

**Statement on introducing Special  
conditions for Society Lottery  
phone-paid services**

**31/07/2018**

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## Executive summary

### About the Phone-paid Services Authority (PSA)

The Phone-paid Services Authority's (PSA) primary function as a regulator is consumer protection. Our vision is a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

Our mission is two-fold:

- to protect consumers from harm in the market, including where necessary through robust enforcement of our Code
- to further their interests through encouraging competition and growth in the market.

The PSA wants to support innovation, including in the introduction of new services that consumers would value. We aim to create the right regulatory environment to do this. Recurring phone-paid, text-based donations to charity, for example, have been a success, moving from launch in 2011 to generating millions of pounds for good causes last year.

### 1. Society Lottery Services

- 1.1 In the UK lotteries or raffles can, by law, only be operated for the benefit of good causes. Society lotteries are promoted to consumers for the benefit of non-commercial societies and carry a form of cash benefit, or other prize, to winners.
- 1.2 While it had been possible to use phone-payment to enter a society lottery, such transactions were until 2017 were subject to VAT, as they did not benefit from the same exemption as HM Revenue and Customs had granted to phone-paid charitable donations. This was because society lotteries carried the "benefit in kind" of a potential prize, whereas donations carried no further benefit to the consumer other than their goodwill. As a further consequence, society lotteries could not operate using shortcodes starting 70xxx, which had been designated by mobile networks as the range for VAT-exempt phone-paid donations to charity.
- 1.3 In 2017, due to efforts within industry led by trade associations, HM Revenue and Customs agreed to extend the existing exemption so that it would also cover society lotteries. To make them distinct from simple donations, mobile networks have determined that VAT-exempt society lotteries would operate on 72xxx shortcodes. This led to society lotteries' interest in using VAT-exempt shortcodes, and phone-payment industry partners, to approach the PSA to seek clarification of the regulations that should apply to society lottery services when charged to a phone bill.
- 1.4 We agreed that Society lotteries would benefit from phone payment, opening the sector up to new consumers and incentivizing people to give with prizes and games.
- 1.5 Following close engagement with industry members and other regulators we consulted on a set of Special conditions for phone-paid society lotteries. These were designed to

streamline regulatory requirements, by condensing and placing a number of existing PSA requirements – including at least two different sets of Special conditions - that the services would otherwise be subject to into one place. The intention behind the proposals was to facilitate the growth of phone-payment for society lotteries by creating an environment where consumers were confident and would be comfortable with ongoing purchases.

- 1.6 Having received 10 responses to the consultation, we have made some changes to the original proposals in light of comments or requests for clarification by respondents. Responses to our proposals overall were broadly supportive although there were a range of views expressed on different questions.
- 1.7 To clarify, Special conditions are imposed by the PSA under paragraph 3.11.1 of the Code of Practice. This allows the PSA to impose “Special conditions” where we are satisfied that an identified service category is causing or is likely to cause either a significant level of consumer harm or unreasonable offence.
- 1.8 The term “high risk service” is therefore used in the specific context that some feature of the service represents a higher risk of consumer harm or unreasonable offence than other premium rate service types and so additional conditions are needed to mitigate the risk of those harms and to ensure that consumers can use the services with confidence. We note a number of those risks in more detail further on in this statement.
- 1.9 The final Notice of Special conditions for Society lotteries, which contains some updated conditions to that in the consultation document following consideration of responses, is attached at Annex A. The rest of this document sets out the background to the consultation, and a summary of responses and our final consideration, in more detail.

## Consulting on new Special conditions for society lottery services

### 2. Our consideration and proposals

- 2.1 The PSA considers all emerging service types, or service types where consumer harm begins to occur, using a risk assessment framework which is used to assess any risks which that service type might present. We considered this new service type because it would have fitted into existing Special conditions regimes even if we had not developed any new proposals.
- 2.2 Some respondents questioned the need for Special conditions for society lottery services, objecting in particular to the categorisation of these services as “high risk”. The starting point is that such services are already subject to Special conditions as they fall within other existing regimes. As a reminder Special conditions are imposed by the PSA under paragraph 3.11.1 of the Code of Practice which states:

“Where the PSA is satisfied there is or is likely to be a risk of:

- (a) a significant level of consumer harm: or
- (b) unreasonable offence to the general public, arising from a particular category of Premium Rate Service (“a high-risk service”),

it may impose conditions (“Special conditions”) for the purpose of ensuring compliance with the Code’s outcomes.”

