

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

IN THE MATTER OF MILTON FRANCIS HARRIS

APPLICATION FOR A LICENCE 1 FEBRUARY 2011 – 31 JANUARY 2012

HEARING DATE: 22 March 2011

Committee Members:

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

DECISION AND REASONS OF THE LICENSING COMMITTEE

A) Introduction

1. On 12 January 2011 this Committee decided to refuse to renew Mr Harris's trainer's licence for the period 1 February 2011 to 31 January 2012. It was decided that Mr Harris had not satisfied the condition requiring him to be a suitable Person. He appealed that decision. He did not challenge any of the findings made by this Committee. The ground of his appeal was that evidence available for the appeal would have resulted in a materially different decision had it been available at the hearing before us. His grounds of appeal accepted that the absence of such evidence was his fault and he did not contend that this Committee was at fault.
2. On 24 February 2011 the Appeal Board decided to give permission to adduce the new evidence and to remit Mr Harris's application for a licence to this Committee on the basis that he had permission to adduce the new evidence. The Appeal Board did so:-
 - 2.1. On the ground that there was new evidence concerning the ownership, business and financial position of the company that would employ Mr Harris, Equine Enterprises Limited ("EEL"), which passed any test of cogency and would have been material to deliberations of the Committee had it been available [pages 60-61 of the transcript].
 - 2.2. Making clear that they should not be taken as indicating that we should have reached a different decision and stating that the new decision would be entirely a matter for us. That nothing said during the appeal hearing "*should, in any way, inhibit*" us when reaching our decision based upon the new evidence and upon any other material provided and/or submissions made [page 65 of the transcript].

- 2.3. Confirming [page 74 of the transcript] that the findings in our original decision and the decision that Mr Harris is not a suitable Person to be granted the licence for which he applies have not been disturbed.
3. We heard the new evidence on 22 March 2011. We note for the purposes of this hearing that the Appeal Board observed that this Committee [page 65 of the transcript]:-

“still have to go on and decide whether [the new evidence] is sufficient, given the other findings that have been made and the views that they take on other failings, ... to carry the day in Mr Harris’s favour [by finding that he has satisfied the suitable Person condition]”.

B) This Further Hearing

4. Mr Harris was represented by Mr Piper, Counsel, and his solicitor, Mr Stewart-Moore, also attended. We read witness statements from Mr Harris (16 February 2011) and Mr Fox (16 February 2011) together with an undated “gist notice” of the evidence of Mr Allen all of which had been before the Appeal Board. We read the transcript of the hearing before the Appeal Board which included evidence received from each of those three gentlemen. We read the grounds of appeal and the additional documentation that had been presented to the Appeal Board. This was included within the sections of the new black bundle before us entitled “New Evidence” and “Additional Material before the Appeal Board”. We also read the “Post Appeal Documentation” contained in that bundle. Also a further, yellow bundle containing the submissions for Mr Harris and further documentation. In addition we heard oral evidence from Mr Harris and from Mr Fox.
5. The British Horseracing Authority (“the Authority”) had objected to the appeal. We read their Response to the Appeal and we heard from Counsel instructed, Ms Joliffe. She also asked questions of Mr Harris and Mr Fox.
6. In reaching our decision we have taken account of all that further information. It is information which we have considered and assessed within the context of our original decision.

C) The Original Decision

7. This decision must be read together with our “Decision and Reasons of the Licensing Committee” (“the Original Decision”) handed down following the hearing on 12 January 2011. The original findings and their reasoning remain unchallenged except to the extent that they may be affected by the new evidence.
8. At paragraph 64 of the Original Decision we provided a summary of matters to be taken into account when deciding whether Mr Harris was a suitable person to be granted a trainer’s licence. For convenience we will repeat it (subject to minor, necessary contextual changes) as follows:-

- 8.1. The training skills of Mr Harris and the other matters raised by him as summarised at paragraph 2.
 - 8.2. The history of previous decisions last year, the causes for them and the decisions made.
 - 8.3. The failure to comply with conditions of the current licence in regard to the obligations to provide accounts.
 - 8.4. The failure to keep the training business of EEL separate from Mr Harris's financial affairs which was an underlying reason for conditions of his current licence and the failure to comply with the condition not to enter into transactions on behalf of EEL which do not relate to the training of racehorses.
 - 8.5. Mr Harris's failure to provide information concerning the sums paid to EEL and subsequently used for his personal finances and the failure to be able to clearly demonstrate what happened.
 - 8.6. The failure to disclose a debt owed to Tattersalls prior to this hearing including at the hearing of 18 June 2010.
 - 8.7. The consequences of Mr Harris' bankruptcy.
 - 8.8. The financial position of EEL.
 - 8.9. The dealings of Mr Harris and/or Mr Frankland with other companies.
9. The reason for the decision that he had not satisfied the Committee that he was a suitable person can be found at paragraphs 65-83 of the Original Decision. The following is a summary for the purposes of this Decision:-
- 9.1. Mr Harris came across to us as a pleasant, indeed affable man who is committed to training and to the horses. He obviously loves his work as well as being a successful trainer.
 - 9.2. Mr Harris failed to comply with two conditions of his existing licence concerning the provision of accounts. He blames Mr Frankland, the director of EEL, but whether that is right or wrong, they were his obligations. He did not write to the Committee forewarning of, apologising for or explaining his non-compliance. He did not inform the Committee that he was unable to comply or that he was doing his best to ensure compliance. He still has not ensured compliance.
 - 9.3. Mr Harris has a history of not being candid with and of providing misleading and untrue statements to the Licensing Committee. The decision notified by letter dated 1 February 2010 "*emphasised that in*

his future dealings with the Authority Mr Harris must be open and transparent and not deal in untruths or half truths”.

- 9.4. Despite this there was a serious absence of openness and transparency when it came to explaining the transactions which involved monies provided by Mr Allen being transferred to EEL by Cotswold Racing Enterprise Limited in order that those monies could be paid by EEL for the benefit of the personal affairs of Mr Harris. There were untruths and half truths. The information provided to the Committee was contradictory and the answers remained opaque. Mr Harris did not provide the information required of him and should have done so. Furthermore having now asserted that the transfer of monies to EEL was not a loan, his attempt to explain a previous written answer to the Authority's enquiries in which it was described as a loan as “bad grammar” was very disappointing.
- 9.5. We would have expected an apology combined with a written statement from Mr Allen identifying the agreement. That would have enabled not just the Committee but also EEL to identify what liabilities, if any, EEL might have to Mr Allen and whether it should and could recover monies from Varringtons. It would have made the financial position of EEL in respect of this transaction transparent not opaque. That did not happen.
- 9.6. The involvement of EEL in the personal financial affairs of Mr Harris through those financial transactions also gave rise to a breach of the existing licence conditions. If condition 2 of the current licence had been complied with, EEL would only have been involved in transactions that related directly to the training of racehorses. It would not have been involved in receiving, holding and paying monies to be used for the purposes of Mr Harris' IVA.
- 9.7. Even when dealing with that issue a further non disclosure was identified. The debt of Tattersalls and the use of part of £50,000 to pay it had not been previously disclosed. Mr Harris did not refer to this debt to that Committee determining his application on 18 June 2010 and only identified it at this hearing for the first time (see paragraph 37 above).
- 9.8. Mr Harris' bankruptcy evidences a history of not paying business debts concerning and arising from racehorse training, although in this instance we do not give great weight to it and treated it as a background feature. The bankruptcy means that he can not be a director or take part in the management of a company whilst undischarged.
- 9.9. The financial information provided concerning EEL did not establish that the business is financially sound for the year 2011. There appear to be good prospects of a capital injection amounting to a further

£40,000 but no evidence has been provided from Mr Fox and there are no details presented to show that the business will be placed on a sound financial footing. Mr Harris suggested there is likely to be further investment, further income from additional horses being trained and a further significant involvement by Mr Fox. There may be new management and Mr Fox may become the sole owner. However all this is currently speculative. We would have expected at least a written statement of support from Mr Fox detailing his intentions. We do not have this.

10. Those matters resulted in the following conclusions at paragraphs 80-82:-

Mr Harris is a good trainer and he puts forward a case of a business which after one year is successful with its racing and has prospects of receiving further investment. Whilst we believe that he probably has the best of intentions in that he wants the training business of EEL to succeed and he really wants to train horses, nevertheless he breaches conditions of his current licence. Furthermore he is not open and honest in his dealings with the Authority. In addition he does not provide factual information to enable us to be satisfied that the business has a secure future.

We would have expected him to have approached this hearing on the basis of ensuring that he provided full and proper explanations for the matters raised in the Reasons and suitable apologies for his failings. We would have expected him to make proposals to reassure the Committee that he was a suitable person who could be granted a licence notwithstanding his failings and breaches of conditions described above. We would have expected a detailed statement from Mr Allen to establish the true position with regard to the monies received by EEL from Cotswold Racing Enterprise Limited. We would have expected a clear financial plan from or based upon the proposed commitment of Mr Fox. We would have expected to have heard from Mr Frankland.

