

The British Horseracing Authority and
Integrity in Horseracing.

An Independent Review.



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Glossary

ACPO	Association of Chief Police Officers of England, Wales & Northern Ireland
ACPOS	Association of Chief Police Officers of Scotland
BHA	British Horseracing Authority
CoLP	City of London Police
HRA	Horseracing Regulatory Authority (precursor of BHA)
IS&LD	Integrity Services and Licensing Department
JAGB	Jockeys Association of Great Britain (now the Professional Jockeys Association)
MoU	Memorandum of Understanding
NIM	National Intelligence Model
SOM	Security Operations Manager
SOS	Security Operations Supervisor
SSO	Stable Security Officer
T&CG	Tasking and Co-ordinating Group
WRSO	Weighing Room Security Officer

1 EXECUTIVE SUMMARY

1.1 The British Horseracing Authority (BHA) is the independent combined governing and regulatory body for horseracing. Ensuring the integrity of the sport is at the heart of what it does. The BHA sets out its responsibility as being to:

- provide the most compelling and attractive racing in the world
- be seen as a world leader in raceday regulation
- ensure the highest standards for the sport and participants, on and away from the racecourse
- promote the best for the race horse

and

- represent and promote the sport and the industry.

1.2 The BHA was established in July 2007 by merging the Horseracing Regulatory Authority, which was responsible for regulating and policing the conduct of racing, with the British Horseracing Board, which was the governing authority for horseracing in Britain, responsible for promoting the interests of racing. Previously the Jockey Club also had responsibility for regulation and discipline in horseracing but it no longer has any regulatory function.

1.3 In late 2002 a review of race security and intelligence was commissioned jointly by the Jockey Club and The British Horseracing Board against a background of negative publicity arising from a number of allegations of race fixing. It reported in 2003 and its implementation has had a significant impact on the quality of intelligence gathering and the standard of investigation in horseracing.

1.4 In October 2007 Dame Elizabeth Neville QPM was commissioned by the BHA to conduct this Review. The initial terms of reference set were:

1. To carry out a Post Implementation Review of the Recommendations of the 2003 Security Review with a view to assessing how such measures have protected the integrity of racing.
2. Identify areas for development to improve the British Horseracing Authority's role in protecting the integrity of racing.

3. Review relevant Rules of Racing and penalties connected with integrity issues.

Following the collapse of the trial of Messrs Rodgers, Fallon, Williams and Lynch in December 2007 the Terms of Reference were expanded to include:

4. Assess the role and procedures that racing and sports governing bodies should adopt when dealing with matters that may involve breaches of the criminal law as well as its own rules in relation to corruption connected with betting.
5. To consider all of the above in the light of the proceedings against Messrs Rodgers, Fallon, Williams and Lynch (The City of London proceedings).

Dame Elizabeth has been supported throughout the Review by Michael Page QPM, and Matthew Burbeck and has benefited from the legal advice of Mark Gay and Catherine Beloff of DLA Piper.

- 1.5 Whilst the Review Team's thanks are due to all who have been involved in this Review for their openness and willingness to contribute, a special debt of gratitude is owed to Fiona Carlin for her tireless support, research and ability to answer even the most obscure questions speedily and efficiently.

- 1.6 The Review was conducted in three phases,

Phase 1

This involved a critical analysis of the recommendations made by the 2003 Review, the subsequent action taken in response to both the recommendations and observations made in the Review and an assessment, both qualitative and quantitative, of the impact achieved by their implementation.

Phase 2

This consisted of a review of the rules governing racing, the conduct of licensed and registered individuals and the penalties for offences of corruption. This included the changes to the conduct of hearings which were implemented on 1st January 2008.

Phase 3

This involved an assessment of the role and procedures that racing and sports governing bodies should adopt when dealing with matters that may involve breaches of the criminal law; as well as their own rules in relation to corruption. Particular consideration has been given to issues connected to betting, the impact of the

creation of the offence of 'cheating' (Section 42 Gambling Act 2005), the impact of the newly formed Gambling Commission and the City of London proceedings.

- 1.7 The Review Team has interviewed in excess of sixty individuals drawn from all aspects of BHA operations, partner agencies and key stakeholders. Visits have been made to a representative selection of racecourses where the opportunity was taken to assess security and regulatory activity in a live operational environment. A literature review of over fifty different documents yielded much valuable background and context which was reinforced by consideration of security provision in other countries and other sports.

HRA RESPONSE TO THE 2003 SECURITY REVIEW

- 1.8 There was overwhelming evidence from those interviewed that the 2003 Review was seen as a watershed in terms of securing the support of the majority of those involved in horseracing in focusing on real threats to the integrity and reputation of the sport. Whilst opinion was split on the extent of the problem, all agreed that preservation of integrity was vital to the future prospects of the sport.
- 1.9 The 2003 Review was seminal and its implementation has had a great impact on the quality of intelligence gathering and investigation in horseracing, making the Security Department (now re-named Integrity Services and Licensing Department (IS&LD)) the recognized leader in the field of integrity in sport. The message that the BHA is working effectively to protect the integrity of horseracing has been widely disseminated and understood. There is a strong corporate feeling within the BHA that all have a role to play. This extends to outside bodies.
- 1.10 The 2003 Review made a total of 36 recommendations, 35 of which were accepted by the HRA. The recommendations were broadly centred on establishing integrity as a strategic imperative, establishing an effective intelligence gathering and analysis framework, improvements to the investigative capability and an increased emphasis on partnership arrangements with other sporting and gambling authorities.
- 1.11 The bulk of the recommendations of the 2003 have been fully implemented. A comprehensive analysis of the action taken in respect of each is given at Appendix B and many of the issues are further developed in the main report. Where recommendations have not been implemented, by and large, the impact has not

been significant, or there were good reasons for not doing so. These reasons were principally related to practicality or the fact that changes in structures or systems have superseded the original intention of the recommendation. In some cases the intended benefits are yet to be realised and there have been some delays caused by difficulties in recruitment and resourcing. The Review Team has highlighted these issues and, where appropriate, has made further recommendations.

