



**MINUTES OF THE MEETING OF
MUSSELBURGH RACING ASSOCIATED COMMITTEE**

**TUESDAY 18 SEPTEMBER 2018
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor F O'Donnell (Chair)
Councillor A Forrest
Councillor K Mackie
Mr R Miller-Bakewell

In Attendance:

Mr B Farnsworth, Racecourse General Manager (Items 1-7)
Ms S Montgomery, Racecourse Commercial Manager (Items 1-7)
Mr D Kennedy, Racecourse Financial Controller (Items 1-7)
Mr W Axon, General Manager of Enjoyleisure (Items 4-7)
Mr C Grilli, Service Manager, Legal and Procurement, ELC

Clerk:

Mrs F Stewart

Apologies

Councillor S Currie
Mr R Anderson Green

Declarations of Interest

None

Prior to the commencement of the meeting, Robert Miller-Bakewell enquired why Items 9 and 10 on the agenda were being taken in private. The Legal Adviser replied that these items were private in accordance with paragraph 6 of Schedule 7A of the Local Government (Scotland) Act 1973 as they contained information concerning the finance or business affairs of people or bodies outwith the Council. Mr Miller-Bakewell considered that this was a liberal interpretation of the legislation.

1. MINUTE OF MEETING ON 3 JULY 2018 FOR APPROVAL

The minutes of the meeting on 3 July 2018 were agreed to be a true record of the meeting.

2. MATTERS ARISING

There were no matters arising from the meeting held in public.

3. HEALTH AND SAFETY REPORT

A report had been submitted by the Racecourse Health and Safety Officer to advise the MRAC of Health and Safety Management at Musselburgh Racecourse.

Bill Farnsworth presented the report, stating that there had been no health and safety matters arising since the last meeting on 3 July 2018. He also advised that remedial work on the electrical infrastructure of the Racecourse had been completed using a local contractor for £3-4,000, which was £6,000 less than the original quote.

Decision

The MRAC agreed to note the report.

4. FINANCE – DRAFT AUDITED ACCOUNTS 2017/18

The Racecourse General Manager had submitted a report to provide the MRAC with the draft 2017-18 audited accounts and take any questions.

Bill Farnsworth presented the report on behalf of the Audit Sub-Committee. He advised that the Sub-Committee had met on 7 August 2018 and reported that the auditors, Scott-Moncrieff, had given the Racecourse a 'clean bill of health'. He stated that the Audit Report was still in draft form and Scott-Moncrieff would provide a full and final report. The main issue for the Auditors had been around the Racecourse's status as a Going Concern. To be a Going Concern, Scott Moncrieff required the Racecourse to be in line with all other UK racecourses and in possession of a BHA (British Horseracing Authority) Licence to 31 December 2018. This issue had now been resolved as the BHA had extended the Musselburgh Racecourse licence to 31 December 2018. The Auditors had also increased the risk from Grade 2 to Grade 3 arising from the reliance on the Finance Manager, with the succession plan on hold. On the recommendation of the Audit Sub-Committee, the Chair was invited to sign the 2017-18 accounts which would be included in the Council's annual accounts going forward to the Audit and Governance Committee on 25 September 2018.

The Chair welcomed the extension to the Racecourse licence which provided certainty and confidence to racegoers and staff. She also thanked everyone who had worked to achieve this.

The Chair referred to the Financial Statements for 2017-18 and enquired if the investment in Britbet would be repaid to the Racecourse and Mr Farnsworth replied that the sum invested would be repaid from future earnings.

Councillor Forrest asked if all matters set out in the accompanying letter from Scott-Moncrieff were in order and Mr Kennedy, Financial Controller, replied that the content of this letter had been approved by the Council's Depute Chief Executive and there were no matters outstanding.

Mr Miller-Bakewell stated that the accounts showed a very encouraging performance by the Racecourse and Mr Farnsworth highlighted the significant uplift in profit from the budgeted profit figure.

Councillor Forrest welcomed the report and the Action Plan from Scott-Moncrieff.

The Chair thanked everyone for their part in returning such a healthy financial performance. She also thanked staff for their loyalty and continuing service.

