

1. I have been instructed to carry out a review of the 2020 Presidential election.

2.

the preparation of a report at the end of the election process, the contents of which are defined at s.52, and that report is available to all members. As well as dealing with more technical matters, such as the voting process, the report must state whether the scrutineer is satisfied that there are no reasonable grounds for believing there were any contraventions of the statutory requirements. The report must also state whether the scrutineer is satisfied that the arrangements made with respect to voting papers and the counting of votes included all such security arrangements as were reasonably practicable for the purpose of minimising any unfairness or malpractice that might occur.

13. Under s.54(1): “



17. Under Standing Order 12.5 (President and Deputy President):

18. Under 12.6, “

”.

19. Under 12.7:

20. The Council has no further role in the conduct of the elections for the President and Deputy President under the Standing Orders.

21. Under Standing Order 1.15,

Under Standing Order

12.5 The Returning Officer is appointed, “

”.

22. The “RCN Elections – policy and processes” (“the Policy”) is a 30 page document. On its first page, it is dated “June 2016”, which would suggest it is the latest version, but the table of contents records under “12. Publication of nominations

and objectives": "

s". That Note is inserted again above section 12 in the Policy, without further reference.

23. While the entire Policy is relevant to this review:

(i) Section 2 sets out the "Core principles for RCN elections". These include that, "

."

(ii) Under Section 3, " ", it states:

(iii) Section 4 deals with " ", noting that: "

".

(iv) Section 6 is headed: "

(v) Section 17 concerns “

”. It states:

24. Appendix A is headed “Role of the Returning Officer” and reads: “

28. There is another heading: "What you cannot do" and it is helpful to set this out in full.

“ The response from the Assistant Member Engagement and Projects Officer directed her to the campaign guidance and said that candidates’ use of social media would be monitored to ensure compliance and she was encouraged to report anything that went “

”.

seeking access to various closed Facebook groups and also that he had allegedly been using Twitter inappropriately. By the same date, the Returning Officer had also received similar allegations regarding Professor Rafferty in respect of closed Facebook groups. Among the complainants was one of the other candidates.

than one individual. There were 13 named recipients, including the Returning Officer, the former Chair of Council and the Chief Executive.

- (iii) The complaints can broadly be divided into 3 categories
 - (a) the conduct of candidates;
 - (b) the disqualification of candidates, together with the treatment of the remaining candidates; and
 - (c) more general concerns about the election process, including individuals' eligibility to vote.
- (iv) In fact, the generic term "complaints" is inaccurate. Some of these were little more than members asking questions about what was happening, for example, along the lines of "What is the RCN going to do next?".
- (v) Complaints were acknowledged fairly promptly, but responses were generally made in September and they came from a number of individuals, including the Returning Officer, the former Chair of Council and the Chief Executive.

50. I would make the following findings regarding the complaints. First, it is clear that many members did not appreciate that a complaint about the election should have been directed towards the person with responsibility for the conduct of the election, namely the Returning Officer. At the same time, it is also clear that some complainants intended a particular recipient to receive and respond to their complaint, because (for example) that person was their Council member.

51. Secondly, since the complaints were being received at multiple points across the RCN, they had to be collated and this was done by the members of staff who normally handled complaints. The sheer volume was obviously both overwhelming and unexpected. My understanding is that, in previous elections, the Returning Officer has been able to deal with the few complaints herself, but the

number of complaints this time meant that was not feasible. It also meant that the staff who handled members' "day-to-day" complaints were not prepared for these election complaints and had not dealt with such complaints before.

52. Thirdly, because so many people were involved, both as recipients and respondents, there were delays in responding, but there was also a lack of clarity over who was actually responsible for dealing with these matters. That also has to be placed in a context of uncertainty over the days following the disqualification of two candidates as to what would happen next, as well as the impact of the former Chair of Council standing down, given that she was actively involved in corresponding with some of the complainants.
53. Fourthly, the situation was further complicated by the fact that some of the complaints were directed at the Returning Officer herself, including some personal attacks on her integrity. Where those complaints were also about the conduct of the election, strictly speaking the Returning Officer should have been responsible for responding to them, but plainly that placed her in a very difficult position.
54. Finally and perhaps inevitably from the previous findings, there was no clear strategy for dealing with members' complaints during this election. However, the responses were broadly consistent, albeit delayed and from more than one respondent.
55. My conclusions on this first issue are as follows.

