

**REVIEW OF THE BUYING AND
SELLING PRACTICES OF
BLOODSTOCK AND RACEHORSES
WITHIN BRITISH RACING**

31 July 2019

**Commissioned by the board of
directors of the**

British Horseracing Authority

Project Leader: Justin Felice OBE

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A. FOREWORD

I am pleased to introduce this Report on the buying and selling of bloodstock and racehorses in Great Britain, a piece of work which was commissioned by the BHA Board in June 2017 as part of a review of the BHA's regulatory risk register. The Board was concerned about the perception of unethical practices and experiences, and a number of clear vulnerabilities had been brought to its attention.

It is vital that we continue to attract, develop and retain owners within British Racing. Owners are a major source of funding in our sport, alongside betting, and the responsibility befalls all stakeholders to ensure their experiences are first class – both on and off the racecourse.

In order to attract investment and grow our ownership base, we need to ensure openness, transparency and fair dealing are at the heart of all we do as an industry, which is why we announced the Review.

British bloodstock is highly sought after, and its sales houses are recognised around the world as places to buy and sell champion thoroughbreds. These theatres of hopes and dreams are where the majority of bloodstock changes hands in Britain. Prospective owners can also buy horses privately or at a racecourse following a selling race.

Back in 2004, a cross-industry working group drew up the Bloodstock Industry Code of Practice, which is incorporated into the Rules of Racing and sets out ethical codes which apply when horses are bought and sold, irrespective of where or how they are sold in Britain. It was last updated in 2009 and we believe now is the right time to be looking at whether we need to bring about any changes to the regulatory landscape to ensure fair practices and appropriately support the industry's growth agenda.

As demand at the top end of the market shows no signs of relenting, one of very few certainties in this sport is that ever-increasing figures will be paid for the top yearlings. By contrast, sales data across the middle and lower tiers is showing increasing selectivity and we are mindful that our sport may have an equine welfare risk if demand fails to match supply and vendors do not have an appropriate cushion to fall back on. We are committed to providing greater transparency and leading on animal welfare standards and we will also ensure our race programme is reflective of the corresponding foal birth and yearling sales data.

This Report is based on extensive research and wide-ranging consultation with stakeholders, most notably within the bloodstock industry, presenting a number of conclusions and recommendations.

I am very pleased with the level of assistance and co-operation that has been provided to the Review Team. I would like to thank Justin Felice OBE, for leading the Review and everyone who has contributed, giving their time, perspective and experience. I am also grateful for the legal support provided by Onside Law's Chris Walsh and Ross Brown to the Review Team.

There is a great deal to consider in this report and its recommendations. I strongly suggest that interested parties read the report in great depth. Whilst not all of the recommendations are in the direct control of the BHA, we are hopeful that stakeholders will accept the basic findings of the report, and work with the BHA to shape and implement all recommendations.

Nick Rust
Chief Executive of the British Horseracing Authority

July 2019

B. EXECUTIVE SUMMARY

1. In March 2018, I was appointed by the British Horseracing Authority to lead a comprehensive review of the buying and selling of bloodstock and racehorses within British Racing. The BHA made clear to me its desire to bring an external independent perspective to this review.
2. I would like to personally thank all the interviewees who agreed to participate in the Review for their time, openness and co-operation during the process. The level of support was excellent and encouraging for the prospects of the bloodstock industry moving forward.
3. The Review process undertaken has been conducted impartially and with integrity. I embarked on the Review with an open mind and no preconceived agendas or opinions.
4. The BHA's core objectives in relation to the British bloodstock industry are, on any reasonable view, eminently justifiable. Those objectives are set out in the Review Terms of Reference (a copy of which is attached at [Appendix 1](#) to this Report) as having in place fair, transparent and ethical practices to remove significant actual and perceived barriers to new owners joining the sport, to retain those who have already become racehorse owners and to protect the integrity and reputation of British Racing. Each objective is obviously very important in its own right, not only for the bloodstock industry but also for the wider best interests of all stakeholders in British Racing.
5. In addition, the Review Terms of Reference also set out the scope of the Review as follows:
 - 5.1. To review the nature and integrity of the practices involved in the buying and selling of bloodstock and racehorses within British Racing.
 - 5.2. To consider what (if any) action the BHA should take, by way of enhanced regulation or otherwise, to ensure legally and ethically robust, fair, transparent and responsible practices in the buying and selling of bloodstock and racehorses.
6. This required the Review Team to consider a wide range of issues, including the role and activities of the different participants in the sales process, the effectiveness of the current regulatory regime in relation to the bloodstock industry and whether any relevant learnings could be drawn from practices and regulations in other jurisdictions and across other comparable industries.
7. The methodology of the Review is detailed in Section D, but in short, the information-gathering phase was conducted in over 70 interviews with representatives of all the key relevant stakeholder groups, the majority of which I attended in person. The interviewees included a wide range of stakeholders across the bloodstock industry, persons with specific bloodstock industry knowledge and expertise (both in Britain and other overseas jurisdictions), participants

from within the racing industry and media and other regulatory bodies.

8. The Review found that the bloodstock industry was generally a safe environment in which to buy and sell bloodstock and the vast majority of industry participants appear to display high standards of integrity.
9. However, the interviewee feedback also revealed a widespread knowledge and acknowledgment of unethical practices being conducted with relative impunity in the bloodstock industry for many years, with a small number of unscrupulous individuals being identified repeatedly by different interviewees as people who pose a real risk to the integrity and reputation of the entire bloodstock industry. A considerable number of interviewees alleged that they had themselves been (or had direct knowledge of others having been) victims of such practices, including many different allegations of improper inducements and payments. On some occasions these practices, as explained below, are also unlawful.
10. Whilst the Review Team was not required to investigate any of the specific allegations made by the interviewees (and did not have the time nor resources to do so in any event), there was sufficient weight of credible testimony and corroboration of individual allegations to leave me in no doubt whatsoever that the concerns and findings in this Report are fair and justified.
11. Many participants spoke freely about their experience and/or knowledge of unethical practices in the bloodstock sales industry and the need for greater integrity, transparency and accountability, failing which the bloodstock industry was at serious risk of being publicly exposed by investigative media and/or those who have fallen victim to some of the improper practices which were cited. It was widely acknowledged that any such exposure would be likely to seriously damage the bloodstock industry's reputation.
12. Whilst the bloodstock industry currently purports to self-regulate through the Bloodstock Industry Code of Practice dated 1 January 2009 (the **Code**)¹ (a copy of which is attached at Appendix 2 of this Report), there was a considerable volume of testimony provided by interviewees of alleged breaches of the Code, primarily by "Agents" (as broadly defined under the Code²), but also by other participants in the bloodstock sales process. There was some consensus amongst the interviewees that approximately 5% of Agents were "bad apples", but that the rest largely conducted themselves with integrity when conducting their agency

¹ For ease of reading and reference, this Report uses defined terms for certain key concepts such as the Bloodstock Industry Code of Practice. That particular defined term is used to refer to the Bloodstock Industry Code of Practice of 2004, as well as the updated version of 1 January 2009.

² Agent is defined as "any trainer, consignor, bloodstock agent, racing or stud manager or other person or entity who represents a Principal in the sale or purchase of bloodstock, stallion shares and nominations, whether the Agent is paid by way of retainer, commission or other forms of remuneration, or has ongoing financial arrangements (for example the payment of management or training fees), or not." Principal is then defined as "a person or entity who appoints an Agent to act as agent on his behalf in the sale or purchase of bloodstock, stallion shares and nominations as in the definition [of Agent]."

activities.

13. Many of these breaches constitute not only breaches of the Code, but also breaches of related agent/fiduciary legal duties, and in some cases potentially breaches of applicable criminal legislation (including one or more of the Bribery Act 2010, the Fraud Act 2006 and the Criminal Law Act 1977) and the tort of unlawful means conspiracy.
14. The unethical and/or unlawful practices which appear to be most prevalent are:
 - 14.1. Secret Profiteering, being the collusion between two parties to make a secret profit through the sales process – usually, but not exclusively, the vendor on the one hand and the Agent for the purchaser on the other.
 - 14.2. Dual Representation/Commission, where the Agent acts for both the purchaser and the vendor in the same transaction and charges commission to both parties (without one or both parties' knowledge).
 - 14.3. Luck Money, an anachronistic practice whereby the Agent for the purchaser demands and receives money (in some cases, a substantial sum calculated as a percentage of the sale price) from the vendor on the sale of a horse.
 - 14.4. Bidding Up, being the artificial increase in the sale price of a horse at auction through a series of pre-agreed bidding where the pre-agreement leads to the purchaser paying more for the horse than he/she would have done, but for the pre-agreement, such practice being of particular ethical concern where it leads to bidding up beyond the reserve price.
15. Each of these is specifically and expressly prohibited by the Code³ in relevant circumstances, with the exception of Bidding Up which may separately, in certain circumstances, constitute a breach of, among other things, other more generic provisions of the Code and related

³ See paragraphs 2, 4, 6 and 8 of the Code, which provide as follows:

Paragraph 2 – An Agent shall not place himself in a position where personal interests conflict with the duty to his Principal. In particular, an Agent shall not use his position to obtain a secret payment or secret profit, which means any payment or benefit in kind received by an Agent that is not disclosed to his Principal.

Paragraph 4 – If an Agent acts for more than one Principal in a transaction (which might be both the vendor and purchaser), the Agent can only do so if he has first disclosed this fact, before completion, to all his Principals, and obtained their consent.

Paragraph 6 – An Agent shall disclose to his Principal and, if required, account to his Principal for any Luck Money paid to him by or on behalf of a vendor. Luck Money means any financial payment or payment in kind made by or on behalf of a vendor to a Purchaser or his Agent, after the sale of a horse has been concluded. The practice of giving and receiving Luck Money shall be entirely voluntary, transparent and should be disclosed to all appropriate parties by the recipient. A vendor has no obligation whatsoever to pay Luck Money and the non-payment of such should not prejudice any further business activity.

Paragraph 8 – A vendor must not offer any secret payment or secret profit to any person whom he believes to be an Agent acting for a prospective purchaser.

agent/fiduciary legal duties.

16. The four practices set out above are the practices which have caused the Review Team the most concern, but we also have concerns that some Agents and other industry participants are also breaching other obligations under the Code⁴, and together all these unethical and/or unlawful practices are collectively referred to in this Report as the ***Improper Practices***.
17. It also became clear that there was a pressing need to change and modernise the culture of the bloodstock industry in a way which stops unethical and/or unlawful conduct being “normalised” and ultimately condoned. A united front across all the various industry stakeholder groups is, in our view, needed to change the current behaviours and culture.
18. This need for greater industry unity was reinforced by my disappointment at discovering that industry participants preferred to avoid reporting allegations of wrongdoing within the bloodstock industry with a real fear expressed by some participants of being ostracised from being able to operate within the industry, including not being able to buy and sell bloodstock, should they do so. There is no clearer manifestation of this than the fact that no complaints appear to have been recorded in the 15-year period since the initial inception of the Code in 2004.
19. There can be no doubt that the self-regulatory model agreed in the amended Code in 2009 is not fit for purpose and requires urgent attention and overhaul. Put simply, the bloodstock industry is not being regulated in any meaningful way as it currently stands and there was a surprisingly widespread lack of knowledge that the Code even existed. This is not an acceptable or sustainable state of affairs.
20. I was struck by the fact that the industry at present is divided into disparate groups, all of whom acknowledge that there are problems which need to be addressed and yet there has been a general failure by any body or stakeholder group to intervene and take any remedial action. It is clear that there is, and has for some time been, a general lack of synergy and co-operation across the different stakeholder groups in the bloodstock industry.

⁴ See paragraphs 1, 3, 5 and 7 of the Code, which provide as follows:

Paragraph 1 – An Agent owes a duty to his Principal to act at all times in accordance with his Principal's best interests.

Paragraph 3 – When an Agent acts as a vendor or part-vendor and sells or intends to sell any horse in which he has an interest to a Principal, or intended Principal, the Agent must disclose to his Principal, before completion, the full extent of that ownership or interest and the benefit derived from that transaction.

Paragraph 5 – An Agent must notify his Principal, wherever possible in advance, when a conflict of interest could arise, such as transactions involving third parties with whom he has a retainer, transactions where he is aware he will benefit from a third party, or transactions concerning horses which he has previously purchased or been involved with.

Paragraph 7 – If an Agent receives an offer to purchase a horse he must relay that offer in its entirety to his Principal and respond in accordance with the Principal's instructions.

21. Whilst there is a clear and compelling need for the BHA, with support from the wider bloodstock industry, to take the regulatory lead to ensure legally and ethically robust, fair, transparent and responsible practices in bloodstock and racehorse sales, I believe that there are a series of practical solutions which can and should be relatively straightforward to put in place, with the necessary industry support.
22. Following careful analysis of all the feedback and other materials obtained through the Review process, the following four core themes emerged in terms of our recommendations, as further set out in Section C below, namely the need for:
 - 22.1. greater cross-bloodstock industry co-operation;
 - 22.2. enhanced and tighter regulation, with an enhanced new Bloodstock Industry Code of Practice (the **New Code**) being put in place, in tandem with the introduction of a BHA operated licensing system for all Agents operating in the British bloodstock industry and the BHA taking a more proactive lead as the sole relevant regulatory authority;
 - 22.3. improved education, communication and awareness; and
 - 22.4. greater transparency in certain aspects of the sales process (each a **Core Theme**).
23. Each of these Core Themes gives rise to one or more specific recommendations, as further detailed at Sections C and G.
24. Taken together, I strongly believe that those recommendations, if implemented, provide an opportunity for transformational and once-in-a-generation change within the bloodstock industry. I would emphasise the Review Team's belief that there is a clear risk to the integrity and reputation of British Racing if the areas of concern highlighted in this Report are not addressed as a matter of some urgency.
25. On a positive note, there does appear to be near-universal support for an industry-wide effort to create a zero-tolerance culture towards allegations of unethical and/or unlawful behaviour in the bloodstock industry, which reinforces my belief that now is the time to act. The recommendations proposed in this Report have been presented to key industry stakeholders, who have been positive in their feedback, with no objections being raised to the nature of the recommendations.
26. I recognise that the recommended reforms require some additional resourcing and funding, but I am confident that those additional costs will be worth every penny if it means that the current ethical risks in the bloodstock industry can at least be significantly mitigated, thereby leading to a reversal in the current decline in new and existing individual owners and providing the industry with a clean and modernised platform from which it can thrive on a long-term basis.

BHA Jurisdiction

27. At an early stage, we required specialist legal advice on the extent of the BHA's legal and constitutional jurisdiction over the bloodstock industry.
28. The BHA's constitution makes clear that the BHA is *"the governing, administrative and regulatory authority for the sport and industry of horseracing in Great Britain"*⁵ (emphasis added) and that, among other things, its constitutional objects include being *"responsible for the regulatory matters in relation to the sport and industry of horseracing in Great Britain including taking all such steps regarding such regulatory matters as may be necessary or advisable to seek to enhance public confidence in the integrity of the sport.... and to encourage the improvement of industry standards...."* (emphasis added)⁶.
29. The bloodstock industry is self-evidently a fundamental component of the wider industry of horseracing and this is further underlined by the fact that, under the BHA's Articles of Association, three of the four Members of the BHA represent the interests of three of the key participant groups in the bloodstock industry⁷.
30. The BHA jurisdiction over those involved in the bloodstock sales process is also clearly expressed in the BHA Rules of Racing and in particular in the General Manual (A). This includes a list of those persons who are subject to BHA jurisdiction, including owners, trainers and anyone who engages in bloodstock transactions or deals in racehorses (including horses intended for racing)⁸. There is also an express obligation on all such persons to *"not act in any manner which the BHA considers to be prejudicial to the integrity, proper conduct or good reputation of horseracing in Great Britain"*⁹.
31. Finally, the Code imposes a range of conduct obligations, primarily on "Agents" . Under the Code, the BHA has the express enforcement power¹⁰ to ban any person in breach of the Code from British racecourses and other licensed premises and to prohibit them from conducting business with licensed individuals on the grounds that such conduct is *"contrary to the integrity, proper conduct or good reputation of horse racing"*.
32. In short, the bloodstock industry has, therefore, already consented to the BHA's jurisdiction over it and there is a clear existing basis for the BHA to accept the responsibility of regulatory jurisdiction over all but one of the key participant groups in relation to their activities in the

⁵ Paragraph 3(1) of the BHA Memorandum of Association.

⁶ Paragraph 3(7) of the BHA Memorandum of Association.

⁷ Namely the Racehorse Owners Association, the National Trainers Federation and the Thoroughbred Breeders Association, as per Article 5(1) of the BHA Articles of Association.

⁸ Rule 2 and 30.2 of the General Manual (A).

⁹ Rule 30.1 of the General Manual (A).

¹⁰ Paragraph 10 of the Code.

bloodstock industry, albeit a jurisdiction that it has not enforced to date. The exception is the sales houses.

33. It is nonetheless important to note that the clear primary aim of the Code is for the bloodstock industry to regulate itself, as evidenced by the unusual dispute resolution process in the Code¹¹ and the fact that the Code was specifically re-drafted and approved, in 2009, by the key organisations and associations representing sales houses, agents, trainers, owners and breeders, with the BHA just one of the parties involved and at a time when it had only just been established (as further described in Section E). The BHA's disciplinary/enforcement powers in practice only arise if an allegation of a Code breach is referred to it after it has already first been reported to, and dealt with by, one of the named trade bodies or sales houses under paragraph 9 of the Code (which has never happened), before the BHA then considers if the allegation may constitute a breach of the BHA Rules of Racing¹².
34. During the course of the Review, whilst it was clear that many industry participants were not aware of the BHA's jurisdiction, no substantive challenge to the fact of the BHA's jurisdiction over the bloodstock industry was raised by anyone. As explained above, the only stakeholders within the bloodstock industry who do not appear to fall squarely under the BHA's jurisdiction are the sales houses. However, based on my conversations with senior representatives of the two biggest sales houses in Britain, Tattersalls and Goffs (the **Sales Houses**), I believe that they also recognise the need for industry reform and are prepared to work with the BHA on the implementation of the Review's recommendations, recognising that doing so is also in their best long-term interests.
35. It is clear to me that the only entity which has the jurisdiction, regulatory capabilities/experience and resources to take responsibility for implementing and enforcing the recommended reforms advocated in this Report is the BHA and it is, therefore, recommended that the BHA does so. No viable alternatives have been suggested or, to my knowledge, exist.

