

BRITISH HORSERACING BOARD

THE MODERNISATION OF BRITISH RACING

**RACING REVIEW PART III:
THE FINANCIAL, ADMINISTRATIVE AND
GOVERNANCE STRUCTURE OF RACING**

June 2004

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EXECUTIVE SUMMARY

- 1. The ‘*Modernisation of British Racing*’ is the latest chapter in the process of modernising the sport of racing that began in the early 1990s and has, since 1998, accelerated following the introduction of the Financial Plan for British Racing, the Future Funding Plan, the Racing Review and now The Modernisation of British Racing.**
- 2. The report proposes seven key changes to the financial, administrative and governance structure of the sport:**
 - (i) the separation of the governance and commercial functions of the British Horseracing Board (BHB);
 - (ii) the restructuring of the BHB Board;
 - (iii) the central selling of data by a commercial company (BHE) rather than by BHB;
 - (iv) changes to the method of allocation and distribution of data income;
 - (v) the establishment of a prize money agreement between racecourses and the recipients of prize money (owners, trainers, jockeys and stable staff);
 - (vi) the introduction of greater competition between racecourses for fixtures;
 - (vii) the modernisation of the Orders & Rules of Racing.
- 3. The BHB will retain its governance functions, relinquish its commercial functions and take over the appropriate functions of the Levy Board when it is abolished in 2006. The Jockey Club’s BHB directors have recommended to the Jockey Club that discussions should take place in 2008 between the Jockey Club and the BHB about merging governance and regulation.**
- 4. The BHB Board will be restructured to reduce shareholder members (ICHL, Jockey Club, RCA and ROA) from nine voting seats to four (one each), and to add the NTF, an additional independent and an additional Executive in order to create a more independent, less sectional Board.**
- 5. Ownership and control of BHB Enterprises, BHB’s commercial arm, will be transferred from the BHB to the industry and renamed British Horseracing Enterprises (BHE).**
- 6. BHE will enter a 10-year licence agreement with BHB to commercialise the content of the BHB database and will license its use, ensure compliance, collection and audit of all use made and pay out all income according to an agreed formula.**
- 7. All data income for Racecourse Fixtures (see point 14 of this Summary) will be distributed under an agreed formula whereby the apportioned costs of governance, regulation and commercial activity are top-sliced from gross data income, an Incentive Fund is set up to encourage racecourses to contribute their own money into the prize fund, with the**

balance hypothecated and distributed to racecourses in proportion to the amount of betting turnover generated by each fixture.

8. In return for the distribution of hypothecated income to racecourses for Racecourse Fixtures, racecourses will contribute 75% of all data income received from Racecourse Fixtures to prize money up to a threshold of £80m at which point racecourses shall be obligated to contribute 50% of all data income received from Racecourse Fixtures to prize money.
9. All data income for BHB Fixtures (see points 15 and 16 of this Summary) will be distributed in full to those courses operating BHB Fixtures, after top-slicing the apportioned costs of regulation, governance and commercial, in accordance with the amount of betting turnover generated by each fixture.
10. Fixture Incentives, Abandonment Payments, Divided Race Fund and Basic Daily Rates will all be withdrawn upon the abolition of the Levy Board, to be replaced by an all-encompassing data payment to each course.
11. With the expansion of the Fixture List and the better utilisation of the horse population through a reduction in maximum field sizes and other measures, it is projected that data income will increase from £110 million in 2003 to £140 million in 2006 and prize money is projected to increase from £94 million in 2003 to around £125 million in 2006.
12. The BHB will expand the Fixture List in 2006 to approximately 1500 fixtures after introducing narrow-band handicaps, initially for Flat racing only, and after limiting field sizes, other than in special cases and at certain times of the year, to fourteen runners.
13. The BHB will set up two separate Fixture Matrices – one for Jumping and one for the Flat – and will establish an appropriate number of Flat and Jump fixtures on a week-by-week basis throughout the year, based on the needs of the horse population.

The BHB believes that Flat and Jump Racing have different consumers and in general should be treated as separate branches of racing. The Flat Matrix will include Regional Racing and All-Weather Racing. Turf and All-Weather racecourses will compete against each other within the Flat Matrix. Other than in a very few instances, Flat and Jumping courses will not compete against each other in the fixture allocation process.

14. All fixtures will be divided into 'Racecourse Fixtures' (1203) and 'BHB Fixtures' (297). Racecourse Fixtures will comprise all 2004 fixtures except Regional Racing Fixtures and BHB leasehold fixtures which were granted on an agreed leasehold basis. Racecourse Fixtures will effectively be Class A fixtures.

15. **BHB Fixtures will comprise the rest of the fixture list, over half of which fixtures will be created for the 2006 Fixture List for the first time, and will effectively be Class B fixtures. The large majority of BHB Fixtures will be Flat fixtures.**
16. **Racecourses will bid for BHB Fixtures competitively against each other for a 3-year lease with the course willing to bid the most prize money contribution winning the bid.**
17. **New racecourses will be defined as those courses that have never operated any fixtures. They will receive preferential treatment in the acquisition of up to 16 BHB Fixtures since they will only be able to acquire Racecourse Fixtures over a period of time.**
18. **A racecourse will, in future, be able to more easily improve its fixture list by:**
 - moving 10% of its Racecourse Fixtures every three years to other Racecourse Fixture slots;
 - moving a percentage of its BHB National Fixtures every three years into Racecourse Fixtures;
 - bidding for BHB Fixtures;
 - swapping, trading or purchasing fixtures.
19. **The new fixture allocation process ends 'In Perpetuity Protection' of a fixture and replaces it with 'Three Year Tenure'.**
20. **The BHB will establish a Development Fund which will be used by the Racing Department to incentivise racecourses, primarily to put on races which are necessary for the development of young racehorses and the breed.**
21. **Certain Orders of Racing will be dispensed with including the 50 mile rule, minimum entry fees, restrictions on the number of handicaps, sellers and claimers that a racecourse can programme and restrictions on valuable races clashing with Pattern, Listed or other valuable races.**
22. **Minimum values will be replaced by meritocracy bands. In future, the BHB shall set the sum of the lower levels of meritocracy bands in totality at no greater than the total amount of money that must be contributed to prize money, thereby leaving racecourses free to decide how much they wish to contribute to prize money from their own funds.**
23. **Field sizes and the number of races that a racecourse can run shall be restricted so that the BHB can ensure that a Fixture List of around 1500 fixtures can be programmed.**

1. BACKGROUND

- 1.1** The modernisation of British Racing has been gradually evolving since the establishment of the British Horseracing Board (BHB) in June 1993 following a Home Affairs Select Committee Report in 1991 recommending the formation of a more democratic, representative and accountable Governing Authority to take over from the Jockey Club.
- 1.2** The BHB, in 1993, took over a number of responsibilities from the Jockey Club, primarily Fixture List compilation and Race Planning; the financing of Racing Administration, including the Jockey Club's continuing regulatory function and the Weatherbys contract; the licensing of the use of pre-race data; and the nomination of Racing's representatives on the Horserace Betting Levy Board (HBLB). However the BHB did not take over responsibility for regulation, licensing or enactment of the Rules of Racing which remained with the Jockey Club.
- 1.3** In January 1998, the BHB produced 'The Financial Plan for British Racing' which called for the further modernisation of the sport. In general, it called for Racing to control its own destiny; in particular, it called for the abolition of the Levy, the transfer of the Tote to Racing, a greater share of betting turnover to be returned to Racing, a Gambling Review and a review of the method of taxation of gambling which in turn led to the BHB urging Government to consider a gross profits tax rather than a tax on turnover.
- 1.4** All of these goals have either been achieved or accepted by Government as the way forward for the sport. Legislation is in progress to complete a number of these goals.
- 1.5** In early 1999 the first restructuring of the BHB Board took place which reduced sectional interests and introduced the first independent director to the Board (who has recently been appointed the next Chairman).

A further restructuring was agreed in 2001 but not ratified by one of the Members. However, at its Board Meeting in March 2004, the Board unanimously agreed a significant restructuring which will reduce sectional interests and introduce a greater number of independent and executive directors to the Board. All four Members have agreed to recommend the structure to their organisations.
- 1.6** The BHB's primary responsibility since 1993 has been the improvement of Racing's finances, which initially was principally conducted through BHB's representation on the HBLB, a key provider of funds to the industry through a statutory Levy on bookmakers, but which, in April 2002, was effectively replaced by a commercial negotiation between bookmakers and the BHB on the terms for use of its database, thus putting in place the commercial replacement of the Levy that the Government asked BHB to identify in March 2000 when it decided on its abolition.