ASSESSMENT OF THE ROLE OF THE INTEGRITY SERVICES AND LICENSING DEPARTMENT (IS&LD) IN PROTECTING THE INTEGRITY OF RACING

1.12 Viewed in context, the focus of the 2003 Review was framed by the threat of corrupt practice amongst licensed and registered individuals within the industry connected with betting (principally the advent of betting exchanges and the ability to lay horses to lose). It was also responding to stinging criticisms of the industry's willingness and ability to put its house in order. It identified five main threats to horseracing's integrity. Its main thrust, however, was to establish a capacity to confront the issues and root out corrupt practice. The Review Team is in no doubt that the restructured Integrity, Services and Licensing Department (IS&LD), working to a strategy of deterrence through certainty of detection and prevention through education on acceptable standards of behaviour, has met its principal aims. Not only has the handling of intelligence and investigations been professionalized, increasing both the volume of cases and the quality of their investigation, but the reputation of the department internally to the BHA and externally has been much enhanced. The IS&LD was described to the Review team by a number of agencies as 'a model for the effective investigation of corruption in sport'. The sport's reputation and standing has benefited considerably from this change and the investment behind it.

1.13 That is not to say that there are not areas in which improvement can be achieved. There is still a need to improve organizational understanding of the intelligence function and encourage people to contribute to it. This would be aided by greater feedback from the intelligence function to contributors. Internally there are still cultural barriers to be overcome, particularly in relation to the SSOs and WRSOs and the overall cohesion of the BHA presence on racedays. The Review Team has recommended that the SSO and WRSO roles be brought closer together, and that the WRSO should be responsible for raceday integrity and intelligence and also be in charge of the SSOs to ensure better briefing and a better flow of intelligence. Proactive intelligence gathering needs to be enhanced.

- 1.14 The Review Team examined a number of investigation files which indicated that investigations are conducted to a high standard. Areas for improvement have been identified. There are issues in respect of the interface between the Legal Department and the practices of the investigation team which points to a need for greater integration of the two functions and this is an area that would benefit from attention.
- 1.15 The investigation team is currently below optimal staffing level and there are concerns that pressure of investigative work is limiting their capacity to gather intelligence. Consideration is being given to plugging this gap by appointing a field intelligence officer but the Review Team considers that developing the intelligence flow between existing resources may provide a more efficient and effective solution.
- 1.16 There were some excellent examples of co-operation amongst handicappers, stable inspecting staff and the IS&LD driven largely by tactical requirements. Equally the Review Team witnessed co-operation on racedays between WRSOs, Stewards and members of the Veterinary team, again driven by the need to address problems on the day. There is some concern that these different elements have their own methods of storing intelligence, creating unnecessary risks in relation to intelligence management. Some groups and individuals do not have access to intelligence. Reasons are largely cultural and we have seen evidence of change for the better during the course of our Review, as the BHA is reorganised and reshaped. A number of recommendations are made to help, in particular that the newly appointed Head of Intelligence should undertake a review of intelligence flows with a view to formalising links and processes.
- 1.17 Security for stabling and the weighing rooms at race courses provided by BHA staff, all of whom are committed to their roles if, as noted earlier, lacking in cohesion as an overall presence, is in urgent need of a systems review. SSOs still rely on paper based access control which is inadequate. Despite the SSOs' extensive local knowledge, these would not withstand a determined attempt at breaching security. The BHA is currently looking at technology based solutions for the stable areas. The Review Team, whilst recognizing the cost implications, recommends that the BHA takes the opportunity to consider an integrated solution for **all** restricted areas rather than just the stable area. CCTV has been an area of concern to the BHA and previously the Jockey Club for some years. The systems examined by the Review Team were basic, poorly sited and in need of upgrade. Neither of these issues will be cheap to remedy and will undoubtedly require risk assessment in order to justify

expenditure. At present however they represent an area of risk to the BHA and the sport.

- 1.18 The IS&LD has a solid record of co-operation within the sporting industry, having seconded staff to assist in setting up the Gambling Commission's intelligence infrastructure and assisted various bodies such as the International Olympic Committee. Formal links with external agencies are well documented and supported by comprehensive memoranda of understanding. There is close co-operation between the IS&LD and Betfair, with information being exchanged on a daily basis. Arrangements with bookmakers are not so well developed. An MOU (Memorandum of Understanding) is being drafted with the Gambling Commission but is currently undergoing detailed discussion around the issue of referral of cases. There is some work to be done to clarify the responsibilities and practical impact of the provisions of the Gambling Act which, following its experience with the City of London proceedings, the BHA is naturally anxious to resolve. The Review Team has been in discussion with the Gambling Commission. Its activities will be tightly focussed on wrongdoing in relation to gambling at the serious end of the spectrum and will be driven by public interest considerations. In most cases dealt with by the BHA, it is unlikely to be able to assist.
- 1.19 The IS&LD has extended its activities from intelligence gathering and investigation, into prevention and deterrence. It has embarked on an excellent education programme on 'Inside Information', designed to protect jockeys and others from the temptations of corruption. This programme is in its early days and we have suggested that a more co-ordinated and planned approach to prevention and deterrence would be beneficial. In looking at how this programme is delivered on training courses for stable staff and jockeys, we have identified a need to review and professionalize training for licensed individuals. Race Straight, is a recently launched whistle blowing initiative which now needs to be promoted further and placed on the BHA website to increase awareness of its existence.
- 1.20 Whilst a great deal has been achieved, at considerably increased cost, it has to be recognized that five years have passed since the original Review, the governance framework for horseracing has been revised and the regulatory environment changed by the Gambling Act 2005 and the establishment of the Gambling Commission. In a sense the 2003 Review, by default, set an integrity strategy for horseracing focused on the threat posed by corrupt practice. As the BHA develops its own strategic

intentions this Review Team believes it is time to assess whether the strategic direction should now be broadened to the areas already identified in the 2003 Review

- 1.21 The element missing from the National Intelligence Model, as applied to the BHA, is that of the organizational risk assessment which balances organizational and operational demands. Conducting such a risk assessment would, as it did in the Security Review in 2003, reveal wider threats related to criminal activity including terrorism, animal rights extremism, and money laundering, use of unidentified techniques or drugs to enhance or depress equine performance, increasing use of information technology to aid betting and suppress activity counter to equine welfare.
- 1.22 The strategic positioning of the intelligence function is, in the view of the Review Team, critical. Widening its scope would secure the engagement of all elements of the BHA.

