BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

RE: MILTON FRANCIS HARRIS

APPLICATION FOR A TRAINER'S LICENCE 1 FEBRUARY 2015 - 31 JANUARY 2016

Hearing Dates: 2 and 3 JUNE 2015

Committee Members:

SEBASTIAN PRENTIS ESQ. (Chairman)

RICHARD RUSSELL ESQ.

EDWARD DORRELL ESQ.

REASONS

1. Following the hearing of 2 and 3 June 2015, on 10 June 2015 the Committee informed the parties that it would refuse the application of Mr Milton Harris for a licence to train for the period to 31 January 2016. These are the Reasons for that decision.

Background

2. Mr Harris was born on 6 February 1959. He was first granted a licence to train by the British Horseracing Authority (the "BHA") on 24 October 2001, and held training licences until 10 June 2011. In that period he had 2,048 runners of which 139 won and 669 were placed, accumulating prize money of £1,300,574. There is not now, and has never been, any dispute that Mr Harris is a competent and able trainer.

3. From December 2009, though, the BHA objected to Mr Harris's holding a licence on the basis that he was not a fit and proper person to be a licence holder. The initial objections, recorded in this Committee's Reasons following a hearing on 14 January 2010, related to concerns over the resources available to Mr Harris's training business; Mr Harris's business competence and capability; his financial soundness; and his honesty and integrity. The honesty and integrity allegation was based on

> *"a failure by Mr Harris to be candid with the [BHA] in relation to business debts, both in correspondence and in previous licence applications" (paragraph 6(3)).*

The Committee found that allegation proved, and that Mr Harris had deliberately concealed business debts and two judgments. Given that the kernel of the BHA's current objection is that Mr Harris continues not to provide it with full and frank information or, as

it is variously put, is not candid or transparent in his dealings with the BHA, it is worth setting out some paragraphs from these Reasons.

> *"97. In view of Mr Harris's assurances and apologies, the Committee has decided that Mr Harris is a fit and proper person to hold a Trainer's licence. However, he should take note of where he stands. Whether or not a person is fit and proper is an assessment made at a particular point in time. On balance, the Committee has been persuaded by Mr Harris's apologies and promise to mend his ways. How Mr Harris conducts himself in the future will be a crucial important factor in deciding whether or not the Committee will, if asked to do so in the future, decide future licence applications that Mr Harris may make.*
>
> *98. We refer to our findings regarding the 3 respects in which Mr Harris chose to mislead the Committee, motivated as we found by embarrassment and a misguided sense of what is private. These are serious matters. It is important that Mr Harris understands that the [BHA] as a Regulator has a legitimate interest in receiving accurate answers to questions asked of him in his licence application form and in correspondence on its behalf relating to his financial position and on other matters within the regulatory remit. The [BHA] is charged with protecting the wider interests at stake in racing and this requires a degree of intrusion into the personal affairs of applicants for a licence...*
>
> *101. It is to be emphasized that in his future dealings with the [BHA] Mr Harris must be open and transparent and not deal in untruths or half truths. The Committee has received assurances from Mr Harris that this will not happen again."*

4. We see those as clear explanations to Mr Harris of the conduct required from someone with the privilege of holding a licence. Moreover, the first sentence of paragraph 101 was repeated to Mr Harris in this Committee's Reasons following the hearing of 12 January 2011 (see paragraphs 8.1(vi)(g) and 70); and in its Reasons following the hearing of 22 March 2011 (see paragraph 9.3).

5. Indeed, through his five hearings before this Committee during 2010 and 2011 Mr Harris has directly and indirectly received repeated reminders of the need to be transparent with the BHA.

6. Having been granted a temporary licence subject to conditions after the 14 January 2010 hearing, Mr Harris appeared before the Committee on 7 May 2010. In an exchange with Mr Stephen Bate, recorded at page 13 of our transcript, Mr Bate reminded Mr Harris that

he must be "utterly realistic and candid", and that problematic facts would not be made better by colouring them. Mr Harris said he understood. At the end of the hearing Mr Bate recommended that Mr Harris go home and read the General Suitability criteria in the Guidance Notes.

7. Mr Harris's licence having again been continued temporarily, he had another meeting with the Committee on 18 June 2010. In issue were a number of non- and mis-disclosures which Mr Harris was called on to explain, a process which of itself must have indicated to him, if nothing else yet had, the quality and accuracy of information required. At page 18 of our transcript Mr Stephen Allday referred Mr Harris directly to his earlier assurances of being open and transparent.

8. Notwithstanding a number of defects in his evidence, that Committee continued Mr Harris's licence to 31 January 2011, again on conditions. One of those conditions which, in essentially the same form, pertained from June 2010 until the expiry of Mr Harris's final temporary licence on 10 June 2011, was as follows:

> *"Save as set out below, you shall not engage in any activity relating to the buying or selling of racehorses either on your own behalf or on behalf of any other person or business, including but not limited to EEL [i.e. his employer Equine Enterprises Limited]; nor shall you procure or authorise any other person to do so on your behalf or on behalf of any other person or business. These prohibitions extend to the making of any arrangement for the purchase of an interest in a horse in lieu of training fees and also to the bidding at auction or making a claim (in any Claiming Race or Selling Race) on your own behalf or on behalf of any other person or business, but shall not prevent you from-*
>
> *1.1 selling your interest in any of the horses owned or co-owned by you on 1 July 2010;*
>
> *1.2 selling or 'buying-in' a horse which wins a Selling Race;*
>
> *1.3 making a claim on behalf of an owner for a horse entered by its owner in a Selling or Claiming Race, i.e. making a so-called 'friendly claim'".*

That condition is in issue before us, and we will describe it as the "Trading Condition".

