



ASA Ruling on Health Lottery ELM Ltd

⚖ Upheld

| Internet (social networking)

| 22 November 2017

Ad description

A Facebook post for Health Lottery ELM Ltd, dated 22 January, stated “You know what they say five chances to win is better than one, that’s why we run five weekly draws! What’s more, each draw has a jackpot of up to £100K- that means that there is a potential half a million pounds up for grabs week in week out! ... Up to £500K can be won every week That’s 5 draws per week each with up to £100K jackpot Tuesday, Wednesday, Thursday, Friday & Saturday ... Still only £1 That’s half the price of Lotto! Play Now #Everybody Wins”.

Issue

The complainants, who understood that the jackpot was usually significantly lower than £100,000, challenged whether claims “up to £100k jackpot” and “up to £500k every week” were misleading.

Response

The Health Lottery said the statements that the jackpot in The Health Lottery was “up to £100K” and “up to 500K” were accurate and the purpose of the ad was to highlight that they operated five draws per week, each with a top prize of £100k, making it possible for members of the public to win up to £500k in total.

They stated that they had been using the “up to £100k” claim in their ads since the lottery commenced operation in October 2011. They explained they were not allowed to state that there was a guaranteed £100k for every draw because prizes in society lotteries were tied to ticket sales as a result of the rules set out in s.99 of the Gambling Act 2005. Section 99 stated that the maximum top prize that could be offered in a large society lottery was 10% of the proceeds of the lottery or £25,000, whichever was higher. The total proceeds of any single lottery were subject to an upper limit under s.99 of the Gambling Act, which currently stood at £4m.

They explained based on the normal volume of ticket sales, together with the ability of the Health Lottery to self-fund prizes by purchasing tickets, top prizes of £100K were a realistic expectation. They stated that since 2011 there had been 264 jackpot winners, of which 61% had won a jackpot of £100k and of which

71% received a prize of £50k or more. The figures were confirmed in their regulatory returns to the Gambling Commission. They provided a spreadsheet setting out the number of £100k jackpot winners per month since October 2011 as well as the total number of winners who had won £50k or more. This showed that there had been 181 £100K jackpot winners since 2011.

They said that they set out how jackpots were calculated in their terms and conditions, which stated that the monetary amount of a prize was determined by ticket sales. Therefore if five of the winning numbers were matched on a player's ticket, the player would win a prize equivalent to 10% of total ticket sales for that draw, up to a maximum prize value of £100k. They stated that their terms were provided to and approved by the Gambling Commission.

They explained they had detailed discussions with the Gambling Commission about appropriate wording for their advertising and the way that prizes could be legitimately expressed. This meant a balance had to be struck between stating what was technically possible, i.e. £400k if there were a large number of ticket sales, and what was the minimum figure, i.e. stating only £25,000. That meant the jackpot would not normally be more than £100k but would be less than that sum if the ticket sales in a draw did not permit such a jackpot to be paid out as a matter of law, or if the jackpot combination was selected by more than just one player, in which case the jackpot would be shared. The wording of "up to £100k" was decided on as it represented fair wording, both being accurate

and demonstrating an expectation of what was inevitably going to be an uncertain prediction of sales in a draw that had yet to take place.

They said that sales figures and jackpots won were provided to the Gambling Commission on a quarterly basis and they were aware of the sums that had been won and the tickets sold.

With regards to the £500k jackpot, they explained that there were no occasions where £500k had been won by an individual winning five consecutive daily draws, a possibility which had only ever existed since they began to operate five draws per week from November 2015.

They said they made it clear that the £500k jackpot was not designed to be a reference to a sum that was at all likely to be won by any individual. They said that the claim informed the public of the type of total prize pot that was available over five draws in a week and that it was comparable with claims made in on-pack consumer promotions to the effect of “£500K to be won” or “win a share of £500k”.

Assessment

Upheld

The ASA considered that consumers would interpret the claim “up to £100k jackpot” and “up to £500k every week” in this context to mean that participants would have a realistic chance of winning up to £100k if they entered one of their five weekly draws. We considered

that the claim “up to £500k every week” from the five consecutive daily draws further implied that the £100,000 jackpot was regularly awarded.

We understood that under s.99 of the Gambling Act, society lottery winnings were capped at £25,000 or at 10% of ticket sales, whichever amount was higher. We also noted that the maximum top prize that could be awarded in a society lottery was £400,000 based on the four million pound upper limit of gross ticket sales and the £100,000 jackpot amount had been considered to be a realistic amount that could be won based on ticket sales and previous winnings of that amount.

We acknowledged that the references to the jackpots were preceded with “up to”, making it clear that the top jackpot amounts were not always available. However, we noted from the information provided by the Health Lottery that, although there had been winners of £100,000 in the past, there had been no winners of that amount since February 2015 when five weekly draws had been introduced. We therefore considered the claim “up to £100k” no longer represented a realistic amount that was likely to be won as a jackpot prize. We therefore concluded that the ad was misleading.

The ad breached CAP Code (Edition 12) rules **3.1** (Misleading advertising), **3.7** (Substantiation), **3.9** (Qualification).

Action

The ad must not appear in its current form. We told Health Lottery ELM Ltd not to exaggerate the likely winnings available in the lottery.

CAP Code (Edition 12)

[3.1](#) [3.7](#) [3.9](#)

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