Letter before Claim

Challenge to the validity of the RCVS Council elections, 2017

1. Summary

In January 2017 I applied to stand in the April 2017 RCVS Council elections. My election statement explained my motivation:

I’m gravely concerned about governance of the profession and seek a mandate to illuminate and address the root causes insofar as the issues are relevant to the wider profession. The concerns I allude to are best illustrated by my own story...

The Returning Officer (RO) redacted the remainder of the 299 words of my election statement and about half of my 200 word biography. The elements of my story explaining why I was gravely concerned were thus withheld from the electorate. These included the disturbing account of a judicial review I brought against the RCVS in 2015 for not properly investigating my professional misconduct complaints about Registered Veterinary Nurses (RVNs), which was successful in its main claim. They also included its disturbing sequel: There has been no internal investigation to determine why legal action was needed to address a substantive failure of RVN regulation. No one in Belgravia House has been held accountable for it, and no steps taken to prevent similar problems in future. There has instead been a catalogue of evasiveness.

I complained that there were no good grounds for the redactions, and that even if the RO disagreed, their draconian extent (85% of my election statement) was unnecessary and disproportionate. I also asked for the RO to notify the electorate that these redactions had taken place, so that at least they understood why my statements were a fraction of the length of the other 15 candidate’s. The RCVS has consistently rejected these complaints and this request in the detailed debate ever since.

This debate culminated in July when I submitted a challenge to the validity of the election through the formal challenge procedure (para 21.1 a) of the Election Scheme rules). I made it clear that by way of remedy I preferred to avoid the disruption and cost of an election re-run. Accordingly, I wrote offering that, in the event that the appointed Challenge Committee upheld my complaint, I would be
prepared to negotiate with the RCVS a less damaging remedy in the best interests of the profession. My aim in these negotiations would have been to get the RCVS to agree to address my concerns about standards of governance. In the event that the RCVS had been able to offer satisfactory remedy, the reason for my candidacy would have been obviated, solving all the problems in one go.

Earlier this month the appointed Challenge Committee rejected my challenge, asserting that it was “misconceived and must be dismissed.” Despite all being members of Council, the members of the Committee have given no indication that they intend to give a further thought to the grave governance concerns—apart from those about the fairness of election—that I have brought to their attention by means of my challenge.

2. Dates and facts

The Committee’s clerk notified me of their decision on 30 October. On 9 November I received an unsigned, undated 15 page document representing the “full decision.”

The account given in the “full decision” is far from a fair and balanced one. One example is the misrepresentation of the reasons why a magazine withdrew its article about my experiences as a jvp—a matter mentioned in my election statement (see Appendix 2 b)). Mindful of the Committee’s eventual dismissal of my complaint as “misconceived,” it seems reasonable to conclude that, in regard to the extended arguments about the validity of the election articulated up to this point, the parties have irreconcilable differences. It follows that they will only be resolved by a judge. Therefore, whilst strongly disagreeing with the Challenge Committee’s approach, findings and conclusions, in general I do not propose substantially to pursue the existing arguments prior to instigating proceedings.

According to para 5 of the “full report,” the Committee are not elected members of the RCVS Council, which means that MsRCVS have no practicable means of holding them to account by voting them out of office. This may help explain why I am able to give reasons why the Committee’s report may reasonably be construed to be what is known colloquially as an “establishment whitewash”. It follows hot on the heels of the whitewash executed by the RO of which my summary begins to hint.

It was gravely concerning institutional behaviour prior to these two whitewashes that motivated me to stand in the elections. Instead of matters improving, the list of my grave concerns has now been added to substantially. For reasons I shall explain, I have come to the conclusion that the neither the Committee nor the RO/RCVS can plausibly claim to have been impartial and fair. I therefore now challenge the Committee’s decision.

According to Mr Price QC (page 2 of Appendix 6 of the Appendices)

For an election to be conducted substantially in accordance with that law there must be a real election by ballot and no such substantial departure from the procedure laid down by Parliament as to make the ordinary man condemn the election as a sham or a travesty of an election by ballot” – Stephenson LJ.

