

THE IHRB REFERRALS COMMITTEE

REFERRAL OF VIKING HOARD TRAINED BY CHARLES BYRNES

DECISION

(COMMUNICATED TO THE PARTIES ON 18 JANUARY 2021)

1. On 18 October 2018, the gelding Viking Hoard ran in the “*Tramore Racecourse On Facebook Handicap Hurdle*” at Tramore, when trained by Charles Byrnes. It opened at a price of 4/1 in the morning and the price drifted thereafter. The starting price was 8/1. The Committee viewed a recording of the race. The gelding ran conspicuously badly. It received a reminder from the rider immediately after jumping the first hurdle. It became rapidly detached from the rest of the field and was pulled up before the seventh hurdle.

2. In these circumstances, the Stewards properly requested that Viking Hoard be examined by the IHRB Veterinary Officer. He reported to the Stewards that the gelding was post-race normal. He also advised Cathal Byrnes, representing his father Mr Byrnes, that the gelding had a slow heart rate. Samples were taken for analysis, including a urine sample. Cathal Byrnes signed for the taking of this sample on behalf of the trainer at 15.05.

3. On 31 October 2018, LGC Laboratory notified the IHRB that there was a screening finding for acepromazine (ACP) and its metabolite in this sample. The IHRB authorised confirmatory analysis of this sample to proceed. LGC certified on 13 November that the urine sample was positive for ACP metabolite hydroxyethyl promazine sulphoxide (HEPS). At the request of the trainer, B sample analysis

without witness was conducted by LCH Laboratory France on 5 December 2018. LCH confirmed that the urine sample was positive for HEPS by report of 19 December 2018.

4. ACP is a sedative, becoming active within 15-30 minutes of administration and lasting up to 6 or 7 hours. It is highly metabolised and excreted in urine. It is licensed in Ireland for use in horses as a prescription-only medication. The data sheet of the product indicates that loud noises or rapid movement during sedation may cause arousal from the sedated state. Consequently, the horse should be kept in a quiet environment, away from sensory stimulation and should not normally be ridden within 36 hours of administration. Overdosage results in early onset of sedative symptoms and prolonged effect.

5. As a sedative, ACP and HEPS are prohibited substances on race day: see Rule 20(v)/Regulation 14 of the Rules of Racing and INHS Rules. ACP is a substance undoubtedly capable at any time of causing an action or effect within the body system of the mammal concerned. The action or effect of ACP on the system of Viking Hoard was graphically illustrated by the poor performance of the gelding in the Tramore race. The race footage provided significant context for the conclusions of Dr Hillyer, discussed below. Under Rule 87(vii)(d), a horse is not qualified for a race if it was in receipt of anything other than food or water on race day.

6. Mr Byrnes was notified of the adverse analytical finding on 30 November 2018 during an unannounced inspection by IHRB Veterinary Officer Nicola O'Connor and IHRB Deputy Head of Security Declan Buckley. The Medicines Register did not record any administration of ACP for Viking Hoard. Neither Mr

Byrnes or his son Cathal had any explanation for the presence of ACP in the urine sample.

7. The IHRB commenced an investigation into the adverse analytical report for ACP in the urine sample for Viking Hoard, and into betting patterns relating to the gelding. The Referrals Committee convened by Zoom on 7 January 2021 to consider these matters. Mr Byrnes was represented at the hearing by Patrick Kennedy, solicitor. The case was conducted by Clíodhna Guy, solicitor and head of the IHRB Legal and Compliance section.

8. The IHRB's case was conducted by reference to the Rules of Racing and INHS Rules, with specific reference to Rules 1(ii), 18, 19A, 20(v) (xvii) (xviii), 21, 96, 148(i) and Regulation 14, which is entitled "*Regulation relating to the taking of Samples from Horses*". At the commencement of the hearing, Mr Kennedy requested clarification as the parameters of the hearing, with reference to the report concerning betting patterns. Ms Guy referred to the absence of an invocation of Rule 272 by the IHRB but submitted that the Committee was entitled to consider the betting patterns aspect in considering the specific provisions invoked by the IHRB, which are recited above. The Committee confined itself to consideration of these provisions and to the consequences of the adverse analytical report. This Decision expressly refers to any aspect of the evidence, including betting patterns, which was considered by the Committee to be relevant to the conclusion as to the consequences of the adverse analytical finding.

