

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 OF THE LEGAL ASSESSOR ON ALLEGATIONS OF APPARENT BIAS AND/OR CONFLICT OF INTEREST REQUIRING HIM TO RECUSE HIMSELF FROM HIS APPOINTMENT AS LEGAL ASSESSOR TO 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 Junior Vice-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 me, as 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. I 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. I advised by letter dated 21 August 2017 ([APPENDIX 2](#)). I 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. My advice was that such a blanket objection should be rejected.
11. I 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. I 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].*

I 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 I sought further information.
13. On 4 October 2017, I 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 this advice, I expanded on how the “*fair-minded and informed observer*” test should be approached. I 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. I 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. My 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. I 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 8 October 2017, Mr Lonsdale wrote a letter to the Clerk of the Challenge Committee contending that I should recuse myself from my appointment as Legal Assessor to the Challenge Committee, under paragraph 24(4) of the Scheme, apparently on the grounds that I have given conflicting advice to date, and have current and ongoing responsibilities to the RCVS, such that I am myself conflicted. I am not clear whether Mr Lonsdale also alleges that I am guilty of apparent bias, but I assume that he includes this in his allegations.
19. In a letter to the Challenge Committee dated 12 October 2017, Mr Lonsdale contends that I have employed much circumlocution and various shades of opinion. He says that, as per his letter of 8 October 2017, he believes that I should recuse myself from the role of Legal Assessor.
20. In the letter of 8 October 2017, Mr Lonsdale explains why he alleges that I have given conflicting advice. He also refers to absent advice, by which I assume he means advice that he considers I should have given, but have not. I do not consider that I have given conflicting advice as alleged, or failed to give advice that I should have given. The advice that I have given to the Challenge Committee is clearly set out in the letters dated 21 August 2017 and 4 October 2017. I believe that this advice has been clear and transparent, and has been given in an even-handed way.
21. Under the heading “Junk pet-food ‘sponsorship’ deals”, Mr Lonsdale goes on to suggest that I am open to criticism for failing to give credence to his widespread allegations to the effect that all aspects of the veterinary profession are involved in a conspiracy involving junk pet-food manufacturers. It is no part of my function as a Legal Assessor to have an opinion, one way or the other, about any of the matters raised by Mr Lonsdale in this section of his letter.
22. Under the heading “Prior knowledge and potential conflict of interest “, claims that it is necessary to consider my past, present and future earnings from the RCVS. It is correct that I

have been a Legal Assessor to the Disciplinary Committee of the RCVS since 2007. In that regard, I have been appointed pursuant to the Veterinary Surgeons Act 1966 to advise the Disciplinary Committee. Rule 24(4) of the Scheme provides that the Challenge Committee must be advised by a Legal Assessor appointed under the Act. The role of the Legal Assessor is to give independent and objective legal advice to the Challenge Committee in relation to relevant legal and procedural issues, in the same way that the Legal Assessor gives such advice to the Disciplinary Committee. The RCVS is not a client of the Legal Assessor. The Legal Assessor has no duty to provide general advice to the RCVS, and protect and protect its interests. It is completely irrelevant as to whether I had any prior knowledge of the allegations made by Mr Lonsdale against the veterinary profession. In fact, I had none. My past, present and future earnings from my fees as a Legal Assessor are equally irrelevant.

23. The RCVS comments that the suggestion that I have a conflict of interest and should recuse myself is entirely without foundation.
24. I consider that, viewed objectively, the allegations made against me by Mr Lonsdale are unreasonable and entirely devoid of merit.
25. I do not consider that any valid grounds have been advanced by Mr Lonsdale that would justify me refusing myself from my appointment as a Legal Assessor to the Challenge Committee, whether on the grounds of conflict of interest, apparent bias, or any other ground.
26. This application is refused.

Richard Price OBE QC

Legal Assessor

30 October 2017