

Proposed amendments to licence condition 11

**Amendments to licence conditions 11.1.1.2 and 11.2.1.2**

**Lotteries – societies and local authorities (11.1)/managers (11.2)**

**All lottery operating licences issued to non-commercial societies or local authorities**

**2a** Subject to 11.1.1.2b, the proceeds of any lottery promoted in reliance on this licence may not exceed ~~£4,000,000~~ £5,000,000 and the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year in reliance on the licence may not exceed ~~£10,000,000~~ £50,000,000.

**2b** In [year] the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year in reliance on the licence may not exceed [amount- to be determined by the commencement date].

**Amendments to licence condition 11.1.1.5, 11.1.1.6, 11.2.1.5 and 11.2.1.6**

**Lotteries – societies and local authorities (11.1)/managers (11.2)**

**All lottery operating licences issued to non-commercial societies or local authorities**

**5** For the purposes of this condition:

**a** two or more lotteries are linked if any of them is so structured that a person who wins a prize in that lottery will also win a prize in some or all others, unless the maximum amount which a person can win is no more than ~~£400,000~~ £500,000 in aggregate. In determining whether two or more lotteries are linked it is immaterial how many of them are promoted in reliance on this licence.

**b** a lottery is linked to a free draw or prize competition if:

**i** a person's participation in, or his being allocated a prize in, the lottery is a means of establishing his eligibility to enter the draw or competition and

**ii** the arrangements for the lottery and/or the draw or competition are such that a person may win more than ~~£400,000~~ £500,000 in aggregate as a result of his participation in the lottery and the draw or competition.

**6** If a lottery, whilst not a linked lottery, has the feature that by selecting the same numbers in the lottery and in one or more other lottery or lotteries the participant in those lotteries may win prizes which, in aggregate, exceed ~~£400,000~~ £500,000, no advertisement for, nor other marketing of, the lottery may make any reference to that feature.

Q5 Do you agree with the proposed changes to the wording of licence condition 11? **Yes**

Comments: **The Lotteries Council urges the implementation of these changes without any further delay.**

## Proposed new social responsibility code 4.3.3

### Social responsibility code provision 4.3.3

#### Lotteries – Information to consumers

#### All lottery operating licences issued to non-commercial societies, local authorities and external lottery managers

1. Licensees must ensure that sufficient information is made available to consumers to enable them to make an informed choice prior to participating in a lottery. This must include but is not restricted to details of how and where proceeds are used and the likelihood of winning a prize or how prizes are allocated.
2. Licensees must take into account the Commission's guidance on information to lottery players.

Q6 Do you think that concerns regarding transparency can be addressed with the new social responsibility code 4.3.3 and associated guidance? **Yes**

#### Comments:

1. The consultation document says, *“Over the course of the broader review of society lottery regulations concerns about the transparency of society lotteries were raised. In particular concerns were expressed about the lack of transparency in relation to odds of winning a prize, how much of the money raised through ticket sales goes to good causes and which good causes are supported.”* The Lotteries Council supports the need to clarify before selling a ticket the proportion of money raised from the ticket sale which will go to good causes (or to provide a reasonable estimate of this). The Lotteries Council agrees it should also be easy to see who the promoting societies for upcoming draws are (which is already a requirement). However, the granular level of detail which the consultation proposes requiring promoting societies to provide goes far beyond the concerns mentioned in the quote above. For example, the consultation proposes introducing a requirement to provide detailed information about distribution of proceeds from previous lotteries, as well as information about the decision-making processes of the promoting society itself. These new requirements don't, therefore, seem proportionate to the concerns which were apparently raised about transparency in the broader review of society lotteries.
2. The consultation document talks about giving consumers sufficient information for them to make an informed choice. On reviewing the DCMS documentation surrounding the broader review of society lotteries, those raising concerns about the additional need for transparency of society lotteries did not appear to be consumers suggesting they presently lacked sufficient information to make an informed choice. Rather it appears to have been Camelot, and the national lottery distribution bodies encouraged by Camelot, who requested additional transparency requirements be imposed on society lotteries.

