

IN THE MATTER of the Gambling Act 2003

AND on an appeal by **THAT WAS THEN
THIS IS NOW CHARITABLE
TRUST**

BEFORE THE GAMBLING COMMISSION

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

Date of Decision: 10 May 2013

Date of Notification
of Decision: 14th June 2013

DECISION ON AN APPEAL BY THAT WAS THEN THIS IS NOW CHARITABLE TRUST

Introduction

1. The appellant trust, That Was Then This Is Now Charitable Trust (the “**Trust**” or “**Appellant**”), has appealed against a decision by the Secretary refusing to grant it a class 3 operator’s licence to conduct a lottery (the “**Decision**”). The Secretary refused to grant the application because he was not satisfied of the matters specified in section 37(1)(b), (e) and (g) of the Gambling Act 2003 (“**Act**”).
2. The background to the appeal is as follows:
 - (a) The Trust was formed in 2001. The aim of the Trust is to provide fitness-based programmes and facilities to the community without cost to the public. The Trust was formed to support people released from prison, to help them reintegrate into the community and to provide facilities where they would be encouraged to improve their overall wellbeing, health and fitness. Prior to the application which is the subject of the appeal, the Trust had applied for seven class 3 licences since 2004, all of which had been granted.
 - (b) The Secretary has become increasingly concerned that organised criminal groups may use a class 3 operator’s licence for the purpose of money laundering. These concerns have resulted in closer attention being paid to applications for class 3 operator’s licences made by groups with criminal associations.



- (c) On 17 October 2011 the Trust made an application for a new licence to conduct a lottery with the total value of prizes exceeding \$50,000. The application was lodged by Evelyn Stanley, the lottery organiser, and Frederick Webb, a Trustee and the Treasurer for the Trust. Both supplied a Personal Information Form on which it was declared that neither had any criminal convictions.
 - (d) The Department of Internal Affairs (“**DIA**”) carried out an investigation into the suitability of the Trust, its officers and the organiser of the lottery, in the course of which it obtained a report from the Police.
3. The Police report, dated 16 November 2011, contained the following information:
- (a) The current trustees of the Trust appeared to be Aaron Hiley, Bryan Collett and Frederick Webb. Previous trustees include David Dunn and Lee Bell. Older Trust meeting minutes also identify Wayne Doyle listed in apologies for the meeting. All of those persons, except Mr Webb, are patched members of the Head Hunters Motorcycle Club (“**HMC**”).
 - (b) The main purpose of an outlaw motorcycle club, such as HMC, is to enable a wide range of criminal activity by ascribing a degree of prestige, trust and perceived loyalty to its members.
 - (c) The East Chapter of the HMC is situated at the same address as the Trust, 232 Marua Rd, Ellerslie, Auckland.
 - (d) Aaron Hiley is a patched member of the East Chapter; he has a number of criminal and traffic related convictions from 2009 dating back to 1985.
 - (e) Wayne Doyle is a patched member of the East Chapter, and holds the office of President of that Chapter. He has a number of criminal convictions, although most are historic, dating from 1972 to 1998. Those convictions include the sale and purchase of illegal lottery tickets.
 - (f) Bryan Collett is a patched member of the East Chapter. He has a number of criminal convictions from 2011 dated back to 1978. He is currently facing charges, alongside other HMC members, of possession of one kilogram of methamphetamine for supply, possession of cannabis for supply, participation in an organised criminal group, unlawful possession of a firearm (4), unlawful possession of a restricted weapon being a stun gun and unlawful possession of an explosive, namely ammunition.
 - (g) David Dunn and Lee Bell are patched members of the West Chapter of HMC and have both also been charged in relation to the possession of the one



kilogram of methamphetamine. These charges are currently proceeding through the court hearing process.