9. When Mr Harris applied for his licence for the year to 31 January 2012 the BHA again objected, stating that Mr Harris was unsuitable as he had failed to comply with licence conditions; failed to be frank; and had made continued attempts to mislead the Committee. Following a hearing on 12 January 2011, this Committee determined that Mr Harris was indeed not a fit and proper person. The Committee's Reasons are helpfully

summarised at paragraph 9 of the same Committee's Reasons following its 22 March 2011 hearing. For present purposes it is enough to note, first, that the Committee found a breach of conditions (see paragraphs 11-15 of the January 2011 Reasons). At paragraph 67 the Committee stated that:

> *"We expect a suitable person to comply with the conditions of an existing licence".*

That remained of relevance to Mr Harris because to permit the orderly winding-down of his activities, as well as giving any Appeal Board the opportunity to reverse effectively the Committee's decision, if appropriate, he remained licensed temporarily, under the same conditions; and that actually until 10 June 2011. We draw from this explicit finding, and warning, that a suitable person would from the dissemination of the Reasons at the end of January 2011 take particular care to ensure that he complied with ongoing conditions.

10. Secondly we can note yet further reminders to Mr Harris of the obligation of candour. So in addition to the repetition of the Committee's January 2010 explanations we have paragraph 66:

> *"A suitable person will be one who deals openly with the [BHA] and provides the information requested... 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'" (the quotations are from the Guidance Notes);*

paragraph 71's finding of:

> *"a serious absence of openness and transparency. There are untruths and half truths... The information provided to the Committee is contradictory and the answers remain opaque";*

and paragraph 81's:

> *"We would have expected [Mr Harris] 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".*

Our expectations of Mr Harris at this hearing are the same.

11. Mr Harris's appeal from those Reasons was allowed to the extent of remitting his application to this Committee, permitting him to rely on new evidence, and ordering him to pay the costs. Specifically raised by Sir Roger Buckley (page 48 of our appeal transcript) was the possibility that Mr Harris had breached his licence conditions by selling horses; Mr Harris accepted that he had; he apologised, and confirmed that he

understood why that condition was imposed. Again, therefore, ongoing compliance with the conditions should have been at the front of Mr Harris's mind.

12. On 22 March 2011 this Committee re-heard his application with the new evidence. It found that actually Mr Harris's position was now worse than at the previous hearing, and therefore it remained of the view that he was unsuitable; Mr Harris's appeal from that decision was rejected. In paragraph 33 of its Reasons the Committee repeated certain of the observations made in its earlier Reasons, including some of those we have quoted at paragraphs 9 and 10 above; and during the meeting Mr Clive Jones in the presence of Mr Harris specifically went through the earlier observations (pages 4 and 5 of our transcript).

13. This brief account of the decisions in 2010 and 2011 demonstrates that in that period Mr Harris failed repeatedly to comply with the basic obligation on him of candour in his dealings and communications with the BHA. That was despite ongoing reminders of his obligations and, indeed, ongoing statements by him that he understood them. Although the reminders were fewer, also drawn to his specific attention was the need to comply with licence conditions.

14. In among these hearings, on 28 July 2010 Mr Harris was bankrupted. Although, as set out below, this is a matter to which we must have regard, it is not in the circumstances of particular importance. However, the quality of Mr Harris's general financial management is why his current application for a licence is put on the basis that, so far as possible, he will deal only with the training aspect of the business.

15. Of great importance, though, is that a consequence of Mr Harris's bankruptcy was that on 16 December 2011 he was made subject to a 5-year bankruptcy restrictions order ("BRO") under Schedule 4A to the *Insolvency Act 1986*. This has the effect of extending the prohibitions which pertain before discharge from bankruptcy under section 11 of the *Company Directors Disqualification Act 1986*, making it, absent leave of the Court:

> *"an offence... 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...".*

In the context of the bankruptcy prohibition, Mr Harris was aware from this Committee's decision following the 22 March 2011 hearing that there were potential difficulties with his ongoing involvement with Equine Enterprises Limited, such that had the Committee recommended a licence it would not have commenced until his discharge (which actually occurred after the standard 12 months): see paragraph 87 of the Reasons.

16. Finally by way of background, on 24 June 2011 this Committee heard and granted an application from Mrs Merritta Jones for a trainer's licence to 31 January 2012, by which she would become the trainer at Equine Enterprises Limited, while Mr Harris would be retained as an employee with the job description of "Assistant Trainer and Racing Manager".

