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22/12

21 December 1989

La Jeffrey

1. PAPER ON THE INTRODUCTION OF A MAJOR LOTTERY OR LOTTERIES
2. "SKILL-BALL" COMPETITION

I thought that you and colleagues on H Committee might wish to know where matters stand on the question of major lotteries. In brief, I believe that we should defer a firm decision on whether or not to allow major lotteries until the possible implications of a new "skill" competition, Skill-Ball, which is to be launched next April and which may seem very like a major lottery, are clearer.

Paper on major lotteries

I inherited from Douglas Hurd an undertaking to circulate to the Committee a Home Office paper covering in some detail the pros and cons of amending the law to allow one or more major lotteries on a national scale, privately-run but subject to necessary regulatory machinery (this was last mentioned in a letter of 19 July from Douglas' Private Secretary to yours, reporting the prospective increases in the monetary limits on lotteries which are currently lawful). This paper has been prepared by my officials, in consultation with other interested Departments and with the Gaming Board for Great Britain. The working assumption is that we should not contemplate the introduction of a state lottery, ie a national lottery run by Government, which would involve the state in the promotion of gambling and seem to run counter to our policies of privatisation and deregulation. The Prime Minister said in the House last autumn that she had no intention of establishing such a lottery.

Similarly, the recommendation in the paper prepared by officials is that none of the options for amending the law to allow one or more privately-run major lotteries, on a national

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The Rt Hon Sir Geoffrey Howe, QC, MP
Lord President of the Council
Privy Council Office

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scale, commends itself. Among the considerations are that such a major lottery or lotteries could: (a) contrary to our overall policy, stimulate gambling, both directly and by leading to pressure for compensatory deregulation from the established gambling industry; (b) prejudice Government revenue from established gambling, unless the lotteries were themselves subject to a specific, compensatory duty; (c) if Treasury public expenditure control rules were applied, lead to no real increase in the funding of public sector services, were the benefit of such services to be the object of the lottery or lotteries; (d) even were they run exclusively for charitable purposes, possibly prejudice both current charitable lotteries and personal charitable giving more widely; and (e) embroil us in invidious decisions about which causes should benefit, and so which should not. Officials' advice is also that, at present, there is no substance to the argument that we should allow our own 'national' lottery because major lotteries in other EEC countries are, or will be, entitled to operate here. These considerations are set out a little more fully in the attached brief note, Annex A.

Skill-Ball and its possible implications

The proposed Skill-Ball competition, which was publicised after the full paper on major lotteries had been prepared, may, however, make questionable a decision not to allow major lotteries founded on these considerations. Annex B enclosed with this letter gives a summary account of the plans for this competition and some assessment of the possible implications of the competition, if it were to succeed, for our gambling policy and, in particular, for a position on major lotteries. In short, Skill-Ball is intended to be a form of skill-with-prizes competition, rather like current newspaper "Spot-the-Ball", but with competition forms entered by computer terminals planned to be installed in thousands of retail outlets, with major prizes (£1 million guaranteed for the first two weeks) and, according to the promoters, a projected turnover of hundreds of millions of pounds, 30% of which would be directed to specific charities. If, as the promoters claim, Skill-Ball is a competition in which success depends substantially on the exercise of skill, it will not, under the current law, be subject to regulation as a form of gambling, or to any specific gambling duty. But, particularly were Skill-Ball to succeed on anything like the planned scale, and to survive any legal challenge to it which might be brought, the competition could appear, not least publicly and in Parliament, to be very like a major, but entirely unregulated, lottery.

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The possible implications of Skill-Ball for policy on major lotteries, and for major sectors of the gambling industry (including the football pools, betting and bingo) have already been identified by some in the industry and some journalists. Our line in response to enquiries from them is that: we are not in a position to say if a court would agree with its promoters that Skill-Ball will be lawful; and that, whilst there are no current plans to amend the gambling laws to apply them to skill competitions, the position is kept under review, and no assurance can be given that legislation will not be introduced at some stage which may affect the legality or viability of such competitions.

My officials will shortly invite their counterparts in other interested Departments, including in the Treasury, in the Scottish and Northern Ireland Offices and in the Departments of Health and of Trade and Industry, to offer any Departmental assessments of Skill-Ball and skill-with-prizes competitions in general. They have already been in touch with Customs and Excise officials who have, I understand, commissioned both an assessment of the possible impact of Skill-Ball on current revenue from gambling, and legal advice as to whether or not the promoters might be liable to pay pool betting duty (at the current rate of 42.5%) on the competition's turnover.

