

Response Part One

Request under the Freedom of Information Act ("FOIA") – section 17 notice

I am writing in response to your FOIA request received by the Gambling Commission (the "Commission") on 19 December 2016 where you requested: *"a copy of the full report behind the decision to fine Camelot, as announced on [16 December 2016]. I know the decision document has been made available but would request to see the full report on which the decision was made."*

We will refer to the above case as the "2009 Case" and the information you have requested as the "Requested Information". For the avoidance of doubt, we have interpreted your request as a request for the information contained in the various reports made to the Commission's Board in connection with the 2009 case, along with relevant exhibits.

Confirmation and Extension

I can confirm that the Commission holds the information you have requested. Having reviewed the Requested Information, it is clear to the Commission that the Requested Information falls within the scope of a number of FOIA exemptions. The relevant exemptions in this context are: s. 30(2) (statutory investigations); s. 31(1) (law enforcement and prejudice to regulatory functions); s. 40 (personal data) and s. 41 (information provided in confidence). Apart from s. 40 and s. 41, which cover some but not all of the Requested Information, all of the aforementioned exemptions are qualified exemptions, which means the question of whether the information is exempt from disclosure under FOIA turns on the application of the public interest test provided for under s. 2(2) FOIA. The Commission takes the view that the public interest considerations in play in this case are complex and in any event fall to be considered by reference to any submissions which may be made by third parties who may be affected by the decision to release the Requested Information. Against this background, the Commission has taken the view that, in accordance with s. 10(3) FOIA, it needs and is entitled to take further time to consult with affected third parties and to reach a final view on the application of the public interest test in this case. As matters presently stand, the Commission hopes and expects that it will be able to provide a full response to the request by 16 February 2017 at the latest. For the avoidance of doubt, this letter should be treated as discharging the Commission's notification obligations under s. 17(1) (read together with ss. 10(3) and 17(2) FOIA).

Application of Exemptions

i. Investigations: s.30(2)(a)(iii), read together with s. 30(2)(b) and 31(2)(c)

Section 30(2)(a)(iii), read together with s. 30(2)(b) and s. 31(2)(c) FOIA ("the Section 30 Exemption") provides that information held by a public authority is exempt from disclosure if it was obtained or recorded for the purposes of an investigation which the authority has statutory powers to conduct, for any of the purposes specified in s.31(2) FOIA, and relates to the use of confidential sources. The relevant s. 31(2) 'purpose' in this case is *"the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise"* (s. 31(2)(c) FOIA). It should be noted that these provisions do not require the application of any prejudice test. Instead they apply a class-based test: information falling within the relevant class will automatically fall within the scope of the exemption.

The Commission has the statutory power to take regulatory action against those bodies or organisations that it regulates. Pursuant to section 5 of the National Lottery etc Act 1993, the Commission has licensed Camelot to run the National Lottery and Camelot is required to

comply with the licence conditions defined by the Commission. The Commission has statutory powers to take enforcement action (including investigating potential licence breaches by Camelot) where necessary, including pursuant to its duties in section 4 of the National Lottery etc Act 1993 and in accordance with the terms of its Enforcement Policy dated May 2013.

In pursuance of its regulatory role, the Commission commenced an investigation into Camelot's compliance with its licence conditions, when it had just cause to believe that these may have not been complied with. The Requested Information includes information obtained or recorded by the Commission relating to the investigation, and in particular includes extensive information relating to the Commission's obtaining of information from confidential sources. Such information was necessarily subsumed within the Report particularly in order to enable the Commission to ascertain whether regulatory action against Camelot was warranted on the grounds that it had breached one or more of the relevant licence conditions. It follows that this information falls within the scope of the Section 30 Exemption. Importantly, whilst the Section 30 Exemption does not per se embody any prejudice test, the Commission is of the view that insofar as the Requested Information falls within the ambit of s. 30(2), disclosure of that information to the general public under FOIA is likely to be highly prejudicial to the effective discharge of its regulatory functions and in particular its ability to investigate and reach appropriate decisions on what (if any) regulatory measures should be taken in any particular case. In particular, the Commission is concerned about the chilling effect on third party participation in the Commission's regulatory activities if information of the kind that is in issue were to be disclosed to the world at large under FOIA. This is a consideration which will obviously have to be weighed in the balance in the context of the application of the public interest test. These points are developed further under the heading below 'Prejudice to Regulatory Functions'.

ii. Law enforcement (prevention or detection of crime): s31(1)(a)

Section 31(1)(a) FOIA provides that information held by a public authority is exempt if its disclosure would or would be likely to prejudice the prevention or detection of crime. In relation to the investigation into the 2009 Case, the Commission and a number of independent third parties assessed the security procedures which were in place at Camelot at the time of the alleged fraud and also those which are currently in place. The assessment of the current procedures was required in order to determine whether they would be effective in preventing a recurrence of the type of fraud which was alleged to have been committed. Information relating to those assessments are subsumed within the Requested Information ("the Security Information").