The General Manual and the Guidance Notes

17. By paragraph 3 of Part 1 to Schedule 9 of the General Manual

> "An applicant for the grant or renewal of a licence, permit or registration is required to satisfy the Authority that he meets all the criteria contained within the guidance notes which accompany the prescribed form."

The onus is therefore on Mr Harris.

18. The following Guidance Notes are of particular relevance.

> "*4. Applicants are required to demonstrate or confirm that…*
>
> *They are otherwise in all the circumstances suitable to hold a licence (i.e. that they are 'fit and proper')…*
>
> *…*
>
> ***J. GENERAL SUITABILITY ('FIT AND PROPER')***
>
> *26. In considering any application, the BHA must also be satisfied, taking into account any fact or matter that it considers appropriate, that the applicant is suitable to hold a licence. Relevant considerations include the applicant's honesty and integrity, business competence and capability and financial soundness.*
>
> *27. In relation to each section below, the BHA 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.*
>
> *28. A person whose conduct, behaviour or character is not in accordance with that which, in the opinion of the BHA, should be expected of a licensed person, may not be considered suitable and therefore may be refused a licence.*

29. 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.

30. 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 BHA will have in mind when making such an assessment.

Honesty and Integrity

31. The criteria to which the BHA will have regard in assessing honesty and integrity include the following:...

31.3 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.

31.4 The applicant's record of compliance with the regulatory requirements of the BHA or its predecessors...

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

31.5.1 With the BHA in relation to the present or relevant past licence applications...

Financial Soundness

37. The BHA 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...

38. Relevant factors include:

38.1 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.

38.2 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).

38.3 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."

Rival approaches

19. On behalf of the BHA, Mr Tim Naylor opened his written submissions with the statement that

> *"Mr Harris is still not suitable to hold a Trainer's Licence as the issues that led to the refusal of his application by the Committee on 22 March 2011 still exist".*

Insofar as the BHA is saying that 22 March 2011 is the focal point of our enquiries, from which we should then look forward to the present to see if matters have altered, that is an approach we would reject: the focal point is now, in light of all Mr Harris's history, although it is no part of our role to punish Mr Harris.

20. Conversely, on behalf of Mr Harris, Mr Rory Mac Neice both in his written and oral submissions refers back to this Committee's statement at paragraph 19 of its Reasons of July 2010 that

> *"Though past conduct is plainly relevant, the focus of the Licensing Committee is on the future".*

Mr Mac Neice states that our approach should be

> *"to assess Mr Harris as he is [now] and to assess him on the basis of his likely future conduct, taking into account his personal circumstances now as opposed to how they were in 2010/2011. At the same time, of course, the Licensing Committee is entitled, and should, take into account his previous good character, disciplinary record and status as a successful trainer prior to 2010".*

We would qualify that approach in two ways. First, that the July 2010 statement was in the context of the imposition of conditions which in part reflected a bullish view of the financial prospects of Equine Enterprises Limited, for which Mr Harris was training. On the facts before us, there is nothing which points to any future change in Mr Harris's suitability from how it is at present. Secondly, while we do take into account the factual submissions in Mr Mac Neice's last sentence, we should take into account all aspects of Mr Harris's history not just those which are positive.

21. We wish to record our gratitude to both Mr Naylor and Mr Mac Neice for their skilled submissions.

This application

22. Mr Harris's application for a licence to train for the period to 31 January 2016 is dated 13 March 2015 (the "2015 Application"). He also made an application for the period to 31 January 2014, dated 10 May 2013, and it is to this application (the "2013 Application") that the BHA's letter of objections dated 4 February 2014 (the "Letter of Objections") is directed. That letter raises a large number of objections, some of which have been pursued before us with more vigour than others. We propose to deal only with those which have weighed significantly with us, beginning with the most serious, the alleged non-disclosure of the BRO.

23. Both the 2013 Application and the 2015 Application are posited on Mr Harris training at a yard in Culworth, near Banbury, for a company called Be Lucky Racing Ltd ("Be Lucky"). Be Lucky is owned by Mr Richard Adkins, who together with Ms Diana Dewbery is also a director; Mr Steve Jones FCCA is company secretary. Until 10 May 2015, when he resigned for innocent reasons following changes in personal circumstances, the trainer for Be Lucky had been Mr Anthony Middleton, Mr Harris acting as his assistant. As we have already recorded, were Mr Harris to be granted a licence then that would be subject to stringent conditions identified in outline in Mr Mac Neice's oral and written submissions, which would serve to restrict his roles to that of training horses and of advising on the purchase and sale of horses; the latter would be only a small part of Be Lucky's business and turnover. Mr Adkins, from whom we heard and who gave straightforward evidence, has considerable faith in Mr Harris's abilities as a trainer. He confirmed that Be Lucky had been trading profitably, but would look to expand its business with Mr Harris as trainer. For its part, the BHA confirmed that it had no concerns either as to the financial viability of Be Lucky, or as to Mr Adkins' abilities to run a racing business, he coming from a background in the construction sector. Were we of the view that Mr Harris was a fit and proper person then the BHA would have concerns about how Mr Harris's role would be supervised and, indeed, absent draft employment or service agreements for him and for the directors, how his role was to be circumscribed in a way consistent with the regulated duties of a licensed trainer.

