BEVA Guidance Notes for completion of the RSPCA Veterinary Examination of a Welfare Case form

These notes serve to give guidance to vets faced with a visit to a potential welfare case and aim to aid in completion of a welfare case form.

The RSPCA can only take a case forward to potential prosecution if they have involvement of a vet able to say that the horse was either ‘suffering’ (Animal Welfare Act section 4) or ‘likely to suffer’ (Animal Welfare Act section 9), so it does fall to the vet’s own personal opinion as to whether they feel this is the case following clinical examination.

A vet may not think they are an ‘expert’ (due to modesty!) however if they treat horses in their normal role, then they are more than expert as a Witness of Fact for the courts purposes and would be considered to be giving an opinion within the area of their expertise.

Simple questions such as:
- “Would a reasonably competent and humane owner have spotted this issue earlier and asked a vet to visit?”
- “Was there action that the vet then needed to take to improve the horse’s situation, to stop the issues getting worse or to provide pain relief?”
- “Is the horse healthier for the action taken?”

can be very helpful in deciding if there was a failure of care or suffering.

Would the vet have been happy to walk away from the horse having taken no action?

A vet will often worry that they are judge, jury and executioner but their statement is just providing knowledge to the court and equipping the court to make their decisions.

The vet’s duty is to the court and not to the owner of the horse, nor to the RSPCA.

The new form developed by the RSPCA facilitates production of an objective account of observations and clinical findings on assessment of a potential welfare case.
Sections 1-4 are factual. A clearly drawn passport standard ID should be drawn onto the form in section 2.

Section 5: Contemporaneous notes of the clinical examination
It is important to provide as much objective detail as possible. Any known dates of previous visits to the premises or of previous concerns raised by the RSPCA or by members of the public should be noted. Some attempt may have been made to treat the animal by the owner and this should be documented, e.g. evidence of any basic bandaging or topical treatments.

Subsection 5.3: note the animal's position on arrival at your first observation, and also whether the animal can stand unaided or remains in recumbency, or makes failed efforts to stand unaided in spite of reasonable encouragement.

Subsection 5.7: note whether any limb is persistently rested and note whether lameness is apparent at walk. Provided it is safe to do so and the degree of lameness or injury noted at rest or walk does not preclude this then a brief period of trotting in hand may be performed, and an approximate lameness grade noted (AAEP 0-5 point scale).
Section 6: The premises where the welfare concerns arose
Note food type(s) present and comment on the suitability of the amount available per head of stock.

Note the type of container in which water is available, amounts available and the state of water e.g. fresh appearing or dirty.

Within subsection 6.4, as well as details of grass availability, details of the type of fencing of the pasture and its suitability and safety should be provided.

Section 7: Veterinary Opinion
Subsection 7.4 Further recommendations
All comments here should be as objective as possible.

For example
1. Additional appropriate daily feeding of both concentrates and forage of two aged horses of low body condition score is essential.
2. Complete, appropriate safely constructed barrier separation of the above two aged horses of low BCS identified on these premises from 6 younger animals of variable weaned age and of acceptable body condition score is recommended in order to facilitate increased feeding of these aged animals.
3. The identified horse requires prompt veterinary treatment to include intravenous fluid therapy/stabling and as such removal to a veterinary facility is recommended.

Rather than stating that the animal is suffering or likely to suffer, consider using the statement “As a result of my documented findings, in my professional opinion section 4 (or section 9 as appropriate) of the Animal Welfare Act 2006 has been breached” (See below).

Arrangement of a repeat assessment date if appropriate should be made whilst on the premises to help increase owner compliance with the above.

**Subsection 7.5 Any other observations/Fitness to travel**

With regard to fitness to travel, many welfare cases are emaciated and recumbent or very weak and as such are not fit to travel. However, the NEWC compendium states (page 39) that whilst “it is an offence to transport an animal which is unfit for the journey due to lameness, illness, injury or debility. This does not apply to an animal being moved under veterinary supervision for the purposes of diagnosis and treatment (provided the journey is as short as possible and precautions are taken to minimise suffering)”. A decision must be made by the attending veterinarian as to where the horse is to be moved to and this location must be decided on with the above recommendations in mind. Clinical examination should include determining whether splinting and bandaging is necessary for safe onward travel also.
Responsibility for arrangement of removal of the horse lies with the RSPCA however it is useful to know that charities recommend travelling welfare cases loose in lorries with plenty of bedding underfoot and it may be necessary to lift these animals directly into vehicles or to use a drag mat. This must be done under veterinary supervision, and sedation may be required. Depending on urgency of timings and the location, access to a purpose equipped horse ambulance may be possible too, and provide the most humane means of transport. There is comprehensive regional coverage across the UK by private companies specialising in horse transport using horse ambulances, and familiarisation with companies in your location is recommended.