The Chair signed the letter of representation to Scott Moncrieff.

Decision

The MRAC approved the completion of the draft audited accounts.

5. FINANCE REVIEW

The Racecourse General Manager had submitted a report to update the Committee on the profit/loss forecast for the year 1 April 2018 to 31 March 2019 at the end of the first and second quarter.

Bill Farnsworth summarised his report. He outlined the Forecast Profit/Loss and Forecast Expenditure and how these figures compared to the previous year. He also advised how much income was expected from Racecourse Media Rights (RMG) and explained how this sum was calculated.

Mr Farnsworth advised that the capital expenditure (capex) budget would allow the completion of Loretto Lawn and the Foodcourt. He also proposed an additional capex item, the provision of more marquee cover to enhance the experience for visitors, particularly on Ladies Day. He explained that there were visitor areas where the ground was not level and, if work was carried out to address this, it would provide more protection from the elements to visitors. He stated that there were two options; to create one large level area to support a much larger marquee or to retain the two levels with an access ramp to Loretto Lawn. He outlined the anticipated costs and asked the Committee to approve the additional expenditure to allow plans to be progressed and planning consent sought.

Councillor Mackie asked if it was wise to commit to this expenditure during the transition phase and questioned whether a better option might be to allow the new third party operator to make this decision. Mr Farnsworth was in favour of the Racecourse being

handed over to the new operator in the best possible condition and stated that the cost of the proposed improvements would be reflected in the rent payable. Mr Farnsworth advised that the landscaping would enable the Racecourse to provide a significantly improved racegoer experience on the bigger racedays, when Loretto Lawn is in use.

Mr Miller-Bakewell supported the concept of improving the assets, but needed more detail on the two options outlined. He asked if plans for both options could be submitted to the Council's planning department for approval and the Legal Adviser replied that, from an operational point of view, it was better to proceed with only one plan.

Mr Farnsworth asked if the Committee could agree his proposals in principle and the Chair replied that she was reluctant to make a commitment at a time when there were other financial liabilities.

Councillor Forrest stated that the only acceptable spending at the present time would be on health and safety.

Mr Farnsworth asked if the Committee would support further work being carried out on the plans by Gary Houston, the Council's Senior Architectural Technician. The plans could then be circulated to the Committee and a planning application submitted at a later date if the proposals were approved. Mr Miller-Bakewell stated that developing the plans could be carried out at a relatively low cost and would provide clarity.

The Chair moved to a vote on asking Mr Farnsworth to progress the plans, submit a planning application and bring a full report to the December meeting for approval of the expenditure and plan.

For: 3
Against: 1
Abstentions: 0

Decision

The Committee agreed:

- i. to note the financial performance to date and the forecasts to the year ending 31 March 2019;
- ii. that recommendation 2.2 in the report, to repay the outstanding HBLB (Horserace Betting Levy Board) loan before the third party operator is appointed, should be devolved to the Working Group; and
- iii. that the General Manager could progress plans for the improvements he proposed, submit a planning application and bring a detailed report to the December meeting to seek approval for the expenditure and plan.

6. COMMERCIAL AND OPERATIONS REPORT

A report had been submitted by the Racecourse Senior Operations and Commercial Manager to update the Committee on the commercial and operational performance of the Racecourse for 2018/19.

Sarah Montgomery summarised her report. She highlighted that VisitScotland had verbally confirmed the Racecourse had retained its 5 Star rating and that the full written

report would follow. She also advised that the Racecourse had invested in 2 mobility scooters, the first racecourse in Scotland to do so. These vehicles would be available to elderly or infirm patrons, particularly for transferring between the car park and the grandstand/hospitality areas.

Ms Montgomery advised that she had received very complimentary comments about Musselburgh Racecourse at a recent Owners and Trainers Association meeting. A summary of runners and owners visiting Musselburgh Racecourse was included in her report, together with a breakdown of the service the Racecourse provides to owners and trainers. Ms Montgomery was also pleased to announce that the sponsorship contract with Stobo for Ladies Day had been extended for a further 5 years.

