



These Reasons have, where indicated, been redacted and summarised by the BHA to take into account concerns expressed by Mr Harris about the disclosure of confidential business and personal information

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

Stephen Allday Esq

Richard Evans Esq

Stephen Bate Esq

IN THE MATTER OF MILTON FRANCIS HARRIS

REASONS OF THE LICENSING COMMITTEE

Introduction

1. Mr Milton Francis Harris ("Mr Harris") is a trainer, who has held a Combined Trainer's licence since 6 April 2002. He trains predominantly National Hunt horses and a few horses for Flat racing. He is a competent and successful trainer. Mr Harris's most recent licence was due to expire on 31 January 2010. However, the British Horseracing Authority ('the Authority') opposed the grant of a further licence to Mr Harris.
2. The Authority's main ground of opposition to the renewal of Mr Harris's training licence was that he is not a fit and proper person to hold such a licence, for a number of reasons relating to his general suitability and in particular his (a) business competence and capability (b) financial soundness and (c) honesty and integrity. The grounds on which the Authority objected to the grant of a licence to Mr Harris were set out in a document entitled 'Matters Relied on by the Authority' ('The Objections').
3. In addition it also appeared to the Authority that Mr Harris could not demonstrate that the necessary financial resources were available to his training business. No financial

reference had been given in Mr Harris's application for a change of stables dated 20 October 2009, when Mr Harris was applying as a self-employed trainer, to change the location of his stables to Highlands, Collingbourne Ducis, Marlborough, which were to be leased to Mr Harris. The grounds on which the Authority objected to the grant of a licence to Mr Harris were set out in a document entitled 'Matters Relied on by the Authority' dated 8 December 2009 ('The Objections'). These were sent to Messrs Withy King, solicitors acting for Mr Harris, on 9 December 2009 with a bundle of documents in support of the matters relied on by the Authority. The most recent licence had been granted to Mr Harris on 23 June 2009, following his application dated 5 June 2009 to train on a self-employed basis at Alne Park, Alcester, Warwickshire. Before that, his training establishment had been located for a number of years at Trafford Bridge stables, near Bicester, to which Mr Harris had moved from where he started out, at Pye Mill near Chipping Campden.

4. Mr Harris's most recent licence was sent to him under cover of the Authority's letter dated 3 July 2009, which advised him that there were specific concerns over his continued licensed status, of which he would be notified in due course. That licence was valid until 22 September 2009. The Authority's letter to Mr Harris of 21 September 2009 extended the licence until 31 January 2010, but informed Mr Harris that the investigations remained ongoing. This letter stated that the specific concerns in question related to Mr Harris's ability to conduct the business with a suitable degree of financial security. By letter dated 2 December 2009 from Mr Oliver Codrington, the Authority's Head of Compliance and Licensing, Mr Harris was informed that the Authority intended to oppose the grant of a further licence.
5. Under cover of a letter dated 14 December 2009 Withy King sent a licence application dated 9 December 2009 to the Authority, which proposed that Mr Harris be licensed as a Trainer for the period 1 February 2010 to 31 January 2011 not on a self-employed basis, but as an employee of a company called Equine Enterprises Ltd ('EEL'), which was to take a lease of the new training premises at Highlands.
6. The matters on which the Authority's concerns were based fell under three headings, namely:
 - (1) the late payment and non-payment of business debts by Mr Harris, in some cases leading to court proceedings, County Court judgments and/or bankruptcy proceedings;

- (2) the settlement by Harris of proceedings brought by an owner alleging fraudulent misrepresentations; and
 - (3) a failure by Mr Harris to be candid with the Authority in relation to business debts, both in correspondence and in previous licence applications.
7. The Authority was reliant on information which third parties had been willing to provide. The information had come from a variety of sources and in relation to some aspects was more limited than it would have liked, and in some cases not wholly up to date. However all the matters raised were in the knowledge of Mr Harris and it was the Authority's position that Mr Harris ought to have been able to provide the Committee with a full account of the up-to-date position.
8. Mr Harris's application was considered at a hearing, which took place on 14 January 2010 at the Authority's premises at 75 High Holborn and at which Mr Harris was represented by Mr Richard Brooks of Withy King and Mr Louis Weston of counsel. He was also accompanied by Mr Frank Frankland, an accountant (albeit not a Certified or Chartered Accountant), who carries on business through a company named AWA Bloodstock Ltd.