REGULATION, LICENSING AND THE DISCIPLINARY PROCESS

- 1.23 The BHA has a very extensive and comprehensive set of rules, orders, codes of conduct and instructions which are contained in the 'Orders and Rules of Racing'. The Horseracing Authority and the British Horseracing Board each had their own rules, orders and instructions which have been amalgamated. The result of decades of amendment is a very large document which contains little clarity as to the distinction between the classifications of rules, orders and instructions. They appear to have evolved in an attempt to deal with every situation that has arisen and are unnecessarily complicated as a result. The new board of the BHA, having recognized this at its start last year, has established a fundamental review of the Rules and appointed a consultant with the brief to write them in plainer language and set them out in a more logical manner to enhance user friendliness.
- 1.24 The Review Team has taken into account views on how the rules for the BHA should be formulated. We are of the view that, ideally, rules should be based on a set of underpinning principles. The rules themselves should not be too detailed in order to allow them to be applied more flexibly. The recommended model would be to have a set of principles supported by codes of conduct with rules which sit under them. A breach of a principle or a code of conduct can lead to a liability to disciplinary sanction, even if there is no specific rule. This gives flexibility and means that it is not necessary to try to cater for every eventuality in the rules.

- 1.25 A large section of the Orders and Rules relates to employment conditions. We believe that current employment legislation may diminish the relevance of its inclusion and suggest that the BHA take legal advice on the parts of the Rules and Orders relating to employment. We believe that most of it should be removed from 'Rules and Orders'. We also believe that the principle of being a good employer should be a condition of a trainer's license rather than part of the regulatory framework.
- 1.26 We further suggest that the rules for licensed and regulated persons be restricted to those which are relevant to the sport of horseracing and not to wider industry issues. The BHA should consider whether there are other elements of the existing rules which are either superfluous or more properly licensing conditions or conditions of registration.
- 1.27 Our overall view is that the whole approach to regulation should be considerably streamlined and simplified. The underlying principles should be articulated, together with codes of conduct. The rules should flow from these. The procedures for horseracing should be gathered into a separate body of documentation. There may also be a place for guidance which should be distinct from rules and procedures. Adherence to guidance may be a relevant consideration either for discipline or licensing and registration.
- 1.28 An issue that requires a strengthening of the rules is the acquisition of telephone and other data. It is a source of constant delay and frustration in the investigative process and, given the investigation of alleged corruption inevitably involves those outside the regulated community, relies on their co-operation if costly court procedures are to be avoided.
- 1.29 The best way to obtain telephone records would be through the powers under the Regulation of Investigative Powers Act 2000 (RIPA). Section 22 may be used by a designated person from a body authorized under the Act for the purpose of preventing or detecting crime (or for other purposes not relevant to the BHA) to obtain communications data, which includes telephone records, from telecommunications operators.
- 1.30 The BHA is not a body authorized under the Act, but the newly formed Gambling Commission is such a body. The Gambling Commission has indicated that it would consider making an application if it considered it appropriate and proportionate. It would have to relate to an allegation of crime. They would envisage a case

conference taking place and that in all likelihood, it would be in the context of a joint investigation.

- 1.31 It is recommended that the role of Licensing as the gateway to the sport be strengthened and that clear procedures for the exchange of information and intelligence between Regulation, the Intelligence Unit and the Licensing Unit be established. The recent inclusion of the licensing function within the IS&LD will greatly aid this process. Although the licence provider need only afford limited rights to an initial applicant for a licence, once the renewal or forfeiture of licence is concerned, all of the rules of natural justice are fully engaged and the matter must be dealt with on a fully disciplinary basis. Therefore, the BHA must ensure that it has evidence based procedures in place to deal with forfeiture or failure to renew and robust processes which will stand up to scrutiny.
- 1.32 The disciplinary process forms part of the natural continuum of the BHA's focus on ensuring integrity in horseracing. This continuum starts with intelligence and investigation and ends in a disciplinary process which may lead to the imposition of sanctions upon participants in racing who breach the Rules. The investigative, licensing, prosecution and judicial functions should be kept discrete (specifically, the investigative and intelligence handling roles should be kept separate from decision making on grant and renewal of licences and institution of disciplinary proceedings). There is blurring of these functions and people undertaking investigative and intelligence functions are involved in decision making about prosecution. There is also a need for improved processes for decision making on prosecution and we have proposed the appointment of a Disciplinary Officer who should be a lawyer. We have also made recommendations for quicker and improved management of cases which are to be prosecuted.

THE WAY FORWARD

- 1.33 Confidence within the BHA has been shaken by the experience of what the media has called 'the Fallon trial', referred to in this report as the 'City of London proceedings'. There is an understandable desire to establish clear rules around how the BHA should deal with cases that could have a criminal dimension. The BHA should exercise its judgment in deciding whether to hand over its evidence to the competent authority which will usually be the Gambling Commission, and Section 42 of the Gambling Act 2005 (cheating at gambling) will usually be the relevant offence.

The Commission has pointed out that it is neither funded nor resourced to support protracted enquiries and would make a public interest decision on how to proceed. If it took on a case, it would expect to work in partnership with the BHA and, where relevant, the police.

