

THE BRITISH HORSERACING AUTHORITY

**IN THE MATTER OF AN APPLICATION BY RICHARD TIERNEY FOR A
CONDITIONAL JOCKEY'S LICENCE FOR THE PERIOD ENDING 30
SEPTEMBER 2010**

BEFORE THE LICENSING COMMITTEE ON 9 SEPTEMBER 2010

STEPHEN ALLDAY ESQ., Chairman

RICHARD EVANS ESQ.

STEPHEN BATE ESQ.

REASONS

1. On 9 September 2010, the Licensing Committee of the British Horseracing Authority ('the Authority') decided to refuse the application of Mr Richard Tierney ("Mr Tierney") for a Conditional Jockey's Licence. These are the reasons for that refusal.

2. On 13 February 2008 the Disciplinary Panel of the Authority made serious findings against Mr Tierney: in essence, that he (with his father Robert) conspired to commit a corrupt and fraudulent practice in breach of Regulation 161(v) of the Jockey Club Regulations for Point-to-Point Steeple Chases, because they each engaged in the running of a 'ringer' at Witton Castle on 5 February 2006 and at Brocklesby Park on 11 February 2006. Mr Tierney was disqualified for a period of 2 years, with effect from 22 February 2008.

3. Mr Tierney applied for a licence by a written application dated 20 May 2010. The application relates to the period ending 30 September 2010.

4. The Authority formally opposed the application in writing with supporting paperwork, which were sent to Mr Tierney under cover of a letter dated 17 June 2010 and which he received.
5. The substance of the Authority's objections was that Mr Tierney was not 'a fit and proper person', because of a number of related issues –
 - (1) The serious nature of the offences for which he had been disqualified.
 - (2) His conduct during the investigation and inquiry; essentially telling lies and trying to cover up his misconduct.
 - (3) Continuing concerns about his attitude; in particular, he had shown no remorse or contrition since the hearing before the Disciplinary Panel.
 - (4) Continuing concerns about his association with his father, a corrupting influence on him. That concern arose from the finding of the Disciplinary Panel that Mr Tierney had participated in the scam on both occasions very much under his influence and direction.
6. The Committee had before it letters dated 18 and 20 July 2010 written on his behalf by his aunt, Hilary Austin, and four written references. Ms Austin works in the regulated field of financial services and has an understanding of the concept of a 'fit and proper person' under the legislation relating to financial services. She commended Mr Tierney to the Committee as a young man who has grown in maturity and who deserves to be given another chance.
7. Mr Tierney appeared before the Committee in person. He did not have the financial means to instruct legal representatives. He was accompanied by Mr J.S. Wainwright, a trainer and author of one of the written references.

Mr Wainwright wished to employ Mr Tierney under a written Conditional Jockey Training Agreement.

8. Mr Tierney's position as set out in Ms Austin's letter and before us was that he had not knowingly ridden the horses in the two races as ringers. He expressed regret at the fact that he had ridden the wrong horse, but said that he had not intended to do so. He said he was sorry and wanted to look to the future. He had not attempted to cover up anything during the investigation or since. His problem before the Disciplinary Panel was that he was a very young man, who did not want to take on his father and he should have had separate legal representation.
9. Mr Tierney had protested his innocence before the Disciplinary Panel. The hearing lasted for three days and he and his father had been represented by one firm of solicitors and counsel. The Panel in its written Reasons stated that it was particularly conscious of the need to have really convincing evidence to prove the matters alleged by the Authority (paragraph 1). It concluded that the wrong horse had been entered deliberately in both races at the instigation of Mr Tierney's father. It went on to consider separately whether Mr Tierney was involved and found that he had been (paragraph 23).
10. Mr Tierney told the Committee that if he had had separate legal representation, 'he might have conducted himself a bit better' before the Panel. The point is also made in Ms Austin's letter. She discussed the question of Mr Tierney's involvement with him at some length over many evenings. He had always maintained his innocence. She expressed the view that he is unlikely to have been involved in any cover-up: that in view of his father's influence over him at the age of 17, Mr Tierney could not have confronted him with questions as to his guilt on the footing that he, Mr Tierney, knew nothing about the scam.

11. The Panel had in mind the possibility that Mr Tierney might have found difficulty in standing up to his father. It found that, -

‘There was no sign at the hearing that Richard Tierney was or felt himself forced to support his father’s version of events and to suppress an explanation that he had only discovered afterwards that he too had been deceived’ (paragraph 23, last sentence).’