- 2.3 The term “high risk service” is therefore used in this specific context, where features of the service represent a higher risk of consumer harm or unreasonable offence than other premium rate service types. As a result, additional conditions are needed to mitigate those risks and to ensure that consumers can use the services with confidence.
- 2.4 When considering whether Special conditions are needed for a particular service type, we make an assessment of the service type against our risk assessment framework. We then consider what conditions would be needed to mitigate against the risk of the harm, and whether such mitigations already exist in the sector. For example, we consider that the fact that there is no limit on the amount that may be charged for a single society lottery ticket, other than spend limits which exist in UK law, represents a higher risk of financial harm to a consumer than some other premium rate service types. The mitigation is a requirement for specific information to be clearly presented to the consumer before purchase.
- 2.5 We also note the recently published consultation by the Department for Digital, Culture, Media and Sport (DCMS) concerning the overall operation of Society Lotteries<sup>1</sup>. Amongst the key proposals are the intention to raise the limits that individual society lotteries – both “Large” and “Small” by classification – can earn in a calendar year, and the maximum prize they can offer per individual draw. Large society lotteries would have their annual earnings limit increased from £10 million per year to £100 million, and the limit they can earn per individual draw increased to £5 million. Lastly, the maximum prize value in any draw would be raised from £400,000 to £500,000 under the DCMS proposals.
- 2.6 Small society lotteries would have their annual sales limit potentially increased from £250,000 to a maximum of £500,000, and the individual per draw sales limit potentially increased from £20,000 to £40,000.
- 2.7 These proposals would raise the amount which society lotteries could earn, and the maximum prize they could offer per individual draw. If the earnings limits for small society lotteries are increased this would bring more lotteries into a lighter touch regulatory regime where they would not require a Gambling Commission licence therefore raising the risk profile given the significant increase in earnings. While we recognise large society lotteries are licenced by the Gambling Commission, we note that small society lotteries, which are not, could carry an increased risk.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720930/society\\_lotteries\\_consultation\\_june\\_2018\\_pdf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720930/society_lotteries_consultation_june_2018_pdf.pdf)

- 2.8 We remain strongly of the view that the Special conditions regime proposed, particularly being more tailored to society lottery services than the existing regimes, is appropriate given our analysis of the potential risks of consumer harm associated with the service type. We consider that a tailored regime can support the growth of this new phone-paid service type to the benefit of consumers, societies and the phone-paid services industry.
- 2.9 As noted above, some respondents objected to the classification of society lottery services as “high risk services”. However, the objections were based on respondents’ arguments that society lotteries carry considerably less risk than some other forms of gambling services, particularly regarding individuals with addiction issues. This misunderstands the PSA’s specific use of the term “high risk service” in the context (in this case) of the potential for consumer harm.
- 2.10 In the context of phone-paid services, we consider Society lotteries to carry a greater risk of consumer harm than other phone-paid services which are not subject to Special conditions. Two examples are areas we outlined within the Risk Assessment Framework in our consultation. The first being that the price of tickets in Society lotteries is potentially significantly higher than most other phone-paid services and is not mitigated by any cap within the Gambling Act. In addition, there is no cap within the Gambling Act on the number of tickets that can be sold to a consumer, which increases the risk of significant financial detriment through cumulative monthly spend.
- 2.11 The second example is around underage access. The Gambling Act prevents under 16s from taking part in society lotteries, but where society lotteries could be purchased using a phone there is no way to guarantee if the owner of the handset is at least 16 years of age. Given the Gambling Act does not set requirements with regard to this specific scenario, the clearest way to ensure this risk is mitigated is through the imposition of Special conditions.
- 2.12 Several of the new Special conditions replicate relevant Gambling Commission requirements. While we recognise that many of those that may provide society lottery services would already be subject to the same requirements via a Gambling Commission licence, by no means all will. This is because smaller lotteries carry different licence requirements, and therefore are not enforced by the Gambling Commission to the same degree. Containing the requirements within Special conditions will ensure that all providers maintain a high level of consumer protection.

