

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

### JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

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*Dé Máirt, 24 Aibreán 2018*

*Tuesday, 24 April 2018*

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Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Pearse Doherty,	Rose Conway-Walsh,
Michael McGrath.	Gerry Horkan.

Teachta / Deputy John McGuinness sa Chathaoir / in the Chair.

## **Business of Joint Committee**

**Chairman:** We have a quorum and will go into private session to discuss some housekeeping matters.

The joint committee went into private session at 1.35 p.m. and resumed in public session at 2.15 p.m.

### **Overview of Operations of the National Lottery: Discussion**

**Chairman:** The item with which we are dealing is the overview of the operations of the national lottery. I welcome Ms Boate and Mr. Derek Donohoe to the meeting.

I draw their attention to the note on privilege. By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I invite Ms Boate to make her opening statement.

**Ms Carol Boate:** I thank the committee for inviting me to provide an overview of the operation of the national lottery. This is my first time to appear before the committee.

To facilitate the committee in understanding the operation of the national lottery, it is useful to provide members with a timeline of the changes which came about when the Minister for Public Expenditure and Reform awarded a 20-year licence to Premier Lotteries Ireland on 27 February 2014, which began operating the national lottery on 30 November 2014. The first regulator was appointed on 17 November 2014 and resigned on 3 May 2017 to take up a post elsewhere. I was appointed on 9 October 2017. In the period before the first regulator was appointed and the interim period between our appointments, the Minister acted as the regulator.

I would also like to draw the members' attention to the respective roles of the operator and the regulator. These roles are set out in the National Lottery Act 2013 and the licence to operate the national lottery. Under the Act, the operator of the national lottery has the sole purpose of operating the national lottery in accordance with the terms and conditions of the licence. The operator must report to the regulator on its activities and it must appear before this committee when requested to do so.

The functions of the regulator under the Act are to procure the holding of the national lottery; to monitor and enforce compliance by the operator with the Act and the licence; to manage and control the national lottery fund; to consider for approval certain matters relating to the national lottery, including schemes for national lottery games; and to exercise the enforcement rights of any trademark of the national lottery. The regulator must exercise these functions with the objectives of ensuring the probity and long-term sustainability of the national lottery, that the interests of participants are protected, and, subject to those objectives being met, maximise returns for good causes. Thus, the regulatory role centres around ensuring that the requirements of the Act and the licence are being met, with statutory powers to support this. Some aspects of the operation of the national lottery require regulatory approval in advance and I have statutory powers to investigate any apparent breaches. Operational matters which do not require approval or are not a breach of the licence are entirely a matter for the operator.

The Office of the Regulator of the National Lottery is staffed with relevant expertise to support its functions. This includes expertise in accounting, audit, law, psychology, data analysis, risk management and regulation. I am trained in regulatory governance and have a background in regulating for effective competition and consumer protection. I am joined today by the deputy regulator and head of audit and finance, Mr. Derek Donohoe, who was previously a partner in a leading Irish accountancy practice with significant experience of auditing, forensic accounting, corporate governance and compliance.

In order to monitor and enforce compliance by the operator, my office has a range of information-gathering mechanisms in place. These include 31 different regular reports from the operator; real-time access to data from the operator's business systems; regular meetings with the operator; oversight of the processes and controls applied by the operator; monitoring the marketing and PR activities of the operator; and other proactive reviews, investigations, and requests for reports or information on specific matters. The information we glean from these monitoring activities is combined with my powers under the Act and a risk-based approach to ensuring compliance.

A range of the operator's activities require the written approval or consent of the regulator. These include new lottery games, new service providers, and changes to codes of practice for sales, advertising and promotion, participant relations and employee vetting. Every request for approval or consent is scrutinised to assess whether it complies with the Act and the licence. Each assessment involves a wide range of aspects of the request and of the licence. If the regulator is not satisfied that a request is compliant, the operator may be asked for further information or explanation. Often, the operator submits an amended proposal or an explanation that removes any concern and the request is ultimately approved. If the operator is unable to address the concerns within the required time limit, the request is rejected or withdrawn. Since the commencement of the licence, the regulator has received 113 requests from the operator that have been considered and concluded. Ultimately, 87 were approved, 19 were rejected, and seven were withdrawn. I have attached to this presentation an up-to-date list of these requests.

A key function of the regulator is to manage and control the national lottery fund. Every week we thoroughly review detailed financial reports from the operator and receive and disburse funds appropriately. We can cross-reference these weekly reports with both the real-time access we have to the operator's systems and other reports we receive. The fund is audited annually by the Comptroller and Auditor General. Under the licence, prizes must, on average across the portfolio of national lottery games, be at least 50% of sales. The amount allocated to good causes is 65% of the difference between sales after free ticket prizes and retailer's

commission, and prizes. Returns to good causes have increased each year since the start of the licence. In 2017, over €226 million was transferred for good causes. The amount for 2016 was €218.9 million, €7 million of which related to sales in previous years, and in 2015 it was €193.3 million.

The operator has provided the following information. In 2017, 1.45 million people played lottery games on a regular basis, that is, in the past month, representing 41% of the adult population. Ticket sales for 2017 amounted to €800 million and in 2016 to €750 million. Sales for draw-based games were €559 million in 2017 and €530 million in 2016. Scratch card and online instant win games accounted for €241 million in 2017 and €220 million in 2016. With respect to the sales channel, 93.5% of sales in 2017 were in retail and 6.5% were online.

The number of retail outlets increased from just over 3,700 at the start of the licence to 5,780. The largest part of the increase resulted from extending the network from one third of post offices to all post offices, including sub post offices, in 2016. Some 1,811 of the new retail outlets operate a restricted range of draw-based games and scratch cards. Some 500 of these are post office outlets co-located within an existing national lottery retailer. The same codes and controls apply to every retail outlet regardless of its ownership or size.

In 2017, on average over the whole network, terminals were available to sell tickets 99.98% of the time. Availability of website services varied from 99.81% to 99.99% of the time. This performance is in line with the 99% standard required under the licence.

I hope the information in my presentation has been helpful to the committee in providing an overview of the operation of the national lottery and the role of the regulator. I look forward to answering members' questions.

**Chairman:** I thank Ms Boate and call Senator Conway-Walsh.

**Senator Rose Conway-Walsh:** I thank Ms Boate for her presentation. I will confine my questions to the gambling aspect of the national lottery and Ms Boate's responsibilities in that regard, in particular in regard to gambling addictions. Did Ms Boate see the "Prime Time" television programme last night?

**Ms Carol Boate:** I did.

**Senator Rose Conway-Walsh:** Did she find it distressing when it showed a woman who was confined to her bed and completely addicted to gambling and scratch cards?

**Ms Carol Boate:** Anybody watching the programme would have been moved by the testimony and the situation that the brave individuals who gave their stories presented.

**Senator Rose Conway-Walsh:** Perhaps we will tease out some of the things that Ms Boate, as regulator, does to protect people such as the woman featured on that programme last night because we know from addiction centres and from working with people that very many people around the country need to be protected. In terms of young people and online gambling, how does Ms Boate ensure that people using the national lottery online system are over the age of 18?

**Ms Carol Boate:** There are several controls in place and required under the licence to ensure that those under 18 do not play national lottery games, including a confirmation of the player's age at the start of the game. There are also triggers involving specific identification checks. If

one wins a prize of €500 or more or withdraws €200 or more, one must provide identification to receive the money. Spot checks are performed every month on a random selection of online players to ask for identification and ensure they are of age.

**Senator Rose Conway-Walsh:** Ms Boate could not guarantee that my 16 year old son would not be able to go online and gamble on the lottery.

**Ms Carol Boate:** If he used his true age, he could not. He could not go online, give his correct date of birth and gamble. If the Senator is asking-----

**Senator Rose Conway-Walsh:** A young person who does not realise the dangers of gambling and so on could get a parent's credit card and suggest he or she is a different age. There is nothing there to stop them doing that. I acknowledge Ms Boate stated they are asked for identification when they win but the chances are they will lose, as we know.