Justin Felice OBE
Project Leader

31 July 2019

¹¹ Paragraph 9 of the Code.

¹² At paragraph 30.1 of the General Manual.

C. CORE THEMES AND RECOMMENDATIONS

- 1. The findings of this Review highlight the following key threats and risks to the integrity and best interests of the bloodstock industry and all those who participate in it:**
 - 1.1. A culture of unethical, and in some cases unlawful, business practices by a small number of unscrupulous individuals operating in the industry.**
 - 1.2. An absence of any effective regulatory or enforcement regime to deter and punish such conduct and to provide protection for other industry participants and the industry as a whole.**
 - 1.3. An absence of any collaborative approach across the different industry stakeholders to integrity and other challenges facing the industry.**
 - 1.4. The absence of any effective industry-wide education, communication or awareness programmes for new entrants and existing participants in the bloodstock industry around the risks to the integrity of the industry.**
 - 1.5. Less than optimal transparency in the actual sales process.**
- 2. Accordingly, in order to address these threats and risks in a meaningful way, we set out below each of the four Core Themes and our specific recommendations to address each of them. The detailed rationale for each Core Theme and recommendation are set out in Sections F and G below.**

CORE THEME 1: Greater Cross-Bloodstock Industry Co-operation

- 3. The specific recommendations which are made to put in place greater cross-bloodstock industry co-operation are:**
 - 3.1. Recommendation 1: Establishment of a “Bloodstock Industry Forum” (with representatives from the BHA, the Sales Houses and each of the relevant industry trade organisations) to act as an industry-wide forum to work together on the implementation and ongoing oversight of the recommendations set out in this Report and any other related initiatives which are put in place to promote and safeguard the best interests of the bloodstock industry.**
 - 3.2. Recommendation 2: Putting in place binding agreements between the BHA and the Sales Houses to enable (and govern the nature and scope of) their information sharing and wider co-operation in the delivery of the recommendations set out in this Report.**

- 3.3. **Recommendation 3: The BHA and/or the BIF should work with the governing bodies of horseracing in Ireland to establish appropriate cross-jurisdictional regulatory structures and co-operation in support of the recommendations set out in this Report.**

CORE THEME 2: Tighter Regulation

4. **The specific recommendations which are made in relation to the implementation of tighter regulation are:**
 - 4.1. **Recommendation 4: Recognition, on an industry wide basis, of the BHA as the authority with overall responsibility for regulating the conduct of all those bloodstock industry participants under its jurisdiction and (where necessary, in conjunction with other relevant industry stakeholders) all associated enforcement measures.**
 - 4.2. **Recommendation 5: The BHA to replace the Code with the New Code which should be more robust and fit for purpose and should include: a) application to all relevant industry participants; b) a clear and comprehensive list of applicable duties of an Agent; c) clear and express statements of the types of practices that are prohibited on the grounds of being unethical and/or unlawful; and d) a more effective complaints and disciplinary procedure, with alleged breaches being reported to the BHA who in turn would have responsibility for prosecution and enforcement.**
 - 4.3. **Recommendation 6: The creation and implementation by the BHA of an Agent licensing system, with any said person found in breach of the licensing conditions or conducting any “Agency Activity” (as defined) without a licence being liable to specified sanctions, such as suspensions (including but not limited to exclusion from all Sales House auctions) and fines.**

CORE THEME 3: Improved Education, Communication and Awareness

5. **Recommendation 7: The specific recommendation which is made to address this Core Theme is to put in place a more effective education, communication and awareness programme for all participants in the bloodstock industry. This could include (among other things): a) developing and updating the limited relevant material that already exists with more effective publication and dissemination of relevant regulations and accompanying guidance notes; b) mandatory training for industry participants; c) putting in place a co-ordinated programme with the Sales Houses and other relevant trade/stakeholder organisations; d) starter packs and other practical assistance to new owners and other new joiners to the industry; e) better and more diverse communication**

channels for the reporting of concerns and f) an annual bloodstock industry integrity review.

CORE THEME 4: Greater Transparency

6. **Recommendation 8: The specific recommendation in relation to this Core Theme is for the Sales Houses to consider whether there are aspects of their sales/auction processes which could be made more transparent to assist in deterring any Improper Practices.**

D. METHODOLOGY

1. This Review of the bloodstock industry was subject to the Terms of Reference agreed by the BHA Board on 7 March 2018, as attached at Appendix 1. Justin Felice OBE was selected as Project Lead and was supported by a team of BHA employees and external legal support with a mandate to produce a report with findings and recommendations to the BHA Board.

Confidentiality

2. It was recognised that, in order to ensure the confidence of participants in the Review, confidentiality of participants' details and the information that they provided would be of paramount importance when conducting the Review. This was echoed by participants who welcomed the commitment that neither their names nor any confidential information they provided to the Review Team would be referred to in this Report in a way which identified that individual unless that individual gave permission. An Information Sharing Protocol was also agreed between the BHA and Justin Felice.

Consultation Phase

3. In June 2017 the BHA Chief Executive wrote to a number of individuals to introduce the possibility of a review of the industry. This was borne out of a desire to ensure that new owners coming into the industry and existing owners could be assured that they were receiving the best possible experience.
4. This letter included the following passage setting out the rationale for conducting the review:

“On reviewing and updating the BHA’s regulatory risks for racing in Great Britain, the BHA board has prioritised a review of the buying and selling of bloodstock and racehorses within British racing. We are concerned about evidence of unsatisfactory experiences for owners and prospective owners, who are one of the two major sources of funding within our sport. The BHA, like many stakeholders, wants to see fair, transparent and responsible practices in place to remove significant actual and perceived barriers to new owners joining our sport, and to retaining those who have already become racehorse owners.”
5. In October 2017, a number of initial pre-consultation meetings were held with industry participants to enable the BHA to obtain a better understanding of any negative concerns or perceptions about current practices in the buying and selling of horses, through both public auction and private sales, and any potential solutions to these issues.
6. In June 2018, the BHA Chief Executive wrote to over 60 people considered to be experienced and knowledgeable representatives of the bloodstock industry, inviting them to participate in

the Review. The interviewees represented various industry groups in Britain and to a lesser extent in Ireland (noting the considerable presence of Irish influence within the British bloodstock industry it was considered important to include Irish representation within the Review) and included:

- 6.1. Sales Houses.
 - 6.2. Breeders/Vendors.
 - 6.3. Bloodstock Agents.
 - 6.4. Consignors.
 - 6.5. Trainers.
 - 6.6. Owners.
 - 6.7. Media.
7. The interviews began in July 2018. Interviews lasted an average of one and half hours and the last interview took place in December 2018.
8. To assist the interview process, a template was drawn up covering the general structure of the meetings as follows:
- 8.1. Opening Introductions.
 - 8.2. Describing the background and purpose of the review.
 - 8.3. General bloodstock industry questions.
 - 8.4. Questions on the Code.
 - 8.5. Federation of Bloodstock Agents (the **FBA**) Code of Working Ethics.
 - 8.6. Case study discussion¹³.
 - 8.7. Closing comments.
9. Each interviewee was informed that the notes taken at the meetings would be a summary of the key content of the meeting and on completion the meeting notes would be typed, anonymised and returned to the participant. The interviewee was offered the opportunity to comment on the notes so as to ensure accuracy.

¹³ The anonymised case study was based on an alleged example of Improper Practices in the bloodstock industry.

10. In addition, interviewees were informed that they could provide the Review Team with any documentation or other material in their possession which evidenced any allegation that they made. However, said evidence was limited, in part due to the historic nature of some of the allegations. Any evidence provided was considered by the Review Team.

Analytical Phase

11. Once the interview notes were complete, the BHA Principal Analyst examined the content of the pre-anonymised notes and searched for common themes.
12. This analysis resulted in the Review Team identifying the Core Themes.

Research Phase

13. Throughout the process, the Steering Group was kept informed by way of monthly reports detailing the progress made and any significant issues of concern. An interim report was produced for the BHA Board in September 2018, following the conclusion of the majority of the interviews, detailing emerging themes from the Review.
14. Legal advice notes and other research notes were produced for the Review Team's benefit, including:
 - 14.1. The nature and scope of the BHA's jurisdiction over the bloodstock industry and its participants.
 - 14.2. Legal and criminal issues arising from each of the alleged Improper Practices.
 - 14.3. Bloodstock regulation in other relevant horseracing jurisdictions, including, but not limited to, Ireland, Australia, France, Hong Kong and the USA.
 - 14.4. Practices in other comparable auction industries, including the greyhound racing and art industries.
15. As well as the documented interview material, the Review Team also received a number of written statements from individuals who had learnt of the Review via an open invitation to contribute, which was published in the Racing Post in June 2018.
16. The Review Team was also assisted by having access to the first BHA Integrity Survey conducted in November 2017, with the results being publicly available through the BHA 2018 Annual Report, as well as the follow-up BHA Integrity Survey of 2018.
17. In addition, members of the Review Team attended sales held by both Goffs UK and Tattersalls and therefore witnessed first-hand the sales day process, as well as following the sales on media outlets to gain an even deeper understanding of the sales process and environment.

Recommendation Phase

18. The analysis of interviewee feedback was carried out continuously through the review period, with regular Review Team discussions also involving key BHA representatives to further develop and refine the emerging themes and recommendations.
19. The emerging themes and potential recommendations were then placed before several key industry stakeholder groups who were provided with the opportunity to discuss them in person with Justin Felice and Nick Rust in the period from January to March 2019.
20. Following consideration of the feedback provided by the various stakeholders at these meetings, the final Report was provided to the BHA Board in July 2019.

Investigations into alleged malpractice

21. On a number of occasions, interviewees gave detailed accounts to the Review Team of malpractice within the industry, some of which have subsequently led to formal complaints being made by the individual concerned to the BHA relating to that alleged malpractice. The BHA have investigated, or are investigating, those complaints.

E. HISTORY OF BLOODSTOCK INDUSTRY SELF-REGULATION

1. In 2004, the first Code was drawn up, a time when The Jockey Club was responsible for the governance and regulation of British Horseracing. That initial version of the Code was drafted in light of the Foodbroker Fancy court case in 2003 which, although ultimately settled out of court, publicly highlighted alleged malpractice in the buying and selling of a racehorse.
2. The Foodbroker Fancy case had itself been notably preceded by a High Court case in 1999 in which damages of over £50,000 were awarded to an owner after a trainer and a former Agent were found guilty of “collusive bidding”. The damages awarded covered the price paid for the horse plus training and stabling fees. At that time, Agents were not licensed (which remains the case) or subject to the Rules of Racing. The FBA had around 40 to 50 members and their own code of working ethics, but membership was, and still is, optional and not all Agents were FBA members and subject to the FBA code¹⁴.
3. In March 2003, the Jockey Club introduced a code of conduct for trainers, covering dealings with owners, to reflect the legal position which existed between the two groups. This included an obligation on any trainer who acted as an agent in a purchase or sale of a horse to inform the owner, *"if he is aware that he will benefit financially from any third party from such a transaction"*. Any such trainer was also forbidden from acting *"simultaneously for the vendor or purchaser"* unless the owner had been informed in advance.
4. However, in April 2004, in the wake of the problems publicly highlighted in the Foodbroker Fancy case, the industry met under the chairmanship of Julian Richmond-Watson, Senior Steward of the Jockey Club, to discuss ways to increase the transparency of bloodstock transactions. The meeting was attended by Henry Beeby of Doncaster Bloodstock Sales (now Goffs), Kirsten Rausing of the European Federation of Thoroughbred Breeders' Associations, Andrew Mead of the FBA, Johnny McKeever of the FBA, Rupert Arnold of the National Trainers' Federation, Chris Deuters of the Racehorse Owners' Association, Jimmy George of Tattersalls, Philip Freedman of the Thoroughbred Breeders' Association, Denis Egan of the Irish Turf Club, Tristram Ricketts of the British Horseracing Board, Julian Richmond-Watson (Chairman) of The Jockey Club, Christopher Foster of The Jockey Club and John Maxse of The Jockey Club.
5. It was agreed at that April 2004 meeting that a working group should be established to develop a bloodstock industry code of practice which would apply to both private and public sales. The working group, chaired by Philip Freedman, Chairman of the Thoroughbred Breeders' Association, would include representatives from the relevant interested parties.

¹⁴ As at the date of this Report, there are 41 members according to the FBA's 2019 Membership List.

6. Afterwards, Julian Richmond-Watson is reported to have said¹⁵:

"We had a very constructive meeting. The aim is to produce a code of practice which will further increase the transparency of sales transactions and promote confidence in the British bloodstock industry for the benefit of all concerned.

7. In July 2004, the Code was published, being the first code of its kind in British Racing. On 5 July 2004, The Daily Telegraph newspaper reported on the new Code as follows:

A committee chaired by Philip Freedman, chairman of the Thoroughbred Breeders Association and a Jockey Club member, has produced the Bloodstock Industry Code of Practice which will be enforced by the Jockey Club.

Anyone found in breach of the code faces the risk of being banned from setting foot on Britain's 59 racecourses or any premises licensed by the Jockey Club - effectively naming and shaming which would make banned people pariahs within the sport.

"The aim of the code is to ensure transparency. What we want to do is stop owners in particular having a bad experience where they feel the industry as a whole has ripped them off.

"The message is that you cannot rip-off outsiders on the basis that 'well fine, we will take their cash off them - they may only be here a year and then we will find someone else to do it to.'

"Given that the code is dealing predominately with the relationship between owners and agents - including trainers, bloodstock agents and consignors who may act for vendors - the principle is that if it got reported back, whatever the agent had done, the client would be content with what is happening."

Apart from banning secret commissions received during transactions, agents will have to declare any interest - ownership or breeding - in a horse or stallion nomination being bought or sold.

The code sets out the responsibilities of agents and vendors and effectively reflects agency law.

¹⁵ See the press release on the BHA website:
https://www.britishhorseracing.com/press_releases/working-group-established-to-develop-bloodstock-industry-code-of-practice/

Significantly, it will apply to anyone dealing in bloodstock in Britain - including a large number of agents and vendors from Ireland and other racing nations who regularly frequent the yearling sales.

"A large percentage of horses sold here are bought by agents who are not necessarily based in this country and, equally, a large number of yearlings are sold here by vendors who are domiciled elsewhere."

Freedman said everyone had acknowledged there had to be change although bloodstock agents "saw the problem being less acute than other organisations."

He believes the two-page code unveiled tomorrow by Julian Richmond-Watson, Senior Steward of the Jockey Club, will make a "significant difference" and its deterrent value will act as a first step in changing attitudes.

8. In 2008, Paul Roy (the then BHA Chairman) instigated a review of the 2004 Code by a cross-industry working group chaired by the then BHA Chief Executive, Nic Coward.
9. A BHA press release, dated 1 December 2008, described the review process and the updated Code produced as a result, as follows:

"Following an extensive review of the existing Bloodstock Code of Practice by a bloodstock industry working group, a new Code of Practice will take effect from January 1st, 2009.

The original Code came into effect on 1st August 2004, following a Bloodstock Summit meeting that took place in April 2004. The Code drew upon existing publications – the Orders and Rules of Racing, the Guides for Buyers (published by both DBS and Tattersalls in their catalogues), the Federation of Bloodstock Agents' Code of Ethics and the existing ROA/NTF training agreements.

The membership of the 2007/8 Code of Practice Working Group was as follows:

Nic Coward (British Horseracing Authority) [Chairman]

Dena Arstall (Racehorse Owners Association)

Ted Voute (representing the consignors)

Henry Beeby (Doncaster Bloodstock Sales and Goffs Ireland)

Geoffrey Howson (Federation of Bloodstock Agents)

Rupert Arnold (National Trainers Federation)

Martin Mitchell (Tattersalls)

Andrew Mead (Federation of Bloodstock Agents)

Louise Kemble (Thoroughbred Breeders Association)

Rhydian Morgan-Jones (Thoroughbred Breeders Association)

James Oldring (British Horseracing Authority)

The key difference with the revised Code of Practice is that the process for the reporting of complaints has been reworked. Previously, any alleged breaches of the Code could only be reported to the Authority (HRA as it was at the time). Now, any complaint should be reported first to the sales house, or any of the FBA, TBA, ROA or NTF. Specific personal contacts have been given within the Code of Practice. This is to ensure a problem can be dealt with at a 'local level' before being escalated. In some cases, for example, the sales company/trade body can offer to mediate where appropriate.

The Code of Practice fundamentally deals with the relationship between anyone acting as agent and their principal; it outlines the minimum standards and levels of care that should be adhered to in order that all transactions, whether at public auction or private, are fair, open and ultimately leave all parties satisfied.

Nic Coward, Chief Executive of the Authority and Chair of the Code of Practice Working Group said:

"It is always extremely rewarding to work on a project that sees those with differing opinions able to work together for the benefit of the sport. It has taken some time, but the bloodstock industry has pulled together to create this new Code, and I'd like to pay tribute to all members of the Working Group who gave up so much of their time to ensure that Britain continues to set the standard to which other racing nations aspire. This is a Code of Practice drawn up by the bloodstock industry, for the bloodstock industry."

Henry Beeby, Group Chief Executive of Goffs and Doncaster Bloodstock Sales, said:

"The Bloodstock Industry Code of Practice provides a clear and concise point of reference for everyone involved in buying and selling horses whether at public auction or privately as it makes clear what is and is not acceptable behaviour from buyers and sellers.

The industry has taken the responsible approach and carried out regular reviews so that the Code keeps pace with an ever-changing world. The Code is just one way that ensures that our auctions are the safest and most transparent way of conducting bloodstock business"

Dena Arstall, representing the Racehorse Owners' Association commented:

“I think that the new Code empowers people. Under the original Code they might ask themselves ‘do I really want to make a complaint to the governing authority, is it that serious, and do I want to escalate this?’ However, now they are in a position to take impartial advice from people that can relate to their situation directly. If the need for mediation arises, then the trade body or sales company can offer this – the industry is self-regulating and taking responsibility, which can only be a positive thing”.

10. The review process which is the subject of this Report is the first time that the bloodstock industry has been comprehensively and independently reviewed since 2008.