### 3. Responses

- 3.1 In the consultation we asked twelve questions regarding the definition of a society lottery, relevant guidance development, risk assessment and the proposed Special conditions.
- 3.2 **Question 1** discussed the definition of *society lottery services* which are defined as follows for the purpose PSA regulation:

**A premium rate service ('PRS') that enables consumers to participate in a "lottery" operated by, or for the benefit of, a "non-commercial society". Such lotteries and societies meet the respective definitions set out in the Gambling Act 2005.**

The question asked:

*"Does this definition of society lottery services suitably align with the gambling legislation and assist in identifying only the relevant phone-paid services that may be subject to specific PSA regulations?"*

- 3.3 Most respondents agreed that the PSAs definition of society lottery services is suitably aligned with gambling legislation and suitably identifies only relevant phone-paid services that should be subject to the specific PSA regulations.
- 3.4 Two respondents highlighted in relation to the accompanying explanatory text, that there is no such thing as a 'commercial lottery', and in fact a lottery operating for private or commercial gains would be illegal. We note this correction, but also note that it does not affect the definition proposed.
- 3.5 A further respondent suggested that our definition attempts to redefine the existing meaning of 'society lottery' and proposed an amendment to include the phrase "premium rate society lottery" which it believed would provide clarity. We do not agree that our definition represents a redefinition of society lottery and given the support from other respondents have decided to maintain the proposed definition unamended.
- 3.7 **Questions 2 and 3** focussed on guidance and suggested existing guidance topics that may require consideration because of the new service type entering the market. The existing guidance topics were:
- Promoting Premium Rate Service (PRS)
  - Competitions and other games with prizes
  - Enabling consumer spend controls
  - Method of exit from a service

The questions posed were as follows:

*"Do you agree with this approach to guidance development in relation to society lottery services?"*

*"Are there any other pieces of PSA guidance that you consider will require consideration that does not appear in the list above?"*

- 3.8 Overall respondents agreed with the approach to guidance development and did not identify any other pieces of existing guidance as requiring consideration. Some respondents did emphasise that guidance should not contradict existing legislation or guidance published by the Gambling Commission. We agree with respondents and will

continue to work with the Gambling Commission to ensure that our guidance does not contradict legislation or Gambling Commission guidance.

3.9 **Question 4** covered risk assessment, it asked:

*“To what extent do you agree with the PSA risk assessment as set out above in section 3? Please give evidence in support of your submissions”<sup>2</sup>*

3.10 **Risk assessment table:**

Risk	Apparent	Why	Evidence	Proposed response
Financial harm	Yes	<ul style="list-style-type: none"> <li>- Subscription based services likely;</li> <li>- No restriction on ticket price</li> </ul>	Industry actively exploring recurring charges for society lottery services on 72XXX shortcodes; Subscription model used currently in other formats; Gambling Commission (GC) guidelines specifically state no ticket price restrictions exist	Requirements for a receipt sent to the consumer by an appropriate means, such as email or text message – SOL6; Ticketing information to make sure key details are provided in a durable medium – SOL7
Passing off	Yes	<ul style="list-style-type: none"> <li>- External Lottery Managers (ELMs) exist in the market;</li> <li>- Charities and other non-commercial societies branding may be emphasised without direct association;</li> <li>- Potential for non-registered charities to be viewed as holding charitable status</li> </ul>	GC has consulted on increasing transparency around revenue share going to the society; Currently ELM platforms and varied infrastructure in the market; Some evidence of interest from charities to have direct control over the payment mechanic and service	ELMs regulated and licensed by GC; GC guidelines call for transparency in promotional material; Promotional material must include key information – SOL3; Ticketing information to make sure key details are provided in a durable medium – SOL7
Uninformed consent	Yes	<ul style="list-style-type: none"> <li>- Historically other competition services have attracted affiliate marketing;</li> </ul>	Online competition services; Terms and conditions of society lotteries;	Society lottery services are regulated by GC; Promotional material must include key information – SOL3;

<sup>2</sup> We note that the original consultation document stated “section 2” this was a numbering error which has been corrected to section 3 in this statement. This error did not appear to affect responses to question 4.

		<ul style="list-style-type: none"> <li>- Complexity of proposition, in terms of process for selection of winners, and revenue sharing arrangements with societies;</li> <li>- Greater propensity to enter because of link to charity</li> </ul>	Popularity of society lotteries in other formats	Include a clear point of purchase in the consumer journey when entering the services – SOL4; Requirements for a receipt sent to the consumer by an appropriate means, such as email or text message – SOL6
Unauthorised consent	Yes	<ul style="list-style-type: none"> <li>- Potential for non-bill payers to instigate charges;</li> <li>- Historically other competition services have attracted affiliate marketing</li> </ul>	Online competition services; Services available to over 16s	Society lottery services are regulated by GC; Use of robust consent to charge process – SOL5
Vulnerable groups	Yes	<ul style="list-style-type: none"> <li>- Gambling services;</li> <li>- Underage use restrictions apply;</li> <li>- Adverse reactions to poor quality ad placement</li> </ul>	Gambling services are known to pose some users problems relating to debt management or addiction; Legislation in place imposing age restrictions	Society lottery services are regulated by GC; Align regulations with remote gambling provisions, recognising age restriction is at 16 years, not 18 – SOL1 and SOL 2; Adoption of a clear point of purchase and robust consent to charge reduces scope of harm arising from entries by non-bill payers and under-age users – SOL4 & SOL5
Unreasonable offence	No			Code provisions sufficient to respond to any market issues