The Commission takes the view that disclosure of the Security Information under FOIA would at the very least be likely to prejudice the prevention or detection of crime because it would assist those with an interest in trying to defraud Camelot by providing them with insights into both: (a) how best to go about defrauding Camelot and, further, (b) how to minimise the risk that their fraudulent conduct will be detected. Indeed, the Commission takes the view that this outcome is not merely a real and significant risk but is in fact an inevitable outcome (although for the avoidance of doubt, the exemption is engaged even if the higher 'would prejudice' threshold was not met in this case, as the 'would be likely' threshold is clearly passed). In reaching these conclusions, the Commission has taken into account both the nature of the information in issue and the amounts of money which could potentially be at stake if steps again were taken to defraud Camelot. There is a serious issue here with respect to criminals or would be criminals using the Security Information to circumvent the controls applied by Camelot in order to gain access to very sizable sums of money. This is true not just in respect of the information concerning the current arrangements but also the information concerning the arrangements in place in 2009. The fact is that that information would still yield useful insights into the arrangements applied by

Camelot at the present time, which is obviously highly undesirable. It is relevant in this context to note that the Information Commissioner Office's section 31 FOIA guidance (www.ico.org.uk) specifically details that the release of security procedures is an example of the type of information that if disclosed could make an organisation more vulnerable to crime. As the Commission sees it, it also increased the risk that those intent on defrauding Camelot will be in a better position to cover their tracks and hence avoid detection. Accordingly, the Security Information falls well within the scope of the s. 31(1)(a) exemption.

iii. Law enforcement (apprehension or prosecution of offenders): s31(1)(b)

Section 31(1)(b) FOIA provides that information held by a public authority is exempt if its disclosure would or would be likely to prejudice the apprehension or prosecution of offenders.

In relation to the investigation of the 2009 Case, the Commission worked with Hertfordshire Police and information was exchanged as part of the criminal investigation and the Commission's regulatory investigation. Although the Commission is satisfied that it is more likely than not that a fraud took place, no offender has been prosecuted to date. As such some of the information in the Report will be relevant should any new lines of enquiry be received regarding an offender in relation to the alleged fraud. Disclosure of certain information within the Report at this stage would therefore be likely to prejudice any further investigation by exposing the information the police have collected to date, allowing any offenders to have access to information which they could use to their advantage, for example by destroying relevant evidence or seeking to create false alibis. As such, this exemption is engaged in respect of certain elements of the Requested Information. As mentioned above s.31 is a qualified exemption and we require more time to consider the public interest test.

iv. Prejudice to Regulatory Function: s.31(1)(g) and s.31(2)(c)

Some of the information you have requested relates to the Commission's investigatory function.

Under s.31(1)(g), read together with s.31(2)(c) FOIA, information is exempt if its disclosure under FOIA would, or would be likely to, prejudice the exercise by any public authority of its functions to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

Were the Requested Information to be disclosed, this would at the very least be likely to prejudice the Commission's ability to ascertain whether regulatory action was required against the bodies that it regulates. In particular, knowing that information provided in relation to a Commission investigation and report of such investigation is at risk of being disclosed to the world at large under FOIA would be likely to deter sources, third parties and the bodies the Commission regulates from being open and honest and expressing themselves in relation to their thoughts and opinions on the investigation that the Commission is carrying out. Furthermore, concerns about this chilling effect on third party engagement would inevitably deter those working within the Commission from expressing their views and giving their advice freely and frankly both internally within the organisation and in dealings with interested third parties. Such developments would inevitably impact upon the quality of the Commission's decision making and prevent it from reaching properly considered and robust conclusions on whether regulatory action in any particular case is necessary. For all these reasons, s.31(2)(c) exemption is engaged.

v. Personal information: s.40

Some of the information you have requested is personal data (as defined under the Data Protection Act 1998 ("DPA")), of various individuals including:

- employees of the Commission;
- employees of Camelot;
- employees of the Police Service;
- the individual who made the prize claim involved in the 2009 Case); and
- other third party individuals

Section 40(2) FOIA states that third party personal data should not be disclosed to a requester if such disclosure would be in breach of the data protection principles under the Data Protection Act 1998 ("DPA").

