

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

**IN THE MATTER OF MILTON FRANCIS HARRIS**

**APPLICATION FOR A LICENCE 1 FEBRUARY 2011 – 31 JANUARY 2012**

**HEARING DATE: 12 January 2011**

**Committee Members:**

**RICHARD RUSSELL ESQ  
CLIVE H. JONES ESQ (Chairman)  
RUPERT SWEETING ESQ**

**DECISION AND REASONS OF THE LICENSING COMMITTEE**

**Introduction**

1. Mr Harris has applied for renewal of his trainer's licence for the period 1 February 2011 to 31 January 2012. His application form for a combined flat and jumping licence was received on 30 December 2010. He applies on the basis that he will be an employee of Equine Enterprises Limited ("EEL") whose principal stable yard is at Collingbourne Ducis, Wiltshire.
2. Mr Harris' training skills are not in doubt at this hearing. These are evidenced by the successes he has achieved this season. Mr Harris has submitted two newspaper articles referring to that success. In one he is described as being *"in the top 20 trainers and mixing it with the elite"*. He makes the point that this will be beneficial to the business of EEL because the number of horses being trained will increase. The business already has 50 horses in its care with 40/41 in work. Mr Harris relies upon the fact that he has not had any disciplinary proceedings brought against him. He has had personal financial difficulties over recent years and these have caused problems and led to his bankruptcy. However, his application is made on the basis that he is not involved in the business side of the training business, he is not a director and does not take part in the management of EEL. He applies as a trainer who concentrates upon training and who is successful at what he does.
3. The British Horseracing Authority ("the Authority") recommended that the application should be refused. Reasons for that recommendation were provided to Mr Harris in a document entitled "Reasons for the Authority's Recommendation That The Application Be Refused" ("The Reasons"). This is to be found in divider 1 of the bundle before the Committee for the purposes of its sitting on 12 January 2011. The main grounds for the recommendations are summarised at paragraph 2 as follows:-

*The Authority invites the Committee to refuse Mr Harris's application on the ground that he is not a suitable person to hold a trainer's licence, as demonstrated by (i) his failure to comply with the conditions on his licence imposed by the Committee throughout 2010, specifically his (and Mr Frankland's) failure to keep Mr Harris's personal financial affairs separate from those of the training business (ii) Mr Harris's continued failure to be frank with the Committee concerning the financial position and management of the company vehicle through which his training business is conducted, and (iii) his continuing attempts to mislead the Committee during 2010.*

4. Mr Harris attended the hearing on his own. No-one appeared for the Authority and we discussed with Mr Harris the nature and details of the facts and matters giving rise to that recommendation. We also discussed matters which have arisen as a result of his bankruptcy on 28 July 2010.
5. We were concerned that Mr Harris was not represented and that he may not have had sufficient time to prepare for this most important hearing. The position being, as we explained to him:-
  - 5.1. There had been considerable correspondence since August 2010 concerning matters relevant to the objections and a letter from the Legal and Compliance Department of the Authority dated 3 December 2010 set out much of what is now contained in the Reasons.
  - 5.2. Nevertheless the document setting out the Reasons is dated 6 January 2011 which means Mr Harris will not have had very long to consider it. The matter is factually complicated and there is a large bundle.
  - 5.3. In addition the Procedural Guidelines at paragraphs 4 and 5 anticipate (in summary) that Mr Harris will have had more than 14 days to prepare for the hearing following an invitation to attend.
6. As a result Mr Harris was offered an adjournment whether to be represented or to be able to prepare further. He was given every opportunity to accept that offer. However, he asked that the hearing proceed. The fact that his current licence expires 31 January 2011 was an important factor for him. It is also fair to observe that he adopted an optimistic approach to the outcome. This is not to say that he was over confident but he clearly thought that there was every reason for him to be positive. He took heart from the fact that he had been granted a licence for a year ending 31 January 2011 (eventually) and he considered that his personal position had improved considerably since 18 June 2010 when that decision to grant had been made. There was no information that he wanted to present to us but was unable to do so because of lack of time. Mr Harris therefore refused the opportunity of an adjournment and did not want to be represented.

7. We draw attention to this at the beginning because it is right to record his decision that the hearing should continue and that he would not be represented. However, we also do so because it reflects what we found to be an approach which failed to recognise the seriousness of the matters raised in the Reasons. As will be seen, that approach is mirrored by his approach towards compliance with conditions of his existing licence and by his failure to provide information to the Authority. Mr Harris came across as an extremely pleasant and amiable man. However, he also came across as someone who did not deal with the serious side of working life with sufficient care. His application will need to be considered in those circumstances not just in the context of whether he is a good trainer. It is to be observed that this arises notwithstanding the difficulties he had obtaining his current licence, the need for it to be subject to lengthy and serious conditions and the fact that the Committee previously found that he had misled them. A different approach would have been expected.

#### **Decisions In Respect of his Current Licence**

8. The conditions of the current licence and the circumstances in which they were prescribed are an important background to this application. This is apparent from the paragraph of the Authority's Reasons quoted at paragraph 3 above which identify non-compliance as a cause for refusal. There were three decisions during 2010 and we have read and taken into account the reasons given for each of them. It would be inappropriate to repeat those reasons in full and the following is to be read as a summary:-

- 8.1. The first decision notified by letter dated 1 February 2010 was that a temporary licence with conditions should be granted for 3 months expiring 30 April 2010 for Mr Harris as an employee of EEL. It is to be noted in particular that:-

- i) Concerns in respect of business competence and capability, financial soundness, honesty and integrity and an absence of the necessary financial resources had caused the Authority to object to the grant of the licence on the basis that Mr Harris was not a suitable person (paragraphs 2 and 3).
- ii) The Committee found a history of debt which had started not in 2006 when financial difficulties arose due to the ending of a 15 year personal relationship as Mr Harris had asserted but by the end of July 2005 (paragraphs 12 and 23).
- iii) That history concerned a large number of debts owed to businesses which had provided their services and goods to his racehorse training business including, for example, the Royal Veterinary College, Summerhill Equine Veterinary Practice and Chess Equine Products, Tattersalls and to a farrier. Non-

payment had led to a number of creditors having to issue proceedings and obtain judgment in the County Court. Some debts remained unsatisfied including a judgment of Her Majesty's Revenue and Customs. Non payment even included a sum agreed to be paid under a Tomlin Order. Cheques were dishonoured (paragraphs 17-72).

- iv) Furthermore the Committee was satisfied that Mr Harris had provided misleading statements to the Authority concerning his financial position. Reference has already been made to the date those financial problems started but there was also misleading information concerning specific liabilities as identified by the Committee, for example, when dealing with the debts owed to Her Majesty's Revenue and Customs (paragraph 54) .
- v) Indeed the Committee when considering the Authority's objection on the ground of lack of candour found numerous instances of Mr Harris having stated matters relevant to his financial position that were untrue. In regard to the debts owed to Summerhill Equine Veterinary Practice and Chess Equine Products there was an express finding that he "*did deliberately mislead the Licensing Department*" during their enquiries (paragraph 87 and 88).
- vi) It is apparent that what saved Mr Harris and resulted in the grant of the temporary licence were:-
  - a) The Committee's acceptance of his assurances with regard to future conduct and his apologies in regard to his past conduct (paragraph 97). The Committee was clearly influenced by this contrition and expression of intent and the fact that the motive for misleading the Committee was a "*mixture of embarrassment and what was a misguided perception that (those matters were) a purely private matter*" (paragraphs 88 and 98-99).
  - b) His "*previously impeccable disciplinary record and various references supplied from owners and others vouching for his integrity*" (paragraph 100).
  - c) The information that there were no other debts apart from one minor one (paragraph 73).
  - d) The fact that he was to have a licence to be a trainer employed by EEL. This would or should separate his personal financial position (past, present and future) from the training business save for the fact that Mr Harris would be a guarantor of the leases of the property to be used by the business with a first year rent of £78,000. Whilst this was his company and he was the sole shareholder, he

would not be a director. The sole director would be Mr Frankland. Furthermore its business would be limited to training and would avoid the purchase and sale of racehorses, an aspect of his previous business which had led to difficulties and been a feature of some of the debts considered by the Committee (paragraphs 105-109).