Mr Harris provided none of that. Our underlying assessment is that this is attributable to a failure to appreciate the seriousness of the matters raised by the Authority throughout 2010 and for the purposes of this application. That failure is in itself troubling. He should have appreciated the need to comply with the conditions of his existing licence. As a result of the previous hearings and the Guidelines he should have appreciated the need to be open and honest and the fact that an applicant's fitness includes an assessment of personal and business dealings including financial soundness of the business for which he will provide his services as a trainer.

D) The New Evidence

11. We will identify the most salient features of the new evidence relied upon in submissions to us before considering its effect on our findings in the Original Decision.

D1) Mr Fox

12. The position with regard to Mr Fox is that he has become a shareholder of EEL and is to become its effective owner as a result, apparently, of having an agreement to purchase the remaining shares from Mr Harris's trustee in bankruptcy for £2,500. He was portrayed as a "Dragons Den" type investor, although in this case he is purchasing the company rather than investing with existing shareholders. We accept from the evidence that he is a successful businessman and that his "take over" of EEL will be significant for its financial position and relevant to its management operation.
13. The background to Mr Fox's involvement starts with the fact that Mr Harris became bankrupt on 28 July 2010. During that month he had tried to avoid bankruptcy through an IVA and it was this that led to the issues involving the receipt of monies by EEL that originated from Mr Allen considered further below. The result of the bankruptcy was that a trustee was appointed and as a matter of law the beneficial interest in the shares held by Mr Harris in EEL vested in the trustee.
14. As set out at paragraph 45 of the Original Decision, a letter to the Authority from EEL's director, Mr Frankland, dated 6 January 2011 described "*Good news on the Milton Harris front*". That news referred to a capital injection of £50,000 at the end of December 2010 from an "*existing patron Mr David Fox*". It explained that £18,000 was to pay for shares that had been issued and £32,000 was a long term loan repayable not before January 2013. Mr Harris informed us at the last hearing that Mr Fox was a 50% shareholder of EEL.
15. It was explained to us by Mr Fox that the shares he received were newly issued. He told us that the trustee in bankruptcy had agreed to this (as presumably he must have) and that Mr Harris's shares will be sold to him for £2,500. Although we have not seen documentation supporting those facts, we have no reason not to accept this information. We also note that the trustee supported the application at the last hearing for the reasons set out in his letter dated 4 January 2011 without raising any issues concerning the issuing of the shares [page 362 at 365 of the bundle before us at the last hearing]. That stance and absence of issue is repeated in a letter dated 4 April 2011 received after the recent hearing. The result is that for a sum of £20,500 Mr Fox will become the owner of EEL, although we understand that some shares are held by his partner, Ms Adams.
16. The new evidence of Mr Fox includes cash flow projections for EEL based first upon a proposed move of stables to "High View Stables" in Lambourn

- and second upon EEL remaining at Collingbourne Ducis, Wiltshire. The licence, if granted, will relate to the business at the current stables but we accept that there is a likely to be a move and that the Lambourn cash flow projections are relevant. In both projections Mr Fox will receive fees as a director of £2,000 per month from July 2011, although these may be shared with Ms Adams. The first proposal (based upon a move) anticipates a profit of £127,876 for the year to 31 December 2011 and £77,476 if the business stays at Collingbourne Ducis.
17. We note that those figures do not appear to be entirely consistent with a share purchase for only £32,000 nor with previous accounts. They suffer from being only projections and we asked questions about them. We were concerned that Mr Fox had not provided us with up to date management accounts whether in the form of a balance sheet or a profit and loss account. The latest unsigned accounts provided in the new evidence are dated 17 February 2011 and were for a 15 month period to 31 December 2010 revealing an operating loss of £12,764 and net liabilities of £12,764 but without the balance sheet recording Mr Fox's loan. Previous unsigned accounts (seen at the last hearing) for the 12 months to 31 December 2010 showed a profit of £4,444 and net assets of £43,286. They treated Mr Fox's loan of £32,000 and a loan from Mr Harris of £6,842 (which is now an asset of the bankruptcy) as shareholders' funds and therefore as deferred loans.
 18. Mr Fox agreed that we were right to be concerned and explained that Baker Tilly, whom EEL will now retain, were unable to provide those accounts at this stage. Nevertheless he relied upon the fact that his cash flow projections were based upon actual trading figures and that those figures identified not only an ability to trade whilst paying debts as they fell due but also a healthy profit. Furthermore Mr Fox decided and informed us at the hearing that he will secure a £100,000 overdraft facility for EEL which will be personally guaranteed by himself. This commitment depended upon Mr Harris receiving his licence and upon that licence being for the full period applied for.
 19. Mr Fox has therefore superseded Mr Harris as owner of EEL. He is the paid director and Mr Harris is and will remain purely an employee. Mr Harris currently receives a basic salary of £24,000 per annum, 50% of the percentage of prize money payable to the trainer under the Rules of Racing and lodgings at the stables. We referred in the Original Decision to the fact that Mr Harris has entered into an income payments agreement with his trustee whereby he will pay £2,000 per month for 3 years to the bankruptcy estate. We still do not understand how he will comply with that agreement but Mr Fox has stated that there will be an increase in salary. For our purposes, however, the position is that Mr Fox has taken over, he will have overall control and Mr Harris will act as an employee training the racehorses in return for a salary with no investment or interest in EEL.
 20. We have raised concerns in the past and in this hearing as to whether in practice Mr Harris will be involved in the management of EEL. It was explained that his role will be limited to training. Management decisions will

be taken by the directors. Whilst Mr Fox does not live near to either training yard and may only spend a day a week at most there, he will be available on the telephone and take an active management involvement. It was stressed in that context that he had cause to do so as the owner and guarantor to be. In addition another company of his is now sponsoring the business. The day to day control and management at the training yard will continue to be handled by Denise Hopkins, who was first engaged as a book keeper by Mr Harris in January 2006. She spends and will continue to spend one/two days a week in the office at the stables (including if there is a move) and also is able to and does work at home. She is responsible for the book keeping, for ordering goods and equipment and for administration. She has recently had training provided through Mr Fox's existing company.

D2) Mr Allen

21. Mr Allen gave evidence before the Appeal Board and we have read the transcript. His evidence is concerned with the transaction which resulted in £40,000 being received by EEL and then paid to Mr Harris's proposed IVA supervisors, the Insolvency Practitioners, Varringtons. He has now stated that he has no claim against EEL for the money transferred to it and then transferred to them. He is claiming repayment, however, from Varringtons.
22. We refer to paragraphs 17-36 of the Original Decision concerning the facts of this transaction as disclosed to the Authority and ourselves. It is apparent that the underlying problem is that £40,000 provided by Mr Allen was paid to Cotswold Racing Enterprise Limited, a company then owned by Mr Harris, and then to EEL before being paid to the Insolvency Practitioners, Varringtons. The monies were provided specifically and only to pay creditors of Mr Harris under the terms of his proposed IVA should that IVA be accepted. There has been no IVA yet Mr Harris through Mr Frankland procured a transfer of the monies and they have in fact been used partly for the payment of Varringtons fees. The balance is claimed by the trustee. The Original Decision identified the potential problems which this scenario gives rise to. It also identified in detail (see paragraphs 17-36) the facts and matters which led the Committee to findings of a serious absence of openness and transparency by Mr Harris when it came to explaining the transaction and that there were untruths and half truths (see paragraph 9.4 above).
23. Mr Allen's new evidence led to the submission on behalf of Mr Harris that such findings can not stand in the light of this evidence. We were surprised at and concerned by such a submission and sought assurance that this was indeed Mr Harris's instructions rather than Counsel's analysis during submissions. The opportunity to adjourn to take instructions was offered but declined. It was confirmed that this was Mr Harris's primary position and Mr Harris confirmed in answer to Mr Piper's questions that he accepted the submissions made.
24. We have also considered and refer to the relevant paragraphs of the witness statement of Mr Harris at pages 99-100 of divider 4 of the black bundle. Mr

Harris in his further evidence to us stated that he had not intended to mislead and that such an incident could not happen again with Mr Fox now in charge of the cheque book.

