THE APPEAL BOARD OF THE BRITISH HORSERACING AUTHORITY

Appeals of:-
David Greenwood
Michael Stainton
Kevin Ackerman
Kenneth Mackay

REASONS FOR THE APPEAL BOARD'S DECISION

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INTRODUCTION

1. On 14–15th December 2015 the Appeal Board heard appeals against a Decision of the Disciplinary Panel ("the Panel") which was reserved following a lengthy hearing spanning the period between Wednesday 1st and Thursday 9th July 2015. The historical facts which formed the backcloth to the issues which the Panel had to decide were wide-ranging and, in some aspects, complex. There is no escaping the need for a reasonably detailed narrative.

2. There are four appellants, all of whom were found guilty of malfeasance contrary to the Rules of Racing. They are:-

   (i) **David Greenwood**: an erstwhile racehorse owner and the owner specifically of the horse AD VITAM (IRE) ("AD VITAM"), a 3 and then 4 year old gelding, between March 2011 and March 2012, a period within which there occurred the events which were under scrutiny. Mr Greenwood was at all material times a professional gambler specialising in horse racing.

   (ii) **Michael Stainton**: a professional jockey and the rider of AD VITAM in 5 of the 7 races (Races 1-7) which were the central focus of the enquiry. Those races were run between 2nd November 2011 and 8th March 2012. Mr Stainton was also the jockey who rode AD VITAM in the two races which fell both immediately before Race 1 and immediately after Race 7 (four additional races in all).

   (iii) **Kevin Ackerman**: an unlicensed and unregistered person, as it happens employed as Chief Executive Officer of Towcester Racecourse, and an enthusiastic punter.

   (iv) **Kenneth Mackay:** a long-standing professional gambler (also, pre-eminently, on horse racing) and an occasional owner.

   In these Reasons they will usually be referred to with the pre-fix "Mr", but not always. Insofar as from time to time they are identified by their surnames alone, no offence is intended or, we are sure, will be taken.

3. They were four of the five Respondents the subject of the Panel's Inquiry. The other was a professional jockey, Claire Murray, who was cleared of the charges brought against her, which were that she had conspired with Mr Greenwood to ride AD VITAM otherwise than on its merits in Races 2 and 3, and had actually done so in those races. She had also been alleged to be in breach of Rule (B)58.1 in respect of those rides.

4. The written Decision and Reasons of the Panel ("the Reasons"; or "the Reasons of the Panel", as the context dictates) run to 22 pages, plus two Appendices, the first ("Annex A") a Table of Races 1-6 and the second ("Annex B") a summary over 6 pages of the relevant "Betting Activities" on and around AD VITAM. The Decision followed a hearing which lasted for a little less than 7 days (excluding a sitting for the purpose of penalties), for almost 5 days of which oral evidence was heard from a succession of, in total, 11 witnesses. The transcript of that evidence alone (the lengthy submissions left to one side) occupies just more than 750 pages.

5. We will be citing substantial passages from the Reasons; but, for total knowledge of their content, resort should be had to the full document published by the Panel. We will not annex it this Decision of ours: for the record, the Reasons can be found on the BHA website at www.britishhorseracing.com under the tab "Resource Centre". That said, it is our intention that our own Reasons should be integral and sufficiently comprehensive to enable the virgin reader of this document, from a standing start, fully to understand what the case has been about and the rationale for what has been decided.

6. We append to our Reasons a document ("Appendix A") which we have created and is entitled: "**BETTING ACTIVITY. Bets on AD VITAM, unless otherwise stated**". This Appendix is an Excel spreadsheet and is intrinsic to what follows. It incorporates all the information embraced within the Panel's Annex B (with minor corrections), but with certain supplemental information. There was nothing wrong with Annex B. Appendix A, however, has the advantage of enhancing the underlying data and (perhaps a virtue in itself) reducing the entirety to one side of A4 paper. The additional data includes, as to each race, particulars of AD VITAM's draw; the distance of the race; the horse's starting price; its precise finishing position; and its fluctuating official rating. The main body of our Reasons is to be read, therefore, in full tandem with Appendix A. [Appendix A can be found under Notes to Editor].

7. The Reasons set out in full the Topics of Inquiry, which were dated April 2015, and directed, in varying substance, at all five Respondents. We need, nevertheless, to recite them verbatim:-

"Mr Greenwood

1. Did DAVID GREENWOOD between 1st November 2011 and 8th February 2012 act in breach of **Rules (A)41.2** and/or **(A)41.1** in that he conspired with Michael Stainton, Claire Murray, Kevin Ackerman and/or Kenneth Mackay to commit a corrupt or fraudulent practice in relation to racing and then committed such a practice by:

    a. Instructing Michael Stainton and/or Claire Murray to ride AD VITAM other than on its merits and so that it would not be placed in Races 1, 2, 3, 4, 5 and 6.

    b. Communicating directly or indirectly to Betting exchange account holders information relating to the prospects of AD VITAM which information was or included information (i) obtained in his capacity as an Owner of AD VITAM and (ii) which was not publicly available or authorised for such disclosure by the Rules of Racing ('Inside Information') knowing that (i) and (ii) were the case and knowing that such information would or might be used to gain an unfair advantage in the betting market?

    and/or

2. Did DAVID GREENWOOD between 1st November 2011 and 8th February 2012 act in breach of **Rule (B)58.2.1** in relation to Races 1, 2, 3, 4, 5 and 6 by giving instructions to the named jockey in those races which if obeyed could or would prevent AD VITAM from obtaining the best possible placing in some or all of those Races.

    and/or

3. Did DAVID GREENWOOD between 1st November 2011 and 8th February 2012 act in breach of **Rule (A)36.1** in that he communicated directly or indirectly to one or more Betting Exchange account holders for material reward, gift, favour or benefit in kind, information relating to the prospects of AD VITAM in the Races which was or included Inside Information knowing such information was Inside Information?

    and/or

4. Did DAVID GREENWOOD between 11th July 2012 and 31st January 2013 act in breach of **Rule (A)50.2** in that he:

a. Failed to supply his telephone billing to the BHA as requested and following the making of an Authorisation to Request Production on 5th November 2012 and specifying the billing required to be produced, and/or

b. Failed to agree a time and place for an interview with a BHA Investigating Officer and/or

c. Failed to attend for an interview with a BHA Investigating Officer.

Mr Stainton

1. Did MICHAEL STAINTON between 1st November 2011 and 8th February 2012 act in breach of **Rules (A)41.2** and/or **(A)41.1** in that he conspired with David Greenwood, to commit a corrupt or fraudulent practice in relation to racing and then committed such a practice by:

    a. Following instructions from David Greenwood in respect of his rides in Races 1 and 5 which were instructions in breach of **Rule (B)58.2.1**.

    b. Agreeing to ride and then riding AD VITAM in breach of **Rule (B)58.1** in Races 1 and 5.

    c. Agreeing to ride in AD VITAM in breach of **Rule (B)58.1** in Races 4 and 6 if the need to ride the horse other than on its merits arose.

    d. Communicating directly or indirectly to Betting exchange account holders information relating to the prospects of AD VITAM which information was or included information (i) obtained in his capacity as an Rider of AD VITAM and (ii) which was not publicly available or authorised for such disclosure by the Rules of Racing ('Inside Information') knowing that (i) and (ii) were the case and knowing that such information would or might be used to gain an unfair advantage in the betting market?

and/or

2. Did MICHAEL STAINTON between 1st November 2011 and 8th February 2012 act in breach of **Rule (B)58.1** in relation to Races 1 and 5 by intentionally failing to ensure that the horse was run on its merits?

Mr Ackerman

1. Did KEVIN ACKERMAN between 1st November 2011 and 8th February 2012 act in breach of **Rules (A)41.2** and/or **(A)41.1** in that he conspired with David Greenwood to commit a corrupt or fraudulent practice in relation to racing and then committed such a practice by using information to place bets on some or all of the Races which was or included information (i) obtained from David Greenwood in his capacity as an Owner of AD VITAM and (ii) which was not publicly available or authorised for such disclosure by the Rules of Racing ('Inside Information') knowing that (i) and (ii) were the case and knowing that such information would or might be used to gain an unfair advantage in the betting market?

   and/or

2. Did KEVIN ACKERMAN between 1st November 2011 and 8th February 2012 act in breach of **Rule (A)37.1** by offering to provide or providing a reward, gift, favour or benefit in kind to David Greenwood in return for the provision to him by David Greenwood of Inside Information or by encouraging such provision in relation to some or all of the Races.

Mr Mackay

1. Did KENNETH MACKAY between 1st November 2011 and 8th February 2012 act in breach of **Rules (A)41.2** and/or **(A)41.1** in that he conspired with David Greenwood to commit a corrupt or fraudulent practice in relation to racing and then committed such a practice by using information to place bets on some or all of the Races which was or included information (i) obtained from David Greenwood in his capacity as an Owner of AD VITAM and (ii) which was not publicly available or authorised for such disclosure by the Rules of Racing ('Inside Information') knowing that (i) and (ii) were the case and knowing that such information would or might be used to gain an unfair advantage in the betting market?

   and/or

2. Did KENNETH MACKAY between 1st November 2011 and 8th February 2012 act in breach of **Rule (A)37.1** by offering to provide or providing a reward, gift, favour or benefit in kind to David Greenwood in return for the provision to him by David Greenwood of Inside Information or by encouraging such provision in relation to some or all of the Races."

8. The Topics, framed at much the same time as the BHA's Case Summary, had followed a series of interviews conducted by BHA Investigating Officers, including, at the core of the investigation, Mr John Burgess. Mr Stainton was interviewed twice, in November 2012 and January 2015; Mr Ackerman once, in February 2013; Mr David Griffiths, one of the trainers of AD VITAM, once, in July 2013; Miss Murray once, in October 2013; Mr Hammond, the trainer of AD VITAM who succeeded Mr Griffiths, once, in September 2014; and Mr Mackay once, in January 2015. Mr Greenwood, however, (see paragraph 4b. of the Topics which relate to him) had refused to be interviewed, or to supply telephone records the production of which was formally requested of him.

9. The Topics, which included the charges levelled at the Respondents, provoked staunch resistance, expressed at times in strong terms in particular by Mr Greenwood and Mr Mackay. There is, as such, nothing amiss with that, even if the resistance seemed to verge upon an assault upon the actual integrity of the sport's regulators and/or those who sit in judgment over them. As to legal representation, both Mr Greenwood and Mr Ackerman were represented by Ian Winter QC ("Mr Winter"), instructed by Stewart-Moore, solicitors. Mr Stainton and Miss Murray had no lawyers, but were represented by Mr Paul Struthers, Chief Executive of the Professional Jockeys Association, to whom the Panel paid a warm compliment. It was well deserved, judging from the excellent quality of his presentation. Mr Mackay, however, although a Registered Person by virtue of his ownership of one horse in training, neither appeared before the Panel nor was represented. He had sent two letters, dated 17th and 29th June 2015, which were couched in somewhat strident terms and are mentioned at paragraph 72 below. Albeit written in lay language, the documents in combination had the essential character of a Defence, and expressed a strong denial of the charges brought against him. At the Appeal hearing all the Appellants have been represented by Mr Winter and the BHA by Mr Louis Weston ("Mr Weston"), who also appeared before the Panel.

THE RELEVANT RULES OF RACING

10. As is apparent from the Topics for Inquiry, the Rules engaged by the charges were Rules (A)36, 37, 41, and Rules(B)50, 58 and 59 of the Rules of Racing. They require recital, at least in part.

36. Communication of inside information

36.1 ***Inside information*** *is information about the likely participation or likely performance of a horse in a race which:*

36.1.1 is known by an Owner, Trainer, Rider, stable employee or any of their service providers as a result of acting as such, and

36.1.2 is not information in the public domain.

36.2 A Person must not communicate inside information directly or indirectly to any other Person for any material reward, gift, favour or benefit in kind ……

37. Assisting, encouraging or causing Rule contraventions

37. A Person must not assist, or encourage, or cause another Person to act in contravention of a provision of these Rules.

41. Involvement in corrupt or fraudulent practices in relation to racing

41. A Person who –

41.1 is guilty of the commission of any corrupt or fraudulent practice in relation to racing in this or any other country,

41.2 conspires with any other Person for the commission of such a practice, or

41.3 connives at any other Person being guilty of such a practice,

shall be taken to have contravened a requirement imposed on him by these Rules.

50. Requirement to provide information or records

50.1 This Rule applies where an Approved Person requests any Person who is subject to these Rules to provide any information or record which the Approved Person reasonably believes is relevant to an investigation conducted under this part.

50.2 That Person shall be taken to have contravened a requirement imposed on him by this Rule if–

50.2.1 he fails to supply the information or record to the Authority within the time and in the manner specified when the request was made;

50.2.2 he fails to agree a time and place for an interview within the time specified when the request was made, or

50.2.3 he fails to attend such an interview.

.....

50.4 The listed categories of information are –

50.4.1 telephone billing accounts for specified periods which are relevant to an investigation

.....

50.4.5 betting accounts.

.....

50.7 The Authority may take any of the following measures in relation to any person who contravenes a requirement imposed him by this Rule:

50.7.1 a summary exclusion under Rule 64 ……..

[NOTE: as a result of Mr Greenwood's contravention of Rule 50, such an Exclusion Order was in fact made on 19th February 2013, and remained in force until the hearing before the Panel].

58. General requirement for a horse to be run on its merits and obtain best possible placing

58.1 Every horse which runs in a race shall be run and be seen to be run on its merits (see Rule (D)45 (Riding to achieve the best possible placing)).

58.2 No Owner, Registered Agent of a Recognised Company or Trainer may –

58.2.1 give any instructions which if obeyed could or would prevent a horse from obtaining the best possible placing, or

58.2.2 prevent or try to prevent in any way any horse from obtaining the best possible placing.

58.3 No Rider or any Person may in any way prevent or try to prevent any horse from obtaining the best possible placing.

59. Failure to run a horse on its merits

59.1 A Rider of a horse shall be taken to have contravened the requirement imposed on him by Rule 58.1 in each of the following cases.

59.2 Case 1 is where the Stewards or the Authority consider that the Rider has intentionally failed to ensure that his horse is run on its merits.

59.3 [Case 2: provides for the situation where there is no intentional disregard of the requirement that a horse be run on its merits but, for specified reasons, the horse has not achieved its best possible placing.

59.4 Case 3: provides for circumstances not falling within Case 1 or 2.....].

59.5 The purposes of this Rule:

59.5.1 placing means any placing given to the horse by the Judge from and including first place to last place, and

59.5.2 if a dead heat occurs as a result of any of the circumstances in Case 1, 2 or 3 it will be regarded as the equivalent of not achieving the best possible placing.

WITNESSES

11. Over almost 5 days of evidence the following witnesses testified (they are not listed in the precise sequence in which they appeared):-

Called by the BHA

- David Griffiths, the trainer of AD VITAM between March 2011 and November 2011.
- Sophie Griffiths, his wife and assistant trainer.
- Mickey Hammond, the trainer of AD VITAM from January 2012 onwards.
- Tom Chignell, a BHA Betting Investigating Officer.
- John Burgess, another BHA Investigating Officer, who conducted or partially conducted many of the interviews.
- Mark Beecroft, a BHA Stable Inspecting Officer, to whom the Griffithses eventually made a report of alleged concerns as to AD VITAM's races in late 2011.

The (now) Appellants and a witness (David Brown) called on their behalf.

- Mr Greenwood.
- Mr Stainton.
- Miss Murray.
- Mr Ackerman.
- The trainer David Brown, who gave evidence intended by Mr Greenwood in particular to destroy Mrs Griffiths' credibility about an allegedly false claim for personal injury damages. This assault fell well wide of its target: it was rejected out of hand by the Panel.