F. FINDINGS OF THE REVIEW

F1. Introduction

1. This Section of the Report sets out the findings of the Review Team that it has reached in relation to the bloodstock industry and its practices. The scope of the Review was in two parts and has been set out in the Executive Summary at Section B above.
2. In support of the Review objectives, the Terms of Reference provided that the Review should address the following areas:
 - 2.1. The role and relevant activities of Sales Houses.
 - 2.2. The role and relevant activities of agents.
 - 2.3. Buyer and seller practices.
 - 2.4. Bidding Processes.
 - 2.5. The buying and selling of horses in training other than through a sales ring, including the link to training agreements.
 - 2.6. The equivalent practices and regulatory approach in other relevant jurisdictions.
 - 2.7. Whether the Code is fit for purpose.
 - 2.8. The approach in other industries which involve comparable auction processes.
 - 2.9. The process for the sale and purchase of stallion nominations.
3. This “Findings” Section provides a detailed overview of the bloodstock industry, as presented and described to the Review Team in over 70 interviews with a wide range of industry participants. It is punctuated by numerous quotes from interviewees, which provide a powerful and honest insight into the current state of the industry, including the clear concerns of a majority of industry participants. The Review Team has sought to take a balanced approach in presenting these findings – positive and negative comments are presented as a representative cross-section of views from different stakeholder groups. The quotes set out are just examples of the kinds of statements made by interviewees on the point in question.
4. It should be noted that the quotes have not been attributed to any specific individual. All the participants in the Review were asked to engage with the Review Team on a confidential basis in order to enable interviewees to speak more freely and frankly about their experiences of the practices in the bloodstock industry.

5. In addition, the quotes are supplemented by several real-life “case studies” provided by interviewees, which are set out to give a more specific flavour of the practices that the Review Team has found to be of concern. The substance of each case study is as presented to the Review Team, but they have been anonymised and generalised as necessary to preserve confidentiality. It should be noted that none of the factual circumstances presented in the case studies have been proven through any formal process, albeit the Review Team is unaware of any good reason to question their veracity.
6. The findings presented in this Section are primarily made as a result of an assessment of information provided by the various industry participants during the interview process. Therefore, a statement such as “*the Review Team finds . . .*”, should be understood in that context.

F2. Bloodstock Industry Trends

7. A key reason for the BHA’s decision to establish the Review was its concern that ownership of racehorses was in gradual decline. If that decline is not promptly addressed, this will create a significant issue for the horseracing industry in Great Britain (and, therefore, the bloodstock industry as an important element of it) because owners are a major funder of the sport.
8. BHA data was made available to the Review Team which suggests that sole ownership has declined in the five years between 2012 and 2017 by around 18%, though ownership through syndication has seen a modest increase of around 4% in the same period. The BHA is concerned, based on feedback it has received, that one of the reasons for this marked decline in sole ownership are concerns about the integrity of the bloodstock industry.
9. The Review Team has found the bloodstock industry to be operating on different levels. On the one hand, it has seen a vibrant industry operating on a significant scale. The various sales auctions run by Tattersalls and Goffs continue to be well attended and see records broken with Tattersalls breaking its record for total sales in its Book 1 October yearling sale for the seventh consecutive year in 2018 by reaching 106 million guineas¹⁶. The annual aggregate sales of Tattersalls and Goffs have both grown significantly in the 10 years between 2008 and 2018 (96% and 36% respectively)¹⁷ as has the value of the top selling horses. All of this indicates strength within the market. The bloodstock industry as a whole contributed £427 million to the UK economy in 2017¹⁸.

¹⁶ <http://www.tattersalls.com/october1-sale-overview.php>

¹⁷ Information provided by the BHA.

¹⁸ The contribution of thoroughbred breeding to the UK economy and factors impacting the industry’s supply chain, Report of the Thoroughbred Breeders’ Association and PwC dated September 2018 (the **TBA Report**), pages 5 and 8.

10. However, those statistics relate to the top end of the market. At the lower end, the Review Team has seen that return on capital investment for breeders is only at 1-3%, which has meant that as many as 66% of breeders are expected to have been unprofitable in 2017 when compared with 45% in 2013¹⁹. Many of these are the small to medium sized breeding operations. This is no surprise when you consider the sales at the lower end of the market – the Tattersalls Book 4 October 2018 sale saw only 55% of horses appearing in the sales ring sold (compared to 68% in 2017)²⁰. This suggests that the overall market has a vulnerability within it and is increasingly reliant on the largest purchasers.
11. The increasingly international nature of the bloodstock industry in Britain is also evident, with the traditional strong presence of industry participants from Ireland being supplemented by numerous international players. The principal sales of Tattersalls and Goffs are attended by industry participants acting on behalf of individuals, companies and/or syndicates based in China, UAE or the United States (and many other jurisdictions). In a similar way, the bloodstock itself is increasingly international – whilst the vast majority will be offered for sale by British and Irish breeders, an increasing number of horses have been sired by non-British/Irish horses.

F3. Views of Bloodstock Industry Participants

(i) General

12. The Review Team has sought the views of as wide a cross-section of individuals within the bloodstock industry as possible. This has resulted in a broad and candid current picture of the industry.
13. A significant number of interviewees were keen to provide their thoughts on their overall perception of the integrity of the bloodstock industry. The majority of interviewees cited some level of concern about the industry's integrity.
14. At the more positive end of the spectrum, one Agent described the integrity of the bloodstock industry as *"surprisingly high"* with another stating that they came across *"very little skulduggery"*. One breeder commented that they had never been approached to do *"anything untoward"*, whilst another thought that *"the industry is cleaner than the perception"*. One trainer stated that he had *"never been offered any deals"* and another confirmed that he had *"never had a problem with the British sales houses"*. A comment from a Sales House was that *"the vast majority of people are scrupulous and honest"*, whilst one owner noted (by way of markedly faint praise) that the industry is not *"overly fraudulent"*.

¹⁹ TBA Report, pages 5 and 8.

²⁰ <http://www.tattersalls.com/october4-sales-results-and-stats.php>.

15. There was however considerably more in the way of negative feedback. Numerous individuals commented about the lack of integrity in the bloodstock industry, with one breeder stating that the *“level of corruption is widespread but it is hard to prove as crooked vendors will not want to expose crooked bloodstock agents”* and another stating that *“it would be ridiculous to say nothing was corrupt in the industry”* since it was *“industry practice to break [the rules]”*. Another breeder described the industry as *“a dinosaur and has to change”*. An owner stated that the *“more you learn the more concerned you become”* with another stating that *“corruption is rife at sales”* and one industry observer commenting that the *“scale of dishonesty, amounting in some cases to straightforward theft, has been eye-watering”*. A Sales House acknowledged that *“the fact that we’re having this conversation means that there is something wrong”* and *“it is the culture which needs to change”*.
16. The overwhelming perception of the Review Team is that there is a substantial level of anxiety within the bloodstock industry that it is highly vulnerable to unethical and potentially unlawful practices, resulting not only in financial loss for those participants who are victims of such practices, but also public exposure which could cause serious damage to the credibility and reputation of the industry.
17. The Review Team finds an industry that is effectively fighting amongst itself – the different categories of industry participants blame each other for the industry’s integrity and other problems. Some owners blame the Agents, but other owners are more concerned with the Sales Houses or the breeders and so on. The Review Team also finds a distinct lack of synergy and co-operation on many of the issues that arise (which issue is covered in more detail below), which further prejudices the best interests of the industry.
18. The Review Team also finds that the general concerns around the integrity of the bloodstock industry were not limited to the conduct of British industry participants. As noted above, the bloodstock industry is becoming increasingly international, and it is no surprise that a number of industry participants suggested that any reform should apply to international industry participants. In particular, interviewees noted the long-standing and important link between the bloodstock industries of Britain and Ireland, with Irish breeders sending many of their horses to the sales in Britain. We note that there was Irish influence in the 2004 version of the Code, which is a good example of the intrinsic link between the two jurisdictions and which ideally needs to be re-kindled as an important part of implementing the recommendations in this Report.
19. In that regard, one breeder suggested that the *“BHA needs the support of Ireland in this”*, a Sales House agreed by stating that *“anything the review recommends must be replicated in Ireland”* and one owner commented that there was a *“need to be careful that the UK and the Irish are in line about this”*. The Review Team finds that any reform of the British bloodstock

industry should, insofar as possible, incorporate some form of co-operation and alignment with Irish regulatory authorities.

(ii) *Sales Houses*

20. The Sales Houses are, of course, an integral part of the bloodstock industry, providing the platform for the majority of bloodstock sales. They offer a crucial service and deal with thousands of sales of bloodstock each year predominantly from their headquarters in Newmarket (Tattersalls) and Doncaster (Goffs), though sometimes also at boutique sales at BHA licensed racecourses. The Sales Houses are not regulated by the BHA.
21. The sales are governed by Conditions of Sale documents produced separately by Tattersalls and Goffs – though they both adopt a broadly similar approach. Various sales take place throughout the year and each focuses on particular areas of the bloodstock market.
22. The Review Team finds that the industry reaction to the service offered by the Sales Houses is mixed. Positive feedback was received across the spectrum of interviewees, with one Agent stating that the Sales Houses “*are a safe place to do business*” and another Agent stating that he would “*trust them with my life*” as they “*are very straight*”. A breeder described them as having “*considerable integrity*” and another said he had “*never had a problem with the British sales houses*”. One owner said that he “*doesn’t think that the Sales Houses are problematic*”.
23. However, other interviewees were less complimentary. One breeder, referring to concerns around the Improper Practices dealt with in this Report, suggested that Sales Houses “*turn a blind eye and don’t admit anything is happening*” whilst another stated that they would “*probably rather keep their heads in the sand*” since “*their business model is based on turnover*”. An owner expressed the view that Sales Houses “*should do more to provide transparency*” and several owners used variations of the phrase “*turning a blind eye*” in reference to the Sales Houses’ approach to dealing with integrity issues. It was notable to the Review Team that whilst the reaction to the Sales Houses was mixed, Agents spoke overwhelmingly in favour of the Sales Houses and their businesses and indicated that they are more than happy with the *status quo*.
24. The Review Team finds that there is a clear concern amongst some bloodstock industry participants as to whether the Sales Houses are doing enough to ensure the transparency and integrity of the sales processes which take place at their premises. The Review Team, however, wishes to be clear that there were both positive and negative comments from interviewees about the role and practices of the Sales Houses and it has not seen any evidence that the Sales Houses operate with a lack of integrity themselves.

(iii) *Agents*

25. Agents are another integral part of the bloodstock industry. They provide considerable (and often superior) industry knowledge since they typically liaise in some direct way with all other individuals and stakeholder groups within the industry, such as purchasers, vendors, trainers and consignors. Put simply, they are most likely to know which the best horses are and their true market value. They can offer significant industry expertise and commercial assistance to their client.
26. Agents themselves typically asserted to the Review Team that *“most agents are compliant with the Bloodstock Industry Code of Practice”* and that *“any perceived issues are being driven by a small minority to the detriment of everyone else”*. Some breeders and trainers suggested that *“there are some honourable agents out there”* and that the Agents that they used were *“of the highest integrity”* and *“without any issues”*. A common element of the feedback was that only a small percentage of Agents were acting inappropriately, but they were doing so repeatedly. For example, one Agent said that *“95% of those who act as an agent do so with the client’s best interests in mind”*. A breeder/trainer agreed stating that *“it’s only the 5% that are bad apples”*, whilst an owner expressed his perception that *“95% of agents are probably straight”*.
27. However, the strength of view and feeling amongst the interviewees about the “bad apple” Agents was considerable. A significant number of breeders and/or trainers made highly critical comments around the behaviour of the small proportion of “bad apple” Agents describing them as *“beyond unethical”*, that they *“sometimes don’t raise concerns to the principal”*, Agents are *“working for both sides of the transaction”* and that *“time and time again, agents will come up to you and ask, ‘how are we fixed?’”*. One trainer said that there are *“2-3 agents that I wouldn’t go near”*. One owner referred to *“agents and vendors colluding to split the commission”* and another to *“agents buying a yearling because they had an interest in it”* without appropriate disclosure. A number of interviewees suggested that it was a risk, as one owner put it, to *“let your bloodstock agent know how much you have to spend”* for fear of being taken advantage of. Agents themselves even acknowledged failings of their fellow Agents. One stated that there is *“bullying”* from some Agents who *“require buyers to pay certain amounts for horses”* and another noted that *“5% of agents take a short-term view of the client and seek to manipulate the system to suit them rather than the client”*.
28. Finally, and in some ways most worryingly, one owner noted that *“younger agents coming into the industry are seeing examples of what their elders are up to and expect that this is the norm and they do the same”*.

29. The Review Team finds that the behaviour of some unscrupulous Agents is a substantial cause for concern and, if allowed to continue unchecked, risks considerable damage to the entire bloodstock industry. The evidence suggests that this behaviour is only undertaken by a small, but significant, minority of Agents in the industry. Even those interviews giving more positive feedback on Agents refer to a small core of Agents engaging in unethical practices. No interviewee suggested that this is a problem which affects all Agents (or, indeed, only Agents). However, the Review Team notes that allegations have been made about the conduct of Agents who are significant players in the industry and that Agents themselves have been critical of their fellow Agents (with one describing a colleague as a *“law unto himself”*). The Review Team finds that regulatory and other meaningful steps need to be adopted to address these concerns about Agent misconduct.

(iv) *Other Industry Participants*

30. Whilst by far the strongest criticisms of the interviewees related to Agents, other participant groups in the bloodstock industry were also, in some cases, the subject of criticism.

31. The bloodstock industry relies on the smooth inter-relationship between all of those groups to be successful – that, therefore, includes the breeders to produce the bloodstock, trainers to train the horse up to the standard to be sold and/or to win races, consignors to assist with bringing the bloodstock to market and owners to purchase, sell and provide appropriate training until the horse is ready to race. It is also clear that many of these roles in the industry are interchangeable, with a number of individuals wearing “different hats” from time to time, by acting as one or more of an Agent and/or a trainer and/or a vendor/breeder.

32. On the whole, the interviewee feedback suggested that the overwhelming majority of industry participants from within these other groups acted with integrity, though again certain individuals’ integrity was called into question (albeit the criticism was not typically as forceful as that reserved for Agents). One breeder referred to the relationship between *“crooked vendors”* and *“crooked bloodstock agents”* and an Agent stated that they had *“previously received offers from vendors saying that “we’ll look after you if you buy this horse” – which in the industry is known as a backhander”*. Another breeder suggested that *“people run up horses to a big price and the vendor will give them a kick-back for doing this”* whilst another insisted that some vendors pay *“illegal commission”*. One owner identified *“kickbacks between agents and vendors as the biggest issue”*, whilst an experienced industry observer noted that *“vendors play the game either because they are no less dishonest than the buying agent or because they fear being boycotted by agents who have good orders”*.

33. As to trainers, one owner stated that *“corruption is rife at sales”* suggesting it was worse *“between trainers and bloodstock agents”*. An Agent observed that *“there are plenty of rumours*

of breaches [of the Code] from trainers” whilst a breeder suggested that “trainers feel they have to get money from other means” so engage in fraudulent behaviour. One industry observer even said that he “found trainers worse than agents for skulduggery”.

34. Notwithstanding these criticisms of certain non-Agents, the Review Team finds that it was the breeders/vendors, trainers and owners who were most vocal in their criticism of the way that the industry currently operates from an integrity and transparency perspective and the actions of the small number of Agents and other industry participants who are involved in Improper Practices.

35. It should also be noted that those views were echoed in similar measure by those interviewees who do not appear in any of the principal categories of industry participants but were nevertheless individuals with considerable experience of the bloodstock industry including members of trade organisations, legal practitioners, media personnel, financial advisers and other industry observers.

(v) *Desire for Change*

36. In light of the findings made in this Section, it is apparent to the Review Team that the bloodstock industry does, broadly, accept that there is an unacceptable level of unethical behaviour within the bloodstock industry amongst a small core of Agents and other industry participants, but importantly also demonstrates a clear determination to tackle the issues within the industry in order to improve its integrity and transparency. By way of example, one trainer noted that there was a *“desire from within to improve the industry”* whilst one senior industry observer stated that he *“hopes something comes out of this review as it is long overdue”*.

37. The Review Team found a general concern that the industry was not doing a sufficient job of regulating itself, with one breeder commenting that the *“industry is incapable of self-regulation”*. The Review Team also found that interviewees across all participant groups were generally very supportive of the Review. Many interviewees wanted those involved in any wrongdoing to be rooted out and disciplined appropriately.

38. The findings of the Review Team set out in this Report are also corroborated to some extent by the results of the 2018 BHA Integrity Survey. The survey considered various threats to the integrity of the sport and industry of horseracing in Britain. A total of 1,984 people completed the survey, with around two thirds of those describing themselves as an owner. One question was *“to what extent do you consider the following integrity threats to be a concern to British horseracing”* with one of the possible answers being *“practices involved in the buying and selling of bloodstock and racehorses”*. Of the respondents to the survey, 67% (i.e. around 1,330 of the 1,984 respondents) considered the buying and selling practices of the bloodstock

industry to be a concern, which further supports the case for meaningful action to be taken to address the risks.

F4. Improper Practices

39. The Review Team has identified several practices within the bloodstock industry which were described by many of the interviewees and have caused them varying degrees of concern from a legal and ethical perspective. It is, however, important to bear in mind that there are nuances and variations to some of these practices and what follows below is necessarily targeted at the most common forms of Improper Practices. The four key practices of concern are:

39.1. Secret Profiteering.

39.2. Dual Representation/Commission.

39.3. Luck Money.

39.4. Bidding-Up.

40. The Review Team notes that the first three of those practices have been expressly prohibited under the Code since 2004, but they have been allowed to continue to thrive with impunity. All industry participants who the Review Team spoke to are aware of or have personally experienced one or more of these practices. Bidding-Up would, in some cases, also amount to a breach of the Code (for example where an Agent for the purchaser colludes with a vendor to artificially drive up the sale price in order to obtain a secret profit).

41. It is important to note that, whilst the four key Improper Practices above are considered by the Review Team to be sufficiently distinct to present in this way, there are cases where they overlap with one another, such that one or more of them are being engaged in during the course of the same bloodstock transaction.

42. The Review Team heard evidence that each of these Improper Practices were being committed in connection with both the Sales House sales process and private sales (with the exception of Bidding-up which is very unlikely to be a feature of a private sale).

(i) *Secret Profiteering*

43. The Review Team received a number of reports of industry participants colluding together to make a secret profit through the sales process at the expense of another participant. The most common example is where the Agent acting on behalf of the purchaser colludes with a vendor to drive up the price of the horse for their mutual gain.