(a) Going into this election, there was nothing that would have suggested to the

(b) Nevertheless, it is clear that, wherever there was a genuine complaint about the conduct of the election process, that should have been directed to and managed by the Returning Officer, but that did not always happen, because of the volume of complaints within a short space of time. The position may have been improved if there had been a filtering process, whereby those “complaints” that were no more than queries could have been separated out and dealt with separately.

(c) However, the requirement in the Policy is that complaints, “

. Applying that measure, I do not think that requirement was met, which was for the reasons set out above, namely – in summary – the volume and spread of the complaints.

56. It would therefore

59. There is no statutory guidance, but I have looked at relevant case law to see if it provides assistance. The cases tend to be very fact specific, but in

D/5-20/17-18, the CO found that where a trade union branch promoted a candidate on its branch website, that was use of the union's resources (and impermissible on the facts of that case). The decision also notes that it does not follow that a reference to a branch in a candidate's email necessarily meant that union resources were being used.

60. Twitter. Starting with social media, as noted above, the Policy provides this definition: "

The RCN's account has the username "@theRCN" and has a large following. It is recognisably "official", as it is the RCN's account on that platform.

61. A tweet that appeared on that account which said " " would obviously not be allowed, whereas a neutral reference to the fact that (for example) "

individual candidate's Twitter account would amount to using the RCN's resources to promote a campaign. It means that the followers of that person's Twitter account will see the mention, but it is not use of the RCN's twitter account, so much as a reference to it.

64. Facebook. When I enter "Royal College of Nursing" as a search term on Facebook, it takes me to the Facebook account: "@royalcollegeofnursing". That is clearly an official RCN Facebook site, which is authorised and approved to communicate on the RCN's behalf. The RCN can control what it chooses to post on its pages.

65. The same search also takes me to Facebook accounts for particular specialisms (e.g. "Royal College of Nursing Students") and regional or local groups (e.g. "RCN West Midlands", "Milton Keynes Branch Royal College of Nursing"). They all have the RCN logo; as one person described it to me, they are " ". If I take the RCN West Midlands account as an example, under "About", it states: "

" . These other accounts are closed, in other words, a Facebook user needs to join that group to have access to the information on its site. I have carried out only limited research, but clearly some groups are very small indeed and (probably) very informal. Obviously, individual candidates might also have their Facebook pages.

66. Some interviewees considered that only the Facebook account - "@royalcollegeofnursing" - could be described as "official", because they saw that as the only account referable to the organisation as a whole and/or controlled by the organisation. Others saw it differently, given the RCN branding and "identity" and the centralised guidance on creating and managing RCN Facebook groups. They would argue that all RCN Facebook groups are communicating on behalf of the RCN as an organisation, by carrying messages from the RCN to members of that group. They are "official" in the sense that they are approved, with a measure of control provided through the guidance.

67. The purpose of the restrictions on use of RCN resources – however defined - is to prevent unfair promotion of campaigning during an election. If one candidate joins a closed RCN Facebook group and campaigns to its members, that is creating an unfair advantage, if other candidates are then denied that opportunity or unaware it is being done. For example, I note that the RCN Student Facebook account has 35,000 followers. A candidate is unlikely to qualify for membership

individuals communicate. I am not saying that these factors alter the definitions in the Policy, but they are relevant to its application and certainly relevant to future recommendations.

70. My own view is that the Policy is not sufficiently clear in its definition with regard to Facebook groups. However, influenced by _____, I tend towards the view that the reference to RCN Facebook account(s) in the Policy extends beyond @royalcollegeofnursing, because – for example – the West Midlands Facebook group has been set up under the guidance of the RCN for members in that region, both to promote their interests, but also to communicate with them. The Facebook page carries the RCN logo and a fair-minded observer would be more likely to see it as an RCN resource than independent of the RCN. I accept, though, that there

73. Publications. The Policy refers to “

According to the RCNi website, it publishes 11 journals, so these are what I would

77. This view is also consistent with Appendix C of the Policy, where it states: "

which overwhelmingly suggests that the decision to disqualify was taken by the Returning Officer alone

