

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

**AN INQUIRY INTO THE RUNNING AND RIDING OF**

**ECHO BRAVA**  
**at Plumpton on 14 December 2015**

**-and-**

**MISSILE MAN (IRE)**  
**At Towcester on 17 December 2015**

**-and-**

**AN INQUIRY CONCERNING**

**JAMES BEST**

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**DECISION OF THE DISCIPLINARY PANEL**

**Sir William Gage, William Norris QC, Nicholas Wachman Esq;**

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**Introduction and background**

1. This is the re-hearing of a Disciplinary Panel Inquiry into the running and riding of ECHO BRAVA at Plumpton on 14<sup>th</sup> December 2015 and of MISSILE MAN (IRE) at Towcester on 17<sup>th</sup> December 2015. Both horses were trained by James (Jim) Best at his yard in Lewes<sup>1</sup> and both were ridden by Paul John, a Conditional Jockey attached to that yard.

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<sup>1</sup> Grandstand Stables, The Old Racecourse, Lewes

2. Both rides were the subject of Stewards Enquiries. In the case of ECHO BRAVA, the Plumpton Stewards found Mr John to be in breach of Rule (B) 59.4 on the basis that he had failed “*to take all reasonable and permissible measures to obtain the best possible placing*” [C/1]. He was suspended for 14 days from 28<sup>th</sup> December 2015 to Sunday 10<sup>th</sup> January 2016 inclusive.
3. The Stewards Enquiry into the running and riding of MISSILE MAN (IRE) at Towcester on 17<sup>th</sup> December 2015 held that the rider, Mr John, was in breach of Rule (B) 59.2. This was a much more serious charge because it involved – and the local stewards so found – that Mr John had been “*guilty of intentionally failing to ensure that his horse ran on its merits*”. [C/2/25] They referred the matter to the British Horseracing Authority (BHA) head office because what the local stewards had found was, in ordinary language, that Mr John had been guilty of a ‘stopping’ offence: that is, they found that he had intentionally prevented it from running on its merits.
4. The BHA looked into the matter and in due course extended its investigation to include the trainer, Mr Best. Mr Best and Mr John were formally notified on 15<sup>th</sup> January 2016 that a Disciplinary Panel would consider the case [A/1/1-4]. Although there had been contact between Mr John and the BHA at least by 4<sup>th</sup> January 2016 [C/4/43A], it seems that it was somewhat later that he indicated that, despite what he had told the local stewards, he would admit that he had intentionally not ridden the horses on their merits and had done so on the instructions of Mr Best.
5. As a consequence, the hearing provisionally fixed before the Disciplinary Panel on 4<sup>th</sup> February 2016 was postponed. Mr Best was notified that he was charged with possible breaches of Rules (C) 45 and (A) 30 on the basis that, in each case, it was he who gave the instructions to Mr John to ride the horse as he did – that is, not on its merits. This was recorded in an email from the BHA to Mr Best, dated 4<sup>th</sup> February 2016 [A/3/28].
6. Mr Best responded to those allegations in an (A) 6 response [A/3/17ff] prepared on his behalf by Jonathan Laidlaw QC, instructed by Stewart-Moore Solicitors.
7. A Disciplinary Panel of the BHA met to hear the case over 6 days between 20<sup>th</sup> February and 11<sup>th</sup> March 2016. On that occasion, as on this, Mr Laidlaw QC represented Mr Best. Mr John was separately represented (by his solicitor, Rory Mac Neice) and the BHA by Graeme McPherson QC.

8. That Disciplinary Panel comprised Matthew Lohn (Chair), Ian Stark and Roger Bellamy. At paragraph 29 of its decision [A/5/66], it recorded a finding that, in the case of each race, ECHO BRAVA and MISSILE MAN (IRE) had "*intentionally not been asked for sufficient effort*". They found Mr John in breach on the basis of the admission that he made to the Panel. The Panel also found that Mr John had ridden in that way because those were Mr Best's instructions – see paragraphs 32 to 37 of the decision. The Panel therefore found Mr Best in breach of the same charges that are the subject of this re-hearing.
9. Mr Best appealed the decision on five grounds. Only two are material to the history. The first was that Mr Lohn, Chairman of the Disciplinary Panel, had previously given advice to the BHA on unrelated matters. As such, it was contended (and conceded by the BHA at the appeal) that there was an "*appearance of bias*" in Mr Lohn's role as Chairman of the Disciplinary Panel. It was also contended (Ground 2) that the Disciplinary Panel had given insufficient reasons for its decision and, in particular, had failed adequately to address the issue of Mr John's and Mr Best's respective credibility.
10. Both those contentions succeeded and, accordingly, the issue was whether the case should be remitted for a re-hearing under paragraph 30.2 of Schedule (A) 7. The answer which the Appeal Board, chaired by Anthony Boswood QC, gave was that there should be a re-hearing which is how the matter comes to this Panel.
11. As a matter of record, Mr Best's representatives have previously challenged the composition of the present Panel and, in particular, objected to the membership of Mr Norris QC and of Mr Nicholas Wachman, though not to that of Sir William Gage. That challenge was heard and determined by Sir William Gage sitting alone and it should suffice to say that Sir William rejected the challenges to Mr Norris QC and to Mr Wachman. There was no appeal against that decision.

**This hearing: those involved and a brief summary of the evidence**

12. Mr McPherson QC was initially instructed to represent the BHA at the rehearing but there were issues raised by Mr Best representatives as to Mr McPherson QC's role generally and particularly in relation to the previous hearing. Accordingly, what we understand to be a pragmatic decision was taken by the BHA to invite Mr McPherson QC to stand down and instruct another barrister, Mr Louis Weston, to represent the BHA in his place. We record our gratitude to Mr Weston for coming into the case at a relatively late stage.

13. The Panel heard evidence over 5 days from 21<sup>st</sup> to 25<sup>th</sup> November 2016, with written and oral submissions on the last day (following which we reserved our decision). We wish also to record our thanks to all those who participated in the process.
14. The only witness that Mr Weston called in support of the BHA's case was Mr John himself who gave evidence in person. He said that these were 'stopping' rides on the instructions of Mr Best. Otherwise, Mr Weston relied on the various films of the two races which he said spoke for themselves.
15. Mr Laidlaw QC began by calling Tom Morgan, a former Irish champion jockey, to give his expert opinion of the way in which ECHO BRAVA and MISSILE MAN (IRE) ran and were ridden. Essentially, Mr Morgan said that these were bad rides by an incompetent and/or unfit jockey and that, in the case of Missile Man, he said this was on a horse with an underlying physical problem which became progressively tired<sup>2</sup>.
16. Mr Best gave evidence to like effect. He was critical of the jockey's riding on each occasion and added (in the light of having heard subsequently about Mr John's lack of sleep over the 48 hours before the Plumpton race) that he looked and must have been weak and tired (even to the extent that he could not breathe<sup>3</sup> during and after the race). He said that, on each case, Mr John had failed to ride as instructed. He vehemently denied instructing the jockey to ride a 'stopping' race and denied that he had. Mr Best insisted he had given appropriate instructions which, had they been followed, should have enabled both horses to run on their merits.
17. We also heard oral evidence from Mr Jack Callaghan and from Mr Christopher Dillon, who were the joint owners of Missile Man. Both denied any knowledge of 'stopping' instructions and it is important to note that it was no part of the BHA's case that either of them, as owners of the horses involved, had any knowledge of such instructions.
18. We heard evidence by telephone from Victor Dartnall, a racehorse trainer to whom Mr John had previously been attached as a conditional and from his Head Girl, Katie Essery. In addition, we heard oral evidence from Paul Cooley, Head Lad in Mr Best's yard, and from Dan Carroll, a vet who had attended both horses at various times. We also accepted written evidence from Mr Jamie Moore (who had ridden MISSILE MAN (IRE) on its previous run)

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<sup>2</sup> There was some support for this in the findings of the racecourse vet after the horse ran at Towcester which were communicated to the Stewards in the course of their Enquiry: she found that the horse "looked leg-weary" and on further examination established that it was in fact lame on the right (off) hind leg [C/2/22]

<sup>3</sup> This could amount to evidence of unfitness. But it would be equally consistent with a jockey having to restrain his horse throughout a race.

and from Yogi Breisner, who had schooled both ECHO BRAVA and MISSILE MAN (IRE) in accordance with Mr Best's regular practice of sending horses that needed to learn how to jump to a man who is an acknowledged expert in that field.