Late and non-payment of business debts

9. The Authority stated that Mr Harris had a record of paying debts incurred in relation to his training business very late or not at all, in several cases prompting threats or the actual initiation of Court proceedings, and in some cases leading to judgments being entered against him. Large amounts remained outstanding as at 8 December 2009. Details relating to the instances of late or non-payment of which the Authority was aware were set out in the Objections. Mr Harris was invited in that document to inform the Committee of any other instances of late or non-payment, in accordance with his duty of full and frank disclosure (as stated in paragraph 21 of the Guidance Notes for a Trainer's Licence).
10. Before dealing with the late payment and non-payment of debts of the training business, it is appropriate to say something further about Mr Harris and his financial circumstances as disclosed to the Committee in a written statement from him, as supplemented by him orally at the hearing.

11. In a nutshell, Mr Harris acknowledges many of the debts but says that his financial problems stem from 2 matters, which are now essentially historical. He put forward a number of matters not, as he said, by way of an excuse, but as an explanation. First, he said this –

I make clear at the outset that I accept that in the last 3 years (since about 2006) I have not been successful in managing my financial affairs. I am not proud of it. I can say to the committee however that I am a good trainer of horses, I am an honest trainer of horses and whilst I have recently not been successful in managing my finances I am able to put in place a structure that will prevent the failings apparent from the papers sent by the BHA. ...

[...]

14. [...] Mr Harris acknowledged that he had 'taken [his] eye of the ball'. By the beginning of 2009 he only had about 10 horses in training.

15. But, he said, he had turned a corner. Current debts can be and are being paid as they fall due. The training operation is 'looking good' and he ... has for some time now been committing himself wholeheartedly to the pursuit of the training business. He took possession of the new premises at Highlands, Marlborough in November 2009 and now has about 42 horses.

16. It is against that background that we now turn to the specific debts relied on by the Authority.

[...]

The Committee then considered a number of late payments of debts owed by Mr Harris to service providers to his training business, but which had not resulted in legal proceedings. Mr Harris accepted that a number of sums owing between 2006 and 2009 had not been paid until many months after they were due. He assured the Committee that any outstanding sums would be settled within 3 months at the latest. The Committee found that a statement made by Mr Harris to the Authority in relation to one of those debts had been untrue.

The Committee then considered a number of debts the late payment of which had resulted in legal proceedings. Some sums remained outstanding, including a large amount owed to HMRC, some of which was the subject of dispute. Mr Harris again assured the Committee that the outstanding sums which were undisputed would be paid within a reasonable time and that he was taking steps to be able to do so.

The Committee then considered proceedings brought against Mr Harris involving allegations of misrepresentation made by a former owner in his yard, and their settlement on terms that Mr Harris pay the former owner damages and costs. The Committee found that this was not a case which was settled to avoid an inevitable adverse finding, whilst noting that it found it unsatisfactory that the payments under the compromise agreement were not made on the dates agreed. Mr Harris had now settled his differences with the owner, who currently has horses at his yard.

The Committee then considered the Authority's complaint against Mr Harris that he had made false statements in previous licence applications and in correspondence with the licensing department of the Authority. Mr Harris regretted the instances on which that had happened and apologised for them. The Committee accepted that his motive was a mixture of embarrassment and a misguided perception that they were purely private matters.

The reasons then continue as follows:

Conclusions on 'fit and proper person'

94. The first matter to be assessed is whether or not Mr Harris is a fit and proper person to hold a licence: see Chapter 2 paragraph 10.1 and 10.2 of the Trainer's Manual. We take into account the guidance given by Lord Bingham in *R v Crown Court at Warrington, ex parte RBNB* [2002] 1 WLR 1954 in which he said that the phrase "fit and proper person" does not "lend itself to semantic exegesis or paraphrase" and is directed to ensuring that the applicant "has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do." We also bear in mind the passages from the judgment of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512 at 518B-519E emphasising the importance for a decision making body such as this Committee of the wider interests at stake, including that of maintaining the reputation of the field of activity in question and sustaining public confidence in its integrity.

