

# Seen to be done

A brief analysis of the legality of the Veterinary Council of Ireland and the Office of the Information Commissioner's decisions to allow the conduct of the VCI's disciplinary proceedings to be in private, and the implications of these decisions

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## Introduction

There is no question that vets occupy a very trusted position in our society. But the reality is that the public do not blindly hand their animals over to complete strangers simply out of a sense of faith that they will do what is in the animal's best interest. The trust that is engendered is done so in large part because we have confidence in the institutions that surround the profession; the universities, the regulatory bodies, the legislators, the courts, the media. These institutions allow scrutiny of the profession to ensure that standards are met that ultimately foster a sense of trust and confidence in the abilities of those who work in it. Where there are failings by any of these bodies to allow transparency and ensure accountability of those in the profession, this undermines the integrity of the profession and erodes the trust of the public.

This article focuses on two institutions in the Republic of Ireland, the Veterinary Council of Ireland (VCI), and the Office of the Information Commissioner (OIC), as they relate to the functioning of the veterinary profession. The contention is that by refusing to allow scrutiny of the disciplinary functions of the VCI these two institutions undermine the integrity of the profession. In considering this issue, this article

explores whether the refusals to allow the public to access disciplinary decisions is legal, and whether it may be a breach of the Irish Constitution and the European Convention on Human Rights Act 2003 ("ECHR"). Finally, consideration will be given to the implications of these decisions to the veterinary profession and the public, in the United Kingdom.

## Background

Much of this article is based on information that I have obtained from the VCI and decisions that I have appealed to the OIC. My involvement in this area arose out of work that I was doing as part of wider activist movement to oppose puppy farming in the Republic of Ireland. I started working on this issue in 2016 after viewing a BBC Panorama expose that revealed the conditions in puppy farms in the UK and Ireland<sup>1</sup>. This programme considered not only the conditions that the puppy farmers had subjected dogs to, but also how the local authorities who were responsible for oversight of these farms had failed to enforce the legislation that protected the welfare of dogs<sup>2</sup>.

The failure to enforce legislation that would ensure better conditions for the dogs was not isolated to the one Irish puppy farm in the expose. Rather, various newspaper articles<sup>3</sup>, dog breeding registers<sup>4</sup> and

<sup>1</sup> "Britain's Puppy Dealers Exposed" BBC Panorama, 16 May 2016

<sup>2</sup> For example, the Irish puppy farm run by Ray Cullivan in Cavan County had been inspected multiple times by the County vet and no action had been taken in respect of the portable wooden crates in which whelping bitches were kept that were illegal under 2.3.2 of the Dog Breeding Establishment Guidelines 2012

<sup>3</sup> Karlin Lillington, 5 August 2016 <

<https://www.irishtimes.com/news/crime-and-law/sad->

<realities-of-our-domestic-puppy-farming-industry-1.2745436>>, accessed 22 July 2018; 3 October 2016 <

<http://www.thejournal.ie/dog-breeding-ireland-3007298-Oct2016/>>, accessed 30 July 2018; Daire Courtney, 11 October 2016 < <https://www.independent.ie/irish-news/puppy-farm-protests-continue-after-dogs-filmed-in-whelping-boxes-35122257.html>>, accessed 30 July 2018

<sup>4</sup> Cork County Council Dog Breeding Establishment Register for 2016, for example see conditions attaching to the licence for

inspection reports of puppy farms<sup>5</sup> (when they could be obtained) detailed numerous instances where local authority vets identified welfare issues, but elected not to take any enforcement action to address the breaches.

'...various newspaper articles<sup>1</sup>, dog breeding registers<sup>1</sup> and inspection reports of puppy farms<sup>1</sup> (when they could be obtained) detailed numerous instances where local authority vets identified welfare issues, but elected not to take any enforcement action...'

