

aimm Consultation Response



Phone-paid Services Authority Consultation on Society Lotteries April 2018

Submission by Association for Interactive Media and Micropayments (aimm)

About aimm

The Association for Interactive Media and Entertainment (aimm) is the UK based trade association representing the commercial and regulatory interests of companies involved in the interactive media and micropayment industries.

Our members supply products and services to consumers via different media channels and platforms, facilitate the service delivery and/or the charging facilities or provide the telecommunications and charging mechanisms. This enables consumers to engage with innovative digital and voice services that fulfil a need or provide entertainment.

Our membership is diverse and ranges across digital content providers, broadcast interactive service providers, charities and their support organisations, payment and infrastructure intermediaries, fixed line and mobile network providers.

Our members uphold aimm's Code of Ethics and Core Values to ensure an environment of consumer trust and industry confidence exists within which, our members' commercial interests can prosper.

We are committed to furthering the interests of Interactive Media through the regular exchange of information throughout the value chains, effective engagement with regulators and legislators and the presentation of a successful industry image to consumer and business media.

We promote the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service should be perfectly at liberty to exercise their freedom of choice and thereby enjoy the most innovative range of rich media services.

To this end, we do not support deliberate limitations applied to products that are made available to consumers, pricing of those products or even the length of time that a consumer can enjoy those products provided the paying consumer has made

their choice freely and knowingly and that vulnerable consumer groups including children are adequately protected.

Member Input to Consultation

aimm welcomes the opportunity to respond to the Phone-Paid Service Authority's (PSA) Consultation on society lottery services and adoption of special conditions.

To assist **aimm** in providing a comprehensive input to this consultation, we research our Members in the following manner;

- Written input from Members
- One-to-one discussions

Our members who operate in the Premium Rate Services (PRS) market are broadly split into five categories although there is some overlap inside individual businesses.

- Fixed Line Networks, Fixed line Intermediaries (L1's)
- Mobile Networks, Mobile Intermediaries (L1's) and Merchants (L2's)
- Broadcasters (L2's)
- Charities (L2's) and Charity enablers (L1's)
- Industry Support and Monitoring companies

aimm sought responses from members within all of the represented PRS industries.

The Mobile Data Association initiative for adding a text based call to action for society lotteries and subsequently adopted by **aimm** has enabled Societies and External Lottery Managers to use mobile payments to sell lottery and raffle tickets and to use mobile shortcodes to facilitate the simple call to action for promotion.

The market for this initiative is embryonic but is being seriously considered by large charities as an additional means of fundraising, particularly in light of changes to socio economic environment that are affecting pure donations.

It is these large entities that have expressed most of the concerns with the PSA proposals with one large charitable organisation cancelling its plans for a Society Lottery launch due to the potential risk of non-compliance with PSA's requirements which do not match those of the Gambling Commission.

Our opinion, reflected by members is that Society Lotteries have risks that are mitigated already by the requirements of the Gambling Act 2005 the licensing requirements and the guidance already provided by the Gambling Commission. Thus, PSA's risk analysis which does not cater for existing mitigation categorises this product vertical as "High Risk" deterring adoption by large entities and places the product into PSA's Special Conditions which limit innovation and flexibility. Additionally, the PSA's promotional material requirements proposed under the Special Conditions far exceed the requirements of the Gambling Commission including their April 2018 update.

We have detailed our member's concerns later in this document.

Some of **aimm**'s larger member organisations may input their response directly to PSA through their regulatory representatives and we encourage this to happen so that PSA understands the depth of industry impact from the proposals. Wherever possible, we ensure that views of members made via independent responses are in synergy with **aimm**'s collective member views.

As our response is guided and supported by member's requirements, some opinions being expressed may not necessarily align with the opinions of individuals in the **aimm** Executive or **aimm**'s Board of Directors.

