BLOODSTOCK INDUSTRY CODE OF PRACTICE

Since 2009, when the current Bloodstock Industry Code of Practice came into effect, the Bribery Act 2010 has been passed into law in the United Kingdom. The Bribery Act made bribery a criminal offence, punishable with up to 10 years' imprisonment. This is reflected in this new Code, which is designed to prevent serious malpractice in the bloodstock sales industry, including by banning: (a) bribery (whether described as "Luck Money" or not); (b) acting for both sides on a Sale without prior informed consent; and (c) the practice of collusive "bidding up". Such practices have no place in the bloodstock industry.

To assist with this stated objective and to encourage Participants to come forward with concerns over an alleged breach of the Code, the Bloodstock Industry Forum has established a facility for a Participant with such concerns to obtain free, initial and independent legal advice from a Panel Lawyer as to any criminal, civil and regulatory remedies for breach of this Code. The Panel Lawyer will owe their duties, including their duty of confidence, exclusively to the Participant and their fees for providing initial legal advice will be met by the Bloodstock Industry Forum. In addition to breach of this Code, misconduct relating to Sales may lead to civil and criminal liability. For example, where a bribe is paid to an Agent, this may lead to civil liability to pay the Principal the amount of the bribe, on the part of either of (or both) the paying and receiving party, as well as to the commission of a criminal offence under the Bribery Act 2010 (applicable in the United Kingdom) or the Criminal Justice (Corruption Offences) Act 2018 (applicable in the Republic of Ireland).

This Code has been drawn up by and with the full support of all members of the Bloodstock Industry Forum namely: The British Horseracing Authority, the Irish Horseracing Regulatory Board, Horse Racing Ireland, the Irish Thoroughbred Breeders Association, the Breeze-Up Consignors Association, the Federation of Bloodstock Agents, the National Trainers Federation, the Racehorse Owners Association, the Thoroughbred Breeders Association, Goffs and Tattersalls.

This Code will be reviewed annually to ensure that it remains robust and fit for purpose.

THE NEW CODE: RULES

DEFINITIONS

Agent: Any person or entity acting, whether in a formal professional capacity or not, on behalf of another (their "**Principal**") as regards a Sale. For the avoidance of doubt, the Agent need not have been formally appointed, or have a written contract, or be a bloodstock professional, and may or may not be acting for reward from the Principal.

Authority: means the Horseracing Authority where the sale or leasing of bloodstock, stallion shares and nominations, whether by private transaction or public auction, takes place.

Panel Lawyer: A lawyer appointed by the Bloodstock Industry Forum who shall owe his duties, including his duty of confidence, exclusively to the Participant and who shall carry out an initial investigation and provide initial legal advice limited to 15 hours of legal services into the alleged breach of the Code. A list of Panel Lawyers is published at the end of this Code.

Participant: Any person or entity participating in a Sale, including, without limitation, vendors, purchasers, breeders, consignors, trainers, syndicate managers, bloodstock agents and any person acting as Agent of any party to a Sale. Any third party offering, making or assisting in the provision of an undisclosed financial advantage, contrary to these Rules shall be considered a Participant in the relevant Sale.

Principal: Any person or entity on whose behalf an Agent acts as regards a Sale.

Prior Informed Consent: Consent granted by a Principal to an Agent for the Agent to act in a manner either previously agreed in writing between them or which would otherwise be in breach of his duty or these Rules. Such consent must be evidenced in writing and explicit. Consent is only Prior Informed Consent if the Principal is aware at the time of the consent of the full circumstances relating to the transaction or arrangement in question and the full nature of any interest of the Agent.

Sale: The sale or leasing of bloodstock, stallion shares and nominations, whether by private transaction or public auction, taking place within Britain and Ireland.

RULE 1:
Application of the Rules

(A) This Code applies to all Sales taking place within Britain and Ireland after 16 August 2021.

(B) The Code is of particular application to Agents. However, the Code is not confined to Agents, but applies to all Participants at Sales.

RULE 2:
The General Duty: Participants shall act honestly and with integrity in relation to Sales.

RULE 3:
Bribery, secret profits, and other payments:

(A) A Participant shall not solicit nor receive any financial advantage as an inducement or reward for the improper performance of relevant business activities relating to a Sale.

(B) No Participant in a Sale shall offer or grant or provide any financial advantage as an inducement or reward for the improper performance of relevant business activities relating to a Sale.

(C) Agents shall not profit from their position as Agents without the Prior Informed Consent of their Principal, provided always that where it is not possible to obtain Prior Informed Consent in advance, consent shall be deemed to be prior if sought and obtained as soon as reasonably practical.

