

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

RE: ALAN WARWICK BERRY

APPLICATION FOR A TRAINER'S LICENCE

Hearing Dates: 23 and 24 AUGUST, and 5 DECEMBER 2016

Committee Members:

SEBASTIAN PRENTIS ESQ. (Chairman)

RICHARD RUSSELL ESQ.

EDWARD DORRELL ESQ.

REASONS

1. On 5 December 2016 the Committee determined that Mr Alan Berry was a suitable person to hold a trainer's licence, subject to conditions. These are the Reasons for that decision

Background

2. Alan Berry bears a distinguished name. He trains out of Moss Side Racing Stables in Cockerham, Lancashire, where he also lives (the "Yard"). The Yard was previously his father's.
3. Mr Berry has had a successful training career. Since receiving his licence on 27 December 1999 he has had 7,777 runners; 388 of those have been winners, including of Group 2 and Group 3 races; 1,967 others have been placed; and he has generated £3,194,388 in prize money.
4. Mr Berry held a licence continuously until 31 January 2015. He was licensed again between 19 April 2015 and 15 February 2016, since when he has been unlicensed. His application for renewal is dated 7 January 2016.
5. That application is opposed by the BHA.
6. Mr Berry has been represented before us by Mr Roderick Moore, and the BHA by Mr Nicholas Corsellis. We are grateful to them both for their careful submissions in what has been a difficult case.

The BHA's objections

7. By detailed letter of 7 July 2016 the BHA set out for Mr Berry its objections (the "Letter of Objections"). They fall into two categories:
 - 7.1 horse welfare management, arising out of the non-treatment of PLUNDER in April 2016; and
 - 7.2 general yard standards, which resulted in the Yard being the subject of ten inspections between 27 March 2014 and 27 April 2016.

8. Two observations can be made.
 - 8.1 The categories are linked by, as it was put at the start of the hearing, Mr Berry's "neglect" or, as had become clear by the end, the more appropriate epithet of "disengagement".
 - 8.2 The complaints relate to Mr Berry's recent management, and come against a background of 13 years of compliance. There has been a marked and serious falling away from previous standards.

9. So far as need be, we will examine the relevant facts below.

General principles

10. The Letter of Objections set out in a clear and, it was agreed, accurate way the applicable principles. We therefore quote directly from its paragraphs 5 and 6.
 - “5. In granting a licence, the BHA must be satisfied that such a decision will not be prejudicial to the reputation of, or public confidence in, horseracing in this country. Those involved in racing are entitled to rely on the fact that the trainers they interact with are properly licensed, and meet the high standards set by the BHA. Equally, other Licensed Trainers are entitled to be satisfied that only duly qualified and suitable individuals are granted licences to train, and that their licensed counterparts are carrying out, to the same expected standard, the obligations imposed on licence-holders.
 6. The position of a Licensed Trainer is well-respected and one of significant responsibility. It is a privilege to be granted a licence and the BHA considers that Licensed Trainers represent the sport; they are responsible for the health, wellbeing and welfare of animals in their care or control, they are responsible for the employment, health and safety of staff on the yard, and much more. Therefore, there is a reputational aspect to the BHA's licensing regime so that the sport is not undermined in any way. Licensed Trainers are required to have the appropriate experience and qualifications to be considered suitable to hold a licence. A person who does not demonstrate these qualities should not be afforded the privilege of

holding a licence to train. If any sport suffers from doubts over the capabilities of its participants, its reputation suffers and it risks decline. Not only is this trust at the core of the sport of horseracing but it is also a foundation for its success. This is especially pertinent in relation to maintaining public confidence in our sport's ability to protect the welfare of our horses, and the harm to the sport as a whole should that confidence be lost".

11. The parties agreed as well that, as was put at the hearing, the "most basic obligation on a trainer is the welfare of horses under his care".
12. The Committee has had regard to those principles in reaching its decision.

The General Manual and the Guidance Notes

13. 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 Berry to demonstrate that he is a suitable person.

14. The following Guidance Notes are of particular relevance.

"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.

...

34. 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.