The first data protection principle ("DPP1") requires that information be processed "fairly and lawfully" and meet at least one of the conditions in Schedule 2 DPA (and, where sensitive personal data is involved, one of the conditions in Schedule 3 DPA for sensitive personal data, such as data relating to alleged criminal offences). Inevitably the reasonable expectations of the affected third party data subject will be relevant to the application of DPP1.

It is unlikely to be within the reasonable expectations of the employees of the Commission investigating the case, Camelot and the Police Service that their personal data would be disclosed to the world at large. Such individuals provided their information to the Commission on a confidential basis. The involvement of these employees in the 2009 Case is not known publicly and they would not expect their involvement in such a highly sensitive matter to be made public. Moreover, it is doubtful that the disclosure of this data would materially serve any public interest. Against this background, the Commission takes the view that this data is exempt under s. 40(2) on the basis that its disclosure would contravene DPP1: the disclosure would not be fair; it would not be lawful and would not meet any schedule 2 condition.

Some of the information you have requested will include information relating to the individual who made the claim to Camelot which the Commission has since found was likely to have been fraudulent in nature (applying the civil burden of proof) ("the Claimant"). The information relating to the Claimant necessarily amounts to "sensitive personal data", as defined in s. 2 DPA, as it amounts to information as to allegations that the individual has committed a criminal offence. There has as yet been no criminal prosecution of the Claimant and, hence, no determination that the Claimant has in fact acted fraudulently, applying the higher criminal standard of proof. In effect, these are allegations which the Claimant has not had the opportunity to address within a criminal prosecution process, with all the safeguards which such a process presupposes. Taking all these considerations into account, the Commission has come to the view that disclosure of the Claimant's name would be unfair, unlawful and would not meet a schedule 2 or a schedule 3 condition. Accordingly, this information is exempt under s. 40(2) FOIA.

vi. Information provided in confidence: s.41

Some of the information that you have requested includes information that was provided in confidence to the Commission by third parties, such as the Police, Camelot and individuals including the Claimant. In some cases, the information was provided on the basis of an express undertaking that the information provided would be treated as confidential. In other

cases, the fact that the information would be dealt with on a confidential basis was implied by virtue of the nature of the dealings with the relevant third party.

Section 41 FOIA provides that information is exempt if it was obtained by the public authority from any other person (including another public authority), and the disclosure of the information to the public (otherwise than under the FOIA) by the public authority holding it would constitute a breach of confidence actionable by that or any other person. This exemption is not qualified under FOIA but the law of confidence requires us to consider whether there is an overriding public interest in disclosure.

Having analysed the Requested Information, the Commission takes the view that disclosure of the confidential information it has obtained from third parties would give rise to an actionable breach of confidence, which is not overridden by any public interest in disclosure in this case, particularly in view of the inherent sensitive nature of the information.

As indicated at the outset of this letter, the Commission needs more time to consider the application of the public interest test in the context of the application of information falling within the scope of ss. 30, 31 and 41. We will set out our full analysis of the application of this test to the facts of the present case in due course.

Response Part Two

I write further to the Commission's letter of 17 January which detailed the information the Commission holds in relation to your request and the exemptions that we considered were engaged in relation to this information.

Having had the time to now consider the public interest test, we believe that the public interest does favour the disclosure of certain parts of the information falling within the scope of your request. There is, however, still material which remains exempt for the reasons previously outlined where the public interest balance favours maintaining the exemption and withholding the information. The public interest test that has been applied to each exemption is detailed below.

One of the key public interest factors we have considered is around providing assurance that the circumstances which led to the prize claim being paid could not be repeated and that the National Lottery is being run in a secure manner whereby players are protected.

