



**BEFORE THE BRITISH HORSERACING AUTHORITY JUDICIAL PANEL
LICENSING COMMITTEE**

**IN THE MATTER OF AN APPEAL BY ANTHONY
CHARLTON**

1. Mr Anthony Charlton has applied to the Licensing Committee to appeal a decision of the BHA not to extend his temporary trainer's licence issued on 30 November 2023 (the "Temporary Licence") nor grant him a new temporary training licence pending the resolution of his application for a full licence (the "Licence to Train"), via a letter of 20 March 2024 (the "Decision"). Permission to appeal the Decision was granted by the Licensing Committee pursuant to Paragraphs 103.1 and 105 of the Judicial Panels Code, on 28 March 2024.
2. The Temporary Licence having expired, in accordance with its terms, on 22 March 2024, the scope of the appeal is limited to the question of whether a new temporary licence should be granted to Mr Charlton, pursuant to Rule (B)5 of the Rules of Racing (the "**Rules**"), pending the outcome of his pending application for the Licence to Train.
3. The Rules define a "Licence" as "*a valid licence issued by the BHA in accordance with these rules*".
4. The Rules in relation to Licensing provide, in relevant part:

“(B)1 A person cannot be a Trainer, a Jockey, a Valet or a Jockey’s Agent without having a Licence permitting them to do so issued by the BHA, or equivalent licence issued by another Recognised Racing Authority.

...

(B)4 The BHA may grant, refuse, withdraw and suspend Licences under these Rules.

(B)5 The BHA may grant a temporary Licence where there is good reason for one to be issued.

...

(B)12 The BHA shall decide each Licence application on its merits.

(B)13 The BHA may:

13.1 grant or refuse a Licence;

13.2 grant a Licence with any conditions and / or restrictions attached; or

13.3 refer a Licence application to the Licensing Committee for determination.

(B)14 The BHA shall give written notice of the outcome of a Licence application to the applicant.

(B)15 Except in relation to a Racecourse Licence application, the BHA shall refer a Licence application to the Licensing Committee for determination if it:

15.1 does not consider the applicant to be a suitable person; or

15.2 believes that it would be in the interests of racing, pending the outcome of an ongoing investigation or process, to refuse the Licence.

(B)16 If a Licence application is referred to the Licensing Committee, the BHA shall inform the applicant of:

16.1 any facts relied upon by the BHA; and

16.2 the reasons why the BHA made the referral.

(B)17 The Licensing Committee shall determine a Licence application referred to it by the BHA in accordance with the Judicial Panel Code.

(B)18 The Licensing Committee may grant a temporary Licence to an applicant whilst Licensing Committee proceedings involving that person are ongoing.”

5. The Judicial Panels Code provides, in relevant part, as follows:

“109. If the Licensing Committee does give permission, it shall consider the Licence application on a de novo basis.

110. The Licensing Committee shall set directions for the fair and expeditious determination of a matter:

...

110.2 if permission to proceed with an appeal is granted; or

...

111. If necessary, the Licensing Committee may request that any person:

111.1 produce any relevant documents; and / or

111.2 attend any hearing to answer questions.

112. The Licence applicant or their legal representative must attend the hearing.

113. The Licence applicant shall be given sufficient opportunity to:

113.1 make representations and call witnesses on any matter relevant to the hearing;

113.2 provide further information with respect to any matter on which the Licensing Committee has sought clarification;

113.3 ask relevant questions of anyone appearing before the Licensing Committee; and

113.4 address the Licensing Committee.

...

115. A Licensing Committee hearing shall be inquisitorial and cross-examination shall not be permitted, unless the Licensing Committee considers it is required for the fair determination of the hearing.

116. Licensing Committee decisions shall be:

116.1 reached by simple majority; and

116.2 subject to Rule (B)25, final and binding.

117. The Licensing Committee shall give written reasons for its decision within 20 working days of the hearing, except in exceptional circumstances.

118. Licensing Committee proceedings will be conducted in private and shall be confidential, subject to paragraphs 119 and 120, and unless otherwise directed by the Licensing Committee.”

SUMMARY OF FACTS

6. As the BHA notes in its submissions of 4 April, this is an unusual appeal. The unusual character of the appeal in part at least relates to the circumstances in which the decision a) to grant the Temporary Licence, and b) not to grant a new

temporary licence, arose. It is therefore appropriate to set out the background to those matters here.

7. Mr Charlton was Assistant Trainer to Mr Milton Harris. Licensing Committee proceedings in respect of Mr Harris in the course of 2023 resulted in the suspension of Mr Harris' trainer's licence. Mr Harris's racing business operated through a limited liability company, Avon Racing Limited ("ARL"), which was wholly-owned by Mr Harris and by which Mr Charlton was employed.
8. Mr Charlton was granted a Temporary Licence to Train, subject to conditions, as an employee of ARL, on 30 November 2023. That Licence was issued under Rule (B)5 which provides that a temporary Licence may be granted by the BHA "*where there is good reason for one to be issued*".
9. The Temporary Licence conditions were set out in the BHA's letter of 30 November 2023, which stated that the Temporary Licence "*will only be valid up to the date a decision is issued as a result of the licensing proceedings involving [Mr Milton Harris] and will be reviewed at that point*". The "*good reason*" for the grant of the Temporary Licence was not expressly described in that letter.
10. On 31 January 2024, the BHA wrote to Mr Charlton to advise him that the Licensing Committee had published its decision concerning Mr Harris, and to advise him that should no appeal be filed by Mr Harris, the Temporary Licence would expire on 28 February 2024. The same letter advised Mr Charlton that if he wished to apply for a Licence to Train in his own right, he would need to apply "*in the usual fashion*".