35. Relevant matters include:

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

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

35.3 Whether there are or will be in place such measures as may be required:

35.3.1 By the Health and Safety Executive or other competent body pursuant to health and safety legislation; and

35.3.2 In connection with animal welfare...

36. Whether there are in place such facilities and procedures as are required by law and/ or are reasonably necessary in connection with the provision of a safe system of work and health and safety at the premises where the training business is to be undertaken.”

15. As stressed by Mr Moore, what is not in issue is Mr Berry’s “honesty and integrity” or “financial soundness”. In turn, Mr Corsellis emphasised the requirement that all aspects of the business be “conducted with reasonable care, skill and diligence”.

16. We must refer as well to Rule (C)27 of the Rules of Racing:

“A Trainer must take all reasonable steps to ensure the safety and welfare of all horses under his care or control (whether or not they are currently in training).”

17. That Rule is not of direct application, but reference has been made to it by both sides as a guide in assessing the care of PLUNDER. Were we the Disciplinary Panel then a breach of the Rule would result in one of three prescribed penalties. In descending order of seriousness they are:

17.1 a disqualification period of 5-25 years, with an entry point of 8 years, for “wilful cruelty”;

17.2 a disqualification period of 6 months-3 years, with an entry period of 9 months, for “neglect over a period of time- very poor husbandry”;

17.3 a fine of £1,000-£3,000, with an entry point of £2,000, for conduct “below acceptable standard”.

Neither side suggests that this would be a top-bracket case.

PLUNDER

18. PLUNDER was Mr Berry’s own horse. Mr Berry took ownership through pity, having heard that he was otherwise going to be put down. Ms Jane King, one of the Yard’s vets, described him as “a family pet as much as a racehorse”. Mr Berry and his partner, Ms Juliette Edmondson, agreed: their 9-year old daughter would ride out on him. However, Mr Berry stated that “I don’t think I treated him any different” from other horses in the Yard;

and it was not suggested either that the treatment of PLUNDER should be assessed by different standards because of that horse's special status; or that that status was a reason for the admitted failure to obtain veterinary care.

19. PLUNDER's schooling record shows him marked "lame" "off hind" from 17 March 2016. Over the course of the next week that developed into a swollen hock. On 24 March 2016 Ms King was attending the Yard to see OH WHAT A SPECIES (IRE), which had suffered a racing injury. Ms Edmondson, with whom (as was usual) she dealt on that day, asked her to look at PLUNDER, reporting him as "having become acutely lame". In the words of her statement, Ms King "diagnosed a suspected subsolar haematoma (bruise) or brewing deep seated abscess and prescribed a course of Danilon. Juliette remarked on the swelling on the inside of his hock but I felt this was filling from not using the leg". The course of Danilon ran until 5 April.
20. In her evidence before the Committee Ms King confirmed that while on 24 March PLUNDER was "very lame", he was also in good condition.
21. Ms King spoke with feeling about the blame which she attached to herself for not enquiring further about PLUNDER a week later. As she put it in the amendment which she chose to make to her statement, "my mistake was not remembering to review the horse at my visit on 31 March and maintain control of the case". The Committee thinks Ms King is being unduly harsh on herself. It is, though, an important point that on 24 March Ms King had also told Ms Edmondson that if there was no improvement in his condition then PLUNDER should be re-examined in 7 days, when Ms King was coming back anyway to see OH WHAT A SPECIES (IRE) and two other horses. On 31 March Ms King forgot to enquire after PLUNDER, and Mr Berry failed to ensure that PLUNDER was seen.
22. It was Mr Berry's evidence that while he could confirm that he was told about PLUNDER's diagnosis, he could not remember whether he was told about the need for re-examination. It seems very unlikely that Ms Edmondson would tell Mr Berry some of what the vet said but not the need for re-examination; and in any event, any trainer acting properly would have asked what further action had been recommended. Mr Moore helpfully confirmed that he did not challenge Ms King's recollection of her recommendation; and accepted that even if it had not been given, Mr Berry should have ensured the vet's return by 5 April, when the course of Danilon ended. The vets routinely visited the Yard once a week.
23. Ms Edmondson told us that she did not ask Ms King to look at PLUNDER on 31 March because "I didn't think it was serious... I just thought maybe it was bruising and it hadn't

come out yet". Mr Berry too "was not unduly worried". As he told the BHA inspecting officers Mr John Burgess and Mr Andrew Streeter in interview of 12 May 2016, PLUNDER was "a proper drama queen", "a real big soft bugger"; and as he told the Committee, it was his belief, given what Ms King had said, that the problem was a bruise which in his experience might take one or two months to come out.