D3) Mr Frankland

25. Mr Frankland did not provide oral evidence and it is clear that Mr Harris attributes some of his problems to Mr Frankland's actions or omissions as a director of EEL. Mr Fox endorses that approach and as from 21 February 2011 Mr Frankland has had nothing more to do with and no position in EEL.
26. Certain documents produced as new evidence were relied upon to support that attribution including a letter from the Chartered Accountants Gerald Edelman which states that Mr Frankland first instructed them to carry out an audit of EEL's accounts on 16 February 2011. This is relevant to Mr Harris's position concerning breaches of the condition to provide management accounts and audited accounts. In that context Mr Harris also relied upon a letter from Mr Frankland to the Authority dated 17 February 2011 in which he states that EEL's year end was extended to 31 December 2010.
27. Another document relied upon was an email dated 23 February 2011 in which Mr Frankland informs Mr Harris that there has been no breach of the condition that EEL should not acquire racehorses because the transactions concerned involved *"the purchase of stock which had been 'pre-sold' to new/existing patrons"* and therefore *"we never took ownership of those horses"*.
28. That e-mail concerns 3 transactions identified before the Appeal Board as transactions which took place in November 2010 involving the individual sales of 3 horses. Of those transactions we need only consider 2, the 2 which have been admitted by Mr Harris to be in breach of the following condition of his licence:-

"Save as set out below [it is accepted that those exceptions do not apply], 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; nor shall you procure or authorise any other person to do so on your behalf or on behalf of any other person or business ..."
29. The first transaction recorded in EEL's accounting records as *"Tom Malone Bloodstocks, Spirit is Needed"* was explained as a commission arrangement of "the normal 5%" for the supply of a horse via the yard. The second recorded as *"Paul Nicholls Racing, Marc Aurelle (Ire)"* concerned the purchase of a horse by owners known to Mr Harris who paid the purchase money to EEL for payment to the vendor. We will refer further to these transactions below.

30. There was also new documentation concerning issues over the use of Cotswold Racing Enterprise Limited for training. We accept that this issue has been dealt with and need not be considered further.

D4) Mr Harris

31. There is a considerable amount of further evidence from Mr Harris: his witness statement; his evidence before the Appeal Committee; and his additional evidence before us. We will refer to the parts we consider of particular relevance within the context of considering the new evidence and of reaching our decision below.

E) Tests

32. We set out the tests to be applied when considering the application for a licence within paragraphs 58-63 of the Original Decision. They are to be treated as incorporated within and were applied to this decision.
33. We also note that we made the following observations within the Original Decision which remain pertinent for the purposes of our current decision.
- 33.1. The test of “*suitable Person*” and the Guidelines (which we read as guidance) require other matters to be taken into account when deciding whether to grant an application for a trainer’s licence in addition to whether a person is a good trainer.
- 33.2. There are wider interests at stake, including that of maintaining the reputation of the field of activity in question and sustaining public confidence in its integrity.
- 33.3. A suitable person will be one who deals openly with the Authority 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*”.
- 33.4. The Rules make clear that the applicant must satisfy us that he meets all the criteria contained within the Guidance Notes which accompany each application form. Where there have been failings, it is reasonable to expect a satisfactory explanation and/or a reliable apology combined with evidence of a sufficient commitment that this will not happen again.
- 33.5. A suitable person should comply with the conditions of an existing licence. Furthermore the Guidelines at paragraph 25 expressly provide that the Committee when assessing honesty and integrity should consider an applicant’s record of compliance with regulatory requirements which will include compliance with the conditions of an existing licence. The Guidelines at paragraph 25 also draw attention to

the criteria of an applicant being candid, open and truthful when dealing with the Authority in respect of past and present licences.

F) Effect of the New Evidence

F1) Training Skills

34. The new evidence does not affect the training skills of Mr Harris and the other matters raised by him as summarised at paragraph 2 of the Original Decision.

F2) Previous History

35. There has been a history of previous decisions during 2010 that raised serious issues and concerns in particular with regard to business competence and capability, honesty and integrity and the financial soundness of the company for whom he would train. We refer in particular to paragraphs 8-9 of the Original Decision.
36. The previous decisions included findings that Mr Harris provided misleading statements to the Authority concerning his financial position, misleading information concerning specific liabilities and numerous instances of Mr Harris having stated matters relevant to his financial position that were untrue. It was made clear to Mr Harris that he must be open and transparent in his future dealings with the Licencing Committee *“and not deal in untruths or half truths”*.
37. As a result of the findings made in those decisions, although Mr Harris was granted licences for periods running throughout the 2010/11 period, they were subject to conditions on each occasion. One underlying condition was that Mr Harris should not be involved with the buying or selling of racehorses and that EEL should limit its business to transactions concerning training. Another was the requirement for accounts to be provided. Another was that Mr Harris should not act as a director of EEL. It is clear that the licences would not have been granted without such conditions and that they were necessary to address the adverse findings made. This emphasises the importance of compliance and the fact that Mr Harris was aware of this, although compliance ought to occur in any event.
38. Understandably those previous decisions and their relevance are neither challenged nor in any sense attacked for the purposes of this further hearing. They stand as a background of concern when considering suitability. On their own they do not prevent the grant of a licence but any further breach of the conditions laid down or other cases of want of openness and truthfulness etc must be considered very seriously when deciding whether to grant the licence for 2011/12.

F3) Breach of Conditions - Accounts

39. It remains the case that Mr Harris failed to comply with conditions of the current licence in regard to the obligations to provide accounts. It remains the case and is still admitted by Mr Harris that he did not and has not provided:
- 39.1. Management accounts, including a balance sheet, for EEL for 1 July to 30 September 2010 by 24 October 2010 as required by condition 6.1. of his previous licence or at all.
- 39.2. Audited accounts for EEL for the period 1 January 2010 to 30 September 2010, such accounts to have been prepared by an independent Chartered or Certified accountant, by 10 December 2010 as required by condition 7 or at all.
40. Mr Piper submitted to us on behalf of Mr Harris that the failures to provide those accounts and the breach of the conditions “*lies at Mr Frankland’s hands*”. He emphasised that Mr Harris as a bankrupt could not be involved in management, that Mr Frankland as the director was responsible for obtaining them and that he did not instruct Gerald Edelman to carry out an audit until 16 February 2011 (see paragraph 26 above). Mr Piper’s submission was that “*the problem was that Mr Frankland just did not [obtain audited accounts]*”.
41. Mr Piper also relied upon the fact that Mr Frankland extended the year end (see paragraph 26 above). In addition it was said, as it was at the previous hearing, that Mr Harris had asked Mr Frankland to comply with the condition on a number of occasions and had not realised that he had not done so.
42. We do not accept the submission that no blame can be cast upon Mr Harris because Mr Frankland was at fault. At paragraph 69 of the Original Decision we said this:-
- We have found that Mr Harris failed to comply with two conditions of his existing licence concerning the provision of accounts (see paragraphs 11-15 above). He blames Mr Frankland (see paragraphs 13-14 above) but whether that is right or wrong, they were his obligations. He did not write to the Committee forewarning of, apologising for or explaining his non-compliance. He did not inform the Committee that he was unable to comply or that he was doing his best to ensure compliance. He still has not ensured compliance. These and the other matters set out at paragraph 15 above are serious issues to take into account when applying the suitability test and reaching our decision.*
43. In the light of those findings, which were not challenged on appeal, we find the above-mentioned submission and the approach of Mr Harris in this further hearing unsatisfactory. He has not acknowledged his failings but instead takes the view that it was Mr Frankland who is at fault not himself. We do not consider that any of the new evidence alters those findings and conclusion

drawn from them. They remain in place and indeed we consider the submission, which was made on instructions, to be a further indication of unsuitability. The conditions were prescribed to enable a licence to be granted and it was incumbent upon Mr Harris to ensure they were complied with. Of course there may be circumstances in which he could not ensure this was done but he could and should have informed the Authority and explained the position as a matter of urgency. We do not accept the submission from Mr Piper that the failure to do so is “a small thing”. That submission does not reflect the importance of the conditions, the reasons for them or the basic premise that a suitable person would be expected to comply with licence conditions.

44. The Original Decision considered the claim of Mr Harris that he did not know of the breaches in. We said this at paragraphs 13-15.

