



BHA statement regarding Matthew Lohn

Following the decision of the Appeal Board to order a rehearing in Jim Best's case, the BHA stated that it took full responsibility and apologised for the fact that the non-disclosure of Mr Lohn's other paid work created an appearance of bias. The BHA indicated that it would issue a full statement once the case was closed.

On 12 December, the Disciplinary Panel for the rehearing announced its decision to find licensed trainer Jim Best in breach of two counts of Rule C(45) and one count of A(30) and to suspend Mr Best's licence for a period of six months.

What follows is a chronological account of the events leading up to the need for a rehearing of this case.

1. Mr Lohn became a member of the Jockey Club's Disciplinary Panel in 2005, and chaired his first Disciplinary Panel hearing for the BHA's predecessor body, the Horseracing Regulatory Authority (HRA), in November 2006.
2. In October 2013, Adam Brickell, the BHA's Director of Integrity, Legal and Risk, asked Mr Lohn to provide urgent, informal advice on a non-disciplinary panel matter relating to the referral of racecourse doctors to the General Medical Council (GMC) which had potentially put the Cheltenham race meetings scheduled for 18 and 19 October 2013 at risk.
3. Mr Lohn was known to the BHA as a qualified doctor and lawyer with experience in dealing with issues of medical performance, racing regulation and discipline, and of acting for the GMC.
4. Mr Brickell and Mr Lohn spoke on a number of occasions between October 2013 and January 2014. During this period, Mr Lohn did not seek payment for his advice.
5. Ben Gunn, one of the BHA's Independent Regulatory Board Directors, subsequently undertook a review into the circumstances regarding the referral of racecourse doctors. In January 2014, Adam Brickell contacted Mr Lohn and asked him, on behalf of Mr Gunn, to provide written advice regarding the referral of the doctors to the GMC. Mr Gunn asked Mr Lohn to submit invoices for this work. In total, Fieldfisher, the legal firm in which Mr Lohn is the senior partner, issued five invoices for work carried out between January 2014 and July 2014, for which the BHA paid £18,366.
6. In September 2014, Adam Brickell and Dr Jerry Hill, the BHA's newly-appointed Chief Medical Adviser, agreed it would be helpful for Dr Hill to meet with Mr Lohn so that he could explain the advice he had given and provide views on a proposed redraft of the

BHA's General Instructions to racecourses that dealt with medical provision. Mr Lohn subsequently provided advice to Dr Hill on the structure and content of the new draft of the General Instructions as well as advice on a discrete issue relating to medical confidentiality. The BHA paid £35,920.80 for work carried out on these matters between October 2014 and October 2015.

7. On 5 December 2014, the BHA held a meeting with the Professional Jockeys Association (PJA) to review the year. The BHA sent draft notes of the meeting to the PJA on 13 January 2015. On 19 February 2015 the PJA, by way of letter, responded to raise a number of issues regarding the composition and operation of the BHA's Disciplinary Panel. The PJA's main point was that a perception of bias existed in relation to the Disciplinary Panel which they stated as follows:

With the exception of a small number of 'legal' members, the Disciplinary Panel is made up of active Stewards, sitting in judgment of their active peers, who sometimes happen to be their friends, even if they don't actively sit with them on a specific panel. The Disciplinary Panel members sit in judgment of decisions taken by Stipendiary Stewards, who they will regularly have to serve with on a racecourse again. To our knowledge, in no other professional sport do 'referees' have their decisions reviewed by their active peers, let alone by individuals who on occasion referee with them and are friends.

8. The PJA made it clear that it did not consider that the Panel or any of its members were actually biased but was concerned about a potential perception of bias due to the presence of honorary stewards on the Disciplinary Panel as this would involve them in reviewing the decisions of their stewarding colleagues. In their letter, the PJA raised five additional concerns, one of which was that the BHA was a client of one of the legal members of the Disciplinary Panel and that this should have been disclosed. The PJA asked specifically for non-disclosure to be addressed directly by the BHA and also requested a formal review of the BHA's disciplinary process. The PJA was aware of Mr Lohn's instruction because on 24 January the BHA had openly disclosed that advice to the PJA.
9. Following receipt of the PJA's letter, Jamie Stier, the BHA's Director of Raceday Operations and Regulation, asked the BHA's in-house legal team for their thoughts on the issues raised by the PJA.
10. On 6 March 2015, Adam Brickell and Andrew Merriam, the BHA's independent regulatory board director, were due to meet with Mr Lohn to discuss a review of the licensing committee and both agreed to take the opportunity to seek his views on the additional concern raised by the PJA in their letter that the BHA was a client of Matthew Lohn.

