

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

IN THE MATTER OF FERGAL LYNCH

APPLICATION FOR A LICENCE FOR A PERIOD TO 17 MARCH 2011

HEARING DATE: 28 February 2011

Committee Members:

STEPHEN ALLDAY (Chairman)
EDWARD DORRELL
CLIVE H. JONES

DECISION AND REASONS OF THE LICENSING COMMITTEE

The Application

1. Mr Fergal Lynch's application form for a flat race jockey's licence for the period to 17 March 2011 is dated 11 October 2010. It is to be found within divider 2 of the bundle before us.
2. The application to the British Horse Racing Authority ("the Authority") arises in the following circumstances:-
 - 2.1. Mr Lynch came to England to be an apprentice jockey when he was 15. He is now 32. He was the Champion Apprentice Jockey in the 1997/8 season and his career soon blossomed whilst he also benefited from a stable 7 year relationship with his former partner.
 - 2.2. Most unfortunately from about 2002 he came into contact with Mr Miles Rodgers who was then the principal of the Platinum Racing Syndicate ("the Syndicate"). Whilst this led to rides and riding success for Mr Lynch, ultimately it led to extremely serious breaches of the Rules of Racing. These are identified in a document dated 24 June 2009 entitled "Basis of Admission and Recommendation on Penalty". A copy of that document is at page 35 of the bundle.
 - 2.3. In essence Mr Lynch admitted that in connection with Mr Rodgers:-
 - a) On 6 occasions he supplied inside information for material reward, sometimes using an unregistered telephone;

- b) On one occasion he intentionally failed to ensure that the horse “Bond City” ran on its merits knowing that it had been laid to lose by Mr Rodgers;
 - c) On 15 occasions he instructed Mr Rodgers to place bets on his behalf and received the proceeds; and
 - d) He was associated with a disqualified person, Mr Rodgers, between April and August 2004 in connection with horse racing.
- 2.4. The most serious offence of stopping a horse from winning knowing that it had been laid to lose occurred on 31 August 2004. The next day Mr Lynch was arrested by the police. However, he was not charged until the summer of 2006 and therefore continued to hold a licence and to race until 7 July 2006.
- 2.5. As from that date Mr Lynch’s licence was not renewed due to him having been charged with the criminal offence of the common law conspiracy to defraud. The charge concerned his involvement with Mr Miles Rodgers, involved a number of defendants and included allegations of conspiring to ensure that horses that had been laid to lose did not win their races. The stopping of “Bond City” was one of the cases relied upon by the prosecution.
- 2.6. Mr Lynch pleaded not guilty and was acquitted on 7 December 2007. He had been unable to race for some 17 months.
- 2.7. Mr Lynch re-applied for his licence and this was granted at a hearing of a Licensing Committee held on 18 December 2007. The transcript is at page 62 of the bundle.
- 2.8. Mr Lynch moved to the United States of America in August 2008 and had a very successful year riding some 120 winners in Pennsylvania where his brother is a trainer.
- 2.9. However he was the subject of disciplinary proceedings concerning the incidents summarised at sub-paragraph 2.3 above. An application by him to dismiss the enquiry was heard and dismissed on 15 and 16 June 2009. The basis for the application being that it would be unfair to conduct an enquiry into breaches of the insider information rules and of stopping Bond City because of his acquittal in the criminal proceedings. He had made no admissions at that stage.
- 2.10. A few days later the “Basis of Admission and Recommendation on Penalty” was negotiated between Mr Lynch and the Authority. It was presented to the Disciplinary Panel on 24 June 2009 at the enquiry concerning himself and

another jockey, Mr Darren Williams. For reasons given (see page 38 of the bundle) the Panel accepted the recommendation of a £50,000 fine. The panel did so in the circumstances of an undertaking that:-

“Mr Lynch is settled in the USA for the foreseeable future and in any event will not apply for a licence to race in the UK or seek to ride in the UK in reliance on any foreign licence (under the provisions of Rule 61) for at least [12] months”.

- 2.11. The undertaking was given in circumstances of the Authority accepting that it would not *“invite any other jurisdiction to impose any restriction on Lynch’s licence to race as a result of these proceedings”* unless he failed to pay the fine (see page 40, paragraph 11 of the decision).
- 2.12. That intention to ride in the USA was thwarted. It appears that the Pennsylvania Racing Commission would and will not grant him a licence unless he is licensed by this Authority or receives a ruling from this Authority that he is of *“good standing”*.
- 2.13. It is in those circumstances that an application is made with Mr Lynch’s primary aim being to return to the USA. However, he is more than willing to race in England and to live in Yorkshire if that is necessary because the Authority is unwilling to grant a licence due to his intention to race in a different jurisdiction.

Objections

3. His application in the circumstances summarised above has led to objections contained in a document dated 11 November 2010 and entitled *“Reasons for the Authority’s Recommendation that the Application Be Refused”*. The grounds are summarised at paragraph 2 as follows:-

The Authority recommends refusal of Mr Lynch’s application on the ground that he is not a suitable, or ‘fit and proper’, person to hold a jockey’s licence. The Authority’s concerns arise out of (i) the nature and extent of the breaches of the Rules of Racing which Mr Lynch committed in 2004, (ii) his failure to be candid with, and an attempt to mislead, this Committee at a previous licensing hearing on 18 December 2007 and (iii) his failure to admit his misconduct until June 2009. The Authority also has concerns about the way in which Mr Lynch appears to be seeking a British licence in order to enable him to ride in the USA.

The Preliminary Issue

4. A preliminary issue (“the Preliminary Issue”) was identified at the first hearing of this application on 16 December and argued at a hearing held on 13 January 2011. The issue was:-

“Whether this Committee can decide that Mr Lynch should not be granted a licence because he is not a suitable person regardless of any insight, contrition, rehabilitation or matters of mitigation because of the very serious and dishonest breaches of the Rules of Racing committed by him in the past?”

5. At paragraphs 45 and 46 of our decision we answered as follows:-

45. *Our decision is that this Committee can decide that an applicant should not be granted a jockey’s licence because he is not a suitable person regardless of any insight, contrition, rehabilitation or matters of mitigation because of the very serious and dishonest breaches of the Rules of Racing committed by him in the past.*

46. *Whether we will do so in the case of Mr Lynch is another matter. Although we have rejected Mr Lynch’s case on the preliminary issue, we make clear that we have not reached any view or conclusion as to whether he is a suitable person to be granted a licence. We also make clear that we have not reached any view or conclusion upon the relevance or significance to his application of the Authority’s agreement to the “Recommendations On Penalty” and of the decision of the Disciplinary Committee in this case.*

6. That decision and its reasons were handed down to the parties prior to this hearing.

The Hearing 28 February 2011

7. At the hearing on 28 February 2011 Mr Lynch provided information in answer to questions asked of him by his Counsel, Mr John Kelsey-Fry QC. The hearing was in the form of a discussion. Mr Warby QC, who appeared on behalf of the Authority together with Mr Jacob Dean, asked Mr Lynch some questions but the hearing was inquisitorial by nature.

The Rules

8. The General Manual of the Rules of Racing (“the Rules”) establishes the framework for the governance and regulation of horse racing¹ within England, Wales and Scotland. Rule 1.1. of Part 1 of the General Manual (A) provides that

¹ See paragraph 4.1 of the Part 1 of the General Manual (A).

all functions relating to the governance and regulation of horseracing shall be exercisable by the Authority. Those functions include granting, refusing, withdrawing and suspending licences required by the Rules².

9. Licences are required for jockeys to ride in races and an application for a licence must be made in accordance with the detailed requirements set out in the relevant Manual of the Rules, Rider Manual (D).
10. These include Rule 12 of Part 2 of the Rider Manual (D) which provides:-

“12. Jockeys to be suitable Persons

12. The Authority may

12.1 refuse to grant or renew a Jockey’s Licence, or

12.2 suspend or withdraw a licence,

if the Authority considers that an applicant or a licence holder is not a suitable Person to hold a licence.”

11. Each application should be considered individually on its merits³. A licence may be granted subject to such restrictions or conditions as the Authority considers appropriate⁴.
12. The Authority may from time to time issue guidance to ensure compliance with any Rule⁵. The guidance relevant to applications for a licence are to be found in the Guidance Notes that accompanied the application form sent to Mr Lynch. They are at divider 6 of the bundle. Paragraph 3 of the Guidance Notes identifies the criteria that an applicant for a jockey licence must demonstrate or confirm. Those criteria include the following:-

“They are otherwise in all the circumstances suitable to hold a licence (i.e. that they are ‘fit and proper’).