The Chair congratulated the management team and staff at the Racecourse on retaining the VisitScotland 5 Star rating and on introducing mobility scooters to the Racecourse.

In response to questions from Councillor Forrest, Ms Montgomery advised that the number of badges offered to owners was standard in the industry, adding that few owners take up all of the badges and some horses had multiple owners. She also stated that the more the Racecourse can do to attract owners and runners, the more the Racecourse would benefit from an increase in income from media rights.

Decision

The MRAC agreed to note the performance to date.

7. MRAC WORKING GROUP UPDATE

The Racecourse General Manager had submitted a report to provide the Committee with an update on the progress of the Working Group.

Mr Farnsworth presented his report and advised that the Working Group had held an Open Day at the Racecourse for prospective tenderers on Monday 23 July 2018. At the successful event, which was well attended, attendees were invited to submit feedback and the information received will be incorporated into the tender documentation where appropriate. The Working Group met on 13 August 2018 to progress the details of the tender process and the public procurement process that would be followed. Mr Farnsworth advised that the aim was for the tender documentation to be issued to tenderers within 90 days of the Open Day and he had hoped that the successful tenderer would be appointed by the end of 2018. However, he had been advised that the first half of the 2019/20 financial year might be a more realistic time frame.

Mr Farnsworth also recommended that outstanding loans were cleared before the new operator takes over.

Carlo Grilli, the Council's Service Manager, Legal and Procurement, stated that 90 days from the date of the Open Day was a challenging deadline for issuing tender documentation.

The Chair thanked the Working Group for their commitment to the tendering process and their attention to detail.

Mr Miller-Bakewell, who had attended all of the Working Group meetings, stated that the deadline for appointing an operator had slipped twice and he urged clarity on the timescale, particularly as the British Horseracing Authority (BHA) had indicated concern at delays in the process.

Mr Grilli stated that the Working Group had not committed to any timescales suggested by Mr Miller-Bakewell at the outset of the process because it was not clear which tendering process would be followed. Now that the process was clearer, he advised that an element of negotiation would be involved to ensure compliance with the tendering process and this would extend the tender period. He stated that a new operator could be appointed in July 2019 if all the documentation is issued in October 2018. Mr Grilli advised that he had briefed members of the Working Group on the tendering process.

Mr Miller-Bakewell asked what the position would be if the BHA were not happy with the timescales for the tendering process and Mr Grilli replied that the Council was following statutory timescales. Mr Miller-Bakewell also underlined the importance of keeping potential operators informed of progress in the tendering process.

In response to further questions from Mr Miller-Bakewell, Mr Grilli advised how invoices in relation to the tendering process were approved for payment and stated that there was not presently a projection of costs associated with the process. Costs would be discussed at the Working Group meetings and would come back to this Committee.

Mr Farnsworth stated that the tendering process was taking longer than anticipated and he viewed this as a risk for the Racecourse, impacting on management and staffing issues. He also stated that the costs of the process needed to be monitored closely.

Further to a request from Mr Miller-Bakewell, the Chair agreed that redacted copies of the Pinsent Masons report would be circulated to Committee members.