- (h) The estimated value of the methamphetamine is one million dollars. Dealing in this quantity would require the ability to launder the proceeds of the sale of the drug to enable the legitimate use of the profits.
 - (i) Supply of methamphetamine throughout New Zealand can be attributed in part to organised supply through outlaw motorcycle clubs which have links with one another.
 - (j) A licensed class 3 raffle has the potential to be misused as a vehicle for the laundering of cash acquired from illegal activity (such as drug sales). The proposed raffle would have the effect of limiting the number of tickets needed to be sold to legitimate ticket buyers and any significant cash subsequently located can be explained away as being takings from the sale of the raffle tickets.
4. On 25 June 2012 the Secretary raised with the Trust his concerns that two individuals, Aaron Hiley and Bryan Collett, were trustees but were not shown as officers of the Trust on the application form and both failed to provide a Personal Information Form. The Police report indicated that both Mr Hiley and Mr Collett were trustees of the Trust, had criminal convictions and are patched members of HMC, an organisation that is involved in drug dealing, violence and dishonesty offending, and that the listed address for the Trust is the same location as the East Chapter of HMC.
5. The Trust responded to the Secretary's concerns. It said that the two individuals were no longer trustees and that, in any event, no concerns had been raised in the course of the seven previous class 3 applications by the Trust regarding the practice of listing only Mrs Stanley (as principal administrative officer of the Trust and the lottery organiser) and Mr Webb (as the Treasurer) as officers of the Trust. The Trust provided information on Mrs Stanley's good character, set out the processes followed during previous lotteries, the Trust's good governance and management practices, and the charitable outcomes produced from the proceeds of previous lotteries. It offered to the Secretary access to all records, audits, and applications to NZ Police to attend the lottery.
6. Following receipt of the Trust's submissions, on 30 October 2012, the Secretary refused the application on the grounds that he was not satisfied that the applicant and its officers and organisers were suitable persons to hold a licence or that the purpose of the proposed class 3 gambling would be to raise money for authorised purposes, for the following reasons:



- (a) He considered that the Trust had deliberately withheld the names of the (former) trustees in order to avoid enquiries into their criminal history. By doing so the Trust failed to comply with the statutory requirement in section 35(3)(f) of the Act to provide the names of all officers of the Trust.
- (b) He had concerns about the Trust's close association with HMC. Because the Trust has the same address as HMC, there was a risk of the Trust using the opportunity provided by class 3 gambling to facilitate money laundering.
- (c) As he was concerned that the licence would provide the Trust with covert opportunities for criminal or dishonest conduct, he was not satisfied that the true purpose of conducting class 3 gambling would be to raise money for authorised purposes as required by section 37(1)(b) of the Act.

7. The Trust appealed to the Commission. In the course of its submissions, it also made an application for an oral hearing of the appeal. This decision deals with both that application and the substantive appeal.

Relevant law

8. The relevant law is as follows:

Gambling Act 2003

35 Application for class 3 operator's licence

...

(3) An application must include the following information:

...

- (f) the address and contact details of the society that will operate the class 3 gambling, the officers of the society, and the organiser of the class 3 gambling; and

37 Grounds for granting class 3 operator's licence

(1) The Secretary must refuse to grant a class 3 operator's licence unless the Secretary is satisfied that—

...

- (b) the applicant's purpose in conducting class 3 gambling is to raise money for authorised purposes; and

...

- (e) the net proceeds from the class 3 gambling will be applied to or distributed for authorised purposes; and

...

- (g) any investigations carried out by the Secretary do not cause the Secretary not to be satisfied about the suitability of the applicant, any officers of the applicant, or the organiser of the gambling.

Submissions by Appellant (Trust)

9. The Trust submitted, in summary, as follows:

- (a) The Secretary's suggestion that the Trust had deliberately withheld the names of former trustees is not supported on the evidence. The affidavit of Mrs Stanley establishes that it had been her invariable practice over seven previous applications (since 2004) to include only her name as organiser and the name of Mr Webb as the Treasurer in each application, as she considered them to be the true officers of the Trust. No objection to that practice had been raised in the past. In addition, historical Trust documentation provided with the application contained references to Messrs Hiley and Collett being trustees. Although the Secretary was aware of those documents, he failed to consider them and the negative implication for a finding that there had been a deliberate withholding of required information.
- (b) When the application was made in 2011, as a matter of fact, Messrs Hiley and Collett were no longer trustees. Mr Hiley had been replaced for health reasons and Mr Collett had been replaced because it was not considered appropriate for him to remain a trustee when he was facing methamphetamine charges (which charges have since been dismissed). They were replaced as trustees by Tyrone Laurensen, a retired senior police officer, and Crystal Stanley in August 2011.
- (c) Neither Mrs Stanley, the lottery organiser, Mr Webb, Treasurer of the Trust, nor the two new Trustees have any criminal conviction history (as recorded in the Decision).
- (d) The suggestion that money laundering "is possible" is speculative, resting on explicable connection between the Trust and HMC. In contrast, there is abundant evidence demonstrating that the Trust functions properly as a charitable trust and that past class 3 licences have been applied for, obtained and implemented without any issue. This evidence includes the submission of audit reports to the DIA following each lottery and supervision of the drawing of previous lotteries by the Police.
- (e) While the Secretary is entitled to rely on information obtained from the Police, he must bring a reasoned and objective perspective to it. He is not simply entitled to adopt the Police view uncritically.
10. The Trust noted the following aspects of the Commission's previous appeal decision regarding a class 3 application (*Hells Angels Nomads Motorcycle Club Incorporated* (decision GC05/12):
- (a) The Commission disagreed with the Secretary's submission that the experience of the prior class 3 licences was irrelevant.



