

SUBMISSION TO OFCOM IN RELATION TO IN-PROGRAMME LOTTERIES

1 INTRODUCTION

- 1.1 We refer to the consultation paper on "Participation TV: protecting viewers and consumers and keeping advertising separate from editorial" (the "Consultation") published on 24 July 2007. This paper is submitted to that consultation process.
- 1.2 Hammonds' gambling team has significant experience of the field of participation TV, having acquired expertise from advising lottery managers, and other key players in the PTV value chain. We have previously acted for prominent broadcasters of dedicated participation and teleshopping TV (including, for example, the Home Shopping Network), for premium rate telecoms providers (including Intext Media) and for leading players in the TV format and production fields (including Endemol). We have provided opinions as to the legality of television formats and premium rate services, betting and gaming promotions and lottery and prize competition mechanisms. We were responsible for the first guide to the Gambling Act 2005¹, and the head of the team is currently commissioned to produce a definitive practitioners' manual on gambling and licensing legislation.²
- 1.3 We and our client have already conducted some preliminary discussions with Ofcom as to the potential for the introduction of the lottery formats as an integral part of editorial broadcast, occupying the place in interactive broadcasts currently used for other forms of PTV (often conducted using PRS). We have been asked by Ofcom to contribute our suggestions for consideration in the course of this Consultation and do so in detail below.
- 1.4 Our comments relate in particular to the following paragraphs of the Consultation: 3.31, 3.39, 4.29, 4.38 and 5.32.

2 EXECUTIVE SUMMARY OF SUBMISSION

- 2.1 Certain PTV formats currently in widespread use have benefited for some time from classification as prize competitions, a status which affords the promotion freedom from regulation as a form of gambling. Some versions of these formats do not warrant such classification and further consideration must be given to whether they are even legal (although we understand that this is a matter for the Gambling Commission as much as for Ofcom). A brief summary of the laws on gambling under the Gambling Act 2005 is provided later in this response paper.
- 2.2 It is appropriate for Ofcom to be able to appraise the strengths and weaknesses of the current regulatory landscape and the changes proposed within the Consultation by comparison to the system in use for the regulation of those who have Lottery Operating licences (conferring External Lottery Manager status), awarded by the Gambling Commission. In our opinion, many of the PTV formats that the Consultation is intended to address have functioned as unlicensed (and therefore illegal) lotteries. In doing so, they have also managed to operate without any effective form of control or regulation over the fairness of their operation.
- 2.3 Licence variations should be introduced to ensure that formats are permissible from a legal and regulatory perspective and their operators should be required to perform to standards at

¹ The Gambling Act 2005 Current Law Statutes Guide published by Sweet & Maxwell ISBN: 9780421923508

² Provisional title: Hyde and Rohsler on Licensing and Gambling Law due to be published by Sweet & Maxwell in March 2008

least as high as those imposed upon licensed ELMs, given that Ofcom do not intend to introduce a vetting procedure to ensure that operators are fit and proper persons to conduct promotions that require the general public to subscribe money.

- 2.4 The commercial success of PTV formats in use at present is undeniable. They are mechanisms for pure profit which do nothing to assist the wider community. Such formats are permitted to be conducted within editorial broadcast.
- 2.5 By contrast, however, lottery formats are regarded considered impermissible in editorial programming, despite the fact that they are (i) certainly legal; (ii) much better regulated than prize competitions; (iii) can only be conducted by those who have been extensively screened and vetted through one of the toughest probity tests in the UK regulatory system; (iv) are subject to ongoing scrutiny which might lead to the loss of licence or criminal prosecution; and (v) are obliged to contribute a significant proportion of their profits to a good cause.
- 2.6 It is unfair and illogical to exclude lottery formats in the way that Ofcom has done. It is no exaggeration to say that, had the Quiz TV industry been operated by regulated lottery managers, the scandals which have destroyed public trust in the broadcasting sector over the last months would not have happened.
- 2.7 It is illogical to say that a lottery format is less integral to editorial content than the existing prize competition mechanisms with which Ofcom is familiar. We have included an example of how a lottery mechanic might work which demonstrates clearly that the format can be (i) related to the content of the programme; and (ii) operated in an almost identical way to a prize competition.

