



## **DECISION of the FEI TRIBUNAL**

**dated 1 June 2017**

**Positive Controlled Medication Case No.:** 2017/CM03

**Horse:** LARILES TSALADIN

**FEI Passport No:** 104ZE14/KSA

**Person Responsible/NF/ID:** Ibraheim Asiri/KSA/10113230

**Event/ID:** CEI1\*110 Riyadh (KSA) – 2017\_CI\_0132\_E\_S\_01\_01

**Date:** 14 January 2017

**Prohibited Substances:** Phenylbutazone, Oxyphenbutazone, Lidocaine

### **I. COMPOSITION OF PANEL**

Mr. Chris Hodson QC, one member panel

### **II. SUMMARY OF THE FACTS**

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
- 3. Oral hearing:** none

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012

("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 2<sup>nd</sup> edition, effective 1 January 2016.

FEI Controlled Medication Regulations ("ECM Rules"), 2<sup>nd</sup> edition, effective 1 January 2016.

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Ibraheim Asiri

**3. Justification for sanction:**

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1."

EADCMRs APPENDIX 1 – Definitions:

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel's degree of Fault include, for example, the Person Responsible's and/or member of the Support Personnel's experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of

care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible's and/or member of the Support Personnel's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's and/or member of the Support Personnel's departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules and Article 2.1 of the ECM Rules, the Athlete must also establish how the Prohibited Substance entered his or her system."

#### **IV. DECISION**

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

## **1. Factual Background**

- 1.1 LARILES TSALADIN (the "**Horse**") participated at the CEI1\*110 in Riyadh, Kingdom of Saudi Arabia, on 14 January 2017 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Ibraheim Asiri who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling on 14 January 2017.
- 1.3 Analysis of the blood sample no. 5555549 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Racing Laboratory ("**HKJC**") in Sha Tin, Hong Kong. The analysis of the sample revealed the presence of Phenylbutazone, Oxyphenbutazone and Lidocaine in the plasma.
- 1.4 The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone and Lidocaine. Phenylbutazone and Oxyphenbutazone (metabolite of Phenylbutazone) are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and analgesic effects. Lidocaine is a local anaesthetic used in treatment of various skin disorders and as a surface anaesthetic for minor surgery. These substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List. Furthermore, no valid Veterinary Form exists for the respective substances. Therefore, the positive finding for Phenylbutazone, Oxyphenbutazone and Lidocaine in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

## **2. The Further Proceedings**

- 2.1 On 8 February 2017, the FEI Legal Department officially notified the PR and the Owner of the Horse through the Saudi Arabian National Federation ("**KSA-NF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.

## **3. The B-Sample analysis**

- 3.1 Together with the Notification Letter of 8 February 2017, the PR and the Owner of the Horse were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 Neither the PR nor the Owner of the Horse asked for the B-Sample to be analysed, and accepted the results of the A-Sample analysis.

#### **4. Written submission by and on behalf of the PR**

- 4.1 On 6 March 2017, the PR provided two statements, one by himself, and a second one by Mr. Ziyad Massad al Harbi, registered trainer of the Horse since 6 March 2017 (the "**Trainer**").
- 4.2 In his statement dated 13 January 2017, *i.e.*, one day prior to the Event, the PR stated as follows:

*"I am the horseman : Ibrahim Ahmed Ibrahim Asseri , international number (10113230) do hereby undertake that Iam going to take part tomorrow in the international founder race for a distance of 110 kilometers this acknowledgement to protect myself in case of any prohibited substance given to the horse LARIES ISALDIN and iam just a horseman at the time of the race and that the coach Zyad Massad al Harbi is one in – charge of the affairs of the said horse, international number ( 10114075) and that anything occurs at the time of the race or after the race I am not responsible for it (...)"*

- 4.3 Mr. Al Harbi stated as follows:

*"(...) I would like to inform you that Iam equestrian coach : Zayd bin Massad al Harbi , international number 101114075 that on the horse race day on 14/1/2017 during the international founder race for a distance of 110 kilometers I was supervising the training of the horse LARILES ISALDIN at the beginning of the season and that the said horse was under my direct supervision but there was a mistake in giving the medications by the doctor four days prior to the race the doctor was mistaken in giving medications to this horse and he was supposed to give it to another horse noting that the horse under my supervision does not need the said medications and that he is prepared for the race but there was a mistake and I admit there was a mistake and I do respect the rules and regulations of the international equestrian federation noting that the said coach in the case who is training the said horse has no relation but the main problem was the giving of medications this is not the mistake of the horseman and the previous owner of the horse and the new owner I do admit there was a mistake due to inattention and seriousness."*