11. Like all Panel members, Mr Lohn was required by the Rules of Racing for Panel members *“to declare any interest and to disqualify himself or to seek any waivers of objection as appropriate prior to final selection.”* Mr Lohn’s view was that he did not believe that a perception of bias arose in respect of the discrete medico-legal issues on which he had advised the BHA.

12. Adam Brickell subsequently discussed the points the PJA had raised in their letter with Patrick Russell, the BHA’s Disciplinary Officer, and Jamie Stier. Following that discussion, on 14 April 2015, Mr Stier sent a letter to the PJA in which he responded fully to all the points they had raised in their letter of 19 February 2015, including the perception of bias in the Disciplinary Panel, an alleged lack of criticism of the BHA by the Disciplinary Panel, the Panel’s note taking and the reasons it provided for its decisions, and the BHA’s instruction of Matthew Lohn. Mr Stier confirmed the BHA’s view that the existing procedures relating to its Disciplinary Panel safeguarded against the risk of bias and, on the specific point of Mr Lohn’s other work for the BHA, confirmed the BHA’s view at the time, which had been made known to Mr Lohn, that as this related to two specific issues on medical matters, it need not be disclosed because it was entirely separate to Mr Lohn’s position on the Disciplinary Panel. Mr Stier also confirmed that Mr Lohn would not sit on a Disciplinary Panel regarding an issue on which he had advised and that the BHA did not consider a full, formal review of the process was justified or necessary. The PJA were encouraged to come forward with any additional concerns.

13. The BHA received a response to Mr Stier’s letter on 13 May 2015 in which the PJA disagreed with the BHA’s position and asked for a meeting with Mr Stier and Nick Rust, the BHA’s new Chief Executive. The PJA’s letter was not discussed or shared with Mr Lohn.

14. After discussion, Mr Rust and Mr Stier decided that it was appropriate for the BHA’s Disciplinary Review Group (DRG) to consider the matter. On 23 June 2015, at the next DRG meeting, the PJA’s correspondence was discussed and in particular its concerns regarding the composition of panels which, for the main, focused on the inclusion of raceday stewards. It was agreed that Nick Rust would meet with Paul Struthers, the Chief Executive of the PJA, to discuss matters of general principle. Mr Rust made contact with Mr Struthers the following day to arrange a meeting.

15. On 8 September 2015, Mr Rust met with the PJA and, following earlier discussions, offered to widen the scope of the terms of reference of the BHA’s Integrity Review to include a review of structure and composition of disciplinary panels in order to address the PJA’s concerns. Mr Struthers subsequently met with Mr Brickell to provide his views on the Integrity Review, as one of more than a hundred consultees. The BHA considered that the matter had been dealt with. Mr Lohn next sat on the Disciplinary Panel in September 2015 and, on the five occasions he chaired the Disciplinary Panel between then and March 2016, he did not disclose the fact that he had given advice to the BHA

on medico-legal issues. At no point prior to Mr Best's appeal was there any formal challenge to Mr Lohn sitting on the Panel, either from the PJA or an individual rider or other participant appearing before it.

16. In February 2016, Fieldfisher was among six law firms considered to have the necessary capability and interest who were invited to tender for a re-write of the Rules of Racing. The BHA understood that should Fieldfisher be successful, Mr Lohn would not be able to continue as a Disciplinary Panel member.
17. During January 2016, the BHA's Secretary to the Disciplinary Panel made enquiries as to the availability of Mr Lohn to sit as Disciplinary Panel chairman for the Jim Best case. At the time, Mr Lohn was one of two legally-qualified Panel members available for selection. The hearing was originally arranged for 4 February 2016, but following an application from Mr Best's solicitors, Mr Lohn agreed to set the date aside and directed that the BHA explain the basis for some of its evidence before Mr Best's solicitors made their submissions in response to the disciplinary charges. The hearing was subsequently arranged for 15 February 2016. As Mr Lohn was not available at this time, rather than delay the hearing further, the BHA proposed the possibility of Tim Charlton QC, the other legally-qualified Disciplinary Panel Chairman, sitting as Chairman for the hearing.
18. In response to the BHA's proposal, Mr Best's solicitors indicated that they did not think that it was necessary to change the Chairman. Mr Lohn was subsequently appointed as Chairman for the disciplinary hearing which was scheduled to start on 25 February 2016. No objection was made to the appointment of Mr Lohn, either to the Panel directly or to the BHA by any of the parties involved in the case.
19. Between 25 February 2016 and 11 March 2016, a Disciplinary Panel chaired by Mr Lohn sat to hear the BHA's case against Jim Best. Paul John was also a respondent and was represented by the PJA.
20. On 8 March 2016, Mr Lohn informed the BHA that he was declining the invitation to submit a tender for the rewrite of the Rules of Racing on behalf of Fieldfisher on the basis that if his firm were successful he would want to be involved in the work and that this could call into question his perceived impartiality as a Disciplinary Panel Chairman.
21. On 21 and 22 March, a Disciplinary Panel chaired by Mr Lohn sat to hear the BHA's case against Paul Gilligan.
22. On 4 April 2016, the Disciplinary Panel published its reasons for its decision to find Jim Best in breach of Rule (C)45 and A(30) and disqualified Jim Best for four years with effect from 4 April 2016 to 3 April 2020 inclusive.

