



Neutral citation [2025] CAT 54

Case No: 1730/12/13/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

24 September 2025

Before:

BEN TIDSWELL
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

- (1) THE NEW LOTTERY COMPANY LIMITED
(2) NORTHERN & SHELL PLC
(3) THE HEALTH LOTTERY ELM LIMITED**

Applicants

- v -

THE GAMBLING COMMISSION

Respondent

- and -

- (1) CAMELOT UK LOTTERIES LIMITED
(2) ALLWYN UK HOLDING B LTD
(3) ALLWYN ENTERTAINMENT LIMITED**

Interveners

Heard at Salisbury Square House on 24 September 2025

RULING (EXPERT EVIDENCE)

APPEARANCES

Michael Bowsher KC and Harry Gillow (instructed by Bryan Cave Leighton Paisner LLP) appeared on behalf of the Applicants.

Joanne Clement KC and Richard Howell (instructed by Hogan Lovells International LLP) appeared on behalf of the Respondent.

Tim Johnston (instructed by Clifford Chance LLP) appeared on behalf of the Interveners.

A. EXPERT EVIDENCE APPLICATION

1. The Applicants (collectively the “New Lottery”) seek permission to adduce expert evidence from an economist with expertise in econometric analysis, Mr Sam Williams. They have provided a draft report from Mr Williams, which is some 80 pages long.
2. The draft report supports proposed amendments to the New Lottery’s draft Amended Notice of Appeal. The focus of the report is econometric analysis which was prepared on behalf of Camelot UK Lotteries Limited (“Camelot”) now part of the Allwyn group (“Allwyn”), the Interveners, and submitted to the Respondent, the Gambling Commission, to support a proposal to use some £70 million of the National Lottery’s gross revenues to reinvest in marketing, in order to drive further lottery sales. The decision to accept that proposal is the subject of a challenge by the New Lottery under the Subsidy Control Act 2022 (the “Act”). The Gambling Commission did not treat this use of the National Lottery funds as a subsidy under the Act, which the New Lottery says that it should have done.
3. Central to this question is whether the Gambling Commission was correct in its assessment that the Commercial Market Operator (“CMO”) principle was satisfied, so that any benefit to Camelot was provided on terms that might reasonably have been available on the market (section 3(2) of the Act).
4. As set out in the draft Amended Notice of Appeal at [49B], [52A] and [52B], the New Lottery’s case is that the Gambling Commission was not entitled to place reliance on Camelot’s econometric work for the purposes of the CMO principle, given the serious and systematic flaws which the New Lottery says it contained (as set out in Mr Williams’s draft report). [52A] and [52B] read as follows:

“52A. Further, and as pleaded at paragraphs 35 to 35I above, the econometric evidence relied on by Camelot in support of the Proposal was fundamentally flawed, as the Gambling Commission was or ought to have been aware of and/or as was made clear to it by its expert economic advisors, Europe Economics. The Camelot Econometric Assurance Report was insufficiently robust or reliable to allow the Gambling Commission safely to reach any

conclusion as to the value of the Decision as an investment, to secure a particular return to good causes or otherwise.

52B. Further or alternatively, the Gambling Commission failed to make any or any proper enquiry into the errors in Camelot's econometric evidence, and any decision that it was acting as a commercial market operator was flawed and/or procedurally improper: *State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 ("*Tameside*"). Paragraph 35J above is repeated."

5. There was some suggestion in the New Lottery's skeleton argument for this hearing that there might be other grounds that justified the expert evidence, but Mr Bowsher KC for the New Lottery confirmed that the only challenge is one of irrationality, including a *Tameside* point about failure to make proper investigations.
6. The Gambling Commission's response to the application is that it is not permissible for the New Lottery to adduce expert evidence in judicial review proceedings unless narrow and strict conditions apply. The accepted grounds are set out in *R v Secretary of State for the Environment, Ex p Powis* [1981] 1 WLR 584 ("*Powis*"), which should be read with a further extension set out in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649 ("*Law Society*") by Carr J (as she then was) for the Divisional Court at [36] and following. The learned judge held that, where a challenge is based on irrationality (as it is here), the test is whether there is a serious technical error which is not obvious to the Tribunal, which can be demonstrated by a person with technical expertise and which is incontrovertible, which goes to the heart of the matter and which would make a real difference to the outcome (*Law Society* at [39-40]). However, if there is room for a reasonable difference of opinion, then an irrationality argument will not succeed, so any rational disagreement between experts will effectively render the expert evidence inadmissible (*Law Society* at [41]).
7. The Gambling Commission says that is the position here, as it has tendered a draft expert report from Dr John Spicer of Europe Economics (which advised the Gambling Commission on the Camelot models) which, it is said, amounts to a rational disagreement on all the points advanced by Mr Williams. The

expert evidence is therefore inadmissible in line with the guidance in the *Law Society* case.