THE RESULT OF THE CASE BEFORE THE PANEL

12. The Reasons of the Panel are dated 9th October 2015. One month previously, on 9th September, the Panel had published a Summary of Findings. It is almost, but not word for word, mirrored in paragraphs 54-66 of the Reasons under the heading "Conclusions", which read as follows (with minor

alterations which do not go to substance [**bold type and underlining is added by us for ease of reference**]):-

54. **"Mr Greenwood and Mr Stainton** engaged in a conspiracy contrary to **Rule (A)41.1** and **Rule (A)41.2** to seek to ensure that AD VITAM ran down the field in Races 1, 4, 5 and 6.

55. **Mr Greenwood** gave instructions (contrary to **Rule (B)58.2**) to **Stainton** to ride in Races 1, 4, 5 and 6 in a way which could, and in races 1 and 5 did, have the effect of preventing AD VITAM from achieving its best possible placing.

56. In Races 1 and 5, **Stainton** rode AD VITAM in breach of his obligation by **Rule (B)58.1** to ride the horse on its merits.

57. **Mr Greenwood**'s purpose in getting **Stainton** to ride in this manner was for handicapping reasons: it was done to try to reduce the horse's Official Rating to a mark at which **Mr Greenwood** judged it would be more competitive.

58. Neither **Mr Greenwood** nor **Stainton** acted in breach of the Rules as above for the purpose of a lay-betting conspiracy.

59. **Mr Greenwood** was not in breach of **Rule (A)36** by communicating inside information to betting exchange account holders for reward. Though he did communicate inside information to **Mr Ackerman** and **Mr Mackay**, he was unaware of its use and there was no reward involved.

60. **Mr Greenwood** was in breach of **Rule (A)50.2** between 11 July 2012 and 31 January 2013 because he failed to agree a time and a place for interview by the BHA investigating officer, because he failed to attend any such interview, and because he failed to supply his telephone billing records to the BHA as requested.

61. **Murray** was not in breach of **Rule (A)41** or **Rule (B)58.1** in relation to Races 2 and 3. In reaching this conclusion, the Panel did not accept the evidence of Mrs Griffiths that she was told by **Murray** before Race 3 that she (**Murray**) had been instructed by **Mr Greenwood** to finish out of the first four in the race. However, the Panel emphasises that it concluded that Mrs Griffiths and her husband gave honest evidence to the Panel. The Panel's eventual conclusion was that Mrs Griffiths misunderstood what was said to her about the riding instructions which **Murray** had been given by Mr Greenwood.

62. The Panel did not find that **Mr Greenwood** gave **Murray** instructions to ride AD VITAM otherwise than on its merits. While he expected that his instructions would contribute to a poor run, in the event they did not do so, and he was not in breach of **Rule (B)58.2**.

63. **Mr Ackerman** was in breach of **Rule (A)41.1**, but not of **Rule (A)41.2**. He became aware from **Mr Greenwood** that AD VITAM (IRE) was likely to run down the field in Races 1, 4, 5 and 6 because of the possible co-operation of **Stainton** in handicapping runs. He placed lay bets against AD VITAM (IRE) in those races. He was not in breach by virtue of his betting for Races 2 and 3.

64. **Mr Ackerman** was not in breach of **Rule (A)37** because he was not providing reward to **Mr Greenwood** for the information which informed his lay betting against AD VITAM for Races 1, 4, 5 and 6, and he did not otherwise assist, encourage or cause **Mr Greenwood** to act in contravention of the Rules.

65. **Mr Mackay** was in breach of **Rule (A)41.1**, but not of **Rule (A)41.2**. He became aware that AD VITAM was likely to run down the field in Race 1 because of the possible co-operation of **Stainton** in handicapping runs. He placed lay bets against AD VITAM in that race. He was not in breach by virtue of his lay betting for Race 2.

66. **Mr Mackay** was not in breach of **Rule (A)37** because he was not providing reward to Mr Greenwood for the information which informed his lay betting against AD VITAM in Race 1, and he did not otherwise assist, encourage or cause Mr Greenwood to act in contravention of the Rules."

PENALTIES

13. In respect of the offences found against them:

- for the breaches of Rule (A)41 and (B)58.2 Mr Greenwood was disqualified for 6 years; and for the breach of Rule (A)50.2 for 2 years – a total of 8 years;
- for the breaches of Rule (A)41 and (B)58.1 Mr Stainton was disqualified for 2 years
- for the breach of Rule (A)41.1 Mr Ackerman was excluded for 6 months and purportedly fined £5,000; and
- for the breach of Rule (A)41.1 Mr Mackay was disqualified for 6 months and fined £5,000.

We say "purportedly" in the case of Mr Ackerman because, unfortunately, the Panel was suffering under a misapprehension. Mr Ackerman, as an unlicensed and unregistered person, was not liable to any fine and that part of the sanction imposed upon him must accordingly be and is hereby quashed (as the BHA immediately conceded). Otherwise, it is only Mr Stainton who appeals against the severity of the penalty imposed upon him. That appeal will be considered at a further hearing which will be convened in due course.

THE NOTICES OF APPEAL

14. We turn to the Notices of Appeal, with two initial observations. First, they are in places repetitive of what has gone before (that is not intended as a criticism): secondly, it is clear that the same draftsman (in fact, Mr Winter) was responsible for the Notices in the cases of Messrs Greenwood, Ackerman and Mackay, and many of the grounds in the three Notices are fully or almost identical.

15. The substance is of the Notices is as follows, re-arranged to some extent into what we think is a logical sequence and expressed in a way which we are confident captures their core meaning. Any words in *italic* type are our own commentary.

Mr Greenwood's appeal

A. The decision of the Panel to find Mr Greenwood not guilty of the primary alleged lay betting conspiracy, but to find him guilty of a secondary conspiracy to give AD VITAM handicapping runs and profit from subsequent back bets, was not open to them in circumstances where the latter allegation had never been made against him, was not put to him during the Inquiry and was something which he had no opportunity to, and did not, defend. The finding was unfair; the hearing was accordingly unfairly conducted; and the finding should be quashed for that reason alone.

B. The conclusion that Greenwood was not guilty of the primary alleged conspiracy, to the effect that Stainton should ride AD VITAM so as to guarantee lay bets placed by Ackerman, was determinative. There was no evidence capable of sustaining a conclusion that he was separately guilty of a conspiracy to profit from back bets on AD VITAM subsequently to be placed.

C. The Panel made essential findings that

(a) Ackerman's lay betting could not sustain the conclusion that Greenwood was guilty of a conspiracy to run AD VITAM otherwise than on its merits; and

(b) Greenwood had not been rewarded for passing inside information about AD VITAM to Ackerman.

Those findings destroy the evidential basis for any conclusion that Greenwood and Stainton had entered into any conspiracy.

D. The only remaining evidence potentially probative of such conspiracy between Greenwood and Stainton was that of Stainton's rides, which evidence, however, without more, was incapable of sustaining the conclusion that they were guilty of such conspiracy.

E. The conclusion of the Panel is evidentially unsupported, unfair and one that no reasonable Panel would have reached.

Mr Ackerman's appeal

F. It was not open to the Panel to find Mr Ackerman guilty of a breach of Rule (A)41.1 [*commission of a corrupt or fraudulent practice in relation to racing*] on the basis that, notwithstanding that he was not party to the primarily alleged conspiracy with Greenwood and Stainton, he nevertheless knew that they had agreed to run AD VITAM otherwise than on its merits. That allegation was never made against Ackerman, was not put to him and was not defended. The finding was unfair; the hearing was accordingly unfairly conducted; and the finding should be quashed for that reason alone.

G. The conclusion that Ackerman was not guilty of the primary (lay bet) conspiracy allegation was determinative. There was no evidence capable of sustaining the conclusion that he was separately guilty of a breach of Rule (A)41.1.

H. Nor did the Panel identify any evidential basis for the conclusion that Ackerman knew that Greenwood and Stainton had agreed that AD VITAM would be run otherwise than on its merits.

I. There was no evidence capable of sustaining the conclusion that Greenwood and Stainton were guilty of a secondary conspiracy to the effect that Stainton would ride AD VITAM otherwise than on its merits so as to seek to profit from a subsequent back bet. It follows that there was no evidence capable of sustaining the finding that Ackerman knew of the existence of that agreement, upon which basis he placed lay bets on the horse.

J. The conclusion of the Panel is evidentially unsupported, unfair and one that no reasonable Panel would have reached

Mr Mackay's appeal

The grounds are almost identical to those advanced on behalf of Mr Ackerman. The one material exception is additional sentence as follows:

*"*No evidence was placed before the Panel of any communication between Mackay and Greenwood, Stainton or Ackerman relevant to Race 1 by which information could have been passed."

Mr Stainton's appeal

The Notice cites grounds of appeal which were, we assume, prepared by a different draftsman and are more voluminous. Moreover, Mr Stainton, apart from an attack upon the findings of malfeasance which is more detailed than that in the other Notices of Appeal, also appeals against the Penalties imposed by the Panel upon him. In summary, the Grounds pleaded by Mr Stainton are as follows:-

K. Generally, the Reasons of the Panel:

(i) are insufficient to support its decision;

(ii) contained no reasoned analysis of why the evidence and arguments advanced by Stainton were rejected, but rather simply state that they were rejected;

(iii) are silent as to various explanations for his conduct given by Stainton. He gave a full explanation of events; but his evidence and submissions were totally disregarded by the Panel without reasonable explanation;

(iv) incorporate a decision which went against the overwhelming weight of the evidence.

L. The hearing was conducted in a way which was unfair and prejudicial to Stainton because:

(i) videos of races where shown in connection with which he had no warning or opportunity to prepare evidence or submissions [**apparently not pursued]**;

(ii) the allegation that Stainton was guilty of the secondary (handicapping / back betting coup) conspiracy had not been notified or otherwise put to him at any time and he therefore had no opportunity to deal with it properly or at all;

(iii) the Panel failed to comply with paragraph 12 of Part (A) Schedule 6 in that it failed to provide Stainton with any/any reasonable opportunity to deal with the "new" (handicapping etc) allegation.

M. There was insufficient material on the basis of which a reasonable tribunal could have made the decision and/or the Panel ignored or gave insufficient weight to Stainton's evidence and/or misconstrued or wrongly applied the Rules of Racing, in that:

(i) the conclusion that Stainton had failed adequately to disclose the nature of his relationship with Greenwood was one which no reasonable tribunal could have reached. This conclusion will have been in the mind of the Panel in its consideration, which was thus tainted, of all subsequent points involving Stainton;

(ii) as to the Panel's conclusions on Stainton's rides in the Races in question, no reasonable tribunal could have come to its conclusions, which were reached with the benefit of hindsight rather than with due consideration of the split- second race riding decisions that a jockey has to make in the heat of a race. [*The Notice of Appeal specifically addresses Races 1 and 5: in substance the contention is that no reasonable tribunal could have concluded that Stainton, in either race, rode AD VITAM in breach of his obligation to ride the horse on its merits*.]

(iii) the Panel's analysis disregards the known and erratic form of AD VITAM; the various descriptions attributed to him e.g. "*ungenuine*", "*a monkey*", with "*a piggy sort of attitude*", "*a horse that would never run twice the same two days running*"; and his tendency to miss the break and/or to be outpaced and/or to be ridden from the rear.

N. Had the Panel properly assessed the rides in Races 1 and 5, it would not have reached the conclusions that it did in connection with Races 4 and 6.

O. No reasonable tribunal could have concluded that the evidence of Mr Griffiths and of Mrs Griffiths was reliable.

P. No reasonable tribunal could have concluded that the instructions provided by Griffiths were always as stated by him, in light of the evidence of Mrs Griffiths and in light of the Form Book.

Q. There was no direct evidence of any reward; and no reasonable tribunal could have properly drawn the inference that any reward passed from Greenwood to Stainton.

(There are further grounds in support of the appeal against penalty, which are for later consideration.)

16. For ease of reference we will adhere to this revised presentation with its lettered paragraphs: so, for illustration, the first stated ground of Greenwood's appeal is "Ground A" and the first stated ground of Stainton's appeal is "Ground K".

17. As we travel through the Panel's Reasons, we will go beyond mere narrative mode and at times express our view of the Panel's findings and reasoning and our reaction to the Appellants' arguments and grounds of appeal. Towards the end of our Reasons (paragraphs 85 ff), we will step back to consider what grounds remain not yet, or as yet insufficiently, addressed and proceed to deal with them accordingly.

18. As a matter of logic the first area of the appeals to address is that based upon the assertion that, because, according to the Notices, the so-called secondary conspiracy – targeted at a lowering of AD VITAM's handicap rating and the making of profit from subsequent back bets – was never, as they say, put to the Appellants or litigated, the finding of such a conspiracy was fundamentally unfair and must be quashed. It is a ground of appeal broadly common to all of the appellants, and falls within paragraph 14.2 of Schedule A(7), which provides that one of the (narrowly prescribed) grounds for bringing an appeal to the Appeal Board is that "*the hearing was conducted in a way which was substantially unfair and prejudicial to the appellant*". It is plain that, unless the finding of corruption on the part of Mr Greenwood and Mr Stainton was reached at the culmination of a fairly conducted hearing, the case against all the appellants [1] becomes vitiated, which would result in either a simple allowing of the appeals without more or (which would be controversial and no doubt strenuously opposed) the convening of some sort of re-trial.

19. We record at the outset our view that this ground of appeal is without merit and cannot succeed. However, it will be expedient to explain our rationale for that conclusion towards the end of these overall Reasons, when the factual and other background from a broader perspective has been explained.

