

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

RE: ANITA ANDERSON

APPLICATION FOR A TRAINER'S LICENCE

Hearing Date: 12 DECEMBER 2017

Committee Members:

SEBASTIAN PRENTIS ESQ. (Chairman)

JENNY PITMAN OBE

EDWARD DORRELL ESQ.

REASONS

Background

1. The BHA considers applications for a trainer's licence "on their individual merits but within the framework" of the "Applications for a Licence to Train: Guidance Notes": Guidance Note 2.
2. Guidance Note 8 begins:
"First time applicants will normally have to demonstrate at least the following:
 - 8.1 a minimum of 5 years' experience in training establishments including at least 2 years in a responsible and senior position preferably as an Assistant Trainer in a successful racing yard;
 - 8.2 or a track record as a Permit holder consisting of at least 3 wins with a reasonable spread of horses; or
 - 8.3 running a Point to Point yard for at least 2 years and having trained a minimum of 10 Point to Point/ Hunter Chase wins with a reasonable spread of horses."
3. The word "normally" indicates that these routes are not exclusive, although it must be anticipated that any alternative experience would have to carry a similar weight and certainly be such as to allow an applicant to be considered a suitable person.
4. Anita Anderson has shown a persistent desire to become a trainer, but has not followed the prescribed route. On 13 July 2015 this Committee dealt with her appeal against a refusal of a licence in the following short terms:

“...you have been unable to satisfy us that you have had sufficient full-time involvement in recent times in the workings of a racing stable or racing in general to be granted a Licence to Train and to satisfy the guidelines on the subject of competence and capability.

You may wish to reapply and [we] would advise you to previously gain full time employment in a senior position in a racing yard. You certainly have the enthusiasm and commitment required”.

5. On 6 April 2017 Miss Anderson lodged a further application for a trainer’s licence with the BHA. While she had gained additional experience in a part-time and unpaid role at a racing yard, she had not followed this Committee’s earlier recommendations. The BHA’s initial response, of 26 May 2017, was
“to advise you that it appears you remain some way short of meeting the criteria for a Licence to Train at the current time. However, the BHA would welcome any additional information... that you may wish to provide which demonstrates that you do meet the criteria”.
6. On 31 July 2017 BHA wrote again, noting that Miss Anderson did not satisfy Guidance Notes 8.1-8.3, but
“recognising that [that]... is not in itself the only way one can demonstrate competence and capability, we believe that your application would benefit from further practical assessment to assist us in making a determination. This practical assessment would take place at the BHA’s Centre for Racehorse Studies (CRS) in Newmarket and will involve you completing requested practical tasks with our CRS horses under the supervision of a panel of experienced individuals...
This practical assessment is a new process being developed as an alternative means to assist the BHA in assessing competence and capability, in circumstances that the BHA considers appropriate. As such, we will require a short period of time in order to finalise the practical assessment criteria, before an invite can be issued to you”.
7. The assessment day was held on 28 September 2017. The record describes it as “an effective way of assessing complex understanding and knowledge”. Miss Anderson was found competent in all areas save that of the starting stall element. The assessment team’s recommendation was that Miss Anderson attend a training day with the BHA Starters Team (which on 21 October she did) and that “all unraced horses (in races started through starting stalls) must be presented for pre-race assessment

(by a BHA Starter on raceday) prior to running as laid out in Schedule (C)5 paragraph 5”.

8. By letter of 20 October 2017 the BHA formally notified Miss Anderson of its decision in respect of her application for a licence. It stated that

“the BHA are willing to grant a Licence to Train to you subject to the following:

- 1) Prior to an entry being made, the horse intended to run under the Rules must have completed, and passed a pre-race assessment (a recognised stalls test), on a race day. We would consider reviewing this condition once a demonstrable record with individual horses, racing from starting stalls, has been accrued.
- 2) You are only eligible to have horses listed as being in training which are in either your sole ownership, or in the ownership of your immediate family. This restriction can be reviewed once a demonstrable track record with results attained by individual horses has been accrued”.

