

INSIDE INFORMATION INQUIRY

**SUMMARY FINDINGS OF THE PHASE 2 WORKING GROUP AND
HRA REGULATORY BOARD DECISIONS**

1. Introduction

The second phase of the Inquiry has been a lengthy and inclusive process to ensure that the recommendations have the support of the various stakeholders within the sport of horseracing, the betting industry and, importantly, are acceptable to the wider racing public. This Inquiry has concentrated on addressing the issues surrounding Inside Information and how to regulate its misuse, as well as general views on the approach taken by racing to these issues.

2. Terms of Reference

To consider the issues referred to the Working Group by the Panel of Inquiry and:

- (i) seek a resolution on the issues raised;
- (ii) make recommendations thereon for consideration by the Regulatory Board.

The Working Group were also given the remit to consider any new issues that might arise during the course of their deliberations.

3. Composition of the Working Group

- Paul Scotney - chairman & Director of Security, Horseracing Regulatory Authority
- Rupert Arnold - Chief Executive, National Trainers Federation
- John Blake - Chief Executive, Jockeys Association of Great Britain
- Andrew Black/David O'Reilly – Director of Betfair/Betting Exchange Trade Association
- Tom Kelly - Chief Executive, Association of British Bookmakers
- Alan Lee - Horserace Writers & Photographers Association
- Sally Rowley-Williams - Racehorse Owners Association
- Sarah Thomas - Department for Culture, Media and Sport
- Graham Walcroft/Nigel Macfarlane - Horseracing Regulatory Authority

4. General Views

The Working Group endorsed the overall approach of adopting Rules to prohibit the misuse of Inside Information, deterrence and detection, and education – with the latter being a key focus of attention.

5. Definition of "Inside Information"

The Working Group agreed that, of itself, there is nothing wrong with having Inside Information; the concern comes when that information is misused. However, before deciding what constitutes a misuse, clearly there needs to be an appropriate definition of Inside Information in a regulatory sense that has general acceptance across the industry, to the wider racing public and to Regulators.

The following definition was agreed by the Phase Two Working Group:

"Inside Information" is information about the likely participation or likely performance of a horse in a race which is known by an Owner, Trainer, Rider, Stable Employee or their Service Providers as a result of acting as such and is not Information in the Public Domain.

Running alongside this there needs to be clarity about what constitutes "Information in the Public Domain" and who we consider to be a Service Provider.

"Information in the Public Domain" is information which has been published or is a matter of public record or can be readily acquired by an interested member of the public, and/or information which the Integrity Code of Conduct says will be treated as in the Public Domain.

"Service Provider" is a person who has provided a service or services for an Owner, Trainer or Rider connected with his involvement with racehorses.

One specific concern was whether Inside Information should be limited to matters of fact rather than include matters of opinion. There were conflicting views amongst members of the Working Group on this issue. However, it was generally agreed that, in certain cases, matters of opinion will constitute Inside Information and on other occasions, they may not.

Racing, by its very nature is awash with Inside Information and there is nothing wrong with that, although it is important that Owners, Trainers, Jockeys and Stable Employees are clear about their responsibilities in ensuring that Inside Information is not misused. In order to bring some clarity to what constitutes an acceptable and unacceptable use of Inside Information we have revised the current Codes of Conduct; together with an annex giving examples.

6. Education and Awareness Programme

The Working Group was unanimous that along with agreeing a definition on Inside Information, an Education and Awareness Programme will be the most important outcome from the Inquiry. Specifically, there is to be an Industry-wide training/education programme that, in the early stages, focuses on Owners, Trainers, Jockeys and Stable Employees, concentrating on the following areas:

- Clarification on what is and is not Inside Information;
- Guidance on what is an acceptable/unacceptable use of Inside Information with practical examples and case studies;
- A regular reminder of all the elements through a new Integrity Code of Conduct and annex highlighting acceptable and unacceptable use;
- Education and guidance on the potential pitfalls they may find when entering the industry, and how to avoid being caught up in threats to the integrity of racing and corruption;

- In an easily understood format, clear guidance on the Rules and Code of Conduct that are in place to help participants protect Inside Information, such as telephone restrictions.

The HRA should develop a training and awareness programme on the above issues. It should include the following:

- Road shows on all aspects on the subject of Inside Information, aimed to reach as many licensed/registered persons as possible.
- Face to face presentations with relevant stakeholders as they enter the industry. Although many do already receive information on these issues during their initial training, the content is not sufficiently focused on Inside Information and the associated Rules. Presentations should be specifically tailored to individual audiences. These presentations should be given jointly with representatives from the relevant trade associations when appropriate.
- Presentations on integrity issues should also be delivered to the various refresher seminars attended by Owners, Trainers, Jockeys and Stable Employees with representatives from the relevant trade associations when deemed appropriate. These could start in October at the mandatory seminars for Jump Jockeys.
- The production of an easy reference guide on Inside Information and associated issues (such as the Rules on the restrictions on the uses of mobile phones) which is issued each year with all licence renewals. These should be tailored and produced for individual groups, and should also be prominently displayed around the relevant areas on racecourses (eg. for Jockeys in the changing rooms, and for Stable Employees in the hostel/canteen areas) and training establishments.
- The production of video education tools using role models from the industry.
- Creating an interactive educational tool on Inside Information, available on the official British horseracing website.
- Exploring the option of establishing a mentoring system for those entering the industry (for example, Apprentice Jockeys being allocated a senior Jockey as point of contact as and when required).

