

## Lockharts to attend BSAVA Congress 2010

Following our success last year, Lockharts will be attending BSAVA 2010. Please visit us at Stand 119 where Senior Partner Andrew Lockhart-Mirams, Managing Partner Ros Parkin, Associate Solicitor Michael Barrett and Solicitor Alison Oliver will be happy to discuss your legal requirements

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### 1. BVA produces Guide to Partnerships in Veterinary Practice

In its ongoing effort to help its members form lasting and profitable partnerships and pre-empt disputes in veterinary practice, the British Veterinary Association (BVA) has revised its 'Guide to partnerships in veterinary practice'. The Guide will be of particular interest to any vets thinking about buying into a partnership for the first time and also provides a range of helpful advice for partners reexamining their existing agreement.

The lack of a formal agreement between veterinary practice partners could have a vast range of detrimental consequences for everyone concerned.

The lack of an effective partnership deed will inevitably have far-reaching consequences for current partners as they will be subject to the provisions of the Partnership Act 1890, which, it is widely agreed, is not an inappropriate basis on which to practise. For example, a retiring partner will not have a clear, express set of agreed terms on which they can rely on an ongoing basis and under which they will be able to retire. An incoming partner will also

not be given a formal indication of how a partnership is to operate when considering joining.

The guide therefore draws attention to areas which should be included as part of an agreement between partners to help reduce misunderstandings and potentially dispute at a later date.

The Guide includes sections on:

- decision making and authority
- profits and losses
- salaried partners
- good faith
- capital assets
- insurance
- tax and accounts
- dissolution
- outgoing partners' undrawn profits and capital
- death
- power of attorney
- disputes and arbitration
- and more

It is not possible to cover every possible scenario in a partnership deed, but it will provide a degree of certainty and security for those involved. The regulatory framework governing veterinary practice imposes further challenges which should be reflected in a carefully drafted partnership deed. By agreeing and formalising the terms of the partnership deed, both a retiring partner and a prospective new partner will be aware of the obligations, liabilities and duties that may arise.

For advice on partnership agreements and other veterinary law matters please contact Michael Barrett at [mb@lockharts.co.uk](mailto:mb@lockharts.co.uk)

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## 2. Calls for New Dangerous Dogs Legislation

An independent report on dog health and welfare by Professor Bateson has called for dangerous dog legislation to be updated with a change in focus from the current breed-specific legislation which fails to offer the intended protection.

The report focuses on welfare issues relating to dog breeding including the recommendation that “the Dangerous Dogs Act should be amended to apply to all dogs that have been shown to be dangerous rather than to specified breeds and should address the problem of dogs being bred and reared specifically as weapons or for fighting.”

The BVA has embraced the recommendation, which comes in the wake of increased calls by the veterinary profession and animal welfare charities for new legislation to be enacted to address the problem of what are referred to as ‘weapon dogs’.

The Dangerous Dogs Act 1991 bans specific breeds. This means vast sums of public money are spent each year boarding non-aggressive seized dogs while their breed is determined. The Act also fails to address the fact that a dog belonging to a breed which is not banned can also become aggressive and dangerous and that by establishing dangerous breeds the Act creates an erroneous belief that dogs belonging to breeds which have not been banned are necessarily safe.

President of the BVA, Professor Reilly, said:

“The problems caused by dangerous dogs will never be solved until dog owners appreciate that they are responsible for the actions of their animals. Rather than singling out individual breeds the BVA strongly believes in targeting individual aggressive dogs.

“With concern about weapon dogs rising and a new Parliament on the horizon looking for fresh ideas, the time is surely right for it to be at the top of the political agenda.”

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## 3. Draft Animal Health Bill

Facets of the new draft Animal Health Bill have been welcomed by the BVA as “a real success for the veterinary profession’s lobby” but it is dissatisfied that the Government remains committed to separating animal welfare policy and animal health policy.

The Bill, published by Defra at the end of January, has resulted from various consultations on cost-sharing and responsibility. It establishes a new non-departmental public body within England called the Animal Health Organisation (AHO) with responsibility for animal health policy and its delivery.

Within the AHO the Bill establishes a new role of England Chief Veterinary Officer (CVO) and also refines the position of the UK CVO, who will take an organisational role within Defra to co-ordinate responses to disease outbreaks.

Additionally, the Bill widens powers within England and Wales to collect and examine veterinary samples, to aid surveillance and to vaccinate animals.

A discrete finance bill will also be required to determine how funding will operate for these new arrangements.

