

On 11<sup>th</sup> September 2019, the Disciplinary Panel of the Channel Islands Horseracing Authority (“the Panel”) sat to hear the complaint of Mr Harrison-White (“the Complainant”).

Horseracing is conducted in the Channel Islands under the Rules of Racing of the Channel Island Horseracing Authority (“the Rules”).

The objection had been submitted on Monday 26<sup>th</sup> August in accordance with the time limits and the procedure set down in Rule (B) 72.1 for an objection lodged under Rule (B) 70.1.

This Panel was convened in accordance with Schedule 3 of the General Manual (A) the Rules.

The meeting in question took place on 11<sup>th</sup> August 2019, and the Complainant objected to the result of Race 3, known as “The Jersey Oaks”. The Complainant is the joint-owner of Safira Menina that was placed second in that race.

Initially, the Complainant also objected to the result of Race 5 on similar grounds (which will be set out below), however the Complainant was not an owner of a horse in Race 5 and therefore it was put to him and accepted by him that he had no standing to raise an objection.

As no objection was received into Race 5 from any qualified person, the objection therefore solely concerned Race 3.

The objection raised was two-fold:

1. That one of the horses in Race 3, namely Molliana, was in breach of Rule (E) 17.5.2. for not being within the 6 month time limit for the vaccination for Equine influenza. (“Objection One”)
2. That the same horse was not entitled to be declared and therefore had not been eligible to run (“Objection Two”);

The Panel has the power to disqualify a horse in relation to a race that has already been run, if it considers that, *inter alia*, any provision of Schedules (B) 2 and B (3) of the Rules has not been complied with in relation to the horse.

### **The test to be applied by the Panel**

The Panel was considering the actions of the Stewards, rather than any racing interference. Mr Shenkin submitted to us (which we accepted) that the test to be applied is the legal test for reviewing the decision of a sporting governing body. We should therefore determine whether the Stewards:

1. Acted outside their powers;
2. Were procedurally unfair;
3. Made a decision which was unreasonable, in the sense that it was irrational, perverse, arbitrary or capricious.

The Panel bore in mind at all times that it was not the Panel’s role to consider what decision it would have made, had it been in the place of the Stewards of the day.

### **Background to the complaint**

On the day in question the Stewards of the day had been notified by the Veterinary Officer, that although Molliana, trained by Neil Mulholland (an English trainer), had received equine influenza vaccinations, they were not within the 6 month time limit imposed by the Rules.

It was not in dispute that the time limit for the booster vaccination had been exceeded by 3 days.

The Stewards' report states that the Stewards heard from the Veterinary Officer "that in his opinion the lapse did not cause any measurable risk."

The Stewards also noted that that from 1<sup>st</sup> May 2019, the British Horseracing Authority had amended the requisite period between vaccinations to 8 months.

The Stewards considered the Veterinary Officer's advice and exercised their discretion under Rule (E) 17.7.1 to allow both Molliana (and a horse in Race 5) to run. Mr Mulholland was reminded that different rules currently apply in the Channel Islands to the UK.

Mr Shenkin informed us that the Stewards had considered the issue for some 15-20 minutes.

### **The Rules**

Rule 17.5.2 deals with the time within booster vaccinations must be given. It states that "If sufficient time has elapsed, the horse must also have received" and then in Rule 17.5.2 "further booster vaccinations at intervals of not more than six months apart (or such lesser time as the Authority may, in an emergency, decide)".

On first sight it would appear that this Rule is strict.

However, Rule 17.7 states: "In the event of failure to comply with any of the requirements of this Rule in respect of which a horse which is on Racecourse Property...."

Rule 17.7.1 "unless the Stewards have given their permission the horse will not be permitted to run in any race."

It is clear therefore that the Stewards are allowed to exercise their discretion in a case where there has been a failure to comply with any of the requirements.

The existence of this discretion was not in dispute between the parties. The dispute arose over the reasonableness of the exercise of that discretion.

