

**IN THE MATTER OF AN APPLICATION FOR A LICENCE TO TRAIN**

**CONCERNING MR DOMINIC FFRENCH DAVIS**

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

**75, HIGH HOLBORN, LONDON, WC1V 6LS**

**WEDNESDAY, 1<sup>ST</sup> MARCH 2013 and**

**FRIDAY, 3<sup>RD</sup> MAY 2013**

**RICHARD RUSSELL ESQ.**

**STEPHEN BATE ESQ. (CHAIRMAN)**

**EDWARD DORRELL ESQ.**

#### **REASONS**

1. On 1 March 2013 a hearing took place before the Licensing Committee (“the Committee”) to decide whether the trainer’s licence of Mr Dominic Ffrench Davis (“Mr Ffrench Davis”) should be renewed until 31 January 2014 following his written application dated 29 December 2012 for a licence renewal. The hearing was adjourned to enable Mr Ffrench Davis to provide further information, which was necessary for the Committee to consider his application. The information was supplied to the Committee on dates between 28 March and 9 April 2013. The Committee considered that a further hearing was necessary, which was convened on 3 May 2013, when the Committee decided to grant the licence, subject to conditions. These are the reasons for that decision.
2. In his application for a licence renewal Mr Ffrench Davis applied for a licence as an employee of a company, namely Upshire House Racing Ltd (“UHRL”). The reason why that application for a renewal required particular consideration was because the previous corporate vehicle through which Mr Ffrench Davis had carried on his training business,

namely Ffrench Davis Racing Ltd. (“FDRL”) had become insolvent and had ceased trading. Thus, Mr Ffrench Davis was invited to attend the hearing by a letter from British Horseracing Authority (“the Authority”) dated 15 February 2013. The background to that application was set out in a series of letters and emails from the Authority, commencing with its letters of 18 December 2012 and 11 January 2013, as follows -

- Mr Ffrench Davis had advised the Authority in a previous application for a licence renewal that he had been trading on a self-employed basis but in fact was not, because the training business was being run by a company, namely FDRL.
- He had been a director of that company, which had ceased to trade because it had been unable to pay its debts as they fall due and was insolvent.
- He now wished to be granted a licence to train as an employee of a new company, co-owned by himself and his wife Mrs Avery Ffrench Davis (“Mrs Ffrench Davis”), of which he was to be the sole director.

The issues of particular concern to the Authority, consistently with the Guidance Notes relating to Applications for a Licence to Train, were not only those relating to the inaccurate information previously furnished as to Mr Ffrench Davis’s trading status, but also those of the financial solvency of the new business venture and the business competence and capability of those concerned in the running of the new business: see the Authority’s letter to Mr Ffrench Davis of 11 January 2013.

3. Mr Ffrench Davis has held a Combined Trainer’s licence for many years, with prize money totalling £527,763. In view of the fact that he was seeking a renewal and his application related to the 12 month period from 1 February 2013, the Authority had granted him a Temporary Licence, which was renewed by the Committee on 1 March 2013 until 8 April 2013 to enable the Committee to consider the further information to be provided by Mr Ffrench Davis. The Temporary Licence was further extended to 3 May 2013.
4. Mr Ffrench Davis attended the hearing on 1 March 2013 with his accountant, Mr Brook Alder (“Mr Alder”).
5. In his letter dated 18 January 2013 to the Authority, Mr Ffrench Davis explained that when completing his application for a licence for the year 2012/2013 he had applied for

a licence on the basis that he would be self-employed, because he was working for his own company. He thought that this meant that he was self-employed.

6. In that letter he also explained the circumstances in which FDRL had become insolvent. The insolvency principally arose because of bad debts and the company ceased to trade in 2012. One owner ran up training fees in excess of £10,000. A second owner owed in the region of £40,000 in respect of training fees, including sums owed for the purchase of a horse. Further strain on the business had been caused by the death of an owner and the time it had taken for training fees to be settled by the deceased's estate. The upshot was that as at 31 January 2013 FDRL had unpaid creditors of £43,153.77, as set out in a schedule of creditors provided to the Authority by Mr Alder. This included trade creditors of £30,170.00 including a debt of £26,104.00 owed to Dodson and Horrell, feed suppliers. Dodson and Horrell had obtained a court judgment against the company but had not yet sought to place it in liquidation. The company owed H.M. Revenue and Customs £12,983.77. Mr Ffrench Davis concluded that letter by giving some details of the new business and stated that he had learned his lesson and would be more careful when taking on new owners in the future, and would obtain references and carry out credit checks.
7. As regards the new business, Mr Alder informed the Authority by email dated 31 January 2013 that it had moved to Upshire House stables in September 2012 and had been trading since the Spring of 2012, previously in the name of Windy Hollow Racing Ltd, a company incorporated on 15 May 2012, as confirmed by the certificate of incorporation provided. On 3 October 2012 the company changed its name to UHRL to tie in with the move to the new stables. By email dated 1 February 2013 Mr Ffrench Davis stated that the company had been trading with sufficient cash flow to meet its expenses and was operating without overdraft facilities. He also stated that he was making voluntary contributions to pay off certain trade creditors of FDRL, though not Dodson & Horrell.
8. In his email of 3 February 2013, Mr Ffrench Davis stated that he should be granted a licence to train, because as he put it -