(D) A Sales House initiative openly published in advance of a Sale by public auction whereby a defined agents commission will be paid to a successful purchaser, where the purchaser is a recognised bloodstock agent and/or licensed trainer, is not considered to be and shall not be a breach of Rules 7 (B) and 7 (C).

RULE 4:
Authority and information provision

(A) An Agent shall act in accordance with the instructions of their Principal and within their authority.

(B) An Agent shall inform their Principal promptly and in full of any offers received for their Principal's horse(s).

(C) An Agent for reward shall make and keep correct records and accounts of their dealings on behalf of the Principals and shall produce on request to the Principal (or other proper person appointed by the Principal) all books, records, and documents (electronic or hard copy, including emails, texts and other social media communications) under their control relating to the affairs of their Principal.

RULE 5:
Agents shall act in the best interests of their Principal in relation to Sales.

RULE 6:
Agents shall not put themselves or be in a position where their personal interests conflict or may conflict with those of their Principal, without Prior Informed Consent. Such a conflict arises, amongst other things, in acting for more than one party to a Sale.

RULE 7
Market Abuse at Public Auction
(A) Collusive Bidding-Up:
Participants shall not enter into any agreement, understanding or arrangement with any other person or entity with the intention of directly or indirectly increasing the price of a horse in a public Sale, save that a vendor is entitled to place a reserve and may appoint one person to bid on their own behalf (or where a horse is stated to be the property of a partnership any partner may appoint one person to bid on their behalf) where and as permitted under the rules of the auction in question.

Induced Purchases at Public Auction:
(B) A Participant shall not, prior to a horse's sale at public auction, either directly or indirectly solicit, demand or receive any financial advantage from the vendor as an inducement or reward for bidding on or buying the horse.

(C) A vendor shall not, prior to their horse's sale at public auction, either directly or indirectly offer, grant or provide any financial advantage as an inducement or reward for bidding on or buying their horse, unless the same advantage is available to the whole market.

(D) A Sales House initiative openly published in advance of a Sale by public auction whereby a defined agents commission will be paid to a successful purchaser, where the purchaser is a recognised bloodstock agent and/or licensed trainer, is not considered to be and shall not be a breach of Rules 7 (B) and 7 (C).

RULE 8:
Assistance:

A Participant assisting another in a course of conduct, knowing that the course of conduct is breaching or likely to breach any rule of this Code or deliberately closing their eyes to that possibility, shall be treated as if they too acted in breach of that rule.

ENFORCEMENT AND SANCTION UNDER THE CODE OF PRACTICE

Any Participant with concerns over an alleged breach of the Code is encouraged to come forward and use the facility established by the Bloodstock Industry Forum to obtain free, independent and confidential initial legal advice from a Panel Lawyer as to any criminal, civil and regulatory remedies for breach of this Code. The Panel Lawyers owe their duties, including their duty of confidence, exclusively to the Participant and their fees for providing initial legal advice will be met by Bloodstock Industry Forum.

The British Horseracing Authority adopts and the Irish Horseracing Regulatory Board supports the Bloodstock Industry Forum's Code of Practice. Any person found by the BHA to be in breach of the Code whether bound by the Rules of Racing or not, may be banned in Britain from racecourses and other licensed premises and banned also from conducting business with licensed individuals.

The IHRB will have due regard to a breach of the Code when exercising their powers over individuals licensed by them or who seek to be licensed by them. Additionally, Tattersalls and Goffs fully support the Bloodstock Industry Forum's Code of Practice. To give effect to its spirit and intent and to prevent those breaching the Code from participating in their sales, Tattersalls and Goffs have amended their terms and conditions of business to establish a clear right to exclude any person or entity from participating in their sales in both Britain and Ireland (whether as vendor, purchaser, agent or otherwise) where they or any person or entity acting on their behalf have been found guilty of a criminal offence appearing to them to involve a breach of the Code, or who has been found liable in High Court or similar civil proceedings for conduct appearing to them to involve a breach of the Code (whether such criminal or civil proceedings take place in the United Kingdom, the Republic Ireland or elsewhere) or who has been sanctioned by the British Horseracing Authority for breach of the Code.

Panel Lawyers – Contact Details

1. **Joel Wallace*, barrister, Littleton Chambers[1] (based in Britain)**

2. **Eoghan Cole*, barrister[2] (based in Ireland)**

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* if, exceptionally, a Panel Lawyer's professional duties preclude them from accepting the Participant's instructions, the BIF's solicitor will select another independent lawyer to fulfil the role of Panel Lawyer.

EXPLANATORY NOTES AND EXAMPLES:

INTRODUCTION

The individual Rules are set out below with Explanatory Notes. These are intended to assist Participants of every type, from professional Agents, to trainers, to novice purchasers of bloodstock, to understand the meaning of the relevant Rule, giving practical examples of the type of conduct which will likely amount to a breach of the Code where appropriate.