- (b) The Commission took the view that the question of suitability for the purposes of section 37(1)(g) could not simply be answered by the presence or absence of criminal convictions on the part of a society's officers or members.
 - (c) The Commission stated that the Secretary is required to exercise judgment in satisfying himself that the information received from investigations through the Police does not cause him not to be satisfied of the applicant's suitability.
11. The Appellant submitted that the *Hells Angels* appeal is distinguishable on the facts:
- (a) The person named in that application as the organiser of the gambling had a conviction for manslaughter. OFCANZ doubted that that person was indeed the secretary and provided information that the person who was in fact the secretary had convictions for serious drug offences, money laundering, theft and receiving, and was also bankrupt.
 - (b) In contrast, the person who is organiser of the raffle for the Trust is Mrs Stanley who has no criminal convictions and who has devoted herself to community service for many years. She has given evidence of her own conduct and the lack of illegal activity associated with the Trust.
 - (c) The application in this case is brought by the Trust, a registered charitable organisation, not HMC. In contrast, in the earlier appeal, the Hells Angels Nomads Club itself was the applicant.
12. The Appellant concluded by submitting that it would be wrong for vague speculation, unsupported by any specific evidence or objective fact, to be the basis to refuse the application. Doing so would deny a *bona fide* charitable trust the opportunity to continue its community work and ignores the quality and integrity of Mrs Stanley. The work of the Trust is of real value to the community, and the concern about money laundering rests on baseless speculation. The appeal concerns a *bona fide* application made for *bona fide* purposes.

The Secretary's submissions

13. The Secretary submitted, in summary, as follows:
- (a) There are grounds for the view that the Appellant, its officers or the organiser of the gambling are not suitable under the Act.
 - (b) There are reasonable risks that the purpose of conducting the lottery is not to raise money for authorised purposes and that the net proceeds from the lottery would not be applied to or distributed for authorised purposes.

- (c) Because of the risk of money laundering, no reasonable conditions could be added to the licence that would ensure that the purpose of raising the money is for authorised purposes and that the net proceeds from the gambling will be applied to or distributed for authorised purposes.
- (d) The present appeal is not as distinguishable from the *Hells Angels* appeal as the Appellant suggests. There is evidence of close association between the Trust and HMC. The Trust operates from an address that is the same as the East Chapter of HMC and the application relates to a lottery to be drawn at this address. The Appellant has, at some time during its application, had trustees that are patched members of HMC. The Trust also has members who are members of HMC.
- (e) While licence conditions can sometimes be imposed to ensure compliance with the Act as an alternative to refusing a licence, none that would ensure compliance with sections 37(1)(b) and (e) of the Act have been suggested. In the *Hells Angels* appeal decision, the Commission concluded that, if the doubt about suitability was because of fear of covert use by a criminal organisation of opportunities to use licensed gambling for criminal purposes, the imposition of licensing conditions is not a safe solution. He reached the same conclusion.
- (f) Although he has, in the past, granted class 3 operator's licences to the Appellant, all class 3 applications are considered afresh and on their own merits.
- (g) His view of the risk that the class 3 licence could be used for illegal purposes was based on consideration of all the information on the file, including the Appellant's response of 16 July 2012 which aimed to address his concerns.

The Trust's submissions in reply

14. In reply, the Trust submitted, as follows:

- (a) The Secretary's evidence does not challenge the evidence of Mrs Stanley concerning her past practice in completing class 3 applications and the provision, as part of the application, of trust documents from 2003 recording the appointment of Messrs Hiley and Collett as trustees and minutes recording their attendance at Trust meetings. No reasoned basis for maintaining the assertion of deliberate withholding is apparent.
- (b) There is no basis on the evidence to doubt the good character of Mrs Stanley, Mr Webb or the new trustees.



