

IN THE MATTER of the Gambling Act 2003
AND of an application by **CUESPORTS
FOUNDATION LIMITED**

BEFORE A DIVISION OF THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
R D Bell

Date of Decision: 9 November 2012

Date of Notification
of Decision: 14th December 2012

**DECISION
ON AN APPLICATION BY CUESPORTS FOUNDATION LIMITED**

Background

1. Cuesports Foundation Limited (the "**Applicant**" or "**Cuesports**") applied to the Gambling Commission for disclosure of material by the Secretary in the course of its appeal against the Secretary's decision to cancel its class 4 operator's licence. The Applicant sought details of similar cases with which the Secretary had dealt previously. As the application was not brought to seek any identified specific information, but on general principles, the Commission requested the parties to make submissions on the appropriateness of such disclosure generally on appeals, as well as in the present case.
2. The Secretary cancelled the Applicant's licence on the grounds that:
 - (a) Cuesports had failed to comply with a relevant requirement of the Act, namely regulation 10 of the Gambling (Class 4 Net Proceeds) Regulations 2004 ("**Net Proceeds Regulations**") for the 2009/2010 and 2010/2011 financial years.
 - (b) He was no longer satisfied that two of the directors of the Applicant were suitable to be key persons of the Applicant (section 52(h)). This was because they had been key persons in relation to a class 4 operator's licence held by Kiwi Community Trust, for which an application for renewal was refused, and because of their profile of past non-compliance with the Act (including the non-compliance forming the other ground for suspension).
3. Cuesports sought orders that the Secretary disclose to both the Commission and Cuesports:

- (a) Details of regulation 10 breaches by other societies, including the name of the society, the percentage breach, the dollar amount breach and the sanction that followed.
- (b) Details of regulation 11 breaches by other societies, in percentage and dollar terms, and the sanction that followed. Cuesports also sought, in particular, details of any finding of key person unsuitability based on a regulation 11 breach.
- (c) Details of instances in which the Secretary has found a society key person to be unsuitable, of the grounds for the finding, and of the sanction imposed by the Secretary.

Relevant law

4. The relevant law is as follows:

Gambling Act 2003

225 Gambling Commission is Commission of Inquiry

- (1) Within the scope of its jurisdiction, and subject to this Act, the Gambling Commission (including any division) must be treated as if it were a Commission of Inquiry under the Commissions of Inquiry Act 1908.
- (2) Accordingly, the Commissions of Inquiry Act 1908 applies to the Gambling Commission.
- (3) The Gambling Commission has no power to—
 - (a) acquire, hold, or alienate property; or
 - (b) employ people.
- (4) Powers conferred on the Gambling Commission by this subpart are additional to powers conferred on the Gambling Commission by the application of the Commissions of Inquiry Act 1908.
- (2) In deciding whether to suspend or cancel a class 4 operator's licence, the Secretary must take into account the matters in section 52.

Commissions of Inquiry Act 1908

4C Powers of investigation

- (1) For the purposes of the inquiry the Commission or any person authorised by it in writing to do so may—
 - (a) Inspect and examine any papers, documents, records, or things:
 - (b) Require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:
 - (c) Require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records as aforesaid.
- (2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall

be verified by statutory declaration or otherwise as the Commission may require.

- (3) For the purposes of the inquiry the Commission may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Commission, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.
- (4) Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and things to the Commission as witnesses have in Courts of law.

Submissions by the Applicant

Disclosure generally

5. The Applicant made the following submissions in support of disclosure of details of similar cases by the Secretary generally:
 - (a) The High Court had confirmed the importance of consistency in decision-making. In *Trillian Trust v Secretary for Internal Affairs* HC Wellington CIV 2010-485-2411, 14 November 2011, the Court stated that it was to be expected that penalties imposed by the Secretary would draw significantly on penalties imposed or approved by the Commission in other cases. This statement confirmed the fundamental importance of consistency in punishment, as did Parliament's inclusion of the principle of consistency in the Sentencing Act 2002 (section 8(e)).
 - (b) In the *First Sovereign Trust* decision, GC02/12, the Commission dealt with an application for discovery under section 4C, Commissions of Inquiry Act 1908 ("COI Act"). The Commission noted that it should only require the production of information that would potentially assist its decision-making. The Commission went on to find that, if similar matters at issue in First Sovereign's appeal had occurred in other situations, the disclosure of those situations and the action taken may be relevant, notwithstanding the Commission's *de novo* decision-making role. It was noteworthy that the First Sovereign case involved a refusal to renew, rather than a cancellation (and therefore did not involve an exercise by the Secretary of his discretion).
 - (c) Similarly, the Commission allowed a disclosure request in an appeal by the Grassroots Trust which involved spending in excess of Limit D. That request sought disclosure of the name of the society, the percentage breach of Limit D, the dollar amount breach of Limit D, the amount of any recovery made, the amount of any concurrent regulation 10 breach (in percentage and dollar