**Definition of an Expert Witness versus a Professional Witness of Fact**

It is important to emphasise that the role of an Expert Witness in court is different to that of a Professional Witness of Fact. It is important to consider carefully whether you are appropriately qualified and able to professionally and personally withstand the scrutiny and criticism that may ensue from both a defense team and the judge in court should you put yourself forward as an Expert Witness.

As a veterinary surgeon involved in a welfare case, there is a choice to be made whether you act as a Professional Witness of Fact, an Expert Witness or, indeed, both. As a Professional Witness of Fact you state/recount factual events that are relevant to the case and that derive from your own personal knowledge. These would be matters such as date and time of visit(s), who called you out and what your clinical findings were. Clinical findings, and even more so what those findings mean, are often in themselves matters of opinion, of course. Nevertheless, what were your opinions on the day as to the clinical status of an animal is a matter of fact for you to state to the court. That said, if you have needed to sign a section 18 certificate to allow seizure of an animal, then you have provided an opinion that the animal is suffering (or is likely to suffer), which is by default an expert opinion.

The role of a veterinary expert is ultimately to assist the court in deciding whether or not there have been breaches of the Animal Welfare Act. This might involve challenging (or supporting) the factual evidence of other professional witnesses who saw the animal(s) insofar as that evidence comprises opinion on and interpretation of their clinical findings. It will usually also involve providing an opinion on the legal consequences of the factual evidence from a veterinary perspective - e.g. as to whether or not an animal was caused to suffer unnecessarily or whether or not an animal was cared for responsibly. To muddy the waters even further, experts will often be asked to examine animals (or carcasses, or samples) for themselves as part of their forensic investigations, in which case such parts of their evidence also becomes factual evidence – i.e. from their own personal knowledge.

Hence it is easy to see how the distinction between vets as factual witnesses and vets as expert witnesses can easily become blurred. There is a difference in purpose, emphasis and likelihood, but in either scenario a vet who provides evidence in an animal welfare prosecution is liable to have to justify and defend
his or her evidence in the face of challenge by others. Those who feel they lack the experience, expertise, confidence or even merely the inclination to do so should either choose not to get involved in the first place, or, where circumstances make involvement unavoidable, should make it clear to those involved as early as possible that their involvement will be limited to the immediate needs of animal welfare.

**Guidance on completing an RSPCA Final Statement**
This document should be a factual summary and be strictly objective. As above, rather than stating that the animal is suffering or likely to suffer, or using any potentially emotive terms consider using the statement “As a result of my documented findings, in my professional opinion section 4 (or section 9, as appropriate) of the Animal Welfare Act 2006 has been breached. These sections are government documents, which do use the terminology suffering or likely to suffer, and as such your opinion may be made clear indirectly (See below).

**References**

**Government Animal Welfare Act 2006**

**Section 4: Unnecessary suffering**
(1) A person commits an offence if—
   (a) an act of his, or a failure of his to act, causes an animal to suffer,
   (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
   (c) the animal is a protected animal, and
   (d) the suffering is unnecessary.

(2) A person commits an offence if—
   (a) he is responsible for an animal,
   (b) an act, or failure to act, of another person causes the animal to suffer,
   (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and
   (d) the suffering is unnecessary.

(3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—
   (a) whether the suffering could reasonably have been avoided or reduced;
   (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a license or code of practice issued under an enactment;
(c) whether the conduct which caused the suffering was for a legitimate purpose, such as—
(i) the purpose of benefiting the animal, or
(ii) the purpose of protecting a person, property or another animal;
(d) whether the suffering was proportionate to the purpose of the conduct concerned;
(e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.
(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

Section 9: Duty of person responsible for animal to ensure welfare
(1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.
(2) For the purposes of this Act, an animal's needs shall be taken to include—
(a) its need for a suitable environment,
(b) its need for a suitable diet,
(c) its need to be able to exhibit normal behaviour patterns,
(d) any need it has to be housed with, or apart from, other animals, and
(e) its need to be protected from pain, suffering, injury and disease.
(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—
(a) any lawful purpose for which the animal is kept, and
(b) any lawful activity undertaken in relation to the animal.
(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.