If the ordinary vet is ever allowed to find out what the RCVS has really been up to, I think “sham” and “travesty” are the politest words they are likely to use.
My reasons are:

a) The absence of reasonable consideration by the RO/RCVS

The Committee claims that the RO/RCVS made reasonable decisions about the redactions around the end of January. Reaching reasonable decisions entails the process of reasonable consideration. Even supposing they were, on review, arguably correct, they would not also have been reasonable if arrived at unethically. An important point here is that there was a wide range of possible lawful outcomes. This may be illustrated by considering the opposite decisions to those made. The RO could have concluded that my statements were not defamatory / not misleading / that they were the preceding but that less draconian redactions would suffice / that the electorate ought to be notified of the redactions. Even on the RCVS’s own account, at least some of these possible alternative decisions fall within the range of reasonable decisions. It is therefore imperative that the actual decision made out of the range of arguably reasonable decisions is an impartial one. This is still true, but generally less of an issue, if there is simply a binary choice between one legal/reasonable option and its illegal/unreasonable alternative.

The following represents evidence that from the outset the RCVS was not impartial and fair because it had a hidden agenda to prevent my Election Statement from being disclosed to the electorate.

i) The RCVS first told me I couldn’t stand at all unless I paid them £12k within nine days. No other alternatives were offered in the email (Bundle 13-6).

ii) The allegations that my statements were “defamatory and misleading” suddenly emerged out of the blue eight days after I first asked for comments on them and immediately after i) was successfully challenged.

iii) There is evidence suggesting that the true motivation for the sudden emergence of the allegations was to prevent information that Ms Ferguson (and others) wanted to suppress from being publicised.

iv) I complained that Ms Ferguson was (as original RO) both redactor and someone with a clear personal vested interest in those redactions. The purported resolution of this conflict of interest was a sham.

v) Ms Mc Cann made her redaction decision without her (and/or any advisor she may have had) being fully competent to do so.

Points i)-v) are explained in further detail in Appendix 1 a)

b) The motivation for the RO/RCVS redaction whitewash: The judicial review judgment was that Ms Ferguson had acted in a way that no reasonable regulator would have acted. My election statement brought this to light, so she had something to conceal. The RCVS/RCVS Council failed to investigate Ms Ferguson’s unreasonable behaviour and introduce remedial measures. My statement brought this to light too, so they also had something to conceal. It follows that RCVS Council members have been appointed by the RCVS to investigate matters they both have an interest in concealing.

The redacted part of my Election Statement asserted:
the RCVS have declined to refer the first RVN case to the PIC/DC liaison committee for review, limiting the opportunity for lessons to be learned about why the investigation was inadequate and took 2+ years to reach the PIC at vast expense [i.e. via a court case]

The way in which the RCVS repeatedly closed the case in view without good reason, and then re-opened it when I protested, is detailed in on page 4 of Appendix 5 in the Appendices. When I threatened to bring a judicial review on account of the woefully poor standard of case management, Ms Ferguson reviewed the case history. She upheld the existing RCVS decision to keep the case closed. I responded by bringing the judicial review, during which the judge ordered the RCVS to reopen the case and advance it to the PIC. Thus is took over two years to reach the PIC (normal timescale a few months at most).

I subsequently wrote to all 40 members of the RCVS Council individually, complaining about the RCVS’s standards and behaviour. This included my having to drag them to a full hearing to get them to admit to Ms Ferguson’s fault (as opposed to them agreeing to re-open the case whilst denying fault in having closed it, which was their dug-in position after the permission hearing. They were effectively asserting that the permission stage judge’s decision was wrong but said they would go along with it to save the cost of a full hearing). I asked that the Council to “Instigate a robust, transparent and independent investigation to determine the reasons for the recurrent RCVS [the context made clear this meant RVN professional conduct case management] failures. Those responsible should be identified, held accountable, and corrective measures taken.” The then RCVS president, Dr Viner replied: “Thank you for your recent letter to all Council members relating to a recent misconduct case. The matters you raise...will be reported at the next PIC/DC liaison committee.” (page 5 of Appendix 5 of the Appendices). It is clear from the minutes of this meeting that the concerns in view were not in fact reported in any meaningful way (see d) i) ).

It is disgraceful enough that the RCVS had not, entirely of its own volition, already scheduled internal investigation to determine the reasons why the RCVS had lost a court case, and taken appropriate remedial measures. In particular, at the permission hearing, the judge ruled that the decision Ms Ferguson had made in her review was one that no reasonable regulator would have made (the full hearing judge agreed). Despite this, of its own accord the RCVS failed to lift a finger to identify and remedy the underlying cause. No reasonable regulator would be so indolent in regulating its internal affairs.