**Ms Carol Boate:** There is currently nothing in the requirements under the licence to prevent a person lying about his or her age in order to play. The requirements contain deterrents to such a practice. If young people knew they would not be able to claim a prize or win, they would have less incentive to gamble.

Another mechanism in place is that the national lottery is not allowed to have games or advertisements that particularly appeal to children. I do not know enough about the previous licences to say if that has always been in place but it has been applied very rigorously under this licence. For example, the Senator will see in the table I have provided of all requests to date that the game "Monopoly" was put forward as a proposal by the operator. It is one of the biggest-selling scratch cards in the world and there are online versions of it. That was refused by my predecessor because it would be of particular appeal to children. We also try to ensure the national lottery games are not attractive to persons under 18.

**Senator Rose Conway-Walsh:** That must be continually looked at because of the increasing problem in this country with gambling. Does the national lottery make any statutory or voluntary contributions to treatment facilities for gambling addiction?

**Ms Carol Boate:** It is not required under the licence to provide money to such centres. The Senator would have to ask them that question. I do not know if they voluntarily give money anywhere, but there is nothing in the Act or the licence that requires it.

**Senator Rose Conway-Walsh:** So Ms Boate does not know whether they make contributions or not?

**Ms Carol Boate:** They would not have to report that to me. I would not know whether they give money voluntarily.

**Senator Rose Conway-Walsh:** Morally, does Ms Boate think that they should?

**Ms Carol Boate:** My job is not to assess their morals. I can only hold them to account in terms of what is in the licence and the Act. They have their own corporate social responsibility programme in addition to their requirements. Unless they were doing something that was in breach of the Act or inappropriate for the national lottery, which would threaten the reputation or so on, it would not come within my remit.

**Senator Rose Conway-Walsh:** I was just asking for Ms Boate's opinion. In Britain, there is a facility called GAMSTOP where people can bar themselves from gambling. Is there such

a facility in Ireland to allow people to bar themselves from doing the lottery?

**Ms Carol Boate:** For the national lottery, there is a self-exclusion programme. This again is a requirement under the licence. It is a new requirement that was introduced. People who feel they are spending too much money or too much time on the website can set themselves up to be self-excluded from it. They can set that exclusion for a few days, for a month or six months and throughout that period, they cannot get back into their account. They do not receive any marketing emails or messages throughout that period and the operator goes a step further and also does not send them any marketing emails after the period has expired unless they come back and engage.

**Senator Rose Conway-Walsh:** How many weeks was the period of self-exclusion ?

**Ms Carol Boate:** There is a variety of periods that people can choose. A person can choose a few days, one month, or six months.

**Senator Rose Conway-Walsh:** Does the national lottery allow people to register online to pay with either a credit card, a debit card or both?

**Ms Carol Boate:** The licence provides that people can play with a debit card or a credit card or both.

**Senator Rose Conway-Walsh:** Can the debit or credit card be connected to a joint account?

**Ms Carol Boate:** I am not 100% sure of the answer. I will check that and revert to the Senator with the answer.

**Senator Rose Conway-Walsh:** Ms Boate can see how that would cause a problem.

The national lottery is regulated by the her organisation but the bookmaking industry is not regulated. Does Ms Boate wish to see a regulator in place for that industry? We are considering whether the entire gambling sector should be put on a level footing and on a statutory basis. Does Ms Boate think that should be done?

**Ms Carol Boate:** I do not think it is a matter for me how the Government and the Oireachtas regulates the gambling sector. I have a very narrow role, which is to regulate the national lottery. It is possibly unique as I have not yet found another regulator who regulates only one company. That is what I do. My job is to procure the services of a company to run the national lottery and ensure that the company runs it in line with the Act and the licence. How the entire wider gambling sector is regulated is not a matter for me and I do not think it would be appropriate for me to comment.

**Senator Rose Conway-Walsh:** I thank the witness.

**Deputy Pearse Doherty:** Go raibh maith agat and fáilte chuig an coiste. I am glad Ms Boate is here because I have been asking questions about her role as regulator and also about the licence that was allocated to Premier Lotteries Ireland, PLI, in 2014. I am interested in the sales code of practice of the national lottery. Will Ms Boate explain how that came into being and the interaction of the regulator with the code of practice?

**Ms Carol Boate:** Under the licence, there is a requirement on the operator to have four different codes of practices, including one for sales, one for participants, one for advertising and promotion, and one for the vetting of their employees.



Under the sales code of practice, the licence prescribes certain matters that it must address and must include. The operator was initially required to draft the code and present it to the regulator for approval. Every year, the operator must review each of these codes and consider whether they require amendment or improvements and submit that to the regulator for approval. The regulator's role is to approve it or to approve it with modifications. If something came before me and I disagreed with the improvement, I could reject it, but I would have to give the reasons that it was not compliant with the Act and the licence. I could make modifications to it, but I would have to justify why that is in compliance with the Act and the licence. There is a process set up to look at that.

The sales code of practice, as the name suggests, applies to how national lottery tickets are sold. It applies to the operator and to every retail outlet that sells national lottery tickets.

**Deputy Pearse Doherty:** Did Ms Boate reject the sales code of practice or did she amend it?

**Ms Carol Boate:** All of the codes of practice have been before the regulator a number of times. As I said, it is an annual process and the codes have been amended. I have not done it yet myself, but I rejected some amendments to the code last year and my predecessor made modifications to the code.

**Deputy Pearse Doherty:** The members of this committee are well used to dealing with the banks. The idea that Ulster Bank would submit a proposal to the regulator in the Central Bank of Ireland showing the way the bank wanted to deal with an issue would not be a runner. We would call that light touch regulation. I am conscious that the regulator of the national lottery has to work within the Act. The national lottery has done a great deal of good and has served this State well in its contribution to good causes. We can see its fingerprints across society. As my colleague, Senator Rose Conway-Walsh, said, it is also gambling. We have to be very careful and there is a need for sufficient and robust regulation. Does Ms Boate think it is appropriate that the sales code of practice would be drafted by the entity that the national lottery regulator is regulating?

**Ms Carol Boate:** I agree it is unusual, but as I said earlier, it is unusual to regulate one company. In fact, I find that when speaking on my role as regulator, I have to explain my role as being slightly different from the norm. People may say that a regulator will do a consultation on some new standards that his or her office is thinking of bringing in, make a decision and apply them. That is perhaps what would be done with a code in the financial or any other sector. In this case, however, there is only one licensee and the State has signed a contract with the licensee to run the national lottery for us. It is our national lottery, but essentially they run it for us and they can take the profits. They paid €405 million for that licence and my job is to ensure that the contract is enforced. It is unusual, perhaps, because there is only one company involved. It is they who draft the codes and the licence does specify what those codes must cover. The sales code is not the easiest example to talk about. Perhaps the advertising code is easier to understand in the sense that one of the major exercises that was done in 2016 and 2017 was to put all of the rules about advertising gambling that are in the Advertising Standards Authority for Ireland's code into the advertising and promotion code applying to the national lottery. It definitely should not be any weaker, and if anything it should be stricter, because the conditions were lifted, lock, stock and barrel into the advertising code. We keep abreast of what the Broadcasting Authority of Ireland is doing, what else is happening in the general space of the online world, and what the Oireachtas is saying about social media and online selling.

**Deputy Pearse Doherty:** Will Ms Boate repeat the codes of practice of the regulator of the national lottery? There is a code of practice for sales, advertising, information and what else?

**Ms Carol Boate:** There is a code of practice for advertising and promotion, and a code of practice for participants. The codes for sales and for participants overlap quite a lot, and there is a code for employee vetting.