24. On 28 March the Yard's farrier, Mr Richard Charles Helliwell, was on one of his weekly visits. In his letter of 6 June to the BHA he says that he was asked to see PLUNDER, who was "chronically lame with a bruised foot and a swollen hock"; that he was asked to see PLUNDER twice more; and that "over this period the bruised foot had healed and the horse's lameness had become more intermittent but there was still a swelling at the hock". In a further letter of 3 July, he confirms what he told the BHA in the earlier letter, being that "on the second of these [further] occasions when I saw that the foot bruise had healed then I recommended that they speak to their vet".
25. In the interview of 12 May 2016 Ms Edmondson identified the date of the second visit as being 20 April. She told us that she had dealt with Mr Helliwell, and had reported what he said to Mr Berry. Mr Berry this time did recall the recommendation. He did not call the vet.
26. In the same interview Ms Edmondson told the inspecting officers that PLUNDER had not got any worse, or any better, on the Danilon.
27. A stable inspection had been arranged by Mr Berry for 27 April. He had been unlicensed since 15 February, and was keen to demonstrate to the BHA that the Yard was now of a suitable standard. As with all the relevant inspections Mr Streeter was an inspecting officer. On this occasion he was accompanied by the Licensing Team Leader, Ms Annette Baker, and a Veterinary Officer, Mr Nick Bowen. Ms King was also present. Ms Edmondson told us that it was because this date was in the diary that a vet had not been called despite the farrier's recommendation.
28. At the inspection one of the horses brought out by Mr Berry was PLUNDER. We have seen photographs of that parade, which was also partly filmed; and on the first day of the hearing we watched that DVD repeatedly. While the filming is not perfect, it is plain that PLUNDER was in a deplorable state. Mr Bowen's report on the visit says that: "PLUNDER had an estimated body score of 2.5... I asked Mr Berry if he had lost condition since the onset of the lameness and he replied in the affirmative".

29. Ms King confirmed to us that on 24 March PLUNDER had been in “good condition”. She said in her statement that on 27 April
“PLUNDER was very lame right hind with a grossly swollen hock with a tarsocrural and tibiotarsal joint effusion. He could toe touch when walking out. I noted that the lameness was worse than 24th March and the swelling to the hock was much increased. The horse had also lost condition in the intervening period”.
30. At the 12 May 2016 interview Ms Edmondson identified the date on which she noticed that PLUNDER was losing condition as 19 April. Mr Berry agreed, and that by 27 April he had “definitely lost condition”.
31. PLUNDER’s state on 27 April was such that x-rays were taken by Ms King the next day. As Ms King records in her statement “given the changes I saw on x-ray I considered the prognosis to be hopeless and the financial cost of further examination and diagnostic methods would be excessive given the deteriorating condition of PLUNDER”. Following her advice, PLUNDER was euthanased on 29 April. Mr Bowen’s report states that “the preliminary [post-mortem] results show extensive soft tissue damage to the hock”.
32. We remind ourselves that it would be wrong to assess Mr Berry’s handling of PLUNDER’s infirmity on the basis of hindsight. As Ms King observed, and as is supported by her own erroneous initial diagnosis, this was “a complicated case”. It is not the BHA’s position that at some point before 27 April Mr Berry ought to have realised what was wrong with PLUNDER.
33. For his part, though, Mr Moore does seek to rely on hindsight for the proposition that had Ms King correctly diagnosed PLUNDER on 24 March, the treatment he actually received of box rest was, as Ms King agreed, “a perfectly possible outcome”. It seems to the Committee that that line is one which fails to address another part of the evidence. Had PLUNDER been subject to box rest then the likelihood is that he would have been prescribed painkillers, because Ms King described that as her normal practice.
34. The reality is that PLUNDER was left in pain when he ought not to have been.
35. The particular failure identified by the BHA in the Letter of Objections is that Mr Berry: “did not obtain veterinary advice for a period of 22 days, during which the horse’s serious lameness did not improve, despite having completed an initial course of medication”. The 22 days are those between 5 April, when the course of Danilon ended, and the Yard visit of 27 April.