In or around December 2015 the ISPCA CEO, Andrew Kelly, wrote to the VCI about this issue. The CEO outlined the problems relating to the inspection of the farms and provided photos of dogs being kept in conditions that should not be allowed under the legislation<sup>6</sup>. The letter noted, "*The ISPCA have visited several licensed and registered dog breeding establishments around the country in the last 12 months and have been shocked that these establishments have passed inspections and been issued licenses*". The ISPCA asked the VCI to, "*issue guidelines to all Local Authority and DAFM veterinary inspectors to apply the DBE Guidelines effectively and to take appropriate enforcement action if the owner of the establishment fails to comply*". Despite having statutory powers to investigate the conduct of these vets, the VCI requested the Minister for Environment to provide local authority vets with more resources<sup>7</sup>. The VCI ended their involvement with this matter on

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Michael Harding that required him to ensure clean water and shelter was provided to dogs.

<sup>5</sup> Redacted inspection reports obtained through Freedom of Information Act requests from Cavan County Council, Limerick County Council and Monaghan County Council for the years 2012 - 2016

<sup>6</sup> Undated letter from Andrew Kelly, CEO ISPCA to the VCI obtained by the author through a FOI request, this included photos of dogs being kept in wooden whelping boxes that were illegal under the Dog Breeding Establishment Act 2010 Guidelines

<sup>7</sup> Letter from Aideen Neylon, VCI Solicitor and Professional Standards Manager, dated 16 December 2015 to DAFM and

the issuing of this letter. The VCI's actions largely ignored the substance of the request of the ISPCA which was to address the failure by the local authority vets to tackle welfare issues on puppy farms. There was no suggestion from the ISPCA that a lack of resources was to blame for the poor conditions, hence the request for more resources indicated a reluctance by the VCI to consider the core issue – that vets were sanctioning poor standards, potentially in breach of legislation and professional standards.

The repeated reports about the reluctance of the local authority vets to take enforcement action, and also the failure by the local authorities as employers of the vets, and the VCI as the regulatory body to investigate these issues suggested a more widespread failure to enforce standards within the veterinary profession. Therefore, to understand the issue better I sought copies of a sample of the VCI's disciplinary decisions. It transpired that VCI refuses to publish copies of these decisions and requires the public to make Freedom of Information requests for them. Five decisions were requested under the Freedom of Information Act 2014 ("FOIA") and all were refused by the VCI at both the initial and internal review stage<sup>8</sup>. The refusals were appealed to the OIC who upheld the VCI's decision<sup>9</sup>. The sections below consider why these refusals are evidence of a disciplinary process that is not only procedurally flawed, but is likely also in breach of the Constitution and the ECHRA.

### The VCI disciplinary process

The primary role of the VCI is to regulate the profession<sup>10</sup> and it has authority to do this both through investigations undertaken of its own volition,<sup>11</sup> or by way of complaints referred to it<sup>12</sup>. The VCI

the Department for Environment, Community and Local Government

<sup>8</sup> Letter from VCI Freedom of Information Officer Aideen Neylon to Michelle Strauss dated 4 August 2017; Letter from VCI Registrar to Michelle Strauss dated 4 September 2017

<sup>9</sup> *Ms Y and The Veterinary Council of Ireland*, 14 May 2018, Case Number 170454

<sup>10</sup> Section 13(1) Veterinary Practice Act 2005

<sup>11</sup> Section 75 and 125 Veterinary Practice Act 2005

<sup>12</sup> Section 76(2) Veterinary Practice Act 2005

operates a two-stage disciplinary process: (1) the Preliminary Investigation Committee; and (2) the Fitness to Practise Committee.

#### Preliminary Investigation Committee (PIC)

The PIC comprises of a panel who consider all complaints made to the VCI. The PIC can decide that an inquiry should not proceed on the basis of any of the following<sup>13</sup>:

- The complaint does not satisfy certain requirements, for example it must be made in writing, must be signed by the complainant and must contain certain information and documentation;
- It is frivolous, vexatious or made in bad faith;
- It does not refer to any of the grounds for making a complaint as set out in the VPA;
- There is insufficient evidence to warrant an inquiry.