**The Issues, the credibility and character of Mr John and Mr Best and our decision in summary.**

19. This is not a case about our interpretation or application of the Rules (though we shall set them out in full). Essentially, we consider that the case can be reduced to two issues.
20. First, we have to decide whether Mr John intentionally prevented either or both of these horses from running on their merits. In everyday language, the question in each case is whether he did or did not give them what we have called (and is known colloquially) as a 'stopping' ride<sup>4</sup>. We unhesitatingly answer this question in the affirmative in each case: in the judgment of the Panel, these were both stopping rides.
21. The second issue follows from the first. If we decide that either or both was a 'stopping' ride, the question is whether Mr John did that on the instructions of Mr Best or for some other reason. In our judgment, the very strong probability is that he did so because those were Mr Best's instructions.
22. We say more about the evidence and the factual history below. However, we make it clear at this stage that, if we had to resolve both issues solely on the evidence of Mr John, our doubts as to his credibility are such that we would be unlikely to have accepted his account absent compelling corroboration, by which we mean supporting evidence from an independent source.
23. We say that because we are satisfied that, in a number of respects, Mr John can be shown not to have told the truth and/or to be unreliable which is the general point made at paragraphs 30-73 of the helpful closing submissions of Mr Laidlaw QC on behalf of Mr Best.
24. We make allowances for the fact that Mr John's mother was very ill for much of the period described by a previous employer, Mr Dartnall, and whilst he was with Mr Best, and that Mr

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<sup>4</sup> A jockey may 'stop' a horse – that is, ride it in such a way as to ensure that it loses a race it might otherwise have won or finishes further down the field than it could have done - for at least 2 reasons. The more obvious reason would be to ensure that a short-priced horse laid to win or for a place did not win or was not placed. The other reason would be to disguise the horse's true ability for the benefit of its handicap mark in later races. In the latter situation, the euphemisms used include expressions such as 'not off today' or 'only out for a run' and other variants to the same effect.

John understandably wanted to help and be with her. But we accept that neither Mr Dartnall nor Ms Essery trusted him.

25. There are some conflicts of evidence between Mr John and Mr Best which we consider we need not resolve. For example, when they were first in contact, we think (without deciding this) that Mr Best could well have said something about 'not stopping horses anymore' when first they spoke<sup>5</sup> if (for good reason or bad) Mr John understood that to be the yard's reputation. We do not find that incredible. On the other hand, we think Mr John was not telling the truth when he told Mr Best that he did not realise he might have trouble with his licence<sup>6</sup> or claimed that he was now a 'freelance conditional'.
26. Mr John must also have lied to both sets of stewards if he is telling us the truth. It may also be that, in some respects, his memory is inaccurate or even that he has embellished parts of his account (such as in relation to the 'stopping' instructions as regards going short or running the horse into the bottom of the hurdles or to finish 33 lengths behind the winner<sup>7</sup>). He may also not be right about exactly when or where he was given the 'stopping' instructions.
27. We also accept that Mr John has been less than frank about his lifestyle and previous history of drinking. We note that Mr Cooley, like Mr Dartnall and Ms Essery, regarded him as someone whose word could not always be relied upon and we therefore treat his evidence with some caution. In fact, we consider that the reality is that Mr John was a difficult, argumentative employee who very often avoided the kind of chores which an enthusiastic conditional jockey, anxious to make his way, would have undertaken without complaint.
28. We heard about his riding history and ability. Whatever reservations one might have as to his attitude, with the exception of the ride on KARL MARX (IRE) at Wincanton on 14<sup>th</sup> February 2015 (when, as we accept and Mr John admits, he simply fell off having tried to lose a ridiculous amount of weight in a very short time), we consider that he was a very competent jockey<sup>8</sup>. Further, we saw no sign that he was weak or unfit in the rides of which we have seen film. Nor do we accept that it has been established that he failed to familiarise himself with courses before a race. We certainly find no support for that assertion in the ride

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<sup>5</sup> Notwithstanding Mr John was a young prospective employee

<sup>6</sup> We accept Mr Best's account in this respect: compare para 5, A/2/8

<sup>7</sup> Though something like that could have been said, improbable though it may sound at first. We say that because MISSILE MAN (IRE) had in fact finished 33 lengths behind the winner at Plumpton on 30 November 2015 [C/2/29]. It is therefore not unlikely that Mr Best might have mentioned a similar figure to Mr John even though the horse had run on its merits on that previous occasion.

<sup>8</sup> As was very apparent to us when we reviewed the ride he gave Don't Call Me Oscar at Fakenham on 13<sup>th</sup> February 2015. This was only the day before the Wincanton incident.

he gave MOTHER MELDRUM (IRE) at Exeter on 1<sup>st</sup> January 2015 when he nearly took the wrong course as he rounded the last bend.

29. Notwithstanding what has been said about Mr John in an attempt to undermine his credibility, Mr Best must, however, recognise that he continued to support Mr John until the latter left his yard on the night of 21<sup>st</sup> December 2015. Whatever reservations he may have had about Mr John's character, attitude, fitness and ability did not prevent him putting up Mr John in the two races which are the subject of this hearing as well as on two other horses in two further races at Lingfield on 21<sup>st</sup> December, INCH WING (IRE) (which did run) and KIAMA BAY (IRE) (which was withdrawn).
30. In each case, these were horses owned by important supporters of the yard and it seems to us fundamentally unlikely that Mr Best would have chosen Mr John to ride them if, at that stage, he honestly regarded Mr John as incompetent, weak, dishonest and unfit to be a jockey. We make every allowance for Mr Best's apparent generosity of spirit in 'wanting to give the lad every chance' (we paraphrase) but, even so, the fact that Mr Best continued to use Mr John throughout this period and that it was Mr John not Mr Best who broke off the relationship is, we think, telling.
31. Dealing as we are with our assessment of the only two witnesses who can actually know the whole truth as the instructions given by the trainer to the jockey, we also record that Mr John was not alone in being a witness about whom we were cautious. In our view, Mr Best was also unpersuasive at various times. A vivid example was when he claimed to see evidence of Mr John's weakness and tiredness in the Plumpton ride. In our judgment, the films entirely contradict that contention.
32. Another was Mr Best's attempt to explain what he did after the decision of the Towcester Stewards. As we have already recorded, he not only declared Mr John to ride 2 horses for the yard on the following Monday (21<sup>st</sup> December) but, in one case, he put Mr John up on KIAMA BAY (IRE) for one of the very same owners (Mr Dillon) who was the co-owner of the very horse (Missile Man) that the Towcester Stewards had found Mr John to have stopped: yet, according to the evidence of both Mr Best and Mr Dillon, not a word had been said by the trainer to the owner about that very serious finding.
33. In short, however, we resolve this case not by a comparison of the competing qualities of Mr John and Mr Best as witnesses – noting that each was articulate and persuasive as well as resolute in sticking to the accounts diametrically opposed to each other as they are. Instead,

for reasons we have already explained, we look to see whose account of the race is supported by the evidence of the films (and opinions as to what those films show).

34. Once we have decided if either or both were 'stopping' rides, we shall consider where the inherent probabilities lie as regards whether Mr John rode like that for his own reasons or because of instructions from some unidentified third party or whether those instructions came from Mr Best.
35. As we explained earlier in this section, our decision on the two main issues is, first, that these were both 'stopping' rides and, second, that it was Mr Best who gave the instructions to stop the horses as Mr John did. The remainder of this decision is intended to explain further how we came to those conclusions.

### **The Burden and Standard of Proof**

36. The Rules of Racing provide at Schedule (A)6, paragraph 16, that:

*“Where any fact or matter is required to be established to the satisfaction of the Authority, the standard of proof shall be the civil standard, which is to say the standard applied in the civil courts of England in a dispute between private Persons concerning a matter of comparative seriousness to the subject matter of the enquiry.”*
37. That provision was considered by an Appeal Board of the BHA in the appeals of Maurice Sines and Others and we have a copy of the decision of that Panel, which comprised Sir William Gage, Lord Rathcreedan and Anthony Mildmay-White on 10<sup>th</sup> April 2012.
38. We follow the approach of the Appeal Board in the Sines case as per paragraphs 38 to 48 of that Decision. It derives from the well-known case of Re B (children) [2008] UKHL 35 and has been followed in subsequent cases, including Re L (children) [2013] EWHC 1569 (Fam), Re D (children) [2012] EWCA Civ 1584 and Re X (children) [2015] EWHC 3651 (Fam).
39. From the submissions of counsel in the present case, we understand the approach of the Appeal Board in the Sines case to be accepted so the foregoing is also uncontroversial. We turn, therefore, to applying that test of the balance of probabilities to the issues in this case.
40. Taking what we regard as the first key issue, namely whether the horse or horses were intentionally stopped, we doubt that applying a “*balance of probabilities*” helps us very much at all although that is the test which we would certainly have to apply if we had any doubt on

the issue. Essentially, we judge this on the basis of our own experience and in light of all the evidence that we have heard. That includes what we see in the films (to which we have paid very close attention) and taking account of the descriptions and opinions of those who have given evidence to us.

41. It is in relation to the second issue, namely, if the horse or horses were stopped, whether this was done on the instructions of Mr Best, that the assessment of probabilities becomes rather more important.