Background to aimm's response

Society Lotteries are designed to provide a fundraising vehicle for societies (which includes charities) and are more attractive to consumers as they introduce an entertainment element while supporting the good cause. They fall under the Gambling Act 2005 (the Act) and are regulated by the Gambling Commission (GC).

A significant number of existing Society Lotteries are currently paper-based e.g. posted raffle ticket books, raffle tickets, forms handed out to potential society supporters etc.

However, with changes to demographics and technology, the paper based services need a different style of promotion and engagement with their audiences to remain successful fundraising vehicles.

Some services for example which use that use form filling are dependent on recurring payments due to the "single bite of the cherry" effect. This deters some consumers from entry as they would like to have the choice of dipping in and out of the lottery / raffle as they please. These services would materially benefit from relationship management through mobile engagement and an easier form of spontaneous payment.

Our initiative, to introduce a new range of mobile shortcodes via the mobile network operators, gave a new promotional vehicle for Societies due to the familiarity by consumers to this established style of a call-to-action and its ease of use compared to other response mechanisms. Where a payment is also being made for the ticket, mobile payments simplifies the requirement on the consumer, encouraging take-up through reduced friction for the low value transactions.

While we do recognise that Society's using this facility will require a Remote Gambling License from the Gambling Commission or operate through an External Lottery Manager with the relevant licenses, we estimate that within two years, £56m revenue could be generated for Societies through this new call to action.

Success in using mobile payments via text service may also encourage on-line Society Lotteries to look at providing a mobile billing option alongside their existing payment facilities and to provide one-off entries alongside their recurring entry mechanisms.

aimm has communicated extensively with PSA on the development of this initiative and has spent time with the Gambling Commission to ensure that mobile payments and a text based call to action do not inadvertently cause issues for licensed operators.

We also examined PSA's Guidance documents and Special Conditions. To ensure that premium rate compliance is maintained, we have highlighted eight PSA publications (in addition to the Code and PSA's registration requirements) that Society Lottery promoters, ELM's and intermediaries need to be aware of. We also highlighted some anomalies.

Our view was that the addition of a new payment mechanism to an already heavily regulated, licensed product should not add unnecessary complexity so we suggested to PSA that a review of requirements and documentation could be made.

At the same time, by considering Society Lotteries as a unique product vertical, a new risk analysis should be conducted as some of the historical reasons for Special Conditions (actual unmitigated risks) are not relevant for this product category due to existing mitigations.

We also felt that PSA could easily allow the majority of consumer protection requirements to be handled under the Gambling Commission's requirements and licensing rather than duplicate them as it will be easier for licensed entities to have a single point of reference. Then PSA could lay out where the premium rate payment mechanism has its own unique requirements without overlap.

In view of the existing legal requirements, licensing, the charitable purposes of Society Lotteries, the low ticket values and the promoters brand values, we believe that this product vertical is **low risk**.

Thus we expected from PSA, based on concurrence with our risk analysis, reduced requirements alongside cross references to the Gambling Commission requirements.

We believe the current proposals from PSA appear to collect the eight separate documents into one, without any relaxation or concessions, with additional requirements placed on top (over and above GC's requirements) and without any pragmatic assessment of the risk mitigations already in place.

As a result, we believe that the current positioning by PSA will severely hamper the opportunity to create to help modernise an existing product.

Our members have fed back an air of disappointment with PSA's approach towards market innovation towards Society Lotteries.

PSA Questions

Q1: Does this definition of *society lottery services* suitably align with the gambling legislation and assist in identifying only the relevant phone-paid services that may be subject to specific PSA regulations?

No. Society Lottery services are already running without premium rate payments and attempting to redefine the meaning of "Society Lottery services" adds regulatory complexity and should be avoided.

Before a Society wishes to introduce a Lottery, it will need to reference the Gambling Act 2005 and the requirements of the Gambling Commission where both “Society” and “Lottery” for the purpose of the Act are already defined.