13. *When Mr Harris was asked to explain the 2 breaches identified in paragraph 11, he stated that this was the first day he was aware of non-compliance. He explained that he had made clear to Mr Frankland in numerous conversations that accounts should be sent in accordance with the conditions and observed that following his bankruptcy he could not be involved in the management of the company and therefore was not involved in the process of preparing accounts. He observed that he had a very difficult time between July and October due to his personal financial position and bankruptcy but remembered reminding Mr Frankland on more than one occasion to send the accounts.*

14. *It is to be noted that Mr Harris' claim that the first time he knew of the breaches was when they were raised at the hearing on 12 January 2011 is difficult to understand. First because the breaches are clearly identified in the Reasons provided by the Authority. Second because letters to him from the Authority dated 3 and 31 December [pages 355/357 and 361 of the bundle] both expressly required his application for a new licence to include the management accounts and audited accounts referred to in the letter from Mr Smith (of the Authority) dated 7 July 2010 [page 275 of the bundle]. The letter of Mr Smith set out the conditions and it is clear that these accounts were required [p.278]. If Mr Smith had thought this unnecessary because they had already been supplied, he could have said so. He did not.*

15. *In any event Mr Frankland did not attend the hearing and we have not heard from him with regard to the assertions made against him by Mr Harris. As a result and notwithstanding the points noted at paragraph 14 above, we do not reach any conclusion as to whether Mr Harris is telling the truth by blaming Mr Frankland. However, we do conclude that:-*

- 15.1. *The breaches are indicative of Mr Harris' approach identified in paragraph 7 above.*
 - 15.2. *There has been no previous communication from him referring to the breach or seeking to explain it and there should have been. These are conditions of his licence.*
 - 15.3. *It was Mr Harris' obligation to ensure that the conditions were complied with. He is responsible for the breaches whether he can blame Mr Frankland or not.*
 - 15.4. *Non-compliance with conditions is clearly a serious matter. The conditions are directly relevant to the concerns the Licensing Committee had when granting the licence.*
 - 15.5. *His blaming of Mr Frankland, if correct, strongly suggests that Mr Frankland is of unreliable character because he not only failed to comply but also failed to inform Mr Harris that he had not complied.*
 - 15.6. *Although the provision of the year end accounts (albeit at the last moment) is to be taken into account, it does not cure the breach. The time limits under the conditions have expired, the accounts required for the specific periods specified by the conditions have still not been provided and there are no audited accounts.*
45. None of those findings or conclusions were appealed to the Appeal Board and again we do not find that the new evidence changes them except for the fact that we will take no note of sub-paragraph 15.5 following Mr Frankland's departure from EEL. We proceed with our decision accordingly also taking into account our decisions upon the submissions set out above.

F4) Breach of Condition - Horse Sales

46. Continuing with breaches of licence conditions, it is convenient to consider the two breaches identified and admitted after the Original Decision (see paragraphs 27-29 above). These too are matters which Mr Harris seeks to deflect by blaming Mr Frankland. Mr Harris has attempted to excuse himself on the ground that he explained all three transactions to Mr Frankland who said that all 3, including the 2 with which we are concerned as admitted breaches, could be carried out provided the horses were paid for and sold and EEL was not at risk.
47. We have of course considered that together with Mr Frankland's email dated 23 February 2011 (see paragraph 27 above). However, we are here to consider Mr Harris and we are very concerned to find him directly involved in

decisions concerning such transactions by EEL. In particular it is clear from the information he gave the Committee in respect of the "*Paul Nicholls Racing, Marc Aurelle (Ire)*" transaction (page 46 of the transcript), that he was the person asked by Paul Nicholls to find a purchaser, he asked owners to buy the horse and he must have been the person who informed Mr Frankland that this is what would happen. (For the avoidance of doubt we should state that we are not in any way criticising Mr Nicholls, this being an issue concerning the conditions of Mr Harris's licence.)

48. The terms of the condition (see paragraph 28 above) are absolutely clear and we find that there could have been no doubt in Mr Harris's mind that the transaction was an "*activity relating to the buying or selling of racehorses ... on behalf of any other person or business, including but not limited to EEL*".
49. In those circumstances we do not consider that Mr Harris can attribute the blame to Mr Frankland and rely upon what he says Mr Frankland told him. We reach that conclusion in the circumstances of Mr Harris initiating and carrying through at least 1 transaction as described above. Mr Harris knew the terms of his licence and must or at the very least should have realised there was a breach. The condition does not say "*unless EEL does not suffer harm*" and we do not accept, indeed we do not understand it to be suggested, that Mr Harris did not understand the extent of the prohibition within that condition.
50. Mr Harris has said that he apologises and we will take account of that but he does so in circumstances of believing that he can deflect the blame onto Mr Frankland rather than in circumstances of acknowledging the extent of his own fault. We must also take note of the fact that the breaches were not disclosed to or even raised with this Committee at the last hearing.

F5) Breach of Condition - Transactions Not Relating To Training

51. The failure to keep the training business of EEL separate from Mr Harris's financial affairs was an underlying reason for the conditions of his previous licence. In the Original Decision we found that the receipt of £40,000 provided by Mr Allen via Cotswold Racing Enterprise Limited and its payment by EEL to Varringtons was a breach of a further condition of that licence. Namely the condition not to:-

"... enter into any transaction on behalf of EEL that does not directly relate to the training of racehorses".

52. This breach is admitted and it occurred notwithstanding that the Committee Decision of 18 June 2010 expressly stated at paragraph 18, as Mr Harris therefore was aware, that the condition was:-

" ... designed to continue to keep the training business separate from Mr Harris's financial affairs ...".

53. This is not altered by the new evidence. What is said instead is that the breach was not serious because EEL was merely used as a channel without resulting liability. We will consider that within the context of the next, inter-related issue.

F6) Failure to Provide Information

54. It is submitted on behalf of Mr Harris that we need no longer be troubled by the £40,000 transfer because Mr Allen has now stated that he has no claim against EEL and therefore Mr Harris's evidence was effectively correct.
55. We have already touched upon our surprise and concern at the submission that our findings of a serious absence of openness and transparency when it came to explaining the transaction and that there were untruths and half truths can not stand in the light of this evidence (see paragraph 23 above). The submission was nevertheless persisted in.
56. The reason for our surprise and concern is that the submission appears to gloss over and indeed ignore the fact that the Authority was from the beginning informed that the £40,000 was provided as a loan and our findings in the Original Decision that proper and adequate information was not provided by Mr Harris (see paragraphs 23-25 of the Original Decision). It does not deal with the fact that when Mr Harris changed his version of events and stated the money was a gift, he tried to excuse the previous incorrect references to a "loan" as "bad grammar". We accept that it may be difficult to analyse the transaction in legal terms but we do not accept that Mr Harris does not understand the difference between a loan and a gift. Whether he is wrong as a matter of law to call the transaction a loan is not what matters. What matters is the fact that he told the Authority it was a loan, which he will have understood involves an obligation to repay. He will have understood when he changed the description of the transaction to a gift that this was not just "bad grammar". This was an explanation which simply did not address the truth for the change of description.
57. The current evidence that Mr Allen accepts he has no claim against EEL will no doubt please Mr Fox and EEL. However, the point made at paragraph 23 of the Original Decision remains. We set out at paragraphs 23-29 of the Original Decision the many problems and deficiencies we found in respect of the information provided. Whereas all that was needed of Mr Harris was a proper explanation to the Authority from the beginning and then the Committee. The conclusion at paragraph 30 of the Original Decision that his approach was "wholly unsatisfactory" remains. Despite that, Counsel was instructed to submit (and we repeat that Mr Harris in evidence confirmed the submissions of Counsel as his instructions) that we should not be troubled by this issue anymore. We have reached the opposite decision. Mr Harris should have remained concerned by his conduct and our unchallenged findings in respect of it. He should have acknowledged his failings and provided the Committee with an apology that persuaded us that he understood where he

had gone wrong, that he appreciated his failings and that he would not conduct himself in such a manner again. He did not do so.

58. The findings at paragraphs 32-33 of the Original Decision are also extant. Notwithstanding Mr Allen's evidence, difficulties remain. Mr Harris has not explained why the money was transferred notwithstanding that there was no IVA and, as has occurred, in circumstances whereby Varringtons can use a substantial part of it for their fees, the trustee can claim the balance and Mr Allen can still claim repayment from Varringtons. It is true that Mr Frankland was responsible for signing the cheque but we find that this was a transaction concerning and emanating from Mr Harris and that he can not blame or hide behind Mr Frankland in respect of the matters raised and found against him. This may not matter in practice to EEL in the circumstances of Mr Allen's new evidence but it does matter that Mr Harris is still not providing a full and open account of the transaction to the Authority and Committee.
59. Most importantly and in any event, however, the breaches of the conditions of the licence identified at paragraph 34 of the Original Decision as dealt with in paragraphs 51-53 above remain. The new evidence does not alter that.

F7) Debt Owed to Tattersalls

60. There are a number of matters raised in the "BHA Reply to Notice of Appeal" before the Appeal Board in respect of the failure to disclose the debt owed to Tattersalls prior to the last hearing including at the hearing of 18 June 2010 which are troublesome. However, overall we have decided that this issue should not affect our decision in the light of the new evidence provided concerning it. We will not consider this further.

F8) The consequences of Mr Harris' bankruptcy

61. We maintain the position taken at paragraph 76 of the Original Decision with regard to the relevance of the bankruptcy.