THE BACKGROUND HISTORY

20. With that necessarily extensive pre-amble we turn to the facts. As to the situation prior to Race 1, the Panel painted the picture as follows:-

> "11. Mr Greenwood told the Panel he was a professional gambler. After university, he said he began a graduate placement with William Hill in about 2002, doing various jobs with them until late 2004, including with William Hill radio. In 2005 he did some TV work for Sky and then worked with Timeform radio, but after that concentrated on gambling, principally on horse racing. He said that his profit since 2005 was just over £5 million, and that in 2010 he had won £865,000 and not far short of that in 2011. He estimated his betting turnover per week at about £1 million, with the aim of making a small percentage of that turnover. The Panel accepted that, in 2011 at least, Mr Greenwood was a high-stakes gambler who had had considerable success. That was confirmed by the evidence of others, notably Tom Chignell the BHA betting analyst.
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> 14. Mr Greenwood acquired AD VITAM (IRE) in March 2011. He claimed it after it won at Kempton on 10 March, and sent it to Griffiths, whom he had known from their days on William Hill radio. Initially their efforts with the horse were collaborative. It was tried over a range of trips from 8 to 11½ furlongs in its eight races up to Ripon on 4 July, and with a variety of headgear. Mr Greenwood would generally choose the jockey and either choose or have a final say about what races to enter. In six of those eight early races, it was ridden by a female apprentice, chosen (Mr Greenwood accepted) because he liked to give rides to girls, especially if pretty. Annex B, which sets out the betting relevant for this enquiry, shows that Mr Greenwood did have some sizeable win or place bets on some of these races, but these were on the two occasions it was ridden by first Michael O'Connell and then by Martin Harley. Over the course of these races, AD VITAM (IRE)'s official handicap rating dropped from 64 to 56, and it finished in a place just once at Redcar. The overall picture, though one of general lack of success, gives credence to Mr Greenwood's evidence that AD VITAM (IRE) was meant to be a "fun horse".
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> 15. After the Ripon race, the horse had a wind operation, though exactly what was never made clear. It returned to racing at Southwell on 30 August, when Murray rode it for the first time, finishing last and being dropped a further 4lbs to 52 in the handicap. A race at Wolverhampton on 29 September, when ridden by

[1] Save, in the case of Mr Greenwood, as to his offence under Rule (A)50

Julie Cumine, was followed by Stainton's first two rides of AD VITAM (IRE): at Wolverhampton on 6 October and Brighton on 13 October. Stainton was selected for the ride by Mr Greenwood. Their relationship was much closer than the usual jockey/owner relationship and closer than Stainton was prepared to admit in interview and evidence. They had known each other well for some years by 2011. Each described the other as a "friend" and Mr Greenwood told Griffiths that Stainton was his "best friend". On one occasion, but on an unknown date, Mr Greenwood gave a large amount of cash – perhaps £3,500 to Stainton's partner. Stainton and Mr Greenwood had from time to time gone together to assess horses for potential purchase. And Stainton was supplying information to Mr Greenwood about prospects for horses he rode. One example was LITTLE PERISHER, a horse which some people, Mrs Griffiths among them, thought Mr Greenwood owned though he later said he did not. A Facebook exchange on 15 November 2011 between Mrs Griffiths and Mr Greenwood records Mrs Griffiths asking "do u run Little Perisher on Fri as well". Mr Greenwood answered "Stainton rode him in work last week and thinks he's ready…"

16. For the 6 October race, a weak contest over 8½ furlongs at Wolverhampton, Mr Greenwood had win and place bets totalling £4186. Stainton rode the horse prominently, lead over 2 furlongs out but eventually finished 2nd. The horse was dropped a further 2lbs in the handicap to 50. At Brighton on 13 October over 8 furlongs, Mr Greenwood's back bets totalled £7045. Stainton again gave the horse a strong ride, up with the leaders to challenge 2 furlongs out. Though 2nd with a furlong to go, AD VITAM (IRE) was eventually beaten into 4th place. The handicapper raised the horse 2lbs to a mark of 52 for this run. The reason for noting these rides in some detail is because of the notable contrast they provide to Stainton's rides in the races listed in Annex A. While the Panel is of course aware that a ride less strong than a jockey's strongest effort does not automatically amount to a breach of the Rules, the contrast between the Brighton ride and the Kempton ride, to the ride in November (race 1) was so marked as to be damning".

21. Thus, as at the beginning of November 2011 Mr Greenwood had owned AD VITAM for some 7 months. He had on many occasions backed the horse to win and be placed (see Appendix A), with varying success but, as it happens, sustaining an overall loss by then of some £10,000. There now commenced another, as it transpired 4 month, period in the course of which Races 1 to 6 were run and, as the Panel found, a corrupt scheme conceived by Mr Greenwood and agreed between him and Mr Stainton was put into action as the precursor towards an attempted and very significant back betting coup which, as to its occasion, came to be labelled as Race 7.

22. We turn to the manner in which the Panel formed and expressed its conclusions as to Races 1-6. In doing so, it had to consider a number of inter-connecting factors the principal of which, if reduced to the form of headings, would be classified as:-

- the video evidence;
- the betting evidence;
- the contact evidence (to include consideration of the relationship(s) between the persons involved);
- the testimony generally of the relevant parties / witnesses.

23. As to the last-mentioned, the Panel had to form a balanced and fair view of the credibility of every significant witness, whether (s)he be an actual respondent or simply an auxiliary witness as to fact. Inevitably it wove into its narrative reference to, and analysis of, many evidential factors. To that end it had to take account of what had been said, *and indeed not said*, in both interview and oral evidence. The words in italics appear because (i) Mr Greenwood, as already mentioned, declined to present himself for interview (or to disclose his telephone records); and (ii) Mr Mackay declined to appear at the hearing and thus to be cross-examined. These were omissions to which the Panel was manifestly entitled to attach such (reasonable) weight as it thought fit.

RACE 1

24. This is what the Panel said about **Race 1**, run at Kempton on 2nd November 2011:-

"17. By the time of the Kempton race on 2 November 2011, therefore, AD VITAM (IRE) had achieved just two placed finishes in twelve runs for Mr Greenwood, and had been raised 2lbs for its last run. Mr Greenwood had just lost his largest bet on AD VITAM (IRE) since the Redcar race in May 2011. At Kempton, AD VITAM (IRE) was drawn on the outside – what the witnesses referred to as the "coffin draw". But there were a number of startling aspects of the ride given by Stainton. First, he missed the break entirely. The recordings show that he did not make any effort to dip down to drive his horse forward just before the gates opened, as all the other jockeys did. When the gates did open, the horse's head was facing left. While the recordings do not make it possible to say one way or the other whether Stainton caused this, it contributed to the slow start. The Panel eventually concluded that his failures of jockeyship at the start were deliberate. Shortly after the start, AD VITAM (IRE) had lost several lengths. This was remarkable given that he had been told by Griffiths to race handy as this was a shorter than usual trip for the horse of 7 furlongs. Stainton began to push AD VITAM (IRE) forward on the outside of the field, and by the 4 furlong marker was still on the outside and just back from mid-division. The field was by this stage racing on the turn. At the 4 furlong marker, Stainton took a hold of the horse. But this was not to drop into a position nearer the rail – he remained on the outside. Further, he continued to race wide, leaving a gap of more than a horse's width between his mount and the nearest horses to him on his inside. The Panel could find no honest explanation for racing so wide, and Stainton could not supply one. AD VITAM (IRE) had lost ground by the 3 furlong marker. In the straight, he was initially carried marginally wider by another horse, but instead of continuing with a straight run, he switched inside and began a sharply rightward angled run to the finish. He did not begin serious effort till 2 furlongs out, by which time his chance was long lost. AD VITAM (IRE) finished 6th, staying on through beaten horses, and losing by a total of 6 lengths

18. Taking this ride as a whole, therefore, the Panel concluded that it amounted to a breach of Rule (B)58 of the kind described in Rule (B)59.2 – a deliberate failure to ride the horse on its merits. There were simply too many startlingly poor features of the ride to permit a less serious conclusion. He plainly did not ride to the instructions from Griffiths. For reasons to be explained, the Panel considered that he was in fact riding to instructions from Mr Greenwood, who wanted the horse to finish down the field to try to get a more sympathetic handicap mark. Mr Greenwood did not back AD VITAM (IRE) in this race, but did back another runner on which he lost £1250 (see Annex B). The Panel did not accept his evidence that the position he took was just because of the poor outside draw for AD VITAM (IRE)."

25. We, the Appeal Board, have watched the race many times, viewing and analysing it from every angle, in both the obvious senses of that phrase. The same observation applies to the video evidence relating to all the other races drawn to our attention at the hearing of the appeals, namely the Brighton race of 13th October 2011, Races 2-7 inclusive and the race (that at Wolverhampton on 16th March 2012) which immediately succeeded Race 7. It has been necessary, and our fundamental duty, to achieve icy objectivity and to be vigilant for any instance(s) where the Panel has or may have trespassed outside the ambit of a reasonably formed conclusion based upon the evidence before it. We have to say, however, that we find the Panel's core analysis of Race 1, as to (i) the missing of the break, (ii) the taking of a hold, (iii) the running wide and (iv) the sharp change of direction to the inner once in the straight to be unsurprising and, without doubt, tenable. On a view of the ride as a whole it looked dishonest, taking all the stated aspects into account, even when due allowance is made for the fact that jockeys do have to make split-second decisions and, it goes without saying, can sometimes make bad errors. Mr Stainton claims to have given cogent explanation for all that he did in the race; but it is clear that the Panel disbelieved him in key areas. One was as to the start, as to which his evidence varied as time progressed. It included the assertion in cross-examination that at the relevant time he did dip (as is standard practice and all the other jockeys did) at the point when the gate was about to open / opening. The Panel rejected what Stainton told them, preferring the evidence of their own eyes (see paragraph 17 of its Reasons).

26. The video evidence alone was not for the Panel the end of the matter: it had also to analyse, in this and other aspects, other surrounding and connected considerations and reach a rounded conclusion. Those other considerations were mentioned by the Panel and, as necessary, will be referred to in our Reasons. They included, by way of example, (i) the stark contrast, as the Panel found, between the rides received by AD VITAM in Races 1-6 as a whole as compared with the rides given by Stainton at Brighton in October 2011 and at Wolverhampton in Race 7 (for avoidance of doubt, we agree as to that contrast), (ii) the relevant betting and contact evidence and (iii) its impression of the overall credibility of those under inquiry and the key witnesses.

27. True it is that, as to Race 1, there was no Stewards' Inquiry at the time; but that is sometimes the way. Stewards generally have to form a swift judgment as to whether a given race merits inquiry and, if so, with what result, without having the benefit, which all involved in this case have enjoyed, of actually viewing the evidence of the camera (to be more precise, 6 cameras) many times over. A Disciplinary Panel also has the benefit of hearing detailed oral evidence, allied to additional information from betting and communications evidence not available to the race-day stewards. One can readily understand, moreover, in the current instance how the Stewards would have assumed, without suspecting otherwise, that AD VITAM had genuinely missed the break; but close scrutiny of the full evidence suggests otherwise. The same rationale applies to Mr and Mrs Griffiths, who, whilst unhappy, did not form the view that the ride given to AD VITAM in Race 1 was corrupt.

28. It is to cater for this type of scenario that Rule (A)52.3 of the Rules of Racing expressly provides:

"52.3 The powers of the Authority extend to conduct that has already been considered by Stewards under the Race Manual (B) and, in such cases, the Authority's powers apply.

52.3.1 irrespective of any decision or action taken by the Stewards, and

52.3.2 whether or not the matter was referred to the Authority by the Stewards under Part (B)1."

29. As to **Races 2 and 3,** the Panel's introductory narrative went as follows:-

19. The next two races both featured Murray as the jockey. They were 6 furlong races at Wolverhampton on 11 and 18 November 2011. Mr Greenwood gave her the rides because Stainton was unavailable owing to a suspension for misuse of the whip. Before describing these races, it is appropriate for the Panel to set out its findings upon an important central aspect of the BHA's case – that before the race on 18 November, Murray told Mrs Griffiths that she had orders from Mr Greenwood not to finish in the first 4. The findings on this were bound to inform the view which the Panel took of the rides.

20. On 18 November, Mrs Griffiths saddled up AD VITAM (IRE) and led the horse out onto the racecourse. Her husband was not present that day. She said she asked Murray "whose instructions are you riding to today?". According to Mrs Griffiths, Murray's reply was that she had had different instructions, and that Mr Greenwood had told her to "jump out, stay wide and don't finish in the first 4". Mrs Griffiths then told her not to be so stupid and that she should ride to Griffiths's instructions to jump out, be prominent and finish in the best place possible. Murray's version was that she made no mention of any instructions from Mr Greenwood and that she was intending to ride to the instructions she recalled from Mrs Griffiths – "to jump out, make all and win as far as you can".

30. The Panel then addressed the credibility of Mrs Griffiths (see paragraphs 43-51 below) and, continuing with its take on the actual races, said:-

"26. What of the rides in races 2 and 3? Both were remarkable spectacles. In race 2, the horse had an unfavourable draw. Murray did have instructions from Mr Greenwood to stay wide out of the kickback, off the pace, and to come through horses in the straight. By contrast, she had been told by Griffiths to jump out and race prominently. She rode a race much nearer to Mr Greenwood's instructions. She remained almost extravagantly wide of the rest of the field after the break and before the turn for home. Coming to the straight, she did switch left and push, though weakly, into a gap between horses. AD VITAM (IRE) began to make serious progress and was moving better than any other runner when she was caught up in a complicated multi-horse event of interference. She was badly bumped a couple of times by other victims of the interference. This unbalanced her and nearly unseated her, causing her to stop riding. But for this incident, the Panel thought she would probably have won the race. In fact, she finished 4th, beaten 2 ¾ lengths by the winner.

27. For race 3, the Panel again determined that she rode a race nearer to Mr Greenwood's wish that the horse be held up, rather than complying with her instructions from Griffiths to jump out and race prominently. Again from a wide draw she kept wide initially and to the rear of the field. Though her effort in the straight did not match that of other more experienced apprentices in the race, she did use her whip four times. AD VITAM (IRE) ran on to finish 5th.

28. The Panel's overall conclusion on these two races was that she rode weakly, but that was all she was capable of, and hence she was not in breach of the Rules. She was inexperienced, and later came to recognise that she did not have the ability to ride professionally, and so she relinquished her licence.

29. That leaves for consideration Mr Greenwood's instructions to her, which she was following rather than those from Griffiths. The Panel was left in no doubt that he gave them because he thought they would contribute to a poor run down the field. And he was concerned to conceal the contents of those instructions. In the Facebook exchange with Mrs Griffiths after the 18 November race, in passages following those already quoted, he kept repeating to Mrs Griffiths that the horse was not able to run to her husband's instructions because it had been "flat out". Mr Greenwood (who was a stranger to false modesty) described himself to the Panel as one of the best five race readers in the country, so this description of the race, which is patently false, was his device at the time to conceal that he had given Murray different instructions. There were undoubtedly other factors which he hoped would contribute to poor results as well – a distance shorter than the horse's best; the use of an inexperienced and weak jockey not able to give a ride of the strength to which the horse was more likely to respond; and a poor draw in both races. But as those instructions, contrary to Mr Greenwood's expectations, did not prevent AD VITAM (IRE) from delivering a challenge in race 2 which would have won the race but for the interference, the Panel did not find him in breach of Rule (B)58.2 in relation to them. The same applies for race 3."

31. There is no ground of appeal which is directed individually at the Panel's findings re Races 2 and 3. That is not to say that the overall conclusion of the Panel as to the laying out of AD VITAM for a back betting coup is not fully challenged: plainly, it is. But, on the premise that the Panel's findings on Races 1 and 5 were properly reasoned and tenable, any quarrel with its findings on Races 2 and 3 would become very difficult to sustain.

32. Before leaving Race 3 we record our agreement with the Panel that Mr Greenwood's suggestion (in the Facebook exchange) that Murray had been "*flat out from the start*" was patently untrue, as the video evidence shows. The extract above shows how the Panel went on to the legitimate conclusion that a purpose for making that suggestion was to conceal the fact that he had given Murray different instructions from those given by Griffiths. As to instructions generally, see paragraphs 57-59 below.

Race 5

33. The Panel said:-

"33. In race 5, again at Wolverhampton on 2 February 2012 over 9½ furlongs, Stainton held the horse up. But just after the 3 furlong marker, when he was making some progress, he stopped riding for a few strides. He said this was because his horse was being intimidated from the outside. But the recordings show no such thing. He had ample room to continue to make a challenge. All the other riders were getting to work on their mounts at this time. Taken in isolation, one might regard this as an error of judgement. But given the wider context, the Panel decided that he was doing this as a precaution to ensure the horse ran down the field, as Mr Greenwood had required. That amounted to a breach of his obligation to ride the horse on its merits. He finished 8th of 13."