It is likely that a Society or an ELM (External Lottery Manager) entering into mobile payments will already possess Gambling Commission licences and will be running “Society Lottery services”. To them, PRS is just another payment mechanism for tickets. We propose a more practical definition:

Premium Rate Society Lottery: A premium rate service (‘PRS’) that enables consumers to participate in a “lottery” operated by, or for the benefit of, a “non-commercial society”. Such lotteries and societies meet the respective definitions set out in the Gambling Act 2005.

Q2: Do you agree with this approach to guidance development in relation to society lottery

Yes. aimm took the initiative to provide guidance to Level 1 intermediaries who would be working with their customers and Mobile Operators to deliver Premium Rate Society Lottery Services. These customers will be mainly Societies or their ELMs’.

Our guidance will assist lottery licensees to understand the PSA Code, relevant Special Conditions and relevant Guidance while detailing for L1’s the requirements placed on their customers by the Gambling Act. aimm is positioned to be able to bridge two regulated areas in such a way and provide expertise and insight. Any future Guidance issued by PSA specific for Premium Rate Society lotteries can benefit from aimm’s existing Guidance document to ensure alignment.

In terms of guidance, we always welcome topical and clearly written industry guidance and also welcome regular reviews as markets evolve and consumer technology and knowledge advances.

Q3: Are there any other pieces of PSA guidance that you consider will require consideration that does not appear in the list above?

We believe that the list is adequate and we also believe that aimm’s work to provide links to PSA’s separate pieces of guidance in our own guidance document has assisted industry.

If PSA decide to author specific guidance for Society Lotteries using premium rate charging, we will be happy to assist.

We do believe that the introduction of any new product line or new vertical is an opportunity to review both existing Special Conditions and Guidance and to reflect on pragmatic requirements for future Special Conditions and Guidance.

Q4: To what extent do you agree with the PSA risk assessment as set out above in section 2? Please give evidence in support of your submissions.

We believe the Society Lottery product vertical is low risk for the reasons below and therefore our opinion is contradictory to PSA's final assessment of "High Risk".

PSA risk analysis framework only considers the risk and not the existing mitigations that manage identified risks. We believe that this methodology has flaws and results in an incorrect final analysis which will impact Society Lotteries. We have identified the risk mitigations below:

1. Society Lotteries fall under the Gambling Act 2005 and are regulated by the Gambling Commission. Therefore any contravention of the Act is illegal and subject to criminal proceedings. As a result, it is unlikely that an unlicensed party will run a Society Lottery. Any party running a Society Lottery without a licence will fail the L1 due diligence checks.
2. All parties promoting or operating a large Society Lottery can only operate with a license from the Gambling Commission. For premium rate payments, a Remote Gambling License *may*¹ also be needed. A Gambling Software licence *may* also be needed. These licenses come with conditions, a breach of which could result in criminal proceedings. It is unlikely that a licensee will deliberately breach a license condition which mitigates the risk associated with "Passing Off". License conditions also mitigate the risks associated with "Financial Harm", "Uninformed Consent" and "Vulnerable Groups".
3. Small Society Lotteries require a local authority license. Running a lottery or raffle without a license is a criminal offence. It is highly unlikely that an L1 will risk criminal proceedings by facilitating payments for an unlicensed lottery. This mitigates the risk associated with "Passing Off". License conditions also mitigate the risks associated with "Financial Harm", "Uninformed Consent" and "Vulnerable Groups".
4. The ticket prices for lotteries are generally low in the £1-2 range and raffles generally at £5-£10. Consumers generally do not purchase lottery tickets or raffle tickets without knowing what the price per ticket would be, the prize on offer and the name of the Society. This mitigates the risk associated with "Financial Harm" and "Uninformed Consent".
5. The risk of ticket purchasing by underage consumers is covered as part of the GC license conditions. All remote operating licensees have existing procedures for self declared age verification on ticket purchase and absolute age verification for prize awarding. This mitigates the risk associated with "Vulnerable Groups".