### **The March email**

The Complainant was in possession of an email sent by the CIHA dated 6<sup>th</sup> March 2019, providing notification of a change to Rule (E) 17.5.2. The email was placed on the CIHA website on the same day, which meant that it constituted a change to Rule (E) 17.5.2.

The email read as follows:

"Notice to all Trainers

Following consultation with yourselves and your representatives the Channel Islands Horseracing Authority now requires all trainers to ensure that all registered racehorses are vaccinated against Equine Influenza (EI) every 6 months.

The Authority will amend Rule (E) 17.5.2 of the Rules of Racing accordingly.

The Jersey and Guernsey Race Clubs will not be allowed to accept declarations from horses that have not been vaccinated in the previous six months. This requirement will be in place until further notice and mirrors those in place in Great Britain.”

The Panel notes that the email states that the amendment was to be to Rule (E) 17.5.2 of the Rules and that is the provision which deals with booster vaccinations. It is not the provision which deals with declarations. Notwithstanding that, Mr Shenkin accepts on behalf of the Authority that the email could have been drafted more clearly.

The declaration process is a two stage process.

The first stage is an application to the Authority in accordance with the (F) Race Administration Manual forming part of the Rules.

The Panel notes that Rule (F) 49 appears to provide the Authority with an overriding discretion to accept or refuse to accept a declaration. Rule (F) 49.1 reads: “The Authority may, if it considers it appropriate to do so ... accept or refuse to accept any of the following in such circumstances as it may determine”. The paragraph goes on to include at 49.1.1.2 “any declaration to run”.

The second stage is the re-visiting of the declaration. It was submitted by Mr Shenkin and not disputed by the Complainant that in respect of vaccinations, it is not possible to ascertain compliance with the Rules of Racing until the passports are inspected by the Veterinary Officer on the day of the race.

All declarations are therefore re-verified at least 45 minutes before the race (Rule (B) 23.2). It is at this point that a declaration may be refused by the Authority, acting through the Stewards, for failure to comply with the vaccination rules. The passports of all overseas runners are also checked at this point. Molliana was an overseas runner.

Once the Stewards had exercised their discretion under Rule (E) 17.7,1 to permit Molliana to run, that decision meant that a declaration to run had been accepted by the Authority.

Although the objections of the Complainant were two-fold, as was set out at the start of this judgment, it was clear to the Panel that the two objections were inextricably linked to one another because the exercise of the discretion of the Stewards was at the heart of both of the objections.

### **The exercise of discretion**

The Panel therefore carefully examined the exercise of discretion of the Stewards and noted the matters which had been considered by the Stewards as set out above. The Panel also bore in mind the fact that the Stewards had deliberated for some 15-20 minutes, which is a not inconsiderable length of time within the context of a busy racing day.

It appeared to be accepted by the Authority that it might be argued that the exercise of the Stewards' discretionary powers under Rule 17.7.1 is subject to other requirements of the Rules of Racing, namely the requirements for a horse to run and the requirements for valid declarations.

The Authority submitted that those requirements had been considered by the Stewards.

Rule (B) 20 sets out the requirements for a horse to run in a race. It states that the conditions set down in Schedule (B) 3 must be satisfied. The condition in respect of equine influenza is set down in Paragraph 1.12 of Schedule (B) 3.

Paragraph 1.12 reads as follows: “The horse in the opinion of a Veterinary Officer must have at least received a vaccination against equine influenza.”

It was not in dispute that Molliana had received a vaccination against equine influenza. It was simply the timing of the booster that was the issue.

It appeared therefore that the requirements of paragraph 1.12 had been satisfied.

The Complainant submitted that there was also a requirement for the Veterinary Officer to be of the opinion that the vaccinations had been “sufficient”.

This is based on the fact that the Authority’s Guide to Procedures and Penalties within the Rules states in respect of Rule (E) 17: “Vaccination section of passport not completed correctly (other than alteration or a recheck) - if insufficiently vaccinated.”

