and, having regard to the limited number of places available in university veterinary schools, this has a fairly restrictive effect on the number of veterinarians in practice at any given time.

90. The Act also gives a committee of the Council of the Royal College power, subject to the right of appeal to the Judicial Committee of the Privy Council, to direct the removal or suspension from the appropriate register of the name of a veterinarian found 'guilty of disgraceful conduct in any professional respect'. This, effectively, enables the Royal College to lay down standards of conduct to be observed by practitioners if they are to remain registered. The Royal College does not, in fact, lay down standards in the form of explicit mandatory rules; but, as we have said, the advice given on conduct in the Guide is, in general, accepted by veterinarians. The restrictions on advertising observed by the profession are an integral part of this advice.

91. Broadly the effect of the restrictions is to prohibit an individual veterinary practice from indulging in any form of advertising, promotion or publicity except for a bare minimum of permitted forms of publicity regarded by the

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<sup>1</sup>Veterinary surgery is not confined to surgery in the restricted sense but covers the art and science of veterinary surgery and medicine; for a full definition see footnote to paragraph 9.

profession as essential for keeping the using public informed of the existence and location of practices or as desirable in the interests of the profession as a whole. The Guide has three basic provisions on this subject; they are those which state (i) that 'no veterinarian should attempt to secure clients or to gain reputation by means of any advertisement whether direct or indirect', (ii) that 'no veterinarian should provide, permit or inspire any article, note or photograph in the lay press which has the intention of giving him or any other veterinarian personal publicity', and (iii) that 'a veterinarian should not, under any circumstances, canvass or tout for practice whether personally or through the agency of others'.<sup>1</sup> Some of the other provisions on advertising in the Guide are clearly intended, partly at least, to reinforce the prohibition of indirect advertising (eg those concerned with location of professional premises, with branch and mobile surgeries, with ancillary services and with testimonials and product support<sup>2</sup>). The remaining provisions on advertising set out in detail the limited exceptions from the general rule which are regarded as necessary for informing the public or desirable in the interests of the profession. Broadly, the provisions for keeping the public informed permit certain strictly limited categories of information to be provided on a plate or sign outside the veterinarian's premises (which, since 1973, may be illuminated at night and, as from the present year, is no longer specifically limited as to size), on his professional stationery (which cannot, however, be used to approach non-clients), in circulars to bona fide clients and, as from the present year, in two successive notices in the local press on the occasion of a change of address or of partners (including the setting up of a new practice), in the 'yellow pages' of the telephone directory, and in local collective schemes for announcing information to the public 'in a professionally acceptable form'.<sup>3</sup> In addition, there are provisions permitting signed press articles, appearances in public activities and in radio and television programmes, and the appearance in the press of 'features relating to individual practices with premises of a particularly high standard';<sup>4</sup> the relevant passages in the Guide make it clear that these exceptions are made because of the publicity gained for the profession as a whole and that in no case must there be any abuse of the latitude allowed in order to gain personal publicity.

### **Advertising and the veterinarian's responsibilities**

92. Various possible advantages of the restrictions on advertising have been advanced in the course of discussion. There can be no doubt, however, that the view of the Royal College that the restrictions are essential in the public interest derives mainly from its, and its members', sense of the special professional responsibilities to clients and to the public interest which every veterinarian is expected to recognise. The services provided by veterinarians involve the use of esoteric skills acquired by specialised training. Veterinarians, like members of other professions supplying services involving the exercise of such skills, regard themselves as in a position of trust in relation to their clients. Furthermore, veterinarians believe that, over and above the responsibility to the client's interest, they have a duty to protect the interest of the patient, that is of the animal requiring treatment, even if this should involve some conflict with the

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<sup>1</sup>Paragraphs 10.1, 10.2 and 10.3 of the Guide—see Appendix 2.

<sup>2</sup>Paragraphs 3, 6, 9 and 11 of the Guide.

<sup>3</sup>Paragraphs 5, 7, 8, 10.4 and 10.6 of the Guide.