**Deputy Pearse Doherty:** Are all four codes, which Ms Boate regulates, written by the operator, a private company, Premier Lotteries Ireland, PLI?

**Ms Carol Boate:** The codes require the approval of the regulator. The regulator can make changes.

**Deputy Pearse Doherty:** As I see it, a person cannot but see signage for the national lottery. When he or she drives down the street in any place in rural Ireland, there will be a sign on a lamp post outside of a shop saying “National Lottery”, there will be a lotto checker at the door as that person goes into the shop, and there will be a terminal sitting on the counter where that person must go to pay for the goods he or she wants to buy. There are big billboards with a local person or someone from the county who may have won a prize on them. They show gigantic cheques, which we are used to thinking of in connection with People in Need. There are big flat-screen televisions showing how much the lotto prize is. If one happens to download the app to check lotto tickets, one is reminded on a daily basis to play the lotto. There is a huge difference in the aggressive marketing by this private company and the marketing when the State had the contract. Is Ms Boate not concerned? The national lottery is important and it has done a lot of good but it also has gambling at its core. Aggressive marketing is very dangerous. Is Ms Boate not concerned about that in terms of what we have seen happening since PLI took over the contract?

**Ms Carol Boate:** The licence and the Act are very specific. My role in advertising relates to the content and not to the amount of advertising. The advertising code is very strict in terms of what advertising PLI is allowed to do and not do. For example, it is not allowed to suggest in any way that playing the lottery is a valid financial investment or solution to a person’s money worries. It is not allowed to use children in its advertisements. It cannot use the heroes of children or anything that might appeal to children. There is no restriction on the volume of advertising it can engage in.

**Deputy Pearse Doherty:** Ms Boate is governed by the rules that govern her office but there is something seriously wrong. I contend very strongly that the balance has been all wrong here since a private company came over and took over the contract. It is paying for it but it is also making huge profits as a result. There is a figure that screams out to me. When the State handed over to PLI in 2014 there were 3,700 retail agents in the State. In the three years and a bit between 2014 and now, 2,019 new retail agents are selling the national lottery. It is out of control. It is a runaway train. If we continue with this trend between now and the expiry of its contract, there will be about 16,000 retail agents. It is not only retail agents because one cannot go into a post office now without being hit by all of the promotional material. There is absolutely no restriction on the number of outlets where it can target individuals to play its games.

**Ms Carol Boate:** The restrictions are on the type of outlets. National lottery tickets cannot be sold where alcohol is served or in a shop that is mainly for children such as a toy shop or one selling children’s clothes. There are no restrictions on the numbers but that is what the licence says. My role is to implement what the licence says.



**Deputy Pearse Doherty:** I understand that but given the level of marketing taking place, which is all within the rules, and given the increase by 64% in the number of outlets where one is able to play the national lottery, does Ms Boate have a view on it?

**Ms Carol Boate:** If one looks back over all the national lottery licences going back to when it started, they have all had minimum targets and minimum requirements in terms of growing the national lottery and the number of outlets. It has always been Government policy to grow it. The minimum was increasing all the time. I read the Act and the licence very carefully to be sure I understand what the Oireachtas has asked me to do, and what the licence requires the company to do, and it is clear the policy has always been to keep growing the national lottery. The licence is a continuation of that. My personal view on what the State ought to be doing is not relevant.

**Deputy Pearse Doherty:** We might differ on that. I would say to Ms Boate and other regulators there is an onus on the regulator to refer something back the Oireachtas if he or she believes something should not be happening, even if the practice is in keeping with the legislation. When the licence was handed over by the State to a private company in 2014, nobody thought that within three years there would be 64% more outlets selling the national lottery in the State or that there would be the type of aggressive marketing I have referred to. Nobody thought we were going to go to that level. The Central Bank has a role in saying something is not in the law but it thinks the Oireachtas should look at amending the law. Has Ms Boate taken that position with the Minister? Is it something she would consider doing?

**Ms Carol Boate:** I understand what the Deputy is saying. I understand the point he is making. I will tell the Deputy what is of concern to me and what I am doing right now. Perhaps after I have done the things I am planning to do, I will consider the question the Deputy has understandably asked me. I am concerned that the increase in the number of outlets is matched by an increase in the resources going into overseeing, monitoring and supporting every retail outlet. What is very important is how national lottery tickets are sold or not sold. As I mentioned earlier, the sales and advertising codes apply equally to every type of outlet and to every individual outlet. It is the operator's responsibility to make sure every outlet is selling tickets responsibly. That includes things like having very visible signs about it being an over-18s product. It should be very clear it is only for over 18s. They are obliged not to sell to anybody under 18 and if they think a person might be under 18 they must ask for identification. They are obliged to engage in responsible selling and there are training videos, posters and materials to support that. The operator is obliged to monitor this and make sure it is happening. I then monitor the operator and hold the operator to account. If there is a large increase in the number of outlets, as the Deputy has correctly pointed out, there should be a corresponding adjustment to the resources and tools being used by the operator to oversee them. I launched a number of reviews and initiatives this year to ensure and check it is actually happening on the ground.

**Deputy Pearse Doherty:** I was looking through the list of games the regulator has approved. A number were not approved. I am not familiar with these games but I have children. I have four young boys and when they talk about prize ducks they think of little yellow ducks going around the water at the fair. It is a gambling game that was approved by the regulator. The name "sweets and treats" is something that would appeal to kids. It is not really something that is targeted at over 18s. It was approved by the regulator. Snap poker, horoscope, Blackbeard's gold and fish for gold were all withdrawn. There has been a huge expansion in the number of games the company is applying for. Some of their names seem to be targeted less at over 18s and more at under 18s. If I went to any marketing company and asked it whether a game called

“sweets and treats” or “prize ducks” was targeted at me or my kids, it would be a no-brainer. I do not know the games or the regulation but it is clearly hovering and pushing the boundaries, if it is not well over the boundaries, and trying to target young people. There is also the appearance, including the colours that are used, the images of sweet wrappers. That is what it is about. I have no problem with responsible gambling. I do the lotto myself. I place a bet on horses the odd time and so on. I also recognise the danger it has to society. I would argue that some of this is seriously concerning. It is clearly targeted at children. Will the witnesses answer that question? Do they believe that Sweets and Treats is targeted at over 18s or under 18s?

**Mr. Derek Donohoe:** If I could clarify, I think that game is Hampers Sweets and Treats, which was a pre-existing game prior to this licence. That is a brand that----

**Deputy Pearse Doherty:** It was on 20 August 2015 and the licence was awarded in 2014.

**Mr. Derek Donohoe:** It is a Christmas-themed game and Hampers Sweets and Treats is the full name.

**Ms Carol Boate:** A condition of the licence was that certain games, if on sale in the 12 months prior to the new licence coming in, would automatically be approved under the new licence. Monopoly, for example, had not been so there was an opportunity to consider whether it was suitable under the new licence. I think our regime is quite strict compared with other countries and sometimes compared with the old regime. As we learned, much more is understood about these kinds of products, the harm that can arise from them and the issues that some people can develop with them. We are particularly vigilant about under 18s. We spent a good bit of time looking at ways to ensure that the products will not be sold to under 18s and do not appeal to under 18s. Hamper Sweets and Treats is a Christmas-themed game that has been on sale every Christmas.

**Deputy Pearse Doherty:** And the Prize Ducks?

**Mr. Derek Donohoe:** Prize Ducks is what is known as an instant win game. It is played online. Risk assessment was done, it was considered with regard to its possible appeal to children and, on balance, it was approved. Importantly, no branding was associated with that which would be recognisable to children. For example, if a children’s character was associated with it, it is unlikely it would have been approved, but because “prize ducks” is a generic term and was not of particular relevance or appeal to children, it was approved by the previous regulator.

**Deputy Pearse Doherty:** Will the witnesses explain the subscription service that was refused? What was the attempt there by the company operating the national lottery?