13. Schedule 9 to the General Manual (A) of the Rules of Racing makes clear that it is for the applicant to satisfy the Licensing Committee that he meets all the criteria contained within the Guidance Notes which accompany each application form.

Mr Lynch’s Oral Statement

14. In answering the questions put to him by Mr Kelsey-Fry, Mr Lynch did not attempt to excuse his conduct or to minimise its seriousness. He provided information which he relied upon to explain what occurred and to show that he

² See Rule 8.2 of Part 2 of General Manual (A).

³ See Rules 15 and 23 of Part 3 of General Manual (A).

⁴ See Rule 3 of Part 2 of Rider Manual (D).

⁵ see paragraph 6.2.2 of Part 2 of General Manual (A).

understands that his misbehaviour was gravely wrong, that he demonstrates true contrition and that he is a reformed person.

15. Mr Lynch's explanation for the breaches of the Rules he has admitted may be summarised as follows:-

15.1. His involvement with Mr Miles Rodgers started off innocently. Mr Rodgers was a gentle giant, likeable and quite funny. The Syndicate was soon very successful expanding from 12 to 20 and then 50 horses, doubling in size every year. There would be promotional events such as dinners attended by many owners with jockeys there to discuss horses and racing. Mr Lynch became a trusted jockey both as a rider and as an adviser. He was successful as a result of riding for the Syndicate.

15.2. However more and more information was being provided by Mr Lynch and gambling crept in. What had started as information recommending horses worth claiming for the Syndicate and advising upon whether to keep and run horses of the Syndicate moved into the provision of insider information for gambling purposes.

15.3. It got out of hand. It went from talking about horses and one thing led to another as conversations escalated. He knew the information he was providing was being used as insider information for gambling. He knew this was wrong. The reward he received in respect of each one of the occasions of the admitted offences of supplying insider information was £1,000.

15.4. He also knew it was wrong to instruct Mr Rodgers to place bets on his behalf but he did so on 15 occasions as he subsequently admitted. He made about £10,000 from this and whilst he first informed us that he did not receive that money from Mr Rodgers, having admitted to its receipt before the Disciplinary Panel in 2009, he later said he would have received profits, although not all of them, in dribs and drabs.

15.5. In addition Mr Rodgers had been warned off in February 2004 and he was aware of this upon his return from racing abroad during the winter. He nevertheless continued his involvement knowing that it was wrong to do so.

15.6. The circumstances that led him into those arrangements and that misconduct could be attributed to the break down of his relationship with his former partner. He lost the stability of a home life which had existed for some 7 years and he began to live a different life. He would stay drinking with other jockeys after races, go to night clubs, dog tracks and casinos. Whilst he did not accrue gambling debts as a result, the ending of

his relationship led him down the path he wrongly took towards the breaches of the Rules he has admitted.

- 15.7. Ultimately it led to his offence of “stopping” Bond City. This was the first and only time that this occurred. It occurred when he knew that Mr Rodgers had laid the horse to lose. He knew it was against the Rules and that it was wrong but it was the end of a chain of events that had escalated. He was in so deep at this stage that he could not get out of this role with Mr Rodgers even though it occurred to him to get help. However, it was this incident that made him realise (in his words) that he had “*crossed the line*”.
- 15.8. On 31 August 2004 he had 3 rides and had advised Mr Rodgers that none of them had a chance of winning. He accepted that he expected Mr Rodgers to use that information for betting purposes. The first race turned out accordingly but not the second which he won on a horse with odds of 9/1. On returning to the weighing room Mr Lynch was soon told that Mr Rodgers wanted to speak to him. Mr Lynch did not telephone in the public area set aside for jockeys but instead he went to his car and (also in breach of the Rules) left the course in order that no-one would see him telephoning to avoid suspicion.
- 15.9. Mr Rodgers was extremely angry having laid the winning horse to lose with the result that he had lost a substantial amount of money on that bet. Mr Lynch made clear that Mr Rodgers did not threaten him but did treat the fact that he had lost a lot of money as being Mr Lynch’s fault because the information provided had proved incorrect. He asked Mr Lynch for a guarantee that Bond City would not win its race. Mr Lynch says that he told Mr Rodgers that he did not fancy Bond City, that he didn’t think it would win but that he could not give a guarantee.
- 15.10. However, during the race the conversation was going through his mind and Mr Lynch explained that he was subconsciously thinking about it. He consciously failed to ask Bond City to run on its own merits, in the event finishing second, in order that the bets laid to lose would succeed.
- 15.11. Mr Lynch described that as being the time when his eyes were opened. He knew he had lost his integrity. There was no good reason for doing what he had done. He made a bad decision and felt ashamed and embarrassed. He felt his conduct had let other jockeys and the owners down. He had “*crossed the line*” and was angry with Mr Rodgers for placing him in that position. He needed help.
- 15.12. Mr Lynch then explained that he left the track and spoke to Mr Rodgers. He told him never to ask him to do that again; that it cost him a winner. He said that his trainer was unhappy with the ride and that it might cost him

his job and career. He says that he said that as an excuse because he wanted out and could no longer be involved with Mr Rodgers.

- 15.13. There was no inquiry into the race but the next day he was arrested at 6.00am. Thereafter, as summarised within sub-paragraphs 2.4 - 2.11 above, he continued to race until he was charged with the criminal offence of conspiracy. He was not able to race again until he was acquitted. He subsequently raced in the USA, faced the disciplinary proceedings and found he could not race in the USA afterwards as intended.
16. Mr Lynch set out a number of reasons why he could be trusted now and for the future. In particular:-
 - 16.1. The reasons that led him to commit the admitted breaches no longer exist. He is not in contact with Mr Rodgers. Of great importance is the fact that he has found a stable home life with a wife who provides support and with whom he wants to have a family. They met shortly after his arrest (in 2005) and became engaged before the trial. They married in 2008 and moved to the USA together. This is the stability he needed and now has.
 - 16.2. He has paid a very high price and suffered as a consequence of his actions both financially and physically. The process of the criminal trial in particular was awful with the threat of imprisonment and all the pressure that a trial at the Old Bailey will have. He thought that suicide might have resulted had he been convicted. Furthermore in this case (as we were told by Mr Kelsey-Fry who acted in the trial for one of the defendants) the police over stepped the mark significantly.
 - 16.3. He has subsequently recognised and admitted his guilt, made his admissions and understood why what he did was wrong. He understands that his actions of providing inside information were unfair to those who accepted bets on the races. His actions identified within the breaches admitted struck at the heart of racing, they were corrupt and despicable. He is ashamed and embarrassed and apologises.
 - 16.4. His letter to the Licensing Department of March 2010 at page 90 of the bundle was written before lawyers became involved. Whilst it may not be perfectly written, it sets out his position and demonstrates his recognition and admission of guilt together with his contrition. It shows he wishes to put the past behind him.
 - 16.5. He wants to start again with a new family and the opportunity to have children which step has been placed on hold in all the circumstances. He is willing to assist other jockeys to show them the pitfalls and provide help in order that no-one else will have to go through what he has gone through.

17. Mr Lynch also apologises for misleading the Licensing Committee on 18 December 2007 when he re-applied for his licence. This was at a hearing at which he did not admit his offences. In addition his Counsel had informed the Committee on instructions that Mr Lynch had made no financial gain as a result of the betting. That was untrue. So too was the statement that the betting was not done on his instructions. He had indeed made financial gain and had indeed had bets placed at his direction for his benefit through Mr Rodgers. His explanation for these lies, which enabled him to obtain a licence that led him to the USA and to considerable financial gain there, was the criminal trial. He had been side lined for some 18 months due to the trial. He was upset and wanted his life back; to get back to riding as quickly as possible. He had been through a hard time and thought he deserved to continue riding. Bond City did not crop up, so he did not volunteer it. He was angry that he had had to sit through the trial and did not think he should be punished. He blamed everyone but himself at that Committee hearing. He did not realise, as he does now, that the only person to blame was himself.
18. Mr Lynch explained his position in respect of where he would like to ride as follows:-
 - 18.1. He would prefer to ride in the USA.
 - 18.2. If the Authority will not give him a licence in those circumstances, then he will ride in this country. He will live in Yorkshire and he has trainers willing to engage him as evidenced by letters submitted.