Q7 Do you agree with the proposed wording of the new social responsibility code 4.3.3? **No**

Comments: The wording of proposed condition 4.3.3.1 specifically states the rationale for providing information is *“to enable consumers to make an informed choice prior to participating in a lottery”*. It goes on to state, however, the information which must be provided to allow consumers to make an informed choice must include *“details of how and where proceeds are used”*. This seems to contradict the specified rationale for requiring the information to be provided. Clearly, before a ticket has been purchased for a draw and before the promoting society itself therefore knows how

much they will make from the draw, the promoting society can't provide details of "how and where" they will actually spend any such funds from that draw.

It is also unclear what is meant by "where proceeds are used". Is this meant to relate to the geographical location of where the money is spent? Or does it mean in what field of activity the money is spent? Either way, at the point when the ticket has yet to be sold, when the promoting society won't yet know how much they will raise from the lottery, the promoting society will not know "where" it will spend such funds raised through the lottery, beyond knowing it will need to be spent in accordance with the aims and objectives of the promoting society. As well as not knowing where funds raised through lotteries will go to, it will be administratively difficult (if not impossible) to trace through exactly where funds from that specific lottery (as opposed to any other funding source) ended up being spent by the promoting society, as opposed to just knowing it was spent in accordance with the aims and objectives of the promoting society. In respect of where sums are spent, society lotteries are already far more transparent than the national lottery. Someone purchasing a society lottery ticket will know the funds received by that promoting society from sale of that ticket will have to be spent in accordance with the aims and objectives of that particular society. Someone buying a national lottery ticket has no idea in which area the "good causes" funding aspect will actually end up.

For many promoting societies, raising funds via large society lotteries will be one of a number of sources of funding. The funds raised may be mixed with funds from other sources and treated as "unrestricted funds", to be used in accordance with the purposes of the society, rather than specifically allocated in advance of a draw to a particular use and/or geographical location. In such circumstances, the society will not, in advance of a draw, be able to provide details of "how and where" funds raised by that draw will end up, beyond confirming they will be applied in accordance with the purposes of that promoting society. The proposed level of transparency through the code and draft guidance, including the requirement for promoting societies to be able to state in advance of a draw "how and where" funds raised by that draw will end up being used appears considerably more extensive than that required under charity law, as well as being unrealistic. It seems likely to deter the use of society lotteries as method of raising funds for good causes, particularly where promoting societies are looking to raise funds to be generally used in accordance with their organisation's aims, rather than specifically having allocated in advance whatever funds happen to be raised to a particular project and/or geographical location.

The Lotteries Council would therefore respectfully strongly suggest that the wording "This must include but is not restricted to details of how and where proceeds are used and the likelihood of winning a prize or how prizes are allocated" should be deleted from 4.3.3.1.

In terms of transparency, the Lotteries Council agrees that before selling a ticket the percentage of money raised from the ticket sale which will go to good causes (or a reasonable estimate of this) should be provided. The introduction of such a requirement would appear to address any concerns about consumers not having enough information about the money from the ticket sale which will end up funding the good causes of the promoting society. We also agree that it should also be easy to establish who the promoting societies for upcoming draws are. This would seem to address any concern about a lack of transparency over the good causes which are supported.

As mentioned in greater detail in our response to question 8 about some of the specific contents of the draft guidance, we are concerned some of the proposals are disproportionately bureaucratic, requiring charities and good causes to spend their badly needed resources on providing layers of information, for little, if any, benefit in terms of helping consumers make an informed decision.

The granular level of detail which the consultation proposes requiring promoting societies to provide goes far beyond the concerns mentioned in the quote in our response to question 6 from the GC's consultation document. For example, the draft guidance proposes introducing a requirement to provide detailed information about distribution of proceeds from previous lotteries, as well as information about the decision-making processes of the promoting society itself. These new requirements don't, therefore, seem supported by the concerns which were apparently raised about transparency in the previous broader review, and which are apparently underpinning the proposed new requirements.

