Professional Indemnity Insurance and Cover for Representation Costs in Criminal and Disciplinary Proceedings

GUIDANCE NOTES

The Veterinary Defence Society Limited
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Important Notice

These notes are provided for guidance only, and should not be used in any way to affect the construction or interpretation of the policy wording. These notes are not intended to be comprehensive and The Veterinary Defence Society Limited ("The VDS") relies on the policy wording and members should always read the policy wording for the full meaning of the policy and the terms of the insurance cover.

Please also refer to the Notes and Important Information on Completing the Proposal Form and the Notes and Important Information referred to in the Invoice.

Background

The VDS is a mutual insurance company which provides insurance to its members. The VDS policy provides professional indemnity insurance to veterinary surgeon members of the VDS and corporate members in respect of liability for civil claims arising from veterinary professional negligence. See below for further details, but broadly a corporate member is the limited company or limited liability partnership through which the practice operates. The policy also gives insurance cover for the cost of legal representation in connection with disciplinary proceedings and also criminal proceedings, relating to the practice of veterinary medicine resulting from Normal Veterinary Work (as defined in the policy).

The VDS also covers veterinary nurse members who are Registered Veterinary Nurses in the UK and veterinary nurses in Ireland registered with the Veterinary Council of Ireland (together described as "RVNs" below), for the cost of legal representation in connection with disciplinary proceedings, and also criminal proceedings, relating to the practice of veterinary nursing and resulting from Normal Veterinary Nursing Work (as defined in the policy).

The full terms on which the insurance is provided are set out in the policy wording and policy schedules which form part of the policy. Reference below to the Schedule is to the schedule to the policy.
Practice Insurance

VDS insurance is practice based, and provides both cover for civil claims and for legal representation in criminal and disciplinary proceedings for all the veterinary surgeons in the practice who are listed in the Schedule and Corporate Members (see below). There is also cover for civil claims for veterinary surgeons who have now left the Practice provided they were included in previous VDS policies. The VDS defines a “Practice” as the organisation through which veterinary work is carried out and this may be one or more veterinary surgeons carrying on veterinary work either as a sole practitioner or in partnership or any other form of association such as a limited company or a limited liability partnership. From 1 January 2014, the cover provided for civil claims relates to the veterinary work undertaken on behalf of the Practice, although cover is given for emergency veterinary first aid and pain relief provided to animals even if this is done outside of Practice work. Cover for representation costs for veterinary surgeons and Corporate Members in criminal and disciplinary proceedings is given in respect of veterinary work undertaken on behalf of the Practice and outside the Practice.

The practice policy arrangements also provide RVNs employed by the Practice, whose details have been provided to the VDS and who are listed in the Schedule, with cover for the cost of legal representation in criminal and disciplinary proceedings relating to veterinary nursing work they undertake on behalf of the Practice.

Premium reductions are given by the VDS in respect of veterinary surgeons who work for 150 days or less (or the hourly equivalent) in the policy year. When declaring Part Time status you must accurately describe the extent of the normal veterinary work that will be undertaken by the Part Time veterinary surgeon. The policy allows for three categories of Part Time Working.

- PT 150 for veterinary surgeons who will work no more than 3 days per week on average
- PT 100 for veterinary surgeons who work no more than 2 days per week on average
- PT 50 for veterinary surgeons who work no more than 1 day per week on average

Examples:
- A veterinary surgeon who worked two days a week for a Practice would fit the PT 100 category.
- A veterinary surgeon who worked two days a week and one weekend in four with one night a week on call would fit the PT 150 category.
- A sole trader working as a veterinary subcontractor one day a week for another Practice would fit the PT 50 category.
- A veterinary surgeon who undertook Racecourse duties, 24 days a year, outside of his routine day to day employment for a different Practice would fit the PT 50 category.

Veterinary surgeons, who undertake secondary veterinary work which is not on behalf of the Practice, will not be covered for civil claims for compensation under the practice policy (except as described above). Therefore the VDS offers insurance for civil liability for such veterinary surgeons, by way of a separate policy.

Corporate Members

Limited companies and limited liability partnerships can become corporate members of the VDS and be insured under the practice policy. Details are set out in the Articles of Association for the VDS. Corporate Members must carry on or be part of a Corporate Group which carries on normal veterinary work. The VDS policy can provide cover for more than one Corporate Member if they are associated, subsidiary or holding companies which are part of the same Corporate Group. These must all be controlled by the same person or persons. For limited companies and limited liability partnerships to become Corporate Members and entitled to cover under the VDS policy they must be included in the Schedule.