With this in mind it beggars belief that all 40 council members were explicitly asked to take the required action in a letter posted to each of them personally, in response to which the RCVS president promised that the matter would be formally considered. To this day nothing has been done, and the RCVS fully intends for that to remain the case. This is not merely indolence, it is a wilful failure of the RCVS to regulate itself. If the indolence mentioned falls below the standards of all reasonable regulators, this clearly falls considerably further below. If the RCVS fails to respond positively to this letter before claim, they will be plumbing even greater depths.

Clearly Ms Ferguson and others have a vested interest both in suppressing this story and in stopping any investigation into their failures. Predictably, the establishment machinery they between them control has been accommodating. It is another example of the culture of non-accountability, indeed subversion of accountability, deeply embedded in Belgravia House.

(further details on pages 3-5 of Appendix 5 in the Appendices)
c) The Committee’s lack of independent thinking and unswerving agreement with the RCVS.

In all 15 pages I was unable anywhere to find anything suggesting that the report was the product of the Committee’s three intelligent and worldly-wise non-lawyers thinking independently and coming to their own conclusions. The entire document read as if it had been carefully crafted by a lawyer for the sole purpose of providing the RCVS with a watertight legal defence.

On every disputed point the “full decision” agreed 100% with the RCVS and 0% with me. In para 56 the Committee concluded: “In relation to other issues raised and responded to in the Appendices, the Committee does not accept the comments and submissions made by Mr Davies, and accepts the comments and submissions of the RCVS.” Their 100% / 0% endorsement habit was thus extended to include all 58 pages of the Appendices, bringing the total to 75 pages. In para 71 the Committee dismissed my case as misconceived, which is as far as it could possibly side with the RCVS, so again 100% / 0%.

The RCVS could hardly have done a better job of writing a report that served their interests if they’d written it themselves. This raises some questions. I’d like to know who was involved in the drafting process. I also challenge each of the Committee members to sign the “full decision” and personally own it, or to refuse to sign it and disown it.

d) The Committee turned a blind eye to evidence that the RCVS had misled their inquiry...

i) ...by claiming that the PIC/DC liaison committee had been notified of my concerns

The RCVS told the Committee:

In respect of Mr Davies’ concerns about the handling of his RVN complaint, the RCVS made the PIC/DC liaison committee aware of his concerns and Mr Davies was notified by letter of 17 October 2016 (which attached an extract of the minutes from the meeting). [page 3 of Appendix 4 of the Appendices]

What “concerns” are being referred to? I had written to the RCVS Council asking them to

Instigate a robust, transparent and independent investigation to determine the reasons for the recurrent RCVS failures [in context, this clearly meant failures of RVN professional misconduct regulation]. Those responsible should be identified, held accountable, and corrective measures taken [page 4 of Appendix 5 of the Appendices]

I alluded to these same concerns in my Election Statement:

The RCVS have declined to refer the first RVN case to the PIC/DC liaison committee for review, limiting the opportunity for lessons to be learned about why the investigation was inadequate and took 2+ years to reach the PIC at vast expense.

Clearly, my concern was that the PIC/DC committee would investigate the regulatory failures attributable to Ms Ferguson and others, learn lessons and hold those responsible accountable.

There is no indication from the minutes in view (page 6 of Appendix 5 in the Appendices) that any of my concerns about any issue were meaningfully discussed, and certainly not the specific concerns being referred to here. What is clear from the minutes is that “The Acting Registrar outlined the various issues of the case and how the Judicial Review (JR) system worked.” The then Acting
Registrar was Ms Ferguson. No details are supplied as to what version of events she gave to the PIC/DC liaison committee. What is clear is that the “committee was not asked to do anything.” So Ms Ferguson gave her own version of the legal reality that she had acted in a way that no reasonable regulator would have acted, told the committee to do nothing about it, and they agreed. For them to have done this, I suggest that the account she gave must have been a very misleading one, whether by virtue of what she said or perhaps more likely by what she failed to say.

