

GM 430 and GM 2044084

The Lion Foundation The Lion Foundation (2008)

Audit Report

12 September 2011

Audit Period 1 October 2009
to 31 July 2010

DISCLAIMER

While our audit is carried out in accordance with Department of Internal Affairs' standards, it cannot, and should not, be relied upon to detect every instance of misstatement, fraud, irregularity or inefficiency.

The responsibility for public accountability and the implementation and monitoring of internal and management controls rests with the holder of the class 4 operator's licence.

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ABBREVIATIONS

Act:	Gambling Act 2003
AP:	Authorised Purposes
BR:	Gambling (Class 4 Banking) Regulations 2006
DJTR:	Daily Jackpot Turnover Report
EMS:	Electronic Monitoring System
GAA:	Gambling Amendment Act 2005
GMA:	Gaming Machine Analysis
GMP:	Gaming Machine Profit
GR:	Class 4 Game Rules 2006
HMR:	Gambling (Harm Prevention & Minimisation) Regulations 2004
MS:	Minimum Standards
NPR:	Gambling (Class 4 Net Proceeds) Regulations 2004
WGMPR:	Weekly Gaming Machine Profit Report
WJSR:	Weekly Jackpot Summary Report

EXECUTIVE SUMMARY

The focus of the audit was to follow-up on the issues found in the audit of The Lion Foundation for the financial year ended 31 March 2009.

The previous audit found non-compliance relating to the society's expenses, particularly expenditure on venue enhancements, entertainment of venue operators, customer functions and rebranding. There were also issues with the expenditure resulting from the purchase of the assets of South Auckland Charitable Trust. The audit found that the society had incurred unnecessary and unreasonable expenditure through the use of services provided by the public relation firm Busby Ramshaw Grice.

The non-compliance identified in that audit resulted in The Lion Foundation serving a four day suspension of their class 4 operator's licence.

The current audit found that the society has addressed a number of the issues identified in the previous audit. However, concerns remain with regard to expenditure on venue enhancements and accommodation and meals.

The society has continued to pay for development and enhancement costs at venues that are not considered reasonable or necessary.

These issues are covered in the body of the report dealing with minimising costs and maximising net proceeds.

INTRODUCTION

Purpose of the audit

The purpose of this audit was to:

- Determine the society's level of compliance with the Act (and applicable Game Rules & Regulations) and the implementation of the Society's policies and procedures.
- Identify areas of non-compliance and ensure areas of non-compliance identified in the previous audit have been rectified.
- Outline required remedial action for areas of non-compliance.

The scope of the audit covers the following key process area of the Society's class 4 gambling operations:

- Society Operating Costs.
- Venue Payments.
- Service Provider Costs.

This audit and the corresponding audit report covers both The Lion Foundation and The Lion Foundation (2008). The Lion Foundation has held a Class 4 Operators Licence for many years. The Lion Foundation (2008) was granted a licence on 13 October 2009, with the venues progressively being transferred over to the new entity. The last venue changed from The Lion Foundation to The Lion Foundation (2008) on 22 March 2011.

Although they are clearly separate legal entities, the two societies have the same personnel and trustees and are treated as one society for the purposes of this audit. In that regard it is noteworthy that for the financial year ended 31 March 2010 the return to AP for The Lion Foundation was 40.8% whereas for The Lion Foundation (2008) it was 10.8%. The combined return to AP was 39.95% which is in excess of the minimum requirement of 37.12%. We note that The Lion Foundation (2008) had been operating for less than six months at 31 March 2010.

Separate accounts were maintained for The Lion Foundation and The Lion Foundation (2008) during the audit period as this period covered the transition phase when venues were transferring from the former to the latter society.

Direct costs such as depreciation and gaming machine duty were allocated directly to each society. Other costs were apportioned based on the number of gaming machines operated by each society. These costs were recorded as being incurred in the first instance by The Lion Foundation, which would then charge The Lion Foundation (2008) for its portion of the overhead costs.