¹ An ancillary remote licence can be sought for non-remote society lottery licensees that wish to accept remote payments

6. All GC licensees have procedures for detecting repeat gambling as part of the conditions of license as well as procedures for self-exclusion. This mitigates the risk associated with “Financial Harm”.
7. The large majority of Society Lotteries are promoted by well known charities and causes who have “brand reputation” at the heart of everything they do. Any reputational damage causes severe financial damage as a result of reduced support of the cause. This mitigates the risk of “Passing Off”.
8. All lottery and raffle entries are supported with a “ticket” that has to be delivered to the consumer along with statutory pieces of information laid out in the Gambling Act. A subscription service user will get a fresh ticket for every lottery / raffle entry and as a result will be aware that they are in a subscription. This mitigates the risk associated with “Financial Harm” due to the user being fully informed on an ongoing basis.

PSA’s risk assessment

PSA’s “Taxonomy of Risk” analysis does not consider existing mitigation before imposing mitigation conditions and so the imposed conditions (mitigations) are based on a flawed premise.

Without consideration of all the risks and all the existing mitigation the reduces or negates the risk, we cannot see how Society Lotteries should be put through this assessment to determine if the vertical should be treated as normal risk (under Ofcom’s determination of Controlled PRS) or high(er) risk.

Certainly, with the assessment of risk mitigations that we have provided above we cannot see how PSA could agree that it passes its own basic test set out in Code 3.11 of:

*“a significant level of consumer harm; or
unreasonable offence to the general public, arising from a particular category of
Premium rate service (“a high risk service)”*

PSA’s Assessment Evidence

We are concerned that the PSA has used as “evidence” for its own risk analysis, statements that do not detail what the evidence is that demonstrates risk.

For example in “Passing Off”, a statement has been made.. *“GC has consulted on increasing transparency around revenue share going to the society”*. The actual consultation showed concern that consumers did not know how much of their money was arriving at the promoted society.

The outcome of GC’s consultation is a requirement to have this information available on websites or literature and published annually and is fairly low key. Across licensed society lotteries, the average share is currently 46% which is in excess of the 20% legal minimum.

“Passing Off” would be promoting a lottery under the name of the Society without the society’s knowledge or permission and is unrelated to the GC’s concerns around transparency.

As another example, an evidence statement has been made: “Currently ELM platforms and varied infrastructure in the market;” and we cannot understand how this represents evidence.

Additionally we do not agree with the statement “Some evidence of interest from charities to have direct control over the payment mechanic and service” is evidence of “Passing Off” as this interest is purely a commercial decision between employing an ELM to perform this function and performing it in-house.

In terms of “Uniformed Consent”, the popularity of the service in other formats as stated in evidence is a testament to the consumer’s engagement with the service based on the simple mechanic of paying to be in a random chance of winning a prize.

It’s vitally important to separate the previous history of online competition services from Society Lotteries as there are no parallels. Online competitions seen historically could be run by any company and do not require a Gambling Commission License. Consumers like lotteries and raffles as they easily understand how they could win and the fact that winning is due to luck rather than skill.

As above, the “evidence” used for Unauthorised Consent risk tries to draw a parallel with online competition services despite the two products being tangential in the consumers eyes and being promoted under different criteria.

The “Service available to over 16” is just a statement of fact, not evidence of a risk. However, any risk in this area is mitigated by legally binding requirements as stated before.

The “evidence” used for Vulnerable Groups is not evidence and we consider that these risks are already mitigated through GC license conditions.

We propose that the PSA re-evaluate the conclusion of this risk assessment to factor in the understanding that this product operates under license conditions and codes of practice published by the Gambling Commission and that the product therefore demonstrates no greater risk than standard premium rate products.

We therefore believe that there is no requirement for Special Conditions and no categorisation of “high risk” to be placed on this product.