terms), and the sanction that followed. The Grassroots Trust appeal revealed inconsistency in the Secretary's decision-making. The Grassroots appeal involved an alleged shortfall in relation to regulation 10 of \$561,482.00. The outcome was resolved between the Secretary and Grassroots (without the appeal proceeding) by Grassroots receiving a 16 day suspension (rather than cancellation).

- (d) When a decision involved the exercise of a discretion, such as cancellation or suspension, a wider range of information relating to past exercises of the same discretion was relevant. The threshold for disclosure in cases that did not involve a discretion, such as refusal to renew cases, would be higher, but this did not mean that disclosure should be rare in such cases. The *First Sovereign Trust* decision, GC02/12 is an example of a case which did not involve the exercise of a discretion (refusal to renew) and in which the Commission considered disclosure regarding similar cases could potentially be of assistance.
- (e) The Department's policy in relation to investigations included consistency and fairness.
- (f) Consistency of decision-making was desirable in all circumstances, but in particular in relation to the exercise of a discretion in relation to the imposition of a sanction. When considering whether to cancel or suspend a licence, the Secretary was performing a sentencing role. It was well-established that, when the courts consider a sentence, it was appropriate to consider the sanctions imposed in other cases involving similar offending.
- (g) When a sanction was proposed for breaching a particular regulation, action taken against other societies for breach of the same regulation should be disclosed. Cuesports submitted that the Department had recognised this by referring to similar cases in recent Limit D appeals.
- (h) The key issue would always be relevance. If information was potentially relevant, it should be disclosed to an appellant in order for the appellant to assess whether the information should be included in their submissions.

Disclosure on this appeal

6. Cuesports submitted that the Gambling Act and regulations under it contained a number of "discrete" provisions, such as regulations 10 and 11 of the Net Proceeds Regulations and Limit D of the gazetted limits and exclusions on class 4 Venue Costs Notice 17 July

2008. Cuesports submitted that disclosure of similar decisions should be automatic on appeals in relation to these “discrete” breaches.
7. Cuesports submitted that disclosure would also usually be appropriate in appeals relating to allegations of unreasonable costs. In other cases, the question of whether or not disclosure will assist the Commission would depend on the nature of the alleged breach and the grounds of appeal, and would best be assessed on a case-by-case basis.
 8. The Applicant submitted that evidence of other regulation 10 breaches, and the consequent sanctions, was relevant to its appeal, particularly the fact that the Secretary had imposed suspensions (rather than cancelling licences) in similar cases. The Applicant submitted that this inconsistency was highly relevant.
 9. Cuesports submitted that evidence of regulation 11 breaches by other societies was also relevant. Although it was not alleged to have breached regulation 11, regulation 11 was touched on in the appeal, because the Secretary’s finding that two of the Applicant’s key persons were unsuitable was based on their involvement in a breach of regulation 11 (as well as regulation 10) by the Kiwi Community Trust. Cuesports submitted that such information was relevant to its argument on appeal that the key persons’ actions when they were involved in Kiwi Community Trust should be assessed against what was common industry practice at the time. It intended to submit, on the substantive appeal, that the Kiwi Community Trust’s breaches were not deliberate acts of non compliance, but rather common practice in the industry due to a lack of clarity. The Applicant submitted that the Department accepted that regulation 11 breaches by other societies did not involve wilful non-compliance. It also submitted that no unsuitability action had been taken against key persons of other societies that breached regulation 11.
 10. Cuesports submitted that findings of unsuitability were rare and tended to relate only to deliberate or wilful behaviour directly attributable to the individual. It wanted to be able to refer to other findings of suitability to support its submission on appeal that a finding of unsuitability had a high threshold. Cuesports also submitted that it was unlikely that the Secretary has found many key persons to be unsuitable, therefore the disclosure obligation is unlikely to be onerous.
 11. Cuesports took issue with the Secretary’s objection that the information was already publicly available in the Department’s quarterly *Gambits* publication. It submitted that it was not sufficient for an appellant to rely solely on the information in *Gambits* as not all cases appeared in it and those that did were not necessarily covered in detail. There had been occasions on which the Secretary had negotiated confidential settlements