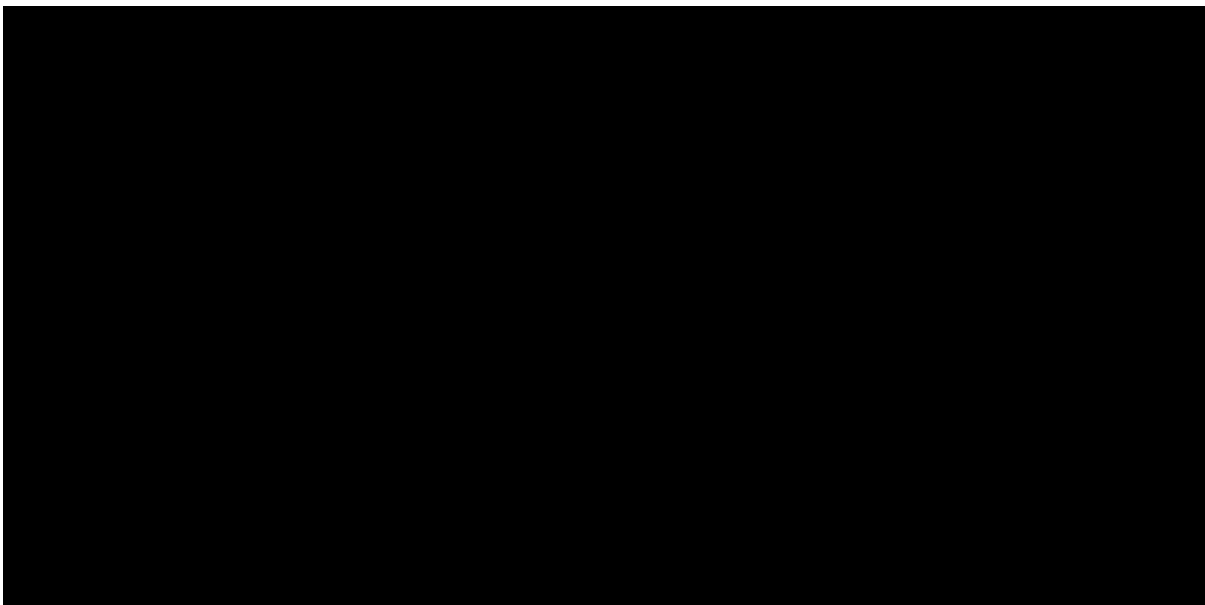
Decision

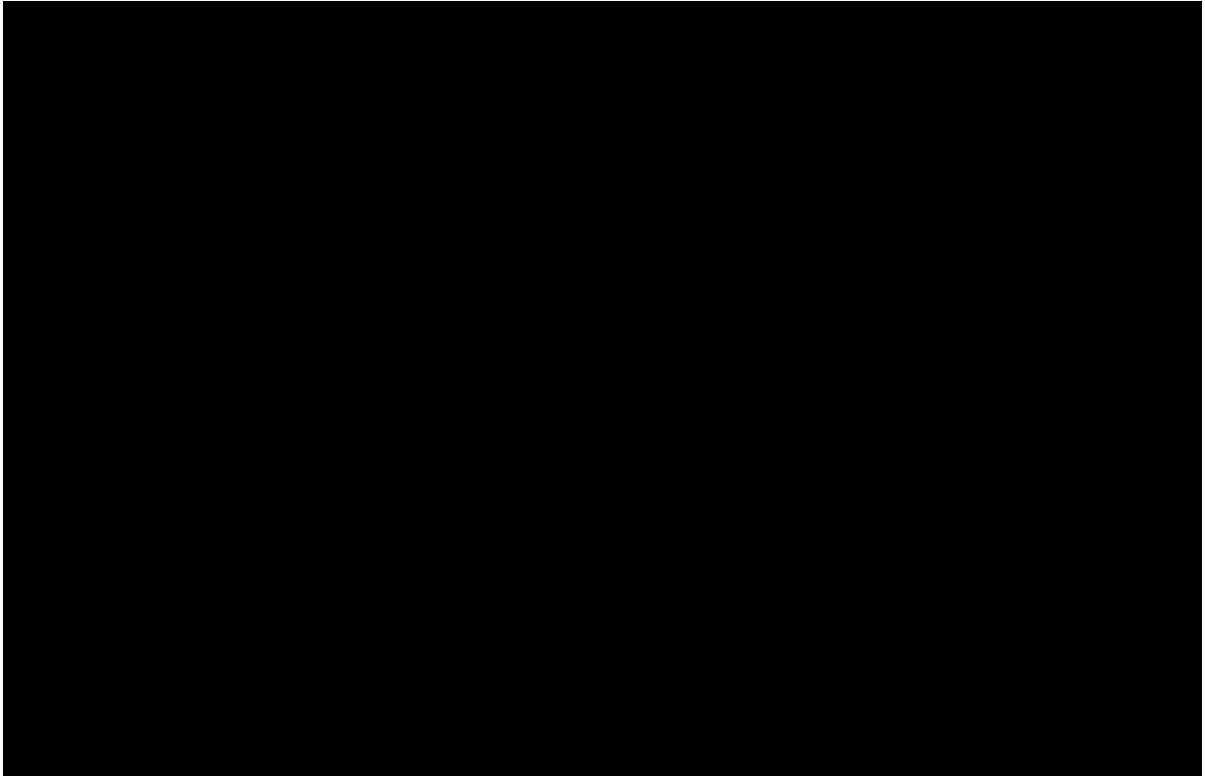
The MRAC agreed to note the report.