So, the RCVS assertion is false. They did not make the PIC/DC committee aware of my concerns, rather Ms Ferguson concealed them from that committee. These issues have been brought to the attention of the Challenge Committee (pages 3-6 of Appendix 5 of the Appendices). Having “received, read and carefully considered all the documents set out in Appendices 1-5” (para 28 of the full report) they cannot plead ignorance. I conclude that they have turned a blind eye.

ii)...by claiming to have taken external legal advice

In para 55 the Committee assert that there is “no evidence to support” my contention that the RCVS misled them. They have completely ignored the explanation I gave as to why the RCVS claim is implausible (see Appendix 1 b) ). After their claim to have taken “independent legal advice” (Bundle 1-23) was challenged, subsequent statements by the RCVS quietly dropped the word “independent,” yet they’ve failed to admit that their earlier claim was untrue. We have a tacit admission nevertheless. If the RCVS were in fact telling the truth at Bundle 1-23 they could readily vindicate themselves by supplying details of the external legal advice they informed the Committee the RO obtained (i.e. on 25/26 January). We still don’t even have the name of the lawyer / law firm the RCVS consulted, let alone details. Nor has any evidence of any internal legal advice been supplied in lieu, along with some sort of apology and explanation for a mix up.

I therefore suggest that the RCVS has made up this story about obtaining external legal advice in order to convey the impression that it has acted more reasonably than it really has. I further suggest that in truth the reference may well have been to nothing more than informal internal advice Ms Mc Cann obtained from Ms Ferguson (who is a solicitor, so can claim to give “legal advice”). This would raise questions of its own, as Ms Ferguson had been replaced as RO by Ms Mc Cann in order to allay my concerns about Ms Ferguson’s potential conflict of interest (see a iv). This scenario would further help explain the RCVS reticence to disclose the so-called “independent legal advice.”

As their “no evidence” premise is untrue, the Committee’s conclusion that “this allegation [does not have] any merit,” is unjustified. Further, they are themselves guilty of the very failing they accuse me of, namely reaching conclusions without reference to—in this case readily available—evidence. Here the nature of the evidence is that a search will either find the external legal advice, or it will establish that the advice cannot be found because it has never existed. (I am mindful that quite possibly Ms Mc Cann may herself have been misled, but any trail of misleading information must have a source).

I suggest the decision of the Committee not to establish definitively whether or not the RO/RCVS was telling them the truth is motivated by an unwillingness to deal with the potential consequences. They realise that if they pay too much attention to searching for evidence they might actually find some. This could potentially leave them in a bind, unable to deny that they had been deliberately misled by a colleague in Belgravia House. The resultant internal conflict would be highly problematic for such a cosy “first rate regulator” as the RCVS. Not only would questions be raised about the suitability of the word “first,” but also about whether the RCVS may properly be called a “regulator” at all, at least, of its own affairs.
In conclusion, it seems that the Committee cannot be trusted not to turn a blind eye in these examples. I surmise that their motivation is loyalty to their own (“their own” being Belgravia House colleagues, sadly not MsRCVS even though it is their own College which they fully fund). So how can the Committee be trusted not to have used their three pairs of wilfully blind eyes to protect their own in regard to the far greater responsibility of investigating my complaint as a whole? (See Appendix 1 b) for further details).

3. Remedy sought

a) The RCVS will declare the Challenge Committee’s investigation void

and either

b) The RCVS will publicly admit that the grave concerns I have brought to its attention both in relation to the election and more widely are worthy of investigation. They will outline these concerns in RCVS News, much as the reasons for vets being required to stand before the DC are outlined—whether or not they are subsequently exonerated or found guilty. Why should the judges of the profession be more deferentially treated than those they judge?

It will make a sincere and credible commitment to carry out a comprehensive internal investigation, holding accountable anyone found not to have done their job to acceptable standards. Where there has been underperformance, it will be remedied. The RCVS will not hold back from carrying out rigorous disciplinary investigations where there is prima facie evidence suggesting the possibility of improper conduct.

Externally, it will at last begin to take seriously the concerns I and others have for years been raising about ethical standards in the corporate veterinary sector, especially the damaging effect these have on its members. It will carefully investigate, and make suitable recommendations to the government about necessary amendments to the long outdated Veterinary Surgeons Act (1966)—or regarding its successor.