F9) The financial position of EEL

62. We can deal with this shortly, although it is of considerable importance. The new evidence identifies a new owner of EEL, Mr Fox. We understand from Mr Fox that his partner, Ms Adams, is a shareholder but that effectively it is Mr Fox's company (or will be once he has purchased the shares still registered in Mr Harris's name but held on trust for the trustee in bankruptcy). Mr Harris no longer has any and will have no interest in EEL, no directorship and no involvement in its management. He will be solely an employed trainer of race horses.
63. We emphasise that the Authority does not and is not required to warrant the future solvency of a business and that creditors or future creditors and/or investors are not to rely upon its decision to grant a licence as a mark of solvency. The Authority is concerned with suitability for a licence. However,

financial soundness including the financial track record of the applicant or the proposed training business is clearly important in assessing whether the applicant is a fit and proper person to hold the licence to train for his or that business. It is also important when assessing whether the grant of a licence to the applicant concerned will be prejudicial to the reputation of, and public confidence in, horseracing in this country. An applicant may be a good trainer but that is not sufficient if the business concerned can not be run as a solvent business or otherwise in accordance with good business practice. The Authority has particular concerns when there are unpaid creditors or the risk of that situation arising.

64. We wish also to emphasise that where concerns arise concerning financial soundness, the applicant in accordance with the need to satisfy the Authority that he is a suitable person should provide detailed and satisfactory information and be prepared to explain, expand upon and substantiate that information.
65. Mr Fox has already invested money in EEL and made loans to it. We understand from Mr Fox that he will stand behind EEL financially. We did note a marked initial reluctance from Mr Fox to commit himself in practice to any further financial obligations. This would have caused a considerable problem for the purpose of Mr Harris's application in the context of an absence of up to date management accounts within the context of the Guidelines upon financial soundness when addressing suitability.
66. However, the potential problem and concerns that can be seen within paragraph 65 above were alleviated. The combination of the cash flow forecasts based on actual figures and the proposed £100,000 guaranteed overdraft facility overcomes them. As a result and provided that the guaranteed overdraft is put in place, we consider the Guidelines concerning the financial soundness of EEL as a company employer of a trainer to be satisfied provided those forecasts remain reliable, the overdraft facility is established and the guarantee put in place. This is subject, however, to our having to consider recent further evidence received following the hearing set out below.

F10) The dealings of Mr Harris and/or Mr Frankland with other companies

67. The evidence of new ownership and financial independence also leads us to conclude that we need not be concerned with the dealings of Mr Harris and/or Mr Frankland with other companies.

G) Additional Matters

68. Following the hearing we received further documentation from which we will identify the matters we consider potentially relevant as follows:-

- 68.1. On 28 March 2011 the Authority received an email from Trailer Resources Limited identifying EEL's non-payment of trailer rental since November 2010 saying this in respect of Mr Harris:-

We have attempted to recover the outstanding rentals through a series of e-mail exchanges with Mr.Harris, who claims that he is merely an employee of the company and has no other connection, despite Companies House showing him to be the 100% shareholder in this company. He has failed to honour promises and deadlines in connection with these payments and as a result we have advised Mr Harris that we will be looking to recover the horsebox, which he has promised but failed to return, and we intend to issue a winding up order on Equine Enterprises Ltd as a result of their failure to pay. It would now appear that Mr Harris has been employing delaying tactics with us over recent weeks, presumably in an attempt to get his temporary license extended or a new license issued before the consequences of his financial dealings with ourselves become known.

- 68.2. Also provided was a copy of an email dated 25 March which appears to be from Mr Harris in response to a request for payment which states (as typed):-

dear sirs, i repeat squine enterprises will pay you as a gesture of goodwill as clearly they have no contractable obligation with you. the horsebox is being valeted this weekend and we can deliver it to your premises on monday. please confirm this is acceptable.there is an interested third party willing to buy the box please supply a figure for the box without any reference to any alledged rentals.

- 68.3. The Authority was understandably concerned about Mr Harris's apparent involvement in the management of EEL concerning the hire of the trailer, albeit stating that he was only an employee.
- 68.4. Mr Harris's solicitor responded that there was only an agreement between Trailer Resources Limited and Mr Harris. A copy of such an agreement was produced dated 23 September 2009. He also stated that Trailer Resources Limited owed Mr Harris (although now the trustee) £23,000 in respect of an unpaid sponsorship agreement. Although Mr Harris passed on demands for payment to EEL, he was only passing them on as they were directed at EEL and the contractual relationship between EEL and Trailer Resources Limited was unclear.
- 68.5. The Authority raised the issue that this dispute should have been mentioned to the Committee and that it is symptomatic of Mr Harris's selective approach to disclosure of information and of his attitude to the licensing process.
- 68.6. An email from Prevention & Detection (Holdings) Limited dated 29 March 2011 addressed to the Licensing Committee records that EEL is listed by credit rating agencies as being up to 60 days late in

settlement of current trading liabilities and that the position is deteriorating. It describes EEL as Mr Harris's current trading vehicle.

- 68.7. The same email alleges that Mr Harris is continuing to buy and race horses under the names of nominees. Reference is made to the purchase of "Emerald Glade" in December 2010 at Doncaster Bloodstock Sales for £5,000 by Tom Malone as agent and registered in the name of Mrs Denise Hopkins.
- 68.8. Mr Harris's solicitor has responded to that e-mail by an e-mail to the Authority sent as follows:-

As to Mr Hill's comments I would say that as far as Mr Harris is concerned he personally has no indebtedness to Trailer Resources. That company is indebted to him. That would have been a positive point for him to have raised and one in Mr Harris's favour. As far as EEL's contractual position with Trailer Resources goes that is a matter for the directors of EEL to make decisions about and not Mr Harris. Whether or not EEL has actually assumed a contractual liability to Trailer Resources is an issue for Mr Frankland and more recently Mr Fox and Ms Adams and their lawyers.

As to the communication from Mr Brown this is clearly part of a concerted attempt to cause trouble for my client in his current licence application. It is clear that he is aware of the communication from Trailer Resources to the BHA. Mr Brown suggests that my client is acting in the management of the company in his communications with Trailer Resources. I can assure you that this is not the case. Indeed in an email dated 9th March 2011 which the BHA forwarded to me earlier today from Mr Harris to Trailer Resources he states in terms:

"I will put this (proposal) to the directors tomorrow for the avoidance of any doubt I am neither a director or shareholder of EEL.."

And in an email of 24th March 2011 to them he says: "As an employee of EEL.....I am unable to make any decisions of this kind." Clearly Mr Brown is either being misled by Trailer Resources as to the content of this correspondence or he is deliberately misleading the committee about the content of this correspondence. I would suggest that these quotes should give the committee some comfort on this particular issue.

As to the comments concerning Emerald Glade my client has no interest in this horse. This is a horse which was purchased in the [sic] by Tom Malone who owned the horse until he recently sold it to one of my client's owners Mr Gary Dole. The horse was registered in the name of Denise Hopkins because Tom Malone is not registered as an owner. The horse has not run whilst with EEL. When it does it will run in the name of Gary Dole.

- 68.9. The Authority has informed us that Weatherbys records now show that Emerald Glade is owned outright by Mr Doel as of 29 March 2011. These details were amended on 29th March 2011 by Mr Harris (or his appointed Agent) on-line at 7.20pm via Weatherbys Racing Administration site.

- 68.10. Mrs Hopkins has been registered as an owner under the Rules of Racing since 27 October 2010. She currently has 7 horses listed as owned by her (either in part or full ownership), all of which are in training with Mr Harris.
- 68.11. The approach of Mr Fox to the issues raised by Trailer Resources was to instruct Mr Harris to return the horse box (subject to any instruction from the trustee) and to put a further £25,000 into the EEL bank account presumably as a loan. We have seen an email to that effect sent on 31 March 2011 from him to Mr Harris and should add that the email makes clear that this was not an admission of liability for EEL does not accept that it has a liability.
- 68.12. The horsebox was returned and in an email sent to the Authority on 4 April Trailer Resources Limited alleges there was significant damage and that it would be seeking compensation from EEL.
- 68.13. By letter dated 16 April 2011 EEL has agreed to pay all outstanding rental and to cover the cost of the damage. EEL also expressed its wish to continue the rental contract until its termination date in October 2011.
69. Our view in respect of the trailer is that the contract in respect of which the rental is claimed appears to be the one entered into between Mr Harris and Trailer Resources Limited. What the contractual relationship is between EEL and Mr Harris and/or Trailer Resources Limited for the use of that trailer we do not know. It is not surprising that Mr Harris has been unable to pay the rental but we do not understand why he retained the trailer. That said, the complication of monies due under the sponsorship agreement leads us to the decision that as a matter of proportionality we should not investigate this contractual relationship further. We do note, however, that Mr Harris's position appears at best chaotic. On a positive note, however, Mr Fox's reaction was decisive (see paragraphs 68.11 and 68.13 above).
70. We are concerned at the reference to EEL being up to 60 days late in settlement of current trading liabilities (see paragraph 68.6 above). This was not disclosed to us, if it is true. However, taking a broad brush approach, this should be resolved by the £100,000 overdraft and a licence can be made subject to a condition of payment of debts as they fall due with an obligation upon Mr Fox to notify us of any non-payment and claims issued. The email sent 31 March 2011 is clearly of comfort in this regard indicating the approach Mr Fox takes towards the operation of EEL.
71. There is a further concern over Mr Harris continuing to buy and sell horses in breach of the condition of his existing licence. However, the information concerning Emerald Glade is vague and the fact of Mr Harris buying and selling as opposed to Denise Hopkins herself is not established. Certainly this is a matter which might be relevant and therefore worth investigating but even if established, in round terms it would only increase the number of breaches

admitted from 2-3 and that fact is unlikely to change the decision. If the 2 breaches in November 2010 lead to a refusal to grant the application, a third is not required. If they do not, it is unlikely that the addition of a third would change that result.