### **The Relevant Rules**

42. ***“Rule (B) 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 other Person may in any way prevent or try to prevent any horse from obtaining the best possible placing.*

### ***Rule (B) 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 is where the Stewards or the Authority consider*

*59.3.1 that there was no intentional disregard of the requirement that the horse be run on its merits, but*

*59.3.2 that the horse has not achieved its best possible placing because the Rider*

59.3.2.1 *failed to ride out approaching the finish on a horse that would have been placed first, second, third, fourth or in any other placing for which there is prize money.*

59.3.2.2 *mistook the race distance and either began riding a finish too early or failed to ride a finish,*

59.3.2.3 *took the wrong course, or*

59.3.2.4 *asked for an effort or made some other permissible manoeuvre too late as a result of serious misjudgement or inattention.*

59.4 *Case 3 is where, in circumstances not falling within Case 1 or 2, the Stewards or the Authority consider that the Rider has failed to take all reasonable and permissible measures to ensure his horse is run on its merits.*

59.5 *For 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.*

**Rule (C) 45. Duty to secure the best possible placing**

45.1 *A Trainer must give, or cause to be given, to the Rider of any horse trained by him such instructions as are necessary to ensure the horse runs on its merits.*

45.2 *Instructions must, among other things, cover the use of the whip when employing an Apprentice Jockey or Conditional Jockey.*

45.3 *A Trainer must not send any horse to race with a view to schooling or conditioning the horse.*

45.4 *A Trainer shall be liable to Disciplinary Action*

45.4.1 *in the event of any failure to comply with Paragraph 45.1, 45.2 or 45.3;*

45.4.2 *in the event that an instruction is given to the Rider which, if obeyed could or would lead to a contravention of Rule (B)54 (careless or improper riding) with regard to misuse of the whip; or*

45.4.3 *in the event that the Rider is found to have intentionally failed to ensure that his horse is run on its merits, including any case where the Rider was found to have been schooling or conditioning the horse.*

45.5 *The Stewards or the Authority may decide not to take Disciplinary Action against a Trainer under Paragraph 45.4.3 where the Trainer satisfies the Authority*

45.5.1 *that the Rider was given appropriate instructions under Paragraph 45.1, but*

45.5.2 *that he failed to comply with them.*

**Rule (D) 45. Riding to achieve the best possible placing**

45.1 *A Rider must*

45.1.1 *ride his horse throughout the race in such a way that he can be seen to have made a genuine attempt to obtain from his horse timely, real and substantial efforts to achieve the best possible placing, and*

45.1.2 *take and be seen to take all other reasonable and permissible measures throughout the race, however it develops, to ensure the horse is given a full opportunity to achieve the best possible placing.*

45.2 *For the purposes of Paragraph 45.1, whilst it is not necessary for the Rider to use the whip, the Rider must give his horse at least a hands and heels ride.*

45.3 *But the Rider must pull up the horse where*

45.3.1 *it is lame or injured, or*

45.3.2 *it would be contrary to the horse's welfare to continue riding out because the horse*

45.3.2.1 *has no more to give or is 'tailed off' through fatigue, or*

45.3.2.2 *has a problem which is materially affecting its performance.*

45.4 *Where the horse is lame or injured, the Rider must dismount immediately and must not ride to a finish.*

**Rule (A) 30. Conduct prejudicial to horseracing**

30.1 *A Person must not act in any manner which the Authority considers to be prejudicial to the integrity, proper conduct or good reputation of horseracing in Great Britain.*

30.2 *For the purposes of Paragraph 30.1, any Person who*

*30.2.1 in Great Britain, engages in bloodstock transactions or deals in racehorses (including horses intended for racing), and*

*30.2.2 in so doing, fails to observe any provision of The Bloodstock Industry Code of Practice.*

*may be taken to have contravened a requirement imposed on him by Paragraph 30.1, whether or not he is otherwise subject to these Rules.*

*30.3 A Person must not in connection with horseracing in Great Britain associate with*

*30.3.1 a Disqualified Person; or*

*30.3.2 a Person who is excluded under Rule 64 from any premises licensed by the Authority*

*unless he obtains the prior permission of the Authority.*

*30.4 Paragraphs 30.1 to 30.3 apply whether or not a Person's conduct constitutes a contravention of any other provision of these Rules.*

*30.5 The Bloodstock Industry Code of Practice for the time being in force is set out in Schedule 4."*

## **Race Details**

43. ECHO BRAVA, owned by Mr Mark Benton, was a 5 year old grey gelding which ran in the 12.10 ( a Novices Hurdle over just under 2 miles) at Plumpton. The going was soft and Mr Best had another runner in the race, RED ORATOR ridden by Andrew Thornton.
44. The Racing Post [C/1/10] records the following in relation to that ECHO BRAVA which finished fifth, beaten 23 ½ lengths. The race reader writes that it was "*well in touch, steadily lost place after fifth and in rear next, stayed on in quite taking style before two out, likely improver.*" The notes also say that "*Echo Brava, rated 85 in his last Flat race, stays 1m 6f on the level. This was a nice introduction to hurdling and he should make his mark, particularly if given a stiffer test of stamina. His rider was given a 14-day suspension for failing to take all reasonable and permissible measures to obtain the best possible placing*". It was ECHO BRAVA's first run over hurdles.
45. The record of the Stewards Enquiry is at C1/1-9. Mr John told the stewards that the horse "*hung and was very keen*" and said that his instructions were to sit "*third and fourth and ride*

*the race from there” and that he asked his horse for an effort “halfway down the back and turning in for home”. Mr Best told the stewards that he was disappointed with the ride but he did not doubt the jockey’s account, said to have been given by Mr John when unsaddling, that the horse had been “keen” “hanging” and could not do anything. Mr Best went on to say [C/1/7] that he was not “satisfied because, look, look, Paul John says the horse is hanging badly and he’s clearly found it difficult to ride the horse but, no, I wanted the horse jumping off in about third, fourth, ridden handy and I was hoping he’d be bang there throughout and have a decent chance.” He concluded that the jockey had told him that he’d been “unable to keep in his position ... it’s disappointing”.*

46. At the end of the Enquiry, the Plumpton stewards found Mr John in breach of Rule (B) 59.4 in that he was guilty of *“failing to take all reasonable and permissible measures to obtain the best possible placing.”* He was, as we have noted earlier, suspended for 14 days.
47. MISSILE MAN (IRE) was one of two runners that Mr Best had in the 2:40 at Towcester on Thursday 17<sup>th</sup> December 2015 (a Maiden Hurdle over just under 2 miles). Again, the going was soft.
48. Both horses had a degree of common ownership. GENEROUS JACK (IRE), owned by Jack Callaghan, was ridden by Daryl Jacob. Missile Man, owned jointly by Mr Callaghan and Mr Dillon, was a 6 year old gelding and it was that which was ridden by Mr John. This was the horse’s second run over hurdles and its previous history is conveniently set out at C/2/29. On its previous outing, at Plumpton on 30<sup>th</sup> November 2015, MISSILE MAN (IRE) had been ridden by Jamie Moore.
49. MISSILE MAN (IRE) finished 13<sup>th</sup> of 14 at Towcester. The Racing Post noted [C/2/27] that the horse had been *“prominent, lost place 5<sup>th</sup>, steadied before 2 out”*. The more lengthy commentary said that *“Missile Man, a stablemate of Generous Jack, was prominent early on but he lost his place and then wasn’t given a hard time to try and get back into it. The Stewards held an enquiry into his running because he appeared to be ridden tenderly throughout. The Stewards interviewed the rider and the trainer. They also received a report from the Veterinary Officer who stated that the gelding was lame on its off-hind on second examination. The rider stated that his instructions were to jump off and be handy and be on the outside on the better ground. He added that he had asked the gelding for an effort in the back straight, and that Missile Man had made a couple of minor mistakes when jumping the hurdles. He further added that he was pushing the gelding, which became tired in the ground. The trainer stated that he was dissatisfied with the ride and thought his jockey should have made the running as the gelding wants further. Having heard their evidence*

*and viewed recordings of the race the Stewards found the rider in breach of Rule (B) 59.2 and guilty of intentionally failing to ensure that his horse ran on its merits. They referred the matter to the Head Office of the British Horseracing Authority”.*

50. The record of the Stewards Enquiry is at C/2/16-25 and includes the following additional and potentially relevant note of what the Veterinary Officer actually said having examined the horse and joined the Enquiry. She (Ms Hall) said *“I examined MISSILE MAN (IRE) at 2.50, so it’s immediately post-race. He had a heartrate of 90, respiratory rate of 72 and when I trotted him up he was quite just reluctant to trot. He could trot, he was sound but looked leg weary. He was then sampled, was washed off and recovered. Had a chance to recover, sampled and then I examined him again at 3.15 when he was just waiting in the sampling unit. He recovered so that his heartrate was 58, his respiratory rate was still 56 and when I trotted him up this time he was Grade 2 out of 5 lame on his off-hind. He could trot; he trotted better, he’s recovered but now he’s noticeably lame right hind.”*
51. Having heard that explanation, Mr Best, who had previously been critical of his jockey, expressed relief that a lame horse had not been made to run harder or faster. Nevertheless, there was no suggestion that Mr John had been aware that the horse was lame and indeed said exactly the opposite. What Mr John actually said to the stewards, in answer to a question about whether he at any time felt the horse to be lame, was in the negative. Rather, he said that he *“just thought he was getting tired ... I was holding him together. He was a big, gangly horse. It’s his second run over hurdles. He’s only had 5 runs in his life. He was tired. He’s a big, old horse; he’s out on his feet. You can see he is out on his feet. I am holding him together. Now he’s lame, maybe that’s why he’s all over the place like that ... no, I never felt like I [presumably he] was lame: never thought he was unsound”.*
52. Immediately following the Inquiry, the Stewards told Mr John and Mr Best that they were finding Mr John in breach of Rule (B) 59.2 and were therefore referring the running and riding of the horse to Head Office.
53. The following day, apparently at 11:02am, the BHA published the Towcester Stewards’ Report [C/2/15] which recorded that the Stewards had *“found the rider in breach of Rule (B) 59.2 and guilty of intentionally failing to ensure that his horse ran on its merits”.*

#### **Factual background up until 13<sup>th</sup> December 2015**

54. Although we have given some of these details already, we shall set out a little more of the relevant history now as the background to our findings of fact.