For example… [Redacted]

...I can only tell my own story (including what others have told me) to the best of my knowledge and understanding. However, as professional regulator the RCVS is in a position both to invite others with experiences like mine and the corporates to give an account (a bit like a parliamentary inquiry without the power to subpoena). By this means the truth may be properly established on much better foundations than anecdotal evidence, and without fear or favour. (See Appendix 2 for more details).

or

c) It will declare the election void, so I can stand in a fair election with a view to achieving b) by becoming a Council member.

4. Information sought

a) Who gave Mr Tufnell the advice to which his 19 January email refers? On what legal basis did they arrive at their conclusion that declaring my alleged conflict of interest was insufficient, and that a pre-requisite for my candidacy was also that my debt to the College also needed to be repaid?
b) Details of everyone who was involved in advising about and drafting the Challenge Committee’s report, explaining what their contribution was.

c) Full details of all external legal advice the RCVS obtained in regard to the editing of candidate statements in January / February 2017. This will include names of lawyers, their law firms, the date the advice was obtained. The RCVS will similarly detail internal legal advice.

5. Documents sought
a) All documents relating to the preparation and redaction process for the Committee’s report.
b) A copy of the report endorsed and authenticated by all three Committee member’s signatures.
c) The content of legal advice 4 c).

6. Proposed reply date
Within 14 days

John Davies MRCVS

Appendix 1

a) The following represents evidence that from the outset the RCVS was not impartial because it had an agenda to prevent my Election Statement from being disclosed to the electorate.

i) The RCVS told me I couldn’t stand unless I paid them £12k within nine days.

On 17 January I sent my draft Election Statement to the then President Mr Tufnell asking for comments. He took the precaution of passing it on “to others with more in-depth knowledge” before giving advice (Bundle 13-5). This advice seems most likely to have come from the Registrar and (then) RO, Ms Ferguson. The advice was that I would not be allowed to stand until I paid the approx. £12k I still owed the College after the judicial review, since it allegedly represented a “conflict of interest.” The RCVS doubtless realised that to hand over £12k within nine days is, for most people, asking the impossible, making it look more like a pretext than a genuine reason. No objection was raised in regard to the content of my statement. I replied that there was already schedule for payment over two years in place and due to start in a few days. I also said that the rules indicated that conflicts of interest ought to be declared in the biography section. I wanted to know why the latter wasn’t sufficient irrespective of financial arrangements. This question has never been answered.

ii) The allegations that my statements were “defamatory and misleading” suddenly emerged out of the blue eight days after I first asked for comments on them and immediately after i) was successfully challenged.

On 25 January Mrs Ferguson responded (Bundle 13-10) that under these two circumstances the RCVS would accept my candidacy. It was only at this point that she alleged that the content of my statement was defamatory and inaccurate (no meaningful explanation was given).
iii) There is evidence suggesting that the true motivation for the sudden emergence of the allegations was to prevent information that Ms Ferguson (and others) wanted to suppress from being publicised.

I replied to Ms Ferguson that her comments didn’t make sense to me, and asked for a better explanation. Ms Mc Cann’s response of 26 January, when read alongside my detailed reply of the same date, make it clear that I found the RCVS’s further explanations for their conclusions hopelessly inadequate. They refused to clarify why they considered their objections reasonable, I suggest because the stated objections were rapidly cobbled together as a second pretext concealing their true motivation, which lay elsewhere (see also iv).

On 26 January Ms Mc Cann had enhanced the apparent reasonableness of the RCVS’s new objections by asserted that her decision had been made following advice from “the College’s legal advisors.” They were later described in Bundle 1.23 as “independent.” This can only mean “independent of the RCVS,” i.e. external legal advice. (This is further discussed in b) below). For the RCVS to have gone to the lengths of taking external legal advice speaks for itself of the RCVS’s commitment to justice and the status of such advisors adds to the credibility of the RCVS’s position. Naturally the opposite is true if no such advice was obtained, which would also support my contention that the objection was in reality a pretext.

iv) I complained that Ms Ferguson was (as original RO) both redactor and someone with a clear personal vested interest in those redactions. The purported resolution of this alleged conflict of interest was a sham.