Please note in relation to partnerships that partners who are not veterinary surgeons are not entitled to become members of the VDS and will not be covered under the policy.
CIVIL LIABILITY (SECTION 2 OF THE POLICY)

Risk Groups

For the purpose of providing Professional Indemnity Insurance the VDS assigns all Normal Veterinary Work to one of three categories or “Risk Groups”. More detail is provided below, but broadly:

- Veterinary work in respect of Domestic Pets is assigned to Risk Group D
- Veterinary work in respect of Equines is assigned to Risk Group E
- Veterinary work in respect of Farm Animals is assigned to Risk Group F.

Please note that the policy excludes cover in respect of liability in relation to Normal Veterinary Work connected with Risk Group E and/or Risk Group F unless the Practice has declared its work in connection with these Risk Groups and cover is specified in the Schedule or the claim arises as a result of a veterinary surgeon’s professional obligation to provide emergency veterinary first aid and pain relief.

Cover provided to veterinary practices that declare that they work exclusively with Equines and/or Farm Animals will automatically include an indemnity limit of £250,000 (€312,500) for Risk Group D. This is to ensure that if vets in these practices are occasionally asked to treat, for example, a dog or cat whilst visiting an equine establishment or farm they will be covered. If your Practice’s involvement with Species Risk Group D animals is more than occasional then this must be declared to the VDS in the Proposal Form (e.g. if you maintain facilities at your premises for this purpose and/or book in consultations).

The VDS policy does not provide cover for any work carried out on humans.

The following lists provide details of how Normal Veterinary Work is allocated amongst each of the three Risk Groups.

Risk Group D

Veterinary work involving:
- Small animals kept as domestic pets, including exotic animals (e.g. birds, reptiles, amphibians, small mammals, fish)
- Small animals (as above) kept for breeding, research, showing, display to the public (to include small animals kept in zoos/safari parks/aquaria/wildlife parks/marine zoos) and in private collections
- Working/sporting/farm dogs
- Guide dogs
- Greyhounds kept for racing/breeding
- Greyhound racing track veterinary duties
- Racing and fancy pigeons

Risk Group E

Veterinary work involving:
- Equine animals
- Racecourse work
- Riding establishment inspections
- Competition and race horse regulatory work
- Diagnostic laboratory work relating to equine animals
- But EXCLUDING animals in Risk Groups D and F.

Risk Group F

Veterinary work involving:
- Food animals i.e. species of animal normally used for the production of human or animal food or fibre, skin or hide (excluding equine animals)
- Animals other than those in Risk Group D (and excluding equine animals) kept for display to the public: to include animals kept in zoos/safari parks/aquaria/wildlife parks/marine zoos
- Any animal not included in Risk Group D or E
- Veterinary services relating to meat hygiene and Animal Feed production
- Diagnostic laboratory work relating to food animal species
- Export/import certification of food, food products, pet-food, animal feed, eggs, animal products, skins, hides, agricultural machinery
- But EXCLUDING animals in Risk Groups D and E.

The premium payable is calculated depending on the applicable indemnity limits and the veterinary work undertaken with reference to each of the three Risk Groups.

Certain types of work or activity, and the practice turnover (if any) derived from it, might relate to more than one Risk Group, or appear initially to fall into a separate category altogether however this work should be allocated to the relevant Risk Group proportionately.
- Export/import certification of animals, embryos, semen should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Veterinary work in specialist disciplines e.g. anaesthesia, pathology, ophthalmology, cardiology, dermatology, nutrition, advanced breeding – AI, ET, semen/fertility testing etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Education – research, teaching, lecturing, training, CPD, examining etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Consultancy – insurance, legal, nutrition, pet food, pharmaceutical, forensic, expert witness, charity, animal welfare, health schemes etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Inspections – riding establishments, boarding kennels, breeding establishments, zoos, dangerous wild animals, dangerous dogs, Home Office, labs, biotech establishments, pet shops, practice standards etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- OVS/Local Authority/State/County Council/Public Health/trading standards etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Shows – agricultural, horse, pets, dogs, cats, birds etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Quarantine establishments – inspection and treatment of animals etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Film supervision etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Tele/on-line consulting, advising, sales etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Work for charitable organisations and unpaid work etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Practice management/advising practice colleagues etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.
- Sales of medicines (including Prescription Only and lower categories), pet-food, accessories etc. should be allocated proportionately to the relevant Risk Group depending on the species involved.

Limits of Indemnity

Cover for Civil Liability is provided on a Claims Made basis for claims that arise from Normal Veterinary Work and that are first made during the Period of Insurance.

For claims relating to liability arising from Normal Veterinary Work for death or bodily injury to a person or damage to property (other than animals), the limit of indemnity provided by the policy is £5,000,000 (£6,000,000). Cover is not provided if the claim relates to a Risk Group where the Practice has indicated that it does not work with animals in that Risk Group and where there is no Risk Group indemnity limit specified in the Schedule for the relevant Risk Group.