72. There is also a question as to why Emerald Glade was registered in the name of Denise Hopkins because Tom Malone is not registered as an owner. We are also surprised to see that she is the registered owner of 7 horses. We are aware that there is a practice amongst some trainers of registering horses in the name of individuals who are not in fact the owners for short terms convenience. We therefore do not consider it right for us to pursue this avenue of enquiry upon this application when it has not been the subject of proper evidence or submission to the Committee.
73. In all of those circumstances we will not take account of this new information subject to the points in the last two sentences of paragraph 69 above. As a result it is unnecessary to convene a further hearing.

H) Suitability

H1) Introduction

74. The difficult issue which we have considered with particular care is how to marry the existing and new evidence concerning the personal characteristics and actions/omissions of Mr Harris with the new evidence concerning the ownership and financial position of EEL. It is easiest to explain this by first considering only the personal characteristics and actions/omissions of Mr Harris. We stress, however, that the test of suitability is a composite test and we will reach our decision by considering all relevant factors together.

H2) Character and Dealings

75. The starting point is that Mr Harris is a good trainer as we stated within the Original Decision. This is obviously important because, as the Appeal Board observed, the Licensing Authority will not lightly take a course of action that will result in the loss of a thoroughly competent trainer. That was certainly our approach for the purposes of the Original Decision and remains our approach. However, this has to be balanced against the findings in the Original Decision, including the conclusion that he breaches conditions of his licence and is not open and honest in his dealings with the Authority (see for example paragraph 80 of the Original Decision), as affected by the new evidence concerning his character and dealings. .
76. Our assessment of the evidence in the context of the Original Decision (referring back to the summary at paragraphs 8.2 - 8.9 but at this stage excluding 8.8) and the new evidence is as follows:-
- 76.1. The previous history as set out in the Original Decision (see paragraphs 35-38 above) remains the same.

- 76.2. The breaches of conditions concerning the provision of accounts remain (see paragraphs 39 and 45 above).
- 76.3. A change for the worse is that new, additional admitted breaches of a licence condition have been identified. These concern the horse sales/purchases in November 2010 dealt with at paragraphs 46-50 above. Mr Harris's attempt to cast the blame onto Mr Frankland does him no credit.
- 76.4. The breach of the condition prohibiting transactions relating to training in respect of the £40,000 remains (see paragraphs 51-53 and 59 above).
- 76.5. Further in respect of the £40,000, the findings of a serious absence of openness and transparency and the making of untruths and half truths have not altered except that the position is worsened by the approach taken by Mr Harris in respect of this "wholly unsatisfactory" state of affairs and by his attempt to again avoid criticism by blaming Mr Frankland instead (see paragraphs 54-58 above).
- 76.6. To Mr Harris's benefit we are now ignoring the previous non-disclosure of the debt owed to Tattersalls (see paragraph 60 above).
- 76.7. The approach we take towards the consequences of bankruptcy remains the same (see paragraph 61 above).
- 76.8. We are also to his benefit now ignoring issues concerning dealings with previous companies (see paragraph 68 above).
77. We have concluded from the matters referred to in that summary that overall the position has worsened since the Original Decision. True the issues concerning Tattersalls and previous companies are to be ignored but there have been additional breaches of a condition of the previous licence. Those breaches were not disclosed to or even raised with this Committee at the last hearing. We have decided that Mr Harris cannot cast aside that blame onto Mr Frankland for the reasons given and the fact that he has sought to do so does not assist his application. We have made clear at paragraphs 46-49 our decision that Mr Harris is to blame for this. We note the apology, as we have said at paragraph 50, but it and Mr Harris lose considerable credibility when it is wrapped around a claim that Mr Frankland is to be blamed. We emphasise in this context the extent of the role of Mr Harris in respect of the purchase of a horse from Mr Nicholls. Mr Harris had no consideration for the terms of the licence. This is to be heavily criticised in normal circumstances but even more so for someone who had been through 3 previous hearings. Those hearings and the decisions referred to in paragraph 8 of the Original Decision should have brought home to Mr Harris the need to ensure fit and proper conduct. We find that Mr Harris's attempt to pass the blame rather than accept his own failings to be a further feature of unsuitability.

78. As previously stated, we have reached a similar decision with regard to Mr Harris's approach to the breach of the condition requiring accounts to be provided. We refer to paragraphs 40-45 above which deal with our rejection of the case that this is to be treated as Mr Frankland's fault. We find Mr Harris's approach in blaming Mr Frankland very surprising particularly having already had the Original Decision which identifies the findings made against him. We note in this regard that he has had the benefit of instructing solicitors and Counsel for the purposes of this hearing. Yet the outcome has not been to approach this Committee wholly recognising and unreservedly and sincerely apologising for those breaches. Instead the application has been approached on the basis of casting blame.
79. We are also critical of Mr Harris's approach in regard to the £40,000 and its channelling through EEL. We have set out the basis for and substance of that criticism at paragraphs 54-58 above. An applicant who has been the subject of findings of a serious absence of openness and transparency is not necessarily unsuitable in particular if he can establish that he fully appreciates his wrongdoing and can show that there is every reason to believe he will not pursue such a path again. However, Mr Harris did not come before us to do that. The submissions made were (in summary) that the information given was effectively accurate and that we need no longer be troubled by the transaction. We offered an adjournment to allow time to reconsider the approach being taken but this was refused and the approach adopted maintained on instructions. This failure to acknowledge the findings and attempt to avoid them do not assist his case that he is a suitable Person.
80. Our deliberations have taken account of the fact that Mr Harris was under considerable pressure during 2010. There were serious financial difficulties leading to his bankruptcy and as a result the loss of his company, EEL. He has sought to continue training, he has sought to repay his personal creditors and he has been tied up in a rescue exercise for EEL which has necessitated him finding and being involved with Mr Fox. However, we have decided that these factors do not alter the criticisms and findings above. They can not be an excuse and we do not find them to be a satisfactory explanation for his behaviour either in regard to his dealings with the Authority and its Licensing Committee or in respect of his breaches of the conditions of his licence. We have concluded from hearing him and his case that the adverse findings and criticisms identify fundamental flaws for the purposes of applying the Guidelines. Flaws that are not overcome by the fact that he is a good trainer.
81. In coming to that conclusion we have taken into account Mr Harris's approach towards the hearings before us. We have dealt with this in respect of the previous hearing in particular at paragraph 82 of the Original Decision. For the purposes of this hearing he had the benefit of reading the Original Decision and of receiving legal advice and assistance. Yet despite this and in addition to the matters considered at paragraphs 77-79 above, when Mr Harris was questioned by his Counsel, it was noticeable that his apology was expressed twice on the basis: "if" (our underlining) we, the Committee, felt we

had been misled [see page 22 of the transcript]. This was in circumstances of him having read the points found against him in the Original Decision and knowing of our findings concerning breaches of the licence conditions and of the failure not only to provide information but also to be open and transparent without untruths or half truths. This is not the approach of a suitable person who is reformed and wiser.

82. Reviewing the Guidelines and for present purposes ignoring the change of ownership of EEL, we have formed the view that the matters referred to at paragraphs 76-81 above mean that Mr Harris has not satisfied this Committee in particular of the requirements within paragraphs 20 (honesty and integrity), 21 (full and frank disclosure), 25.4 (compliance with requirements applying this to the licence conditions) and 25.5 (candid, open and truthful in all dealings with the Authority in relation to present and relevant past licence applications) of the Guidelines. In this context we refer back to paragraphs 33.3 - 33.5 above. If matters stood there, we would decide that Mr Harris had not satisfied us that he was a suitable Person. We do not accept the submissions of Mr Piper that Mr Harris is to be treated as an applicant who has done his best and that he is someone who has not been self-serving nor hidden anything.

