



Report for:	Licensing of Alcohol and Gambling Sub-Committee
Date of meeting:	19 September 2017
PART:	I
If Part II, reason:	-

Title of report:	<i>Application reference number: M043323</i> <b>Small society lottery registration application under the Gambling Act 2005</b>
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	This report sets out details of an application for registration to promote small society lotteries (raffles, etc), which requires consideration and determination by the Sub-Committee in accordance with the adopted scheme of delegation.
Recommendations	That the Sub-Committee consider the contents of the report, and determine the application(s) in accordance with the options set out below.
Corporate objectives:	<p>Safe and Clean Environment</p> <p>Applications are required to be considered with regard to the promotion of the licensing objectives, which are:</p> <ul style="list-style-type: none"> <li>• Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;</li> <li>• Ensuring that gambling is conducted in a fair and open way; and</li> <li>• Protecting children and other vulnerable people from being harmed or exploited by gambling.</li> </ul> <p>Dacorum Delivers</p> <ul style="list-style-type: none"> <li>• Consideration of applications for small society lottery registrations is a statutory function, with a risk of judicial proceedings and reputational damage should the authority fail to properly exercise its functions.</li> </ul>
Implications:	Applications are to be determined under existing policies. No new policy implications arise.
Consultees:	There are no consultation requirements for applications of this type.

Background papers:	<p>Gambling Act 2005, and associated regulations</p> <p><a href="#">DBC Statement of Principles 2016-2019</a> (Para 29.2)</p> <p><a href="#">Gambling Commission's Guidance to Licensing Authorities</a> (Part 34) (5<sup>th</sup> edition, September 2015)</p>
Glossary of acronyms and any other abbreviations used in this report:	

## 1. Background

- 1.1. The provision of commercial and non-commercial gambling activities in the UK is regulated under the Gambling Act 2005. The definition of gambling includes gaming, betting or participation in a lottery, and is generally defined as activities provided for a payment, in exchange for the chance to win a prize.
- 1.2. The Act includes regulatory measures for lotteries (with the exception of the National Lottery), which are defined as either:
  - a) A 'simple lottery', in which players must pay to participate, and may be allocated a prize through a single process relying wholly on chance, or
  - b) A 'complex lottery', in which players must pay to participate, and may be allocated a prize through a series of processes, the first of which relies wholly on chance.
- 1.3. These definitions are wide enough to capture a variety of different fund-raising schemes, including lotteries, raffles, tombola, 100 clubs, prize draws, and non-skill competitions. The law only allows any lottery to be promoted to benefit a non-commercial purposes – not for private profit or gain.
- 1.4. There are several different categories of permissible lotteries, including some which must be formally licensed by the Gambling Commission (large society lotteries and local authority lotteries). Incidental lotteries (those run incidentally to an event), private society/work/residents' lotteries (those run solely for members of a society, employees of a workplace, or residents of a property), and customer lotteries (for customers at a business premises) are considered to be exempt lotteries, which do not require any licence/registration but must be run in accordance with strict statutory requirements. Small society lotteries are also considered to be an exempt type of lottery, but can only be promoted under a registration issued by the relevant local authority.
- 1.5. A small society lottery must:
  - Be promoted by or on behalf of a non-commercial society, which is registered with the relevant local authority throughout the promotion period;
  - Comply with limits on proceeds of such lotteries (no more than £20,000 per lottery, and £250,000 in aggregate in a calendar year);
  - Deliver at least 20% of its proceeds to the purposes of the promoting society;
  - Have a prize value not exceeding £25,000, including any rollover arrangements;
  - Charge the same amount for every ticket sold, and provide a ticket document to buyers containing certain prescribed details.

## 2. Application

- 2.1. An application for registration to promote small society lotteries was received on the **26 April 2017**, from **ProFormance Global**.
- 2.2. The application describes the purpose of this organisation as:  
**Football training for young people. Children register to train in our teams and are coached by professional coaches. We have a strict child protection policy and maintain the highest of standards. Local players have gone through our programme and on to professional clubs**
- 2.3. The applicant is not a registered charity, and has not held operating licences from the Gambling Commission in the previous 5 years.
- 2.4. On making checks as to the status of the applicant, officers noted that ProFormance Global is registered with Companies House as a commercial private limited company, number 10202891. This status would not be compatible with the statutory requirement that local authorities only register non-commercial societies.
- 2.5. Officers raised these concerns with the applicant and asked for additional information about the structure and constitution of the company, which was provided in a short email (appended at Annex A). Officers subsequently wrote to the applicant again to advise that the concerns remained, with advice on how to proceed (appended at Annex B). To date, no response has been received to this letter.

## 3. General principles to be followed when determining applications

- 3.1. Schedule 11 to the Gambling Act 2005 sets out the relevant framework for the determination of applications for registration, stating:

**44.** *As soon as is reasonably practicable after receipt of an application under paragraph 42 a local authority shall, subject to paragraphs 47 and 48–*  
*(a) enter the applicant, together with such information as may be prescribed, in a register kept by the authority for the purposes of this Part,*  
*(b) notify the applicant of his registration, and*  
*(c) notify the Commission of the registration.*

...