- 1.34 The City of London Police has indicated that it is willing to act as a single point of contact for the BHA, subject to the development of an MOU. It does not rule out investigating future cases which are beyond the powers of the BHA, given its national responsibility for Economic Crime and maintaining the National Fraud Reporting Centre. It has said that it would want to take advantage of the expertise and knowledge of the BHA and work with it as a regulatory body, rather than treat it as a complainant and potential witness as was done in the past. The Association of Chief Police Officers of England, Wales and Northern Ireland has indicated that it supports the role of the City of London Police in this respect.
- 1.35 The BHA will have to enter into negotiations with both the City of London Police and the Gambling Commission to identify the way forward when it suspects criminal activity by non regulated individuals. The Review Team has made some recommendations on how the BHA should approach this complex issue involving two different bodies.
- 1.36 The Review Team has considered the position of the BHA over bringing disciplinary proceedings when it has referred a possible criminal case either to the Gambling Commission or the police. There is no legal principle that prevents the BHA from investigating, or commencing or continuing disciplinary proceedings against a person subject to the Orders and Rules of Racing, notwithstanding that there is a risk that criminal or civil proceedings may be brought, or indeed in circumstances where they have already been commenced. In most cases there will be no impediment to the continuation of the BHA investigation and disciplinary process, but there are certain considerations in deciding whether to continue with disciplinary proceedings which are set out in Section 8.
- 1.37 The Review Team recommends that the BHA adopts a strategic position of tackling integrity and cheating issues by dealing with its own regulated community. If serious matters emerge which are beyond their own powers to deal with or relate to other individuals, then the BHA should not investigate more widely but refer the matter on. It will be a matter for the relevant body, police or Gambling Commission, to decide on its response. If they engage, they are likely to look to work in partnership with the BHA. The terms of reference for such investigations must be carefully drafted to

ensure that the BHA element is focussed on areas subject to its regulation, and where it has expertise and powers.

- 1.38 This approach will militate against the BHA taking on a pan sport role of intelligence gathering on gambling, although it would not preclude it taking on a contracted role of intelligence or betting analysis for specific sports.
- 1.39 The Review Group concludes that the BHA in general and the IS&LD in particular have, through their response to the 2003 Review, established processes and structures that have been successful in countering the threat of corruption. We believe that these measures are capable of enhancement to cover other potential threats to the integrity of racing through the emerging BHA Strategy.
- 1.40 The IS&LD recognizes the need for continual evolution and development. The main body of the report considers what further improvements might be made in the context of recent developments such as the advent of the Gambling Commission and recent events such as the trial of Rodgers et al. The BHA's external relationships have suffered from criticisms in the wake of the collapse of the trial. Work now needs to be done to reconstruct those relationships, building on the IS&LD's otherwise sound foundations.
- 1.41 To assist in this the Review Team has made 16 recommendations, a summary of which is provided at Section 2.

2 SUMMARY OF RECOMMENDATIONS

From the outset the Review Team determined that the process should be as dynamic as possible and, as noted elsewhere in this report, received the enthusiastic engagement of staff across the BHA but notably those within IS&LD. Accordingly work is already underway in respect of aspects of a number of these recommendations. The recommendations remain in full, however, to provide a comprehensive reference point for overall development

R 1 The Review Team recommends that the IS&LD reviews its strategy to ensure that it derives from the BHA Strategy which is currently being developed, taking into account the recommendations of this Review. The Review Team recommends that the BHA's strategic position on protecting the integrity of horseracing militates against it taking on a pan sport role. This does not preclude consideration of offering contracted out services to other sports which should be restricted to betting analysis, and possibly inputting and analysis of intelligence product. IS&LD should not consider taking on the intelligence gathering function for any other sport.

R 2 The Review Team recommends that an analysis of intelligence flow be undertaken by the newly appointed Head of Intelligence with a view to ensuring that intelligence links are maintained with all departments of the BHA. Within this, consideration should be given to the best way of enhancing the proactive field intelligence gathering capacity and ensuring that all intelligence within the BHA is stored on a common database. To enhance the performance of the raceday team, a nominated individual, probably the Weighing Room Security Officer (WRSO) should take responsibility on behalf of the BHA for intelligence and integrity at all racing events. All security staff must be briefed at the commencement of each race meeting, such briefings to include any intelligence alerts and overall security arrangements. Similarly, intelligence debriefs should be held at the end of each meeting.

R 3 In support of improved intelligence function and investigation, the following recommendations are made:

- There is greater scope for the Legal Department and Investigators to agree an investigation plan early on in the process and for the Legal Department to take a more active part in case management. We recommend the drafting of a protocol between the two departments setting out the role of each in the prosecution process, the levels of service each can expect from the other and joint case management protocols.
- The approach to case debriefs should be reviewed to ensure that learning is relayed to all interested parties and incorporated into future investigations.
- The IS&LD should review the procedures in place to ensure the integrity of all evidence.
- The IS&LD should review the issue of all equipment such as digital cameras and adopt a consistent documented approach to their use. Guidance should be given to ensure they are not used inappropriately or intrusively.
- There should be a specified minimum induction programme for new IS&LD staff designed to ensure familiarity with all other aspects of the BHA operation. Similarly other departments should arrange familiarisation with IS&LD functions and processes as part of the standard induction of their staff at all levels.

R 4 The Review Team recommends that the BHA should deliver its aim of preserving the integrity of horseracing by focussing its efforts on those who fall within its regulatory ambit. When it becomes aware of wrongdoing by those outside of its regulatory remit it should report such wrongdoing to the appropriate body, usually the Gambling Commission and/or the City of London police. If a joint investigation is agreed, the terms of reference must be carefully drafted to ensure that the BHA element is focussed on areas subject to its regulation, where it has expertise and powers and that its contribution is not disproportionate. The BHA should develop formal arrangements in the

form of MOUs with the City of London Police and the Gambling Commission, and consider the interrelationship of the two bodies. The BHA should also review existing MOUs to ensure they cover the appropriate range of organizations, are up to date in the light of the Gambling Act 2005 and the existence of the Gambling Commission.

- R 5** The Review Team recommends that the whole approach to regulation should be reviewed and considerably streamlined and simplified. The underpinning principles should be articulated, together with codes of conduct. The rules should flow from these. The rules for licensed and regulated persons should be restricted to those which are relevant to horseracing. The BHA should consider what elements of the existing rules are either superfluous or more properly licensing conditions or conditions of registration. The procedures for horseracing should be gathered into a separate body of documentation. There may also be a place for guidance which should be distinct from rules and procedures. Adherence to guidance may be a relevant consideration either for discipline or licensing and registration.
- R 6** The Review Team recommends a number of changes to Rule 241 to assist investigations and to ease the difficulty of obtaining telephone records. We also recommend that jockeys are required to register their mobile telephone details with the BHA and keep them up to date.
- R 7** The Review Team recommends that the role of Licensing as the gateway to the sport be strengthened and that procedures for the exchange of information and intelligence between Regulation, the Intelligence Unit and the Licensing Unit be reviewed. Full checks must be carried out before the grant or renewal of any licence or registration.