Position to take on Skill-Ball

Subject to the results of this action between and by officials, my current view is that Skill-Ball should be left to be launched next April, and that we might wait to see if it succeeds, both commercially and in the event of any legal challenge to it. There does not, at present, seem sufficient reason to move to ban the competition, which would require fresh and urgent legislation and which, in equity, would need to apply to all skill competition, including newspaper Spot-the-Ball, which provides soccer with vital income. It would also seem premature to announce a presumption that skill competitions should be brought within a statutory, regulatory framework. Regulation, at least to ensure that the claimed proportion of the proceeds of Skill-Ball is in fact made over to charity, might in due course be required. But that need would seem to arise only if Skill-Ball becomes established successfully and with a considerable flow of funds. The competition's very similarity to forms of gambling, such as newspaper "Spot-the-Ball" and the football pools, may limit its scope for success and permanence. And, whilst I do not at present propose that we should ourselves seek to bring the matter before a court, Skill-Ball might be challenged there, for example at the instigation of a competitor.

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Position on major lotteries

In the light of the Skill-Ball development, I believe that it would be premature to invite colleagues to reach a decision now on whether or not the law should be amended to allow a major lottery or lotteries. How Skill-Ball fares could evidently have a bearing on that decision, but possibly in any one of a number of ways. For example, if Skill-Ball fails commercially, that could be taken either as establishing that the market for a major charitable lottery is less than its advocates claim, or that a lottery proper should be given a chance to prove itself. Equally, if Skill-Ball succeeds, both commercially and against any legal challenge to it, it could be argued either that the need for a major charitable lottery (or something like it) had been met, or possibly that the competition's very similarity to a lottery helped to make the case for major lotteries themselves.

I recommend, therefore, that our position, both privately and publicly, should continue to be that we have no plan to amend the law to allow a major lottery or lotteries, but that we continue to keep the matter under consideration.

For the present, I envisage holding to that broad line at least long enough to be able to take the actual operation of Skill-Ball into account. Within that position, it may from time to time be necessary to deploy some of the considerations which seem to tell against major lotteries. A number of MPs have written to me asking about our attitude to the current campaign for a major lottery for the Arts, Sport and Environment, which is headed by Lord Birkett and Ken Hargreaves. Lord Birkett is seeking to initiate a debate in the Lords in support of such a lottery, and there is always the possibility of an attempt to introduce a Private Members' Bill to provide for it. In responding to these various inquiries and possible moves, I and my Home Office colleagues will as necessary draw on the considerations which seem to tell against major lotteries which I have summarised earlier in this letter and which are in Annex A attached. We will refer to them as factors which need to be taken into account rather than reasons firmly to conclude against any change in the law.

New NHS/Loto scheme

For completeness, I should perhaps take this opportunity to comment on the recent launch of a new lottery scheme by NHS (or National Hospital Trust)/Loto which, as colleagues may have seen, has been advertised widely in the press. It was attempted by this company last year to circumvent the current

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law and to introduce a major lottery by combining numerous small ones, which led Douglas Hurd, with the agreement of colleagues, to make regulations to prohibit such "multiple" lotteries, as well as to increase the monetary limits on lawful lotteries and to envisage circulating a paper on major lotteries. The new NHS/Loto scheme offers participation, either in combination or separately, in one or more different small, lawful lotteries (each with a maximum weekly prize of £2,000) and in a "free draw" with a jackpot prize of £500,000. This scheme does not seem to challenge the regulations prohibiting "multiple" lotteries. But the scheme does appear to have some doubtful aspects, which the Gaming Board have asked the Commissioner of Police of the Metropolis to investigate. At present, the nature of this new scheme seems to be such that whether or not it succeeds, and whether or not it is lawful, should not evidently have any significant implications for our positions on major lotteries or on prize competitions such as Skill-Ball. This is on the assumption that the "free draw" will prove either to be truly free, like many other, well-established draws, or in fact subsidised by the small lotteries, when long-established lotteries law would seem to make it unlawful.

Summary

You and colleagues may wish to note that officials will be obtaining and sharing advice on the proposed Skill-Ball competition, which is described in Annex B.

