



Fast Track Case Resolution Trial

**Tim Naylor
Head of Regulation
4 September 2017
(Update – 10 October 2017)**



Contents

1.	Introduction	3
2.	Process Overview	6
3.	Green Wave Breaches	9
4.	Amber Wave Breaches	12
5.	Red Breaches	14
6.	Response Form	Appendix A
7.	Template Referral	Appendix B

Introduction

The British Horseracing Authority ('BHA') is responsible for the regulation and governance of British horseracing. As a responsible and progressive regulator, the BHA is committed to upholding the integrity and reputation of the sport and will continue to develop its processes and policies to ensure this.

In July 2016, Christopher Quinlan QC carried out a review (the 'Review') of the BHA's regulatory processes. As part of the Review, he consulted with a wide range of stakeholders across the sport including the National Trainers' Federation, ('NTF') and Professional Jockeys' Association, ('PJA'). He made key recommendations including the establishment of the Independent Judicial Panel but concluded that the regulatory system was fundamentally sound and robust.

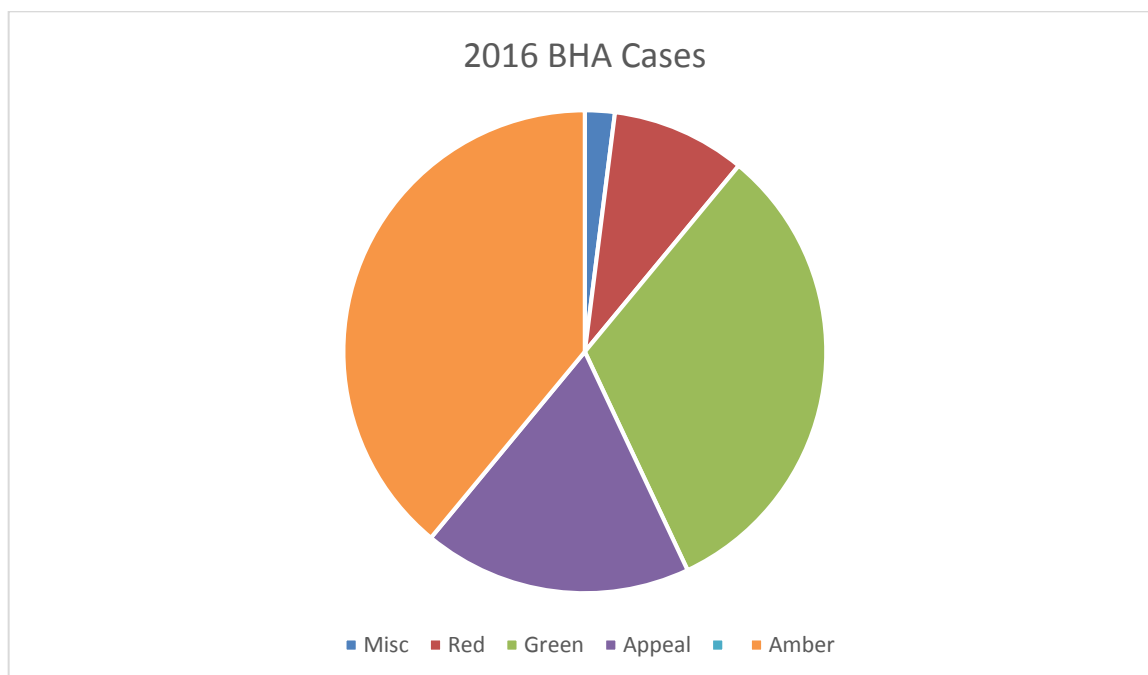
As part of the Review, recommendations were made for the Regulatory team to adopt. These included a formal disclosure policy and "Fast-track" procedure for the swifter resolution of minor cases with less of a drain on resources and cost for all involved. In his Review, Christopher Quinlan QC referred to other sporting bodies including the Lawn Tennis Association, ('LTA') and Rugby Football League, ('RFL') who have implemented similar procedures in an effort to reduce delays in hearing cases and to reduce costs.

