

**National Lottery enforcement
consultation response**

January 2018

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1 Introduction

- 1.1** On 11 October 2017 we issued our consultation on proposed changes to our enforcement strategy for the National Lottery. Our strategy is set out in the National Lottery Enforcement policy.
- 1.2** Earlier this year we consulted on changes to our Enforcement Strategy under the Gambling Act 2005. That consultation concentrated solely on the enforcement work we conduct in pursuance of our licensing objectives set out in the Gambling Act. It did not cover our enforcement work on the National Lottery because there are some important differences in the legislation that underpins that work.
- 1.3** Nevertheless, we want to harmonise our approach to National Lottery enforcement with our approach to enforcement under the Gambling Act in so far as possible. In that way, whenever we take enforcement action, we do so with the same goal of putting the consumer at the centre of what we do and how we regulate.
- 1.4** The key changes we proposed to our National Lottery Enforcement policy were:
- An updated set of general principles in Section 2
 - A clearer distinction between our investigative work and our decision making
 - Removing the requirement for decision makers to decide on whether the overall regulatory significance of a breach is low, medium or high as in practice that assessment added complexity but had little impact on the eventual outcome
 - Separating out the arrangements for informal procedures in Section 5 and in the same Section, including more information about regulatory settlement
 - In Section 7, more information about publication.
- 1.5** In making these changes, our intention is to:
- Streamline the policies and processes that govern National Lottery enforcement
 - Align our approach to National Lottery enforcement more closely with our general approach to our other enforcement work
 - Build on our experience of working with the current policy, whilst maintaining the legal and procedural safeguards that have always been a feature of the regulatory framework for the National Lottery.

2 The consultation

- 2.1 The consultation opened on 11 October 2017 and ran for six weeks until 21 November 2017.
- 2.2 We received two responses to the consultation and respondents identified themselves as follows:
- Local authority –
 - Industry body – 1
 - Other –
 - Not specified – 1
- 2.3 In this document we set out our analysis of the responses and our position on the issues they raised. Although we received only two responses, they are from bodies that provide wide representation of opinion about the National Lottery which is run by a sole operator. One response was wholly supportive of all of our proposals and one raised some issues for consideration. In this document, we have not indicated the number of respondents who raised issues about our proposals, we have simply identified the issue raised and set out our response.
- 2.4 In the consultation we asked 11 questions. We structured our 9 of our questions using a 5-point Likert Scale and invited respondents to indicate the extent to which they agreed or disagreed with our proposals. We also provided an option for respondents to add free-text where they wanted to add more to their response. Questions 10 and 11 were open, free-text questions.
- 2.5 In this document we have included our response **only to those questions which generated a substantive response**. They were questions 2, 3, 4, 5, 6, 8, 9 and 10.

3 The questions

Question 2: To what extent do you agree or disagree with our proposed changes to Section 2?

Issue

3.1 Issues were raised about:

- Whether we should specify the risk-based criteria we would use to determine whether an investigation was required
- What information we would provide in the initial stages of an investigation?

Our response

3.2 We have not removed the principle of being targeted. We have added it into the new expanded principal of proportionality and it now runs through this as an explicit theme. This is consistent with our intention to make these principals clearer and simpler. We will only intervene with enforcement actions where necessary to secure that the statutory obligations are met.

3.3 We do not consider it necessary to add in a principal of timeliness, as it is always our intention to resolve cases as quickly as is possible. It is our experience that the factors that determine the timeliness of concluding cases are determined by the aspects of each case.

Question 3: To what extent do you agree or disagree with our proposed amendments to Section 3?

Issue

3.4 Issues were raised about:

- Whether we should specify the risk-based criteria we would use to determine whether an investigation was required
- What information we would provide in the initial stages of an investigation?

Our response

3.5 We will make any request for initial information through written correspondence and/or dialogue. This allows for flexibility so that information can be obtained in a manner appropriate to the circumstances of the case. If we ask for additional information, it will be to increase understanding so that we can determine the most appropriate approach.

3.6 If we commence a formal investigation, we will set out our concerns in full in our written Notice of Investigation, which we send to the operator.