- 1.7** In June 2002, once the industry's finances had been put on a sounder financial footing, the BHB began the most comprehensive and far-reaching review of British Racing ever undertaken, through the Racing Review Committee. Consultation with the consumer was conducted with racegoers and non-racegoers, punters and non-punters, sponsors and potential sponsors. Consultation with the industry and others was conducted with racecourses, owners, breeders, trainers, jockeys, stable lads, bookmakers, the media, trade associations, handicappers, opinion formers, the All Party Racing Group, Training Colleges and the British Horseracing Training Board, and BHB and Jockey Club staff.

The Racing Review Part I covered The Racing Product and made 76 recommendations as to how the sport could be modernised. Most of those recommendations have either been implemented or are in the process of implementation.

Part II of the Racing Review covered The Racing Experience which included the most exhaustive consumer research the horseracing industry had ever conducted. This research focussed on understanding what the consumer really wants from horseracing and how any changes to horseracing may affect consumer behaviour.

In June 2000 the BHB and the Jockey Club voluntarily notified Racing's Orders & Rules to the OFT notwithstanding their view that the Orders & Rules were competition compliant. In April 2003 the OFT issued a Rule 14 Notice which indicated the OFT's preliminary views and invited the BHB and The Jockey Club to make representations which they did. The BHB Board then decided that it would assume responsibility for publishing Part III of the Racing Review, which covers the Financial, Administrative and Governance Structure of Racing, and its recommendations are contained in this document entitled 'The Modernisation of British Racing'. The Racing Review Committee has however been fully consulted on all issues relating to the Financial, Administrative and Governance Structure.

- 1.8** 'The Modernisation of British Racing' encompasses the ways in which the BHB believes further changes are desirable to improve the structure and operation of British Racing. The BHB has kept the OFT fully informed as to the progress of the review and the proposed changes which the BHB believe also comply with competition law.

- 1.9** 'The Modernisation of British Racing' is the latest chapter in the process of modernising the sport of racing that began in the early 1990s. It has been an evolving and, since 1998, an accelerating process, approved and assisted by Government and welcomed by the majority of the industry itself.

The BHB believes that the proposed changes are not only desirable but will be beneficial to racing and all involved with it.

1.10 All the proposals contained in the ‘Modernisation of British Racing’ will be introduced no later than 1 January 2006 unless otherwise indicated. Where possible, proposals will be implemented sooner.

2. SEPARATION OF THE GOVERNANCE AND COMMERCIAL FUNCTIONS OF THE BRITISH HORSERACING BOARD

2.1 Introduction

2.1.1 Since its inception in June 1993, the BHB has had a number of responsibilities as the Governing Authority of British Racing. A list of the key BHB responsibilities, with a brief description of each, can be found in Appendix I on page (i).

2.1.2 The Memorandum of Association of the British Horseracing Board Limited (see Appendix II on page (iii)) clearly illustrates that the BHB was set up with responsibilities that extended beyond purely governance functions.

Section 3(A)(1) of the Memorandum stipulates that one of the objects of the Company is 'to undertake all such responsibilities and activities as may be necessary or convenient to maintain and improve the financial position of horseracing'. This object, accepted and endorsed by all sectors of the industry in 1993, confers on BHB a distinct commercial responsibility.

2.1.3 This commercial responsibility was exercised until April 2002 primarily in participating in the negotiation of annual Levy Agreements through the BHB's three nominees on the Levy Board, but also in its negotiation with racecourses in 1992/3 of a 2% charge for data as part of the SIS picture deal for licensed betting shops, which generated an income to the BHB of £260,000 per annum.

2.1.4 In March 2000, Government announced its intention to abolish the Levy and asked the BHB to develop a commercial replacement for it. The BHB, in putting forward the Future Funding Plan in October 2000, proposed that payments for data replace the Levy and in 2002 proceeded to negotiate data licensing agreements with bookmakers which established the value of data to bookmakers at around £110-120 million per annum.

Although the majority of the proceeds of these agreements is currently paid through the Levy, the Levy is scheduled to be abolished in 2006 and responsibility for distributing this considerable sum would have passed to the BHB.

2.1.5 However, tension between governing bodies and commercial operators in sport has become increasingly noticeable over the past few years, particularly when governing bodies begin to generate sizeable income streams of their own, as has been the case in racing. As a result, racecourses have become concerned at the potential for the BHB to influence their commercial activities, especially with the imminent

demise of the Levy Board, which has been seen by the racecourses as a safe pair of hands that has generally looked after racecourses' interests.

2.1.6 Consequently, at BHB's June 2003 AGM, the Chairman called for the separation of the governance and commercial responsibilities of the BHB, a principle which quickly won almost universal acceptance.

2.1.7 The BHB's legal advice confirmed that such a separation would also be desirable, providing it was real and not cosmetic. By splitting governance and commercial, certain core governance functions can be isolated from the allegation that they are 'profit motivated', making it more likely that a competition authority will accept that a governance action (even if it has economic consequences for another undertaking) is not an exercise of market power. This separation can only be beneficial to the management of the industry and engender more harmonious relationships within it.

2.2 The Proposed Governance Structure of the BHB

2.2.1 The BHB's Responsibilities

2.2.1.1 The BHB will retain its governance functions, relinquish its commercial functions and take over the appropriate functions of the Levy Board when abolished in 2006.

Functions which are essentially of a governance nature, will remain the responsibility of the BHB, notwithstanding the fact that they may have a commercial impact.

2.2.1.2 The consequent future key responsibilities of the BHB can be found at Appendix III on page (v).

2.2.1.3 The BHB will licence a commercial entity to commercialise the content of BHB's database and to take over both its and the Levy Board's (when abolished) compliance, collection and audit responsibilities. The commercial entity will distribute resultant income on the basis set out in Section 5.

2.2.1.4 Data will continue to be supplied as now to the BHB database through the data orders contained in the Orders & Rules.

2.2.2 The BHB Structure

2.2.2.1 The BHB has four Members: Industry Committee (Horsereading) Limited (ICHL), the Jockey Club, Racecourse Association (RCA) and Racehorse Owners Association (ROA).

The Members are each incorporated bodies. The Jockey Club is incorporated by Royal Charter, the others as companies limited by guarantee. No changes are anticipated in either the corporate structure or members of BHB.

2.2.2.2 The current BHB Board Structure is as follows:

13 Voting Board Members:

- Chairman (with deliberative and casting vote)
(appointed by the Board)
- 1 Independent Director (appointed by the Board)
- 1 Nominee of the Thoroughbred Breeders' Association
(appointed by the Board)
- 1 Executive (appointed by the Board – BHB Chief Executive is current appointee)
- Appointees of:
 - Industry Committee (Horseracing) Limited (2)
 - Jockey Club (3)
 - Racecourse Association (2)
 - Racehorse Owners' Association (2)
- The Board has the power to co-opt up to two non-voting Directors (Chairman of the BHB Race Planning Committee is currently co-opted).
- No alternate Directors are permitted.

2.2.2.3 The proposed new Board Structure is as follows:

10 Voting Board Members:

- Chairman (with deliberative and casting vote except as detailed in 2.2.3.1 and 2.2.3.2) (appointed by the Board)
- 2 Independent Directors (appointed by the Board)
- 2 Executive Directors (appointed by the Board)
- 1 Nominee of the Thoroughbred Breeders' Association
(appointed by the Board)
- Appointees of:
 - Industry Committee (Horseracing) Limited (1)
 - Jockey Club (1)
 - Racecourse Association (1)
 - Racehorse Owners' Association (1)

Expert Practitioners (Non-voting)

- National Trainers' Federation (1)
- Racecourse Association (1)

Co-opted

The Board will have the power to co-opt up to two additional non-voting Directors who may or may not be the Chairman of the Race Planning Committee and the Chairman of the Horseracing Regulatory Authority.

2.2.2.4 The main changes to the proposed BHB Board Structure are as follows:

- All Members will be reduced to one voting Director.
- RCA will also nominate one non-voting Director.
- NTF will nominate a non-voting Director.
- An additional Independent Director may be appointed.
- An additional Executive Director may be appointed.
- Member Directors will be permitted to appoint alternates and will no longer be obligated to appoint the head of their organisation.
- No person who is a member of the BHE Board will be permitted to sit on the BHB Board and vice versa.

2.2.3 BHB Budget Approvals

2.2.3.1 The BHB currently approves the Regulatory Budget of the Jockey Club by majority vote. No change in the method of approval of the Regulatory Budget is anticipated, except that the Chairman will not have a casting vote.