3.11 Responses to our risk assessment were mixed. Some respondents suggested that the imposition of conditions, as opposed to Guidance, was taking an over-cautious approach which was not reflective of the level of control that the Gambling Commission already has over society lotteries in general, and that the assessment doesn't consider that Society Lotteries are a safer form of gambling with low 'problem gambling' statistics. We have already addressed this argument above. Other respondents agreed with our assessment and agreed that we were taking a measured approach.

3.12 Society lottery services represent a completely new phone-paid service type. There are risks which arise from the use of phone payment to facilitate entry to society lotteries as with any new phone-paid service type. For society lotteries to succeed in the phone-paid market we believe it is essential a safe controlled environment is established for the services to operate in. Special conditions enable this control whereas the application of Guidance alone would not allow sufficient mitigation of risks. While we considered guidance, this is not binding in the same way that Special conditions are. As such Special conditions will ensure a standard mitigation of risk while this new service type becomes established.

3.13 We think that it is particularly important that consumers can have confidence in this new service type from the outset. We consider that society lottery services meet our higher risk assessment, and that the proposed Special conditions regime will provide such mitigation as to ensure consumer protection and confidence. We would point out that Special condition for Recurring Donation Services – i.e. regular giving by text – have not impeded the growth of text donation. In fact, the conditions have been cited by some charities and associated organisations as an enabler to growth, through the control they ensure consumers have to skip and end donations.

3.14 **Question 5** focused on Special conditions SOL1 and SOL2 which address aspects of underage use:

**SOL1 Persons under the age of 16 years are not permitted to use the service.**

**SOL2 If a consumer is found to be under 16, they must be refunded and blocked from using the service.**

The question states:

*“To what extent do these provisions, SOL1 and SOL2, mitigate any risks associated with under-age use of gambling services and address?”*

3.15 Responses to the question posed were again mixed. Some respondents argued that it is not necessary to include SOL1 and SOL2 as this is repetition of pre-existing legal requirements and the PSA’s Code of Practice already requires phone-paid services to comply with the law. Other respondents agreed that both conditions were acceptable.

3.16 While it is true that these conditions replicate Gambling Act 2005 requirements, and that para 2.1 of our Code of Practice sets out that “PRS must comply with the law”, we hold that these Special conditions offer wider and more effective consumer protection. The replication ensures that providers, especially those who solely facilitate payment and so are not generally involved with the Gambling Commission, can reference key requirements in one place. The inclusion of these provisions does not affect any party which is already licensed by the Gambling Commission, and where parties are not licensed – for example those who are based in non-UK territories and are exempt – their inclusion in our Special conditions ensures consistency.

3.17 In the absence of these provisions, for example, the PSA would have to rely on referring providers who breached the age restrictions to the Gambling Commission for action. Including these provisions allows the PSA to act on its own initiative against providers who permit persons under 16 to use the service, which we consider more efficient and effective for consumer protection than an onward referral to the Gambling Commission, who may have other priorities, would be.

3.18 We consider that there is a higher risk that under 16s could use the service via phone payment. This is because mobile phones are registered either as belonging to someone over or under 18 years of age. Where a phone is registered as belonging to an adult, the mobile payment would be verified without further checking the buyer’s age. A substantial number of handsets are passed by adults to children without their status

being changed, there is a higher than usual potential that under 16s can engage. The Special conditions remind providers to ensure under 16s cannot use the service.

3.19 We also consider that these two conditions do not impose any additional regulatory burden on providers of society lotteries over and above the requirements of the Gambling Act 2005 and so we have decided to maintain these provisions in the final Notice.

3.20 **Question 6** asked:

*“Do you agree with our assessment that ticketing requirements and wider gambling regulations are sufficient for users, including any vulnerable groups, tracking their usage?”*

3.21 Most respondents agreed with our assessment. One respondent stated that with Society lotteries the need for players to access their player history is lessened because the playing mechanic is not complex when compared to other gambling products. Furthermore, the same respondent stressed that society lotteries are not reported by GamCare as a concern for addicted gamblers.

3.22 Most respondents were happy with our proposal to replicate some existing Gambling Commission requirements in our Special conditions notice. Those that weren't argued that these conditions already apply through Gambling Commission licences, and so there was no need for the PSA to also require them.