We are therefore releasing information to inform public understanding in respect of the following areas:

- Weaknesses in processes / controls in place at Camelot at the time of the prize claim which contributed to or caused the prize claim to be paid, save to the extent that it could not prejudice any future police investigation or the ongoing integrity of Camelot's security processes and controls
- The robustness of the Commission's investigation
- Assurance that measures are in place that would prevent a reoccurrence, save to the extent that disclosure of such measures may make a fraudulent claim more likely in the future or prejudice the integrity of Camelot's security processes and controls

The information we are disclosing is attached to this email. The documents comprise of:

- the paper submitted to the Commission's Board with supporting documents
- exhibits which supported the case summary
- additional relevant material.

As the documents have been redacted where i) absolute exemptions are engaged or ii) qualified exemptions are engaged and the public interest favours maintaining the exemption and withholding the information, we thought it would be helpful to provide some additional context, as follows. For the avoidance of doubt, this information is provided in order to assist you in understanding the process followed by the Commission and to place the information we are disclosing in context. The Commission is not required by the terms of the Freedom of Information Act 2000 to create information in response to a request.

Relevant context relating to the Commission's investigation

The Commission investigation

On 12 October 2015, the Commission was notified of an allegation of fraud relating to a prize payment made by Camelot in 2009. On 15 October, Camelot were put on formal notice of an incident investigation under the National Lottery etc. Act 1993.

The investigation comprised four key elements where breaches may have occurred:

1. Access controls
2. The prize claim investigation process
3. The rationale for making the payment
4. Existing processes and procedures in relation to prize claims

Whilst the first three areas related to the 2009 incident, the fourth area focussed on providing assurance that current controls were sufficient to prevent any sort of re-occurrence. This aspect is addressed in the subsequent section.

A case management group was also established comprised of relevant Commission officials to provide support on specific aspects of the investigation as well as to provide managerial oversight. This group initially met on a weekly basis to monitor progress and review new developments.

Over the remainder of 2015 and for the early part of 2016, the investigation team collected information from Camelot and other relevant third parties in order to establish whether licence conditions had been breached.

In April 2016, the Commission issued preliminary findings to Camelot which took into account independent assurance work, compliance reviews by the Commission, information provided by Camelot and the police as well as responses from Camelot to questions during the investigation. Preliminary findings were made that there was evidence of failings in the following areas at the time of the alleged fraud:

1. Access controls
2. The prize claim investigation process
3. The rationale for making the payment

Some of these findings were agreed by Camelot but some aspects of the findings were disputed by Camelot who submitted further representations. The preliminary findings also raised concerns over some of the security processes and procedures in place at that time.

The findings of the investigation team were presented to the National Lottery Committee¹ on 16 June 2016. The Committee found that there were breaches of the licence held by Camelot under section 5 of the National Lottery etc Act 1993 in relation to access controls, the prize claim investigation and the decision making process that had been followed in the prize payment being made. They did not conclude that there was a breach in relation to current access controls. Whilst the Committee was able to make findings in relation to the licence breaches, in order to determine the appropriate sanction, they considered further evidence was required to determine the likelihood of a fraud having taken place and, if there was a fraud, the question of whether the licence breaches could have contributed to any losses to good causes.

Further investigation work was then undertaken and additional evidence was gathered (including evidence from the police). In July 2016 the Commission's investigation team provided this further material to Camelot together with reasons in support of the recommendation to the Committee that they found the prize claim was, on the balance of probabilities, not genuine. Camelot did not agree with this view and provided its further representations in this regard. The Committee reconvened on 6 September 2016 to consider the further material and representations that had been generated. Based on the evidence produced, the Committee concluded that it was more likely than not that a fraud had been committed and that a sanction should be imposed.

On 6 October 2016, there was a Committee meeting to determine the sanction.

On 27 October 2016, the findings of the Committee and their recommendations were provided to the Commission's Board. The Commission's Board found breaches in relation to the first three areas but did not find that Camelot was in breach in relation to existing processes and procedures in relation to prize claims.

Assurance work

The circumstances surrounding the alleged breach gave rise to questions regarding the current controls in place and whether such an incident could be repeated (or indeed had happened subsequently).

The current controls that are in place formed part of the investigation as previously outlined.

The assurance work consisted of a range of actions, detailed below.

1. Price Waterhouse Coopers (PWC)

After the incident had been identified, Camelot engaged PWC to:

- review the processes in place surrounding the incident
- consider whether any instances of fraud of the kind alleged other than the alleged fraud were likely to have been committed in relation to high tier prizes
- identify any additional areas for improvement in existing processes.