11. Mr Harris initially filed, but then withdrew, an appeal against the decision of the Licensing Committee with respect to his case. The withdrawal of the appeal took place on 14 February 2024.
12. On the same day, Mr Charlton applied to the BHA for an extension of his Temporary Licence until the end of the National Hunt season (30 April 2024), on the primary basis that as a result of the decision of the Licensing Committee with respect to Mr Harris, the position of ARL would need to be addressed such that it would either be able to continue to trade, or to wind down in a controlled manner.
13. On 15 February 2024, the BHA responded to that request to state that the BHA position was that it *“may be appropriate to extend [the Temporary Licence] until Friday 22 March 2024. The final runner under [the Temporary Licence] would be on Friday 15 March 2024. The additional 7-day period is designed solely to allow owners an opportunity to move their horses to another yard while the horses remain under the care of a licensed trainer”*. The letter set out further conditions for the continuation of the Temporary Licence. It noted that breach of any of the conditions would result in the BHA withdrawing the Licence and stated that should such withdrawal occur a right of appeal would be available to Mr Charlton pursuant to Rule (B)19. The letter concluded *“we do not intend to engage in negotiations either on the length of the proposed extension or the proposed conditions. Should you reject the proposal outlined above then [the Temporary Licence] will expire on 28 February 2024”*.
14. On 26 February 2024, Mr Charlton made an application for a Licence to Train.
15. On 28 February 2024, the BHA confirmed the extension of the Temporary Licence to 22 March 2024. The letter of confirmation provided that the

Temporary Licence was “*granted in order to bring to an orderly conclusion your status as a temporarily licensed trainer*”. There was no reference in that correspondence to the application by Mr Charlton for a Licence to Train, although it had been made two days previously.

16. On 7 March 2024 the BHA wrote to Mr Charlton in respect of his application for a Licence to Train, setting out various matters which required further action or information from him in order for that application to be considered. The letter of 7 March stated: “*In order to manage expectations, when applying for a new licence the BHA requires that you must submit the application at least two months before the date on which the licence will be required, this is set out (sic) clearly in the Guidance notes, which I have attached for your convenience. At present the application that we have received from you is not deemed complete by the BHA and therefore requires you to submit all of the requested documentation to the Supervision Team in order that they can move the application forward.*”
17. On 11 March 2024, Mr Charlton’s solicitor sought confirmation in writing of the BHA’s position with respect to the status of the Temporary Licence and the application for a Licence to Train, stating that there seemed to be an issue regarding the period between the end of the Temporary Licence and the result of the application for a Licence to Train.
18. The BHA responded to that request via an email of the same date, which stated, in relevant part, that: “*Mr Charlton has filed an application for a full licence. As you can see from the attached letter of 7 March that application requires considerable input from Mr Charlton before the BHA are in a position to assess same. Notably, and as was previously made clear in our correspondence, Mr*

Charlton must complete the requisite training modules. Of course, the company that is to employ him will need to be identified (unless Mr Charlton wishes to train in a personal capacity which I understand he does not). As was stated in my letter of 24 February the licensing process will take time and I do not know on what basis Mr Charlton seems to have come to believe that his temporary licence would continue to be extended until such a time as he is issued a full licence. I am though concerned that this seems to be the case and, based on phone calls and emails received by certain of my colleagues today, that owners seemed to have formed the same impression. Mr Charlton's application will be assessed on the same basis as any other applicant."

19. On 14 March 2024, Mr Charlton's solicitors wrote to the BHA in the following terms, so far as material: *"Mr Charlton has been training under a temporary licence since the end of last year and has now made an application for a full trainer's licence. My experience of such applications is that, even with a fair wind, they take many weeks and usually months. Mr Charlton has asked for an extension of his temporary licence pending the outcome of his application; but the BHA says that it will not extend Mr Charlton's temporary licence pending the consideration of and decision on Mr Charlton's full application. The BHA has not yet, so far as I can see, provided any explanation as to why it is appropriate to refuse to extend the temporary licence in light of Mr Charlton's full application and it does not appear that the BHA considers it necessary to do so. Mr Charlton now wishes to challenge urgently the BHA's refusal to extend his temporary licence (or even to consider the extension of his temporary licence) in light of his full application for a trainer's licence ... The likelihood is that there will be no existing yard by the time that the result of his full application is known unless the temporary licence is extended. It appears to me that the Licensing Committee has jurisdiction to adjudicate on this matter under the Rules of*

Racing. Rule 15 states that the BHA shall refer a Licence application to the Licensing Committee for determination if (15.1) it does not consider the applicant to be a suitable person or (15.2) it believes that it would be in the interests of racing, pending the outcome of an ongoing investigation or process, to refuse the Licence. Given that a Licence is defined as a “valid licence issued in accordance with these Rules” and that Rule 6(B)¹ allows the BHA to grant a temporary licence, it appears that the BHA’s decision to refuse Mr Charlton’s temporary licence is caught by Rule 15.2 because the BHA is refusing to grant a temporary Licence pending the outcome of the application process.” Mr Charlton’s solicitors therefore sought confirmation by 4pm on 15 March 2024 as to whether the BHA agreed that the extension of Mr Charlton’s application should be referred to the Licensing Committee either under Rule (B)15 or some other provision of the Rules of Racing.