The BHA has established fast-track principles in its disciplinary process for some time. For example, riding appeals from racecourse decisions are normally heard within the 14 day period after which the rider suspension takes effect pursuant to Schedule (B)1 Paragraph 3. Further, as a matter of adopted practice, most referrals from the racecourse have always been dealt with by the Disciplinary team. These matters, in the main, are not subjected to the full investigative process and are usually heard within a few weeks from the date of the incident. This is not the case for cases that have traditionally been managed by the Compliance team. The merging of both teams into one Regulatory department should in itself bring about greater efficiency in our processes. This proposed trial 'Fast Track' system should accelerate this through agreed sanctions and resolution without an oral hearing.

Many regulators such as the Nursing and Midwifery Council, ('NMC') and General Dental Council, ('GDC') have systems which replicate what is known in the criminal arena as an 'early guilty plea' scheme. An early admission of guilt is rewarded with a reduced sanction but also a swifter resolution to the regulatory proceedings. The BHA has an agreed basis of plea procedure set out in Schedule (A)10 of the Rules of Racing. Whilst this is under review, the 'Fast Track' scheme as recommended in the Review is designed to compliment this process but concentrate on the numerous small breaches and administrative failings that are currently taking up a great deal of time and resource. This should be of benefit, not only to the BHA but also jockeys, trainers, owners and stable staff.

The potential benefits are highlighted through the 2016 case statistics. There were 88 cases in total before the Disciplinary Panel and Appeal Board. 32% would have been categorised as 'Green' under this proposed process. As another 39% would have been

classified as 'Amber', this could have resulted in over a third of all cases having been finalised administratively.



The 'Fast Track' process outlined within this document has also been the subject of review by HH Brian Barker CBE QC, the Judicial Panel Chairman. The BHA is also grateful to all who have provided input and suggestions but in addition the insight of Lucinda Cavendish, Steward and past Disciplinary Panel Chairperson, has been crucial.

The Regulatory team has carried out a full audit of the Rules of Racing and isolated those Rules which are capable of resolution through this process. There is a proposed double wave approach which will commence as of 11 September 2017. The trial will consist of three months of 'Green' only Rule breaches prior to the commencement of consideration of 'Amber' Rule breaches. The process will be kept under review during this period and feedback will be gathered from all stakeholders as well as the Disciplinary Panel as to its success or otherwise. The BHA is grateful to the new Regulatory team for their hard work and efforts particularly Danielle Sharkey in drafting the initial project scope and formalising the wave process, Andrew Howell for managing and drafting the equine positives procedures and Lauren Robinson for her initial audit of the raceday breaches.

As this proposed scheme is a procedural adaptation of the current procedures set out in Schedule (A)6, it does not require formalisation into the Rules. Currently, the Chairman of any Disciplinary Panel can adapt the procedures as set out in the Schedule as they see fit including consideration of the matter by telephone or in this case on papers. It is expected that this will be incorporated as part of the Rules Re-write process that is due to be finalised in the latter half of 2018. This will form part of a number of reforms including a review of the agreed sanction process.



Subject to the success of this trial, it is hoped that, eventually, administrative breaches can be dealt with through an automated online system. This would free up considerable resource for the BHA, the Independent Judicial Panel as well as, most importantly, create a far swifter, easier and less fraught process for our stakeholders. This can only be of a huge benefit to racing as a whole.

A handwritten signature in black ink that reads 'Tim Naylor'. The signature is written in a cursive style with a large, looped 'N'.

Tim Naylor
Head of Regulation

4 September 2017

Process Overview

The start point for all potential proceedings for breaches of the Rules is the Regulatory team. This is either as the result of a referral from the racecourse or following a handover of an investigation from the BHA's Integrity department. The 'Fast Track' cases will be administered in line with the ordinary case management process as set out below:

1) Case Review

The case manager will review the circumstances of the alleged breach for evidential sufficiency. At this stage, it is not necessary for any material supporting the allegation to be formalised into witness statements or formal exhibits. The case manager should consider, if possible, what admissions or comments have been made by the subject of the allegation as well as the nature of the breach alleged when deciding whether the case might be suitable for 'Fast Track' resolution.¹

2) Communication

Having approved the case for 'Fast Track' resolution, the Case Manager will contact the subject of the allegation in writing requesting confirmation of their approval to proceed. The BHA will set out the following:

1. The alleged breach including date of commission, place, and brief details of the facts of the allegation including any part or full admissions;
2. That the matter is deemed suitable for Fast Track resolution;
3. A proposed sanction for agreement²; and
4. A response date to the notification letter, 7 days³ from sending, including appropriate contact details of the Case Manager. Should

¹ For specific processes relating to equine positive cases, please see page 11.

