

GAMBLING COMMISSION

**Response (for the request, please see below)
5 August 2009**

INFO 09/70

I refer to your letter dated 13 July 2009, the contents of which are noted.

In your email dated 19 May 2009, you asked the Commission to clarify whether it had been decided that the Oldborough House scheme was a prize competition and not an illegal lottery, or whether the Commission had simply decided not to commence a prosecution under Section 258 of the Gambling Act 2005. On 20 May you repeated your request asking about the Commission's position on the Oldborough House scheme, whether the Commission would be taking legal action and if not why not. In the Commission's response dated 18 June, it refused to give the requested information, relying on the section 30 Freedom of Information Act exemption (investigations and proceedings conducted by public authorities) and saying that the Commission's opinion was that the public interest was best served by maintaining the exemption. However, matters have progressed since then and we no longer think we need refuse to respond to your request. The position therefore is as follows.

The Commission wrote to the organisers of the Oldborough House scheme on 17 April 2009 to inform them that the Commission considered the scheme they had set up to be a lottery, as defined by section 14 of the Gambling Act 2005. That letter also informed them that, having considered all the circumstances of the case, the Commission did not intend to prosecute them in respect of the actions they had taken up to that date.

The organisers of the scheme subsequently carried out a draw for the house. That led the Commission to carry out further enquiries, given that the organisers were aware at that stage that the Commission considered that the arrangements they had established did constitute a lottery. Those enquiries had not concluded when your original email was received, although they have now come to an end.

Having considered the information gathered from those further enquiries, the Commission remains of the view that the scheme did constitute a lottery, as defined by section 14 of the Gambling Act 2005. The Commission also remains of the view that a prosecution would not be in the public interest. I can therefore confirm that on 13 July 2009, the Commission wrote to the organisers of the Oldborough House scheme to inform them of its decision.

The Commission's decision in relation to the Oldborough House scheme should not be misunderstood. The Commission carefully considers each case on its facts and the decision not to prosecute in relation to the Oldborough House scheme simply reflects the fact that, on the particular facts of the case, it was not in the public interest for a prosecution to take place.

The Commission may well pursue prosecutions in other cases, notwithstanding its decision in the Oldborough House scheme case.

Request

We are writing to you as the Licensing Officer at the Gambling Commission to seek clarification as to the Gambling Commission's position with regard to prize competitions, and in particular, to the Gambling Commission's interpretation of Section 14(5) Gambling Act 2005.

We have advised a large number of clients on prize competitions and I am writing to you on their behalf, but in particular we are also writing on behalf of *REDACTED* who operated the Cheltenham House competition.

We are writing to you to ask the Gambling Commission to state your position on prize competition, and in particular to clarify your interpretation of the Act and to confirm whether or not the guidance documents issued by the Gambling Commission on this topic are still the position to be adopted by the Gambling Commission.

In particular, we are writing to ask you to clarify whether or not the Gambling Commission has now changed their opinion on interpretation.

You will recall that *REDACTED* organised a competition to win their house in their Cheltenham. The competition was run on the internet and consisted of one question, namely: "Which horse won the 2008 Cheltenham Gold Cup?". All successful entrants were then placed into a draw and the intention was to pick the winner out of the hat at the culmination of the competition.

On 30 September 2008, the Gambling Commission wrote to *REDACTED* expressing concerns regarding the scheme that was being operated. "The sense on the element of knowledge required to enter the competition". In effect they raised the question of whether the competition meets the test in the Gambling Act 2005 that sets out the distinction between prize competitions and lotteries.

The letter sent by *REDACTED* went on to say: "The question on whether the skill, judgement or knowledge element of your competition to win a house is insufficient to meet the requirements of the Act, in particular the test at Section 14(5)."

On 29 October 2008 we responded to your letter and set out in detail the reasons why legally the process being operated by *REDACTED* was a prize competition and also evidentially the process met the requirements of Section 14(5).

After a considerable delay the Gambling Commission replied on 3 December 2008 as follows: "The Commission does consider the scheme to involve a lottery which the lack of a licence or other exemption will be unlawful." The Commission argued that the only aspect people had to pay to participate in was the draw and that Section 14(5) was never engaged. The Commission also argued however: "If there is a chance of winning a valuable property by answering a question which does not so much require knowledge, skill or judgement as the making of some effort to find or work out the correct answer, we would expect the Court to conclude that such a requirement cannot reasonably be expected to prevent a significant proportion of persons who wish to participate in the arrangements from doing so.

The letter concluded: "We would request that you confirm to us within 21 days of the date of this letter that the scheme is no longer operating and is in the process of being closed down."

We are also worried that at the same time as corresponding with REDACTED the Gambling Commission also corresponded with REDACTED who were running a competition to win the Oldborough House. On 10 November 2008 the Gambling Commission wrote to REDACTED considering the points that had been put forward on their behalf, but stating that: "We have considered what you say in your letter but remain of the view that the scheme involves a lottery which for the lack of a licence or other exemption will be unlawful. There is no deterrent or penalty if someone has an incorrect answer as they can enter as many times as they like and are told if they have the incorrect answer. Furthermore, no payment is required until the correct answer is given. Whilst we note the statistics which you have supplied, we are not convinced that these indicate that a significant proportion of persons have been prevented from participating in the arrangement. We also consider that the answer to the question can be found very easily on the internet. Should the draw proceed then the Commission will have to consider whether the circumstances are such as to merit prosecution for an offence under Section 258 of the Gambling Act 2005."

We now understand that the REDACTED family has announced that the draw will take place for the house shortly and the REDACTED website states that the Gambling Commission now see this matter as closed.

We are writing therefore to you to request under the Freedom of Information Act that the Gambling Commission clarify whether it has been decided that the REDACTED competition is a prize competition and not an illegal lottery, or whether it has simply been decided not to prosecute under Section 258 of the Gambling Act 2005.

In the case of REDACTED, the decision was taken, following the threat of legal action, to cancel the initial competition which at that stage had £260,000 worth of entries and was clearly on target to reach £1million.

We take the view that even if the Gambling Commission is going to reconsider the guidance which it has issued it should still under the Freedom of Information Act specify in writing what decision has been taken in respect of REDACTED.