

**INDEPENDENT INVESTIGATION INTO
THE ROYAL COLLEGE OF NURSING'S
2020 PRESIDENTIAL ELECTION**

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Introduction

1. I was instructed to carry out a review of the 2020 Presidential election and provided my report on 17 November 2020.
2. The second part of those instructions was to make recommendations about whether the RCN's policies and processes need to be changed in respect of future elections. In fact, the report contained some suggestions, but I have collated those with some further recommendations.

The Returning Officer

3. The Charter does not refer to the role of returning officer. Under Standing Order 1.15, "*“Returning Officer” means a person appointed by the Council to serve as Returning Officer in the event of any election conducted in accordance with Standing Orders and who is not a Member of the College;*". Under Standing Order 12.5, the returning officer is appointed, "*to be responsible for and to make such regulations as are necessary for the proper conduct of the elections to these offices*". There is therefore no requirement under the Charter or Standing Orders for the returning officer to be a member of staff.

4. My recommendation is that the role is carried out externally. That is not an implicit criticism of way the role has been carried out to date, rather a pragmatic way of avoiding the inevitable concerns that will be raised over the independence of a member of staff, as well as a recognition of the demands placed upon any member of staff appointed to that role.
5. There are two options. The first option is to appoint someone outside the RCN, such as the RCN's external solicitors, who will then liaise with the independent scrutineer. The person appointed does not have to be a specialist in election law, although familiarity with compliance will be an advantage.
6. The second option is to appoint the independent scrutineer to act as returning officer as well. A number of trade unions do this. Unison's rulebook requires the returning officer to be independent of the union and they have used UK Engage to fulfil both roles in recent elections. Unite have used Civica (formerly Electoral Reform Services) to perform both roles. The National Education Union is another example and their rulebook states (§13.16.1(b)), "*The counting of votes shall be under the control and administration of an appointed independent scrutineer and a representative of the independent scrutineer shall act as Returning Officer*".¹
7. It is not a case of one option being better than the other, but the second is probably administratively easier and guarantees relevant expertise in the role. As noted above, if this recommendation is adopted, the existing Standing Orders allow for that appointment. The RCN's current independent scrutineer - UK Engage - could undertake both roles.
8. I should mention that there is one union - Unite - which also appoints what they describe as an "Election Commissioner", whose role is, "*to adjudicate on any complaints made under clause (24) of this rule relating to the conduct of the election*".²

¹ <https://neu.org.uk/media/3161/view>

² <https://unitetheunion.org/media/1383/unite-rule-book-june-2018.pdf>

Clause 24 relates to the conduct of the election. Unite instructs a legal academic (Professor Keith Ewing) to carry out that role, while the returning officer (Civica) deals with the general conduct of the elections. However, I am not sure what advantage that approach would bring to the RCN, which has a different structure and constitution. There is no reason why the returning officer should not manage all aspects of the conduct of the election, subject to the independent scrutineer, which is what other trade unions do.

9. There is an important caveat to this recommendation. The ambit of this report is the Presidential elections. Standing Order 8 requires that, *“in any given calendar year in which Council Members are to be elected, the Council shall appoint a Returning Officer, to be responsible for, and to make such regulations as are necessary for, the proper conduct of the election”*. Standing Order 9 (Student member and Nursing Support Worker member of Council) and Standing Order 18 (Voting by Poll) both require the appointment of a returning officer. Standing Order 20 deals with the elections for the posts of Chair, Vice-Chair, Honorary Treasurer.
10. In other words, a returning officer must be appointed for a range of other elections. It is therefore for the Council to decide whether the role of returning officer should be outsourced for all RCN elections or – for example – for the “statutory” elections only, which would be my recommendation.
11. **In summary, I would recommend the appointment of the independent scrutineer to act as returning officer as well for all statutory elections.**

Written election policy

12. The current “RCN Elections – policy and processes” (“the Policy”) is a 30 page document, which is unnecessarily long and – in places – repetitive. For example, Unison’s “General Secretary 2020 Election Procedures” ran to 7 pages, with 4 short

appendices.³ I am not instructed to rewrite the policy document, but it may be that the examples referenced in the footnotes are of assistance.