H3) Mr Fox, EEL and the Role of Mr Harris

83. However, we must now consider the application of Mr Harris within the context of the involvement of Mr Fox and the role of Denise Hopkins. The case is put that whilst Mr Harris can not turn back time and change what he has done previously, he is contrite and the introduction of Mr Fox will provide the necessary cure. This is because:-
- 83.1. EEL is/will be Mr Fox's company and Mr Harris will have no involvement with its business other than as an employed trainer. As a result concerns in respect of business competency and capability and concerns about his honesty and integrity in that context need no longer be considered because they will not be an issue in practice.
- 83.2. EEL is now to be considered financially sound and will operate accordingly, removing financial concerns previously held.
- 83.3. Mr Fox is an important influence upon Mr Harris. Mr Harris respects him and does not want to let him down. He has assisted in Mr Harris's recognition that he must not let down EEL's employees or anyone else affected by EEL's business. It is one thing to "*mess around*" when the only person involved is oneself but not when others are involved.
- 83.4. Mr Fox has enabled Mr Harris to be legally represented with the result that his solicitor has pointed out what it really means and what is required to comply with licence conditions and to take the Authority seriously.

- 83.5. Mr Fox has backed Mr Harris forming a personal opinion that Mr Harris can be trusted and is a suitable Person. Whilst it is fully understood that it is for the Committee to decide suitability, this might provide some comfort and in any event Mr Harris is unlikely to let down the person who has provided so much help, support and trust.
- 83.6. Mr Frankland, who is criticised for the role taken and advice given, will not be involved with EEL.
- 83.7. There is a wholly different scenario in place and Mr Harris is a sadder and wiser man.
- 83.8. The scenario is of a rosy future for EEL with a move to better premises and Mr Harris doing only what he does best, namely training horses.
84. It should be apparent from our previous considerations of suitability that we do not agree with the submissions that Mr Harris is to be treated as contrite or indeed wiser. The fact of legal representation makes his approach and the resulting submissions which we have criticised worse. We are also very unattracted by the proposition that he was indeed “*mess[ing] around*” previously.
85. As to Mr Harris’s involvement with EEL as now owned by Mr Fox and Mr Fox’s influence, there is no doubt that the change of ownership is a very important factor to take into account. In particular because we have decided that the Guidelines concerning financial soundness of the company employing Mr Harris are satisfied (presuming the guaranteed overdraft is established) (see paragraphs 62-66 above). Furthermore, the new regime leads to the likelihood that some of the conditions previously breached will either not be laid down for a new licence or else will be unlikely to be breached because of Mr Fox’s role. Thus conditions requiring accounts are likely to be met due to Mr Fox. Prohibitions upon dealings with horses through EEL are unlikely to be imposed because the financial position of EEL will be sound. Similarly conditions designed to keep the training business separate from Mr Harris’s financial affairs will not be needed. In addition, the new regime may also be influential in respect of Mr Harris’s future conduct taking into account Mr Fox’s potential influence upon Mr Harris. For example, Mr Fox’s approach over the trailer (see paragraph 69 above).
86. However, in order to reach our decision we need to look further at the role of Mr Harris and the involvement of Mr Frankland and Denise Hopkins within the new business regime.
87. During the course of this application we have been concerned whether Mr Harris has in fact been involved in the management of EEL notwithstanding the terms of his licence and indeed his bankruptcy. We dealt with that issue at paragraph 43 of the Original Decision but some of the answers provided by him to questions from the Appeal Committee [pages 41-42 of the transcript] and his acknowledged involvement in the sale of horses in November 2010

(see paragraph 46 above) revived the concerns. We are troubled that the true extent of Mr Harris's role in the business could amount to a breach of section 11 of The Company Directors Disqualification Act 1986. That is relevant to us to the extent that a licence could not be given to someone if that will be the result. However, we have not heard submissions on this and Mr Piper frankly disclosed that this was not an area of law in which he had any expertise. We also take account of the fact that Mr Harris has informed us that he has had expert advice that he is able to carry on his employment. Furthermore the trustee has raised no objection and indeed looks to this employment as a source of funds to repay creditors. In those circumstances we will proceed on the basis that the answer to this issue would be for a licence to contain a prohibition against being involved in management whilst an undischarged bankrupt. We therefore do not concern ourselves further with section 11.

88. Irrespective of section 11, we have concerns as to whether the role of Mr Harris in the business of EEL and his resulting actions and attitude will be sufficiently constrained to enable us to conclude that the failure to satisfy the Guidelines should not prevent him from receiving his licence. There are issues arising over the extent to which both Mr Fox and Denise Hopkins will have sufficient involvement and control: Mr Fox because of the distances between the yard and his home and his limited attendance at the yard; and Denise Hopkins, who has worked with Mr Harris since January 2006, because her role is limited to that of an administrator/book keeper and she herself will not be present more than 1-2 days a week (see paragraph 20 above).
89. Our conclusions from what we have been told happens and will happen to the running of EEL is that Mr Fox (potentially with his partner) will make the management decisions as a director of EEL. Denise Hopkins will be in charge of the books and records and of the administration. However, the day to day operation of the business of training horses remains in the hands of Mr Harris as the trainer. Mr Harris is the person who deals with, prepares and trains the horses. He is the person who deals with the owners and (subject to the conditions of his licence) with horse purchases and sales. He is the person who supervises the lads and other staff involved with the horses. He is the person who is responsible for the racing of the horses. He is also very much at the forefront of the business. We will need to take these findings into account when reaching our decision whether a licence should be granted.

H4) Consequences of Refusal

90. As stated above, it is clear to us that if we only considered "character and dealings" Mr Harris's history of past conduct, breaches of licence conditions, failure to provide full and frank disclosure and to be candid and open information and his approach to these hearings would mean that we would have to reach the conclusion that he is an unsuitable person notwithstanding his ability as a trainer. The question is whether this conclusion should be reached when also taking into account the new evidence concerning EEL and the involvement and influence of Mr Fox. However before answering that

question we need to consider the ramifications of a decision to refuse this application within the context of EEL having been taken over by Mr Fox.

91. The change of scenario resulting from the involvement of Mr Fox inherently asks us to consider why we might refuse a licence which would result in Mr Harris being unable to participate in this new business venture as an employed trainer. From Mr Harris's perspective he has been through considerable difficulties, ended up as bankrupt, lost nearly everything and now has a chance to continue what he loves doing, earn his income and indeed use that income to repay his debts in accordance with his agreement with his trustee.
92. We are very conscious of the ramifications of a decision to refuse a licence. The prevention, for that is what it amounts to in practice, of Mr Harris from training in the jurisdiction of the Authority will result in a restriction upon him earning a living in his chosen trade as a trainer. Although that does not prevent him from working in the racing industry (and we bear that in mind), the existence of such a restriction will always be a highly significant one and we also have regard in this case to the fact that Mr Harris not only depends upon training for his income but it provides his accommodation. We make clear that we have the consequences very much in mind. This includes the consequences for EEL and its employees, although we anticipate that another trainer can and indeed will be found and that the business may not suffer, at least not significantly. This is also relevant to the financial commitment of Mr Fox. Whilst Mr Fox has invested his money knowing of the risk that a licence may be refused, the consequence also affects him and EEL in the loss of Mr Harris as the trainer and we do not ignore that.
93. We have received letters from Mr Harris's trustee in bankruptcy supporting the application on the basis that this is most likely to lead to Mr Harris receiving a salary that will enable him to comply with his agreement to make payments to the trustee for the benefit of the creditors. We note that and take it into account when reaching our decision.
94. On the other hand, the Authority has responsibility for the allocation of licences. That responsibility has led it to identify the need to ensure that (amongst other requirements) the applicant is suitable, a fit and proper person, to hold a licence. The Licensing Committee is required to apply the Rules and to follow the Guidance. The Guidance clearly emphasises the importance and need for honesty and integrity as well as business competence, capability and financial soundness. The Guidelines indicate that the characteristics of honesty and integrity are to be considered generally within the overall context of a trainer's duties and operations within the world of horse racing and specifically within the context of dealings with the Authority. Whilst they are "guidelines". it is important that we take account of them when reaching our decision.
95. Looking at the overall context of the Guidelines, the world of horse racing relies heavily upon trust. The public attending and gambling upon races, the

owners committing their resources and time and the trainers, jockeys and others earning their living from horse racing must have trust in the horse racing industry controlled by the Authority. Part of that trust is a belief that trainers who receive licences satisfy the requirements contained within the Guidelines including that they are suitable by reason of their honesty and integrity. That trust depends upon the industry not only being but also being seen to be trustworthy. Once any sport suffers from doubts over the trustworthiness of its participants, its reputation suffers and it risks decline. That is particularly the case in a sport which involves gambling. Not only is this trust at the core of the sport of horse racing but it is also a foundation for its success.