² The BHA reserves the right to include any proposed sanction it deems appropriate in the circumstances of the case, the ordinary proposed sanction would be the entry point within the Guide to Procedures and Penalties. In cases where it is deemed appropriate a 1/3 discount will be applied to reflect the early admission. If the Fast Track process is not taken up, the BHA's stance will be that the individual does not qualify for credit for an early admission.

³ The response date should be 7 days unless there are exceptional circumstances as to why the deadline has been missed. If the case manager is satisfied that there are exceptional circumstances, they will have the discretion to extend the period as appropriate. In doing so, the case manager should bear in mind that the overarching aim of this process is to speed up the process so any extension should be minimal.

the BHA not receive a response within this timeframe, the offer of Fast Track resolution will be withdrawn (the consequences of missing the response deadline should be made clear in the notification letter).

3) Admission

The BHA will expect the subject of the allegation to respond by returning the 'Fast Track' response form. (Appendix A) This should include:

1. An admission to the alleged breach; (this cannot be qualified in any way);
2. Agreement that the matter can be dealt with through the Fast Track process;
3. Agreement to the proposed sanction; and
4. Any personal mitigation that the BHA and the Disciplinary Panel are requested to take into consideration.⁴

4) Referral

Once the response form is received, the BHA Regulatory Team will refer the matter to the Independent Judicial Panel Secretary within 7 days of receipt. The referral will include the following:

1. The notification letter;
2. The response form; and
3. A summary of the facts of the alleged breach including proposed sanction details and any supporting evidence. (Appendix B)⁵

⁴ Mitigation should only be of a personal nature. The acceptance of the charge cannot be qualified in any way. If the BHA is of the view that the acceptance is equivocal, the individual will be contacted and if necessary, the case will be set down for a full hearing in the usual way instead. The BHA can reduce the proposed penalty if appropriate in the circumstances of the case having received the personal mitigation.

⁵ Each referral will depend on the circumstances of the alleged breach. The BHA reserves the right to vary the format and content of the referral. The BHA will provide such information as is deemed necessary to understand the circumstances of the breach.

5) Consideration by the Judicial Panel Chairman⁶

The Judicial Panel Chairman will then consider the matter on the basis of the referral documents alone. He can make the following decisions or appoint a Panel to do so:

1. Approve the proposed resolution including suggested sanction;
2. Refer the matter back to all parties with a varied sanction; or
3. Refer the matter back for listing for an oral hearing.

6) Resolution

If the Disciplinary Panel approves the proposal, they will inform all parties and publish a short decision in the usual way. If the matter is referred with an amended proposed sanction (5.2 above) then both parties will have 7 days to agree to the proposal and notify the Judicial Panel Secretary in writing.

If the matter is referred back to the BHA with out an amended proposal, or the parties do not agree the amended proposal, the BHA will follow ordinary procedures and list for an oral hearing before the Disciplinary Panel. The individual will have the opportunity to provide further mitigation either in writing or by attending at the hearing.

⁶ The Disciplinary Panel will be chosen by the Judicial Panel Chairman and constituted in the same way as in any other matter if he thinks necessary. Otherwise he will make the Fast Track decisions himself. (October Update)

Green Wave Breaches

The BHA has identified the following Rules as those that are suitable as trial 'Green' Wave breaches to be dealt with through the Fast Track process in the first 3 months of implementation (September – 31 November 2017).

The breaches have been identified during a full audit by the Regulatory team as those that are either mostly administrative failings or do not ordinarily give rise to wider integrity concerns. Breaches of these rules will not automatically fall to be processed through Fast Track but will be subject to a full review by a Regulatory Advisor as set out on page 5.