2.2.3.2 The BHB currently approves its own Governance Budget by majority vote, with the Chairman having a casting vote. It is proposed that the 2006 Governance Budget will require approval by 70% of the voting Directors of the BHB Board including not less than two Member appointees, provided that the Governance Budget does not exceed the forecast contained in Appendix XVI on page (lxxvi), adjusted to take consideration of the internal audit of the central overheads of the BHB which will be carried out no later than 31 December 2004. If it does exceed the forecast, it shall require approval of a majority of the Board including at least three Member appointees.

Thereafter, provided the BHB Governance Budget does not exceed the 2006 BHB Governance Budget, index-linked annually to the official price index, it shall be approved by a majority of the voting Directors of the Board with no casting vote for the Chairman.

If the BHB Governance Budget in any year subsequent to 2006 exceeds the 2006 BHB Governance Budget (index-linked annually to the official price index), it must be approved by a majority of the voting Directors of the BHB Board including at least 3 Member appointees

2.2.3.3 For the purposes of calculating any increases in the BHB Governance Budget, it is accepted that the Owners' Premium Scheme will not be fully mature until 2011 and that annual increases are anticipated until 2011 as follows:

2007	£329,000
2008	£400,000
2009	£300,000
2010	£200,000
2011	£100,000

These increases will be added to each year's base BHB Governance Budget after taking consideration of the annual indexation of the official price index.

2.2.4 Merger of Governance and Regulation

2.2.4.1 When the BHB was formed, regulatory responsibility remained with the Jockey Club. In 2003 the Jockey Club announced that it was setting up an independent Horseracing Regulatory Authority (HRA).

The target date for the Jockey Club to delegate its regulatory powers to an independent HRA within the scope of its Royal Charter is 1 January 2005.

2.2.4.2 It is the view of the ICHL, NTF, RCA, ROA and TBA that a more logical structure for handling Regulation would eventually be for the Jockey Club to transfer its responsibilities to a restructured BHB, following the transfer of its own commercial activities to BHE (see below). If the ownership of HRA was passed to BHB, governance and regulation could, to a degree, be reunited, as was the case prior to 1993 and is the practice in almost every other sport, but with appropriate separation between the two roles.

2.2.4.3 The Jockey Club appointed directors on the BHB Board have agreed to propose to the Jockey Club that it reviews with the BHB the merits of transferring what will then be its 'golden share' in HRA to a restructured BHB, following the transfer of the BHB's commercial activity, three years after HRA is operational.

2.3 The Proposed Devolution of the BHB's Commercial Activities to a Commercial Entity

2.3.1 Corporate Structure

2.3.1.1 The BHB's commercial activities are currently operated through BHB Enterprises plc (BHBE), a wholly-owned

subsidiary of the BHB. Subject to tax clearance, the BHB will transfer the shares of BHBE so that the shares will be held as follows: 59 racecourses holding one share each, the rest of the industry holding 59 shares through the Industry Nominations Panel and the BHB holding one share (with no voting capacity other than in very limited circumstances set out in 2.3.3.4 below). The Company will be renamed British Horseracing Enterprises (BHE). The proposed structure and shareholding of BHE will be substantially in the form outlined at Appendix IV on page (vii).

2.3.1.2 The BHB's commercial activities primarily comprise the commercialisation of the content of its database and it is proposed that BHB's database will be licensed to BHE on terms substantially in the form outlined at Appendix V on page (xvii).

2.3.2 Responsibilities

2.3.2.1 The responsibilities of BHE shall be to commercialise the content of the database; to license its use; to ensure compliance, collection and audit of all use made; and to make payments in respect of its contractual arrangements as set out in Section 5.

2.3.3. Appointments to BHE Board

2.3.3.1 The BHE Board structure is designed to enfranchise racecourses and the rest of the Industry to work together to commercialise the content of the BHB's database.

2.3.3.2 Racecourses will appoint 5 representatives to BHE's Board substantially on the basis set out in Appendix VI on (xxv).

2.3.3.3 The rest of the industry will appoint 5 representatives by majority vote of an Industry Nominations Panel comprising appointees of the ROA (3), NTF (1), JAGB (1) and ICHL (1). One of the ROA appointees will chair the Panel. In the event of a tied vote the provisions for a casting vote set out in Appendix IV on page (vii) will apply.

2.4 The Capital Fund

2.4.1 Government has made it clear that it intends to transfer the Capital Fund to the BHB upon the abolition of the Levy Board on condition that it continues to be used for purposes consistent with that Board's statutory objectives, namely the improvement of horseracing, the improvement of breeds of horses or the advancement or encouragement of veterinary science or education.

- 2.4.2** Subject to Government approval, the Fund, expected to be £50 million, will be transferred to a Company limited by guarantee, which will be a wholly-owned subsidiary of the BHB.
- 2.4.3** The Fund will be administered by the three Directors of the Company – one each appointed by the BHB and the RCA and a Chairman appointed by the BHB and the RCA jointly.
- 2.4.4** The Fund will be principally available to racecourses for loans for capital improvements, and, on occasions, for loans for other initiatives covered by the Levy Board's statutory objectives.
- 2.4.5** Loans will carry interest only to the extent required to cover the administrative costs of the Fund and to maintain its real value.
- 2.4.6** The Fund will continue on the basis set out in 2.4.2 to 2.4.5 above for as long as industry-wide agreements on the 'Modernisation of British Racing' are in place. The continuation of these arrangements will be covered, as appropriate, in successor agreements. Irrespective of whether such agreements are in place, the Fund will always be used for purposes consistent with the Levy Board's statutory objectives.
- 2.4.7** In the event of the cessation of industry-wide agreements on the 'Modernisation of British Racing', outstanding loans will be repaid in accordance with the terms of the original loan.

2.5 The Development Fund

- 2.5.1** The Development Fund is used by the Racing Department to incentivise racecourses primarily to put on races which are necessary for the development of young racehorses and the breed. With the imminent introduction of narrow-band handicaps and the elimination of a number of Orders which previously required racecourses to put on certain races or restricted the number of handicaps per fixture, it is even more important than ever that the Development Fund is of a meaningful size. It is proposed that it will be a charge on BHB's budget of £3 million in 2006.
- 2.5.2** The Development Fund will be used to encourage courses to programme certain types of race, in particular Novice Chases, Bumpers, Introductory Novice Hurdles and Mares Hurdles for Jumping; and, for the Flat, fillies Class 1 and 2 Handicaps, Listed staying races, condition races and novice two year old races; also replacement fixtures, transferred Pattern races and Pattern races where courses put additional money into those races. It may also be used to encourage racecourses to bid for fixtures where no bid is received or to move fixtures where it is in the best interests of racing to move a fixture.

2.5.3 As well as the £3 million Development Fund generated out of BHB's Governance Budget, which may be adjusted up or down as deemed necessary on an annual basis by the BHB Board subject to the necessary voting approvals required, additional income may flow into the Fund from surplus bidding income for BHB National or Regional Fixtures and forfeit fees where racecourses do not take up fixtures which had been secured in the bidding process. This element of the Development Fund will be capped at £3 million (index-linked on an annual basis to the official price index), other than as outlined in Section 5.9.1 on page 35, and any surplus funds above the capped figure will be hypothecated to racecourses on the basis of each course's share of off-course betting turnover generated.

3. GREATER COMPETITION BETWEEN RACECOURSES FOR FIXTURES

3.1 Introduction

- 3.1.1** The BHB has managed the Fixture Allocation process since its formation in 1993. It establishes the number of fixtures for Flat and Jumping based primarily on the needs of the horse population. Existing fixtures remain annually with those courses that operate them unless the BHB decides that it does not intend to operate racing on a given date or unless a course can reach agreement with another course to swap, transfer or sell a fixture under the terms of the Fixture Transfer Arrangements, a non-binding agreement reached between the BHB and racecourses in May 1998. (See Appendix VII on page (xxvi).
- 3.1.2** Allocation of new fixtures is currently based on geography, turf suitability or other factors deemed important by the Fixture Allocation Group who recommend to the BHB Board the award of new fixtures. The process has historically also been influenced by the Levy Board's decision as to how many fixtures it is prepared to fund and the pattern of that funding (the Fixture Criteria.)
- 3.1.3** Many of the limitations established in the Fixture Transfer Arrangements were put in place by the BHB at the request of the racecourses in order to reflect the fact that courses believed they had a proprietary interest in their fixtures.
- 3.1.4** The BHB believes that, while the current fixture allocation process confers significant benefits, British Racing needs to achieve a balance between maintaining those benefits and encouraging the fixture allocation process to evolve in the best interests of the sport and its participants.
- 3.1.5** The challenge has been to find a way to introduce more competition into the Fixture List while having regard to racecourses' belief that they have a proprietary interest in their fixtures and recognising the importance to all of maintaining a considerable degree of stability in the Fixture List.