3.7 We set out timescales for the operator's response within our Notice of Investigation, and in subsequent correspondence as the case progresses. We always encourage operators which are the subject of casework, to engage with us to resolve any questions.

Question 4: To what extent do you agree or disagree with our proposal to replace the term 'voluntary settlement' with the term 'regulatory settlement'?

Our response

3.8 We have set out our position on regulatory settlement in our response to Question 8 below.

Question 5: To what extent do you agree or disagree with our proposals at Section 4 to streamline the decision-making process?

Issue

3.9 Issues were raised about:

- The impact of removing the assessment of regulatory significance from the decision-making process and how consistency would be achieved
- How will we address the risks associated with the removal of scrutiny provided by a secondary view during the process
- Why are we proposing to remove the word “significant” when it adds clarity
- The consistency of our approach with the Director General’s statement on financial penalties

Our response

3.10 Over time and through our experience of analysing casework, we have seen that the assessment of regulatory significance within the decision-making process creates unnecessary complexity, delay and can fetter the ultimate outcomes of the investigation. In future, National Lottery investigations will be assessed through the new decision-making framework. We will continue to consider the seriousness of each case and it will be worked through during step 1 of the new process. This will enable us to make an initial assessment, which can then be applied flexibly to the available regulatory outcomes.

3.11 We agree that there should be a secondary view during our decision-making process. For that reason, as we move forward all casework will be subject of oversight with appropriate checks and balances within a specialised casework environment. The framework for this includes scrutiny by Senior Commission officials as well as the oversight of our Complex Case group. We are satisfied as to the effectiveness of these arrangements, having developed and refined them through operational experience, and subjected them to external audit.

3.12 We have considered the comments we received about our proposal to remove the word ‘significant’ from the description of breach. The purpose of this revision is to promote transparency and clarity for consumers and operators about the range of options which are available to us, including investigation, where we have concerns about non-compliance.

3.13 The Commission remains consistent with the Secretary of State’s directions to the Commission about eliminating operator gain or benefit from non-compliance. To clarify this point we have amended the Policy to address this concern with the addition of a specific footnote.

Question 6: To what extent do you agree or disagree with our proposals to give credit for cooperation and timely disclosure as set out in Section 4, Step 3?

Issue

3.14 Issues were raised about what we meant by “timely disclosure” and what other factors might be taken into account when we assess cooperation and timely disclosure.

Our response

3.15 In line with our wider approach to enforcement, we do not intend to provide a fixed definition of timely disclosure. What constitutes timely disclosure should be based on the specifics of each case and by considering the full circumstances. This approach provides the necessary flexibility according to the facts and complexity of each case.

Question 8: To what extent do you agree or disagree with our proposed amendments to Section 5?

Issue

- 3.16** An issue was raised about the circumstances in which regulatory settlement might be an appropriate outcome and whether it would be considered as a final settlement.

Our response

- 3.17** In our National Lottery Enforcement policy we set out the value and flexibility that Regulatory Settlement can offer. We have also set out the criteria which must be met before Regulatory Settlement can be considered. Decisions about whether to accept a Regulatory Settlement will be made on a case by case basis
- 3.18** We enter into regulatory settlements on the basis of the facts known at the time. This normally concludes the investigation. If significant new information emerges post settlement, we would consider the appropriateness of the original outcome and reserve the right to consider further formal action.

Question 10: Do you have any other comments about the minor changes we are proposing to our National Lottery Enforcement policy.

Issue

- 3.19** An issue was raised about each change in isolation appearing minor but the cumulative effect of the changes being significant on both process and outcomes.

Our response

- 3.20** In proposing these amendments to policy and procedures, we considered the overall impact of the changes. Our intention is to refine the enforcement process based on our experience over the past few years of using the existing policy. Whilst we recognise that there are differences in the regulatory regime for National Lottery cases, there are clear benefits, particularly for consumers, in simplifying and harmonising procedures with our wider enforcement approach. We will be incorporating National Lottery enforcement cases into well established and operationally proven process and governance arrangements.
- 3.21** We will continue to evaluate the impact of these changes for their effectiveness, efficiency and that they are achieving the desired outcomes.

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