

Written evidence submitted by the All Party Parliamentary Group for Gambling Related Harm

What Next for the National Lottery?

Call for Evidence

Digital, Culture, Media and Sport Select Committee

This is not an official publication of the House of Commons or the House of Lords. It has not been approved by either the House or its committees. All Party Parliamentary Groups are informal groups of Members of both Houses with a common interest in particular issues. The views expressed in this report are those of the Group. The research for the report was undertaken by the members of the Group. The report was drafted by Interel, the Group Secretariat - the Secretariat is funded by Derek Webb.

Context

1. The All-Party Parliamentary Group for Gambling Related Harm (GRH APPG) welcomes the opportunity to comment on the future of the National Lottery and the efficacy of the Fourth Lottery License Competition.
2. The GRH APPG is made up of over 60 parliamentarians from across all political parties and both houses. Collectively, we are calling for wholesale change to the system of gambling regulation in this country, particularly to online gambling and where it concerns children and the vulnerable.
3. In recent months, we have taken evidence on the operation of the National Lottery (TNL) from Camelot, the current license-holder, as part of a wider programme of work looking at the interaction between children and gambling.¹
4. We were delighted that, following our session on the 4th November last year, on the 8th December the Department announced that the conditions of the license would be changed to raise the minimum age of play to 18 from 16.²

¹ Gambling Related Harm APPG Evidence Session – Children and Gambling: The National Lottery – 4th November 2020 - <http://grh-appg.com/wp-content/uploads/2020/12/GRH-APPG-Minutes-04.11.20-Children-and-Gambling-The-National-Lottery.pdf>

² Department for Digital, Culture, Media and Sport - Government response to the consultation on the minimum age to play National Lottery games - <https://www.gov.uk/government/consultations/consultation-on-the-minimum-age-for-playing-national-lottery-games/outcome/government-response-to-the-consultation-on-the-minimum-age-to-play-national-lottery-games>

5. Since then, the Group has continued with its inquiry, including going forward with plans to hold a session on the Fourth National Lottery License Competition (4NLC). We invited the Gambling Commission and the then bidders to join us to give evidence on both the process and how they planned to place the reduction of gambling harm at the heart of their operations.
6. We were disappointed that the terms of the competition prevented any of those involved from speaking with us while it remains live. Whilst we recognise that there is a clear need to ensure that the tender process is fair and effective, the competition is also taking place in parallel with the Government's Review of the Gambling Act 2005. It is likely that the framework in which the wider TNL operates will be fundamentally altered by the provisions of the subsequent White Paper, and so it is vital that these processes are neither siloed nor unreasonably shielded from criticism.
7. We look forward to hearing from the Commission and other relevant parties at the appropriate moment. Our response to this Call for Evidence reflects some of the preparation we have carried out ahead of our own session, as well as our concerns between the intersection of the tender process and harm reduction and mitigation processes.

Question 1: How effectively has the fourth National Lottery licence competition fulfilled the Gambling Commission's objectives?

8. The Commission's principle objectives are:
 - preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
 - ensuring that gambling is conducted in a fair and open way
 - protecting children and other vulnerable persons from being harmed or exploited by gambling

Our concerns primarily centre around the third, most important objective: protecting children and the vulnerable from harm.

9. Historically, the National Lottery has been one of the few forms of gambling that can be legally accessed by children – with a minimum age limit of 16. Whilst the rest of the gambling sector has been restricted to adults, for nearly 20 years children have been able to legally gamble through the TNL.
10. The historic justification for this is the original infrequent, non-live draw-based nature of TNL. But as technology and the commercial environment have progressed, Camelot (as the license holder) has expanded into other forms of gambling – including Instant-Win games, as well as establishing an online platform.
11. All of this has taken place under the terms of the lottery license and has exposed young people directly to gambling and the risks that entails. As such, the 4NLC

process should aim to ensure that bidders proposals for harm reduction are appropriate and accurately reflect the social status of TNL.

12. In a letter dated 18th June 2021, our chair, Carolyn Harris MP, wrote to the Gambling Commission's newly appointed Interim Chief Executive, Andrew Rhodes, with our concerns about both the 4NLC and the current operation on harm prevention mechanisms in the current license period.³
13. Unfortunately, the Commission declined to comment on our specific requests for information on the 4NLC, citing confidentiality concerns, but made a commitment to ensure that the process would be in line with its objective to protect the vulnerable:

*"The protection of consumers remains one of our statutory duties as a regulator and is fundamental to the fourth licence. We are clear that the licensee will be held fully accountable for protecting players from day one of the new licence. It is through the competition process that we evaluate the applicants' credentials and plans in this area. The successful applicant will have demonstrated high standards of player protection, including on prevention of underage or excessive play, and we will hold them fully accountable for delivering on their commitments during the licence period. We will retain strong enforcement powers and, if necessary, we will not hesitate to use them."*⁴

