

IN THE MATTER of the Gambling Act 2003
AND on an appeal by Eureka Trust

BEFORE A DIVISION OF THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
M M Lythe
P J Stanley

Date of Appeal: 16 September 2008

Date of Decision: 5 December 2008

Date of Notification
of Decision: 15 December 2008

**DECISION
ON APPEAL BY EUREKA TRUST**

Appeal

1. Eureka Trust ("**Eureka**") 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 Belfast Tavern, in Christchurch (the "**venue**"). Eureka 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

2. 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;

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

Background

3. This appeal has arisen because the gaming room at the venue is accessible by two entrances, 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 venue. 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 the gaming room may encourage problem gamblers to use that venue's class 4 gambling facilities.
4. On 13 June 2008, the Secretary wrote to Eureka proposing to add a condition to the venue licence which would require the external entrance to be closed at all times that the gaming machines are in operation. On 3 July 2008 Eureka made submissions opposing the imposition of the condition.
5. On 8 September 2008 the Secretary wrote to Eureka stating that:

Pursuant to section 70(2)(a),(b)-(g) and (i) of the Gambling Act 2003 (the "**Act**") and my delegated authority under those sections, I have decided to add a new condition to the class 4 venue licence (the "licence") granted to Eureka Trust (the "**Society**") in respect of Belfast Tavern, 899 Main North Road, Belfast, Christchurch (the "**venue**").

The amended licence is enclosed. The new condition reads as follows:

Condition – Access: 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

6. By letter dated 15 September 2008, Eureka filed a notice of appeal challenging the Secretary's decision to impose this condition.

Submissions on behalf of Eureka

7. Eureka submitted (in summary) that:
 - (a) The addition of the condition is unnecessary as the possibility of minors gaining access to class 4 gambling at the venue is already minimal, due to the measures in place.
 - (b) the venue does not attract young patrons.
 - (c) It has issued a new directive that if a staff member serves a customer from a part of the bar from which s/he cannot see into the gaming machine area, that staff member must then enter the gaming machine area to check if any new patrons have entered.

- (d) The imposition of the condition will not minimise the risk of minors gaining access to the gaming machine area.
- (e) The inconvenience of imposing the condition will outweigh any benefit.
- (e) The imposition of the condition is not reasonable in all the circumstances of the venue.

8. Eureka supported its submissions with affidavit evidence from Neil Lowsley, who deposed to being the lessee and venue manager of the venue.

Submissions by the Secretary

9. The Secretary submitted (in summary) that:

- (a) The measures in place are not sufficient to ensure that the possibility of minors gaining access to class 4 gambling is minimal.
- (b) The imposition of the condition would minimise the risk of access as closing the external entrance would require minors who wanted to access the gaming machines to enter the main part of the venue before entering the gaming room. Closing the external entrance would also act as a deterrent to minors entering the venue by other entrances.
- (c) The condition is reasonable, is a result of a process of reason, is proportionate, has no detrimental effects, and is fair to the venue, Eureka 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 Stuart Fuller, a team leader at the Southern office of the DIA's Gambling Compliance Unit; Shannon Gibson, a gambling inspector and investigative accountant at the Southern office of the DIA's Gambling Compliance Unit; John Stansfield, the former CEO of the Problem Gambling Foundation; Dr Philip Townshend, a clinical psychologist and director of research for the Problem Gambling Foundation; and Dr Fiona Rossen, a co-director of the Centre for Gambling Studies at the University of Auckland's Faculty of Medical and Health Sciences.

Submissions in reply

11. In reply, Eureka submitted (in summary) that:

- (a) The venue has a number of unique features which distinguish it from other venues the Commission has considered.

- (b) The simplest and most cost-effective way of ensuring that the possibility of minors accessing class 4 gaming at the venue is minimised is to increase the size of the internal entrance, so staff can better assess the age of patrons heading to the gaming machine area.

- 12. Eureka supported its submissions in reply with affidavit evidence from Graeme Parker, Eureka's Chief Executive Officer.

Visit to the venue

- 13. Two Commissioners visited the venue in December 2008. 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 the plans, photographs and in evidence. The Commissioners visited the venue as members of the public, unaccompanied by representatives of either party.

Analysis

- 14. The Commission has, in three previous decisions, GC16/06, GC37/06 and GC22/08, considered the closure of secondary entrances into class 4 gaming areas. In 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.
- 15. 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 minimal?

- 16. 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.

17. The Commission noted that the external entrance into the gaming machine area is able to be viewed from part of the bar, but the Commission considered this view to be of ~~limited~~ limited value unless a staff member positions him/herself permanently at that position, looking at the external entrance. This is extremely unlikely in a working environment where bar staff are required to move around to serve patrons and address the venue's general needs.
18. When the Commission visited the venue, the sole bar person on duty spent the majority of her time away from that part of the bar that can view the external entrance, which is consistent with the observations of Mr Gibson for the Secretary.
19. The Commission also considered that the venue's new directive was unlikely to be adhered to in a busy, working bar, and that the proposal to enlarge the internal entrance would be of limited benefit.
20. The Commission concluded that the risk of access to class 4 gambling by minors was not minimal and that the imposition of the condition under section 70(2)(b) was appropriate.

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

21. 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 through one of the venue's other entrances and cross the bar before entering the gaming room. The Commission concurred with the Secretary's submission that this would also act as a deterrent to minors entering the venue.

Is the condition reasonable in all of the circumstances of the venue?

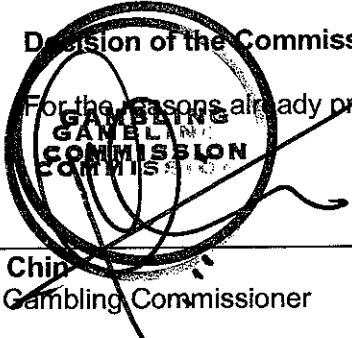
22. The Commission considered that the condition was reasonable, given all of the circumstances of the venue, as it would potentially reduce the possibility of access by minors to class 4 gambling. The Commission considered that very little, if any, detriment would be suffered as a result of closing the external entrance, and that detriment would not be disproportionate to the benefit gained.
23. The Commission noted the venue has two other entrances into the venue's bar area, and a third entrance into the venue's garden bar, which is currently closed. The Commission considered that the two (open) entrances could be utilised without difficulty, and that the third (closed) entrance, which is adjacent to the external door in question, could be reopened and allow access into the venue without allowing direct entrance into the gaming machine area.

Imposition of the condition on harm minimisation grounds

24. 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 and ensure compliance with the Act.
25. 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 section 70(2)(g) and 70(2)(i).

Decision of the Commission

26. For the reasons already provided, the division unanimously declines the appeal.



Peter Chip
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

15 December 2008