¹ The National Lottery Committee provides advice to the Board of Commissioners (the Board) and the Chief Executive in relation to the exercise of the Commission's functions under the National Lottery etc Act 1993. The Committee is comprised of five members of the Board of Commissioners who are appointed by the Department for Culture, Media & Sport.

PWC made a number of positive observations regarding behaviours and activities but also identified a number of areas for potential improvement. The report was shared with the Commission who monitored the implementation of the agreed actions to strengthen controls.

There was no evidence identified of any fraud other than the alleged fraud having been committed. Camelot also conducted their own reviews of high-tier prize claims.

2. Mazarsⁱ

After the incident had been reported to the Commission, we engaged Mazars to conduct a desktop review of existing Camelot policies which are designed to prevent fraud. This provided a good level of assurance that current policies were fit for purpose.

3. Commission compliance work

The Commission has an existing compliance function which monitors Camelot's operations. Given the concerns raised by the alleged fraud coming to light, Commission officials in this area have focussed on the efficiency of controls around fraud prevention and the prize claims process that is currently in place. Work in this area remains ongoing, testing that policies are being effectively applied in practice.

Whilst we are unable to double check every prize claim, the public can feel reassured that we do carry out our own extensive monitoring of Camelot's processes. For example, in 2016 we conducted over 100 separate monitoring activities in relation to Camelot.

We impose clear requirements on Camelot to meet internationally recognised control standards, which were independently re-certified last year. We also require regular reporting of Camelot's own assurance processes.

We have taken assurance from our own and independent investigations that there are no analogous events and we are satisfied that processes are in place to mitigate against the possibility of an incident of this nature happening now. The independent reports identified no material weakness in Camelot processes, although some improvements were suggested.

Public interest test considerations

The relevant exemptions upon which the Commission relies are set out in the letter dated 17 January 2017. As explained above, where these relevant exemptions are qualified exemptions, the Commission has carefully considered the public interest factors which relate to the information which falls within the scope of your request. The public interest considerations which apply in respect of each of the relevant exemptions is outlined below. Where the Commission has concluded that, in respect of any particular information, the public interest balancing exercised is in favour of maintaining the exemption, this information has been redacted and/or not disclosed.

i) Investigations – s.30(2)(a)(iii), read together with s.30(2)(b) and 31(2)(c)

This exemption may be engaged in relation to information gathered as part of an investigation which the Commission has the power to conduct and relates to confidential sources.

Public interest factors in favour of disclosure

- There is a legitimate public interest in promoting the accountability and transparency of public authorities.
- There is a public interest in demonstrating that the fraud which the Commission found to have taken place could not be repeated.
- There is a public interest in providing assurance that the Commission has thoroughly reviewed the circumstances of the alleged fraud and investigated the matter.

In favour of maintaining the exemption

- The investigation contains material provided to the Commission which was obtained from confidential sources and provided by the police. There is a real and significant risk that such third parties would in the future be willing to volunteer only limited information and that opinions and/or advice would likely be curtailed and not free and frankly given. There is also a risk that some third parties may no longer wish to exchange information, opinions or advice at all in the future.
- Without the ability to gather such information from third parties, on the assurance that the information would be suitably protected from further disclosure, the investigation in this case is likely to have been significantly more difficult. Disclosing this information would therefore be likely to be of significant detriment to future cases which will depend upon this type of cooperation and the receipt of information from confidential sources.
- There is a general public interest in third parties and the public maintaining a level of trust in the Commission as a regulator, including in our integrity as a regulator. If information which has been disclosed for a specific purpose with the expectation it will be held in confidence is disclosed, this would likely undermine this trust.
- Information, opinions and advice provided by third parties can assist the Commission in our investigations and the effective conduct of our duties and functions as an authority and where disclosure would inhibit the provision of advice and opinions from third parties this would be detrimental to the Commission's statutory functions

Weighing the balance

Having considered the balance of the public interest, the Commission believes disclosing some of the information which falls within the scope of section 30(2)(a)(iii) would be likely to prejudice our ability to gather information in future cases and that significant weight should be attached to the need to preserve the efficiency and effectiveness of the Commission's investigations. It is in the public interest confidential sources are able to provide information to the Commission, in the knowledge that the information disclosed will be used for legitimate regulatory purposes only and not subject to wider disclosure unless there are compelling public interest arguments to the contrary. If they believed it was likely that such information would reach the public domain it would be likely to have an impact on the accuracy, honesty and level of detail of information supplied to the Commission, which would be likely to have a direct impact on the Commission's ability to perform our statutory duties effectively. There is also a strong public interest in maintaining effective cooperation from other parties such as the police, without which the Commission would be less effective as a regulator, as our information sources would be restricted.