34. As before, we watched the comprehensive video data, from 6 cameras. The films, of course, have varying degrees of impact and value depending upon what particular riding issue is being scrutinised. Again, we found ourselves concurring with the Panel's conclusions. In interview and oral evidence Mr Stainton asserted that he had only taken a pull on AD VITAM over three strides, a statement later repeated. In fact, the number of strides in question, described by the Panel as "*a few strides*", looks from the videos to have been six or seven. We mention that fact for completeness: in the overall context it is a distinction without significant difference. However, the BHA's case was that there was no apparent reason for this action taken by the jockey, which cried out for explanation. The ultimate crux of the matter was that Stainton gave two explanations: (i) that he had come so close to the horse in front of him, a horse named LITTLEPORTNBRANDY in red and white quartered colours, that he had no space to continue riding without inhibition and was compelled to restrain AD VITAM, and (ii) that he was intimidated, later described as "*slightly intimidated*", by the horse on his outside, HARRY'S YER

MAN, the eventual winner. We agree with the Panel. It is demonstrably clear from the video evidence that neither of these explanations holds water: they look to be false. There is a side-on view which clearly shows much more space between LITTLEPORTNBRANDY and AD VITAM than Mr Stainton suggested. Moreover, none of the cameras yields any evidence of probable intimidation. It is worth mentioning in passing that HARRY'S YER MAN was always under relative restraint and travelling comfortably: he was an easy victor over his opponents and could be named as the probable winner a long way from home.

35. In oral submissions before us Mr Winter, on instructions, took another point about Race 5, which had not been taken at the Panel hearing. It was that the jockeys of two other horses had also taken a pull more or less contemporaneously with Stainton on AD VITAM, thus indicating, suggested Mr Winter, that there must have been some sort of "incident" which was the catalyst for what happened. The horses the subject of this suggestion were HARRY'S YER MAN and KIRSTY'S LAD (ridden by a relatively inexperienced 7lb claimer, Neil Garbutt). Garbutt did in fact take something of a pull, for whatever reason, but there was no visible incident at all. HARRY'S YER MAN was ridden and ran naturally for a horse travelling as sweetly as he was. The taking so late of this (it has to be said, bad) point is a good example of the shifts which occurred over time in Mr Stainton's evidence.

36. We do stress, however, that the effect, and depth, of culpability in Mr Stainton's riding in Race 5 should not be overstated; but the Panel itself accepted that proposition. What it concluded, in effect, was that the horse was ridden in such a way as not to achieve its best possible placing and, it must follow, to mislead the handicapper and present a level of form inferior to what possibly could have been achieved. However, the video evidence reveals the firm likelihood that the horse, even absent the pull, would not have finished in the frame. It bears repeating that the Panel merely found that Stainton had taken the action that he did out of precaution, so as to ensure that the horse ran down the field.

37. In conclusion, it cannot possibly be said that no reasonable Panel could have arrived at this Panel's conclusions / findings as to Race 1 or Race 5.

38. As to **Races 4 and 6**, they too are not individually the subject of the Appeals, save to the extent that Mr Stainton contends (Ground N) that, had the Panel properly assessed the rides in Races 1 and 5, it would not have reached the conclusions that it did in connection with Races 4 and 6. That must be right, but takes the matter no further. As to Race 4, the Reasons recount how AD VITAM was out of training and resident with Mr Stainton's father for a few weeks after being taken away from Mr Griffiths in November 2011 and only joined Mickey Hammond in January 2012. At Paragraph 32:-

> "32. In fact, Hammond took remarkably little interest in the horse. He left the selection of races and jockeys to Mr Greenwood. It was ridden in work by Stainton. When it arrived at the yard, Hammond had no concern about its general health but said it was carrying condition. The race at Wolverhampton on 20 January 2012 (race 4) was a poor run and the horse was never on terms. Stainton was its jockey. While there was no criticism of the ride, it showed the horse had a pronounced lack of race fitness, finishing 11th of 12. It was dropped 2lbs in the handicap to a mark of 48"

And later

> "34. Race 6 was again at Wolverhampton on 9 February, this time over 6 furlongs. Again, there was no criticism of the ride. The horse had a poor draw, never got on terms and remained always behind, finishing 10th of 13. This produced a further drop in the handicap to 46. In each of races 4, 5 and 6 Stainton was prepared, in the Panel's view, to ride to lose if necessary (at Mr Greenwood's direction), and he actually did so in race 5."

39. The other videos which we saw were those relating to the Brighton Race of 13th October 2011 and the Wolverhampton race of 8th March 2012 (**Race 7**), directly between which Races 1-6 were run. The Panel commented upon Race 7 as follows (its previous reference to the Brighton race is mentioned at paragraphs 20 and 26 above):-

35. The next race at Wolverhampton on 8 March, however, was instrumental in explaining to the Panel what the purpose of the previous six races really was. It was over 7 furlongs and AD VITAM (IRE) was off a mark of 46. It had a more favourable draw. From the outset Stainton rode with a vigour that was quite absent in races 1, 4, 5 and 6. This was the first race since Brighton in October 2011 in which Mr Greenwood backed AD VITAM (IRE). He staked a total of £15,659 in the win and place markets. Stainton raced prominently right up with the lead throughout but met with difficulty in running at the 1 furlong marker. Nevertheless he drove the horse into the lead inside the final furlong but was caught and headed at the finish by the winner, who had come late and from wider behind. Stainton's effort on this occasion was, like in the October race at Brighton, a stark contrast with his rides in races 1, 4, 5 and 6. As Mr Greenwood's betting shows, this was a race which he and Stainton were trying to win."

40. To be more detailed than in fact the Panel deemed necessary, Mr Greenwood placed wagers totalling £7,887 that AD VITAM would win the race and £7,772 that the horse would be placed, a total of £15,659. Mr Winter maintains that this was consistent with the sums which Mr Greenwood regularly risked; but this does not sit comfortably with Mr Greenwood's slightly varying descriptions of his average wager as being at a level of either £2,000 or £2,500. We will assume £2,500. Whilst it is true that Mr Greenwood had bet big previously on AD VITAM, especially at Redcar on 9th May 2011, his bet on AD VITAM in Race 7 was more than 6 times that average. The horse started at 5/1, but had been trading at 14/1 in the morning. Its opening show prior to the actual race was 10/1. Mr Greenwood must have availed himself substantially of the more favourable odds, because his winnings, had the horse won, would have been £89,352 (which equates to an average price of just less than 10/1). (As the horse in fact finished 2nd, the profit was actually only £8,378.)

41. In refuting the Panel's finding of a pre-planned back betting coup, Mr Winter also made the point that, as he put it, Mr Hammond gave clear evidence that he "really fancied" AD VITAM's chances in this race. That submission is exaggerated and misconceived. In interview Mr Hammond reported that the horse had worked "*alright*", but he "*didn't think the horse would win a race really and truthfully*". Later, in oral evidence, he said that he recalled the horse working well on the Saturday before the race; but he also made clear that he thought that the horse was of limited ability and, when asked by Mr Winter whether he thought it might do well on 8th March, replied: "*[I was given] reason to think it might run a bit better than it had done on its previous three runs, but it certainly wouldn't have carried any of my money*". He then described AD VITAM as a very ordinary horse that just worked OK and which went a little bit better in training on that Saturday morning. Contrary to Mr Winter's submission, he never, to our knowledge, said that he really fancied AD VITAM's chances in the race.

42. Mr Winter further contended that on the analysis which found favour with the Panel – based on the secondary back betting conspiracy – the BHA would and should have levelled a charge of corruption against the alleged offenders in specific relation to Race 7, which must itself, he said, have been corrupt if the analysis were correct. We reject that submission. Plainly, on the Panels' findings Races 1-6 were the races in which there was actual or potential malfeasance. In Race 7 the running of the race was and was always intended to be without blemish; and the fact that a given contestant was running off a mark and with a form profile which would or may have been different if the horse been ridden differently during the course of Races 1-6 cannot alter that fact.

THE ORAL EVIDENCE

(i) Mrs Griffiths' evidence

43. David Griffiths was AD VITAM's trainer between March 2011 and November 2011. Mrs Griffiths gave evidence first and, as narrated in the Reasons, on no issue more keenly contested than the question whether Claire Murray had told her prior to Race 3 that Mr Greenwood had given her instructions not just contrary to the trainer's instructions, but to the specific effect that she was to hold AD VITAM up and not finish in the first four. The Panel dealt with the issue at Paragraphs 20-25 of the Reasons and, in doing so, came to a firm view as to Mrs Griffiths' credibility. It rejected various attempted assaults upon her integrity made by and on behalf of Mr Greenwood, to the effect, for example, that (a) she had several years previously mounted a false claim for personal injury damages, (b) she had given false evidence to the BHA about horse ownerships (including by Mr Greenwood) and (c) she had

invented or at least doctored some of the Facebook exchange with Mr Greenwood referred to in the Reasons.

44. At Paragraphs 23-25, this passage appears:-

> 23. So, in resolving what was said at Wolverhampton on 18 November, the Panel proceeded on the basis of its assessments of the witnesses and the probabilities emerging from other relevant evidence. Mrs Griffiths impressed the Panel as an honest witness, though combative at times. There were errors of recall in her evidence, but that did not make her a liar. Murray was a quiet person, nervous of the enquiry proceedings, but she too impressed as basically straightforward. The Panel had very much in mind the testimonial from her employer, Mr Brown, that she was a reserved person, but entirely trustworthy.
>
> 24. An important part of the evidence on this issue was the record of Mrs Griffiths's Facebook exchange with Mr Greenwood just an hour after the race, when she was preparing to return home with the horsebox. Mr Greenwood suggested this record was fabricated, but the Panel concluded it clearly was not. Mr Greenwood did not disclose his side of the record. This is the exchange:
>
> **'5.12pm**
> **Sophie Emma Griffiths**
> She told me on the way out ur orders she also said she had 3 different orders to ride to so she was going to stay wide fall back behind horses in the straight don't finish in the first 4 and I was not nasty to her I told her she should have been sat more handy and it was nothing like daves orders it was an identical race to last week I know u don't want him to win dave said that he never would without a tongue strap anyway I'm not stupid it would be nice to know what the hell your plan is for the horse hell knows what we have done wrong to you
> **5.25pm**
> **David Greenwood**
> Sophie. I've spoken too Claire and according too her she said nothing of the sort too u. U really need too watch the race. Claire is flat out from the gate. The horse gave his all.'
>
> 25. The Panel decided that there had been a conversation between Mrs Griffiths and Murray along the lines described in that Facebook entry, but that crucially it did not include Murray saying she was instructed not to finish in the first 4. The Facebook entry appears to be a combination of recounting a pre-race conversation and a description of how the horse ran. It is more likely that Murray said something to the effect that she was told by Mr Greenwood to stay out of the first 4 during the race – i.e. to hold the horse up. Mrs Griffiths, who was very angry about the ride afterwards and the departure from the instructions she and her husband had given, misunderstood this.

45. The Panel then articulated its reasons for being further influenced to conclude that, as to Race 3, Mr Greenwood did not instruct Murray to give AD VITAM a stopping ride [2]. In this passage it expressed its view that the delay of the Griffithses in making a report to the BHA re AD VITAM indicated that Mrs Griffiths was much less clear about what she was told at the time of Race 3 than she later became. She later, the Panel said, read her Facebook exchange in a way that led her to a mistaken (but honest) view that Murray had told her of an instruction to stop the horse from Mr Greenwood.

46. So the finding by the Panel (their paragraph 23) was, as to Mrs Griffiths, of a basically honest witness who had suffered from a misunderstanding. In the above circumstances it is incomprehensible how, without more, any Appellant feels able to submit through Mr Winter that the evidence of the Griffithses was "discredited", it being effectively contended that it should have been totally rejected and ignored.

47. The submission is unsustainable. The Panel having seen the relevant witnesses over many hours of evidence, it would require clear indication of perversity or irrationality before we could interfere with their assessment. As it happens, moreover, the Appellants can hardly complain about the finding of

[2] For avoidance of doubt we make clear that, wherever in this type of context the word "stop", "stopped" or "stopping" is used, or was used before the Panel, the intended meaning connotes simply the riding of the horse in such a way that the horse does not achieve its best possible placing, wherever finishing, and thus does not run on its merits.

misunderstanding, given an exchange which occurred between the Chairman of the Panel and Mr Winter towards the end of his closing submissions. Mr Greenwood in oral evidence had branded Mrs Griffiths (not to say that he accepted Mr Griffiths' entire truthfulness either) an out-and-out liar. The Chairman was plainly exercised, amongst other considerations, by what the Panel apparently saw as the intrinsic unlikelihood that, within what was in fact a mere 45 minutes of Race 3 finishing and whilst still at the racecourse, Mrs Griffiths had become the author of an elaborate concoction of false narrative and accusation via Facebook (particularly, no doubt, given that it was common ground that prior to this race the relationship between Mr Greenwood and the Griffithses was harmonious). Was there, the Chairman was wondering, some other explanation? What, he asked Mr Winter, would he suggest as the reason(s) why Mrs Griffiths was so upset, angry and even nasty to the jockey, Claire Murray, after the race?

48. Whilst it is to be acknowledged that Mr Winter's primary contention mirrored Mr Greenwood's accusation ("*lie upon lie*", he said), he volunteered in answer to the Chairman's questioning the possibility that Mrs Griffiths had misunderstood or misheard something that had been said. A little later Mr Winter said: "*So either it is just malicious or it is self-defensive, getting a pre-emptive strike in because she thinks Mr Greenwood is going to take the horse away, or it is based upon some form of misunderstanding, or she is so upset about the ride that she doesn't think it can be incompetence because she doesn't think anyone can be that bad, and therefore she has put two and two together and got five and is gilding the lily*".

49. Mr Stainton is the one Appellant who proffers a specific ground of appeal (Ground O) to the effect that no reasonable Panel could have concluded that the evidence of Mr and Mrs Griffiths was reliable. To repeat, we cannot interfere with that conclusion of the Panel. One feature of the review, as opposed to re-hearing, appellate procedure, whether at tribunal or actual court level, is the cardinal principle that it is only in exceptional circumstances that an appellate body can or should overturn assessments of evidential veracity and the findings of fact. The reason is obvious. Such a reversal is by no means precluded; but a justified conclusion that the lower tribunal has made a perverse and/or irrational assessment or finding is the requirement. It is a high hurdle to clear. The Panel was confronted with highly conflicting evidence from Mr Greenwood and the Griffithses. It is plain that Mr Greenwood made, sadly, a particularly poor impression upon the Panel, who gravely mistrusted his reliability and found him untruthful in a number of key areas, including by way of example:

- the account, or rather varying accounts, he gave of his instructions to the jockeys;
- his presentation of what relationship he had with Mr Mackay;
- not the closeness, but the more subtle dynamics, of his relationship with Mr Ackerman;
- the precise nature of his friendship with Mr Stainton and the nature and substance of the oral communications which they habitually conducted.

See further at paragraphs 52-55 below.

50. Further complaints by Mr Stainton as to what he says were inconsistencies in Mrs Griffiths' evidence are make-weight by the side of the principal assault upon her truthfulness, which failed. One example (Ground P) was her initial evidence that Mr Griffiths always gave the same instructions, something which she did later qualify whilst emphasising that, certainly from early October 2011 onwards, the trainer's instructions were constant in the case of AD VITAM: be handy / prominent. Another was her conviction that her interview with the BHA had been tape-recorded, when it clearly had not – a typical instance, we suppose, of the "errors of recall" to which the Panel referred in paragraph 23 of the Reasons.

51. To put it into final perspective, we should record that the actual residual significance of the Griffiths' evidence, once the Panel did not fully accept Mrs Griffiths' version of her conversation with Murray at

Wolverhampton prior to Race 3, became narrow in its scope. Its single most important consequence was perhaps in helping the Panel form its conclusions on the matter of riding instructions.

(ii) How Mr Greenwood's evidence was regarded by the Panel

52. Meanwhile, Mr Greenwood himself gave evidence over several hours. The Panel had the opportunity to subject that evidence to close scrutiny (and was entitled to bear in mind that he had refused to be interviewed and had failed to produce his telephone records).