- e) However because the business was new and because of the background of personal debts with Mr Harris's solvency being a material factor it was considered to authorise a temporary licence for 3 months in order *"to give a controlled start to, check on, the new business against the background of (i) Mr Harris's personal debts and conduct as set out in [the] Reasons and (ii) the fact that ... [the Committee had been told] ... that all the debts would be paid within 3 months "* and *(iii) that this 3 month period is very important as far as his personal solvency is concerned"* (paragraph 110).
- f) In the circumstances the Committee laid down 5 conditions for the temporary licence. These need not be repeated here but included ensuring that Mr Harris would not have a management role in EEL because (in summary) Mr Frankland would be the sole director and would be the only person able to sign cheques.
- g) Furthermore it was made clear in the course of the decision that: *"It is to be emphasised that in his future dealings with the Authority Mr Harris must be open and transparent and not deal in untruths or half truths"*.
- h) It was also stated that whilst not a condition, the Committee expected the 3 debts established to be still outstanding to be paid within the 3 months.

8.2. The decision dated 7 May 2010 was that a temporary licence for Mr Harris as an employee of EEL should be granted expiring 18 June 2010. There were similar conditions to those applied to the previous temporary licence save that: there was no requirement to provide accounts; and there was an obligation to notify the Authority immediately of any change in circumstances affecting him or EEL that may affect his position as a licensed trainer having regard to the detailed matters set out in the Guidance Notes pertaining to the licensing of trainers. The reasons for that decision can be summarised as follows:-

- a) Management accounts for EEL to 31 March 2010 were generally in line with projections and *“indicated moderately good health”* (paragraph 3).
- b) Mr Harris had not been able to establish payment of the 3 debts referred to in paragraph 1.2(h) above but it appeared probable that he would be able to do so imminently.
- c) There were still extant bankruptcy petitions, one adjourned for 28 days on 6 May 2010 and the other to be heard on 17 May 2010<sup>1</sup>.

8.3. The Decision on 18 June 2010 to grant a licence for Mr Harris as an employee of EEL expiring 31 January 2011 was made in the following circumstances and for the following reasons:-

- a) The 3 debts referred to above had been paid and the bankruptcy petition adjourned in circumstances of a proposed IVA.
- b) EEL’s management accounts for 3 months to 31 March 2010 showed it to be in a reasonably healthy financial position.
- c) However, there were further complaints concerning non-disclosure of debts and his past financial dealings in his application for a licence to 31 January 2011.
- d) The Committee decided not to consider complaints relating to events in and before 2009 on the basis that it would not be right to re-open previous findings in previous decisions.
- e) The Committee found that Mr Harris had misled it on 7 May 2010 by failing to disclose a 2008 debt of some £30,000 owed to bloodstock dealers. Nevertheless it was decided that *“viewed in the round”, “this failure was not enough to undermine the broad assessment of Mr Harris’s suitability to be granted a licence, although it did undermine the essential importance of full and frank disclosure on his part”*.
- f) The Committee in reaching its decision was particularly influenced by the absence of complaints about EEL’s trading since 1 January 2010. This led to their view that whilst the personal financial position of Mr Harris had worsened, a licence should be granted provided the conditions in place kept EEL’s business separate from Mr Harris’s own financial position. It was emphasised that the

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<sup>1</sup> Noting that there was no explanation or consideration as to why there were 2 petitions. There should not be but it happens from time to time.

conditions were very important and that *“breach of a condition may result in the suspension or withdrawal of the licence”*.

g) The conditions can be described as extensive and are set out at pages 49-51 of the bundle. Their terms need to be read and applied in full but the following provides an underlying summary of their essence:

- i) Mr Harris must have nothing to do with the buying or sale of racehorses and EEL will only enter into transactions concerning training;
- ii) EEL’s sole director will be Mr Frankland and only he will sign cheques. Mr Harris shall not act as a director of EEL;
- iii) Management accounts will be provided to the licensing department for specified periods at specified times down to 31 December 2010. EEL will also provide audited accounts for the period 1 January to 30 September 2010 by 10 December 2010.
- iv) The licensing department will be informed of specified matters relevant to Mr Harris’s personal position including his financial position.

9. In the Reasons it is noted:-

9.1. In granting a temporary licence to run until 30 April 2010 the Committee imposed conditions expressly in order *“to give a controlled start to, and check on, the new business against the background of Mr Harris’s personal debts and conduct”* (February Reasons ¶110).

9.2. The similar conditions imposed in May 2010 were expressly stated to be *“designed to secure that the business could trade independently of the circumstances of Mr Harris”* (See Reasons for Decision given on 7 May 2010 (“the May Reasons”) ¶2).

9.3. The conditions imposed on 9 July 2010 (which appears to be a reference to the letter dated 7 July 2010 at page 275 of the bundle and relates to the decision and conditions of 18 June 2010) were *“designed to continue to keep the training business separate from Mr*

*Harris's financial affairs [and] to ensure that the business is run solely by Mr Frankland or some other suitable person approved by the Licensing Committee" (See Reasons of the Licensing Committee dated 9 July 2010 ("the July Reasons") ¶18).*

10. Those reasons are to be borne in mind when considering this application and the contentions of breach of conditions.

#### **Breach of Conditions - Accounts**

11. We start with breaches of the conditions requiring accounts to be produced because it is unarguable that the following conditions prescribed on 9 July 2010 were not complied with:-

- 11.1. Mr Harris did not provide management accounts, including a balance sheet, for EEL for 1 July to 30 September 2010 by 24 October 2010 as required by condition 6.1. or at all.

- 11.2. Mr Harris did not provide audited accounts for EEL for the period 1 January 2010 to 30 September 2010, such accounts to have been prepared by an independent Chartered or Certified accountant, by 10 December 2010 as required by condition 7 or at all.

12. The accounts of EEL that have been provided to the Authority are:-

- 12.1. A Financial report incorporating a balance sheet, trading summary and overheads for the 3 month period to 31 March 2010 signed and dated by Mr Frankland and enclosed by him with a letter to the Authority dated 5 May 2010.

- 12.2. A Financial Report in substantially the same form for the 6 month period to 30 June 2010 attached to an e-mail from Mr Frankland to the Authority dated 22 July 2010.

- 12.3. An accountant's report signed by Mr Frankland and dated 10 January 2011 presenting management accounts for the year ending 31 December 2010 which contain a balance sheet, summary trading account and a schedule of trading overheads. They were received on the day before the hearing, 11 January 2011.

13. When Mr Harris was asked to explain the 2 breaches identified in paragraph 11, he stated that this was the first day he was aware of non-compliance. He



explained that he had made clear to Mr Frankland in numerous conversations that accounts should be sent in accordance with the conditions and observed that following his bankruptcy he could not be involved in the management of the company and therefore was not involved in the process of preparing accounts. He observed that he had a very difficult time between July and October due to his personal financial position and bankruptcy but remembered reminding Mr Frankland on more than one occasion to send the accounts.