If the PIC considers there is sufficient evidence to warrant it, the complaint will then be referred to the Fitness to Practise Committee<sup>14</sup>.

'Transparency in relation to this process is important because over the last 5 years only 16% of complaints made to the PIC have been passed to the FTP.'

Despite the broad details above there is very little information about how the PIC stage of the disciplinary proceedings works in practice. Transparency in relation to this process is important because over the last 5 years only 16% of complaints made to the PIC have been passed to the FTP.<sup>15</sup> Of the complaints dismissed by the PIC at this initial stage over 90% of these are dismissed because of "insufficient evidence". Whilst a low referral rate to the FTP is not in and of

itself a concern, with respect to the VCI's PIC process the following has to be considered:

- (a) It is not clear what standard of proof is applied;
- (b) The PIC does not appear to allow complainants access to all of the evidence upon which its decisions are made<sup>16</sup>;
- (c) It is not clear how the PIC handles, or indeed allows, requests for discovery made by the complainant;
- (d) Where there are factual disputes it does not appear as if the PIC either cross examines, or allows cross examination of witnesses. It is therefore uncertain how the PIC determines such disputes; and
- (e) The PIC stage of the disciplinary process is always held in private and the decisions of the PIC are never published, even in redacted or summary form<sup>17</sup>.

#### Deficiencies in the PIC process

It is impossible to consider the adequacy of the procedures or decision making of the PIC when the only publicly available information is that furnished in the VCI's annual reports that simply notes the number of complaints made and the type of animal it related to. However, one OIC decision provides insight into the procedures of this stage of the disciplinary process, *Ms X and the Veterinary Council of Ireland*<sup>18</sup>. Ms X had made a complaint to the VCI about the conduct of a vet in treating her pet. The complaint had been referred to the PIC who had obtained information from Ms X and the vet concerned. The PIC had also sought the opinion of an expert about the conduct of the veterinary professional complained of. The expert's report was not provided to Ms X and the PIC dismissed her complaint on the basis of insufficient evidence. Subsequently, Ms X made an application under the FOIA for the expert's report. This request was refused

<sup>13</sup> 18 September 2014, VCI Memorandum for the Applicant <<http://www.vci.ie/Services-for-the-Public/Complaints-Procedures/Page-2>>, accessed 29 July 2018

<sup>14</sup> Section 70 and 77 Veterinary Practice Act 2005, and letter from the VCI Registrar to Michelle Strauss dated 29 November 2016

<sup>15</sup> VCI Annual Reports 2013 – 2017, <<http://www.vci.ie/Reports>>, accessed 22 July 2018

<sup>16</sup> The author was provided by a member of the public with a decision by the PIC (PI-01-15, 16 March 2015) in which the PIC refused to provide the complainant a copy of the Premises Accreditation Scheme (PAS) for the premises at which the vet in question practised.

<sup>17</sup> Letter from Aideen Neylon to Michelle Strauss dated 4 August 2017

<sup>18</sup> Case 170029

at all stages by the VCI. An appeal was made by Ms X to the OIC, where the VCI's decision to refuse access to the report was upheld. The OIC refused the complainant access to the substance of the report and the name of the expert. The reason given was that to release the report would infringe s37 of the FOIA that protects against the release of personal information.

The OIC held that releasing the report would be a breach of this section by (a) revealing that the vet had been the subject of a complaint and (b) by finding that the expert's name, education and work history was personal information for the purposes of the FOIA and therefore not subject to release. The OIC rejected the argument that the information provided related to the conduct of these two individuals in their professional, and not their personal capacity and therefore was not subject to section 37 considerations. Additionally, the OIC rejected the argument that the public interest in the release of this information outweighed the entitlement to privacy.