55. Paul John was born on 28<sup>th</sup> November 1991. He was a Conditional Jockey having been granted his licence in February 2014 after riding as an amateur with an 'A' and a 'B' permit in Point-to-Points. As we have already observed, everybody who participated in this Inquiry appears to agree (and that includes the members of the Panel) that Mr John was capable of riding well or very well. Indeed, he had ridden several winners and, from what we have seen in the various films we have looked at, we think he rides tidily and with good balance.
56. Nevertheless, there is no getting away from the fact that he has a record as a Conditional that is significantly more chequered than most. He was originally attached to the yard of Henry Daly in Ludlow and from there he moved to Mr Dartnall's yard and, having fallen out with Mr Dartnall, he became attached to the yard of Mark Gillard and, as such, was granted a Conditional Licence from 5<sup>th</sup> February 2015 which was valid until 4<sup>th</sup> February 2016 [C/7/97].
57. We do not intend to devote any further attention to the history of Mr John's time with any or all of those three trainers. We have already said we find he could be rude, difficult and uncooperative<sup>9</sup> and that some of those who knew him felt he could not always be trusted to tell the truth. Even his riding record was not unblemished: as we say, he made a bad mistake at Wincanton and a lesser one at Exeter. It may be that there were times when he stayed up late, drank too much and generally did not keep himself fit for the job. We accept that even at Mr Best's yard there were times when he would not do as he was told and did stupid things and, at least to more old-fashioned eyes, did not adequately 'muck in'. Nevertheless, there is no escaping the fact that Mr Best must have thought sufficiently well of him to give him rides.
58. An important aspect of this part of the history is that, by the time Mr John joined Mr Best's yard in August 2015, his Conditional Jockey's licence was under real threat. When he joined his previous trainer, Mr Gillard, in February 2015 [C/7/97] he was told that he was expected *"to stay licenced with Mr Gillard until at least February 2016 and that it [the BHA] would only consider a future application for a Conditional Jockey's Licence prior to this date in the event of exceptional circumstances"*.

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<sup>9</sup> There is some limited support for that conclusion in the material in C/5.

59. But Mr John did leave Mr Gillard<sup>10</sup> and, on the recommendation of his agent, Dave Roberts<sup>11</sup>, joined Mr Best in August 2015<sup>12</sup>. We accept Mr Best's evidence that Mr John was cavalier in his attitude to the terms of his Conditional Jockey's Licence and said that he was a "freelance" Conditional when, as everybody knows, there is no such thing. We also accept that Mr Best made every effort to obtain the licence for him, as evidenced by [C/7/98ff].
60. On 30<sup>th</sup> October 2015, Mr John was told that he had his licence. The letter is at [C/7/116] and Mr John's attention was drawn to his "licensing history" and he was again told that if he were to leave this new trainer (Mr Best) within 12 months, a further application would only be considered in the light of "exceptional circumstances".
61. The effect of that history, which includes exchanges between Mr Best and Mr John and the BHA until the grant of his licence on the 30<sup>th</sup> October 2015, is that Mr John really was being given a last chance by Mr Best.
62. Despite the issues with Mr John's conduct and attitude about which Mr Best and Mr Cooley gave evidence, the fact remains that Mr John continued to work in the yard and was put up in races for several of the yard's owners. According to the Schedule (A) 6 form, at [A/2/6], Mr John had "seven of his 14 rides in the current season... from Mr Best". In that case, two of the last three rides (and those with which this Panel is immediately concerned) were those on ECHO BRAVA and MISSILE MAN (IRE) on the 14<sup>th</sup> and 17<sup>th</sup> of December 2015 respectively.

### **The Riding Instructions for ECHO BRAVA on 14<sup>th</sup> December 2015**

63. The events leading immediately up to the 17<sup>th</sup> December are very much in issue between Mr Best and Mr John. Mr John's account, set out at paragraphs 17ff of his witness statement [A/2/10], is that it was on the Sunday that Mr Best called him into the office and was told to stop the horse: the actual words that Mr John says Mr Best used were that Mr Best wanted him to "jump off right up there, and when you pass the stands, start slowly coming back.

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<sup>10</sup> On good terms apparently: Mr Gillard wrote [C/7/103] to the BHA on 14 October 2015 saying "Paul John was with us last season and rode 4 winners for us and had 17 rides during the season...he felt he was not getting the opportunities he deserved and was offered what he thinks is a better opportunity with Mr Best. I wish him the best of luck..."

<sup>11</sup> An extremely well respected agent.

<sup>12</sup> According to Mr John, Mr Best said straight away (on the phone) something to the effect that they were 'not stopping horses any more'. We make no finding as to whether that was actually said. At one level, it is inherently unlikely. It is less so if (as we find to be the case) Mr Best did in due course give Mr John 'stopping' instructions. We also make no finding about any subsequent conversation about Mr Best's yard stopping horses which was said to involve the Chief Executive of the PJA, Paul Struthers. We did not hear from Mr Struthers and have nothing more than Mr John's and Mr Best's versions of events.

*Finish at least 33 lengths back*". We have made reference to the terms of that instruction already.

64. It was put to Mr John that not only is that account fundamentally incredible but also that it was contradicted by evidence from an owner, Mr Dillon who was at the yard that day. We do not think that Mr Dillon was doing anything other than telling the truth, but we find that there was an opportunity at some stage on the Sunday for Mr Best to have given those instructions to Mr John, had he wished to do so. We certainly do not accept Mr Best's suggestion that it would be inherently unlikely that a Conditional Jockey would be given any sorts of instructions about how to ride the horse so long (plus or minus 24 hours) before the race.
65. We say that for two reasons. First, we would expect any Conditional Jockey to be interested in what he was riding in the near future and we cannot imagine that any sensible trainer might not want to give him some sort of warning in advance, whether for reasons of weight or for just general preparation. That the instructions might need to be reviewed the following day in the light of changed circumstances does not make that implausible. Second, whilst there is an obvious inconsistency between the instructions Mr John says he was given on the Sunday and those he was subsequently given on the Monday, that is precisely what one would expect if the 'stopping' instructions were given on the Sunday and carried the implication that a second set of apparently genuine instructions would be given on the following day, particularly if the owner was not in on the arrangement<sup>13</sup>.

#### **Events of 14<sup>th</sup> to 21<sup>st</sup> December 2015**

66. There are very different accounts of the background facts surrounding the two races which we shall set out before we deal with the races themselves (by reference to the films and the description of the rides given to us by Mr John, Mr Morgan and Mr Best). We record this and later events as part of the history but observe that, whilst the investigation of these issues occupied some considerable time, in the end this is all peripheral because what really matters is our judgment of Mr John's riding in the races themselves.
67. We do not hold it against Mr Best that he was not more critical of his jockey in front of the Stewards. We do not consider that there is anything sinister in that. Rather, we think it is

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<sup>13</sup> There was some suggestion [A/2/11 – para 29] from Mr John that something was said in the paddock at Plumpton which indicated that the owner, Mr Benton, might have known about the previous arrangement. His oral evidence about this was equivocal and we take no account of it. In fact, we had expected to hear from Mr Benton (he was on the list of Mr Best's witnesses) but, in the event, he was unavailable. There is, we find, no evidence that Mr Benton knew of any 'stopping' instructions.

entirely consistent with a trainer who did not wish to criticise his jockey too openly in public. We think it is equally consistent with what he said was his attitude to Mr John, which was to give a young man a chance.

68. There is disagreement as to what happened in the evening after the Plumpton race. According to Mr John, at paragraph 37 [A/2/12], he sat down with Mr Best and his brother Tom (Best) after evening stables and they took him through the race and showed him how he could have made a better job of stopping the horse – that is, by doing it less conspicuously. According to Mr Best, they engaged in no such analysis.
69. This kind of conflict of evidence is particularly difficult to resolve<sup>14</sup>. There is some evidence to suggest that there was no opportunity for such a discussion which, if correct, would cast doubt on an element of Mr John's account. However, we regard it as surprising that Tom Best was not called to support his brother's version of events. In addition, we would be astonished if a conscientious employer – as Mr Best would portray himself – would not have wanted to take his Conditional Jockey carefully through a ride for which the Plumpton Stewards had suspended him for 14 days.
70. So, whilst there are competing analyses, we resolve this particular issue, like other issues of fact, by working back from whether we decide that the Plumpton race was indeed a stopping ride and, if so, whether we conclude that this must have been done with the knowledge, connivance or on the instructions of Mr Best.
71. As we know, Mr Best did in fact put Mr John up on MISSILE MAN (IRE) at Towcester on 17<sup>th</sup> December 2015 and we accept the evidence of Missile Man's co-owner, Mr Callaghan, that he did so at Mr Callaghan's suggestion.
72. Here too there is an issue between Mr John and Mr Best as to what, if any, 'stopping' instructions could have been given in relation to that ride. Mr John's account is at paragraph 40ff of his witness statement [A/2/13]. It is said both that no opportunity can have arisen for giving such instructions and that the account Mr John actually gives of having been called in by Jim and Tom Best on the Wednesday cannot be true as he (Mr John) would never have had any reason to be pushing the feed cart.