20. By a letter of 15 March 2024 the BHA responded, in relevant part, as follows:
- “The BHA have previously explained that the ‘good reason’ that prompted the BHA to issue your client a temporary licence to train in accordance with Rule (B)5 no longer exists. That good reason was to allow the training business of Avon Racing Limited [‘ARL’] [to] continue to trade despite the suspension of the Training Licence formerly held by Mr Milton Harris. That good reason no longer exists, and extensions granted since have been to allow for an orderly wind down of the training business of ARL. The BHA have identified no good reason to further extend the temporary licence held by Mr Charlton which must now expire as Mr Charlton is currently being allowed to compete on unequal terms with all trainers, who are properly qualified and have been assessed as suitable to hold a Training Licence, on the basis of circumstances that no longer exist. ...*

¹ I believe this should be treated as a reference to Rule (B)5

The BHA consider it clear that the 'process' referred to in Rule (B)15.2 is a disciplinary process. More pertinently the BHA has not refused your client a temporary licence on the basis that it is in the 'interests of racing to do so'. The BHA have granted your client a temporary licence (later extended for an appropriate period) while good reason existed to do so. As that good reason no longer exists the licence must expire. The BHA have no obligation to refer your client's Licence application to the Licensing Committee and do not intend to do so. ... The BHA does not consider that there is a decision of the BHA that your client is entitled to appeal, but it is a matter for your client to identify the reasons he should be granted permission to appeal on whatever basis he believes an appeal exists. It is for the Licensing Committee to decide a request for permission to appeal. If any such request is made the BHA will seek to oppose the request".

21. Mr Charlton through his solicitors applied to the BHA on 19 March 2024 to request either an extension of the Temporary Licence or the grant of a new temporary licence as a matter of urgency. That letter referred to the content of the BHA's correspondence of 15 March, contested the BHA's position, and set out the "good reasons" on which Mr Charlton relied for the continuation of the Temporary Licence, or issuance of a further temporary licence under Rule (B)5.
22. The BHA responded via a letter of 20 March 2024 which stated: "*The BHA will not be further extending the temporary trainer's licence (or issuing a new temporary licence) held by your client. As we have stated on a number of occasions the 'good reason' for which the licence was issued no longer exists and has not existed for some time. That good reason was to allow the training business of ARL to continue to trade pending the Licensing Committee decision*

concerning Mr Harris. Extensions granted since have been granted to allow for an orderly wind down of that training business”.

23. Mr Charlton applied for permission to appeal on 21 March 2024, in respect of the decision communicated by the letter of 20 March 2024. Permission was granted (following the presentation of written submissions by both the BHA and Mr Charlton) on 28 March 2024.
24. Written submissions in relation to the appeal were filed by the BHA on 4 April 2024, and by Mr Charlton on 9 April 2024. Further submissions were filed by the BHA on 10 April 2024.
25. In addition, Mr Charlton supplied a copy of correspondence which had been sent by him to the owners on 30 March which described the status of his application for a Licence to Train.

MR CHARLTON’S POSITION – INITIAL SUBMISSIONS

26. Mr Charlton submits that the Licensing Committee and/or the BHA should treat an application for the grant of a temporary licence on the basis of assessing whether “*good reason*” exists as of the date of the application. The BHA’s insistence that the only “*good reason*” for the grant of the Temporary Licence (the need to preserve the position pending the outcome of the Licensing Committee proceedings against Mr Harris) has ceased to exist following the termination of those proceedings is, on Mr Charlton’s case, misplaced. On Mr Charlton’s case, the application for a Licence to Train by Mr Charlton made on 26 February 2024 “*presents an entirely new context to the question of whether there is “good reason” to extend Mr Charlton’s temporary ability to train*”.

27. Mr Charlton has set out the grounds for the issuance of a further temporary licence pending the outcome of his application for a Licence to Train in his solicitors' correspondence of 19 and 21 March 2024. These may be summarised as:

- a. The business in respect of which Mr Charlton was granted the Temporary Licence is *"a commercially successful yard which turned over approximately £1.1 million last year... [and] has excellent facilities. There is every chance that these facilities will be lost to racing in a part of the country where there are few trainers if the yard is forced to close"*.
- b. Mr Charlton's length of experience in racing, including his previous period as a licensed trainer and his assistant trainer roles for three trainers including Mr Harris;
- c. Mr Charlton's established relationships with the owners at the yard, many of whom had *"confirmed that they will keep their horses at the yard in the event that Mr Charlton is granted a licence"*. Accordingly, *"there is every reason to believe ... that the yard will go forwards successfully if Mr Charlton is able to take over as permanent trainer"*.
- d. Few if any of the owners will keep their horses at an unlicensed yard. It follows that *"[i]n the event that Mr Charlton is ultimately granted a full trainer's licence but not allowed to train in the interim then it seems inevitable that his opportunity to take over at he yard as trainer with new financial backing will have passed"*, because the existence of a prohibition on the owners entering their horses for races will likely result in the horses being lost to the business.
- e. If the yard is forced to close then that will result in job losses for the 20 staff and for Mr Charlton himself. Given the limited number of opportunities for work

in racing in the area, it is likely that both Mr Charlton and the staff would have to move to a different part of the country in order to continue to work in racing.