Sederunt: Mr Farnsworth, Ms Montgomery, Mr Kennedy and Mr Axon left the meeting.

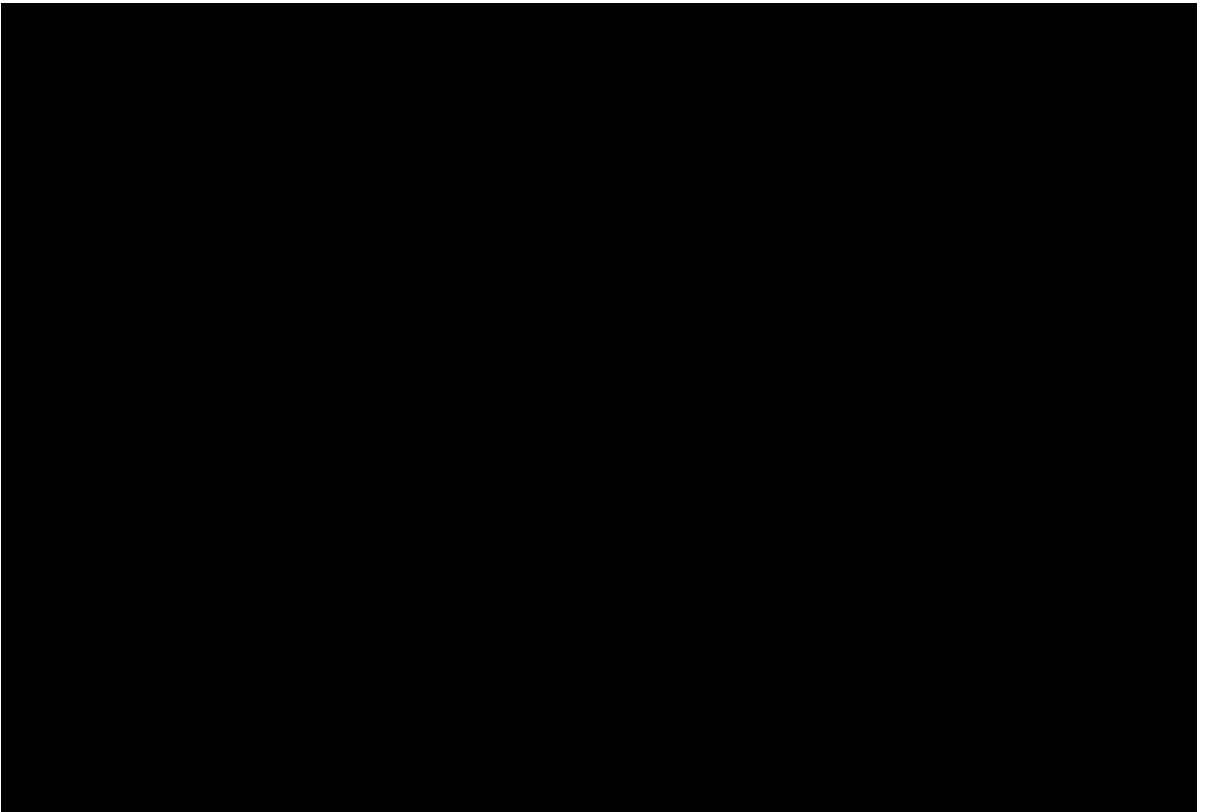
PRIVATE

8. COUNCILLOR CURRIE – CORRESPONDENCE





MATTERS ARISING FROM MRAC MINUTE OF 3 JULY 2018 (PRIVATE)



Sederunt: Mr Farnsworth, Ms Montgomery, Mr Kennedy and Mr Axon re-joined the meeting.

