



Kevin Lundie - Rule (K)49

Disciplinary Panel - Other decisions

26 Aug 21

1. On 26 August 2021 the independent Disciplinary Panel of the British Horseracing Authority (BHA) convened to consider whether Mr Kevin Lundie, a licensed professional flat jockey, was in breach of Rule (K)49 (a jockey must ensure that no Banned Substance is present in their body) and/or Rule (L)5.2 (where an approved person requires a person to attend an interview the person must attend the interview at the agreed time and place).
2. The BHA was represented by Ms Charlotte Davison and Mr Lundie by Mr Rory Mac Neice. The hearing was of necessity virtual and followed the agreed rules for this procedure. No objection was taken to the constitution of the Panel.
3. At the outset of the hearing, Mr Mac Neice helpfully confirmed his instructions as set out in his email to the BHA on 4 August 2021, that Mr Lundie admitted both a breach of Rule (K)49 and Rule (L)5.2; the latter being a failure to attend for interview on 1 December 2020, rather than attempting to avoid being interviewed, as in fact an interview did take place on 23 March 2021.

The issue therefore for the Panel was as to penalty.

Background

4. The factual background was essentially not in dispute. Mr Lundie is now 29 years old. He held an apprentice jockey's licence from 2009 to June 2018. On 6 July 2018 he was granted a full professional flat jockey's licence, which is due to expire on 10 September 2021.
5. On 27 February 2019 at Southwell racecourse he tested positive for benzoylecgonine, a metabolite of cocaine, at a concentration of 670ng/ml (the threshold level being 150ng/ml). His riders licence was suspended on an interim basis on 6 March 2019, and when he appeared before the Disciplinary Panel on 11 July 2019 his licence was withdrawn for 6 months i.e. 6 March 2019 to 5 September 2019. Before his licence was restored Mr Lundie underwent an Enhanced Testing Programme.

6. On 7 September 2020 the current breach of Rule (K)49 occurred when Mr Lundie tested positive at Windsor racecourse (where he rode in two races) due to the presence of benzoyllecgonine in his urine sample, at a concentration of 370 ng/ml. This is almost 2½ times over the threshold level. No B sample was sought by Mr Lundie. On 16 September 2020 his riders licence was suspended on an interim basis with immediate effect. This interim suspension has remained in place ever since.

7. On 23 September 2020 Mr Taylor, the BHA Investigating Officer (IO) first contacted Mr Lundie, and Mr Lundie gave permission for the IO to talk to Mr Paul Struthers (Chief Executive, Professional Jockeys Association) about the case. Various attempts were made by the BHA to contact Mr Lundie during October 2020, and on 2 November 2020 it was discovered that he had gone abroad to work in Dubai.

8. During November 2020 there were further difficulties setting up an effective interview between the IO and Mr Lundie, but eventually a zoom meeting was arranged to commence at 1400 hours on 1 December 2020. The IO opened the zoom application and commenced the meeting, but Mr Lundie did not join. The IO noted that at 14.27, Mr Lundie's phone had been in use. Mr Lundie did not contact the IO or the BHA to provide any explanation as to why he did not take part in the planned interview on 1 December 2020, nor did he arrange a new date. Indeed nothing further was heard from Mr Lundie for the next 3½ months. On 15 March 2021 the BHA sent Mr Lundie a message saying that due to his failure to co-operate with the investigation, the BHA was minded to apply under Ruler (L)13 for an Exclusion Order, excluding Mr Lundie from any premises licensed by the BHA, and repeated their request that he co-operate with them. Mr Lundie responded promptly, stating that he was still in Dubai and agreed to a zoom interview on 23 March 2021, which accordingly took place and lasted just under ½ hour. The relevant contents of the interview will be referred to later in these Reasons.

Summary of the BHA case

9. The BHA say that it is agreed that Mr Lundie tested positive for the Banned Substance benzoyllecgonine at Windsor racecourse on 7 September 2020. As he had previously tested positive for the same substance at Southwell on 27 February 2019, the BHA submits that he falls within the penalty for a second offence within 24 months under Rule (K)49. The Table of Penalties state that the penalty for such a second offence within 24 months is an entry point of 9 months and a range of 6 months to 2 years withdrawal of licence. The guide states that when the substance is cocaine the rider will normally have their licence withdrawn for a period at the top of the range. Ms Davison on behalf of the BHA submits that the position is clear, no reduction is appropriate and invites the Panel to withdraw his licence for 2 years. The BHA accept that the interim suspension (which has been in force from 16 September 2020 to date – not far short of a year) should count towards the penalty.

10. As to the admitted breach of Rule (L)5.2 (failing to attend the interview on 1 December 2020) the BHA point out that the entry point is a fine of £2,000 or withdrawal of licence for 3 months, with a range of a fine of £1,000 - £5,000 or withdrawal of licence of between 1 month and 3 years. The BHA do not point to any particular aggravating features and suggest a period of withdrawal of Mr Lundie's licence as the appropriate penalty. They leave it to the Panel to decide whether the period of withdrawal of the

licence should run consecutively or concurrently to the period of withdrawal for the more serious matter under Rule (K)49.