9. Dr Lynn Hillyer, Head of Anti-Doping/Chief Veterinary Officer of the IHRB dealt with the veterinary aspect of the case. In evidence, she helpfully summarised the key aspects of her written report as follows: -

- a) The absence of any record of administration of ACP,
- b) The absence of any explanation from the trainer as to the presence of ACP in the urine sample,
- c) The significant finding by the Veterinary Officer on the day of the race that the gelding had a slow heart rate, consistent with the presence of ACP in clinically significant concentrations in the gelding,
- d) The presence of both the parent drug and the metabolite in the post-race urine sample was strongly indicative of administration of ACP on the day of the race,
- e) HEPS was found in high enough concentration to exceed the International Screening Limit (ISL). The ISL is 10 nanograms/millilitre. The estimated detected level in this urine sample was 1000 nanograms/millilitre, or 100 times the applicable ISL,
- f) ACP was exerting a clinical effect on Viking Hoard in the form of a low post-race heart rate,
- g) At these concentrations, ACP affected the performance of the gelding, the integrity of the race and the health, safety and welfare of the animal, the rider, stable staff and other riders and animals in the race.

10. In reply to questions from Ms Guy, Dr Hillyer added that in this case several relevant factors remained unknown. These factors included the form in which the ACP was administered and the level of dosage. As to the time of administration, Dr

Hillyer referenced a study in which she participated, where ACP gel was administered to 6 horses. Based on this experience, she estimated that the level of ACP detected in this case could be found at 2 hours (increasing) and 10 hours (decreasing) after administration. The study showed a rapid onset of effects after administration in the case of an overdose. **In this case, the evidence showed that Viking Hoard was subject to a dangerous degree of sedation during the race, which was masked until the rider was required to ask the gelding for an early effort in the race. In her opinion, the betting patterns were not co-incidental, and Dr Hillyer concluded that the evidence demonstrated that Viking Hoard had been “nobbled” prior to the race. This conclusion was not challenged. The Committee accepted that this inference is correct and fully justified by the evidence.**

11. Under cross-examination by Mr Kennedy, Dr Hillyer noted that the level of sedation was either deliberate or else resulted from an error on the part of the administrator. She pointed out that this was another unknown in the case. She accepted that the likeliest scenario was that the administration of ACP occurred close to the time of the race. The Committee shared the opinion that this was the most probable scenario. The evidence of Mr O'Connor was also to this effect. He is a veterinarian who gave evidence on behalf of Mr Byrnes.

12. Mr Buckley dealt with the betting pattern aspect of the case. The IHRB had received alerts from the British Horseracing Authority (BHA) relating to betting patterns on Viking Hoard. These were in turn based on information received from commercial betting exchanges which allow for widespread betting against horses winning races. This information indicated that there was a substantial lay bet on

the Tramore race, with a potential liability of €34,889 if the gelding won. This sum was risked to win €3,200. This represented 50% of the relevant exchange market. The Committee was satisfied that this risk/reward ratio demonstrated substantial confidence on the part of the layer, both on this and on previous occasions.

13. The gelding ran at Sedgefield on 2 October 2018 when it finished fourth. It was suggested during the hearing that samples were taken on that occasion, which showed nothing untoward. The official BHA Stewards Report of that meeting (available online) in fact makes no reference to such testing. The gelding drifted from 3/1 that morning to 10/1 at starting. The risk on that occasion was €30,279, against a return of €12,000. This represented 71% of the relevant exchange market. Another runner from Mr Byrnes' stable at that meeting was successfully laid against a substantial risk on the exchanges, when it pulled up after the saddle slipped. This event was duly reported by the rider to the Stewards and is recorded in their Report.

14. Prior to Sedgefield, the gelding ran at Galway on 30 July 2018. On that occasion, the morning price was 4/1, drifting to 8/1 at starting. The risk on the race at Galway was €55,000, against a return of €12,000. This represented 50% of the relevant exchange market. The official IHRB Daily Report of that meeting (also available online) confirms that the gelding was examined by the IHRB Veterinary Officer at the request of the Stewards. It was found to be post-race normal and samples were also taken for analysis. The Committee presumed that nothing adverse arose from subsequent analysis of those samples.

15. Mr Buckley added that all three of these lay bets had been traced through the Betfair exchange to the same account number. **These lay bets were initially placed with a limited liability company, which placed them in turn with Betfair, on what**

appeared to be a combined basis with other such bets. The Committee was surprised to hear that such a mechanism is possible, as it could hinder identification of the possible beneficiaries of lay betting. Mr Buckley identified an individual known to be associated with the combined account. He is based in a distant part of the world and was said to be associated with match fixing and associated betting in connection with other sports. **There is no evidence to connect Mr Byrnes with these betting patterns, but they are part of the full and relevant context to the events of 18 October 2018 at Tramore and informed the subsequent investigation into those events.**

16. Mr Byrnes participated in investigations by the IHRB and gave evidence to the Committee. His stance in the matter is that he had nothing to do with the administration of the ACP to Viking Hoard or the various betting activities set out above and has no knowledge of any of these matters. He had not used ACP in his stable for many years. As to his part in the Tramore events, he stated that he arrived at the course with his son Cathal and the gelding about 2 hours before the race. The race went off at 2.35. To the best of his knowledge they had not stopped during the two-hour journey to the course. He signed in and Cathal took the gelding into the stable yard. He conceded that the gelding had been left unattended in the stable yard on two occasions prior to the race. The first was when he met Cathal who had left the gelding to look for a rug. The second was when he and his son went for something to eat. He estimated that the gelding was left unattended for a total of between 20 and 25 minutes as a result. Mr Allen asked Mr Byrnes whether it was a common practice for him to leave horses unattended. Mr Byrnes replied that he knew what the rules provided but characterised the reality as being that horses were frequently left alone

for short periods. He stated that he assumed that whoever had administered ACP would have known of this reality.

