Neutral citation [2026] CAT 27

Case No: 1730/12/13/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 March 2026

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

RULING (COSTS)

A. INTRODUCTION

1. This is the Tribunal's costs ruling following its **Judgment** ([2026] CAT 14) on an application for review under s. 70 of the Subsidy Control Act 2022 (the **SCA**) of a decision of the Gambling Commission (the **Respondent**) dated 19 July 2023 (the **Decision**). The application was brought by the New Lottery Company Limited, Northern & Shell PLC and The Health Lottery Elm Limited (collectively the **Applicants**).

2. The Applicants unsuccessfully alleged that the Decision constituted the grant of a subsidy to one or more of Camelot UK Lotteries Limited (**Camelot**) and/or either Allwyn UK Holding B Ltd or Allwyn Entertainment Limited (together **Allwyn**) (collectively the **Interveners**). The Tribunal concluded that the Decision was consistent with normal market conditions under the commercial market operator principle (**CMO principle**), with the result that there was no subsidy within the meaning of s. 2 of the SCA.

3. It was therefore not strictly necessary to consider the Respondent's alternative arguments that the Decision did not involve specific financial assistance granted through public resources; nor was it necessary to consider the arguments on relief. Nevertheless, in considering those points in any event, the Tribunal concluded that the alleged benefit to Camelot was provided through public resources, including the forgoing of revenue otherwise due, and that it was specific. As such, had the Tribunal reached a different conclusion on the CMO principle, it would have concluded that the Decision was a subsidy requiring consideration of the subsidy control principles before it was granted. The Tribunal considered, however, that the Applicants had not acted sufficiently promptly in bringing the present proceedings. Accordingly, if the Applicants had been entitled to relief, the Tribunal would have been inclined to refuse it.

4. The Applicants have not sought permission from the Tribunal to appeal the Judgment.

5. The Respondent now applies for an order that the Applicants pay its costs of the proceedings, and for an interim payment on account. The Interveners apply for an order that the Applicants pay all or, alternatively, a portion of their costs of the intervention, but do not seek an interim payment on account.

B. THE RESPONDENT'S APPLICATION

6. The Respondent applies for an order that the Applicants pay its costs of the proceedings, to be subject to detailed assessment on the standard basis, with an interim payment on account of £350,000 plus VAT. That represents approximately 68% of the Respondent's total claimed costs of £516,874.59 plus VAT. The Respondent submits that it is likely to recover the overwhelming majority of its costs on detailed assessment.

7. The Respondent's costs breakdown is as follows:

   (1) the fees of the Respondent's external solicitors, Hogan Lovells International LLP, amounting to £372,026.16, at discounted hourly rates (within the 2025 Solicitors' guideline hourly rates for Band 1 London work), and with work allocation said to be proportionate to the proceedings;

   (2) Capital Law costs of £48,070 for internal litigation management, also within the Band 1 London guideline hourly rates; and

   (3) counsel's fees of £96,778.43 at heavily discounted rates.

8. The Applicants concede that they should pay the Respondent's reasonable and proportionate costs of the proceedings, but dispute the reasonableness of the Respondent's costs, and contend that the interim payment should therefore not exceed 50%. As a general point, the Applicants contend that there are strong policy considerations against excessive costs awards in the context of proceedings under the SCA. More specifically, in this case, the Applicants submit that the hours charged by the Respondent's solicitors for preparation of witness evidence, preparation for the first case management conference (**CMC**),

and trial preparation appear excessively high. The Applicants also query the role of Capital Law.

9. There are, in my judgment, some potential justifications in the Applicants' objections regarding the amount of the Respondent's costs. First, according to the costs schedule filed by the Respondent, its main solicitor team Hogan Lovells spent around 319 hours on the preparation of witness evidence and accompanying exhibits, with the bulk of that work being done by a senior and junior associate. While that was a reasonable distribution of the work, the amount of time spent on those statements is extraordinary. As the Applicants point out, it equates to almost eight weeks at 40 hours per week, for two short statements occupying (in total) around 25 pages of text.