For other claims (such as damage to animals) the limit of indemnity depends upon the Risk Group relevant to the claim, and the indemnity limit you have chosen for that Risk Group. The limits are set out in the Schedule.

No matter how many veterinary surgeons or Corporate Members are entitled to indemnity under the policy in respect of a claim or related claim (please see the policy wording on how claims are treated as a single claim in certain circumstances) the total liability of the VDS will not exceed the relevant limit of indemnity.

The policy also provides aggregate limits of indemnity for each Risk Group, which means that the maximum liability of the VDS for all claims during the policy year relating to that Risk Group will not exceed these limits which are shown in the Schedule, and will usually be three times the particular Risk Group limits of indemnity.

All of the limits of indemnity are inclusive of any damages you or the Practice may be liable to pay, defence costs and the costs of any other party which you or the Practice may be liable to meet.

It is very important that you carefully consider and review the Indemnity Limits included in the Schedule to ensure they are sufficient for your needs and those of the Practice. These limits will be the maximum liability of the VDS for a claim or related claims connected with that Risk Group, and this limit includes damages and/or legal and other costs. Please refer to the policy wording and Policy Guidance Notes for further information.

When choosing your Indemnity Limits you should be aware that, in addition to considering the value of individual animals under your care, the larger claims handled by the VDS often involve numerous animals and/or business losses that flow from a single occurrence.

Claims Made Basis

In common with most other professional indemnity insurance policies, Section 2 (Civil Liability) of the VDS policy operates on a “claims made” basis. This means that for any veterinary work undertaken after 1 January 2014, the relevant policy will be that policy which is in existence at the time the claim is made, rather than the policy which was in existence at the time of the occurrence which gives rise to a claim.

The policy includes provisions requiring claims and knowledge of circumstances which may give rise to a claim to be notified promptly to the VDS. Failure to notify claims or circumstances promptly is likely to invalidate insurance cover.

To assist members, the policy provides some extended reporting periods, to give members the benefit of cover in certain circumstances after the expiry of the policy period (see further below).
**Extended Reporting Period for Civil Claims**

As set out in the policy wording, the policy provides extended reporting periods for civil claims for up to six years from the expiry of the policy in certain circumstances.

If the Practice ceases trading (and this is not due to any reorganisation or restructuring of the business or the transfer of the business of the Practice to another party), or if a veterinary surgeon named as an insured dies, or permanently retires from undertaking veterinary work or is permanently disabled, subject to the terms set out in the policy, the VDS will provide cover in respect of claims made and notified for up to six years after the end of the policy period. For cover to apply, the claims must arise from veterinary work undertaken prior to the expiry of the policy, or the cessation of the Practice, or the death, disablement or retirement of the veterinary surgeon. The VDS must be notified of any practice cessation, or of the death, permanent disablement or permanent retirement of the relevant veterinary surgeon before the expiry of the period of insurance.

In the event that a Practice ceases undertaking veterinary work during the policy period in connection with Risk Group E and/or Risk Group F, the policy provides an extended reporting period of up to six years from the date the Practice ceases undertaking such work. Subject to the terms of the policy, the VDS will provide cover in respect of claims made in connection with veterinary work relating to Risk Group E and/or Risk Group F undertaken before the date the Practice ceased undertaking such work. The VDS must be notified of the date the veterinary work ceases in relation to Risk Group E and/or Risk Group F.

Any extended reporting periods provided by the policy will not have any effect on the available limits of indemnity under the policy.

**Exclusions**

The policy wording sets out in detail the exclusions which apply, and only a few of the exclusions are highlighted in these Guidance Notes.

No indemnity is provided under the policy to anyone committing or condoning a criminal, illegal, deliberate, wilful, dishonest, fraudulent or malicious act or omission.

Where veterinary services are provided in connection with the sale, purchase or valuation of horses, there are particular limitations on cover, and in particular the need to use VDS approved certificates. Full details are set out in the policy.

No cover is provided in relation to selling or promoting any insurance (to include pet insurance).

If you are aware of an incident, occurrence, fact, matter, act or omission which may give rise to a claim in respect of civil liability, and this is known prior to the inception of the policy and is not notified to the VDS, there will be no cover under the policy.

There is no cover for proceedings brought outside the UK and Ireland.

There is no cover under the policy to the extent that any liability is caused by an act or omission of any Veterinary Sub-contractor (see the section below on Veterinary Sub-Contractors).
Criminal and Disciplinary Proceedings (Section 3 of the Policy)

Cover is provided for reasonable legal costs and disbursements in relation to criminal or disciplinary proceedings, for both veterinary surgeons included in the Schedule and also RVNs included in the Schedule. The criminal or disciplinary proceedings must relate to Normal Veterinary Work for veterinary surgeons or Normal Veterinary Nursing Work for RVNs.

