

## **Training fees – trying to help you avoid bad payers**

### **First off – get your ducks in a row**

We fully understand that as a trainer you want to see horses' heads over your stable doors – an empty stable most definitely isn't earning any money. However, as you will only know too well a non-paying owner is costing you money and so it is important that do your homework on a potential new owner.

Wherever possible met with a new owner - you can then sound them out as to whether they are the type of client you want to have.

Do some background search – do some online research. If it is a company, look at Companies House – there is a free search where you can check if the company does exist, if the person who says he or she is the company director actually and see if the company accounts are up to date.

Are there any other warning signs – perhaps they are a known bad payer or they move horses for no apparent reason. If there are warning signs, it doesn't mean to say don't take them on but make sure you get a training agreement, make sure you keep on top of payments and are alert to the first sign of any issues. Perhaps consider asking them to pay the basic training fee up front or by direct debt. That may be unusual but if they are genuine why shouldn't they?

### **Make sure you know who the contract is with – the importance of this cannot be over emphasised**

Sounds simple but it is essential that the correct person or entity signs the training agreement and then you invoice that entity – for example if it is a company ownership, the invoices must be addressed to the company not an individual c/o of that company.

So, is the owner an individual, a partnership, a syndicate, a company - make sure that the person signing has authority to do so. Under the BHA rules, the following are required signatories:

Partnership	all legal owners of the horse must sign a training agreement BHA rule (E) 67
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Syndicates	the syndicator or each syndicator where there is more than one, as defined in rule (E) 73A
Businesses	the registered agent or all agents where there are more than one as defined in Rule (E) 41
Racing Club	The club manager or managers if there is more than one as defined in rule (E) 73F

Is the company a newly set up limited company purely for the racehorse ownership? If so, consider asking for a guarantee from one or more directors or ask for money on account (see below). If the company has no assets or assets of any value then there will be no money to pay you even if you obtain a court order for a debt.

### **Training Agreement – is it worth the paper it is written on?**

We have put that as the heading as we hear from time to time that the training agreement is not worth having.

There are many good reasons to have a training agreement – it will not solve all your ills but provided it has been properly entered into, it a very important part of your armoury should an owner not pay.

Good reasons for a training agreement –

Reason 1

It is a rule of racing – the BHA rules require that there is a training agreement in place in respect of a horse before it runs.

Reason 2

It sets out the agreement between the parties – the terms are clear and should Court proceedings be necessary it will be the foundation document for those

Reason 3

If you wish to claim for legal expenses assistance in recovering a debt, the insurers ARAG are unlikely to accept the claim if there is no training agreement in place – this relates to reason 2.

Reason 4

If you wish to go down the forfeit list route via the BHA, the BHA will require a training agreement to be in place.

Reason 5

Should your owner become insolvent or bankrupt, having a training agreement will move you up the list of debtors to receive payment.

Reason 6

It shows you mean business.

### **What happens if the owner will not or does not sign the training agreement?**

An owner or trainer could be fined £100 if there is not a training agreement in place. If an owner has been sent a training agreement and not returned it to you, reminding them that it is a rule of racing could be useful.

If the owner refuses to sign and return the training agreement, then you may nonetheless be able to rely on the terms of the agreement as the basis of the agreement if the owner has seen the agreement and has not raised any objections. Do bear in mind though that:

- this is definitely not as good as having the signed training agreement
- you will need to have records in place showing that :
  - the training agreement was sent to the owner (or if handed to the owner you can evidence when that happened)
  - you followed up on the training agreement being sent or given to the owner – so you have evidence, most likely an email asking them to sign and return the training agreement or to contact you if they have any queries upon it.

If the owner still does not return it then it would be sensible to follow that email up with another, reminding them that you await the signed training agreement, referring them to clause 25 “Acceptance by Performance” namely that if they do not return the signed training agreement or raise any queries within 21 days of it being received by them, the owner will be deemed to have accepted the conditions as if the agreement had been signed.

**It is very important** that if you change your terms or come to some different form of agreement that a new training agreement reflecting that is issued - this could be where the owner perhaps agreed to provide something in return for reduced training fees. If the only change is an increase in fees then that can be notified by letter or email and does not need a new agreement.

### **Deciding your financial terms of business**

It is your business and we are not here to tell you what you should or shouldn't do but the following may be worth considering.

### **Weatherbys Invoice Payment Service**

By using this service, Weatherbys will set up – on the owner's instructions - a payment service whereby they arrange payment of your invoices. At the outset, you will agree a date upon

which your monthly invoices should be paid and you send Weatherbys a copy of your monthly bills for payment. If the owner wishes to query a bill they would contact Weatherbys before the payment date.