17. The Committee was satisfied that Viking Hoard received a substance other than food and water on the day of the Tramore race and must therefore be formally disqualified from that race based on a breach of the provisions of Rule 87(vii)(d) on that occasion. The Committee was also satisfied that the same result followed from a breach of Rule 96(a) consequent on the presence of a prohibited substance at the level detected in the post-race urine sample.

18. The Committee was satisfied that Mr Byrnes is liable to sanction arising out of these matters based on Rule 148, which provides that the trainer is responsible for all matters concerning the welfare, training and running of horses under their care, unless a satisfactory explanation is forthcoming. The main issue in this case is the level of sanction that should be applied to the trainer under Rule 96 in these circumstances.

19. It is most likely, as already noted, that ACP was administered to Viking Hoard in the hours immediately prior to the race. During the time of possible administration, the gelding was under the direct care and control of Mr Byrnes and his son, either in transit to the racecourse or in the stable yard. The gelding was admittedly left unsupervised for a significant portion of the time that it was in the yard. Mr Kennedy submitted that it was therefore possible that it could have been accessed by a third party in the yard. This person would either have been otherwise authorised to have access to the yard, or somehow obtained unauthorised access. Mr Buckley stated that the latter scenario was not possible. The Committee considered that this scenario was no more than a theoretical possibility. It

presupposes an unauthorised person bypassing security at the entrance, finding the gelding in the yard among all the other race day activities, ensuring that it was unsupervised, and then administering a large dose of ACP in some form.

20. Therefore, the Committee found that only two scenarios were reasonably likely as to the administration of ACP close in time to the race. Firstly, ACP was administered during that time by or with the knowledge of the trainer. Secondly, and in the alternative, ACP was administered during that time by a person with authorised access to the stable yard during a period when the gelding was left unattended. Following the clarification sought by Mr Kennedy at the commencement of the hearing, and in the absence of an invocation of Rule 272 against Mr Byrnes, the Committee was not required to choose between the respective scenarios.

21. The Committee approached the case on the interpretation of the evidence that was reasonably open and most favourable to Mr Byrnes, that being that Viking Hoard was “nobbled” by an unidentified third party at a time when the gelding was left unaccompanied by him or his son. Although not alleged to be involved directly in the administration of ACP, his neglect in supervising the gelding facilitated what was clearly organised pre-race doping of his charge. The deliberate doping of Viking Hoard close to race time in this case could not conceivably have been a casual or opportunistic event.

22. The Committee noted the difficulties of proof that the IHRB faces in cases where there is no direct evidence of who administered a prohibited substance. Direct evidence of administration will rarely be available, for obvious reasons. When direct evidence is not to hand, proof relies on inferences drawn from the surrounding circumstances. A finding against a licensed trainer of such misconduct

would inevitably be followed by a lengthy or permanent withdrawal of licence. It could also attract criminal investigation and/or liability.

23. Although the standard of proof in these cases remains that of the balance of probabilities, the law suggests that the consequences of a finding of the magnitude of deliberate doping against a trainer should be considered in deciding whether the finding was established by the evidence. In the decision of the Supreme Court in *Banco Ambrosiano SPA -v- Ansbacher & Co. Ltd. (1987)*, it was held that **proof of an inference of fraud must not be drawn lightly, or without regard to all the circumstances, including the circumstance of the consequences of a finding of fraud.** Deliberately doping a horse to ensure that unsuspecting punters will lose their stakes is both a fraudulent and a criminal activity. Consequently, circumstantial evidence may enable identification of the culprit in a doping case but must be approached with care in the light of the applicable civil law.