We also believe that Society Lotteries should be taken out of scope of the Special Conditions:

- Special conditions for online competitions (where the primary promotion is online)

- Special Conditions: Remote Gambling²:

Q5: To what extent do these provisions, SOL1 and SOL2, mitigate any risks associated with under-age use of gambling services and address?

We do not believe that this product vertical meets the criteria for Special Conditions as detailed above.

We do not see the benefit of repeating the requirements already stipulated by the Gambling Act and Gambling Commission's material. The only requirement that PSA should demand is already set out in PSA's Code 2.1 "*That PRS comply with the law.*"

Q6: Do you agree with our assessment that ticketing requirements and wider gambling regulations are sufficient for users, including any vulnerable groups, tracking their usage?

We believe that the existing Gambling Commission requirements are sufficient and do not need to be repeated or contradicted. Subscription Lotteries have different requirements to single-shot lotteries.

We believe that the need for access to gambling history is reduced for lotteries even in an online environment for two reasons.

1. The profile of the wider areas of gambling and the complexity of some gambling products are radically different than Lotteries and Raffles and so the need for access to playing history is lessened. Runaway gambling and gambling addiction feature heavily in government concerns. However Society Lotteries do not even feature in the list of products used by gambling addicts that go on to contact the charity GamCare.
2. Each lottery or raffle ticket issued to a PRS based player is accessible from the phone storage. The consumer can easily access history themselves.

If any provider wishes to provide player history, where the GC do not demand it, should be on a voluntary customer care basis and not subject to a separate PSA regulatory condition.

² We understand that PSA plans to review this Special Condition as it replicates provisions already set out by the Gambling Commission

Q7: Does the list in SOL3 contain the right types of information needed to give consumers adequate information associated with society lottery services? Please provide an explanation regarding any additional or amended requirements where you have suggested changes.

We do not believe that this product vertical meets the criteria for Special Conditions as detailed above.

The information requirements are duplicated with GC's with most of the GC's requirements detailed in the Remote Gambling and Software Technical Standards document³ however, PSA has suggested that the information requirements is for **promotional material** rather than replicate most of the GC's requirement that certain information should be "easily available" to consumers. As such, PSA's proposed list in SOL3 does not match GC's RTS3 which was updated April 2018.

In order to provide regulatory certainty to industry, overlapping requirements should either be matched or PSA should refer to the GC's material for common requirements, and only highlight anything that is additional as a result of the usage of PRS based billing, an example being that entrants can buy a ticket and add it to the phone bill.

PSA's list of promotional material requirements will add clutter to the basic call to action and will obfuscate important information and / or confuse customers. Clarity is often achieved with less, not more.

GC have stipulated in their Licence Conditions and Codes of Practice⁴:

"Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion"

It may be that PSA's interpretation of "promotional material" may differ to the general understanding of the noun, in which case, this needs to be made clear to industry.

We are also concerned that PSA's requirements can be open to different interpretations between a promoter and PSA investigations staff. GC's requirements for certain information to be "easily available" means that complex items can be detailed on a website rather than cluttering the promotion.

³ <http://www.gamblingcommission.gov.uk/PDF/Remote-gambling-and-software-technical-standards.pdf>

⁴ <http://live-gamblecom.cloud.contensis.com/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf>

In terms of technology neutrality, an existing Society Lottery service using Direct Debit will have to change the information declared in its promotional material in order to add premium rate payments. This will create a significant market barrier for premium rate and this must be addressed.

We believe the PSA proposals have the potential to restrict industry and deter innovation and we request a review of the proposed requirements to incorporate our feedback.

Q8: To what extent do SOL4 and SOL5 offer clarity at the point of purchase and achieve a requisite level of consent to charge in relation to society lottery services?

We do not believe that this product vertical meets the criteria for Special Conditions as detailed above.

SOL4 draws parallels with affiliate marketed online competition services based on the PSA risk assessment which we have pushed back on as it does not cover existing mitigation.

These services need a Gambling Commission license to operate and the providers will not risk criminal proceedings or a revocation of their licenses.

