

## Advertising Standards Authority for Ireland



In reply please quote  
Our Ref.: 41265.sp

By Email

10th January 2024

Ms Sarah O'Farrell  
Clerk to the Committee  
Committee of Public Accounts  
Leinster House  
Kildare Street  
Dublin 2  
Email: sarah.ofarrell@oireachtas.ie

### **RE: Advertising for the National Lottery**

Dear Ms O'Farrell,

I refer to previous correspondence in the above matter.

In our letter of 6<sup>th</sup> November, we indicated that we would write to you again if there was a material change in the draft Case Report forwarded to you at that stage. In fact, the Complaints Committee has since reviewed the case and taking account of all submissions has decided that it was more appropriate to issue a Statement on the case. A copy of their revised Case Report is enclosed.

As explained earlier, Case Reports on complaints investigated by ASAI are released to media and the enclosed Case Report will be included in the next release which will take place shortly.

Yours sincerely,

Orla Twomey,  
CHIEF EXECUTIVE.

Encl.

Note: In limited circumstances an application can be made by either party to the case to have this decision reviewed by a Review Panel. Information on the review is contained in the enclosed extract from the Code. An application form for a review can be obtained from this office.

Board Members: B. Dooley | B. Hughes | M. Hughes (Chair) | S. McElligott | K. O'Kelly | K. O'Leary | S. Quish |  
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for Ad Self-Regulation

## CASE REPORT

Batch: 288

Ref: 41265

**Product:** Leisure  
**Advertiser:** National Lottery  
**Medium:** Television

**Advertisement:** A television advertisement featured a shopkeeper and a female customer. When the customer placed her lotto ticket on the counter, the shopkeeper stated:

*“Did you know that 90% of National Lottery money goes back into the community”.*

The customer expressed disbelief together with other customers in the shop. The advertisement then featured a man outside the shop telling a crowd what the shopkeeper had said. A woman enters the shop and states that the shopkeeper was talking “gibberish” while another asks if they should call a doctor. When the ‘doctor’ appeared, he used a ‘fib’ detector test on the shopkeeper which detected that she was telling the truth.

On screen text at the end of the advertisement stated:

*“2020 financials were 58% prizes, 27% good causes, 5% retailer commission”.*

**Complaint:** The Committee of Public Accounts considered the advertisement’s statement that 90% of lottery money goes back to the community was misleading because this figure included unclaimed prize money which was diverted to incremental marketing and advertising of the National Lottery.

**Response** The advertisers stated that the advertising claim was correct, that 90% of all revenue generated from sales of National Lottery games was returned to communities in the shape of prizes, funding Good Causes and commission to retailers all over Ireland. They said that the advertising campaign explicitly defined the 90% return to the community as meaning 58% prizes, 27% Good Causes and 5% retailer commission and that all iterations of the advertising referred to figures used to calculate the 90% value by reference to financial statements e.g. *“2020 financials were 58% prizes, 27% Good Causes, 5% retailer commission”.*

The advertisers said that the National Lottery Licence contained an express provision requiring that factual statements for the National Lottery be true and capable of independent verification. As such, the independently verified source of information for the claims made during the course of the 90% campaign was their audited financial statement(s) and these statements had been the subject of subsequent analysis of their auditors which further verified the claim within the advertising.

The advertisers said that prizes are won by members of the community and are then available to be claimed. If any prize is not claimed within the stipulated period, they said that it then must, under the terms of the Licence, be used solely to promote the

National Lottery, and that 90% of sales go back to the community as claimed in the advertisement.

The advertisers referred to the fact that The National Lottery Act 2013 had established the Regulator of the National Lottery, an independent statutory body with a suite of powers to maintain oversight and regulate the operation of the National Lottery, including its advertising and adherence to the terms of its operating Licence. They said that the regulatory framework included a bespoke National Lottery Advertising and Promotions Code of Practice, which contained detailed and sector specific obligations and expressly required continuing compliance with the general provisions of the ASAI Code.

They said that the Regulator was aware of their advertising campaign, the relevant financial statements that the claim was based on, and the detailed provisions contained in the Licence on the treatment and the use for promotional purposes unclaimed prizes. They said that the Regulator had completed a review of the material which was the subject matter of the complaint and was a matter of public record, having been confirmed by the then Minister for Public Expenditure and Reform in response to parliamentary questions in September 2022.

The advertisers said that, notwithstanding the fact that they believed the advertisement was accurate, independently verified, and compliant with the Code, and through an abundance of caution, they agreed to qualify any future statements in any similar advertising campaign to ensure there was no opportunity for misinterpretation. They noted that the advertisement has already run its natural course and was no longer live and considered that this would deal with the complaint issue raised.