Mr Kelsey-Fry's Submissions

19. Mr Kelsey-Fry submitted that the approach the Committee should adopt is to be found within paragraphs 17 and 18 of a previous Licensing Committee decision concerning Robert Fitzpatrick dated 2 December 2010 following a hearing on 24 November 2010. Accordingly he submits:-
 - 19.1. We should reject the notion that refusal of a licence would be criticism "*by the back door*" of the decision of the Disciplinary Panel on 24 June 2009. It is not our function to mete out further punishment.
 - 19.2. Equally a person in breach of the Rules can not submit that they should be readmitted on the ground that they have "*served their time*".
 - 19.3. An applicant who shows they now have the necessary honesty and integrity and sufficient insight into past breaches of the Rules combined with knowledge of and commitment to the Rules regarding integrity will be unlikely to commit future breaches.

- 19.4. In reaching a decision that someone is fit and proper, account should be taken of the need to uphold public confidence in racing and in the sport's reputation.
- 19.5. There is a tendency to uphold those wider interests if a jockey is readmitted because he is unlikely to prove a threat in the future to the integrity of racing and has expressed deep remorse for his wrongdoing and has shown the necessary commitment to the Rules.
20. Mr Kelsey-Fry has moved away from his skeleton argument in that he does not now assert that it would be unconscionable for the Committee to refuse a licence in the circumstances of the agreement between Mr Lynch and the Authority in respect of the disciplinary enquiry and/or the decision of the Disciplinary Panel on 24 June 2009. He accepts instead the approach taken by the Committee within the Preliminary Decision, namely that these are factors to have regard to when reaching our decision. Mr Kelsey-Fry has expressly disavowed reliance upon any case of estoppel arising from those matters. He does not assert any claim of legitimate expectation or restraint of trade nor rely upon any principles or authority relevant to those areas of law.
21. Mr Kelsey-Fry raised concern that Mr Lynch may be viewed as "*a rabbit caught in the headlights*" when giving his evidence and that as a result he may not have been as eloquent as he might have been. However he emphasised that:-
- 21.1. Full admissions were stated;
- 21.2. Mr Lynch did not take the easy life line of alleging that he was threatened by Mr Rodgers in order to try to minimise what he did.
- 21.3. At the time of the main offence, the stopping of a horse, he told Mr Rodgers that: "*I don't really want to do that again ... It's cost me a winner ...*" (see p.39 at paragraph 7 of the decision of the Disciplinary Panel on 24 June 2009). This shows that at the time Mr Lynch knew he should not have done what he did. He said he would not do so again. That is how the words "*It's cost me a winner ...*" should be construed. It is an assurance of his future conduct existing even at that stage.
- 21.4. There was a prolonged period of riding after his arrest and following his acquittal. There was no re-occurrence of the breaches here or in the USA. Although references from people in Pennsylvania have not been provided, there is no reason for that.
- 21.5. Not only has Mr Lynch not transgressed but he has gone through a process of facing trial and potential imprisonment from which he is likely to have learnt never to transgress again.

- 21.6. That likelihood is supported very strongly by the absence of the factors that led to his breaches in the first place and the existence now of a stable relationship. He was easily flattered by Mr Rodgers and the wining and dining of the Syndicate but has now moved to a new life.
- 21.7. Mr Lynch apologises for misleading the Committee in 2007 unreservedly. However, Mr Kelsey-Fry as his current Counsel observes from the transcript that the instructions given to his then Counsel were in circumstances of that Counsel having been recently briefed, of that Counsel emphasising that this led him to urge caution and of them having a mere 5 minute adjournment for instructions when it would have been wiser to accept the 3 weeks suggested by the Committee.
- 21.8. Whilst all cases turn on their facts, other cases referred to at dividers [16] and [17] of the bundle reveal that the fact of misleading a previous Committee does not automatically lead to a decision in this case that the applicant is an unsuitable person. This is not an issue or question of legitimate expectation. Each case depends upon its own facts and each decision is reached in its own circumstances. However, they show that suitability can still be established and indeed in circumstances that may be considered worse than Mr Lynch's insofar as misleading is concerned.
- 21.9. The personal letter from Mr Lynch to the Licensing Department (page 90 of the bundle) is significant. It does not refer as such to dishonesty but it is written without lawyers and no-one can argue that it fails to recognise the gravity of what has occurred or fails to express remorse. It provides a personal insight.
- 21.10. Those unfamiliar with the full facts may consider the Disciplinary Panel's decision lenient. However, it is clear that Mr Lynch has paid a very heavy and high price for his conduct: the criminal trial, the inability to ride and the continuing lack of a licence preventing him from riding in the USA or here.
- 21.11. If anyone has learnt a lesson Mr Lynch has. The abyss into and influence under which he fell could not be more different than the life he has today. He is manifestly ashamed, contrite and apologetic. He has no illusions about his conduct and there is a negligible chance of re-offending. This should uphold public confidence.
- 21.12. He could attend seminars concerning insider information, although this is probably mandatory for all jockeys.
- 21.13. The position with regard to his riding here or in the USA is clear and should not prevent a licence being granted. He will undertake to ride within the jurisdiction of the Authority if necessary. He has a home in Yorkshire.

- 21.14. He has well known and respected people who will provide rides and who have provided references which should be taken into account. This too is relevant to the public confidence issue.
22. Mr Kelsey-Fry had previously submitted a skeleton argument dated 9 January 2011 primarily but not wholly concerned with the test we should apply. We have read that document and have taken its contents into account when reaching this decision. We do not consider it necessary to repeat it having heard the detailed, oral submissions identified above.

Submissions of Mr Warby

23. Mr Warby's approach, quite rightly, was that he would not adopt an adversarial response and seek to reply to the points made by Mr Kelsey-Fry. His submissions are primarily contained within his and Mr Dean's skeleton argument and in the document entitled "Reasons for the Authority's Recommendation that the Application Be Refused". We agree with that approach and do not consider it necessary to repeat the contents of that skeleton or document, although obviously thank him for his assistance, as we equally thank Mr Kelsey-Fry.

The Test

24. The Guidance Notes provide that:-

"Applicants are required to demonstrate or confirm that:

- *They have the competence and capability to race ride;*
- *They are medically fit to race ride in accordance with the published Medical Standards for Fitness to Ride;*
- *Derive their main income or a reasonable portion of it from race riding or, in the case of Apprentice or Conditional Jockeys, be in full time paid employment of a licensed trainer and recorded as such on the Trainer's Register of Stable Employees;*
- *They are otherwise in all the circumstances suitable to hold a licence (i.e. that they are 'fit and proper');* and
- *In the case of Overseas Riders they have permission to work in Great Britain as a professional jockey."*

25. As to the fourth of those factors, we start with the general guidance applicable to the test of suitability to be found within the speech of Lord Bingham concerning the words "fit and proper" in the case of ***Regina v. Crown Court at Warrington, Ex parte RBNB (an unlimited company)*** [2002] UKHL 24, [2002] 1 WLR 1954:-

"... some consideration must be given to the expression "fit and proper" person. This is a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the

personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do.

26. The context for suitability here is of course the application to ride as a jockey which, if successful, will make that jockey available to owners of horses and their trainers for rides in professional races which will attract audiences both present and through the media. The role of the jockey is obviously very important for the racing world, its status as a sport and its position as a business for all those who have a direct or indirect stake in the horse racing industry. That role involves participation in a sport which attracts enormous sums of money both for investment in horse racing and for the purpose of gambling both at the races themselves and these days worldwide. The jockey must have the personal qualities reasonably required for a professional rider to be involved in such an environment. Honesty and integrity are necessary qualities in those circumstances.

27. The Guidance Notes include the following paragraphs in respect of suitability:-

D. GENERAL SUITABILITY ('FIT AND PROPER')

17. In considering any application, the Licensing Committee must be satisfied, taking into account any fact or matter that it considers appropriate, that the applicant is suitable to hold a licence.

18. The Licensing Committee expects full and frank disclosure from the applicant, who is required to disclose all matters known to him/her and those which he/she can be expected to discover by making enquiries. Failure to do so will be a relevant factor in the assessment as to an applicant's honesty and integrity.

19. A person whose conduct or character is not in accordance with that which, in the opinion of the Licensing Committee, should be expected of a licensed person, may not be considered suitable and therefore may be refused a licence.

20. In some cases a single factor may lead to the conclusion that someone is not suitable, whereas in another case the determination of whether someone is not suitable may depend upon the cumulative assessment of a number of matters.

21. It is not possible to produce a definitive list of all matters that would be relevant to a particular application. This document should be considered a guide as to the sorts of considerations that the Licensing Committee will have in mind when making such an assessment.

