

RESPONSE OF THE ROYAL COLLEGE OF VETERINARY SURGEONS TO THE ELECTION CHALLENGE BROUGHT BY MR TOM LONSDALE TO THE RESULT OF THE COUNCIL ELECTION 2017

1. The Royal College of Veterinary Surgeons (RCVS) responds to the challenge brought by Mr Lonsdale by letter dated 6 August 2017 [tab 1].

Relevant background

2. The Council election was run in accordance with the provisions of the Veterinary Surgeons Act 1966 (“the Act”) and the RCVS Council Scheme 1967 (amended in 2006) (“the Scheme”) [tab 5]. The Scheme was made by the Council and approved by the Privy Council. Under the Scheme, the Returning Officer is responsible for the conduct of each election (subject to the provisions of the Act and the Scheme).
3. The election was run in accordance with a strict timetable, stipulated under the Scheme. The last date for nominations was 31st January. The last date for despatch of voting papers was 31st March (Paragraph 7 of the Scheme). The Returning Officer has no discretion under the Scheme to alter this timetable save in specific circumstances which had no application to this election.
4. The challenge procedure under the Scheme provides that any candidate in an election may challenge the result of the election on two grounds only (paragraph 24): namely, that the election was (1) not in accordance with the provisions of the Scheme; or (2) 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 bribery, treating or undue influence under section 113, 114 or 115 of that Act.
5. Mr Lonsdale relies only on the second ground (in paragraph 24(1)(b)) and specifically relies on section 115(2)(b) of the 1983 Act which is concerned with undue influence. Hence, Mr Lonsdale alleges that the election was furthered by conduct that would have been a corrupt practice by way of undue influence had the election been regulated by the 1983 Act. In considering his challenge, it is necessary to consider the elements of the offence of undue influence under the 1983 Act. The RCVS

denies that the election was furthered by conduct amounting to a corrupt practice by way of undue influence for the purposes of section 115 of the 1983 Act.

6. If the Challenge Committee were to conclude that the election was furthered by conduct amounting to a corrupt practice, the election will not be declared void unless the Challenge Committee is satisfied that the irregularity complained of rendered the election *substantially* not in accordance with the Scheme or *significantly affected the result* of the election (Paragraph 24(7)).
7. A candidate may supply with his nomination an election statement and biographical information (of a format and length as specified in the Scheme). Mr Lonsdale's challenge is concerned with decisions made by the Returning Officer under paragraph 11 of the Scheme to edit his statement before circulation to the electorate and not to publish his Questions and Answers video on the RCVS's website.
8. The Returning Officer is not required to circulate an election statement which s/he "*reasonably considers to be defamatory or otherwise unlawful, or factually misleading, and may in the absence of agreement with the candidate either edit the election statement before circulating it or decide not to circulate it*" (Paragraph 11(4)).
9. In this instance, Mr Lonsdale's election statement was circulated albeit in an edited form. Mr Lonsdale was given the opportunity to revise/edit the written statement and video himself but chose not to do so. In those circumstances, the Returning Officer edited the written statement herself and chose not to publish the video.
10. The Scheme provides that any question as to format or presentation of an election statement or biographical information is determined conclusively by the Returning Officer (Paragraph 11(5)). Further, by supplying an election statement or biographical information, Mr Lonsdale was taken to have agreed that the decision by a Returning Officer not to issue the whole or any part of a statement was final (Paragraph 11(6)(a)).

Relevant legal framework

11. Mr Lonsdale relies on paragraph 24(1)(b) of the Scheme and argues that the election was furthered by conduct amounting to a corrupt practice by way of undue influence.

12. The relevant provision of the 1983 Act is s.115, which provides as follows:

“115.— *Undue influence.*

(1) *A person shall be guilty of a corrupt practice if he is guilty of undue influence.*

(2) *A person shall be guilty of undue influence:*

(a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or

(b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents [, or intends to impede or prevent,] the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon [, or intends so to compel, induce or prevail upon,] an elector or proxy for any elector either to vote or to refrain from voting.”(emphasis added).