It is also recommended that two changes be made to the Orders and Rules of Racing. First, we would propose that the second sentence of Part 1(a)(v)(a), which treats renewals of licences as if they were initial applications, be deleted as it does not reflect the current law. Indeed it is in direct conflict with it.

Secondly, we would propose a new paragraph (i) at Part 22, Rule 220 of the Orders and Rules of Racing. This would create an obligation on all persons who participate in racing to be fit and proper persons to do so at all times.¹ Consequently, if the BHA were to find that by virtue of past or present conduct or associations that a person was not such a person, this would also constitute a breach of the Rules and Orders of Racing and could be dealt with as a disciplinary matter.

In the longer term, if the Orders and Rules of Racing are revised as we have suggested, the obligation to be a fit and proper person might be more properly enshrined in the codes of conduct. A breach of the codes would be a disciplinary breach, whether or not there was any breach of a rule.

R 8 The Review Team recommends:

- that the investigative, licensing, prosecution and judicial functions be kept discrete (specifically, that the investigative and intelligence handling roles be kept separate from decision making on grant and renewal of licences and institution of disciplinary proceedings);
- improved processes for decision making on prosecution and for managing the disciplinary process, with the appointment of a Disciplinary Officer who should be a lawyer;
- quicker and improved management of cases which are to be prosecuted;
- that the Disciplinary Procedures set out in Appendix S of the Orders and Rules of Racing be amended to reflect the revised processes for case management.

¹ Our suggested wording would read as follows:

"(i) All persons involved in racing shall be fit and proper persons to do so."

R 9 The Review Team considers that the BHA should investigate and prosecute alleged breaches of the Rules and Orders of Racing notwithstanding that this conduct may amount to a criminal offence, subject to the exceptions set out below. The only circumstances in which disciplinary matters which are under investigation by the BHA should be remitted to the police or the Gambling Commission for consideration for criminal investigation are:

- where the disciplinary powers of the BHA are so inadequate in an individual case that the evidence necessary to prove the charge cannot be obtained or the penalty would be ineffective;
- where the conduct disclosed to the BHA concerns substantial non-racing or non-betting matters of a serious nature;²
- where a disciplinary panel, appeal board or the Board of the BHA recommends such a step at the conclusion of disciplinary proceedings.

R 10 The Review Team recommends that the IS&LD develops a prevention and deterrence strategy and plan.

Following from this, we recommend that the IS&LD establishes what remains to be actioned from the Review of Inside Information and draws up an implementation plan.

A plan should also be drawn up to convey the Inside Information message to the whole regulated community and also to deliver it at the point of entry. This should include consideration of translation of some of the material into commonly spoken foreign languages.

Improving relationships with other bodies can contribute to the effective dissemination of the Inside Information message. We recommend that the BHA considers how its relationship with the National Trainers' Federation might be enhanced. The same applies to the National Association of Stable Staff.

The plan should include promoting awareness of the existence of Race Straight as widely as possible.

² E.g. threats of violence, intimidation or blackmail

R 11 The Review Team has considered training in the context of integrity, but this has led us to make a general recommendation about training for the regulated community. We recommend that the BHA reviews its approach to training, to ensure that it matches the BHA strategic aims and to professionalize its delivery. Oversight and quality and content control should rest with the Head of Industry Recruitment and Training who should act in consultation with the relevant departments.

R 12 The Review Team's primary recommendation for the SSO and WRSO roles is that the two should be brought closer together, and that the WRSO should be responsible for raceday intelligence and integrity and be in charge of the SSOs. This will ensure better briefing and a better flow of intelligence. The WRSO would liaise with racetrack staff, brief and debrief all BHA staff, and also racecourse security staff.

We make a number of subsidiary recommendations in relation to the WRSOs and SSOs with a view to improving their efficacy.

- Appropriate training should be given to the WRSOs for their current and any future role.
- The SSOs should have access to the database of licensed and registered persons at all times. They should be encouraged to submit more intelligence, particularly relating to whether people are fit and proper persons to be licensed or registered.
- Owners should be issued with passes and the SSOs should be provided with lists of relevant owners for any given raceday.
- Arm bands should be used at all race meetings pending the introduction of a technological solution, as a means of identifying those authorised to enter secure areas.
- The SSOs uniforms be assessed, any necessary changes made and that they be required to wear them so they look professional, are visible and project the corporate image of the BHA. Consideration should be given to

the wearing of uniforms to all Integrity Services and Licensing Department staff who appear in public.

- R 13 The Review Team recommends a review of the CCTV systems for both the Weighing Rooms and the stable areas should be carried out and both systems brought up to an appropriate standard at all locations. This should permit the rapid and remote downloading of data. Recording equipment and tapes should be stored securely.**
- R 14 The Review Team recommends that the BHA retains consultants to recommend the best way to provide an integrated access system for ALL restricted areas. The BHA can then make a policy decision on the way forward before going out to tender for this major piece of work.**
- R 15 The Review Team recommends that the BHA develops a communications strategy encompassing its three audiences: external, the regulated community, and internal to the BHA. This will ensure the delivery of agreed consistent messages. It should include website strategy and content which should be controlled from the Communications Department.**
- R 16 The Review Team recommends that the emphasis on future recruitment concentrates on skills rather than background. Recruitment campaigns should be spread as widely as possible and not restricted to police specialist publications.**

8. CITY OF LONDON TRIAL: KEY LESSONS

- 8.1 In accordance with its Terms of Reference, the Review Team has been asked to consider the role and procedures that racing and sports governing bodies should adopt in dealing with matters involving the criminal law, in the light of the criminal proceedings brought by the Crown against Messrs Rodgers, Fallon, Williams, Lynch and others. Having done so, the Review Team considers that there are a number of lessons to be learnt from the BHA's handling of the Rodgers case. In order to put these lessons into context, it is necessary first to set out a brief history of the BHA's involvement in that case. It should be emphasised at the outset that the purpose of this review is not to examine the course or conduct of the criminal trial, or to seek to critique the outcome. It is no part of this review to seek to apportion blame. Rather, it is to seek to examine if lessons can be learnt from those proceedings. It is against this background that the facts will be analysed.