8. The Gambling Commission also says that the evidence of Mr Williams is not necessary to deal with the New Lottery's irrationality argument. It refers to the requirement that expert evidence should be reasonably required before it is admitted. See for example *Public and Commercial Services Union v Secretary of State for the Home Department* [2022] EWHC 517 (Admin), [2022] 3 WLUK 154, and the Tribunal's Guide to proceedings 2015 at [7.65]. It also relies on the case law (including the Tribunal's own case law) emphasising the exceptionality of introducing expert evidence into judicial review proceedings. See for example *Dye v Durham* [2023] CAT 32 at [27] and [28].
9. Allwyn supports the Gambling Commission in opposing the application, in particular on the second ground that the evidence of Mr Williams is neither necessary nor appropriate in judicial review proceedings. Allwyn also notes the history of decisions in this Tribunal and the High Court in which a restrictive approach to the admission of expert evidence in judicial review proceedings has been taken – see for example *BAA Ltd v Competition Commission* [2012] CAT 3, where Sales J (as he then was) noted that, as a general matter, technical expert evidence “should be strongly discouraged and disallowed” due to the “obvious danger that costs will be wastefully multiplied with no significant benefit for the speedy and efficient dispute resolution procedure”.
10. There are various collateral disputes between the parties about the draft report of Dr Spicer – for example, whether he is properly to be considered an expert (having advised the Gambling Commission during the process of making the decision as part of the Europe Economics' work), whether he is giving expert evidence or evidence of fact, and whether he is straying into matters which are for the Tribunal to determine. It is not necessary to deal with those points in any detail. I have found his draft report helpful for the purposes of better understanding the nature of the criticisms made by Mr Williams.
11. Nor is it necessary to get into the details of the criticisms themselves and Dr Spicer's response. Broadly speaking, they involve the planning, the choice and

treatment of variables in the regression analysis, and the testing and assurance which Camelot carried out. It should however be noted that:

- (1) There is considerable uncertainty about what work and other steps Camelot did carry out, in particular because the model used was an iteration of previous work which had been assessed by Europe Economics in prior years and there is uncertainty about the extent to which that work had been superseded by changes to the model.
 - (2) There are points of agreement between Mr Williams and Dr Spicer (and indeed many of the criticisms by Mr Williams echo criticisms made by Europe Economics at the time of their assessment of Camelot's work). However, there are points of disagreement about what a reasonable econometrician would or would not do in relation to certain aspects.
12. In my judgement, the answer to the application to adduce the expert evidence lies most obviously in the relevance of that evidence to the grounds of judicial review advanced by the New Lottery.
 13. That is because (as the New Lottery's pleading acknowledges), we are interested in what the Gambling Commission knew or should have known about the shortcomings of the Camelot econometric work, rather than what Mr Williams now thinks of that work. The Gambling Commission did have material before it which explains shortcomings in the Camelot work (which is set out extensively in the draft Amended Notice of Appeal at [34A-F] and [35D-G]). I do not see how analysis from Mr Williams which was not apparent to the Gambling Commission assists with the assessment of the rationality of the Gambling Commission's decision. To the extent that the New Lottery wishes to argue that the Gambling Commission could have drawn conclusions beyond those expressly identified by Europe Economics, it may do so by reference to all the information available to the Gambling Commission at the time of the decisions. That, self-evidently, does not include the analysis of Mr Williams.
 14. It said by the New Lottery that the expert evidence is necessary because it shows the severity of the defects in the model, which were not fully appreciated by

Europe Economics. However, in circumstances where the advice from Europe Economics was that the models were not reliable for the purposes of identifying a point estimate of the effect on lottery sales of the proposed marketing spend, that seems to be an argument about nuances in the judgement of Europe Economics and straying into a merits challenge, rather than a judicial review challenge. Indeed, Mr Bowsher KC acknowledged that he was essentially submitting that Europe Economics had “got it wrong”, which illustrates that the challenge is straying well beyond one of irrationality.