As mentioned above, the present GC consultation talks about giving consumers sufficient information for them to make an informed choice, in light of concerns raised in the broader review of society lottery regulations. On reviewing the DCMS documentation surrounding the broader review of society lotteries, those raising concerns about the additional need for transparency of society lotteries did not appear to be consumers suggesting they presently lacked sufficient information to make an informed choice. Rather it appears to have been Camelot, and the national lottery distribution bodies, encouraged by Camelot, who requested additional transparency requirements be imposed on society lotteries.

## Proposed Guidance

### Information to lottery players: distribution of proceeds and likelihood of winning a prize

December 2019

#### 1 Introduction

- 1.1 This note provides guidance to licence holders on the implementation of social responsibility (SR) code provision 4.3.3 set out in our Licence conditions and codes of practice (LCCP).
- 1.2 It sets out what we expect all lottery licence holders (society and local authority lotteries and external lottery managers (ELMs)) to consider regarding the information they should supply to consumers:
  - before they purchase a ticket,
  - regarding where their money goes;
  - and what the likelihood of winning a prize is.
- 1.3 It also provides guidance to licence holders on how they should make information available and make consumers aware of information available on request.
- 1.4 This guidance aims to assist licensees with detail about how to comply with the LCCP and the wider legal requirements and is intended to allow licensees flexibility as to how they comply. This guidance is not intended to be a substitute for legal advice and nothing in this document should be construed as such. Anyone requiring clarification on the regulatory issues contained in this document should seek their own independent legal advice.
- 1.5 In this guidance, the word 'must' denotes a legal obligation, while the word 'should' is a recommendation of good practice, and is the standard that the Gambling Commission (the Commission) expects licensees to adopt and evidence. The Commission will expect licensees to be able to explain the reasons for any departures from that standard.
- 1.6 The Commission has a duty to permit gambling as long as we think it is reasonably consistent with the three licensing objectives set out in the Gambling Act 2005 (the Act). These objectives are to:

- keep gambling free from crime and from being associated with crime
- ensure that gambling is fair and open
- protect children and vulnerable people from being harmed or exploited by gambling.

**1.7** It is important to provide consumers with clear and easily accessible information to help them form a decision whether to gamble with a particular licensee or not. Licensees should provide effective, transparent and fair information about all lottery products and schemes, and the likelihood of winning a prize. This is an important part of achieving the second licensing objective.

**1.8** This guidance may be amended periodically to take account of what we learn from research with licence holders and gambling consumers about emerging trends in lottery products and player participation, or of changes to legislation. Where proposed amendments are minor, we will consult informally, for example, through industry trade bodies and with consumer groups. For more substantial changes, we will consult more formally.

## **2 Information available to consumers on prizes and the likelihood of winning a prize**

**2.1** Licence holders must make available information to consumers on prizes and the likelihood of winning a prize.

**2.2** Remote lottery licensees (with aggregate annual proceeds exceeding £250,000) are already required to provide information to players on the prizes or payouts available, the way in which winners are determined and their chances of winning a prize, before the customer commits to gamble. Relevant requirements are in Remote Technical Standard 3 (RTS3).

**2.3** All other lottery licensees must include as a minimum:

- a description of the way in which winners are determined and prizes allocated and
- the potential prizes available and the probability (likelihood) of winning tickets being drawn.

**2.4** For some types of lottery where it is not possible to determine the likelihood of winning because it depends on the eventual number of participants, a description of the way in which prizes are allocated and the way in which prizes are determined should be provided.

**2.5** The following items provide guidelines on the type of explanatory content that may be relevant about the way in which winners are determined and how prizes are allocated and should be considered for inclusion. This is not a prescriptive list as each lottery may be different, and societies all promote lotteries differently:

- clear descriptions of what constitutes a winning outcome
- how rollovers operate and the way in which the rollover operates
- information about the amounts that players may potentially win, for example in the form of pay-tables or by showing the odds for particular outcomes (such as matching 3, 4 or 5 numbers).

## **3 Information on how proceeds are used**

### **Return to the good cause**

**3.1** Lottery licensees should make available the estimated, average or actual (where this is known) return to the good cause for each lottery. Licensees should make this available to consumers prior to them purchasing a ticket. This is in addition to the current provision in social

responsibility code (4.3.1), which requires all society lottery licensees to publish annually the proportion of total proceeds allocated to the purposes of the society.