The BRO

24. Aside from a small section on financial soundness, based on Guidance Note 38, the Letter of Objections concentrates on the honesty and integrity criteria. At its paragraph 18.3 it identifies the failure to mention the BRO up to that point, stating that:

> *"This impacts heavily upon our assessment of your current suitability".*

25. The 2013 Application was signed off by Mr Harris, who thereby confirmed that, as set out in the "Applicant's Declaration", "I have disclosed any information known to me which might reasonably be said to be relevant to the consideration of my application". That Declaration continues "I understand that if the BHA considers that I have knowingly omitted material information, it may reject my application".

26. Accompanying the 2013 Application was a letter of 10 May 2013 from Mr Harris to the BHA. It begins

> *"I fully accept that my past actions fell well short of the requirements of the Authority",*

and says that in the time since:

> *"I have completely re-evaluated my life, lifestyle and entire outlook on the world. I am a much older and wider person; the decisions that I made in the past are not the same that I would make now".*

He then says that, although it is no excuse, some of his "truly awful" earlier decisions were driven by financial pressure.

27. Next, he addresses specific concerns raised by the BHA in a letter of 26 January 2012, responding to an application for a trainer's licence made by Mr Harris dated 7 December 2011 ("the 2011 Application"), which we will consider in more detail below. Those concerns were a summary of paragraphs 65-83 of this Committee's Reasons in January 2011, and included a further re-iteration of paragraph 101 from the January 2010 Reasons. Mr Harris read those when preparing his 2013 letter. So, if he needed it, he had a contemporaneous prompt as to his obligations. Certainly he understood the content of what he was responding to well enough to be able to précis the effect of paragraph (ii) of the 26 January 2012 letter as "Candid approach". He continued:

> *"I apologised before and do so again that my actions were not compatible with your requirements. I explained that I was under extra ordinary pressure for a long time which could not fail to adversely influence my actions. Subsequently I have put my house in order. I have been fully open in all recent dealings with the authority."*

28. In respect of paragraph (vi) Mr Harris addressed his bankruptcy, writing in part:

"This was a terrible time in my life that I have learned from and want to put behind me. I have spent years rebuilding my life to this point."

29. Nowhere in this letter, or in the 2013 Application, is the BRO mentioned. Neither, as we shall see, had Mr Harris previously told the BHA about it. With actual knowledge of his duty to be candid, Mr Harris was therefore inviting the BHA to deal with his 2013 Application as though he were not, and never had been, subject to a BRO.

30. We have no doubt that the existence of the BRO was material to the BHA's decision, and by extension to ours. Rightly, Mr Mac Neice did not suggest otherwise. It was material because of the limiting effect which it had on Mr Harris's activities; because BROs are granted only where there is conduct on the part of someone who has become bankrupt which is sufficiently serious as to require admonishment, and the public to be protected; and it was material also because of Mr Harris's failure to disclose its existence thus far. The BRO was not disclosed to the BHA by Mr Harris until the 2015 Application.

31. Mr Harris's written submissions gave no explanation for the failure to disclose, although they did address the effect of the BRO on the proposed scheme under which Mr Harris would work, taking the view that it would not impinge. They also said that:

"In reality, the application by the Official Receiver for [a BRO] was not contested by Mr Harris in circumstances where Mr Harris had no financial means to do so and he was, at the time the application was made, facing an extremely difficult period in his personal life."

32. On the first morning of the hearing Mr Harris was asked why he had not disclosed the BRO in his letter of 10 May 2013. He answered (page 17 of our transcript):

"I don't know. The honest answer is I don't know... I certainly wasn't trying to sort of- 'belittle' is the wrong word- but not make it clear about the [BRO]...".

33. A few moments later he was asked by the Chairman (page 18 of our transcript):

"Were you just not thinking about the [BRO] at all? Is it not something that featured in your mind?"

He answered:

"I think I've been very naive about the whole bankruptcy. I didn't understand it at all. And I think the consequences of it have come to the fore more and more since the actual bankruptcy."

34. Mr Harris then confirmed to Mr Mac Neice that he had not contested the BRO because

"I wasn't in a position financially to do so".

He told the Chairman (page 19) that he thought he had received correspondence before the BRO was made, although he did not remember receiving any letter which offered the consensual course of a bankruptcy restrictions undertaking, and said that:

"At this point I was taking the advice of my Trustee in Bankruptcy".

Pressed as to whether this included advice about the BRO Mr Harris said he did not remember any conversation

"but the only person I had any contact with [apart from an official interview] was my Trustee in Bankruptcy".

35. A few minutes later (pages 27-28) Mr Harris was asked about non-disclosure of the BRO in the 2011 Application, in which he had sent the BHA only a copy of his certificate of discharge. His response was:

"I wasn't aware of this [BRO]. I should have been aware, obviously, looking back, but I can assure you I was not aware that an order was about to be made. In fact, I had to go and get a copy of that from the court... I don't recall the trustee in bankruptcy telling me that an order was being made. Now, I'm sure he did....".

In subsequent answer to Mr Mac Neice, he told the Committee that he had not been trying to mislead, or hide from the BHA potential problems with the bankruptcy.