95. Mr Weston did not demur from these principles, but pointed out the materially different context in which the Master of the Rolls was making the observations he did in *Bolton*, namely the solicitors' profession. Both the Authority and Mr Weston referred to the Guidance Notes and made submissions with respect to the criteria applicable in this case. It is not necessary to set out the criteria or the submissions, which the Committee has firmly in mind.

96. One point that Mr Weston did make was that the Authority considered it appropriate to grant Mr Harris a licence in response to his application dated 9 June 2009, which it did by renewing the licence from 23 June 2009. Hence, it was submitted, there was little difference to the facts as they appeared to the Authority on 23 June 2009 and as they appeared on 8 December 2009, the date of the Objections. The picture available to the Authority when the licence was granted was far from complete, as our findings above show. Much of the information was not obtained by the Authority until after 23 June 2009. The Authority was also unaware of the further untruths told by Mr Harris in his application forms, concerning his employed status, and of the omission in the letters of 11 and 12 June 2009 concerning the outstanding debt of [...]. The Authority also reserved its position when issuing the licence of 23 June 2009, albeit in relation to what appears to have been financial matters only, and continued to reserve its position in its letter of 22 September 2009. All in all, we consider that in considering the issue of whether or not Mr Harris is a fit and proper person, we are not constrained by looking at events occurring after 23 June 2009. In fairness to Mr Weston, his position was that it would not be fair or proportionate to refuse a licence by taking into account conduct taking place before that date. What the Committee has to do is to take account of the past conduct of Mr Harris, so as to make a judgment of his likely future conduct during the term of the licence in question.

97. In view of Mr Harris's assurances and apologies, the Committee has decided that Mr Harris is a fit and proper person to hold a Trainer's licence. However, he should take note of where he stands. Whether or not a person is fit and proper is an assessment made at a particular point in time. On balance, the Committee has been persuaded by Mr Harris's apologies and promise to mend his ways. How Mr Harris conducts himself in the future will be a crucial important factor in deciding whether or not the Committee will, if asked to do so in the future, decide future licence applications that Mr Harris may make.

98. We refer to our findings regarding the 3 respects in which Mr Harris chose to mislead the Committee, motivated as we found by embarrassment and a misguided sense of what is private. These are serious matters. It is important that Mr Harris understands that the Authority as a regulator has a legitimate interest in receiving accurate answers to questions asked of him in his licence application form and in correspondence on its behalf relating to his financial position and on other matters within the regulatory remit. The Authority is charged with protecting the wider interests at stake in racing and this requires a degree of intrusion into the personal affairs of applicants for a licence. .

99. Mr Harris apologised to this Committee in relation to his failure to inform the Authority that he was to train as an employee of CRL in 2008 and of CRE in 2009. In fact, the answers he gave in his application forms were untruths. Mr Weston said that Mr Harris was not really a man who understood much about companies and that like many people in his position, did not (though he should have done) bother with what one might call the legal niceties. However this was not consistent with what Mr Harris told the Committee, namely that he had had discussions with Mr Smith about what had to be done about becoming an employee, if that is how he wanted to pursue his training activities. We are left with the conclusion that he deliberately misled the Committee in the answers that he gave on the application forms. As was explained to Mr Harris during the course of the hearing, the reason why the Authority needs to know whether the applicant for a Trainer's licence is self-employed or not is in order to make an assessment of the training *business* to which the application relates, for example its solvency. We also find that he did mislead the Committee in his statement by asserting that there was a real dispute as to whether the tax was payable and whether or not he or CRL owed the money, whereas the true position is that he owes at least [...] to HMRC. He clearly got into a muddle when asked about the tax situation (see paragraph 103 below), but we consider that this particular statement is likely to have been a further attempt by him to mislead the Authority [...]. On this occasion, we are prepared to accept that his motive for doing so may have been a continued reluctance to disclose what he wrongly regards as private matters.