- (c) The Secretary failed to advance any cogent reasons to support his concerns that a class 3 raffle would facilitate drug dealing, in light of the past history of successful applications by the Trust, the purposes for which the raffles have been operated, and how the funds have been applied. Before the Secretary adopts the view that the Police concerns are correct, it is incumbent upon him, acting reasonably, to investigate those concerns. The Commission should not be drawn into taking sides in a generic conflict between the Police and gangs, as the Secretary appears to have done.
- (d) The effect of the Secretary's decision refusing the application is to deny a worthy charitable organisation the ability to pursue its causes and benefit those whom it exists to support and has supported in the past through the proper operation of its authorised gambling activities.

Oral hearing application

15. In addition to the substantive submissions summarised above, the Appellant made an application for an oral hearing on the basis that such a hearing was in the interests of natural justice. It submitted that there would be significant and real benefit in oral presentation and an exchange between counsel and the Commission. The significant issues raised by the appeal needed to be explored fully by an oral exchange. The absence of an oral hearing would effectively amount to a denial of natural justice in that there would not have been a fair hearing of the appeal.
16. The Secretary opposed the Appellant's request for an oral hearing on the basis that an oral hearing is only required where it is necessary to evaluate evidence and make credibility findings. This is not the case in this appeal. The Secretary submitted that natural justice would not be compromised if the appeal were dealt with on the papers. An oral hearing would be less efficient, in time and cost, involving Wellington-based officials and counsel having to attend an oral hearing in Auckland. The appeal is not an exceptional case, requiring a departure from standard procedures for hearing such appeals.
17. The Act specifies a number of matters relating to the hearing of class 3 appeals. The Appellant and the Secretary are entitled to make written submissions (section 227(4)) and a division may hold an oral hearing (section 227(6)). Schedule 3 (which applies pursuant to section 234) contains provisions which expressly provide for the Commission to regulate its own procedure and to meet in private or in public as the Chief Gambling Commissioner decides. The Commission has issued Practice Notes as a guide to the exercise of its procedural discretion. The Practice Notes record an expectation that most

appeals will be heard on the papers but that oral hearings will be held whenever the Commission considers that natural justice or efficiency so requires.

18. As it happens, all of the Gambling Commission's appeal decisions to date have been dealt with on the papers. The Commission does not consider that hearings on the papers invariably amount to a denial of natural justice, although in some circumstances oral hearings may be desirable or necessary. The present appeal lacks any of the features that make an oral hearing necessary or desirable. The outcome, for example, does not turn on any credibility findings or conflicts in the evidence. The Commission is satisfied that the appeal can be heard fairly on the basis of the written material before it. The application for an oral hearing is declined.

Law affecting substantive appeal issues

19. This is the third appeal to come before the Commission against a decision of the Secretary to refuse to grant a class 3 licence, but only the second to proceed to a substantive decision (other than on costs), the first appeal being the *Hells Angels* decision.
20. Class 3 appeals are dealt with by way of a *de novo* consideration of the merits on appeal as though the Commission were the decision maker in the first instance. In doing so, the Commission is required to make its own independent decision on the basis of the material before it and without being limited by the Secretary's decision or to the material that he considered. It may confirm, vary, or reverse a decision of the Secretary or refer a matter back to the Secretary with directions to reconsider a decision.
21. Class 3 gambling is defined by section 27 of the Act as follows:

27 Meaning of class 3 gambling

In this Act, class 3 gambling is gambling that satisfies the following criteria:

- (a) the net proceeds from the gambling are applied or distributed to authorised purposes; and
 - (b) the total value of the prizes offered or awarded to the winners of the gambling activity, or to the winners of 1 session (if the gambling is conducted in sessions of more than 1 game), exceeds \$5,000; and
 - (c) the gambling satisfies relevant game rules; and
 - (d) the gambling does not utilise or involve a gaming machine, directly or indirectly; and
 - (e) no commission is offered or paid to, or received by, a person for conducting the gambling, except a licensed promoter; and
 - (f) the Secretary has not categorised the gambling as another class of gambling.
22. As with class 4 gambling, the application or distribution of net proceeds to authorised purposes is of such central importance that it forms part of the definition of class 3 gambling.