**Ms Carol Boate:** Many national lotteries and state lotteries have a subscription service whereby a person can sign up to have his or her numbers entered automatically for every draw. For some people, the idea that their numbers would come up and they forgot to put them in would be too much. They like the idea of being able to play every week or every draw. The financial mechanism or instrument used is different in every case but the idea is that one pays money every draw or every month to facilitate that. The company decided to propose something like that facility for Ireland. It was refused on the basis that I believed it raised too many risks, was not sufficiently protective of the interests of players and presented too many risks to the reputation and sustainability of the national lottery.

**Deputy Pearse Doherty:** I ask the witnesses to move on to the issue of unclaimed prizes. Some of this is outside of the control of the witnesses. There are serious questions for the De-

partment and Minister about the 2014 contract, specifically the changes to that contract, which I understand happened midstream and which allowed for unclaimed prizes to be used by the company to promote and advertise the games. Before this, unclaimed prizes all went back into the pool of winnings. The company now gets to use unclaimed prizes for operational costs. I have been trying to get information on the level of unclaimed prizes, how much has gone into special draws and how much is being used for advertising. Are the witnesses aware of those numbers and will they inform the committee about those numbers?

**Ms Carol Boate:** The Deputy is correct that the new licence is different from the old licence. Previously, unclaimed prizes all went back as prizes in another way. They were used to top-up prizes, maybe at St. Patrick's weekend or such. Under the new licence, unclaimed prizes may still be used for top-up prizes but may also be used for advertising and promotion of the national lottery. If anything is not spent within the 365 day period, that group returns to good causes. My role is to make sure that the right amount of money is in the right place at the right time, that that is what unclaimed prizes are being spent on and nothing else, and that only unclaimed prizes go into that money. I know the amounts. We monitor this regularly. We have a number of different reporting mechanisms to make sure we keep an eye on unclaimed prizes, the value of them and where the money is going. I know all of the figures involved. Some of the coverage of this issue has been a bit unclear. There is no question of the company not doing what it is supposed to do under the licence. It is supposed to spend the money on the three things mentioned, on top-up prizes and promotion, with anything left over going to good causes. Based on all the information I have and all of the reports and reviews we have done, there is nothing to suggest that the company is doing anything other than that.

**Deputy Pearse Doherty:** Prior to that-----

**Chairman:** The Deputy's time is up.

**Deputy Pearse Doherty:** If the Chairman will let me in, I will finish with this. Prior to 2014 and a private company coming in, where were unclaimed prizes allowed to be used?

**Ms Carol Boate:** Under the old licence, prizes were prizes. If they were unclaimed, they went back in to players as top-up prizes. For example, we might put an extra €1 million on the lotto jackpot for a certain weekend. It is important to be clear that unclaimed prizes are never zero. People always lose tickets or forget to check their numbers. Some people do not bother collecting a prize. Regardless of where they were going to go, we would always check-----

**Deputy Pearse Doherty:** We own the national lottery. It is important that we know how much in unclaimed prizes this company is using to deal with operational costs. We do not know that. We have no transparency about that. The argument from the regulator's office is that this is commercially sensitive information. I am baffled about how it can be commercially sensitive information given that this is a monopoly. The company has the contract for the next couple of decades. There is no competitor. Nobody is bidding and nobody can bid for the national lottery licence for the next couple of years. The reality is that during this tender process, the conditions were changed that allowed the company to use unclaimed prizes for its operational costs. I am not sure if the other bidders were aware of the significance of that change at the time. We have no transparency. The company is making a mint out of this contract from 2014. I think the hundreds of thousands of players - I am one of them - should know where their money is going. If it is going into advertising, that ties into the earlier point about aggressive promotion of the product for one purpose and one purpose only, which is to increase the profitability of this private company. Why can we not be given the information on the ratio of unclaimed

prizes? How much of it is going into special games? How much is going into top-up prizes and how much is being used as the operational expenditure of this company, that is advertising and promotion?

**Ms Carol Boate:** I understand the Deputy's frustration. I will be clear that I know the numbers. There is only one reason I cannot give them to the committee, which is the confidentiality of that material and the clause in the licence which says that I am not allowed to release the firm's confidential information. It specifically refers to the management accounts of the company and this information comes from its accounts. It does not have to be commercially sensitive, only confidential and not in the public domain, so without the company's permission, I cannot release it. I asked for the company's permission to release it since I knew the Deputy was looking for it but the company was not inclined to give it. I understand the Deputy's frustration in not knowing the amount.

I would like to point out some facts which may be of use to the committee. The first is that, for every cent in profit that the company makes on a national lottery sale, good causes earn three times as much. The licence is quite robust. I am sure the Deputy is familiar with what happened in the United Kingdom, where profits went up and contributions to good causes went down. That will not happen here as we have a far more robust model. The advertising and promotion that goes to drive sales also drives good causes. As the Deputy said, the licence is designed in this way and my role is to enforce it and ensure the company complies with it.

**Deputy Pearse Doherty:** I acknowledge that. The problem is that Ms Boate is enforcing a flawed licence. The 2014 licence is deeply flawed, as is the process. We now have a situation where Ms Boate cannot provide transparency - I do not accuse her of avoiding it - in respect of this information. We have situations where operators are writing their own codes of conduct for sales, advertising and members. It is deeply undesirable.

**Deputy Michael McGrath:** I welcome Ms Boate and Mr. Donohoe and thank them for the statement and tables they have provided. The array of games available on the *lottery.ie* website is mind-boggling. The days of one weekly draw and one Winning Streak scratch card are long gone. How many games are now approved and in a position to be marketed under the various headings? There are instant win games, for example.

**Ms Carol Boate:** There are three types of games. There are five draw-based games, three of which have an add-on or plus game. There are 24 instant win games.

**Deputy Michael McGrath:** There are five draw-based games, three of which have an add-on option.

**Ms Carol Boate:** Yes, an add-on option.

**Deputy Michael McGrath:** That gives eight draw variations.

**Ms Carol Boate:** Yes. There are 24 instant win games, which are probably the ones the Deputy saw on the website.

**Deputy Michael McGrath:** Are those 24 games online only?

**Ms Carol Boate:** Yes, they are online only. There are 24 online instant win games. There are 19 varieties of scratch card on sale. I do not have to hand the number approved since the beginning of the licence, but practically, only a certain number can be on sale at any time, and

currently, that is 19 varieties of scratch card.

**Deputy Michael McGrath:** To recap, there are eight versions of the lotto draws, with which we are familiar, based on five draws; 24 instant win games, which are all online; and 19 scratch cards which are allowed to be sold in shops at any point in time. That gives a total of 51 games, versions of games or opportunities to bet currently being provided. Is it correct that that is quite a dramatic increase on what was available before the licence was awarded to the current operator?

**Ms Carol Boate:** Not really. When I began looking into this area, I thought Winning Streak and All Cash were the only scratch card games available, but that was not the case.

**Deputy Michael McGrath:** It is far from that now.

**Ms Carol Boate:** I did not realise how many draw-based games there were. That only becomes apparent when one looks closely. All of those draw-based games were available before the licence changed. A similar number of instant win games and scratch cards were available. The scratch cards are a little more visible in shops than previously. They were often hung behind a sweet display and were not as visible to customers as they are now, but there has always been a variety on offer. The way for lottery games to work, scratch cards in particular, is to provide a variety of games at different price points which will appeal to different people. Regular scratch card players, who enjoy them and play them regularly rather than occasionally buying them as a gift, know the various games and have their preferences. Before I took up my role, I decided that if I was going to be tasked with approving them, I should understand what they felt like to play, so I played all of them. There is a scratch card which involves a crossword. I like crosswords. On that scratch card, one has to match letters rather than figures. It takes me ten minutes to play it. At the end, one counts how many words one has matched.