The first point of note in respect of the *Ms X* decision is that it is evident that the complainant could not have had the opportunity to review the adequacy of the report provided by the expert, nor to cross examine the expert on his/her findings. The second related point is that the withholding of the expert's name and qualifications flies in the face of established procedure to ensure that a person making pronouncements on the professional conduct of another, is qualified and independent enough to do so.

The adequacy of the OIC's reasoning must also be considered. The OIC's interpretation of "personal information" verges on the absurd for the simple reason that most people acting in professional capacities advertise themselves, their expertise and qualifications to the public. But even if the OIC's argument in this respect is sound, its refusal to release the report on public interest grounds is highly questionable. The OIC reasoned that the report "*would not disclose anything about the VCI's actual decision making... [or] how it carried out its functions in this*

*case*". The OIC said the focus of the report was only concerned with the registrant's actions. The difficulty with the OIC's argument is that it misses a fundamental point, which is that whilst the report will clearly only deal with the vet's actions, it is how the PIC used that information to justify its findings that will shed light on the adequacy or otherwise of its decision-making process. A consistent refusal to release this information does not allow the public to understand whether this process functions as it should.

#### The Fitness to Practise Committee and Council (FTP)

The Fitness to Practise Committee (FTP) comprises of the second limb of the disciplinary section of the VCI. The FTP conducts hearings, following which a report is compiled that contains the finding of the Committee. The report may also contain recommendations as to sanctions which is then referred to the Fitness to Practise Council. Where findings have been made by the Committee, it is for the Council to decide whether to impose a sanction and what those sanctions will be.<sup>19</sup>

The Veterinary Practice Act 2005 establishes the broad procedures of the disciplinary process.<sup>20</sup> It details who should preside over the hearing, who can give evidence at the hearing, what the hearing can determine and how evidence can be given. The VPA is silent as to whether the FTP hearings should be held in private and is silent about whether the decisions can or cannot be published.

The VCI has elected to impose the following evidential and procedural requirements in respect of FTP hearings:

- (a) The standard of proof is that of the criminal standard.<sup>21 22</sup>
- (b) All hearings must be held in private unless an application is made and granted for the hearing to be held in public, and the

<sup>19</sup> Sections 78 and 79 Veterinary Practice Act 2005, and letter from the VCI Registrar to Michelle Strauss dated 29 November 2016

<sup>20</sup> Section 78

<sup>21</sup> This is in contrast to the RCVS who impose the civil standard of proof

<sup>22</sup> Email from Aideen Neylon, VCI Professional Standards Manager to Michelle Strauss dated 1 November 2016

Committee is satisfied that it is in order to conduct the Inquiry in public.<sup>23</sup>

- (c) The VCI does not have any guidelines or rules to determine how such requests should be handled. Additionally, the VCI advises there is no right to appeal any decisions on this point.
- (d) The VCI does not advise parties of the ability to make an application to have a public hearing.<sup>24</sup>
- (e) The VCI does not publish any of the decisions of the FTP.<sup>25</sup> The only information provided to the public is that contained in the VCI's annual reports.

The position of the VCI as regard the FTP procedures is at odds with other professional bodies in Ireland such as the Solicitors Disciplinary Tribunal<sup>26</sup> and the Medical Council.<sup>27</sup> It is also at odds with the procedures of the Royal College of Veterinary Surgeons<sup>28</sup> in the UK.

'The position of the VCI as regard the FTP procedures is at odds with other professional bodies in Ireland such as the Solicitors Disciplinary Tribunal and the Medical Council.'

In the course of my work, this inconsistency gave rise to the consideration of two issues (1) what status does the VCI's disciplinary body have; and (2) what obligations does this confer on that body to make its hearings and decision-making public?

The VCI's disciplinary arm is a Court for the purposes of the Irish Constitution

The Articles of the Irish Constitution that relate to the administration of justice apply to Courts that exercise judicial power. Therefore, in considering whether a

body is a Tribunal or a Court, for the purposes of determining whether the Constitution applies to the exercise of their functions, one must have regard to the nature and extent of the power exercised by that body.