Occurrence Basis

Unlike Section 2 of the VDS policy, Section 3 of the VDS policy now operates on an “occurrence” basis. This means that the Policy provides cover for the legal representation costs of proceedings relating to veterinary work/ veterinary nursing work undertaken during 2017, notwithstanding the date any disciplinary or criminal proceedings are brought.

To assist with the transition to the cover applying on an occurrence basis the Policy extends to include the legal representation costs of proceedings related to veterinary work undertaken prior to 2017 provided that the veterinary surgeon, RVN or Corporate Member concerned was a member of the Society at the time of the relevant events and is named as a Covered Person on the Schedule.

Limit of Indemnity

The limit of indemnity for representation costs in criminal or disciplinary proceedings is £150,000 (£180,000) for veterinary surgeons, with an aggregate limit of £450,000 (£540,000) for all such costs in relation to each veterinary surgeon insured under the policy during the policy period. It is £100,000 (£120,000) with an aggregate limit of £300,000 (£360,000) for RVNs.

Exclusions

The policy wording sets out in detail the exclusions which apply to the cover in respect of criminal and disciplinary proceedings, and similar exclusions apply to veterinary surgeons/Corporate Members and RVNs. Please note that only a few of the exclusions are highlighted in these Guidance Notes. No cover is provided for fines or penalties of any kind, or for the cost of a regulator.

There is no cover in respect of appeal costs.

There is no cover for proceedings brought outside the UK and Ireland.

There is no cover in respect of a criminal, illegal, deliberate, willful, dishonest, fraudulent or malicious act on the part of the RVN or veterinary surgeon or Corporate Member.

General Points

The Conduct of Claims/Defence of Criminal or Disciplinary Proceedings

Members are obliged to co-operate fully with the VDS with regard to claims and the defence of criminal or disciplinary proceedings, and if they fail to do so cover is likely to be withdrawn. There must be no admission of liability or offer to settle any claim without the prior written consent of the VDS, and the identity and timing of the appointment of any legal representatives or experts is solely at the discretion of the VDS.

Temporary Replacement Veterinary Surgeons

Cover is provided under the policy to indemnify those veterinary surgeons and Corporate Members named in the Schedule for liability arising from veterinary work undertaken by a temporary replacement veterinary surgeon engaged by a practice, provided that the temporary replacement is retained temporarily to fulfill the duties of a particular veterinary surgeon who is named in the Schedule (or in the schedule for a previous policy with the VDS). There is no need to advise the VDS of these arrangements, although if a claim arises the VDS will investigate the status of the temporary replacement, and cover may be refused if the individual did not act as a temporary replacement for a veterinary surgeon named in the Schedule.

However, unless they are named in the Schedule or have taken out individual cover, these temporary replacement veterinary surgeons will not have cover for civil liability in their own right, and nor will they have cover for representation costs in criminal or disciplinary proceedings.

Veterinary Sub-contractors

All veterinary surgeons directly employed by the Practice should be named in the Schedule. Cover is provided under the policy to indemnify those veterinary surgeons and Corporate Members named in the Schedule for liability arising from veterinary work undertaken on behalf of the Practice. A Veterinary Sub-contractor is defined in the Policy as a veterinary surgeon or a limited company or LLP which provides veterinary services for the Practice and is not included in the Schedule and is not a temporary replacement. Unless they are named in the Policy Schedule or have taken out their own cover, the Veterinary Sub-contractor will not have cover for civil liability, and nor will they have cover for representation costs in criminal or disciplinary proceedings. In addition, if the Veterinary Sub-contractor is not engaged as a Temporary Replacement Veterinary Surgeon (as described above) and a claim arises involving the Veterinary Sub-contractor to the extent that any liability is caused by an act or omission of the Veterinary Sub-contractor there will be no cover under the Policy for the Practice or any Corporate Members or veterinary surgeons in the Practice.
What to do in the Event of a Claim, Disciplinary Investigations, Disciplinary Proceedings or Criminal Charges

As soon as a claim is made against you or the practice, whether in writing or orally, you should contact the VDS, using the contact details below (which are also in the policy). Similarly, if you, or anyone in the practice, becomes aware of circumstances which may give rise to a claim, you should notify the VDS immediately.

If you, or anyone in the practice, are aware of investigations by the RCVS or the VCI which could lead to disciplinary proceedings against you or any veterinary surgeon or RVN in the practice, you should contact the VDS. If you are aware of any investigations which could lead to criminal charges relating to veterinary work undertaken by you or anyone in the practice, you should also contact the VDS.

Drawing on the experience and expertise of the VDS’s Claims Consultants at an early stage is likely to benefit you and the Practice. The policy also requires, as a condition to cover, that the VDS always receives prompt notification.

Contact details:

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