9. OPERATION OF GOLF COURSE

The General Manager of enjoyleisure had submitted a report on health and safety in respect of Common Good land (Musselburgh Links, the Old Course and Musselburgh Racecourse).

Mr Axon presented his report, stating that he had a professional and legal responsibility to bring certain issues to the attention of the Committee. He added that all parties accepted responsibility for the health and safety of those using the Links but there was disagreement on how those responsibilities should be met. He emphasised the seriousness of the situation, advising that Board Members (Directors) who did not meet their obligations under Health and Safety legislation could face severe consequences, including custodial sentences and substantial fines. In his report, Mr Axon pointed out that there had been a number of concerns regarding health and safety risks posed by Racecourse activities during allocated public golfing time. This created a number of issues for enjoyleisure, including a possible loss of income. Despite extensive communications with Racecourse management, these issues had not been resolved. Mr Axon stated that the Management of Health and Safety at Work Regulations required that *'where two or more employers shared a workplace...all involved have to co-operate and co-ordinate their activities'*. Enjoyleisure's insurance company also states that no 'dual activity' should be undertaken and that they might be left without cover if this is allowed.

The Chair invited questions for Mr Axon. Mr Miller-Bakewell enquired what Mr Axon's professional health and safety qualifications were and sought confirmation that he had written the enjoyleisure report. Mr Axon confirmed that he had written the report and advised that he had no health and safety professional qualifications. As a senior executive, he had advisers and received advice from a professional body. He also stated that he did not need professional qualifications to make a professional judgement. Mr Miller-Bakewell asked why the concerns outlined had not been raised when the Racecourse had its annual safety certificate reviewed and Mr Axon replied that Mr Farnsworth would need to answer that question.

Councillor Mackie understood that the Racecourse's insurance company did not share the concerns of enjoyleisure's insurance company and asked if both companies were interpreting the legislation differently. Mr Axon replied that this could not be the case. He explained that a joint risk assessment would have to be carried out for activities, but there was no need as dual activities were not permitted to take place. Mr Miller-Bakewell pointed out that golfers had been playing on the golf course on the previous Saturday which was a raceday.

Mr Farnsworth stated that insurance does not make an event safe and that if an assessment has been done to limit risk, the Racecourse would be covered by its insurance policy. He advised that over the years, the insurance company has carried out checks and there had been meetings with Anderson Strathern to ensure that the Racecourse operated safe events in a safe environment. In their view, the Racecourse was doing everything to the highest standard and there had never been an incident or a claim resulting from a non-raceday event.

The Chair considered that the best solution would be to pass the matter to the Working Group for their consideration and to work towards an agreement between both parties.

Decision

The MRAC agreed to refer the matter of health and safety to the Working Group with a view to agreeing a protocol which would ensure that both parties were compliant with legislation.

10 STABLES CAFÉ – VERBAL REPORT

Bill Axon, General Manager of enjoyleisure gave a verbal report on the Stables Café. He advised that three external organisations had operated the café prior to enjoyleisure and all three had failed. He stated that he had been asked to consider running the café to provide facilities for racedays and, following a meeting between himself, Bill Farnsworth and Ray Montgomery (former Council Head of Infrastructure), an agreement was reached. A standard charge of £750 plus VAT was agreed per day to include all services, staff, equipment, insurance and variable costs. Mr Axon outlined other details of the agreement and stated that it would be his intention to maintain this agreement going forward and to enter into negotiations with the new operator.

Mr Grilli stated that there was no formal contract between the Racecourse and enjoyleisure and suggested that this matter could also be referred to the Working Group to formalise the arrangement.

Mr Farnsworth stated that his team managed the Racecourse and therefore they should have accountability and responsibility. He could see no reason why enjoyleisure should sit between the Racecourse and the café on racedays. As Manager of the Racecourse, he felt vulnerable. If there arose a situation where the café was not BHA compliant, the Racecourse could not be held to account, and enjoyleisure could not be held to account because the BHA do not licence them. He doubted that the BHA would be happy with such an arrangement. The Chair asked to be copied in on his correspondence with the BHA.