*"I have dedicated the last thirty years of my life to horseracing in Britain and have an exemplary record. Just because two less than scrupulous parties should bring down my business this has no reflection on my character, my ability as a trainer or my ability to run a successful business in the future."*

He stated that he was the sole director of UHRL and that Mrs Ffrench Davis was the Company Secretary. In answer to previous queries in the Authority's correspondence about the requirement that the company have access to funds of £40,000 (unless good reason to the contrary be shown), he stated that his father had arranged to advance £40,000 in anticipation of an inheritance of £30,000 which he, Mr Ffrench Davis, was due to receive later in 2013 and on account of further funds which his father was going to gift to him later in 2013. He had previously informed the Authority that sums totalling £50,000 would be paid to the company: see his email to the Authority of 31 January 2013. Mr Ffrench Davis provided a SWIFT Transfer – Receipt showing that £40,000 was transferred to the bank account of the company on 4 February 2013. He also stated in the email of 1 February 2013 that he had learned a harsh lesson and would not only be more vigilant about who he trained for but would not let anyone run up a debt that the company could not 'cope with'.

9. Details concerning UHRL were forwarded to the Authority by Mr Alder's office. These included certificates of incorporation and details of the shareholders and directors, showing Mr and Mrs Ffrench Davis to be directors and sole shareholders of the company, each owning 50 shares. Mr Alder also provided a detailed business plan and cash-flow forecast.
10. At the hearing on 1 March 2013 the Committee asked Mr Ffrench Davis about the inaccurate information he had given to the Authority in his previous licence application. The Committee accepted the explanation given in the letter of 18 January 2013 and repeated by Mr Ffrench Davis at the hearing. The mistake was an innocent one and there was no attempt deliberately to mislead the Authority.
11. The Committee also discussed with Mr Ffrench Davis the circumstances which had led to the insolvency of FDRL. The owner who owed what Mr Ffrench Davis told the Committee was £30,000 was an individual who, Mr Ffrench Davis said, lived abroad and whose assets had been located abroad. He had gone to ground and it was not possible to find him, let alone use any legal process to recover the money. Mr French Davis had not done background checks before he agreed to train for him and had acted on a recommendation in taking him on as an owner. The horse had been purchased by the

company in anticipation of it being sold to another owner, who had not wanted it. Mr Ffrench Davis agreed with the Committee's suggestion that, if a licence to train were to be granted to him as an employee of UHRL, it was not a good idea for that company to be buying horses 'on spec'. That was because the training business should be insulated from other trading activities that might prejudice its financial health.

12. The Committee also asked him about what financial controls existed within FDRL to enable the company to know, from one day to the next, whether it was able to pay its debts and would be likely to be able to do so as it traded. There had been no management accounts produced and no other internal controls. He said that they had not been necessary.
13. The Committee considered the business plan and cash-flow forecast. The annual rent of £14,400 payable for the yard, though provided for in the business plan, had not been carried through into the cash-flow forecast. The forecast also showed depreciation, which was incorrect. It also showed 'drawings', in addition to 'Directors salary'<sup>1</sup> and 'Dividends paid', which Mr Ffrench Davis rightly queried. Mr Alder agreed to provide a revised cash-flow forecast.
14. The Committee adjourned the hearing to allow this further information to be produced and also asked for further information to be supplied, by 1 April 2013 as follows, -
  - 14.1 A copy of the Management Accounts for UHRL for the period ending 31 January 2013.
  - 14.2 Copies of bank statements for the company for the period ending 31 January 2013.
  - 14.3 Satisfactory evidence that the company had a legal right to occupy the yard.
  - 14.4 A revised cash-flow forecast for UHRL together with any relevant explanatory notes where necessary.