There is a link to the scheme here

<https://www.weatherbys.bank/WeatherbysBank/media/Racing-Bank/Invoice-Payment-Service-July-2018.pdf>

### **Taking money on account**

Given the way that training businesses have historically invoiced, at the end of the month with another month to pay, that means you are supporting the owner's horse for at least two months before payment is received. For any business and particularly a new business that is not easy on the cashflow.

Have you considered asking for money in advance? That could be to cover the first month's invoice and reflect the number of horses placed with you. The owner should be asked to pay the first invoice in full such that the money on account can be used to pay any future invoices if unpaid. In some ways that is like a deposit on a rented property. We can understand you may not want to ask for this and risk losing an owner but it is an option particularly if you have any concerns at the outset.

### **Get payment by direct debit**

You could ask your owner to pay a **set amount direct debit** for the basic training – again that could be in advance with an agreement in place that if the horse leaves during the period paid for, then you will do a closing account and either repay any over payment or invoice any further payment needed.

Or perhaps a **variable amount direct debit** – once an owner has given you their authorisation, you can take payment of any amount as long as you give them the required advance notice. This advance notice is very important and it is vital to get the advance notice right. If you don't the owner will be entitled to an immediate refund and you would find yourself subject to sanctions for breaching the direct debit scheme rules. If you are thinking of doing this then it would be necessary to take further advice.

### **How else can you avoid problems?**

Keep on top of your credit control – this sounds simple but the pressures upon trainers are many and this is just another one. It is a very important one though and some fairly simple steps should help.

Ensure that any default in payment is noted and chased up promptly – see Knights advice on the NTF website on **Minimum Credit Control Procedures**

<https://www.racehorsetrainers.org/members/business.asp>

If you have an owner who is always late in paying, that really isn't good enough. You are not late in caring for his horse or getting the horse to the races and the owner needs to pay in a timely manner.

**Head off problems** – owners will sometimes refuse to pay or dispute particular parts of debts because they say they were not kept informed of the horse's progress, were not told it was running, did not know what it was receiving chargeable supplements or treatments – you can head off arguments by keeping your owners informed.

We do receive fewer calls on this than we used to which shows good practices are in place but ensure you keep good daily records as to what the horse was doing, keep the owner updated, advise them if the horse is receiving additional chargeable items – know what your training agreement says, for instance, do you need advance authority for, say, a supplement if it is over a certain amount?

Make sure you keep brief notes of phone calls or yard visits by owners and keep copies of communications. Whilst this will not stop an owner complaining, it will definitely help you show that the owner was aware or authorised an item if an item is disputed at a later stage.

### **Outsource your credit control management**

Group1creditmanagement.co.uk is a company which for a monthly fee will manage your credit control and help recover overdue payments on behalf of trainers. If thinking of using this service you should ensure that it meets your business needs.

### **So, despite all the above, the owner has not paid, what are your options?**

Which of the following is the best option is likely to depend upon various things - do you have a training agreement or can prove that one was sent and followed up, does the owner still have horses with you, is the financial value of those horses more than the debt, if the owner no longer has horses with you do they still have other horses in training elsewhere, is the owner "good" for the money or are there no funds available?

If a debtor does not have the means to pay then a court order will not mean you get paid but once a court order has been obtained there are options available with regard to bailiffs or attachments of earnings. There are times though when there are no funds or no assets in a business where investigations into the financial status and ability to pay the debt mean that writing off the debt may be the practical option – however we will hope that by good credit control practices and taking advice at the appropriate time those situations will be few and far between.

Whatever action you take, you should first of all go through inhouse procedures – there is further advice on the NTF website at **Minimum Credit Control Procedures** <https://www.racehorsetrainers.org/members/business.asp>

You should also consider **mediation** - mediation is where the parties meet with a mediator who is a neutral party to the matter to try to find a solution to the issue. In some cases this may be done over the telephone rather than meeting in person. Mediation may be of help particularly where the owner is claiming that charges should not have been applied or saying that they are not paying because of problems with the service provided or there are other complications.

Mediation is confidential and if a solution is not reached, nothing said at the mediation can be used in any subsequent court proceedings.

Both parties pay a fee to the mediation service.

There are a number of mediators with equine and racing knowledge and the NTF can provide contact details. This is not part of any referral from the NTF nor recommendation.

There is also a Government run small claims mediation service which is free and if you commence court proceedings you will be asked in the court papers if you wish to take part in mediation. We understand that due to limited resources it can be difficult to use the Government mediation service but mediation should definitely be considered – if you suggest it and the debtor refuses, then that could be considered unreasonable if the claim is of a level where costs can be sought by either party (generally where the debt is over £10,000).

### **Lien/Power of sale**

The training agreement gives you a lien – a **right to hold** the horse against the debt. This is a contractual lien so quite a powerful tool.

A correctly entered into training agreement gives you **the right to sell** the horse provided the process set out in it is followed. This can be by auction or privately. If private sale then you must obtain two valuations as set out in the training agreement.