3.2 The Overall Fixture Allocation Strategy

- 3.2.1** The proposed detailed Fixture Allocation Process and Timetable for 2006 and beyond can be found at Appendix VIII on page (xxxii).
- 3.2.2** There is unlikely to be any real change in the number or allocation of fixtures for 2005 since the Levy Board has indicated that it is unwilling to fund any more fixtures and the probability is that the 2005 Fixture

List will largely be a rollover of 2004 with about ten additional Regional race meetings, increasing the total to some 1351.

3.2.3 The basic strategy for 2006 onwards however is to operate a Fixture List of around 1500 fixtures. This can be achieved if:

- racecourses limit field sizes to 14 runners, other than in special cases and at certain times of the year. This will also assist turf management and stalls and stable utilisation.
- narrow band handicaps, as recommended by the Racing Review, are in place across the board for all Flat races, other than in special cases.

3.2.4 Racing must utilise its horse population in the most effective way to maximise betting turnover while at the same time providing suitable opportunities for all horses, and having regard to the development of the breed.

Research shows that punter interest reduces when field sizes exceed 14 runners and a more effective spreading of the horse population to create an expanded Fixture List is the best way to generate full value for the racing product.

3.3 Establishing the Flat and Jump Fixture Matrices

3.3.1 The importance of maintaining central coordination of the Fixture List, and the implications for the industry of a fixture free-for-all and the non-separation of Jumping and Flat, were first outlined in the BHB Chairman's speech at the 2003 BHB Annual General Meeting when he said:

“And finally, and most importantly, I have recommended to the Sub-Committee that the industry resist all attempts at a fixture free-for-all. I have so far found no one, including among those who would like a free-for-all, who denies that this scenario would transfer ownership of Racing to Bookmakers, result in a dramatic decline in the value of rights, kill Jumping and be no more than a short term gain for those racecourses that initially dominate the free-for-all. In the long run, even they would be worse off.

Instead, we must introduce clear and identifiable competition between racecourses, both existing and new, into a structured Fixture List. We must fight to retain industry control of fixtures so that we can balance them with the horse population and provide opportunities for jumpers.”

3.3.2 The BHB will set up a new Committee entitled the Fixture Matrix Group which will comprise 3 BHB nominees, 3 RCA nominees, 1 ROA nominee, 1 NTF nominee and 1 HRA nominee. This Group will supercede the current Fixture Allocation Group.

The BHB nominees will be the BHB Chief Executive, who will chair the Group, the Racing Director and the Recruitment and Training Director who will ensure that industry staffing issues are properly considered before any final decision on the size of the Fixture List is taken.

The HRA nominee will be responsible for advising on integrity, turf and regulatory staffing issues.

All members will have a vote, with the exception of the BHB Recruitment and Training Director and the HRA nominee.

- 3.3.3** Two matrices will be established – a Flat Matrix and a Jumping Matrix. The Flat Matrix will include Regional Racing and All-Weather Racing. Turf and All-Weather racecourses will compete against each other within the Flat Matrix.

The matrices will establish an appropriate number of Flat and Jump fixtures on a week-by-week basis throughout the year, based on the needs of the horse population. This will result in a small number of fixtures at certain times of the year being open to movement from, and competition between, Flat and Jumping.

- 3.3.4** The formulae by which the BHB will establish the Flat and Jump Matrices can be found at Appendix IX on page (xliv).

3.4 Division of Fixtures into ‘Racecourse Fixtures’ and ‘BHB Fixtures’

- 3.4.1** All fixtures will be designated as either ‘Racecourse Fixtures’ or ‘BHB Fixtures’.

- 3.4.2** Racecourse Fixtures will comprise all 2004 fixtures except Regional Fixtures (70) and BHB leasehold fixtures (68) which were awarded on an agreed leasehold basis.

As such, Racecourse Fixtures will effectively be Class A fixtures. The main features of these fixtures will be:

- No bidding required.
- Race programme determined by the racecourse after full consultation with the BHB Racing Department.
- Greater security of tenure.
- Generally superior positioning in the Fixture List.

There are 1203 Racecourse Fixtures split currently between Flat (698) and Jumping (505). The breakdown between courses and codes can be found at Appendix X on page (lix).

- 3.4.3** BHB Fixtures will comprise the 138 current leasehold fixtures which were awarded in 2002 and 2003 (plus any awarded in 2004 for the 2005 Fixture List) as well as around a further 160 fixtures that will be

created in 2005 for the 2006 Fixture List. It is intended that any future increase or contraction in the Fixture List will be in BHB Fixtures. The breakdown of the 138 BHB Leasehold Fixtures for 2004 can be found at Appendix XI on page (lxi).

BHB Fixtures will effectively be Class B fixtures. The main features of these fixtures will be:

- Awarded on a 3 year lease by the BHB, although they will be staggered on 1, 2, 3 year leases in the first year to ensure BHB fixtures are available every year for competition.
- Awarded to the highest bidder with the successful bid being invested, along with owners' entry fees, in the prize fund for the fixture, with the division between races according to the wishes of the racecourse, providing the racecourse abides by the appropriate meritocracy bands.
- Fixture composition and race programme to be determined by the BHB after full consultation with racecourses.
- Less security of tenure.
- Generally inferior positioning in the Fixture List.
- Turf and All-Weather courses to bid against each other since there will be no demarcation between the two surfaces.
- Split roughly 50%/50% between BHB National Fixtures and BHB Regional Fixtures.
- Awarded initially to Flat fixtures based on the current needs of the horse population, but also to Jump Fixtures as field sizes reach appropriate levels.
- HRA Inspectorate approval required before operating a BHB Fixture.
- Actual distance and race conditions to be identified by the BHB closer to the date of the fixture.

3.5 The Definition and Treatment of New Racecourses

3.5.1 A racecourse will qualify for the definition of a 'New Racecourse' only if it has never operated any fixtures. A racecourse putting in a new surface or a new code will not be classified as a 'New Racecourse'.

The reason for this is fundamental. An existing racecourse already has fixtures. Its argument that it needs additional fixtures to justify its investment is no more compelling than a racecourse arguing that it should be granted additional fixtures because it is making capital investment in a new stand or stables. Furthermore, under the proposed Fixture Allocation System, existing racecourses will have an additional 300 fixtures for which they can bid.

3.5.2 A New Racecourse will be given the opportunity to acquire not less than 16 BHB National Fixtures.

A New Racecourse will be given priority to acquire up to a total of 16 BHB National Fixtures because it will not have the ability to acquire Racecourse Fixtures immediately. This disadvantage entitles a New Racecourse to priority in the allocation of BHB National Fixtures.

It will acquire the fixtures by entering the bidding process along with all other courses. It will have the opportunity to acquire and maintain 16 BHB National Fixtures for a 9 year period:

- by winning the bid over all other courses.
- by matching any other bid for a fixture for which it also bid, up to a total of 16 acquired BHB National Fixtures less any number it has moved into Racecourse Fixtures.

A New Racecourse may also bid for any additional fixtures alongside and equally with any other racecourse but may not acquire more than 16 BHB National Fixtures by match bidding. BHB Regional Fixtures acquired will not count towards the acquisition of 16 BHB National Fixtures.

- 3.5.3** New Racecourses will be able to attempt to move the greater of 4 or 25% of their BHB National Fixtures into Racecourse Fixtures at each of the first three opportunities from 2009 onwards.

3.6 Bidding for BHB Fixtures

- 3.6.1** All racecourses, subject to code, can bid for both BHB National and Regional Fixtures. Racecourses must operate the BHB Fixtures they acquire themselves and may not swap, lease, trade or sell a BHB Fixture. The bidding system will be in essence as set up below.

- **BHB National Fixtures**
 - Racecourses submit closed bids based on the classification of the races identified by the BHB for each fixture. Each programme will identify the meritocracy band for each race and the total number of races.
 - Racecourses bid the amount of prize money they are willing to put up for each fixture.
 - The fixture will be awarded to the highest bidder and the money bid will be put into prize money along with owners' entry fees.
 - If a successful bidder has bid more than the total of the upper level of each meritocracy band, the surplus will be allocated to the Development Fund, a fund which will be used by the BHB to incentivise racecourses to put on races needed for the horse population or breed.
 - If a New Racecourse, or a racecourse moving down from a Racecourse Fixture, has bid for a fixture but not won the bid, it will be granted the option to secure the fixture by matching the bid of the highest bidder providing that, if it

is a New Racecourse, it does not exceed the acquisition of 16 total BHB National Fixtures less any number it has moved into Racecourse Fixtures or, if it is a racecourse moving down from a Racecourse Fixture, that it does not acquire more fixtures by match bidding than it is entitled to.