The Irish Supreme Court's decision in *Re the Solicitors Act, 1954*<sup>29</sup> considered this very issue. In deciding that the Law Society's Disciplinary Committee was in fact exercising judicial power, the Court had regard to the nature and effect of the powers conferred on the Disciplinary Committee, specifically:

- The Committee had the authority to remove a solicitor from the roll;
- The Committee's decisions had wide implications for a solicitor because a solicitor cannot practice without being on the roll;
- That Committee can require a party pay a contribution to the applicant or council following the disciplinary process.

On this basis the Court held that the Law Society's Committee was exercising judicial power.

In this respect the powers that the VPA confer on the FTP are analogous:

- It is a legal requirement that a license to practice is obtained prior to engaging in any type of veterinary work in Ireland, this entails being placed on the VCI Register (section 54 VPA);
- The Council has the power to remove a registered person from the Register (section 80 VPA); and
- The Council has the power to require a party to make an order to pay a contribution to the applicant and/or to the Council following a disciplinary process (section 82 VPA).

<sup>23</sup> Letter from Aideen Neylon to Michelle Strauss dated 4 August 2017

<sup>24</sup> No such applications have ever been made to the VCI

<sup>25</sup> Letter from Aideen Neylon to Michelle Strauss dated 12 September 2017

<sup>26</sup> Rule 59(a) and (b) of the Solicitors Disciplinary Tribunal Rules 2017 as regards publication of decisions. The SDT hearings are open to the public, "*Where the Tribunal decides that a complaint discloses a 'prima facie' (i.e. apparent) case of misconduct by a solicitor, there will be an inquiry, with oral evidence, conducted by the Tribunal in public*"

<http://www.distrib.ie/>, accessed 30 July 2018

<sup>27</sup> The Medical Council has a presumption in favour of hearings in public, although given the personal nature of the hearings, will consider applications for it to be held in private or part-private see *Fitness to Practise Inquiries* <https://www.medicalcouncil.ie/Public-Information/Making-a-Complaint-/Fitness-to-Practise-Inquiries/>, accessed 30 July 2018

<sup>28</sup> "The hearings are generally conducted in public" <https://www.rcvs.org.uk/concerns/disciplinary-hearings/>, accessed 30 July 2018, and decisions are published on the website noted above, as well as decisions on applications to hold hearings in private.

<sup>29</sup> [1960] IR 239





It therefore follows that it is very likely that the FTP exercises judicial power and is a Court for the purposes of the Irish Constitution. The FTP would therefore be bound by Article 34.1 that requires the administration of justice to be carried out in public. The VCI's presumption of a private hearing would as such be unconstitutional. In fact, in order to be legal, the VCI's presumption would need to be reversed whereby public hearings were standard unless the very limited circumstances prescribed in the Courts and Civil Law (Miscellaneous Provisions) Act 2013 were met. The threshold that has to be met is high and every case has to be determined on its facts.<sup>30</sup> It is notable that proceedings from which the public are generally excluded are those of a distinctly personal nature and

include family law and sexual assault matters, not those relating to alleged professional misconduct.

In the alternative, the VCI's disciplinary arm is a Tribunal for the purposes of the ECHRA

Throughout the FOI process the VCI maintained the questionable argument that the VPA prevented it from having public hearings and publishing its disciplinary decisions. The VCI continued to effectively say that to provide an open disciplinary process would therefore be *ultra vires*.