10. Secondly, over 100 hours of solicitor time is claimed for preparation for the first CMC in these proceedings on 11 July 2025, which is said to include the "skeleton argument, confidentiality issues, agenda, bundles". It is difficult to understand how those activities could have warranted that amount of work, particularly as the skeleton argument would normally have been drafted by counsel. In a similar vein, the claim for over 220 hours for preparation for the substantive hearing (including 29 hours of partner time) is also difficult to justify, given that counsel would have been expected to be taking the lead in preparation at that stage.

11. Thirdly, over 69 hours of "post-hearing work" is claimed, on the basis of the Respondent's written response to the Tribunal's post-hearing questions, and review of the draft judgment. Nothing has been provided to justify that amount of work, given that the Respondent's post-hearing submissions consisted of only four pages drafted by counsel.

12. Finally, I agree with the Applicants' observation that the role of Capital Law is unclear and may well have led to duplication of work.

13. The interim payment will therefore be set at 50% of the costs claimed, giving a total of £258,437 excluding VAT. The costs above are to be the subject of detailed assessment on the standard basis if not agreed. In addition, at the second

CMC on 24 September 2025 the Tribunal made an order for costs in favour of the Respondent. Those costs should also be subject to detailed assessment.

C. THE INTERVENERS' APPLICATION

14. The Interveners apply for an order that the Applicants pay all or, alternatively, a portion of their costs of the intervention, such costs to be subject to detailed assessment on the standard basis if not agreed. They refer to the fact that they had a separate interest from that of the Respondent, in that they were the substantive target and focus of the claim; they contend that the manner in which the Applicants advanced their case compelled the Interveners to incur substantial additional costs; and they submit that their intervention was helpful and non-duplicative of the submissions of the Respondent. The Interveners' total costs of the intervention are said to be approximately £1.54 million plus VAT, comprising around £1.19 million in solicitors' fees and around £350,000 in counsel's fees.

15. The Applicants submit that the Interveners should not recover any part of their costs, relying on the general Tribunal position that the costs of an intervention will fall where they lie, and Tribunal case law endorsing that position. In the alternative, the Applicants argue that any award of costs to the Interveners should be very limited, particularly given the disproportionate sum claimed.

16. Rule 104(2) of the Competition Appeal Tribunal Rules 2015 provides the Tribunal with a broad discretion to make "any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings." Under r. 104(4) the Tribunal may take account of, among other things, whether costs were proportionately and reasonably incurred, and whether costs are proportionate and reasonable in amount.

17. As the Court of Appeal found in *Durham County Council v Durham Company* [2023] EWCA Civ 729, §37, while the substance of an application challenging a subsidy decision is to be determined under s. 70 of the SCA by applying the same principles as in judicial review proceedings, that does not restrict the Tribunal's case management powers under its Rules.

18. The Tribunal's broad discretion under r. 104 includes the power to make an order for costs in favour of an intervener. The general position is, however, that an intervener will not recover its costs: see §8.10 of the Tribunal's Guide to Proceedings 2015:

> "The general position is that interveners are neither liable for other parties' costs, nor able to recover their own costs: see, for example, *Ryanair Holding plc v Competition Commission* [2012] CAT 29 at [7]. However, the matter remains in the discretion of the Tribunal and that approach may be departed from in appropriate circumstances: *National Grid v GEMA* [2009] CAT 24. For an example of a case where an intervener recovered part of its costs see: *Independent Media Support v OFCOM* [2008] CAT 27."

19. The rationale for that position was explained in *Ryanair* at §7, in the following terms:

> "The Tribunal's general position in relation to interveners' costs is concerned to strike a balance between not discouraging legitimate intervention and not unduly encouraging interventions which may have implications for the expeditious conduct of proceedings to the detriment of the main parties."