53. The impression which he made upon the Panel was, to repeat, very poor, to the extent that it went so far as to say:-

> "12. The Panel's caution in accepting what should have been largely uncontroversial material from Mr Greenwood about his history arose from its general approach to his evidence. When giving his evidence, he gave a detailed account of his involvement in the racing of AD VITAM (IRE), as well as of his contacts with the horse's trainers and jockeys and with his various friends and associates in the racing world. For a variety of reasons, the Panel felt compelled to treat his account with great caution. Thus –
>
> (i) he failed, at any time before giving his evidence before the Panel, to commit himself to any detail of what he remembered of his contacts with trainers and jockeys or of his dealings with friends such as Mr Ackerman.
> (ii) As will be seen from the Panel's conclusions about the Rule (A)50 issue, he evaded giving an account in interview with investigators and failed to produce his telephone records.
> (iii) His Schedule (A)6 form contained considerable detail of the nature of the legal arguments to be advanced, and general denials of wrongdoing, but set out next to nothing of Mr Greenwood's own account of, for instance, what he discussed with the horse's trainers or jockeys.
> (iv) That deficiency in Mr Greenwood's Schedule (A)6 form was pointed out before the hearing, and a direction from the Chairman of the Panel required Mr Greenwood to produce sufficient detail of his factual case in advance of the hearing.
> (v) His response (through his solicitor) was to repeat his earlier denials that he had given instructions to jockeys to stop AD VITAM (IRE) or had told Mr Ackerman or anyone else that this might happen. But again, nothing about what if anything he remembered he did say was disclosed.
> (vi) When he came to give evidence before the Panel, he gave for the first time some detailed evidence of his exchanges and conversations with trainers and jockeys. The Panel gained the overriding impression that this evidence was the product of his calculation of what was to his advantage rather than genuine recollection, and this was consistent with his prior failure to commit himself, whether in an interview (which he evaded), or in his Schedule (A)6 form, or in his response to the Chairman's direction of 23 June 2015.
>
> 13. These considerations persuaded the Panel that, basically, Mr Greenwood's evidence could not be trusted unless it was corroborated by reliable evidence from others or by the Panel's judgement of the probabilities."

54. Mr Winter does not in fact attack the Panel's essential conclusion as to Mr Greenwood's lack of credibility. What he seeks to say is that it is a flawed procedure for the Panel to announce at or near the commencement of its Decision that the evidence of Mr Greenwood should be rejected. His assertion is that the Panel's judgment has been constructed backwards in order to reach what he terms a pre-determined conclusion. Mr Greenwood's evidence, he says, "*only becomes important ... once the case against him has been established evidentially*". It was wrong in principle to approach the task of the Panel on the basis that Mr Greenwood's evidence was unreliable such that some breach of the Rules of Racing must have occurred, so as to depart from the BHA's stated case in order to try to identify some breach.

55. The fact is, however, that, as we have said, the Panel rejected much of Mr Greenwood's evidence. It was entitled to do so and to be influenced by the mistrust of which we have spoken, even if only as one of several major factors. Other considerations included the video evidence: this was crucial, but its interpretation was not entirely a matter of visual analysis. Also in what might be termed the

equation was the other material to which we have alluded, including, at which we will shortly arrive, the betting evidence and the contact evidence.

56. The assertions made by Mr Winter smacked of an assault upon the Panel's integrity and bona fides. He did, however, make it clear, when we asked him, that such an assault was not intended. But his attempt to relegate Mr Greenwood's evidence, and credibility, to subsidiary, almost peripheral, status is in our view misconceived. We reiterate that it was a central factor interacting with the many other features of the case whose significance had to be assessed and weighed in the balancing exercise.

INSTRUCTIONS

57. One important example of the factual issues which the Panel had to unravel was the issue of what instructions were given to the jockeys, Stainton and Murray, how, when and by whom. It was a matter upon which there was a welter of evidence in the interview transcripts, in the written statements and in the oral evidence of, in particular, Mr Greenwood, Mr Stainton and Murray; Mr and Mrs Griffiths; and Mr Hammond.

58. One ground of appeal, of Mr Stainton, (Ground P, already mentioned), reads: "*No reasonable tribunal could have concluded that the instructions provided by Griffiths were always as stated by him, in light of the evidence of Mrs Griffiths and in light of the Form Book*." Otherwise, the findings of the Panel as to instructions are not directly challenged, even if inferentially they must be to some extent disputed in so far as they are inconsonant with the Appellants' insistence that no infringement of the Rules of Racing was ever contemplated.

59. There are various references to the Panel's findings as to instructions in the quotations above; but, when the threads are drawn together, this is the position in summary:-

(a) Race 1: Mr Griffiths gave instructions to Mr Stainton: so too, however, did Mr Greenwood. Griffiths' instructions were to stay handy and be prominent, as Stainton eventually conceded in cross-examination. This was in marked contrast to the theme of some lengthy cross-examination of Mrs Griffiths based upon the thesis that AD VITAM's style of running (he allegedly needing to be habitually held up) was inconsistent with such instructions. In any event, the Panel found that Greenwood's instructions to Stainton, following upon their agreement to this effect, were to finish down the field; and that Stainton rode to the instructions of Greenwood, not Griffiths. It is notable that initially, in interview, Stainton told Mr Burgess that in the case of AD VITAM his instructions always came from Greenwood, not from the trainer, although he later went some way towards retracting that evidence. We would echo the Panel's observation that, notwithstanding the theme just mentioned, AD VITAM was ridden relatively prominently both at Brighton and in Race 7.

(b) Races 2 and 3: in Race 2 Mr Griffiths gave instructions to Claire Murray to run prominently. Greenwood, however, told her to stay off the pace, wide and out of the kick-back. In Race 3, again Griffiths gave instructions to jump out and race prominently; but Greenwood instructed Murray to stay out of the first four, in other words to hold the horse up.

(c) Race 5: Mr Greenwood required Stainton to race down the field. By then the trainer of AD VITAM was Mr Hammond; and the thrust of the evidence was that Greenwood insisted that he would convey how the horse was to be ridden and, in any event, that Hammond took the view, and said so, that Stainton knew the horse well and should exercise his own judgment accordingly.

(d) As Mr Weston correctly submitted, Mr Greenwood, whilst accepting that he did give some advice to jockeys riding AD VITAM (as to what was termed "race shape" e.g. what horse(s) was likely to make the pace), was vague as to what that advice was. In Race 7, however, his instructions were recalled clearly, namely that the horse should run prominently, which it did. The Panel's conclusion that in that race the horse was ridden with a vigour in contrast to what had been applied in Races 1-6 is invulnerable to criticism.

MR ACKERMAN

60. The betting of Mr Ackerman on AD VITAM, and of Mr Mackay (see below), required thorough analysis. Like Mr Greenwood's back-bet support of AD VITAM, or lack of it, it was obviously yet another component of what the Panel described as the "wider context". The Panel's conclusions were as follows:-

"The lay betting – Kevin Ackerman ….

37. It will be noted that the Panel has expressed its conclusions about the rides in races 1-6 and the associated conspiracy between Mr Greenwood and Stainton to ensure poor runs by AD VITAM (IRE) without reference to the lay betting by Mr Ackerman or Mr Mackay. That betting is detailed in Annex B. The reason for this is that the Panel came to the view that the activities and agreement of Mr Greenwood and Stainton were not related to this lay betting. Mr Greenwood and Stainton acted as they did to bring off back-betting coups for Mr Greenwood in the Wolverhampton race on 8 March, a scheme which was only partially successful, and in its next race, again at Wolverhampton, on 16 March, a scheme which failed. Nevertheless, the Panel also found that the lay betting by Mr Ackerman and Mr Mackay was inspired by information provided by Mr Greenwood.

38, Mr Ackerman was a close friend of Mr Greenwood, who for instance often stayed at his house. They were in regular phone contact. He accepted that his bets on or against AD VITAM (IRE) at least may have been influenced by Mr Greenwood's view of its prospects, but denied getting any information from him that made him feel he was doing anything wrong. He was rather vague in his evidence about his betting in races 1 to 6. For race 1, for instance, he could not remember why he had placed lay bets against AD VITAM (IRE) for the first time, having previously backed it on some of the occasions when Mr Greenwood did. He said that the horse's draw might have been a big factor. He offered no real explanation for his betting in races 2 and 3. In the Panel's view, his back bet on LITTLE PERISHER in race 3 was clearly influenced by Mr Greenwood's information from Stainton that the horse was ready to win (see the Facebook exchange referred to earlier in these reasons at paragraph 15). This showed a degree of detail passing from Mr Greenwood to Mr Ackerman which was much greater than either was prepared to admit. For races 4, 5 and 6, his explanations were vaguer still. He said that he knew the horse by that stage and had the confidence to lay big.

39. As Mr Chignell's evidence established, these lay bets by Mr Ackerman fell outside his usual pattern. The lay bets for races 1 and 2 were his 2nd, 3rd and 9th largest lay bets of 2011, and the 2012 bets were also among his largest that year. The Panel felt bound to conclude that this level of confidence was influenced by information from Mr Greenwood that AD VITAM (IRE) was not going to perform in these races because Stainton would ride to lose if necessary. For the two Murray rides, his confidence was influenced by Mr Greenwood's information that the horse would not win because his instructions to the jockey would help to provide a poor run. In the case of the Murray rides in races 2 and 3, however, the Panel has already found that those instructions did not include a requirement to stop the horse and were not otherwise a breach of the Rules by Mr Greenwood. So they cannot involve any breach by Mr Ackerman.

40. The Panel accepted the submission of Mr Winter QC that the Ackerman bets in races 1-6 were trivial in money terms from Mr Greenwood's perspective. That contributed to the Panel's conclusion that there was no conspiracy between Mr Greenwood and Mr Ackerman. Mr Greenwood was far too smart to place lay bets against AD VITAM (IRE), either personally or through others, and had no real interest in what Mr Ackerman would do with the information he provided. The Panel decided that Mr Greenwood did not know what Mr Ackerman was doing with the information provided. For this reason, it acquitted both Mr Greenwood and Mr Ackerman of breaches of Rule (A)36 and Rule (A)37. The BHA's submission that the facility of an office which Mr Ackerman arranged for Mr Greenwood at Towcester (where Mr Ackerman was the Chief Executive) was some sort of payoff for the information was rejected. That arrangement had been in place for some time before the events with which this enquiry was concerned.

41. That leaves for consideration the allegation that Mr Ackerman's betting amounted to a "corrupt practice" and therefore a breach of Rule (A)41.1. In the light of the findings of fact above, it is not necessary to go through the detailed submissions about the correct approach to the Rules following the High Court decision in McKeown v BHA in 2009, or the decisions of the BHA's Appeal Board in Babbs and Celaschi (2013) or Knott

(2015). It is enough to note simply the explanation given in Knott for the earlier decision in Babbs and Celaschi –

"*the basis on which Babbs and Celaschi was decided was that the mere placing of a lay bet on the basis of Inside Information does not, without more, amount to a corrupt or fraudulent practice contrary to Rule (A)41; and that the provision of information to enable such a lay bet to be made does not, without more, put the provider of such information in breach of Rule (A)37 of assisting or encouraging or causing another person to act in contravention of the provision of that Rule. We agree with that, and we reject the BHA's contention that the case was wrongly decided*."

42. Where, as here, the information from Mr Greenwood included an indication that Stainton was prepared to ride to lose if necessary, there is present the extra ingredient which makes corrupt at least lay betting influenced by it. The Panel therefore found that Mr Ackerman's lay betting for races 1, 4, 5 and 6 amounted to a corrupt practice contrary to Rule (A)41.1."

61. Mr Winter submits that in the context of a back, as opposed to lay, betting coup, it is only Mr Greenwood's betting activity which can conceivably be relevant; but we do not accept that submission. He puts the Appellants' case starkly where betting evidence is concerned in this type of case generally. He recognises that it is open to a tribunal to draw an adverse inference of corrupt behaviour from betting activity, but only if it consists of what he terms a "*spike*" in the historical risk appetite of the punter under consideration. He has even from time to time suggested that, to qualify as truly extraordinary, and thus a spike, a wager must in its quantum be a substantial multiple of the sort of figure habitually wagered. At the hearing before the Panel he cited more than one extreme to illustrate the point. We suggested to Mr Winter, however, that every case must be fact specific, but (for illustration) that in a given case a, say, 30% increase in historically maximum appetite for risk might properly be considered a spike. He did not seem seriously to demur. He insisted, however, that in the current instance neither Mr Ackerman's nor Mr Mackay's betting activity does anything to support the BHA's case.

62. Mr Ackerman was, generally, a keen and active punter. In 2010 he did enter into a number of lay bets as to which the risk involved amounted to several thousand pounds. In 2011, however, the picture altered radically. He was, as the Panel noticed, like Mr Greenwood a supporter of AD VITAM, in his case for three races prior to Race 1, and then stopped backing the horse at precisely the same time as Mr Greenwood. The risks he incurred in November in Races 1 and 2, £963 and £945 respectively, were the largest in that year at the time (he did risk £1,614 on another horse 2 days after the AD VITAM lay in Race 2). He also had a large back bet on the (flip-flopping with AD VITAM) favourite in Race 3, LITTLE PERISHER, as the Panel recounted in paragraph 38 of the Reasons.

63. In 2012, however, the figures were of a dramatically different dimension, because Mr Ackerman, in laying AD VITAM, risked £3,000 (to win £1,946) in Race 4 and £4,110 (to win £915, odds of broadly 2/9) in Race 5, which was the second of the two races in which the Panel found that Mr Stainton had taken active steps to ensure that AD VITAM did not run on its merits. This lay, to the tune of £4,110, was Ackerman's largest lay in 2012; and that of £3,000 the second largest. The third largest was for a risk of £2,239, not much more than one half of the greater liability risked on AD VITAM, and the fourth largest for £1,212, almost half again less. The Panel said that the risks on Races 4 and 5 were "*amongst the largest*" in that year; but in fact they *were* the largest, as just described, and by a wide margin. It is beyond sensible dispute that they must have been born of a great deal of confidence in their success. The Panel found that Mr Ackerman has no persuasive explanation for that confidence.

64. Most of these facts required explanation from Mr Ackerman, for there were plainly grounds for strong suspicion. He had the opportunity to allay that suspicion in oral evidence, but the Reasons make clear that he was not a convincing witness and failed to do so: thus the reference to his vagueness and the lack of real or persuasive explanation for the betting positions which he took. We have to say that a reading of the transcript of Mr Ackerman's oral evidence bears out the Panel's assessment; but in any event the finding of vagueness is not under challenge in the appeal.

65. The Panel's scepticism as to Mr Greenwood's evidence included what he said about the communications between him and Mr Ackerman. A great regularity of texts and telephone calls was established and, one acknowledges, not disputed. Much time was spent in the oral evidence of both men seeking to explore and get to the bottom of the question what information was given by the one to the other and whether for example, as both maintained at times, it was confined simply to discussion of factors in the public domain, notably as to the draw and as to which horse was likely to "go forward" i.e. make the pace, possibly causing the running of a strongly run race.

66. It has to be understood that great emphasis was placed by Mr Greenwood, both in evidence and in argument, on the bad draws suffered by AD VITAM in Races 1-6 (and this point was also taken by the other Appellants, including Mr Ackerman). In general principle the point was fairly taken; but, apart from the fact that, axiomatically, horses sometimes do win or are placed from a bad draw, it is notable that in AD VITAM's race at Wolverhampton on 29th September 2011 Mr Greenwood, who gave oral evidence to the effect that he would never back a horse from the sort of bad draw which had been confronting AD VITAM, did back the horse when drawn 11 of 13 and, when it finished 5th, lost £5,895. By contrast, in oral evidence Mr Greenwood, for example, described AD VITAM 's draw at Wolverhampton in Race 4 (10 of 12) as "in the car park …. ".