My 25 January response (Bundle 13-14, 15) to Ms Ferguson’s letter complained that “her singularly unhelpful approach...could be construed to be obstructive” noting that “she has a potential motive...since it was her decision that was overturned by the judicial review to which my statement refers.” I said that there was “a potential conflict of interest if she makes the decision about which parts of my candidate statement may be published.” Accordingly, I asked that someone else “at arm’s length from her” should make such decisions. The next day, I received an email from Ms Mc Cann stating that “as a measure of assurance for you about the independence of the process” she would take on Mrs Ferguson’s role. Given that Mrs Mc Cann reports to Mrs Ferguson, the only assurance I got was that the RCVS had done some window dressing to give the misleading appearance that the RO was neutral.

v) Ms Mc Cann made her redaction decision without her (or any advisor she may have had) being competent to do so.

According to Ms McCann (26/1/17), whether or not the statements I made about the JVP “are true or not is irrelevant; they are defamatory.”

It is a reasonable assumption that Mr Price QC understands this subject better than Ms Mc Cann—even if armed with unspecified “legal advice” of unspecified origin. According to him, in the eyes of the law the statements in view are assumed to be false until proved otherwise. Only by being provisionally deemed to be “false” in this peculiar legal sense do they qualify as being defamatory. However, they are no longer defamatory (in any sense) if demonstrated to be true. So truth is not irrelevant, it is axiomatic.

It follows that Ms Mc Cann (or her out of sight advisor) made the decision without properly understanding their subject. This is inherently unfair. It also is unfair from a practical point of view because she made her decision assuming that truth was irrelevant. She ought to have known that it
was highly relevant, and taken such truth as she could reasonably access into account before making her decision. Such truth would start, but not be limited to, what she and Ms Ferguson (whose decision of the day before she was reiterating) already knew. Further, she needed to apply the right test of whether my statement was true. This was on balance of probability, as opposed to beyond reasonable doubt. It is reasonable to suppose that she didn’t know this either.

b) Claims about obtaining external legal advice

In Bundle 1.23 the RCVS wrote

Mindful of the requirement to act reasonably, Ms McCann sought independent legal advice before reaching her view as to whether the content was defamatory or factually misleading

A close look at the relevant correspondence on Bundle pages 13-10, 20, 21, 27, 36, 40, 41, 42, 43, 46 and 47 indicates that whatever is meant by “advice,” it must have been taken on 25 or 26 January.

My concerns about Bundle 1.23 are outlined on page 3 of Appendix 3 in the Appendices:

1. According to 1.23 “Ms McCann sought independent legal advice before reaching her view as to whether the content of my statement was defamatory or factually misleading”

2. The view that she reached is set out in her letter of 26 January (13-20), the occasion being a reply to my letter of the 25 January-so one formed in about a day. This seems remarkably quick for her to obtain independent legal advice (her letter of 26 January seems to allude to this). Apart from the speed, this seems rather surprising on account of the fact that external advisors would not be properly placed to express an authoritative opinion about some of the matters she mentions.

3. How would an external legal advisor be in a position to affirm [as Ms McCann clearly asserts they do] that there is “no such process” as referring the matter to “the relevant Standards Committee” and that “the matter has been dealt with in accordance with College procedures”? So why would anyone consult them to obtain such information?

4. An example of the independent legal advice the College receives may be found at 13-63. Another oddity is that Ms McCann’s email shows little sign of the legal professionalism demonstrated there.

[Note that she asserts that “Whether or not these statements [allegedly undermining a reputation] are true or not is irrelevant; they are defamatory.” Yet this legal advice that Ms McCann purports to have obtained contradicts that given by Mr Price QC. According to him, in the eyes of the law the statements in view are assumed to be false until proved otherwise. Only by being “false” in this notional legal sense do they qualify as being defamatory. However, they are no longer defamatory if demonstrated to be true. So truth is not irrelevant, it is axiomatic. It is implausible that Ms McCann received external legal advice of such low quality]

5. I am therefore somewhat sceptical that the account given is an entirely accurate one. Perhaps Ms McCann would inform us on what date she received this advice, from which person, in what format and exactly what that advice was. Given that independent legal advice is usually carefully documented for purposes of invoicing etc, there should be a record in the files of the independent advisor as well as at Belgravia House.
6. The College will be ill-placed to support its assertion that I have supplied arguably misleading information if it emerges that the assertion itself is supported by arguably misleading information.