3 A VERY BRIEF INTRODUCTION TO RELEVANT ASPECTS OF GAMBLING LAW

- 3.1 Whilst it is clear that it is not the place of this response to set out a full summary of the new gambling legislation, it is perhaps worth noting one or two key themes and changes by way of introduction, since these may not be covered by other submissions. They will in our view, have an important bearing upon the way in which Ofcom should treat different sorts of promotion. We believe that the change in law requires a re-evaluation of traditional mechanisms with which Ofcom might be familiar.
- 3.2 The law recognises four broad categories of activity in relation to gambling: betting, gaming, lotteries and prize competitions. In fact, a prize competition is not a form of gambling but an exception to the rules on lotteries. In basic summary:
- 3.3 **Betting** is the hazarding or value on a future event of uncertain issue or a past event if the result of that event is not generally known. Those who receive or settle bets will be obliged to hold a bookmaker's operating licence.
- 3.4 **Gaming** is the playing of the game for a prize in money or money's worth. The game is defined by the legislation as including a game of chance or combined skill and chance but does not include a sport. By way of example, backgammon, poker and bridge are all games of mixed chance and skill, roulette is a game of pure chance and chess is a game of pure skill. Gaming is regulated in a variety of ways, but the majority of commercial gaming can only take place on casino premises or in bingo halls and can only be operated by those who have an appropriate operator's licence.

- 3.5 A **lottery** is usually defined as a division of prizes by chance where the participants pay for the chance to win the prize³. All forms of lottery have strict limits on the format of tickets, the stakes, the percentage of proceeds to be returned in the form of prizes and so on. Importantly, all forms of lottery require an element of either charitable giving or at least a condition that they are not made for private gain. Where a lottery does not comply with these strict regulatory restrictions, a criminal offence occurs.
- 3.6 A **prize competition** is a division of prizes where the participants pay for the chance to win the prize, but where the outcome is determined by **skill** rather than chance. One of the most important questions when determining the legality of a scheme is whether the skill element is sufficient for the promotion to be classed as a prize competition. Under the old law⁴, the test was that the result of the contest had to be determined "to a substantial extent" upon the exercise of skill. Under the new law, the test has changed such that the amount of skill required must either be sufficient to prevent a substantial number of people from winning the prize or from entering the contest at all⁵.
- 3.7 Also of relevance, the Gambling Act 2005 contains a new category of lottery, known as a "complex lottery". **Complex lotteries** are schemes where there is more than one process to decide the winner and where the *first* of those processes is dependent upon chance. To give a practical example, if one had a poetry competition and, after assessment of the entries, the judges could not separate the finalists and decided to determine the contest by drawing one name out of the hat, that would be a permissible prize competition on the basis that, of the two processes involved in deciding the winner (the skill and the hat), the skill process came first (and fulfilled the substantiality test mentioned above) and the chance process came second. By contrast, if one imagines a telephone phone-in where callers are selected at random in order to be put through to the studio where they answer a skill question then, of the two processes used to determine the overall winner, the first is based entirely on chance and so would fall to be treated as a complex lottery and would be illegal, even though the second process might require substantial levels of skill.
- 3.8 This change in the law has had a profound effect upon TV quiz operators (leading, it appears, to the extinction of many such businesses). The first blow was the creation of the complex lottery – which prevented those operating TV quiz services from using the mechanism of random selection of telephone caller, followed by a skill question posed of the selected participant.
- 3.9 The second blow was that operators had previously also employed another legal technique to avoid being classed as a lottery – the offer of a free entry route, which was designed to remove the taint of lottery by removing the requirement for a payment to enter.⁶ However, in light of the guidelines and regulations which have been issued by the Gambling Commission, to the effect that no purchase necessary routes must genuinely be not only free but also equally as convenient as the paid for mechanism, that route has been, if not closed altogether, then certainly made more difficult to utilise.

³ In fact, this is a slight simplification of the definition which exists under s.14 Gambling Act 2005, but is, in essence, correct.

⁴ The Lotteries and Amusements Act 1976 (s.14)

⁵ Section 14(5) Gambling Act 2005

⁶ The position is actually more complex than stated here. Under the old law, there was House of Lords authority (in the case of *DPP v Imperial Tobacco*) for the proposition that free entry routes would not be effective ways of avoiding the status of being a lottery. In fact, in the wake of their Lordships' decision that the Imperial Tobacco promotion was an illegal lottery, the industry was obliged to operate on the basis of a press release issued by the Director of Public Prosecutions to the effect that, where a free and unfettered no purchase necessary route existed for promotions, no state prosecution would be brought. That rather unsatisfactory position has now been corrected under the Gambling Act 2005 which provides a statutory basis for no purchase necessary routes to allow free prize draws to exist.

