

GAMBLING COMMISSION

Decision of the Regulatory Panel following a hearing

Health Lottery ELM Ltd

Application for an operating licence

Regulatory Panel:

Ben Gunn (Chair)
Gill Milburn
Jenny Williams

The Applicant:

[Redacted information]

Attendees:

[Redacted information]

Date of decision:

2 September 2010

Introduction

1. The Panel convened to consider an application for an operating licence made under section 69 of the Gambling Act 2005 ('the Act') by Health Lottery ELM Ltd ('the Applicant').
2. Officials had requested the Panel to consider the application due to concerns over the Applicant's suitability to hold an operating licence and with particular regard to finances and integrity.
3. The hearing was conducted in private, in Birmingham, on 2 September 2010.

Summary of the information and evidence considered by the Panel

4. The Panel considered a bundle of documents, a copy of which had previously been served on the Applicant, comprising:
 - a) A case summary prepared by officials
 - b) The licence application and supporting documentation
 - c) Financial reports
 - d) Correspondence between the Commission and the Applicant
 - e) Background information from open source checks
5. The Panel also considered a bundle of documents provided by the Applicant in response to questions from Commission officials during the application process; representations provided by **[Redacted information]** in response to the Commission's case summary and supporting documents; and the Commission's response to the representations.

Introductions

6. The Chair introduced himself, his fellow Panel members and those present for the Commission and explained the process that would be followed and that the purpose of the hearing was to determine the application for an operating licence.
7. The individuals attending for the Applicant each introduced themselves and gave an account of their experience in so far as it was relevant to the application.
8. The Chair stated that they intended to address the following principal areas of interest:
 - a) The structure and management of the Applicant and its relation to the 31 Community Interest Companies ('CICs')
 - b) The structure and management of the 31 CICs, how they inter-relate and their relationship with the People's Health Trust ('PHT')
 - c) The arrangements for ticket sales
 - d) Contingency planning for financial continuity

[Redacted information]

Questions of the Applicant

9. The Panel confirmed with the Applicant the structure of the Health Lottery group of companies and that **[Redacted information]** was the sole shareholder. The Panel also confirmed that the Applicant would be operating the proposed scheme in support of the 31 CICs and that PHT would be identifying the health needs in the respective geographical areas.
10. The Panel asked the Applicant to explain their understanding that the scheme was acceptable in respect of section 99 of the Act. The Applicant stated that the funds would be protected as they entered the business through a trust account and when this was closed, the funds would pass to the CICs. These funds are ring-fenced by **[Redacted information]**. 20.5% of the proceeds would be passed from the CICs to PHT (PHT will take 0.5% for administration costs and there is currently no provision for increasing the 20%). The Applicant will make a management charge.
11. The Panel asked the Applicant to explain the relationship between PHT, the CICs and the Applicant and to satisfy the Panel that the structure was not a device to avoid the restrictions of section 99 of the Act. The Applicant stated that there is a common cause linking these organisations, namely to develop a successful lottery business and support communities by addressing health inequalities. The Applicant also stated that PHT is regulated by the Charities Commission, the CIC's are regulated by The Regulator of Community Interest Companies and the Applicant would be regulated by the Commission if a licence were granted. The Applicant stated that the management teams of the organisations were independent from one another, which was further demonstrated by **[Redacted information]** resigning as Non-executive Chair.
12. **[Redacted information]** appearing on behalf of the CICs, stated that the current scheme is organic by design and expects PHT to become a household name, combining the commercial and charitable aspects of CICs to develop the local community. He also stated that when the scheme takes off, the Boards of the CICs and PHT will expand.
13. The Panel discussed with the Applicant the rationale for having 31 CICs and the reason for them being named as they were. The Applicant stated that the number of CICs related to the number of Local Health Authorities in Great Britain and acknowledged that the names did not give an indication of the areas they were representing but stated that it was the role of the ELM to clearly communicate this to consumers.
14. The Panel asked the Applicant how participants in the lottery would be able to identify which good cause they were supporting. The Applicant stated that participants could identify the good cause before purchase through calling a contact centre or checking on-line and also that retailers would be aware of which

CICs were being supported in a given week. Post purchase, the tickets would have the name of the CIC and the Applicant stated that participants would be supporting health in general and would be aware that their local area would benefit over the course of a year.