- Bids for BHB National Fixtures will be managed by the BHB Racing Department with an independent organisation appointed by the BHB to ensure the integrity of the process.
- Regional Fixtures
 - An identical bidding system will be instituted for Regional Fixtures as for National fixtures except that the prize money will be provided by BHB out of the money bid by racecourses. The successful bid will be paid to the BHB who will, if the bid exceeds the prize money, pay the balance into the Development Fund.
 - There will be no match bidding for Regional Fixtures.

3.7 How Racecourses Will Compete For Fixtures More Effectively

3.7.1 Racecourses historically have been able to prevent other racecourses operating on their raceday by refusing to move or trade their fixture. This has limited courses' ability to improve their Fixture List and their ability to improve their own financial position as well as that of the industry.

3.7.2 The main ways by which a racecourse can improve its Fixture List through the proposed new Fixture Allocation Process are essentially as follows:-

- (i) By moving 10% of its Racecourse Fixtures every three years to another Racecourse Fixture slot:
 - Movements will be allowed in Year 1 (2006) and every 3 years thereafter.
 - 10% is calculated to the nearest whole fixture based on the number of programmed Racecourse fixtures in the year in which the movements are being made (e.g. 2005 for the 2006 Fixture List).
 - Each racecourse is treated as a separate entity and is not allowed to transfer or sell 'moves' to another racecourse whether within the same group or not.
 - Racecourses must operate a slot into which they have 'moved' for 3 full years before they can swap it within their group or with another racecourse.
 - Other than in limited circumstances, movements can only be made within the same Fixture Matrix (Flat or Jump)

- BHB Pattern Panel approval is required before a race meeting with a Pattern or Listed race can be moved with that Pattern or Listed race included.
- Movements will be made in order of size of racecourse (size to be defined by average prize money net of owners' stakes per Racecourse Fixture) with the larger racecourses identifying their moves first. The current batting order based on 2003 figures can be found at Appendix XII on page (lxiii).
- Racecourses that have a fixture that is surplus to criteria can elect to stay in that fixture slot as a non-criteria fixture or move to another Racecourse Fixture slot that is open, moving in the same order as the original moves.
- If a racecourse, in the opinion of the HRA does not have a suitable alternative Racecourse Fixture into which it can move having had another racecourse move into its fixture slot, the BHB, at its discretion, may agree to swap a BHB Fixture with a Racecourse Fixture in order to accommodate that racecourse.

(ii) By moving a percentage of its BHB National Fixtures every three years into Racecourse Fixtures

- Existing racecourses which have two or more BHB National Fixtures will be able to attempt to move the greater of one or 20% of their BHB National Fixtures in Year 4 (2009) and every 3 years thereafter into Racecourse Fixtures; New Racecourses will be able to attempt to move the greater of 4 or 25% of their BHB National Fixtures into Racecourse Fixtures at each of the first three opportunities from 2009 onwards, after which they will be treated as an existing racecourse.
- The number of fixtures a racecourse will be able to move will be calculated to the nearest whole number of programmed BHB National Fixtures in the year in which the movements are being made (e.g. 2008 for the 2009 Fixture List).
- Each racecourse is treated as a separate entity and is not allowed to transfer or sell moves to another racecourse whether within the same group or not.
- Racecourses must operate a slot into which they have 'moved' for 3 full years before they can swap it within their group or with another racecourse.
- Other than in limited circumstances, movements can only be made within the same Fixture Matrix (Flat or Jump).
- When a racecourse successfully moves a BHB Fixture into a Racecourse Fixture, the losing racecourse must move to another slot occupied by a Racecourse Fixture.

- Each racecourse that has lost a Racecourse Fixture is allowed one move to another Racecourse Fixture but, if its move fails, it must move to a BHB Fixture where, by match bidding, it can secure a 3 year lease before having to compete equally with all other racecourses for that fixture.
- (iii) By Bidding For BHB National and/or Regional Fixtures
- This has been explained in 3.6 above.
- (iv) By Swapping, Trading or Selling/Purchasing Fixtures
- The introduction of a ‘right to move’ a percentage of fixtures transforms the whole fixture allocation process. Awareness that a racecourse may be able to move in to a slot occupied by another course every 3 years will create the environment in which courses become much more willing to swap or trade in the intervening period.

If, for instance, a racecourse knows that the following year it will get no compensation for being ousted from a fixture by a large course, it may be sensible to accept payment to swap, trade or sell early.

- Agreed swaps, trades or sales/purchases outside the ‘moving period’, which are only permitted for Racecourse Fixtures, do not count as moves and therefore provide an incentive to courses who wish to move more than 10% of their fixtures to offer incentives to other courses to swap, transfer or sell their fixtures, providing, if it is a fixture which was acquired by ‘moving’, that it has operated that fixture for 3 years before it swaps, trades or sells that fixture.
- HRA Inspectorate clearance is required before swapping, transferring or selling/purchasing any fixture. BHB approval is required if any swap, trade or sale/purchase involves a Pattern or Listed race.

3.8 General Points

3.8.1 An Appeals Board will be set up to consider racecourse appeals over BHB and HRA Inspectorate decisions on fixture allocation and any indications of improper conduct in the context of bidding, trading or moving of fixtures. The Appeals Board will be independent and experienced and its decisions will be binding.

3.8.2 A forfeit fee of 100% of the successful bid will be payable to the BHB Development Fund if a racecourse, having won the bid for a BHB

Fixture, withdraws and does not take up the fixture. This eventuality will result in the fixture being reopened for bidding by all racecourses.

3.8.3 Unless required by a Government regulatory authority, BHB will not attempt to change the status of the 1203 Racecourse Fixtures, subject to 3.8.5 below.

3.8.4 A racecourse shall not be able to sublet a fixture unless, having acquired a BHB National Fixture or being entitled to operate a Racecourse Fixture, it shall be unable to do so because of significant renovations to the racecourse or track which, in the opinion of the BHB, prevent the racecourse from effectively operating that fixture.

3.8.5 An individual racecourse may sell its Racecourse Fixtures, subject to the BHB's Fixture Allocation Policy, to any other racecourse provided that, where a racecourse ceases to trade, its Racecourse Fixtures will revert to the BHB Board unless sold within a reasonable period of time as determined by the BHB.

3.9 Benefits of the New Fixture Allocation Process

- Ends 'In Perpetuity Protection' of a fixture and replaces it with '3 Year Tenure'.
- Responds to racecourse claims that they have a proprietary interest in their fixtures.
- Encourages movements, swaps, trades and sales/purchases within the entire Fixture List.
- Introduces open and objective competition into 20% of the Fixture List.
- Provides no barriers to entry to new racecourses.
- Creates a clear meritocracy for racecourses where efficient courses prosper and inefficient courses decline.
- Provides a clear fixture structure for racecourses – a descending order of Racecourse Fixtures, a descending order of BHB Fixtures, Regional Fixtures – and the ultimate loss of fixtures for non-performers.
- Provides the necessary degree of stability to the Fixture List.

4. THE IMPORTANCE OF THE CENTRAL COMMERCIALISATION OF THE BHB DATABASE

4.1 Introduction

4.1.1 In April 2002, the BHB issued Licences to off-course bookmakers for access to the content of the BHB's database. Without such access to complete and accurate lists of runners and riders and other pre-race information, bookmakers would not have been able to conduct their betting business on British Racing.

4.1.2 The BHB agreed that for the remainder of the life of the Levy Board, payments to the Levy under arrangements mirroring the commercial data deal, would be offsetable against fees payable under the commercial data deal. From racecourses' perspective this gave them a degree of comfort knowing that a third party, the Levy Board, would be distributing the income, although no industry can ultimately flourish if its purse strings are controlled by another entity.

Of greater concern to racecourses was what would happen after the Levy Board was abolished. If the purse strings were controlled by the BHB, a body seen by racecourses as dominated by other sectors of the industry, would racecourses receive a fair distribution of data income or, possibly, any data income at all? Furthermore, several racecourses and racecourse groups were unhappy with the distribution formula that the Levy Board employed which has been less than transparent. Racecourses therefore saw the whole issue of data income as one which had a significant ability to impact their commercial affairs.

4.1.3 The OFT, in issuing its Rule 14 Notice, was concerned about entry barriers that it believed prevented racecourses supplying data. The BHB does not agree and considers that the proposed changes will both enhance competition and assuage OFT's concerns. The BHB is committed to ensuring that the income generated from the licensing arrangements flows to racecourses in a way that reflects the economic value of the data relating to races taking place at those courses through betting.