- f. Mr Charlton has set up a new company (Tony Charlton Racing) to which the lease of the yard will be transferred (subject to the grant of a licence, as Mr Charlton's solicitors confirmed in their further submissions of 9 April).
- g. Mr Charlton has financial backing for his new venture of £100,000 which is more than the minimum threshold required for the grant of a Licence to Train, from a source previously unconnected with ARL, Mr Harris or Mr Nic Allen ("Mr Allen"), who was a director of ARL for a period during the pendency of the Temporary Licence.
- h. There has been no finding of misconduct against Mr Charlton (by contrast with the findings made against Mr Harris). *"There has never been any suggestion that Mr Charlton has ever behaved in a way which casts doubt over whether he is a fit and proper person to hold a trainer's licence"*.
- i. Mr Harris will have no involvement in Mr Charlton's yard. Mr Charlton is *"more than willing to agree to a condition that [Mr Harris' horses, which have either been leased to ARL or transferred into the ownership of Mr Allen] be removed from the yard if not sold to third parties unconnected to Mr Harris in short order"*.
- j. Mr Charlton's application for a Licence to Train stands a good prospect of success.
- k. The BHA's stated concern that to grant Mr Charlton a further temporary licence would *"give him a competitive advantage over other trainers"* has *"not been explained and in any event is plainly nonsensical"*.

28. Mr Charlton accepts that if a Licence to Train is ultimately refused, the consequences with respect to closure of the business, and the transfer of horses and employees, will follow as the yard will have to close at that time. However, if a Licence to Train is ultimately granted to Mr Charlton (but there is no interim temporary licence in place) that will have resulted in the needless destruction of a thriving yard and an asset to racing.
29. Mr Charlton therefore submits that there is “*good reason*” for the Licensing Committee to find that a temporary licence should be granted to Mr Charlton pending the outcome of his application for a Licence to Train.

THE BHA’S POSITION – INITIAL SUBMISSIONS

30. The BHA opposes Mr Charlton’s application for a new temporary licence for the following reasons.
31. The BHA points to the very limited circumstances in which Temporary Licences have previously been granted by the BHA, and states that Mr Charlton is at present the only trainer operating under a licence issued under Rule (B)5 which has been granted for a reason other than the death of the licence holder.
32. The BHA sets out in some detail the issue which arose as a result of the Licensing Committee proceedings in respect of Mr Milton Harris, including the risk that, his licence having been suspended pending the outcome of the proceedings in his case, the business of ARL could potentially have failed in circumstances in which the outcome of those proceedings may have resulted in the restoration of Mr Harris’s licence, thereby causing “*obvious and perhaps irreparable damage ... to him and to his training business*”. The grant of a

Temporary Licence to Mr Charlton was intended to “*avoid this potential damage*”.

33. Once the outcome of Mr Harris’s Licensing Committee proceedings was known, the BHA submits, Mr Charlton should have turned his attention to the submission of an application for a Licence to Train, on 31 January 2024. His delay in the submission of that application has caused at least some of the difficulty which has arisen.

34. The BHA argues that there is no “*good reason*” as of now to extend or renew the Temporary Licence granted to Mr Charlton, and addresses in more detail the matters which were relied upon by Mr Charlton in the letter sent to the BHA on 19 March 2024 in pursuit of an urgent application for extension or a fresh grant of a Temporary Licence. In short, the BHA characterises these matters as being properly relevant only to the question whether Mr Charlton’s application for a Licence to Train might succeed, rather than demonstrating that there is “*good reason*” to extend or grant a fresh Temporary Licence. Specifically, the BHA makes the following points by way of response to the matters on which Mr Charlton relies in support of the “*good reason*” to grant a further temporary licence:
 - a. The business was run by Mr Allen from 5 December 2023 to 24 March 2024 and not by Mr Charlton. While access to appropriate training facilities is a relevant consideration for the grant of a Licence to Train it is not a “*good reason*” for the grant of a temporary licence.

 - b. Mr Charlton’s length of experience and prior positions in the racing world is not a “*good reason*” to issue a temporary licence.

- c. Mr Charlton's pre-existing relationships with owners, and the indicated willingness of the owners to continue to keep their horses at the yard, such that it would be successful in the event of Mr Charlton being able to take over *"goes to the question of whether Mr Charlton will meet the requirements for the minimum number of horses that must be in training and whether he can demonstrate the likely financial soundness of his proposed training business... It is certainly not a "good reason" to issue him a temporary Licence under Rule (B)5"*.
- d. The converse position – i.e. the risk that the horses will leave the yard in the event that there is no temporary licence, might, *"at first glance"*, *"be considered akin to the reason Mr Charlton was issued a temporary Licence on 30 November (to protect the training business of ARL) or to a situation where a temporary Licence is issued to a person on the death of a former Licence holder to allow a business continue to trade while an application for a full Licence is progressed (or the training business wound up)"*. However, *"on closer inspection"* the BHA rejects this as a "good reason" for the issuance of a temporary Licence. That is on the basis that *"a viable business plan would accommodate periods when horses cannot run. It is not "commercially naïve"... to anticipate, if Mr Charlton has the support of owners as he claims, that owners may be willing to keep their horses at his yard while the outcome of his full Licence application is awaited"*. The BHA goes on to make two further submissions:
- i. *"It is also possible that owners might temporarily move their horses to another trainer and move back to Mr Charlton should his application be successful. The effect of Mr Charlton being without a Temporary Licence may not prove to be as damaging as Mr Charlton seeks to portray it"*;

- ii. The hope that Mr Charlton might attract owners previously connected with the training business of ARL is not good reason to renew the temporary licence, because ARL has no future as a training business. The BHA draws a distinction between the issuance of a temporary licence to enable an existing training business to continue to trade, and permitting a proposed new training business to *“benefit from goodwill built up by ARL and to begin trading with benefit of a licence without it having been assessed under normal licensing procedures.”* This *“goes too far”* and the BHA considers that the grant of a temporary licence for this reason will have given Mr Charlton an unfair advantage over all applicants for a Licence who are assessed in the usual fashion and without the benefit of a temporary Licence to allow them to attract owners or have runners under the Rules while their application is assessed.