The response that was advanced to both the VCI and OIC was that even if one proceeded on the basis that the VCI were correct about the interpretation of the

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<sup>30</sup> *MD v The Clinical Director of St Brendan's Hospital [2007] IESC 37* regarding the detention of a person on mental health grounds. The hearing and the decision strayed into matters of a deeply personal nature and yet the Court held, as set out at the start of the judgement, "On the hearing of this appeal the Court was requested on both sides of the case to take such steps as were possible to prevent the publication of the applicant's name or at of any detail which might identify him. This was requested on the basis that he was, undisputedly, a

*person under a disability. The Court did not consider that it had, in these proceedings, any power to make an order in that regard. However, the Court agreed to, and did, request any representatives of the media who might be present not to publish his name and said that it would not itself do so. The Court now repeats this request to any person who may wish to report this case either for the ordinary media or for the purposes of law reporting."*

VPA<sup>31</sup>, there would therefore be a conflict between the VPA and the ECHRA. The basis on which the ECHRA applied to the matter in issue was as follows:

- The ECHRA transposed a European Union Law into Irish law. EU law has primacy as against domestic legislation. Therefore, where there is an apparent conflict between the ECHRA and another statute, the law should be interpreted insofar as is possible to ensure compliance with EU Law.
- The disciplinary body of the VCI is a “Tribunal” for the purposes of Article 6<sup>32</sup> of the ECHRA.
- Article 6 provides for the right to a fair hearing.
- The right to a fair hearing requires that justice be administered in public save in very prescribed circumstances<sup>33</sup>. The decision of *Diennet v France*<sup>34</sup> was highlighted as being of particular relevance because it considered this issue in the context of the proceedings of a professional regulatory body:

*“The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6... The public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6, paragraph 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society within the meaning of the Convention.”*

On the basis of the above the contention is that the VCI’s disciplinary hearings should always have been open to public, save in very limited circumstances. The only measure that can now be taken to address this

wrong is to make public the FTPs disciplinary decisions.

The response to the argument that the VCI was either a Court or Tribunal

(i) Court

A FOI request was made by the author to the VCI for 5 FTP decisions. The request was refused on the basis of S29(1), s30(1)(a), s35(1)(a) and s37 of the Freedom of Information Act 2014. The appeal of this initial decision to another FOI officer with the VCI was premised on the argument that the VCI had no basis on which to consider whether or not to provide information under the FOIA as the FTP was a Court and was therefore subject to s34(1) of the Constitution<sup>35</sup>. The decisions should be available as of right unless at the time of the hearing an application had been made to withhold the decision from the public.

In a 15 page letter, the VCI refused access to all FTP decisions but did not once engage with the constitutional issue.<sup>36</sup> The decision was therefore appealed to the OIC.<sup>37</sup> The primary argument to the OIC was that the FTP was a Court and in accordance with section 42(a)(i) of the FOIA, the OIC did not have jurisdiction to consider whether or not to release the documents. It was requested that the OIC refer the matter to the High Court under s24(6) of the FOIA for determination of the issue. Section 24(6) allows the OIC to refer questions of law arising under review to the High Court for determination.

In its decision<sup>38</sup> the OIC upheld the VCI’s refusal to allow access to the FTP decisions. The OIC’s brief consideration of the constitutional points betrayed a fundamental misunderstanding of the matters in issue. When refusing to refer the matter to the High Court, the decision maker set out:

<sup>31</sup> The VCI’s assertion that the VPA prevented it from publishing disciplinary decisions was disputed by the applicant

<sup>32</sup> *Sramek v Austria* no 8790/79, ECHR, 22 October 1984, para 36.; *Rolf Gustafson v Sweden* no 23196/94, ECHR, 1 July 1997, para 38

<sup>33</sup> Of interest in respect to how the RCVS dealt with a request for a private hearing is the recent RCVS decisions in respect of the Application by Simon Peter Woods to hold a hearing in private, 31 May 2018

<sup>34</sup> *Diennet v France* no 18160/91, ECHR, 26 September 1995

<sup>35</sup> Letter from Michelle Strauss to Valerie Beatty, Registrar of the VCI, dated 13 August 2017

<sup>36</sup> Letter from Valerie Beatty, Registrar of the VCI, to Michelle Strauss dated 4 September 2017

<sup>37</sup> Letter from Michelle Strauss to the OIC dated 18 September 2017

<sup>38</sup> *Ms Y and The Veterinary Council of Ireland*, 14 May 2018, Case Number 170454