- 3.10 Nevertheless, there are still serious doubts about the legality of a number of forms of prize competition which are currently operating and which do not to fulfil the required test in relation to skill. Of course, none of the difficulties apply in the case of properly regulated lotteries, the legality of which has never been in doubt.

4 LEVELS OF REGULATION IN GAMBLING

- 4.1 All forms of gambling in the United Kingdom are heavily regulated. As we have already mentioned, all operators of gambling will require a licence. The process of obtaining a licence is a complex and expensive one requiring the applicant to undergo scrutiny by the Gambling Commission in relation to its ownership, management, key personnel, track record in gambling, accounting practices, social responsibility and so on.
- 4.2 In addition, there is normally a requirement for key personnel within a regulated entity to have personal licences. The process of obtaining a personal licence is similarly scrupulous and time-consuming. The Gambling Commission has extensive powers to collect evidence and inspect premises and may also impose conditions upon or, indeed, revoke licences.
- 4.3 The Commission also has prosecution powers in relation to the large number of offences which exist under the Act. As a consequence of this, the UK is generally regarded as one of the most tightly regulated jurisdictions for gambling in the world.
- 4.4 Within the context of regulation, lotteries are generally more highly regulated than either betting or gaming. This is because, unlike betting (the outcome of which is usually resolved by reference to an external event over which the bookmaker can have no control) the resolution of the lottery lies entirely in the hands of the organiser. Also, in the majority of gaming, the player is present and can see the turn of the cards or the spin of the wheel as some kind of practical monitor of fairness. Clearly, where a lottery manager is responsible for conducting a draw or printing scratch-cards, there has to be the highest degree of trust and that the process will be conducted fairly.
- 4.5 It is worth noting, in this regard, that the features we have highlighted above (though occurring in lotteries which are one of the most highly regulated forms of gambling) are precisely similar to those which arise in prize competitions: in a prize competition, the selection of the winner and the distribution of prize money is within the sole control of the competition organiser. However, because prize competitions are not classed as gambling, *there is no effective legal regulation of their conduct*. Prize competitions can be open to any age, can have essentially any terms and conditions and there is no limit on prices.

5 SPECIFIC NOTES ON THE REGULATION OF EXTERNAL LOTTERY MANAGERS

- 5.1 To illustrate the level of licensing regulation which gambling operators undergo, we set out below a summary of the regulations in respect of External Lottery Managers ("ELMs"). An ELM is an individual, partnership or company licensed by the Gambling Commission for the purpose of managing lotteries. Under the Lotteries & Amusements Act 1976, applicants paid a fee of more than £15,000 to the Gaming Board which then undertook a rigorous investigation procedure to scrutinise the company, its directors and shareholders and its trading practices. Applications were only approved where it could be shown that:
- (a) any person likely to manage the business or any part of the business of managing lotteries under the certificate was a fit and proper person to do so, and

- (b) all persons for whose benefit that business would be likely to be carried on would be a fit and proper person to benefit from it.
- 5.2 ELM licences issued under the LAA 1976 were required to be renewed by the Gambling Commission in 2007 to allow for continued operation under the Act. There are fewer than 20 ELMs in the United Kingdom.
- 5.3 ELMs are entitled to manage all aspects of a lottery. They can distribute and promote the lottery through various channels, and may also perform a wide range of lottery operation and administration tasks including, for example, the processing of member details, running the draw, book-keeping, production of management accounts and banking.
- 5.4 Any ELM is required to work within financial principles set out by the Gambling Commission. The first and most important of these is that at least 20% of the proceeds of each lottery are required to go to a nominated "good cause", usually a registered charity.