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<sup>14</sup> A further example of a factor which might be interpreted in two very different ways is the 'V' sign photo [C/6/92]. On Mr John's case, it is a light-hearted response to a message Mr Best has now deleted about how the jockey would be spending the 14 days of his suspension. On Mr Best's case, it is just an offensive message. But if it were the latter, it seems even more bizarre that Mr Best did not take the opportunity to show Mr John the error of his ways.

73. Again, we note that Tom Best, the other person alleged (by Mr John) to have been present when these instructions were given, was not called to confirm or deny it. However, we think this issue is also best resolved by working back from whether in fact he stopped MISSILE MAN (IRE) and, if so, whether it is likely to have been done on Mr Best's instructions.
74. We find nothing surprising about Mr Callaghan's choice of Mr John as the jockey to ride MISSILE MAN (IRE) at Towcester on 17<sup>th</sup> December 2015. It does not indicate that he was complicit in the giving of 'stopping' instructions. Indeed, we repeat that we think he was not. Nor is the fact that Mr Best did not raise any objection to that suggestion indicative of anything. It is perfectly plausible that he might be given a further chance.
75. The fact that MISSILE MAN (IRE) had been lame after its previous run at Plumpton on 30<sup>th</sup> November 2015 and had only just finished a course of treatment is, in our view, nothing to the point notwithstanding the BHA's arguments to the contrary. Equally, we see nothing sinister in the horse running "so soon" after that course of treatment had been concluded and we very much prefer Mr Best's explanation that it was good to get another run into the horse sooner rather than later.
76. We can also understand why the Towcester race might well have been regarded as suitable for the horse, given that the ground was likely to be soft, it is a testing track and Missile Man's stamina might well have come into play to advantage had it been running on its merits. But, on either view of the facts, it made sense to run it then and there.
77. We accept that Mr John, Mr Callaghan and Mr Best travelled up to Towcester together. We attach little attention to what was or was not said going up to the races in the car. What is, in our judgment, more significant is what was said (or not said) after the Stewards had found the jockey guilty of stopping the horse.
78. According to Mr Callaghan, he was unaware that there had been the Stewards' finding on the way home. That may be true, unlikely as it sounds. However, Mr Callaghan accepts that he reads the Racing Post and it will have been, we have no doubt, a matter of very obvious interest to everybody concerned that the Towcester Stewards had found the rider of his horse "*guilty of intentionally failing to ensure*" that it ran on its merits. We are sure it would, similarly, have been a matter of considerable interest to him and to anybody else connected with the yard that the issue had been referred to the BHA. Yet he and Mr Best apparently said and did nothing about it.

79. We make some allowance for the fact that the racecourse vet had found MISSILE MAN (IRE) to be lame after the race, but we do not think that that can possibly explain that Mr Callaghan did not hear from Mr Best about what had happened in the Stewards' Room before the end of that weekend and we are confident Mr Callaghan must have heard about it anyway. In so far as he says otherwise, we think his recollection is unreliable.
80. We also find it frankly incredible that Mr Dillon remained in ignorance of those same matters in circumstances where Mr John was due to ride his horse, KIAMA BAY (IRE) at Lingfield on Monday, 21<sup>st</sup> December. If Mr Dillon was telling us the truth about his unawareness of what had happened at Towcester, it is inexplicable that Mr Best did not speak to him about what had happened. We simply do not believe Mr Best when he says that he thought that the whole issue would blow over which is why he did not mention it. As far as we are concerned, any competent trainer would definitely have wanted to tell two important owners that a jockey had been found guilty of intentionally 'stopping' a horse, particularly when one of those owners actually owned the horse that had been stopped (MISSILE MAN (IRE)– Mr Callaghan) and the other, Mr Dillon was the co-owner of the same horse and was going to see Mr John jockeyed up on another of his horses, KIAMA BAY (IRE), at Lingfield on Monday 21<sup>st</sup> December.
81. Mr John did ride one of the two horses, INCH WING (IRE), on Monday, 21<sup>st</sup> December 2015 at Lingfield. Given the heavy ground, Mr Best withdrew the second horse, KIAMA BAY (IRE).
82. According to Mr John, after racing that night he went back to the yard and spoke to Paul Struthers (Chief Executive of the Professional Jockeys Association) and to his mother, saying that he was intending to leave the yard. We did not hear evidence from Mr Struthers but it seems to be common ground that Mr John did in fact leave the yard that night and decided to go home. He says (at paragraph 61 of his Witness Statement – [A/2/15]) that he called another trainer (Richard Woollacott) and asked if he had a job. He rode out there the next day and the following morning (we are now close to Christmas) says that he received a text from his agent, Dave Roberts, to the effect that Mr Best "*desperately*" wanted him back and that he would "*back*" him. According to Mr John, he declined that offer (in response to Mr Roberts) and he also declined to speak to Mr Best when the latter tried to call him.
83. We should note that we have no evidence to corroborate or to contradict that part of Mr John's account and we do not think it appropriate (nor useful) to make any finding about it.

**21<sup>st</sup> December 2015 to 31<sup>st</sup> January 2016**

84. It is therefore common ground that Mr John left the yard three or four days before Christmas but, whereas Mr John said it was because he was appalled by what he had been asked to do and did not want to be put in the same situation again, Mr Best said he was just shirking his duties. Mr Best suggests that the real reason was that Mr John wanted to be away for Christmas and was unwilling to fit in with whatever arrangements the stable might wish to make for a busy period in racing even though opportunities often arise for a Conditional Jockey on Boxing Day.
85. We consider that Mr John's account of the reasons for his actions is more likely to be true notwithstanding he did not share this explanation with the BHA until they contacted him in the New Year. We understand that the BHA's investigation was proceeding during this period. At some stage, Mr John must have decided to change his story from what he had told the Plumpton and the Towcester Stewards to an acceptance that he had deliberately stopped both of those horses and he went so far as to say that he had done that on the instructions of Mr Best.
86. Notwithstanding our reservations about the terms of the negotiations between Mr John and the BHA and how the process was managed<sup>15</sup>, we consider that Mr John is to be given credit for his willingness to admit his guilt and to identify the trainer as responsible for giving stopping instructions which he carried out. We also find that he is telling the truth when he said he wanted to 'look himself in the mirror' by acknowledging what he had done.
87. Mr Best's case is that Mr John had left the yard just to go home for Christmas and that the later attempt to claim that he had in fact stopped the horses and had done so on Mr Best's instructions was a strategy designed to curry favour with the BHA and constitute 'exceptional circumstances' that might enable him to keep his Conditional licence<sup>16</sup>.
88. At first sight, this might seem fanciful. If, as Mr Best insists, these were not stopping rides, then Mr John's admission of guilt would be likely to make things worse rather than better. But that has to be qualified by considering the possibility that Mr John made what (on Mr Best's case) was an unnecessary admission of guilt because he knew that, if he did so and

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<sup>15</sup> See further under the section below which sets out the Panel's views as to the 'Deal'

<sup>16</sup> As per the letter at C/7/116

accused Mr Best, he would be favourably treated (notwithstanding the damage to his personal reputation).

89. The first relevant document in that sequence is an internal BHA email of 4<sup>th</sup> January 2016 [C/4/43A]. Mr John was represented by Rory Mac Neice (a Partner in Ashfords Solicitors) and by Paul Struthers of the PJA. It is apparent that by that stage Mr John had it in mind saying “*something about his general experiences at the yard rather than specifically the Towcester race*”.
90. By 19<sup>th</sup> January, we see from [C/4/43C]) that Mr John was evidently prepared to go further. We can also see that he wanted to know how he might be treated in relation to penalties: to quote the relevant section in the page, we see that the BHA record of a conversation (Without Prejudice) with Mr Mac Neice is that Mr Mac Neice wanted to know the “*BHA’s position... re penalty*” in circumstances where “*evidence vs someone else [which] also incriminate[s] him*”.
91. Mr Mac Neice wrote on 27<sup>th</sup> January 2016 [C/4/44A] saying it was “*fundamental that we know the BHA’s clear position by the end of this week at the very latest*”. That email follows another earlier the same day which we have at [C/4/44B].
92. A significant conversation evidently took place between Mr Mac Neice and Mr McPherson QC on Friday, 29<sup>th</sup> January 2016. The precise contents of the telephone conversation may not themselves be important and we have not heard what they were. However, we record in full Mr McPherson’s email of 31<sup>st</sup> January 2016 which refers to and confirms whatever had been discussed on the Friday.