36. That failure was admitted by Mr Berry in the pre-hearing written submissions prepared on his behalf, and again when he gave evidence. As he said:
“...it’s my fault. I own the licence. I train the horses. I should have made sure the vet came back”.
- As Mr Moore put it at the beginning of the hearing:
“[Mr Berry] accepts that the vet should have come back around 5 April when the medication ran out and there was obviously still a significant problem with the horse”.
37. The Committee therefore concludes that in not ensuring that PLUNDER received veterinary care at any point between 5 April and 27 April 2016, Mr Berry acted below the acceptable standard of reasonable care, skill and diligence. That failure is exacerbated by having occurred despite an express instruction from the vet on 24 March, and an express recommendation from the farrier on 20 April.
38. In reaching its conclusion, the Committee is not relying on any view as to the appropriate category were this an application under Rule (C)27 of the Rules of Racing. It has not heard the same evidence as a Disciplinary Panel would when dealing with such an application, and it has not received submissions dedicated to that single point.
39. Neither is the Committee relying on a report from Ms Jennifer Hall, Chief Veterinary Officer to the BHA, which presents her professional opinion of Mr Berry’s conduct based on part of the evidence before us. The concessions made by Mr Moore rendered her attendance for questioning, and further consideration of her report, unnecessary.

General standards at the Yard

40. The Letter of Objections complains of Mr Berry’s “repeated failings to address concerns raised in relation to your yard, and the lack of proactive action taken to prevent these issues reoccurring”; “your training operation is not conducted with reasonable care, skill and diligence, nor do you proactively maintain your facilities...”. There are therefore two aspects to this complaint: the physical state of the Yard, and its administrative support.
41. Again, the written submissions for Mr Berry make substantial concessions on each aspect: “Mr Berry accepts that legitimate issues have been raised about the past condition of his premises and other related administrative matters... He also accepts that he has not dealt with the same with the enthusiasm and expedience with which he should have done”.

42. As is said later in those submissions, it is Mr Berry's position that he "undertakes to behave differently in the future". What weight we can give that we shall consider in the next section of these Reasons.
43. Mr Berry was subject to ten inspections of the Yard between 27 March 2014 and 27 April 2016. Whether he was the sole inspector or not, the resulting report was compiled by Mr Streeter. Although those reports were internal to the BHA, it was not controversial that relevant matters would be discussed during the visit, and there would always be a follow-up e-mail containing a checklist of matters to do. It may be said to encapsulate both the administrative failures at the Yard and the cussedness of Mr Berry towards the BHA that at the December hearing he admitted that he "didn't look at the emails".
44. Mr Streeter told us that in his experience ten inspections in two years was "unique": yards would tend to be visited about every 18 months, depending on the perception of risk.
45. The nadir for the Yard came in the 16 January 2015 inspection, which resulted in the non-renewal of Mr Berry's licence on 1 February 2015. We do not intend to set out the details of the Yard's failings over the period covered by the reports, because Mr Moore accepted that there was a pattern of failures, not all of them major, but cumulatively of significance; and that those failures were repeated, in the sense that they were recorded as unremedied report after report. Excerpts from the 16 January 2015 report will, though, tell their own story.
46. As is the usual style, that report retains comments from previous inspections before adding fresh remarks. This is an excerpt from the 15 December 2014 report:
"...it is clear that [this report] demonstrates circumstances which are not sustainable for a Licensed Trainer or BHA approved premises without significant actions and resultant improvements. The stable yard and training facilities are steadily falling into ruin, staffing levels remain unacceptable and there are numerous significant hazards to man and beast on site which cannot be allowed to go unaddressed."
Looking forward, the report continues:
"Whilst it is indisputable that the premises now require significant investment to return them to former glories, it remains a fact that a sensible maintenance budget, reasonable staffing levels and plenty of hard work could at least return standards to an acceptable level".
47. These are some of Mr Streeter's 16 January 2015 observations.
"This inspection was carried out without formal appointment however in accordance with communications... from the inspection completed on 15/12/2014 [when Mr Berry and Ms