SPECIFIC COMMENTS ON THE CONSULTATION

6 SECTION 3.31

- 6.1 Section 10.2 of the Broadcasting Code requires broadcasters to ensure that the advertising and programme elements of a service are kept separate and section 10.3 provides that products and services must not be promoted in programmes. Nevertheless, there is an exemption provided for "programme related material" and that has been used by broadcasters to include prize competition formats in the programme while still retaining editorial status. The definition of "programme related material" allows for products or services that are "both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme" to become part of the broadcast.
- 6.2 Section 10.5 prohibits product placement, although a specific exemption to this rule is found in section 10.9, which states that premium rate telephone services will normally be regarded as products or services, and must therefore not appear in programmes, except where they form part of the editorial content of the programme or fall within the meaning of programme-related material. These provisions are used by broadcasters to insert into editorial broadcasts interactive formats such as prize competitions which distribute commercial products as prizes. The line between editorial and advertisement content is blurred here, and the Broadcasting Code allows for this blurring.
- 6.3 We are aware that one of the concerns that Ofcom currently has in respect of the proposed introduction of lottery formats into broadcast space currently occupied by prize competitions, is that of undue prominence. Section 10.4 seeks to ensure that products or services or references thereto may not appear in any programme unless there is editorial justification. We agree that it is vital to ensure that consumers understand when they are watching a commercially-motivated encouragement to purchase or participate, and when they are receiving impartial entertainment or information.
- 6.4 We submit that the lottery format could be incorporated into editorial broadcast without compromising the integrity of the editorial nature of the programme or involving any issues of undue prominence. The lottery elements of the promotion would be conducted by the ELM on

the basis of its expertise and its statutory duty to conduct lotteries fairly, but would work in accordance with the broadcaster's vision for the programme content. The ELM would not receive publicity and the promotion would not carry the branding of the ELM but rather the branding of the broadcaster and / or programme and the good cause for which the lottery is held. Indeed, the ELM's role in organising and monitoring the lottery is normally entirely anonymous as far as the public is concerned – they are merely a regulated service provider, standing between the good cause and the public and ensuring that the lottery is managed on behalf of the good cause effectively, efficiently and fairly.

6.5 We feel it may be useful to demonstrate the fact that, should a lottery format be adopted as suggested above, the key elements of the promotion would remain largely constant. To illustrate:

	Prize competition format	Lottery format
	<i>"Phone in now to answer the multiple choice question. Calls cost £1 when made from a BT landline. The winner receives £10,000"</i>	<i>"Today's nominated charity is the NSPCC. Phone in now to enter. Calls cost £1 from BT landlines and 20p from every pound will go straight to the NSPCC. Everyone who enters will go into the draw. One lucky winner will win a holiday to the Alps and ten more winners will receive top of the range mountain bikes"</i>
A	presentation of the promotion on-screen;	presentation of the promotion on-screen, with reference to the nature of the chosen "good cause";
B	a number of calls to action which encourage viewers to use PRS telephone numbers to enter the promotion;	a number of calls to action which encourage viewers to use PRS telephone numbers to enter the promotion;
C	access by the viewer to a telephone line provided on behalf of the broadcaster by a third party PRS operator, whereby he becomes a participant in the promotion;	access by the viewer to a telephone line provided on behalf of the broadcaster by a regulated ELM operator, whereby he becomes a participant in the promotion;
D	all participants will submit their answer and one of the correct participants will be chosen by the third party PRS operator as the winner of the promotion;	all participants will be entered into the lottery and one of the participants will be chosen by the regulated ELM operator conducting the lottery as the winner of the promotion;
E	fees for use of the PRS service are collected from the participant by his telecoms provider, who deducts a fee and pays the remainder to the third party PRS operator; and	fees for use of the PRS service are collected from the participant by his telecoms provider, who deducts a fee and pays the remainder to the ELM;
F	the PRS service operator deducts his fee for provision and management of the PRS system and then passes the remaining	Of the total proceeds received, the ELM makes a deduction which is used to fund the prizes in the lottery and makes a

	monies to the broadcaster.	minimum payment of 20% of the proceeds to the good cause. The balance of the proceeds these used to defray the expenses of the promotion which can include a reasonable fee for the ELM itself and the cost of other expenses that it has incurred in producing in promoting the lottery. In a paper-based lottery, such expenses would include the printing of tickets and advertising associated with the lottery. In this example, however, some would include an amount paid to the broadcaster in respect of the expenses which it has incurred relating to that section of the programme.
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6.6 In both circumstances, viewers and participants are entirely unaware of the identity of the third party (whether a PRS operator or an ELM) conducting the back office function of the promotion, and the participant considers his call to be made directly to the broadcaster. The broadcaster is ultimately responsible for the conduct of the promotion and is in ultimate control of the promotion.