4.2 Satisfying the Concerns of Interested Parties that they should be Involved in the Commercialisation of the Database and the Division of Data Income

4.2.1 How this has been achieved will be dealt with in more detail in Section 5 on pages 30-36. However the main changes that the BHB will make to ensuring that racecourses, owners and other interested parties are fully involved in the commercialisation of its database and the division of data income are as follows:

- Commercialisation of the content of the BHB database will be licensed by the BHB to BHE thereby separating commercial from governance.
- There will be equal representation from racecourses and from the rest of the industry on the BHE Board.
- Other than contributions to the Incentive Fund, net data income will be hypothecated based on betting turnover generated by each racecourse.
- The terms of the database licence will stipulate the agreed distribution formula for all data income between the different sectors of the industry.

4.3 Reasons Why the Central Commercialisation of the BHB Database is Essential

4.3.1 An outline of the legal and economic arguments relating to the central exploitation of the content of BHB's database can be found in the two letters of BHB's legal and economic advisers – one by Addleshaw Goddard, PricewaterhouseCoopers and David Vaughan QC and one by Herbert Smith – at Appendix XIII (a)(b) on page (lxiv).

4.3.2 However, in addition to the overriding importance of maintaining the integrity of data, there are two further practical issues which further show why it is necessary that the content of the BHB's database is commercialised centrally for the benefit of the whole industry.

4.3.3 First, non-racecourse data providers have made it clear that they are not agreeable to granting their data to individual racecourses or racecourse groups to license to users without a prior agreement on the terms of the database licence. If they withheld their data, bookmakers, media companies and broadcasters would either have to buy data from individual data providers (which even if possible would be administratively difficult and costly) or racecourses would insist, as a condition of entry, that data providers would have to make their data available to racecourses as a condition of entering a race.

While the latter may seem the more practical, and to some the more likely scenario under which data would be collected, it would be presumptuous to believe that this would in effect be the most probable outcome.

Non-racecourse data providers could alternatively set up their own database and seek bids from racecourses to attract their horses. Either scenario would result in a major schism within the industry between performers and venues that would ultimately result in one sector of the industry controlling the sport to the detriment of the other.

For these reasons, a strong Governing Authority is needed to balance the interests of all investors and participants in British Racing and the BHB, as owner of the database, has always commercialised it, and will

ensure that the rights continue to be commercialised, for the benefit of Racing as a whole.

- 4.3.4** Second, if individual racecourses or racecourse groups were allowed to license their own, or an industry, database there are only two possible outcomes, both of which would act against the interests of the consumer.

Either the major bookmakers would be able to drive the price of data down with the reduction in industry income resulting in less racing and less quality, or the racecourses would restrict access to their individual databases to a limited number of bookmakers in order to drive up the price to those being granted a data licence.

This latter scenario would result in some bookmakers going out of business, some product being available in some shops, some in others and none in others. Punters would have little or no idea as to what product, if any, was available in which Licensed Betting Office.

Whichever of these two outcomes materialised, the result would be less racing, less quality and less choice for the consumer, quite aside from the likely adverse impact on integrity, meritocracy and competitive balance.

- 4.3.5** Conversely, the ability to commercialise the content of the BHB database centrally imposes on the racing industry an obligation to operate an open, non-discriminatory and non-exclusive licensing policy at a fair market price to all who wish to use such data.
- 4.3.6** The whole racing industry believes that central commercialisation of the content of the BHB database under an agreed structure is essential to the future health and harmony of the sport and crucial to the best interests of the consumer.

5. ALLOCATION OF DATA INCOME WITHIN RACING

5.1 Introduction

5.1.1 Data income for 2003 amounted to £110.3 million. This figure comprised £89.5m through the Levy, £7.7m from the Tote and £13.1m from overseas, primarily Ireland, and other data users.

All of this income is generated through the data licences that the BHB completed with off-course bookmakers in April and May 2002 although, until the Levy Board is abolished in 2006, over 85% of the income will pass through the Levy Board.

5.1.2 When the Levy Board is abolished all data income will pass directly to the BHB for it to distribute under the data agreements. The BHB Board, in reviewing the issues relating to this transfer of economic power, recognises that this situation could potentially compromise its governance responsibilities and has concluded that its strategy going forward should consist of three parts:

- Insistence on the continued central commercialisation of the content of the BHB database.
- Devolution of the right to commercialise the content of the BHB database to a commercial entity, BHE, under agreed licensing terms.
- An agreed distribution mechanism for all data income which includes an undertaking that, in return for all monies being distributed to racecourses, after agreed top slicing for purposes set out below, racecourses will return an agreed percentage of data income from Racecourse Fixtures to prize money and will bid competitively against each other for BHB Fixtures.

5.1.3 The BHB Board is firmly of the view that it would be abrogating its responsibility to provide a balance of interests between the constituent members of the industry if it allowed the distribution of all data income to racecourses without a reciprocal agreement in place to reward, through prize money, those who provide the product.

5.2 Commercialisation of the BHB Database

5.2.1 The BHB will grant BHE a licence to commercialise the content of the BHB database for an initial term of ten years with a minimum of 12 months' notice exercisable from the conclusion of Year Four onward. Details of the terms of the database licence between the BHB and BHE can be found at Appendix V on page (xvii).

5.2.2 BHE will then form a Board, develop a business plan, put a staffing structure in place and commercialise the content of the database,

continuing to operate an open, non-discriminatory and non-exclusive licensing policy at a fair market price to all who wish to use such data.

5.2.3 The database licence will acknowledge that there are data owners who contribute to the database and that, in the event of termination of the licence, data will continue to be applied under the Orders & Rules, unless otherwise amended. (See Appendix V on page (xvii).)

5.2.4 At the end of Year four, and annually thereafter, upon giving twelve months' notice, all five of the racecourse appointees or all five of the industry appointees may give notice on behalf of BHE to the BHB, and BHB may give notice to BHE, that it wishes to renegotiate the terms of any licences between BHE and the BHB. If after a period of six months of good faith renegotiation no agreement has been reached, it may terminate the licence or licences, with termination to take effect twelve months from the date of the original notice of renegotiation.

5.3 Generation of Data Income

5.3.1 BHE will enter into licence agreements that permit access to the content of the database. Income will be paid to BHE and compliance, collection, distribution and audit tasks will be the responsibility of the management team of BHE, in order to ensure that the terms of the licences are fully adhered to.

5.3.2 The actual gross data income for 2003 for 1203 Fixtures and the projected gross data income for 2006, broken down by the 1203 Racecourse Fixtures and 297 BHB Fixtures, can be found at Appendix XIV on page (lxxiv). Because of the different treatment of Racecourse Fixtures, which require no bidding system, from BHB Fixtures, which do require a bidding system, it is necessary to separate the data income generated by the two types of Fixture.

5.4 Top Slicing of Regulatory, Governance and BHE Costs

5.4.1 Regulatory Costs

5.4.1.1 The first charge on the data income stream will be the regulatory costs of the HRA. These costs will be approved annually, as at present, by a majority of the BHB Board. The actual 2003 and projected 2006 regulatory costs can be found at Appendix XV on page (lxxv). Some of these costs may in future be hypothecated to racecourses if the BHB, HRA and RCA are satisfied that these costs can be managed more efficiently by racecourses while maintaining the standards laid down by the HRA.

5.4.1.2 Regulation will be provided free of charge to racecourses for a six race programme. Racecourses that run seventh and eighth

ances will be charged for the marginal cost of providing regulatory services for those additional races.

5.4.2 Governance Costs

5.4.2.1 The second charge on the data income stream will be the governance costs of the BHB. The actual 2003 and projected 2006 governance costs can be found at Appendix XVI on page (lxxvi).

5.4.2.2 The Governance budget for 2006 and subsequent years will be approved by the BHB Board in accordance with the terms identified in Section 2.2.3 on page 13.

5.4.3 BHE Operating Costs

5.4.3.1 The third charge on the data income stream will be the operating costs of BHE. The actual 2003 and projected 2006 operating costs can be found at Appendix XVII on page (lxxvii).

5.4.3.2 The BHE operating budget for 2006 and subsequent years will be approved by the BHE Board by a simple majority.

5.4.4 How Top-Slicing Should Be Treated

5.4.4.1 Appendix XVIII on page (lxxviii) identifies the actual net data income for 2003 based on 1271 fixtures and the projected net data income for 2006 split between 1203 Racecourse Fixtures and 297 BHB Fixtures. The projected 2006 costs of Regulation, Governance and BHE represent 36.4% of total projected 2006 gross data income.

5.4.4.2 These costs shall be top-sliced in line with the income generated by Racecourse Fixtures and BHB Fixtures off gross data income and the net data income shall be divided into two separate net data income streams – one from Racecourse Fixtures and one from BHB Fixtures.

5.5 The Incentive Fund

5.5.1 Currently there are two mechanisms by which racecourses are incentivised to put money into prize money:

- Levy Board Merit Table.
- BHB Incentive Scheme.