I should be grateful to know if you and colleagues agree that, otherwise:

- (a) we should envisage waiting to see how Skill-Ball fares if and when it is launched next April; and
- (b) we should therefore defer a conclusion on the question of a major lotteries, probably to take account of Skill-Ball's fate.

You and colleagues may also wish to note:

- (c) the holding of discouraging terms in which, in the interim, we will as necessary respond to enquiries about any plan of our own for legislation on major lotteries, drawing from the considerations in Annex A; and
- (d) the assessment of the new NHS/Loto scheme.

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I am copying this letter and its annex to the Prime Minister, the other members of H Committee, the Foreign and Commonwealth Secretary, the Minister for Arts and Libraries, the Chief Whips in both Houses and to Sir Robin Butler.

Joseph
Butler

CONSIDERATIONS WHICH SEEM TO TELL AGAINST THE INTRODUCTION OF MAJOR
LOTTERIES, ON A NATIONAL SCALE

Introduction

There is some Parliamentary and public pressure for a major lottery, on a national scale (or for a limited number of such lotteries), privately-run (but subject to necessary regulatory machinery) to profit one purpose or a specified range of purposes. The apparent attraction of that arrangement is to harness people's gambling habits and their wish to benefit good causes so as to benefit financially purposes or projects which various groups regard as worthwhile. This note summarises some of the principal considerations which seem to tell against amending the law to allow such a lottery or lotteries. In addition, paragraphs 9 and 10 of this note record that the argument that we need domestic major lotteries to pre-empt the promotion here of major lotteries based in other EC countries seems to be ill-founded.

(a) The implications for our general gambling regime

2. One of the principles of the policy on gambling of successive Governments is that of "unstimulated demand", ie. that the demand for gambling should not be stimulated, for example by advertising, and that the level of gambling facilities which is allowed should be sufficient only to satisfy the demand for such facilities which has not been stimulated artificially. Extensive promotion, including via television and other advertising media, is a vital part of major lotteries in other countries. It is therefore reasonable to assume that persistent, public promotion would be a necessary condition of success of major lotteries in this country. To allow this could have two consequences for current policy. First, it could itself appear to breach the principle of "unstimulated demand". Secondly, it would be hard to resist calls from other sectors of the gambling industry for compensatory deregulation for themselves, both in advertising and in respect of other controls to which they are subject at present.

(b) The possible impact of such lotteries on Government revenue from other forms of gambling

3. Because they are small-scale, 1976 Act lotteries are explicitly exempted (by Customs and Excise Order) from pool betting duty. All other forms of

public gambling are subject to duty to some degree, ranging from 8% general betting duty (ie. on bets in betting offices) to 42½% pool betting duty on the football pools. Total revenue from betting and gaming duties in 1988/89 was some £913 million. If major lotteries were to be allowed here, one question is whether they should be subject to duty, both in equity and to compensate for the likely loss of revenue from other forms of gambling (it is commonly assumed that people would divert current spending, in particular some of that on the football pools, to lotteries). Dependent upon the extent to which major lotteries diverted money from current forms of major gambling, there might be alternative consequences. Either there would be an overall loss of revenue for the Exchequer, if major lotteries were subject to no gambling duty or to such duty only at a very low level. Or major lotteries should be subject to a level of gambling duty sufficient at least to compensate for the loss of revenue from other forms of gambling; and that level might need to be so high as to impair the lotteries' viability, particularly as a means of raising funds for charitable or other "good" purposes.

(c) The possible implications for public expenditure control

4. The causes popularly favoured for benefit from the proceeds of major lotteries include some which are funded mainly from public expenditure, notably the National Health Service. To aim to provide any significant part of the funding of such a service by lottery could be controversial in itself (eg. "your life depends on a lottery"). There is, in addition, a public expenditure control consideration. This is the presumption that expenditure financed by lottery proceeds would have to displace public expenditure rather than add to it, eg. in the instance of the NHS, that a cash "addition" of, say, £500 million from lottery proceeds could require a proportionate reduction in the public expenditure provision for the service, resulting in a nil real addition. (It should be noted that there is some indication that the proponents of funding services from lotteries or similar activities may be aware of this potential difficulty, and see that it might be avoidable by diverting the proceeds to activities not directly dependent upon public expenditure, eg. charities in the health or welfare fields.)