FACTS

- 8.2 The criminal trial has become known as the 'Kieren Fallon trial', although Mr Fallon was only one of a number of defendants and he was not a part of the Jockey Club investigation. The circumstances which led to the case first came to the attention of the then Jockey Club's Security Department in December 2002. Mr Miles Rodgers was suspected of using inside information to engage in corrupt betting activities. An investigation was commenced within the Security Department. On 10 December 2003, Mr Rodgers was interviewed by Jockey Club investigators, but denied having a Betfair account and any wrongdoing.
- 8.3 On 22 December 2003, Mr Paul Scotney, the then newly appointed Director of the Security Department and Mr Ben Gunn, a former Chief Constable and the then non-executive director of the Jockey Club responsible for security issues, met with the Commissioner of the City of London police, Mr James Hart. The

purpose of this meeting was confirmed in a subsequent letter from Mr Scotney to Mr Hart dated 23 December 2003, in which Mr Scotney stated: "*As you know, our main concern is to what extent the Police Service will become involved in the investigation of suspected criminal offences in Racing. You kindly allayed our fears by offering us the option of discussing individual cases with Detective Chief Superintendent Steve Wilmott. This would enable us to have a clear steer on whether the matter is appropriate for the Police and, if it is, an indication as to which Force would be most appropriate to deal with it.*"

- 8.4 On 29 December 2003 and 19 March 2004, following the Security Department investigation, Mr Rodgers was charged by the Jockey Club with laying horses owned by Platinum Racing, a company of which he was a director. During this period, the Jockey Club received information from Betfair that heightened its concerns that Mr Rodgers was using a number of 'host' accounts to mask his betting activities. Indeed, intelligence indicated that in spite of being the subject of disciplinary proceedings, he may have been subverting jockeys to influence the outcome of races. The Review Team understands that at this time, Mr Scotney discussed the case with Mr Gunn. Notwithstanding that the Jockey Club's disciplinary procedures had not been exhausted, Mr Gunn took the decision that the case should be referred to the police as an allegation that a serious crime had been or was being committed, being fraud, or conspiracy to defraud the customers of Betfair.
- 8.5 Mr Gunn met with the then Commissioner, Mr Hart, in late February 2004. According to Mr Gunn, the rationale for referring the case to the police was as follows:
- Mr Rodgers was already under active investigation by the Security Department of the Jockey Club for suspected serious breaches of the Rules of Racing and suspected corrupt betting activity;
 - The suspected activity involved potential serious criminal offences of fraud as well as possible disciplinary offences against the Orders and Rules of Racing;

- In spite of being involved in current disciplinary action, Mr Rodgers was believed to be continuing to subvert jockeys and other licensed persons to enable him to lay horses to lose on Betfair;
- The powers of investigation available to the Jockey Club at that time were very limited in respect of the sort of offences that were suspected of Mr Rodgers;
- The investigation of crime is wholly a matter for the police.

8.6 Mr Gunn has confirmed his understanding that the Jockey Club and its successor bodies, the HRA and the BHA, played no part in the decision to prosecute, or in the preparation of the case, or its presentation at Court. This was confirmed to the Review Team by two of the BHA's key legal advisors, Mr Mark Warby QC and Mr Patrick Russell who, despite their in-depth knowledge of the BHA's Rules and its disciplinary procedures, were not consulted by the City of London police either on the decision to prosecute or on the preparation of the case.

8.7 Mr Scotney has also provided a chronology of contacts between the City of London police and the Jockey Club, after the decision to involve the police was taken. Mr Scotney first met with Detective Chief Superintendent Wilmott (who had been appointed by the Commissioner as the senior investigating officer on the case) on 10 March 2004, and provided him with a briefing sheet on the activities of Mr Rodgers. A further briefing sheet was provided to DCS Wilmott on 27 March 2004, (two days after the Disciplinary Panel of the Jockey Club had declared Mr Rodgers a Disqualified Person for two years). Between April and September 2004 (the precise dates have not been recorded), Mr Scotney had several further meetings with DCS Wilmott and other police officers. The information flow was at all times one-way. The purpose of these meetings was for Mr Scotney to provide information requested by the police. The police did not share any information regarding the case with Mr Scotney or with anyone else at the Jockey Club. In particular, the prosecution took a unilateral decision to use a race-reader from Australia, Mr Ray Murrhy, as their expert witness. The Jockey Club was not consulted on this decision and, when they were informed of it, expressed misgivings.

- 8.8 In September 2004, the City of London police made their first arrests. Neither Mr Scotney nor any other person within the Jockey Club had any advance warning of the timing of the arrests or who was likely to be arrested.
- 8.9 Sometime later, on 2 July 2006, Messrs Rodgers, Fallon, Lynch, Williams, Berry and various others were charged with conspiracy to defraud Betfair customers. The HRA was not consulted on the nature of, or given any advance details of, the proposed charges.
- 8.10 On 7 July 2006, the HRA convened a Special Licensing Panel, chaired by Sir Michael Connell, an ex High Court Judge and Independent Director of the BHA's Regulatory Committee with special responsibility for advising on legal matters, to consider licence applications from Messrs Lynch, Williams and Berry (whose licences had automatically expired when they were charged). The Panel also sat to consider whether Mr Fallon could continue to ride in Great Britain on his Irish licence. Mr Berry was granted a licence. Messrs Lynch and Williams were not, but were compensated for this at the standard rates set by the Professional Riders Insurance Scheme. Mr Fallon was suspended from riding in Great Britain until the conclusion of the criminal trial. Mr Fallon's subsequent appeal to the Appeal Board of the HRA was dismissed following a hearing on 13 July 2006, as was his appeal to the High Court on 28 July 2006.
- 8.11 On 24 September 2007, the criminal trial began at the Old Bailey. Five HRA employees, Mr Scotney, Mr John Gardner, an Intelligence Analyst in the IS&LD, Mr William Nunneley, Senior Stipendiary Steward, Howard Robinson, Veterinary Officer and Ms Rachel Tonks, Stipendiary Steward, gave evidence at the trial. The BHA had no other involvement in the trial, and in particular was not consulted at any time on the nature of the case that was to be advanced by the prosecution. On 7 December 2007, following a half time submission, Mr Justice Forbes directed the jury to deliver a verdict of not guilty against all the accused.
- 8.12 The BHA and its officials have been subject to criticism, both from within the industry and the press, as a result of the collapse of the trial. The public perception is that the CPS, the City of London police and the BHA were all responsible in part for the collapse of the case. In particular, the BHA has been

criticised for its lack of involvement in a case which was at the heart of the regulation of horseracing in Great Britain.