14. We remain concerned about a number of elements of both the existing license conditions, and how they will be adjusted during the 4NLC process. Though the Commission has confirmed that their intention is to future proof the 4th License, we have significant reservations about the ability of the Commission and the License Holder to keep pace with the emergent scale of gambling harms. For reference, the Commission said:

*"Future proofing is equally important. We commenced this process alive to the fact that the context for the National Lottery has changed since its inception in 1994. In fact, a great deal has changed since 2009, when the third licence was awarded. We recognise that the world is likely to once again be very different by the time the fourth licence concludes, in 2033, which is why the next licence will enable, and incentivise, the licensee to adapt, in a safe and responsible way, according to technological advancements, new opportunities, and changes in consumer preferences."*⁵

³ Carolyn Harris MP to Andrew Rhodes – 18th June 2021 – <http://grh-appg.com/wp-content/uploads/2021/09/CH-to-GC-on-Lottery-Competition-June-18.pdf>

⁴ Andrew Rhodes to Carolyn Harris MP – 6th July 2021 - <http://grh-appg.com/wp-content/uploads/2021/09/Re-National-Lottery-APPG-GRH-060721.pdf>

⁵ Ibid.

15. One of the most important factors to consider in agreeing the terms of the 4NLC is the use of data to drive harm reduction interventions – a matter we have questioned the Commission on in both the current License and for the 4th License. We are glad to hear that the Commission, utilising powers under 10.1-10.13 of the License, has a healthy relationship with the current license holder in the provision of information sharing to support harm reduction efforts:

“We receive significant data from the licensee on a weekly, monthly, quarterly, six monthly and annual basis, either as agreed through a very detailed set of Management Information and Reporting Requirements (MIRR) or through information required for performance review meetings. This includes substantial data in relation to player protection matters, including around participation, playing habits and risk. As a result, and because we consider the proportionality of our requests, I could not cite an example where we have had difficulty in obtaining any information we deem necessary from a regulatory perspective.”⁶

16. The Commission has also cited the below as an example of data-led policy intervention within the framework of the current license:

“A combination of this regular monitoring, our close engagement with the licensee and our powers under the licence enable us to apply focus to specific areas as risks emerge. While no two interventions are the same, another good example of how we use the data we gather about the National Lottery, both from the licensee and elsewhere, is the withdrawal of £10 scratchcards in 2019 and subsequently £10 Interactive Instant Win Games (IIWGs) in 2020. In both cases, the Commission proactively undertook research with players and used extensive analysis from the licensee in order to understand the risk present. This information suggested a possible link between problem gamblers and these products and after further research and analysis was conducted, the licensee promptly, and voluntarily, removed them from the market.”⁷

17. However, we still do not understand if the Gambling Commission has set any data-driven performance targets for the current licensee, using its powers under section 10.13, or whether this will be a prominent factor in the terms of the next license. Data is a powerful tool to detect and prevent harmful behaviours like “loss-chasing”, and we would expect it would be appropriate to create a framework to require the operator to track and identify these behaviours as part of its wider plan to reduce harm.

⁶ Ibid.

⁷ Ibid.

18. We are aware that Camelot, the current operator, use a behavioural analytics model called Mercury V2 to identify ‘problem play’ in online users (as referenced in its 2020 annual report).

19. We asked the Commission to provide further detail on the data gathered via Mercury and the impact it had had on reducing harm. The Commission found it inappropriate to comment on the specifics of Mercury, but did confirm both its use and that *“the types of information outlined within your letter are made available to the Commission.”*⁸ Further, they also made it clear that they:

*“continually assesses the current licensee’s performance in relation to gambling harm prevention under the current licence and again, where we have concerns, we step in. As part of this work we have an annual review of performance that helps inform where we will then seek improvements from the licensee in the year ahead.”*⁹

20. Having also questioned the Commission further on the general use of 10.12 of the License to acquire further information to inform harm monitoring, we received general assurances of the use of information sharing:

*“The MIRR requirements are adapted as necessary over time and additional information is provided through regular reviews across each of our statutory duties, as well as through specific reviews of emerging issues. These processes have not been negatively impacted by the pandemic, allowing us to maintain oversight of the current licensee throughout. It is also worth noting at this stage that the way in which we set targets has evolved. We can, and have, set targets through means other than the licence itself, for example, via conditions of game approvals.”*¹⁰

21. However, we still do not understand what action is being taken on the deficiencies we have identified through the 4NLC process. These are:

- Section 10.12 does not ask for reporting of online sales broken down by product and player postcode, which would not allow the Gambling Commission to conduct analyses of the patterns of spending and affordability (relative to household income) for particular products
- Section 10.12 does not ask for reporting of online patterns of play by individual player and product, which does not allow the Gambling Commission to spot potentially problematic play such as ‘chasing losses’.

