



KEYSTONE LAW

### Lotteries – what are they and how are they regulated?

Richard Williams – Partner, Keystone Law

Promoting Excellence in Licensing  
@instoLicensing  
#NTC2022

---

---

---


---

---

---

---

---



### What is “gambling”?

- s. 3 Gambling Act 2005 (GB) “gambling” is:
  - “Gaming”
    - “playing a game of chance for a prize”
  - “Betting”
    - “making or accepting a bet on outcome of a race, competition, event, likelihood of something occurring, something being true”
    - “Participating in a Lottery. [Excludes the National Lottery]”
- If not “gambling” = unregulated and no licence required
- If not in one category, could still be in another

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---


---

---

---

---

---



### What is a “lottery”?

- S.14 Gambling Act 2005 “Simple Lottery”
  - the 3 essential ingredients:
  - 1. Persons are required to pay.
  - 2. Prizes are allocated
  - 3. Allocation process relies wholly on chance.
- “Complex Lottery”
  1. Same as a Simple Lottery (payment and prizes); but
  2. Prizes are allocated by a series of processes.
  3. The first allocation process relies wholly on chance.

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

1. What is a requirement to pay?

- Schedule 2 Gambling Act 2005:
  - Paying to enter includes:
    - Paying money
    - Transferring money's worth
    - Paying for goods and services at a price which reflect opportunity to participate
  - Product promotions/draws – ok if product price isn't inflated to reflect entry

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

Example of a product promotion



Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

What is a free entry route?

- Option of “free” entry – “free draws”
- Person must have a choice whether to pay or enter for free by sending a communication
  - Ordinary post letter, text, e-mail
- Free entry must be publicised so “likely to come to the attention” of each individual
- System for allocating prizes must not differentiate between paid and free entrants

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

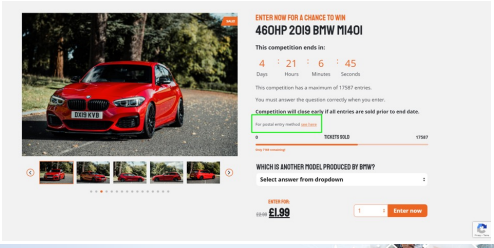
---

---

---

---

### Example of a “free draw”



Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

### 2. What is a prize?

- Any money, articles or services
- For “gaming” a prize must have a real life value (money or money’s worth) BUT not for lotteries
- “Loot boxes” – are they lotteries? (GC says not)

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

### 3. What is chance?

- Prize allocation process relies “wholly on chance” i.e. winner selected at random
- Genuine skill competitions are not lotteries; but
- Skill/judgment/knowledge questions still rely on chance if:
  - The skill involved doesn’t prevent a significant proportion of participants from receiving a prize; and
  - The skill doesn’t prevent a significant proportion of those who wish to participate from doing so
- Multiple guess, simple or easily Googleable questions will not pass the legal test

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

TV competitions – not skill:

What is the name of the pub in Emmerdale?  
 A: The Queen Vic  
 B: The Woolpack  
 C: The Rovers Return  
 Call 0904 161 50 50  
 Text your answer A, B or C to 88011  
 Visit itv.com, stv.tv, u.tv

Calls from BT Landline cost no more than £1.50, other networks may be higher and mobiles will be considerably more. Texts cost £1.50 + 1.00p network rate message. To receive marketing texts send SMS with NO INFO. Data & age restrictions apply. Contents must be 18+. Terms and free will apply open for at least 3 working days at 10am on tv and u.tv. Entries made after lines close on Sunday 10th February 2013 at 10am will not be counted but may still be charged. Do not enter if you are watching on demand.

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

What competitions are not lotteries?