<sup>4</sup>Paragraph 10.2 of the Guide.

wishes of the client. And they argue that overt competition among veterinarians to obtain and keep the custom of clients would be incompatible with that attitude of impartiality and moral integrity which is essential if the practitioner is faithfully to carry out his overriding duties to patient and client.

93. The main questions for us that emerge from these arguments are:

- (1) Do the suppliers of veterinary services assume special responsibilities, and is it desirable that they should do so?
- (2) If special responsibilities are assumed and it is desirable that they should be assumed, would freedom to advertise be likely to have adverse effects on the suppliers' ability to carry out these responsibilities?

94. With regard to (1) of paragraph 93, the veterinarian, as we have said, assumes both that he is in a position of trust in relation to his client and that he has an overriding responsibility for the interest of his patient. So far as the client's interest is concerned, the ability of a buyer to judge the quality of the goods and services he is offered varies greatly according to the nature of the goods and services concerned. He has to buy some goods and services largely on trust. In some of these cases it may be possible subsequently to identify defects and hold the supplier responsible; but in other cases this can be much more difficult, even when the consumer is vigilant and takes advantage of the protection increasingly given to consumers by legislation and otherwise. Some users of veterinary services, such as farmers, may be capable of judging the quality of the services rendered to them. But we accept that many users of veterinary services are likely to be so ill-informed about the nature and quality of these services as to make it difficult for them to recognise deficient service and so to protect themselves against its consequences. It is therefore in the interest of users of their services that veterinarians should assume a special sense of responsibility in their dealings with their clients.

95. So far as the responsibility for the interest of the patient is concerned, we think that the public accepts, and we would ourselves accept, that domesticated animals have some independent interests which should be respected, the most obvious such interest being that they should so far as possible be maintained in good health and relieved of physical suffering. The veterinarian, because of his training, can be expected to be better able than the layman both to diagnose the patient's interest in this respect and to decide what remedies are appropriate. To this extent we agree that it is desirable that the veterinarian should assume a special responsibility for the interest of his patient.

96. With regard to (2) of paragraph 93, the Royal College contends that freedom to advertise would be likely to stimulate an undesirable form of competition within the profession, in that individual veterinarians, instead of co-operating with one another, would be seeking the custom of clients and, in the process, some might be tempted both to make unjustifiable claims to attract clients and to provide a lower standard of service to patients. It is felt by the profession, in other words, that the present avoidance of overt competition among practitioners greatly strengthens their determination and ability to put the patient's interest first, the client's interest second and their own interest last; whereas competition for business, provoked or intensified by advertising, would place veterinarians under such pressure that the interests of clients and, above all, those of patients would suffer.

97. We are not convinced by these arguments. The welfare of a domesticated animal is within the control of its owner unless and until the latter chooses to place it within the care of a veterinarian. If veterinarians were free to advertise, the processes by which owners decided that veterinary attention was required and selected their veterinarian (generally from a very small number who were locally available) could hardly be more arbitrary than they are at present. The Royal College does not dispute that veterinarians have their share of human fallibility; some of them under present conditions may fall short of the best professional standards, either occasionally or even habitually, though clients may not readily detect such failings. It is not entirely obvious, from the Royal College's own arguments, why such failings should be expected to occur more frequently if owners' decisions to seek veterinary services were to be influenced to some extent by claims made in advertisements.

98. We are not disposed, however, to dismiss entirely the view that some kinds of advertising could have harmful effects on public confidence in the veterinary profession, and that such a reduction of confidence might in turn lead to a significant deterioration in the quality of service provided by the profession. Although there are no doubt some exceptions, we think that animal owners on the whole believe that members of the veterinary profession know better than themselves what is for the good of their animals and wish them to exercise their skills impartially. If all kinds of advertising were permitted, some veterinarians might make claims which were untrue or reflected on the competence of other veterinarians; and this might cause other veterinarians to respond. The effect on public confidence in the profession could be disproportionately severe; and the more sceptical the public became of the profession's impartiality and integrity, the greater would be the temptation of the veterinarian to provide a service with little regard for any special responsibilities. Moreover, we accept that some kinds of advertising might have harmful effects on confidence within the profession and that this could have harmful effects for the public. In our view, however, there are some kinds of advertising that would not have any of these harmful effects.