13. Mr Lonsdale relies only on limb (2)(b) of s. 115. As is apparent from the wording of s. 115, it covers undue influence in circumstances where physical means are used to prevent or impede the voter from exercising a free choice at the ballot box, as well as undue influence where the mind of the voter is overborne by moral/religious pressure or deception to prevent or impede the voter from exercising a free vote.

14. The RCVS note that the offence of undue influence is committed by “a person”.

15. Further, the acts complained of must be directed at “an elector or proxy”. Hence, it is necessary to define individuals who were the objects upon whom undue influence was practised.

16. The meaning of s. 115(2)(b) was considered by the Court of Appeal in *R v Rowe* [1992] 1 WLR 1059. The purpose of the section is to safeguard the election from fraudulent influences. The word “prevent” means that the device made the elector change his mind. “Impede” means something less than that and indicates interference which the elector in the end resisted. The exercise of the franchise must be impeded or restricted at the time that the voter goes to vote.

17. Further, “...*offences against the subsection must be measured by whether an impediment or prevention has been proved*” (per Farquharson LJ at 1065). The subsection requires proof *beyond reasonable doubt*.

The Challenge

18. Mr Lonsdale relies on the following acts on the part of the RCVS to establish a corrupt practice by way of undue influence:

- a. The RCVS's refusal to allow Mr Lonsdale to include hypertext links in his online manifesto;
- b. The removal of the names of pet food manufacturers that are, according to Mr Lonsdale, the subject of a legal class action in the USA;
- c. The refusal to publish his Q & A video;
- d. Different and unfair treatment of his video compared to videos of other candidates.

19. He alleges that undue influence exercised by a "*demonstrably corrupt*" RCVS had a "*significant and/or substantial effect as per the functions and purposes of elections*". The RCVS understands Mr Lonsdale to submit that the criteria for setting the election aside pursuant to paragraph 24(7) of the Scheme are made out. Mr Lonsdale invites the Challenge Committee to declare the election void.

The RCVS's response

Generally

A. No corrupt practice by way of undue influence

20. The RCVS does not accept that any of the four matters complained of by Mr Lonsdale could be found to constitute a corrupt practice by way of undue influence as defined by s.115 of the 1983 Act or that such practices furthered the election for the purpose of paragraph 24(1)(b) of the Scheme:

- a. He has not identified any "person" that is said to be guilty of a corrupt practice. It is not admitted that an organisation such as the RCVS can be guilty of a corrupt practice under s.115;
- b. None of the matters raised could conceivably amount to "abduction" or "duress";

- c. None of the matters complained of could conceivably amount to the use of a “fraudulent device or contrivance”. There is no evidence that the RCVS has sought to deceive voters;
- d. Finally, Mr Lonsdale produces no evidence whatsoever that any voters have been prevented or impeding from exercising their free right to vote. In the absence of such evidence, there could be no finding of a corrupt practice for the purpose of section 115 of the 1983 Act.

21. Mr Lonsdale’s submission is premised on his view that the veterinary profession as a whole is corrupt and involved in a conspiracy with pet food manufacturers to promote pet food that is injurious to animals. He contends that the RCVS has been involved in a cover up and that the RCVS’s refusal “*to acknowledge and investigate what I describe as the Mass Poisoning of Pets by Vets shows that undue influence, whether by errors of omission or commission, is at the core of the RCVS modus operandi*” (p.6). He invites the Challenge Committee to accept his assertions that the RCVS is either corrupt or involved in corruption and then go on to find that the RCVS’s actions during the election process were in furtherance of these corrupt objectives or in order to cover up corruption (p. 7).

22. The RCVS denies that it is involved in any conspiracy with pet food manufacturers to poison pets or is involved in any cover up of corrupt practices by pet food manufacturers and others in the profession to poison pets. The allegations that the RCVS is corrupt or seeking to cover up corruption of others is not supported by any evidence and the RCVS invites the Committee to dismiss Mr Lonsdale’s assertions in this regard.

Specific response to the four complaints made

23. As outlined above, the RCVS denies that any of the four matters (whether individually or taken together) amounted to conduct which would have been a corrupt practice by way of undue influence for the purpose of s. 115 of the 1983 Act (had it applied to this election).