**Deputy Michael McGrath:** Did Ms Boate win anything?

**Ms Carol Boate:** I won €10.

**Deputy Michael McGrath:** At any point in time-----

**Ms Carol Boate:** They are quite different.

**Deputy Michael McGrath:** The 24 instant win games are online 24-7. A person can play any of them-----

**Ms Carol Boate:** No, a person can only play between 7 a.m. and 10 p.m.

**Deputy Michael McGrath:** Only from 7 a.m. to 10 p.m.

**Ms Carol Boate:** And they can only be bought in-store between 7 a.m. and 10 p.m.

**Deputy Michael McGrath:** Okay. However, the 24 instant win games are online-----

**Ms Carol Boate:** Yes.

**Deputy Michael McGrath:** -----and available at all times. Are there 19 scratch cards on the market?

**Ms Carol Boate:** There are 19 available for retailers to sell. Retailers' units are of different sizes. As I mentioned, some smaller operators only sell All Cash and Winning Streak while



other with a far higher turnover and a bigger display unit may have 18 scratch cards on sale at any one time. Other retailers provide offerings at levels between those extremes.

**Deputy Michael McGrath:** To clarify, those are year-round games. Are there also seasonally themed games? Ms Boate mentioned Christmas-themed games.

**Ms Carol Boate:** That includes seasonally themed games. There are 19 scratch cards in total, which includes seasonally themed games. This is not the time of year for seasonally themed games. Christmas is a very popular time of year for such games. The “Winning Streak” programme will not be shown on television during the summer, so there will have to be a similar offering for people who like that type of scratch card. There will be holiday cash and other summer-themed scratch cards. Different versions of the online games will also be offered.

**Deputy Michael McGrath:** Such themed offerings are among the approved games we have considered. There are no other seasonal ones I have not addressed. Are the games Christmas Countdown, Christmas Millionaire Raffle and Merry Money, respectively noted at Nos. 122 to 124, inclusive, included on the list at which I am looking?

**Ms Carol Boate:** No. There are currently 19 varieties of scratch card on sale and they do not include Christmas games. More than 19 have been approved. Next Christmas, the operator will consider which of those to resurrect and sell at Christmas time. Each year, the game may be slightly changed. The scratch cards on sale 25 years ago would look very old-fashioned to us. They would be in pounds and the amount of money may not seem exciting to us. Scratch cards always change over time. A lottery is unusual because the same thing is being sold over and over again but it must be kept fresh such that it does not look dated and it must be kept interesting. Operators regularly change the games and may make the jackpot higher or put in a new set of prizes at a certain value. It may seem odd to have all of these approvals but only a certain amount on sale, but that is because they become outdated and a new version comes out the following year or two years later.

**Deputy Michael McGrath:** How many are approved?

**Ms Carol Boate:** As I mentioned, 87 have been approved, the majority of which are games. I would have to check how many are games. That might be at the bottom of the table I have provided to the committee. A lot of games are approved but they do not last.

**Deputy Michael McGrath:** That is what I am trying to understand. We went through the games that are on the market.

**Ms Carol Boate:** On the market as of today. It changes every day.

**Deputy Michael McGrath:** There are far more approved games that the operator could bring to the market for occasions such as Christmas, etc.

**Ms Carol Boate:** Yes. Looking through the list, All Cash appears three or four times because the operator has made changes to it since the licence was granted. There was a holiday cash scratch card which was changed by the operator a couple of years later to have a new picture on it or a different jackpot or ten holidays to be won rather than five.

**Deputy Michael McGrath:** The statement provided by Ms Boate notes that there have been 113 requests from the operator, not all of which would be for new games. Looking at the list, most are section 45 applications. Ultimately, 87-----



**Mr. Derek Donohoe:** Some 66 games were approved.

**Ms Carol Boate:** There are 66 games out of 113.

**Deputy Michael McGrath:** Were 66 games approved?

**Ms Carol Boate:** Yes, or game-related requests.

**Mr. Derek Donohoe:** Yes.

**Ms Carol Boate:** The instant win games online involve a slightly different process.

**Deputy Michael McGrath:** Are those 66 games made up of scratch cards and instant win games?

**Mr. Derek Donohoe:** Yes.

**Ms Carol Boate:** And draw-based games, if there is any change to the game.

**Deputy Michael McGrath:** Based on those numbers, the vast majority of approved games are on the market.

**Ms Carol Boate:** Yes.

**Deputy Michael McGrath:** The operator has more than 50 games in the market.

**Ms Carol Boate:** Yes.

**Deputy Michael McGrath:** Is the witness saying that the total approved is 66?

**Ms Carol Boate:** Yes, that is correct.

**Deputy Michael McGrath:** Therefore, the balance of the remaining ones, 15 or whatever, would be pop-up games at Christmas and seasonal gifts for a few weeks.

**Ms Carol Boate:** Yes, seasonal games. That is correct.

**Mr. Derek Donohoe:** There could be games which have been approved, run their course, been withdrawn and are no longer in play. The fact that it was originally approved does not mean that it still remains in play.

**Ms Carol Boate:** Essentially, it was discontinued. It was decided not to run that game.

**Deputy Michael McGrath:** Would there not be notification and then it would be revoked?

**Ms Carol Boate:** We are notified when a game is coming to an end. Once it is approved, it is approved. I would only need to revoke it if it turned out there was a problem with the game. For example, if there was a Christmas - we keep going to Christmas but it is a popular time of year for scratch cards - game approved, it could just be reintroduced the following November or October in the run-up to Christmas. It has been approved but has been taken off sale because no one wants to buy a Christmas scratch card after 1 January.

**Deputy Michael McGrath:** Yes, I understand.

**Ms Carol Boate:** It might be put back on at the end of the year, however, if the Deputy understands what I mean. Another game at the same price point will be taken down to make

room for the new game.

**Deputy Michael McGrath:** That is fine. The sales were €670 million in 2015, €750 million in 2016 and €800 million in 2017. It is up about 20% from 2015 to 2017.

**Ms Carol Boate:** Yes, it is.

**Deputy Michael McGrath:** It is now a commercially driven operation and there is very extensive advertising. Is the witness satisfied with her remit and what she is empowered to regulate under the Act? Has she requested any additional powers or suggested any amendments to the legislation to the relevant Minister?

**Ms Carol Boate:** In respect of the powers under the Act, it is important to note we use all of the tools available to us. They are broad-ranging. Deputy Doherty is no longer here and I did not get a chance to say all of the things we are doing. It is not clear from looking at the licence on our website. We have enormous power in some ways. I can ask for any information and the operator has to give it to me. It is given it to me and on time. We have 31 different regular reports coming into to us. I mentioned this earlier. It is like having tentacles into the company. We get all of this information from its finances, how it operates and its security controls. That is fed into us regularly.

We have real-time access to their data. We can see the sales of every single scratch card and lotto ticket throughout the country as they come in. We use all of that information to check, for example, that more than 50% of sales are going into prizes, that 6% is going to retailers to pay their commission, the right amount is going to good causes, and what we are told is being sold is what is being sold. We have huge power in that respect. I refer also to the power to pre-approve. We do not run the company. The operator does. We check it is in compliance. Having the power, with some aspects, to say certain things are not compliant before they are done is a great help.

**Deputy Michael McGrath:** On the question itself, the witness has not asked for or suggested any amendments to the legislation or her role as the regulator.

**Ms Carol Boate:** No, I have not.

**Deputy Michael McGrath:** I will address the issue of unregulated, offshore, bet on lottery operators, as they are called. The licensed operator has raised this issue. It has been presented that they are masquerading as being the national lottery or certainly giving people the impression that, by betting through on these platforms, they are betting on the national lottery. They are in fact, because they are betting on the outcome of the national lottery, as I understand it. They have a remote bookmaker licence issued by the Irish national excise licence office. There have been 15 such licences issued. However, they are unregulated in the Irish market. Is that correct and what impact are they having? Is there any quantification of how much money people in Ireland are spending through these unregulated offshore betting operators?