Summary of Mr Lundie's case

11. Mr Lundie accepted that this was his second positive test for cocaine within 2 years. It was accepted on his behalf that the starting point penalty for such a breach was likely to be at or close to a 2 year withdrawal of his jockey's licence. However, on his behalf Mr Mac Neice submitted that under Rule (H)26 the Disciplinary Panel could exercise the power afforded to racecourse Stewards to suspend part of the period of withdrawal and that if there was a further breach involving cocaine or alcohol during the period of suspension, then the suspension would be activated. Mr Mac Neice submitted that a third of the 2 year period (ie. 8 months) could thus be suspended.

12. It was pointed out that Mr Lundie had confronted his problems largely on his own and had shown some courage and character in so doing. After the first cocaine positive in February 2019, Mr Lundie had not accepted that he had a problem. However, after the current positive at Windsor in September 2020, he now realised he did have a problem, although as he said in his interview, he considers his problem really to be with alcohol. It is when he has drunk excessively that he is liable on occasions to take cocaine, but his problem, he says, is not previously with cocaine.

13. As he told the IO in interview on 15 March 2021, approximately 4 days before Windsor races on 7 September he went to a party, drank too much and accepts he took some cocaine although he could not now recall the details. He says at the time he had recently lost his job and his girlfriend and he had "literally lost the plot through drink".

14. He decided, recognising the problem, that he needed to make a fresh start away from England and accepted a 6 month contract in Dubai, a country which he knew had a zero tolerance to drugs and alcohol. In Dubai he helped break yearlings and he said things went well. The person whom he worked for in Dubai recommended him to a trainer in England and by the date of the Disciplinary Panel hearing he was back working in England.

15. On his behalf, it was said that Mr Lundie had shown considerable strength of character, now recognised he had a problem and apologised sincerely for the trouble he had caused.

16. As to the interview, it was stressed that Mr Lundie never intended to avoid an interview, but that a number of difficulties had arisen which necessitated a delay in the interview taking place. For example, after he arrived in Dubai he learned he needed a VBN code in order to communicate by a number of channels with the UK and his lack of such a code caused various delays. Then on the agreed date of the interview (1 December 2020) he had believed his apartment would be empty, but in fact his room mate had appeared with friends and given the sensitive and embarrassing nature of the interview, he decided not to go ahead with the interview. He accepted that it had then taken him over 3 months to have any contact with the BHA and only then after they had threatened to obtain an Exclusion Order

against him. He apologised for his behaviour and for the time, trouble and expense that he inevitably caused to the BHA over this interview, which as stated above, eventually took place on 23 March 2021. It was accepted that in this interview he had been open and co-operative.

Mr Mac Neice submitted that in the circumstances for the breach of Rule (L)5.2 a caution would suffice.

Conclusion

17. As stated above, where cocaine is concerned, the rider will normally have their licence withdrawn at the top of the range. The top of the range for a second cocaine offence in 24 months is a licence withdrawal for 2 years. The Panel could find no good reason for departing from this approach. The Panel did not consider that the circumstances of the offences nor Mr Lundie's personal mitigation, justified reducing the period of 2 years or suspending part of it. Indeed, the gap between the first and second positive was in reality only about one year, as for 6 months of the period between the offences his licence was withdrawn for the first offence. The use of cocaine by jockeys is not only very dangerous for riders and horses but in the view of the Panel has a tendency to bring the sport of racing into disrepute.

18. As to the breach of Rule (L)5.2, the Panel accept that Mr Lundie did not intend to avoid being interviewed completely. However, he delayed matters a number of months and between December 2020 and March 2021 could, and should, have been far more pro-active in explaining why he had missed the first interview and promptly setting up another. He clearly caused a significant amount of time, trouble and money to be wasted. The Panel considered for this breach that the entry point of 3 months withdrawal of his licence was appropriate. Although there were arguments to support this 3 month withdrawal being consecutive to the 2 years, the Panel overall concluded it was fair and appropriate to order the 3 months to run concurrently with the 2 years.

19. The Panel further ordered that the interim suspension of Mr Lundie's licence, which had run from the 16 September 2020 should count towards the 2 year withdrawal of licence. Therefore, Mr Lundie's licence has been withdrawn from 16 September 2020 to 15 September 2022 inclusive.

20. Whilst it is for the BHA to decide, it seems likely that Mr Lundie will be subject to an Enhanced Testing Programme before his licence is returned. It was not possible for the Panel to accurately assess how Mr Lundie had progressed in the year since the positive test at Windsor, as he did not give evidence at the hearing and there were no reports from employers or anyone else. This may simply be because, as Mr Lundie said in interview, he finds it difficult to confide in and seek help from others. The Panel did however suggest that given his recent history, it might be sensible for him to re-consider seeking advice and assistance from, for example, the Professional Jockeys Association. Mr Lundie, through Mr Mac Neice, agreed that hitherto he had basically battled his problems on his own.

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