5.5.2 The Merit Table is a mechanism which encourages racecourses to maximise their own contributions to prize money by allocating larger Basic Daily Rates (BDRs) to the better performers. Although the

mechanism is not particularly transparent and is slow to react to racecourse behaviour, it has undoubtedly encouraged racecourses to keep up their prize money contributions. The Merit Table will be abolished with the demise of the Levy Board.

- 5.5.3** The BHB Incentive Scheme was introduced in 2003, after the breakdown of the Future Funding Plan in order to encourage racecourses to abide by the principles of a 40:40:20 split of data income to which they had committed in June 2001.

If the BHB, as is intended, ceases in 2006 to manage the distribution of data income from overseas bookmakers that has allowed it to fund its Incentive Scheme, then that Scheme will also have to be abolished.

- 5.5.4** Consequently, with both mechanisms to encourage racecourses to put money into prize money likely to be abolished in 2006, racecourses will have no real incentive to contribute to the prize fund (beyond the prize money contract discussed at Section 5.9 on page 35).

- 5.5.5** Many racecourses have expressed the view that not all remaining data money should be hypothecated and that the retention of an Incentive Fund is important to maintaining competition between racecourses.

The rest of the industry has also expressed the view that it needs to be reassured that racecourses will have a motivation to contribute to the prize fund and that it has a reasonable expectation that the prize fund will reach a level that fairly rewards it for providing the product.

- 5.5.6** It is therefore proposed that, for racecourses with Racecourse Fixtures, an Incentive Fund of 10% of Net Data Income, up to a maximum of £8 million, be available to racecourses according to the amount of annual betting turnover generated from Racecourse Fixtures by each course and that this sum should be deducted, after Regulation, Governance and BHE costs have been top-sliced, before the balance of the income is hypothecated. In Round 1 of applications for the Incentive Fund, racecourses would be required to contribute £2 of their own money for every £1 they accessed from the Incentive Fund. In Round 2 the ratio would move up to 1:3 and in subsequent rounds to 1:4. Any Incentive Fund money remaining after all racecourses have ceased to apply to receive Incentive Fund money by making racecourse contributions to prize money will be hypothecated to racecourses according to their share of total betting turnover generated from the 1203 Racecourse Fixtures. There will be no Incentive Fund relating to BHB Fixtures.

Racecourses will, from 1 January 2006, be able to benefit from the Incentive Fund for every pound they contribute to prize money whereas, under the current BHB Incentive Scheme, they have to contribute a considerable amount of their own money to prize money before they receive anything from the BHB Incentive Scheme.

5.6 Hypothecation of the Remaining Income

5.6.1 Fixture Incentives, Abandonment Payments, Divided Race Fund and Basic Daily Rates will all disappear upon the abolition of the Levy Board, to be replaced by an all-encompassing data payment to each racecourse.

As BHE's income is derived from betting, it should essentially be paid out according to how much betting a racecourse can generate. Hypothecation will be based on betting turnover rather than gross profits in order to eliminate the distorting effects of unusual results, such as happened at the Cheltenham Festival in 2003 and the dangerous incentive which might be created for racecourses to maximise individual racecourse gross profit and a consequent inevitability of compromising the integrity of the sport. Betting turnover figures will be derived from at least three significant independent sources as well as from at least one betting exchange.

Hypothecation for all income ("Hypothecated Income") will be calculated following a deduction from Gross Data Income of a first charge that incorporates Regulation, Governance and BHE administration costs, in addition to a 10% Incentive Fund for Racecourse Fixtures only, which will be deducted from Net Data Income.

5.7 Hypothecation of Racecourse Fixtures' Remaining Data Income

Hypothecated Income in respect of Racecourse Fixtures will be made according to the average percentage of betting turnover generated by each racecourse over the previous two years for Racecourse Fixtures, subject to an adjustment to reflect actual rather than projected participation and actual rather than forecast income. Each fixture within the individual racecourse's total fixtures will be weighted according to its type. The factors which will be taken into account to determine type will include time, date, season and code of meeting.

The amount of Hypothecated Income which a racecourse then receives for a forthcoming year will be based on this calculation applied to the total annual income forecasted to be derived from Racecourse Fixtures,. If a racecourse operates the same number and type of Racecourse Fixtures in a forthcoming year (whether or not they are run at the same physical location), its share of income, subject to adjustment, will remain static. If a racecourse gains or loses Racecourse Fixtures in a forthcoming year, the share of income it receives will be adjusted according to the number and type of Racecourse Fixtures it has gained or lost.

Averages based on previous years and types of fixtures are used to assist in a racecourse's planning and to recognise the likely time lag in getting bookmaking data on actual rather than projected participation. To ensure that

racecourses get timely benefit from changes in and the marketing of its race programme rather than have the impact of the changes softened by the use of weighted averages, a rolling quarterly adjustment will be made for each racecourse to reflect actual rather than projected participation, with a final reconciling adjustment made at the end of the year.

5.8 Hypothecation of BHB Fixtures' Remaining Data Income

Hypothecated Income in respect of the total amount of income forecasted to be derived for BHB Fixtures will be based on the type of fixture to be run against the average forecasted to be derived from that fixture type. The average will be derived according to the racecourse's own average for that type of fixture or a generic average if the racecourse has not run that type of fixture before. An adjustment of the type made for Racecourse Fixtures to take into account actual rather than projected participation and income, will also be made for BHB Fixtures.

5.9 Racecourses' Commitment to Prize Money

5.9.1 The BHB Board has determined that it would be willing to license its database to BHE on terms which, among others, include a commitment by racecourses to contribute to prize money 75% of hypothecated data income received annually from their 1203 Racecourse Fixtures up to a total of £80 million. The 25% balance of hypothecated data income from these 1203 Fixtures can be used by racecourses as they see fit. If a threshold of £80 million Net Data Income from Racecourse Fixtures (index-linked annually to the official price index) is reached, income above that level will be split 50:50 between prize money and racecourses and the cap on the Development Fund will be removed as to that year's Fund.

5.9.2 Net Data Income generated from BHB Fixtures will be paid to racecourses without any commitment from racecourses to prize money other than the payment of the prize money bid amount which secured the fixture on a 3 year lease. There will be no Incentive Fund for these fixtures.

5.9.3 Possible prize money scenarios for 2006 can be found at Appendix XIX on page (lxxix) The scenarios show that prize money is likely to be in the range of between £120 million and £130 million. This represents a substantial increase of between £25 million and £35 million over and above 2003 and is made possible by the more effective use of the horse population and of the fixture criteria.

5.10 Benefits of Distributing Data Income According to these Formulae

5.10.1 The benefits to racecourses of distributing net data income according to these formulae are:

- Racecourses are projected to receive almost £86 million from net data income in 2006, as opposed to around £62 million in 2003.
- Racecourses will receive around £16.5 million of income from their 1203 Racecourse Fixtures as unfettered data income (to be spent as they wish) in 2006, compared to only £7 million in 2003.
- 57 of 59 racecourses will receive more total data income in 2006 than in 2003 from their Racecourse Fixtures.
- 57 of 59 racecourses will receive more unfettered data income in 2006 than in 2003 from their Racecourse Fixtures.
- Data income will be distributed in a much fairer way than at present.
- BHB will no longer influence racecourse behaviour through the use of Minimum Values and Minimum Values will be replaced by Meritocratic Bands. (see Section 6.5 on page 38).
- An additional projected £28 million of gross data income in 2006 compared to 2003 will more than mitigate the loss of money consequent upon the termination of the ATR/RCA contract.

5.10.2 The benefit to the rest of the industry of distributing data income according to these formulae are:

- Prize money should exceed £120 million in 2006 for the 1500 fixtures and could reach £130 million.
- There will be more opportunities to race for more prize money with approximately the same horse population.
- Racecourses will be incentivised to contribute their own sources of income to prize money.

6. MODERNISATION OF THE ORDERS & RULES OF RACING

6.1.1 Introduction

6.1.1 The Orders are effectively the rules by which the BHB governs the sport and are set in the interests of the sport. The Rules are effectively the rules by which the Jockey Club regulates the sport and are set in the interests of the integrity of the sport.

6.1.2 As part of the process of the modernisation of British Racing, particular attention has been given to those Orders & Rules to which the OFT objected. The BHB has, together with the Jockey Club, ROA, RCA and ICHL reviewed the Orders & Rules thoroughly and applied the principle that unless each could be reasonably considered to be necessary for the sport's proper governance, its financial or sporting structure, its integrity or for the development of the breed, then it should be either dispensed with or amended to bring as light a touch to governance as possible.