Edmondson were advised that a follow up inspection would need to be completed no later than 16 January 2015]. Mr Berry was present on arrival although appointed his partner Juliette Edmondson to deal with the content as soon as the purpose of the BHA Team's visit had been relayed. It should be noted that during that initial conversation, Mr Berry expressed his surprise on being advised that he had so far failed to renew his trainer's licence subsequently confirming that it was his intention to do so.

Initial discussions with Ms Edmondson were particularly unsatisfactory. Despite assurances when questioned during the inspection on 15/12/2014 that correspondence sent to [a specified e-mail address] was the desired method of communication and that such correspondence was checked and read on a regular basis, Ms Edmondson advised that she had not read the BHA communication sent on 19/12/2014 (marked high importance). That communication bulleted the matters requiring attention...".

48. Pausing there.

48.1 Confusion over such an essential matter as the date for licence renewal occurred again. Mr Berry regained a 6-month licence on 19 April 2015. On 7 October 2015 the BHA had to write to Mr Berry reminding him that if he wished to continue to be licensed, he needed to make an application. Mr Berry told us that his application was late because he "thought the licence was running until the end of the year".

48.2 Not only was Mr Berry not looking at e-mails from the BHA, but neither was the Yard's secretary, Ms Edmondson, consistently doing so.

49. Continuing from the 16 January 2015 observations.

"Considering the documented history of stable inspections at Mr Berry's since 20/11/13, there seems little point in bulleting a 'to do' list in the hope that the necessary progress will be made. Realistically, the fundamental failings at Moss Side run far beyond a training yard falling into deepening disrepair. Even following repeated opportunities to and guidance on providing the necessary documentation to complete the stable inspection process, the only documentation provided was woefully inadequate...

Moving forwards, recent inspections only really serve to direct matters to a head. Considering Mr Berry's ongoing inability or refusal to raise standards to an acceptable level, it appears essential that a formal review takes place of his status as a Licensed Trainer...".

50. We recognise that we are quoting from the report which found that the Yard did not meet the requisite standards, whereas all the others found, just, that it did. But it gives an idea of the deep-seated and persistent difficulties with Mr Berry, who was doing no more than the minimum, and that only when pushed. That lack of care for standards and proper

management is the more striking because Mr Streeter was doing his best to help him; and even if Mr Streeter's e-mails were not being read, he was informing Mr Berry or Ms Edmondson of the difficulties as they walked round at each inspection. It is a sorry reflection of the state of the Yard and Mr Berry's management that, as Mr Streeter told us, this is the only occasion that as an inspector he has described a to-do list as pointless; but he felt that he "could progress the matter no further".

51. Mr Berry's new licence from 19 April 2015 was granted only on the basis that he signed an undertaking which contained eight points. Point 4 was this:

"I am aware of the minimum requirements for my training yard and facilities to be considered of an acceptable standard (as to suitability and security) by the BHA. I confirm that my premises will be maintained at least in accordance with these standards at all times during the currency of my licence".

Point 6 confirmed that:

"I will ensure that management practices are in place to ensure that I am aware of any correspondence sent by the BHA... regarding my position as a Licensed Trainer".

Yet by October Mr Berry was unaware of his licence renewal date.

52. When he did finally submit his application in October 2015, Mr Berry signed another undertaking in the same form. Having made further inspections in April, May, July and October 2015, on 13 November 2015 the BHA wrote to Mr Berry saying that

"Having considered your application and comments, together with all other information available, the BHA is not satisfied that you have demonstrated any real improvement at [the Yard], or to your administrative procedures".

Detailed reasons were given in that letter. After further extensions to allow for investigations, Mr Berry's licence lapsed on 15 February 2016. As already mentioned, the visit of 27 April 2016 was intended to demonstrate to the BHA that the Yard was now run to an acceptable standard. Leaving aside PLUNDER, so it would have been. But the PLUNDER issue is by itself a stark example of management failure.