36. On the morning of the second day (transcript pages 48-49) Mr Naylor took up the point in relation to non-disclosure of the BRO in the 2011 Application:

"Just so I am clear on this, as I understand your evidence [the non-disclosure] is because you did not understand what was happening with the [BRO]?"

Mr Harris replied:

"There's no excuse for it apart from ignorance. For the first year or two probably of this [BRO] it took a while to understand it, and I'm more informed now than I ever was at the start and I should have been more informed at the start, is the truth of the matter. So I apologise for that. It was not intent to mislead...".

Mr Naylor asked Mr Harris whether he knew about the imminent BRO when he made the 2011 Application. Mr Harris, having said "I can't remember", then said

"I don't think I did know about it, the truth of the matter is."

37. These accounts by Mr Harris of his state of knowledge of the BRO can hardly be described as "realistic and candid" or as a "full and proper explanation". They betray a habit of not answering direct questions directly. They are also self-contradictory. His evidence in his written submissions and initially on the first day was that at some point before it was made he was aware of the application for the BRO; he did not contest it because he could not afford to; and he may have taken the advice of his trustee on it. His evidence later on the first day and on the second day was that he did not think he did know of the application for the BRO, and that for the first year or two after it was made he did not understand it (although, it seems, he did know of it).

38. Another trait of Mr Harris's oral evidence which these exchanges evidence is that, as a witness, he was quick to grab from a question whatever seemed to him most helpful, rather than concentrating on what was the true answer. We detect a similar trait in his disclosures to the BHA.

39. We find it most unlikely that Mr Harris was unaware of the application for a BRO. That is not just because his first account was the more convincing (after all, his written submissions were put together by Mr Mac Neice), but because it accords with what one would expect. By paragraph 3(1) of Schedule 4A to the *Insolvency Act 1986* an application for a BRO must be made before the expiry of one year from the commencement of the bankruptcy, unless the Court gives permission. Here, the application had to be made by 28 July 2011 and we have no evidence of any permission to extend that period. Before making a BRO the Court will also be keen to ensure that the debtor has been served with the application and has had the opportunity of submitting evidence. Again, absent contrary evidence, we assume that the Court took those precautions here. As the Official Receiver's report in support of the application is dated, in draft, June 2011, it is a fair assumption that Mr Harris will have known of the intention to make the application before his discharge from bankruptcy on 28 July 2011. Whether that is right or not (and we emphasise that we recognise we cannot be certain, although we also observe that such uncertainty is created by the lack of evidence from Mr Harris), the closer one gets to the hearing of 16 December 2011, the reduced chance there is of Mr Harris not being aware of the application; and on the evidence we find that at some point before the hearing sufficient for him to consider the application, Mr Harris was aware of it.

40. In fact, the 2011 Application was not the first contact that Mr Harris had with the BHA addressing his bankruptcy. As recorded in this Committee's decision to grant Mrs Jones her licence, it was envisaged that although she was the licensed trainer and not a cipher for Mr Harris, her tenure might prove to be that of a caretaker trainer because Mr Harris was likely to reapply promptly for his licence. With that in mind, on 10 September 2011 Mr Harris wrote to Mr John Smith, Licensing Team Manager at the BHA

> *"to keep you informed regarding my current involvement in the horse racing industry. In keeping with the BHA licensing committee's requirements, it is vital for me to demonstrate complete transparency in all my horse racing activities.*
>
> *First of all, I would like to point out that I have now been discharged from my bankruptcy."*

No more is said on that primary topic. On the evidence before us it should have been, although (as stated in the previous paragraph) we recognise that there is necessarily uncertainty in that conclusion. Such failure sits poorly with the professed "complete transparency", and worse still with the final paragraph of this missive:

> *"I would like to assure you that I have fully taken on board the BHA licensing committee's concerns about my suitability to be a licensed trainer. In the future, if I was to re-apply for a licence, I will demonstrate that I am acting in a professional and trustworthy manner."*

41. Mr Harris's anticipated application was the 2011 Application. This was accompanied by what was described as an "Affidavit of Milton Francis Harris", sworn on 8 December 2011 before Mr Paul Hardy, solicitor of Sheep Street, Stratford-upon-Avon. In the written submissions Mr Mac Neice was anxious to point out that actually this was not an affidavit, and it was not drafted with legal advice. We take those points, but this remains a document from Mr Harris to the BHA which Mr Harris considered serious enough to require the formality of being sworn.

42. It opens with another profession of apologies and of comprehension:

> *"I will start my statement by making a full, open and frank apology for all of my previous failings and accept all of the rulings of the Committee without exception, comment or qualification."*

Next, he refers to the pressures which had caused his earlier decisions. He continues:

> *"These pressures no longer apply as I have passed through and been discharged, in the minimum time possible, through the bankruptcy process. A copy of my discharge notice is attached as required in page 5 of the application."*

43. Eight days before the hearing of the application for the BRO that statement was thoroughly misleading; a position made worse by being contained in what Mr Harris regarded as a formal document, and being preluded by a profession of contrition and comprehension.