22. The criteria to which the Licensing Committee will have regard in assessing honesty and integrity include the following:

22.1. Whether the applicant has been convicted of any criminal offence in Great Britain, or a foreign jurisdiction, excluding road traffic offences and offences which are spent under the Rehabilitation of Offenders Act 1974 and in the case of foreign offences, such as may be appropriate. Particular consideration will be given to offences of dishonesty, fraud and those relating to sexual conduct, violence, and animal welfare.

22.2. *Whether the applicant is the subject of any proceedings of a criminal nature or has been charged in connection with any alleged criminal offence involving dishonesty, fraud or those relating to sexual conduct, violence, or animal welfare.*

22.3. *Whether the applicant has been the subject of any adverse finding by a judge in any civil proceedings, or has settled civil proceedings brought against him/her relating to any matter which could reasonably be said to materially affect his/her suitability to hold a licence.*

22.4. *The applicant's record of compliance with the regulatory requirements of the Authority or its predecessors, of any other Turf Authority or of a regulator of any other sport in which he/she has participated or has been otherwise involved.*

22.5. *Whether the applicant has been candid, open and truthful in all his/her dealings:*

22.5.1. *with the Authority in relation to the present or relevant past licence applications; and*

22.5.2. *with any other Turf Authority or other sports regulator.*

22.6. *Whether or not the applicant has been dismissed from any previous employment or position of trust or has been asked to resign or resigned on grounds connected with his/her honesty or integrity.*

22.7. *Whether an applicant has been convicted of, or dismissed or suspended from employment for drug or alcohol abuses or other abusive acts or has other lifestyle or social issues, which are likely either to:*

22.7.1. *Impair significantly his/her ability to safeguard the welfare of any horse or meet the regulatory requirements of the Authority; or*

22.7.2. *Render the applicant a threat to the health, welfare or safety of others involved in horseracing, or to the integrity of the sport.*

22.8. *Whether the applicant has engaged in conduct or there are circumstances which may render the applicant susceptible to pressure from persons seeking to corrupt horseracing and whether the applicant is likely to or may engage in such conduct.*

22.9. *An applicant's fitness and propriety includes assessment of the fitness and propriety of those with whom he/she is or may be associated or connected with in their personal or business dealings. For example, if the applicant is known to remain associated with person(s) who are considered by the Authority to pose an unacceptable risk to the integrity of horseracing notwithstanding specific warnings issued by the Authority about such association, that matter will be taken into account and its ultimate relevance to his/her suitability will be assessed in the light of the applicant's attitude to the association.*

22.10. *The Licensing Committee has a policy of not granting a jockey's licence to a person actively engaged as, or otherwise associated with, a Bookmaker, having made the judgement that such a close financial interest, potentially in conflict with his interest as a jockey, is likely to diminish public confidence in the integrity of racing.*

28. Those paragraphs are of course for guidance but a key feature of them is a requirement of honesty and integrity. Clearly the Guidance has in mind such

qualities within the context of the life of a professional jockey summarised at paragraph 26 above.

29. We have previously decided when answering the Preliminary Issue that those personal qualities need to be considered but that serious and dishonest breaches of the Rules committed in the past may in themselves be sufficient to reach the conclusion that the applicant is not suitable. We refer to our Reasons in respect of the Preliminary Issue which should be read as part of this decision. However, for convenience we repeat here the following paragraphs which are of particular relevance to our application of the test of suitability and which we will apply:-

21. *We consider the starting point to be the words of the Rule, namely the requirement that an applicant must be a “suitable Person” as set out at paragraph 16 above. In our decision the test of suitability includes (when this is relevant to the facts because of past serious breaches of the Rules) satisfying the requirement that the grant of a licence to the applicant concerned will not be prejudicial to the reputation of, and public confidence in, horseracing in this country irrespective of current personal qualities.*

22. *We reach that decision on construction because that is part of the nature and meaning of suitability within the context of an application to be a jockey. The licence is applied for in order to race before the public who should be able to trust the sport as one that is operated and performed honestly, to the best of the ability of those involved and without ulterior motive. The need for that trust is not only to protect the reputation of the sport as a sport, it also arises because very substantial sums are at risk through betting. The betting industry and those who bet rely upon such performance by (amongst others) the jockeys. In addition account must be taken of the fact that honest owners will not participate and invest in a business that is seen or perceived to be corrupt. There is also the issue of the effect a decision may have upon other licensed jockeys. For example, its relevance to their roles as jockeys and to their assessment and understanding of the administration of the sport in which they race. It is essential to preserve the integrity of horse racing. It follows that in assessing suitability, the Committee can and should consider public reputation and public confidence in its own right.*

23. *As a result, as a matter of construction of the term “suitable”, if past conduct means that such reputation and confidence may be damaged irrespective of current qualities of the applicant, the Licencing Committee may consider that the applicant is not suitable notwithstanding those personal qualities.*

24. *.... the Guidance should not to be read as meaning that current honesty and integrity of the applicant is synonymous with suitability and that therefore the Committee is concerned with public reputation and confidence purely in the context of the applicant’s personal qualities. Honesty and integrity are factors to be taken into account when applying the test of suitability. However, the test of suitability also includes asking whether the grant of a licence to the particular applicant will have adverse consequences for the public reputation of and confidence in the sport. One of the purposes of the decision whether to grant a licence is to assess whether that reputation and confidence will be adversely affected or not. The Principle [defined below] can apply.*

27. *In paragraph 6 of his skeleton argument Mr Warby describes the Bolton Decision as one which clearly expresses “the principle that in the most serious cases matters of personal rehabilitation must give way to the importance of protecting public*

confidence in the relevant field of activity". For convenience we will define this as "the Principle".

28. *We agree with that description for the purpose of deciding the preliminary issue. The decision is concerned with the statutory provisions relevant to that case, namely The Solicitors Act 1974. Its relevance for determination of the preliminary issue is that it identifies the Principle and provides an example of a circumstance in which the Principle is applied. It is of assistance to read the reasons why it is applied to solicitors under and in the circumstances of the provisions of that statute. Whether the Principle applies in this case, however, depends upon the drafting of the Rules and the Guidance, the nature of the sport of horse racing and its connection with the public.*

29. *The case decided that a solicitor who has been dishonest will almost always be struck off from the roll. Even if such a person has redeemed his reputation, which will inevitably take a number of years, only in rare cases will he be re-admitted. The reason being that the public interest in protecting the public and maintaining the reputation of the profession means that such dishonest persons can not be re-admitted unless there are exceptional circumstances. Lawyers must perform their duties with integrity, probity and complete trustworthiness. The public must be able to trust solicitors "to the ends of the earth" (page 518 at H). To ensure and maintain that trust, it is normally the case that solicitors who have been dishonest should be removed from the Roll and thereafter be denied re-admission. This applies even where the solicitor has made every effort to re-establish himself and redeem his reputation.*

30. *In our decision similar considerations apply to jockeys, albeit in this different context. We refer back to paragraph 22 above. Take, for example, the stopping of a horse. The consequences are not limited to the financial loss of those who gambled on the specific race in the belief that it was a genuine contest between each horse. The consequences extend to the potential for raising public doubt over the genuineness of other races. In the absence of appropriate measures not only of punishment but also of condemnation and protection from the possibility of the act itself, the obvious danger is that public confidence will be undermined and with it the reputation of British horse racing. There is potentially a very slippery slope and one which is relevant to the ambit of the test of suitability to be applied under the Rules. In our decision those factors can lead a Licensing Committee to decide not to grant a licence irrespective of the efforts made by the jockey concerned to re-establish him/herself and to show he/she is now a redeemed character. In our judgment the Rule requiring suitability is to be construed in the manner we have decided to maintain and protect public reputation and confidence. The public must be able to trust jockeys and the Principle is to be applied to the test of suitability in appropriate cases.*

30. The case of Bolton referred to above is the decision of ***Bolton v The Law Society*** [1994] 1 WLR 512, CA. We will not further repeat our considerations of that decision when determining the Preliminary Issue. However, we take note of the following passage within the judgment of the Master of the Rolls, Sir Thomas Bingham, at page 518 when he deals with the decisions that may be reached by a disciplinary tribunal hearing a case of misconduct alleged against a solicitor:-

It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to

deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

31. We take note of this passage generally but specifically observe that it draws attention to the different functions of different tribunals and to the potential for those functions to overlap. It is a potential that means we as a licensing committee must be careful to ensure that we do not consider punishment as a relevant matter when addressing the admitted breaches of the Rules. We accept Mr Kelsey-Fry's submission that it is not our function to mete out further punishment. That has no part to play in our decision. That is not to say, of course, that a licence should be granted. The Master of the Rolls in the passage above envisaged that expulsion may not be sufficient to maintain the reputation of a profession and that a denial of re-admission may occur in due time as well. Indeed in the case of a solicitor readmission would be exceptional in cases of previous dishonesty. That outcome may arise precisely because of the exercise of a different function. We agree with Mr Kelsey-Fry's submission that a person in breach of the Rules can not submit that they should be readmitted on the ground that they have "*served their time*" (see paragraph 19.2 above).

32. However, whilst we have different functions, this does not mean that we should not take into account what has gone before, namely the agreement between the Authority and Mr Lynch leading to the decision of the Disciplinary Panel and the

reasons for that decision. The existence of a disciplinary decision by the Panel is a relevant factor to take into account.

33. We are very conscious of the ramifications of a decision to refuse a licence. The prevention, for that is what it amounts to in practice, of someone from racing in the jurisdiction of the Authority will result in a restriction upon him earning a living there in a chosen trade of a professional jockey. The existence of such a restriction will always be a highly significant one and we also have regard in this case to Mr Lynch's age. We make clear that we have the consequences very much in mind. It is necessary for our decision to be reasonable in the interests of the parties concerned. When considering the public interest there should be a legitimate aim worthy of protection and for that protection to be provided in a proportionate manner.
34. This leads to the question of the approach we should take to the fact that this application was first made on the basis that Mr Lynch needed a licence in order to ride not in England, Wales and/or Scotland but in the State of Pennsylvania.

Purpose of the Application

35. The evidence concerning the position with regard to the Pennsylvania Racing Commission is limited. There is simply (albeit within a chain of emails) an email sent on 4 June 2010 by Mr Burd to Mr Codrington. Mr Burd is the "Director of Licensing Pa Racing Commission" and Mr Codrington was the then Head of Compliance and Licensing for the Authority. The material parts read as follows:-

"I have been speaking to [Mr Lynch] concerning his request to be licensed in Pennsylvania. I would prefer that he would be currently licensed by BHA first to prove suitability for licensing. Apparently he feels he met with some difficulties with a licensure in your jurisdiction. The only means for him to get licensed by our Commission is to be licensed by the BHA or to produce a ruling stating that he is in 'good standing' with the BHA. The ruling that he is eligible to apply is not adequate ...".

36. We make clear that it is not for this Committee to reach a decision for the purposes of another application to a different authority. Any decision reached by this Committee is for the purposes of the Authority's Rules and for the purposes of the Authority only. So far as the Authority is concerned, each authority must reach its own decision. Nothing that we decide is a representation or a decision that Mr Lynch should or should not be granted a licence to race elsewhere.
37. The Authority in its "Reasons for the Authority's Recommendation that the Application be Refused" asserts that:-

"It would be an abuse of the licensing system for a rider to seek a licence from this Authority in order to allow him to race solely or primarily abroad. The Rules do not (unsurprisingly) deal with the situation. However, there are a number of continuing obligations on and requirement of licensed jockeys set out in the Rules which indicate that British licensing would not be consistent with riding primarily abroad. Riding in this

country means that the jockey's compliance with the Rules on a day-to-day basis can be monitored, including the Rules designed to discourage and to facilitate the detection of corruption (such as the mobile telephone rules at (D) 33-35), the Rules in relation to banned substances (and the power to make random spot checks at (D) 61), and the power to monitor the medical condition of the rider (D) 62 ...

It is notable that Rule (D)27.5.1 indicates that residence in Great Britain for more than 30 days may be a reason to refuse permission to an overseas rider to ride in this country on an overseas licence. The clear spirit of this Rule is that riders should be licensed by the Turf Authority of the country in which they do most of their riding."

38. Mr Kelsey-Fry in his skeleton argument has viewed the reference to an "abuse" and an earlier reference to a "device" as "inappropriate and offensive". We do not think that is the intention behind the words used. There is an important point at issue which we need to consider. Mr Kelsey-Fry's alternative position is that Mr Lynch "will do whatever is required of him by the Authority to resume his career" and we have set out above his evidence concerning racing in Yorkshire sub-paragraphs 2.12, 21.13 and 21.14 above).
39. The Guidance Notes, as set out above, provide that applicants are required to demonstrate or confirm that they:-

- *Derive their main income or a reasonable portion of it from race riding or, in the case of Apprentice or Conditional Jockeys, be in full time paid employment of a licensed trainer and recorded as such on the Trainer's Register of Stable Employees;*

In addition the Notes specifically provide the following guidance:-

C. INCOME STATUS

23. *Applications will not be considered from those who can expect to ride only on odd or chance mounts, and for whom there is no demand for their services to ride regularly (normally a minimum of 25 rides per season) in public unless they are in the full time employment of a licensed trainer as an Apprentice or Conditional jockey.*
40. In our decision it is apparent from the wording and the context of those Notes that jurisdiction is a relevant issue when deciding whether a licence should be granted. The application should relate to racing in England, Wales and/or Scotland and the intended rides are to be more than odd or chance rides. There must be a demand for the services of an applicant so that he will ride regularly within the jurisdiction of the Authority (noting the exception of full time paid employment for apprentice of conditional jockeys). Not only is this clear from the wording of the Guidance but it achieves an important purpose. It should result in successful applicants being those who will be able to comply with the Rules. This applies to the Rules generally but can be of particular importance in the context of specific Rules. We consider it right in this context to include Rules concerning tests for banned substances and monitoring of health as examples of Rules which need to be complied with by attendance.

41. If such Rules are not going to be complied with because the applicant will be abroad, it is highly unlikely that the applicant will be able to demonstrate or confirm the requirements of the Guidance Notes. They are not likely to be considered suitable for the purposes of granting a licence. Of course different solutions may be proposed in respect of different circumstances and each case must be assessed on its merits. However, as a matter of general proposition we would not grant a licence to Mr Lynch if his intent was to live in and race full time in the USA.
42. In fact Mr Lynch has made clear that if such a decision is reached, his application should be treated as an application made on the basis that he will commit himself to riding in races under the jurisdiction of the Authority. In those circumstances we do not consider there to be a bar to his application, although it may be that appropriate conditions would need to be added to his licence should we decide to grant one. Whether we will do so or not will depend upon our assessment of his suitability.

Assessment of Suitability

The Guidelines

43. The Guidelines contained with the Guidance Notes as set out at paragraph 27 above need not be repeated but we take into account the following matters as guidance in respect of Mr Lynch's application:-
 - 43.1. We must be satisfied taking into account any fact or matter we consider appropriate that Mr Lynch is suitable to hold a licence.
 - 43.2. Mr Lynch did not provide full and frank disclosure prior to his admissions and this failure to comply with that requirement is a relevant factor in the assessment of honesty and integrity.
 - 43.3. Mr Lynch's admitted breaches are clearly conduct and involve character that is not in accordance with what should be expected of a licensed person.
 - 43.4. Mr Lynch was acquitted of the criminal charges and that record stands so that we do not take into account any negative aspect that would otherwise have been drawn from the criminal proceedings. Only positive points made in support of his application, for example their effect on him should be considered.
 - 43.5. However, the admissions themselves involve dishonesty and fraud in the context of the Rules. They fall within the spirit of the guidance within subparagraphs 22.1 - 22.3.

- 43.6. The breaches admitted constitute an awful record of compliance with the Rules.
- 43.7. Mr Lynch has not been candid, open and truthful in all his dealings with the Authority in relation to past licence applications.
- 43.8. Although we are unaware of any dismissal or resignation from employment, the breaches admitted would have justified such a result and therefore fall within the spirit of sub-paragraph 22.6 of the Guidance.
- 43.9. Mr Lynch has engaged in conduct and there were circumstances that rendered him susceptible to pressure from persons seeking to corrupt horseracing. We will assess the likelihood of future engagement in such conduct below.
- 43.10. In the past he has been associated with a person who was unfit and indeed warned off despite knowing this, namely Mr Rodgers.
- 43.11. Whilst he has not been actively engaged or associated with a Bookmaker, his personal betting through Mr Rodgers was a breach of the Rules that would have diminished public confidence in the integrity of racing if disclosed. His involvement with Bond City for betting purposes diminishes public confidence in the integrity of racing.

Honesty, Integrity, Insight and Commitment

44. All of those factors lead to the conclusion that Mr Lynch is not a suitable person unless we accept the case of Mr Lynch and the submissions of Mr Kelsey-Fry that he is now reformed, has paid a very heavy and high price for his conduct and has learnt his lesson with the result that he should be granted a licence. Mr Lynch's case is that he has shown that he now has the necessary honesty and integrity and sufficient insight into past breaches of the Rules combined with a knowledge of and commitment to the Rules regarding integrity which makes it unlikely that he will commit future breaches and means he is now a suitable person to hold a licence.

Stopping The Horse

45. Our assessment of Mr Lynch will concentrate upon the admitted offence of "stopping" a horse. That is not to suggest that we minimalise the gravity of the other admitted breaches of the Rules. They are each serious offences and their combination significantly adverse to an assessment of Mr Lynch for the purposes of determining suitability. However, we concentrate upon the offence of "stopping" because it is the gravest of them all. In doing so we will also have in mind that this offence occurred on top of the other grave offences.

46. There is no doubt that the “stopping” of a horse by a jockey to prevent it performing to its best ability in order to fix a race is considered by the racing community to be one of the most heinous offences that can be committed. It is fundamentally wrong and an act that should never be even contemplated by a jockey. It is dishonest. It is a fraud on those who have bet on the race, upon the other owners, trainers and jockeys of horses racing, upon the race course owners and upon the sport itself.
47. It is clear that the same assessment will be made by the public at large. There are situations when there can be disagreement over whether professional cheating is acceptable or not. For example, in golf even a very small movement of a ball in breach of the rules is unacceptable. In football there are different views concerning diving. However, public perception concerning deliberate cheating for reward is rightly clear. Cricketers must bowl to the best of their ability and not “throw” a match in order to ensure a bet is won whether by themselves or by people who reward them. Jockeys must ride horses to their best of their ability and not “stop” a horse from racing to that ability in order that bets may be won. Such action is fundamentally wrong and public opinion will condemn it and any sport corrupted by it.
48. This is a starting point for addressing the issue of suitability. The very fact that Mr Lynch not only contemplated but did in fact stop a horse for that purpose and thereby committed a dishonest act identifies a fundamental flaw of character.
49. It is true that this makes it very difficult for a person with such a past offence to present a case as a reformed character. However, it is right that it should be so for four reasons. First because of the existence of that flaw in character in the context of requiring honesty and integrity. Second because it can be very difficult to assess declarations of apology and of future intention. It is one thing to be able to say that one is reformed and will not commit such an offence when applying for a licence, it is another to establish that the flaw will not be resurrected should circumstances occur that will lead the applicant into temptation. There should be a high onus upon the applicant who claims reform because of the very serious flaw in character identified in the past and the consequential risk of recidivism should temptation arise. Third because it is not possible to establish safeguards to prevent such recidivism. Certainly none have been offered by Mr Lynch. We place no criticism upon that because it reflects the difficulty of doing so. Fourth because of the consequences of the offence and as a result upon the granting of a licence to a past offender for the reputation and integrity of the sport.
50. Mr Kelsey-Fry relies upon the passage within paragraphs 17 and 18 of the previous Licensing Committee decision concerning Robert Fitzpatrick dated 2 December 2010 to submit that an applicant who shows they now have the necessary honesty and integrity and sufficient insight into past breaches of the Rules combined with knowledge of and commitment to the Rules regarding integrity will be unlikely to commit future breaches. That may be correct

depending upon the facts of the particular case but the difficulty in a case such as this is in establishing that such honesty and integrity and commitment now exists and that it will continue should difficult circumstances arise in particular (but without forgetting the other offences) in the circumstances of the admitted previous conduct concerning Bond City.

51. We add to this the concern that the stopping of Bond City occurred with relatively little pressure within the context of such a serious act. We refer to the information provided by Mr Lynch set out at sub-paragraphs 15.8 - 15.9 above. The guaranteeing of a horse not winning in circumstances of bets having been laid to lose had not arisen before. There was no face to face meeting with Mr Rodgers, there were no threats and there was no further inducement (whether as reward or by withdrawing any or all of the benefits received from the relationship to date, legitimate or otherwise). This is troubling when assessing suitability.
52. We acknowledge that the other breaches admitted show a pattern of decline towards what has been described as "*the abyss*" within the circumstances of influence exercised by Mr Rodgers. We recognise that there would be inherent pressure arising from past dealings and the desire to maintain those dealings which had provided legitimate benefits such as rides on Syndicate horses in addition to the illegitimate fruits of passing on information and betting on races. We also take account of the personal difficulties faced by Mr Lynch at the time (which we address further below). Nevertheless Mr Lynch is not someone who took a long time to corrupt into "stopping" a horse and relatively for the offence, he did not require much pressure to do so. We appreciate that Mr Lynch considers his actions to be out of character but this is what he did and, as we will address below, he continued with actions that further identify a character which is of concern to us.
53. The telephone conversation with Mr Rodgers was the first occasion on which a guarantee was required. It occurred in circumstances of Mr Lynch knowing bets had been laid to lose. As we understand it, there had been no previous incident of loss to Mr Rodgers caused (as Mr Lynch perceived it) by Mr Lynch riding a winner. Mr Lynch would or should have been shocked by such facts. Yet in those circumstances and the first time a guarantee was requested, Mr Lynch without threats and without being face to face with Mr Rodgers succumbed. He chose his course having had time to consider the conversation. Indeed he appears to have refused the proposition during the telephone conversation and changed his mind on the race course at the very moment when his instinct should have been to win. We consider this highly relevant to an assessment of his character for the purposes of addressing the issue of suitability.

Admissions and Openness

54. Mr Lynch gave his evidence plainly and clearly. We did not view him as “*a rabbit caught in the headlights*”. Mr Lynch was certainly nervous and we fully understand that and take this into account. However, he was articulate and presented his information well.
55. His opening statements confirming his previous admissions and understanding that what he did was wrong had an inevitably contrived quality about it. However that was due to the circumstances and nervousness. We take no note of that and proceed on the basis that he has admitted and is admitting his wrongs, acknowledging that they were wrong and showing that he knows why they were wrong. In reaching that assessment we take into account his letter of March 2010 written by him without the help of lawyers. We take on board the fact that he did not seek to cast blame upon Mr Rodgers as opposed to himself. He said he was not threatened.
56. Yet we have serious concerns about his failure to be open and to disclose what he had done after he “stopped” Bond City. We note that when he realised he “*crossed the line*” on 31 August 2004 (see sub-paragraph 15.11 above), he did not inform anyone. True he was arrested the next day and no doubt the possibility and subsequently the existence of criminal charges (which included this incident of “stopping”) would cause difficulties for disclosure. However, he made no admissions to the Authority and carried on racing until he had to stop because the criminal charges resulted in him no longer holding a licence. Similarly he did not come clean at the hearing on 18 December 2007 when he re-applied for his licence. We will deal further with this hearing below but he obtained and subsequently profited from a licence as a result not only of non-disclosure but also by telling lies.
57. There is no suggestion that he made any disclosure to anyone after he obtained that licence until shortly before the disciplinary hearing on 24 June 2009. He had moved to the USA and was extremely successful there. It certainly appears as though he was burying the past rather than openly acknowledging his past misdemeanours. He was continuing his trade very successfully having obtained a licence without admitting what he had done. (We will deal with the issue of misleading the Committee below). He had not assisted the enquiry which eventually led to the disciplinary hearing by admitting what he did until shortly before and at that hearing.
58. Indeed on 15 and 16 June the Disciplinary Panel heard an application by Mr Lynch through his lawyers (we understand he was in the USA at the time) to “*throw out the allegations of breach of the inside information rule and of ‘stopping’ Bond City. It was argued that it would be unfair to conduct any enquiry into these matters because of [his] acquittal at the Old Bailey, where the conspiracy charge he faced included an allegation that he had stopped Bond*”

City". There is no suggestion that this application was made on the basis that he admitted the breaches of the Rules but it would nevertheless be wrong for the enquiry to be conducted. The process of admissions before and at the hearing would not have occurred had this application succeeded.

