

IN THE MATTER OF THE ROYAL COLLEGE OF VETERINARY SURGEONS COUNCIL ELECTION SCHEME 1967, as amended in 2006 (“the Scheme”), as approved by the Privy Council.

AND IN THE MATTER OF A CHALLENGE TO THE VALIDITY OF THE ELECTION TO THE COUNCIL OF THE ROYAL COLLEGE HELD IN APRIL 2017 BY TOM LONSDALE, MRCVS, THE RESULTS OF WHICH WERE ANNOUNCED AT THE ANNUAL GENERAL MEETING OF THE COLLEGE HELD ON 7 JULY 2017

LONSDALE v ROYAL COLLEGE OF VETERINARY SURGEONS (“the RCVS”)

**DECISION ON THE ALLEGATIONS OF APPARENT BIAS
AGAINST ALL MEMBERS OF THE CHALLENGE COMMITTEE**

1. The RCVS Council Election 2017 (“the Election”) was held in April 2017, in accordance with the provisions of the Scheme. The Election was administered on behalf of the RCVS by Electoral Reform Services. Voting closed at 5pm on Friday 28 April 2017, and in accordance with paragraph 22 of the Scheme, the results of the Election were announced at the Annual General Meeting of the RCVS held on 7 July 2017. There were 16 candidates at the Election, and six vacancies to be filled. Mr Lonsdale was a candidate at the Election, and polled 496 votes, coming second to last in the poll. The winning candidates polled between 3,073 and 1,909 votes. The total number of valid votes cast was 6,731, some 54 votes having been declared invalid.
2. (In this Decision, all references to “paragraph” numbers are references to the relevant paragraphs of the Scheme, unless the context otherwise requires.)
3. By letters dated 25 July 2017, and 6 August 2017, Mr Lonsdale challenged the validity of the election under paragraph 24(1)(b), on the grounds that the election was furthered by conduct which, if the election had been regulated by the Representation of the People Act 1983 (“the 1983 Act”) would have been a corrupt practice by way of undue influence under section 115(1) and (2)(b) of the 1983 Act. The complete text of Mr Lonsdale’s letter of challenge, and the particular grounds of challenge, are annexed as [APPENDIX 1](#). The grounds for the challenge to the validity of the Election appear to be contained in sections 1-4 on pages 8-11 of the letter date 6 August 2017.
5. In accordance with paragraph 24(3) of the Scheme, a Challenge Committee of three members of the Council, who were not elected members, was duly nominated by the President of the RCVS, comprising Professor Richard Hammond, Professor James Wood, and Ms Elaine Acaster. Professor Hammond was appointed to the Council by the University of Bristol, Professor Wood was appointed by the University of Cambridge, and Ms Acaster was appointed by the University of London.
6. In accordance with paragraph 24(4) of the Scheme, the President of the RCVS duly nominated Richard Price OBE QC, one of the Legal Assessors appointed under paragraph 6 of Schedule 2 to the Veterinary Surgeons Act 1966, to sit with the Committee in an advisory capacity, but without a vote.

7. Paragraph 3 of the Scheme provides that the Registrar of the College shall act as the Returning Officer at the Election, but in the absence or inability of the Registrar to act, the Assistant Registrar or such other employee of the College as shall be appointed by the Registrar shall act in his place. In this case, the Assistant Registrar, Ms Corrie McCann, acted as the Returning Officer, and was largely responsible for the conduct of the Election, subject to the provisions of the Veterinary Surgeons Act 1966 (“the Act”), and the Scheme.
 8. Mr Lonsdale has since 1991 been conducting a public campaign based on his belief that the poisoning of pets (impairing health or occasioning premature death) by the junk pet-food industry in collusion with the veterinary profession, represents unconscionable animal cruelty. He claims that the sale of harmful products, portrayed by most vets as being beneficial for animal health and welfare, is in his opinion a fraudulent activity and a criminal offence. In his letter dated 25 July 2017, Mr Lonsdale states that he has levelled these allegations against all the British veterinary schools, the RCVS, the British Veterinary Association and the British Small Animals Veterinary Association. He then states:

“Accordingly, and for the removal of any apprehension of bias whether actual or perceived, I believe that no member of those universities or organisations should sit on the Challenge Committee.”
 9. The Legal Assessor was asked by the RCVS as to how it should proceed in relation to the Constitution of the Challenge Committee in the face of this wide-ranging objection from Mr. Lonsdale.
 10. The Legal Assessor advised by letter dated 21 August 2017 ([APPENDIX 2](#)). He commented that the Scheme requires that the Committee shall consist of three members of Council who are not elected. It appeared that Mr Lonsdale was objecting to anyone who is a member of the RCVS, and particularly anyone who is a member of the Council of the RCVS, or of any of the other bodies mentioned above. His advice was that such a blanket objection should be rejected.
 11. The Legal Assessor advised that it would be a matter for individual members of the Committee to consider their individual positions relating to any conflicts of interest which might lead to an appearance of actual or apparent bias. He advised that the test to be applied when each member of the Committee decides whether or not it is necessary to recuse him/herself is as follows:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal [in this case the member of the Committee] was biased.” (Lord Bingham in *Porter V Magill* [2002 AC 357].
- The Legal Assessor advised that the members of the Committee should be sent copies of Mr Lonsdale’s challenge, and grounds, and asked to consider whether they were aware of any matters which would lead them to think that they had a conflict of interest in sitting on the Committee.
12. There then followed further correspondence from Mr Lonsdale, in which he continued to object to the three members of the Committee, the members of the Committee disclosed information

which might, or might not give rise to a conflict, and the Legal Assessor sought further information.

13. On 4 October 2017, the Legal Assessor gave further advice, summarising the information that had been obtained from members of the Committee, and giving detailed advice as to the correct approach in relation to an allegation of apparent bias on the part of members of the challenge committee. That Letter of Advice is attached as [APPENDIX 3](#).

14. In his advice, the Legal Assessor expanded on how the “*fair-minded and informed observer*” test should be approached. He referred to an extract from the Privy Council case of ***Holmes v Royal College of Veterinary Surgeons [2011] UKPC 48***, at paragraph 24 of the Judgment of Lord Wilson:

“The question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”: ***Porter v Magill [2002] 2AC 357***, at para 103, per Lord Bingham in ***Helow v Secretary of State for the Home Department [2008] UKHL 62***, Lord Hope described the attributes of such an observer in terms on which it would be impossible to improve:

“[1] *The fair-minded and informed observer is a relative newcomer among the select group of personalities who inhabit our legal village and are available to be called upon when a problem arises that needs to be solved objectively...*

[2] *The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious Her approach must not be confused with that of the person who has brought the complaint. The “real possibility” test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.*

[3] *Then there is the attribute that the observer is “informed”. It makes the point that, before she takes a balanced approach to any information she is given she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as their headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgement.”*

15. The Legal Assessor explained that, in the *Holmes* case, the Privy Council had to decide whether there was any merit in Mr Holmes complaint of apparent bias in relation to three members of the Disciplinary Committee of the Royal College, which had found numerous charges of disgraceful conduct in a professional respect proved against Mr Holmes, and directed the Registrar to remove his name from the Register. The Privy Council applied the principles laid down by Lord Hope as set out above, and found that there was no real possibility

or appearance of bias on the part of any of the Committee members involved. In relation to one member of the Committee, Lord Wilson said as follows:

“Mr Holmes makes a final complaint of apparent bias which falls into a different category. It relates to Ms Shield. Prior to April 2007, there was controversy about whether the practice of docking a dog’s tail accorded with responsible veterinary practice. The controversy largely came to an end on the coming into force of s.6 of the Animal Welfare Act 2006, which made it a criminal offence to remove a dog’s tail otherwise than for the purpose of its medical treatment. Mr Holmes had been appointed as Honorary Veterinary Surgeon by the Council for Docked Breeds which strongly opposed the reform. He had had a high profile on behalf of the campaign to preserve a general right to dock a dog’s tail. In support of the reform, however, had been “Vets against Docking”, supported by the College, which argued that docking represented an unjustified mutilation of the dog. On the sixth day of the hearing before the DC Mr Holmes unsuccessfully objected to the continued participation on it of Ms Shield on the ground that, as he had just discovered, she had been a signatory in support of “Vets against Docking”, as was visible on its website which remained online.