44. For the reasons given, we recognise that in respect of the 20 September 2011 letter there is on the version of his evidence which we prefer some residual doubt about Mr Harris's state of knowledge of the BRO application. But by that same version, Mr Harris must have known about it by 8 December 2011. We conclude that the 2011 Application deliberately excluded mention of the BRO.

45. Whatever had been our conclusions on those points, we are also satisfied that the 2013 Application ought to have included reference to the BRO, and that that reference was deliberately excluded. Even leaving aside the numerous reminders which he had already received of his duty to be candid, in compiling his 10 May 2013 letter of response Mr Harris had open in front of him the BHA letter of 26 January 2012 which told him that

> *"in his future dealings with the [BHA] [he] must be open and transparent and not deal in untruths or half truths".*

46. Our conclusions are also based on the failure by Mr Harris even now, with professional assistance, to provide a full and proper explanation either of his knowledge of the BRO or for the content of these communications.

The Trading Condition

47. Relying on a statement from Mrs Jones from 2011, the Letter of Objections identifies alleged breaches of the Trading Condition in respect of the purchase of PIPE BANNER (GB) and SWANSBROOK (IRE), and the sale of SIMONE MARTINI (IRE), MOONBALEJ (GB) and PEPPORONI PETE (IRE) in May and June 2011.

48. No admissions are contained in Mr Harris's written submissions. However, in respect of PIPE BANNER (GB) and SWANSBROOK (IRE), they did state that Mr Harris was tasked by Mr David Fox, owner and director of Equine Enterprises Limited, to introduce new business including new horses and new owners; and they described Mr Harris offering PIPE BANNER (GB) to a Mr Zambuni, and being offered SWANSBROOK (IRE) to sell on, which it subsequently was.

49. Questioned on the second day on those passages, and having been taken to the widely-drawn Trading Condition itself, Mr Harris did accept that he was "maybe" in breach; that he was aware of the Trading Condition but probably had not thought about it; and acknowledged that there were probably other similar incidents.

50. These were plainly breaches of the Trading Condition. This Committee is not impressed by such breaches, especially at a time when Mr Harris was operating under a temporary licence and hoping to have a full licence restored; when just a few months earlier, in February 2011, he had been told by the Appeal Board that he had been in breach of this same condition, which he accepted and for which he apologised; and when this Committee at paragraph 76 of its subsequent Reasons identified these breaches as "a change for the worse" compared with the position before it in January 2011. Perhaps, as he told us, Mr Harris had just forgotten about the Trading Condition when he breached it; but given the contemporaneous history it seems to us much more likely that this was a wanton flouting of it. In reaching that conclusion we also bear in mind Mr Harris's opening oral statement to us, in which he told us that as at March 2011 he was "angry and bitter" that his licence had not been renewed (page 6 of our day one transcript); and the evidence of his dealings with Mrs Jones, which we address below, which demonstrate someone who, at the time, would brook no dissent from his beliefs as to how things should be.

51. Were this Committee otherwise minded to grant Mr Harris a licence subject to conditions then these breaches of the Trading Condition would lead to considerable hesitation about Mr Harris's ability to comply with them. But there is also a second thread to this breach. Although the non-compliance is in 2011, and it may be said that Mr Harris is now a different man, better advised and more aware than he has ever been of his duties, the blunt facts are that the non-disclosure of his non-compliance continued until this hearing; and his qualified admission at the hearing came not voluntarily, but after questioning.

52. We have borne in mind that the conditions pertained only until 10 June 2011. We should record that we see no merit in the BHA's contention in the Letter of Objections, and in its closing, that after that date Mr Harris ought to have continued to comply with the conditions. Mr Harris was and is entitled to earn his living in a business he knows and obviously loves so long as that way is permitted to him.

The relationship with Equine Enterprises Limited and Mrs Jones

53. The overarching allegation is that in the brief period between Mrs Jones obtaining her licence, on 24 June 2011, and 12 July 2011, when Mr Fox finally decided to close down the company because of the falling out between Mr Harris and Mrs Jones (Mr Fox confirmed that he had initially made his decision on 9 July 2011), Mr Harris continued to act as though he and not Mrs Jones were the licence holder, and failed to appreciate his new restricted role.

54. In support of the larger claim the Letter of Objections relies on a number of individual complaints. We will address only the more important of those, and those few in which corroborative documentary evidence is available. As we made clear during the hearing, we are simply not in a position to decide whether on 12 July 2011, as he says, Mr Fox sacked Mr Harris or whether, as Mr Harris says, he resigned. Neither do we see how such a decision would materially assist us.

55. We heard both from Mrs Jones and from Mr Fox. They were both entirely credible witnesses, to whom we give credit for agreeing to attend the Committee to give their account of an upsetting relationship which ended nearly four years before. The Committee was troubled by lines of questioning on behalf of Mr Harris. It was perfectly in order for the defects in their factual evidence to be tested; but the hostile questions asked, we must assume, at the behest of Mr Harris showed a failure to appreciate that by taking up the licence Mrs Jones had tried to act in the best interests of everyone, including Mr Harris; and that Mr Fox had lost considerable sums because he believed in Mr Harris's abilities and as a result invested in Equine Enterprises Limited.