23. Section 4 of the Act defines “authorised purpose” as follows:

authorised purpose means,—

- (a) for class 1 gambling, class 2 gambling, and class 3 gambling, any of the following purposes:
 - (i) a charitable purpose;
 - (ii) a non-commercial purpose that is beneficial to the whole or a section of the community;
 - (iii) promoting, controlling, and conducting race meetings under the Racing Act 2003, including the payment of stakes;
 - (iv) an electioneering purpose;
- (b) for class 4 gambling, any of the purposes specified in paragraph (a)(i) to (iii)

24. Under section 36(1), the Secretary must undertake any investigations that he considers necessary to determine whether the applicant for a class 3 operator’s licence is eligible and suitable, including receiving a Police report (section 36(2)(a)).

25. The default position is that a licence will not be granted. The Secretary may only grant a licence if he is positively satisfied of all the matters in section 37(1)(a)-(g); namely:

- (a) the gambling to which the application relates is class 3 gambling; and
- (b) the applicant’s purpose in conducting class 3 gambling is to raise money for authorised purposes; and
- (c) the applicant’s proposed gambling operation is financially viable; and
- (d) the applicant will maximise the net proceeds from the class 3 gambling and minimise the operating costs of that gambling; and
- (e) the net proceeds from the class 3 gambling will be applied to or distributed for authorised purposes; and
- (f) the applicant is able to comply with applicable regulatory requirements; and
- (g) any investigations carried out by the Secretary do not cause the Secretary not to be satisfied about the suitability of the applicant, any officers of the applicant, or the organiser of the gambling.

26. The double negative in section 37(1)(g) (“any investigations carried out by the Secretary do not cause the Secretary not to be satisfied...”) means that the Secretary does not have to be positively satisfied of the applicant’s suitability; rather he must be satisfied that nothing arising from the investigation causes him not to be satisfied in order to grant a licence.

27. As was noted in the *Hells Angels* appeal, the Act does not specify the types of things that may be considered in the assessment of suitability (in contrast to grounds for granting a class 4 operator’s licence in the Act).

28. A class 3 application requires only the contact details of the society, officers and organiser of the class 3 gambling. It does not require a profile of each key person including details of relevant class gambling experience, history of gambling, **character** and qualifications (as class 4 requires).

29. The Commission, in the *Hells Angels* appeal, held that the statutory differences mean that, in contrast to class 4 gambling, class 3 licensing requires:
- (a) no evidence of gambling experience and history, qualifications and good character; and
 - (b) no specific matters to be taken into account in assessing suitability.
30. In the absence of specific direction on what is relevant to suitability, the Commission considered that the relevant matters to take into account arise from a pragmatic assessment of the practical requirements of an acceptable raffle operation, having regard to the purposes of the Act. Section 3 provides that the purpose of the Act is to:
- (a) control the growth of gambling; and
 - (b) prevent and minimise the harm caused by gambling, including problem gambling; and
 - (c) authorise some gambling and prohibit the rest; and
 - (d) facilitate responsible gambling; and
 - (e) ensure the integrity and fairness of games; and
 - (f) limit opportunities for crime or dishonesty associated with gambling; and
 - (g) ensure that money from gambling benefits the community; and
 - (h) facilitate community involvement in decisions about the provision of gambling.
31. The Commission considered that the purpose listed in subsection (f):
- ... suggested a broader concern than simply the likelihood that the raffle itself would be run honestly and fairly. The statutory provision for the Secretary to obtain information from the Police was consistent with a broader approach to assessing suitability than one solely focused on the ability to run a fair lottery.
32. In determining whether a licence should be granted, the Commission needs to be satisfied that:
- (a) the Trust's purpose in conducting class 3 gambling is to raise money for authorised purposes and that the net proceeds will be applied to or distributed for authorised purposes (per section 37(1)(b) and (e)); and
 - (b) there is nothing in the material before the Commission that causes it not to be satisfied about the suitability of the applicant, any officers of the applicant, or the organiser of the gambling.

Analysis of substantive appeal issues

33. In this appeal, the authorised purpose is a charitable purpose (section 4(1)(i)). This is in contrast with the earlier appeal where the purpose was a non-commercial purpose benefiting a section of the community, namely the members of the Hells Angels Motorcycle Club. The Trust was established as a registered charitable trust in 2001. As

set out in the affidavit of Mrs Stanley, "the principal focus of the Trust is to provide support in rehabilitating prison inmates."