67. Mr Winter places heavy reliance on the submission that, if, as the Panel found, there was no financial benefit for Mr Greenwood in passing the inside information to Mr Ackerman, then there was no apparent purpose at all in doing so, and none was identified by the BHA. That is true and we have weighed the point carefully; but it was something of which the Panel was aware, as it was of the very close friendship between Mr Greenwood and Mr Ackerman. The friendship, to repeat, was not disputed; but the point is that it was certainly such as to establish that complete trust is very likely to have existed between them. In all the circumstances the Panel not only described the lay betting of Mr Ackerman as falling outside his usual pattern, which they were justified in concluding (see above); but also took the view that that betting must have been inspired by information from Greenwood (paragraph 37 of the Reasons). In our judgment these were conclusions at which, as a reasonable Panel, they were plainly entitled to arrive.

68. In reaching this view we take into account that Mr Ackerman did not back AD VITAM on his Betfair or Betdaq accounts in Race 7 or, so far as is known, anywhere else, although he did back it to the tune of c.£700 in its next race (at Wolverhampton on 16th March 2012). One can only speculate as to how that situation arose; but it is certainly far from sufficiently significant to displace the Panel's ability properly to reach the conclusions it did as we have just recounted them.

69. We note in passing that in paragraph 37 of the Reasons the Panel referred to back betting coups (in the plural) on Race 7 and the race run 8 days later. Mr Winter observed that the BHA itself had not suggested that scenario. We can only assume that the Panel was struck by the fact that in the 16th March race[3] Mr Greenwood did back AD VITAM in an overall sum totalling £13,119. It must, however, be logical to assume that, had the horse won in Race 7, netting a profit of c.£90,000, that would have been *the* coup (in the singular).

MR MACKAY

70. The relevant passage from the Reasons is as follows:-

[3] It was, incidentally, as to this race, not Race 7, that Mr Hammond said that he felt that, if AD VITAM was ever going to win a race for him, then this was the race.

"<u>The lay betting - …. Kenneth Mackay</u>

43. Mr Mackay chose not to attend the enquiry. He therefore avoided questions about the explanation he gave to investigators in interview for his lay bets against AD VITAM (IRE) in races 1 and 2. This explanation was to the effect that he had lost a large amount of money through betting at the end of October 2011, and decided to change tactics to place large pre-race bets to try to recoup his position. Mr Mackay was a professional gambler concentrating very largely on in-running betting.

44. Prior to November 2011, he had in fact placed pre-race back bets on AD VITAM (IRE) on three occasions, on each of which Mr Greenwood was also a substantial backer. His change of tactics in November 2011 consisted of three pre-race lay bets of which two were against AD VITAM (IRE) in races 1 and 2. For race 1, the liability risked through his account with Betfair and Betdaq were the 7th largest he ever took. For race 2, the liability risked was the largest he ever took. He told the investigators in interview that these positions were based upon his judgements of the horse's form, the draw, the lack of support in the early betting market, and in the case of the second race upon the booking of Murray to ride.

45. Mr Mackay admitted knowing Mr Greenwood, whom he would see at racecourses as both were in-running gamblers. He said he knew him to speak to, but had never really been involved with him. Mr Greenwood, however, disowned any real knowledge of Mr Mackay, and said he had to be shown a photograph of him to know who he was. While there was no evidence of phone contact from Mr Mackay's phone to Mr Greenwood, the position with Mr Greenwood's phone is unknown because he did not disclose his records. The Panel formed the view that they must have known each other to a much greater degree than either was prepared to admit, because of their frequent association at racecourses. Mr Mackay's back betting on AD VITAM (IRE) before November 2011 on occasions when Mr Greenwood was also backing his horse was too much to be coincidence, and also showed contact between them and a flow of information from Mr Greenwood to Mr Mackay.

46. The Panel decided that information from Mr Greenwood influenced Mr Mackay's lay bets in races 1 and 2. There was no obvious reason for him to try a new approach alongside his generally profitable in-play betting, particularly when the first of his so-called change of tactics bets, against GALLANTRY on 1 November 2011, had made him a substantial loss. The relative size of his lay bets for races 1 and 2 also contradicts his untested assertion that it was based on form and other judgements of publicly available information. He was placing those bets because he knew from Mr Greenwood that Stainton was prepared to ride to lose if necessary in race 1 and that Murray had been given instructions by Mr Greenwood which it was hoped would contribute to a poor run.

47. As in the case of Mr Ackerman, however, the Panel took the view that Mr Mackay was not party to any conspiracy – he was simply picking up on and using information from Mr Greenwood, in all probability without Mr Greenwood's knowledge. But again similarly to the case of Mr Ackerman, his use of this information for race 1 was a corrupt practice and therefore a breach of Rule (A)41.1. For reasons already given, his use of the information provided for race 2 was not corrupt, because there was no breach of the rules by Murray or by Mr Greenwood in relation to his instructions for that race (more by luck than judgement in Mr Greenwood's case). The Panel was not prepared to infer that any price was paid by Mr Mackay for this information: it was provided by Mr Greenwood to someone he evidently trusted and it was no part of Mr Greenwood's purpose to make money from lay betting. Hence there was no breach by Mr Greenwood of Rule (A)36 or by Mr Mackay of Rule (A)37."

71. Mr Mackay was contacted by the BHA in around late 2014. He initially co-operated in their requests for information and explanation as to his involvement (if any) with Mr Greenwood and his betting activity in races in which AD VITAM had performed. The BHA came into possession of relevant Betfair data, which was shared by Betfair when they re-examined their records of lay betting activity on AD VITAM. In addition, Mr Mackay volunteered certain telephone records and agreed to an interview, which took place on 28th January 2015.

72. However, when facing formal allegations of wrongdoing, and with an actual disciplinary hearing on the horizon, Mr Mackay's attitude changed markedly. He sent the two letters of 17th and 29th June 2015 mentioned in paragraph 9 above. While in some parts abrasive, they denied any real connection with Mr Greenwood and certainly any friendship. Mr Mackay said that he did not talk to Greenwood other than to say hello: he simply did not know the man. In interview Mr Mackay put it rather differently, as the Panel recounted: he did know Mr Greenwood but was not involved with him. The whole case, he said, was built on a bed of inference. According to him, the bets on AD VITAM did not speak for themselves; and they were not unusual when taken in their proper context.

73. Mr Greenwood's evidence, meanwhile, was that, as to Mr Mackay, he did not know him and had to be shown a picture of him to identify who he was, a proposition which the Panel simply did not believe to be true.

74. When it came to the actual hearing, Mr Mackay, as he had foreshadowed in correspondence, did not condescend to appear, although a Registered Person. The Panel plainly regarded his absence as of some significance; but not crucial. We are satisfied that the Panel fully recognised that it remained the undiluted task of the BHA to prove its case.

75. The Panel did not descend into greater detail than that recited in the passage above; but will have been fully aware of these unchallenged facts:-

a. Mr Mackay was a prolific and professional gambler, having accounts with both Betfair and Betdaq. The BHA's Betting Investigator, Mr Chignell, had access to his Betfair account records with effect from the opening of the account in March 2005.

b. In total, the number of British horseracing bets placed on the Betfair account up to 30th July 2013, a period of 8¼ years, was 66,370. The bets made a profit of £762,695.

c. Mr Mackay was a specialist (but by no means exclusively) in-running punter. For that purpose, like Mr Greenwood, he was a habitual racecourse visitor who frequented the dedicated areas made available specifically to in–running punters.

d. Of the 66,370 bets referred to, 19,360 were pre-race wagers. Of those, 4,395 were pre-race lay bets. One pauses to reflect that, whatever Mr Mackay may precisely have meant by the suggestion of a change of tactics accounting for his lay betting on GALLANTRY and then on two separate occasions AD VITAM in November 2011 (see Appendix A), there was nothing new about pre-race lay betting in terms of betting strategy: on average he had been placing about 10 such bets per week over the 8+ year period. On one view of what he said, the change was to the level of, specifically, <u>place</u> lays, the quantum of which exceeded anything that had gone before; but the position is not clear, and of course Mr Mackay would not present himself for forensic questioning.

76. The Panel examined the two lay betting operations which Mr Mackay conducted in, respectively, Races 1 and 2. His lay in Race 1 was large. The overall risk was £4,827. Had the full liability to which he aspired been fully matched, it would have risen to £5,491. The Panel observed that it was the 7th largest pre-race lay (conducted on the Betfair account). That is true; but, as Mr Winter urges, the bet was not extraordinary in the sense of being wholly outwith his recent risk appetite. It was unquestionably substantial, but within fairly close range of about a dozen other lays conducted in the previous 12 - 14 months (although the extent to which they were lays in the *place* market is another matter). That said, this lay bet alone troubled the Panel, who felt, and in our judgment were entitled to feel, it significant that, having backed AD VITAM in its three races prior to Race 1, Mr Mackay had suddenly become a layer of this horse, coincidentally with Mr Greenwood ceasing to back it, a fact which contributed in part to the Panel's conclusion that there must have been greater than the admitted communication between them.

77. As to the factors persuading him that AD VITAM was a good lay, he mentioned inter alia the draw, the shorter distance, the fact that the horse had been beaten by a substantial distance in aggregate in its previous races, his dislike of the horse's action and the fact that, as he suggested, it had been unruly before the start. We are not aware that this last factor was ever suggested by any other person involved, including Messrs Greenwood, Stainton or Ackerman, whether as to Race 1 or (see below) Race 2. Those are amongst the numerous assertions which, had Mr Mackay attended the hearing, would have been subject to potentially searching cross-examination.

78. In any event in Race 2 the arithmetic was markedly different. The total lay involved a risk of £10,387 for a profit of £2,071. Had the liability to which Mr Mackay aspired been fully matched, it would have risen to £10,683. Contrary to the submission made on his behalf by Mr Winter on appeal, by any standards an extraordinarily strong view had been taken, implying the greatest confidence of success. Why extraordinarily? The reason is, to repeat, that the risk at the level of £10,387 was, of all the 4,395 lay liabilities incurred in a period of more than 8 years, the largest: Mr Mackay had never taken a greater risk, at least on a lay bet, than on that occasion. This was a fact which the Panel was entitled to find, and did find, to be of telling significance.

79. It goes further than that. If one looks from a different viewpoint and concentrates on the period of, say, 2 years leading up to the AD VITAM lays, one sees that up to the date of Race 2 the highest was on a horse named STEFANKI. The risk was £6,684, for a win of £235 – odds of approximately 1/28, but the type of bet to which Mackay was fully entitled and perhaps professionally inured. The Race 2 AD VITAM lay, however, was 55% greater. If the lay of GALLANTRY, the day before AD VITAM, is put to one side, the next largest was on a horse called FRANCOISMYNAME, where the risk was £5,256. Self-evidently, the Race 2 lay bet on AD VITAM risked approximately double that amount.

80. As to the subsequent Races, Mr Mackay had had a very fortunate escape in Race 2. He himself said that he gave AD VITAM up as a bad job once Race 2 was run. That does ring true.

81. Moreover, Mr **C**hignell mentioned in his statement that the three place market liabilities with Betfair on GALLANTRY, AD VITAM Race 1 and AD VITAM Race 2 were, at £6,386, £5,710 and £4,230 respectively, standout wagers: they were a very long distance from the 4th largest place liability on the account, which was just £870. To put it another way, excluding those three largest place liabilities the account's average lay liability was a mere £88. Mr Mackay put this down to a change of tactics, but the Panel was understandably troubled by that explanation. Mr Weston predictably submits that this is another of the features of Mr Mackay's betting on AD VITAM which renders it extraordinary.

82. Mr Winter contended that, in light of the Panel's conclusion that no malfeasance could be attached to Race 2**,** whatever betting had taken place in respect of Race 2, whether by Mr Ackerman, Mr Mackay or otherwise, is by definition irrelevant. We disagree. Race 2 was, to the extent explained by the Panel and in light of Mr Greenwood's instructions to Murray, part of the overall campaign found by the Panel to have been directed at a back betting coup. It was a race in respect of which Mr Mackay's written (but wholly untested) explanation for his wagering on AD VITAM was similar to that proffered re Race 1 - the horse's draw, the fact that it was being dropped in distance to 6 furlongs and his having noticed that the horse was unruly before the start. It was upon the premise of those factors, according to him, that he entered into his largest ever lay liability in over 8 years, as already described. Clearly, in our view, the Panel was entitled to look at this material and see whether it was assisted by it in reaching its conclusions upon the connected issues in the case.

83. Mr Winter urged both upon the Panel and before us that there is no overt evidence of communication between Mr Greenwood and Mr Mackay prior to Race 1 (and he would say the same as to Race 2); but, as in the case of reward (see paragraphs 104ff below, an inference that communication probably took place (whether telephonically or otherwise) is permissible if the collateral facts so justify. We are sure that the Panel was entitled to draw that inference. As to Mr Winter repetition of the "*no purpose*" point referred to above in paragraph 67, it is fairly taken and there is no certainty as to the precise dynamics which governed the information given as found by the Panel; but again the inference that Mr Mackay knew of a plan not to run AD VITAM on its merits as may be necessary was permissible against the factual background which we have just described.

84. In summary as to Mr Ackerman and Mr Mackay, the Panel was confronted with the denials of Mr Greenwood, Mr Stainton, Mr Ackerman and (only in writing) of Mr Mackay. It had to evaluate not only its impression of the general credibility of Mr Greenwood and Mr Stainton but also [i] its interpretation of the video evidence and [ii] the betting evidence, including the coincidence referred to above. These considerations, allied to the size and timing of Mr Ackerman's and Mr Mackay's wagers in AD VITAM's races, led it to conclude that both Mr Ackerman and Mr Mackay must have been sufficiently trusted by Greenwood to be given, for what precise reason it is impossible to say, information about the intention to run the horse below its true capability. The evidence which the Panel weighed and their findings of fact about the running of the races, combined most particularly with the betting evidence, were such that we find it impossible to hold that no reasonable Panel could have reached the conclusions which this Panel did.

THE GROUNDS OF APPEAL: FURTHER MATTERS

85. We perceive that what we have said substantially meets the grounds articulated in the Notices of Appeal presented by Mr Greenwood, Mr Ackerman and Mr Mackay, and a good deal of what is said in Mr Stainton's Notice. More, however, needs to be said about certain grounds cited by Mr Stainton. In addition, in deference to Mr Winter and to the other Appellants, we will first address (even if concisely) certain additional points made by Mr Winter in argument which go to the appeals of Messrs Greenwood, Ackerman and/or Mackay.

EXPERT EVIDENCE: WAS IT AND IS IT NECESSARY?

86. This point was not raised in the Notices of Appeal, but surprisingly – and without application to amend the Notice – found its way into Mr Winter's written Skeleton before us. It was not, however, argued orally, so is presumably only lightly pursued. It has in our view no merit, but it will be no bad thing to put the issue in perspective by reciting what Mr Weston says about expert evidence in his Skeleton:-

> "The Appellants did not adduce any expert evidence before the Panel, notwithstanding the warning from Stainton that he might do so (his Schedule (A)6 form)…. Neither Stainton nor Ackerman nor Greenwood made any such submission in closing to the Panel, in the opening arguments or in the [opening] Skeleton submitted on their behalf. There is no basis to challenge the Panel's position now. The decision in McKeown v BHA ….. is clear authority that the Disciplinary Panel of the BHA is not required to adduce or otherwise put before itself expert evidence (see Stadlen J. at paragraphs 211-212). The forensic device of complaining of a decision of a first instance tribunal for its lack of expertise without adducing expert evidence before that Panel, or applying to adduce such evidence on appeal, having seen the possibility of serving that evidence, is no basis to mount an appeal."