- 13. My recommendation, therefore, is that the policy is rewritten, so that it is clearer and more concise.**

Complaints about the conduct of elections

14. Process: in summary, if a material complaint is made about a candidate's conduct during the election campaign, the candidate should be notified immediately of the complaint and given a time-limited opportunity to respond. If the complaint is being taken any further, there should then be a discussion with the candidate before a decision is taken as to what – if any – sanction will be applied. That discussion meeting should be minuted.

15. Specifically, the following points should be considered. This is not a prescriptive list, but suggestions of what the complaints process might include.

- (i) All complaints should be made in writing and submitted to the returning officer; complaints should be made as soon as reasonably practicable and it is sensible to put a time limit for complaints of (say) within 28 days of the declaration of the outcome.
- (ii) If the returning officer considers that a complaint falls within the remit of the independent scrutineer, then they should refer it to the independent scrutineer and have no further involvement. Apart from the independent scrutineer and the returning officer, no other person should be handling the complaints (save in a purely secretarial or administrative role within the returning officer's direction).

³ <https://www.unison.org.uk/content/uploads/2020/07/GS-election-Procedures.pdf>

- (iii) If the returning officer considers the complaint falls within their own remit, they should have a discretion to deal with – for example – complaints that are no more than queries about the process or that are vexatious complaints without involving the candidate.
- (iv) Where there is a material complaint, the candidate must be informed in writing of the complaint and given a time-limited opportunity to respond before any decision is taken in respect of the complaint that would affect the candidate.
- (v) The returning officer should be allowed to request further information from the complainant and from the candidate.
- (vi) If the returning officer is considering any sanction (and see below), then there must be a meeting with the candidate before any decision is taken, which should be minuted. If the returning officer is considering the sanction of disqualification, then the candidate should be told in advance of the meeting that disqualification is being considered.
- (vii) The decision on sanction should be taken after the meeting and communicated orally by the returning officer and then confirmed in writing to the candidate.

16. I have not included an appeals mechanism in the above suggestions. The availability of an internal right of appeal against disqualification would defeat the requirement for independence. There is no reason why there could not be a right of appeal, but whoever heard the appeal should be independent of the RCN (so, for example, provided by UK Engage). However, during my various interviews in preparing the report, I noted that many felt that a right of appeal was needed in this last election because they felt that the process had not allowed a fair hearing

before disqualification. It may well be that the Council decides that an appeal stage would be unnecessary if the suggested safeguards were implemented.

17. Sanctions: as pointed out in my report, the current election policy only refers to the sanction of disqualification and there has been some confusion over whether there is a discretion in applying that sanction.
18. Disqualification is the ultimate sanction, but I can see no reason why there should not be a lesser sanction of a warning. For example, a candidate may have inadvertently breached the rules or the breach might be very minor, so it is sensible to have the power to provide a warning.
19. Complainants: those who make complaints to the returning officer about the conduct of the election should receive an acknowledgement, together with any request for further information. I would then suggest a guideline time for a substantive response. For instance, it would be appropriate to commit the returning officer to responding within (say) 14 days “wherever possible”.
20. **My recommendation, therefore, is for Council to consider including all of the above in the process for handling complaints.**

Using RCN resources

21. I previously suggested that an “*RCN official social networking site*” would be one authorised and approved by the RCN and used to communicate on its behalf. The site would be a “resource” in the sense that it is something that can be used and drawn upon by the RCN in order to function effectively.
22. The Council will need to discuss the extent to which it wants to restrict candidates from using RCN resources to promote their candidacy, as well as the broader concerns around social media use. There are several issues.

