

**BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING
COMMITTEE**

IN THE MATTER OF MR ANDREW HAYNES

APPLICATION FOR A LICENCE RENEWAL

HEARING DATE: 10 January 2012

Committee Members:

**RICHARD RUSSELL ESQ
CLIVE H. JONES ESQ (Chairman)
EDWARD DORRELL ESQ**

DECISION AND REASONS OF THE LICENSING COMMITTEE

Introduction

1. Mr Haynes has applied for a renewal of his trainer's licence under Rule (C)6 of the BHA Rules of Racing by an application form dated 21 November 2011. The application is made following the expiry of a licence granted until 31 October 2011 by a decision of this Committee made on 9 March 2011. That licence was for Mr Haynes to train whilst an employee of Haynes Training Limited, a company which was compulsorily wound up by Order of the Bristol County Court on 27 October 2011. This application is made on the basis that he will be an employee of a newly formed company, Hinton Training Limited.

Changes of Fact

2. Changes of fact have arisen which alter the whole basis upon which the application is made. First the proposed employer has changed to PT Racing Limited and second (and most importantly) the proposed premises from which the training business of that company will operate will be different. It is now proposed that Eastbury Cottage Stables should be rented. This affects not only the location but also the size of the operation based upon the number of stables available and the financial position.

Background

3. There is a history of financial failure of companies belonging to and/or managed by Mr Haynes which have employed him as a licensed trainer. This will be apparent from reading the reasons for the decision made on 9 March 2011. The issues relevant to that decision were summarised as follows:-

- (1) *A past history of 2 companies for whom Mr Haynes trained and in which he had shareholdings which had a history of insolvency.*
- (2) *Losses within the accounts of the Company for the year ending 30 September 2010.*
- (3) *The existence of County Court judgments.*
- (4) *How the Company would pay creditors old and new over the period of the licence applied for and trade as a solvent business.*
- (5) *Certain specific disputes concerning third parties.*

4. Mr Haynes satisfied the Committee that a licence should be granted but the background of previous, failed businesses and existing financial difficulties caused the Committee to lay down the following conditions for his licence (“the Conditions”):-

- (1) *By 31st March 2011 Mr Haynes shall lend to Haynes Training Limited the sum of £45,000, upon terms that he will not be repaid the loan ahead of unsecured creditors (which he offered and as he has represented he will do);*
- (2) *By 31st March 2011 Mr Fuller shall have entered into a legally binding guarantee of the liabilities of Haynes Training Ltd to its creditors limited to £35,000 (which he offered and represented he will do);*
- (3) *Mr Haynes will provide written evidence of compliance with subparagraphs 3.1 & 3.2 to the Authority by 4.30pm on 14th April 2011;*
- (4) *Mr Frank Frankland through AWA Bloodstock Ltd will continue to be retained by Haynes Training Ltd as its accountant (or another suitable person will be in his place with the same or similar scope of duties providing Mr Haynes notifies the Authority in writing of any change of the party so retained within 14 days of that change);*
- (5) *Haynes Training Ltd by Mr Frankland shall report to the Authority (either directly or through Mr Haynes):-*
 - a) *any Court judgment entered against it;*
 - b) *should it be unable to pay its debts as they fall due*

and shall do so in writing forthwith upon that event occurring.

- (6) *In the event of any condition not being fulfilled or of the events identified within sub-paragraph 3.5 above occurring, the Authority may revoke the licence without any further hearing or make such other decision as it thinks fit in its discretion.*

In addition it was recommended (but not a requirement) that Mr Fuller, company's accountant, become a director of the Company. This did not happen but nothing turns on that for the purposes of this decision.

Current Concerns

5. Mr Haynes asks for a new licence on the basis that there will be a new employer, a company owned and (at least) initially financed by Dr Rochford, with sufficient financial standing and that this will provide the stability required for a new company and a new business which can then benefit from his undoubted skills as a trainer.
6. Clearly it is necessary for the Committee to be satisfied that there is such a financial standing. It is for Mr Haynes to satisfy the Committee that he is a suitable person and meets all the criteria contained within the documents entitled "Applications for a Licence to Train Guidance Notes". Those criteria include that *"the necessary financial resources are available to the training operation"*.
7. Even if that criteria is met, there are others to consider in addition. The Guidance Notes also provide (amongst other matters) that:
- "Applicants are required to demonstrate or confirm that:*
- They have the competence and capability to train;*
 - They have access to appropriate training facilities;*
 - They have security of tenure for the premises from which they wish to train;*
 - They comply with relevant Health and Safety responsibilities;*
 - They comply with all relevant employment responsibilities;*
 - They have appropriate Public Liability Insurance and, where appropriate, Employers' Liability Insurance; and*
 - They are otherwise in all the circumstances suitable to hold a permit (i.e. that they are 'fit and proper')."*
8. The failure of Haynes Training Limited is relevant to the last of those criteria, as is the inter-related question whether Mr Haynes complied with the Conditions. The Committee when considering whether to grant a licence is not acting as a disciplinary panel. It is not its purpose to assess whether penal consequences should flow from any breaches of the Conditions. However, it is reaching a

decision whether Mr Haynes is in all the circumstances a suitable person to hold a licence and it must consider his previous conduct in that context.