**Ms Carol Boate:** I am afraid I do not have any of the answers to any of those questions, I would not have that information. I only regulate the one company to provide the actual national lottery. I do not have any of that information on what other companies are doing. I know that the Department is actively looking at it and consulting the Attorney General, the national lottery operator and, I believe, the companies to which the Deputy refers to answer the questions he has posed. It is beyond my remit and my powers of information.

**Deputy Michael McGrath:** The position seems to be that the activity has escalated very significantly in recent times and that people are in effect betting on the national lottery. They are betting on the outcome of these draws using these bet on lottery products through these operators who are licensed, it would appear, but are unregulated and are offshore. It does present a potential loss of revenue for the regulated operator and also a potential loss of revenue for the good causes which benefit from the consumer spending in the regulated area. I know it is not directly within the remit of the regulator but is indirectly relevant in that it affects the operator that is being regulated by her. There is no handle on the quantum of the money or the preponderance of these operators in the market. There are 15 of them, for example, *Jackpot.com*, *Lottoland*, and *Play Lottery Online*. They are clearly masquerading as being the lottery.

**Ms Carol Boate:** If they were masquerading as being the lottery, I would certainly have a concern. I do have responsibility for enforcing trademarks, and I think every day about the integrity of the brand of the national lottery and how to ensure its long-term sustainability into the future. People play the national lottery out of trust as well. They play it for fun, for the dream of winning, and they trust, when they buy that little slip of paper, that it has gone into a draw that is correctly supervised, monitored and regulated, and that, if they win, they will be advised of it. Anything that would threaten the brand of the national lottery would concern me.

It is not clear what the scale of each of these operations is. What is clear is the number of them is growing and it may continue to grow. I would not be so worried about the scale as much as if they represent any threat to the brand of the national lottery.

**Deputy Michael McGrath:** Has Ms Boate any concerns that Irish consumers are, in effect, gambling on the outcome of national lottery draws, but not through the national lottery, and therefore are doing so in an unregulated fashion?

**Ms Carol Boate:** It is up to the Oireachtas and the Department to decide what kind of gambling it wishes to allow. The answer is not obvious or clear-cut because while one is allowed to set up a national lottery monopoly under EU law, one is not allowed to do everything one would wish to protect it. The Department is actively looking to see the exact scale of this industry, the scale of threat it represents, what would be a response that would be in line with EU law, and to what extent they are attracting euros from the national lottery and good causes into these offshore or other companies. None of that is clear, so that needs to be established and then an appropriate response chosen.

**Chairman:** I wish to go back to some of the questions raised by Deputy Pearse Doherty at the beginning of this discussion. The sale went ahead and the change was how the unclaimed prizes would be dealt with. That was the only change. The office of the regulator has nothing to do with that licence. The regulator regulates the content of the licence and ensures the operation is as per what was agreed. Am I correct that the office of the regulator has oversight of all sales? In other words, the figures are not just given to it.

**Ms Carol Boate:** We can see in real time what is being sold. There are two systems.

**Mr. Derek Donohoe:** We have access to the national lottery's online gaming system, which means we can visit it in real time and see sales as they are happening and being recorded. Separately, there is an independent control system which is used to ensure the veracity of the gaming system, to which we also have access. We have access in real time to both of those systems. In addition, we have access to the national lottery's management accounts, internal audit reports and governance reports. In terms of financial information, it is hard to imagine that there is any

information to which we do not have access.

**Chairman:** In regard to the licence, which is a 20-year licence, is there a built-in break clause or what would cause the licence to be broken?

**Ms Carol Boate:** I am not sure. There were a number of changes. This licence differs from the previous licence in more than one respect. There is not a-----

**Chairman:** Has the regulator looked at this?

**Ms Carol Boate:** Not too much; only when issues arise because my role is to implement the licence as it currently stands. For example, the self-exclusion system online was not a feature of previous licences. Each licence differs slightly. The issue of unclaimed prizes has drawn quite a bit of attention. That change in that regard is not the only change.

There is no specific break clause such that we can step back and re-evaluate. Obviously, in an extreme scenario, under the Act, I can revoke the licence, which is a big step. There is no particular break clause of the type that is built into other contracts.

**Chairman:** It is a 20-year licence with no built-in break clause and action can only be taken if something extreme occurs. Is there any sanction for minor breaches of the licence?

**Ms Carol Boate:** There is interpretation. As I mentioned, the codes are evolving. There are sanctions that can be applied for breaches. The investigative powers are very important. Some things are visible. For example, in the case of an advertisement that I felt was in breach there would be clear evidence and the argument then would be around whether what is deemed to be a breach is actually a breach. I have the power to send in an investigator if there is an apparent breach. There is also the sanction of withholding money. Money can be withheld from the operator for breaches.

**Chairman:** How is money withheld? What money does the office of the regulator have that it would withhold?

**Ms Carol Boate:** We manage and control the national lottery fund so we could-----

**Chairman:** The regulator could withhold it from there?

**Ms Carol Boate:** -----withhold it from the money that we give to them.

**Chairman:** Is there a specific amount relevant to a sanction?

**Ms Carol Boate:** There is nothing specified in the licence so it would have to be-----

**Chairman:** How much can the regulator withhold, should it decide to do so and what is the limit?

**Ms Carol Boate:** There is a maximum under the Act.

**Mr. Derek Donohoe:** That is in relation to fines.

**Ms Carol Boate:** There is a maximum, which is quite high.

**Chairman:** Ms Boate might give us the range when she has it to hand. In regard to the €16 million left over from the previous licence in terms of unclaimed prizes, does the office of the regulator have any input into the decision-making process in that regard?

**Ms Carol Boate:** No. The €16 million was left in the fund. It is the same fund which is held in the Central Bank, as it always has been. That money was left over in the fund from when An Post National Lottery Company held the licence. It was not clear or obvious where it should go - it was not legally clear. This is being actively looked at and once there is a clear answer we will know where to move the money. Our job is to keep it safe in the fund until it becomes clear where it is supposed to go, and then we will move it.

**Chairman:** It has remained unclear for how many years? Was it from 2014 onwards?

**Ms Carol Boate:** It has been three years or almost four years.

**Chairman:** Is there any light at the end of the tunnel for the €16 million? Is it gaining interest?

**Ms Carol Boate:** I understand from speaking to those responsible in the Department that eminent senior counsels are looking at it. They assure me there is light at the end of the tunnel. One would have to ask those responsible in the Department, Chairman - it is their remit.

**Chairman:** The balance after legal fees will be greatly reduced.

**Ms Carol Boate:** After legal fees, yes.

**Chairman:** That is the matter of the €16 million. We will move to reflecting on the old licence. A total of 2% of sales ended up as unclaimed prizes - that was roughly the guide.

**Ms Carol Boate:** Was that under the old licence?

**Chairman:** Yes, under the old licence the amount was €15 million. That amounts to 2% of sales in the sense of analysing how much money was left in unclaimed prizes.

**Ms Carol Boate:** It is not clear what year the €16 million figure came from. Was it all from the past 12 months? The way the old licence worked was different. Everything left over was surplus and went into the fund. The lines were slightly different compared to the way we do it. I cannot say for sure that the €16 million is from a particular year or is related to sales from that particular year.

**Chairman:** Is it fair to ask Ms Boate? She has the knowledge from looking at the old licence and the new licence. She has the figures or the general differences that exist in the comparison of both licences. I know that she has looked at this because she mentioned it earlier, now that I think of it. Has she ever looked at the media coverage of this and the lack of transparency that has given rise to people working out the amounts over a 20-year period? If €15 million went unclaimed for each of those years, notwithstanding an increase in the sales and so on, then the operating company would have a clear advantage of at least €300 million in terms of operating its marketing budget.