**Subject:** FW: Confirmation of Friday’s conversation  
**From:** Graeme McPherson  
**Sent:** Sunday, January 31, 2016 11:09 AM  
**To:** Mac Neice, Rory (R.MacNeice@ashfords.co.uk)  
**Subject:** Confirmation of Friday’s conversation

Dear Rory

*As I indicated I would at the end of Friday’s WP telephone conversation, I am emailing to confirm the position that the BHA intends to adopt as regards the appropriate penalty for Paul John on the basis that (1) he is intending to plead guilty to the 2 alleged breaches of Rule (B)59.2, and (2) his evidence as to why he rode the horses as he did at Plumpton and Towcester will be as you have previously indicated i.e. because Mr Best had instructed him to ride the horses other than on their merits.*

*On that basis the BHA would not be suggesting to the Panel that disqualification would be an appropriate penalty for Mr John. The BHA's position would be (1) that the breaches should be categorised under d), e) or f) in the Guide to Procedures and Penalties (2) that in the ordinary course of events the appropriate penalty would be a suspension of a jockey's licence, but (3) that since Mr John does not currently hold a licence, the appropriate period for any suspension (i.e. whatever suspension the Panel would otherwise have been imposed) should be replaced by a period of the same duration for which the Licensing Committee should not grant him a licence.*

*The BHA do not intend to be specific as to what actual period of suspension is/might be appropriate for each breach by Mr John or for the breaches viewed collectively. Instead, the Panel's attention will be drawn to the entry point and range for the breaches and the guidance notes for dealing with a first and second offence. The BHA will submit that the gap of only 3 days between the two offences should be considered an aggravating feature. The BHA may also be able to be positively supportive of certain submissions that you might make in mitigation on behalf of Mr John (rather than simply neutral), although that is something that we can discuss closer to the time once you are in a position to identify more precisely what you might be saying in that regard.*

*I hope that accurately reflects our discussion. Do give me a call during the week if you want a word about anything.*

*Kind regards,*

*Graeme”*

93. Unsurprisingly, that email was the focus of considerable attention here as it was in the course of the hearing in front of Mr Lohn and at the appeal against his decision. Viewed from the perspective of Mr Best's side, it is characterised as a “deal” whereby Mr John had the expectation that he would be favourably treated by the BHA in terms of their presentation of the case to the Disciplinary Panel in return for giving evidence implicating Mr Best. That, it is said, is a reason to doubt whether Mr John is telling the truth because it gives him a motive to lie.

#### **Our View as to the “Deal”**

94. We find that a ‘deal’ is the correct way to describe this arrangement, especially in context and consider it is relevant to our assessment of Mr John's credibility. That is because it is open to the interpretation that, in giving evidence against Mr Best, Mr John was, in effect,

keeping his side of a bargain, expecting to be favourably treated by the disciplinary authorities if he did so.

95. Moreover, we think it is also fair to suggest, as Mr Laidlaw QC does, that Mr John was in fact leniently treated since, as a consequence of that arrangement, he has been able to apply for and has been granted a Category B Amateur's Licence. That is of value to him in his new role as someone running the family farm, breaking in a few horses, and probably running some of them in point-to-points with the option of riding them himself as an amateur under NH Rules. We also accept that the value and importance of the deal continued during the summer when Mr John obtained his B licence<sup>17</sup> and may even have some value to him today in keeping him on the right side of Racing's Regulator.
96. Whilst this 'deal' is clearly relevant to our assessment of his credibility, it does not necessarily do it substantial harm. Standing back from these arrangements, and whatever our view as to the appropriateness of the exchanges which took place, the fact remains that Mr John – notwithstanding that he was implicating Mr Best – was also acknowledging his guilt of a very much more serious offence than having ridden badly. Even though Mr John received what we regard as lenient treatment, he nevertheless exposed himself to the risk of harsh penalties<sup>18</sup> as well as making an admission which was profoundly harmful to his reputation by admitting that he had actually stopped the horses.
97. It is not inconceivable that Mr John would be prepared to do that in the circumstances, even though he had really only ridden badly and/or when unfit, but we find that it is extremely unlikely that he would admit 'stopping' horses if he had not in fact done so<sup>19</sup>. When we assess likelihoods, we cannot escape the conclusion that if, in fact, the jockey admitted 'stopping' the horses, that is probably because he had done so, at least in the absence of any other plausible motive.
98. We conclude this section by making two observations about the 'deal'.
99. First, whether the BHA should make such an offer through its Disciplinary Officer and/or lawyers instructed to present its case is a question of policy on which we do not need nor do

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<sup>17</sup> We find what happened with the Licensing process strongly supportive of the suggestion that Mr John was receiving specially favourable treatment – see the Note from the Head of the Licensing Committee at C/4/67-25 We also see that as late as August 2016 the BHA was considering Mr John's application for a permit and referring to the difficulties of 'keep(ing) him onside' – C/4/67-10. He was granted a licence that same month, some 3 months after his period of ineligibility ended [C/4/67-24]

<sup>18</sup> Not least because the decision as to sanction was one for the Disciplinary Panel and the BHA/Mr McPherson QC could do no more than make recommendations as to the appropriate penalty – see the Protocol (Schedule 10) at A/4/48

<sup>19</sup> Unless he was stopping them for someone other than the trainer for betting reasons. We return to this later.

we intend to comment further not least because it has not been the subject of detailed argument in the present case.

100. However, our second observation is that this ‘deal’ was plainly very material to an important issue in the case, namely, Mr John’s credibility. We are aware that the Protocol at A/4/48 states that any “*correspondence or communications between the parties shall be confidential between them*” and not disclosed to the Disciplinary Panel/Appeal Board. Even if that provision is sensible as far as it goes (and we do not comment further), we are entirely clear that it must certainly be disclosed to any third party (here, Mr Best) who is subject to related disciplinary proceedings. That should be done, we consider, at the earliest practicable stage and well in advance of the hearing of any charge against that third party.

### **Concluding Comment on Mr John’s Credibility**

101. We take into account all of the criticisms which Mr Laidlaw QC has drawn to our attention, some of which have more substance than others. We do not intend to say much more than is to be found elsewhere in this decision. We accept that Mr John’s credibility is open to question in a number of respects to the extent that, without corroboration, we would not have felt comfortable in accepting his word alone that he stopped the horses on Mr Best’s instructions. However, we hold that Mr John’s account is corroborated by the finding (based on the films and the analysis of them<sup>20</sup>) that these were in fact both ‘stopping’ rides and by Mr Best’s denial of that. It is also corroborated by what Mr Best did (and did not do) between the Plumpton race on 14<sup>th</sup> December and Mr John’s departure from the yard on 21<sup>st</sup> December<sup>21</sup>.

102. Accordingly, we return to where we began. We consider that the decisive evidence as to whether or not these were ‘stopping’ rides is to be found in the films and in the analysis of them. If we decide that they were, we then have to decide if they were stopped on Mr Best’s instructions. As to that, it is not just a question of one witness’s word against another where credibility is in issue: here the question of balancing probabilities is a crucial consideration.

### **Our Analysis of the Films**

103. Unlike in court proceedings, a feature of this inquisitorial process is that the members of the Disciplinary Panel, who are expected to have considerable experience of race analysis, bring that experience to bear in deciding what has happened in a race. Of course, we need to

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<sup>20</sup> See further at paragraphs 103 to 129 below

<sup>21</sup> See further at paragraphs 29 to 32 and 66 to 83 above.

proceed cautiously in doing so given this goes beyond evaluating what witnesses say or write and includes material that we assess on our own account. Hence, to ensure fairness, we canvassed any such provisional thoughts or impressions with any factual or expert witness who might have offered a more expert or contrary opinion.

104. With that preamble, we record the fact that no member of this Panel had seen any film of the race at Plumpton on the 14<sup>th</sup> December or at Towcester on the 17<sup>th</sup> December until the first morning of this hearing, when Mr Weston played all the relevant films to the Panel without comment or description.
105. We saw the films on several further occasions. All the members of the Panel have reached exactly the same conclusions. Looking at the race at Towcester, even for the first time, we had not the slightest doubt that Mr John had ridden a 'stopping' race. We will therefore consider that race first. We reached our conclusion not on the basis that the jockey went wide – though he did – nor because the horse was not perfectly presented at various hurdles. Nor did we take much account of the fact that Mr John says he only waved the whip or used it as an 'air whip' or 'air shot' without actually striking the horse or whatever else he can be seen to be doing with the reins in what, according to him, is feigned and, according to Mr Morgan, is active encouragement to the horse to go forward. Rather, we concentrate on whether we saw signs that the horse was actively restrained throughout the race and particularly on the final circuit, and before and after the last two or three hurdles.
106. In our view, Mr John was actively (that is, deliberately) preventing the horse from going forward at Towcester throughout the race and this includes the final circuit and the period before and after the second last and the last hurdle. We see him pulling on the reins, applying pressure to the horse's mouth through the bit and we think that was the cause of the horse's head moving from side to side. We reject the explanation that what we see on the film is a horse that was just uncomfortable or awkward in this race. We take full account of the fact that, after the race, the horse "*looked*" leg weary to the vet who examined it and we are well aware of the fact that it was found to be lame afterwards. We consider that this latter factor is irrelevant as the jockey said afterwards that he was unaware that the horse was lame (though he did claim it was 'tired') [C/2/25].
107. We accept that in relation to Towcester, a rear view of the jockeys would not allow us to have reached that conclusion alone after the last two hurdles. But it is the head-on and other views of Mr John's riding which lead us to conclude that the ride at Towcester was without doubt a 'stopping' ride.