22. We are pleased with the outcome of the consultation on the minimum age to play for National Lottery games, which raised the minimum age of play for TNL

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

products to 18.¹¹ This means that the minimum age of play is not an issue to be decided in the 4NLC.

23. Regardless, the issue of young people illegally accessing TNL products does remain an ongoing concern. We have received assurances on this front from the Commission – but as with our previous points on the lack of information around the specific use of systems, it is hard to clearly assess how effective these systems are:

“In terms of how we use this data to monitor and minimise the risk of harm being experienced by National Lottery players, our focus is to ensure the licensee is preventing underage play, preventing excessive play and is continuing to raise standards of player protection.”¹²

24. We also have concerns around the use of marketing campaigns under the terms of the current license, and how this has related to the marketing of harmful products to under 18s. Whilst we are satisfied that under the current license, such joint-marketing campaigns (between the Commission and the operator) are permitted under Condition 23, there is a continuing question as to the harm caused by gambling advertising. Regardless of the good cause return, TNL is gambling, and it is the Group’s position that all gambling advertising should be banned – returning to a pre-2005 Act position.¹³

25. Additionally, it has not been made clear to us that such co-funding investments do not directly undermine good cause returns. The Commission have assured us that a rigorous commercial assessment is carried out, with a clear focus on the intention to increase returns to good causes, but it is not clear to us if miscalculations on advertising spend has in the past resulted in a direct reduction in the money available for charities.

“For each investment, we undertake a robust analytical assessment, as well as negotiation with the current licensee to ensure the best possible deal for good causes. This includes a detailed assessment of the current licensee’s evidence base, both internally and by external specialists, along with a detailed assessment of the historic performance of similar investments. We therefore have a high level of assurance that each investment has and / or will deliver benefits to good causes, supported by our evidence, which

¹¹ Department for Digital, Culture, Media and Sport - Government response to the consultation on the minimum age to play National Lottery games - <https://www.gov.uk/government/consultations/consultation-on-the-minimum-age-for-playing-national-lottery-games/outcome/government-response-to-the-consultation-on-the-minimum-age-to-play-national-lottery-games>

¹² Andrew Rhodes to Carolyn Harris MP – 6th July 2021 - <http://grh-appg.com/wp-content/uploads/2021/09/Re-National-Lottery-APPG-GRH-060721.pdf>

¹³ Gambling Related Harm APPG – Review of the Gambling Act 2005: Call for Evidence - <http://www.grh-appg.com/wp-content/uploads/2021/04/Gambling-Related-Harm-APPG-Review-of-the-Gambling-Act-2005-Call-for-Evidence-Submission.pdf>

suggests previously approved joint investments have delivered hundreds of millions of pounds for good causes.”¹⁴

26. In relation to our specific concerns around higher-risk instant win products – which carry higher risks and incidents of gambling-related harm - we are encouraged that the Commission has chosen not to directly promote these. For reference:

“[The Gambling Commission] have never approved a joint investment in marketing for either scratchcards or interactive instant win games.”¹⁵

Question 2: What will the way in which returns for good causes are calculated under the fourth licence mean for the distributing bodies and the projects they support?

27. We do not wish to comment.

Question 3: What needs to happen to ensure a smooth transition between the third and fourth licence period?

28. Whilst we recognise that there are commercial considerations around the 4NLC process itself, once that is concluded and a preferred operator selected, it is absolutely essential that either Camelot or its successor is made available to be scrutinised as to the specific provisions of the license insofar as they relate to upholding the harm-based licensing objectives.
29. Full integration between the Commission’s data sharing and harm monitoring activities and the new operator is absolutely essential and should be a priority following selection.
30. As the largest lottery operator and one of the largest single-operator contributors to GGY, the TNL license holder has just as much responsibility as other major gambling operators to act responsibly and ensure it does not exploit its customer base. We look forward to questioning them on their plans for the 4LC at the appropriate juncture.

Question 4: What will the outcome of the fourth National Lottery licence competition mean for the UK’s wider lottery market?

31. We do not wish to comment.

¹⁴ Andrew Rhodes to Carolyn Harris MP – 6th July 2021 - <http://grh-appg.com/wp-content/uploads/2021/09/Re-National-Lottery-APPG-GRH-060721.pdf>

¹⁵ Ibid.