

IN THE MATTER of the Gambling Act 2003
AND on an appeal by **UNISON TRUST**

BEFORE A DIVISION OF THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
P J Stanley
G L Reeves

Date of Appeal: 27 February 2006

Date of Decision: 16 November 2006

Date of Notification
of Decision: 11 December 2006

DECISION
ON AN APPEAL BY UNISON TRUST

Appeal

1. Unison Trust ("Unison") appealed under section 77 of the Gambling Act 2003 (the "Act") against a decision by the Secretary for Internal Affairs (the "Secretary") to impose a condition on the class 4 venue licence for the Occidental Hotel, Wellington (the "venue").
2. Unison requested that the Commission reverse the Secretary's decision to impose the condition. The Secretary asked the Commission to confirm his decision.

The Gambling Act 2003

3. The key sections of the Act for this appeal are sections 67 and 70. These sections (in part) are as follows:

67. Grounds for granting class 4 venue licence

(1) The Secretary must refuse to grant a class 4 venue licence unless the Secretary is satisfied that –

- (b) the possibility of persons under 18 years old gaining access to class 4 gambling at the class 4 venue is minimal; and

70. Content and conditions of class 4 venue licence

(2) The conditions that the Secretary may add to a class 4 venue licence include –

- (b) conditions to minimise the possibility of persons under 18 years old gaining access to class 4 gambling at the class 4 venue;
- (g) procedures to encourage responsible gambling at the venue;

- (l) any other conditions consistent with this Act that the Secretary considers will promote or ensure compliance with this Act.

Facts

4. This appeal has arisen because the venue has two entrances into its gaming room - one internal and one external. The external entrance provides access into the gaming machine area without the need to enter the main part of the hotel. The Secretary is concerned that persons under the age of 18 could use the external entrance to gain access to the gaming machines. The Secretary also filed evidence suggesting that the existence of an external entrance directly into a gaming room may encourage problem gamblers to use that venue's class 4 gambling facilities.
5. By letter dated 17 November 2005, the Secretary wrote to Unison proposing to add a condition to the venue licence which would require the external entrance to be closed. The Secretary offered Unison the opportunity to make submissions on why the condition should not be added. Unison made submissions by letter dated 15 December 2005.
6. The Secretary wrote to Unison on 11 January 2006 stating that he was not satisfied that the possibility of persons under the age of 18 years gaining access to the gaming machines is minimal, and in accordance with sections 70(2)(b) and 70(3)(b) of the Act, added the following licence condition to the venue's class 4 venue licence:

Any external entrances into the gaming machine area must remain closed and locked at all times that the gaming machines are in operation, and may only be used to meet fire, health and safety regulations specific to the venue. The internal entrance(s) to the gaming machine area must be in direct line of sight to the main bar serving area.

Submissions on behalf of Unison

7. Unison submitted (in summary) that:
- (a) The design of the venue and in particular, the service hatchway between the bar and the gaming machine area, was sufficient to ensure that the possibility of persons under 18 years of age gaining access to the gaming room is minimal.
 - (b) Venue staff perform regular checks of the gaming area.
 - (c) There is CCTV coverage of the gaming area, with Unison undertaking to install extra surveillance and detector equipment if required.
 - (d) Closure of the secondary door would have serious commercial disadvantages for the primary activity of the venue.
 - (e) It provides extensive training to venue staff, who are aware of their responsibilities in relation to problem gambling and minimising the risk of access by minors.

(f) There is no history of underage gambling at the venue.

8. The Applicant supported its submissions with evidence from the Agreed Statement of Facts.

Submissions by the Secretary

9. The Secretary submitted (in summary) that:

- (a) the possibility of minors gaining access to class 4 gambling at the venue is not minimal;
- (b) closing the external entrance and requiring all gaming room patrons to access the gaming area by first entering the venue's main entrance would minimise the risk of access;
- (c) the condition is reasonable; is the result of a process of reason; is proportionate; has no detrimental effects or inconvenience; and is fair to the venue operator, Unison and the community;
- (d) the condition can appropriately be imposed for reasons other than risk of access, namely on harm minimisation and prevention grounds.

10. The Secretary supported his submissions with evidence from the Agreed Statement of Facts and the affidavits of Antoni Demetriou, a Senior Gambling Inspector with the DIA, John Stansfield, the CEO of the Problem Gambling Foundation, and Dr Philip Townshend, a clinical psychologist and Director of Research for the Problem Gambling Foundation.

11. Unison filed no submissions in reply.

Visit to the venue

12. A Commissioner visited the venue in November 2006. The purpose of the visit was to gain an impression of the venue's layout and operating practices that had been represented to the Commission in plans, photographs and in evidence. The Commissioner visited the venue as a member of the public, unaccompanied by representatives of either party.

Legal test

13. Commission decision GC16/06 related to an appeal by the Lion Foundation against a decision by the Secretary to impose a condition on 11 venue licences, requiring the

closure of secondary entrances to gaming areas. Similar issues arise in relation to the present appeal.

14. At pages 6-9 of decision GC16/06, the Commission set out a framework for considering the validity of proposed licence conditions. That framework is applicable to the present appeal. It is not necessary to repeat that framework verbatim, but the Commission considered the following:
- (a) In the absence of the condition, are the measures in place sufficient to satisfy the Commission that the possibility of minors gaining access to class 4 gambling at the venue is minimal?
 - (b) Will the imposition of the condition minimise the risk of access?
 - (c) Is the condition reasonable in all of the circumstances of the venue?
 - (d) Is the condition appropriately imposed for reasons other than risk of access by minors such as problem gambling and harm minimisation?

In the absence of the condition, is the possibility of minors gaining access to class 4 gambling at the Occidental Hotel minimal?

15. The Commission considered whether, in the absence of the condition, the possibility of minors gaining access to class 4 gambling at the venue is minimal, and determined that it is not.
16. The Commission noted that in addition to standard venue measures such as CCTV and bar staff periodically checking the gaming room, there is a service hatchway between the bar and the gaming machine area. The Commission considered that the view from this hatchway is limited, does not provide a clear view of the external accessway, the whole gaming room or all of the machines.
17. The Commission concluded that the risk of access to class 4 gambling was not minimal and that the imposition of the condition under 70(2)(b) was appropriate.

Will the imposition of the condition minimise the risk of access?

18. The Commission next considered whether the condition imposed by the Secretary was potentially effective in minimising the possibility of underage access, and concluded that it was. Closing the external entrance would require minors who wanted to access the gaming machines to enter the venue's main entrance before entering the gaming room.

Is the condition reasonable?

19. The Commission considered that the condition was reasonable, given all of the circumstances of the venue, as it would potentially reduce the possibility of access by minors to class 4 gambling. Any foreseeable detriment suffered as a result would not be disproportionate to this benefit.

Imposition of condition on harm minimisation grounds

20. Under sections 70(2)(g) and 70(2)(i), the Secretary may add conditions relating to procedures to encourage responsible gambling at the venue which the Secretary considers will promote or ensure compliance with the Act.
21. Having determined that the condition could be appropriately imposed under section 70(2)(b), it was unnecessary for the Commission to determine whether it could also be imposed pursuant to sections 70(2)(g) and 70(2)(i).

Decision

22. For the reasons already provided, the Division unanimously declines the appeal.

A large, stylized handwritten signature in black ink is written over a circular stamp. The stamp contains the words "GAMBLING COMMISSION" in a bold, sans-serif font, arranged in two lines. The signature is a complex, overlapping scribble that extends beyond the top and right edges of the stamp.

**GAMBLING
COMMISSION**

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

11 December 2006