In order to ensure that Participants are aware of the full significance and potential consequences of any improper practices, and so that the victims of such improper practices are aware of their potential remedies and rights arising from such improper actions, the Explanatory Notes also summarise at the end the potential civil or criminal consequences of such acts.

However, nothing in the Explanatory Notes should be taken as advice as to the remedies and rights of individuals as regards the civil law or criminal consequences of particular acts. Participants who have concerns over an alleged breach of the Code should take their own legal advice as to any criminal, civil and regulatory remedies and in the first instance are encouraged to take advantage of the facility established by the Bloodstock Industry Forum to obtain free initial and independent legal advice from a Panel Lawyer. The Panel Lawyer will owe their duties, including their duty of confidence, exclusively to the Participant and their fees for providing initial legal advice will be met by the Bloodstock Industry Forum. The intention of the Civil and Criminal section below is to point to potential further consequences of particular acts, which may also be breaches of this Code, so as to reinforce the purpose of the Code in preventing improper practices.

RULE 1:
Application of the Rules
(A) This Code applies to all Sales within Britain and Ireland after 16 August 2021.
(B) The Code is of particular application to Agents. However, the Code is not confined to Agents, but applies to all Participants at Sales.

EXPLANATORY NOTE:

The Rules apply regardless of whether the relevant **Participant** is a citizen of Britain or Ireland, or present in Britain or Ireland. The only relevant requirement is that the **Sale** (public or private) should take place within Britain or Ireland and after the 16th August 2021. For example, an individual resident outside and physically absent from Britain or Ireland at the time of the Sale will still be subject to this Code as regards a Sale if they are a Participant in that Sale.

Examples of those acting as Agents include: bloodstock agents, trainers and racing managers purchasing on behalf of clients, syndicate managers purchasing on behalf of a syndicate, an individual purchasing on behalf of a family member or friend. The issue is the capacity in which the person is acting on the specific Sale, not their title or customary role. A person normally acting as a bloodstock agent, will not be acting as an Agent when buying on their own account, but will be when buying for another person.

Although centrally concerned with abuses by those acting as Agents, the Code applies to **all** Participants. For example, Rule 3 makes it a breach of a code to **offer or receive** improper financial advantage (colloquially, a bribe), so that both the party receiving the bribe (often a purchaser's Agent) **and** the party paying the bribe (often a vendor or their agent), will be in breach of the Code (and potentially liable to civil and criminal consequences).

RULE 2:
The General Duty: Participants shall act honestly and with integrity in relation to Sales.

EXPLANATORY NOTE:

This General Duty to act honestly and with integrity is an overall statement of the aims and purposes of the Code. There is no special meaning to the terms "honestly" and "with integrity", which are ordinary words. It should usually be obvious to any Participant whether a course of action is in compliance with the General Duty. If they have any doubts, good sense suggests that the Participant should not pursue the course of conduct in question, or only proceed having taken professional advice. The General Duty also permits disciplinary action as regards misconduct not foreseen and specifically catered for in specific Rules.

RULE 3:
Bribery, secret profits, and other payments:

(A) A Participant shall not solicit nor receive any financial advantage as an inducement or reward for the improper performance of relevant business activities relating to a Sale.

(B) No Participant in a Sale shall offer or grant or provide any financial advantage as an inducement or reward for the improper performance of relevant business activities relating to a Sale.

(C) Agents shall not profit from their position as Agents without the Prior Informed Consent of their Principal provided always that, where it is not possible to obtain Prior Informed Consent in advance, consent shall be deemed to be prior if sought and obtained as soon as reasonably practicable.

EXPLANATORY NOTE:

Bribery, particularly of Agents, is a central concern to which the Code is directed. Participants should be aware that it is not only the Agent, receiving a bribe or secret profit who is at serious fault: those offering or paying bribes are equally responsible.
Participants should be clear that there can generally be no legitimate reason for an Agent of the purchaser to be rewarded **in any way** by the vendor and parties related to the vendor, and that the Agent of the purchaser should generally only be rewarded by their Principal, the purchaser.

This is so whether or not the payments are described as "Luck Money". Participants should be aware that such terminology and historical practices do not in any way alter the fact that payments of undisclosed/improper inducements are not permitted.

Where any gift (even a modest one) is received by an Agent on an unsolicited basis, the Agent must still seek consent (and obtain it) as soon as reasonably practicable after receiving it, if they are properly to retain the gift. If, however, the Principal's consent is **not** forthcoming, the Agent cannot properly retain the gift and should return it.