53. It follows that we find that from about 27 March 2014 there was a failure of management at the Yard, resulting from Mr Berry's disengagement, and resulting in continued maintenance issues and administrative failures; and that Mr Berry thereby failed to meet the acceptable standard of reasonable care, skill and diligence.

Is Mr Berry now a suitable person?

54. Stepping back, this is an extraordinary case. For 13 years Mr Berry held a licence with, as Mr Streeter described the last couple of those years, “nothing particularly untoward”. Then things fall apart.
55. In addressing whether Mr Berry is now a suitable person, Mr Moore sought to draw comfort from the years of compliance (“...it is highly probative that, for nearly 15 years, there was no suggestion of a licensing issue”). The Committee has been unable to take that view. On the contrary, it has been deeply troubled that against a lengthy background of compliance, matters turned so bad, so quickly, and for such an extended period. It seems clear to it that the starting point is not the years of compliance, but the years of failure: given those years, on what basis can it conclude that Mr Berry is now suitable?
56. In this context, the obvious first question is “why?”: why was there this falling away? No explanation was offered by Mr Berry either before the hearing or during its first day. His evidence was notably defensive and unforthcoming, failing to give the Committee any insight into his own state during the period or, thereby, any comfort that he now realised why matters had turned bad and so could be confidently expected to behave differently in the future. The Committee therefore raised the issue directly with Mr Moore at the end of the first day. Ultimately, that resulted in an adjournment for further evidence during the second day. When it came, that evidence regrettably took matters no further and, indeed, did not even support the outline explanation given by Mr Moore on instructions on the morning of the second day. The Committee made a further effort to elicit an explanation from Mr Berry at the December hearing. Again, it failed.
57. The Committee is therefore in the position of being invited to conclude that Mr Berry is a suitable person without any probative explanation from him for the failure; and that despite a number of opportunities, including an adjournment explicitly for the obtaining of that evidence.
58. Nevertheless, it has felt able to take particular comfort from the evidence of Mr Streeter, who has been inspecting the Yard and dealing with Mr Berry since 2011, and is therefore as well informed as anybody from outside the Yard. Mr Streeter addressed the Committee with great thought and sensitivity. In the same way he has endeavoured to bring Mr Berry up to standard, while not compromising his own obligation to enforce those standards.
59. In an exchange with Mr Moore, Mr Streeter said this:

"I would say that there has been a period when Mr Berry was more than capable. I'm afraid in the last two years, as I reached the point of exasperation where I felt I could help no more, whatever support, whatever effort was made on behalf of the BHA bore no fruit... I was only dragging out a situation... exposing all involved to risk...

There had been a period without a shadow of a doubt where Mr Berry... proved himself a very worthy trainer but for the last two years... that was no longer the case. He was sufficiently disengaged from his business that there were fundamental, unacceptable issues that were being repeated on an ongoing basis and my personal view was that we needed to draw a line in the sand, we needed to stop in order that we could get things back to an acceptable level...".

60. As is implicit in that last remark, it was Mr Streeter's view that Mr Berry "can reach the threshold if he is minded to do so" or, as he put it at another point "...the issue I would raise has not been Mr Berry's competence, it has been his engagement with the business".
61. Mr Streeter was also clear that "the administrative back-up... [at the Yard] is inadequate"; "it's not a job for one person"; "there needs to be a managerial infrastructure" who could deal with issues "proactively and in a timely manner". Mr Streeter described a "yard manager" or "trusted soldier", someone "who can help with those responsibilities, eyes and ears that are capable of recognising the deficiencies we've highlighted", as being "incredibly useful support" from which he would take "great comfort".
62. Since August there have been developments at the Yard and apparently in Mr Berry's attitude. On 21 November 2016 the BHA issued Mr John Murray with a temporary licence to train from the Yard, valid until 31 January 2017. Mr Murray has moved into a bungalow at the Yard, where he may be joined by his wife, who has already started some administrative tasks. At the December hearing Mr Berry confirmed that he was, as required, allowing Mr Murray to train; and that he now recognised that: "I can't do it all on my own. I appreciate that now".
63. It was also the Murrays who escorted Mr Streeter and Ms Baker on the latest inspection, that of 24 October 2016. The report bespeaks a different attitude from the other ten we have read: "...both Mr & Mrs Murray engaged fully with the inspection process listening fully to all advice and any guidance given. They were fully compliant in terms of BHA instructions going forwards giving the impression that Mr Murray will be fully committed to his responsibilities as a Licensed Trainer. Mrs Murray will be managing the yard's