14. It is to be noted that Mr Harris' claim that the first time he knew of the breaches was when they were raised at the hearing on 12 January 2011 is difficult to understand. First because the breaches are clearly identified in the Reasons provided by the Authority. Second because letters to him from the Authority dated 3 and 31 December [pages 355/357 and 361 of the bundle] both expressly required his application for a new licence to include the management accounts and audited accounts referred to in the letter from Mr Smith (of the Authority) dated 7 July 2010 [page 275 of the bundle]. The letter of Mr Smith set out the conditions and it is clear that these accounts were required [p.278]. If Mr Smith had thought this unnecessary because they had already been supplied, he could have said so. He did not.
15. In any event Mr Frankland did not attend the hearing and we have not heard from him with regard to the assertions made against him by Mr Harris. As a result and notwithstanding the points noted at paragraph 14 above, we do not reach any conclusion as to whether Mr Harris is telling the truth by blaming Mr Frankland. However, we do conclude that:-
  - 15.1. The breaches are indicative of Mr Harris' approach identified in paragraph 7 above.
  - 15.2. There has been no previous communication from him referring to the breach or seeking to explain it and there should have been. These are conditions of his licence.
  - 15.3. It was Mr Harris' obligation to ensure that the conditions were complied with. He is responsible for the breaches whether he can blame Mr Frankland or not.
  - 15.4. Non-compliance with conditions is clearly a serious matter. The conditions are directly relevant to the concerns the Licensing Committee had when granting the licence.
  - 15.5. His blaming of Mr Frankland, if correct, strongly suggests that Mr Frankland is of unreliable character because he not only failed to comply but also failed to inform Mr Harris that he had not complied.
  - 15.6. Although the provision of the year end accounts (albeit at the last moment) is to be taken into account, it does not cure the breach. The time limits under the conditions have expired, the accounts required

for the specific periods specified by the conditions have still not been provided and there are no audited accounts.

16. We will address the consequences of those breaches for the application having considered the other matters relevant to our decision whether to grant a licence.

### **Breach of Conditions – The Personal Insolvency Finance**

17. Another matter arises from the following payments identified from bank statements of EEL supplied by it to the Authority:-

- 17.1. On 5 July 2010 a payment in the sum of £39,840 was received by EEL with the reference "COTSWOLD RACING EN".

- 17.2. On 7 July 2010 a payment in the sum of £4,000 was received with the reference "COTSWOLD RAC LOAN TO COMPANY".

- 17.3. On 7 July 2010 £34,030 was paid out to Varringtons.

- 17.4. On 25 July 2010 a further payment, in the sum of £1,410, was made to Varringtons. The payment was given the reference "COTSWOLD / HARRIS".

18. The Authority's concern is that those payments were related to Mr Harris' personal financial position. It is a concern because the conditions imposed on 9 July 2010 were (see paragraph 9.3 above) *"designed to continue to keep the training business separate from Mr Harris's financial affairs [and] to ensure that the business is run solely by Mr Frankland or some other suitable person approved by the Licensing Committee"*. It is also of concern because there may have been breaches of the conditions (or either of them) requiring that neither Mr Harris nor any other person shall *"enter into any transaction on behalf of EEL that does not directly relate to the training of racehorses"* (condition 2) and that he *"shall not act as a director of EEL"* (condition 4) (pages 49/50 and 277/8 of the Bundle).

19. It is a matter which has led also to the concern that Mr Harris has misled the Licensing Committee. It is expressed as follows at paragraphs 38 and 39 of the Reasons:-

38. *Mr Harris did not inform the Committee on 18 June 2010 that a scheme was being considered by which money would be channelled through EEL in order to assist his personal position. Neither Mr Harris nor Mr Frankland have*

*answered the questions posed about when the arrangement was entered into with Mr Allen, but, given that a previous proposal for an IVA which contained a cash contribution from a third party was made on 1 June 2010 (according to Mr Slator's report provided on 4 January 2011), and that the first payment was made on 5 July 2010, it appears highly likely that the arrangement was at least in contemplation on 18 June 2010. In Mr Frankland's letter of 15 June 2010 he expressly drew a distinction between Mr Harris's "previous personal financial difficulties", which were described as "issues from the past", and the outlook for EEL which was described as "very good indeed". There was no indication, from either Mr Harris or Mr Frankland, in correspondence or at the hearing, that they were about to embroil EEL in Mr Harris's personal financial debt problem. Had there been, it seems inconceivable that the Committee would have been content for Mr Harris to continue training as an employee of EEL.*

39. *Further, for the reasons given above, Mr Harris's assurance in his letter dated 4 August 2010, that EEL had not been used for any purpose other than for training horses, was plainly untrue.*

20. This should not have been a matter to take up a considerable amount of time and enquiry on the part of the Authority. Mr Harris should have provided a clear explanation of the transactions involved and supported this with documentary evidence. He has not done so and the matter is (speaking colloquially) "a mess". The fact that he has not done so, is in itself a concern.
21. A good starting point is a document entitled "*Current status of obtaining funds following the Bankruptcy of Milton Harris*" enclosed with a letter to the Authority from his trustee in bankruptcy dated 4 January 2011 (page 362 of the bundle). The letter explains the creation of that document which under sub-heading "*3. IVA Lump Sum*" provides the following (summarised) information:-
  - 21.1. Mr Harris sought to enter into an Individual Voluntary Arrangement ("IVA") in order to avert bankruptcy.
  - 21.2. His first Proposal dated 1 June 2010 included the offer of a sum of £50,000 to be used for creditors which would be provided by an unconnected third party within 1 month of approval of the IVA.
  - 21.3. A second Proposal dated 27 July 2010 included the offer of a sum of £40,000 to be paid by EEL within 2 months of approval of the IVA.
22. It appears from the information set out at paragraph 17 above and the fact that Varrington Associates Limited ("Varringtons") were the insolvency

practitioners acting in respect of the proposed IVA, that the sum of £39,840 received by EEL on 5 July 2010 was used to pay £34,030 and £1,410 to Varringtons for the purposes of the first and second Proposals on 7 and 25 July 2010 respectively. EEL appears to have retained £8,400. The questions to be answered are: why should EEL have received the sums of £39,840 and £4,000 in the first place? From whom were those sums received? What were the terms of receipt? Why were the payments made to Varringtons when there was no acceptance of the IVA?

23. It is not the function or purpose of this Committee to answer those questions. It was for Mr Harris to provide the correct answers to the Committee. All that was needed from Mr Harris was an explanation of what occurred. At the beginning of August 2010 he appeared to have done this:-

23.1. In answer to a letter of enquiry from the Authority dated 3 August 2010 (page 295 of the bundle) Mr Harris by letter dated 4 August 2010 (page 297 of the bundle) stated that:

"A loan from a good friend has been used to help me avoid going bankrupt and I was advised to protect the third parties [sic] interest that it was better if that money was loaned to the company as apposed [sic] to me individually, so that should the worse case scenario happen, the third party funds would not be at risk." (our underlining)

23.2. On 6 August 2010 the Authority received a copy of an e-mail dated 4 August 2010 (page 301 of the bundle) from Mr Nic Allen of Avon Estates Limited to Mr Harris in which he stated:-

"As discussed with you over the last few weeks I am happy to support [EEL] with a loan facility to help with the IVA. We have agreed in principle the main points of this agreement and payment terms for the £50,000.00 that has now been sent to [EEL]." (our underlining)

24. The information provided made clear (in particular in the parts underlined) that there was a loan to EEL and, therefore, on the face of it there would be a debt owed by EEL to the lender when the loan became repayable. It was also made clear that the money was to be for the purposes of Mr Harris' IVA and only for that purpose. A problem resulting from the creation of a loan is that the loan will affect the financial position of EEL. A further problem for Mr Harris is that it means that EEL has been involved in transactions concerning Mr Harris' insolvency not directly the training of racehorses. It may be that the director of EEL, Mr Frankland, can justify the decision for EEL to accept a loan. He may have in mind the importance of Mr Harris to the business (although we make no decision upon that). However, in any event the agreement to lend and borrow is a transaction and it can not be construed as a transaction that "directly relate[s] to the training of racehorses". At best it directly relates to the trainer. It is a breach of condition 2 of the current licence.

25. Reading the e-mail from Mr Allen we would have expected Mr Harris to be able to tell us what "*the main points of this agreement and payment terms for the £50,000.00*" were and also why the sum sent was £50,000 when the figures identified in paragraph 17 above totalled £43,840.
26. Notwithstanding the e-mail and indeed his letter dated 3 August 2010 (see paragraph 23 above), Mr Harris informed us that the monies received were not a loan but a gift received on the basis that he would of course repay them as and when he was able to. In other words, as we understood him, there was a debt of honour but not a contractual obligation. If that were so, there would be no loan to EEL nor a loan facility and the letter and e-mail referred to in paragraph 23 above would not have been written in the terms they were. Mr Harris could not explain this. He sought to explain his letter as "bad grammar" written at a time when he was in shock at having been made bankrupt on 28 July notwithstanding the IVA Proposal.
27. We do not accept that explanation. The use of the word "loan" instead of gift is not "bad grammar". These words, "loan" and "gift" are straight forward, easily understood words of the English language. This is no explanation for why Mr Harris stated the money was a loan in an important letter, namely a letter providing information to the Authority for the purposes of their inquiries. Furthermore Mr Allen referred to a loan facility which is contrary to the current suggestion that there was a gift.
28. The information provided at the hearing (paragraph 26 above) is similar to his explanation by letter to the Legal and Compliance Department of the Authority dated 23 December 2010 (page 359 of the bundle) It is to be noted that this is over 4 months after the August correspondence referred to above and there is no explanation for the different versions. In that letter Mr Harris described the money as a gift to be used for the IVA and that he had been advised by Varringtons that the funds should not be lodged in his personal account in case he was in fact made bankrupt. EEL was "*merely used as a vehicle to protect Mr Allen, on I might add professional advice*". It may be noted that the advice of Varringtons does not appear to have been to pay the money to EEL and certainly there is no suggestion that a loan should be made to EEL or that there should be a loan facility.
29. The Reasons identify other correspondence which is far from satisfactory:-
  - 29.1. In a letter dated 6 August 2010 from Varringtons to the Authority (page 300 of the bundle) it is stated that £40,000 "*was paid into EEL as a loan to Mr Harris by a friend*". It is unclear whether the monies were treated as a loan to EEL or whether EEL was merely a conduit without further liability once it had paid the monies to Varringtons for the purpose of the IVA. However, there is no reference to a gift.
  - 29.2. An e-mail from Mr Frankland to the Authority dated 6 August 2010 (page 302 of the bundle) states that the £34,030 sent to Varringtons on 7 July was "*from separate funds advanced to EEL for this specific*

*purpose. It does not represent a charge against [EEL]*". The use of the word "advanced" also suggests a loan to EEL. Alternatively the letter read as a whole may be suggesting the money was held on trust for Mr Allen/Mr Harris without liability other than ensuring that the purpose of the trust was carried out or the monies returned. Even if that is correct, there appears to be a problem. The monies have been retained by Varringtons for their fees after the IVA failed. That does not appear to have been their purpose and this still leaves an issue concerning EEL's liability for their repayment.

- 29.3. By letter to the Authority dated 18 August 2010 (page 305 of the bundle) Mr Frankland said that the money in question had been "*channelled ... through EEL in order to protect Mr Allen*". It described the money as being a "*loan to him on an interest-free basis to be repaid by Harris only when he is 'back on his feet'*". This more matches what Mr Harris said at the hearing and is in line with the concept of a trust referred to above. The existence of the trust gives rise to the potential problem referred to in the sub-paragraph above. In addition the terms of the letter give rise to the question whether in practice Mr Harris was controlling and directing EEL either generally or in this specific instance of "channelling".
- 29.4. By letter to the Authority dated 24 August 2010 (page 331 of the bundle) Mr Frankland stated that the payment into EEL on 5 July 2010 was shown in the company books as "*Shareholder's Loan*" and the payment out to Varringtons on 7 July 2010 as "*Repayment of Shareholder Loan*". It was added that the accounts are not computerised but such entries form part of the manual recording. This means a loan from Mr Harris to EEL and presumably follows from the fact that he was lent the money. The question of what liability EEL has for repayment remains unanswered.
- 29.5. In answer to a letter from the Authority dated 27 August 2010 (page 336, a similar one sent to Mr Frankland is at p. 334) which explained the Committee's concerns about these matters and Mr Harris's failure to comply with previous requests for information, Mr Harris by email dated 30 August 2010 (page 338 of the bundle) stated that EEL has no liability to Mr Allen because the money was not paid directly by him to an EEL account. That appears to be factually correct (see paragraph 17 above and the sub-paragraph below) but it is a surprising proposition that EEL will have no liability to repay the monies advanced for those reasons alone.
- 29.7 Mr Frankland in a letter to the Authority dated 1 September 2010 (page 340 of the bundle, answering the letter to him dated 27 August 2010) stated that the £39,840 paid into EEL on 5 July had come from Mr Harris's account at Cotswold Racing Enterprises Limited. He said that the £4,000 paid in on 7 July had come from the same source. These payments were said to have been recorded as Shareholder

loans. He said that when Varringtons “*send back the £34,000, minus their fees*” he would then “*look to repay the balance on Shareholders Loan*”. This strongly suggests the existence of a liability for EEL. It also draws attention to the issue why Varringtons received and/or used the money for their fees and what liability EEL has as a result.

30. This is all wholly unsatisfactory. It is apparent from the matters above that Mr Harris has not provided the answers to the questions identified within paragraph 22 above. Nor can he say he was not asked. The Reasons at paragraph 30 identify questions asked in correspondence in August 2010.
31. Mr Harris’s attitude at the hearing was that in practice none of this really matters. Mr Allen is a good friend and will not require repayment from EEL. Mr Allen was providing Mr Harris with funds and if Mr Harris was wrong to use EEL as a conduit, there will be no adverse consequences for EEL.
32. In one sense he is right. There was absolutely no need to use EEL if the monies were to be held pending a decision upon the IVA proposal. They could have been held, for example, by Varringtons. Mr Harris took a wrong and unnecessary route. However, Mr Harris misses the point. The fact that he took the EEL route means that it is necessary to know the legal position of EEL concerning the monies. It is necessary to ensure that the financial position of EEL is known. At present it is uncertain. This is evident from the fact that it is wholly unclear why the monies were paid to Varringtons and, as appears to be the case, how Varringtons were able to use those monies for their fees when the money was apparently provided for the purposes of paying creditors within an IVA which never arose. It appears from the Trustee’s document “Current status of obtaining funds following the Bankruptcy of Milton Harris” that Varringtons have used £28,787.50 for their fees and retained £16,822.50 which the trustee is claiming. The Committee does not reach any decision upon this. The point is that if Mr Allen’s money was to be used for a specific purpose and only if the IVA succeeded, this should be clear from the agreements entered into with him and Mr Harris and with him and/or Mr Harris and EEL. It currently is not because those agreements have not been identified.
33. Furthermore the point is that whether Mr Harris is right or wrong, he has not provided the information requested by the Authority to assist it in its enquiries as he should have done. We do not accept that there should be contradictions between earlier and later explanations for the transactions. However, even if that is excusable, Mr Harris has failed to explain why it happened or to produce clear evidence to show what really happened. For example, he has not provided a statement from Mr Allen to support his current stance.
34. Notwithstanding the current confusion, it appears clear to us that there have been breaches of the conditions of the extant licence:-

- 34.1. Contrary to the reasons behind the imposition of the conditions for his current licence, EEL has been involved in the financial affairs of Mr Harris. Its business should have dealt only with training but in fact it has been involved in attempting to assist in facilitating Mr Harris' proposed IVA.
- 34.2. The receipt of money by EEL and its payment to Varringtons is a transaction which does not relate directly to the training of racehorses. It is a breach of condition 2 of the current licence.
35. We cannot reach a decision as to whether he was acting as a director of EEL. There are clearly grounds for suspecting that EEL was acting upon his instructions and directions when agreeing to enter into the transactions of receipt and payment of the monies. However, the fact that we can not reach a decision is attributable to his failure to provide information and that does not assist him with his current application.
36. The one positive point in favour of Mr Harris is that we have decided that he did not mislead the Committee on 18 June 2010 (see paragraph 19 above). We doubt that such a scheme was then in existence. There is no reference to EEL in the trustee in bankruptcy's description of the 1<sup>st</sup> Proposal dated 1 June 2010. That was simply a proposal for a lump sum payment by an unconnected third party. However, unfortunately the matter of disclosure does not end there. It is to be noted that there is reference to a sum of £50,000 within the First Proposal (see paragraph 21 above). Mr Harris informed us during the hearing that £50,000 was indeed provided. We know that £43,840 was paid to EEL (see paragraph 17 above). He says that the balance gifted to him was used to pay a debt to Tattersalls.
37. The problem with that statement is that the debt was not disclosed to the Committee on 18 June 2010. Debts owed to Tattersalls are identified at paragraphs 55-57 of the Reasons of the Licensing Committee dated 10 February 2010 (page 29 of the bundle). Those debts are recorded as having been paid. There is no reference to further debt in the Reasons given for the decision at the hearing on 7 May 2010 (page 43 of the bundle). The Reasons given for the decision at the hearing on 18 June 2010 (page 45 of the bundle) identify 2 previously undisclosed debts (paragraph 9, page 46 of the bundle) and to two (possibly three) judgment debts (paragraphs 10 and 12, page 47 of the bundle). There is also reference to some other claims. None of these relate to Tattersalls. Notwithstanding that this hearing was concerned with undisclosed liabilities, he failed to mention the debt owed to them. Mr Harris could provide no explanation and this continues the history of Mr Harris failing to disclose debts when providing information to the Committee.
38. As a result and for the reasons set out above, most of the concerns identified within the Reasons remain concerns and have led us to adverse findings against Mr Harris in respect of his conduct and for the purposes of assessing him when deciding whether to grant his application for a licence. There are



also further matters to consider as a result of his bankruptcy and as a result of information recently received concerning the finances of EEL.

## Bankruptcy

39. The first point to be made in respect of bankruptcy is that whereas Mr Harris was a beneficial owner of the shares of EEL, from 28 July 2010 that beneficial ownership vested in his trustee in bankruptcy. That means that the trustee is directly interested in what happens with regard to this licence. The trustee has not attended but in his document "*Current status of obtaining funds following the Bankruptcy of Milton Harris*" (at page 364 of the bundle) he has written as follows:-

*"Given that the asset that would achieve the largest realisation for the bankruptcy estate is the IPA (potentially £72,000), the trustee would strongly support the renewal of MH's trainer's licence to enable the IPA to continue and a dividend to be paid to creditors, while also recognising that the Committee will take all matters into account."*

40. The "IPA" is an income payments agreement entered into pursuant to insolvency legislation whereby Mr Harris will pay £2,000 per month for 3 years to the bankruptcy estate. This was presumably agreed on the basis of an existing employment contract between Mr Harris and EEL dated 22 January 2010 (page 93 of the bundle). His basic salary was £48,000 per annum and he would receive 50% of the percentage of prize money payable to the trainer under the Rules of Racing. However, EEL has not been able to afford that salary and Mr Harris has received only £27,000 as shown in the year end accounts recently received. Mr Harris tells us the employment agreement was varied so he receives £27,000 per annum and 100% of that prize money. He has not explained how he can comply with the IPA nor indeed what happens about income tax.
41. In any event it appears that the trustee either has not addressed the question of realisation of his shares in EEL or does not consider them worth mentioning. We will return to that later. The point at this stage is simply that Mr Harris is no longer an employee and owner of EEL but only an employee.
42. The second point is that whilst the current licence prohibited Mr Harris from being a director, his bankruptcy has wider implications. Section 11 of the Company Directors Disqualification Act 1986 not only makes it a criminal offence for him, as an undischarged bankrupt, to act as a director but also for him to take part in or be concerned in the management of a company. He is likely to be discharged on 27 July 2011. The relevant part reads as follows with underlining added:-

*"It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when—  
(a) he is an undischarged bankrupt ..."*

43. In those circumstances the question arises as to whether this application is for a licence which is sought in order to carry out management activities contrary to that prohibition. Mr Harris described his role as an employee and strongly contended that he was not and would not be involved in management. We emphasise that we are only concerned with his application for a licence. Any decision we make can not be relied upon by Mr Harris for any other purpose. It will not provide him with any form of answer to any allegation that he has been or is involved in management. However, from the information he has provided us and purely for our purposes, we are satisfied that he is not involved in management. That is because Mr Harris has told us that all management decisions are referred to Mr Frankland in particular by e-mail. We must record that we have not seen any written evidence to support what we are told. We have not seen the e-mails or any board minutes. We re-emphasise that Mr Harris cannot rely upon our current view in the event that anyone challenges him and asserts he is involved in management.
44. This leads on, however, to consider the trading of EEL over the last year under the directorship of Mr Frankland.

#### **EEL and the Financial Position**

45. We refer to two recently received pieces of information. The first is a letter from Mr Frankland to the Authority dated 6 January 2011 (but not received until 10 January 2011 - page 368 of the bundle) describing "*Good news on the Milton Harris front*". That news refers to a capital injection of £50,000 at the end of December 2010 from an "*existing patron Mr David Fox*". It is explained that £18,000 was to pay for shares that had been issued and £32,000 was a long term loan repayable not before January 2013. Mr Harris informs us that Mr Fox is now a 50% shareholder of EEL, although there has been no reference to the trustee in bankruptcy agreeing to this.
46. The letter also makes the following statement:-
- "The significance of [Mr Fox] is that he has 12 racehorses in training, spread between varying trainers, but has chosen Mr Harris as the one to receive his financial support. Mr Fox is a mature and successful businessman in the Midlands, who has expressed an interest to invest a further £40,000 after the expiry of 3 months if the operation continues to progress."*
47. Mr Harris told us that he would be very surprised if Mr Fox did not invest the further £40,000. He also emphasised that Mr Fox would buy more horses and increase the income for the business of EEL.
48. Mr Harris is quite right to describe it as increasing the business of EEL. Although the letter refers to Mr Harris receiving the financial support, it is EEL which receives it. Mr Harris is only an employee and no longer a beneficial shareholder. EEL is now owned beneficially by Mr Fox (or by the person who

represents him as shareholder, Lystre Adams) and the trustee in bankruptcy. Presumably what will happen in the future if there is to be further investment is that Mr Fox will try to purchase the shares of the trustee in order that EEL will become his. This is clearly an important development but we note that we have not heard from Mr Fox.

49. The Accountant's report for EEL for the year end accompanied by management accounts is the other piece of information recently received. We note the following from the accounts:-

49.1. This is a reasonably substantial business in terms of income with training fees of £396,201. However, whilst there are net assets, these only stand at £43,286 and there are long term loans of £32,000 due to Mr Fox and £6,842 apparently due to Mr Harris. Of the current account assets, trade debtors total £62,444 and payment of these will be required when the trade creditors totalling £47,240, PAYE due in 3 months of £13,377 and VAT due in 2 months of £6,882.

49.2. Although the balance sheet carries forward a trading profit of £4,444, this only arises because Mr Harris (an employee) has agreed to forego going on towards half his salary (see paragraph 40 above).

49.3. For some reason his salary is shown in the line for Directors fees which does not bode well within the context of deciding whether he is acting as a director. However, it is described as "salary to Trainer" rather than as a director's fee. In any event the profit is made without Mr Frankland receiving any director's fee. He appears to be prepared to act as a director making and taking responsibility for director's decisions without remuneration. The only relatively minor advantage to him financially being that (presumably) his firm receives the accountancy fees of £5,760 for the year.

49.4. The management accounts make no reference to any liability to Mr Allen, save to the extent that the £6,842 loan due to Mr Harris may have anything to do with it. For reasons detailed under 17-33 above, this is an issue which is far from clear. If monies are owed to Mr Allen in respect of a loan/loan facility (see paragraphs 24.1 - 24.2 above), this changes the balance sheet quite significantly depending upon whether Varringtons were entitled to the money they received and whether the trustee is entitled to the balance (see paragraph 32 above).

49.5. There is also a question whether the £6,842 loan due to Mr Harris constitutes a cause of action which has now vested in the trustee and whether he is able to demand payment.

49.6. As a result of the matters above, although the training fees may be reasonably substantial for a business, it is clear that the business was only able to survive its first year as a result of Mr Harris and Mr

Frankland being prepared to make sacrifices. It appears that £18,000 has been injected as capital (although not included within these management accounts) but the need for a further capital injection is apparent.

50. Mr Harris' optimism about the likelihood of that future capital injection was clear at the hearing. He told us that Mr Fox is indeed a good businessman and will make a substantial difference to EEL. For example he envisages that Mr Fox wants to "build the yard" and describes Mr Fox as a serious investor in racehorses. He told us that Mr Fox runs his horses under Power Electrical Systems as well as his own name and has invested a million pounds in National Hunt horses in the last couple of years. Mr Harris is looking to a successful future based upon his skills as a trainer and the involvement in EEL of Mr Fox. It may even be that Mr Fox will bring in his own management team. Yet we have no information from Mr Fox himself. In this regard we note that the Authority by its letter 3 December stated that (see page 357 of the bundle):-

*At the very least, any such application [for the 2011 licence] should include a full and truthful explanation of your current financial information and that of EEL. This should include all relevant business and financial records from throughout 2010, including records relating to the loan from Mr Allen ... all bank statements, and the management accounts, balance sheets and audited accounts referred to in [the Authority's] letter of 7 July 2010. You should set out any business plan for the future of EEL and any other information on which you seek to rely.*

51. It is to be observed that there is no such business plan and no statement from Mr Fox. The paragraph quoted above was repeated in the Authority's letter to Mr Harris dated 31 December 2010 when he was invited to attend the hearing (page 361 of the bundle). Yet it has not been provided.

### **Other Companies**

52. Currently EEL has one director who is in control of the business, Mr Frankland. We therefore consider it appropriate to make reference to information received from a purported creditor of Mr Harris concerning other companies in respect of which Mr Frankland has been involved, sometime with Mr Harris. That creditor is Prevention & Detection (Holdings) Limited. Its claims against Mr Harris are in dispute and there are clearly serious issues between Mr Jaffer in his role as Managing Director of that company and Mr Harris. We are not able to decide those issues. However, included in the correspondence received from Mr Jaffer is a letter dated 19 April 2010 (page 157 of the bundle) dealing with company records for such companies.
53. There is reference to two companies of which Mr Harris was the sole director and shareholder and Mr Frankland the company secretary, Cotswold Racing Limited and Cotswold Racing Enterprise Limited. In respect of those two companies the following information is provided:-

- 53.1. Both have been the subject of notifications to strike off the register for failure to file annual returns or accounts.
- 53.2. Cotswold Racing Limited has been the subject of a winding up petition by HMRC adjourned to 19 May 2010.
54. Mr Harris did not dispute that information. He sought to explain the financial position of the two companies and the fact that Cotswold Racing Enterprise Limited has superseded Cotswold Racing Limited which has been wound up. We did not find it easy to understand what he said. We also note that the Reasons raise concern over the role of one of those companies in transferring the monies identified in paragraph 17 above. We have not considered it necessary to deal with that concern but we do note the apparent failure by both Mr Harris and Mr Frankland to ensure that the companies were run properly.
55. Two further companies are referred to, AWA Bloodstock Limited and Argento Conference Limited. Mr Harris has nothing to do with those companies but Mr Frankland was/is sole director of both. In respect of those two companies the following information is provided:-
- 55.1. Both have been the subject of notifications to strike off the register for failure to file annual returns or accounts, Argento Conference Limited more than once.
- 55.2. AWA Bloodstock Limited had a County Court judgment entered against it on 30 July 2008 which remains unsatisfied.
56. We have not heard from Mr Frankland about these companies but it is not a good record if true and raises doubt over his approach to managing companies. A doubt which would apply within this context when he is the sole director of EEL.
57. The relevance of these matters and of all the matters above must now be addressed by identifying the test we are to apply when deciding whether to grant a licence.

### **Test To Be Applied**

58. The General Manual of the Rules of Racing (“the Rules”) establishes the framework for the governance and regulation of horse racing<sup>2</sup>. Rule 1.1 of Part 1 of the General Manual (A) provides that 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 Rules<sup>3</sup>. Training licences are required for

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<sup>2</sup> See paragraph 4.1 of the Part 1 of the General Manual (A).

<sup>3</sup> See Rule 8.2 of Part 2 of General Manual (A).

a person to train horses to run under the Rules<sup>4</sup> and Rule 23 of Part 3 of Manual (A) provides (amongst other matters) that:-

- 58.1. Each application shall be considered individually on its merits.
  - 58.2. At any time after receiving an application and before determining it, the Authority may require an applicant to provide it with such further information as it reasonably considers necessary to determine the application.
  - 58.3. The Authority may require an applicant to provide information which he is requested to provide under this Rule in such form, or to verify it in such way, as the Authority may direct.
59. Where an application for a licence or permit is made to the Authority in accordance with the relevant application procedure, the Authority may grant the licence with or without conditions or may refuse it<sup>5</sup>. A renewal application must be received at the Authority's Office at least 1 month before the date on which the licence or permit will be required. A licence may be renewed subject to such restrictions or conditions as the Authority considers appropriate and the restrictions or conditions may differ from those previously imposed<sup>6</sup>.
60. Rule 10 of Part 3 of the Trainer Manual (C) sets out the general requirements applying to licensed trainers as follows:-

*10.1 The Authority may*

- 10.1.1 refuse to grant or renew a trainer's licence or permit, or*
- 10.1.2 suspend or withdraw a licence or permit,*

*if the Authority considers that any of the conditions specified in Paragraph 10.2 are not met.*

*10.2 The conditions are that*

- 10.2.1 the applicant or the holder of the licence or permit is a suitable Person,*
- 10.2.2 any training establishment used by him is suitable and secure,*
- 10.2.3 training may only be carried out at or from stables in connection with which the licence or permit is granted,*
- 10.2.4 the terms and conditions on which Persons are engaged by him in the training of racehorses are fair and reasonable, and*

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<sup>4</sup> Rule 13, Part 3 of General Manual (A).

<sup>5</sup> Rule 24, Part 3 of Manual (A) and Rule 2, Part 3 of the Trainer Manual (C).

<sup>6</sup> Rule 6.3, Part 4 of the Trainer Manual (C).

10.2.5 the holder meets such other requirements as the Authority may from time to time determine.

61. The condition which is in issue for this decision is whether Mr Harris is a "suitable Person". For the purpose of applying that condition the Authority within the Reasons has invited us to adopt the approach set out at paragraph 94 of the Reasons given for granting Mr Harris a temporary licence dated 10 February 2010. We consider it right to do so. The Committee said the following:

*We take into account the guidance given by Lord Bingham in R v Crown Court at Warrington, ex parte RBNB [2002] 1 WLR 1954 in which he said that the phrase "fit and proper person" does not "lend itself to semantic exegesis or paraphrase" and is directed to ensuring that the applicant "has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do." We also bear in mind the passages from the judgment of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 at 518B-519E emphasising the importance for a decision making body such as this Committee of the wider interests at stake, including that of maintaining the reputation of the field of activity in question and sustaining public confidence in its integrity.*

62. The Authority may from time to time issue guidance to ensure compliance with any Rule<sup>7</sup>. 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. The Notes set out the conditions to be met and provide guidance upon them. The Guidance Notes accompanied the application form sent to Mr Harris.
63. Section I of the Guidance Notes concerns "General Suitability ('Fit and Proper')". Included within the considerations which are relevant to be taken into account are: honesty and integrity, business competence and financial soundness. This is not a definitive list and is only a guide. We note in particular the following guidance to which we add our underlining for particular reference to this application:-

For the purposes of honesty and integrity:

*21 In relation to each section below, the Licensing Committee expects full and frank disclosure from the applicant, who is required to disclose 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, competence, honesty and integrity.*

*22 A person whose conduct, behaviour 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.*

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<sup>7</sup> see paragraph 6.2.2 of Part 2 of General Manual (A).

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

25.4. 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.

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

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

For the purposes of personal or business dealings:

26. 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 has been a director or shareholder of a company that has committed a criminal offence, 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 responsibility (if any) in relation to that offence. Also, where the applicant is to be an employee of a company or other person(s) running the proposed training business, the honesty and integrity of the employer may be relevant to an assessment of the fitness and propriety of the applicant, as may be the honesty and integrity of those associated with or connected to the employer.

28. The applicant must also demonstrate his/her competence and capability to run the proposed training business or where the business is to be carried on in whole or in part by another person, the competence and capability of the person(s) concerned to run the business. The Rules of Racing require that the training business to which the licence relates must be carried on with reasonable care and skill in addition to the various specific requirements of the Rules of Racing regulating the conduct of a training business.

29. Relevant matters include:

29.1. Whether the business will have a competent and prudent management structure; and

29.2. Whether the applicant can demonstrate that the affairs of the business will be conducted with reasonable care, skill and diligence.

For the purposes of financial soundness:

31. The Licensing Committee will take into account the financial track record of an applicant and (whether or not the business is owned by the applicant) all the relevant circumstances in assessing the likely financial soundness of the



proposed training business. First time applicants will be required to satisfy all relevant factors (listed below) however, applicants applying for a renewal of a licence to train may be required to produce documents only upon request.

32. Relevant factors include:

32.1. Whether the applicant has been the subject of any judgement debt or award in Great Britain or elsewhere, which remains unpaid or was not satisfied within a reasonable period.

32.2. Whether the applicant has ever, in Great Britain or elsewhere, made arrangements with his creditors, filed for bankruptcy, had a bankruptcy petition served on him, been adjudged bankrupt, or been the subject of any other bankruptcy process (including any restrictions order or undertaking or sequestration of assets).

32.3. Whether the applicant has been a director or other officer or shareholder of a company which has gone into insolvent liquidation or has been placed into administration while the applicant was so connected to the company or within 12 months of his/her ceasing to be so connected.

32.4. That the training business to which the application relates is solvent and able to pay debts as they fall due.

32.5. Whether the training business to which the application relates is likely to be financially sound, taking into account all relevant matters, including the information that the applicant is required to furnish in support of his application, namely:

32.5.1. a financial reference from a satisfactory source indicating that the applicant or the person(s) who own the training business have available working capital or overdraft facilities of not less than £40,000 or such other amount as may be requested on behalf of the Licensing Committee having regard to the circumstances of the application; and

32.5.2. projected profit and loss accounts for the first 12 months of the training business; and

32.5.3. a cash flow projection for the first 12 months of the training business, setting out in reasonable detail the assumptions on which the projection is based.

32.5.4. Accounts and balance sheets for any prior period of trading of the proposed or of any other relevant business as may be requested by the Licensing Committee.

## Summary of Relevant Matters

64. The matters set out above lead us to the conclusion that when deciding whether to grant a licence to Mr Harris we need to take into account in particular the following:-
- 64.1. The training skills of Mr Harris and the other matters raised by him as summarised at paragraph 2 above.
  - 64.2. The history of previous decisions last year, the causes for them and the decisions made (see paragraphs 8-9 above).
  - 64.3. The failure to comply with conditions of the current licence in regard to the obligations to provide accounts (see paragraphs 11-15 above).
  - 64.4. The failure to keep the training business of EEL separate from Mr Harris' financial affairs which was an underlying reason for the conditions of his current licence and the failure to comply with the condition not to enter into transactions on behalf of EEL which do not relate to the training of racehorses (see paragraphs 17-34 above).
  - 64.5. Mr Harris' failure to provide information concerning the sums paid to EEL and subsequently used for his personal finances and the failure to be able to clearly demonstrate what happened (see paragraphs 17-35 above).
  - 64.6. The failure to disclose a debt owed to Tattersalls prior to this hearing including at the hearing of 18 June 2010 (see paragraphs 36-37 above).
  - 64.7. The consequences of Mr Harris' bankruptcy (see paragraphs 39-44 above).
  - 64.8. The financial position of EEL (see paragraphs 45-51 above).
  - 64.9. The dealings of Mr Harris and/or Mr Frankland with other companies (see paragraphs 52-56 above).

## Decision

65. This is an application by a currently, successful trainer. No-one has suggested that Mr Harris is not a good trainer. However, it is clear from the test of "suitable Person" (see paragraph 61 above) and from the Guidelines that there are other matters to take into account when deciding whether to grant an application for a trainer's licence and that the matters summarised at paragraph 64 above are relevant considerations. As stated within paragraph 61 above, there are wider interests at stake, including that of maintaining the

reputation of the field of activity in question and sustaining public confidence in its integrity.

66. A suitable person will be one who deals openly with the Authority and provides the information requested. We refer back to paragraphs 21 and 22 of the Guidance (see paragraph 63 above). A licensed person is expected to give *“full and frank disclosure”* and an applicant who does not comply with what is expected *“may not be considered suitable and therefore may be refused a licence”*.
67. We expect a suitable person to comply with the conditions of an existing licence. Furthermore the Guidelines at paragraph 25 expressly provide (see paragraph 63 above) that the Committee when assessing honesty and integrity should consider an applicant’s record of compliance with regulatory requirements which will include compliance with the conditions of an existing licence. The Guidelines at paragraph 25 also draw attention to the criteria of an applicant being candid, open and truthful when dealing with the Authority in respect of past and present licences.
68. Mr Harris came across to us as a pleasant, indeed affable man who is committed to training and to the horses. He obviously loves his work as well as being a successful trainer. However, the Rules make clear that he must satisfy us that he meets all the criteria contained within the Guidance Notes which accompany each application form (see paragraph 62 above). Where there have been failings, it is reasonable to expect a satisfactory explanation and/or a reliable apology combined with evidence of a sufficient commitment that this will not happen again.
69. We have found that Mr Harris failed to comply with two conditions of his existing licence concerning the provision of accounts (see paragraphs 11-15 above). He blames Mr Frankland (see paragraphs 13-14 above) but whether that is right or wrong, they were his obligations. He did not write to the Committee forewarning of, apologising for or explaining his non-compliance. He did not inform the Committee that he was unable to comply or that he was doing his best to ensure compliance. He still has not ensured compliance. These and the other matters set out at paragraph 15 above are serious issues to take into account when applying the suitability test and reaching our decision.
70. In addition Mr Harris has a history of not being candid with and of providing misleading and untrue statements to the Licensing Committee. We refer in particular to paragraphs 8.1(iv) and (v) above which concern the decision notified by letter dated 1 February 2010. We note that it was *“emphasised that in his future dealings with the Authority Mr Harris must be open and transparent and not deal in untruths or half truths”* (see paragraph 8.1(vi)(g) above).
71. Yet when it came to the monies provided by Mr Allen and transferred to EEL by Cotswold Racing Enterprise Limited (see paragraph 17 above), there is a

serious absence of openness and transparency. There are untruths and half truths. We refer in particular to our findings at paragraphs 24-30 above. Was it a loan, was it a gift, what are EEL's liabilities? The information provided to the Committee is contradictory and the answers remain opaque. Mr Harris did not provide the information required of him (see paragraph 30 above) and should have done so.