- (i) I have discussed below what we mean by “RCN resources” and said a bit more about each, but I think it has to be accepted that preventing candidates from taking advantage of social media would not reflect its centrality to our ways of communicating, particularly in the Covid and post-Covid era.
- (ii) It will be common ground that no candidate should be expressly endorsed by the RCN through its official resources; the issues are around any implied endorsement and unfair or unequal access.
- (iii) Therefore – to take Facebook as an example – it would be appropriate either to let all candidates have the same opportunity to join or otherwise access RCN Facebook groups or to let none do so. My recommendation would be to allow all candidates the same opportunity to contact RCN Facebook groups, but to provide clear guidelines for Facebook group moderators to ensure that it is not abused.
- (iv) There is a discussion to be had around a candidate’s exposure via publications and events. For example, as happened in this last election, there was an article about a candidate which had been written well before she decided to stand as a candidate. She also had no control over its publication date. My view is that this is an example where it is impossible to provide a definitive position. That article might be an explicit endorsement or it might be an academic study. It is precisely the sort of issue to leave to the discretion of the returning officer.

23. Twitter. 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. There are also Twitter accounts for other groups of RCN members, such as @RCNStudents and @RCNSouthWest, which would also count as RCN resources, because they are used to communicate on the RCN’s behalf.

24. Individual candidates will probably have their own Twitter accounts, from which their RCN membership may be obvious. However, as those are obviously not RCN resources, it is up to the individual what they choose to tweet. Where that candidate tweets an endorsement of their candidacy, it would be unfair on the other candidates if it was liked or retweeted by an official RCN Twitter account, so Twitter is perhaps easier to manage.
25. Facebook. On the other hand, I think Facebook is harder to manage. The Facebook account: “@royalcollegeofnursing” 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.
26. There are numerous other 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 carry what might be described as “the RCN brand” and I would classify them as RCN resources also. I do not think the fact that a site is closed and for members only prevents it from being an RCN resource.
27. There will also be Facebook accounts that are for very small groups and are run very informally and, at a point that is very hard to define, they pass from being official to being unofficial sites. I think that what determines whether the site is “official” is the extent to which they are approved and subject to a measure of control provided through the guidance. There is also a common sense test: whether a Facebook page is quite clearly too small and informal in nature to be an official RCN resource.
28. I repeat the recommendation from my initial report that there needs to be a decision made about the definition, such as: “*“official RCN Facebook” means only @royal college of nursing*” or, alternatively, “*any Facebook group displaying the RCN*”

logo and which is aimed at RCN members by speciality and/or location” or something similar. The latter would be my recommendation.

29. Publications. According to the RCNi website, it publishes 11 journals, so these are what I would understand to be RCN publications and thus RCN resources. This is therefore a much easier resource to define.

30. Speaking events. Again, I think it will be straightforward to identify speaking events that can be described as “RCN events”. I anticipate a similar issue will arise as with publications, where a candidate has been booked to speak some time previously and (almost certainly) the content of their talk will not have anything to do with their candidacy. However, it is more straightforward to revise speaking programmes and substitute speakers than to change publications. My recommendation would be that no candidates participate in RCN speaking events during the period of the election.

31. Finally in this section, I would recommend that there is a document which defines the term “RCN resources”, giving precise examples and perhaps FAQs. For example:

Q. I have been given membership to a closed RCN Facebook group. A member of the group has asked me what I think of the other candidates. Can I comment them?

A. No. You can promote your own candidacy, but you should not comment on or criticise the other candidates.

Q. There is an article in this month’s Nursing Standard, which includes an interview with me. It was conducted weeks ago and before I decided to stand. What should I do?

A. You should contact the Returning Officer to draw this to their attention. They will then decide what, if any, action needs to be taken.

32. If this were an appendix to the revised election policy, then it could easily be updated as needed, for example to reflect changes required by Covid or developments in social media.
33. The last thing I would suggest is providing guidance for the candidates, which very much ties in with the last point. My own feeling is that a training session at the very start of the election, which involves discussion around what can and cannot be done, is more likely to encourage the sort of ongoing dialogue that is likely to assist where problems arise.
34. **There are several recommendations in the above section on the use of RCN resources, but if there was an overall recommendation it would be that the RCN adopts a pragmatic approach to the use of its resources and social media in particular, which allows - as far as possible - equal access and exposure for candidates.**

Conclusion

35. Overall, I note from the response to my initial report that there is a willingness to make any necessary changes. Obviously, no election process will be perfect and there will always be concerns and complaints, but I hope these recommendations will assist in addressing some of the issues raised in this previous election.