20. More recently, in *Whistl v Royal Mail* [2024] CAT 33, §46, the Tribunal noted that interveners are generally not awarded their costs unless good reason is shown for departing from that position. As the Tribunal went on to comment at §51 of the same judgment, however, there is a reasonable prospect that an intervener will recover some of its costs where it has made a substantial difference and an important contribution to the proceedings. There have, moreover, been occasional cases where interveners have recovered all or part of their costs of Tribunal proceedings, including *IMS v Ofcom* [2008] CAT 27, *Ping Europe v CMA* [2018] CAT 9 and *Viasat v Ofcom* [2019] CAT 11.

21. The Tribunal's case law confirms that having a commercial interest in the outcome of the proceedings and providing helpful and non-duplicative submissions are not in themselves reasons to justify an award of costs in favour of an intervener: *Royal Mail v Ofcom* [2020] CAT 2, §§40–45.

22. Factors which nevertheless have been relied on by the Tribunal in cases where interveners' costs have been awarded include situations where the proceedings "consisted of an attack on a core element" of the intervener's business, such that the intervener was "particularly and directly affected" by the challenge (*IMS v*

Ofcom, §§13 and 17); or where the relevant application "directly concerned" the interests of the intervener because of potential retaliatory measures if it succeeded, giving it a personal interest in the application *(Ping Europe v CMA,* §14); or in a similar vein where the intervener "was a real target of the application", such that it had a "compelling business interest in participating", as opposed to merely having "some shared interest" in relation to the dispute (*Viasat v Ofcom*, §§8–10). The Tribunal has drawn a distinction between these situations and cases where the intervener has a "mere indirect interest in supporting a main party, which might be typical of interveners in the majority of cases" *(Ping Europe v CMA*, §14).

23. The Applicants refer to the comments of the Tribunal in *Durham Company v Durham County Council* [2023] CAT 14, §3, concerning the need for the jurisdiction under the SCA to be "fast, cheap and simple", noting that the issues are likely to be narrow in scope and not such as to require extensive disclosure, witness and expert evidence. While the Tribunal's decision in that case to impose cost caps on the parties was overturned on appeal, the Court of Appeal considered that the judge's aim of seeking to ensure that the costs of reviews under s. 70 of the SCA did not become excessive was "entirely laudable". The Tribunal did not, however, in that case consider the position of interveners, and there is nothing in the judgments of either the Tribunal or the Court of Appeal to suggest that an intervener in subsidy control proceedings should be treated, for the purposes of costs, in a different way to an intervener in any other type of proceedings before the Tribunal.

24. In the present case, I agree with the Applicants that the fact that the Interveners had a separate interest justifying their intervention, and that they provided helpful and non-duplicative submissions, are not in themselves reasons to award costs in their favour. Those are conditions which should apply in any case in which permission to intervene is given. Nevertheless, I consider that the particular facts here, when taken together, are such as to warrant an order that the Applicants should pay a proportion of the Interveners' costs.

25. The first point to note is that the Interveners were not, here, simply an indirectly interested party supporting the position of the Respondent. Rather, the

Applicants' challenge directly targeted the Interveners, by alleging that the disputed Decision of the Respondent constituted a subsidy to one or more of the Interveners, and seeking an order requiring the Respondent to recover over £70 million from the Interveners. The proceedings were therefore, in substance, not merely a challenge to the Respondent's Decision, but also a fundamental attack on the position of the Interveners specifically under that Decision, with potentially very significant financial consequences. This was therefore a case where the Interveners were "particularly and directly affected by the challenge" (using the words of the Tribunal in *IMS v Ofcom*) and "a real target of the application" (*Viasat v Ofcom*).

26. That does not mean that in every subsidy control challenge in the Tribunal, the recipient of the alleged subsidy will have a specific interest justifying recovery of the costs of intervention; rather, that will be a matter to assess in all the circumstances of the case. In the present case, the particular position of the Interveners derives not only from the fact that they were the real target of the application, with particularly significant potential financial consequences, but also from the way in which the Applicants' case was pursued.