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<sup>1</sup> He pointed out that the 'Directors salary' was for himself and his wife, the monthly figure of £1,268 being the figure for the combined salaries, each taking one half of that amount.

By letter dated 12 March 2013, Mr Ffrench Davis was also asked on behalf of the Committee to give details of what appeared to be the resignation of Mrs French Davis as a director and her appointment as Company Secretary.

15. By letter dated 27 March 2013 Mr Alder sent copies of the documents requested, except for the revised cash-flow forecast. He also confirmed that Mrs Ffrench Davis was still a director of the company and had not been appointed as the Company Secretary. He enclosed the relevant documents from Companies House, which were the same as those previously supplied and to which reference has been made previously in these Reasons. The revised cash-flow forecast was sent on 9 April 2013 under cover of an email from Mr Alder, which also responded to further questions raised on behalf of the Committee.
16. One of the issues was that a revised business plan or 'budget forecast', which was produced in addition to the revised cash-flow forecast, showed a net profit of £17,624, whereas the original plan showed a net profit of just under £33,000. Mr Alder explained in correspondence that there had been a mistake made by the accounting software in adding up the administrative expenses of the company, which had remained the same. The figures showed that he was correct about this. The Committee had also received documents from Dodson & Horrell, which were included in the papers sent to Mr Ffrench Davis in advance of the reconvened hearing.
17. Mr Ffrench Davis and Mr Alder were present at the reconvened hearing on 3 May 2013, and were asked further questions by the Committee.
18. The Committee decided that it was likely that Mr and Mrs Ffrench Davis would run the new company with sufficient business competence and that there were reasonable prospects of its being financially viable. Although the company was slightly behind on its cash-flow projection, which began in April 2013, there had been some interruption to the business by the process of the licence renewal. The figures were tight, with a positive cash-flow of just over £12,000 and a projected net profit of £17,624, as indicated. However, the costs and turnover were realistic, as were the assumptions on which they were based. Mr Ffrench Davis understood that the £40,000 was only to be used if absolutely necessary, as working capital. It was a feature of FDRL that it had nothing put

away 'for a rainy day' and Mr Ffrench Davis understood that the new company required the protection of access to those funds.

19. He also well understood that he had to conduct background and credit checks on new owners and had to be more stringent in calling in debts from defaulting owners. He explained his proposed credit controls and they are satisfactory. He also agreed that personal expenditure of his and of his wife should be not be paid from the company's account and that the existing practice of deducting it from sums paid by the company as salaries, should be discontinued.
20. He acknowledged that he had to get to grips with the financial side of the business more than he had done in the past and was committed to do that by engaging Mr Alder's firm, Wellers, to provide quarterly management accounts and also by himself supervising the financial operations of the company. Mrs Ffrench Davis would keep the books and provide the records to Wellers for the quarterly VAT returns from which the management accounts (to include profit and loss account, balance sheet and cash-flow statement) would be produced.
21. The Committee was concerned about the want of care with which important documents, such as the cash-flow, had been prepared. Mr Ffrench Davis acknowledged these concerns and assured the Committee that he understood that as a director of the company he had a personal responsibility to see that its accounts were accurate. Mr Alder regretted the errors that had occurred in the preparation of the accounts and assured the Committee that these were isolated instances and were unlikely to be repeated.
22. Taking all the relevant matters into account, the Committee decided to grant to Mr Ffrench Davis a Trainer's Licence for the period to 31 January 2014 as an employee of UHRL, subject to the following conditions, -
  - 22.1 Mr Ffrench Davis to provide management accounts (to include a profit and loss account, a balance sheet, a cash-flow statement and a review of the company's actual financial performance measured against the revised business plan) approved and signed by him and by Mr Alder for the following periods and according to the following timetable, -

22.1.1 for the year ending 31 March 2013, by 15 May 2013;

22.1.2 for the quarter ending 30 June 2013, by 15 August 2013;

22.1.3 for the quarter ending 30 September 2013, by 15 November 2013;

22.1.4 for the period ending 31 December 2013, by 15 January 2014.

22.2 In the event of a breach of the condition specified in paragraph 22.1 above, Mr Ffrench Davis shall show cause why the licence should not be suspended or withdrawn.

Dated: 8 May 2013

A handwritten signature in black ink, appearing to read 'Stephen Bate', with a stylized, overlapping loop structure.

Stephen Bate

for the Licensing Committee