85. Fourthly, it is surprising that the Policy does not spell out what should happen if a complaint is made about the candidate in terms of process. However, it seems to me that any process should allow the candidate to know what complaints have been brought against them and should provide them with an opportunity to explain themselves before any decision is taken. Of course, it may well be that an explanation will not make any difference, but anyone facing allegations that could lead to their disqualification in an election should have that opportunity.
86. That would also have gone some way to address a valid criticism from both disqualified candidates that, because the decision was completely unexpected, they were unprepared for it. That made it much harder to deal with and left them feeling isolated.
87. A significant number of interviewees said there should be a right of appeal from the Returning Officer's decision. I have touched on this earlier, but, to be clear, there could not be an internal right of appeal, because that would not be independent. The statutory mechanism allows for a complaint to the CO or court only. However, the lack of an internal appeal emphasises the importance of a fair and transparent process, in which candidates and complainants have confidence.
88. Fifthly, it was the view of many interviewees that any member of staff appointed as Returning Officer for such an important election was being given a huge and perhaps unfair responsibility and placed under a significant amount of pressure. Some interviewees saw a potential tension between that person's role as a member of staff within a line of management and their necessary independence as Returning Officer. My own view is that, within a trade union, there is much to be

- (i) I believe it was open to the Returning Officer to conclude that both Professor Rafferty and Mr McKenzie had breached the Policy in respect of their use of RCN Facebook groups, as both had sought access to closed Facebook groups. It was not disputed that they had done so and both candidates were open about their use of social media or, in Professor Rafferty's case, how others had used social media on her behalf.

- (ii) As I have noted earlier, there is an argument that there is only one official RCN Facebook account, namely @royalcollegeofnursing, but the Returning Officer was entitled to conclude that the candidates were entitled to use the account for their own purposes.

noteworthy that, having raised this issue, Professor Green was the one candidate who steered away from social media.

- (ix) There is also an important question over how the decisions were communicated and the consequence of disqualification in such a high-profile election. Quite obviously, these decisions were very upsetting for those two candidates and they also caused huge reputational damage, both individually and institutionally. I am not minimising the distress and frustration felt by Mr McKenzie when I say that Professor Rafferty, as President, also had to deal with the more public embarrassment of being disqualified from running for the office she was currently holding. That does not mean the decisions were wrong, nor does it mean the decision maker acted improperly, but it does suggest that the consequences of disqualification as the only sanction (both on terms of its communication and its impact) had not been thought through properly when Council approved the Policy. That is something that requires further consideration for the future.
- (x) It seems to me that a consistent approach could arguably have led to the disqualification of Yvonne Coghill as well, which was a view expressed by a number of interviewees (not all of whom were in possession of the full facts). However, I am mindful of the fact that I never had the opportunity of speaking with Ms Coghill to understand her version of events, whereas my conclusions regarding the decisions made in respect of the other three candidates are coloured by their interviews.
- (xi) First, she had referred to @theRCN on Twitter, although I do not think that actually amounted to use of an RCN resource, as I have explained above. Secondly and more significantly, Ms Coghill had featured in an article in Nursing Standard and, although there was no mention of her candidacy and no blame can attach to her personally for appearing in that article, it was plainly use of an RCN resource and the exposure – at least potentially

- gave her an unfair advantage. Thirdly, there was also the appearance at an RCN Scotland event, although that did not take place in the end.

- (xii) The issue is not one of culpability, but of whether a consistent approach to the Policy should have led to the conclusion that Ms Coghill was also in breach and, if that was the case, whether the same sanction should have been applied. The Policy does not require any “guilty” intention on the part of the candidate and I am sure Ms Coghill did not intend to obtain an unfair advantage (and I would say the same of Professor Rafferty and Mr McKenzie).

election. The collective responsibility for the Policy itself lay with the Council and not the Returning Officer.

91. Nevertheless, the outcomes suggest that the Policy needs to be significantly revised in the light of this election to take into account: (i) changing times and ways of communicating, (ii) proper processes for complaints resolution, (ii) clarification of the parameters of campaigning and (iv) to ensure that, if difficult decisions have to be made, they can be made in ways that cause the least damage to individuals and to the organisation itself. Any elections policy should be pragmatic and purposive, with the aim of achieving equal access and exposure for all candidates across all forums to ensure fair elections. The experience of this election suggests the current Policy does not achieve that.