9. In reaching such a decision past conduct needs to be addressed within the context of the application itself. The Committee needs to address suitability by taking into account the facts relevant to the licence sought. For example breaches of previous conditions or other misconduct might be tempered by the changes or restraints that those facts place on future conduct. As an illustration of this, personal responsibilities for the financial failings of a previous training business will not necessarily mean that a licence will be refused in the event that the trainer will have no role in the management of the proposed employer in respect of whom there are no questions concerning financial stability. Another example, although it does not arise in this application, is that the trainer or future employer may voluntarily assume a personal liability for debts incurred by the previous business. Clearly that would introduce another factor to take into account. In contrast there may be cases when the previous breaches are so serious that it would be inappropriate to grant the licence applied for in any event. We have in mind, for example, cases of untrustworthiness attributable to fixing races or other similar offences. Subject to that, a Committee may be satisfied on the facts before it that the new scenario will provide sufficient safeguards and reasons to enable it to be satisfied of suitability. This is a distinction between the role of a committee considering whether to grant a licence and the role of a disciplinary panel.

The Decision

10. It is quite clear that a licence cannot be granted upon the present application due to the lack of information concerning the new company, its business and premises. The changes of fact have this inevitable result on the evidence before us.
11. It is true that applications can result in a “chicken and egg” situation when an applicant and/or the employer and/or supporters cannot commit to obligations before knowing whether a licence will be granted. For example, in this case the entering into of a lease for new premises. However, subject to the facts, this can be dealt with by making the grant of a licence conditional or by restricting its application to certain circumstances. That is not the problem here.
12. The problem here is that the late changes of fact mean that (amongst other matters): there is no business plan, there are insufficient details of the ownership and investment structure for the new company; the commitment and involvement of the owners in the operation of the new company is vague; and there has been no inspection of the premises.
13. These matters will normally be required by an applicant in ordinary circumstances in order for that applicant to satisfy the guidelines referred to above. They are particularly important in this case due to the background and current concerns.

Furthermore there has not been adequate consideration of the safeguards that might exist to deal with the concerns over suitability.

14. At this hearing the Committee was satisfied that there were breaches of the Conditions:-

(1) *The Committee has not seen evidence of compliance with the first condition, although Mr Fuller states that it can be provided. Assuming it can, there is still a breach of the third condition.*

(2) *Mr Fuller did not enter into a legally binding guarantee of the liabilities of Haynes Training Ltd to its creditors limited to £35,000 (which he offered and represented he will do). This is mitigated by the fact that he made long term loans to the company. The accounts for the year ended 30 September 2011 identify long term loans from the "patron" totalling £113,411. Nevertheless this condition has been breached and there was a further breach of the third condition.*

(3) *The two breaches of the third condition have been identified. It is to be noted that this condition was prescribed in circumstances where the Conditions made clear that this information would be relevant because the Committee could decide to revoke the licence. The importance of compliance cannot be under-stated.*

(4) *Mr Frank Frankland continued to be retained by Haynes Training Ltd as its accountant until its liquidation.*

(5) *There has been no Court judgment to report but Haynes Training Limited was wound up on a petition by its then landlords based upon a debt of £23,338.35. This represents unpaid rent for every month from 12 March 2011 (only 4 days after the hearing granting the licence) until but including 12 August 2011 except for June. This petition was not disputed. That non payment is evidence of being unable to pay debts as they fall due and yet Mr Haynes did not notify the Authority. This was a breach of the fifth condition and the position is made worse by the fact that a letter from him dated 30 June 2011 represented to the Authority that "current debts are being met as they fall due". He attributed this to a misunderstanding because he meant to refer to suppliers not the landlord but clearly it is a misstatement.*

15. All of those matters raise considerable concern with regard to suitability. However, as explained in paragraphs 8 and 9 above, their relevance and consequence needs to be addressed within the context of the facts identified within the application. There is no need to address those concerns in respect of this application because it will be refused in any event due to the matters set out in paragraphs 10-12 above. Nor would it be appropriate to do so. That is because we

do not consider that Mr Haynes is necessarily an unsuitable person to hold a trainer's licence notwithstanding all of the matters above ranging from the financial background to the breaches of the Conditions. Whether he is or not will depend upon the facts relevant to the application.

16. We remain impressed, as we were at the last hearing, at his commitment and good intentions both on their own and combined with those of his partner, Miss Berry. We consider that it may well be appropriate to grant a licence for a future application provided a Committee can be satisfied that the future application presents sufficient safeguards from which to reach such a decision. We emphasise that this view is not binding upon any future Committee which will reach its own decision upon the application and evidence before it.
17. However, we do not see this as a case where past breaches are so serious that suitability cannot be established in any event. As a result we do not discourage Mr Haynes from making a new application upon the basis of the changed facts. Nevertheless we emphasise to him the importance of ensuring that the application considers all matters of concern. That said, the manner in which he makes his application and its content is a matter for him. It is he who must satisfy the Authority.
18. We refuse this current application for the reasons set out at paragraphs 10-12 above.

Signed: 

For the Committee