15. The draft report from Dr Spicer also illustrates the potential for disagreement between experts to become problematic in determining this matter. As the authorities have consistently cautioned, letting in expert evidence of this sort will delay the final hearing, increase costs, require the Tribunal to deal with potentially irreconcilable evidence and risk shifting the basis of review towards a challenge on the merits. I can see no reason why the parties and the Tribunal should be exposed to these undesirable outcomes, given the lack of relevance of the proposed expert evidence to the real issues in this case and in particular the inevitability of the vacation of the December hearing and significant costs for all parties in dealing with the expert evidence.
16. As for the *Tameside* challenge, which is essentially that the Gambling Commission was given sufficient information about flaws in the Camelot models to require it to make further investigation into those flaws and the consequences of them, that is again something which can and should be assessed by the material available to the Gambling Commission at the time, not analysis by Mr Williams that was not available to it. It might be said that expert evidence could assist with the question of whether any further investigations would be fruitful. However, Mr Williams does not provide much, if any, assistance on that point, as he is not able to say in most respects what Camelot actually did or did not do in preparing, executing or assuring its models. As Dr Spicer makes clear, that is a complex question which is likely to involve analysis of models developed in prior years.
17. Accordingly, the proposed expert evidence of Mr Williams does not address the real questions that arise for the Tribunal in this matter and is therefore of no real

assistance. Further, to the extent that the New Lottery wishes to maintain a challenge to the effect that the Gambling Commission knew or should have known that the flaws in the Camelot work made it unreliable, the material from Europe Economics appears to set out clearly and in detail a number of flaws (to such an extent that their advice was that the models were not very reliable for point estimates of the effect on lottery sales of the proposed marketing spend). The New Lottery has made it clear that it can plead its case on irrationality (including the *Tameside* point) without the expert evidence. It is therefore difficult to see how it could be said to be reasonably necessary or why the benefits of including it outweigh the disadvantages. It is not enough for the New Lottery to say (as it does) that the expert evidence would assist it in making its case.

18. I also agree with the Gambling Commission that the expert evidence fails to pass the *Law Society* test by reason of there being a basis for rational disagreement on substantially all, if not all, of the errors advanced by Mr Williams. The New Lottery suggested that Dr Spicer has agreed with Mr Williams that the Camelot work contained a number of serious technical errors. That is an oversimplification of Dr Spicer's draft report, which for the most part either said that it was not clear what Camelot had or had not done or that there was room for different approaches which could encompass the choices Camelot had made. The obvious exception to this was a lack of consistency and a lack of robustness in the approach to statistically insignificant variables, but Dr Spicer noted that this only applied to one type of model (the extended model) which Europe Economics considered unreliable in any event.
19. While there may be room for argument about the status of Dr Spicer's evidence, that does not alter the fact that someone with extensive econometric experience is able to illustrate that there is a rational basis for disagreement. That is sufficient for present purposes to dispose of the matter.
20. Finally, the New Lottery argues that the expert evidence falls directly within two of the four categories in *Powis* – either as showing what material was before the decision maker or determining whether a proper procedure was followed. This is manifestly not the case as the report of Mr Williams was not before the

Gambling Commission and it tells us nothing about the procedure followed (which is, in the *Powis* sense, about adherence to the principles of natural justice). The New Lottery also argues that the expert evidence falls within the extension of *Powis* to be found in *R (Lynch) v General Dental Council* [2003] EWHC 2987 (Admin), [2004] 1 All ER 1159, which dealt with the consideration of matters which would not obviously be fully understood by a layman without some assistance from an expert in that field. That extension is limited to understanding technical terms or process and does not assist the New Lottery here.

21. For all these reasons, the application to adduce expert evidence is refused.

B. COSTS

22. The Gambling Commission seeks its costs in relation to the application by the New Lottery to adduce expert evidence, which I have rejected. Mr Bowsher KC has submitted that this hearing is in the context of case management and the costs should be costs in the case. I do not accept that submission.
23. It has been plain since the hearing in July that the application involves a significant alteration of the New Lottery's case, to bring expert evidence; it was also made plain from an early stage that that application would be opposed and it seems to me only right that, having lost that application, the New Lottery should pay those costs.
24. That should be done on a standard basis. The costs to be dealt with include the preparation of the response to the application and the costs of today's hearing, save that a proportion of today's hearing has genuinely dealt with case management matters, and so the costs of today's hearing that are payable by the New Lottery should be 80% of the costs incurred, rather than 100%. But otherwise, those costs are to be paid on a standard basis, and they are to be assessed, if not agreed.
25. In relation to the costs of the amendment to the Notice of Appeal, the New Lottery seeks its costs in respect of the amendment that reflects its

corrected understanding about the way in which payment flows took place by way of the investment in marketing in the National Lottery. It argues that the Gambling Commission failed to comply with its obligations under the Act to provide information at an earlier stage, which is why the amendment has been necessary.

26. Ms Clement KC submits that the basis on which the New Lottery seeks those costs is flawed because it is not correct that the Gambling Commission was under an obligation to provide the material under the Act. That is a matter which was canvassed in some detail at the last hearing.
27. I agree with Ms Clement KC, at least to the extent that it is not plain that the Gambling Commission was required to provide the relevant information at an earlier stage. The costs of the amendment should therefore follow the usual rule of being costs in the case.

Ben Tidswell
Chair

Charles Dhanowa CBE KC (Hon)
Registrar

Date: 24 September 2025