**47.** *A local authority shall refuse an application for registration if in the period of five years ending with the date of the application–*  
*(a) an operating licence held by the applicant for registration has been revoked under section 119(1), or*  
*(b) an application for an operating licence made by the applicant for registration has been refused.*

**48.** *A local authority may refuse an application for registration if they think that–*  
*(a) the applicant is not a non-commercial society,*  
*(b) a person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence, or*  
*(c) information provided in or with the application for registration is false or misleading.*

**49.** *A local authority may not refuse an application for registration unless they have given the applicant an opportunity to make representations.*

- 3.2. There is a small amount of content relevant to applications of this type within both the statutory guidance to licensing authorities, issued by the Gambling Commission, and the statement of principles issued by the licensing authority. Both of these documents are linked above.
- 3.3. If the application is refused, the applicant will have a right of appeal against the decision. Appeals may be instituted by way of written notice to a Magistrates Court, within 21 days of being notified of the decision.

#### **4. Options available to the Sub-Committee / Recommendation**

- 4.1. Officers recommend that this application be refused under para 48(1), schedule 11 to the Gambling Act 2005, on the grounds that the applicant, ProFormance Global, is a commercial company and is thus not eligible to promote small society lotteries to benefit a non-commercial society.
- 4.2. If the Sub-Committee are not minded to accept the recommendation, then the application for registration to promote small society lotteries must be granted. There is no provision to add conditions to a registration.

## **Annex A – Correspondence with applicant**

**From:** Ben ProFormance  
**Sent:** 30 May 2017 18:56  
**To:** Licensing Mailbox  
**Subject:** Re: Small lottery registration

Thank you for coming back to me.

We are a company. I didn't know how else to submit the application.

We coach children's football and so have been involved with DBC on projects such as 'kick it out' and 'get set go'.

We do quite a lot for free but as we do not make big profits it's really hard.

We'd like to hold a raffle of our members to raise money for free children's playing kit and free coaching for children in Dacorum.

thank you for your time

Best  
Ben

Sent from my iPhone

On 30 May 2017, at 18:36, Licensing Mailbox <[Licensing@dacorum.gov.uk](mailto:Licensing@dacorum.gov.uk)> wrote:

Dear Mr Roberts,

Apologies for the delay in responding, unfortunately we currently have staff absent long-term which is affecting our response times.

We do have some concerns about this application. Our initial checks show that Proformance Global is a registered commercial company, no. 10202891. Under the Gambling Act 2005, small society lotteries can only be promoted by non-commercial societies, and we are obliged to refuse applications from bodies which do not meet this status. With the exception of the National Lottery, there is no lawful means to promote a lottery for commercial or personal gain.

I would be grateful if you could provide additional information about how your company is structured, how you intend to promote lotteries if a registration is granted, and how the proceeds would be applied.

With regards,

**Ross Hill**  
Licensing Team Leader | Legal Governance

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Visit [www.dacorum.gov.uk/licensing](http://www.dacorum.gov.uk/licensing) for information on all of our licences and registrations.

## Annex B – Letter sent to applicant

Date: 9 June 2017  
Your reference:  
Our reference: M043323  
Contact: Ross Hill  
Email: [licensing@dacorum.gov.uk](mailto:licensing@dacorum.gov.uk)  
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Ben Roberts  
ProFormance Global  
REDACTED  
REDACTED  
REDACTED  
REDACTED

Dear Mr Roberts

### **Gambling Act 2005: Application for Small Society Lottery Registration**

I refer to your recent application to register ProFormance Global for the promotion of small society lotteries, and to the additional information you provided by email on 30 May.

As I explained in my original email, the fact that ProFormance Global is a registered commercial company has given rise to various issues. The Gambling Act 2005 only allows licensing authorities to register non-commercial societies for the promotion of small society lotteries – in fact under UK law, the only commercial company permitted to operate lotteries is the National Lottery operator. Other companies which hold lottery manager licences from the Gambling Commission may also run lotteries (including the Health Lottery and the Postcode Lottery), but these are run to benefit registered charitable societies, each of which is registered or licensed for lotteries in its own right – the company only serves as an external provider of services.

I have considered the additional information you have provided about the intention being to use lottery proceeds to provide free kit and coaching for children, and have no doubt that this is a laudable aim. However, after carefully considering your application and the applicable legislation, I remain of the opinion that we would be unable to lawfully register your company to engage in small society lotteries.

Continues...



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Were your company founded as a non-profit organisation, such as a community interest company or a private company limited by guarantee, we may take a different view, but as Proformance Global is a commercial (share capital) company with shareholders being personally entitled to a share of the company's assets and dividends, this breaches the non-commercial requirements under the Act.

An alternative way forward may be to establish a non-commercial society outside the auspices of the company, and for that society to apply for a registration. However in such a case, the society would need to be wholly separate from the company, with its own constitution, membership and financial arrangements. It would also, by law, have to be established and active for a different purpose – promotion of lotteries cannot be the sole or primary purpose of a registered non-commercial society.

I would be grateful if you would advise how you wish to proceed at this point. Should you wish to proceed with your current application, it will be necessary to refer it to a hearing of our Licensing Sub-Committee, where I would be recommending refusal for the reasons outlined above. If the Committee were minded to agree and refused the application, you would subsequently have a right of appeal to a magistrates' court against such a decision.

Alternatively, should you wish to withdraw your current application, I would be grateful to receive confirmation from you of this. On this occasion, given the misunderstanding that has arisen, I would be prepared to refund the application fee you have paid, or to carry this over to an application from a revised applicant.

I am sorry that you will not be able to use this route to raise funds for your proposed activities, but I hope that you will understand that the legal framework around lotteries is restrictive, to avoid abuse and misuse.

I look forward to hearing how you would like to proceed.

Yours sincerely

**Ross Hill**  
**Licensing Team Leader**  
**Legal Governance**