which included an express condition that details of the settlement would not appear in *Gambits*. Cuesports also submitted that the fact that some information was published in *Gambits* confirmed that disclosure should not be too difficult, nor should it prejudice the society to which it related.

12. Cuesports submits that disclosure should include:
- (a) the amount of the breach as a percentage;
 - (b) the amount of the breach as a dollar sum;
 - (c) the amount of recovery;
 - (d) the amount outstanding;
 - (e) the sanction imposed; and
 - (f) the name of the society concerned.
13. Cuesports submitted that disclosure of the name of the society was essential, because factors such as the location of the society, and whether or not it was a new society, might provide relevant context. There was no justification, in its submission, for protecting the names of societies which had breached the Act or regulations and, in any case, the Department had recently adopted a policy of issuing press releases announcing decisions to appeal or suspend. Finally, the breaches were generally by corporate societies (not individuals) which were required to be open and transparent in their dealings.

Secretary's submissions

Disclosure generally

14. The Secretary submitted that disclosure of all prior decisions by the Secretary in similar cases was not desirable, nor was it necessary to ensure consistency in decision-making.
15. The Secretary made the following submissions in support of his position:
- (a) It was appropriate to distinguish between consistency in terms of a decision whether to cancel or suspend a licence and consistency regarding the length of suspension. Consistency in respect of the former was not necessary, as the decision to suspend or cancel was based on whether the Secretary was satisfied of particular facts in relation to the society in question. Prior acts by other societies could have no bearing on this assessment. However, once a decision had been made to suspend a licence, consistency in the length of suspension was desirable.

- (b) Breaches of regulations 10 and 11 and Limit D were not distinguishable from other obligations. Even if they were “discrete”, it was not necessary or desirable to take into account prior actions of the Secretary in relation to them.
 - (c) Automatic disclosure, rather than promoting consistency, may instead detract from a proper and objective assessment of each set of circumstances.
 - (d) The fact that some information was published did not mean that all information could be easily obtained or should be available. The provision of such information required a balancing exercise to ensure relevant information was provided and undue prejudice to other parties was prevented.
 - (e) The question of whether to require disclosure should be considered on a case-by-case as should the potentially relevant detail.
 - (f) Negotiated settlements between the Secretary and class 4 societies should not be subject to disclosure as the details of such settlements were not relevant to anyone not a party to them. The benefits resulting from these settlements should not be undermined by disclosure (although the Secretary did not elaborate on the benefits of the settlements).
16. The Secretary submitted that a consistent approach may be desirable when considering either to refuse to renew (section 56(5)) or to cancel (section 58(1)). However the distinction might be illusory in practice because an investigation under section 56(5) that caused the Secretary not to be satisfied about one of the matters in section 52, was likely also to be considered a breach of the Act, Regulatory or Gazette Notice. This might also be a ground for cancellation, depending on the circumstances. Each set of circumstances must be assessed on its own merits. One set of facts that warranted cancellation might be wholly different to another that warranted refusal to renew.

Disclosure on this appeal?

17. The Secretary submitted that the Applicant’s request did not take into account the constantly changing context within which the Secretary made his decisions. This required the Secretary to maintain flexibility in order to take into account the particular circumstances within which conduct occurs. Automatic disclosure might create an unnecessary distraction and would not recognise the changes which occur in the gambling sector, with which the Secretary was committed to ensuring effective engagement. Although he appreciated the desirability of consistency, he submitted that a “one size fits all” approach was not beneficial to either the gambling sector or the community. The information which the Applicant sought on this appeal was not relevant

to the issues between the parties as sanctions imposed by the Secretary in each case were fact-specific.