100. The Committee took into account in favour of Mr Harris his previously impeccable disciplinary record and various references supplied by Mr Harris from owners and others vouching for his integrity. It also took into account the possible consequences on Mr Harris of refusing him a licence; and on those whom he employs.

101. It is to be emphasized that in his future dealings with the Authority Mr Harris must be open and transparent and not deal in untruths or half truths. The Committee has received assurances from Mr Harris that this will not happen again.

102. The Authority rightly questioned Mr Harris's financial track record and likely solvency and generally his suitability to hold a licence having regard to what it says is his lack of business competence and capability. Mr Harris rightly anticipated this difficulty by proposing that the training business was not run by him but by Mr Frankland, through EEL.

103. Reliability is another matter relevant to the assessment of Mr Harris. In addition to misleading the Authority in the respects mentioned, he showed that he was not reliable, for example in failing to provide accurate answers in his letter to Mr Smith of 12 June 2009 and in his written explanation to the Committee of the debt owed to HMRC. On the latter matter, it was plain that Mr Harris was out of his depth. The explanation of the situation given in that statement was wrong and Mr Harris had difficulty understanding the issues he raised when asked about them at the hearing. He should have left that matter to Mr Frankland and not speculated on what he did not understand.

104. There are numerous instances of Mr Harris not meeting his financial obligations and that he entered into those obligations in the first place is a matter common to many individuals or organisations who find that they cannot pay their debts. However, with Mr Harris there is an added element, which the Committee wishes to convey. Even though it is proposed that Mr Harris has a minimal involvement in the business side of the new operation, he will inevitably be involved to some extent. He must appreciate that persons dealing with his business have to rely on him to do what he says he will do.

The new licensing arrangements proposed by Mr Harris

[...]

The Committee then considered Mr Harris's proposals for new licensing arrangements. The reasons continued as follows:

Grant of a temporary licence

110. The Committee has considered it appropriate to grant Mr Harris a temporary Trainer's licence of 3 months expiring 30 April 2010 as an employee of EEL. In a nutshell, the reasons for that are to give a controlled start to, and check on, the new business against the background of (i) Mr Harris's personal debts and conduct as set out in these Reasons and (ii) the fact that we were told by Mr Harris and Mr Weston at the hearing that all the debts would be paid within 3 months and (iii) that this 3 month period is very important for Mr Harris as far as his personal solvency is concerned. The Committee has considered it right to attach conditions to the temporary licence, as follows –

- i) During the licence period, neither Mr Harris nor any other person shall enter into any transaction on behalf of EEL with a third party that does not relate to the training business carried on by EEL.
- ii) Mr Frankland or some other person approved by the Licensing Committee shall be the sole director of EEL throughout the licence period.
- iii) Mr Frankland shall during the licence period be the sole signatory of cheques drawn on any bank or other account of EEL.
- iv) Management accounts, including a balance sheet, of EEL for the period 1 January 2010 to 31 March 2010 shall be provided to the Authority by 24 April 2010.
- v) Mr Harris shall notify the British Horseracing Authority within 7 days of his or EEL becoming aware of any judgment entered or legal proceedings of any kind, taken against him or EEL.

111. The Committee informed Mr Harris of its decision and of these conditions by letter dated 1 February 2010, having put draft conditions to him in correspondence with Withy King following discussion at the hearing. We should emphasise that the condition in i) above precludes EEL from engaging in the purchase or sale of racehorses.

112. The Committee decided not to impose conditions with respect to any of the outstanding debts [...] but expects them to be paid by the end of the licence period in line with the recent letters from Withy King and the information given by Mr Harris at the hearing. [...].

113. The letter of 1 February 2010 also notified Mr Harris that he is to inform the Committee by 24th April 2010 of details concerning payment of these [...] debts and generally provide full disclosure of any debts owed by him and EEL, which are more than 60 days in arrear on that date, an update on [...] and the arrangements for the payment of the debt owed by him to HMRC.

Dated 10 February 2010.