Financial benefits need not be direct and/or of cash. Payments in kind suffice, a watch or other valuable item, for example. The benefit need not be direct, for example payments to the order of the Agent (to extinguish debts, and/or to family).
It is irrelevant whether or not the purchaser has suffered a loss (i.e. that they may have paid a fair price at public auction, for example). An attempted bribe, even if refused, and/or even if it had no effect on the receiving party, is still a bribe. (As explained below, the parties to a bribe, both bribing party and receiving party, may be liable to account to the other party, usually the purchasing Principal, for the amount of the bribe. Those assisting such activity may also be liable for any losses.)

Examples:

- An Agent for the purchaser seeks and receives a payment or promise of a payment from the vendor of a horse in order to buy that horse, which is **not** disclosed to the Agent's principal. The Agent will have received a bribe and/or secret profit and be in breach of Rule 3A and 3C. The vendor will have bribed the Agent and be in breach of Rule 3B. The vendor and the Agent may both be liable to civil and criminal consequences. This applies where the Agent is receiving a share or cut relating to collusive bidding-up where this has been pre-agreed: see Rule 7 and the example there.
- A trainer acting for a purchaser, whether an existing client or not, as regards a sale, is in the same position as any other Agent. However, the fact that they may profit from the sale indirectly through the payment of fees when the horse is trained by them after purchase is not an illegitimate profit, since it will be known to the purchaser.
- A trainer advising a purchaser and accepting money to influence the purchase will be taking a bribe. The party offering and the trainer will both be in breach.
- Where a trainer or racing or syndicate manager appointed by a purchaser seeks to share in or does share in any commission otherwise payable by the purchaser to his bloodstock agent, then the trainer, racing or syndicate manager must obtain the Prior Informed Consent of their Principal to any such arrangement.
- An Agent seeks "Luck Money" from the vendor as regards a sale, whether before or after sale, which is **not** disclosed to the Agent's Principal. This will be a breach by the Agent in seeking such a reward and there may be civil and criminal consequences for both. Paying it would put the vendor in breach and there may be civil and criminal consequences. The fact that the term "Luck Money" is used makes no difference.

RULE 4:
Authority and information provision

(A) An Agent shall act in accordance with the instructions of their Principal and within their authority.

(B) An Agent shall inform their Principal promptly and in full of any offers received for their Principal's horse(s).

(C) An Agent for reward shall make and keep correct records and accounts of their dealings on behalf of their Principals and shall produce on request to the Principal (or other proper person appointed by the Principal) all books, records, and documents (electronic or hard copy, including emails, texts and other social media communications) under their control relating to the affairs of their Principal.

EXPLANATORY NOTE:

Agents are obliged to act within the scope of their authority. In particular, they should follow any instructions of their Principal. Agents also have a duty to report to their Principal on matters of relevance, offers to purchase being of particularly obvious significance.
Agents have a general legal duty to keep proper records of their dealings on behalf of their Principals and, if requested, to produce such records to the Principal or, for example, their lawyers, all documents relating to the affairs of the Principal. Such is, in any event, obvious good practice.

RULE 5:
Agents shall act in the best interests of their Principal in relation to Sales.

EXPLANATORY NOTE:

Agents acting for others (Principals) at Sales are subject to certain general principles of law, sometimes referred to as "fiduciary duties", of which this is a fundamental one. This is sometimes

considered part of a duty of "loyalty". Some of the other Rules below as regards Agents are aspects of this fundamental principle.
This Rule applies whatever the type of agency. It makes no difference if the Agent is retained on a professional basis, or acting for free, is acting on a long-term basis, or on a one-off basis. There need be no written contract, or express agreement, that such a term applies, or even a contract.

Examples:

Agents will normally have little difficulty in knowing whether or not they are acting in the interests of their Principal. For example:

- It is obviously not in the interests of a purchasing Principal for the Agent to cause the Principal to buy a horse for more than it is truly worth.
- It is not acting in the best interests of the Principal for an Agent to spread information against the Principal's interest.
- It is not acting in the best interests of the Principal for an Agent only to view horses or to recommend horses to their Principal because of some collateral advantage to the Agent (such as a bribe).
- It is not in the best interests of the Principal for the Agent to disclose their Principal's budget for a purchase to a vendor with a view to manipulating the price of a sale, or for reward.

RULE 6:
Agents shall not put themselves or be in a position where their personal interests conflict or may conflict with those of their Principal, without Prior Informed Consent. Such a conflict arises, amongst other things, in acting for more than one party to a Sale.

EXPLANATORY NOTE:

The Agent cannot be in a position where their own interests do, or **may**, conflict with those of their Principal, whether or not the duties actually conflict.