Mr Shenkin drew the Panel’s attention to the following within the Guide to Procedures and Penalties within the Rules: “The guidelines as to penalties are not intended to override the discretion of the Stewards or the Disciplinary Panel under the Rules. However, in the interest of consistency and fairness, Panels are expected to operate within the guidelines unless they have good reason to consider that there are exceptional circumstances in the case before them which justifies a greater or lesser penalty outside the guidelines; Panels should be prepared to explain their reasons for so doing.”

The Panel considered that it was not a requirement as such for the Veterinary Officer to find that the vaccinations had been “sufficient”. Rather, if the Veterinary Officer found a discrepancy under Rule (E) 17 it was his duty to report this to the Stewards. This he did. As it happened, the Panel heard from Mr Shenkin as a matter of fact that the Stewards had discussed the sufficiency of the vaccinations with the Veterinary Officer during the course of their deliberations before giving their permission for the horse to run.

The Veterinary Officer had not been asked to attend the hearing by either party. The Complainant had unsurprisingly not been present during the Stewards' enquiry. He related a conversation with the Veterinary Officer after the race, where he was told that there was no measurable risk. It was therefore agreed between the parties that the Stewards' report had to that extent been accurate. It was not accepted by the Complainant that the Veterinary Officer had said that the vaccinations had been sufficient.

The Panel asked the Complainant whether he considered it necessary for the hearing of his case for the Panel to hear from the Veterinary Officer. He declined the opportunity on the basis that there was no dispute as a matter of fact as to what had been said. Mr Shenkin agreed that he saw no benefit in the Veterinary Officer being called. The Panel therefore took the view that it would not add anything to their deliberations to hear from the Veterinary Officer.

## **Decision**

In his oral submissions, the Complainant helpfully and eloquently identified his issue as being whether the Stewards exercised their discretion reasonably in allowing the horse Molliana to run in The Jersey Oaks on 11<sup>th</sup> August 2019.

The Complainant did not dispute the fact that the Stewards had the power to exercise such discretion, but instead alleged that their decision was irrational, perverse, arbitrary or capricious.

The Panel considered carefully the submissions of the Complainant and Mr Shenkin. For the avoidance of doubt, the Panel agrees with the parties that the Stewards did have the discretion to permit the horse to run under the Rules.

The Panel has heard that the decision was reached after consultation with the Veterinary Officer, relatively lengthy consideration during the race day, and with appropriate concern for the welfare of the other racehorses present at the meeting.

The Panel also noted that the Stewards had taken into account the British Horseracing Authority guidelines. The Stewards were aware that these had been changed to eight months as of 1<sup>st</sup> May 2019, with a one month grace period, meaning nine months for practical purposes. Molliana would have been entitled to run in the UK. Although it is accepted that this relates to a separate jurisdiction, the Panel were persuaded by Mr Shenkin who submitted that the BHA was a professional, related authority that had recently dealt with an outbreak of equine influenza. The Stewards felt justified in considering the approach taken by the BHA in these circumstances and the Panel finds this to have been a relevant and reasonable consideration.

It is important to reiterate that it was not the Panel's role to consider what decision it would have made, had it been in the place of the Stewards of the day. Instead, the Panel was bound to decide whether the Stewards reached a decision that was so unreasonable that no reasonable body acting reasonably could have made it. This is a different (and stricter) test than merely showing that the decision was unreasonable.

In all of the circumstances, the Panel has not been convinced by the Complainant that this was the case. Accordingly his objection is not upheld. The Panel's decision was unanimous.

The Panel wishes to thank the Complainant and Mr Shenkin for their obvious and thorough preparation, and the manner in which they have conducted themselves throughout.

Although unsuccessful, the Complainant's deposit is to be returned.

Notes to Editors:

The Panel for the Enquiry was: Advocate Rebecca Morley-Kirk (Chair), Advocate Mark Torode and Robin Rumbol.