3.23 We have addressed this argument above. We have not replicated all of the Gambling Commission requirements, only those that we considered we needed to include to enable sufficient control in the context of phone payment. Although the replication of these requirements provides additional control and therefore should provide additional assurance to consumers as it supports robust enforcement, they should not require an additional administrative burden on service providers.

3.24 **Question 7** addressed Special condition SOL3 which contained a list of information we considered should be present within a society lottery service's promotional material to ensure consumers are adequately informed about the service:

**SOL3 The promotional material for the service must include the following information:**

- **An adequate description of how the service works and clear instructions on how to use it**
- **Payment options, where relevant, should clearly indicate PRS payment places charges on the user's phone account (mobile or otherwise)**
- **Any significant terms and conditions, including details of the society who will benefit from the running of the lottery**
- **Clear identification of the provider of the society lottery service if separate from the society that will benefit from the running of the lottery**

- **Prominent warnings about restrictions on use, such as access restrictions based on regional regulations imposed on gambling services, and prevention of underage use**
- **The prize or amount of money that consumers stand to win or an adequate explanation of how prize winnings will be calculated**
- **A clear explanation of how winnings will be paid, or winners will take ownership of prizes**
- **Information about responsible gambling or links to sources of such information**
- **Instructions on how to stop the service where entrants incur recurring charges.**

The question asked:

*“Does the list in SOL3 contain the right types of information needed to give consumers adequate information associated with society lottery services? Please provide an explanation regarding any additional or amended requirements where you have suggested changes.”*

- 3.25 Responses to this question were varied. Some respondents again questioned the need for information that is already required by Gambling Commission and Advertising Standards Agency regulations. Those respondents suggested that instead, the PSA should signpost the relevant regulations and only focus on additional information that is unique to the phone-paid billing mechanic.
- 3.26 One respondent stated that SOL3 should highlight that promotional material should state where the full terms and conditions can be found and provide a link to the relevant webpage(s), these webpage(s) should also set out the rules of participating in more detail and provide a forum for dealing with complaints.
- 3.27 Another respondent suggested that SOL3 should be updated to mention that providing URLs within promotional material is an acceptable way to include lengthier details by directing consumers to relevant webpages and that this satisfies the Gambling Commissions requirement for information to ‘easily accessible’. Furthermore, it should not be a requirement to state all the details directly on the promotion to save space. This respondent also suggested that to duplicate existing regulations could be problematic as we would need to ensure that the list is kept up to date.
- 3.28 As previously discussed, the PSA does not consider that having requirements which correspond to those of the Gambling Commission or the Advertising Standards Authority requirements places an additional regulatory burden upon providers. We will continue to ensure that our regulations and relevant external regulations are aligned. This is something that the PSA does as a matter of course therefore we do not envisage any issues here.
- 3.29 Regarding the list of key information, having considered all responses we have not seen persuasive arguments that suggest any of the categories of information are not required. However, we agree that not all the information listed needs to be displayed in

full on the promotional material, and that it would be sufficient for some to be contained within terms and conditions which may be signposted in the promotional material.

- 3.30 We have decided that the information listed in bullets 1, 2, 3, 5 and 9 must be displayed prominently within promotional material. It will be acceptable for the information listed in bullets 4, 6, 7 and 8 to be provided within terms and conditions, and a link to the terms and conditions should be provided on the promotion.
- 3.31 **Question 8** focused on Special conditions SOL4 and SOL5 which cover 'point of purchase' and 'consent to charge' requirements respectively:

**SOL4 The point of purchase must be separated from service interaction, including its promotion, in a clear and effective way to allow the consumer to consider their purchase. At the point of purchase, PRS providers must:**

(a) clearly signpost the point of purchase by making it distinctive from other aspects of the service (such as by design and colour scheme) and take all reasonable steps to make that distinction clear, avoiding any confusion between service promotion and the point of purchase

(b) ensure that consumers, when committing to a purchase, explicitly acknowledge that the purchase implies an obligation to pay

(c) ensure that consumers are made aware, in a clear and prominent manner and directly before the consumer commits to a purchase, of the cost of the service, and the frequency of charges, and

(d) indicate that the PRS payment will be added to the consumers phone account.