59. All this points to a conclusion that Mr Lynch had not reached the requisite standard of honesty and integrity required of an applicant notwithstanding the fact that he says he recognised on 31 August 2004 that he had "*crossed the line*". We consider it right to take this into account when assessing his current application. Mr Lynch explains his emotions after the acquittal (see paragraph 17 above) and says that he now appreciates that he was blaming everyone but himself. That is candid and reflects well on him but an underlying impression that we have gained both from the matters above and from hearing him provide information to us is that there has been and remains far too great an emphasis in his own mind upon himself and upon the adverse effects his actions have had upon him.
60. This does not assist in reaching a favourable decision with regard to suitability. It does not lead to a conclusion of inherent honesty and integrity that will stand the test of temptation should difficult times occur. Also it moves away from the conclusion that in practice he has a sufficient insight into the reasons for the Rules and/or the effects of his past misdemeanours on others. Our view is that Mr Lynch remains of the view that he has been and is being hard done by and that he has suffered enough. We concluded as a result of having heard him provide us with information that there is an over emphasis upon his resultant suffering. We have done so whilst taking account of the effect of the criminal trial and the complaints concerning the police explained to us in general terms by Mr Kelsey-Fry. However, we remain concerned that Mr Lynch concentrates too much upon the consequences of his actions upon himself. It may be that he has cause to do so in respect of the actions of the police and possibly the trial process but the rest of his perceived suffering is derived from his own conduct. True in the context of the hearing before the Licensing Committee in 2007 he says that he did not then but does now realise he has only himself to blame. However, our assessment from hearing him is that he does not concentrate upon the effect his actions had on others (whether those involved in racing, the general public or racing as a sport). Although he appreciates that what he did was wrong and why, his concentration is upon the effects his actions have had on him. That is relevant to our assessment of suitability.
61. We note in this context that even when he "*crossed the line*" his response to Mr Rodgers was that "*I don't really want to do that again ... It's cost me a winner ...*". One would have expected him to be saying how it was wholly wrong, how it misled and caused loss to the public and how it was an affront to racing and his position as a jockey. Not that its consequence was that it "*cost me a winner*".
62. Mr Kelsey-Fry submitted that the words are to be read as an assurance of his future conduct existing even at that stage. Assuming "really" was used as an

adverb to emphasise his real position and does not indicate a slight hesitancy, it is certainly true that he makes clear that he does not want to “stop” a horse again. However, the emphasis upon costing him a winner is wrong. It is also not a statement that he never wants anything to do with Mr Rodgers again. He does not appear to want to sever the links that provided him with his rides. Indeed he does not even say he will cease to provide illicit information or that he will not use Mr Rogers for the purposes of Mr Lynch’s betting. We note these points in circumstances of this conversation taking place when it had dawned upon Mr Lynch that he had “*crossed the line*”.

63. We do treat this point with some caution, however. We obviously have not heard the conversation and we have only seen a partial recollection. We accept that this would have been said in the heat of the moment, that Mr Lynch may not have meant it as we understand it. We therefore do not rest our decision upon it. However, we do see it as a potential illustration of an underlying concentration upon the effect of his offences upon himself rather than upon others which we have found with regard to his subsequent conduct.
64. We accept that Mr Lynch has recognised that his attitude after the trial was inappropriate (see paragraph 17 above) but we consider that attitude another example of that underlying approach and character we have concluded subsists.
65. It is an attitude illustrated by his failure to be open after 31 August as considered above. The impression we have gained is what was important most to Mr Lynch was that he could move on and return to racing and be successful (see paragraph 57 above). We have concerns in the light of that history that this application and therefore remorse is only coming to light because of the need to obtain a licence once the Pennsylvania Racing Commission declined to do so.
66. We do not conclude from that that what Mr Lynch has told us is deliberately contrived but we do consider that these are important matters relevant to an assessment of his suitability. Those matters give us serious cause to doubt whether his expressed intentions for the future will necessarily survive difficult times should they arise. We are concerned that recidivism may prove likely should a future as a jockey involve difficult times for Mr Lynch and we bear in mind that he succumbed quickly to “stopping” a horse as set out above.
67. We have heard an explanation for his conduct derived essentially from the break up with his former partner. We take account of this but do not accept that it can explain his misconduct. First because he went far too far down the line to enable him to attribute his conduct to the loss of a relationship and loss of stability. Such problems can cause all sorts of difficulty but they should not cause what Mr Lynch did. This raises serious doubts over his ability to handle difficulties which may arise in the future. Second although he refers to turmoil and losing his way, what happened as a result of the breakdown of his personal relationship was that he turned to a way of life which involved drinks and nights out (see paragraph

15.6 above). It was a life style which could not be described as uncommon amongst young men and as such should not have led to the events that occurred notwithstanding the absence of previous stability at home. This too raises worrying issues when assessing suitability.

68. We do not accept that the breakdown is an explanation for the misconduct. It may be that he adopted a life style which then led him down a slippery slope which he could not resist but we perceive this as being a matter of choice and personal character. It was not imposed or enforced by the relationship break-down nor a consequence of problems that may be uncontrollable such as gambling debts or alcoholism. We appreciate that Mr Lynch's evidence did not attempt to excuse his conduct or to minimise its seriousness. We also take on board the fact that his marriage now prevents that style of life from re-occurring.
69. Mr Kelsey-Fry rightly stressed that the facts of Mr Lynch's new life with his wife are clearly relevant. He also properly emphasised that there was a prolonged period of riding after his arrest and no re-occurrence of the breaches here or in the USA. In addition it is right to take account of the effect of the trial upon the likelihood of future transgression. Mr Kelsey-Fry has placed these points in context with great eloquence and the only reason we do not set them out here is that we would be repeating what appears at sub-paragraphs 21.4, 21.5 and 21.10 above. We have also taken into account his charity work through golf events, the availability of insider information seminars and his willingness to assist other jockeys in the future.
70. However, we are concerned that there are fundamental weaknesses which are at odds with honesty and integrity and that he has not satisfied us, which is the burden he has, that he would resist temptation again should difficulties arise even of a wholly different nature, for example financial troubles.

The 2007 Licence

71. Before reaching a decision we turn to the unreserved apology for misleading the Committee in 2007. We take into account Mr Kelsey-Fry's analysis of the transcript and the role of Counsel. Whilst noting by way of footnote that the Senior Partner of the firm acting for him and who we understand acted for him in the criminal proceedings was also present to assist and advise. However, the fundamental point is that Mr Lynch knew he was applying for a licence whilst telling lies and not making disclosure of matters he says he knew were serious breaches of the Rules. We do not consider that the matters identified in submissions are an appropriate or acceptable explanation. Indeed, whilst we fully understand why they were made and it was right for Mr Kelsey-Fry to point them out, we give credit to Mr Lynch for the fact that he did not use them as an explanation or excuse.

72. We agree with Mr Kelsey-Fry's submission that the fact of misleading a previous Committee does not automatically lead to a decision in this case that Mr Lynch is an unsuitable person. We have also read and taken note of the decisions to which he referred us. Nevertheless this is clearly a serious matter to add to the factors to be taken into account when deciding suitability. We consider the only feature in favour of Mr Lynch in this regard is the fact that he says that he now recognises he was blaming everyone but himself.

Recommendations and the Disciplinary Panel

73. We turn next to consider the "Recommendations On Penalty", the fact of their agreement and the decision of the Disciplinary Panel. Their context was of course different to this. There clearly was a punitive issue.
74. The "Recommendations On Penalty" put before the Disciplinary Panel proposed that a combination of the admissions, undertaking, previous period of being unable to race (18 months between 7 July 2006 and 18 February 2007), personal mitigation and all other circumstances referred to within that document meant that a fine of £50,000 would be "*proportionate to the gravity of the breaches*" such that it would be unnecessary to suspend or disqualify Mr Lynch from racing for any further period.
75. The Panel approved the penalty recommended as "*an acceptable alternative to the ban which would have been imposed if Lynch still wanted to race here*". It is clear that this was considered the right "punishment" in the circumstances summarised within sub-paragraph 74 above. It is also clear that such decision was reached having considered the protection of racing under the Authority's jurisdiction.
76. However this was not intended to impinge upon or influence the future functions of a Licensing Committee. This can be identified within paragraph 3 under the heading "Undertakings" in the "Recommendations On Penalty". There is no express reference to this in the decision of the Panel but it could not be and is not suggested that its decision should be read as containing such an intention.
77. The agreement of recommendation and the Panel's decision were made in circumstances that Mr Lynch would still have to establish that he was a suitable person to the satisfaction of the Licensing Committee should he seek a licence in due course. However, we should and do take account of those facts and of the consequence that Mr Lynch was able to continue racing from the perspective of the Authority provided it was not within their jurisdiction. We do not approach our decision on the basis that the Disciplinary Panel's decision was lenient. We take the approach that the decision was correct and that we should not mete out further punishment.