44. A typical scenario is, in simple terms, where a purchaser and his/her Agent discuss a possible purchase and the maximum amount to bid, say £200,000. The Agent then speaks with the vendor and agrees that the fair market price for the horse is in fact £100,000 and that they should agree to split the difference of any sum paid by the purchaser above that fair market price. The Agent or the vendor then arranges for a third party to work with them to bid-up the horse well above £100,000 to, say, £175,000. In that scenario, in addition to the Agent's commission on the purchase (usually 5%), the Agent earns a secret profit of £37,500. The vendor also earns an additional £37,500 above the fair market value of £100,000. The purchaser believes they have bought a horse that is below their maximum bid, so is happy and will use the Agent again. In many cases, the purchaser never finds out about the Agent's and vendor's arrangement and that they paid well above fair market value.
45. Such a practice is already prohibited under various paragraphs of the Code. In particular, the Code states that *"an Agent shall not use his position to obtain a secret payment or secret profit, which means any payment or benefit in kind received by an Agent which is not disclosed to his Principal"*²¹ and that a *"vendor must not offer any secret payment or secret profit to any person whom he believes to be an Agent acting for a prospective purchaser"*²².
46. This practice was the subject of considerable criticism from the interviewees from across the spectrum of industry participants. One breeder/trainer stated that *"secret profits are endemic in this industry"* whilst another notably and worryingly told the Review Team that secret profits are *"killing the business"* resulting in the *"driving away [of] smaller breeders"*. An owner acknowledged that Secret Profiteering constituted *"fraud and bribery"* whilst another, upon finding out his *"agent was [also] demanding 5% from vendors"*, described it as criminal and a *"straightforward fraud"* since the Agent was *"receiving a secret profit and [committing an act of] bribery"*. A Sales House commented that *"collusion between an agent and vendor doesn't need the [Code], it is a crime"*.
47. It should be acknowledged that not all interviewees had direct experience of this practice and some only had anecdotal knowledge. The Review Team do not, therefore, find that the practice is as endemic as some interviewees suggested and believe that the majority of industry participants do not engage in it. However, the Review Team do find, on the basis of the interviewee testimonies, that certain industry participants engage in Secret Profiteering on a frequent basis.

²¹ Paragraph 2 of the Code. Note the general obligation in paragraph 1 is relevant too.

²² Paragraph 8 of the Code.

48. One of the actual examples of Secret Profiteering presented to the Review Team was as follows²³:

An Agent who was contracted by a racing syndicate to purchase horses on their behalf also received payments from consignors for any horses sold to that syndicate. The Agent did not disclose to the syndicate its receipt of payments from the consignors. The funds were hidden in another individual's bank account and amounted to a seven-figure sum.

49. Secret Profiteering is an issue of considerable concern because it is not only obviously unethical but may well also amount to a criminal offence (such as fraud or bribery, as further explained in Section G below). The Review Team finds that this practice, therefore, is a stain on, and a significant vulnerability for, the bloodstock industry which urgently needs to be addressed.

(ii) *Dual Representation/Commission*

50. The Review Team were also provided with a number of examples of an Agent acting for both the purchaser and the vendor in the same transaction without one party (and in some cases both parties) knowing either of the Agent's dual representation or the fact that the Agent is charging commission to both parties. This can occur in both private sales and those sales taking place through the sales ring.
51. Where the vendor is working with the Agent, dual representation permits an Agent and a vendor to decide on the sale price together as regards a private sale (which is likely to be inflated) and to undertake to commit the practices of Secret Profiteering and Bidding-Up where the horse goes to auction. In either case, a purchaser who is unaware of the dual representation stands to lose out financially, and potentially significantly so.
52. An Agent acting for more than one party without consent is prohibited in the Code: *"if an Agent acts for more than one Principal in a transaction (which might be both the vendor and purchaser), the Agent can only do so if has first disclosed this fact, before completion, to all his Principals, and obtained their consent"*²⁴. Doing so without consent would also not be acting in the best interests of the principal(s) who are unaware of the dual representation and is very likely to give rise to a conflict of interest, thereby leading to further breaches of the Code²⁵ as well as constituting possible breaches of other agency and fiduciary duties (see further at paragraph G56.4 below).

²³ As noted in paragraph F5 above, the case studies presented in this Report are anecdotal and should not be considered as a proven fact.

²⁴ Paragraph 4 of the Code.

²⁵ Paragraphs 1 and 5 of the Code.

53. One breeder referred to a particular Agent who was known for *“taking a cut from both sides”* whilst another was particularly angry describing his experience of this Improper Practice as *“disgusting”*. Another breeder stated that *“it is common for agents involved in/facilitating private sales to take from both ends”*. One industry observer referred to their specific experience of an Agent who had *“charged commission to both sides of the deal”* without their knowledge at the time and another noted that the methodology of some Agents was that *“vendors are approached by agents for potential purchasers, direct, demanding a commission to bid on a horse”*. One owner highlighted the trust that they have to place in Agents and stated that they *“wouldn’t know if [their Agent] was taking commission from both sides”*. Another owner noted that the majority of Agents at one sale they attended were *“getting from both sides as a given”* and that the *“payment from both sides has to stop [and] must be made illegal within the rules”*. Even some Agents acknowledged the problem with one stating that they were aware of anecdotal evidence of *“agents acting on both sides of a transaction”* and another admitting that he had *“on occasion been buying a horse for an owner where the vendor has been a client”* without appropriate disclosure.
54. One typical example of this practice which was specifically presented to the Review Team was as follows:

The purchaser acquired a horse privately, with the same Agent acting for both the purchaser and the vendor (an arrangement which the purchaser had consented to). The purchaser paid a considerable sum to the vendor. At a later date, the purchaser spoke to the vendor and found out that the Agent had received around a third of the price paid for the horse from the vendor. This payment had not been revealed to the purchaser by the Agent.

55. As with Secret Profiteering, there appeared to be fairly wide-ranging knowledge of the practice amongst the interviewees. The Review Team’s finding is that, as with Secret Profiteering, Dual Representation/Commission is a common and widespread problem within the bloodstock industry, but not endemic.

(iii) *Luck Money*

56. The Review Team discussed the concept of “Luck Money” in almost every interview. This is a seemingly long-standing practice in which an Agent for the purchaser approaches the vendor and receives a payment from the vendor following the sale of a horse. This can in some cases be a substantial sum calculated as a percentage of the sale price. On occasion, this practice is supplemented by a further deeply unethical practice whereby an Agent may restrict the vendor’s access to the sales process, through ensuring that one or more industry participants do not bid on the vendor’s horses, if they do not pay Luck Money. This can occur in both private sales and those taking place through the sales rings.

57. Luck Money is defined in the Code as *“any financial payment or payment in kind made by or on behalf of a vendor to a Purchaser or his Agent, after the sale of a horse has been concluded”* which is *“entirely voluntary, transparent and should be disclosed to all appropriate parties by the recipient”* and any *“non-payment of such should not prejudice any further business activity”*.²⁶
58. The Review Team finds that there are typically two types of Luck Money in practice; namely a) significant financial payments and b) nominal/de minimis financial payments or payments in kind (for example, a payment of £50 or a case of wine).
59. The Review Team find that in the former category there is a considerable volume of evidence that some Agents acting for the purchaser will routinely seek a percentage of the purchase price of a horse from the vendor. This is often as high as 5% of the purchase price (and 10% in some cases which were cited by interviewees) which will amount to a significant sum on many occasions. The Review Team has also learned that, invariably, the benefit of this supposedly *“voluntary”* and *“transparent”* payment is not passed on (or even reported) to the purchaser by the Agent.
60. The feedback of the interviewees was clearly split between the two types of Luck Money. No one had any particular issues with the kind of Luck Money which constituted nominal/de minimis financial payments or payments in kind. However, where Luck Money resulted in the vendor feeling compelled to make a significant financial payment, almost all the interviewees had significant concerns (which were shared by the Review Team).
61. One breeder commented that Luck Money was *“an appalling device which needs to be stamped out”*. Another suggested that *“no cash payments should be made”* and described Luck Money as *“cheating”*, with another adding that Luck Money should not be *“a condition of purchase”*. Another breeder commented that he *“would miss out on business”* due to his refusal to pay Luck Money because *“certain agents avoid buying from him”*. One owner suggested that Luck Money of *“£5/£10 or buying people a drink is harmless unless it is being used as taking a commission which [he] considered wrong”* with another adding that when it becomes a *“secret payment”* then *“luck money has got to go”*. Another owner stated that Luck Money becomes a problem when *“it becomes a huge amount of money with an invoice with management fee written across the top”*. Another interviewee described Luck Money as *“a bribe”*.
62. The above views on Luck Money expressed by the various industry participants were also even shared by some Agents, with one stating that *“if someone encourages you to buy their horse, offering 5%, well that’s more than luck money”* and another adding that *“there is a line where*

²⁶ Paragraph 6 of the Code.

[Luck Money] *stops being a gesture and becomes a crime*". However, another Agent suggested that *"Luck money is harmless and is commonplace in the agricultural world"* and that they could not *"believe that this sort of thing could be classified as rife"*. Another Agent put the problem more at the door of vendors stating that vendors, would say to him that *"we'll look after you if you buy this horse – which in the industry is known as a backhander or luck money"*.

63. Various interviewees from across the spectrum were also opposed to the term "Luck Money" itself, with one Agent observing that the term was *"old-fashioned and unfamiliar to people outside of the horse world"*.
64. One example of the kind of Luck Money which the Review Team finds to be unjustifiable and unethical was the following experience of a breeder:

A breeder at a stud farm reluctantly agreed to give 5% of the sale proceeds of horses to Agents, who had asked for Luck Money if the clients of the Agents purchased his horses. These payments were given to the Agents in cash. On another later occasion, the breeder asked for receipts before paying any Luck Money, but his requests were ignored and when he insisted on receipts, the Agents appeared to shun him, and he suddenly for the first time experienced considerable difficulties in securing sales, which was unusual on the basis of his sales numbers in previous years. The breeder firmly believes that the Agents were influencing other industry participants against him due to him not paying Luck Money to the Agents.

65. The Review Team finds that the practice of Luck Money so far as it relates to a significant financial payment, such as a percentage of the purchase price, should be prohibited outright. As with some of the other Improper Practices, the purchaser of bloodstock is potentially also being defrauded since an Agent is legally obliged to account to their principal for any sum that a third party pays to them in the course of their agency duties, which is far from always the case.

(iv) *Bidding-Up*

66. Bidding-Up is the artificial increase in the sale price of a horse at auction through a series of pre-agreed bidding where the pre-agreement results in a purchaser paying more for the horse than they might otherwise have done, but for the pre-agreement.
67. The Review Team finds that Bidding-Up can be split into two distinct categories. The first is where a vendor (or his associate) bids on a horse in order to ensure it reaches its reserve price and, once there, ceases to bid. The vendor's hope is obviously that, having secured the minimum price for which they were prepared to sell the horse, the bidding will continue further. The Review Team shares the concern of some interviewees about the artificial nature of this

practice and the risk that it creates a false market for the horse, but also acknowledges that such bidding is permitted in the Conditions of Sale of the Sales Houses²⁷.

68. Of more concern to the Review Team is the second type of Bidding-Up where two parties (often a vendor and an Agent) collude to bid on a horse to drive its price up, beyond any reserve price and with no desire to be successful with their bid, in the hope that either a third party or the Agent for the purchaser then purchases the horse at a higher value than they otherwise would have done. The conspirators then split the upside created by the artificial Bidding-Up. This is a problem as it results in a distorted market and, aside from being unethical and potentially unlawful, results in an unfair environment for legitimate industry participants with the potential to affect not only the true market value of the horse being bid-up, but also other horses through association.
69. Whilst Bidding-Up is not explicitly referred to within the Code, paragraphs 1 and 2 of the Code could both potentially be infringed by this practice in certain circumstances.
70. The practice of Bidding-Up provoked strong views from a number of industry participants, who generally viewed it as a practice lacking in integrity. One breeder stated that *“true corruption is if the horse is worth a certain amount and others bid it up astronomically”*, whilst another breeder was concerned that the bidding process was *“not fit for purpose”* as a result of the prevalence of Bidding-Up. One owner observed that *“collusion was the main issue in relation to bidding at sales houses”* and explained how there may be *“a lot of bids around the ring but in fact there may only be one person who is a bidder”*. Another owner expressed concern that *“bidding-up creates a false market”*. An experienced industry observer commented that *“even after a horse has fetched its reserve the vendor continues, perhaps through various aliases, to bid a horse up in the hope that he can make the buyer pay more money for it”*. Another industry observer was of the strong view that *“bidding up should be illegal”*.
71. Others were less concerned by Bidding-Up. One trainer saw no problem with bidding up his own horses beyond the reserve *“up to a price [he was] comfortable at selling at”* on the basis that it was *“perfectly clear and open”*. Another trainer acknowledged that he had *“no problem with another party bidding a lot up on behalf of a vendor”*. An Agent suggested that he did not see a problem with bidding against a reserve as *“you just judged for yourself the value of the horse”*.
72. A number of different interviewees described their experiences of Bidding-Up, including one who relayed the following experience:

²⁷ For example, at paragraph 2.2 of the Tattersalls Condition of Sale (although there is no limitation on the vendor ceasing to bid at the reserve price).

The interviewee learnt of a horse that was to be sold at auction whose price has been fixed two days before the sale. The horse was ultimately sold for a very significant six-figure amount and the bidding showed that two individuals were involved in bidding-up the sale price to the pre-agreed price. Both individuals have a high profile within the industry and, in this example, were the vendor and the Agent for the purchaser. The purchaser in this particular case confirmed to the Review Team that the horse had substantial health issues which had prevented it from being run at all and alleged that he had received no advice from the Agent about any veterinary concerns and was highly suspicious of his conduct. The purchaser has never used the Agent again.

73. The Review Team find that the practice of Bidding-Up, if permitted at all, requires a better system of regulation to prevent unethical collusion which causes financial loss/prejudice to the purchaser. It cannot be appropriate that, instead of innocent bidders simply bidding on what they believe is true market value for the horse, those individuals often find themselves bidding in artificial circumstances (where they are blind to the fact that the person they are bidding against in the sales ring is the vendor or their associate) resulting not only in the bidder paying over the odds for a horse but also others typically making a profit at their expense.

F5. Regulatory Framework

74. The current regulatory framework of the bloodstock industry is limited to the Code. Whilst the concept of the Code is laudable, its scope is insufficiently broad and its reporting, investigation and enforcement mechanisms have proven totally ineffective in practice.
75. The Code is limited from a jurisdictional position in applying almost exclusively only to Agents (with only one separate express obligation on vendors not to offer secret payments). The Code places no obligations on trainers, consignors or the Sales Houses (unless any of them also act as an Agent in accordance with the definition in the Code). It does not directly address Bidding-Up nor does it address all the legal obligations of an Agent towards its principal. It offers little clarity on how a complaint can be brought and how any decision on such a complaint might be made²⁸. No reference is made to potential sanctions and the BHA's jurisdiction is left unclear.
76. The Review Team understands that no recorded complaint has ever been made under the Code or its 2004 predecessor. The Review Team finds that this fact also speaks volumes about the culture of the bloodstock industry and its reluctance to address integrity issues which are widely known within the industry (in which regard, see also the "Normalisation/Ignorance" Section at paragraph F93 below).
77. The Review Team finds that the feedback from the interviewees regarding the Code was overwhelmingly negative. One Agent said that *"even though [the Code] is in the sale*

²⁸ See paragraphs 9 and 10 of the Code.

catalogues, people do not read it” whilst another said that they were “not aware of the Code despite being an agent” and that it has “not been widely circulated”. Another Agent suggested that “any criminal practices should be spelled out [in the Code]” and that “penalties should be included in the Code of Practice to make it more hard hitting”. One breeder suggested that the Code’s “voluntary nature means that it does not work, and that it should be obligatory and impose draconian penalties” and another noted that “the word “fraud” should be specifically referred to in the Code”. One member of a trade organisation said that the Code should be “strengthened in order to point out the illegality of practices”. One owner put it even more bluntly by asserting that the Code was simply “not fit for purpose”. The only positive comment about the Code was that many interviewees agreed with its broad definition of an “Agent”.

78. The Review Team has no hesitation in finding that the Code, and therefore the whole regulatory framework of the bloodstock industry as it currently stands, is clearly ineffective and not even known about by a number of full-time industry participants. There was limited understanding of how the Code sits within the broader regulation of the BHA, notwithstanding that the BHA is referred to in the Code and the Code is referred to in the BHA Rules of Racing²⁹. It is remarkable that some industry participants were unaware of the Code and that the many examples of Improper Practices uncovered during the Review have failed to yield one recorded complaint under the Code in 15 years. This is a significant problem since it means that no participant in the bloodstock industry is being held to any sort of standard – the industry is giving carte blanche to all to act as they please and to do so with impunity. The Review Team find that the adverse impact of Improper Practices and the ongoing risks which they pose to the best interests of the bloodstock industry are, therefore, greatly accentuated by the lack of any meaningful regulatory framework.
79. The Review Team finds that there is considerable industry support for a detailed review and updating of the Code that offers greater clarity on prohibited practices and a better procedure for reporting and then dealing with potential breaches of it, with the aim of ensuring that all participants in the bloodstock industry have a sufficient degree of protection against such practices.
80. The Review Team notes that some industry participants are subject to some limited regulation in other ways. Trainers are required to enter into training agreements under the BHA Rules of Racing where the rules clearly prescribe the necessary content of those agreements, as well as a code of conduct for trainers³⁰. There are also rules that specifically relate to owners in the BHA Rules of Racing. In addition, around 40 Agents who are members of the FBA are (nominally) expected to comply with the FBA’s Code of Working Ethics, though that code does

²⁹ Schedule 4 of General Manual (A) of the BHA Rules of Racing.

³⁰ Schedule 4 of Trainer Manual (C) of the BHA Rules of Racing.

not directly address many of the Improper Practices and only provides a limited (and seemingly ineffective) system for dealing with any alleged breaches.