The consumer is more likely to pay attention to the brand or cause that they are engaging with.

SOL5 should not be a requirement for a low risk product vertical. Our launch initially enables a text MO to purchase tickets and any migration to online will use the Payforit (or principles) based payment which already contains a two-stage purchase and confirmation facility for consumers.

Q9: To what extent do SOL6 and SOL7 give consumers awareness of their use of phone-paid services and an ability to track spending over time?

We do not believe that this product vertical meets the criteria for Special Conditions as detailed above.

SOL6 is already met through the Gambling Law requirement to issue tickets to Lottery entrants for each Lottery or Raffle purchase. This is in effect a receipt but with

significantly more information. We do not see how SOL6 is any different apart from the wording and will cause industry confusion over interpretation.

SOL7 is already met through the Gambling Law requirement (99(5)) to issue tickets to Lottery entrants for each Lottery or Raffle purchase.

Q10: Do you agree that compliance with SOL7 reduces the need for a separate provision relating to subscription spend reminders? Please provide evidence in support of your submissions.

We do not believe that this product vertical meets the criteria for Special Conditions as detailed above.

Any Society Lottery subscription service operating under a Gambling Commission licence would be for the recurring purchase of raffle or lottery tickets e.g. one £2 entry per week. These currently exist under Direct Debit facilities.

Under the Gambling Act Clause 99(5), each ticket purchase requires that a ticket is sent to the consumer:

“The fourth requirement is that where a person purchases a lottery ticket in a lottery promoted by a non-commercial society in reliance on the licence he receives a document which—

- (a) identifies the promoting society,*
- (b) states the name and address of a member of the society who is designated, by persons acting on behalf of the society, as having responsibility within the society for the promotion of the lottery, and*
- (c) either— (i) states the date of the draw (or each draw) in the lottery, or (ii) enables the date of the draw (or each draw) in the lottery to be determined.”*

Under PSA’s general subscription rules (Notice of Specified Service Charges and Durations of Calls Published in accordance with paragraph 3.12.6 of the 14th Code of Practice) a reminder is sent detailing the subscription exit facility and consumer support service provided by the service provider.

We cannot see any need for additional reminders as the consumer is fully informed and has all choices available.

Q11: Do you agree that spend caps are not required for society lottery services based on the information provided under SOL6 and SOL7 and that the notice issued under paragraph 3.12.6 should be amended accordingly?

This product vertical has, by law, protection measures built in to prevent excessive gambling. Additionally, it does not have the characteristics that would make it attractive to a consumer with gambling addiction compared with other gambling products and does not even feature in the list of gambling addiction products reported by callers to GamCare⁵

The consumer is fully informed at each ticket purchase and therefore free of the choices that can be made to control spend. Self-exclusion is also built in to the product.

We agree that spend caps are not required other than those imposed by the Payment Services Regulations 2017. We do not believe that the implementation of Special Conditions will protect consumers any more than the Gambling Act and the guidance to industry that is supplied by the Gambling Commission.

Q12: Does the list in SOL8 contain the right types of information to support the regulation of society lottery services and equip the PSA to handle any complaints and enquiries that may arise?

We do not believe that this product vertical meets the criteria for Special Conditions as detailed above.

Most of these items are required for product registration purposes and this is just duplication.

It should be the intermediaries' responsibility to check for appropriate licences as part of their due diligence. This will prevent an unlicensed person from operating whereas a tick box on PSA's website will not.

Close

⁵ http://www.gamcare.org.uk/sites/default/files/file_attach/GamCare%20Annual%20Statistics%202016-17%20FINAL.pdf

We assure you that, as ever, our comments are made constructively, compiled from member input and with the intent of achieving an effective, fair, economical and proportional regulatory regime for premium rate charged services in the UK.

If any clarification to our response is required or if we can be of any further assistance please contact the **aimm** executive at regulatory@aimm.co