Without a training agreement you have no right to sell the horse. You can hold the horse against the debt under what is called a general lien but this is not so clear cut as the training agreement lien and does not give you a right to sell the horse.

### **Court Action**

There are various ways to take court proceedings against an owner and before you do that you should have completed the debt control procedures and put the owner on notice that you are either going to take court proceedings or instruct solicitors to commence action for repayment.

Ensure as far as it is possible that any disputes which may have been made about the service provided have been resolved before going to court – this will help your chance of recovery.

You can take court action yourself through the Government portal Moneyclaim online <https://www.moneyclaim.gov.uk> There is a court fee to pay but you can add that onto the debt owed.

Or you can instruct the NTF Legal Expenses insurance scheme for solicitors to act on your behalf

### **NTF Legal Expenses scheme through ARAG**

This is a benefit of membership of the NTF and there is a head of cover for debt recovery/contract disputes. The insurers will have the case assessed and there needs to be reasonable prospects of a successful outcome for the insurers to accept the claim. The first step in meeting this “reasonable prospects test” is to have a properly completed training agreement in place.

The insurers’ solicitors will where appropriate do due diligence to establish if the debtors have means to pay and if that appears unlikely then they will advise as to options available.

If you wish to use the legal expenses insurance for a claim contact them on 0333 003 0159 or contact the NTF office to arrange to have a claim form sent to you.

The insurance does not cover debts under £500 and if the debt is over £5,000 then there is an excess of £500 which you would be required to pay. This is because the excess is classed as the first £500 of the legal fees incurred by the solicitors – if the solicitors once instructed assess the prospects of success at the initial stage as being less than 51% then the excess is refunded. If a large amount of work is done and subsequently the prospects are considered to be below 51%, then this excess is not refunded.

### **ROA/NTF Holding account**

If you have a training agreement in place and the owner is a member of the ROA, then this is another option where there is a disputed debt. It works so that the owner pays the amount claimed by you into a joint account of the ROA/NTF – once you have been given notice this has been done then you cannot sell the horse and the owner is entitled to remove the horse from your yard. The money remains in the holding account until the matter is resolved and is only paid out on joint instructions from the owner and trainer or their legal representatives.

If thinking about using this route, the NTF will liaise with the ROA for you and we would aim to get the owner to pay any undisputed amounts directly to you and not into the holding account.

### **Forfeit List**

The Forfeit List is operated by the BHA and if a debtor is put on the forfeit list then they become a disqualified person under the rules of racing – so they cannot own a horse in training nor can they attend BHA licenced premises including racecourses.

It does not get you paid but depending on the situation warning a non paying owner who has horses in training with other trainers that you are going to ask the BHA to put them on the forfeit list can be a useful tool in getting payment.

If you wish to put an owner on the forfeit list then you apply to the BHA, sending through a copy of the training agreement, the unpaid invoices and a statement of account. The debt must have been owing for three months.

Upon receipt of an application the BHA will write to the owner asking why they have not paid. If the owner does not respond with an acceptable reason or does not respond within 21 days then the owner will be placed on the forfeit list.

The procedure is set out in the BHA rules of racing, Trainer Manual C, Schedule 4, Paragraph 5.1.

You should note that the BHA will not become involved in settling a dispute between you and the owner and they will not pursue a forfeit list application if there are already ongoing court proceedings for the debt.

Contacts at the BHA to dispute forfeit list applications are Lyn Williams and Trish Hill on 0207 152 0000.

### **Debt collectors**

If using a debt collection agency most offer a no collection no fee service and many trainers have used this route to obtain payment of debts. Depending on the situation, contact from a third party debt recovery practitioner be it a solicitor through the insurers or a debt collector may be enough to prompt the person to pay.

Contact details for two debt recovery companies are on the NTF website.

### **Statutory Demands**

A statutory demand is a written formal request for a debt to be paid. Once the demand has been made, the debtor has 21 days to respond. They must either settle the debt or come to an agreement about how the debt will be recovered. If they do not then you may seek to make the person bankrupt if the debt is over £500 or wind up a company that owes £750 or more.

This may be an option to discuss with solicitors or a debt collection agency depending on the circumstances.

### **And so importantly what can you claim?**

The NTF ROA training agreement provides for interest to be paid on a debt –

The wording is

“Invoices unpaid after the expiry of one month from delivery shall carry interest calculated from day to day from the expiry of that month at the annual rate from time to time payable under the Late Payment of Commercial Debts (Interest Act) 1998.”



The rate referred to in this clause is 8% plus the Bank of England base rate – the Government information on this is

<https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt>

or there are a number of online calculators available for calculating interest – search for Late Payment of Commercial Debts calculator.

### **And a final word**

Do not hesitate to contact the NTF - you can ring the office on 01488 71719 or the legal advice helpline on 0333 003 0159 for advice and guidance on debt recovery.