87. The judgment of Stadlen J. in **McKeown v British Horseracing Authority** [2010] EWHC 508 (QB) ("McKeown") at paragraphs 211-212 reads:-

> *"211. In a revealing passage when Mr Winter and Mr Warby were submitting respectively that one could and could not see Only if I Laugh catch up with the horse in front of it Mr Winter said that this underlined why these sort of cases should be brought on the basis of expert evidence that can be tested. That seemed to me to identify the fundamental error in Mr Winter's submissions. It may well be that the Panel would have been better assisted if they had had expert evidence. It was not, however, so far as I am aware ever submitted either to the Panel or the Appeal Board by or on behalf of Mr McKeown that it was unfair to conduct the enquiry without the benefit of expert evidence. It was in any event always open to Mr McKeown to seek to adduce expert evidence and he did not do so. Indeed at the Appeal Board he indicated a desire to do so and then withdrew his application for adducing expert evidence. That was a matter for him. The failure of the Defendant to do so did not in my view render the process unfair.*

212. There is my view no general requirement flowing from the overriding requirement to conduct disciplinary proceedings fairly either for the prosecuting body to adduce and tender for cross examination or for the disciplinary Panel to ensure the attendance of expert witnesses as a necessary condition for respectively bringing and finding proved against a member of a sporting body. ***There is in principle no reason why a tribunal including members with relevant experience and knowledge of the sport in question should not draw on their knowledge and experience of viewing and interpreting video evidence and drawing inferences from it and from the evidence relating to such things as the nature and record of the contestants. Indeed there is every reason why they should be free to do so."*** **[emphasis added]**

This is a small part of a substantial section on the point, but does encapsulate the judge's reasoning.

STANDARD OF PROOF

88. Next, in reaction to a submission of Mr Winter in argument, we record our awareness of the law relating to the standard of proof, and our confidence that the Panel were aware of it. The point was urged upon the Panel, with detailed reference to the relevant principles, in paragraphs 3-10 of Mr Winter's closing written submissions in July 2015.

89. Reference was made to the judgment of Lord Hoffman in **In re B (Children)** [2009] 1 A.C 11, which we need quote only sparingly:

"If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the Tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

The Judge then referred to confusion that had been caused by dicta suggesting that the standard of proof may vary with the gravity of the misconduct alleged, and referred to several categories of case, one of which was the type of case where it had been observed that, when some event is inherently improbable, strong evidence may be needed to persuade a Tribunal that it more probably happened than not. Later he summarised the existing law as follows:

"I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not. ... ... Lord Nicholls said, in the passage I have already quoted, that "the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability." ... . There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities."

90. To revert to **Mr Stainton's Notice of Appeal**, a few matters remain to be addressed, because he seeks to take the Panel to task on a number of additional grounds. He says (Ground K) that "*the Reasons contained no reasoned analysis of why the evidence and arguments advanced by Stainton were rejected, but rather simply stated that they were rejected; and are silent as to various explanations for his conduct given by Stainton* …."

91. This is in the same area as Ground M, which asserts inter alia that "*the Panel ignored or gave insufficient weight to Stainton's evidence and/or misconstrued or wrongly applied the Rules of Racing, in that*:

(i) the conclusion that Stainton had failed adequately to disclose the nature of his relationship with Greenwood was one which no reasonable tribunal could have arrived at ……. This conclusion will have been in the mind of the Panel in its consideration of all subsequent points involving Stainton; ……..

(iii) the Panel's analysis disregards the known erratic form of AD VITAM, and the various descriptions attributed to him e.g. "ungenuine", "a monkey", "a piggy sort of attitude", "a horse that would never run twice the same two days running", and his tendency to miss the break and/or to be outpaced and/or to be ridden from the rear" etc."

92. To deal with the latter points first, at the hearing before the Panel Mr Stainton sought to make much of the personal characteristics of AD VITAM: thus the references to "*ungenuine*", "*a monkey*" (particularly in the horse's earlier days, per Mrs Griffiths), having "*a piggy sort of attitude*" (per Mr Hammond) and "*would never run twice the same 2 days running*" (also Mr Hammond). The Ground also refers to the horse's alleged significant tendency to miss the break and/or be out-paced and/or be ridden from the rear.

93. In this last connection, when presenting his closing written submissions dated 8th July 2015 Mr Struthers had clearly been doing some homework. He told the Panel that the Racing Post's commentaries on AD VITAM's 62 races (it was actually 61, we think) clearly demonstrated that the horse had shown a significant tendency to miss the break and/or be out-paced and/or be ridden from the rear. 26 races were then referred to, of which the first 10 pre-dated Race 1.

94. Mr Stainton is aggrieved that the Panel was not more receptive to this data; and the personal traits argument is worthy of careful thought. Its suggested significance is two-fold, as we understand it. First, the point is made that the unreliability of the horse detracts from the likelihood that it was set up for a handicapping / back betting coup: as Mr Winter put it orally, AD VITAM was fundamentally "*a bad vehicle for a handicapping conspiracy*". We find that difficult to follow. Whatever the characteristics of the horse, they did not deter its supporters, including those involved in this case, from staking very substantial sums on and against the horse, which as a matter of fact did fall in the handicap to a substantial extent (the detail is at paragraph 124 below).

95. Secondly, reliance is placed on the horse's character traits in the context of whether or not its missing of the break, under Stainton, at Kempton was deliberate. The Panel found that it was and we have already indicated that, having seen the video evidence, we would not interfere with that conclusion.

96. We do, however, think that the Panel should, in deference to Mr Stainton's submission, have dealt specifically with at least the nub of the argument presented. Its bottom line was, in fact, that in 26 of the horse's 62 races he had missed the break, been held up or been out-paced. We do not know how the Panel viewed this arithmetic; but, clearly, it cannot have been impressed. It would have been better in our view to tackle the data expressly and explain why.

97. That said, the Panel's (to be implied) rejection of the argument is to us not at all surprising. If one closely examines the horse's Performance History, one sees that AD VITAM, in an undistinguished career as a 2-year-old, ran 8 times between April and December 2010. According to the Racing Post's summaries, he dwelt in two of those races, and was out-paced in another. As a 3-year-old, however, he had (which is not apparent from the Notice of Appeal) run in 20 races from January 1st 2011 up to

and including his run at Brighton immediately before Race 1. According to Mr Struthers' analysis, he started slowly in one of those 20 races; was held up in three; and was steadied after the start in two. There is no mention of the horse having actually missed the break or even having dwelt (although "*started slowly*" is of a course a description very much in the same territory). All in all, we do not believe that the analysis could be expected to impact materially on the Panel's analysis of Race 1. As to Race 5, the nub of the wrongdoing, as found, fell within the narrow scope of what happened on the bend at around the 3 furlong marker, and why.

98. As to the closeness and nature of Mr Stainton's friendship with Mr Greenwood, and their descriptions of it, the Panel stated (paragraph 15 of the Reasons):

> "*Their relationship was much closer than the usual jockey/owner relationship and closer than Stainton was prepared to admit in interview and evidence*".

99. In interview Mr Stainton first described Mr Greenwood as a friend with whom he did not associate out of racing. After stating that he had probably met him for dinner somewhere along the line, he later recalled an occasion when Mr Greenwood had taken him and his partner (i.e. girlfriend) out for a meal on the occasion on his (Stainton's) birthday after racing. Otherwise they did not socialise.

100. In Mr Greenwood's oral evidence he said that he had known Mr Stainton since 2003 (Mr Stainton had initially said that they had known each other for 3 to 4 years). Asked whether Stainton was a friend, Mr Greenwood said "friend-ish", explaining that they had not seen each other for a long time between 2003 and 2010. He described how they had gone together to view horses, and he had taken advice from Mr Stainton. Mr Stainton's own oral evidence was initially that he had never been to see a horse with Mr Greenwood; then that that had not happened so far as he recalled.

101. There was evidence too in cross-examination Mr Greenwood making a gift of £3,500 to Mr Stainton's partner in connection with a horse named DAMIKA. Mr Greenwood also gave advice to Mr Stainton about challenging a 5 day ban which he had suffered, something which Mr Stainton said he did not remember. These are examples.

102. Certainly, the description by the Panel of a relationship between the two men much closer than the usual jockey/owner relationship was justified; but the question whether Mr Stainton was what might be termed cagey about the relationship is more difficult for us to decipher – as such an issue is liable to be when it is the Panel who has had the advantage over us in seeing and hearing the witnesses give their evidence. It has to be assumed that they did not take favourably to the submission made by Mr Struthers to the effect that what he called uncertainties in Stainton's evidence were caused by a lack of comprehension at the line(s) of questioning or language used. Our overall impression is that Mr Stainton was to some extent guarded about the relationship in interview, but more forthcoming in oral evidence.

103. That said, the Panel recounted and was clearly influenced by the fact that, according to Mr Griffiths' statement, Mr Greenwood had actually told him that Mr Stainton was his "*best friend*". An overview of Mr Greenwood's evidence suggests to us that he was not averse to exaggeration; but the fact remains that Mr Griffiths was not, as we understand it, cross-examined on his account of that description given by Mr Greenwood.

104. As the issue of **reward,** by Ground Q Mr Stainton raises a different complaint. He says that there was no direct evidence of any reward; and no reasonable tribunal could have properly drawn the inference that any reward passed from Greenwood to him. The Panel's finding as to the passage of reward which Mr Stainton challenges was articulated thus:-

"36. There was no direct evidence of any reward passing from Mr Greenwood to Stainton for his conduct in these races. However, the Panel concluded that there must have been some. Whether it took the form of continuing patronage with rides, a cash payoff or some other reward (or even a combination of all three), it is not possible to say.".

105. By way of general observation on the Panel's rationale, it must be borne in mind that in this type of case i.e. where corrupt practice for financial gain is alleged, but denied, it is elementary that there will inevitably be issues the resolution which require analysis of direct and conflicting evidence: which witness does the tribunal regard as credible, or the more credible, and why? In addition, however, there will often be contested issues of fact in connection with which the tribunal has to ask itself whether the drawing of a given inference is, or is not, justifiably to be made. And, in making that decision, it will need to focus upon the facts, evidence and argument touching upon all aspects of the case, not only individually, but in so far as they may legitimately and logically be seen to inter-connect. Again, this is what was meant by "*the wider context*" in the Reasons.

106. Reward (or not) in this type of case is a cardinal example of those instances where, typically, it will be fair and appropriate for the adjudicating Panel to consider whether, direct evidence absent, an inference should or should not be drawn that a particular event has happened. Many in the racing world do not understand this proposition (and some make their voices heard accordingly), but on detached analysis its rationale is obvious. The law was helpfully expressed by Stadlen J. in McKeown as follows:-

"132. It further follows in my judgment that a reasonable Panel would have been entitled to draw the inference that Mr McKeown probably received a substantial reward for his efforts. The gamblers stood to make a lot of money if their bets succeeded, as they did, and to lose even more money if they failed. By contrast Mr McKeown stood to lose his livelihood if his conduct was detected by the authorities. The Appeal Board was in my view quite right to say that on those findings the inference of reward would be virtually inevitable. Mr Warby relied on the facts that Mr McKeown was given rides by Clive Whiting despite the fact that he did not consider him to be in the top 20 jockeys and contrary to Mr Blockley's advice and that Mr McKeown accepted that he had received higher than average payments from Mr Whiting. He submitted that the Panel was entitled to reject his evidence that this was for winning. However the Panel did not base its finding that he received substantial rewards on those facts but rather on the inference which it held it was legitimate to draw. I have no doubt that that was a reasonable inference even in the absence of those facts."

107. We refer back to the detail in paragraph 40 above. Had AD VITAM won, Mr Greenwood's winnings would have been very nearly £90,000. The horse having in fact finished 2nd, the profit was £8,378.

108. In all the above circumstances it is clear to us that the inference of reward was properly drawn by the Panel and wholly legitimate.

109. Finally, as to Mr Stainton, on the question of the principles governing a court's / tribunal's obligation to express its reasons for making a given decision/order, neither Counsel touched upon any judicial authority. We will do so, albeit briefly.

110. In the well-known judgment of Lord Phillips, then the Master of the Rolls, in the case of **English v Emery Reimbold and Strick Limited** [2002] EWCA Civ. 605 it was said:

"In each of these appeals, the judgment created uncertainty as to the reasons for the decision. In each appeal that uncertainty was resolved, but only after an appeal which involved consideration of the underlying evidence and submissions. We feel that in each

case the appellants should have appreciated why it was that they had not been successful, but may have been tempted by the example of Flannery to seek to have the decision of the trial Judge set aside. There are two lessons to be drawn from these appeals. The first is that, while it is perfectly acceptable for reasons to be set out briefly in a judgment, it is the duty of the Judge to produce a judgment that gives a clear explanation for his or her order. The second is that an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the Judge has reached an adverse decision."

111. The lessons drawn by Lord Phillips have a resonance in the current case. The detailed analysis which we have undertaken demonstrates beyond dispute that each party in this case must be able to understand the reasons why it is that the Panel (whether it was right or wrong is not the point in this context) reached its decision, both overall and in its component parts. The Reasons are in certain areas briefly stated, but essentially they do, on their face, explain the Panel's rationale. If and to the extent that there is any lacuna (and we are not aware of any glaring omission), then it is a case where the knowledge of the evidence given and submissions made at trial, per Lord Phillips, ensures the Reasons' intelligibility.

112. In **In <u>Re V (A Child)</u>** [2015] EWCA Civ. 274 McFarlane LJ said, at paragraphs 14-16, having cited Lord Phillips' dictum in <u>English</u>:-

"14. In simple terms, what the law requires is that the losing party needs to know why he or she has lost on any particular point. This court rightly affords a great deal of respect to trial judges who sit in a courtroom for a number of days immersed in the evidence in the case, be it written or oral, and, most importantly, seeing the demeanour of the key players in the courtroom, particularly when they come to give evidence. What I say in this judgment in this case is not, and I repeat not, intended to raise the bar, alter the law or otherwise cause 99.9 per cent of the judges who undertake this work to depart from their current practice. If indeed there is a general move to encourage judges to change their approach in these cases, it is a move towards giving shorter judgments, rather than longer judgments

15. In a straightforward fact-finding exercise such as this, there is no need for an elaborate distillation of each and every point. A straightforward case merely demands a straightforward explanation of the key factors that the judge has taken into account and his or her reasons for preferring one part of the evidence over another. Where oral evidence has been given by the key players it will often, if not always, be important to give a short appraisal of the witness' credibility and, where the testimony of one is preferred over another, a short statement of the reasons why that is so. The trial judge has had the privileged position of seeing the protagonists and using that privileged perspective to inform a conclusion on credibility. For the judge not then to go on in his judgment to offer a brief description of what he has observed and as to how, as a result, he has approached credibility robs any recipient of the judgment of knowledge of that important aspect and, in particular, makes it harder for this court to afford the usual weight that is rightly to be given to the fact that the judge has had a ringside seat at the trial.

16. In summary, the well-established approach of an appellate court in cases such as this is that a basic, short but clear description of the factors considered and the reasoning that underpins any conclusion is all that is required. But it is nevertheless required, and the question in this appeal is whether the judicial analysis offered by Judge Wulwik in his judgment falls short of that requirement ……."

113. We have considered with care what Mr Stainton is seeking to say, but it is clear to us from overall analysis of the relevant passages in the Reasons of the Panel, many of which are quoted above, that

the deficiency for which Mr Stainton contends is not established: the reasons why, fundamentally, his case was rejected are sufficiently apparent. We will, however, say that we do think that the Panel in deference to the detail and zeal with which Mr Stainton's case was put by Mr Struthers would have taken a preferable, even if not mandatory, course if his arguments had been itemised with greater particularity, albeit rejected.