15. The Panel discussed with the Applicant at length how each of the CICs could be seen to be promoting their lotteries given the current arrangements and whether the CICs are a device to keep below the proceeds and prize thresholds and support PHT that was being promoted under the umbrella of health. **[Redacted information]** stated that people would be able to identify the work of PHT through the health inequalities that are being addressed in local areas and that this would be well publicised. **[Redacted information]** also stated that he was clear that the CICs were 31 individual organisations and that this would become clear over time as the scheme developed. The Applicant stated that demand would be generated by people seeing the difference that the lotteries will make at a local level and through informing local retailers of the good causes. The Panel said that the Department for Culture, Media and Sport may look at such a scheme as the Health Lottery as it is close to the line in respect of section 99 of the Act. The Applicant stated that they were satisfied that the scheme they were intending to operate passed the statutory test and that they were being as open as possible in letting people know which CIC was being supported when a ticket was sold. The Panel and the Applicant also discussed the possibility that a function could be added to the terminals at the point of sale which would give the name of the CIC currently promoting the lottery. The Panel said that they would have to satisfy themselves that the lotteries were being separately promoted.
16. The Panel asked the Applicant questions relating to the administration of the CICs and PHT would be adequately provided for. **[Redacted information]** stated that administration was centralised to reduce costs and that there were fallback measures to ensure that the 20% would reach the CICs if sales were lower than expected.
17. The Panel asked the Applicant questions relating to their marketing and projections. The Applicant stated that the top prize of 'up to £100,000' would be clearly marketed as such. The Panel and the Applicant discussed what information could appear on printed tickets in order to provide clear information to participants, such as which CIC was promoting the lottery, which geographical area was being supported and that the top prize could be below £100,000. The Applicant stated that they had research carried out as to the possibility of having more winners than they could afford to pay out and this showed that this was only likely to happen once every two hundred years. The Applicant would wish to maintain the regional nature of the good causes supported rather than add additional national charities should the lottery prove highly successful. The Applicant was asked if the CIC's would feature in their advertising and promotion and responded that this would be done following the draw, promoting the work that would be done.
18. The Panel asked the Applicant how confident they were in their projections. The Applicant explained the research that they had undertaken and stated that they felt the projections submitted were pessimistic compared to what they expected to

achieve. The Applicant also explained their breakeven points in terms of sales and the amounts that would go to good causes [Redacted information].

19. The Panel discussed with the Applicant any points of conflict that may be perceived in the management structure. The Applicant stated that [Redacted information] had resigned her position as Non-executive Chair and intends to resign from PHT also to avoid any point of conflict although she was personally disappointed in doing so. [Redacted information] stated that he would resign as the Chair of PHT when it became well established.

Summary of the facts found

20. The Panel carefully considered the case papers and found the facts to be in all material respects as set out in the case summary and as presented to them by the Applicant.
21. On balance the Panel found that the scheme is capable of being compliant with the Act but acknowledged that the point was finely balanced and is a matter of fact and degree.

Decision of the Panel

22. Having carefully considered all the available information and the representations made on behalf of the Applicant with regard to the licensing objectives, the Panel unanimously decided to grant the application to hold a non-remote ELM and a remote ELM operating licence.
23. The Panel's reasons were that they were satisfied that the Applicant was suitable to carry on the licensed activities and would manage potential conflicts of interest.
24. The Panel explained to the Applicant that they had given very careful consideration to whether the proposed scheme complies with the requirements of the Act and were satisfied that it is capable of being compliant. The Applicant were advised that they would have to ensure that the scheme represents 31 (or more) separate lotteries, rather than operating as a de facto single lottery, which would of course be unlicensed and / or operating in breach of the limits imposed by the Act.

Signed:

Date:

Ben Gunn
Chair