9. As was her entitlement under the Rules of Racing (A) Schedule 9, Part 2, paragraph 9.1, on 9 November 2017 Miss Anderson sought a re-assessment by the Licensing Committee of her application. On 16 November 2017 the Chairman concluded that her re-assessment application met the “real prospect of success” test and should therefore be argued in front of the Committee; and he gave directions leading to this hearing.

The particular issue

10. Although the stalls test procedure was subject to regrettable hiatus on the day, the stalls not operating correctly, Miss Anderson takes no issue with the first condition imposed by the BHA: it reflects the assessment team’s recommendation.

11. The issue before us is the second condition. Through her counsel, Roderick Moore, Miss Anderson does not dispute that there should be a condition to her licence which reflects her lack of experience. But the practical effect of this condition is that, as Mr Moore says, Miss Anderson has been given her opportunity by one hand and had it taken away by another. She explains that:

“No member of my immediate or extended family either owns a racehorse or has any current plan to become a racehorse owner; or, for that matter, has any interest in the possibility of becoming an owner”.

Miss Anderson tells us that she herself is longer an owner, and cannot afford the three horses which would be the minimum she would require as a trainer.

12. Mr Moore was careful to observe, correctly, that Miss Anderson’s personal difficulties were not themselves reasons to re-assess the second condition, which has been put in place for wider public-interest reasons. The application for re-assessment suggests the following second condition:

“That Miss Anderson may not train any horse unless its owner has been made aware of the decision of the BHA in respect of her competency and capability recorded in its letter of 20 October 2017 and also made aware of the findings of the BHA’s assessors recorded in their record of an assessment which took place on 28 September 2017; and that, having been provided with a copy of both documents and having confirmed in writing that they have considered both documents, they have nonetheless decided to place their horses with Miss Anderson to be trained by her”.

The Licensing Committee’s task

13. In the view of this Committee, its task is to ascertain whether there is a suitable second condition which meets the public interest while alleviating Miss Anderson’s personal difficulties. As Philip McGhee, counsel for the BHA, acknowledged, and as is implicit in the BHA letter of 31 July 2017, a part of the public interest is in opening up licences to train to those who have not come up through the usual channels but who have had alternative experience and are competent and suitable to hold a licence.

The basis of the second condition

14. A licence to train is, of course, a privilege and not a right. It is a sign to the racing world and anyone else who is interested that the holder is of a sufficient calibre, has reached the necessary competence and is a suitable person. It is not a badge which can be acquired merely by financial expenditure, or box-ticking, or having friends in the right places.

15. The breadth of interests which the BHA is seeking to protect through the second condition is indicated in an e-mail sent on 24 October 2017 by Andrew Howell, Compliance Adviser at the BHA, to Miss Anderson, in which he explains the thinking behind both conditions, and in an impeccably open way encourages her to apply for a re-assessment if she is unhappy.

“As I stated during our conversation yesterday, the BHA do not suggest that you are an actual risk to racing. However, based on the discussions with you on 28 September and the practical assessment, a lack of experience was identified. Inexperience in this regard may give rise to potential problems, whether that be the risk of potential injury to a horse, rider, BHA employee or so on. The BHA are the governing body for horseracing and have a duty of care to protect all participants. That duty must be, and is, taken extremely seriously.

This duty of care, if breached, could have serious implications especially where a potential problem has been identified by the BHA. The BHA has no doubt that you would take a role as trainer with the utmost professionalism, however the BHA's approach must be consistent and absolute. As such, the BHA has suggested that a temporary restriction and condition be imposed on you to ensure that any potential concerns surrounding your perceived inexperience and failure to meet the requisite criteria can be monitored. Once those concerns are allayed then an application for an unconditional licence would be more than welcomed by the BHA”.

16. Mr McGhee also drew our attention to the particular concerns here about potential owners, who must not be misled by the terms of any licence into thinking that Miss Anderson has more experience than she has; and about rival trainers, to whom it would be unfair if Miss Anderson, with her lack of experience, were able to compete for business on equal terms. He also stressed the effects that a lack of experience could have on all racegoers and participants.