THE "NOT PUT " GROUND OF APPEAL

114. We return finally to this ground of appeal, as indicated at paragraph 19 above, and give our reasons for not finding favour with it.

115. Having regard to the way that the Notices of Appeal are drafted, one might gain the impression that, according to the Appellants, the finding of the back betting coup conspiracy was, from their viewpoint, a complete bolt from the blue. But is that so? More profound analysis suggests otherwise:-

[i] In the second Stainton interview of January 2015 the following passage appears in the transcript:

J BURGESS: *Our concern is that basically the horse was just being campaigned for a gamble ... you know, we're asking the question "Is this horse being campaigned, is it being by whatever means intentionally [around] to reduce its mark ready for a gamble when the owner, connections, whoever, consider it to be off a winning mark".*

M STAINTON: *To my recollection every time I rode that horse, I rode it to my ability.*

The discussion moved to consideration of Race 6 (Wolverhampton: 9th February 2012); and then Race 7 (Wolverhampton: 8th March 2012). Mr Burgess pointed out that the horse was backed from 12/1 to 5/1; that Mr Greenwood backed it; and that in his view there seemed to have been very different tactics - more aggressive out of the gate, better position. There was mention of the horse having a good draw, and of it running off a mark of 46, 12lb lower than its last winning mark. Later:

J BURGESS: *This to me looks like me to be the day of the gamble. This is the day. We know what Greenwood's had on on the exchanges.*

Mr Stainton said that he had not known that Mr Greenwood had bet on the horse.

Some time later:

J BURGESS: *... really, hopefully it's fairly clear about our concern. Have you placed a part in Greenwood plan to stop this horse for a series of races until punting it?*

M STAINTON: *I know you've got to ask this question, but I'm insulted because I've tried every time, so no.*

J BURGESS: *OK, so there are none other races we've watched today have you in stopped the horse, achieving its best possible place?*

M STAINTON: *Not at all, not at all.*

[ii] In the interview with Miss Murray (October 2013) there is this extract:

J BURGESS: *Just so it's on the record when you look at the history of the horse it's possibly the BHA's but certainly my opinion that you look at the history of AD VITAM. There's a failed gamble on 6th October 2011 when it finished*

second. It had been beaten 2½ lengths in a 0 to 55 handicap. The theory that we're considering is that at that point the horse has been beaten, it was a gamble, it was a failed gamble. The horse then seems to have been campaigned in a manner where its handicap mark has fallen. This contains rides that we have concerns about as well as rides that we've seen - - where the horse has been laid. Whether this was to get it below 50 to put it in a 0 to 50 or what, who knows? Greenwood won't speak to us, so we haven't got the opportunity to speak to him.

This pattern continues until the 8th of March 2012 when, now trained by Mickey Hammond, it's off a mark of 46 and again it was subject to another substantial gamble and the riding tactics employed were, if you compare like for like on the videos, very different in the manner it has ridden up until that point ... that this was effectively a campaign to get the horses marked down with a view to a future gamble and in between somebody has known something to be laying the horse, OK. Having watched those videos, Claire, this, and my view is shared by other people in the Authority, that there are concerns over the way that horse was ridden. Particularly concerns that it was just restrained early on, taken so wide and that that doesn't match the instructions that were given, that the trainer has told us were given.

[iii] In the interview with Mr Mackay (January 2015) this was said, after a passage in which Mr Mackay was dealing with the contact, or rather lack of it, between himself and Mr Greenwood and said that he would not class Mr Greenwood as someone from whom he would ask information.

J BURGESS: *But you know, I think you've answered that by saying that this was a form decision - - -*

K MACKAY *Hm, Hm.*

J BURGESS: *--- and a betting strategy decision as opposed to anything untoward. You know, I've explained our concern. Our investigation is into whether this horse was being campaigned to be beaten in some of these races, hence why the fact that you've laid then on this has become relevant to us.*

[iv] In the interview of Mr Hammond, the transcript of which was in the case bundle and will have been read by all parties / their representatives, it was made plain that the BHA was exercised by the possibility that AD VITAM had been campaigned dishonestly with a view to a later back betting gamble.

[v] As to the charges identified in the Topics of Inquiry, it will be appreciated that Greenwood Topic 1a raised the possible scenario (in fact, applicable in light of the Panel's decision) where, against all (or, as in fact transpired, three) of the Respondents, a conspiracy might be found not proven, but nevertheless a corrupt practice in relation to racing found established.

[vi] In Topic 1a the precise nature of the conspiracy, and the motive behind it, were not sought to be identified.

[vii] In the cross-examinations of Mr Greenwood, Mr Stainton and Mr Ackerman (there was of course none of Mr Mackay, who was absent) the following questions were asked:-

Of Greenwood:

WESTON: *A view of this case is that the horse doesn't do well for a number of rides – put neutrally alright – and then suddenly comes in at a low mark, long odds, and does pretty well, comes second.*

GREENWOOD: *Louis, the horse doesn't do well drawn in the coffin boxes, and then when it has some sort of a chance, 6 months on from the first race, it finishes second, from a decent draw.*

WESTON: *So it is complete nonsense for me to think that there might be some handicapper rides being given him?*

Of Stainton (It having been suggested by Mr Weston that Mr Greenwood always gave the riding instructions to Mr Stainton and that the instruction with all four rides on AD VITAM over the relevant period was that he did not need to win or be placed and that in two of the races the horse was ridden other than on its merits, whilst on two of them that was not necessary. Mr Stainton firmly denied that suggestion and said that he always rode to the best of his ability.)

WESTON: *When we come to Race 7 and when there is money on the horse, your instructions change and you're sent in to win?*

The suggestion was denied by Mr Stainton.

Of Ackerman:

WESTON: *A way of making money on betting is to campaign a horse and to ride it badly so its odds improve, and then tell it to get going and then win. Yes? ... Did you understand that Mr Greenwood did that?*

Mr Ackerman said that that was not his understanding and emphasised how Mr Greenwood had belief in the horse. There was discussion about a bad draw being a massive negative in relation to the horse's chances of winning any particular race.

A little later Mr Ackerman said that, in expressing one's belief in a horse, "*I think [a person] would say that the horse is handicapped to win. You know, it's on a mark that means that - - I mean, at that lowly level AD VITAM was racing at, they're all pretty mediocre/moderate horses. I think Dave had the belief that the horse was on a decent mark in terms of its handicap rating meant that you know it was ready to win*."

[vii] As to closing submissions, in writing Mr Weston did mention the possibility of AD VITAM having been set up for a betting coup culminating in different instructions and the horse being given a proper ride. In the transcript of his oral submissions appear the words: "*And/or AD VITAM was being set up for a betting coup ... lose, lose, lose, lose, back, win*."

[viii] Mr Winter's closing submissions came after Mr Weston's. Orally, he addressed the matter of a betting coup in dialogue with the Chairman of the Panel, albeit briefly. In retort, to the limited extent that a Reply was permitted by the Panel, Mr Weston uttered the words: "*The betting coup with 1, 2, 3, 4, 5, 6 .... stop it and then outside: once that stopping has stopped, we come to Race 7*."

116. In oral submissions at the appeal hearing Mr Winter recognised at least some of these, what he called "floated", references to a back betting coup, but submitted that they were insufficient for the purpose of giving the Appellants sufficient notice of the BHA's case. He contended that, because

(i) Mr Weston had not proffered formal amendment of the passage in his Case Summary which alleged that any conspiracy, and stopping of AD VITAM, was for lay betting purposes (it is beyond dispute that this was indeed the BHA's primary contention); and because

(ii) the possibility that AD VITAM had been given handicapping rides targeted at a back betting coup operation was articulated as an example, and under the heading, of inside information which might have passed from Greenwood to Ackerman and/or MacKay, but not by way of a revised presentation of the dynamics of the alleged conspiracy,

ergo the finding of a back betting as opposed to lay betting operation, as to its conception and then implementation, was simply not available to the Panel. Mr Winter also submitted that the Appellants had been taken unfairly by surprise: the plotting and implementation of a back betting coup had not been sufficiently and/or formally put.

117. We have found it impossible to accept these submissions, and much prefer the riposte of Mr Weston, who submitted that Mr Winter's case fails to draw any or any adequate distinction between "activity" and "purpose", in other words between the commission of the central malfeasance which is charged and the purpose which motivated or may have motivated the perpetrators to act as they did.

118. It is of course normal, where wrongdoing is alleged, whether in the civil or criminal jurisdiction, to seek out the offender's purpose in doing what he is alleged to have done. But what turns out to be an inaccurate assertion of that purpose or, as it is often called, motive, or even an inability to identify motive, does not necessarily preclude a finding, whether by judge or jury (or tribunal) as the case may be, that the commission of the offence charged has been established.

119. In the instant case the essence of the wrongdoing found by the Panel consisted of

- an agreement between Mr Greenwood and Mr Stainton to the effect that Stainton would ride AD VITAM other than on its merits;
- instructions accordingly from Greenwood to Stainton; and
- the fulfilment by Stainton of the agreement in Races 1 to 5 combined with a willingness to take such action in Races 4 and 6.

On a wide interpretation, that conduct alone was a corrupt practice in relation to racing, per Rule (A)41. If, as Mr Winter contends, some financial element is required to bring the offence within the Rule ("*corrupt or fraudulent practice*"), then the passage of reward from Mr Greenwood to Mr Stainton provides that element. (We address separately, at paragraphs 104-108 above, Ground Q of Appeal, whereby Stainton contends that in the absence of direct evidence no reasonable Tribunal could have properly drawn inference that reward passed from Greenwood to him). That apart, such a conspiracy, and the actual commission of the practice agreed, will almost invariably be aimed at some back or lay betting activity, financial advantage thus being the motive for the core malfeasance, which is the stopping of the horse.

120. According to Mr Winter, the Appellants understood that any references by Mr Weston to a back betting coup were confined to that area of his submissions in which he was postulating as to the possible substance of inside information emanating from Mr Greenwood. We find that proposition impossible to accept. Mr Weston alluded to the back betting coup scenario on several occasions. It is elementary that, upon the possible premise, expressly raised by him, that inside information was given to the effect that the horse was going to be run down the field for the purpose of a back betting coup, it was the inevitable counterpart of that scenario that the motive behind the actual agreement between owner and jockey must have been to campaign the horse dishonestly for *that* purpose, not for the purpose of lay betting. It follows that, in so far as Mr Weston raised, albeit by way of secondary presentation, the back betting coup alternative, he was not just addressing the narrow inside information question, but also the substance and the nature of the stopping conspiracy itself.

121. We do not accept the submission on behalf of the Appellants that in all the circumstances the BHA breached the terms of Paragraph 12 of Schedule (A)6 of the Rules of Racing, which reads:

"***Time to consider new allegations***

12. If a Disciplinary Panel considers that a person appearing at the inquiry may be liable to Disciplinary Action on account of conduct, or of contravention of a Rule, which has not previously been notified to him by the Authority (and whether in addition or in substitution for the conduct or Rules of which is notified), the Chairman should ensure that the Person is given a reasonable time to deal with the new allegations or addition or substitution of Rule, including by adjourning the proceedings in an appropriate case."

122. In this context the distinction between the activity which constituted the actual offence, and the purpose of the perpetrator, is obviously crucial. Moreover, at no stage did Mr Winter raise objection when Mr Weston, as stated above, adverted to the possibility of a back betting coup; nor did he apply for any adjournment or say that he needed further time or opportunity to resist the suggestion.

123. As to prejudice, Mr Winter says that, if he had intended to meet the allegation of a handicapping conspiracy, he would have relied upon certain arguments not in fact deployed. He draws attention to a particular passage from the BHA's Guide to Handicapping:

> "*Every case is judged on its individual merits with the Handicapper taking into account all the pertinent variables such as the weight the horse carried in relation to other runners, the race distance, the ground, the draw (if a Flat race), the finishing margins between runners, the pace at which the race was run, the strength of the current form of the runners, and whether any incidents occurred that could have impeded one or more of the runners or exaggerated a horse's performance. ....*"

He points out that, for example, the missing of the break might be regarded as such an "incident", thus to dissuade the handicapper from lowering a horse's rating. He makes the point that a horse, even if placed, can be awarded a lower handicap rating: the converse also applies – an unplaced horse can be raised in the handicap. It is a line of argument which we have carefully considered; but we do not perceive that substantial and unfair prejudice can be established by the Appellants. The fact is that the agreement to run AD VITAM contrary to its merits and the allegation that Mr Stainton had done so in Races 1 and 5, and would have been prepared to do so in Races 4 and 6, were all rejected out of hand by him and Mr Greenwood; and it is difficult to see how that denial would, in cross-examination, have been expressed with meaningful difference if the secondary allegation of back betting coup had been put more prominently and more deeply explored.

124. Our views to this effect are fortified by the hard fact that, in the actual events that occurred, AD VITAM's handicap rating *did* fall by 6lb between Race 1 and Race 7, from 52 to 46. At 46, incidentally, the horse was racing at a rating 17lb lower than when it raced at Yarmouth on 25th April 2011.

125. In conclusion, we have found the suggestion that the Appellants were taken by total surprise unconvincing. It is true that Mr Weston continued, in terms of pecking order, to favour the lay betting motive, but we are satisfied that he did put the secondary possibility of a back betting coup into the arena as a possible motive for what Greenwood and Stainton did. Either scenario, it should be needless to say, strikes at the very integrity of the sport.

126. We add for avoidance of doubt that we do not regard it as a pre-requisite to the successful prosecution of an allegation of malfeasance contrary to the Rules of Racing that the BHA must with complete accuracy identify the perpetrator's motive, and certainly not at the Case Summary stage, which often comes well before the forensic process that proves the cutting edge of the investigation. There is nothing amiss in a prosecuting authority citing one or more alternatives as to what the perpetrator's motives were or may have been. In some cases the position may have to be expressly reserved. The proposition we are advancing is rudimentary and derives from the simple fact that in many cases it will only be the forensic exercise of cross-examination (and argument based upon it) that will ultimately direct the tribunal towards the findings and conclusions, including as to motive, which on the facts as they emerge are fair and accurate.

127. To deal finally with a complaint which Mr Weston makes against the reasons of the Panel, he contends, to quote:

"The Panel found at Paragraph 40 that Greenwood did not know what use Ackerman would make of the Inside Information he passed to him.

It is the BHA's submission that that factual decision was wrong, for these reasons:

a. Greenwood admitted knowing that Ackerman was following his tips and information and that Ackerman was betting off of the back of his tips and information. That information included information about his own (i.e. AD VITAM) and other horses.
b. Greenwood expressly admitted that he knew that Ackerman would bet off his information saying '*I knew that he would – he respected my opinion and he would follow my bets, yeah'*.
c. Both Greenwood and Ackerman in their Schedule (A)6 Responses accepted the passage of information, and Inside Information between them."

128. We decline to interfere with the Panel's rationale, based as it was upon its detailed assessment of Mr Greenwood's wide-ranging evidence. The Panel did not believe Mr Greenwood on a host of matters but, having heard him testify, it did give him credence in the area the subject of Mr Weston's complaint. We do not think that they behaved irrationally in doing so.

CONCLUSION

129. In the above circumstances and for the above Reasons the Appellants have in our judgment fallen well short of establishing merit in their grounds of appeal. The fundamental findings and conclusions of the Panel were fully available to them on the evidence acting as a reasonable Panel. The Reasons given by the Panel were sufficient. They were not against the overwhelming weight of the evidence. The appeals are accordingly dismissed.

Bruce Blair QC
Christopher Hodgson
Jeremy Philips
6th January 2016