In the Board’s view no appearance of bias on the part of Ms Shield was generated by the professional stance opposite to that of Mr Holmes which she had adopted in the largely historical debate about an issue in no way related to those raised in the proceedings...”

This extract from the judgment in **Holmes** provided an example of the test of the “*fair-minded and informed observer*” in action.

16. The Legal Assessor’s advice to the members of the Challenge Committee was that they should apply the principles laid down by Lord Hope, when considering all the relevant information disclosed by members of the Committee, and deciding whether or not it was necessary for any of them to recuse themselves from sitting to hear the challenge brought by Mr Lonsdale. The Committee was invited to bear in mind that the pool of unelected members of Council, who would be eligible to be members of the Challenge Committee, is very limited, and Mr Lonsdale is likely to object to any potential member who has any involvement with the veterinary profession, and all organisations or institutions connected with it.
17. The Legal Assessor observed that the Committee is not required to pass judgement on the merits of Mr Lonsdale’s campaign against the manufacturers of pet foods, but is required to decide whether or not the result of the Council Election 2017 is invalid, for the reasons advanced by Mr Lonsdale in his letter and grounds of challenge.
18. On 11 October 2017, the RCVS made written submissions to the Committee on Mr Lonsdale’s allegations of apparent bias on the part of the Challenge Committee, in response to the Legal Assessor’s letter dated 9 October 2017. These submissions are attached as [APPENDIX 4](#). The position of the RCVS is that a fair-minded observer, having considered the facts, would not conclude that there is a real possibility that Challenge Committee is biased. The RCVS noted that the role of the Challenge Committee is to decide whether or not the Election is to be declared invalid due to a breach of the Scheme. The Committee is not being asked to decide on the merits of Mr Lonsdale’s view that pet food manufacturers are selling food that is harmful to animal health in collusion with the veterinary profession.

19. The RCVS submits that the fact that Mr Lonsdale objects to an extremely wide pool of persons is indicative of an unreasonable and non-fair minded approach to the question of apparent bias. Mr Lonsdale's objection to any member of the RCVS sitting on the Committee presents an immediate problem, because the Scheme provides that the Committee shall consist of three members of the Council who are not elected members. There is no discretion under the Scheme to appoint a Committee from persons who are not members of the RCVS's Council. The pool of unelected members of the Council is limited, and the RCVS agreed with the Legal Assessor that Mr Lonsdale is likely to object to anyone who is associated with a veterinary school or the veterinary profession generally.
20. The RCVS submits that, in relation to Prof Hammond, Prof Wood and Ms Acaster there is no objective basis for suggesting that a fair-minded observer, knowing the facts, would conclude that there is a real possibility of bias on the part of any of the Committee members, for the reasons set out in Appendix 4.
21. Mr Lonsdale responded to the Legal Assessor's letter of 9 October 2017, by letter dated 12 October, which is attached as [APPENDIX 5](#). The letter begins with wide-ranging allegations that junk pet-food companies control the veterinary profession, and that the veterinary profession receives corrupt benefits from the junk pet-food companies.
22. Professor Hammond disclosed that the Bristol Veterinary School had received some limited funding from pet food manufacturers for research over the years (amounting to less than 0.14% of the total annual income of the school). Mr Lonsdale contends that Professor Hammond *"shows himself and his school to be steeped in junk pet food grease. His partial disclosure seeks to gloss over the dominant culture pervading all aspects of his vet school"*.
23. Professor Wood disclosed that the Cambridge Veterinary School received a grant from a pet-food manufacturer, albeit through the Veterinary School Trust, to fund research in small animal medicine, together with other small donations, amounting to less than 1% of the school's overall annual funding. Mr Lonsdale contends that Prof Wood was *"economical with the information he provided"*. The implication behind this allegation is that Professor Wood was not being frank about benefits that his school received from pet food companies.
24. Ms Acaster is a retired Vice-Principal of the Royal Veterinary College. She has made it clear from the outset that she has no conflict of interest. She clarified that her roles at the Royal Veterinary College placed her at some distance from the acquisition and use of funds, sale of pet food and any other forms of support from pet-food companies. She is not a veterinary surgeon, but a lay member of the Committee. Mr Lonsdale contends that Ms Acaster has shown poor judgement and tries to put an improper spin on her activities. He alleges that Ms Acaster bent the truth in her declaration, and likely knows a good deal more than she admits.
25. Mr Lonsdale then attacks the information that Prof Hammond and Prof Wood have disclosed questioning their frankness, judgement and integrity. The Legal Assessor is accused of employing much circumlocution and various shades of opinion. He believes that the Legal Assessor should recuse himself from that role. That matter will be dealt with separately by the Legal Assessor.
26. Mr Lonsdale concludes that the current Committee are shown to have either exerted undue influence or been subjected to undue influence in many different respects. He believes that an