Conclusion: the second condition

17. Following deliberations, we announced at the end of the hearing our view that the public interest was met sufficiently by a second condition in the following terms, which are an adaptation of those suggested by Miss Anderson:

“That Miss Anderson may not train any horse unless its owner has been made aware of the decision of the BHA in respect of her competency and capability recorded in its letter of 20 October 2017, and also made aware of the findings of the BHA’s assessors recorded in their record of an assessment which took place on 28 September 2017, and of the decision of the Licensing Committee following the meeting of 12 December 2017; and that, having been provided with a copy of those documents and having confirmed in writing that they have considered them, they have decided to place their horses with Miss Anderson to be trained by her; provided always that save with the agreement of the BHA or of the Licensing Committee, Miss Anderson may not train more than ten horses at any one time”.

18. A second condition in those terms opens the way to Miss Anderson taking up the licence which has been offered to her, and promotes the wider public interest in her so doing.
19. Our reasons are as follows.
 - 19.1 It is not in dispute that Miss Anderson is a competent and suitable person to hold a licence to train, albeit that for a period that licence must be subject to a condition ensuring that her horses have passed a stalls test, and subject to a condition which reflects her relative lack of experience.
 - 19.2 The BHA’s preferred second condition directly affects only the pool of owners from which Miss Anderson may draw. It is not in terms aimed at any other racegoer or participant whose interests the BHA is to protect.
 - 19.3 It follows that if one considers the various parties whose interests the BHA are seeking to protect, the only difference between its proposed second condition and Miss Anderson’s is that hers allows owners from a wider pool.
 - 19.4 However, the BHA’s second condition does not in terms seek to limit the number of horses of her own or her family’s which Miss Anderson may train, or require any particular knowledge of her circumstances on the part of her family.
 - 19.5 By contrast, her proposed second condition ensures that all her prospective owners are dealing with her open-eyed as to her specific racecourse issue and her inexperience. That seems to us both essential and adequate protection for that class of interests.

- 19.6 In its formal written response to Miss Anderson's application for re-assessment the BHA contended that her second condition "removes the responsibility of proper oversight and regulation of her training operation from the BHA and onto potential owners". We reject that. Owners can place horses with Miss Anderson and remove them as they see fit, just as her family could under the BHA's proposals. The BHA retains oversight because this a condition on her licence which it can choose to remove, vary, or maintain.
- 19.7 As it was, before us Mr McGhee argued the point in the opposite direction, contending that Miss Anderson's proposed condition placed an undue regulatory burden on the BHA. Again, we reject that. There probably is some increase in its work in checking that owners have given the requisite written confirmation as against confirming the familial links of those owners, but that increase is minor and in any event not disproportionate.
- 19.8 We do consider, though, that it is necessary for the moment to have a formal limit on the number of horses under Miss Anderson's care at any point. We are told that her proposed yard at Wolverhampton Racecourse has thirteen stalls. Miss Anderson has told us that she projects turning a profit with a minimum of six horses, and has provided us with figures supporting that. She has said as well that "Under my proposal I would expect to start with four horses belonging to others. My plan would be to have as many as 10 horses by the end of my first 12 months in business". In our view, the appropriate present limit for Miss Anderson's training operation is ten horses. As an inexperienced trainer she can concentrate her attention on that number; and a limit of ten answers as well any residual concerns about the fairness of her competing for owners with more experienced trainers, although we add that those concerns appear to us met both by the open-eyed second condition and the very fact that conditions are put on the licence at all.
20. We re-iterate what the BHA has already stated, which is that these conditions are intended to be temporary. In the first instance it will be for Miss Anderson to approach the BHA for their lifting or variation, but if she is unhappy with the result then she may seek a further hearing before this Committee, through the re-assessment process if applicable, or otherwise by direct application. This is not, for the avoidance of any doubt, intended to limit in any way the BHA's own control of its licensing process.

21. By agreement between the BHA and Miss Anderson, her licence, subject to the agreed first condition and to our second condition, will be granted upon the completion of the usual formalities.

Sebastian Prentis,
Chairman of the Licensing Committee,
15.xii.2017