81. The Review Team has considered the regulatory structures of other sports and the wider BHA regulation of the sport of horse racing. The Review Team noted that a number of other sports had put in place a system of agent licensing, whose primary purpose is to regulate the conduct of Agents. Indeed, the BHA itself already has a similar system in respect of Authorised Rider Agents.
82. As a result, the Review Team has carefully and specifically considered the merits of an Agent licensing system in the bloodstock industry (accompanied by a set of appropriate Agent licensing regulations) as a tool to prevent (or, at least, substantially deter and reduce) the Improper Practices. The Review Team specifically discussed this potential additional layer of regulation with interviewees.
83. The views of the industry as a whole in relation to this proposal were a little mixed, with negative comments seemingly largely borne out of a misunderstanding as to how such a system would operate. One Agent said that *“this notion of licensing is a worry – how could you license the Irish? It’s an international business”*. An owner agreed stating his belief that *“it would be an honourable thing to pursue but it would be difficult to license the agents as they are self-employed”*. Another Agent did not agree *“that licensing is the right way”* because he considered that *“education is key”*. One industry observer suggested that *“better enforcement of the existing regulations should be the focus instead of the adoption of new regulations which won’t make a difference”*.
84. There was, however, a greater weight of support amongst interviewees for an Agent licensing system. By way of example, one breeder suggested that *“licensing agents under the rules of racing would make the industry be taken more seriously”* and queried *“why an agent wouldn’t want to be licensed”*. Another agreed commenting that Agents should be *“licensed and subject to some sort of regulation”*. An owner stated that they *“believe agents should be licensed and that the BHA should be responsible for this”*. One industry observer suggested that *“agents should be licensed”* whilst a member of a trade organisation stated that the *“problem is that agents aren’t licensed”*. Perhaps unsurprisingly in light of the findings of this Review, the support for an Agent licensing system amongst Agents was limited.
85. As further detailed in Section G below, the Review Team finds that a system of licensing of Agents has broad support within the bloodstock industry (with more in favour than against), would be in the best interests of the industry, should not be difficult to implement and (if properly operated and enforced) should result in a significant reduction in the Improper Practices given

the serious financial and other ramifications for any Agent who is found guilty of any such activity and subsequently loses his/her licence is then unable to act as an Agent.

F6. Transparency of the Auction Process

86. The Review Team attended several auctions operated by the Sales Houses. They are well-attended, busy and fast-paced, but we share the view of some interviewees that they could be daunting to newcomers to the bloodstock industry, particularly when it comes to having the confidence to make a bid. The Sales Houses do however, in fairness, produce some information to assist potential purchasers through their sales catalogues and on their websites. The format of the auctions and the bidding processes have developed and been regulated by the Sales Houses over time and in accordance with their respective published Conditions of Sale. Our impression is that the auctions appear well-run.

87. Notably, however, many interviewees raised concerns that some of the business practices and procedures of the Sales Houses could inadvertently assist in creating an environment in which unscrupulous industry participants could engage in some of the Improper Practices.

88. Interviewees identified several areas of concern, but the following three stood out to the Review Team in particular:

88.1. Publication of Reserves:

88.1.1. The Sales Houses adopt different approaches, with Tattersalls confirming when a reserve is met during the auction whilst Goffs do not (though neither pre-publish the reserve). Industry participants are divided, broadly on a 50/50 basis, as to whether either of those approaches are preferable. Some would like to see the reserve published in the sales catalogues or digitally in the sales ring. Others disagree, stating that the reserve price can be found out from the vendor on most occasions if they are asked pointing out that they are only decided upon shortly before the sales and therefore pre-publication is impractical. The bidding is also affected with some industry participants only feeling comfortable making a bid when they know the reserve has been met.

88.1.2. By way of representative examples of some of the interviewee feedback, one breeder stated that he *“can’t see why there isn’t an open reserve”*, whilst another questioned the need for reserves at all stating that *“the horse goes for its value regardless”*. One owner was of the view that the lack of transparency of reserve prices results in bidders thinking they *“have got a bargain without realising [a horse] has been bid up”*. A trainer suggested

that any reserve *“should be documented on the digital board”* to avoid cases where a purchaser is *“unsure whether [their] bid is an actual bid”*. An Agent also acknowledged that *“one of the mysteries with the reserve is that it is unclear who the actual owner is”*.

88.1.3. On the other hand, one Agent was content with the system since *“you just judged for yourself the value of the horse”* whilst another agreed that they did not *“think the reserve needs to be published”*. One industry observer did not *“consider it a specific problem but did acknowledge there was a lack of transparency around the reserve”*.

88.1.4. The Review Team finds that the issue of reserves and how they are set and published by the Sales Houses needs further consideration and discussion with the Sales Houses and other industry participants in the interests of trying to minimise the scope for certain Improper Practices.

88.2. Identity of the Vendor(s):

88.2.1. Whilst sales catalogues publish the vendor, they often do not make clear all the individuals with underlying ownership. One example is where the vendor is a syndicate and only the name of the syndicate is set out (and not any of its individual members). In addition, the sales catalogues are frequently out of date since private sales are often made in the lead up to the sales with the Sales Houses not informed of the change in ownership for the purposes of the sales ring process. In the sales ring, information around the selling party does exist but it seems to vary as to whether the vendor or the consignor is referred to.

88.2.2. The Review Team were provided with a number of examples of purchasers finding out some time after buying a horse in the sales ring that the person, company or syndicate that they actually bought a horse from was not who they had been led to believe – and often with the true vendor (or part-vendor) being someone who was conflicted from being in such a position. Information regarding the true vendor at the point of bidding in the sales ring will be available to the Sales Houses given they will need to know who is entitled to the sales proceeds.

88.2.3. This issue was specifically addressed by a number of interviewees. A breeder noted that *“ownership is not fully disclosed and the only people suffering are the purchasers”* whilst another suggested that a *“register of the correct owners at the time of sale, including those sold after that [sales]”*

catalogue had been printed” would be useful. Another breeder stated that *“transparency is the problem here, the bidder should know who owns the foal”*. One industry observer commented that *“sometimes it was difficult to establish who the owner of a horse was”* whilst another believed that there was a *“failure to disclose the true ownership of the horse”*. One Agent stated that *“transparency of ownership”* in the Sales Houses auction process was needed, whilst another agreed adding that he did not *“see any harm in having ownership published, I think it would be benefit”* and *“ownership disclosure would be a way of sales houses improving practices”*.

- 88.2.4. There was some limited support for the current process around vendor publication, with one trainer expressing the view that more care on identifying vendors did not seem *“particularly workable and there are too many ways round it”*. A breeder added that he had *“no issues of owner identification”*.
- 88.2.5. The Review Team, however, finds that there would be benefits for the transparency and integrity of the bloodstock industry if the identity of the vendor is published prior to any bidding in a Sales House auction process. This gives the potential bidder crucial information about the horse they may be purchasing given the vendor and any associated Agent, consignor or trainer will have a reputation within the bloodstock industry which may be relevant to the type of horse they present to the market. It also enables bidders to identify any potential conflicts of interest. This knowledge is an important form of protection for the potential purchaser.
- 88.2.6. The Review Team notes that some interviewees stated that the identity of the vendor is not important because the only relevant factor is the quality of the horse in the sales ring, meaning a bidder should make their judgment on that alone, with information coming from the horse’s pedigree and other research. Whilst the Review Team acknowledges the force of that point to a limited extent, such an approach cannot be justified when the relevant information is available to the Sales Houses and the added layer of transparency of publication of vendor details will help prevent any more of the examples relayed to the Review Team of industry participants buying a horse under false pretences.

88.3. Identity of the Bidders:

88.3.1. Some bidders will bid on their own behalf as the end purchaser and it is also very common that an Agent acting on behalf of the potential purchaser is the bidder. However, the Review Team came across several other possibilities as a result of the interviewee feedback. The vendor may bid on its/their own horse in order to bid up the price to the reserve or as part of his/her engagement in one or more of the Improper Practices, such as Bidding-Up or Secret Profiteering. The vendor may ask an Agent acting for them or any third party to bid-up their horse and may ask more than one individual to do so. Where a horse is part-owned more than one vendor may bid. In some cases, it is the Agent who seeks a third party to be an additional bidder.

88.3.2. These issues were addressed by a number of interviewees. One breeder asked, *“why isn’t every person who made a bid being recorded?”*. An owner noted that there are *“a lot of bids around the ring but in fact there may only be one person who is a bidder”*. However, one Agent said that he was *“not bothered about transparency and who is bidding on the horse”* suggesting that he would make up his own mind on the appropriate value of the relevant horse. Many of the quotes set out above on Bidding-Up (see paragraphs F69 and F70 in) are also relevant to this issue.

88.3.3. The Review Team finds that greater transparency regarding the identity of the bidder is also important. This gives the potential purchaser further key information about the market for the horse. That potential purchaser may well bid in a different way if they thought the person bidding against them was a genuine rival for the horse, as opposed to someone bidding to get to the reserve price only or someone artificially engaging in a bidding war to artificially inflate the sale price beyond the reserve price. A purchaser should not have to take the risk of unethical practices in the buying market in which they are operating.

89. Interviewees also raised a couple of other points on the issues of sales process transparency, which we agree should be given consideration by the Sales Houses:

89.1. Bloodstock Records – A number of interviewees raised a concern about the lack of information available in relation to horses being sold in the sales ring. The horse’s parentage and recent form is currently made available, as is any update to the sales catalogue information. The outer ring also gives potential bidders the opportunity to

observe the general condition and behaviour of the horse at close quarters. However, there is no obligation for a veterinary check or the provision of any information about the historical health of the horse. The Review Team were, therefore, not surprised to receive reports from interviewees of situations where purchasers bought a horse only to find the horse was not in the condition that they had been led to believe. The Review Team find that consideration should be given to some form of log book (as you might expect with the service history of a car) so that purchasers are able to access the full medical history of a horse before committing to the often considerable cost of a purchase. This would also be beneficial from an equine health point of view.

89.2. Modernisation – The Review Team notes that the Sales Houses have previously considered the possible modernisation of the processes around the sales ring, by using modern technology, and have ultimately concluded that they are either not appropriate, not required or not cost-effective. However, given the commentary of some interviewees and the various recommendations of this Report, the Review Team finds that this may be the appropriate time for the Sales Houses to reconsider that position. The Review Team considers that certain technological advancements in the bidding and sales process would improve transparency in, and the record-keeping related to, the sales ring.

F7. Lack of Education

90. The Review Team has already made findings in this Report that the bloodstock industry lacks sufficient cross-industry co-operation and that its existing regulatory framework is ineffective. A key underlying factor in relation to both of those issues is the ignorance of the bloodstock industry to the rules under which they operate (i.e. the BHA Rules of Racing and the Code). No industry body or participant group has taken any lead in seeking to ensure that the industry as a whole is appropriately informed and educated.

91. As it stands, education initiatives are limited to publications produced by some trade organisations which provide a basic level of information on Sales Houses, the buying and selling of bloodstock and on Agents, and information in the sales catalogues and websites published by the Sales Houses. Whilst information is available, no proactive step is taken to ensure that industry participants are aware of the key aspects of the bloodstock industry or the relevant rules. The simple fact is that the current education and awareness system is not working.

92. The feedback from the interviewees was overwhelmingly in favour of further education. One Agent stated that “*education was key*” whilst another suggested “*putting up the membership fee of the FBA and introducing a robust training process for new agents*”. Another Agent

proposed *“integrity training days for agents”* which were then *“promoted as a badge of certification”* – sentiments with which other Agents agreed. One industry observer stated that new owners should receive a *“regulation pack . . . to increase their early education”*. One breeder noted that *“there is no education, guidance or information for people entering the industry . . . the industry needs to be shown examples of what is good and bad”* whilst another noted that there was *“no guidance at the sales”*. Another breeder suggested that the *“quickest way to address the problems [of the bloodstock industry] is to have a better education process for new buyers”*. An owner suggested that there must be *“education and training for all and engagement with the sales houses”* whilst another agreed stating that there is a need *“to improve education and transparency, to enable existing and prospective racehorse owners to feel more informed and confident about engaging in thoroughbred racing”*.

93. The Review Team finds that better education for all participants in the bloodstock industry is crucial. As it stands, whilst education exists, so much more could be done to ensure that all industry participants are properly informed of the relevant regulatory framework, legal and ethical considerations and the practicalities of the sales process.

F8. Normalisation/Ignorance

94. The Review Team finds that an important reason as to why the Improper Practices have become so ingrained within the bloodstock industry is that the culture of the industry has evolved to a point that too many industry participants regard them as normal practice.
95. Some have no concept that the Improper Practices are in fact unethical or even potentially criminal. Others are aware but believe that they must tolerate them if they want to continue to be involved and progress in the bloodstock industry given the potential financial/commercial impact of speaking out. Younger individuals see the approach adopted by more experienced industry participants and believe they can, and should, do the same if they want to be successful. They do not question the rights and wrongs of Improper Practices – they just perpetuate them because if they did not, their career prospects may be adversely affected.
96. The lack of education and awareness of the Code and the absence of any enforcement of it fuel an acceptance of unethical conduct. The Code has provided no deterrent whatsoever against such conduct.
97. With this culture, the Review Team find that the Improper Practices have become normalised. A breeder said, *“the system is so endemic of “give us a kickback” that [industry participants] don’t see it as corruption, they see it as the norm”*. Another breeder said that *“98% of any criminal activity carried out in the business is done by people who do not know or believe that what they are doing is criminal”*.

98. Improper Practices are further promoted through the bloodstock industry's preference to avoid open discussion about them. It is rare for someone to publicly (or even privately) complain for fear of being shunned by the industry and the consequential potentially serious financial impact that may have on their business. Other industry participants prefer to deal with issues away from the public eye. For example, the Review Team are aware of several instances of apparent wrongdoing which have not been reported to the BHA³¹ (or the Sales Houses under the Code), despite the potential disciplinary consequences of not doing so, where the victims have been under pressure from significant players in the industry to stay silent about being a victim of Improper Practices.
99. There is evidence of a culture of intimidation and certain strong vested interests in maintaining the *status quo*. Many interviewees referenced the intimidation factor. A breeder said that *"unless first time sellers made promises to agents, their horses were not looked at"*. An industry observer said that *"people are afraid to file complaints"* and a member of a trade organisation remarked that *"the biggest issue is that people will not name names as they fear the consequences"*. As a result, many interviewees were sceptical that a culture that is so ingrained can be changed for the better.
100. However, if the bloodstock industry fails to come together to put the necessary reforms in place, it would remain open to significant risk and damage, as well as keeping in place the barriers to new owners entering the bloodstock industry and even hastening the departure of some current industry participants who run out of patience with the industry's failure to tackle the Improper Practices.

F9. No Systemic Corruption

101. The Review Team does however want to be clear that it has not found there to be systemic corruption across the bloodstock industry. Whilst there are significant issues that need to be urgently addressed, the problems within the bloodstock industry are primarily caused by a small, but significant, minority of industry participants who behave unethically and, in some cases, criminally.
102. The Review Team wishes to emphasise they have found the vast majority of industry participants to display both high standards of integrity and a commitment to see positive change within the industry in order to protect themselves from the unethical minority. The Sales Houses also appear to seek to maintain high standards of integrity. The bloodstock industry is largely a safe and secure environment in which to buy and sell bloodstock and particularly if an

³¹ This is an offence under s. 42A of the BHA Rules of Racing, which requires any breach of the Rules (which include the Code) to be reported by the relevant industry participant.

individual has experience in the industry. The actions of a minority, therefore, put the bloodstock industry as a whole at substantial risk.

103. The Review Team is encouraged, therefore, by the drive expressed by many of the interviewees, often representing important industry groups and trade organisations, for this Review to be the lever for change in the bloodstock industry.

F10. Anti-Money Laundering

104. It is clear that there is a very significant amount of money circulating within the bloodstock industry and given the increasingly international nature of the industry participants and the nature of some of the Improper Practices, the Review Team is concerned that the bloodstock industry is vulnerable to the criminal offence of money laundering. The Review Team is aware of three examples of where the bloodstock industry has been or may have been used for a money laundering offence. Some of these cases have involved either investigation by the police leading to criminal convictions or a report being submitted to the National Crime Agency.
105. Whilst the Review Team is not aware of the outcome or indeed the current status of these matters (and was not specifically tasked with investigating money laundering in its Terms of Reference), it is apparent that the bloodstock industry has been linked to money laundering offences and related investigations. This was an issue which concerned a number of interviewees.
106. The Review Team finds that money laundering is potentially a significant risk to the bloodstock industry. The industry should be vigilant to such a threat and there is a clear need for all anti-money laundering systems to be kept under regular review and for relevant industry participants to be educated on the subject. The Review Team is not aware of any of these known money laundering cases being brought to the attention of the BHA prior to the relevant law enforcement authorities.

F11. Training Agreements and Stallion Nominations

107. The Terms of Reference required the Review Team to consider whether any issues arose from the use of training agreements and through the process of the sale and purchase of stallion nominations.
108. Both matters were discussed with the interviewees but the only issue of particular concern which arose was the fact that it is rare for signed training agreements to be put in place (in the same way that it appears to be rare for signed representation agreements to be put in place between an Agent and his/her principal). The absence of a signed agreement leaves parties more exposed in the event of a dispute.

F12. Concluding Comments

109. The Review Team's findings do not relate to issues that have only arisen in the bloodstock industry in recent years. It appears that the Improper Practices have been around, in one form or another, for much longer than that. It is apparent to the Review Team that the bloodstock industry generally has been well aware of the problems described but have not taken sufficient or any effective practical steps to deal with them.
110. This is unfortunate since the opportunity to tackle the Improper Practices has arisen on previous occasions in the last 15 years. The reviews of 2004 and 2008 described above, led to the creation of the Code, but having a written Code in isolation does nothing to meaningfully combat the Improper Practices. In the absence of proper monitoring and enforcement, the Improper Practices have been able to thrive.
111. The Review Team very much hopes that the findings and recommendations of this Report act as the catalyst for the meaningful change that the bloodstock industry plainly needs.
112. The majority of interviewees accept that there is an unacceptable level of unethical behaviour taking place within the bloodstock industry. The findings made in this Section result in the clear and unarguable conclusion that this *status quo* is not sustainable.
113. The Review Team believes that its findings offer a fair and accurate account of the industry. They may not make comfortable reading for the bloodstock industry, but they demonstrate that there is a compelling need for a new and effective regulatory approach for the bloodstock industry.
114. The bloodstock industry is at a crossroads. It can either collectively grasp the opportunity that this Review affords to achieve transformational change or continue to turn a blind eye to concerning practices which, at some point, will cause the industry significant damage. As one of the Sales Houses remarked, "*we need to change what is deemed as acceptable and what isn't*".