The RCVS responded (page 2 of Appendix 4 in the Appendices)

The RCVS has informed the Committee and Mr Davies of the fact that legal advice was obtained in order to explain the careful consideration it gave to the content of Mr Davies’ statement to show the reasonableness of the position adopted by the Returning Officer. In any event, this issue is not determinative of the question as to whether the election was in accordance with the Scheme and the RCVS proposes to say no more about it.

Pages 1-2 of Appendix 5 in the Appendices record my reply:

1. I expressed scepticism about the truthfulness of the RCVS assertion that “Ms McCann sought independent legal advice.” I suggested to the College that my scepticism might be alleviated if “Ms McCann would inform us on what date she received this advice, from which person, in what format and exactly what that advice was” (5)

2. I note the College has provided none of this information about either internal or external legal advice.

3. I further note that the College has modified its position, and no longer asks us to believe that the legal advice was independent.

4. It is reasonable to

   i) conclude that the College made a misleading statement to the Committee about the independence of any legal advice it obtained.
   ii) remain less than fully convinced the College is being altogether candid when it now creates the impression that meaningful internal legal advice was obtained.
   iii) remain doubtful about whether “careful consideration” is an accurate portrayal of the Colleges’ approach to my draft submission.

5. The most likely explanation for the College misleading the committee seems to me to be that it wanted to enhance the appearance that it had acted reasonably. This has obvious legal implications.

The RCVS have made no further comments since.

Appendix 2

Concerns about [Redacted]... corporate...[Redacted]... and the recurrent failure of the RCVS to take MRCVS’s complaints seriously.

a) [Redacted]

….. Despite tens of pages of complaints about the woeful standard of case management by Ms Ferguson and her subordinates, made to both the then Registrar Gordon Hockey and the then President, Col. Smith, the RCVS refused to take the matter seriously. It didn’t even get close to the
PIC stage. Later they charged me £2000 or so for including it in my judicial review, not because I lost that part for lack of merit, but because it was ruled out of time. To add yet more insult to injury...[Redacted]...

Page 10 of Appendix 3 went on to complain that...

Others have also had difficulty in bringing similar concerns to the RCVS’s attention. On this subject my statement noted [Redacted]...For example, in 2009...[Redacted]...MRCVS complained...[Redacted]...About a year ago...[Redacted]...MRCVS told me ...[Redacted]...gave a detailed account of her concerns to the former President Bradley Viner. According to her 18/9/17 account...[Redacted]...She concluded: “Despite all of the substantiated information” she took to the meeting “the RCVS disappointingly were not interested in helping at all.”

According to para 28 of the full report, “The Committee has received, read and carefully considered all the documents set out in Appendices 1-5.” Unless they disown the report, this leaves them no excuse. Despite being members of Council, therefore ultimately responsible for professional governance, the Committee members (qua Council members) evidently have not the slightest intention of even beginning to take responsibility for these matters.

b) [Redacted]

In para 41 the Committee:

notes that Mr Davies refers to the fact that a professional magazine declined to publish his allegations against the Joint Venture partners. The Returning Officer observed that the fact that this was so supports the view that these allegations were contentious, and potentially liable to challenge. The Committee considers that the challenge referred to meant a challenge by way of a libel action, and that the Returning Officer was reasonably entitled to take this into account when arriving at her decision that the relevant words were defamatory.

That the magazine “declined to publish” puts a highly misleading spin on what I told the Committee had happened (see underlined):

...[Redacted]...(page 11 of Appendix 3 of the Appendices)

This ...[Redacted]... is something else the Committee members admit to being made aware of but doing nothing about.

I note that para 41 justifies the RO’s decision based on the fact that “a professional magazine declined to publish [my] allegations.” In point of fact the article was about 1000 words long and she hasn’t read it. She has no right to conflate any putative defamation in the article with the entirely different and far shorter wording of my statement. Even supposing the article was defamatory, that doesn’t make my statement about the article defamatory.

I also note that the RCVS predicated its decision on the belief that the article was “contentious”, and “liable to challenge.” In infer from this and the complete absence of any reference to considerations of what the requirements of truth and justice might be that the RCVS ethos is a cowardly one. It trembles...[Redacted]...Yet it is very brave indeed when it comes to using its members funds to hire
the best lawyers to pick off an individual MsRCVS with legitimate grievances about the RCVS financing legal action out of their own pocket.