An Agent cannot act for both the buyer and seller in a Sale unless (both the) Principals (but particularly the purchaser) are fully aware of, and consent to, the fact that the Agent is acting for both parties. Purchasing Principals in general would have no reason to approve such a conflict if known.

An Agent cannot act for more than one purchasing principal as regards the same horse without their being a conflict, such that they need the Prior Informed Consent of **each** principal to act for them on a particular sale (or to any alternative arrangements).

It does not matter that the Agent is not, in fact influenced by the conflict.

It does not matter that the Principal suffers no loss as a result of the Agent's conflict.

The potential conflict may extend to indirect and/non-financial conflicts, for example where the vendor is a close relative of the purchaser's Agent.

Prior Informed Consent is referred to in the Definitions Section. Agents should disclose any circumstance material to the consideration of whether or not to give consent, and the Principal should be made fully aware of the nature of the conflict or potential conflict. The consent needs to be given **prior** to the purchase. Good sense suggests that written evidence of Prior Informed Consent to significant conflicts should be obtained.

EXAMPLES:

- An Agent acting for a purchaser is also acting as Agent for the vendor, without disclosing this to the purchaser. The Agent is in a position of conflict and in breach of this rule and there may be civil and criminal consequences.
- An Agent has a small share in a syndicate owning a horse, which their Principal wishes to purchase. The Agent must obtain the Prior Informed Consent of the purchaser to be able to act on the sale. This is so regardless of whether the Agent is in any way affected by the small interest, and would have acted in exactly the same way anyway. The concern is that the Agent **may** be more likely to influence the Principal to buy that horse, perhaps at a higher price. Nor is it an answer that the Principal did not actually overpay (for example that the purchase was via public auction).
- A trainer hopes to train a horse for the purchasing Principal after purchase and acts as Agent for the purchase of the horse. This normally should present no difficulty, since the interests do not necessarily conflict and the Principal is well aware that the trainer is a trainer and might hope to train the horse. However, if the trainer causes the purchaser to overpay so as to increase his fees, or for other financial benefit, they have acted for their own interests against those of the Principal (see Rule 5).

RULE 7
Market Abuse at Auction
(A) Collusive Bidding Up:
Participants shall not enter into any agreement, understanding or arrangement with any other person or entity with the intention of directly or indirectly increasing the price of a horse in a public Sale, save that a vendor is entitled to place a reserve and may appoint one person to bid on their own behalf (or where a horse is stated to be the property of a partnership any partner may appoint one person to bid on their own behalf) where and as permitted under the rules of the auction in question.

Induced Purchases at Public Auction:
(B) Subject to Rule 7(D), a Participant shall not, prior to a horse's sale at public auction, either directly or indirectly solicit, demand or receive any financial advantage from the vendor as an inducement or reward for bidding on or buying the horse.

(C) Subject to Rule 7(D), a vendor shall not, prior to their horse's sale at public auction, either directly or indirectly offer, grant or provide any financial advantage as an inducement or reward for bidding on or buying their horse, unless the same advantage is available to the whole market.

(D) A Sales House initiative openly published in advance of a Sale by public auction whereby a defined agents commission will be paid to a successful purchaser, where the purchaser is a recognised bloodstock agent and/or licensed trainer, is not considered to be and shall not be a breach of Rules 7 (B) and 7 (C).

EXPLANATORY NOTES:
Rule A: Collusive Bidding Up, i.e. the collusive making of bids to increase the price of horse in a public auction, is a serious abuse of the market. This is so regardless of whether or not the collusion also involves the payment of a bribe.

Rules B and C: address market abuse through inducements required by/offered to those intending to purchase horses at public auction. Such "inducements", in particular the payment of so called "Luck Money", are open to abuse and create an un-level playing field at public auction.

Rule D addresses the situation in which a Sales House may, whether as a promotion or otherwise, introduce the payment of a commission to a successful purchaser which may on a strict reading of the Code appear potentially to breach Rules B and D, but which is advertised transparently such that there is not the character of secrecy or preference which the Code was designed to prevent.

There need be no formal agreement: any arrangement or understanding will suffice. A promise to pay is sufficient. An indirect financial advantage is sufficient, for example an understanding to return the favour at a later date.

Examples: Collusive Bidding-Up
A vendor reaches an understanding with more than one other person that the others should bid for the vendor's horse in a public auction in order to increase the price, without any intention to buy. All parties to this understanding are in breach of this Rule.

As for the above example, but this involves the Agent of a purchaser. The Agent tells the vendor the Principal's budget, the parties bid up the horse to that level or close to it. The parties split the proceeds, perhaps the price above the reserve. All parties are in breach of this Rule. They have also breached Rule 3 as to bribery and there may be civil and criminal consequences.