G. ANALYSIS OF FINDINGS AND RECOMMENDATIONS

G1. Introduction

1. This Section analyses the interviewee feedback provided to, and the associated findings of, the Review Team and sets out in further detail the recommendations of the Review Team as to how the issues, problems and risks that have been identified can and should be addressed in a measured and effective way.
2. There is no question that the greatest concern arising from our findings are the Improper Practices identified as being conducted by a small number of unscrupulous individuals in the bloodstock industry.
3. We have found clear and compelling evidence of widespread instances of breaches of agency and fiduciary duties, as well as associated commonplace practices, such as Secret Profiteering, Bidding-Up, Dual Representation and improper use of so-called “Luck Money”, which in certain circumstances also constitute potential criminal offences, including under one or more of the Bribery Act 2010, the Fraud Act 2006 and the Criminal Law Act 1977. There are also concerns that certain alleged practices could constitute money laundering and/or tax fraud offences.
4. Not only do these practices lead to individuals within the bloodstock industry suffering financial loss and/or being defrauded, but the fact that such practices are prevalent and seemingly normalised will inevitably create barriers to new owners joining the sport and have a suppressive effect on the number of individual owners more generally. Perhaps the greatest risk of not tackling these Improper Practices head-on is the risk of the rotten elements of the industry being publicly exposed in a way which inflicts long-term damage on the reputation and interests of the entire bloodstock industry, and by association the many bodies which operate within it.
5. The case for change is a convincing one since it is clear that the bloodstock industry, on any reasonable objective view, simply does not inspire the confidence in its integrity that it should do.
6. This Section provides a series of recommendations that the Review Team believe will provide the BHA and the bloodstock industry with a detailed blueprint for the reforms which are needed to protect the industry’s integrity and long-term best interests.
7. The Review Team has spent a significant period of time analysing all the data from the interviews with the assistance of BHA data analysts, as a result of which a series of common

themes were identified. This has in turn enabled the Review Team to identify the problems and why they existed and to recommend a series of potential solutions.

8. The Review Team supplemented that work with detailed legal and regulatory analysis, with assistance from their external legal support. This included taking advice on the statutory and other legal duties which are infringed by the various Improper Practices which had been identified, how other national governing bodies and regulators of horseracing worldwide manage and regulate their own bloodstock industries, what lessons could be learnt from other comparable auction and other industries (including the art and greyhound industries) and how other sports governing bodies regulate in respect of some of the analogous risks identified by the Review Team.
9. This extensive and detailed analysis process has resulted in the Review Team distilling its findings down into the following four Core Themes, each of which feed into specific recommendations as further detailed below:
 - 9.1. Measures to Create Meaningful Bloodstock Industry Co-operation.
 - 9.2. Tighter Regulation.
 - 9.3. Improved Education, Communication and Awareness.
 - 9.4. Greater Transparency in the Sales Process.
10. The Review Team strongly believes that there is a compelling rationale and justification for each Core Theme and specific recommendation, each of which can play a substantive role in improving the bloodstock industry for all participants and eliminating, to a significant extent, the Improper Practices that have caused so many existing industry participants such concern.
11. The Review Team acknowledges that all industry participants are likely to have to take proactive steps in order to put into effect and comply with these recommendations. The Review Team also acknowledges that these recommendations will have an inevitable, but we believe not prohibitive, cost and resourcing implication for the BHA and others in the bloodstock industry. We are in no doubt that those implications are a price well worth paying to improve and safeguard the integrity of the bloodstock industry.

G2. Measures to Create Meaningful Bloodstock Industry Co-operation

12. Whilst the Review Team has no wish to attribute blame for the current problems and risks within the bloodstock industry to any specific industry participants, it is clear that, for one reason or another and with varying levels of active and passive involvement or fault, the bloodstock industry has, over a significant period of time, permitted the development of the less than ethical

aspects of its environment and culture. Therefore, to some extent, breeders of bloodstock, vendors of bloodstock, purchasers of bloodstock, Agents, trainers, Sales Houses (and the various trade organisations representing individuals and/or companies in these categories) and the BHA itself must all bear some responsibility for the current vulnerability of the industry.

13. The Review Team considers it no surprise that many industry participants expressed a feeling of being trapped between their dislike of the way the bloodstock industry operates and their need to do business and make a living. To speak out meant to lose out, so there was no benefit in doing so or otherwise rocking the long-standing *status quo*. Those few individuals who have publicly or otherwise spoken out told the Review Team of the adverse effect on business and other consequences of doing so. Others spoke in disapproving terms of the Improper Practices which exist within the industry but were making money so stayed silent to protect their own businesses.
14. The Review Team wishes to emphasise that the bloodstock industry is not a fundamentally unsafe place to do business. However, such has been the level of self-interest of the majority in maintaining the *status quo*, that the Improper Practices undertaken by a small number of unscrupulous individuals have been allowed to continue without challenge in a way which adversely affects the industry as a whole.
15. The Review Team found that almost everyone they spoke to had heard numerous rumours of Improper Practices taking place. Some had personal knowledge of Improper Practices or knew of someone else who had. However, equally clearly, the interviewees stated that because most industry participants felt pressured to tolerate the Improper Practices, it was difficult to speak out and stop them.
16. This underlying culture within the industry provided those with a desire to engage in Improper Practices an almost free rein to do so without fear of challenge, publicity or sanction. The environment of the bloodstock industry enabled those unscrupulous individuals engaging in Improper Practices to do business verbally, face-to-face and in cash where possible, with the result that there was no paper trail with which to evidence wrongdoing. As noted above, so ingrained is this culture of Improper Practices that many industry participants are unaware that such actions are unlawful or potentially even criminal offences.
17. To some interviewees, the Improper Practices are not improper at all – instead, they are considered normal and because they are normalised, they become acceptable. It is a classic flawed human trait to think that if everyone else appears to be doing something, it must be legitimate and therefore it's fine to do it yourself. This of course simply perpetuates the cycle of unethical behaviour.

18. The auction process in the Sales Houses does not proactively address these underlying problems and is hampered, to some extent at least, by the absence of full transparency in that process. It is often difficult to properly understand who is selling a certain lot, who is bidding on the lot and who the ultimate purchaser might be. Some of the Improper Practices benefit from the format of the auction/sales process, though we must emphasise that we do not find that any of the Sales Houses have been actively or knowingly complicit in any Improper Practices. It should also be noted that some of the Improper Practices are engaged in during private sales that take place away from the sales ring.
19. The Improper Practices are self-perpetuating and difficult to deal with in the current regulatory environment because too much of the industry has the potential to gain financially from them. For example, Agents (some of whom are trainers acting in that capacity) stand to gain financially from most, if not all, of the Improper Practices through their fees being based on the auction sale price. The higher the price, the higher the fee. Similarly, vendors clearly stand to gain financially from the higher possible auction sale price meaning that most, if not all, or the Improper Practices are of benefit to them. Likewise, the Sales Houses also benefit from a higher price as that will increase their commission to the extent any such sale goes through the sales ring.
20. The one group who are unlikely to end up with any benefit are the purchasers of the horse who, in cases where one or more of the Improper Practices have been committed, will end up owning a horse that is worth less (and, in some cases, of a lower standard) than they had been led to believe. This presents an obvious risk in that any material decline in the number of new or existing owners would, as we understand it, have a considerable adverse effect on the health of the bloodstock industry.
21. The BHA must also, in our view, assume central responsibility for co-ordinating and implementing the necessary reforms to the bloodstock industry and thereby ensuring that it meets the highest standards of integrity and is fair and transparent for all.
22. Improvements to the wider governance of sports by national governing bodies and associated regulatory bodies has been a major priority of the UK Government in recent years, as illustrated by the Code for Sports Governance which was introduced under the auspices of Sport England and UK Sport in October 2016 and requires all publicly-funded sports bodies in England to comply with a prescriptive and detailed set of governance obligations. Whilst the BHA is not technically bound by this Code, if the UK Government perceives any acquiescence on the part of the BHA in not properly regulating those under its jurisdiction in the bloodstock industry, this could have other adverse consequences for the BHA (and in turn the wider bloodstock industry) in terms of governmental support in other aspects of British Racing.

(i) *Bloodstock Industry Forum*

23. Given the vulnerabilities identified by the Review Team, we believe that one of the most important outcomes of this Report is an open commitment from all relevant individuals, companies and trade organisations who are active in the bloodstock industry that they collectively recognise the need for change and will support the necessary changes. The Review Team was heartened in that regard by the fact that the majority of interviewees are clearly in favour of reforms.
24. The Review Team recommends that a key element in achieving greater cross-industry synergy and co-operation is through the creation of a forum, as soon as possible, which we have provisionally entitled the Bloodstock Industry Forum (the **BIF**), on which all key industry stakeholder groups would have representation.
25. The Review Team considered whether an existing industry forum might serve the BIF's purposes. The obvious example is the Stakeholder Integrity Forum, which was established as an advisory group with a stated objective of keeping corruption out of the sport, but mainly operating in the racing arena. The membership of the Stakeholder Integrity Forum also includes representatives of jockeys and the betting industry who are not involved with the bloodstock industry, whilst key participants of the bloodstock industry, such as Sales Houses and Agents, are not represented. As a result, the Review Team has concluded that a new cross-bloodstock industry forum is needed.
26. On the basis that the BIF should be a forum for the benefit of all participants in the bloodstock industry, the Review Team recommends that the following organisations are represented with the appointment of a single member (save that we can see benefit in a representative from each of Goffs and Tattersalls being on the BIF):
- 26.1. The BHA.
 - 26.2. The Racehorse Owners Association.
 - 26.3. The Thoroughbred Breeders Association.
 - 26.4. The National Trainers Federation.
 - 26.5. The FBA.
 - 26.6. The Racehorse Syndicates Association.
 - 26.7. The Sales Houses.

27. In addition, the Review Team considers that the BIF would benefit from one or more members who are independent from the bloodstock industry. Such individuals would offer impartiality, perspective and broader relevant industry experience. The Review Team recommends that the initial Chair of the BIF is the BHA appointee on the basis that the BHA are likely to need to take the lead on most, if not all, of the reforms recommended in this Report. Thereafter we can see some benefit in the Chair being an independent member, failing which the Chair should be rotated throughout the industry participants on no less than an annual basis. Likewise, the Review Team can see that representation from the appropriate entity in Ireland on the BIF would also be beneficial.
28. Terms of Reference for the BIF would need to be drawn up and approved by the member groups, setting out (among other things) its key roles, responsibilities and objectives.
29. The Review Team considers that the BIF's key roles and objectives should be as set out below (but on the basis that members of the BIF should be invited to propose any additional ones for the group's approval):
- 29.1. Discussion Forum:
- 29.1.1. The BIF should constitute the only forum for open discussion and co-operation between the various stakeholder groups within the bloodstock industry, for the purpose both of agreeing the detail of, and implementing, the recommended reforms set out in this Report and addressing any other generic issues which arise in the bloodstock industry which pose a risk to its reputation, integrity and wider best interests.
- 29.1.2. The Review Team recommends that meetings of the BIF are given a significant degree of priority and members make every effort to attend, only sending a suitable replacement attendee where necessary. Meetings should ideally be held on at least a quarterly basis to ensure a suitable degree of proactivity.
- 29.2. Implementation of Regulations:
- 29.2.1. The BIF should assist the BHA in the implementation of the New Code, the proposed Agent licensing system, the proposed agent regulations (the **Agent Regulations**) (see further from paragraph G57 below) and any other applicable regulations.
- 29.2.2. It is critical to the effectiveness of any regulatory reforms that any new rules are publicised and in language that all industry participants understand. All

industry participants will have a role to play in ensuring that any new regulatory structure is successful and works in the way it should from a practical perspective. This will require new systems and procedures to be adopted by many industry participants.

29.2.3. In that regard, the Review Team envisages that particular responsibility for important aspects of the practical enforcement of the recommended new regulatory regime will fall on the Sales Houses because they run the auctions at which bloodstock is bought and sold. Under the proposed new rules, they will be obliged, for example, to put in place procedures to ensure that any Agent who is unlicensed or subject to a ban under the New Code is refused entry to the private property that is their sales ring premises, as well as ensuring that only those who are licensed agents are involved in bidding for horses or otherwise conducting “Agency Activity” in their sales ring.

29.2.4. Any and all new rules will also require review on a regular basis (perhaps every 1 to 2 years) and this review process should also involve the BIF.

29.3. Education:

29.3.1. The BIF should assume responsibility for ensuring that the nature of education and training for all participants within the bloodstock industry in relation, for example, to standards of integrity and the applicable rules and laws, is at an appropriate level and maintained at that level, through regular updates and other means.

29.3.2. The bloodstock industry will need to assist participants in their understanding of the applicable law and regulation. A proactive approach must be taken to ensure that, for example, the implications of the New Code are understood by industry participants, particularly regarding the types of offences under the New Code and the applicable sanctions.

29.3.3. Various examples of the education, communication and awareness initiatives that are proposed are set out in paragraphs G79 to G85 below.

29.4. Transparency:

29.4.1. The BIF should review all issues of transparency raised by this Report with a view to improving transparency in the sales/auction process and other relevant aspects of the bloodstock industry.

29.4.2. Various examples of the transparency-related issues which should be considered are set out in paragraphs G86 to G92 below.

29.5. Management of the future needs of the bloodstock industry:

29.5.1. It is clear that the bloodstock industry requires a proactive and industry-wide co-operative approach to best protect its integrity and to deal with the changing challenges and needs of the industry in the future.

29.5.2. Once measures are in place regarding the issues identified in this Report, it will be necessary to have and keep in place practical systems and safeguards to ensure they are acted upon by all industry participants, to assess the success of those measures and identify where any changes or new approaches are needed to safeguard the integrity and reputation of the bloodstock industry.

29.6. Equine Welfare:

29.6.1. The BIF should also play a role in ensuring that appropriate equine welfare measures are in place across the bloodstock industry and its sales/auction processes. For example, the BIF could play a role in supporting the BHA's implementation of its Equine Health & Welfare Strategy.

Recommendation 1:

Establishment of a “Bloodstock Industry Forum” (with representatives from the BHA, the Sales Houses and each of the relevant industry trade organisations), as further detailed above, to act as an industry-wide forum to work together on the implementation and ongoing oversight of the recommendations set out in this Report and any other related initiatives which are put in place to promote and safeguard the best interests of the bloodstock industry.

(ii) *Memoranda of Understanding*

30. The Sales Houses hold a unique position in the industry and have a critical role to play in the recommended reforms, given that they provide the arena in which a very significant proportion of the buying and selling of all bloodstock in Great Britain takes place. All other industry participants ultimately gravitate to a large extent to the service that the Sales Houses are offering.

31. Their central role in the bloodstock industry means that there is a particular need, and indeed a unique opportunity, for them to work closely with the BHA (and other industry stakeholders), in particular in the regulation and “on the ground” enforcement of the recommended new regulatory regime (in particular the Agent licensing system) and on improvements to the transparency of the sales/auction processes. The Review Team were repeatedly told by interviewees that the Sales Houses could do more to encourage and facilitate greater integrity in the industry given their unique industry position, so we hope that the Sales Houses will play a key role in the necessary reforms.
32. As it stands, our understanding is that there is no formal contractual relationship between the BHA and the Sales Houses through which they co-operate on integrity-related matters within the bloodstock industry.
33. Given the repeated interviewee feedback and Review Team finding in support of greater cross-industry co-operation, the Review Team can see considerable benefit in the BHA putting in place such a co-operation agreement (whether in the form of one or more Memoranda or otherwise) with each of the Sales Houses.
34. Industry-wide co-operation to support initiatives and rules designed to protect the integrity and reputation of sports has been an ever-growing feature of British and international sports governance in recent years. For example, many sports governing bodies and regulators now have contractual relationships, commonly in the form of a written “memorandum of understanding”, with betting companies, gambling regulators, the police/law enforcement bodies, charitable organisations and other stakeholders on issues such as anti-corruption, anti-doping and safeguarding. These “MoU”s have been used to considerable positive effect by providing, for example, information sharing and other arrangements which support the detection and prosecution of integrity-related offences by sports bodies.
35. The Review Team therefore recommends that a standard form MoU is put in place between the BHA and each of the Sales Houses to set out the scope of their mutual support and co-operation in the implementation and enforcement of relevant recommendations from this Report. The Review Team recommend that the following kinds of mutual co-operation could usefully be incorporated into the MoU:
 - 35.1. The sharing of intelligence and other data:
 - 35.1.1. The BHA has an active Integrity department, with specialist expertise, which investigates and prosecutes a range of disciplinary issues under the Rules of Racing. The BHA are often reliant on information from individuals or organisations within the British horseracing industry to provide key evidence

in those investigations and prosecutions (including acting as witnesses in any subsequent hearing).

35.1.2. We have recommended that the BHA should be responsible for investigating and prosecuting actual or suspected breaches of the New Code, for which purposes it will need to work closely with relevant industry participants to obtain relevant evidence. The Sales Houses will possess a significant quantity of information that may be relevant to a particular investigation or prosecution – including any sales or purchases that a specific individual/company were involved with, written communications with that individual/company, financial records and audio-visual records from around the sales ring. Likewise, this would enable the Sales Houses to offer suitable assurances regarding the robustness of their anti-money laundering processes.

35.1.3. Similarly, the Sales Houses may have their own specific independent concerns around a particular individual's conduct or a particular sales transaction that has taken place on its property, which necessitates a sharing of relevant information/intelligence with the BHA. The Review Team also considers that there should be a positive obligation on Sales Houses (and all other participants subject to the New Code) to report any actual or suspected breach of the New Code to the BHA.

35.1.4. The Review Team therefore firmly believes that having a procedure around the sharing of intelligence would be of mutual benefit to the BHA and the Sales Houses. Having this appropriately documented is also strongly advisable from a good governance and GDPR³² compliance perspective.

35.2. Enforcement of Agent licensing regime and other BHA sanctions: the MOU could also usefully set out the nature and scope of the Sales Houses' practical enforcement responsibilities in respect of any person seeking to conduct any "Agency Activity" at a Sales House without being licensed to do so or any individual who has been banned (after due process) from involvement in bloodstock sales activities and/or from BHA licensed premises. This will also involve an element of information-sharing between the BHA and the Sales Houses in respect of any such individuals.

35.3. General Co-operation: the Review Team can also see benefit in establishing a general communication link and point of contact between the BHA and each Sales

³² The EU General Data Protection Regulation 2016/679 as incorporated within English law by the Data Protection Act 2018.

House, with a view to their working more closely and regularly together on integrity initiatives and the regulation of the bloodstock industry as a whole. The BIF could also consider in due course whether similar MoUs should be put in place between the BHA and any other bloodstock industry stakeholder.

Recommendation 2:

Putting in place binding agreements between the BHA and the Sales Houses to enable (and govern the nature and scope of) their information sharing and wider co-operation in the delivery of the recommendations set out in this Report, as further detailed above.