- “Free draws” (even if most people pay to enter)
  - *R v Interactive Telephone Services (The Telemillions case) (1995)*
    - Magistrates Court convicted as v. free few entrants therefore not prominent enough
    - Old gambling legislation – no longer good law?
- Genuine skill/knowledge competitions
  - Is STB skill or chance?
  - *IFX Investment Company Ltd & Ors v Revenue And Customs [2016] EWCA Civ 436 (04 May 2016)* – VAT case appealed by HMRC to Supreme Court.
  - No VAT (20% on sales) on games of chance - £97m VAT recovered (RGD?)

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

Spot the ball skill or chance?

SPOT THE BALL  
 Which circle is the real ball hidden behind?  
 A, B, C, or D?

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---



### How are lotteries regulated?

- Lotteries can't be operated for commercial gain (non-commercial society "good cause", local authority or ELM)
- S.258/259 criminal offence to promote or facilitate a lottery unless exempt or lottery operating licence held
- Some lotteries are exempt – no licence/registration required:
  - Customer lotteries (customers at business premises)
  - Incidental lotteries (at event e.g. charity dinner)
  - Private lotteries:
    - Society (society members on society premises)
    - Work lotteries (people who work on same premises)
    - Resident's lotteries (people who live at same premises)

Promoting Excellence in Licensing for 25 years #NTC2022



---

---

---


---

---

---

---

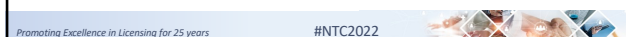
---



### Small society lotteries

- Small society lotteries (exempt if registered):
  - Must only benefit a non-commercial cause (e.g. charity, sport, culture)
  - Register with local authority where principal office located
  - 16+
- Financial limits (if exceeded, must apply for GC licence):
  - Maximum ticket sales per lottery £20,000
  - Maximum ticket sales annually £250,000
  - Maximum prize £25,000 (rollovers permitted)
  - Minimum 20% of ticket sales to good cause (80% prizes and expenses)
  - Lottery return to LA within 3 months of draw

Promoting Excellence in Licensing for 25 years #NTC2022



---

---

---


---

---

---

---

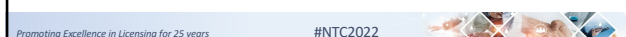
---



### Large society lotteries

- Large society lottery:
  - Must only benefit a non-commercial cause (e.g. charity, sport, culture)
  - Operating licence required from Gambling Commission (remote/non remote/ELM)
  - LCCP – conditions apply. 16+
  - Financial limits (revised upwards from 29 July 2020):
    - Individual draw ticket sales £5m
    - Aggregate annual ticket sales £50m
    - Maximum prize per ticket £500,000
    - Not linked to another lottery, draw, prize competition
    - Minimum 20% of lottery proceeds to good cause

Promoting Excellence in Licensing for 25 years #NTC2022



---

---

---

---

---

---

---

---

**External lottery manager**

- External Lottery Managers (ELM):
  - Makes arrangements for a lottery on behalf of a society (remote/non remote)
  - Promoting society must also be licensed (small/large lottery)
  - ELM requires operating licence from Gambling Commission
  - LCCP – conditions apply. 16+
  - Examples: Health Lottery/People’s Postcode Lottery

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---

---

**Advertising lotteries**

- Generally lotteries have a low risk of underage/irresponsible gambling.
- ASA CAP/BCAP Codes regulate lottery advertising:
  - No strong appeal to under 18s
  - No persons or characters followed by under 18s (with exceptions)
  - No under 25s gambling
  - No under 25s in a significant role (with exceptions)
  - Must not exploit cultural beliefs or traditions about gambling or luck

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---


---

---

---

---

**Fun question – is this a lottery?**



**In it to Win it!**

We will have a draw at the end of the Friday Expert Panel and one lucky delegate will win a bottle of Champagne. The catch? You have to be in the room when we have the draw!

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---


---

---


---

---

---

KEYSTONE LAW 

For further information



**Richard Williams**  
Partner, Keystone Law  
m 07834 227 351  
t 020 3319 3700  
e richard.williams@keystone.law.co.uk  
w www.keystonelaw.co.uk

Promoting Excellence in Licensing for 25 years #NTC2022

---

---

---

---

---

---

---