108. When we first saw the film of the Plumpton race, we were not so convinced that it was a 'stopping' ride. Indeed, it was not until we saw the rear view of Mr John riding over the last two hurdles that we were able to reach the same conclusion but, in the end, that was exactly what we decided. In our view, what we see from behind is a jockey who was actively restraining the horse.
109. In relation to Plumpton, there is the further factor that, over the last two hurdles, Mr John, on ECHO BRAVA, appears to follow behind LAC LEMAN (GER), ridden by Sam Twiston-Davies, which jumps right over the last two hurdles. One explanation for the way in which ECHO BRAVA (to put it neutrally) followed Lac Leman over the last two hurdles is that a horse being a herd animal may well follow the leader. Whilst that is so and whilst we cannot be sure we saw Mr John actually pulling on the right rein, we do consider that Mr John actively directed his horse to follow Mr Twiston-Davies's horse; that it was Mr John in control of the horse rather than vice versa is shown by the way he pulled the horse out from following Lac Leman. Then, as we see it, Mr John made an unconvincing attempt to ride some kind of a finish.
110. It will be apparent that in reaching those conclusions we have, in fact, come to the same conclusion as the Plumpton and Towcester Stewards and, in fact, to the same conclusion as did Mr Lohn's Panel. As a matter of record, we attach very little weight to the conclusion of either set of Stewards or the conclusion of Mr Lohn's Panel. Instead, we have made up our own minds.
111. In doing so, we take no account of some elements of the instructions that Mr John says he received from Mr Best. We cannot say whether Mr Best did suggest that Mr John should run his horse into the bottom of the hurdles so that it would jump less well. We think it is unlikely that such an instruction would have been given, but it may have been even though it might seem an odd thing for the trainer to say that when these were reasonably valuable horses starting out on their hurdling careers and the owners had gone to the trouble of paying for special schooling with Yogi Breisner.
112. We also take account of the fact that, in our view, ECHO BRAVA jumped reasonably well at Plumpton, bearing in mind that it was a horse off the flat having its first run over hurdles. Nevertheless, whilst it may be unlikely that the 'stopping' instructions included this detail about running it into the bottom of hurdles, we accept that they might have done.

113. A further factor that Mr Best relied on was the suggestion that it would be inconsistent with an instruction to give the horse a 'stopping' ride to go to the trouble of having the horse scoped the day before. Mr Carroll, a vet, gave evidence and looked at his records and confirmed that ECHO BRAVA was indeed scoped on Sunday, 13<sup>th</sup> December. The argument is that this would only be consistent with a trainer who wanted to be sure that the horse was in a fit condition to run well.
114. We disagree. It would not be inconsistent with having given instructions to ride the horse other than to its merits, particularly in circumstances where the vet was in the yard anyway to scope other horses that were also running at Plumpton that same day. Indeed, to have scoped all other runners without scoping ECHO BRAVA would, in our view, have drawn attention to any different plans for that horse. As a further comment, we note that MISSILE MAN (IRE) was in fact not scoped for the run at Towcester. Accordingly, we think the point about scoping is neutral.
115. We also heard evidence from Mr John and Mr Best which provided very different and clearly conflicting accounts of the rides. We know that Mr John, supported to an extent by Mr Best, gave accounts to the Plumpton and Towcester Stewards which are completely inconsistent with the description of those rides he now gives. Nevertheless, we find Mr John's account of the way in which he rode those horses<sup>22</sup> was convincing and entirely consistent with what we as a Panel saw for ourselves.
116. We reject Mr Best's account to the opposite effect. His account of events was consistent with what he said to the Stewards at the time and what he wrote in his (A)6 response [A/3/17ff] and with what he said to Mr Lohn's Panel on a previous occasion. However, we find he was not telling the truth and, in at least one instance, that he was denying the evidence of his own eyes. Generally, we consider he has tried to construct an account of the race which fits his own version of the facts and has done so by being selective in the material presented to us.
117. One example of this arises out of the fact that it emerged that, before the Plumpton ride, Mr John had very little sleep, perhaps over the previous 48 hours. If Mr Cooley is right, Mr John may have been out late on the Saturday night and it is common ground that he had driven back to Devon and then returned to Mr Best's yard in Lewes in the early hours of the Monday morning before the race. Mr Best repeatedly relied on this to support his contention that Mr

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<sup>22</sup> For further details, reference should be made to his written witness statement at A/2/5ff: Mr John's oral evidence to us followed and was consistent with what he wrote.

John must have been very tired to the extent that he gave ECHO BRAVA a “*weak*” ride and explains why he was breathless during and after the race<sup>23</sup>.

118. It may be that Mr John was in fact tired but we say without any hesitation that we can see absolutely no sign in the film that it affected his riding nor do we see any sign that Mr John was, as Mr Best would have it, weak. We regard Mr Best’s emphasis on Mr John’s tiredness as purely opportunistic. We also consider that he demonstrated a one-eyed approach to the assessment of Mr John’s riding in the Plumpton race (and damaged his own credibility) when, in seeking to demonstrate that Mr John was weak and tired, Mr Best said that, in the manner of weak or tired jockeys, the jockey was standing up in the irons. We asked Mr Best to identify two points in the race, including one as Mr John was crossing the finishing line, where he says he could see the jockey was standing up in the irons. The answers he gave were completely unconvincing and demonstrated to the Panel that Mr Best was simply not telling the truth.
119. We turn now to the expert evidence that we heard from Tom Morgan. In fairness to Mr Morgan, it should be acknowledged that he came into the case relatively recently. Indeed, the only written material from him, with which we were provided, was a comparatively short report which is better described as a summary of his evidence. It is to be found at [A/3/43 (a) to (c)] and is headed “*Expert Evidence of Tom Morgan 11/11/16*”.
120. We will take the various points he makes in turn. He said, first, that the route taken by Echo Brave (i.e. on the outside) is consistent with a horse running on its merits. He explained that the horse in the position in which we see ECHO BRAVA was taking the racing line. We agree. It certainly is consistent with a horse being run on its merits, but it is also consistent with a horse under a ‘stopping’ ride where the trainer had told the jockey to go wide.
121. Mr Morgan also said that he can see no example of Mr John putting the horse “*short*” into any of the hurdles. We consider he is probably right about that, as we observed earlier on. But it is no more than one factor we take into account in our assessment of the issues of reliability and credibility of the witnesses.
122. He also referred to what Mr John has described as his air shots and “*show nudges*”. Mr Morgan told us he saw signs of the jockey actually striking the horse and that he was generally encouraging the horse to go forward. We find Mr Morgan was wrong and prefer Mr John’s evidence. As we see the film, Mr John is right when he said that he was trying to look as though he was hitting the horse and trying to look as though he was making an effort,

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<sup>23</sup> Also consistent, of course, with restraining a horse that was pulling for much of the race.

whereas in fact he did no such thing and that if he did touch the horse it was all part of the 'show' and that any contact must have been light.

123. As to that, we recognise that waving the whip at all and shaking the reins (as Mr John can be seen to do at various times) may have the effect of encouraging the horse to go forward, when that is not what a jockey giving a 'stopping' ride would want. But, on the other hand, this has to be balanced against the fact that this jockey giving a 'stopping' ride would not want to make it too obvious. In short, we find that what we see is consistent with somebody making a show of riding the horse when, in fact, he was not doing so.
124. We therefore do not accept what Mr Morgan told us about what Mr John described as "*air shots*". Again, we see him as someone arguing a case and not providing an objective and balanced assessment<sup>24</sup>. For example, he identified an occasion when he said that the jockey must, in fact, have hit the horse because we see its tail move in an unnatural way. There are a number of difficulties with that. First of all, a view of this horse in other parts of the race and, indeed, in an earlier race, show that it does have an exaggeratedly high and somewhat unusual tail carriage. Second, it is not impossible that whilst Mr John was attempting to do an air shot, he actually touched the horse. As we said earlier, that is not inconsistent with the account of a 'stopping' ride which Mr John has given where the jockey is trying to give the appearance of effort when, in fact, he was making none. Yet Mr Morgan made no allowance for this possibility whereas a proper, independent expert, offering a balanced opinion in the light of all circumstances, would have done so.
125. Mr Morgan also sought to develop the argument that there was something physically wrong with MISSILE MAN (IRE) and that it was somehow "*unhappy*", which explained the way in which it ran. Indeed, Mr Morgan went so far as to compare the run at Towcester with the previous run on the 30<sup>th</sup> November at Plumpton and told us he thought that it looked that the horse had an underlying problem that was getting worse.
126. There is, of course, some support for his contention in that the racecourse vet found the horse to be lame and, indeed, Mr Carroll found it to be lame the following day. In our judgment, however, that is neither here nor there, since the issue upon which we focussed and which Mr Morgan seemed strangely reluctant to address, was not so much the horse's particular gait but whether we could see signs of active restraint by the jockey, as we suggested to him was what we saw on the film. In any case, as we have already said, the

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<sup>24</sup> Another example would be Mr Morgan's reliance upon the fact that Mr John had his finger or fingers in the horse's neck strap. We don't accept that this is indicative of a jockey who is weak, unfit or incompetent. Lots of jockeys may do that to help settle the horse, keep their hands down as well as to aid their balance.

jockey told the Towcester Stewards that he had not felt the horse go wrong (just that it was tired). Mr Morgan's thesis that MISSILE MAN (IRE) was an unhappy horse with an underlying problem that was apparent in its previous race on 30<sup>th</sup> November and getting worse was not supported either by the vet, Mr Carroll, or by Mr Best himself.