99. It is not our purpose to pronounce upon the advantages and disadvantages of advertising in the field of goods and services as a whole. We can hardly arrive at a judgment on the effects of restrictions on advertising in one small part of that field, however, without taking account of the fact that freedom to advertise to the extent that it exists at present over the greater part of that field is not universally regarded as being without some disadvantageous consequences.

100. In the view of the Royal College 'a great deal of commercial advertising is designed to create a feeling of need and only then to fill it', and it adds that 'advertising is frequently something against which the public requires protection rather than something of which they are in danger of being deprived'. While there is some element of truth in both these statements, every advertiser must, if he is to attract demand, try to take some account of the interests of the potential purchasers; and in this sense it is a function of advertising to promote the interests of consumers as well as that of the advertiser. There remains, certainly, a recognised risk that the advertiser may mislead the consumer. In the field of goods and non-professional services this is regarded as an acceptable risk because of potential counter-balancing advantages to the consumer and

the public interest, though some attempt is made to minimise the risk by applying general controls (eg by legislation or by other means of regulation and restraint). We express no view as to the desirability of tighter control of advertising in general. Two points that seem to us relevant to the present inquiry, however, are, first, that the present controls on advertising by veterinarians are severe, and, secondly, that the veterinarians seem to us to ignore the extent to which the interests of their clients might be served by their own advertisements.

101. In the light of paragraphs 92 to 100 above our position so far may be summed up as follows. We accept that veterinarians have a special responsibility to their clients and a further responsibility for their patients. We accept that there are some kinds of advertising which, if permitted and indulged in, could lead to a significant deterioration in confidence within the profession, in the public's confidence in the profession, and therefore in the profession's ability to carry out those special responsibilities which it is in the public interest that it should assume. There is, therefore, a case for the continuance of a degree of restriction of the advertising of veterinary services. But it does not follow that the kinds of advertising that we think should be avoided are those at present forbidden to veterinarians.

#### **Possible disadvantages of advertising restrictions**

102. The principal possible objections to the restrictions on advertising observed in the veterinary profession appear to us to be that (1) they deprive users and potential users of helpful information which might otherwise be available to them, (2) they reduce the stimulus to efficiency, to cost-saving, to innovation, to new entry to practice and to the setting up of new practices, and to competition amongst veterinarians, and (3) by eliminating the use of an overt method of stating competitive claims they enhance the more undesirable effects of less open methods of self-promotion. In the following paragraphs we consider what weight needs to be given to these objections in the actual context in which members of the profession offer their services. We bear in mind in this connection, on the one hand that for practical purposes competition amongst members of the profession could only take place on the local basis of small groups of suppliers (see paragraph 88) and, on the other hand, that with or without restrictions on advertising, the profession as a whole is protected by its statutory reservation of function (see paragraph 89).

#### **Effects on information to the public**

103. With regard to (1) of paragraph 102, we agree with the Royal College that there is little evidence of dissatisfaction on the part of the public about the information available to them on veterinary services. It does not follow that this information is as satisfactory as it might be, since the public may tend to be uncritical of existing arrangements because they are unaware of alternatives. We do not think that there is any real difficulty, whether in towns or in the country, about finding a veterinarian when he is needed. We do not, however, see why any veterinarian should be debarred from providing the kind of information about the nature of his practice that could help members of the public to choose the particular veterinarian to consult in their particular circumstances.