34. The Trust's objectives are listed in Mrs Stanley's letter of 16 July 2012 to the Secretary as "to promote, advance and enhance the skills of people returning to the community after serving sentences in prison, and to provide such people with the encouragement, education and help needed to empower them to take control of their own lives..."
35. The evidence of Mrs Stanley sets out the community work that the Trust has sponsored in the past, consistent with the charitable objectives of the Trust. Her evidence is that all funds obtained through lotteries are applied for that purpose.
36. There is no information before the Commission which rebuts the evidence given by Mrs Stanley. The only information obtained in the Secretary's investigations which is capable of suggesting that the purpose of the gambling is for non-authorized purposes is the information regarding connections with HMC provided by the Police.
37. A failure to be satisfied of this matter would involve doubt that the Trust would use the raffle proceeds for its own charitable purpose but would instead hand the funds over to others to be used as they saw fit. Such concern would rest on doubts about the suitability and character of the Applicant, its officers and the organiser as a result of the HMC connections. There are no separate reasons not to be satisfied.
38. The parties' submissions adopted two different perspectives on the issue of suitability:
 - (a) The Secretary's view of suitability was based on the Trust's connection with HMC and individuals with criminal convictions and his conclusion that the Trust had dishonestly withheld information.
 - (b) The Appellant took the approach that evidence of the Trust's past activities and compliance with previous licences as well as the suitability of the key people involved in running the lottery should determine suitability.

Deliberate withholding of information

39. Section 35 sets out the requirement of an application for a class 3 licence. Of particular relevance is section 35(3)(f) which requires that the application must include the following information:

the address and contact details of the society that will operate the class 3 gambling, the officers of the society, and the organiser of the class 3 gambling;



40. The term “officer” is neither defined in the Act nor on the form. In addition, section 35(4) provides that the Secretary may return an incomplete application, and the accompanying documents and any fee, to an applicant.
41. The Secretary contends that the Appellant deliberately withheld the names of the two (former) trustees in order to avoid enquiries into their criminal histories. The names of the two individuals were not listed on the class 3 licence application form and Personal Information Forms were not filled out for them.
42. The Appellant submits that there was no such intention as Mrs Stanley considered herself and Mr Webb the principal organisers, the names of the former trustees were on attached documents submitted with the application and neither person was a trustee at the time of application.
43. The Secretary’s contention that the Appellant deliberately withheld the names of two (former) trustees is hard to reconcile with the evidence. It is not contested that the Appellant had always given similar information without challenge and the application attached documents explicitly naming the former trustees. When the Secretary gave the Appellant the opportunity to respond, she also explained that Messrs Hiley and Collett were no longer trustees.
44. The Commission concluded that any failure to name the current trustees was not intentional and does not reflect adversely on suitability.

Past Lottery Grants

45. Whilst the Secretary has acknowledged the previous successful applications of the Appellant, he argues that all applications are made afresh in terms of their own merits. The Appellant on the other hand argues that the experience of its previous class 3 licences is directly relevant to this application.
46. In the *Hells Angels* appeal, the Commission held at [25] that:
- The prior experience and gambling history (good or bad) of the officers and organiser are material to the assessment of suitability, even if they were gained in a different organisation.
47. In a previous decision of the Commission which related to an application for costs brought by the Filthy Few Motorcycle Club,¹ the Commission noted that the Secretary had reversed his decision not to grant a class 3 licence because of a reconsideration of the Appellant’s appeal documents. The Commission noted:

¹ *Filthy Few Motorcycle Club Incorporated Tauranga Incorporated* (GC15/12)



In particular he reflected on the weight to be placed on the Appellant's (relatively good) history in relation to the conduct of previous raffles with the same officers, and balanced that against concerns about the club's alleged criminal activities, and the risk of money laundering.

48. The past performance of the applicant and organiser is material but not necessarily determinative.

Criminal convictions

49. In the *Hells Angels* appeal, the Commission expressed the view at [25] that:

The question of suitability for the purposes of section 37(1)(g) could not simply be answered by the presence or absence of criminal convictions on the part of a society's officers or members. The existence of convictions will not automatically render a society unsuitable; equally, an absence of convictions amongst a society's members will not necessarily mean that a society is suitable to conduct class 3 gambling.