- 3.2** Existing LCCP provisions require all lottery licensees to comply with the advertising codes of practice issued by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). These advertising codes include rules on misleading advertising. Licensees must ensure they do not mislead consumers on what the return to good causes is.
- 3.3** Information about the promoting society must be made available. Lottery licensees are required to identify the promoting society within ticket documentation (licence condition 11.1.1.7b and 11.2.1.7b). Social responsibility code 4.3.2 also requires that branded lotteries must ensure that it is clear to consumers (or potential consumers), which society lotteries are being promoted.

#### **Breakdown of proceeds**

- 3.4** Lottery licensees should inform consumers that information is available about how lottery proceeds are spent. Licensees currently retain information as set out in Condition 11.1.1, which can be used to provide relevant information. Licensees should ensure the records of each lottery are retained in a format that is easy to extract and share. Specifically, the consumer should be able to request and be provided with any of the following information:
- the total proceeds from all tickets sold
  - allocation of the proceeds of each lottery to prizes (including prizes rolled over)
  - allocation of the proceeds of each lottery to expenses occurred in promoting and running the lottery; and
  - the amount applied directly to the purposes of the society or purposes for which the local authority has power to incur expenditure as the case may be.

#### **Information about grants**

- 3.5** Lottery licensees may use proceeds to fund grants to beneficiaries who meet the aims and objectives of their societies. Where this is the case, information should be available to consumers about how the allocation of grants is determined and who has received them.

#### **4 How information should be made available**

- 4.1** All reasonable steps should be taken to ensure that the information is understandable, easily accessible and presented through the most appropriate means of reaching the consumer.
- 4.2** Where this guidance states that information should be easily available to consumers before they commit to a gamble, licensees should consider the medium through which the gambling is conducted and the way they advertise or promote the lottery.
- 4.3** For example this information could be included in marketing communications, advertisements, promotions, the lottery website, ticket documentation, or any other information surrounding the draw.
- 4.4** Where licensees use the internet or mobile sites to promote lotteries, the information should be located from the menu or drop-down list, but consumers should be directed to this by links within the main lottery pages.

**4.5** Where information is to be made available on request, lottery licensees should publish details on how to request it in way that is likely to come to the attention of consumers. For example, this could be included in marketing communications, advertisements, promotions, the lottery website, ticket documentation, or any other information surrounding the draw.

**Q8** Do you have any comments on the proposed guidance? **Yes**

Comments:

**Clause 1.2**

This is clumsily worded and would benefit from the removal of the bullets.

**Clause 2.4**

This provides allowance for including information on *“how prizes are allocated”* instead of *“the likelihood of winning a prize”* (where the latter information cannot be obtained in advance), However, clauses 1.2, 1.7, 2, 2.1, 2.2 and 2.3 do not provide for this information consistently. The Lotteries Council proposes that, as a minimum, the header at the start of Section 2 be retitled as *“Information available to consumers on prizes and the likelihood of winning a prize or how prizes are allocated”* and that clause 1.2 has the words *“or how prizes are allocated”* added to the end and clause 1.7 has those same words added to the end of the second sentence.

**Clause 3.1**

Before consumers have purchased tickets, the promoting society will obviously not know how many tickets it will sell and may well have difficulty estimating this. It may, however, be in a position to estimate the amount or proportion of each ticket sale that will go towards its good causes. Additionally, it should be permissible to use the proportion published under social responsibility code 4.3.1 as an estimate. We would request the guidance be amended to clarify that as long as prior to consumers purchasing a ticket information has been made clearly available about the proportion of the ticket price which will (or it is reasonably estimated will) go towards the good cause of the promoting society, the GC will view this *“return to good cause”* transparency obligation as being met.

Some promoting societies may already be including the proportion or amount to good causes figures within a solicitation statement provided before sale. It would be helpful for the GC’s guidance to make it clear the GC would also accept this in satisfaction of the *“return to good causes”* obligation, given in terms of enabling customers to make an informed decision.

**Clause 3.3**

This is already a requirement under the provisions quoted. It is difficult to see what this clause adds.