127. In relation to Mr Morgan's other comments, it seems to be common ground between everyone that, in the case of both rides, Mr John was attempting to restrain a horse that was trying to run faster than he wanted in the earlier stages of the race. The difficulty for Mr Morgan, so far as we are concerned, and one that demonstrates to us that he was not an impartial and independent expert but, instead was a 'hired gun' here to argue a case, was perhaps most conspicuous in relation to Missile Man's run at Towcester.
128. Although we could all see that the horse is pulling less hard during the later stages of the race, the Panel could see absolutely no signs of it having been actively encouraged to go forward at any stage. On the contrary, we see it as being actively restrained up to and after the last hurdle. Mr Morgan's attempt to suggest otherwise was, we find, wholly unconvincing.
129. Some final points about the ride on Missile Man: Mr Morgan suggested that there was bumping before and after the third-last hurdle. He says that this was caused by the winner at the third-last and that, before and after the last, there is no apparent difference in the way MISSILE MAN (IRE) was ridden as compared with other horses. Whilst it is true that we can see some consequential interference with other horses at or after the third last, we could also see that the horse regained momentum quickly and that, thereafter, the jockey continued actively to restrain his horse. As for Mr Morgan's comments about the view from behind before and after the last, that serves only to illustrate his partial approach: the view from behind is nothing like as illuminating as the one from the side and ahead.

### **Why stop these horses?**

130. If there was absolutely no reason for the trainer (or owner) to have given either horse a 'stopping' ride, it might cause us to doubt whether either or both would have any interest in giving an instruction to that effect.
131. A point that Mr Morgan makes is that there would be no logic in getting ECHO BRAVA down to a mark of 85. We do not agree. It is true that Mr John accepts that he made a mistake in saying that he thought Mr Best had told him the horse had previously won off a mark of 85 on the flat, whereas in fact it had only won off 79 but had run off 85. But we fully understand the logic of someone wanting to get a handicap mark down. A trainer, and in many cases

an owner, will be delighted if the horse has a handicap mark which does not reflect its true ability. That can happen perfectly legitimately if a horse runs moderately and then improves. But a dishonest trainer or owner has an obvious motive for lowering that handicap mark artificially. It follows that there is nothing inherently unlikely in a trainer wanting the horse to be run in such a way that it did not run on its merits to the benefit of its handicap on later occasions.

132. Mr Morgan also made a point (which Mr Best developed) to the effect that it was fundamentally incredible that he might have been told to get beaten by “33 lengths”. We have referred to this already. If that assertion were taken literally, then Mr Best and Mr Morgan have a fair point. But we do not think that is the right approach. We find this is more consistent with Mr Best having told Mr John to get the horse beaten by a long way and he may well have used an expression such as “33 lengths”<sup>25</sup>. It was not to be taken literally.
133. Nor do we think it is inherently unlikely that MISSILE MAN (IRE) might be similarly advantaged by having a lower handicap mark nor that it might be run other than on its merits on at least 3 occasions so as to achieve that<sup>26</sup>. Nor is it impossible that the horse might actually have ended up in a selling race<sup>27</sup> if it had not won off a lower mark and/or if it proved to be ‘gutless’ (as Jamie Moore had described it) or turned out to have an underlying problem (as Mr Morgan argues).
134. We should make it clear that we do not think that either Mr Dillon or Mr Callaghan was privy to any such plan. A trainer may choose to involve the owner but he need not necessarily do so.
135. In the case of Mr Dillon, we disregard the equivocal evidence as to what was said in the paddock at Plumpton. We heard and accept what he told us in his oral evidence that he knew nothing to suggest that ECHO BRAVA would not run on its merits. The same applies to Mr Callaghan and MISSILE MAN (IRE) as regards the race at Towcester.
136. It is also true that Mr Callaghan said he would have had no interest in running what was a valuable horse, for which he had paid good money and which had subsequently won a bumper in a seller. We have dealt with that already: if the horse had got down to and then

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<sup>25</sup> As a matter of record, the distance by which MISSILE MAN (IRE) had been beaten at Plumpton on 30<sup>th</sup> November. Echo Brava was actually beaten 23 ½ lengths.

<sup>26</sup> There is absolutely nothing in the fact that MISSILE MAN (IRE) was ridden by Jamie Moore on its first run over hurdles and neither side suggests that it was a stopping ride on that occasion.

<sup>27</sup> As Mr John says he was told was part of the plan – see para 41 of his witness statement [A/2/13]

won off a low handicap mark, that option would probably never have materialised. And Mr Callaghan was not in on Mr Best's plan anyway, as we have already acknowledged.

### **Did Mr Best give the instructions to stop these horses: the balance of probabilities**

137. We have already said that we find that Mr John's account that he deliberately stopped the horses was decisively corroborated by what we saw on the film, quite apart from the fact that it is inherently unlikely that he would admit to giving the horses 'stopping' rides when he had not, however badly disposed he may have been to the trainer.
138. We have already addressed the issue of a trainer's (or owner's) interest in giving 'stopping' instructions – that is, to improve its handicap mark. In the case of a horse that was unfancied in the betting, they would be the people most likely to benefit and so the overwhelming likelihood must be that one or other of them would be the source of the 'stopping' instructions.
139. In the course of the hearing we canvassed the possibility that the jockey might have been acting for some third party – an outside interest such as a bookmaker, for example. We realise that a short-priced favourite could be stopped by the jockey to the advantage of bookmakers without the trainer or owner knowing. As Mr Best's solicitor, Mr Harry Stewart-Moore, helpfully pointed out in answer to a question from the Panel, there might also be a similar betting interest in 'stopping' a horse that had been backed each-way<sup>28</sup>. Furthermore, in these days of betting exchanges in the UK and overseas markets and with what is known as spot-fixing, we take account of the fact that it is not impossible that there might be a third party interest in ensuring that an unfancied horse runs in a particular way.
140. These are, however, wholly theoretical possibilities which we discount. It has never formed any part of Mr Best's case that either horse was in fact stopped<sup>29</sup>. Nor has it been suggested to Mr John that he might have done that for such a reason and in the interests of some third party influence. On the contrary, Mr Best's case throughout has been that these horses were just ridden badly and that Mr John must have said he stopped them on the trainer's instructions to give himself an excuse to leave the yard when he did and to establish 'exceptional circumstances' as regards his licence and then to perform his side of the 'deal' for the BHA.
141. A further factor which weighs heavily in the balance of probabilities can be found in what Mr Best did or did not do after the two races. We bear in mind that, on Mr John's account on the

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<sup>28</sup> Even in a Novice Hurdle on a December Monday at Plumpton

<sup>29</sup> Nor was any evidence offered that there were unusual betting patterns

one hand, he had ridden 2 'stopping' races as per instructions: on the other hand, according to Mr Best, Mr John, his conditional jockey had ridden 2 bad races and shown himself to be weak and to get tired and had not followed instruction. Worse still, he had 2 run-ins with the stewards, getting 14 days on the first occasion and was held to have deliberately stopped the horse on the second.

142. If Mr Best's version were true, one would have expected him to have had a very strong word with his jockey and to have taken every step later (when they got back to the yard or the following day) to show him the error of his ways. Furthermore, we expect that the way he rode would have attracted considerable comment in and outside the yard and we cannot imagine that Mr Best would not at least have warned his owners that a large, dark, cloud was hanging over the jockey especially in circumstances where he might be going to ride one of their horses.
143. But, on Mr Best's own account, and that of Mr Cooley and Messrs Callaghan and Dillon, the trainer apparently decided it was just 'business as usual', despite what the stewards had said: there was no discussion with his jockey, no attempt to explain, remonstrate or rehabilitate and no attempt to explain matters to these important owners. On the contrary, Mr John was put on INCH WING (IRE) at Lingfield on the Monday (21<sup>st</sup> December) and was down to ride KIAMA BAY (IRE) for Mr Dillon who (he says) had been told nothing about the dramatic events of the previous 7 days.
144. In our view, that account of events is either untrue or, if broadly accurate, it is far more consistent with Mr Best taking so relaxed an approach because, far from blaming the jockey for what he had done, he knew full well he had done his bidding.

#### **The unanimous decision of the Disciplinary Panel**

145. We find that Mr John did intentionally ride both horses other than on their merits: that is, these were 'stopping' rides. We also find that it is overwhelmingly likely that he rode in that way because those were Mr Best's instructions.
146. That being so, the findings against Mr Best under Rule (C) 45 in respect of both races necessarily follows because he did not give his jockey proper instructions. That leaves the issue of the alleged breach of Rule (A) 30.1 which alleges Mr Best is guilty of conduct prejudicial to horse-racing.

147. As regards (A) 30.1, this is not a duplicated or alternative charge and there is no question of double jeopardy (if that means being charged twice for the same offence). Rather, we consider Rule (A) 30.1 is an additional and separate charge on the basis that not only is giving such instructions inherently prejudicial to the interests of racing but that it is particularly reprehensible if those instructions are given to a Conditional Jockey for whom the trainer has a general supervisory and advisory responsibility (and if the trainer then lies about what he has done and seeks to blame the jockey for having failed to carry out his instructions).
148. We will hand this decision down at a re-convened hearing on Monday 12<sup>th</sup> December 2016. The parties and their legal representatives will have had a draft well in advance of that hearing. However, they are invited to attend in person as we shall have to address the issue of the appropriate sanction(s) given that the earlier decision is, in effect, a nullity.

**Sir William Gage (Chairman)**  
**William Norris QC**  
**Nicholas Wachman**