Effective regulation depends on trust being developed with stakeholders so that open and constructive conversations can take place and information is freely provided.

Having considered the balance of the public interest, the Commission is of the view that the balance of the public interest lies in maintaining the exemption in relation to information obtained from confidential sources used to support this investigation considering the wider impact this could have on other investigations.

ii) Law enforcement (prevention or detection of crime) – s.31(1)(a)

This exemption relates to information that would be likely to prejudice the prevention or detection of crime if it were to be released.

In favour of disclosure

- There is a legitimate public interest in promoting the accountability and transparency of public authorities.
- There is a public interest in demonstrating that the fraud which was alleged to have taken place could not be repeated due to strong controls now being in place.

In favour of maintaining the exemption

- There is a strong public interest in avoiding crime being perpetrated against Camelot through disclosing information which would assist a would be fraudster, such as current security controls, processes or procedures.
- The investigation work undertaken by the Commission necessarily goes into a granular level of detail regarding the controls framework in order for assurance to be provided and if detailed information relating to these controls were to be released, it would likely undermine the security of Camelot's systems and processes and increase the likelihood of a fraud being committed, as it would enable people to circumvent the controls.
- There is a public interest in maintaining security of systems and processes operated by licensees to protect, not only the licensees, but personal data and confidential information of individuals and confidential information of organisations which may be held on those systems.
- The issues addressed in the information relate to wider, ongoing compliance issues and disclosure of the information would be likely to prejudice work in this area.
- Disclosing assurance work would likely set a precedent whereby the Commission would likely find it more difficult to refuse similar requests in future in relation to other licensed gambling companies and security audits, creating the same security concerns in the future.
- High level assurance of current processes has been made available through the release of summary material contained in the PWC and Mazars reports.

Weighing the balance

There is a strong public interest in providing assurance that the fraud which was alleged to have taken place could not be repeated. This has to be weighed against the information that has been provided already and the impact that disclosing the information could have in terms of making a fraud more likely. On this basis, the conclusions of independent reports have been released but details relating to specific controls are being withheld as the Commission considers that this strikes the correct public interest balance in terms of providing assurance but without disclosing information which would undermine the security of Camelot's systems and processes.

Having considered the balance of the public interest, the Commission is of the view that the balance of the public interest lies in maintaining the exemption in relation to detailed discussion of security controls.

iii) Law enforcement – s.31(1)(b)

This exemption relates to information that, if it were to be disclosed, could prejudice the apprehension or prosecution of offenders. Given the nature of the alleged crime, this would relate to the police investigation.

In favour of disclosure

- There is a legitimate public interest in promoting the accountability and transparency of public authorities, including demonstrating that the Commission has effectively managed the investigation so as not to prejudice the investigation carried out by the police.
- There has been extensive media coverage of this case and disclosure could provide assurance as to the thoroughness of the investigation by the police.

In favour of maintaining the exemption

- The police investigation may be re-opened should new information come to light and it is important that information is not disclosed which would prejudice that investigation process as there is a strong public interest in the police being able to carry out their functions effectively.
- The Commission has a high level of expertise in relation to gambling and is able to support the police where they investigate criminal matters in this sector. Should the Commission disclose information that is prejudicial to police investigations, this would discourage the police from cooperating with the Commission on future investigations, impacting on their effectiveness.
- Disclosing this material would be likely to deter police forces from working with the Commission in future cases. Without the ability to work closely with the police, on the basis that their information will be protected, the Commission's ability to investigate particular licence breaches would be impaired. Information, opinions and advice provided by the police can assist the Commission in our investigations and the effective conduct of our duties and functions as an authority and it is important that this free flow of information is maintained.