**Clause 3.4**

Whilst the Lotteries Council fully supports the laudable objective of helping consumers make an informed choice before deciding whether to buy a lottery ticket, we don’t see the way in which this proposed new requirement achieves this objective. The proposed new code provision 4.3.3.1, from which this part of the guidance hangs, relates to ensuring *“... that sufficient information is made available to consumers to enable them to make an informed choice prior to participating in a lottery.”* All the information referred to within clause 3.4 of the draft guidance, however, relates to detailed information which is only available after the relevant lottery has taken place. It does not, therefore, enable consumers to make an informed choice about a future draw run by the same promoting society, in respect of which all such information for that lottery will not be available at the point of sale. It may, in fact, be wholly counterproductive in terms of informing a future

purchasing decision, for example if the proportions spend on prizes or on the good causes of the promoting society in the historic lottery for which the information is sought and provided are different from those of the future lottery they are considering participating in.

The promoting society is already required, under to the LCCP, to provide detailed information about how draw proceeds have been accounted for to the Gambling Commission after the relevant draw. In this way, consumers may be reassured that the accounts for previous draws have been appropriately dealt with. It seems very unlikely the vast majority of consumers would want the level of detail which the above envisages promoting societies would require to provide on request. Those wanting such information are far more likely to be competitors, or people who, for whatever reason, want to cause the promoting society to need to spend time and money corresponding with them on specific matters of detail.

The proposed obligation is in relation to “consumers”. We assume (although this should be clarified if this provision is actually introduced) that “consumers” would mean any individual, regardless of whether they have ever bought a ticket from the promoting society from whom they are requiring such detailed information. The processes and systems required to respond to such requests are likely to be similar to those required to comply with data subject access requests, or by public authorities under freedom of information legislation. The resources and professional support required to administer and process such requests are considerable. Although there are compelling policy reasons behind the legislation underpinning data subject access requests and freedom of information requests to public bodies, such compelling policy reasons do not seem present here. Introducing a requirement on all promoting societies to provide such detailed information to any individual who chooses to request it, who could make numerous specific requests of numerous lotteries, seems a wholly disproportionate response to any concerns about transparency which may have been raised during the previous wider consultation about society lotteries. We would respectfully question the extent to which, if at all, concerns regarding consumer choice and consumer information originated from consumers who regret specific purchasing decisions on the basis they felt they lacked sufficient information to have made an informed choice. On reviewing the DCMS response to the previous consultation, it appears to have been Camelot, and some National Lottery distributing bodies, who have sought such additional transparency requirements to be imposed on society lotteries, rather than consumers. Requiring promoting societies to provide such detailed information to anyone who requests it, in respect of any historic lottery which they may choose to request it for, does not serve the stated purpose of helping an informed choice about participation in a future lottery for which the information would be completely different. It would, however, take up time and resource which would otherwise be used towards the good cause of the promoting society.

In light of the above, the Lotteries Council would strongly suggest draft Clause 3.4 be removed. It introduces unnecessary, and potentially costly, bureaucracy for promoting societies in terms of having to provide such specific information (or subsets of such specific information), without in any way achieving the stated aim of the provision, namely facilitating an informed choice prior to purchase of a ticket. In some instances, the provision of such information for historic draws is likely to run wholly counter to making an informed choice about whether to enter a future draw. Whilst the Lotteries Council can support the greater provision of information which would help such an informed choice at the point of purchase, namely in relation to the proportion of the ticket price which will end up being used by the promoting society for its purposes for that particular draw (as opposed to previous historic draws), and clear signposting to what those purposes are, the level of

granular detail proposed above relating to each draw of a historic lottery seems wholly disproportionate, and will divert money from charities and good causes for no discernible reason.

Furthermore, requiring operators to publish the ability to get such granular detail of historic lotteries in a way likely to come to the attention of consumers (e.g. within advertising, as suggested in draft clause 4.5 of the guidance) is also likely to be counterproductive and confusing for such consumers, particularly in the context of an ELM where an upcoming monthly subscription may relate to draws by a number of operators.