The Rules which will be considered for Fast Track during the trial period are⁷:

(A)15/(A)69	Riding whilst suspended
(A)32	Violent or improper behaviour on a racecourse (verbal only)
(A)50.2	Requirement to provide information on records - Failure to provide/
(A)50.2	Requirement to provide information on records – Tampering records (also arguably falls under (A)31.2, also suitable for green wave fast track
(A)75	Suspension of horses from running in future races
(A)97	Equine swimming pools: requirement for certificate of approval
(A)100	VAT registration scheme
(B)36.1	Every horse in a race must be at the starting post ready to start at the appointed time
(B)45.2	Riding to the draw in a flat race with marker poles
Schedule (B) 3 para 22	Horse not in the care of a licenced trainer – Mistake
Schedule (B)6 part 2	Misuse of the whip (referral)

⁷ Any Rule breach ordinarily dealt with on the Racecourse will also be considered. As listed in the Guide to Penalties and Procedures 2017.

(C)12.1	Failure to check identity of horse - correct horse but marking errors
(C)12.2	Failure to report discrepancies to the Racing Calendar Office
(C)13	Duty to keep treatment records – where discovered as part of a stable inspection
(C)15.2	Failure to correct/return Stable Employees' Register Return
(C)16.3	Failure to correct/return Horses in Training Return
(C)17.1	Failure to notify horse has been gelded
(C)17A	Failure to notify horse is of ambiguous sex
(C)18.2	Notification of overseas performances
(C) 19.2	Notification of overseas performances (GB Trained horse)
(C) 20	Failure to enter into training agreement
(C)20A	Changes in employment status
(C)24	Vaccination, passport and identity checks
(C)25	Ensuring protective equipment is worn
(C)29	Strict liability of trainer on horse's visit to equine swimming pool
(C)31	Prohibition on bringing horse affected with ringworm to a racecourse
(C)37	Entering a horse not qualified/wrong horse to race
(C)38	Failure to lodge foreign racecourse performances (Trained outside GB)
(C)43	At the racecourse – removal of Approved Speed Sensing Device/wrong weight carried
(C)66A.2	Failure to notify Racing Calendar Office of an arrangement with a Betting Organisation
Sch (C)2 1	Failure to contact previous employer/register new employee/notify national insurance number or termination of employment.
Sch (C)5 3.5	Horse receiving report from starter (referral)
Sch (C)5 3.7	Three consecutive stalls test failures by horse
(D)34.3	Permitted use of registered mobile telephones: jockeys

(D)44	General conduct at the start.
(D)59	Testing positive for banned substance or notifiable medication – Alcohol only suitable for green (where no vulnerability issues)
(D)79	Payment for non-riding services
(E)15.5	Failure to present the correct horse to the Veterinary Officer
(E)18	Vaccinations against equine influenza
(E)24	Requirements for racing in Great Britain
(E)26C	Notification of pregnant horses
(E)82.6	Non-registration of colours
(E)83.7	Horse running in colours other than those declared
(E)87	Information about horses of ambiguous sex
(E)89	Owners giving instructions to riders
(F)15.3	Racecourse breaches
(F)66	Unruly horse
(G)2.6	Possession of (raceday only) Prohibited Substance on course

Amber Wave Breaches

Following the successful trial of the 'Green Wave' Rule breaches, the BHA will introduce Rule breaches categorised as 'Amber' during the Regulatory team's audit. These are breaches that often involve more than merely administrative failings and require detailed consideration before being selected for the Fast Track process. Often an assessment of wider integrity concerns and the interests of the sport will have to take place. The 'Amber Wave' will commence on 1 December 2017 and run until 28 February 2018.

Breaches of the BHA's equine anti-doping rules pursuant to Rule (G) 2.1 have been classified as 'Amber' for the purposes of the Fast Track process. This is because those involving contamination issues can be corrected through education and are unlikely to be repeated once reasonable precautions are implemented by the Responsible Person. Similarly, an appropriate case could be when the Responsible Person has not opted for elective testing where a substance prohibited only on raceday has been administered. Ultimately, this is a Rule of strict liability and the Responsible Person is liable for sanction and the horse for disqualification. Where there are no residual integrity concerns, it is right that these matters are dealt with swiftly for all parties.

The usual Adverse Analytical Finding investigation will take place after a positive finding but the Investigating Officers will provide an initial assessment report for the purposes of assessing the nature of the breach. Provided both the Investigating Officer and Regulatory Advisor are content that (even unknown) the source is not one of direct administration for doping purposes or that there are no wider integrity concerns, the case will be placed in the Fast Track process. However, if the Responsible Person does not accept or if the matter is referred back without an alternative proposal, the BHA will continue with its full investigation prior to the case being heard by the Disciplinary Panel. The Fast Track process is intended primarily for first time breaches of Rule (G) 2.1, repeated failings will require a full oral hearing.