6.7 It is impossible to deny that PTV formats are used as an income stream by broadcasters and telecoms providers, and yet Ofcom has created an exception to allow the continued use of PRS in editorial broadcasts. We are aware that some programmes (news bulletins, for example) use PRS to allow the viewer to send their opinion in by SMS and some of these opinions are broadcast or considered during the course of the programme.

6.8 If Ofcom are of the view that the PRS exemption exists for the purpose of allowing such programming, then we suggest it would be appropriate to enforce the rule against broadcasters who use PRS in ways that do not genuinely derive from the programme content or allow listeners or viewers to benefit more fully from interaction with the programme. It is commonplace to see prize competition formats inserted into magazine shows without reference to the foregoing or upcoming content of the show and which involve interaction by participants only with the PRS system and not with the broadcast itself. The PTV element is rarely if ever an essential or wholly integrated element of the broadcast. If this is not an abuse of the exemption drawn for PRS, then we can see no logic to the distinction currently drawn between third party telecoms providers and third party lottery providers.

7 SECTION 3.39

7.1 The Consultation acknowledges in section 3.39 that some TV quiz services as currently operated may fall to be treated as lotteries under the new provisions in the Act. We have dealt already in this response with the fact that a number of operators have chosen to restructure the established competition format in ways which would undoubtedly be more accurately categorised as a lottery, and have proceeded to conduct such promotions without the regulatory permissions required so to do.

7.2 The revenue capable of being accrued from such promotions is considerable, and yet, to date, no person involved in their implementation or operation has been required to be vetted

by the Gambling Commission. By contrast, licensed ELMs have been approved by the Commission as fit and proper people capable of being trusted with responsibility for every element of this form of gambling. The Ofcom rules as they have been applied to date act to prevent the use of legal lottery formats during editorial broadcast, ostensibly for reasons concerned with commerciality, and yet illegally operated schemes conducted without financial regulation and to far greater commercial benefit for their operators, have not been appropriately restrained.

- 7.3 We acknowledge that Ofcom is responsible only for issues arising under the Communications Act and linked legislation, and that scrutiny of the nature of these formats falls within the remit of the Gambling Commission. The Commission has power to prosecute those who unlawfully conduct lotteries and may choose to use these prosecutorial powers in respect of broadcasters who have conducted promotions insufficiently skilful to meet the test for skill set out in section 14(5) of the Act. Nevertheless, it is not the Commission but Ofcom which has put in place a scheme responsible for preventing broadcasters from utilising the superior format of a lottery in place of the prize competitions currently in use.

8 SECTION 4.29

- 8.1 The Consultation suggests that Ofcom may seek to appoint an independent third party auditor and a series of reporting requirements to ensure the proper conduct of PTV. We agree that urgent steps must be taken to restore public confidence in the broadcast industry and in broadcasters of PTV in particular, and that it is evident that broadcasters have shown themselves to fail when required to exercise prudence in this regard.
- 8.2 We note that the audit functions proposed in the Consultation are still some way from achieving the level of stringency required of licensed ELMs by the Gambling Commission. You may wish to note that when Hammonds acted for a number of PTV broadcasters and approached the auditor responsible for the conduct of the National Lottery, the audit work proposed voluntarily by the broadcaster was deemed to be of insufficient commercial interest to the auditor. Has Ofcom established that there will be sufficient capacity within the audit market to carry out such work?
- 8.3 In any event, any auditor appointed by a broadcaster will act on a commercial basis. We note by contrast that ELMs are subject to a more detailed level of audit by a regulatory body acting under and empowered by statute.

9 SECTION 4.38

- 9.1 *Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why. If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?*

We suggest that the key issue in this regard is to ensure that all aspects of PTV are regulated appropriately, whether generated by the broadcaster, a third party PRS operator or production company. One way to do this would be to oblige broadcasters to obtain evidence that each element of the promotion is carried out legally and in accordance with the relevant regulatory obligations, whether imposed by PhonePayPlus, the Gambling Commission or any other regulatory body.

The broadcaster is ultimately responsible for the transmission of any promotion to the general public and is also responsible for initiating and co-ordinating the elements of the promotion carried out by a third party. For this reason, we suggest it would be appropriate for ultimate responsibility for the compliance of the promotion to lie with the broadcaster and that specific licence variations are an appropriate way to codify this responsibility. However, care must be taken to ensure that the licence variations do not conflict with the requirements made of PRS operators by PhonePayPlus.