7. Receiving Reward

The Working Group were asked to consider a change to Rule 243 in respect of the need for an element of reward to be present. Specifically, as it currently stands, a licensed or registered person cannot be in breach of Rule 243 unless it can be proved that they have received material reward, gift, favour or benefit in kind for passing information. After much debate, the Group decided that the need to prove the element of reward for a breach of Rule 243 should remain.

8. Non-licensed persons who misuse Inside Information

The Working Group considered whether an additional Rule was needed specifically to cover “non-licensed persons” (ie, those who have not agreed to be bound by the Rules of Racing) who obtain Inside Information for misuse by financial reward. It concluded that recent cases have illustrated that non-licensed persons who misuse Inside Information can already be prosecuted under the Rules of Racing.

However, greater clarity will be achieved by amending the current wording of Rule 243 so that persons other than those licensed or registered by the HRA are more clearly caught within the wording of the Rule. It was agreed that the amended wording for Rule 243 should be as follows:

“No person shall communicate Inside Information directly or indirectly to any other person for any material reward, gift, favour or benefit in kind.”

9. Introduction of a Code of Conduct for licensed persons

Whilst Codes of Conduct for Jockeys and Trainers are already in place under the Rules of Racing, there is general agreement that these should be updated and that Racing’s participants be better informed of the contents. In particular, the language needs to be easily understood, and should make clear the responsibilities of licensed and registered persons in preventing the misuse of Inside Information and where its use may be permissible.

10. Introduction of a Code of Conduct for racing media representatives

The Working Group agreed that everyone involved in horseracing, including the media, has a responsibility to prevent the misuse of Inside Information; and those who are not licensed or registered can be dealt with under the Rules already. In general, the media have been extremely responsible in this area, although, there have been one or two isolated cases where members may have misused Inside Information.

Recent cases have involved the misuse of Inside Information about horses either not participating in or not winning a race. It was agreed that any action should focus on preventing the negative use of Inside Information. The following wording for a Code of Conduct is proposed for members of the Horserace Writers and Photographers Association (HWP):

No member of the HWP who, in the course of his/her duties acquires Inside Information as defined in the Rules of Racing, shall:

- (a) Use it for the purpose of attempting to profit from negative information about a horse.*
- (b) Encourage any other person to use it for that purpose by disclosing the information.*

There was also agreement that, for it to be meaningful, there should be sanctions against those found to be in breach which relates to their professional standing. The suggested punishment (in addition to any action under the Rules) is that any member of the HWPFA found to have breached the Code, can be expelled from membership and have their accreditation (RCA metal racing badge) removed.

11. Dealing with non-licensed individuals who refuse to co-operate with HRA investigations

A number of recent investigations carried out by the HRA, which involved corrupt practices by non-licensed individuals, have taken an average of two years to reach the Disciplinary stage. One reason for delay has been that non-licensed persons will usually refuse to co-operate with the investigation which makes the task of gathering evidence against them much more difficult. Unlike the Police, the HRA has no powers to obtain documents from non-licensed persons for the purposes of an investigation. Unless some action is taken against them, suspected corruptors who refuse to co-operate can continue to attend race meetings and, of more concern, talk to Owners, Trainers and Jockeys about racing matters. The Working Group agreed that this is an unsatisfactory situation, and efforts should be made to put them before a Disciplinary Panel at a much earlier stage with a view to their exclusion from racing premises for failing to co-operate with the Regulator.

The Working Group was informed of a recent case involving the corrupt use of Inside Information by a registered individual who refused to co-operate in any way with the investigation. Rather than wait until the substantive hearing (which at the time was more than 9 months away), the individual was placed before the Disciplinary Panel for the single issue of failing to produce his telephone records as required under the Rules. As a result, he was declared a disqualified person for three years. The advantage of this course of action is that during the period prior to a substantive hearing the corrupter was deterred from attending race meetings or talking to licensed or registered persons about racing matters. The Working Group agreed that similar steps should be taken as the most appropriate course of action in the case of uncooperative non-licensed individuals.