Examples: Induced purchases at Public Auction (Rules 7 B and 7 C)

Prior to an auction sale, Purchaser A agrees with a vendor that the purchaser will bid on the vendor's horse if the vendor agrees to pay Purchaser A a percentage of the sale price if Purchaser A buys the horse. The effect is to give the Buyer Purchaser A a subsidy in bidding on the horse (and a percentage reduction in price), unknown to the market. Competing Purchaser B, not party to such an agreement and not knowing of it, may lose the purchase as a result of being outbid in light of the subsidy or may have to pay more to buy the horse than they would otherwise have paid. In short, there is no level playing field. The same is unaffected by describing the payment as "luck money".
The same scenario as above, but Purchaser A, or an agent acting for Purchaser A, instead of seeking a percentage payment for Purchaser A, agrees with the vendor before the Sale at Auction that, if Purchaser A purchases, the vendor will pay Purchaser A's agent's or other fees. The effect is the same: Purchaser A has an unfair advantage over other purchasers who do not have such an arrangement.

A vendor shall not offer an inducement to purchase their horse unless the same inducement is offered to the whole market in which event the vendor must take all reasonable steps to make the inducement (for example, a discount on the price) available to the whole market prior to the sale.

For the avoidance of doubt an agreement made between vendor and prospective purchaser prior to a horse's sale at public auction whereby the vendor agrees to retain a percentage ownership interest in the horse in the event that the horse is purchased by that prospective purchaser, such that the purchase price payable by the purchaser is reduced by the commensurate percentage, is not considered to be and shall not be a breach of Rules 7(B) and 7(C).

RULE 8:
Assistance:

A Participant assisting another in a course of conduct, knowing that the course of conduct is breaching or likely to breach any Rule of this Code or deliberately closing their eyes to that possibility, shall be treated as if they too acted in breach of that rule.

EXPLANATORY NOTES:
Assisting a breach is unacceptable conduct, like aiding and abetting in the criminal context.

ENFORCEMENT AND SANCTIONS UNDER THE CODE OF PRACTICE

Any Participant with concerns over an alleged breach of the Code is encouraged to come forward and use the facility established by the Bloodstock Industry Forum to obtain free, independent and confidential initial legal advice from a Panel Lawyer as to any criminal, civil and regulatory remedies for breach of this Code. The Panel Lawyers owe their duties, including their duty of confidence, exclusively to the Participant and their fees for providing initial legal advice will be met by Bloodstock Industry Forum.

The British Horseracing Authority adopts and the Irish Horseracing Regulatory Board supports the Bloodstock Industry Forum's Code of Practice. Any person found by the BHA to be in breach of the Code whether bound by the Rules of Racing or not, may be banned in Britain from racecourses and other licensed premises and banned also from conducting business with licensed individuals. The IHRB will have due regard to a breach of the Code when exercising their powers over individuals licensed by them or who seek to be licensed by them. Additionally, Tattersalls and Goffs fully support the Bloodstock Industry Forum's Code of Practice.

To give effect to its spirit and intent and to prevent those breaching the Code from participating in their sales, Tattersalls and Goffs have amended their terms and conditions of business to establish a clear right to exclude any person or entity from participating in their sales in both Britain and Ireland (whether as vendor, purchaser, agent or otherwise) where they or any person or entity acting on their behalf have been found guilty of a criminal offence appearing to them to involve a breach of the Code, or who has been found liable in High Court or similar civil proceedings for conduct appearing to them to involve a breach of the Code (whether such criminal or civil proceedings take place in the United Kingdom, the Republic Ireland or elsewhere) or who has been sanctioned by the British Horseracing Authority for breach of the Code.

Panel Lawyers – Contact Details

1. **Joel Wallace*, barrister, Littleton Chambers[3] (based in Britain)**

2. **Eoghan Cole*, barrister[4] (based in Ireland)**

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* if, exceptionally, a Panel Lawyer's professional duties preclude them from accepting the Participant's instructions, the BIF's solicitor will select another independent lawyer to fulfil the role of Panel Lawyer.

CIVIL LIABILITIES AND CRIMINAL OFFENCES ARISING FROM MISCONDUCT

Civil Liabilities

Participants should be aware of the potential financial consequences of misconduct of the type against which this Code is directed. In simple terms, Agents receiving bribes, Luck Money or rewards beyond what their Principal has agreed to pay them, may well be liable to pay over that money to their Principal. Those making the improper payments may also be liable for the amount of the payment. In both cases, this is regardless of whether the Principal can show they have suffered any loss.

The following example addresses the example of bribery of an Agent and explains the potential civil liabilities. The example assumes the issues can be proved to the relevant standards, such as dishonesty, where required.