Applicant's submissions in reply

18. The Applicant made the following submissions in reply:
- (a) The provision of disclosure would not impose a fetter on the Secretary. It was accepted that each case would have unique aggravating or mitigating factors; disclosure would enable the appellants to point to both similarities and differences between comparable cases.
 - (b) Disclosure of negotiated settlements would not undermine that process. The Secretary had already published the outcome of some settlements in *Gambits*. The Secretary was still bound by the Act when negotiating a settlement, therefore his actions as part of that process may be relevant.
 - (c) If the Secretary withdrew a cancellation decision in one case and proceeded to renew the licence, but refused to do so for another society in very similar circumstances, it was reasonable to ask why he was satisfied (of the requirements under the Act) in one case but not the other.
 - (d) The Secretary was in a privileged position because he had access to all prior sanction information, whereas the Commission and appellants did not. Some appellants would have advisors with experience in the sector, who were aware of some previous decisions, but others would not. A general disclosure order was essential to ensure that all appellants had access to all relevant information, as well as to assist the Commission in imposing fair and proportional sanctions.
 - (e) A standard disclosure requirement would result in the Secretary keeping a running log of decisions. The log would reduce the number of appeals, both by improving the quality of the Secretary's decision-making and by providing societies with full information at an early stage of the appeal process, potentially leading to some appellants discontinuing appeals at an early stage.
 - (f) Disclosure of the names of societies, as well as other details about prior sanctions, was important. Without knowing the name of the societies, appellants would not be able to put all the details of previous cases in context. Non-disclosure of names would also suggest that corporate societies, which hold funds on trust for the community, deserved anonymity when breaches have occurred.

- (g) Disclosure would not be an unnecessary distraction, but rather a safeguard against inconsistency.
- (h) Disclosure would not negatively affect the Secretary's goal of effective engagement with the gambling sector. Rather, it would promote effective decision-making, which in turn would improve the relationship between the Department and the gambling sector.

Analysis

19. The Commission has considered its power to order disclosure previously, in decision GC 02/12. As set out in that decision, the Commission's power to make disclosure orders arises from section 4C, COI Act (which applies by virtue of section 225 of the Gambling Act). Under section 4C(1)(b) COI Act, the Commission may require any person to furnish for examination "any papers, documents, records or thing in that person's possession or under that person's control" and to allow copies to be made. The Commission may also require any person to furnish "any information that may be required by it" (section 4C(1)(c)). Neither of these sections restricts the information or the documents that the Commission might require. However section 4B, COI Act provides that the Commission may receive evidence if, in the Commission's opinion, it may assist the Commission to deal effectively with the subject of the inquiry. Accordingly, the Commission considers that it should only require the production of information that would potentially assist it in its decision-making.
20. Decision GC02/12 involved an application for disclosure in the course of an appeal against a refusal to renew a class 4 operator's licence. The Secretary had refused to renew the First Sovereign Trusts ("FST") licence because he was not satisfied of a number of matters under section 52(1). The Secretary's concerns arose, in particular, in relation to a buy-out by FST of its contracted management services provider. FST sought disclosure of all documents held by the Secretary in relation to the buy-out by certain (named) corporate societies of their management providers, as well as any other documents the Secretary held in relation to similar transactions by other corporate societies. The Secretary opposed the application on the basis that disclosure would be prejudicial to ongoing investigations of other corporate societies. The Commission considered that it was possible that the information might contain relevant information which would assist it in its decision-making. It was possible that, if the matters at issue in the appeal had occurred elsewhere in the industry, this might provide relevant context to the Commission. However, it was unable to make a proper assessment of the potential relevance or prejudice of the disclosure sought and therefore directed the Secretary to provide it with limited further information in order to be able to make such an assessment. As it transpired, the appeal was resolved prior to a substantive decision



although the Commission's experience enabled it to form a view about the value of the disclosure given in that case.

21. In this case, the key ground relied upon by the Cuesports, in support of both of its applications for disclosure, was the importance of consistency in decision-making. The Applicant did not point to anything in particular, apart from one decision of the Secretary of which it was aware, to say that there were likely to be other, inconsistent, decisions which would be disclosed as a result of its application. Accordingly, the issues raised on the application were not unique to Cuesports' appeal, but rather relevant to all class 4 appeals involving suspensions or cancellations. At the Commission's request, therefore, the parties made submissions on whether the sort of disclosure sought by Cuesports should be made as a matter of course in class 4 appeals.