- e. The potential impact on staff, the BHA accepts, is the strongest argument for issuing a new temporary licence. However, the BHA submits that it is not “good reason” to do so. That is because the staff are currently employed by ARL, which *“has no future”*. If Mr Charlton were to succeed in his application for a Licence to Train, *“then there is a possibility that staff may be able to remain employed at The Beeches premises or to be employed in the future by Tony Charlton Racing Ltd. However, the proposed training business of Mr Charlton must be assessed on its own merits and without an unfair advantage being conferred on the business by granting Mr Charlton a further Temporary licence to support his proposed business”*. The BHA submits that the fact that there are staff employed by ARL at the yard now cannot justify the issuance of a temporary licence.

- f. Neither the willingness of the landlord to lease the premises to Mr Charlton's new entity, nor the stated level and source of funding for that entity, are "*good reason*" for the grant of a new temporary licence. While in this particular case the question of establishing that the new business will be "*free of the influence of Mr Harris*" will be "*an important element*" of the consideration of the BHA with respect to the application for the Licence to Train, is it not relevant to the question of the grant of a temporary licence.
- g. The BHA contests the statements made with respect to the question whether there are doubts as to whether Mr Charlton is a fit and proper person to hold a trainer's licence. It addresses matters of suitability later in its submissions but asserts that in any event, even if Mr Charlton's submissions were true, they would not amount to a "*good reason*" to issue a temporary licence to Mr Charlton.
- h. The claimed lack of future involvement of Mr Harris and Mr Charlton's expressed willingness not to retain Mr Harris' former horses at the yard goes to the same matter as that set out at sub-paragraph (f) above: freedom from influence. It is not a good reason for the grant of a temporary licence.
- i. The assertion that Mr Charlton's application stands a good prospect of success is "*incorrect*". The BHA submits that, without prejudging the application, "*the reality is that he might be said to be in a more difficult position than the majority of applicants*". That is not a good reason to issue a temporary licence.

35. The BHA's position is that if the Licensing Committee finds that there is a "*good reason*" for the grant of a new temporary licence, it must be satisfied that it is also in all the circumstances appropriate to issue such a licence. In order to do that, (and having made some points as to the need for various technical

information to be assessed by the BHA for the purpose of the application for a Licence to Train), the BHA submits that the Licensing Committee “*must be satisfied, that there are no concerns regarding the overall suitability of the person to whom such a licence is to be issued. In Mr Charlton’s case there are obvious and profound questions regarding his suitability identified by the Licensing Committee and that were not live concerns when Mr Charlton was first granted a temporary Licence. The BHA submit that these concerns mean that it would be wholly inappropriate for Mr Charlton to be issued a new temporary Licence*”.

36. The BHA acknowledge that Mr Charlton was granted extensions of his former temporary Licence despite BHA knowledge of the suitability concerns set out below. However, the short extensions granted since the decision in the proceedings concerning Mr Harris were granted “*solely to allow ARL to wind down in an orderly manner*”. The BHA submits that it has been “*absolutely clear since 31 January 2024, a matter of days since the decision in the Licensing Committee proceedings concerning Mr Harris issued, that it is concerned about the suitability of Mr Charlton to hold a Licence to Train*”.

37. The submission refers to the matters stated in the letter of 31 January to Mr Charlton concerning the then-impending expiry of the temporary licence, which stated this: “*in view of the decision, no application which involves you training for a company in any way connected with Mr Harris will be considered. Your suitability to train will also be carefully assessed, taking into account the findings of the Licensing Committee concerning your evidence in the Harris case*”. The most important aspect of this decision, for the purposes of the Appeal, the BHA submits, are the findings of the Licensing Committee regarding Mr Charlton at ¶¶ 122-126. In short, the BHA submits that the Licensing

Committee found that “*Mr Charlton gave an inaccurate account to them in an attempt to support Mr Harris in his bid to retain a Licence*”. The BHA submits that there are other aspects of the decision which relate to Mr Charlton, and which must be explored by the BHA as part of assessing his suitability. Broadly, Mr Charlton was assistant trainer to Mr Harris for 5 years, seemingly never raising issue with the behaviour of Mr Harris, and in fact offering evidence in support of him during investigations made by the BHA and at the Licensing Committee Hearing.

38. The BHA therefore submits that the Licensing Committee should reject Mr Charlton’s request for a Temporary Licence on the basis that there are serious doubts around Mr Charlton’s suitability which make the request “*untenable*”.

MR CHARLTON’S REPLY SUBMISSIONS

39. Mr Charlton contests the approach which has been taken by the BHA to assessment of the factors which he has submitted in support of his application for a temporary licence.
40. The position, on Mr Charlton’s submissions, is that the Licensing Committee must determine whether there is “*good reason*” to grant a temporary licence to Mr Charlton on the basis of a holistic examination of the factors in their context, and not to assess each factor individually as to whether it constitutes “a” good reason for the grant of the temporary licence. Nothing in the Rules supports the BHA’s submission both that the Licensing Committee is required to identify “a” good reason, and that it should consider whether it is appropriate to grant a temporary licence in any event (i.e. even if there is “a” good reason). Mr Charlton submits that this is an attempt to “*draw a line in water*”.