#### **5. Written Response by the FEI**

- 5.1 On 3 April 2017, the FEI provided its Response to the explanations provided on behalf of the PR.
- 5.2 In essence the FEI submitted that:
- a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent,*

*fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1".* Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Phenylbutazone, Oxyphenbutazone and Lidocaine, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR did not dispute the presence of those Prohibited Substances in the Horse's sample. Accordingly, the FEI had discharged its burden of establishing that the PR had violated Article 2.1 of the ECM Rules.

- b) Where a Controlled Medication Substance was found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. To do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) how the Prohibited Substances entered the Horse's system and (ii) that he bore No Fault or Negligence for that occurrence; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- c) The ECM Rules stipulated, and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance(s) entered into the Horse's system. The FEI submitted in this context that the PR must provide clear and convincing evidence that proved how the Phenylbutazone, Oxyphenbutazone and Lidocaine had entered the Horse's system. The PR claims that the Trainer is responsible and the Trainer admits that the Horse was under his direct supervision but that there was a mistake in giving the medications by the doctor four (4) days prior to the competition. The doctor was mistaken in giving medications to the Horse and he was supposed to give it to another horse. The FEI was of the opinion that this was a plausible explanation, however, there had been no further evidence or documents of the medication or mistake made by the doctor. The FEI could not accept the explanation unless further evidence was provided. That so far in the proceedings the PR had not established how the Prohibited Substances entered the Horse's system.
- d) In order to evaluate the PR's degree of fault, the definitions of fault, *i.e.*, Fault, No Fault or Negligence, and No Significant Fault or Negligence, clarified the factors to be taken into consideration.

- e) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation was the "*personal duty*" of the PR following from Article 2.1.1 of the ECM Rules, *i.e.*, his personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*".
- f) The FEI argued that, through the FEI Clean Sport programme and in particular the "*Athletes Guide*"<sup>1</sup> it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It should be noted that, in the Glenmorgan decision<sup>2</sup>, CAS had stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" and described the Athlete's Guide as "*required reading*".
- g) Further, the Sole Arbitrator in the case *Mohammed Shafi Al Rumaithi v. FEI*<sup>3</sup> endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, stating (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent [the FEI] put it in its skeleton argument*

*"The FEI believes that making the rider responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It (is) strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse'.*

*The Sole Arbitrator respectfully agrees".*

- h) Moreover, in the Glenmorgan case (at paras 203 and 209), the Panel confirmed that the rider was best fit to control the Horse before a competition.

*".. Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*

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<sup>1</sup> Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

<sup>2</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

<sup>3</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI

*"The Panel wishes to emphasize again that the fault or negligence which determines the measure of the Appellant's sanction is not that of the Dr. It is the Appellant's own fault and negligence in not having exercised the standard of care applicable to a PR which, like the non-equine Athlete, is placed at the exercise of "utmost caution". It is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body."*

- i) In light of the CAS jurisprudence, the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bore No (Significant) Fault or Negligence for the positive finding was a reasonable and justifiable stance.
- j) Moreover, that CAS jurisprudence confirmed, that the rider was, no matter what, the Person Responsible for the horse he was competing with, and cannot delegate that duty to another person. That the conclusions to be drawn from the case law was that the duty of care was very high and that his duty of care was non-delegable. But also that Persons Responsible were responsible for their Support Personnel and the medical/veterinary treatments given to their horses by their veterinarians.
- k) That the PR's document stating that he was not responsible for the Horse, but that the Trainer was responsible for the Horse had no value in relation to the strict liability in the FEI rules. The rider was no matter what the PR for the Horse, and the rules were crystal clear on this point. The PR had not provided any evidence in order to establish no (significant) fault or negligence for the rule violation. The FEI therefore respectfully submitted that no elimination or reduction of the period of Ineligibility was possible in the case at hand, and that the applicable period of Ineligibility on the PR had to be six (6) months.
- l) Finally, it had to be noted that the PR was also the registered trainer for the Horse on the date of the Event, and that Mr. Al Harbi had only been registered as the trainer for the Horse after the Event on 6 March 2017.
- m) Pursuant to Article 9 of the ECM Rules, the results of the PR and Horse combination obtained in the Competition should be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. Furthermore, since this was a case with a Controlled Medication Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the ECM Rules.
- n) As fairness did not dictate that no fine be levied in the case at hand,

the FEI duly requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fine the PR in the amount of 2 500 CHF, and order the PR to pay the legal costs of 1 500 CHF that the FEI had incurred in these proceedings.