*“With regard to section 42 of the FOI Act, the wording of that section is, in my view, perfectly clear. It states that the Act shall not apply to a record held by the courts. I believe that the use of the word the provides clarity on the extent of the application of this section. It is not intended to extend the application of the section to all bodies with a quasi judicial function. The Courts are defined in Article 34 of the Constitution as comprising Courts of First Instance, a Court of Appeal and a Court of Final Appeal. I do not think that a committee of the VCI could be classified as coming within any of those categories. Consequently I find that section 42 of the FOI Act does not apply”.*

Significantly the Supreme Court decision of *Re Solicitors Act* was not referred to, considered, or distinguished, in the OIC’s decision.

(ii) Tribunal

The VCI briefly considered the points advanced in relation to the FTPs status as a Tribunal for the purposes of the ECHRA and noted the following,<sup>39</sup>

*“In my view the Requester has unfortunately elided and overlapped the question of public access to the proceedings themselves with the question of access by a requester to records for the purposes of the FOI Act. There is no functional or legal relationship between the two considerations and only the latter arises in relation to this Request... I note the three considerations identified by the Requester all relate to the Requester’s interpretation of the European Convention of Human Rights and a number of alleged breaches in relation thereto. All of these breaches identify the fact that the FTP Committee does not meet in public as the basis for a consequential finding that the Reports must be released pursuant to the FOI process. That is not the basis upon which the FOI process in general or section 30 in particular operates.”*

The only consideration that the OIC gave to the Tribunal argument was to note the following:

*“I do not propose to address the applicant's submissions regarding the holding of the disciplinary proceedings in private, save insofar as it relates to the application of section 42 of the FOI Act. It is important to note that this Office has no role or jurisdiction to address how public bodies perform their functions generally. It is my function to address whether or not they have justified any claims for exemption under the FOI Act and so I will not comment on the practices of the VCI with regard to their disciplinary functions”.*

With respect to the VCI’s argument it should be noted that it is the VCI who created the system whereby requests for FTP decisions would only be considered if made under the FOIA, and only because the VCI has statutory obligation to respond to such requests. There is no doubt that this is plainly the incorrect procedure and that is why in the covering letter, attaching the FOI request, the VCI was asked to first consider release of the information on the basis the decisions sought were Court/Tribunal documents<sup>40</sup>. In response the VCI said, *“The Council does not... propose to engage with those legal points with the exception of entirely reserving its position in relation to each and all points raised therein”*. Therefore, the only way to force the VCI to engage with the issue was to frame it in the context of an FOIA request, which was done.

That said, the VCI’s point is refuted on the basis that there still remains a strong argument under the FOIA for why the decisions should be released. The point that was being made to the VCI was that when addressing whether the VCI should release information under the FOIA, the consideration does not stop with the FOIA and must extend further to the ECHRA. If public bodies could ignore the requirements of the ECHRA when making FOI decisions, it would entirely undermine the primacy of EU Law. Therefore, if at the time of the hearing the FTP should have held the

<sup>39</sup> Letter from VCI Registrar to Michelle Strauss dated 4 September 2017, page 9, second paragraph

<sup>40</sup> Email from Michelle Strauss to Valerie Beatty, Registrar of the VCI, 13 August 2017



hearing in public, then it would follow that the decision that was made after that hearing should also be public.

Quasi-judicial bodies such as the VCI and OIC do not appear to be cognizant of, or maybe do not wish to turn their minds to, the implications of the requirement to interpret domestic law to give effect to EU law. Indeed this problem is not isolated to the OIC<sup>41</sup>.