41. Mr Charlton submits that the approach should be to consider, in the particular context in which the application is made, whether the positives or opportunities in granting a temporary licence to Mr Charlton outweigh the negatives or risks of doing so, in all the circumstances.
42. In terms of the BHA's position that none of the factors on which the application for a temporary licence is premised are either relevant, or sufficient, to support the application, Mr Charlton has responded to each such matter, to clarify its context for the purposes of the temporary application. These are summarised below:
- a. The underlying point with respect to the present status of the yard as a successful operation is that it may be lost to racing if the application for a temporary licence is unsuccessful.
 - b. Mr Charlton's length of experience in racing is relevant to the prima facie prospects of success of the application for a Licence to Train; Mr Charlton's experience is a positive compared to an applicant who has had no experience.
 - c. As to the third and fourth points raised, with respect to the willingness of the owners to continue to have their horses trained by Mr Charlton, and the likely loss of the horses to other yards if no temporary licence is granted, Mr Charlton argues that the position which is taken by the BHA (i.e. that the owners might stay even if there is no temporary licence, and that reliance on the pre-existing business of ARL places Mr Charlton at an unfair advantage) is inconsistent with the approach which was taken by the BHA to the original grant of a temporary licence to Mr Charlton to protect the training business (of Mr Harris) from suffering "*obvious, and perhaps irreparable damage*" pending the outcome of the Licensing Committee proceedings against him. Mr Charlton submits that "*the distinction between an "established" training business and Mr Charlton's*

situation is entirely artificial. The BHA does not license limited liability vehicles through which trainers operate (primarily in order to avail themselves of the benefit of limited liability) – it licenses individual trainers who are then generally employed by the limited liability vehicle through which they trade. The suggestion ... that it was through a sense of concern as to the prospects of ARL (a company entirely owned by Milton Harris) that caused the BHA to grant Mr Charlton a temporary licence in the first place cannot be correct. It is submitted that what matters here is the yard and the trainer of that yard and not the corporate vehicle through which the yard trades”.

- d. The BHA’s artificial approach and its reliance on the undesirability of placing Mr Charlton in a position of advantage relative to other applicants for a Licence to Train is premised on a comparison (which in Mr Charlton’s submission is inappropriate) between the position of Mr Charlton and that of a first-time applicant with a prospective (but not actual) business. Mr Charlton is seeking to keep a viable show on the road by taking over the yard, staff and horses in order to prevent the yard from being lost to racing. That is a potentially unique set of circumstances which are relevant to the consideration of whether there is “good reason” to grant a further temporary licence.
- e. The argument above applies with particular force to the potential job losses at the yard in the event that no temporary licence is granted. The BHA dismisses that risk as a “good reason” for the grant of a temporary licence on the basis that since ARL “has no future” those jobs (with ARL) are going anyway and therefore it is reasonable for the staff to await the outcome of the application for a Licence to Train and potentially to join Mr Charlton’s business in due course. Mr Charlton submits that that is a callous conclusion and one which should not be accepted by the Licensing Committee.

- f. Mr Charlton submits that the willingness of the landlord to transfer the yard to Tony Charlton Racing, and the existence and value of the funding for that business, are both relevant factors supporting the temporary licence application, which the BHA would accept if it was approaching the exercise with an open mind.
43. As to suitability and the issues relating to Mr Harris, Mr Charlton submits, in summary, that the various matters on which the BHA relies place the BHA itself in a very difficult position. He submits that “[t]he regulator plainly does not want at this stage to say that Mr Charlton is not a fit and proper person to hold a licence because it has confirmed that it is considering Mr Charlton’s application with an open mind and because, having not yet even interviewed Mr Charlton, it plainly does not have the material necessary to make any decision. However it does not take a great deal of reading between the lines to realise that the BHA does not want to Mr Charlton to have a temporary licence because it believes that Mr Harris will have some kind of control over him.” The effect of the BHA’s submissions is that it is trying to argue both that the outcome of the application for a Licence to Train is uncertain and has not been predetermined and that Mr Charlton is in any event not a suitable person to hold a temporary licence. These positions are not mutually sustainable. If the BHA accepts that the outcome of Mr Charlton’s application for a Licence to Train is not yet determined, then he should be able to hold a temporary licence pending a determination on that application (which would terminate in the event that the application is unsuccessful following proper consideration of it).

THE BHA'S FURTHER SUBMISSIONS

44. The BHA limits its additional submissions to two points.
45. First, the BHA makes remarks as to the extent to which Mr Charlton has been forthcoming either with the owners or the staff at the yard as to the status and prospects of his application for a Licence to Train. The BHA does not allege that Mr Charlton has misled either group but alleges that he has failed to communicate promptly the fact that there was no guarantee that the temporary licence would be extended. The BHA correctly notes that the correspondence which it has received from owners supports the position of Mr Charlton and expresses support for the proposal that he should be permitted to continue to act as trainer for their horses in the future.
46. Second, the BHA raises a concern that Mr Richard Adkins, who appears to have been assisting Mr Charlton in his application for a Licence to Train, has copied Mr Harris on the correspondence between himself and Mr Charlton. This is a matter which supports the BHA's concerns as to Mr Charlton's ability to train "*unencumbered by Mr Harris and free of his influence*". The possible influence of Mr Harris on Mr Charlton's activity has been cited by the BHA as being relevant to the application for a Licence to Train in a number of ways: "*It relates to the question of whether his application is truly independent of Mr Harris. It relates to Mr Charlton's understanding of the need for real change at the yard to support him in demonstrating suitability in all respects to be licensed. It relates also to his commitment to, and understanding of the requirement on him, to provide a safe and appropriate working environment should a Licence be issued to him*". These are all matters which must be explored by the BHA with Mr Charlton and that it would be "*wholly inappropriate*" for a temporary licence to

be issued while such concerns are live. That submission was made prior to the BHA becoming aware of Mr Adkins' having involved Mr Harris in the process of responding to the BHA's queries relating to Mr Charlton's application for a Licence to Train.