The breaches categorised as 'Amber' and therefore eligible for Fast Track during the second trial period (December to February) are:

(A)29	Horse not qualified
(A)30.3	Associating with a Disqualified person
(A)39	Requirement to comply with controls on sponsorship
(B)6.1.7	Preventing a horse that has been declared from being examined
Schedule (B)3 para 22	Horse not in the care of a licences trainer – Deliberate
(C)20	Failure to comply with Code of Conduct
(C)23	Security of horses

(C)30	Duty to report communicable diseases – depending on severity an ramifications of disease
(C)33.3	Administration of substance, other than normal feed and water, on a raceday without prior permission
(C)37	Duties in determining horses to run in a race
(D)44	Misconduct of rider at start
(D)59	Testing positive for banned substance or notifiable medication- EXCLUDING recreational drugs
(D)13	Reporting any injury or illness
(E)89A	Owner compensates rider or instructs another to do so
(G)2.1	Presence of a prohibited substance – in certain circumstances

Red Breaches

Following the conclusion of the 6 month Fast Track trial period, the BHA will choose breaches of the Rules at its discretion to subject to the Fast Track process. This might include breaches not listed as part of the Green and Amber waves. There are many Rule breaches which seldom arise and therefore will need to be considered on their merits as and when they occur.

However, there are some breaches of the Rules that are so serious or indicate such a serious threat to the integrity of the sport that the Regulatory team has classified them as Red during the audit process. These are cases where, even if full admissions are made, it is in the interest of the sport for there to be an oral hearing. Examples of these breaches are listed below: (Non-Exhaustive)⁸

(A)30	Conduct prejudicial to horseracing
(A)31-38 and 40-42	Corruption and bribery breaches
(B)53	Dangerous riding
(B)58/59.2	Running and Riding
Schedule (B)3 11.1	Running a horse that has had a neurectomy
(C)4.5	Failure to produce evidence of ownership of horses under the care or control of a Permitted Trainer
(C)22	Trainer in breach of duty regarding horse(s) in his charge
(C)64	Trainer lays a horse under his/her care
(D)14	Jockey is owner or part owner
(D)33	Mobile phones
(D)53-56	Jockey/rider betting
(D)59	Testing positive for banned substance or notifiable medication – recreational drugs

⁸ This list is subject to review at the conclusion of the Fast Track trial.

(D)74	Mobile phones (valet)
(D)75	Valet betting
(D)78.1	Authorised rider's agent betting.
(E)26A	Notification of neurectomy operations



Appendix A

FAST TRACK RESPONSE FORM

I, admit that I breached Rule..... of the
Rules of Racing.

I am aware of the BHA's Fast Track Procedure and understand the process.

Furthermore, I agree to:

1. this matter being resolved by way of the British Horseracing Authority's Fast Track Procedure; and
2. the penalty proposed by the British Horseracing Authority, namely.....

I would like the following to be taken into consideration: (Personal Mitigation only)

I also accept that the Independent Judicial Panel retains the right to reject the Fast Track Procedure and order a full oral hearing, if it requires such a hearing to fairly and justly resolve this matter.

SIGNED:

DATE:

Appendix B

**BEFORE THE DISCIPLINARY PANEL OF THE
BRITISH HORSERACING AUTHORITY**

FAST TRACK REFERRAL – *NAME*

DATE

Introduction

1. This a referral to the Independent Disciplinary Panel of the British Horseracing Authority, (“BHA”) for resolution through the Fast Track disciplinary system.
2. [Insert name] has admitted a breach/breaches of Rule/s [Insert] of the Rules of Racing and agreed that this matter can be resolved administratively.

Summary

3. [Insert brief summary of facts of breach]

Penalty

4. The BHA proposes
5. a penalty of [Insert penalty]. This is appropriate in the circumstances of this case and has been accepted by [Insert name]. [Insert additional explanation relating to why penalty level has been chosen, eg reflects further mitigation, early admission, any aggravating features.]
6. [Insert any further orders requested, eg disqualification]

[Insert Date]