(1) Hypertext links in online manifesto

24. The candidate statement and biography submitted by Mr Lonsdale contained numerous hyperlinks to external websites [tab 6]. The Frequently Asked Questions guidance that the RCVS circulated to candidates states that “Links to websites etc. are not permitted” (see response to question 5) [tab 4].
25. Mr Lonsdale does not bring a challenge on the basis that the RCVS was not entitled under the Paragraphs to ban website links. His challenge is brought on the basis that there was a corrupt practice by way of undue influence.
26. In any event, the RCVS had that power. Pursuant to paragraph 11(1) of the Scheme, candidates are required to supply election statements and biographical information *“in such format as the Returning Officer shall specify”*. Further paragraph 11(5) provides that *“any question as to the format or presentation of an election statement, biographical information.....shall be decided conclusively by the Returning Officer”* and the decision of the Returning Officer not to issue part of a statement is final under the Scheme (paragraph 11(6)).
27. The Returning Officer was entitled to decide that links to external websites were not permitted in election statements or candidate biographies and to require Mr Lonsdale to remove those links and to delete those links when he failed to do so (see correspondence [tab 7]).
28. All other candidates were subject to this requirement and so he was treated in the same way as other candidates.
29. Mr Lonsdale put the version of his election statement and biography on his website with the links included.
30. There is no evidence that the refusal to allow hyperlinks had any influence on the free exercise of votes by any member of the electorate. The suggestion that this was a corrupt practice by way of undue influence is fanciful and denied.

(2) The removal of the names of pet food manufacturers

31. In the original version of his election statement [tab 6], Mr Lonsdale named a number of corporate bodies in relation to a class action in the USA which he says “*alleges conspiracy to defraud over the sale and promotion of prescription foods*”.
32. Mr Lonsdale was asked to replace the names of the companies with the phrase “household names”. When he refused to do so, his election statement was edited so as to refer to “household names” and to delete the reference to the specific companies.[tab 7]
33. Mr Lonsdale does not bring a challenge on the basis that the RCVS had no power to edit his election statement in the way that it did. The RCVS’s position, in any event, is that the Returning Officer had the power to do so pursuant to paragraph 11(4) – 11(6) of the Scheme. There was a reasonable basis for considering the statement to be defamatory, because companies were being named in connection with allegations of conspiracy and unlawful conduct that would be likely to cause harm to their reputation and/or affect their reputation adversely in the estimation of reasonable people generally.
34. Mr Lonsdale was entitled to publish the full version of the statement on his own website and did so.
35. Mr Lonsdale was not the only candidate whose election material was edited (this also occurred in relation to Mr John Davies).
36. There is no evidence that the removal of the names from his election statement had any influence on the free exercise of voting by any member of the electorate. The allegation of undue influence is fanciful and denied.

(3) The refusal to host his Questions and Answers video

37. Mr Lonsdale was asked to edit his Questions and Answers Video to remove a reference in the video that referred to “governing bodies” (in the plural) in connection with an allegation that they were corrupt (amongst other things). He also stated in the video that the governing bodies were negligent, incompetent and should be prosecuted. He was asked to edit his video so that he did not refer to other governing bodies, although he was entitled to criticise the RCVS. That was on the basis that the

statements were considered defamatory of other governing bodies to which Mr Lonsdale is subject and which could easily be identified including, for example, the Veterinary Practitioners Board of New South Wales in Australia, where Mr Lonsdale practises [tab 10]. The website address for the link to the video on YouTube is set out in [tab 11]. The editing that the RCVS requested was relatively minor.

38. Mr Lonsdale refused to edit his video and hence, the Registrar decided not to publish the video on the RCVS's website.

39. Mr Lonsdale does not dispute the Registrar's power to refuse to publish his video. The RCVS's position, for the avoidance of doubt, is that the Registrar plainly had such power pursuant to paragraph 11(4) – (6) of the Scheme. Further, candidates were reminded of these provisions in an e-mail sent to them on 9 March 2017 in connection with video statements [tab 9]. The purpose behind paragraph 11 and the Registrar's power to edit or not publish election statements is to avoid the RCVS incurring a liability to any third person arising from the publishing of such statements.

