

Digital Markets, Competition and Consumers Bill – Call for Evidence

Written evidence submission from People’s Postcode Lottery

Introduction

People’s Postcode Lottery welcomes the opportunity to submit this written evidence to the Public Bill Committee considering the above legislation. The following submission details the need for subscription-based charity lotteries¹ to be explicitly provided for as an excluded contract as per section 247, Schedule 19 of the Bill.

About People’s Postcode Lottery

People’s Postcode Lottery is a not-for-commercial-gain External Lottery Manager (ELM) licensed by the Gambling Commission

We manage lotteries with the sole purpose of raising funds for good causes. Charities are at the heart of everything we do, and our players now raise over £18 million for good causes every month.

As of 2022, we act as ELM for 20 Postcode Trusts (each a registered independent charity) that distribute funds raised from their lotteries to other charities and good causes.

Since People’s Postcode Lottery launched in 2005, players have raised over 1 billion for over 11,000 good causes, including many local community organisations across Britain.

People’s Postcode Lottery is subscription-based, with 20 draws conducted each month. Winning postcodes resulting from these draws are announced on a daily basis in accordance with the Prize Draw Calendar shown on our website.

For each ticket sold 33% of the value goes to good causes, well above the statutory 20%. 40% of ticket sales goes on to prizes and the remain 27% to operating costs.

The type of funding provided by the Postcode Trusts is very important to charities, with the majority focused on long term, unrestricted funding. This means that charities can use funding for core costs or indeed for further fundraising – using these funds to leverage more income. This flexibility can complement project-based funding such as that from the National Lottery Community Fund². The value of this model is explained in the report “Fundraising for Impact” published by nfpSynergy³.

The charity lotteries we manage have together supported charities and good causes in a wide range of sectors. These include over 90 larger charities working in the areas of:

- support for older people, young people, homeless people and people living with health problems;
- environmental protection;
- animal welfare and wildlife conservation;
- sport, culture and the arts; and

¹ Formally known as Society Lotteries: <https://www.gamblingcommission.gov.uk/print/lotteries-and-the-gambling-act-2005>

² NFP Synergy, Small Change: How charity lottery limits impact small charities, April 2019

³ *People’s Postcode Lottery Funding For Impact*, nfpSynergy, April 2018.
<https://www.postcodelottery.info/media/1339/funding-for-impact-report.pdf>

- international development and human rights.

Required exclusion for subscription-based charity lotteries

As above, People's Postcode Lottery strongly urges that charity lotteries be explicitly provided for as an excluded contract as per section 247, Schedule 19 of the Bill.

In its present form, we believe the legislation would have a detrimental impact on the fundraising of People's Postcode Lottery, owing to the burdensome administrative costs of proposed changes to the rules around subscription products. Specifically, sections 248 – 253 of the Bill introduce a significant number of new requirements for non-excluded subscription products related to pre-contract information, reminder notices, renewal payments and operator duties on termination of a subscription.

This issue was raised during Stage 2 of the Bill's passage through the House of Commons, by Craig Whittaker MP and Richard Thompson MP respectively, both of whom called upon Ministers to feature an exclusion for charity lotteries under Article 19 of the Bill, to which the Minister for Tech and the Digital Economy explained:

"...because a consumer donates regularly to a charity but does not have receipt of a good, a product or digital content in return, that will not meet the definition of a subscription contract. Therefore, those charitable donations do not need to be included in the exclusions set out in schedule 19, as they are not in scope in the first place."

While it is clear from the Minister's response that the Government does not intend for charity lotteries to be within the scope of the legislation, as presently drafted, s246(1) defines subscription contract as:

"...a contract between a trader and a consumer— (a) for the supply of goods, services or digital content by the trader to a consumer in exchange for payment by the consumer..." The definition of "goods" in section 272 presently includes "rights and obligations."

We therefore believe that - while unintentional - it is the case that without an explicit exemption under Article 19, People's Postcode Lottery (and any other subscription-based charity lotteries) *would* fall within the scope of the Bill as presently drafted, owing to the fact that players *do* receive a good/service in return for their subscription.

In return for their subscription payment, the "good" or "service" received by players is a ticket to enter the lottery. In the case of People's Postcode Lottery this takes the form of a code unique to them. This ticket is then entered into the lottery in accordance with the contract between People's Postcode Lottery and the player. If the ticket is selected as a winner, People's Postcode Lottery are under a contractual obligation to provide the service of handing over their win.

Payment for the subscription can therefore be seen to differ from a donation, in that in return for payment the player gets something – entry to the lottery, with the consequential contractual obligations on People's Postcode Lottery to enter them into the lottery and provide them with the winnings if their ticket is selected to win.

Furthermore, whilst there is no provided definition of a charitable donation, we would advise that HMRC guidance is clear that for the purpose of Gift Aid, the purchasing of a lottery ticket would not constitute a charitable donation. HMRC Charities Guidance Clause 3.4.6 very clearly states *“the payment to purchase a raffle ticket from a charity is not a gift but a payment for the right to enter the raffle — it does not matter that the chance or expectation of winning a prize is small or that the prize is of little value”*⁴.

Concurrent regulation

While People’s Postcode Lottery recognises that much of the focus of the Bill centres around enhanced consumer rights where these are required, it is the case that subscription-based charity lotteries such as ours are already subject to stringent Gambling Commission regulations around consumer protection in a manner many sectors are not.

For example, charity lotteries are already prevented from offering lock-in subscriptions for a defined period of time because they already must ensure that customers are able to self-exclude at any time.⁵ In light of this, our customers are already able to cancel their subscriptions at any time. The provisions currently within the Bill regarding the need to give consumers notification of their “cooling off” period seem likely to be confusing for our consumers, in relation to our product which already has no lock in period and therefore no need for a cooling off period. In addition, charity lottery operators are also already not allowed to offer incentives to customers based on them playing for a pre-determined length of time.⁶

Moreover, we note that a range of sectors already set to be exempted under Schedule 19 are already subject to external regulation, such as energy companies, insurance companies and those providing financial services. The rationale for excluding such sectors is presumably related to the fact they are already heavily regulated, as is the case for charity lotteries.

Without the necessary exemption, the scale of our return to good causes is likely to be negatively impacted owing to the increased legal, regulatory and marketing costs needed to ensure compliance with the requirements of the Bill in its present form. Other charity lottery operators offering lotteries on a subscription basis would face the same challenges.

ENDS

⁴ <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-3-gift-aid>

⁵ [LCCP Condition 3.5.3 - Remote SR code \(gamblingcommission.gov.uk\)](https://www.gamblingcommission.gov.uk/lccp-condition-3.5.3-remote-sr-code)

⁶ [LCCP Condition 5.1.1 – SR code \(gamblingcommission.gov.uk\)](https://www.gamblingcommission.gov.uk/lccp-condition-5.1.1-sr-code)