

BETTING ON LOTTERIES: “CLUTTER IN THE MARKETPLACE”?

The Gambling Commission recently issued guidance for operators offering betting on lottery-style products. **Bahar Alaeddini** of Harris Hagan looks at the background to these changes, and the next steps operators need to take in order to remain compliant.

In recent years, and as lately as July this year, the Gambling Commission (“Commission”) has warned of the risk that customers may become confused when playing betting on lottery-style products because they believe they are participating in a lottery rather than in betting. Camelot, the operator of the National Lottery, recently claimed, perhaps reflecting its own commercial interests, that the “innovations” in the market by the Health Lottery, scratch card lotteries and the ability to bet on lotteries were all “causing consumer confusion and clutter in the marketplace”. So, what’s the fuss all about? Are customers misunderstanding the product they are playing or are operators creating confusion with their messaging and branding? The key to understanding what all the fuss is about is to grasp that the two product offerings require different licences and, as a result, trigger very different licensing requirements.

Lotteries

Lotteries are often viewed as a popular cultural activity with the possibility of winning a life-transforming sum of money. They are viewed by most as being very different to harder forms of gambling, which is perhaps reflected in the legal age of 16 to play, compared to 18 for betting or gaming. A lottery (also known as raffle or draw) is a form of gambling that has: (1) a payment to enter; (2) one or more prizes are awarded; and (3) those prizes are awarded by chance.

Lotteries cannot be run for private or commercial gain, except by the National Lottery. Since its launch in November 1994, the National Lottery has raised over £32bn for good causes and contributed almost £2bn towards the London 2012 Olympics, with £34m raised weekly.

The Gambling Act 2005 (the “Act”) created eight categories of permitted lotteries, including (small and large) non-commercial society lotteries, which were

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most notably put in the spotlight with the launch of the Health Lottery, operating as an “umbrella” managing 51 society lotteries that each represent a different geographic area tackling health inequalities.

A large society lottery licence is currently subject to a condition that 20% of the proceeds of the lottery must be used for the purposes of the non-commercial society that is promoting the lottery. This means that 20% of the ticket sales for all lotteries (other than the National Lottery) must go to charitable or other non-commercial causes. The remaining proceeds from ticket sales may be divided between lottery

prizes and the “costs reasonably incurred in organising the lottery”, which can include the cost of employing an external lottery manager (“ELM”). An increased percentage of proceeds going to good causes will mean lottery organisers will have to either reduce the level of prizes or make an allowance in their operating costs. Inevitably, a reduction in operating costs means a reduction in profits for ELMs.

Betting on lotteries

Offering betting on the outcome of lotteries, except the National Lottery, is legal and is not subject to any monetary limits, which means it can be for purely commercial

purposes, in stark contrast to lotteries. It has been possible to place bets in betting shops on the outcome of foreign lotteries for many years. However, concerns have risen recently due to the increasing availability and popularity of betting on lotteries online, such as mylotto24.co.uk run by Tipp24 and the Health Lottery Bet (a partnership between the Health Lottery and Coral).

Most operators offer betting on foreign lotteries, but they are also able to offer betting on the EuroMillions on the proviso that it is promoted in another country. This is because section 95 of the Act,

which prohibits betting on the National Lottery, only extends to the EuroMillions as promoted by the National Lottery.

Commentators, including most vociferously Camelot, argue that the demarcation between betting and lotteries is blurred and there is greater potential for confusing customers, especially where the products look similar by offering low stakes and large jackpots, and offer similar branding as lotteries.

DCMS Report

In 2014 the activities of the Health Lottery prompted the Department for Culture, Media and Sport (“DCMS”) review and subsequent report, titled “Society Lotteries”, published on 25 March 2015 (the “Report”). One of the issues considered by DCMS was the overlap between lotteries and betting, including research in relation to a EuroMillions betting product which highlighted that only 14% understood that it was a betting product, whilst 61% thought it was a way of participating in the EuroMillions lottery. Ironically, during a recent recce to four high street bookies, I was told by staff and fellow customers that it was not possible to bet on the EuroMillions and that I should go to the supermarket to buy a ticket instead!

In its evidence to DCMS, Camelot suggested three options to clean the muddy blue waters between betting and lotteries:

1. prohibiting betting on lotteries either in betting shops or online (including the loophole allowing bets on the EuroMillions, as promoted in another country);
2. improving clarity on marketing by using the word “bet” in their title and preferably not using “lotto” or “lottery” or similar wording; and
3. re-defining bets on lotteries as “pure” lotteries.

Whilst DCMS’ focus was on society lotteries, it recommended that the Commission research and advise the

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Government on all three measures suggested by Camelot, to determine which would be most effective in reducing consumer confusion.

Commission position

At the time of the Report, the Commission was reviewing advertising to ensure customers understood whether they were betting or buying a lottery ticket. It recently published guidance to operators on being clear to customers that they are participating in a “harder” form of gambling, not a lottery. In its recent guidance, applicable to both the online and land-based industry, the Commission summarised:

- the importance of operators being clear about the products they offer;
- the risks of misleading advertising and being in breach of the licensing objective to ensure that gambling is being conducted in a fair and open way;
- avoiding a similar look and feel to a lottery, by not using branding/imagery and language such as “lottery”, “lotto”, “draw”, “good causes” or “charity”, which may leave the customer under the mistaken impression that they are participating in a lottery;
- its desire to encourage discussion and action within the industry before assessing the need to take further action;
- anecdotal evidence suggesting different customer motivations for participation in lotteries vs. betting, with some lottery customers not wishing to participate in other forms of gambling;
- the need for operators to satisfy themselves that all material is

“sufficiently clear”, to the average customer regarding the type of product being offered.

Betting operators must review the new guidance, engage in the process and take steps to address the concerns by ensuring they are clear to customers about what form of gambling they are participating in.

The Commission has confirmed that, if necessary, it will consider the need for regulatory intervention, including the introduction of licence conditions 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.

Whilst Camelot, unsurprisingly, believes there is “clutter” in the marketplace, it is apparent now more than ever that it is not clutter, but rather vast customer choice in a competitive and innovative betting industry. What is important is that this is not lost as a result of operators creating confusion in the marketplace with their messaging and branding about the products being offered.

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