104. To this the Royal College replies, first, that the individual member of the public has little choice locally and, secondly, that, even if there were some apparent need, individual claims to specialisation could be dangerously misleading. As to the first objection, we think that no unnecessary obstacle should be put in the way of the public having ready access to information on which to exercise their choice of veterinarian, however small the number of practices available to them may be; moreover, given more knowledge of the location of practices and of the differences between one practice and another, some users might be prepared to travel rather longer distances than they do at present for the sake of getting the particular kind of attention they want or even for experiment's sake. As to the second objection, we have noted that the Royal College accepts that practices do differ in character; some are 'mixed' practices, some are largely, or almost entirely, small animal practices, some are largely farm practices, some cater for the veterinary needs of particular species of farm or other animals, some have their own veterinary hospital or laboratory facilities.<sup>1</sup> The Royal College says that any veterinarian who feels unable to deal with a particular patient has a duty to refer the client to another veterinarian who can supply the service required; but we do not see why the veterinarian who can supply that service need be prevented from telling the public that he can do so. Assuming that a general restraint can be placed upon certain kinds of advertising (see paragraph 101), we see little danger in permitting veterinarians to inform the public that their practices can handle any animal, or that they are predominantly, or even wholly, concerned with particular species of animal, or that there are particular species that they do not handle, or that their practices have particular technical facilities available. There would, of course, be some element of risk, in that the public might assume that such statements implied a higher degree of expertise than was warranted. But we do not think that this risk would be any more serious than that arising at present, where members of the public may be led to assume that all veterinarians can be expected to be equally competent for their purposes. In either situation the public have to accept a good deal on trust.

105. It does not necessarily follow from what we have said in the foregoing paragraphs that we would think it desirable that veterinarians should be free to claim any kind of specialisation whatever. To claim experience, for what that may be worth, with particular species of animals, or with all species, or that the practice has particular technical facilities is one thing. To claim to be a specialist in particular areas of treatment (eg eyes, teeth or old age) would be another. In this latter case, we think there is more to be said for the Royal College's view that any claims to expertise of this kind should be based upon a special academic qualification as well as upon experience. But veterinarians who have such qualifications (if and when they are available—see paragraph 73) should be free to inform the public of that fact.

106. For the reasons given in paragraphs 103 to 105, we think that it is a significant disadvantage of the existing restrictions on the advertising of veterinary services that they deprive the public of information which they ought to have, and which in our view they could be given without undue risk of abuse, about the kinds of service offered by individual veterinary practices.

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<sup>1</sup>The British Veterinary Association also appears to recognise that members' 'sectional' interests vary—see paragraph 18.

### **Effects on efficiency and the competitive situation**

107. With regard to (2) of paragraph 102, the possible objections to the restrictions in this respect are that, by eliminating the use of advertising, they deprive the more efficient practices of something which might help them to expand at the expense of the less efficient, and that, by depriving new entrants and practices which wish to introduce new methods or new kinds of service of a means of attracting demand, they discourage both new entry and innovation; more generally, insofar as vigorous competition among suppliers may be expected to stimulate efficiency and so contribute to cost and price reduction, any inhibition on overt competition may be expected to produce contrary, disadvantageous effects.

108. We know of no method of making any quantitative comparison between the present state of efficiency of veterinary practices and their hypothetical state of efficiency if advertising were permitted. There is at least no obvious reason for supposing that freedom to advertise would be likely to lead, on average, to a lower degree of efficiency than exists at present. In this connection the Royal College has argued that freedom to advertise would simply lead to an increase in costs as practices competed with one another in wasteful expenditure. We do not dispute that some advertising cost might be incurred simply to neutralise advertising initiated by other veterinarians, thereby raising total costs without causing re-allocation of business. But not all advertising would be of this kind; and insofar as it might bring about some re-allocation of business between the more efficient and the less efficient practices there would be an improvement in the efficiency with which the work as a whole was carried out. Considering the nature of the service and the local scope of most veterinary practices, we think it unlikely that any practitioner would indulge in an expensive advertising campaign.

109. So far as innovation and new entry are concerned, we think it can be said more positively that the present arrangements are likely to have disadvantageous effects from the point of view of the public interest. It is in the public interest, in our view, both that the introduction of new and better methods and types of service should be encouraged and that, given the protection which the profession as a whole enjoys from third-party competition, the entry to practice of new competitors within the profession should not in any way be hindered.