50. The information before the Commission establishes that several former trustees have criminal convictions for a variety of offences, but the raffle organiser, the Treasurer, and current Trustees have no criminal convictions.²
51. While the Secretary states that the Trust "also has members who are members of HMC", it is not entirely clear whom he regards as "a member of the Trust". As one of the Trust's purposes is the rehabilitation of prisoners back into the community, one would expect that beneficiaries of the Trust's work would have criminal convictions and possible links to gangs.
52. A key element of the Commission's decision in the *Hell's Angels* appeal was the fact the organising entity and beneficiary was an outlaw motorcycle club, that the individuals in control of the club had serious convictions for Class A drug dealing, money laundering and dishonesty and the untrustworthy nature of those running the organisation meant that conditions could not deal with the resulting concerns. None of those factors appear in this case.

Connections between Trust and HMC

53. Absence of convictions on the part of the officers and organiser, however, is not necessarily determinative of suitability. While the completion of the licence application form, the experience with past class 3 licences and the criminal records of the current trustees and organiser may not cause the Commission difficulties with suitability, the nature of the connections between the Trust and HMC has required cautious and careful consideration.

² The Secretary's decision notes that "to the best of the Secretary's knowledge none of the current trustees have any criminal conviction". In addition the appellant's response to the original opportunity to respond, states that Tyrone Laurenson is a former Inspector with NZ Police with 25 years experience.

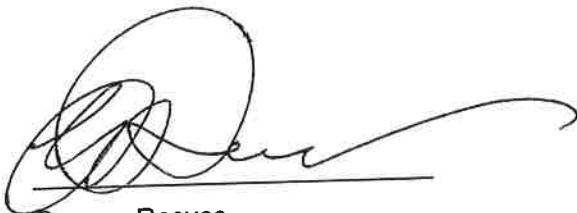


54. The information in the Police report contains strong indications that HMC is a criminal organisation and that it could have reason to engage in money laundering:
- (a) Its members have many convictions for a variety of serious offences involving drugs, violence and dishonesty.
 - (b) HMC is known, and styles itself, as an outlaw motorcycle club.
 - (c) Outlaw motorcycle clubs are believed to be very active, in an organised way, in the supply of illegal drugs nationally.
 - (d) The suspected illegal activity would give rise to a need to launder the proceeds.
 - (e) Licensed gambling has the potential for misuse for money laundering.
55. As a result, Commissioners were concerned about the connections between HMC (an organisation of highly doubtful suitability) and the Trust. Those connections include:
- (a) the Trust sharing an address with the East Chapter of HMC;
 - (b) patched HMC members formerly holding positions as trustees of the Trust; and
 - (c) the attendance by the president of the East Chapter of HMC at Trust meetings.
56. Such connections can give rise to concern about the extent of the influence which HMC may have over the Trust. While Commissioners would prefer to see more distance between a class 3 licence applicant and an outlaw motorcycle club, in this case, on balance, it is not dissatisfied with the suitability of the Trust, its officers and the organiser. Of particular influence is the background and good character of the organiser and the current trustees, and the evidence of its history of past charitable activities and satisfactory conduct of earlier class 3 gambling.
57. The Commission considers that, having regard to these factors, additional conditions are capable of increasing its comfort about suitability. Licence conditions are unlikely to provide sufficient comfort if imposed on a criminal organisation, the leaders of whom have convictions for drug dealing and dishonesty, but the Trust cannot be fairly characterised in that way. The Commission will impose additional conditions intended to give a greater degree of comfort that the licensed gambling will not be used to cover up criminal activity or to launder the proceeds of criminal activity.

Decision of the Commission

58. The Commission reverses the decision of the Secretary refusing to grant a class 3 licence to the Appellant. In reversing the decision, the Commission directs the Secretary to issue a licence containing the following additional conditions:

- (a) All proceeds from the sale of tickets must be paid into a bank account which is operated by the Trust.
- (b) The Trust must maintain complete and accurate records of all income and expenditure relating to the lottery, including application or distribution of the proceeds, and retain all ticket stubs and unsold tickets, for a period of seven years after the draw of the lottery. Those records must be made available for inspection by the Secretary, his staff or his agents, at his discretion at any time during that period.
- (c) Within one month of the drawing of the lottery, financial statements relating to the conduct of the lottery must be produced, certified by the Trustees and submitted to the Secretary.
- (d) Within 12 months of the lottery, a financial statement showing the application or distribution of the proceeds must be produced, certified by the Trustees and submitted to the Secretary.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

14 June 2013