47. The BHA submits that the grant of a new temporary licence to Mr Charlton would *"necessarily involve disregarding the real possibility that Mr Harris, considering he appears to be involved in some capacity in the application, intends to be involved in some capacity in the proposed training business of Mr Charlton, or exercise control as a shadow director of the operation"*.

ANALYSIS AND DECISION

48. As both the BHA and Mr Charlton accept in their respective submissions, the question which has arisen concerning the grant of a further temporary licence to train to Mr Charlton has arisen in unusual and challenging circumstances.
49. It is important first of all for the Licensing Committee hearing this appeal not to go further than is required by the Rules with respect to the question of whether a temporary licence should be granted. This Licensing Committee is not determining Mr Charlton's application for a Licence to Train. Its function is limited to a determination whether, in the circumstances, a further temporary licence should be granted to Mr Charlton pending the outcome of the assessment by the BHA of his application for a Licence to Train.
50. On the BHA's case, the position is that, save in very limited circumstances, a temporary licence under Rule (B)5 should not be granted. The *"usual"* scenario to which they point is one in which the licence holder has died, and the purpose of the grant of the temporary licence is to *"allow a business [to] continue to*

trade while an application for a full Licence is progressed (or the training business wound up)". On the face of it, it is somewhat challenging to distinguish that situation from one in which the licence holder has had his licence withdrawn (at least so far as concerns the effect on the underlying business).

51. At its heart, the question of "*good reason*" is one which requires the BHA, or in this case the Licensing Committee, to consider whether the preservation of the business for a period of time is a "*good reason*" to issue a temporary licence, or whether it is not necessary for such a temporary licence to be issued. While it is clear from the BHA's submissions that it considers such temporary licences to be the exception rather than the norm, the reality is that the BHA does grant, and has in this case already granted, temporary licences for the purpose of preservation of the business being carried on at the yard. In principle, therefore, the preservation of an ongoing business from "*obvious and perhaps irreparable damage*", to use the BHA's own phrase, is self-evidently a "*good reason*" within Rule (B)5. Based on the submissions of Mr Henry KC for the BHA, the duration of such temporary licences is expected to be short, although he cited examples of temporary licences having a duration of 7 or 12 months in the course of his submissions.

52. Rule (B)5 requires the BHA or the Licensing Committee to go beyond the mere establishment of a "*good reason*". As the language of the Rule makes clear, it is a discretionary decision of the BHA or the Licensing Committee whether to grant a temporary licence where such good reason is established. In other words, a good reason is required, but it is not, by itself, enough, to justify the grant of a temporary licence.

53. In the exercise of its discretion, the BHA or the Licensing Committee must therefore consider the other relevant factors in the balance to establish whether in all the circumstances it is appropriate to grant a temporary licence. That exercise necessarily involves consideration of the sorts of concerns which the BHA has raised in relation to the capacity, and/or suitability, of Mr Charlton to hold such a licence.
54. In brief, and as presented at the hearing by Mr Henry KC on behalf of the BHA, the core concerns with respect to Mr Charlton's application are:
- a. That he may not have the capability to manage the business on his own (which is the basis on which the application for the Licence to Train has been presented);
 - b. That he has involved in the process of progressing his application for a Licence to Train Mr Adkins, who has copied his correspondence to two email addresses which are on the face of it connected with Mr Harris, such that there is a concern that Mr Harris remains involved in the business behind the scenes;
 - c. That the potential involvement of Mr Harris in the business would mean that Mr Charlton is not "*his own man*" and that this would be unacceptable in view of the Licensing Committee's findings with respect to Mr Harris; and
 - d. That Mr Charlton's own conduct before the Licensing Committee, and their findings referred to above, give rise to sufficiently serious concerns about his suitability as a licence holder to prevent the grant of a temporary licence.
55. In the course of the hearing, Mr Charlton through his counsel, Mr Renteurs, submitted that:
- a. The involvement of other advisers in the course of preparation of the licence application is not unreasonable;

- b. Mr Adkins had copied what are understood to be the office/administrative email addresses of the business of ARL and was not involving Mr Harris in that process. Moreover, since the emails in question had been supplied openly by Mr Charlton to the BHA there was no evidence that there was any underhand involvement of Mr Harris in the process;
 - c. Mr Harris has returned to the yard property since the expiry of the Temporary Licence, since as the premises is now not licensed he is not barred from it. Although he has been at the premises, Mr Charlton has had no contact with him.
56. The Licensing Committee takes very seriously the expressed concerns of the BHA as to Mr Charlton's suitability to hold a licence. As the BHA has stressed, however, that is a matter for consideration by the BHA with respect to the application for a Licence to Train. The Licensing Committee is not in a position to, nor should it, determine the question of suitability in the context of an application pursuant to Rule (B)5. It suffices to say that these matters have been taken into account in the consideration of the application of the Committee's discretion. We are not persuaded that the BHA is correct in its submission that we must be satisfied that there are no suitability concerns in order to proceed under Rule (B)5. We accept that such concerns form part of the balancing exercise to be undertaken by us with respect to the exercise of our discretion.
57. The distinction which the BHA draws between the situation in which the grant of a temporary licence would be appropriate and that in which it would not is entirely rooted in the specific facts of this case, in the view of the Licensing Committee. In a case where a training licence holder died, an application to continue the business by his or her assistant under a temporary licence would