If, despite the above, the GC still intend retaining this provision, the Lotteries Council would request it should at least be clarified that such an obligation only arises in relation to draws after the new provision comes into force, rather than promoting societies needing to spend time and money providing such information, or subsets of such information, for any historic draw they may have undertaken to date. It would also be requested this be limited to providing information for draws for a maximum period of 3 years from the draw, given LCCP 11.1.1.14 only requires the promoting society to maintain records for inspection by the GC for a period of 3 years from the draw. We would also request clarification that the requirement for providing information about allocation of proceeds towards expenses would only require the percentage allocated to expenses, as opposed to breaking down in a granular detail every specific expense they went towards. In a similar way, if notwithstanding the strong reservations expressed above this provision is retained, we would request that clarification be given in the guidance that in relation to providing information about the amount directly applied to the purpose of the promoting society this would be providing the percentage and/or amount of the proceeds used in the aims and objectives of the promoting society, not detailing exactly where that money ended up being used by the promoting society.

If the clause is retained, the GC should provide further guidance about the treatment of start-up costs. The Council has long argued that new lotteries should be allowed to aggregate their returns to good causes over a three-year period to enable them to meet the statutory 20% to good causes, taking into account the sizeable start-up costs new society lotteries face. The GC has responded that they already allow the flexibility to spread start-up costs over a period, but this is undefined with the result that there is no consistency.

### **Clause 3.5**

The stated objective of the proposed guidance is to ensure consumers have sufficient information to make an informed choice on whether or not to participate in a lottery, and the Lotteries Council has no difficulty with the proposition that, if the promoting society might use proceeds to fund grants to beneficiaries meeting the aims and objectives of the promoting society, information about this should be clearly available in advance of a ticket being purchased.

What is of concern, however, is again the level of granular detail which is apparently envisaged, the potential bureaucracy and cost of providing this by the promoting society, and the questionable benefit this gives in helping consumers make an informed choice whether to buy a particular lottery ticket or not. The introduction, through the gambling regulatory framework, of a requirement to detail how promoting societies determine when and where they may decide to give funds to others, the process for deciding between competing applications, and listing anyone they have previously used lottery proceeds to provide grants or funding to goes well beyond helping consumers to make an informed choice.

The Lotteries Council does not think it necessary, in order to help consumers make an informed choice, for them to be provided with the detail of how and when such a promoting society might

make grants, and to have an exhaustive list of any such grants which have previously been made. That seems unnecessary, as well as potentially costly and time-consuming for the promoting society, especially given the other obligations proposed to be introduced about the ways in which such information should be brought to the attention of the consumer.

Furthermore, information about how charities determine the way in which their funds are to be used would seem a matter for the charity regulator, rather than the gambling regulator, as under charity law, charities are obliged to award grants only to organisations which align with their aims and objectives. The Lotteries Council would therefore strongly request Clause 3.5 be amended to something along the lines of “*Lottery licensees may use proceeds to fund grants to beneficiaries who meet the aims and objectives of their societies. Where this is the case, information should be available to consumers that licensees may use proceeds in this way.*”

#### **Clause 4.3**

For the avoidance of any doubt, this list should include the solicitation statement that canvassers are already required to make.

The Lotteries Council is concerned about the sheer quantity of information that could be required to appear on a lottery ticket or scratchcard, or indeed to be incorporated into a solicitation statement. That ticket/scratchcard/statement should be able to refer the player to a website to obtain the majority of the proposed information.

*Q9 How long a lead-in time would you need to implement the information requirements set out in the proposed guidance?*

The proposed amendments to licence condition 11 in respect of the lottery limits do not require a lead-in period and should come into force as soon as possible.

With regard to the new information for consumers requirements of code 4.3.3, the lead-in time required (if any) for societies is likely to depend upon what the final version of the wording actually says, including clarification on the various matters raised elsewhere in this response.

*Q10 Are you able to provide an estimate of the costs that might be incurred by your lottery through implementing the information requirements? Such costs might include printing costs, website development etc. Please also provide details of one-off costs and any annual or ongoing costs from the proposals.*

**Not applicable – trade association**

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The Lotteries Council  
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