Weighing the balance

Having considered the balance of the public interest, the Commission is of the view that the balance of the public interest lies in maintaining the exemption in relation to material relevant to the alleged fraud that was committed in 2009 which falls within the scope of section 31(1)(b). The Commission's view was that a fraud was likely to have occurred and there is a strong public interest in any future police investigation proceeding in a manner which has not been prejudiced by disclosure of information by the Commission. This outweighs any argument in favour of disclosing this material.

iv) Prejudice to Regulatory Functions – s.31(1)(g) and s.31(2)(c)

This exemption relates to information that, if released, could prejudice the Commission's ability to undertake its regulatory functions. This would include the ability to effectively investigate regulatory issues and take appropriate action.

In favour of disclosure

- There is a legitimate public interest in promoting the accountability and transparency of public authorities.
- There is a strong public interest in demonstrating that the operator of the National Lottery is subject to effective regulation so that consumers can have confidence in participating.
- The Commission has the power in certain circumstances to compel licensees to provide information required to conduct our regulatory functions and the provision of information by licensees may not therefore always be on a voluntary basis.

In favour of maintaining the exemption

- The investigation contains material provided to the Commission which was obtained from third parties, including Camelot. There is a real and significant risk that such third parties would in the future be willing to volunteer only limited information and that opinions and/or advice would be likely to be curtailed and not free and frankly given. There is even a risk that some third parties may no longer wish to exchange information, opinions or advice at all in the future. This would be detrimental to the ability of the Commission to conduct its investigations.
We believe that disclosing information would be likely to discourage Camelot and other licensees from freely and candidly providing information to the Commission in future cases.
This would be likely to force the Commission to take a formal approach to compel disclosure of information by licensees. This would likely result in engagement with licensees being more time consuming, less constructive and more confrontational, resulting in delays and poorer outcomes. That would in turn likely prejudice the Commission's ability to licence, monitor and regulate licensees, which in turn would have a detrimental effect on the Commission's regulatory functions as a public authority. It is in the interest of the public that the Commission can carry out our duties as effectively as possible and at a proportionate cost.
- As a regulator we require a safe space in which to consider the evidence before us in investigations, debate this internally and reach decisions without the expectation that every minor discussion point will be subjected to public scrutiny once matters are concluded.
- There is a general public interest in third parties and the public maintaining a level of trust in the Commission as a regulator, including in our integrity as a regulator. If information which has been disclosed for a specific purpose with the expectation it will be held in confidence is disclosed, this would likely undermine this trust.

Weighing the balance

Having considered the balance of the public interest, the Commission believes that by disclosing some of the information where this exemption is engaged would be likely to compromise the transparent communication between the regulator and the regulated community upon which effective regulation is founded and therefore the public interest lies in favour of withholding this information. There is a balance between the public interest in being transparent about the key facts of a case and the reasons for decisions being reached on the one hand, and in providing sufficient space for detailed representations to be made and robust discussions to be had on sensitive points that need to be explored in detail.

This applies to this particular licensee and the impact that disclosure would likely have on a wider basis with other licensees. It is in the public interest that applicants and existing

licensees should be open with the Commission, acting with timeliness and candor in the knowledge that the information disclosed will be used for legitimate regulatory purposes. If applicants or licensees believed it was likely that such information would reach the public domain it would be likely to have an impact on the accuracy, honesty and level of detail of information supplied to the Commission, which would be likely to have a direct impact on the Commission's ability to perform our statutory duties effectively. There is also a strong public interest in maintaining effective cooperation from other parties such as the police, without which the Commission would be likely to be less effective as a regulator as our information sources would be restricted.

Effective regulation depends on trust being developed with stakeholders so that open and constructive conversations can take place and information is freely provided. If the voluntary supply of information is negatively affected, this results in engagement with licensees being more time consuming, less constructive and more confrontational, resulting in delays and poorer outcomes, which is not in the public interest.

Request

I'd like to request a copy of the full report behind the decision to fine Camelot, as announced on Friday.

I know the decision document has been made available but would request to see the full report on which the decision was made.

ⁱ Mazars LLP asked that the following note be provided in relation to their report:

This information was prepared by Mazars LLP in connection with the services provided to the Gambling Commission and was therefore prepared specifically for the purposes of those services and solely for the benefit of the Gambling Commission. To the fullest extent permitted by law Mazars LLP accepts no responsibility and disclaims all liability to any third party who purports to use or rely for any reason whatsoever on the information, its contents, conclusions, any extract, reinterpretation, amendment and/or modification. Accordingly, any reliance placed on the information, its contents, conclusions, any extract, reinterpretation, amendment and/or modification by any third party is entirely at their own risk.