12. Restrictions on Jockeys' Agents betting on horses to lose

The Phase One Report proposed that Jockeys' Agents should be included in the Rule that prohibits connections from laying their own horses to lose. Specifically, they should be restricted from laying horses to lose that are ridden by the Jockeys they represent, as they have direct access to Inside Information about the chances of a horse, in the same way that those who are Service Providers to Owners, Trainers, Jockeys or Stable Employees do. Whilst there was not a consensus on this issue, the majority of the Working Group did agree that Jockeys' Agents should be included in Rule 247.

13. Informing the industry of the non-participation of a horse in a race

The Working Group considered whether improvements should be made to the dissemination of information about the non-participation or well-being of horses entered in races with an ante-post market. The Working Group agreed that the HRA should continue to enforce the Order requiring Trainers to inform the Racing Calendar Office "as soon as is practicable" of the non-participation of a horse following contact with the Owner. This information should then be disseminated to the wider betting industry for a decision on whether to suspend their markets.

The Working Group proposed a second level, prior to the declaration forfeit stage, for Trainers to inform the Racing Calendar Office (and the betting public) if there were doubts about the participation of a horse in a race. Again, the betting industry can take action on such doubts and decide whether to suspend the market.

14. The voiding of specific bets in certain circumstances

The voiding of bets, in specific circumstances, will be an option open to the Gambling Commission under the provisions of the Gambling Act 2005. The HRA should continue to work with the Gambling Commission on how this sanction can be operated in the best interest of the integrity of racing. In September this year, betting will become a legally enforceable contract and it will be open to both bookmakers and the exchanges to void bets themselves if there is any material defect in the contract (bet). The betting exchanges are currently exploring the option of voiding a bet, placed for example in the ante-post market, on horses which are known to have died.

15. To restrict the activities of those who seek to corrupt horseracing

The Working Group noted that the HRA has limited powers to deal with non-licensed persons but agreed that it should continue to act to restrict the activities of those proven to have corrupted racing by excluding them from all racecourses and premises licensed by the HRA. Furthermore, the HRA should seek to formalise agreements with the ABB and BETA by recommending that their members ban any person, whom the HRA has excluded from racing, from entering their premises or betting with them.

DECISIONS BY THE HRA REGULATORY BOARD

5. Definition of Inside Information

The HRA Regulatory Board unanimously agreed that Inside Information can encompass both matters of fact and matters of opinion. In coming to that view, it took account of the issues raised by the Working Group and, in particular, the judgement of Tim Charlton QC in the case of Winston, Fitzpatrick and others (16th February 2007). The Board are also now able to take account of the findings of the Appeal Board (7th March 2007) chaired by Richard Hartley QC in the case of Brian Reilly where the Appeal Board considered and agreed with Tim Charlton's judgement on the parameters of what constitutes Inside Information. The Board agreed the definition as follows:

"Inside Information" is information about the likely participation or likely performance of a horse in a race which is known by an Owner, Trainer, Rider, Stable Employee or their Service Providers as a result of acting as such and is not Information in the Public Domain.

7. Receiving Reward

A key consideration for the HRA Board was whether Rule 243 should include the need to prove "material reward, gift, favour or benefit in kind". In considering this issue the HRA Board agreed that, notwithstanding the evidential difficulties of proving receipt of a reward, this should not detract from the fact that the primary objective should be to catch or dissuade anyone who systematically passes on Inside Information for reward or misuses it for financial gain. On balance, the HRA Board concluded that the requirement to prove a "material reward, gift, favour or benefit in kind" should be retained as it better protects those who innocently pass on Inside Information within the Rules.

8. Non-licensed persons who misuse Inside Information

The HRA Board agreed with the Working Group that greater clarity would be achieved by amending the current wording of Rule 243 so that persons other than those licensed or registered by the HRA are more clearly caught within the wording of the Rule. The Board agreed the following amended Rule 243:

"No person shall communicate Inside Information directly or indirectly to any other person for any material reward, gift, favour or benefit in kind."

The HRA Board agreed to formalise a previously informal agreement with the ABB and BETA, who will undertake to recommend to their members the banning of individuals who have been shown by the HRA to have corrupted racing and as such continue to pose a threat.

9. Introduction of a Code of Conduct for licensed persons

In the light of this the HRA Board agreed that the various Codes of Conduct currently in use should be up-dated and provide guidance on the type of circumstances in which the use/misuse of Inside Information will be acceptable/unacceptable (see Notes to Editor).

10. Introduction of a Code of Conduct for racing media representatives

The HRA Board were pleased to note that the Working Group had agreed the need for a Code of Conduct for Racing Media representatives. Whilst the betting industry was not intending to follow suit and issue a similar Code for its members, the HRA Board acknowledged that the betting industry will, of course, come under regulatory scrutiny through the Gambling Commission.

12. Restrictions on Jockeys' Agents betting on horses to lose ridden by jockeys they represent

Whilst noting that the Working Group could not reach a consensus on this recommendation, the HRA Board determined that Jockeys' Agents are likely to have access to this kind of Inside Information and approved their inclusion in Rule 247.