(d) The possible impact on charitable giving

5. Lotteries under the current law are to be run essentially for non-commercial purposes. Many such lotteries are promoted by charities, often small ones, and they are understood to provide sums which, whilst small compared to the proceeds of major gambling, are vital to the charities

concerned. One concern is whether major lotteries might damage these small, charitable lotteries. The proponents of major lotteries claim that the experience in some other countries, which have state or other major lotteries, is that small, charitable lotteries are not affected adversely. But it is difficult to judge how far such international comparisons could be relied upon, not least because no other comparable country appears to have as varied a gambling industry as there is here, with which any new gambling enterprise would have to compete.

6. In addition, a major lottery or lotteries might possibly have adverse implications for all forms of charitable giving. The concern is that, even if it could be shown, on good evidence, that major lotteries would attract new gambling money to specific charities, the lotteries might nonetheless draw from a pool which charities overall could otherwise tap directly and more cost-effectively.

(e) Possible Government involvement in deciding which causes should benefit, and so which should not

7. The advocates of a major lottery often argue for one for a particular cause or causes. An example is a current campaign for a major lottery for the Arts, Sport and the Environment. There is possibly some weight in the fear that otherwise a "free for all", ie. to allow a complete freedom to establish major lotteries, could be self-defeating. But the alternative, of effectively granting an exclusive licence to one lottery or a small number of lotteries could well be controversial. That would mean preferring one cause or set of causes to enjoy the privilege of benefitting from major lottery proceeds, over another cause or other causes which would be denied that benefit. It is difficult to see how the Government, in introducing or assisting legislation, could distance itself entirely from this invidious choice.

(f) Drawbacks of "free" competition

8. Instead of one lottery, or a limited number of lotteries, possibly relieved of advertising controls and the full weight of gambling duty because of the charitable destination of part of the proceeds, there might be a freedom to establish as many lotteries as might be feasible, for whatever purpose, subject to "standard" gambling duty and, possibly, to some restrictions on marketing. It is not certain this arrangement would be unworkable commercially, although it would certainly be less attractive than the arrangement sought by the proponents of various single major lotteries. Commercial unattractiveness is

not in itself a reason to continue to prohibit an activity (ie. the current prohibition on major lotteries). But there would seem to be political and presentational difficulties in responding to calls for major lotteries to benefit good causes by proposing, instead, legislation which, if it could be employed at all, would aim only to add to commercial gambling activity.

EC considerations

9. Our law prohibits the conduct or promotion of foreign lotteries here. Some MPs and others have claimed that our own national or otherwise major lottery is required to prevent a UK market or such a lottery from being taken by lotteries based in one or more of our fellow member states in the EC.

10. This claim does not seem to be well-founded. Our present understanding is that the law on gambling will not be affected by the advent of the Single European Market in 1992, and that a good defence of our prohibition on major lotteries could, if necessary, be made, should that prohibition be challenged under the Treaty of Rome as it stands. In addition, action is being pursued with the relevant authorities in the Federal Republic with a view to curbing the recent promotion here, by post, of West German states' lotteries (which has been portrayed, by some advocates of a British, domestic, major lottery, as a de facto if not de jure breach of our prohibition on major lotteries).

HOME OFFICE

GOLDEN GRID "SKILL-BALL" COMPETITION

Introduction

This note:

- (i) describes the apparent plans of Golden Grid plc to launch in April 1990 a computerised spotting-the-ball competition Skill-Ball;
- (ii) explains that "skill-with-prizes" competitions, such as the promoters claim Skill-Ball to be, are at present unregulated; and
- (iii) indicates the possible implications of Skill-Ball, if it were to succeed, for the policy on gambling, particularly for the question whether or not to allow major lotteries in this country.