78. This does not prevent us from taking into account any of the matters we have considered above in our assessment of suitability but we should add to the balance in favour of Mr Lynch the fact that he has “*served his time*” accordingly.
79. This is in line with Mr Kelsey-Fry’s submissions set out at sub-paragraph 19.2 above, namely that a person in breach of the Rules can not submit that they should be readmitted on the ground that they have “*served their time*”. The question is whether suitability can be established at the time of application.
80. We note the additional submissions recorded at sub-paragraphs 19.3 - 19.5 above. We have already considered the first of those (see paragraph 50 above). Clearly Mr Kelsey-Fry is also correct in his submission that account should be taken of the need to uphold public confidence in racing and in the sport’s reputation. He further submits, as set out at sub-paragraph 19.5 above, that there is a tendency to uphold those wider interests if a jockey is readmitted because he is unlikely to prove a threat in the future to the integrity of racing and has expressed deep remorse for his wrongdoing and has shown the necessary commitment to the Rules. We understand that and see it as a positive approach which we have considered when reaching our decision.

Public Confidence

81. We have already identified our view of the seriousness of the offence of “stopping a horse” and of the consequences for public perception (see paragraphs 46-47 above). We do not wish in any way to be thought to be diminishing the seriousness of the other breaches. However, this breach involves cheating which goes to the very heart of a race and to the very heart of racing. If jockeys fix racing, then what purports to be a sport involving competition becomes a fraud. It is an action which results in serious loss to those involved in racing whether as gamblers or as fellow competitors. That also applies to other jockeys, to trainers and to owners. It is also a substantial loss to the viewing public who enjoy horse racing. Its damage to racing is obvious.
82. The Authority must safeguard the reputation of horse racing and preserve its integrity. Subject to a case by case consideration there is every danger that the granting of a licence to someone who has so cheated in the past will result in damage to that reputation and a loss of integrity. There is every danger that it will adversely affect the weighing room. Not only will it risk leading to an incorrect assessment of what is required to obtain a licence, not only might it place the perception of the inherent integrity of the weighing room at risk but it may also lead to a loss of confidence in the government of racing that will adversely affect morale and belief in the sport. Those concerns arise for trainers and owners and for all those involved in horse racing within their own contexts. In addition there is the effect upon the general public and the reputation and integrity of the sport to consider. This is not a question of punishment. It is consideration of the consequences of granting a licence to someone who has acted dishonestly and

cheated in public for the direct financial gain of another and for his own indirect benefit by his actions as a jockey in a race in 2004 and failing to admit it to the Authority until 2009. Someone who obtained a licence in the intervening period due to that non-disclosure and also specific lies as considered above.

83. Mr Kelsey-Fry relied on the references received. We take note of them. We consider Mr Lynch's charity work and his proposal to help other jockeys in the future relevant considerations in this context as well. However, we have reached a firm decision upon this issue.

The Decision

84. We have set out why the guidelines lead to the clear conclusion that Mr Lynch is not a suitable person to hold a licence unless we can now be satisfied that he is a "new" person (see paragraphs 43-44).
85. There are many positive aspects to Mr Lynch's application. Mr Kelsey-Fry's submissions have made that clear. He must be given credit for the admissions he made and for the absence of any complaints during his periods of riding after the 31 August 2004. Whilst there are no references from people involved with him whilst racing in the USA, we do not consider that diminishes his application. We take account of the references he has received from well known and respected people within the Authority's jurisdiction. We also acknowledge that Mr Lynch has gone through much since 31 August 2004 including the criminal trial. We agree that this forms a foundation for his remorse and apologies together with his commitment to comply with the Rules expressed in his application, his letter (page 90) and before us.
86. However, it will be apparent from the paragraphs above that we have been left with serious concerns. The gravity of his admitted breaches and most particularly the "stopping" of Bond City (see paragraphs 45-53 above) places a high onus upon him when seeking to satisfy us that he is a suitable person. We have to recognise that Mr Lynch was willing to take such a step in the first place. This is not a recognition for the purpose of punishment. Far from it, it is a very important starting point from which to assess his current suitability. It is a starting point that draws attention to particular concerns of character resulting from the circumstances in which the "stopping" occurred. We refer to paragraphs 48-53 and 55-70 above. In briefest summary he was living a life style that should not as such have led to such offences and those offences occurred without a great deal of pressure (relatively for what he was to do) in circumstances of him knowing bets had been laid to lose and deciding to provide a guarantee whilst riding.
87. We are also troubled by his lack of openness for long periods, his non-disclosure and lies before the 2007 Licensing Committee his attempt to prevent the disciplinary panel from hearing the enquiry and our assessment that there is an over-emphasis upon the effects of what has happened as a result of his breaches

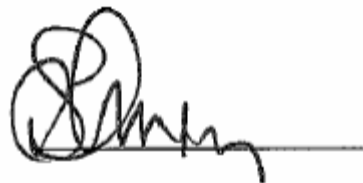
upon himself. We refer to paragraphs 54-72 above. They lead us to have serious doubts about his suitability and whether he will resist temptation should it arise in difficult times in the future.

88. As a result we do not consider that Mr Lynch currently has the personal qualities reasonably required of a person who will ride as a professional jockey taking into account all that such a role involves. We are not satisfied and consider that Mr Lynch is not a suitable person to be granted the licence for which he applies based upon his personal qualities.
89. We also reach that decision because of the very serious and dishonest breaches of the Rules committed in the past. We consider that the observations and principles identified within paragraphs 21-24 and 27-30 of the decision upon the Preliminary Issue (as quoted under paragraph 29 above) apply in this case primarily because of the offence of “stopping” a horse. We refer to paragraphs 45-50 and 81-82 above. We have taken account of his periods of riding without complaint since 31 August 2004 and weighed his admissions against the delay in making them and the deceit before the 2007 Licensing Committee. We have taken account of the whole circumstances leading up to and including that offence including the other admitted breaches. We have borne in mind all the other matters considered in this decision.
90. We have decided as a result that not only does Mr Lynch not have the required personal qualifications to be considered suitable but also and in any event that the grant of a licence to him would be prejudicial to the reputation of and public confidence in horseracing within the Authority’s jurisdiction. It is essential to maintain amongst the general public a confidence and trust in the sport of horse racing as a genuine and fair competition. Integrity and honesty is required and must be seen to exist. The reputation of horse racing is crucial and we have decided for all the reasons set out above that it would not be in the interests of racing for us to grant the licence applied for in the circumstances of Mr Lynch’s past actions.
91. Our decision is that this will not be a case where the wider interests will be upheld if a licence is granted (see paragraph 19.5 above). We consider the position to be the opposite taking account in particular the fact of “stopping” Bond City and the circumstances in which this occurred. We include within those circumstances that Mr Lynch was not threatened and that he made his choice whilst in the race. We bear in mind the subsequent non-disclosure and the obtaining of a licence as a result and by telling lies. We take account of the other admitted offences as being relevant to these issues. It is our decision that the grant of a licence to him would lead to doubt and concern within horse racing and the general public with regard to its honesty and integrity. It would undermine confidence in horseracing. There is nothing presented to us with regard to his current position and personal qualities that alters that conclusion. The reputation of racing depends upon races being fair competition and upon the absence of cheating. Members of the public

are entitled to expect that those who are licensed as jockeys are wholly trustworthy without a past history that leaves any question marks over their honesty when racing. The sport's most valuable asset is its reputation and the confidence people have in its integrity and this must be upheld.

92. In reaching our decision we have taken into account its ramifications for Mr Lynch. It is clear that he will not be able to be a professional jockey in this jurisdiction and it may well adversely affect his position elsewhere, including in Pennsylvania (although we make clear that any decision in regard to racing there is a matter for the Pennsylvania Racing Commission - see paragraph 36 above). We bear in mind his age and his desire to start a family. We also take account of the fact this is not a disqualification preventing him from entering onto licensed premises or a licensed yard. He can still obtain employment within the industry and can still work in a racing yard or possibly obtain a licence from another authority (although we have no evidence of this and we recognise this will not be possible in some jurisdictions and that there will be considerable difficulties in others).
93. Weighing the interests of all parties concerned we consider this to be a reasonable result. We are also clear that protection of the interests of racing is a legitimate aim and worthy of protection in this context and that the refusal of this application is proportionate.
94. As a result of our decision there is no cause to consider conditions as mentioned within paragraph 42 above having decided that we would not in any event have granted a licence to Mr Lynch if his intent was to live in and race full time in the USA (see paragraphs 35-42 above).
95. The decision is, therefore, that **we refuse Mr Fergal Lynch's application for a flat race jockey's licence for the period to 17 March 2011 dated 11 October 2010.**

Dated:- Friday, 4 March 2011

A handwritten signature in black ink, appearing to read 'S. Allday', with a horizontal line extending to the right from the end of the signature.

Signed on behalf of the Committee:-

STEPHEN ALLDAY (Chairman)