8.13 The factual conclusions that the Review Team has drawn from the above are as follows:

- i. The Jockey Club took the decision to refer the Miles Rodgers case to the City of London police, notwithstanding that its own disciplinary procedures were in motion and at that time had not been exhausted;
- ii. The Jockey Club's primary rationale for this decision was that the case involved potential serious criminal behaviour, which was ongoing, and which the Jockey Club did not have sufficient investigative powers to deal with;
- iii. Once the case had been referred to the police, the Jockey Club's/HRA's/BHA's only role was to provide information to the police at infrequent intervals when requested to do so. Even if it had wanted to do so, it would not have been allowed any participatory role;
- iv. The Jockey Club/HRA did not receive any information from City of London police which might allow the either body to progress its disciplinary enquiries;
- v. No disciplinary enquiries continued and no proceedings were commenced against the defendant jockeys in relation to the wrongdoing alleged in the criminal charges;
- vi. The Jockey Club/HRA had no involvement in the conduct of the investigation, the decision to prosecute, the evidence on which the case was based or the preparation of the case for trial. By the time of the trial the HRA had become the BHA. The BHA's role at the trial was limited to four of its employees giving evidence on relatively non contentious matters.

ANALYSIS

- 8.14 From the BHA's perspective as a regulator of sport, the events documented above have been highly unfortunate. The Review Team is satisfied that the decision to involve the City of London Police taken by Mr Gunn in 2004 was right in the circumstances, particularly as at the time the Jockey Club was not aware that it might have the ability to utilise Norwich Pharmacal Orders⁷ to obtain information from third parties about wrongdoing and the Jockey Club had not yet entered into a Memorandum of Understanding with Betfair which would allow it to analyse betting patterns in the manner necessary to properly investigate the alleged misconduct.
- 8.15 It is also true that Mr Rodgers was beyond the disciplinary jurisdiction of the Jockey Club, as he enjoyed no license from it. Indeed, all that could be done to Mr Rodgers was to warn him off. Such a sanction is a relatively weak one against a non-participant in the sport, as non-participants do not need access to racecourses to conduct their nefarious activities. In those circumstances, Mr Gunn's actions in referring the matter to the City of London police appear to us to have been fair and reasonable. Indeed, there is little else he could have done at the time.
- 8.16 From the time the police investigation began, all disciplinary investigation ceased, as the then current thinking was that to continue disciplinary proceedings would prejudice the criminal process, which, of necessity, enjoyed priority. The BHA had no substantive input into the criminal process, despite its expert status as the regulator of horseracing. Some three years passed from the time the Miles Rodgers file was handed to the City of London police to the time of the trial. In the meantime, high profile arrests were made which damaged the reputation of

⁷Deriving from the case of *Norwich Pharmacal v. Customs & Excise* (1974) AC 133, where it was held by the House of Lords that there was jurisdiction for the Court to order disclosure from third party "facilitators" of evidence implicating tortfeasors, despite the fact that no wrongdoing was alleged against the facilitator. The jurisdiction can be used to obtain evidence from telephone companies and bookmakers.

horseracing, and acquittals resulted, which also damaged the reputation of the BHA as the regulator of horseracing, although its role in the proceedings was tangential, at best.

8.17 In adopting the approach that once criminal authorities are involved, all disciplinary inquiries and proceedings must cease pending the outcome of process, the BHA was hardly alone amongst sports governing bodies. In football cases, any announcement of a police investigation into on-field or off-field matters has meant the suspension of disciplinary inquiries and proceedings. However, in the light of the collapse of the City of London proceedings, it is clear that all sports governing bodies must investigate new approaches to regulating their sports.

8.18 Consequently, it is the widespread view of all of those the Review Team interviewed, not just that the criminal justice system is an inefficient and inadequate means by which to seek to regulate horseracing, but that the regulation of malpractice in horseracing can be better performed by the BHA than by external criminal prosecution agencies. This view is shared by the Review Team. This is no criticism of such agencies, as it is not their role to regulate horseracing. The question this poses is whether it would be practically possible for the BHA to continue its disciplinary proceedings after the point at which it is suspected that criminal misconduct has taken place. In order to answer this question, it is necessary first to analyse the law on this point.

LEGAL ANALYSIS

8.19 Given that the BHA may in future want to pursue its disciplinary investigations and proceedings despite the fact that criminal offences may have been committed, the question is whether there is any legal impediment to its so doing.

8.20 The first question is whether the BHA is under any legal duty to report any evidence of criminal wrongdoing to the criminal authorities. The short answer is no. Since the felony of misprision was abolished by the Criminal Justice Act 1967, no criminal sanctions can be imposed upon a person for failing to report to

the authorities facts which may amount to the commission of a criminal offence. Of course, if pursuant to their powers of investigation the police request information, and that request is backed by appropriate orders, such information must be provided. Equally, a person may not obstruct the police in the execution of their duties or pervert the course of justice. However, the fact remains that without an inquiry and a request from the police there is no stand-alone legal duty (as opposed to moral duty) to inform the authorities of those facts.

8.21 This does not mean that the Review Team is recommending that material be withheld from the police or the Gambling Commission. On the contrary, it is anticipated that pursuant to a Memorandum of Understanding, the BHA will share information regularly with both the police and the Gambling Commission so that they are fully apprised of the matters with which the BHA is concerned (see Section 5). However, in the absence of a request by the criminal authorities, it is under no obligation to do so.