24. In summary, the law is that where serious allegations are made in civil proceedings, the tribunal must apply the standard of proof in a rigorous and exacting manner and require clear and convincing proof before a grave allegation is established as a matter of probability. **Suspicion, no matter how strong, is not evidence for this purpose.** The Committee set out its understanding of the law to illustrate legal framework within which the IHRB and the Committee must operate. This legal framework explains the policy underlying the provisions of Rule 148. **The trainer is held responsible for the matters set out in Rule 148 because he or she is the primary custodian and supervisor of the racehorse. The trainer alone has the degree of access to and control of the animal necessary to ensure an effective first line of defence against interference by third parties, particularly on a race day.**

25. So far as the trainer is concerned, in the case of a relevant breach, Rule 96 provides for a fine and/or withdrawal of his or her licence for such period as the Committee considers to be appropriate. Both parties made submissions on the issue of sanction in this case. **Mr Kennedy submitted that a “minimal sanction” should be imposed.** He suggested that ACP was administered close in time to the race. The Committee accepted that this was the most probable conclusion on the evidence. He referred to the absence of a CCTV camera in the Tramore stable yard that might have identified or eliminated possible culprits. He suggested that this resulted in gaps in the investigation. He submitted that the gelding had been left unattended for a short time and referred to “custom and practice” in this regard. **Ms Guy submitted that although it was not alleged that Mr Byrnes was directly involved in either the administration of ACP or the betting patterns, he had taken risks in discharging his responsibilities under the Rules that resulted in an extremely serious outcome from the perspective of the IHRB.**

26. **The Committee concluded that Mr Byrnes was seriously negligent in the supervision of Viking Hoard of the day of the Tramore race.** His level of culpability was not affected by the presence or absence of a CCTV camera in the stable yard. Additional CCTV coverage would be desirable but cannot cover every event in a large and busy stable yard and boxes. It is not a substitute for the discharge of the primary responsibilities of the trainer under the Rules. The Committee did not accept that the “custom and practice” argument afforded significant mitigation in this case. Of course, as a matter of practicality, it is recognised that there may be very short periods of time where an animal might be left unattended in a stable yard. However, in this case there were two separate instances where the gelding was left unattended. Both were avoidable, given that two persons were available to share the

requisite supervision duties on the day. **It is incumbent on the trainer to arrange for and deploy adequate personnel and resources to specifically ensure that there is no unauthorised or unsupervised access to a competitor on race day and that there is general compliance with all obligations pursuant to the Rules.**

27. The “custom and practice” argument made on behalf of Mr Byrnes is not well-founded, either in general or in this case. Even if it could be used to justify brief absences where an animal is left unattended, **on the facts of this case the Committee did not accept that the combined period of absence was short. On the contrary, it represented a significant proportion of the time that the gelding was present in the stable yard prior to being tacked up for the race. In addition, the Committee is satisfied that in accepting the interpretation of the evidence that a third party planned and executed the doping of Viking Hoard, it follows as a matter of probability that Mr Byrnes’ general mode of operation permitted such a strategy to be viable.**

28. **The actual and potential consequences of the failure to supervise in this case are disturbing.** Firstly, the level of ACP administered to Viking Hoard rendered the gelding a danger to all nearby persons and animals. Fortunately, no actual consequences flowed from this danger. Secondly, it ensured that the winning bets staked on Viking Hoard on the betting exchanges could be opposed with absolute confidence. Any punter who backed Viking Hoard to win in good faith was dishonestly deprived of a fair run for their money. **Significant actual damage flowed from the neglect of the trainer. The damage was financial in the case of affected punters, and reputational in the case of the racing industry. This case illustrates the specific and additional challenges and dangers to the integrity of**

racing posed by the widespread ability to back horses to lose races for significant returns. The desirability of this practice or how it might be better controlled within the available regulatory resources is worthy of further, constant review. That issue is beyond the remit of this Committee.

29. The Committee considered that the consequences of a breach of rule are relevant to the assessment of sanction. In this case, the Committee considered that Mr Byrnes indulged in an unacceptable level of risk-taking in the supervision of his charge on a race day, resulting in the significant damage referred to above. The Committee therefore concluded that a “minimal sanction” was not appropriate, and that the facts and consequences of this case passed any such threshold. Each case has different facts and consequences, but the prevention of doping and “nobbling” requires a scrupulous level of supervision, care and attention by trainers and their representatives in discharging their responsibilities under the Rules of Racing, particularly on a race day. The Committee decided that a purely financial sanction on the trainer would be insufficient and inappropriate on the facts of this case.

30. In this regard, and in the interests of consistency, the Committee had regard to the decision of the Appeals Body in the appeal of David Dunne, Trainer, dated 30 January 2020, where a financial penalty imposed by the Referrals Committee in a case involving exposure of the horse to Boldenone while in the care of the trainer prior to race day was held to be unduly lenient and was replaced by a sanction of withdrawal of the trainer’s licence.

31. The Committee therefore imposed a sanction of 6 months withdrawal of Mr Byrnes' licence to train, together with a fine of €1000. The fine was levied at the minimum level specified by the Rules in anticipation of the financial consequences for Mr Byrnes of the primary sanction of withdrawal of his licence. The Committee also ordered that Mr Byrnes discharge to the IHRB the costs of analysis of the B sample.

NOTE: The Committee added emphasis to matters considered to be of importance to this decision.