- 9.2 *Do you agree that there is a need for broadcasters to obtain independent, third-party verification that they are in fact complying with the draft licence obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options for verification discussed in Section 4 do you think is most appropriate? Are there other appropriate options? Again, please provide reasons. Do you have any comments on the draft licence variation set out in Annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.*

We agree that, for the purpose of restoring public confidence and ensuring the future legal compliance of all broadcasting formats and their operation, third party audit will be necessary. We note, as per our comment in paragraph 8.2, that the audit functions proposed in the Consultation remain significantly less stringent than those required of licensed ELMs by the Gambling Commission. It will be vital, going forward, to ensure the legality of PTV formats and we suggest that this is best done pre-emptively rather than in retrospect.

We suggest it would be appropriate for Ofcom to give consideration to improving the proposed audit requirements by reference to the requirements imposed upon ELMs by statute, other requirements of the Gambling Commission and of PhonePayPlus. In lieu of such action, an enhanced version of Option C should be incorporated into the amended licence variations.

- 9.3 *Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.*

The participation formats used in television and radio broadcasts tend to be similar in structure and in effect. We suggest that it would be appropriate to extend any new system to radio broadcasting as well as to television broadcasting, for the purpose of certainty and maintaining competitive parity between broadcasters, while making appropriate suggestions as to how the crucial differences between the formats (eg on screen display of pricing information) should be handled.

10 SECTION 5.32

- 10.1 This section of the Consultation reiterates Ofcom's concern about the commercial nature of betting and gaming products and services. Whilst we appreciate the principles identified by Ofcom in this regard, it is true to say that those principles have not been upheld by broadcasters during the recent growth of other PTV formats.
- 10.2 One could argue that PRS operators are essential to the broadcast in the same way as (for example) a production company, technical staff or other services that are routinely contracted out by broadcasters. Some of the technical functions provided by PRS operators may be crucial for true interactivity; examples of this include the availability of dedicated numbers, multiple telephone lines and computer systems capable of handling high number of calls.

Nevertheless, these services are not charged to the caller at a rate designed to reflect the true cost of providing the service, and instead are charged at premium rates for the purposes of creating a revenue stream.

- 10.3 In this way, the role of PRS operators in the value chain is entirely as commercial as any role occupied by bookmakers or those who operate gaming. PRS operators and broadcasters alike have been allowed to make significant profit from the purportedly non-commercial provision of telecommunications services to broadcasters.

11 CONCLUSIONS

- 11.1 Given the mischief that the Consultation is seeking to end and the problematic nature of the participation TV formats currently in use, Ofcom must afford proper consideration to the potential of the lottery format as an alternative to the prize competition.
- 11.2 Those responsible for the operation of lotteries are commercially and legally obliged to incline to prudence and would take this approach if operating lotteries through broadcast media. Any problems arising fall to the Gambling Commission for regulation, and the Gambling Commission is empowered to remove an ELM licence from any licensee failing to meet its exacting operational and financial standards. This would ensure that Ofcom's own responsibility would be solely for the broadcast, rather than for the legality of participation mechanisms.
- 11.3 The Gambling Act 2005 does not contain any statutory restriction on the promotion and operation of lotteries in broadcasts; nor was it ever intended that the Act should have such an effect. However, the Ofcom Broadcasting Code as it is currently drafted is inconsistent with this legal intention and instead provides great advantage to those seeking to operate prize competitions which may be in effect unlicensed lotteries, while significantly disadvantaging those operators wishing to conduct licensed lotteries, subject to strict rules in respect of financial propriety and proper conduct.
- 11.4 We suggest that Ofcom should consider now the prospect of allowing lottery formats to be treated as PRS are currently treated. This would require lottery formats to be used only where they are capable of editorial justification and derive from a specific programme, allowing listeners or viewers to benefit fully or interact with the broadcast. Such a move would provide consistency, clarity and certainty for viewers, participants and broadcasters.

We would welcome the opportunity to discuss this further with you. Please do not hesitate to contact Katherine Conlon or Carl Rohsler of this office on 0870 839 1000 if you have any questions or wish to explore the issues raised in further detail.