8.22 The second question is whether a disciplinary inquiry or disciplinary proceedings against a person can be commenced or continued in circumstances where that conduct may also amount to a criminal offence. The broad answer is that there is no rule of law that provides that merely because criminal proceedings are contemplated or have begun (or indeed that civil proceedings are contemplated or have begun) private disciplinary proceedings must be stayed pending the outcome of those proceedings. On the contrary, the courts have held that there is a substantial public interest in such disciplinary proceedings continuing unhindered. On the issue of whether private disciplinary proceedings should be stayed pending civil proceedings, Hirst LJ said⁸:

"The power to intervene should be most sparingly exercised and ... it is only in exceptional cases that the disciplinary process (to which the Institute rightly attaches great importance in public interest) should not be allowed to go ahead unhindered."

⁸ R -v- Institute of Chartered Accounts in England & Wales ex parte Brindle and Others [1994] BCC 297

Therefore, the policy bias of the courts is to allow disciplinary proceedings to continue, notwithstanding the existence of concurrent civil or criminal proceedings.

- 8.23 The question this poses is when will the courts intervene to stay disciplinary proceedings, such as those that would be brought by the BHA? In essence, unless a party seeking a stay can show that if a stay is refused, there is real risk of serious prejudice which may lead to real injustice in one or both the proceedings, a stay must be refused.⁵ Even if prejudice can be demonstrated, this is not the end of the matter. Even if there is a real risk of such prejudice, the court still has to balance that risk against other considerations. These considerations will almost always include a strong public interest in seeing that the disciplinary process is not impeded. Therefore, even if prejudice can be shown, there remains a presumption in favour of allowing the disciplinary proceedings to continue. Finally, in a case where such a balancing exercise is carried out, the court will give great weight to the view of the tribunal in considering whether a stay should be granted (in this case this would be the Disciplinary Panel of the BHA), although the court's view is determinative.
- 8.24 As can be seen, the development of the jurisprudence on the issue of whether it is permissible for disciplinary proceedings to be pursued concurrent with civil or criminal proceedings is relatively recent. The decision in which the key factors governing this issue are drawn together is the decision of Mr Justice Burnton in *R v The Executive Council of the Joint Disciplinary Scheme* [2002] EWHC 2086. Therefore, those at the Jockey Club/BHA who had assumed the primacy of criminal proceedings can be forgiven for not knowing that the law on disciplinary proceedings had progressed in the way that it has.
- 8.25 There is, therefore, no legal principle that prevents the BHA from investigating misconduct, or from commencing or continuing disciplinary proceedings against a person subject to the Orders and Rules of Racing, notwithstanding that there is a risk that criminal or civil proceedings may be brought, or indeed in circumstances where they have already been commenced. The only question is whether that person would be prejudiced in the other proceedings by the

continuance of the disciplinary proceedings. As the subject matter of a BHA charge is entirely different from that brought by the Gambling Commission under Section 42, or by the Crown Prosecution Service under statute and common law, it would be difficult for any person so placed to argue that such prejudice exists, against a background where the case law emphasises the primacy and importance of private disciplinary proceedings. There is, therefore, no intrinsic legal impediment to the BHA conducting itself in this fashion, although every case must be analysed on its own facts.

CONCLUSION

- 8.26 In conclusion, the Review Team recommends that going forward, the BHA should continue to investigate and prosecute breaches of the Rules of Racing, notwithstanding that such breaches may also involve breaches of the criminal law. As Sir Michael Connell, pointed out, all attempts to influence betting potentially involve breaches of the criminal law. The charges that may be laid by the BHA are different from the charges that may be laid by the police if it is suspected that a criminal offence has occurred, and require different evidence, even though the circumstances that are the subject of the investigation may be similar. The BHA is entrusted primarily with protecting the integrity of horseracing, not with investigating and prosecuting criminal offences.
- 8.27 The Review Team is fortified in its view by the fact that the powers of investigation now available to the BHA are more extensive than those apparently available at the time when Mr Rodgers' case was referred to the City of London police. Not only are Norwich Pharmacal Orders available, but there is also a Memorandum of Understanding with Betfair, which means that Betfair is able to share data on suspicious betting patterns with the BHA. In addition, the Gambling Commission have been granted statutory powers which may also yield information useful to the BHA, pursuant to a Memorandum of Understanding between the BHA and the Gambling Commission. In these circumstances, therefore, the sources of information available to BHA appear to be adequate for it to discharge its regulatory functions.

- 8.28 The BHA has an overriding need to move more swiftly to protect the integrity of horseracing. While it fails to act or does not act, the integrity of horseracing may be subject to continuing damage. The BHA cannot allow its obligation to maintain the integrity of the sport to be compromised by the timetabling demands of a criminal prosecution, as the objectives of the BHA as the regulator of horseracing, and the objectives of criminal authorities, whilst in many ways complementary, are very different. Therefore, in all but the most exceptional cases, breaches of the Rules of Racing should be investigated and prosecuted by the BHA.
- 8.29 There must, of course, be circumstances in which the BHA will cede its disciplinary powers in favour of the criminal authorities, be it either to the police or the Gambling Commission. Many people have commented upon how difficult it is to draw the line. Although the task is difficult, the Review Team considers that it is not impossible.

R 9 The Review Team considers that the BHA should investigate and prosecute alleged breaches of the Rules and Orders of Racing notwithstanding that this conduct may amount to a criminal offence, subject to the exceptions set out below. The only circumstances in which disciplinary matters which are under investigation by the BHA should be remitted to the police or the Gambling Commission for consideration for criminal investigation are:

- **where the disciplinary powers of the BHA are so inadequate in an individual case that the evidence necessary to prove the charge cannot be obtained, or the penalty would be ineffective;**
- **where the conduct disclosed to the BHA concerns substantial non-racing or non-betting matters of a serious nature;⁹**

⁹ E.g. threats of violence, intimidation or blackmail.

- where the disciplinary panel, appeal board or the Board of the BHA recommends such a step at the conclusion of disciplinary proceedings.