56. This Committee's disquiet is a relatively small matter. Of larger import is that the written submissions for Mr Harris describe Mrs Jones's contemporaneous written evidence as containing comments "which are in their entirety disputed". As shown by our finding on the breach of the Trading Condition, that should never have been Mr Harris's stance, and demonstrates, again, an ongoing lack of comprehension and, ultimately, of integrity.

57. That conclusion is reinforced when one considers two of the particular allegations.

58. The first of those is that, although he no longer had authority, Mr Harris engaged two members of staff without reference to Mr Fox or Mrs Jones. No answer to this is given in Mr Harris's written submissions. In questioning on the second morning (pages 7-9 of the

transcript), Mr Harris said that before Mrs Jones took over he had asked Mr Fox through his secretary, Ms Denise Hopkins, to employ them, and that Ms Hopkins had agreed.

59. We do have contemporaneous e-mails, and both sides were agreed that we were able to draw conclusions from them.

60. On 3 July 2011 Mrs Jones wrote Mr Harris an e-mail, subject "STAFF", copied to the company's address. She tells Mr Harris that she has no knowledge of the employment of Laura; that neither does Ms Hopkins; that Laura has no signed contract of employment, which is in breach of the Rules of Racing, and that this is therefore a serious matter; and that she understands that another person may be starting work the next day, which has not been discussed with her.

61. On 6 July Mrs Jones e-mailed Mr Harris. The subject was "Entries and Declarations", and we will turn to that below, but Mrs Jones also noted that at a meeting on 4 July Mr Harris had admitted he was wrong with regard to the "recent unauthorised staff appointments".

62. The next day Mr Harris replied. One of the things he wrote was that "I do take issue with you regarding the proposed new member of staff as we did talk about it although only quickly". There is no mention of authority from Ms Hopkins, and we reject Mr Harris's contention at this hearing that he had such authority.

63. Another issue was that of Mr Harris entering horses without consulting Mrs Jones. On 1 July 2011 Mrs Jones e-mailed Mr Harris to arrange a meeting on 4 July, to discuss entries and declarations "in a systematic way". Underlined in bold was that before entering or declaring a horse, "you must ring and discuss with me first".

64. However, Mrs Jones's 6 July e-mail complains that on 4 July Mr Harris sent her a text stating

> *"Merrita, horses entered for Stratford Sunday are Gulf Punch Tri Nations Speedy Directa".*

Mrs Jones had not been consulted about that. She went on to say that on 5 July she read the Racing Post and

> *"I was horrified to see you had entered Gulf Punch... in two chases, one a novice handicap and the other a handicap, at Stratford on Sunday... If I had known about this entry, I would not have allowed it".*

Although raised in the Letter of Objections, we cannot determine the wisdom of entering GULF PUNCH (GB) in two races over four days. What is clear to us, though, is that we must reject Mr Harris's evidence before us (day two transcript, page 10) that

> *"Mrs Jones was aware that I entered the horse. She knew the horse had been entered."*

If she had known, she would not have expressed herself in such strong language in her e-mail.

65. Those issues also evidence that Mr Harris did indeed find it difficult to work within his new role. He acknowledged (day two, page 3) that "It didn't sit easily with me", and we hear the commanding voice of Mr Harris in such e-mails as that of 7 July 2011:

> *"...the only way this business can survive and go forward in my opinion is as was originally agreed with you".*

What Mr Harris considered originally agreed was that

> *"Your kind offer to hold the licence was on the understanding that the training and running routine would not be altered as it was working and working well and indeed it was sold to our owners on that basis...".*

We acknowledge that Mr Harris was (and remains) always keen to put the interests of "his" owners strongly to the fore, and that continuing to act as their representative in the yard may have been a cause of his failure to accommodate his new position. But it was Mrs Jones who held the licence, and as this Committee stressed when granting that licence, it was on the basis that she was in practice the trainer. Mr Harris confirmed that he was "fully aware" of the Committee's reasons (day two, page 13). He should therefore have known that if Mrs Jones wished to change the training routine that was ultimately her decision. One can hear Mr Harris's attitude again in his statement to the Committee that "it had been a foolhardy thing to do... changes" (day two, page 15). He seems yet to have come to terms with Mrs Jones's actions, or his own failings.

Mr Middleton and Be Lucky

66. We were grateful, too, for the attendance before us of Mr Middleton, at considerable personal effort. Mr Middleton was the licensed trainer at Be Lucky under whom Mr Harris worked until May this year. Mr Harris relies on Mr Middleton's evidence as providing comfort to the BHA as to his ability to work within and comprehend restrictions, whatever was the position in 2011.

67. Mr Middleton was, again, an entirely credible witness, and Mr Naylor did not suggest otherwise. He described clearly how he had worked with Mr Harris; and he stated with

conviction that when he and Mr Harris had disagreed then it was he, Mr Middleton, who had the final decision, and that was even though Mr Harris had the greater experience. He said he never felt his obligations as licence holder to be compromised by Mr Harris.

68. We accept Mr Middleton's evidence, and that, as Mr Harris says, it supports there being an improvement in his ability to work with others, respect their views, and respect working restrictions.