**Ms Carol Boate:** I am unsure what the question is.

**Chairman:** Let us use the figures that we have seen reported in the media. They suggest that for each year there are unclaimed prizes amounting to approximately €15 million. Over the 20 years of the licence, that would give the company operating the licence now a considerable advantage.

**Ms Carol Boate:** What is the advantage over?

**Chairman:** It is in terms of the money going directly to its marketing budget.

**Ms Carol Boate:** All I can say is that every country makes a decision on the kind of licence to have and what should happen to unclaimed prizes. As I said earlier, the amount is never zero. In some countries it goes directly to good causes. That was the case in the UK. It goes straight into the good causes fund there. I am not overly familiar with the old licence in Ireland - I have enough to be doing to enforce this one - but I know that under the old licence the money went straight to prizes. The new licence is a hybrid whereby some of the money goes to prizes, some goes to good causes and some goes to advertising and promotion. My job is to ensure that is where it goes.

**Chairman:** Who decides on the percentage going to each share?

**Ms Carol Boate:** The people who are negotiating the licence. It is in the design of the licence.

**Chairman:** Is it contained rigidly in the licence that a given percentage of unclaimed prizes-----

**Ms Carol Boate:** If the question relates to unclaimed prizes, the answer is “No”.

**Mr. Derek Donohoe:** Under clause 692 of the new licence, three uses to which the unclaimed prizes may be put are specified. Some shall be used for the purpose of top-up or additional prizes, some may be used for incremental marketing and some may be used for other methods of promoting the national lottery as agreed with the regulator. Unclaimed prizes, therefore, can only be used for the sole purpose of promotion of the national lottery.

The amount used for marketing is for incremental marketing. That cannot be used in lieu of the base marketing budget. Under the licence, the operator must submit a base marketing budget to the regulator. Base marketing is an operating cost of the operator. Incremental marketing, which is marketing other than base marketing, is a marketing cost that is allowed to be paid out of the unclaimed prizes.

**Chairman:** The wording relating to that is “shall” and “may”. There is nothing definite in the licence conditions that tells the operator how much must be used for top-up prizes, incremental marketing or good causes. For example, if €15 million in prizes is unclaimed in one year, the operator can split that amount in any way it wishes, weight it towards marketing and the regulator can do nothing about it. Is that correct?

**Mr. Derek Donohoe:** Yes.

**Chairman:** If the figures for the old lottery operator are applied to the current licence, it is possible for the operator to tilt the balance in favour of its own marketing and allocate very little for top-up prizes and good causes. This means the operator is just tipping its hat at the legislation and nothing can be done because of the words “shall” and “may” and the lack of a definite role for the regulator in controlling that.

**Mr. Derek Donohoe:** I agree with what the Chairman has outlined. The incremental marketing is marketing over and above base marketing and it is designed to drive additional sales. The benefit of additional sales hugely favours good causes compared to the operator.

**Chairman:** I understand that but what I have to get at here on behalf of the taxpayer who has an interest in this is the deal that was done for the sale of the licence that resulted in one



sentence alone giving the operator discretion over the distribution of €15 million per year.

**Mr. Derek Donohoe:** The sum of €15 million is hypothetical-----

**Chairman:** It is based on figures from the old lottery operator.

**Mr. Derek Donohoe:** But that figure is not specific to a year. That is an accumulation of annual amounts and it was the figure that was outstanding when the old licence expired.

**Chairman:** The previous lottery operator said that approximately 2% of the general figure related to unclaimed prizes. If that is used as a guideline, the amount works out at €15 million. The licence was sold for €405 million and over the next 20 years, the company is in a position to have discretion over the disbursement of €15 million annually, which amounts to €300 million over that period. I am not laying that at the regulator's door; I am just trying to establish where this began.

**Mr. Derek Donohoe:** I take the Chairman's point. I am not trying to justify this; I am trying to explain the situation. It is not absolute discretion for the operator in the sense that it is restricted to promotion of the national lottery.

**Chairman:** Yes, "shall", "may" and similar wording.

**Mr. Derek Donohoe:** It is allocated under the three uses I outlined.

**Chairman:** If I was running the national lottery, I would have a good argument with Mr. Donohoe about "shall" or "may" if he decided to poke around in my figures. That is not his fault-----

**Ms Carol Boate:** The Chairman is correct in that we have no role in the proportion that goes into, say, three buckets with one being for prizes, one for the promotion of the national lottery and one for what is left over for good causes. We have no role over the ratio going into each of those. We just have to make sure it goes into those three.

**Chairman:** I am trying to establish the quality, or otherwise, of the agreement that was entered into. It seems from some media reports there is a basis for doubt around how that contract was constructed and put in place but I am not asking the regulator to comment on this. Deputy Pearse Doherty mentioned earlier whether the other bidder in this case knew all of this. I am only posing that as a question. I am coming to the point of transparency. It would be far better if there was greater transparency around that contract and the figures which Ms Boate knows because of her oversight of the licence and its operation. It would ease the minds of those who are concerned about this.

That brings me on to the issue of marketing. It ties into the notion that the company can have a pretty significant figure for looking for extra business basically. If one goes into any of the outlets there is a massive amount of publicity or promotion material in what could be determined as family-friendly spaces. People going into the post office to transact their business who may have family members with them are exposed to all of that. It is not hidden away from people, it is in their face when they are going about their business. The company has the power and money to continue to do it like that because it is contained in the licence. The Government, through its sale, has made it possible for that company to push as much as possible the licence and the promotional material.

What information can the regulator make available under the freedom of information leg-

isolation?

**Ms Carol Boate:** We are subject to the Freedom of Information Act. Essentially, we apply it the same as every other State agency in that we cannot reveal commercially sensitive business secrets but we can reveal a bit about the way we work. It is very important that my office is held accountable and is transparent about what I and we are doing. The Freedom of Information Act is one of the tools that does that. We had a decision and one of our freedom of information decisions was appealed to the Information Commissioner, who decided that we had applied the Act exactly correctly. We have that decision and it is very useful for us to have that confirmation that we are applying the Act carefully. That is where it becomes different because it is commercially sensitive information and not just confidential information.

**Chairman:** Who deems it to be commercially sensitive? Is it Ms Boate or a company telling her that it is commercially sensitive?

**Ms Carol Boate:** If it is under the Freedom of Information Act, that is prescribed and we would not be unique in having commercially sensitive information. The definitions that apply under the Freedom of Information Act would be the ones that we would apply.

**Chairman:** That Act refers to what is in the public interest.

**Ms Carol Boate:** Yes.

**Chairman:** Given the public interest and the media attention around this in terms of the lottery, how it is operated, the old licence versus the current one, all that detail and following on from that the activities of the new company, the prizes, the unclaimed prizes and whatever else, and given that information is available without it being supported or challenged, surely, in the public interest, if the regulator was asked under the freedom of information legislation to give the figures, it would be in the public interest to know some of the figures, although perhaps not all of them, and to have some broad guidelines in regard to them. It would be in the public interest to know some of the figures, although maybe not all of them, and to have some broad guidelines in regard to them.

**Ms Carol Boate:** I would have to think about that.

**Chairman:** Who is responsible for the freedom of information requests within the national lottery?

**Ms Carol Boate:** Within my operation, the head of legal and compliance is our first port of call on decision-making on freedom of information.

**Chairman:** Has the witness ever had freedom of information requests?

**Ms Carol Boate:** Yes, we have had quite a number of them.

**Chairman:** Were they in the context of what we have been talking about?

**Ms Carol Boate:** No, not in the context of unclaimed prizes.

**Mr. Derek Donohoe:** We have had freedom of information requests which have involved information in regard to the operator, but if we are looking at information which is confidential, that is, confidential information as defined by section 20.6 of the licence, then freedom of information is trumped by the licence. Information that is confidential cannot be released without

the agreement of the operator.