An Agent, with the assistance of a Trainer who introduces the parties and attends the meetings, seeks and obtains a bribe from a Vendor of a horse to purchase the horse on behalf of the Principal at an inflated price.

- The Agent will be liable for the Principal's losses as regards the purchase, including any over-value.
- The Agent will be liable to account to (i.e. pay, in simple terms) the Principal the amount of the bribe, regardless of whether or not the Principal can prove a loss.
- The Trainer will be liable for dishonest assistance and so liable to compensate the Principal for any losses, jointly with the Agent. If they have received part of the bribe or the proceeds of it, or other financial benefit, they may be liable to account for this also (whether or not the Principal can show a loss).
- The Vendor will be liable for losses suffered by the Principal. Alternatively, the Vendor will be liable f**or the amount of the bribe in question**, whether or not the Principal has suffered any loss. The payment of a bribe will likely also permit the relevant contract to be unwound, if a private sale. It is **not** necessary to prove against the Vendor any dishonesty, intent to corrupt or actual corruption of the Agent. The Vendor may also be liable for the amount of the bribe even if this was only promised, but not paid.
- Third parties knowingly receiving money improperly paid in breach of duty may be liable to the Principal in the amount received, e.g. if the Agent passed some of the bribe money to an employee. Those dealing with monies which are the proceeds of crime, which would include a bribe falling within the Bribery Act, see below, as the example might well, would also be potentially committing offences under the Proceeds of Crime Act: see below.

Criminal Offences

The following are potential criminal offences which may be committed as regards the types of misconduct against which this Code is directed.

A. England & Wales[5]

Fraud Offences

1. Where an agent seeks to make a gain from either the purchaser or the vendor, it may be a criminal offence under the Fraud Act 2006 s. 1(2) if he fails to disclose the gain to the principal or abuses his position acting for the principal and, at the relevant time, is dishonest.

[5] This section contains a statement of the law of England & Wales. Participants should take appropriate advice as to the law in other jurisdictions within the UK.

2. A person may be guilty of a substantive offence of fraud where he acts in joint enterprise with another; or of conspiracy to commit fraud under the Criminal Law Act 1977; or of the common law offence of conspiracy to defraud where he has conspired with another.

Collusive Bidding-Up

3. If an agent and or a vendor rigs the bidding process by engaging other individuals to enter bids in order to push up the price that the purchaser will ultimately pay, they will have acted dishonesty and in order to make a gain - the vendor by a higher purchase price and the agent by a higher percentage commission. All individuals involved in this agreement may be guilty of the common law offence of conspiracy to defraud. They may also have committed offences under fair trading legislation.

Bribery Offences

4. Where the agent is paid a secret commission it may be an offence under the Fraud Act as set out above or, if it is part of an agreement whereby the agent will improperly perform his duties to the purchaser in return for profit, it may be an offence under the Bribery Act 2010.

i. It is an offence under s.1 of the Bribery Act 2010 for a person to offer, promise or give a financial advantage to another person intending that it will induce the person to perform improperly a relevant function or activity or reward the person for improper performance.

ii. It is an offence under s.2 of the Bribery Act 2010 for a person to request, agree to receive or accept a financial advantage from another person and intend that, in consequence, a relevant function or activity should be performed improperly whether by himself or another person.

Money Laundering Offences

5. There are three substantive money laundering offences under sections 327, 328 and 329 of the Proceeds of Crime Act 2002 relating, in general terms, to the acquisition, retention, use or control of criminal property. Property is criminal if it constitutes or represents a person's benefit from criminal conduct and the person knows or suspects that it constitutes or represents such a benefit.

Tax Evasion Offences

6. Where a person seeks to deprive the revenue of money to which it is entitled, there are a number of offences under which he can be charged. It may be a fraud by misrepresentation, fraudulent evasion of income tax or, in the most serious cases, a charge under the common law of cheating the public revenue. There are additional offences which may be committed by a company or sole trader.

Criminal Penalties – England & Wales

The following summarises the penalties for the offences set out above:

The maximum sentence for the offences of bribery, fraud and conspiracy to defraud is 10 years imprisonment. The maximum sentence for money laundering is 14 years imprisonment and, for fraudulent evasion of income tax, 7 years. The maximum sentence for a cheat on the public revenue is life imprisonment (although the range in the Sentencing Guidelines spans 3 – 17 years imprisonment).

The maximum sentence for a conspiracy under section 1 of the Criminal Law Act 1977 will be the same as for the substantive offence.

On conviction, a person will be liable to confiscation proceedings under part 2 of the Proceeds of Crime Act 2002. These proceedings may result in the court depriving the person of the benefit they have gained from the criminal conduct. Failure to pay a confiscation order can result in an additional term of imprisonment.

B. Republic of Ireland[6]

Fraud Offences

1. Where an agent seeks to make a gain from either the purchaser or the vendor then he or she may be guilty of the offence of making a gain or causing a loss by deception under section 6(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001 (the "**2001 Act**") if a person dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act.

2. The 2001 Act also contains an offence of obtaining services by deception under section 7, whereby, a person is guilty of an offence if a person dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception obtains services from another. A person obtains services from another where the other is induced to confer a benefit on some person by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

Bribery/Corruption Offences

Where the agent is paid a secret commission it may be an offence under the 2001 Act as set out above or, if it is part of an agreement whereby the agent will improperly perform his duties to the purchaser in return for profit, it may be an offence under the Criminal Justice (Corruption Offences) Act 2018 (the "**2018 Act**").

3. Section 5 of the 2018 Act provides for offences of active and passive corruption which are similar to the bribery offences in the UK Bribery Act 2010. Under section 5(1), a person who either directly or indirectly by himself or herself or with another person (a) corruptly offers, or (b) corruptly gives or agrees to give, a gift, consideration or advantage to a person as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position or business shall be guilty of an offence. "Corruptly" is defined in the 2018 Act as "(a) by means of making a false or misleading statement, (b) by means of withholding, concealing, altering or destroying a document or other information, or (c) by other means".

4. Section 5(2) of the 2018 Act then provides for an offence whereby a person who, either directly or indirectly, by himself or herself or with another person corruptly requests, accepts or obtains, or agrees to accept, for himself or herself or for any other person, a gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position or business.

Money Laundering Offences

5. The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "**2010 Act**") includes an offence under section 7 of money laundering occurring within Ireland. A person commits this offence if the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct: (i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property; (ii) converting, transferring, handling, acquiring, possessing or using the property; (ii) removing the property from, or bringing the property into, Ireland.

[6] This section contains a statement of the law of the Republic of Ireland.

The "proceeds of criminal conduct" is defined as any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part, and whether that criminal conduct occurs before, on or after the commencement of the relevant part of the 2010 Act. "Criminal conduct" is defined as conduct that constitutes an offence, conduct occurring in a place outside Ireland that constitutes an offence under the law of the place and would constitute an offence if it were to occur in Ireland or conduct occurring in a place outside Ireland that would constitute an offence under section 5 (1) or 6 (1) of the Criminal Justice (Corruption Offences) Act 2018 if it were to occur in Ireland and the person or official, as the case may be, concerned doing the act, or making the omission, concerned in relation to his or her office, employment, position or business is a foreign official within the meaning of that Act".

6. Money laundering which occurs outside Ireland is also an offence in Ireland (section 8 of the 2010 Act) under certain circumstances, most notably where the conduct constitutes an offence under the law of that place and the person is an individual who is a citizen of Ireland or ordinarily resident in Ireland, or a body corporate established under the law of Ireland or a company registered under the Irish Companies Acts.

7. Attempting to commit the offence under section 7 of the 2010 Act from a place outside Ireland is also an offence (section 9 of the 2010 Act). Aiding, abetting, counselling or procuring the commission of an offence under section 7 by a person in a place outside Ireland is an offence under section 10 of the 2010 Act.

Tax Evasion Offences

8. The individual fraudulent evasion of tax or fraudulent evasion of tax with any other person or facilitating the fraudulent evasion of tax are offences under section 1078 of the Taxes Consolidation Act 1997.

Conspiracy

9. Section 71 of the Criminal Justice Act 2006 provides for an offence of conspiracy. Under section 71(1) a person who conspires, whether in Ireland or elsewhere, with one or more persons to do an act (a) in Ireland that constitutes a serious offence, or (b) in a place outside Ireland that constitutes a serious offence under the law of that place and which would, if done in Ireland, constitute a serious offence, is guilty of an offence irrespective of whether such act actually takes place or not. A serious offence is defined as one for which a person may be punished by imprisonment for a term of 4 years or more.

Criminal Penalties – Republic of Ireland

- The maximum sentence under section 6 and 7 of the 2001 Act, section 6 of the 2018 Act and section 1078 of the Taxes Consolidation Act 1997 is 5 years. The maximum sentence under sections 7 – 10 of the 2010 Act is 14 years.
- The maximum sentence for a conspiracy under section 71 of the Criminal Justice Act 2006 will be the same as for the substantive offence.
- A person may be subject to a confiscation order even in the absence of a criminal conviction under the Proceeds of Crime Act 1996 in circumstances where the applicant (either the Revenue, a member of an Garda Siochana or the Criminal Assets Bureau) has reasonable grounds for suspecting that the property, in whole or in part, directly or indirectly, constitutes the proceeds of crime and the value of the assets exceeds €5000.