Councillor Forrest stated that he had understood that the café building had been built for use by the community and was advised that the building is no longer used by the community. Mr Farnsworth disputed this and stated that the primary purpose of the Stables and Stables Café is to provide facilities on racedays, as per the BHA Racecourse Licensing requirements.

Mr Miller-Bakewell asked if he could see the contract between the Council and enjoyleisure and Mr Grilli undertook to look into it. The Chair stated that the Committee needed to know when the lease ends and who would make a decision on the future of the lease. Mr Grilli stated that the main issue was that there was no formal written agreement.

Decision

The MRAC agreed to refer the matter of operating the Stables Café to the Working Group with a view to agreeing a formalised arrangement for the operation of the café on racedays.

11 GENERAL MANAGER'S REPORT

The Racecourse General Manager had submitted a report to provide the MRAC with an update on the general management of the Racecourse and any matters requiring the attention of the MRAC.

Mr Farnsworth reported on the matters outlined below.

2.1 HR Matters

Mr Farnsworth had stated at the last meeting of MRAC that he felt it would be appropriate to review the Racecourse staff terms and conditions before the tender process to appoint a third party Racecourse operator begins. The GMB union representative had written to Alex McCrorie in respect of this matter but had so far not received a response.

2.2 Small Claims Summons

Mr Farnsworth advised the Committee that he had received a cheque as re-imbusement of legal expenses from Mr. Wood.

2.3 Catering

Following the MRAC meeting on 3 July 2018, Mr Farnsworth had re-negotiated the term of the Heineken (H UK) contract. In anticipation that a new Racecourse operator would be in place for the year 2019-20, it had been agreed that both parties now have the option to terminate the Racecourse beer supply contract by giving a minimum 3-months termination notice before 31 March 2020. He had forwarded the contract to Mr Grilli for approval and, once approved, he would forward to Heineken to countersign and return. The contract would then be put into the Data Room for the tender process. The contract had to date not been approved by Mr Grilli.

2.4 Britbet

Mr Farnsworth advised that the Britbet LLP Agreement had now been signed in the correct name (MRAC). Britbet began operating on 13 July 2018.

2.5 Stables Café

This item was covered earlier in the meeting.

2.6 Betting Shop

Mr Farnsworth advised that William Hill took over the operation of the betting shop on 13 July in a smooth transition.

2.7 Harness Racing

Mr Farnsworth recommended that harness racing does not continue at Musselburgh. The fixtures had lost money this year and crowd numbers had fallen significantly. He would advise the organiser of the harness racing and inform the Committee if any new proposals are received.

2.8 Fixtures

Mr Farnsworth outlined the 2019 flat highlights and jump highlights (subject to BHA approval). Proposals under consideration were that on Easter Saturday, the £100k Queen's Cup would be supported by the Scottish Sprint Cup (relocated from June) featuring as the main fixture on ITV. The Edinburgh Cup Raceday would be re-introduced on 3 May 2019 as a £30-50k 12f Class 3 handicap for 3yos and on 2 June 2019, Ladies Day would feature the Scottish Derby, a new £100k 12f conditions race for 3yos. He aimed to establish the Scottish Derby as a major raceday for the future. Mr Farnsworth also advised that York Racecourse had approached him about Musselburgh staging a race as a prep race for the Ebor Festival on Derby Day.

Decision

MRAC agreed to note items 2.1 to 2.6 above and 2.8, and unanimously agreed to terminate the harness racing (2.7).

Sederunt: Mr Farnsworth, Mr Axon, Mr Kennedy and Ms Montgomery left the meeting.

12 MINUTE OF MJRC MEETING ON 23 APRIL 2018 FOR ADOPTION

The Committee unanimously agreed to adopt the decisions contained in the minute of the MJRC meeting on 23 April 2018. This minute was approved by Mr Miller-Bakewell and the Chair in advance of today's meeting as agreed on 23 April, as this was the last meeting of the MJRC.

Matters Arising

Mr Miller-Bakewell stated that he would like to see the staff bonus scheme re-introduced.

Mr Grilli provided an update on the work being carried out by Pinsent Masons.

Signed

Councillor F O'Donnell
Chair of Musselburgh Joint Racing Committee