12. Before the Licensing Committee Mr Tierney was referred to this paragraph of the decision of the Disciplinary Panel and he indicated that the findings did not represent what actually had happened. He had been forced to support his father’s version of events and he was doing what his father’s solicitor had advised him to do. The suggestion is that, had he had an opportunity of presenting his true position, the case on his innocence would have been advanced very differently.
13. The Committee is very reluctant to go behind the finding of the Disciplinary Panel on this point and declines to do so. Although the assertion that Mr Tierney had been forced to support his father’s version was not suggested to the Disciplinary Panel, the Panel was plainly alive to its possibility and the Licensing Committee, some two and a half years on, is in no position to contradict that assessment. However, it does bear in mind that the assertion now made includes little detail as to what he says did actually happen, whether before or after the races.
14. The few matters put before the Licensing Committee by and on behalf of Mr Tierney as to what did happen before and after the races did not persuade us that the Disciplinary Panel had reached the wrong conclusion on the question of Mr Tierney’s involvement. He told the Committee that there had been a gap of three or four months between his riding of the two

horses and had only ridden the horse (i.e. what in fact was King's Star) four times, twice on the gallops and twice at the races in question. The Disciplinary Panel had found that he was familiar with both horses (the other horse being Green Admiral), to the extent that he was well aware of the different sizes of the stars on each of them. We see no reason at all to go behind the findings of the Disciplinary Panel.

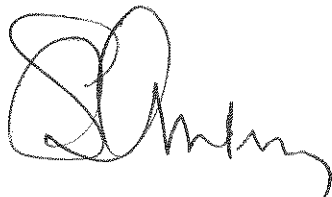
15. The fact that Mr Tierney has maintained his innocence of involvement in the scam both at the hearing and since and again before the Committee means that the expressions of regret and apology made at the hearing were devoid of real meaning.
16. However, we were satisfied that Mr Tierney's relationship with his father no longer causes a difficulty of the nature alleged by the Authority. Mr Tierney felt cheated by him and he has little to do with him other than seeing him on family occasions.
17. A Jockey's Licence may be refused, if the applicant is not a fit and proper person to hold a licence (Rider Manual (D), Part 1, Chapter 2, paragraph 12.1). The Licensing Committee has directed itself in accordance with the guidance given by Lord Bingham in *R v Crown Court at Warrington ex parte RBNB* [2002] 1 WLR 1954 at [9], where he stated –

"[S]ome consideration must be given to the expression "fit and proper" person. This is a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do."

18. Lord Bingham also stated in his speech (at [8]) that, the licensing authority whose decision had been subsequently appealed, had *“been required to form a judgment .. based on the evidence ..”*.
19. The Committee has taken into account passages from the judgment of Sir Thomas Bingham M.R. in the earlier case of *Bolton v Law Society* [1994] 1 WLR 512 at 518B-519E, where he considered the factors to be taken into account by the Law Society in deciding whether to strike a solicitor off the Roll and whether to grant an application for readmission after a period of being struck off. Some care should be exercised in relation to that passage, because of the intermingling of the matters to be taken into account when a disciplinary tribunal is considering a penalty for a breach of the rules of a profession with the matters to be taken into account when considering an application for readmission following expulsion. The passage does highlight the importance 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.
20. The Committee has also taken into account the Authority’s published criteria for the assessment of a ‘fit and proper person’, set out in the Guidance Notes relating to Applications for Jockey Licences, so far as they were engaged by the Authority’s written objections to the grant of a licence to Mr Tierney.
21. Thus, the Committee is required to make a judgment as to whether or not Mr Tierney has sufficient honesty and integrity so as to be suitable to hold a licence.
22. The matters of which he was found guilty by the Disciplinary Panel were very serious. As pointed out by the Disciplinary Panel (paragraph 27 of the Reasons), running a ringer strikes at the heart of the integrity of a branch

of the sport, which particularly depends on the honesty of participants. We also bear in mind the findings of the Panel that (though Mr Tierney and his father were not involved in a betting scam) betting punters had been cheated at both races and that the offence involved a deception of all those who competed in or watched the race' (paragraph 27).

23. The relevance of a past offence is not whether the Licensing Committee considers it right to visit a further period of punishment on the licence applicant. That would be quite wrong. The type of offence and the fact that it was committed are relevant to the applicant's likely compliance with the Rules of Racing, and with the rules concerning integrity in particular.
24. Without an acknowledgement of his guilty participation in the two races in 2006 and any genuine regret at this, Mr Tierney's expressed wish to forget the past and move on, albeit accompanied by an apology, is not sufficient to satisfy the Committee that Mr Tierney has the necessary honesty and integrity at this point in time. His guilty participation in the scam accompanied by the lack of acknowledgement of his guilt and the absence of real contrition leave the Committee without the necessary confidence as to Mr Tierney's likely compliance with the Rules of Racing and those concerning the integrity of the sport in particular.
25. The Committee took into account all the matters advanced by and on behalf of Mr Tierney, but for the reasons given has concluded that Mr Tierney is presently not a fit and proper person to hold a licence.



S. E. Allday

Chairman, Licensing Committee

17 September 2010