6.1.3 The BHB's proposed alterations to the Orders & Rules can be found at Appendix XX on page (lxxx). Responses have been divided into Dispensable, Amended Wording (including New Orders) and Indispensable, and Reasons for Change and Retention have been fully explained.

6.1.4 This Section does not deal in detail with each Order or Rule. Instead it covers, in addition to a brief summary of which Orders are deemed Dispensable, Indispensable or have Amended Wording, key issues which impact on several Orders. These key issues are:

- Meritocracy bands.
- The impact of the number of races run on field sizes.
- Divided races.

6.1.5 The changes reflect intention as to substance and principle only. The rewording will require detailed technical and legal review before the changes are formally incorporated into the Orders & Rules by BHB and Jockey Club.

6.2 Dispensable Orders

6.2.1 Among the dispensable items that BHB will withdraw are the following:

- The 50 mile 'rule'.
- The requirement that racecourses obtain BHB permission to run Guaranteed Sweepstakes.
- Restrictions on the number of sellers, claimers and handicaps that can be run at a fixture.

- Apportionment of prize money to Flat races over a mile and to Steeplechases.
- Regulations governing the division of the surplus over the selling price of a Seller and the level and split of the premium paid on the Advertised Claiming Price.
- Restrictions on valuable races clashing with Pattern, Listed or other valuable races.

6.3 Amended Wording Orders

6.3.1 Among the Orders which BHB will amend are Orders requiring racecourses to:

- Divide races.
- Run a certain number of maiden, novice, apprentice, conditional and distance races.
- Run a minimum and maximum number of races at a fixture.
- Run races with prize money within certain meritocracy bands.
- Run Selling races with certain selling prices and Advertised Claiming Prices.
- Run a minimum number of steeplechases.
- Classification of races.
- Division of prize money between connections.
- Minimum and maximum entry fees.
- Minimum Advertised Claiming Price in all Claiming Races.
- Comply with the Guidelines for New Racecourses.

6.4 Indispensable Orders

6.4.1 Among the Orders which BHB believes are indispensable with unchanged wording are those relating to:

- Race times.
- Going descriptions.
- Division of Appearance Money between connections.
- Restrictions on races limited to horses sold at specific Auctions.
- Race division criteria.
- Appearance Money Scheme.
- Data, Other Entry and Racecourse Refusal Orders.

6.5 Meritocratic Bands

6.5.1 Minimum Values, and their imposition by the BHB, have always been a contentious issue for racecourses who have objected to them on the grounds that they have enabled the BHB to influence the level of prize money beyond the levels at which racecourses have sometimes wished to contribute and have reduced racecourses' flexibility over their race programmes.

The facts show that Minimum Values in 2003 for all races were in fact more than £13 million higher, at £73 million, than the amount of money that had to be compulsorily contributed to prize money in the form of Basic Daily Rates (BDRs) and Divided Race Fund payments from the Levy Board, BHB's Incentive Scheme and Development Fund and Owners' entry fees.

- 6.5.2** The Racing Review found that the meritocratic system lacked clarity, leading connections of horses often to prefer relegation to promotion, resulting in potentially compromised integrity. It also found that there were too many classes of race and handicap bands and that prize money differentials between race classes were too small and too variable.

The Racing Review urged the establishment of an improved meritocratic structure where owners and trainers actively sought to gain promotion rather than relegation for their horses. The Review recommended the introduction of a smaller number of race classes, initially for the Flat and later for Jumping, as well as clearly defined meritocratic bands for each class.

- 6.5.3** The non-racecourse sectors of the racing industry have made it clear that they regard meritocracy as one of the most important structures that the industry must maintain. They argue that racecourses who are unhappy with the levels of meritocracy bands (Minimum Values) can always run races at the next lower class by downgrading their programme and that, for every racecourse looking to downgrade its programme, there is always a racecourse looking to upgrade. Furthermore, they argue that there is no prize money maximum in Class 1 (the highest class) and the BHB now recommends that there should be no minimum prize money in Class 5 (the lowest class).

- 6.5.4** The issue is an integrity and shape of the breed, as well as a financial matter, for unless racecourses abide by meritocratic bands, the opportunity to target a low quality race with high prize money presents an opportunity for owners and trainers to compromise the sport's integrity.

For example, a 0-60 handicap with £20,000 prize money might attract, say, 10 people with horses rated around 70 who decide to try to get their horses down to 60 in order to cover the year's training fees. If it takes each horse five runs to get down the handicap to the required level, the integrity of the sport has been compromised in as many as 50 races because of one race which, inadvertently, encouraged a lack of integrity.

Some racecourses have also argued that they need to pay higher levels of prize money to attract runners but payment of appearance money has been shown to be a more effective way to attract runners than increasing prize money.

6.5.5 In order to lighten the hand of governance with regard to meritocratic bands, the BHB will introduce six measures which should be welcomed by racecourses:

(i) The BHB will no longer influence racecourse behaviour through the use of Minimum Values and will replace Minimum Values with Meritocracy Bands

- The BHB will undertake that the total sum of the lower level of each of its Meritocracy Bands for all the races that are run during the year will not exceed the amount of money that as a totality must go into prize money.
- This mechanism will be transparent and bands will be able to move up or down without the need for constant renegotiation. The bands will therefore reflect the economic state of the industry.

(ii) BHB will appoint a Fixture Matrix Group to recommend any changes to Meritocracy Bands

- Any changes to Meritocracy Bands will be recommended by the Fixture Matrix Group, a committee of seven comprising the BHB Chief Executive, Racing Director, ROA nominee, NTF nominee and 3 RCA nominees. The non-voting members (the BHB Recruitment and Training Director and the HRA nominee) will not be expected to attend meetings which relate to discussion of meritocracy band).
- It will require a 70% majority of the voting Directors of the BHB Board, including at least 2 Members, to overturn the recommendations of the Fixture Matrix Group on meritocracy bands.

(iii) Racecourses will be able to adopt Total Prize Funds for all races rather than Added to Stakes from January 1, 2006

- In complying with Meritocracy Bands, racecourses will be able to use either the Total Prize Fund or Added to Stakes prize money mechanism, giving them more flexibility within each band.

(iv) Racecourses will be able to include Appearance Money payments in a Total Fund figure:

- Racecourses who decide to pay Appearance Money in order to attract runners will be able to show a Total Fund

figure which will comprise prize money and Appearance Money. Stating a Total Fund figure will in turn help to attract runners.

(v) Meritocracy Bands are generally expected to have a range of up to 100% between the lower and upper level except for two year old races where the range will probably be in the 60%-80% range

- This should provide all the flexibility racecourses need to establish their prize money levels.

(vi) Ability to Apply for Exemptions from Applying No More than the Upper Level of Meritocracy Bands

- Racecourses have certain races where they have historically put in prize money over and above the meritocracy band for those races on the basis that those races are special races.
- Racecourses will be able to apply to the BHB Racing Department for special exemptions from upper levels of meritocracy bands for such races, and permission for such exemptions will not be unreasonably withheld.

6.6 The Impact of the Number of Races Run on Field Sizes

6.6.1 As the Fixture List expands to 1500 fixtures, the natural expectation would be for field sizes to reduce by an amount proportionate to the increase in fixtures. However, the introduction of narrow band handicaps, the reduction in maximum field sizes to fourteen and the utilisation of eliminated horses mean that, as shown in Appendix IX on page (xliv) field sizes can be maintained at an appropriate level.

6.6.2 However, it is not only the number of fixtures that impact on field sizes but also the number of races. Mathematically, if racecourses run 1500 fixtures with 6 races, they would only be able to run around 1100 fixtures with 8 races per fixture, if they wished to have the same average field size.

With the move towards greater hypothecation of data income, racecourses will come under increasing pressure to run more races to maintain their share of data income. This in turn could put pressure on field sizes with a knock on effect on both picture and data income.

6.6.3 Because of these factors, the BHB needs to maintain an Order regarding the number of races that can be run but intends to make a number of changes to both simplify the Order and make it fairer. These changes are:

- Both Flat & Jump fixtures to run a minimum of 6 and a maximum of 8 races.
- The maximum to be reduced to 7 races in June, July and August (Flat) and August, September and October (Jump).
- Distinction between daytime and evening fixtures to be abolished (previously racecourses were unable to run more than 6 races at an evening meeting).

6.6.4 The situation needs to be carefully monitored. BHB Fixtures may often include only 6 races which will keep the average down but upward pressure on the average number of races run during a fixture may ultimately result in the need to review the Order relating to the maximum number of races that can be run per fixture.

6.7 Division of Races

6.7.1 The ability to divide races also impacts on field sizes and the number of races per fixture.

6.7.2 When the Levy Board is abolished, the Divided Race Fund will also disappear. Thereafter it will be up to racecourses to decide if they wish to divide races and what races to divide.

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