administration and was keen to point out that any historical arrangements on site would be reviewed fully to ensure that they were suitably robust and fit for purpose... there can be little doubt that both Mr & Mrs Murray have the potential to have a much needed positive influence at Moss Side.”

64. That report also described the horses in preparatory training as looking well and being in “apparently good condition”. The Committee would stress that, other than the PLUNDER issue, all the reports are consistent on that point.
65. The physical state of the Yard was also much-improved. Mr Berry explained at the December hearing that he had hired a Mr Kellet who was living in one of his properties in lieu of doing odd jobs around the Yard and farm six mornings a week.
66. It was Mr Moore’s submission that in being deprived of his licence Mr Berry has learned his lesson. For most individuals one could take that as read. Whether it is true of Mr Berry, time will tell. The Committee has not been put into the position to concur; and Mr Streeter also declined to adopt it. Even at the December hearing Mr Berry could not, or would not, say why he allowed the failings to occur. He could not, or would not, even say who had caused the improvements in the Yard described in the October report. And despite the contents of that report, which identified the Murrays as creating a new dynamic at the Yard, both he and Ms Edmondson downplayed their influence.
67. Taking stock, there is no dispute that Mr Berry is a competent trainer. Further, whoever has brought it about, the Yard is now in acceptable physical state. There is also a new backroom structure which addresses both maintenance of the Yard and its administration. Mr Berry now recognises, as he did not when this hearing started, that he must rely on others if the Yard is to be properly managed. The horses are in good condition as, barring PLUNDER, they have always been.
68. In those circumstances, and notwithstanding the ongoing lack of explanation, the Committee is satisfied that it has sufficient evidence to conclude that there has been a change from the position which inured from 2013 until now; and that Mr Berry can be treated as a suitable person. However, that can only be so on the basis of conditions which ensure a proper and competent management structure. The conditions must be permanent, in the sense that they will apply to every trainer’s licence granted to Mr Berry until the BHA or this Committee determines otherwise. The Committee emphasises to Mr Berry that a failure to comply with any of the conditions is likely to result in a withdrawal of his licence.

69. The conditions which have been settled between the BHA and Mr Berry, and which this Committee has approved, read as follows.

CONDITIONS OF LICENCE

The following conditions are imposed without prejudice to Mr Berry's obligations as a licence holder. The conditions are intended to be permanent or continue until a date that the BHA or Licensing Committee chooses to either vary or remove them.

It is hereby ordered that the conditions to be attached to Mr Berry as a licensed trainer are:

(A) Assistant Trainer

Mr Berry is to employ on a full-time basis an Assistant Trainer:

1. who has previously trained in his own right; or
2. who has previously been employed as an Assistant Trainer for an aggregate of 2 years;
3. whose employment and CV is notified and submitted to the BHA in advance of his employment;
4. whose contract of employment is submitted to the BHA in advance along with an annexed job description which shall include day-to-day responsibility for the yard and the welfare of horses whilst in Mr Berry's care or control.

(B) Racing Secretary/ Office Manager

1. Mr Berry is to employ on a full-time basis (job-sharing permitted) a racing secretary/ office manager who shall have day-to-day responsibility for all of the office and administrative tasks. It is expected that there shall always be a person available during normal office hours.

(C) Handyman

1. Mr Berry is to retain access to the services of a regular handyman who is available to attend at short notice.

(D) Inspection Reports

1. Should an Inspection Report identify any defect, Mr Berry shall within 14 days confirm to the BHA in writing his progress in remedying the same.

Sebastian Prentis
for the Licensing Committee
6 January 2017