(i) Golden Grid's plans

2. Golden Grid plc is a recently-formed company, in which businessmen in the Republic of Ireland, including one with experience in running the Republic's National Lottery, appear to have a leading role. The company is said to have £12.5 million in backing. The company plans to launch in April 1990 Skill-Ball, which is claimed to be a skill competition with the following elements:

- (i) entry to the competition is via a computer terminal located in a retail outlet (eg. a newsagent's);
- (ii) a player views six, separate still photographs of a different moment in a soccer match, from each of which the ball has been erased; he also has a coupon, of six boxes, each divided into 36 numbered squares, and marks one square of each box as being where, in his judgement, the ball in the corresponding photograph will have been;
- (iii) the retailer feeds the coupon into the computer terminal, which transmits the six selections to a central computer and issues, for the player, a ticket recording those selections;

- (iv) the charge is £1 per six selections;
- (v) there will be winners weekly, with the winning numbers announced in the press;
- (vi) there will be a minimum guaranteed jackpot of £1 million for the first two weeks of the competition;
- (vii) an initial 1,000 to 2,000 retail outlets are planned, with an eventual aim of 20,000 after 3 years;
- (viii) of the net (ie. ex-tax such as VAT) turnover, some 50% will be prizes, some 30% will go to six charities (eg. RADAR, MENCAP and the Variety Club), and the remaining 20% will be devoted variously to operating costs (including 5% commission to retailers) and to shareholders' profits (8%);
- (ix) illustrative projections of possible turnover vary considerably: Golden Grid aims for some £350 million in the first year, although press speculation is of £2,700 million annual turnover after five years.

(ii) Skill competitions are not a form of gambling

3. Golden Grid claims to have legal advice that Skill Ball will constitute a competition within, but not contravening, section 14 of the Lotteries and Amusements Act 1976. Among other provisions, section 14 makes it unlawful for a competition conducted in connection with any trade or business to offer prizes where success does not depend to a substantial degree on the exercise of skill. Golden Grid's legal advice is that success in Skill-Ball can be regarded as being dependent to a substantial degree on skill; and also that the competition is neither a lottery nor gaming (were it either, it would be unlawful).

4. Whether or not Skill-Ball will be a skill competition which complies with section 14 of the 1976 Act, and which does not fall foul of the law on gambling, would ultimately be a matter for the courts. It is possible that some interested party (eg. a pools company) might try to put the question to the test. Customs and Excise are also consulting their lawyers on the question whether Skill-Ball might, in revenue law, be subject to pool betting duty. But if Skill-Ball is regarded as, or found by the courts to be, a legitimate skill competition, it will not be subject to regulation as a form of gambling. In that event:

- (i) there will be no control on the advertising of Skill-Ball;
- (ii) there will be no specific statutory machinery for its regulation (eg. the submission of accounts to a local authority or to the Gaming Board);
- (iii) there will be no limit either to the amount which players may spend, or to the size of the prizes which may be offered;
- (iv) there will be no restrictions on the places in which the facility for participating in the competition may be provided;
- (v) no betting or gaming duty will be payable on the stakes.

5. The 1978 report of the Rothschild Royal Commission on Gambling recommended that "skill with prizes" competitions in which a charge is made for participation should be made unlawful. This recommendation has not been implemented for a number of reasons, including that: (i) newspaper "Spot-the-Ball" is one such competition, and provides invaluable income to soccer; and (ii) there is a multitude of such competitions, none of which has caused serious concern and none of which has been seen directly to compete with major forms of gambling or, therefore, to call in question Government policy on gambling.

(iii) Possible implications of Skill-Ball for policy on gambling, particularly on major lotteries

6. Whether or not Skill-Ball has significant implications for the policy on gambling may in large part turn on whether or not the competition succeeds on any scale, and survives any legal challenge. If Skill-Ball were to establish itself as a major commercial success (providing large sums to charity), the public, press and Parliamentary perception of the competition could be that it was very like a form of gambling, particularly like a major lottery.

7. Following are major factors which have told against ready agreement to allow major lotteries: (a) they could stimulate gambling, both directly and in leading to pressure for compensatory deregulation from the established gambling industry; (b) they could pose serious problems of regulation, unless tight and possibly-expensive regulatory machinery to prevent fraud or mismanagement were put in place; (c) they could prejudice Government revenue from established gambling, unless the lotteries were themselves subject to a specific, compensatory duty; (d) where the objects of the lotteries were public sector

services, Treasury public expenditure rules could require a proportionate reduction in the public revenue support for the services to reflect the income from lotteries; and (e) even were they run for charitable purposes, major lotteries could prejudice both current charitable lotteries and personal charitable giving more widely.

8. To varying extents, each of the factors listed in paragraph 7 above seems to apply to Skill-Ball, or to any similar competition with which competitors might enter the field. The difference, evidently, is that whilst major lotteries are at present unlawful, Skill-Ball may prove to be lawful.