**Further  
Information:**

1. The ASAI Executive reviewed the National Lottery Licence, in particular Clause 6.9.2, which stated:

*Any Expired Unclaimed Prizes shall be forfeited in favour of the Licensee, provided that such Expired Unclaimed Prizes shall be used:*

*6.9.2.1 solely for the promotion of the National Lottery and/or the Lottery Games (excluding Base Marketing), in a manner determined by the Licensee, which shall include the funding of special draws and additional top-up prizes; and which may include Incremental Marketing and advertising of the National Lottery and/or Lottery Games; or such other activities to promote the National Lottery and/or Lottery Games as specifically agreed in writing with the Regulator from time to time;*

2. The ASAI Executive reviewed the transcript of the Committee of Public Accounts debate of 8<sup>th</sup> December 2022. They noted commentary from the Premier Lottery Ireland that “The licence is very clear that once money has been allocated by the regulator to the prize account and remains unclaimed for a period of time, which is over three months in the case of most games, it then ceases to be prize money and becomes promotional money (Page 67)”

3. They also noted commentary from the transcript of the same meeting referring to a report by the Comptroller and Auditor General which included references to unclaimed prizes<sup>1</sup>. The ASAI Executive reviewed this report and noted information that since 2015 just over €124 million in respect of expired unclaimed prizes had been forfeited in favour of the National Lottery operator, and by end 2021, almost €122 million had been used for the promotion of the National Lottery/ and or the Lottery games. Of this, 98% had been spend on incremental marketing with the remaining 2% spent on top up prizes.

**Code Sections:** 2.4 (c) Compliance with the Code is assessed in the light of a marketing communication's probable effect when taken as a whole and in context.

Particular attention is paid to:

- the characteristics of the likely audience
- the media by means of which the marketing communication is communicated
- the location and context of the marketing communication
- the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers.

4.1 A marketing communication should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

4.4 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.

4.6 Disclaimers, asterisked, footnoted or "small print" information should not contradict more prominent aspects of the message. Such information should be of sufficient size and/or prominence and be located and presented in such a manner as to be clearly and easily legible and/or audible; where appropriate such information should be linked to the relevant part of the main copy.

4.9 A marketing communication should not contain claims – whether direct or indirect, expressed or implied – which a consumer would be likely to regard as being objectively true unless the objective truth of the claims can be substantiated.

4.10 Before offering a marketing communication for publication, advertisers should satisfy themselves that they will be able to provide documentary evidence to substantiate all claims that consumers are likely to regard as objective. Relevant evidence should be sent without delay if requested by the ASAI and should be adequate to support both detailed claims and the overall impression created by the marketing communication.

**Conclusion:** Statement:  
The Complaints Committee considered the detail of the complaint and the advertisers' response. The Committee considered that, in line with the Code, a statement was warranted in this case.

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<sup>1</sup> [19. Exchequer receipts from National Lottery ticket sales \(audit.gov.ie\)](https://www.audit.gov.ie/19-Exchequer-receipts-from-National-Lottery-ticket-sales)

The Committee noted that the claim in the advertising campaign was that 90% of National Lottery money goes back into the community and was based on audited financials for the year 2020 and that this information had been included in the television advertisement, stating “58% prizes, 27% good causes, 5% retailer commission”. The Committee noted that the complainants considered the advertising was misleading because the 90% included unclaimed prize money (as noted in paragraph 2 of Further Information above) that was redistributed back into advertising and incremental marketing for the National Lottery and therefore not “back into the community”.

The Committee also noted that under the terms of the lottery licence, unclaimed prize money should be used solely for the promotion of the National Lottery, with the proviso that the promotion includes the funding of special draws and additional top-up prizes; and which may include incremental marketing and advertising of the National Lottery and/or Lottery Games.

The Committee considered that including information in advertising, where appropriate, about the reinvestment of unclaimed prize money would add clarity for consumers and welcomed the advertisers’ proposal to include a qualification, about the reinvestment of unclaimed prize money in future similar advertising.

**Action Required** Where similar claims are made on the percentage of money that goes back to the community, a qualification should be included to state that the prize money referred to may include unclaimed prizes which could be returned to the advertisers.

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# Code of Standards for Advertising and Marketing Communications in Ireland

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## Review System

In exceptional circumstances, the Complaints Committee can be asked to reconsider its decisions (“Decisions”). Reviews of Decisions will be conducted on the basis of, and in accordance with, the principles, structures and procedures set out in Appendix IV – Review System of the Code (attached)

## APPENDIX IV – REVIEW SYSTEM

### **Review Panel**

A Review Panel (“the Panel”) consisting of three members will be appointed by the Board of the ASAI. Each Member will hold office for a term of five years or for such shorter period of time as the Board of the Authority in its discretion considers appropriate. Members of the panel can be appointed for a further term/terms provided always that the maximum cumulative period of time which a member may serve is ten years and, for the avoidance of doubt, any member who has served for 10 years will not be eligible for reappointment.