(iii) Closer working with relevant bloodstock authorities in the Republic of Ireland

36. The Review Team recognises the international nature of the bloodstock industry and the fact that a number of industry participants in Great Britain are themselves based, or act for third parties who are based, outside Great Britain.
37. The one jurisdiction which is particularly intertwined with the British bloodstock industry is Ireland. It became clear to the Review Team that a considerable number of all categories of British bloodstock industry participant are based in Ireland, as are many of the horses sold in the sales rings. Goffs is an Irish company and Tattersalls has a presence in Ireland. Many industry participants will do business at both sales in Ireland and sales in Britain. The Review Team accordingly spent time in Ireland conducting interviews.
38. As a result, the Review Team considers that the recommendations made in this Review should be streamlined and harmonised with Ireland so far as possible, to minimise any perceived negative effects on the British bloodstock industry. The interests of the industries in both jurisdictions is inextricably linked and a consistency of regulatory approach across the two jurisdictions would clearly be desirable.
39. Ireland does, of course, have a slightly different regulatory position to that of the British bloodstock industry, though this can be, and is, successfully managed as the businesses of Goffs and Tattersalls demonstrate. There are significant similarities which offer a starting point for a close liaison. For example, the Irish Thoroughbred Breeders Association has produced a bloodstock industry code of practice, in conjunction with the sales houses in Ireland, with similar themes and underlying objectives as the Code.
40. The Review Team recommends that the BHA and the BIF do everything that they can to encourage the relevant regulatory authorities in Ireland to adopt as closely as possible any of the recommendations in this Report which are implemented in Great Britain, including similar

regulatory obligations/processes and reciprocal recognition of sanctions. The Review Team notes that, in due course, there may be merit in considering similar and reciprocal arrangements with other jurisdictions, such as France.

Recommendation 3:

The BHA and/or the BIF should work with the governing bodies of horseracing in Ireland to establish appropriate cross-jurisdictional regulatory structures and co-operation in support of the recommendations set out in this Report.

G3. Tighter Regulation

41. This Review has found that the current regulation of the bloodstock industry is not fit for purpose and, as a result, has contributed to the Improper Practices. Certain categories of industry participant are, in practice, entirely unregulated, with the most notable example being Agents.
42. As set out above in Section B, the BHA does already have jurisdiction over the bloodstock industry to a considerable extent as a result of the Code being incorporated into the BHA Rules of Racing – the notable exception being the Sales Houses. Rule 30 of General Manual (A) of the BHA Rules of Racing makes clear that failing to observe the Code is an offence under that Rule. However, the BHA does not appear to have ever investigated or prosecuted any potential breaches of the Code which to some extent is a consequence of never having any complaint referred to them given the Code's clear focus on industry self-regulation. Many interviewees were nevertheless unaware of the BHA's powers.
43. Many of the industry participants who were interviewed were even unaware of the Code and a significant number reported having never even seen it. The Code has not been properly disseminated and communicated within the bloodstock industry, with the result that it has been and still is ineffective.
44. The Code would benefit from improvements to its wording, for example to more clearly set out, possibly with illustrative examples, what types of conduct and practices are prohibited and may even be criminal. However, its biggest deficiency is the absence of any meaningful and effective procedure for making a complaint about an alleged breach of the Code, with any such complaints needing to be made to a trade organisation or a Sales House, and only then any subsequent disciplinary proceedings being brought by the BHA. No such recorded complaints have ever been made, for the various reasons explained in this Report, and even if they were the Review Team's view is that the trade organisations and Sales Houses had at least a perceived (if not actual) conflict of interest in dealing with them.

45. The Review Team's clear view (and that of many of the interviewees) is that the BHA should be the sole recipient of any complaints and put in place appropriate procedures to ensure that disciplinary action is taken when there is evidence of a breach of the (New) Code.
46. Against this background of inaction, limited regulation and confusion an environment has been created to help the Improper Practices to develop and thrive. The upshot of the absence of any effective monitoring, regulation and enforcement regime around the Code is that anyone wishing to partake in any Improper Practice has been able to do so with impunity in the knowledge that the chances of anyone in the industry even reporting them were almost zero, and the risk of any BHA disciplinary proceedings under the Code was more or less non-existent.
47. To take the example of Agents, being the stakeholder group found to be most responsible for committing Improper Practices, there are no qualifying tests or criteria to become an Agent, no need for any prior experience or any form of written agency/representation agreement and no standards of practice to abide by in any practical sense. There are no checks and balances, and in the vast majority of cases no written agency/representation contracts, no invoices and no audit trail. There is nothing, aside from their personal moral integrity, to stop them conducting Improper Practices. Worse still, legitimate industry participants cannot escape unscrupulous Agents since they tend to be central to any given sales process.
 - (i) *Sole Authority*
48. The Review Team is in no doubt that one bloodstock industry stakeholder needs to take the lead in relation to implementing the necessary reforms and being the body with overall jurisdictional responsibility for receiving complaints of breaches of the New Code and enforcing any new regulations. The obvious such authority is the BHA, being the body which commissioned this Review, and which governs and regulates the sport and industry of British racing, including the vast majority of participants in the bloodstock industry.
49. Clearly, where there are allegations of criminal conduct which arise, they should be referred to the relevant law enforcement authorities. The Review Team also of course accepts that the Conditions of Sale of the Sales Houses are ultimately a matter for the Sales Houses.
50. The Review Team notes that giving the BHA overall responsibility for implementing the necessary reforms and being the body with overall jurisdictional responsibility for receiving complaints of breaches of the New Code and enforcing any new regulations is consistent with the approach to those issues taken in other similarly sophisticated bloodstock jurisdictions, such as Australia.

51. The same approach is taken in British greyhound racing, the only other sport that uses auction sales in a similar way to the bloodstock industry in Great Britain. Whilst the greyhound industry is smaller in scale to the bloodstock industry, the Greyhound Board of Great Britain (the **GBGB**) notably retains regulatory oversight of disciplinary proceedings involving the sales processes. It asserts jurisdiction over all its industry participants, including agents, and also regulates the sales/auction processes itself by conducting all auctions on its own licensed premises which has led to it bringing successful prosecutions under its rules.

Recommendation 4:

The BHA should be recognised, on an industry wide basis, as the authority with overall responsibility for regulating the conduct of all those bloodstock industry participants under its jurisdiction and (where necessary, in conjunction with other relevant industry stakeholders) all associated enforcement measures.

(ii) *New Code*

52. As explained above, the overwhelming consensus of interviewees is that the Code is ineffective, not fit for purpose and to a considerable extent not even known about within the industry. As also noted above, the Review Team is not aware of a single recorded complaint being made to any trade organisation or Sales House under it, despite the fact that numerous specific incidents (and countless pieces of anecdotal evidence) have been relayed to the Review Team by interviewees which, in many cases, would clearly constitute a breach of the Code. Similarly, the Review Team is not aware of the BHA conducting any investigation under the Code.
53. It is also worrying that many bloodstock industry participants do not understand that the Improper Practices are unlawful and, in some cases, potentially criminal in nature.
54. The Code needs a substantial overhaul, with clarity required around the Improper Practices that are not permitted, the procedure for making complaints to the BHA, the investigations to be conducted by the BHA, how hearings are conducted and the sanctioning powers of the BHA. In any event, after ten years, the Code is well overdue for an update. Of course, simply updating the Code in isolation is not enough; appropriate steps also then need to be taken to make the bloodstock industry aware of the New Code and educate it as to its terms (as to which, see further at paragraphs G79 to G85 below).
55. The Review Team recommends that the New Code sits at the forefront of an enhanced system of regulation for the bloodstock industry. It is recommended that the New Code covers, among other things, the following key points:

55.1. Jurisdiction:

- 55.1.1. The New Code should clearly state that it applies to all bloodstock industry participants and explicitly set out all those participants groups, including Agents, consignors, purchasers, the Sales Houses, trainers and vendors on the basis that they are all engaged, in one way or another, with the buying and selling of bloodstock.
- 55.1.2. The New Code must also assert jurisdiction over any industry participants who are domiciled or otherwise based outside of Britain. As with other similar sporting regulations, there is no good reason why any individual wishing to conduct business within the British bloodstock industry should not be subject to the New Code (and any associated applicable laws and regulations).
- 55.1.3. The New Code should expressly state that it applies to all sales of bloodstock whether through the sales ring or privately.
- 55.1.4. There should also be an express statement that any complaints of a breach of the New Code must be exclusively submitted to the BHA, which will then have exclusive responsibility for any subsequent investigatory, prosecution and enforcement processes.

55.2. BHA Rules of Racing:

- 55.2.1. The New Code should make expressly clear that it forms a part of the Rules of Racing and include verbatim both the relevant updated wording in the associated Rule 30 and the Rules dealing with the range of BHA sanctions that can be imposed (by way of an additional prominent deterrent to those engaging in Improper Practices or otherwise acting in breach of the New Code).
- 55.2.2. A review of the Rules of Racing should also be carried out by the BHA in case there are further consequential amendments that need to be made by way of cross-references to the New Code or otherwise. The Review Team notes that, for example, the Trainer Manual would need to be updated to reflect the New Code and the obligations on trainers who also act as Agents under the recommended new agent licensing system.

- 55.3. Definitions: There should be a comprehensive definitions section in the New Code to make clear how the bloodstock industry defines key terms, such as “agent”, “agency activity”, “vendor” and each of the Improper Practices.
- 55.4. Agency and Fiduciary Duties:
- 55.4.1. The New Code should include a summary of the fiduciary and other duties owed by an Agent to his principal for the benefit of all those who act as Agents or principals in the bloodstock industry.
- 55.4.2. In simple terms, under English law, an agency relationship can arise through contract or common law. In the case of the bloodstock industry, common law is currently far more likely given the almost universal absence of written agency/representation contracts. In such circumstances, the agent will have fiduciary responsibilities towards a principal given their position of trust and confidence, including obligations on the agent to.
- 55.4.2.1. act in the best interests of their principal;
- 55.4.2.2. act within the limits of their authority;
- 55.4.2.3. act with reasonable care and due diligence;
- 55.4.2.4. avoid any conflict of interest;
- 55.4.2.5. disclose all material facts to their principal;
- 55.4.2.6. not disclose a principal's confidential information;
- 55.4.2.7. not make any secret profit; and
- 55.4.2.8. offer undivided loyalty to the principal.
- 55.4.3. All of these legal duties apply to any participant in the bloodstock industry who acts as an Agent within an agent/principal relationship. Setting them out clearly in the New Code should serve as a helpful reference point for all.
- 55.4.4. The New Code should make clear that no industry participant should have any dealings with an unlicensed Agent, failing which they will have committed an offence under the New Code. The New Code should also cross-refer to the proposed new Agent Regulations to ensure consistency.

55.5. Specific Practices:

- 55.5.1. The New Code should explicitly state which practices are not permitted and should highlight where those practices are unlawful or even criminal. These should ideally also be de-mystified and “brought to life” by the inclusion of illustrative examples of what practices are prohibited.
- 55.5.2. Many of the Improper Practices not only constitute a breach of agency/fiduciary duties, but also could be a criminal offence under one or more of the Bribery Act 2010, the Fraud Act 2006 and the Criminal Law Act 1977. In general terms, a criminal offence is committed under:
- 55.5.2.1. the Bribery Act 2010 where an individual offers or receives a financial advantage as an inducement or reward for the improper performance of relevant business activities;
- 55.5.2.2. the Fraud Act 2006 where an individual dishonestly represents something false, dishonestly fails to disclose something they should disclose or dishonestly abuses their position in each case, usually, to gain a financial advantage; and
- 55.5.2.3. the Criminal Law Act 1977 where a person agrees/conspires with another person to pursue a course of conduct and that conduct will involve the commission of a criminal offence.
- 55.5.3. Criminal sanctions for such offences can be up to 10 years imprisonment and a fine.
- 55.5.4. To the extent that any of the Improper Practices are criminal and any individual engaging in any of them makes a profit, then any further dealings around the sale and purchase of bloodstock could also constitute an offence under anti-money laundering regulations and/or proceeds of crime legislation. In addition, any individual who fails to declare any earnings which he/she has generated through bloodstock sales may be committing tax fraud.
- 55.5.5. The Review Team considers that, subject to the specific facts of any given case each of the Improper Practices may constitute criminal offences under one or more of the Fraud Act 2006, the Bribery Act 2010 and the Criminal Law Act 1977, as well as a breach of one or more of the fiduciary duties owed by an Agent to his/her principal.

- 55.5.6. As explained above, the Review Team found two distinct types of “Luck Money”, only one of which could be considered acceptable, namely where Luck Money is provided by the vendor to the purchaser of bloodstock purely by way of a genuine thank you gesture (a nominal/*de minimis* amount of money or a case of wine being typical examples). The unacceptable form is where the vendor is subject to any kind of pressure or intimidation to make a significant Luck Money payment often calculated as a percentage of the sale price and made by the vendor to the Agent acting for the purchaser (and often without that purchaser’s knowledge).
- 55.5.7. The Review Team’s view is that the anachronistic and misleading phrase “Luck Money” should be excluded from the New Code and replaced with a ban on any such type of cash payment. That binary rule would provide certainty in place of the current uncertainty within the bloodstock industry of where the line between acceptable and not-acceptable lies. The BIF could consider whether some sort of “Gifts and Gratuities Policy” should be introduced to make clear what was acceptable by way of gesture from a vendor to a purchaser/his Agent.
- 55.5.8. The Review Team notes that the Australian Bloodstock Code of Practice³³ does not refer to the term “Luck Money”.
- 55.6. Complaints Procedure: The New Code will, of course, require a revised and clear procedure for the making of a complaint, an explanation of how they are investigated and by whom, as well as the procedures for disciplinary hearings and the sanctioning powers of the disciplinary panel.
- 55.7. Failure to Report:
- 55.7.1. The New Code should include an additional offence of failing to report any actual, attempted or suspected breach of the New Code to the BHA. The Review has found that significant numbers of industry participants have some form of knowledge of Improper Practices taking place over a long period of time. Similar positive reporting obligations are common place in other sports body rules and this self-policing mechanism has been shown to act as a valuable additional deterrent to those who seek to breach the rules.

³³ Dated 9 May 2007.

55.7.2. Such reports can, if necessary, be made on a confidential and anonymous basis using the BHA whistleblowing telephone line, "Racestraight". Indeed, the BHA already receives such reports in the context of its other integrity activities and such a provision is set out in the Rules of Racing³⁴.

55.8. Proxies: The New Code also make clear that a proxy will be treated in the same way and subject to the same responsibilities as a vendor or an agent under the New Code.

56. The Review Team strongly believes that if the New Code is drafted along the above lines and supplemented with the Agent licensing system and Agent Regulations proposed below, there will then be a regulatory framework which should significantly reduce the current risks to the integrity and reputation of the bloodstock industry.

Recommendation 5:

The BHA to replace the Code with the New Code which, as further detailed above, should be more robust and fit for purpose and should include: a) application to all relevant industry participants; b) a clear and comprehensive list of applicable duties of an Agent; c) clear and express statements of the types of practices that are prohibited on the grounds of being unethical and/or unlawful; and d) a more effective complaints and disciplinary procedure, with alleged breaches being reported to the BHA who in turn would have responsibility for prosecution and enforcement.

(iii) Licensing of Agents

57. Whilst the New Code will serve a useful purpose, the Review Team is of the strong view that it will not address the problems highlighted in this Report on its own. It must be supplemented by an additional layer of regulation focussed on the single biggest threat to the integrity and reputation of the bloodstock industry, namely the Improper Practices committed by a small number of unscrupulous individuals – primarily Agents or other industry participants acting in an agency capacity. Only then will a regulatory framework exist that is truly capable of the necessary transformational change.

58. It is no coincidence that the Code places a clear focus on Agents as being the principal category of industry participant whose activities needed regulation. As above, Agents received the

³⁴ See rule 42A of the Rules of Racing which provides "Any Person who is subject to these Rules must, as soon as reasonably practicable, disclose to the Authority full details of any approach or invitation made to: 42A.1 him; or 42A.2 any other Person, of which he is, or becomes, aware, to engage in conduct that would amount to a breach of these Rules."

majority of the adverse commentary from bloodstock industry participants and they feature prominently, in a negative way, in all of the case studies presented in this Report.

59. Many agency arrangements are made verbally, often on the basis of a handshake, and there is a clear absence of invoices, contractual documentation or any kind of an audit trail. Some payments appear to still be made in cash.
60. The Review Team has found that it could not be easier for an Agent to engage in the Improper Practices. They are at the centre of most transactions in the bloodstock industry, whether in the sales ring or in private sales. Many industry participants are aware of Agents (and other participants) who habitually engage in Improper Practices and have named them to the Review Team during the Review. However, it is extremely rare for anyone to be called out publicly for their behaviour, let alone investigated and prosecuted.
61. A change in the culture of Agents is needed and there is a clear and compelling case for enhanced regulation of them through the introduction of a simple licensing system for all Agents (and any trainer, vendor or other industry participant who seeks to act as an Agent or to conduct any “Agency Activity”), such system to apply to anyone acting in such capacity in Great Britain (i.e. including agents who are based overseas and travel to Great Britain to conduct agency activity).
62. This recommendation also has the support of the majority of the interviewees in principle, though it was clear to the Review Team that there is a lack of understanding of how a licensing system might be introduced and made to work in practice.
63. We also note that licensing of Agents is even expressly anticipated and provided for in the BHA’s constitutional documents, which state that the BHA intends to be “*responsible for the licensing and/or registration of any persons including but not limited to . . . agents (including jockey’s agents) . . .*”³⁵. The BHA itself has considerable experience of administering licensing systems because it licenses various other categories of participants around the sport of horseracing including owners, trainers and other forms of agents.
64. The recommended licensing system replicates the key features of the tried and tested similar agent licensing regimes in other British sports which have proved to be an effective means of improving the conduct of their agents. We also note that other jurisdictions have successfully implemented a system of agent licensing an example of which is the California Horse Racing Board in the United States³⁶.

³⁵ Paragraph 3(11) of the BHA’s Memorandum of Association.