110. As regards innovation, the Royal College says that research is more effective on a co-operative basis than if undertaken individually, that the results of research are communicated to the whole of the profession and that every veterinarian is therefore able, if he wishes, to introduce innovatory methods and services into his practice as soon as they are known to be practicable and desirable. We doubt, however, whether such co-operative measures provide, in themselves, a sufficient stimulus to individual practices to introduce innovatory methods. These may call for capital expenditure, and not all practitioners will wish to take the risk; and at present the more enterprising who might wish to do so could be deterred by the circumstance that they would be unable to set about creating demand for the form of service they wished to offer by advertising it. It seems possible, therefore, that an effect of the restrictions on advertising is to slow down the introduction of innovations in the form of services to the public by discouraging individual initiative in this respect. The Royal College

says that, even if it were to accept that there were some truth in this, it would still consider that individual advertising would have an ultimately disadvantageous effect on innovation, because veterinarians would no longer be prepared to pool the results of their research and experience for the common benefit. We doubt the force of this argument. In industry, it is not unknown for suppliers to be in open competition for the market while exchanging research information. Few practising veterinarians can, in fact, be in a position to conduct individual research on anything but a very limited scale, and we imagine that most would expect to gain more than they would lose by continuing to pool information.

111. As to new entry, it would be unrealistic to assume that inability to advertise is likely to be the only difficulty confronting the newcomer to practice in this profession. Apart from any problem he may have in raising the necessary capital, he is likely to find himself seeking, or awaiting, clients from a relatively small area around his surgery which is already served by several established practices. Whether or not he could advertise his presence, he might well find that clients were slow to approach him unless there were special circumstances, such as an overall excess of demand over supply of the service in the locality, or some particular reason for dissatisfaction with the service provided by a local practitioner. There is, nevertheless, a material difference between having to await clients and being able to seek them. Although the Royal College now permits a new practice to issue two discreet local advertisements in order to make its existence known, it remains the general rule of the profession that clients should not be sought and, above all, that no veterinarian should do anything which might be interpreted as an invitation to another veterinarian's client to become his own client. This is a restriction which bears particularly hardly upon the new entrant to practice. In its present form it must discourage some qualified entrants from setting up separate practices in competition with the already established practitioners, and this is an effect which we regard as particularly undesirable in a profession to which entry is restricted by law (see paragraph 89).

112. In the light of what we have said in paragraphs 107 to 111, we think that the existing restrictions on the advertising of veterinary services have further significantly disadvantageous effects, in that they are likely to delay the introduction by some practices of innovatory methods and services and to discourage the setting up of new practices. Both of these effects are likely to have consequential disadvantageous effects on the competitiveness and efficiency of the profession generally.

#### **Effects on the public attitude to the profession**

113. With regard to (3) of paragraph 102, there is scope for suppliers of many kinds of services to attract customers by hints or by more explicit 'touting'. Or a supplier may think it worth his while to establish a reputation in public affairs because this may indirectly recommend him to numbers of potential customers. Such methods can vary from the honourable to the disreputable. The scope for using such methods would appear to be greatest where the service is based on esoteric skills and is normally supplied by individuals in business on their own or in partnership rather than by large corporations. This is not to suggest that we believe disreputable methods to be in common use within the veterinary profession; but this profession, like other professions, is aware that no rules can ensure that they will never be used by any of its members.

114. The argument against restrictions on advertising in this connection is not that their removal could be expected to eliminate these other methods of attracting custom. Rather the argument is, in the first place, that a limitation on the use of explicit challengeable claims in advertisements may enhance the influence upon clients and potential clients of hints of claims that are hardly open to challenge and may have little bearing upon the client's real need. Secondly, it is that, if the suppliers of a service are known to deny themselves the use of overt advertising but are believed by the public, whether rightly or wrongly, to be willing to promote their businesses by backstairs methods, the public may be more sceptical of their integrity than they would otherwise be, with effects which are detrimental to public confidence in the profession and ultimately to the public interest. We believe that this last consideration is more important than the veterinary profession, and perhaps most professions, may realise. By over-emphasising the consequences of its 'special' responsibilities a profession can defeat its own purpose. However devoted the members of a profession may be to the carrying out of their special responsibilities, they are all at the same time in business to earn a living by supplying their service. The public are well aware of this, and we think that if the profession were more frank with the public in acknowledging the supplier's personal interest in conducting a successful and remunerative business, the public might be more rather than less ready to recognise that this personal interest did not mean that other interests were disregarded.