place the temporary licence-holder in the same sort of advantaged position relative to other applicants for a Licence to Train as would be the case here for Mr Charlton (a primary basis for the objection of the BHA to the appeal). In the “*acceptable*” scenario, the business would be able to employ as licensed trainer someone who was appointed to permit the business to trade while their application for a full Licence is progressed. The difference between that scenario and the present one lies in the need for a new corporate vehicle for the business to be established and to take a transfer of the horses, premises and staff of ARL, and in the need for there to be certainty that Mr Harris will not operate as a “*shadow director*” of the business (he having been reappointed as a director of ARL shortly after the expiry of the Temporary Licence).

58. There is a paradox in the position taken by the BHA that no temporary licence should be granted to Mr Charlton in view of the risk of Mr Harris’ involvement: for so long as the Temporary Licence was in place, the conditions of that Temporary Licence prevented Mr Harris from being at the licensed premises, and from being a director of ARL. The situation has only changed because the Temporary Licence expired.
59. In the view of the Licensing Committee, the grant of a temporary licence to an individual in the position of Mr Charlton requires, as his solicitors have argued, a holistic examination of the situation, including of the likely consequences for the business if such a temporary licence is not granted.
60. Both Mr Charlton and the owners who have contacted the BHA have made clear that if no temporary licence is granted, they will have to explore moving their horses to other yards, which they are reluctant to do. While the BHA has argued that such owners might return their horses to Mr Charlton in the event that a

licence was to be granted to him, the owners have clearly stated their preference for the status quo to be preserved pending the outcome of the licence application. It is apparent that horses have already been lost to the business as a result of the expiry of the Temporary Licence, and – given the uncertainty as to the further duration of the application process for the Licence to Train – it seems to the Committee more likely than not that more horses will be removed in the event that no temporary licence is in place.

61. As to the employees, the BHA itself recognises that the potential risk to them of losing their jobs (and of having potentially to move to other areas of the country) is the strongest argument in favour of the grant of a temporary licence.

However, because ARL is to be wound down in any event, the BHA states that this is not a good reason in the particular circumstances of the case. We disagree. A transfer of the business to a new company but with all of the other elements of the set-up being preserved must be a better outcome for the staff than either having to seek work elsewhere or, as the BHA posited at the hearing, hoping that another trainer might seek to acquire the facilities at The Beeches. We note in this regard the concerns as to the position of the staff which were expressed by NARS to the BHA in March 2024 which state in terms that “*if the yard is unlicensed the staff will lose their jobs*”, as well as noting that job opportunities in the local area are “*very limited*”.

62. It is clear from the previous actions of the BHA during the period of the Licensing Committee proceedings against Mr Harris that the BHA appreciated that the loss or suspension of a training licence on an ongoing business could cause “*obvious and perhaps irreparable damage*” to that business. Here the BHA has sought to distinguish the present situation from that which obtained with respect to Mr Harris because the subject business is, technically, a new

business under Mr Charlton, rather than being a continuation of the business of ARL. That, however, in the view of the Licensing Committee, is a distinction without a difference since all that is currently being contemplated is the continuation of the business of the existing owners with the existing staff at the yard.

63. The evidence that is available to us at this stage is limited. However, it cannot be right, as the BHA argues, that the Licensing Committee can find that the application for a temporary licence is untenable based on concerns as to Mr Charlton's suitability in circumstances where the establishment of his suitability is expressly a matter which the BHA has yet to determine. Set against the unknown outcome of that inquiry is the likely consequence of a refusal of the application for a temporary licence in terms of the departure of the horses and staff and the surrender of the premises, which will mean that, even if Mr Charlton's application for a Licence to Train is ultimately successful, the intended purpose of that Licence (i.e. to service the existing owners and retain the staff of ARL) may well be frustrated.

64. In the view of the Licensing Committee, the welfare of the horses, the staff, the interests of the owners, and the continuation of the business, are all matters which point in favour of the grant of a temporary licence. These matters outweigh, for the purposes of the application of Rule (B)5, the concerns which have been raised with respect to Mr Charlton's suitability. The Licensing Committee stresses that we are not pre-determining that issue, or indeed making any findings on it, as it is a matter for the BHA to consider in the context of the application for a Licence to Train.

65. The Licensing Committee therefore concludes that Mr Charlton should have a temporary licence pursuant to Rule (B)5 pending the outcome of a first-instance decision (by the BHA or a Licensing Committee) as to the application for a Licence to Train. That process is expected to take around three months, but in view of the uncertainty as to that duration, we consider that it provides greater clarity to the Parties to direct that the duration be fixed by reference to the decision on the application for a Licence to Train rather than by reference to a date.
66. Mr Charlton accepts that the temporary licence will need to be subject to conditions (as was the case for the Temporary Licence). As the BHA had not addressed us on those conditions we have directed (a) that the BHA is to propose conditions in writing by no later than close of business on Tuesday 16 April, (b) that Mr Charlton is to respond to accept or contest the conditions by close of business on Wednesday 17 April, and (c) that the Licensing Committee will determine any disputed conditions on the basis of the written submissions, and by 19 April in any event, so that the temporary licence can take effect from Monday 22 April.

17 April 2024

The members of the Licensing Committee were Philippa Charles, Austin Allison and Rory Niblock