Commenting, Professor Bill Reilly, President of the BVA, said:

“The draft Animal Health Bill is a mixed bag. We are delighted that, on some aspects of the new arrangements, the Government has listened to our concerns and heeded our advice. The proposed UK CVO role based in Defra, as distinct from the new post of England CVO, is a real success for the veterinary profession’s lobby. Through the draft Bill Defra has clarified that the UK CVO will report directly to ministers, as well as having a key coordination role in disease outbreak situations, ensuring that the veterinary voice remains at the centre of decision making.

“Although the make-up of the proposed Animal Health Organisation (AHO) has not been spelled out, we would expect veterinary expertise to be represented on the board and will continue to push for this. We also recognise the important role that the advisory

committees will have in providing advice to the board.

“The BVA welcomes any measures that will encourage livestock producers to follow good practice, as well as the opportunities in the Bill for increased surveillance.

“We agree that all species should be included in the AHO, but until the separate finance bill is published we do not know how funds will be raised from all sectors, particularly horses and companion animals.

“Unfortunately, we are deeply disappointed that Defra remains committed to splitting animal health policy and animal welfare policy. Along with many other organisations, the BVA has consistently argued that health and welfare are inextricably linked. We need to be convinced that lines of communication under the new proposals are such that welfare is not sidelined or compromised. We have not yet received those assurances and will continue to lobby for welfare to be embedded in health policy.”

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#### 4. VET Help

The BVA has devised a Vet Helpline sticker to promote the help and support available for veterinary professionals.

The suicide rate within the veterinary profession is around four times higher than that in the general population and around double that of other high risk groups that include farmers and medical practitioners. Research has shown that long hours, the risk of making professional mistakes, rising client expectations and an increase in administrative work have all led to higher levels of anxiety and depressive symptoms being witnessed among vets.

The sticker acts as a reminder to veterinary professionals that a confidential helpline (07659 811118), manned by trained volunteers from the profession, is available 24-hours a day throughout the year to offer support and assistance and a channel to specialist help where appropriate.

Stickers are available free of charge from the BVA via Amelia Findon at [ameliaf@bva.co.uk](mailto:ameliaf@bva.co.uk)

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#### 5. Access for Disabled Customers

A recent Court of Appeal decision has upheld an injunction that ordered a high street bank to undertake almost £200,000 of building work at one of its branches in order to make its full range of services available to a wheelchair-bound customer.

The case: (i) usefully illustrates that service providers must ensure that proper access to their services is given to people with a disability; (ii) makes clear that service providers cannot assume that their obligations are at an end just because they make some adjustments to premises, and (iii) demonstrates the full extent of a service provider's obligations to its customers and employees under the Disability Discrimination Act 1995.

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#### 6. Directors' Duties and Liabilities – A Summary

The Companies Act 2006 sets out for the first time a statutory statement of the general duties owed to a company by its directors. The final set of provisions came into force on 1 October 2009.

The Act sets out seven general duties to which a director will be subject, which are:

- Duty to act within powers
- Duty to promote the success of the company
- Duty to exercise independent judgment
- Duty to exercise reasonable care, skill and diligence
- Duty to avoid conflicts of interest
- Duty not to accept benefits from third parties
- Duty to declare interested in proposed transaction or arrangement

In addition to these 'internal' duties, directors also have wider duties imposed by statute and

case law. It is important that these duties are observed as breach of them can be a criminal offence, punishable by fine and/or imprisonment.

Directors' duties are, broadly speaking, owed to the company rather than any particular shareholder. This means that it is the company, not the shareholder, which has the right to enforce the duties. Where directors have acted in a way that benefits certain shareholders to the detriment of others, there may be a means of redress.

The new Companies Act makes it easier for shareholders to enforce directors' duties and to bring a claim against directors for alleged negligence arising out of breach of duty. Thus, the importance of directors appreciating their position in law and seeking the appropriate professional advice.

Anyone accepting a company directorship should take great care to ensure that they have proper structures in place in the company to be able to meet the various requirements imposed on them by the new legislation (e.g. ensuring suitably experienced delegates are in place compliant with financial recording obligations, that proper enquiry is made of other directors where necessary, concerns minuted at board level and professional advice taken where appropriate).

A fuller treatment of the duties owed by directors to a company can now be found in Lockharts' briefing paper, 'Directors' Duties and Liabilities – A Summary'. The cost of sending a copy of this paper to you (inc P&P) is £48 + VAT. Please contact [csd@lockharts.co.uk](mailto:csd@lockharts.co.uk) to order your copy.

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"Headed by Andrew Lockhart-Mirams, Lockharts advises over 1,800 GP practices, plus numerous dental practitioners, healthcare professionals and professional bodies throughout the country. The practice also helps to establish companies and LLPs tailored for the delivery of healthcare services"