27. In particular in that regard, notwithstanding the failure of the Applicants' application to adduce expert evidence at the trial, the Applicants made extensive amendments to their Notice of Appeal, contending that there were serious and systemic errors in the econometric material put forward by Camelot, so as to render that econometric material unreliable. This was a central part of the Applicants' case in these proceedings: as the Judgment noted at §99, these contentions occupied 23 of the 50 pages of the Amended Notice of Appeal.

28. At the second CMC on 24 September 2025 counsel for the Interveners expressed concern at the evidential basis for those contentions, given the consequences for their own evidence, noting that "a good part of the focus of these alleged errors relates to what Allwyn has done. If those arguments are going to trial, we're going to have to address at least some of them by way of factual evidence". Counsel for the Applicants confirmed, at that hearing, that the Applicants would be maintaining their challenge to the adequacy of Camelot's econometric

modelling, and that they would rely in that regard on the contemporaneous documents.

29. In those circumstances, the Interveners (unsurprisingly and reasonably) filed detailed witness evidence responding to the Applicants' allegations in that regard, in the form of witness statements from Ms Nanson, Ms Popat and Mr Dimech. A central issue addressed in that evidence (and particularly in the witness evidence of Ms Nanson) was the alleged failings in Camelot's econometric modelling.

30. While the Applicants' skeleton argument for the hearing narrowed the basis on which the criticisms of the Interveners' econometric modelling were put, as described at §100 of the Judgment, the Applicants maintained the substance of their objection that Camelot's econometric analysis was not fit for purpose, addressing the point at length over the course of over 11 pages of their 30-page skeleton argument. Again, that was a direct challenge to the Interveners' conduct, to which the Interveners (again unsurprisingly and reasonably) responded in their own skeleton argument. The Applicants notably did not suggest, either in their skeleton argument or their submissions at the hearing, that the evidence and submissions of the Interveners were irrelevant to the issues that the Tribunal had to decide.

31. The result was that the Interveners did not simply participate in the hearing to support the position of the Respondent. Rather, they intervened in order to defend the extensive challenges to their own conduct, and the relief sought which directly targeted them. The Applicants knew, moreover, that this would be the consequence of the way in which they had pursued their case in these proceedings. There is therefore, in the present case, a combination of factors which, taken together, justify the award of at least a proportion of the Interveners' costs of intervening in these proceedings.

32. I note, however, that the Interveners' written and oral submissions for the hearing (including their post-hearing written submissions) were not confined to the issues on which the Interveners had a separate and specific interest to that of the Respondent, but also addressed matters which the Respondent could be

expected to, and did indeed, address in its own submissions. This included submissions on the relevant legal principles and in particular the application of the CMO principle in this case, and submissions on the Applicants' delay in bringing the present proceedings.

33. Since the Interveners have not provided any detailed costs schedule, any assessment of the proportion of their costs that is attributable to the issues on which they had a separate and specific interest can only be made on a very broad-brush basis. I consider that it is appropriate for the Interveners to recover 60% of their costs reasonably incurred.

34. As to the amount of those costs, the Applicants' objection that these are disproportionate to the basis and scope of the intervention is in my judgment well-founded. The Interveners have offered no explanation as to how their intervention on the issues which concerned them could have given rise to costs which are around three times those of the Respondent. It is no doubt because of the scale of the difference between the Interveners' costs and those of the Respondent that the Interveners have avoided filing a costs schedule and making any claim for an interim payment on account of their costs.

35. The Interveners will need to justify their position on detailed assessment. For present purposes, it suffices to say that the scale of the Interveners' costs does indeed indicate that the Interveners have adopted a disproportionate approach to the conduct of the proceedings. There is nothing in the material before me to explain why the Interveners should have incurred costs that are so significantly greater than those of the Respondent. The Interveners' explanations for this will no doubt be carefully scrutinised in due course.

The Honourable Mrs Justice Bacon
President

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 26 March 2026