³⁶ See Article 13 of the California Horse Racing Board Rule Book

65. The two key and linked elements of the recommended agent licensing regime are:
- 65.1. a licensing system, run by the BHA, in which all individuals who wish to undertake any “Agency Activity” within the bloodstock industry must register with and be licensed by the BHA to act as an Agent;
 - 65.2. a set of new Agent Regulations by which all licensed Agents and all other relevant bloodstock industry participants are bound, which would be drafted in a way which reflects relevant aspects of the agent regulations of other sports.
- “Agency Activity” would be defined along the lines of acting in any way and at any time in the capacity of agent, representative, adviser or in any other way providing a service to a third party, either directly or indirectly, in any aspect of the negotiation, arrangement or execution of any kind of bloodstock sales transaction.
66. In headline terms, the Review Team envisages that the licensing system would work as follows:
- 66.1. Any individual, of any nationality, who wishes to undertake agency activity in the British bloodstock industry and meets the definition of an “Agent” (in the New Code and the Agent Regulations) would be required to register with the BHA before they can be licensed to act as an Agent in Britain – this would importantly need to include access to, and the ability to participate in, the auction processes in the sales rings (which therefore requires the co-operation of the Sales Houses).
 - 66.2. Licensing pre-conditions would include:
 - 66.2.1. a credit check and any other relevant anti-money laundering checks;
 - 66.2.2. confirmation that the Agent has read, understood and agrees to be bound by the New Code and the Agent Regulations (see further below);
 - 66.2.3. completion of mandatory online training (as to which, see further below); and
 - 66.2.4. any other qualifying criteria, such as being over the age of 18, not having been convicted of any criminal offence involving dishonesty or deception, not being an undischarged bankrupt, not being subject to any form of suspension or ban under the Rules of Racing and having in place an appropriate insurance policy.
 - 66.3. The license would be subject to an annual renewal.

- 66.4. A list of licensed Agents to be published on the BHA, ROA and Sales Houses' websites and, ideally, within all sales catalogues of the Sales Houses (and any other relevant website or publication), so that anyone could research a particular Agent and find out if they are licensed, on the basis that anyone dealing with an unlicensed Agent could themselves face disciplinary action for breach of the New Code and/or Agent Regulations.
67. The Agent Regulations, to which all Agents and other relevant bloodstock industry participants would be bound, would supplement the New Code and set out the basis for the Agent licensing regime, including the above licensing pre-conditions, the duties of a licensed Agent in the bloodstock industry, a disciplinary process for any alleged breach of the Agent Regulations and the range of sanctions available. It is recommended, given its wider jurisdiction over Agents, that the BHA investigates and prosecutes any Agent under the Agent Regulations.
68. Any licensed Agent who, after due process under the Agent Regulations, loses his/her licence would then be prohibited from conducting any "Agency Activity", including (with the enforcement support of the Sales Houses) gaining entry to their sales rings for the period of their ban/suspension.
69. The Agent Regulations should also require that all licensed Agents enter into a written agency/representation agreement with their principal. This could be in a basic short standard template form drafted and approved by the BHA and/or the BIF and would set out the key terms of the relationship, including (among other things) the term, the scope of the Agent's authority, the commission that is payable upon any sale or purchase that the Agent facilitates, the need for proper invoicing and a prohibition on payments in cash.
70. The Review Team envisages that the Agent Regulations would be structured along the following lines:
- 70.1. Parties, recitals and definitions.
 - 70.2. Purpose and scope of the Agent Regulations.
 - 70.3. Licensing process and pre-conditions.
 - 70.4. Prohibition on unlicensed Agents.
 - 70.5. Standards expected of licensed Agents.
 - 70.6. Renewal, cancellation and suspension of license.
 - 70.7. Standard terms of the agent/principal relationship.

- 70.8. Remuneration of Agents.
- 70.9. Process and sanctions for breach of the Agent Regulations.
71. The Review Team firmly believes that the Agent licensing system outlined above would go a significant way to deterring the Improper Practices being carried out by a minority of agents and other bloodstock industry participants. The combination of the licensing system, Agent Regulations and the New Code should create a significantly enhanced regulatory position, which ensures that new and existing owners will have trust and confidence in the bloodstock industry.
72. The benefits of introducing a set of Agent Regulations include the following:
- 72.1. The bloodstock industry would be regulated in the same way as other major sports in Britain in which agents play a prominent role. Football, rugby union and cricket all have some form of agent licensing/registration regulations³⁷ and regularly take enforcement action where appropriate. The GBGB rules also expressly require any agents supplying greyhounds to the person/organisation conducting the sale to be subject to a licensing system in order to access the sale, with any potential breaches prosecuted by the GBGB.
- 72.2. It applies to the entire bloodstock industry and would bind all industry participants to deal only with licensed Agents. Any Agent seeking to operate in Britain, irrespective of their nationality, could not do their job without being licensed.
- 72.3. It helps to ensure that every Agent must always operate to the highest of integrity standards for the benefit of all industry participants, or else risk losing his/her livelihood.
- 72.4. An Agent can market themselves as being a licensed Agent (akin to a “Kitemark”), which provides new and existing owners in the bloodstock industry with assurance that any such Agent has been officially checked and certified, which should also further deter them from using any unlicensed Agents.
- 72.5. The bloodstock industry is given confidence that the integrity of the industry is being monitored and maintained. Potential owners of bloodstock should feel that the Agent they instruct will be motivated to acquire bloodstock on their behalf at the best and fairest prices. Vendors will know that Agents will not seek to ignore their horses where

³⁷ Football: <http://www.thefa.com/football-rules-governance/policies/intermediaries/agent-regulations>
Rugby: https://www.englandrugby.com/mm/Document/General/General/01/32/72/25/RFURegulation8_English.pdf
Cricket: https://pulse-static-files.s3.amazonaws.com/ecb/document/2018/03/18/8e9c97c7-53e9-4172-8e12-e04088ef32ae/FCC_KSL_AgentsRegs_2018.pdf

vendors refuse to engage in an Improper Practice. New owners, upon whom the future health of the bloodstock industry relies, are more likely to be attracted to the sport of horseracing if they believe that Agents are acting with integrity and in the principal's best interests.

- 72.6. It ensures that both Agents and principal's benefit from a legally enforceable contractual relationship.
73. The Review Team acknowledges that a period of consultation with stakeholders is likely to be needed regarding the proposed enhanced regulations, in which the BIF will play a key role. Some form of transition period may be needed as part of any implementation process.
74. The Review Team also acknowledges that there may be challenges to introducing a suitably effective system of agent licensing, the principal one being securing the necessary level of practical enforcement support from the Sales Houses. For the system to work, in any meaningful way, both Sales Houses must be prepared to deny access to the sales ring for any Agent who is unlicensed or the subject of a sanction under the New Code or the Agent Regulations³⁸.
75. The Review Team believes that the concern of some industry participants that licensing Agents will drive their improper business practices underground and/or drive legitimate business practices of other bloodstock industry participants to another jurisdiction is exaggerated and baseless.
76. The same applies to those concerned that Agent licensing would not work because it would not cover Irish and other overseas agents. This is wrong because the system would apply to anyone seeking to conduct "Agency Activity" in the Sales Houses or elsewhere in Britain.
77. The Review Team did consider an alternative but, in its view, less favourable alternative to Agent licensing. This involved all Agents being required to provide an annual signed personal undertaking to the BHA that they agree to abide by the terms of the New Code. The Review Team has rejected this option because it does not really advance the current regulatory position, does not deliver the transformational regulatory reform which is needed and will have limited, and possibly no, practical impact on the Improper Practices carried out by some Agents and other participants. The threat of losing his/her Agent licence and then being refused access to any sales ring for the period of any ban/suspension, with a positive obligation on all

³⁸ The Review Team notes that the Society of International Thoroughbred Auctioneers (**SITA**) has stated that they would be prepared to recommend that any Agent receiving a sanction from the BHA would see their ban applied internationally and not just within the British bloodstock industry.

participants to report breaches of the New Code, is a far more effective way of stamping out, or at least significantly reducing, the Improper Practices.

78. Finally, the Review Team notes that there may be merit in the FBA having a role to play in the Agent licensing system and suggest that this is an issue for the BIF to consider with the FBA in due course.

Recommendation 6:

The creation and implementation by the BHA of an Agent licensing system, with any said person found in breach of the licensing conditions or conducting any “Agency Activity” without a licence being liable to specified sanctions, such as suspensions (including but not limited to exclusion from all Sales House auctions) and fines, as further detailed above.

G4. Improved Education, Communication and Awareness

79. A significant majority of participants in the bloodstock industry have limited knowledge, or in some cases no knowledge, of the regulatory framework that currently applies to the bloodstock industry, being the Rules of Racing and the Code. Similarly, the Review has found that many industry participants are not aware that some or all of the Improper Practices are breaches of the Code and may constitute criminal conduct.
80. The main reason for the lack of understanding is that industry participants have simply not had their attention properly drawn by anyone to the applicable legal duties, laws and regulations. The majority of interviewees highlighted the importance of education forming a part of the necessary package of reforms.
81. The Review Team wholeheartedly agrees that regular and appropriate education and training of participants is vital and, given the other recommendations in this Report, now is an opportune time for the industry to be re-educated as to existing and new law and regulations.
82. The lack of education has clearly facilitated the development of the Improper Practices within the bloodstock industry. It is easy to see how an industry participant can believe that an Improper Practice is legitimate if they see others doing the same and are not told otherwise.
83. The Review Team, therefore, recommends a complete overhaul in the way in which the bloodstock industry is educated and further recommends that the BHA, with support from the BIF, should take the lead in developing the resources required to do so, given their background in training throughout the broader horseracing industry.

84. There are several ways in which a system of education for the industry can be developed, including:

84.1. Publication of Regulations: As a simple starting point, the regulatory framework of the bloodstock industry should be regularly drawn to the attention of the participants in the industry and in the most user-friendly way possible. The key is that awareness of the rules is put in place using all resources available, including online and in hard copy.

84.2. Mandatory Training:

84.2.1. It is a common feature of other major sports in Britain that online training resources are developed so that participants in those sports can undertake the training in their own time. A particular focus of such training is typically around integrity issues relevant to the specific sport with audio-visual content on how to avoid breaching the rules of the sport around that issue. The training is mandatory so that participation in the relevant sport is prevented until the training is taken and passed. The participant is then required to retake the training on a regular basis, say every two years, by way of a refresher of the relevant rules.

84.2.2. The Review Team recommends the same approach is adopted in due course for all participants within the bloodstock industry (perhaps with Agents being the initial focus), with the online training to be developed by the BHA and administered by them (at least initially). The BHA would share the results with appropriate third parties, including the BIF and the Sales Houses, so that access to the industry can be managed appropriately. This is a simple and effective way to ensure the message of integrity is regularly reinforced amongst bloodstock industry participants and assists with the industry's self-regulation.

84.3. Guidance Notes:

84.3.1. The Review Team notes that even the relatively limited additional regulation that it is proposing will require some time to understand and apply to the day-to-day practices of a participant in the bloodstock industry. Whilst as detailed as possible an understanding should be the target, a suitable easily digestible summary of all the key applicable law and regulations would be a significant help to many industry participants.

- 84.3.2. The Review Team therefore envisages short, ideally one-page, guidance notes summarising the key information that a bloodstock industry participant needs to know – the important regulatory information and prohibited/unlawful practices but also, for example, key practical tips for attending the sales ring. Such guidance notes could be tailored for different categories of industry participant.
- 84.4. Sales Houses:
- 84.4.1. The Sales Houses are in a unique position to assist with the education of the bloodstock industry, particularly as they control and manage access to the sales ring.
- 84.4.2. The Review Team recommends that the Sales Houses publish the New Code in their sales catalogues and have hard and online copies available at the sales ring and on appropriate sales-related pages of their website respectively. The New Code should also be prominently displayed around the sales rings. The same communication channels could also be used in relation to lists of licensed Agents, lists of individuals subject to a sanction, the online training or the industry guidance notes.
- 84.4.3. In addition, the Review Team considers that it would be a simple and useful step for the Sales Houses (in conjunction with the BIF) to send out reminders of the key information in the days before the most important sales – around the practices that are or are not permitted, for example. Reminders of key information relating to it could also usefully be verbally communicated by the auctioneer at the start of any auction session, such as what to do if an attendee has a concern about another attendee's conduct.
- 84.5. Trade Organisations: They also have an important role in drawing their members' attention to, and assisting them with understanding, the applicable law and regulation through online and hard copy resources.
- 84.6. New Industry Participants: Once the recommended enhanced regulation and education systems are set up, the Review Team recommends that new joiners to the bloodstock industry should be provided with a pack of material, including the New Code, a list of licensed Agents, the guidance notes and a link to the online training. It has been a clear finding of the Review that the bloodstock industry is notoriously difficult to penetrate for a new industry participant and new owners in particular. Such a pack of material would provide significant assistance to them.

- 84.7. Reporting of Concerns: It is also of course important that should any bloodstock industry participant have any concerns that certain individuals are acting in breach of the applicable new regulations he/she should be clear as to how and to whom those concerns should be raised. As a starting point, the Review Team recommends use is made of Racestraight. The Review Team also recommends the setting up of a BHA-run anonymous and confidential email address as an alternative reporting channel.
- 84.8. Annual Reviews: The recommended new system of education should be subject to regular review and refinement. Education should be on a regular basis and this is an obvious task for the BIF to help to supervise. The Review Team notes that the BHA already undertakes an annual survey of integrity issues which, for the first time in 2018, included a reference to the integrity of the bloodstock industry. It would be straightforward to include a broader section on the bloodstock industry within future versions of that survey. Regular feedback to the BIF offers the chance to monitor the successes and/or failures of the recommendations of this Review, to measure the extent to which the bloodstock industry embraces the proposed changes and whether or not the Improper Practices are being significantly reduced.
85. The Review Team acknowledges that some time and cost will be required to put the recommended system of education in place. However, once established it should not be difficult to implement on an ongoing basis. The need for greater education is compelling and every participant in the bloodstock industry should be given as many different opportunities as possible to become adequately informed.

Recommendation 7:

Put in place a more effective education, communication and awareness programme for all participants in the bloodstock industry, as further detailed above.

G5. Greater Transparency in the Sales Process

86. Many interviewees cited the problem of a lack of transparency in the bloodstock industry and principally around the act of buying or selling bloodstock. The lack of transparency regarding the practices of Agents is the most common example that was cited by interviewees. Many industry participants have experienced difficulties in identifying who they are buying from, who they are selling to, who has a relationship with whom and so on. They have reported that the processes in and around the sales ring are not as transparent as they could or should be, and this assists unscrupulous industry participants to take unfair and unlawful advantage of another party for their own financial gain.

87. The Review Team does not criticise the Sales Houses for the way in which they have run their businesses and does not find that the Sales Houses have been knowingly complicit in any Improper Practices. The Review Team reiterates that many interviewees held the integrity of the Sales Houses in a high regard and some were positive about the auction process in the sales rings.
88. The Review Team acknowledges that the principal reason for the existence of the Improper Practices is the clearly ineffective system of regulation that currently exists in the bloodstock industry, but also concludes that there are certain aspects of the sales process which the Sales Houses should consider making more transparent.
89. The three principal aspects of the sales process which were most questioned in this regard by the interviewees were:
- 89.1. Publication of Reserves:
- 89.1.1. The current lack of publication of reserves means that only some bidders may have that information, which creates an opportunity for unscrupulous industry participants, particularly in relation to Bidding-Up and Secret Profiteering. For example, an experienced industry participant may be able to find out a reserve directly whereas a less experienced individual may not be able to access that information (even though it is also known to the Sales Houses). An Agent engaging in Bidding-Up or Secret Profiteering could use that information to the disadvantage of a purchaser they were acting for.
- 89.1.2. The Review Team is of the view that the system of reserves should be reviewed by the Sales Houses (with input from the BIF) and, if possible, leading to publication and harmonisation of approach across the Sales Houses.
- 89.2. Identity of the Vendor:
- 89.2.1. The fact that the relevant vendor(s) are not always clearly published also creates a greater risk of Bidding-Up and Secret Profiteering. For example, where an unidentifiable vendor and a purchaser's Agent and/or another third party collude to artificially inflate the price of a horse to the disadvantage of the eventual purchaser without detection. The potential purchaser is bidding without being aware that they are bidding against a party or parties with a financial interest in the sale price being driven artificially high and may consequently lose out significantly.

89.2.2. The Review Team can see no good reason as to why the identity of the vendor (or vendors in the case of a syndicate) could not be published by the Sales Houses more clearly prior to the relevant sale and in the sales ring itself in circumstances where Sales Houses should have this information.

89.2.3. One alternative method of dealing with this issue is to prevent the legal sale of a horse being completed within a certain period of the relevant sale taking place (a period which the BIF could agree with the Sales Houses) – to ensure that the vendor at the sale is the person, company or syndicate set out in the sales catalogue and with that vendor clearly and fully identified. That information could be re-confirmed before the start of the sales. Where the vendor is a company or syndicate, then the beneficial owners behind those entities should be identifiable to any potential purchaser should they require that information.

89.3. Identity of all the Bidders:

89.3.1. There is no doubt that the Improper Practices of Bidding-Up, Dual Representation and Secret Profiteering all become easier to engage in (and avoid detection) because the identity of bidders and who they are acting for is not transparent. For example, an Agent can benefit from the uncertainty because even if the Agent's principal is in attendance, he/she would not necessarily know that the rival bidder is being controlled by the Agent acting for them which makes the principal vulnerable to Bidding-Up and Secret Profiteering.

89.3.2. The Review Team acknowledges that consideration should be given as to where the line is drawn in relation to bidding practices and the identity of bidders, so that appropriate clarity is provided to the industry. For example, whether Bidding-Up should only be prohibited where it takes place over and above the reserve price.

90. It is not the Review Team's job to advise or tell the Sales Houses how they should operate their businesses. The Review Team simply observes that the above transparency issues and concerns exist and suggests that it would be in the best interests of the bloodstock industry for the Sales Houses to give careful consideration as to whether greater transparency in certain aspects of the sales process would benefit the whole industry.

91. The Review Team encourages all industry participants to take a step back to reflect upon the business practices of the industry more generally and whether they are sufficiently transparent to minimise the existence of Improper Practices .

92. The Review Team hopes that the Sales Houses and other relevant industry participants will work in good faith with the BHA and the BIF to agree sensible measures to improve the transparency of the sales process.

Recommendation:

The Sales Houses (and bloodstock industry as a whole) should consider whether there are aspects of their sales/auction processes which could be made more transparent to assist in deterring any Improper Practices.

Appendix 1 – Terms of Reference

Dated: 7 March 2018

Appendix 2 – The Bloodstock Industry Code of Practice

Dated: 1 January 2009