Disclosure generally

22. Cuesports argued that consistency in decision-making was important generally, and particularly important in decisions involving the imposition of a penalty. Cuesports likened the Secretary's role in suspension and cancellation decisions to that of a sentencing court, and submitted that, in such cases, it was well-established that courts would consider sanctions imposed in similar cases. It submitted that automatic disclosure of comparative outcomes was appropriate in all cases involving breaches of regulations 10 and 11 and Limit D. The Secretary submitted that consistency in decision-making was important, but that disclosure of all prior decisions was not necessary to ensure consistency. He also submitted that consistency was more important in relation to the length of suspension (if a decision to suspend was imposed) rather than the decision of whether to suspend or cancel, which was a very fact-specific question.
23. The Commission agreed that consistency of decision-making was important, and doubted that the last proposition (that the consistency principle applied only to length of suspension and not to whether a suspension should occur) but considered that the principle of consistency had been over-extended in the Applicant's submissions. The Commission is principally concerned with the consistency of its own decision making. The consistency of the Secretary's prior decision making over time is of more limited interest for a variety of reasons.
24. As the Commission noted in decision GC02/12, when considering appeals against class 4 licensing decisions, information about similar situations to have come before the Secretary might sometimes provide useful contextual information. The Commission might sometimes be assisted, for example, by knowing the pervasiveness of a particular

issue in the industry and how the Secretary had approached the particular issue in the past.

25. However, the Commission was not satisfied that disclosure of all similar decisions to an appeal would usually assist it in the hearing of appeals. It considered that the type of close comparative analysis of past decisions by the Secretary that the Applicant appeared to want the Commission to undertake would be of little value:
- (a) Strict consistency over time in the Secretary's decisions would not necessarily be expected. The Commission did not expect that the Secretary would make the same decision today on a given set of facts as he would have made, for example, five years ago. Enforcement attitudes and policies commonly change over time (initially more tolerant and focused on education, but gradually becoming stricter and more punitive), and are expected to be shaped by events, including by later decisions of the Commission and the High Court.
 - (b) Decisions by the Secretary (and Commission on appeal) are highly fact-dependent, making comparative analysis of different decisions difficult. Therefore, examination of the consistency, or otherwise, of a decision under appeal with earlier decisions of the Secretary would involve substantial analytical consideration which was unlikely to be of any real assistance to the Commission.
 - (c) Leaving aside expected reasons for inconsistency over time, if a decision by the Secretary under appeal was inconsistent with his earlier decisions in similar circumstances, this inconsistency would not necessarily assist the Commission. The Commission is a *de novo* decision-maker and decides appeals on the basis of its assessment of the facts and appropriate consequences, rather than how the decision compares to earlier decisions by the Secretary. Although the circumstances of other decisions might, in some cases, provide relevant context, this was not the same as saying that, as a matter of course, all similar decisions by the Secretary would be relevant.
26. Applicant's submissions drew an inappropriate analogy with criminal sentencing, without acknowledging the absurdity which applying such an analogy would create in practice. The disclosure sought in the present application is not comparable to information disclosed in criminal sentencing or, more to the point, in criminal sentencing appeals. In a summary sentencing appeal, the appellant is not entitled to disclosure of every single prior sentence ever imposed by the District Court on the charges under appeal, yet that is what the present application seeks in substance.



27. As indicated in paragraph 25(b) above, the Commission was also dubious about the scope that automatic general disclosure would have to take in order to be of comparative value. Appeals to the Commission tend to involve a number of overlapping issues or considerations; contrary to what the Applicant submitted, in the Commission's experience, cancellation rarely involves discrete issues capable of easy comparison. On one view, the limited information sought by the Applicant would be arbitrarily narrow and incomplete. This is exemplified by the Applicants' submission on the justification for seeking the names of the societies concerned. The names are said to be important because of the relevance of numerous details which lay behind the names (location, period of operation, compliance history) but which, on the terms of the application, would not be disclosed. This aspect of the submissions demonstrates that very extensive information would be required to make valid comparisons. In the Commission's view, the efforts required to produce such extensive information and to analyse it in argument are not justified in the light of the minimal benefit expected from such disclosure.
28. For these reasons, the Commission did not consider that automatic disclosure was appropriate generally, or in cases involving regulations 10 and 11 or Limit D in particular. The Commission did not consider that breaches of these provisions were usually "discrete". As with other decisions, conduct involving spending, and which engages the net proceeds regulations or venue cost limits, potentially engages a number of other provisions of the Act. For example, expenditure concerns can produce overlapping breaches, breaches can lead to suitability concerns, expenditure is related to returns, inadequate returns can lead to financial viability concerns, and so on. The Commission did not think that appeals involving breaches of regulations 10 and 11 or Limit D were any less likely to involve overlapping issues or, for this reason, that they should be considered a separate class of appeals.
29. Accordingly, the Commission did not consider that it would necessarily be assisted in its decision-making by automatic disclosure of similar decisions by the Secretary, either generally or in relation to any particular class or type of appeal. Rather, the Commission considered it preferable to consider the appropriateness of disclosure under s 4(1) COI Act on a case by case basis, if and when the issue arose. This would allow it to consider both the potential assistance, as well as the scope, of disclosure sought in relation to the circumstances of individual appeals.