**Chairman:** I go back to the public interest element of the freedom of information request.

**Ms Carol Boate:** I would need to think about that in some detail but there are two important points, of which the Chairman will be aware, in that what is “of public interest” is not the same as what is “in the public interest” and it is not in the public interest for me to break the State’s side of the deal.

**Chairman:** I believe it is “of public interest” and “in the public interest” that this matter needs to be laid to rest in terms of the general picture that could be painted through the office of the witness, through freedom of information. That is the point I am trying to address here.

**Ms Carol Boate:** I understand. I spend my time enforcing and ensuring the licence is complied with and I am always conscious not to break the State’s side of the contract that was signed.

**Chairman:** In terms of the Minister, what information does the witness give to the Minister in regard to the operation and regulation of the licence?

**Ms Carol Boate:** We only furnish what is in our annual report.

**Chairman:** He or she does not get to see any of the detail but general matters.

**Ms Carol Boate:** The Act established the role of an independent regulator at an arm’s length from the State, which would keep an eye on, oversee and monitor the operator. Much of it is about ensuring that the money is in the right place at the right time and is going to the right place, which is stated in the licence, and, in terms of probity, that we can trust that these games are run in the way we can continue to trust them, as we have for 30 years. The only requirements in terms of reporting to the Minister are the ones contained in the annual report, namely, the reporting of the accounts and all the information there. He or she would not have any more information than this committee.

**Chairman:** Is the regulator concerned by the significant growth in the number of outlets?

**Ms Carol Boate:** I would be concerned if this was not matched by proper oversight and support for those outlets.

**Chairman:** Has the witness measured that oversight and support against the outlets?

**Ms Carol Boate:** Yes, that is one of the initiatives I am going to take this year. I will do a few things, including doing a mystery shopping exercise of the outlets. The operator does its own mystery shopping exercises but it is time for us to do one. I will do a review of the geographic spread of the outlets and a review of the exact resources and the tools they use to monitor the retail outlets.

**Chairman:** Are the results of any of those reports made available publicly?

**Ms Carol Boate:** The outcome of them is made public in each annual report.

**Chairman:** I know the licence is there for 20 years. Does the witness have the facility within this arrangement, and in the context of the independence of her office, to be able to say to the Minister that the office has been doing this for a while and there are maybe four, five or six different areas the Minister should look at?

**Ms Carol Boate:** When I first got the Act, I looked for that section which states “thou shalt advise the Minister” but there is no such section in this Act about advising generally. If I felt there was a major flaw in the powers in the Act, or if there was something in the Act I was not able to achieve, I would bring that to the attention of the Minister. If the Minister or the Oireachtas believed changes need to be made to the licence or to the Act, I would obviously advise on what they might look like in practical terms.

**Chairman:** I refer to corporate social responsibility and I return to something Senator Conway-Walsh raised. The company may not be obliged to give part of its profits to support those who find themselves addicted, in one way or another, to these games or to betting. However, maybe it is something the company, given the profits it is making, might consider if a nudge was given in that direction that it might be worthwhile looking at what programmes are out there to support those who are addicted to betting and have an issue with it. This company might like to support them. It is something it should consider.

In her opening remarks, the witness outlined the staff she has, including in the area of psychology. How many staff does she have in total?

**Ms Carol Boate:** I have sanction for ten posts.

**Chairman:** I will leave the witness with that thought.

**Deputy Pearse Doherty:** Of the ten posts, how many are in place?

**Ms Carol Boate:** I have eight staff at the moment. When I commenced, I decided that rather than fill the posts that were vacant, I would try to learn from the experience of the first three years in the office what skills we needed and what staff we were retaining and not retaining. The vacancies are on the administrative side. I put in a business case to the Department to restructure the posts and that was prioritised. I received approval for that, so I will now recruit to fill those posts. I have tweaked them a little bit to make them more suited and to make sure we have all the skills we need in-house.

**Deputy Pearse Doherty:** I want to say this, because I do not get the opportunity to do so in that I do not know when the regulator of the national lottery last appeared before the committee, but I believe the regulator needs to make her voice heard. I hope that she makes her voice heard in the appropriate manner because - forgive me for using this language but I am trying to think of a better way - hiding behind what it says in the Act is not good enough. What the regulator is overseeing is a hugely aggressive promotion of the national lottery. I read an article that appeared in *The Sunday Times* last year and it was about a pilot project in a number of stores, including Tesco, Dunnes Stores and SuperValu, where scratch card dispensers containing up to 19 different games were installed in every checkout aisle.

When I read that I was reminded of when I got elected to the Houses of the Oireachtas first. I was in the Seanad and I had the pleasure of sharing the backbenches with former Senator, Feargal Quinn, who imparted many stories during the couple of years I was there, one of which was that he was the person who moved sweets from the checkouts. First he made one aisle free of sweets, because of the pressure it placed on parents, and then he went further. Now we have gambling in every single aisle with these dispensers. What do the dispensers look like? They look like the same thing from which one would buy a packet of Mentos, a Mars bar or such like. It is a nice plastic cage, designed in that way not by accident, but deliberately. This is how one sells sweets in shops and this is how we now sell scratch cards, which surveys show is the most

accessible type of gambling for our teenagers. We have not heard any public commentary on that in the context of the regulator.

I suggest the regulator needs to make her voice heard. Maybe she thinks it is okay but I would say it is not okay, and we will say this to the Government and to the Minister. There is a responsibility on the regulator. It is the job of the regulator to apply the law, and I see no fault in the way the regulator is applying the law to her job, but there is an onus on regulators to say the law is not robust enough or does not go far enough. I have not heard that from the regulator in respect of what is happening with the national lottery. The second point I want to make-----

**Chairman:** Another committee will be having a meeting in this room shortly.

**Deputy Pearse Doherty:** Okay. I will be brief. I have two more questions, the first of which relates to the proportion of top-tier prizes in comparison with lower-tier prizes. What is the ratio of top-tier prizes to lower-tier prizes? Do top-tier prizes in the lottery comprise 50% or 80% of prizes? Perhaps the figure is as low as 10%.

**Ms Carol Boate:** As it differs across every game, it is difficult to give a general figure. It varies hugely.

**Mr. Derek Donohoe:** It varies across games and it also varies depending-----

**Deputy Pearse Doherty:** Let us take the lotto as an example.

**Chairman:** Maybe the witnesses can come back to us with the relevant figures.

**Ms Carol Boate:** We can certainly try. If the top prize in a scratch card game is €100,000, there are not going to be many such prizes. Then it is about the percentage of the very top prizes-----

**Deputy Pearse Doherty:** I will explain why I am asking.

**Ms Carol Boate:** It is different.

**Deputy Pearse Doherty:** The only bit of transparency we have is the statement from the national lottery that €6.9 million in unclaimed top-tier prizes have accumulated since the current operator took over in 2014. We are trying to figure out if that represents a quarter or a half of prizes, or the majority of prizes.

**Mr. Derek Donohoe:** The Deputy's question relates to the lotto. The game rules of the lotto are on the website. I do not have them in front of me, unfortunately. The rules stipulate the prize amounts and the proportion of the prize fund that goes to each of the tiers. The game rules, which are available to everybody, set out how much of the prize fund is allocated to the top-tier prize.

**Deputy Pearse Doherty:** Can Mr. Donohoe provide a rough indication? Is it half or is it-----

**Chairman:** The Deputy is delaying his own meeting now.

**Deputy Pearse Doherty:** All right.

**Chairman:** There is a queue outside the door.

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**Deputy Pearse Doherty:** Okay. I encourage the regulator to look at the issue I have raised and not just within the confines of the legislation setting up the regulator. There may be other areas in which this matter should be raised.

**Chairman:** I thank Ms Boate and Mr. Donohoe for their attendance.

The joint committee adjourned at 3.52 p.m. until 10 a.m. on Thursday, 26 April 2018.