96. We should emphasise that there is and has been no suggestion that Mr Harris has done anything wrong in the context of racing his horses or in matters of gambling. We are concerned with the public interest in ensuring that the licensing process is complied with and that licences are awarded to those who satisfy the tests laid down. The Guidelines include honesty and integrity for the reasons referred to above. The public should be assured that those granted licences satisfy the tests prescribed including the requirements of honesty and integrity both generally and specifically.
97. The specific obligation concerning dealings with the Authority by an applicant is very important. An Authority can not perform its obligations (or at least can only do so with far greater difficulty) if the applicants are not candid open and truthful. One only has to look at the amount of time taken up and the quantity of paperwork involved in the current and past applications of Mr Harris resulting from his failings to see that the system should require such qualities from applicants.
98. We consider the public interest in ensuring that the licensing process is complied with and that licences are awarded to those who satisfy the tests laid down to be a legitimate aim worthy of protection. However, in doing so, we bear in mind that our decision should be reasonable in the interests of all of the parties concerned. Therefore we need also to consider the consequences for Mr Harris. We should and will address the issue of suitability and public interest by ensuring that any decision to refuse his licence is a proportionate and reasonable result.

(I) The Authority

99. The Authority remains opposed to the grant of the licence. We note that and the submissions made. We treat this as significant to the extent that there is an absence of support and that it indicates the approach the Authority wishes to adopt in accordance with its Rules and Guidelines. However, the power to decide whether to grant the licence is delegated to this Committee and therefore it is for us to make the decision based upon our own assessment of the information before us. That is what we will do, as we did when reaching the Original Decision.

(J) The Decision

100. Where all of the matters above take us is (in summary) this:-

100.1. The previous licence history, the admitted breaches of licence conditions, the findings of a serious absence of openness and transparency and of the making of untruths and half truths and the manner in which Mr Harris has approached this application and the renewed hearing all point to a decision that Mr Harris should not be granted a licence because he has not demonstrated and satisfied this Committee that in all the circumstances he is a suitable person to hold the licence applied for and in particular has not satisfied us that he fulfils the requirements of the Guidelines identified at paragraph 82 above.

100.2. This needs to be viewed against the new scenario which removes the financial concerns and also provides a new regime for the future with Mr Harris remaining only an employee trainer of EEL now owned (or to be owned) by Mr Fox.

100.3. The question in those circumstances is whether those circumstances when taken into account together with all over relevant facts and matters (including those referred to in paragraph 100.1 above) lead us to conclude that Mr Harris is a suitable person and should be granted a licence.

100.4. In answering that question account must be taken of the public interest in ensuring that the licensing process is complied with and that licences are awarded to those who satisfy the tests laid down.

100.5. At the same time we must reach a result that is proportionate and reasonable taking account of the ramifications of a refusal of the licence for Mr Harris and to some extent EEL, its employees and Mr Fox.

100.6. In doing so we must bear in mind that we are not reaching a decision to achieve punishment for wrong doing.

101. Weighing those matters and taking into account all of the matters considered in this Decision above, we have reached the following conclusions:-

101.1. It is important that Mr Harris's skill as a trainer is not in doubt and we should certainly not reach a decision to refuse him a licence lightly.

101.2. The change of scenario resulting from the introduction of Mr Fox, his finance and his new business regime is significant in particular for the reasons identified within paragraph 85 above.

101.3. However, the new evidence and the new regime does not change the fact that all of the reasons for the Original Decision as set out at paragraph 9 above remain except for those concerning Tattersalls (paragraph 9.7) and the financial position of EEL (paragraph 9.9).

101.4. Nor does it alter our finding that the position has worsened in that:-

- a) New breaches of licence conditions, which could have been but were not previously disclosed to us, have been identified and admitted concerning horse sales (paragraphs 46-50 above);
- b) We have reached an unfavourable assessment of Mr Harris's approach and attitude as a result of this further hearing (see in particular paragraphs 23, 42-43, 49-50, 54-58, 77-81 above) which adds to the criticisms in respect of his attitude and approach to be found in the Original Decision as set out at paragraph 10 above. It does not appear to us that the benefits of legal advice and assistance and the influence of Mr Fox have had the significance or effect we would have expected and as it is submitted they should have.
- c) We have found that Mr Harris (ignoring the new regime) does not meet paragraphs 20, 21, 25.4 and 25.5 of the Guidelines (see paragraph 82 above).

101.5. Although the new regime will clearly be beneficial in many aspects, in particular financial, administrative and in the decision making and potential influence of Mr Fox, the role of Mr Harris as trainer will remain integral to the operation of the business. We refer back to paragraph 89 above. The extent of that role and its nature means that it remains important that the Committee is satisfied that he personally still meets the requirements of the Guidelines concerning general suitability. There will be new restraints to his actions and new elements of control resulting from the new regime but inevitably Mr Harris will have a wide remit and discretion in regard to his actions as a trainer.

101.6. Notwithstanding the new scenario, the problem we return to is that in the past (i.e. the previous history referred to at paragraphs 35-38 above), during the course of this application leading up to the Original Decision and at this latest hearing Mr Harris has not established that he meets the criteria contained within the Guidance Notes. We are satisfied that he does not. We have set out in detail above all the problems relating to breaches of licence conditions, failure to provide information, failure to be candid and open and the approach taken at this hearing which we have criticised. Nothing is served by their repetition but we do emphasise the following points:-

- a) The background of the past history not only in respect of the findings made and the causes for them but also because Mr Harris ought to have appreciated the seriousness of his past conduct and the need to ensure that such problems and conduct did not occur again.
- b) The fact that the findings of the Original Decision remain largely unaltered subject only to the issues concerning Tattersalls and the financial position of EEL.
- c) The criticisms of his attitude and approach at this hearing which lead us to conclude that he has not reformed and is not, as submitted, a sadder and wiser man. This includes: the casting of blame upon Mr Frankland rather than appreciating his faults and errors; his approach towards the failure to provide information and to be open and transparent when dealing with the £40,000 transfer; and his apology “if” the Committee felt it had been misled.
- d) The breaches and the seriousness of the breaches of his licence conditions. Including the discovery of new breaches concerning the sale/purchase of horses and our findings in respect of his role in this.

102. As a result and applying the tests identified within paragraphs 58-63 of the Original Decision and the observations repeated at paragraph 33 above we have decided that the seriousness of all of Mr Harris’s failings identified in this decision combined with the approach he has adopted as criticised by us mean that he has not satisfied us that he is a suitable person to be granted the licence for which he applies. Whilst the issue of finance concerning EEL is resolved and although he is a good trainer, it remains the case that he has not established that he satisfies the criteria of honesty and integrity to be found within the Guidelines. The failings are numerous and significant and the response to their existence and the findings of the Original Decision inappropriate.

103. Mr Harris has not satisfied us that the new evidence concerning the consequences of Mr Fox’s ownership and involvement with EEL means that he has now established that he satisfies the Guidelines or that we should grant a licence in any event. The new evidence does not overcome the fundamental problem that Mr Harris, whilst being a good trainer, has failed to satisfy the Guidelines concerning general suitability including those referring to honesty and integrity. Nor has he satisfied us that the new evidence means that his actions and role as a trainer with EEL will be sufficiently constrained and/or supervised so as to avoid further risk of unsuitable behaviour.

104. In reaching our decision we have taken into account the public interest in ensuring that the licensing process is complied with and that licences are awarded to those who satisfy the tests laid down. We consider the extent of

his failings to be sufficiently serious to lead to the conclusion that it would be contrary to the public interest to grant a licence notwithstanding the regime change and notwithstanding the consequences for him. He has not satisfied us that he meets the criteria of the Guidelines and we have reached the conclusion that this means he should not be granted the licence for which he applies. We consider this a proportionate and reasonable result because of the extent and seriousness of his failings. We have certainly not reached this decision lightly and the loss of a thoroughly competent trainer is very much regretted. However, it is a decision we have reached for the reasons stated.

K) Temporary Licence

105. We need to recognise that there is a right to appeal and in any event that a period of time will be required for EEL and indeed Mr Harris to deal with the practical results of this decision. In those circumstances, although this should not be construed as encouraging an appeal, a temporary licence will be granted for 28 days from the date of this letter upon the following conditions:-

- (1) The conditions attached to the current licence which now expires and is superseded by this temporary licence will continue.
- (2) Mr Harris will not be permitted to train any new horses under this licence, only those in training under the current licence.
- (3) Mr Harris will not be permitted to make entries for any races under the Rules to be run after the date of his appeal (should he choose to make an appeal).
- (4) Mr Harris's employer, EEL, must be and must continue to be solvent during the period of the temporary licence applying a balance sheet test and also a commercial test of whether it can and indeed is paying its debts as they fall due.
- (5) Any failure to comply with those conditions must be notified to the Authority by Mr Harris and EEL forthwith and the Licensing Committee may revoke the temporary licence or vary its conditions without a further hearing.
- (6) Mr Harris may apply to extend the 28 day period should the appeal be made and not take place within that period or if there are other good and necessary reasons for doing so. The Licensing Committee will have a discretion whether to grant such an application.

Signed on behalf of the Committee:

C. H. JONES
Chairman
20 April 2011