objective, informed, fair-minded observer would conclude that the committee members have insufficient understanding and regard for what 'undue influence' means. Consequently, they are unfit to sit in judgement on this very issue.

27. The Challenge Committee met with the Legal Assessor on 18 October 2017 to consider the allegations of apparent bias on the part of the entire Committee. The Clerk to the Committee was in attendance.
28. The Committee read and carefully considered the allegations, comments and submissions contained in the documents, and the advice from the Legal Assessor, which are attached as Appendices. The Committee accepted the advice of the Legal Assessor, and applied the "*fair minded and informed observer test*", as explained by Lord Hope in the **Helow** case.
29. Mr Lonsdale states that, since 1991, he has been vocal in the public domain in his belief that the poisoning of pets (impairing health or occasioning premature death) by the junk pet-food industry in collusion with the veterinary profession represents unconscionable animal cruelty. He claims that the sale of harmful products, portrayed by most vets as being beneficial for animal health and welfare, is in his opinion a fraudulent activity and a criminal offence. He has levelled his allegations against any member of a British veterinary school, the RCVS, the British Veterinary Association, and the British Small Animal Veterinary Association. Accordingly, he objects to any person who is, or has been, a member of any of those organisations sitting on the Challenge Committee. The Committee accepts the submission of the RCVS that Mr Lonsdale's objections to an extremely wide pool of persons is indicative of an unreasonable and non-fair minded approach to the question of apparent bias. His attacks on members of the veterinary profession are couched in extreme terms, and his belief appears to be that anyone who does not agree with his campaign and his views is not only wrong, but corrupt. This is not the approach of a fair-minded and informed observer.
30. In the event of a challenge to the result of the Election, the RCVS is obliged to appoint a Challenge Committee from non-elected members of the Council. It has no discretion to appoint persons from outside the Council or the profession.
31. Each member of the Committee has carefully examined the information disclosed by each of the other members, and their CVs available on the RCVS website (attached as [APPENDIX 6](#)). The Legal Assessor observed that each member of the Committee is a distinguished, intelligent and well-informed professional. The Committee has considered the wide-ranging allegations made against each member by Mr Lonsdale, ranging from lack of integrity, bending the truth, lack of frankness, failure to disclose material information, and generally being party to the corruption of their respective organisations by the junk pet-food industry
32. Each member of the Committee rejects the allegations made against them personally, or jointly, which are considered to be, at their lowest, unreasonable and unjustified by any objective assessment. So far as Mr Lonsdale makes allegations against third parties, and draws his own conclusions from them, the Committee does not consider that these matters are of assistance in applying the "*fair-minded observer*" test, and are not relevant to this Decision on apparent bias.
33. The Committee accepts the submissions of the RCVS on apparent bias set out in Appendix 4.

34. The Committee agrees with the observations of the Legal Assessor and the RCVS that its task is to decide whether or not the Election is to be declared invalid in accordance with paragraph 24(1)(b) and 24(7) of the Scheme. It is not being asked to decide on the merits of Mr Lonsdale's view that pet food manufacturers are selling food that is harmful to animal health in collusion with the veterinary profession
35. The Committee has applied the principles outlined by Lord Hope. The Committee considers that a fair-minded and informed observer, having understood the facts, would conclude that their respective connections with the pet-food industry are remote, indirect, and, in the case of Ms Acaster, virtually non-existent. Each member of the Committee is of the firm view that there is no real possibility of their respective judgments being distorted or influenced by an interest in or links with the pet food industry. The Committee considers that the fair-minded and informed observer would agree with that assessment.
36. Accordingly, the Challenge Committee dismisses Mr Lonsdale's application that all three members of the Committee should recuse themselves from hearing this challenge, on the basis that they are guilty of apparent bias.

By the Challenge Committee