Conclusion – the implications for the UK

This article started by considering what allows professions to maintain the trust and confidence of the public it is there to serve. Much of this trust is fostered by two interrelated functions, that of openness and transparency of the profession itself, together with rigorous oversight provided by the institutions that surround and regulate the profession. The decisions of the VCI and OIC to keep the disciplinary functions of the PIC and FTP from scrutiny may cause irreparable damage to perception that the public have of the veterinary profession in Ireland. Indeed, questions have already been asked in the mainstream media about the functioning of the VCI<sup>42</sup>.

The reasons advanced by the VCI for withholding information that relate to the preservation of professional reputation and the protection of the integrity of VCI's disciplinary process do not hold water when one simply considers that many other regulatory bodies manage to function perfectly well with a transparent disciplinary system. The VCI's strong objection to allow any scrutiny of its disciplinary process inevitably leads to questions about why such a position has been taken. That the VCI insists that its statutory framework does not allow an open disciplinary process, but then fails to engage with the legal arguments relating to the Constitution and the ECHR, causes one to question the ability of the VCI to be self-critical. The capacity of any regulatory body to be able to step away from the culture of the profession,

and indeed the body's own conventions, is essential in maintaining an effective regulatory system. The failures by the VCI in this regard lend credence to the criticisms raised about the ability of professions to properly self-regulate<sup>43</sup>.

'In the longer term the VCI's position may be self-defeating as it may render the body obsolete as society may react to a perceived lack of effective regulation by implementing a far more rigorous and constraining regulatory regime.'

In the short term the VCI's failings in this respect, may, as noted, have a negative effect on the public's perception of the profession. In the longer term the VCI's position may be self-defeating as it may render the body obsolete as society may react to a perceived lack of effective regulation by implementing a far more rigorous and constraining regulatory regime<sup>44</sup>. This may in turn have unintended, but very serious consequences for the profession and public. As an example of this Rollin notes how in the United States, there was such concern around the irresponsible use and dispensing of pharmaceuticals by vets that the profession almost lost their ability to prescribe drugs in an "extralabel" fashion (extralabel meaning prescribing a drug in a manner that is not consistent with what is set out on the label). As so few drugs are approved for animal use, this move would likely have had significant negative consequences for both the profession, the public, animals<sup>45</sup> and animal-based industry.

Furthermore, the VCI's actions have implications for the United Kingdom, the EU and any other nations with which Ireland have reciprocal agreements to allow vets

<sup>41</sup> *Cooke and Strauss v Bank of Ireland*, Workplace Relations Commission DEC-S2016-016, 3 March 2016, paragraph 4.6

<sup>42</sup> John Mooney, 'Vet to be struck off for role in exporting cattle fraud', *The Sunday Times*, 15 July 2018, "The VCI has been criticised for failing to take prompt action against vets who engage in malpractice or activities that contravene their professional standards or code of ethics. It declined to comment"

<sup>43</sup> Blass, E. (2014). *The Failure of Self-Regulation: The example of the UK Veterinary Profession*. *Journal of Business Systems, Governance & Ethics*, Vol 5 No 4.

<sup>44</sup> Rollin, B.E. (2006) *An Introduction to Veterinary Medical Ethics: Theory and Cases*. Wiley-Blackwell

<sup>45</sup> *ibid*

to practise in different jurisdictions without undergoing further training. Irish vets who have been registered for more than 3 months after their date of graduation can apply to the RCVS to practise in the UK<sup>46</sup>. As part of this application process vets must provide a letter from the VCI that includes, amongst other things, confirmation that the applicant is of good professional standing, that there is no charge of unprofessional conduct against him/her and where relevant details of any disciplinary proceedings or findings against the applicant. Whilst there is no suggestion that the VCI is or will be dishonest in its drafting of these letters of standing, the concern extends to whether the VCI's disciplinary proceedings are sufficiently robust to allow the RCVS to have confidence in the assertions made by the VCI about a vet's professional abilities and complaints history. On the basis of the information currently available, my contention is that it is not.

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<sup>46</sup> RCVS Applications for Registration  
<https://www.rcvs.org.uk/registration/applications-veterinary-surgeons/ireland/>, accessed 29 July 2018