- The Panel will comprise a Chairman and two ordinary members.
- The Chairman of the Panel will be independent of the advertising industry and the ASAI. One ordinary member will have a background in the advertising industry and the remaining ordinary member will have a consumer, or non-advertising industry, background.

### **Basis of Review**

Applications for a review can be made to the Panel on one or more of the following grounds:

- New, fresh or additional relevant evidence has become available, which could have a significant bearing on the Decision concerned (in such cases, an explanation as to why such evidence was not previously available and/or provided, will be required);
- The Decision concerned was clearly and manifestly in error having regard to the provisions of the Code, was wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision;
- There was a substantial flaw in the process by which the Decision was reached.

The onus is on the applicant for a review (“the Applicant”) to make out a sufficiently strong case in relation to any of the aforementioned grounds that are the subject of the relevant application for a review.

No review will proceed if the point at issue is the subject of simultaneous or contemplated legal action between anyone directly involved.

### **Application for a Review**

An application for a review (“Application”) will only be accepted from the parties to the original complaint and must be submitted on the designated application form (“Application Form”). Any one of the parties to the original complaint may apply for a review of a Decision. Such requests should be sent within 21 days of the date on the ASAI’s letter of notification of the Decision. The Review Panel may waive this 21-day time limit if they judge it fair and reasonable to do so.

For consumer applicants, there will be a nominal charge of €30. For advertiser applicants the fee will be €5,000 (save for registered charities in respect of whom the fee will be €2,000) and for applicants involved in competitive complaints, the fee will be €5,000. These charges will be reimbursed if the Decision is ultimately substantially altered in favour of the applicant, or reversed, by the Complaints Committee.

### **Review Procedure**

Having received the application form and any submissions forwarded by the Executive, the Panel will first decide whether the application should be accepted. When an application for a review is accepted by the Panel, the Executive will forward a copy of the application form to the other parties to the original complaint and seek submissions from such parties in relation to the application.

Any submissions received will then be forwarded by the Executive to the Panel.

The Panel will then consider all the submissions concerned. The Panel may, in addition, seek or obtain such further information and submissions as it thinks appropriate, fair and reasonable in the circumstances. Having considered the foregoing, and taking into account the fact that the onus is on the applicant to make out a sufficiently strong case, it will then decide as follows

### **Either**

That the application does not meet any of the three grounds for review set out above. The Panel may find, in this regard,

- that it is not satisfied on the balance of probabilities that the new, fresh or additional evidence is relevant, or sufficiently relevant, and/or that the said evidence could not have a significant bearing on the Decision concerned, and/or that the explanation for the previous non-availability and/or non-provision of the said evidence is satisfactory; and/or



- that it is not satisfied on the balance of probabilities that the Decision concerned was clearly and manifestly in error, having regard to the provisions of the Code, wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision; and/or
- that it is not satisfied on the balance of probabilities that there was a substantial flaw in the process by which the Decision concerned was reached,

and that, accordingly, no further action will be taken on foot of the application.

Or,

That it is satisfied on the balance of probabilities that one or more of the three grounds set out above has been met. The Panel may find, in this regard,

- that it is satisfied on the balance of probabilities that the new, fresh or additional evidence is relevant, or sufficiently relevant, and/or that the said evidence could have a significant bearing on the Decision concerned, and that the explanation for the previous non-availability and/or non-provision of the said evidence is satisfactory; and/or
- that it is satisfied on the balance of probabilities that the Decision concerned was clearly and manifestly in error, having regard to the provisions of the Code, wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision; and/or
- that it is satisfied that there was a substantial flaw in the process by which the Decision concerned was reached.

And that the case should be referred back to the Complaints Committee to be reconsidered accordingly.

In either case, the Panel will set out the reasoning for the Panel's decision, and the decision will be communicated by the Executive to all parties involved.

For the avoidance of doubt, in reaching its decisions the Panel will not be bound by any interpretation by the Complaints Committee of any provision of the Code which formed part of the decision under review.

There is no appeal from a decision of the Panel and, as provided for at Paragraph 27 of the Complaints Procedures, the decision of the Complaints Committee will stand, pending the outcome of the reconsideration by the Complaints Committee (if applicable).

Where a case has been referred back to the Complaints Committee to be reconsidered, the Committee will have regard to the decision and reasoning of the Panel and will, as it considers appropriate,

- affirm or vary its original decision,

Or

- annul its original decision and make such decision as it considers proper in relation to the matter concerned.

In either case, the decision of the Complaints Committee is final.

The Executive will advise all relevant parties of the Decision of the Complaints Committee. Adjudications that are revised following a review will be published on the ASAI website [www.asai.ie](http://www.asai.ie).