23. Jim Best subsequently lodged an appeal against the decision of the Disciplinary Panel on the following grounds:
- The reasons given were insufficient to support the decision
 - The hearing was conducted in a way which was substantially unfair and prejudicial to the appellant because of the apparent bias of the Chairman of the Disciplinary Panel
 - There was insufficient material on the basis of which a reasonable decision-maker could have made the decision in question
 - The Panel misconstrued or wrongly applied the relevant rules
 - The penalty is so disproportionate that no reasonable decision maker could have decided upon it.
24. On 7 April 2016, Anthony Boswood QC, Appeal Board Chairman, granted Jim Best's application for a stay of penalty to which the BHA had objected due to the severity of the breach involved.
25. The BHA subsequently took advice from leading counsel and, following receipt of that advice, decided not to contest Mr Best's appeal on the grounds of an appearance of bias. The BHA considered that the most appropriate approach, in the best interests of racing, would be to concede that point up front and press for a rehearing in front of a new Disciplinary Panel.
26. On 10 May, George Bartlett QC, an Appeal Board Chairman, granted Paul Gilligan's application for a stay of penalty, pending the determination of Mr Best's appeal.
27. On 24 May 2016, an Appeal Board upheld Mr Best's appeal on two grounds: that Mr Lohn's position gave rise at the time of the hearing to an appearance of bias and that the Disciplinary Panel's reasons were insufficient to support its decision. The Appeal Board ordered a re-hearing to take place as soon as possible. During the appeal hearing, the BHA made a full apology to Mr Best and offered to pay his reasonable, wasted costs for the original hearing, the stay of proceedings hearing and the subsequent appeal hearing.
28. On 1 June 2016, the BHA outlined a number of steps to maintain confidence in its disciplinary process including:
- appointing Christopher Quinlan QC, an independent expert in the field of sports governance and regulation, to lead a review of the structure, composition and operation of the BHA's Disciplinary Panel, Appeal Board and Licensing Committee in consultation with the sport's stakeholders. (At the time, the BHA published the Terms of Reference for the review and committed to publish Mr Quinlan's report in full on the 30 September 2016, which it subsequently brought forward to 29 September 2016).

- asking Ian Mill QC to advise on past cases where Mr Lohn sat on the Disciplinary Panel so that it could be established if there were similar grounds for an appearance of bias in those cases on which Mr Lohn had sat after being instructed by the BHA to do other work. (Mr Mill identified seven cases where there might be grounds for a potential appearance of bias. Four cases have since been resolved by mutual agreement and the BHA is in correspondence with the parties concerned in the remaining three cases).
 - requiring each sitting member of a Disciplinary Panel, Appeal Board and Licensing Committee to sign a Declaration of Independence before each hearing, and making this available to those appearing before them so that they can make any concerns known before the hearing proceeds and that these can be dealt with appropriately.
29. On 13 July, an Appeal Board upheld an appeal from Mr Gilligan on the grounds that Mr Lohn's position gave rise at the time of the hearing to an appearance of bias and made an order that the case be remitted for redetermination by a differently constituted Disciplinary Panel and that the BHA should pay Mr Gilligan's costs of the appeal.
30. On 29 September 2016, the BHA published in full Christopher Quinlan QC's report and confirmed that the BHA Board had accepted all 24 recommendations. The BHA aims to complete the implementation of the recommendations by April/May 2017, subject to the appointment of a Judicial Panel Chairman.