**SOL5 At the point of each purchase and prior to delivering the PRS charge, including an initial charge of a subscription service, providers are required to obtain consent to charge from the consumer in the form of a positive, recorded and auditable response where the costs and name of the premium rate service have been presented clearly to the consumer.**

**PRS providers must establish such consent via one of the following means of consumer interaction.**

(a) use of a secure PIN loop system to confirm each transaction initiated and confirmed by the Level 1 provider<sup>15</sup> through interaction with the consumer, whether the transaction is a one-off purchase or the initial agreement to enter a subscription, or

(b) use of a password system, the password being selected and controlled by the consumer, to confirm each transaction, whether the transaction is a one-off purchase or the initial agreement to enter a subscription, or

**(c) use of a secure, consumer controlled, mobile originating short message service (MO SMS) system for consumers to notify the Mobile Network operator and Level 1 provider(s) of confirmation of the charge request.**

The question asked:

*“To what extent do SOL4 and SOL5 offer clarity at the point of purchase and achieve a requisite level of consent to charge in relation to society lottery services?”*

- 3.32 Overall most respondents either agreed that Special condition SOL4 offered sufficient point of purchase clarity or had no specific comments about it, while responses were mixed regarding Special condition SOL5.
- 3.33 One respondent highlighted that both conditions draw parallels with Special conditions ONLC1 and ONLC2 from the PSA’s previously published Online competition services notice of Special conditions<sup>3</sup>. The respondent suggested that SOL4 is not necessary given that providers of society lotteries are required to hold a Gambling Licence and argued that they will not risk revocation of their licences. The respondent further suggested that it is likely that consumers engaging with society lottery services will be more aware of the ‘brand’ (in this case charitable cause) than they might be while engaging with an online competitions service.
- 3.34 Regarding SOL5 the same respondent suggested that the requirements are disproportionate as Society lottery services are low risk. Initially most services will operate with a mobile originating (MO) SMS mechanic which means the consumer responds to a promotion by sending a text message containing a keyword(s) to a short number in order to take part and any migration to an online mechanic will use the “Payforit” billing mechanic which already contains the functionality to provide a two-stage purchase and confirmation facility.
- 3.35 Following consideration of these responses the PSA conducted some post consultation stakeholder engagement to clarify the reasoning behind the two conditions. We explained that the requirements are mostly focusing on online promotions. If providers intend to operate with a Mobile Origination (MO) SMS opt in mechanic,<sup>4</sup> then the requirements will automatically be satisfied providing the promotion makes it clear there is an obligation to pay and that the payment will be added to the consumers phone bill.
- 3.36 We also reiterated that Small society lotteries do not require a Gambling Licence, instead these lotteries should register with a local authority. This does present some

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<sup>3</sup> <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Guidance-and-compliance/Explore-our-guidance/Special-conditions/Notice-of-Special-conditions-for-online-competition-services-03-01-2017.ashx?la=en&hash=6512548145F6EB7BD1411F7EF9CFC93CD1B26BCE>

<sup>4</sup> A Mobile Origination message in a phone payment context is one which triggers a charge to the consumers’ bill as soon as it is received by the provider. This is held to be robust proof of consent because providers cannot fake the receipt of an MO message - a mobile network would be able to check their records to establish if a message was first sent by the consumer’s handset.

risk in terms of phone payments as providers of these lotteries are not ordinarily subject to the same levels of regulatory control.

- 3.37 If providers intend to operate Society lottery services with an online opt in mechanic, then the two conditions would apply regardless because they are required by the Online competition services Notice of Special conditions. The conditions were transferred to the society lotteries Notice in order to simplify and streamline regulatory requirements, essentially making the notice a 'one stop shop' rather than expecting providers to refer to various different PSA notices.
- 3.38 To clarify, where consumers enter a society lottery by texting a mobile shortcode, there will be no requirement to send an additional text for the consumer to reply to and confirm their consent. However, because web-based opt-in carries a greater risk in ensuring consumers have given clearly informed consent to charge, for example a button on a website can be obscured so the consumer clicks it without it triggers a charge. The PSA has set requirements that ensure consumers have either already proven their identity through a log-in procedure or pay using a pin loop mechanic. We know from consumer research and from feedback from consumers who contact us directly either with enquiries or complaints, that the issue of consent and opt-in mechanisms are particularly important to them.
- 3.39 Conditions essentially identical to SOL4 and SOL5 have been successful in removing consumer harm associated with other service types using similar payment mechanics. We think it important that when society lottery services are launched that they should be successful and not generate high numbers of complaints and believe these measures will support that goal.
- 3.40 It is important to recognise that society lotteries do fall under the definition of Online competitions, a service type which the PSA has previously recognised as carrying risk, and for which we have created conditions to mitigate. As such we have set the same conditions around payment, which our previous research indicates consumers welcome in terms of the friction it provides, at this time in order to safeguard the introduction of society lotteries. It is important to note that we keep all Special conditions under review and we would adapt them as necessary should the need arise.
- 3.41 **Questions 9, 10 and 11** referred to Special conditions SOL6 and SOL7 regarding receipts and ticketing:

**SOL6 Each time the consumer incurs a charge to participate in a society lottery whether this involves a single charge or a recurring charge, a receipt must be sent to them in either SMS or email formats as soon as is reasonably practicable. This receipt must detail the name of the service, the cost of using the service or products purchased, and the name and contact details of the provider.**

**SOL7 For each and every draw entered, once payment has been made, consumers must be issued with a valid ticket of entry to the society lottery, containing all relevant ticketing information as required in law. Each ticket issued in conjunction**

**with a subscription charge should include information about the method of exiting the phone-paid service, including instructions on the use of the STOP command**

Question 9 asked:

*“To what extent do SOL6 and SOL7 give consumers awareness of their use of phone-paid services and an ability to track spending over time?”*

- 3.42 Responses to this question were varied with some respondents seeking clarification. One respondent agreed that sending consumers receipts and tickets will give them the ability to track spend over time. They also agreed that where tickets are issued at the same frequency as payments the ticket can also act as the receipt and reduce the number of messages required to be sent to consumers. They went on to say that if separate tickets and receipts for each draw were required, then this could be onerous for weekly draws due to the volume of messages consumers would receive. The respondent sought clarification on this point.
- 3.43 Another respondent confirmed that only External Lottery Managers (ELMs) are allowed to generate tickets and enter users into draws, payment aggregators will not be generating tickets.
- 3.44 A further respondent remarked that Special condition SOL6 was more burdensome than other forms of established lottery payments and that this would put phone-payment at a disadvantage. They stated that direct debit payments do not require the issuance of a notice every time a subscription payment is taken. They also stated that if Special condition SOL7 requires issuing a ticket for every draw then this would be an excessive administrative burden.
- 3.45 Regarding SOL7 a respondent stated that the Gambling Commission already has requirements in relation to the information which needs to appear on tickets in a society lottery, as set out in footnote 9 of the PSA’s consultation. They went on to say that it would seem unnecessary for the PSA to require these as well and that we should only focus on aspects that are unique to phone payments.
- 3.46 We have addressed the issue of duplicate requirements elsewhere in this Statement. As before we do not consider that these requirements represent an additional administrative burden. We note that SOL6 and SOL7, in addition to replicating some Gambling Act requirements, also impose requirements that are consistent with those we impose on some comparable phone-paid service types, such as online competitions. Given the risk of financial harm associated with recurring charges, we consider that it is particularly important that consumers have easy access to information on how to stop a recurring charge.
- 3.47 We can confirm that receipts need only be sent when there is a charge, for example if the consumer will be charged for four weeks’ worth of draws at once, then it is only necessary to send out one receipt. Should providers wish to send tickets separately, for example by post or email, then this is acceptable, but receipts will need to be sent to consumers regardless. If providers wish to, they can combine receipts with tickets.

Given the mechanism of entry and confirming receipt, this may be a convenient mechanism both for providers and consumers.

3.48 **Question 10** asked:

*“Do you agree that compliance with SOL7 reduces the need for a separate provision relating to subscription spend reminders? Please provide evidence in support of your submissions.”*

3.49 Most respondents agreed that by complying with SOL7 the need for reminders is reduced. One respondent stated that most players of subscription style society lotteries are provided with the essential information including a unique play number when they join. Payments are then taken from the bank by Standing Order, Direct Debit or recurring credit card. Provision of the phone bill detailing lottery payment should be similarly sufficient. Another respondent recognised that the cost of sending a ticket receipt and a spend reminder each week would be overburdensome to providers. They went on to say that not all lottery models operate in this way and suggested that a reminder may be appropriate for those.

3.50 One respondent reiterated that they believed it is unnecessary to duplicate requirements that are already imposed by the Gambling Commission.

3.51 As mentioned earlier in this statement we do not consider that having requirements which correspond to that of the Gambling Commission’s requirements places any additional regulatory burden upon providers.

3.52 Given that most respondents agreed with our position regarding reminder messages, we can confirm that there is no requirement for separate subscription reminder messages to be sent.

3.53 **Question 11** asked:

*“Do you agree that spend caps are not required for society lottery services based on the information provided under SOL6 and SOL7 and that the notice issued under paragraph 3.12.6 should be amended accordingly?”*

3.54 The PSA received few responses to this question with most respondents agreeing that spend caps should not be required. One respondent highlighted that the Payment Services Regulations<sup>5</sup> impose spend caps already therefore further spending caps are not necessary.