72. Furthermore his answer at the hearing of "bad grammar" is very disappointing (see paragraphs 26-27 above). We would have expected an apology combined with a written statement from Mr Allen identifying the agreement. That would have enabled not just the Committee but also EEL to identify what liabilities, if any, EEL might have to Mr Allen and whether it should and could recover monies from Varringtons. It would have made the financial position of EEL in respect of this transaction transparent not opaque. This has not happened.
73. Those financial transactions also gave rise to breach of the existing licence conditions (see paragraph 34 above). None of the problems identified in paragraphs 70 and 71 above would have arisen if the reasons behind the conditions had been honoured. EEL would not have been involved in any transaction connected to the financial affairs of Mr Harris (see paragraph 9.3 above). If condition 2 of the current licence had been complied with, EEL would only have been involved in transactions that related directly to the training of racehorses. It would not have been involved in receiving, holding and paying monies to be used for the purposes of Mr Harris' IVA. We have to take account of all these matters when reaching our decision.
74. Even when dealing with this issue a further non disclosure was identified. The debt of Tattersalls and the use of part of £50,000 to pay it had not been previously disclosed (see paragraphs 36-37 above). Yet non disclosure of liabilities featured strongly as an issue and criticism in the decisions reached by the Committees in 2010. We refer not only to the matters set out in paragraph 70 above but also to paragraph 8.3(e) above concerning the 18 June 2010 decision. Mr Harris did not refer to this debt to that Committee and only identified it at this hearing for the first time (see paragraph 37 above).
75. So whilst the starting point of being a good trainer without a history of disciplinary proceedings is a good one, the failings identified above are considerable and significant.
76. We add to the balance the fact of Mr Harris' bankruptcy which evidences a history of not paying business debts concerning and arising from racehorse training. There are also the problems concerning other companies with which he has been involved identified at paragraphs 53-54 above. We note, however, that the significance of these factors for present purposes is considerably reduced if he has no role in the management and is not a director of EEL. We also note to Mr Harris' credit that however unrealistic his IPA may be financially, he did enter into such an agreement (see paragraph 40 above). As a result although bankruptcy is borne in mind, we do not give

great weight to that fact when assessing his suitability and treat it as a background feature. However, it is clear that in this context of bankruptcy a licence could only be granted not only if he is not to be a director but also if he is not to be involved in management whilst an undischarged bankrupt (see paragraphs 42-43 above).

77. We need to consider business competence and the financial soundness of the business of EEL. The Guidelines make clear that this includes the fitness and propriety of the person(s) with whom he is associated or connected. In this case that will be EEL and Mr Frankland (see paragraphs 26-28 of the Guidelines at paragraph 63 above). The business side of training is important. Whether the trainer is to be an employee or an owner of the business, it should be financially sound and properly run.
78. We consider the financial position of EEL to be a significant matter. On the information provided we do not consider that Mr Harris has established that the business is financially sound for the year 2011. We refer to paragraph 49 above and to the concerns identified within it. This includes the concern that last year's profitability only occurred as a result of Mr Frankland not taking any director fees and of Mr Harris waiving his entitlement to nearly 50% of his salary. The balance sheet shows solvency but we have identified concerns in respect of the need to ensure payments by debtors in order to be able to cover liabilities. There is also the point that the issues concerning the sums received from Mr Allen affect EEL's financial position and have not been explained whether by Mr Harris or by Mr Frankland. We observe that there is no business plan notwithstanding the Authority's letters dated 3 and 31 December 2010 (see paragraphs 50 and 51 above). In addition we are concerned by Mr Frankland's track record with regard to other companies identified at paragraphs 52-54 above, although we take account of the fact that we have not heard from him.
79. It is true that there appear to be good prospects of a capital injection amounting to a further £40,000. Yet nothing has been received from Mr Fox and there are no details presented to show that the business will be placed on a sound financial footing. Mr Harris suggests that there is likely to be further investment, further income from additional horses being trained and a further significant involvement by Mr Fox. There may be new management and Mr Fox may become the sole owner. However all this is currently speculative. We would have expected at least a written statement of support from Mr Fox detailing his intentions. We do not have this.
80. Mr Harris is a good trainer and he puts forward a case of a business which after one year is successful with its racing and has prospects of receiving further investment. Whilst we believe that he probably has the best of intentions in that he wants the training business of EEL to succeed and he really wants to train horses, nevertheless he breaches conditions of his current licence. Furthermore he is not open and honest in his dealings with the Authority. In addition he does not provide factual information to enable us to be satisfied that the business has a secure future.

81. We would have expected him to have approached this hearing on the basis of ensuring that he provided full and proper explanations for the matters raised in the Reasons and suitable apologies for his failings. We would have expected him to make proposals to reassure the Committee that he was a suitable person who could be granted a licence notwithstanding his failings and breaches of conditions described above. We would have expected a detailed statement from Mr Allen to establish the true position with regard to the monies received by EEL from Cotswold Racing Enterprise Limited. We would have expected a clear financial plan from or based upon the proposed commitment of Mr Fox. We would have expected to have heard from Mr Frankland.
82. Mr Harris provided none of that. Our underlying assessment is that this is attributable to a failure to appreciate the seriousness of the matters raised by the Authority throughout 2010 and for the purposes of this application. That failure is in itself troubling. He should have appreciated the need to comply with the conditions of his existing licence. As a result of the previous hearings and the Guidelines he should have appreciated the need to be open and honest and the fact that an applicant's fitness includes an assessment of personal and business dealings including financial soundness of the business for which he will provide his services as a trainer.
83. In all of the circumstances we consider that Mr Harris has not met the condition that he is a suitable Person and that pursuant to Rule 10 of Part 3 of the Trainer Manual (C) we refuse his application to renew his trainer's licence for the year starting 1 February 2011. He must inform EEL and the owners of the horses currently placed with him of this decision immediately.
84. We have considered whether we should give him the opportunity of a further hearing to address all of the reasons set out above and provide further evidence if it is available. However, we do not consider that the right course. First because we have reached a clear decision. Second because it was for Mr Harris to satisfy us that he meets the criteria contained within the Guidance Notes. Third because we offered him the opportunity of an adjournment in order to be represented and/or to have further time to prepare and he decided that he was ready for the hearing. Finally we also take account of the opportunity he has on appeal to contend that there is evidence available for the appeal which, had it been available at the original hearing, would have caused the decision maker to reach a materially different decision.
85. We should record and deal with the fact that the Rules provide that Mr Harris has the right to appeal. He should not think we are encouraging him to appeal. That is a decision for him having considered this decision, the reasons for it and what the Committee would have expected from him. However, the fact that there is a right of appeal subject to compliance with the Rules means we need to consider the consequences should he do so. We also need to address the very short time scale that remains for the

continuation of his current licence and the need for EEL and the owners of the horses to re-organise themselves.

86. As a result:-

86.1. This decision will be notified with Reasons by email and therefore Mr Harris has to lodge a notice of appeal addressed to the Head of Disciplinary at the Authority's Office within 7 days of the date of notification of the decision should he wish to do so. We refer him to the Rules which provide for Appeals that can be found on the Authority's website and in particular (although not only) Schedule 7 to the General Manual (A).

86.2. It is anticipated that the Appeal Board will be able to convene an Appeal within four weeks of a notice of appeal being lodged.

86.3. Recognising the likelihood of Mr Harris wishing to appeal and in any event the need to deal with the consequences of this decision, we will grant him a licence to train for a limited period of time from 1<sup>st</sup> February 2011 to 28 February 2011 with the following conditions of issue attached:-

The conditions of that licence:

(1) The conditions attached to his current licence will continue.

In addition there will be conditions which will in effect 'freeze' the status quo without abruptly stopping the business from continuing to function pending the outcome of the appeal process. As a result

(2) Mr Harris will not be permitted to train any new horses under his licence only the ones he is training under his current licence. In addition

(3) Mr Harris will not be permitted to make entries for any races under the Rules after the date of his appeal (should he choose to appeal such a decision).

Further, for the purposes of ensuring as best we can the financial position during this period, whilst appreciating that Mr Harris is not to be concerned in its management nor be a director:-

(4) His employer, EEL, must be solvent applying a balance sheet test and it must pay its debts as they fall due.

That fourth condition does not require Mr Harris to take any steps in respect of or be concerned with the management of EEL. He only needs to know the factual position concerning solvency which he can ask of and be told by Mr Frankland.

By reason of him being an undischarged bankrupt:-

- (5) He must not directly or indirectly take part in or be concerned in the management of EEL.

87. Therefore the decision is:-

**Decision**

- (A) Mr Harris has not met the condition that he is a suitable Person and that pursuant to Rule 10 of Part 3 of the Trainer Manual (C) we refuse to renew his trainer's licence for the year starting 1 February 2011.
- (B) In order to accommodate an appeal he will be granted a temporary licence for the period 1 February 2011 to 28 February 2011 subject to the conditions specified in paragraph 86 above.

Mr Harris must inform EEL and the owners of the horses currently placed with him of this decision immediately.

Dated 24 January 2011