## **6. Jurisdiction**

The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

## **7. The Person Responsible**

- 7.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.
- 7.2 In this respect the Tribunal has taken note of the PR's statement signed prior to the Event that he should not be held responsible for any potential positive findings that might occur. However, the Tribunal finds that the GRs with regard to the Person Responsible are clear. The rider of the Horse at the Event is considered as the Person Responsible in the meaning of the GRs. Therefore, no rider can waive such responsibility by means of a contract or otherwise. A rider, and the PR in the case at hand, will remain the Person Responsible, and the EADCMRs with all its consequences are applicable to that rider, and as such to the PR in the case at hand.

## **8. The Decision**

- 8.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR and the Owner of the Horse waive analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone and Lidocaine in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding. These substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of Phenylbutazone, Oxyphenbutazone and Lidocaine during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 8.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proved the objective elements of an offence by the PR, in accordance with Articles 2.1 of the ECM Rules.

- 8.3 In cases brought under Article 2.1 of the ECM Rules a strict liability principle applies as described in Articles 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 8.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 or 10.5 of the ECM Rules.
- 8.5 The Tribunal takes note of the Trainer's explanation for the positive finding, namely that the Horse had been mistakenly administered the Controlled Medication Substances by a veterinarian four (4) days prior to the Event. However, no further evidence has been provided to support this explanation. In the view of the Tribunal, this is not sufficient in order to establish how the Prohibited Substances entered the Horse's system; the PR has to provide clear and convincing evidence in this respect.
- 8.6 As a result, the Tribunal holds that the PR has not established how the Controlled Medication Substances entered the Horse's system.
- 8.7 Accordingly, the Tribunal does not need to address the question of whether the PR has established that he bears No (Significant) Fault or Negligence for the rule violation. Furthermore, given the lack of information provided by the PR, the Tribunal finds that the degree of Fault or Negligence of the PR for the rule violation is impossible to assess.
- 8.8 For the avoidance of doubt, the Tribunal wishes to clarify, that the PR – as Person Responsible – would also still be responsible for the present rule violation in the case for example the veterinarian had admitted to administering the Prohibited Substances to the Horse. In such a case, a veterinarian could potentially be held additionally responsible. The PR however would have remained the main Person Responsible. Further, the Tribunal notes that despite the clear submissions by the FEI, neither the PR nor Mr. Al Harbi had submitted any further evidence.
- 8.9 As a result of the foregoing, the Tribunal holds that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

## **9. Disqualification**

For the reasons set forth above, the Tribunal disqualifies the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the

ECM Rules.

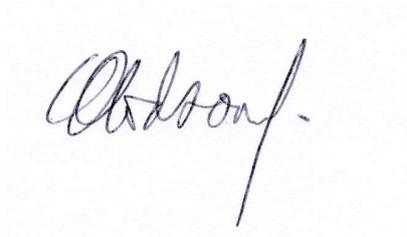
## 10. Sanctions

- 10.1 As a result of the foregoing, the period of Ineligibility imposed on the PR shall be six (6) months. The Tribunal takes note that the PR has been provisionally suspended from 8 February 2017. The Tribunal finds, that the period of Provisional Suspension shall be credited against the period of Ineligibility imposed.
- 10.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **six (6) months**. The period of Provisional Suspension, effective from 8 February 2017, the date of imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible **through 7 August 2017**.
  - 2) The PR is fined **two thousand five hundred Swiss Francs (CHF 2'500,-)**.
  - 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure.
- 10.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).
- 10.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the ECM Rules).
- 10.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 10.6 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read "Chris Hodson", is centered on the page. The signature is written in a cursive style with a long, thin tail on the final letter.

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**Mr. Chris Hodson QC, one member panel**