For this reason most of the expenses mentioned in the report such as customer briefings/functions and government interface were initially recorded in the accounts of The Lion Foundation, with a portion of these costs later charged to The Lion Foundation (2008).

SUMMARY OF NON-COMPLIANCE

Report Ref.	Regulatory Ref.	Subject
Pages 4 - 10	S4, s52(1)(d) Act	Expenses not reasonable nor necessary. Not maximising net proceeds and minimising operating costs.

MINIMISING COSTS & MAXIMISING NET PROCEEDS

This section covers matters relating to the general expenses, which includes operating costs and venue payments (including venue enhancements).

As stated in the Executive Summary, this audit concentrated on determining whether the society has rectified the issues found in the previous audit covering the 12 months ended 31 March 2009.

The audit found the following areas of non-compliance:

Customer briefings/functions

An amount of \$18,175.75 was spent on customer briefings/functions in the period 5 October 2009 to 4 April 2010.

This expenditure has reduced significantly since the last audit when \$117,428 was spent on conference/customer functions in the financial year ended 31 March 2009.

A portion of the reduction is due to the categorisation of costs. Some of this type of expenditure that was included in the category "conference/customer functions" in the previous audit are included as "accommodation and meals" in the current audit.

Not all of this expenditure in the current audit period was reasonable or necessary. An example of this is the spending of \$1,335.94 (GST exclusive) on a table for 10 at the Auckland Cup week in March 2010 for society and venue personnel.

The society changed its policy regarding sporting events as the result of the previous audit. It no longer takes venue operators out to sporting events such as rugby and Warriors matches as was the case previously.

Accommodation and meals

The society spent \$128,722.28 on accommodation and meals in the audit period.

The majority of this expenditure relates to legitimate costs incurred when society staff, travel within New Zealand as part of their functions.

There are however, cases where excessive expenditure has been incurred on meals. This was also an issue that was highlighted in the previous audit report.

Numerous examples have been obtained of expenditure on meals that was not considered reasonable or necessary. These relate to costs incurred by society staff taking venue representatives out for meals.

An example is \$408.44 (GST exclusive) incurred for a customer meeting hosted by [REDACTED] at Cullens Restaurant in Hamilton on 14 December 2009. The invoice shows that approximately half of the costs was for alcohol.

On 25 March 2010 [REDACTED] spent \$402.67 (GST exclusive) on a dinner meeting with [REDACTED] at Domaine in Hamilton.

[REDACTED] hosted a dinner meeting with [REDACTED] (who operate two Lion Foundation venues in Whakatane and Edgecumbe) at Roquette in Whakatane on 8 April 2010. The cost was \$327.29 (GST exclusive).

Another example is a meeting with [REDACTED] from the society with representatives from the Kensington Tavern at Killer Prawn Restaurant in Whangarei on 20 October 2009 at a cost of \$360.00 (GST exclusive).

[REDACTED] also hosted a dinner meeting with representatives from Softy's Sports Bar and the Te Rapa Tavern at Cullens Restaurant on 3 November 2009. The meal and drinks for five people cost \$720.00 (GST exclusive).

On 3 November 2009 [REDACTED] spent \$165.33 (GST exclusive) at the Te Rapa Tavern. This was also described as a dinner meeting even though the cost was exclusively made up of alcoholic beverages (other than \$4.00 for an energy drink).

On 5 November 2009 [REDACTED] had dinner with representatives from the Playhouse at Dine by Peter Gordon at a cost of \$404.44 (GST exclusive).

On 3 March 2010 [REDACTED] had a lunch meeting with representatives from Boodles at Kermadec Brasserie & Bar at a cost of \$400.43 (GST exclusive).

[REDACTED] from the society had an "end of year brief" with the venue operators at Hotel Bristol. This was held on 21 December 2009 at Charlie Bill Fine Food Bistro in Wellington and cost \$588.00 (GST exclusive).

On 22 December 2009 [REDACTED] had another "end of year brief", this time with Breakers Bar. The meal at the Old Church Restaurant in Napier cost \$968.44 (GST exclusive).

[REDACTED] hosted a meeting with the Te Puna Tavern at Astrolabe in Mt Maunganui on 26 April 2010. This cost \$277.60 (GST exclusive).

On 30 April 2010 [REDACTED] hosted a meeting with the NZRB at Portofino Restaurant at the Viaduct in Auckland. The cost for the lunch was \$446.40 (GST exclusive).

[REDACTED] from the society had a dinner meeting with the Wakatu Hotel at Relish Waterfront Dining in Nelson on 28 April 2010 at a cost of \$368.44 (GST exclusive).

On 16 February 2010 [REDACTED] spent \$406.31 (GST exclusive) at Botswana Butchery on a dinner narrated as "Wanaka – venue agreement meet".

The audit also found that the society spent \$1,649.11 (GST exclusive) on accommodation at Trinity Hotel in Wellington for society and Konami representatives at the time of the All Blacks versus Wallabies test match in Wellington on 19 September 2009. The accommodation was for the period 18 to 19 September 2009.

The society spent \$165.89 and \$383.56 (both GST exclusive) for event hosting at the Crusaders versus Waratahs rugby match in Christchurch on 10 April 2010. Invoices show that the majority of this money was spent on alcohol. This was described as a briefing with Schroeder's Tavern.

This type of expenditure is not acceptable. It is not necessary to have expensive meals when meeting with venue operators. In most cases a meeting at the venue concerned would be sufficient. This would not involve any cost to the society.

This issue was included in the previous audit. The audit report was issued to the society on 7 December 2009 and the Department met with the society's trustees on 21 December 2009 to discuss the findings in the audit report. At this stage the society was on notice that this expenditure is not reasonable or necessary. Despite this the society chose not to take the Departments advice immediately and in

response to the audit, described the period from December 2009 until July 2010 as a period of uncertainty. There was no uncertainty on the Departments part and it never resiled from its stated position as at December 2009. If the society was uncertain it would have been prudent for it to have stopped incurring the expenditure until it was certain.

The society did not change its entertainment policy until 26 July 2010, more than six months after the Department made it clear that it considered this type of expenditure unacceptable.

The new policy is that society representatives cannot take venue operators out for dinner, only breakfast or lunch. There first has to be some necessity for paying for even a breakfast or lunch for a venue operator. It is no longer acceptable to pay for drinks with venue operators under the new policy and pure entertainment expenses are no longer allowed.

The new policy also sets the amounts that society staff can claim for meals when travelling for business purposes. The amounts as at July 2010 were:

- breakfast \$30
- lunch \$40
- dinner \$60

This means that up to \$130.00 per day could be claimed for meals. This seems excessive.

After comment from the Department the society again reviewed its policy in July 2011 with the reduced maximum being:

- breakfast \$25
- lunch \$25
- dinner \$60

We note that dinner and/or drinks with venue operators is not allowed under the policy, however the Department does not accept that expenditure on breakfast or lunch for a venue operator is a necessary cost either. The Gambling Commission made it clear in the TTCF decision (paragraph 90) that entertainment expenditure is not permitted if it is benefiting venue operators.

By way of comparison the Department has previously provided details of amounts that can be claimed by its staff which is up to a maximum of \$90 per 24 hour period.

Branding - signage

The Department also looked at costs incurred by the society at its venues. One area where it does not meet its obligation to minimise costs is around signage at venues. Although the Department accepts that branding/signage at gaming venues can be acceptable and even necessary the level of expenditure at some venues is considered excessive.

Between The Lion Foundation and The Lion Foundation (2008) there were 35 items of expenditure for varying degrees of signage cost. They ranged from \$612 (GST exclusive) to \$9,565 (GST exclusive) and for audit purposes the highest six amounts were used for further investigation. The following comments are made:

Graces Place – Signpak invoice dated 15/10/09 for \$3,925.00 (GST exclusive)
"Manufacture and installation of various signage at Gracies Place, as per order from
[REDACTED]"

Wairau Tenpin – Signpak invoice dated 26/11/09 for \$1,930.00 (GST exclusive)

“Supply and installation of window graphics at Wairau Tenpin, as per order from [REDACTED]”

Takapuna Bar – Signpak invoice dated 24/3/10 for \$1,885.00 (GST exclusive)

“Manufacture and installation of various signage at Takapuna Bar, as per cost summary to [REDACTED]”

Boodles – Signpak invoice dated 24/3/10 for \$8,474.00 (GST exclusive)

“Manufacture and installation of various signage at Boodles Bar, Papakura – as per purchase order from [REDACTED] dated 11/2/1010” and “Electrician to run live power from inside building to both lightboxes, as instructed by [REDACTED]”

The Drink – Signpak invoice dated 29/6/10 for \$9,565.00 (GST exclusive)

“Manufacture and installation of fascia signage and internal partitioning to gaming lounge at “The Drink” in Birkenhead, as per quote to [REDACTED] dated 08/04/2010”

Slims Bar – Opotiki Signs invoice dated 24/7/10 for \$2,189.33 (GST exclusive)

“Change signage for Slim’s Bar, Opotiki ... plus change lettering on frosting glass ...”

The signage varies from a double sided 800x600mm sign which is likely to be a ‘sandwich board’ type and which has a cost of around \$700.00 to neon signs that cost several thousand dollars. In December 2009 the society paid for a sign for Rosie O’Gradys Palmerston North which cost \$700 + GST and which is considered reasonable. However, in contrast the society paid \$8,474.00 + GST for two neon signs for Boodles in Papakura, which is not considered reasonable or necessary.

In the case of Boodles the neon signs were predominantly advertising the venue and incorporated in this is Lion Foundation branding. Notwithstanding considerations of who owns the chattel, if the venue was to change societies the signage would not be of any use to either party. The Department considers this to be an unacceptable use of community funds and not a reasonable or necessary expense.

Venue enhancements – DEM

The Department requested details of Development, Enhancement or Maintenance (DEM) costs at both The Lion Foundation and The Lion Foundation (2008) for the audit period. This showed some areas of expenditure that do not appear to be reasonable and necessary and are as follows:

Wairau Park Ten Pin

November 2009 costs were incurred by the society for work carried out at this venue. Over \$11,000 was spent on carpet, plaster & paint, and the removal of wall.

Mangakino Hotel

In late 2009 and early 2010 the society paid for work that included “line walls, prep and paint GR ceiling” and also the supply and installation of a heat pump.

Tainui Tavern

In excess of \$10,000 was spent carrying out work in late 2009 and early 2010, that was itemised as “plastering & painting of gaming room”, supply and lay ...carpet in GR” and “construct new walls in Gaming Room”.

Edgware Sports Bar

The sum of \$36,434.92 was spent on this venue with the breakdown showing painting, carpet, air conditioning and construction in March 2010. This included \$30,222,22 (GST exclusive) being spent on “construction in gaming room” and

which is not considered reasonable. Although there may have been changes that where necessary for better supervision at this venue the issue is around the reasonableness of the amount of expenditure and satisfying the Department that the venue operator could not pay for this work in the first instance.

The Naval and Family Bar Hotel

\$6,000.00 was paid by the society for gaming room construction/renovations in March 2010.

Kopu Station Hotel

Carpet cost \$1,525.00 and gaming room construction \$2,779.88 and this was paid for in the first instance by The Lion Foundation in April and June 2010 respectively.

The following are examples of costs incurred by the society post the May 2010 Gambling Commission decisions:

The Takapuna Bar

The cost of \$3,525.35 was incurred for "Bridge House – construction" by the society in June 2010 together with an amount of \$1,200 for "painting of gaming room interior" in March 2010. Air conditioning was also installed at a cost to the society of \$1,307.

Stables Sportsbar

An amount of \$9,351 was spent at this venue and paid for by The Lion Foundation in June 2010, with the work including air conditioning, painting and carpet tiles.

Excelsior Sports Bar

Approximately \$20,000 was spent on work carried out at the venue that included: painting of gaming room, supply & install carpet, plaster/paint/electrical and air conditioning unit. This expenditure occurred between May and July 2010 and it is acknowledged by the Department that some work may have been necessary after the removal of another society's machines, the Department is not satisfied that the amount or cost of the work involved was reasonable or necessary.

The Drink Bar

The society incurred costs of \$1,261.95 for gaming room construction at this venue which was paid by the society in June 2010. This cost together with the signage cost previously referred to does not appear to be necessary.

The timing of the expenditure falls into stages, with most being incurred prior to the Gambling Commission decisions of 5 May 2010, which provided clear guidance to societies with respect to venue DEM expenditure. Although that is the case for a number of the above examples, it is unacceptable that the society took so long to introduce their current policy. The current policy came into effect on 26 July 2010.

There are also different categories of expenditure with some such as painting and carpet possibly being necessary, and in these cases the society should be able to provide evidence that this was the case. This could include, for example, photos of the paint or carpet that supports the good faith assessment the society has made to pay for these items. It is only under exceptional circumstances that building or construction work will meet the necessary test.

The society has advised that they no longer pay for any DEM at venues and their only expenditure is for the essential items of gaming machines, stools, etc. This policy is commendable although the society has continued to pay for DEM that is not considered reasonable after the previous audit report brought this to their attention in December 2009, and in some cases after the Gambling Commission decisions, which supported the Department's view in May 2010.

Although not a focus in this audit there are also a number of instances where the venue has paid for DEM costs in the first instance and subsequently The Lion Foundation has included these in Limit C, which is effectively reimbursing the venue. The venues are Highland Park TAB (11/8/10) and Valentines Petone (1/6/10), and in both cases, in excess of \$20,000 is included in section 3 of Limit C of the class 4 venue cost schedule. The only costs that should be included are ones that meet all of the actual, reasonable and necessary test. It is only under exceptional circumstances that building or construction work will satisfy the necessary requirement.

Government interface

The previous audit found that the society was employing the services of the communications and public affairs firm Busby Ramshaw Grice (BRG). The society paid \$50,915.56 (GST exclusive) to BRG in the 12 month period to 31 March 2009.

Again the audit report of 7 December 2009 made it clear that the Department found it unnecessary for the society to incur this expenditure. The audit report also commented that the society had breached Regulation 5(4) of the Gambling (Class 4 Net Proceeds) Regulations 2004 because no written agreement specifying the type of services provided and the itemised costs of these services was in place.

The Department expected that the society would immediately cease to employ the services of BRG once it was brought to its attention in December 2009 that this expenditure was unnecessary. This did not happen and the society continued to pay BRG for services provided.

The society merely addressed the issue of the lack of a written agreement by entering into a contract for the supply of consultancy services with BRG on 1 February 2010. This contract was terminated on 24 June 2010.

The society paid \$55,094.17 to BRG in the period 5 October 2009 to 4 April 2010 and \$27,845.16 in the period 5 April 2010 to 1 August 2010.

CONCLUSION

The audit identified the following issues:

Operating expenses

1. Unreasonable and unnecessary expenditure on customer briefings/functions.
2. Expenditure on society staff taking venue operators out for meals and drinks.
3. Continued payments to the public relations firm BRG that were identified as unacceptable in the previous audit.

Branding – signage

4. Unreasonable and unnecessary spending on venue signage.

Venue developments and enhancements

5. Expenditure on venue developments and enhancements that should have been paid for by the venues rather than the society.