CHANINBAR (FR)

69. On 19 July 2012 Mr Harris admitted before the Disciplinary Panel that he was in breach of Rule (A)37 by "assisting and encouraging" Mr Martin Keighley to commit a breach of Schedule (B)3, paragraph 23

> *"in that CHANINBAR (FR) ran in the Shloer Chase at Cheltenham on 13 November 2011 when the gelding had not been in training with Keighley for the 14 days immediately prior to the race."*

CHANINBAR (FR) had been in pre-training with Mr Harris.

70. Before us, as before the Disciplinary Panel, Mr Harris accepted his breach. That is to his credit, but the breach itself demonstrates a disregard for the rules which is especially unfortunate when at the same time Mr Harris was submitting to the BHA in his September 2011 letter and the 2011 Application that he was a fit and proper person who had learned his lesson.

71. The Letter of Objections relies on a further decision of the Disciplinary Panel on 11 April 2013, concerning five horses in pre-training with Mr Harris which Mr Brendan Powell had declared and run before the expiry of the 14 days. Mr Harris was not a party to that decision, and we draw nothing adverse from it.

72. Neither do we accept Mr Naylor's in passing criticisms of Mr Harris running a pre-training yard. As we have already remarked concerning his dealing in horses, Mr Harris can earn his living in this industry in any way permitted to him.

County Court Judgment

73. Without disclosing any proper details, the 2013 Application did advert to a County Court Judgment against Mr Harris

> *"...in the region of £1,000. I can confirm that this is being settled."*

74. The 2015 Application also referred to the judgment, without identifying who held the benefit of it, and exhibited a 13 March 2015 search result saying that the judgment was obtained on 6 June 2012, was for £1,387, and was unsatisfied.

75. At the hearing Mr Harris told us (day one, pages 14-15) that it was a debt to solicitors, who had been difficult to trace; but it had been settled this year, and Mr Mac Neice possessed an e-mail of 1 June 2015 to confirm that.

76. Asked what he had meant when in May 2013 he had told the BHA that the debt was being settled, Mr Harris said:

> *"I think it took me the best part of four or five months to ascertain the debt, who the debt was to... I had to track down the lawyers...".*

Asked next:

> *"What were you doing in 2013 to settle the debt"*

Mr Harris gave no answer.

77. Again, this looks to us like Mr Harris in 2013 putting an unjustified positive spin on his actions; and in 2015 failing to admit that.

Mitigation

78. We have already referred to some substantial points in Mr Harris's favour, especially that he is a good trainer who, with the one blemish, has an excellent disciplinary record. He obviously commands support among a number of owners and from those who have had dealings with him in the purchase and sale of horses, and we have read a number of commendatory letters. These also include references to his care in rehoming horses.

79. Other claimed credits must be more qualified.

80. Mr Harris of his own volition wished to address us at the beginning of the hearing to present his apologies for his shortcomings and tell us that he was now a different person. While the apologies are recognised, the profession of change is, as we have found, only partly justified.

81. Mr Mac Neice emphasised that it was Mr Harris who insisted on disclosure of the BRO report. Again, that is all very well, but this disclosure was in 2015 and not 2011.

82. It was also Mr Harris who instructed Mr Mac Neice to cease questioning of Mrs Jones when she became upset. Her upset, though, was caused by the line of questions presumably approved by Mr Harris.

Conclusions

83. We quoted at paragraph 3 from paragraphs 98 and 101 of this Committee's Reasons after Mr Harris's first hearing before it, in January 2010. As we have found, Mr Harris is still someone who is not "open and transparent"; he is still someone who deals in untruths and half-truths; and he has not demonstrated that he understands the importance of the BHA "receiving accurate answers". We have found that Mr Harris deliberately misled the BHA in his 2013 Application, his 2011 Application and, probably, his 20 September 2011 letter. Even leaving aside the other failings we have identified, including in particular the breach of the Trading Condition, we do not consider Mr Harris to be a fit and proper person.

84. We would have reached the same conclusion even had we found that Mr Harris's multiple non-disclosures were all of them inadvertent. Mr Harris was in the extraordinary position of receiving repeated reminders as to his obligations. As a suitable person, he ought to have been in no doubt as to what they were, and he ought to have applied his mind before he made the disclosures he did. Instead, despite his own repeated professions of comprehension, he repeatedly failed to ensure that he provided the regulator with full and frank information.

85. We have given much thought to the proposed outline conditions, as well as to the effect of the refusal of this licence on Mr Harris; on Be Lucky, Mr Adkins and Ms Dewbery; and on Mr Harris's owners. In the end, even were detailed and precise conditions fashioned and contracts agreed, and even if (as we envisage would be necessary) Mr Harris were given permission by the Court to act notwithstanding the BRO, we do not consider that the proposed conditions would address Mr Harris's basic and multiple failings. We have to give weight to the interests of horseracing as a whole. As Mr Harris was told in 2010, accurate disclosure is fundamental to the performance of the BHA's function as regulator of the industry.

86. We therefore refuse Mr Harris's application for a licence to train for the period to 31 January 2016.

Dated: 24. vii. 2015

Signed for the Committee: