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Betting on lotteries and lottery themed gaming products: being clear to consumers

Betting on the outcome of lotteries and other lottery themed gaming products must be presented and advertised in a way that makes it clear to consumers that they are not entering a lottery and that allows them to easily identify what product is being offered.

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What is the issue?

We are concerned that some operators offering betting on lotteries and other lottery themed gaming products [\(1\)](#) do not make it clear enough to consumers that they are participating in some other form of gambling, rather than entering a lottery. This could amount to misleading advertising and a breach of the fair and open licensing objective set out in the Gambling Act 2005 [\(the Act\)](#).

We are considering if we need to take further steps to ensure that operators are clear about the products on offer. We want to highlight our concerns and to encourage discussion and action from the industry, which may prevent the need for future regulatory intervention.

Background

The Act specifies that lotteries [\(2\)](#) in Great Britain are the preserve of good causes, such as charities and other **non-commercial organisations**. Therefore lotteries cannot be run for private or commercial gain and are required to return any profit to the purposes of the good cause for which they are run. This provides lottery operators with the unique position of being able to promote the fact that they are run solely for the benefit of good causes, without any commercial incentive.

The Act sets out other regulatory requirements such as monetary limits on prizes and ticket sales (proceeds), which are specific to lotteries.

The Act also permits forms of commercial gambling such as betting and gaming (eg casino, bingo games) subject to specific permissions and rules.

Betting on the outcome of lotteries (other than lotteries that form part of the National Lottery) is permitted by the Act. Betting on lotteries and lottery themed gaming products are not subject to any monetary limits and are normally run on a purely commercial basis, although some products may also raise money for a particular good cause.

The Act specifies that society lotteries must return a minimum of 20% of proceeds (ticket sales) to the purposes of the promoting society (the good cause) although no such minimum return requirement exists for other gambling products which raise money for good causes.

On some websites it can be hard for consumers to distinguish between the types of gambling on offer. Some of these products create a similar look and feel to a lottery, using the term 'lottery' or ambiguous terms such as 'lotto' in the names of products or website names and using imagery and language, such as 'draw' that is normally associated with lotteries in their marketing, presentation and design. In some cases, they also advertise that they return a percentage of the funds to a charity or other 'good cause' or products are branded as a charity or sporting club lotto. This is also relevant in the non-remote context where products use lottery associated language, branding or imagery for example on betting slips, or within product livery, advertising or general presentation.

These factors may leave the customer under the mistaken impression that they are

participating in a lottery.

Anecdotal evidence suggests that lottery player motivations can be different to the motivations of people who participate in other forms of gambling. It is generally accepted that for many society lottery players the contribution to good causes appears to be a more important motivator than playing for fun or to win a prize. There are also indications that some lottery players would not consider participating in other forms of gambling. For example, the **Mintel Gambling Review 2014** notes that 'the lottery tone makes betting on lottery products attractive to 57% of consumers', who, it identifies, would not consider gambling products other than lotteries.

We are concerned that consumers may be misled into participating in other forms of gambling because the information they have been provided with has led them to believe the product being offered is a lottery, and/or assuming the 'profits' go to a good cause rather than a commercial gambling operator.

It is our view that operators offering betting on lotteries or other gaming products with a lottery theme should satisfy themselves that in all material it is sufficiently clear to the average consumer, as defined in **The Consumer Protection from Unfair Trading Regulations 2008** (CPRs), the type of product being offered. This should allow a consumer to determine if they are placing a bet, or playing a casino, bingo or slots game (as appropriate).

We consider this to be particularly important where the product is available online and therefore may not be clearly presented within a betting, casino, gaming machine or bingo environment, but it is also applicable to those operating in licensed premises.

Where is this included in the regulatory framework?

As well as lotteries, the Commission regulates commercial gambling in Great Britain, in partnership with licensing authorities, permitting gambling offered in line with the licensing objectives of the Act. We ensure it is crime free, fair and open and that children and other vulnerable people are protected.

Under the fair and open objective, we expect all licensees to have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble. This is set out in our *Statement of principles for licensing and regulation*.

The **Advertising Standards Authority (ASA)** is the UK's independent regulator of advertising across all media. It applies the UK Advertising Codes (the Codes), which are written and maintained by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). They include general rules that state advertising must be responsible, must not mislead, or offend and specific rules that cover advertising to children and advertisements for specific products and services, including gambling. Operators that do not comply with the codes could be subject to adverse publicity resulting from adjudication by the ASA or sanctions, including the denial of media space, for example.

Section 3 (Misleading advertising) of the CAP and BCAP codes states:

- Marketing communications must not materially mislead or be likely to do so.
- Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.
- Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available.

The Consumer Protection Regulations (CPRs) prohibit unfair marketing to consumers, including misleading advertising. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the CPRs. That means it will take factors identified in the CPRs into account when it considers whether a marketing communication breaches the CAP code.

It is an ordinary code provision in our **Licence conditions and codes of practice (LCCP)** that operators should adhere to the UK Advertising Codes and apply them to forms of marketing that are not normally captured by those codes. Operators should comply with ordinary codes or be able to explain convincingly why their non-compliance does not adversely affect their ability to pursue the licensing objectives. Otherwise their continued suitability may be called into question.

A social responsibility code provision in the LCCP requires that operators satisfy themselves that their marketing communications, advertisements and invitations to purchase (within the meaning of the CPRs), do not amount to or involve misleading actions or misleading omissions within the meaning of those regulations. Operators must comply with social responsibility codes. Failure to do so carries the same weight as a breach of licence conditions.

The Commission requires all operators to have due regard to the licensing objectives and to comply with the Act and the conditions of their operating licence; we treat any breaches very seriously. In circumstances where either a breach of the Act or the licence conditions occurs, we will consider what action we need to take. That would normally be regulatory rather than criminal and could include a review of an operating licence, which could result

in a formal warning, additional licence conditions, a financial penalty or suspension or revocation of the operating licence.

Next steps

Given the above and taking account of a recent supporting [ASA adjudication](#), the Commission expects to see affected operators engaging with this issue and taking steps to address the concerns expressed. Essentially, ensuring that it is clear to consumers what form of gambling they are participating in, where otherwise the presentation could be considered ambiguous and lead them to believe they are participating in a lottery.

If operators are unable or unwilling to alleviate these concerns, we will consider whether to introduce licence conditions to address the issue. This may include, but not be limited to, a condition requiring operators to specify the type of product being offered, for example, by requiring a prominent message specifying the product on offer at the top of web pages, or messaging on each product.

We also continue to encourage lottery operators to market their unique position as a fundraising tool for good causes. Only those operators who hold a lottery operating licence, a registration with a local authority or promote certain forms of 'exempt lottery' can legitimately claim to be a lottery raising funds to support a non-commercial 'good cause'.

Consumers who are unclear about the nature of a product can look for the type of licence that it is offered under. If this is not a lottery operating licence issued by the Commission or lottery registration provided by a local authority, the product will not be a lottery.

Consumers can confirm the licensed status of an operator using our [online register](#).

Another indicator may be the age limit placed on the products; lotteries can be offered to individuals aged 16 or over, whilst other forms of gambling can only be offered to those aged 18 or over.

Issues surrounding betting on lotteries were also considered as part of the Department for Culture Media and Sport (DCMS) 'call for evidence' on lotteries (2014) and the Culture Media and Sport Select Committee (2014). The issues highlighted here do not preclude any action by DCMS or the Commission in the future.

1 Lottery themed gaming products are those that:

- are presented using lottery branding, terminology or imagery generally associated with lotteries and/or
- make consistent reference/comparison to other genuine lottery products or markets

2 The National Lottery is regulated under separate legislation.

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