115. For the reasons given in paragraphs 113 and 114 we conclude that an additional significant disadvantageous effect of the existing restrictions on the advertising of veterinary services is that they may enhance the influence upon the public of other, less desirable, methods of attracting custom, and tend to create a false image of the profession which is harmful to public confidence and to relations between the profession and the public.

#### **Conclusions on the public interest**

116. We have found that the existing restrictions on the advertising of veterinary services result in significant disadvantages to the public interest. We conclude, therefore, that:

- (a) The 'conditions' which we have found to prevail (paragraph 86) operate and may be expected to operate against the public interest because the restrictions on advertising by virtue of which those conditions prevail (i) unduly restrict the information given to the public about the kinds of services offered by individual veterinary practices (paragraph 106), (ii) are likely to delay the introduction of innovatory methods and services and the setting up of new practices with probable disadvantageous effects on the competitiveness and efficiency of the profession generally (paragraph 112), and (iii) may enhance the influence upon the public of other, less desirable, methods of attracting custom and tend to create a false image of the profession which is harmful to public confidence and to relations between the profession and the public (paragraph 115);
- (b) There are no things done by the parties concerned as a result of, or for the purpose of preserving, the 'conditions' which operate or may be expected to operate against the public interest.

### III Recommendations

117. It does not follow from our conclusion in paragraph 116 about the disadvantageous effects of the existing advertising restrictions upon the public interest that we think veterinarians should henceforth be allowed to advertise without any restriction. We have made it clear that in our view there is a case for the continuance of a degree of restriction of the advertising of veterinary services because some kinds of advertising could lead to a significant deterioration in confidence within the profession, in the public's confidence in the profession and therefore in the profession's ability to carry out those special responsibilities which it is in the public interest that it should assume (paragraph 101). We agree with the representatives of the advertising industry that no clear distinction can be drawn between advertising which is purely informative in purpose and that which is persuasive in purpose (see paragraphs 58 to 60). The Royal College appears to take a similar view for, being convinced that no individual veterinarian should indulge in persuasive publicity, it lays down a code which all but prohibits individual advertising, the only permitted kinds being those with a minimum of persuasive content which are regarded as essential to inform the public of the availability of veterinary services or desirable in the interests of the profession as a whole. This, basically, is where we disagree with the Royal College. We accept that there are some kinds of advertising which, if permitted and indulged in, could have harmful effects in the context of the veterinary profession and its services, and that there should continue to be a safeguard against the risk that individual veterinary practices might bring disrepute upon the whole profession by the methods or matter of their publicity. But we think that, for these purposes, the line does not have to be drawn where the Royal College now draws it, and that a new approach, providing considerable scope for advertising, is required. In paragraphs 118 *et seq* we describe the arrangements which would, in our view, substantially remedy the adverse effects, as summarised in paragraph 116, of the present restrictions while providing the necessary safeguards.

118. Subject to certain specific restraints (see paragraph 119), we would see nothing improper or harmful to the relations between the profession and the public in allowing any individual veterinary practice to advertise to the extent and by the methods it thinks fit. Such publicity, whether by way of advertisements in the press or other news media or of circulars or by any other means, could not only draw attention to the existence of the practice, the surgery hours and the qualifications of the practitioner and of his employees but could also describe the nature of the practice, including allusions to the species of animal which are or are not treated by the practice and to any facilities which are available to or provided by the practice. Nor would we see any objection to the practitioner, should he think it appropriate, drawing attention to any other feature of the practice, eg, the convenience of its location, its readiness to deal with emergencies, or the level of fees which it charges. A veterinarian who advertised in such a way would, to an extent, be inviting custom, including the custom of other veterinarians' clients; and he might, perhaps, be inviting particular kinds of custom. But, as we have said, the public are well aware that veterinarians are in practice for the purpose, among others, of earning a living. We do not think they will be surprised or shocked if members of the profession invite custom explicitly and informatively. Nor, given the appropriate restraints, do we think such advertising will be likely to create any new risk to the interests of

either clients or patients. We would expect on the other hand that the increased freedom to advertise would be conducive to improvements in communication and relations between the public and the profession and in the general efficiency of the profession, to the introduction of new methods and to the facilitation of new entry to practice.

119. In paragraph 91 we have drawn attention to the three basic provisions on advertising which at present rule out any attempt by a veterinarian to obtain business, reputation or publicity by advertising or through the 'lay press' or by personal canvassing. We consider that these provisions should be terminated and replaced by a rule which would permit any veterinary practice in the United Kingdom to use, whenever it thinks fit, such methods of publicity as it thinks fit, provided that:

- (1) No advertisement, circular or other form of publicity used by a veterinary practice should claim for that practice superiority in any respect over any or all other veterinary practices.
- (2) Such publicity should not contain any inaccuracies.
- (3) Such publicity should not contain any claims to specialisation in particular areas of veterinary treatment except insofar as these are justified by the veterinarian's particular academic qualifications, provided that a veterinarian may state the species of animal he does or does not handle and any facilities available to or provided by him.
- (4) While advertisements, circulars and other publicity may make clear the intention of the veterinary practice to seek custom, they should not be of a character that could reasonably be regarded as likely to bring the profession into disrepute.

120. Since we do not agree with the ways in which the veterinary profession, through the Royal College, has exercised its power to regulate advertising, we have considered whether it might be advisable that some independent representation of the public interest should be introduced to play a part in the formulation or enforcement of the advertising code of the profession. For various reasons we have reached the conclusion that this is not practicable. Provided the basic changes we regard as necessary are made in the present code, we see no need for modification of the present disciplinary arrangements within the profession. The restraints proposed in paragraph 119 should, therefore, be enforceable through the Royal College's existing disciplinary processes.

121. Although we have outlined the substance of the general rule on advertising which we propose, we think that there should be consultation between the Royal College and the appropriate authorities under the Fair Trading Act before the rule is formulated in precise terms. As we have indicated in paragraph 91, many of the subsidiary provisions on advertising in the Guide are concerned with the prevention of indirect methods of advertising and with the regulation of those exceptional forms of advertising that are at present permitted. Given a general rule such as we suggest, we would see no need for additional provisions on plates and signs, professional stationery, changes of address or partners, ancillary services, directories, information of services in an area, or reprints (paragraphs 5, 7, 8, 9, 10.4, 10.5 and 10.6 of the Guide). In the Guide there is, however, no clear segregation between provisions which have a bearing upon

advertising and publicity and other provisions of the ethical code. It will be necessary to reconsider and revise many other passages in the Guide to ensure that they are not in conflict with the intention of the advertising rule we propose. Provisions which would need to be considered in this connection would include those relating to veterinary ambulances, veterinary hospitals, use of title of 'specialist' or 'consultant', location of professional premises, branch and mobile surgeries, testimonials and product support, tendering, and ethical relationships between veterinarians (paragraphs 1.5, 1.7, 2.1, 3, 6, 11, 12 and 14 of the Guide). The consultation referred to above could cover all these matters. It may also be necessary to bear in mind that the provisions of the Guide are not confined to veterinarians practising in the United Kingdom.

122. When formulated in more precise terms, a rule such as we have outlined need be neither vague nor unenforceable. The Royal College's disciplinary powers will remain intact; it will still, ultimately, be for its disciplinary committee to determine whether a veterinarian has been 'guilty of disgraceful conduct in any professional respect' and, if necessary, to apply the appropriate penalties, which can include removal or suspension from the register. Indeed, the power of this committee under the Veterinary Surgeons Act 1966 to determine what is and is not to be regarded as 'disgraceful conduct' will remain. Our recommendation is made in the expectation that the Council and all relevant committees, including the disciplinary committee, will accept that advertising, subject to the conditions we propose, will not henceforth be regarded as in any way improper for veterinarians in the United Kingdom. It is in this expectation that we have said, in paragraph 120, that we see no need for modification of the present disciplinary arrangements.

ASHTON ROSKILL (*Chairman*)

ROGER FALK

MARGARET HALL

E L RICHARDS

S A ROBINSON

HARRY STREET

B S YAMEY

E L PHILLIPS (*Consultant*)

25 June 1975