40. The video was, in any event, available on YouTube¹ and he could have published a link to it from his own website.

41. There is no evidential basis for alleging that the RCVS, in not publishing his video, was engaging in a corrupt practice by way of undue influence. There is no evidence that any voter has been impeded or prevented from exercising a free vote by the RCVS refusing to publish his video on its website. The allegation is fanciful and is denied.

(4) Alleged double standards for favoured candidates

42. Mr Lonsdale alleges that he has been treated unfairly compared to two other candidates, Miss Sarah Brown and Mr Danny Chambers who were successfully elected. He states that the RCVS published videos made by them although they contained "*highly disparaging remarks about readily identifiable veterinary surgeons who practise Complementary and Alternative Veterinary Medicine*" (p. 10)

¹ The page on YouTube states that the video was published there on 17 March 2017

43. The allegation is denied. Both Mr Chambers and Ms Brown made critical comments in their videos about the practise of alternative veterinary medicine where unproven treatments are offered to clients or false claims made about their efficacy. Both stated that they supported the RCVS seeking to regulate or provide guidance in relation to such treatments.
44. Mr Chambers was asked to edit the original version of his video on the basis that it appeared to single out a particular veterinary practitioner for criticism. Mr Chambers then edited the video so as to criticise the offering of alternative treatments in more general terms [see tab 13]. The edited video was then published. Ms Brown's criticisms of alternative therapies are stated in general terms and she does not criticise expressly or implicitly any particular individual offering such treatment. The published videos raise matters of proper discussion and debate in the profession but do not contain defamatory or other material that could expose the RCVS to a liability to third parties.
45. The edited version of Mr Chambers' video and Ms Brown's video can be viewed on YouTube at the links listed in [tab 11].
46. There is no evidential basis for the allegation that Mr Lonsdale was treated in an unfair way by comparison to other candidates. Nor is there any evidential basis for the allegation that the RCVS was engaged in a corrupt practice by way of undue influence by refusing to publish his video. There is no evidence that any voter was impeded or prevented from exercising a free vote by reason of the failure to publish the video. The suggestion of a corrupt practice is fanciful.

B. Paragraph 24(7) requirements not met

47. Even if, contrary to the above, the Committee were to make a finding of a corrupt practice by way of undue influence, it would not follow automatically that the election would be declared void. The Committee would still have to apply paragraph 24(7) of the Scheme and satisfy itself of one of the limbs. This reflects the 1983 Act which renders elections void only in particular circumstances where the corrupt practice has so extensively prevailed that it is reasonably supposed to have affected the result.²

²The 1983 Act provides that where a corrupt practice is found to have been committed by reference to an election "for the purpose of promoting or procuring the election of any person at that election have so

48. The Challenge Committee cannot be satisfied on the evidence that (i) the irregularity concerned rendered the election substantially not in accordance with the Scheme or (ii) that the irregularity concerned significantly affected the result of the election.

There is, therefore, no power to declare the election void.

49. None of the matters complained about in terms of editing or not publishing his election statement (whether in written or video form) could be treated as rendering the election *substantially* not in accordance with the Scheme because they affected Mr Lonsdale alone and did not affect the integrity of the election process (paragraph 24(7)(a)). There was no fundamental departure from the principles of a free and fair election, such that the whole election could properly be described as a sham or travesty of an election by ballot.

50. As to the alternative ground (para. 24(7)(b)) the Committee is unable to be satisfied that the matters complained of significantly affected the result of the election. There is no evidence that if these matters had not occurred, that he would have been elected to the Council. He came second to last in the election and was in truth, never in the running for the election. He received 496 votes and the candidate with the fewest votes who was elected received 1,909 votes. It is also relevant that Mr Lonsdale has stood in all Council elections since 1997 and has come last, save for in 2017, when Mr Davies came last [tab 12]. It is inconceivable that he would have polled sufficient votes to be elected to the Council.

Conclusion

51. For the reasons set out above, the RCVS invites the Committee to dismiss this election challenge.

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extensively prevailed that they may be reasonably supposed to have affected the result (a) his election, if he has been elected, shall be void" (s. 164(1)). However, s.164(2) goes on to say that "An election shall not be liable to be avoided otherwise than under this section by reason of general corruption, bribery, treating or intimidation".