Disclosure on this appeal

30. The Applicant sought information on other decisions by the Secretary involving regulation 10, regulation 11, and key person suitability. In relation to regulation 10, the Applicant submitted that information revealing that there was at least one other case in which a suspension, rather than a cancellation, was imposed for breach of regulation 10



by a similar amount and that this was highly relevant. While this invoked consistency generally, it did not address the fact that the decision under appeal in this case involved two sequential breaches of regulation 10 and issues about key person suitability arising from involvement in an earlier society with a history of similar failures.

31. The Applicant submitted that information regarding regulation 11 breaches was relevant because the finding on key person suitability was based significantly on breaches of regulations 10 and 11 committed by Kiwi Community Trust, that it was common at the time (of Kiwi Community Trust's breaches of regulation 11) for societies to retain money in a manner that is now considered to be in breach of regulation 11, that this arose from lack of clarity, rather than wilful non-compliance, that, if the breaches arose from lack of clarity, they were less indicative of key person suitability and that it was likely that past decisions by the Secretary on key person suitability would reveal that findings of unsuitability were only made for "criminal" rather than "administrative" breaches.
32. The Commission did not consider that the information sought by the Applicant on regulation 11 and key person suitability was likely to assist it in this appeal. The range of matters for assessing key person suitability is potentially wide and unlikely to be limited to discrete considerations, but rather a series of matters in combination. For example, grounds for concern may be, amongst other things, conviction for a relevant offence; history of previous compliance with the Act; connection with a class 4 licence which has been subject to enforcement measures; and personal financial history. An assessment of suitability often involves a subjective element of weighing several potential concerns. It is inherently unlikely that the Secretary's past assessments of others will materially assist the Commission's assessment of the suitability of a particular person.
33. The Commission was also concerned by the Applicant's characterisation of the *Kiwi Community Trust* decision as a simple breach case. The decision involved non-renewal of a class 4 operator's licence, which the Commission upheld because of lack of satisfaction that the Kiwi Community Trust was financially viable (following a history of regulation 10 and 11 breaches and a proposed solution which would have involved a further regulation 11 breach). In the Commission view, the indication that the Applicant considered that the Kiwi Community Trust decision involved a simple regulation 11 breach exemplified its concern about the likely lack of value of disclosure for comparative purposes in appeals.
34. In any event, for the reasons set out above, the possibility that disclosure might reveal inconsistent decisions by the Secretary in regulation 10 and key person suitability cases did not mean that such information, if disclosed, would assist the Commission in its

decision-making. As a *de novo* decision-maker, the question for the Commission on appeal will be whether it is satisfied that Cuesports did not comply with regulation 10; whether or not it is satisfied of the key persons' suitability; and what, if any, consequences should follow. None of these are directly affected by the question of whether the Secretary acted consistently in his earlier decisions. As discussed above, the Secretary's decisions may differ over time and in difference cases for a number of reasons. As the Commission would not expect decisions made prior to a successful appeal to be consistent with decisions made after the appeal decision, the fact of inconsistency would often be unremarkable. In addition, inconsistency alone, even if unexplained, would not usually be determinative, as the Commission's task is to determine the appropriate response to the facts as it finds them, rather than to determine how the Secretary's decision compared with his earlier decisions.

Decision of the Commission

35. For the reasons set out above, the Commission declines the application for disclosure.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

14th December 2012