3.55 Another respondent explained *“most lotteries have a cap on the number of subscriptions that a player can hold, and the number of single tickets that can be entered into a single lottery draw.”*

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<sup>5</sup> <http://www.legislation.gov.uk/uksi/2017/752/contents/made>

- 3.56 This statement was supported by a further respondent who mentioned “*we have policies and procedures in place to tackle problem gambling and to promote responsible gambling and have restricted the number of weekly lottery tickets that can be purchased by consumers.*”
- 3.57 One respondent indicated that while the proposed Special conditions would provide more clarity and transparency around lottery costs and spend, vulnerable consumers may still require protection which could be afforded through a cap on spend, such as a restriction on the number of tickets that can be purchased.
- 3.58 We do not believe it is necessary for us to impose any specific spending caps for society lottery services other than spend caps existing in UK law. The introduction of the Payment Services Directive II into UK law imposes a cap on phone payment (where the provider is not registered with the Financial Conduct Authority) of £40 per individual transaction. We have recently issued a consultation on changes to our Notice of Specified Charges and Durations of Calls, which aligns existing spending caps with this £40 limit, which providers would be required to comply with by law.

3.59 **Question 12** focussed on the final condition of the notice SOL8:

**SOL8 PRS providers operating these services are to notify the Phone-paid Services Authority within 48 hours of launching the service, if not done before. On notification, PRS providers must provide information relating to:**

- (a) brand identification associated with the provider of the society lottery**
- (b) confirmation that all licences required by law have been obtained from relevant bodies, such as the Gambling Commission and / or local authorities**
- (c) PRS numbers used for the service, including the dedicated number chosen for STOP and STOP ALL requests**
- (d) customer care services details**
- (e) identity of all Level 1 providers involved in the provision of the PRS, including those managing the method of exit.**

The question asked:

*“Does the list in SOL8 contain the right types of information to support the regulation of society lottery services and equip the PSA to handle any complaints and enquiries that may arise?”*

- 3.60 The PSA received no strong objections to the inclusion of SOL8. One respondent did mention that including SOL8 is just a repetition of existing PSA Code and Gambling Commission requirements and therefore not necessary.
- 3.61 The purpose of including this provision is to act as a reminder to new society lottery service providers to seek the relevant licences prior to using a phone-paid services facility and provide clarity around service registration requirements. The PSA believes it is helpful to include SOL8 as all the requirements can then be found in one place.

- 3.62 One respondent advised that the Gambling Commission require customer care to be handled by the ELM. They suggested that SOL8 could be amended to include 'customer care services details of ELM;'
- 3.63 Another respondent suggested that it would be helpful to ask providers to supply the charity registration number where relevant and a yearly requirement to update/check Gambling Licence numbers.
- 3.64 When a charity registers their organisation with the PSA they are required to provide their charity registration number. As such we do not believe it is necessary to check this separately in relation to Special conditions. In relation to a yearly requirement to check Gambling licences have been updated, this is a potentially helpful suggestion which we consider appropriate for the payment aggregator to undertake in relation to its clients. We will consider this further as we review our Guidance on Due Diligence, Risk Assessment and Control later in the year.
- 3.65 Regarding customer care arrangements, we have checked the Gambling Commissions Licence conditions and codes of practice (LCCP)<sup>6</sup>, part 6.1<sup>7</sup>, Complaints and disputes, states that licensees must put into effect a written procedure for handling customer complaints, rather than specifying that customer care should be handled by the ELM. We are happy for ELMs to handle customer care if this is the industry standard, however we do not think it is necessary to update SOL8 to state this.

#### 4. Next Steps

- 4.1 The PSA has today published the updated Notices of Special conditions for Society Lottery services. We have sought to add clarity throughout this Statement as to our expectations for such services and the reasoning behind the introduction of Special conditions.
- 4.2 We intend to host an implementation workshop in September 2018, we will release more details about this including how you can register to attend shortly. You can subscribe to receive news and events updates through the PSA website here <https://psauthority.org.uk/news-and-events/subscribe>.
- 4.3 The Special conditions for society lotteries will come in to effect on 1 October 2018. If providers wish to commence operating phone-paid society lotteries prior to this date, we would expect the requirements set out in the Notice to be satisfied.

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<sup>6</sup> <http://www.gamblingcommission.gov.uk/PDF/LCCP/LCCP-sector-summary-for-remote-lotteries.pdf>

<sup>7</sup> <http://gamblingcommission.gov.uk/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf>