

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Dé Céadaoin, 9 Deireadh Fómhair 2013

Wednesday, 9 October 2013

The Joint Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Senator Ivana Bacik,
Deputy Marcella Corcoran Kennedy,	Senator Martin Conway,
Deputy Alan Farrell,	Senator Denis O'Donovan.
Deputy Anne Ferris,	
Deputy Seán Kenny,	
Deputy Pádraig Mac Lochlainn,	
Deputy Finian McGrath,	

In attendance: Deputies Noel Coonan and Michael Lowry.

DEPUTY DAVID STANTON IN THE CHAIR.

The joint committee met in private session until 9.55 a.m.

Scrutiny of EU Legislative Proposals

Chairman: Members will have received a briefing document on the following two proposals: COM (2013) 534, a proposal for a Council regulation on the establishment of a European public prosecutor's office, and COM (2013) 535, a proposal for a regulation of the European Parliament and the Council on the European Union Agency for Criminal Justice Cooperation, Eurojust. It is proposed that these proposals warrant further scrutiny. I suggest we invite departmental officials to attend to further brief the committee next Wednesday, 16 October. Is that agreed? Agreed.

Data Protection Package: Discussion with the Office of the Data Protection Commissioner

Chairman: In this part of our meeting we will have a discussion on the data protection package. I welcome Mr. Billy Hawkes, Data Protection Commissioner, and Mr. John O'Dwyer, deputy commissioner, and thank them for attending. They are invited to make an opening statement of about five minutes in duration, which will be followed by a question and answer session with members.

Witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if 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 a 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 Mr. Hawkes to make his contribution.

Mr. Billy Hawkes: I thank the joint committee for inviting me to address it on the data protection package being negotiated at EU level. Members have already heard from the Minister for Justice and Equality, Deputy Alan Shatter, on the main features of the legislative package and the considerable progress achieved by him and his officials during the Irish Presidency of the Council of Ministers. Whether this progress will be sufficient to have the proposals approved by the Council and the European Parliament in advance of next year's European elections remains uncertain.

Data protection has become an increasingly important issue in the European Union following the entry into force of the Lisbon treaty. The draft regulation, as put forward by the Commission, reflects the increased importance in a number of ways. It accepts that the core principles set out in the 1995 data protection directive remain sound but need to be strengthened and updated in order to better protect the individual right to data protection and make clear to

organisations the heavy obligations they take on when they gather and possess the personal information of individuals.

The regulation also addresses the importance of uniform application of the law within the European Union, not least in order to ensure the free movement of data. The individual right to protection of personal data that each of us enjoys is rightly at the heart of the Commission's proposals. Regarding the somewhat bewildering online world, the regulation insists on the need for much greater transparency about what information is being collected from us and how it is being used. As is appropriate for what is now a fundamental individual right, the proposals aim to give each of us greater control over what happens to our data and the related rights to have the minimum data collected, to have access to our data and to have it corrected, if necessary.

Let me turn to issues of direct relevance to data protection authorities such as mine. The proposed one-stop shop for multinational companies, be they European or non-European, is the subject of significant discussion. The idea of having a single regulator responsible for oversight of a multinational company is obviously attractive for companies. Our experience of dealing with multinational companies here suggests it makes sense for a regulator to become very familiar with the business of a particular company, knowing its data protection policies inside out and ensuring these are in compliance with the law. If the concept is to be acceptable, it is essential that all data protection authorities be willing to rely on the relevant data protection authority to vindicate the rights of all EU citizens, not just those of its own member state. For this, it will be essential that the proposed "consistency mechanism" work as intended to ensure uniform application of the law.

This issue is of particular importance to us in Ireland for two reasons. First, many companies providing services for Irish residents, for example, telecommunications and banking services, are European multinationals based in other EU member states. Under the proposed regulation, oversight of their data protection practices would in future be primarily the responsibility of the data protection authority where they have their main establishment. Second, many non-EU multinationals, especially US multinationals, have chosen Ireland as a base from which to provide services throughout the European Union. Under the proposed regulation, oversight of their data processing activities would mainly be the responsibility of our office.

It will be essential that data protection authorities have the resources necessary to carry out their broader European oversight responsibilities. This is a key issue for us owing to the large number of multinational companies handling personal data that have substantial operations in Ireland. The Minister for Justice and Equality, Deputy Alan Shatter, has responded by providing additional staff and funding for our office and given a commitment to keep the resourcing of the office actively under review to ensure additional necessary resources will be made available.

I am sure companies will welcome the removal of most routine notification or registration requirements. This is in exchange for a very strong focus on the responsibility placed on organisations to show to customers and regulators that they are willing to be accountable and demonstrate this through privacy impact assessments, a privacy by design approach, allocating sufficient resources to deal with privacy issues and notifying data breaches when they occur.

It has long been a complaint from those concerned with data protection that data protection authorities do not have the teeth to enforce the rights of individuals. It has often been put to me that when cold commercial decisions have to be made on issues such as marketing, the bottom line question is what it is going to cost companies if they do not comply. The answer - €1

million euro or 2% of worldwide turnover - should cause even the most hardened CEO to have second thoughts about taking risks in this area.

It is important, of course, that such powers be used sparingly so as not to discourage organisations from seeking guidance from data protection authorities. In our office we always make it clear that we prefer to help companies to comply rather than have to deal with the consequences of non-compliance. For the same reason, we have always asked that we be consulted on new laws in order that we can ensure due account is taken of data protection when issues such as data sharing are being considered. While I am sure companies will be happy with the less prescriptive approach taken in relation to advance notification of processing, they will need to realise that this shifts responsibility squarely onto them, which is where it properly lies. The regulation is clear that failure to live up to these responsibilities will attract heavy penalties.

Of course, there are points that may need to be further clarified as the package goes through the legislative process. There has already been much debate, for example, on issues such as the definition of personal data and the restrictions on the use of consent. The issue of international transfers of personal data has also recently been to the fore.

I will now deal briefly with the draft directive dealing with law enforcement which is part of the legislative package. A harmonised set of basic rules applying to the activities of police forces across the European Union has much to commend it. We must also acknowledge that some exemptions from data protection requirements are necessary to permit the police to do its work in the public interest. This is already reflected in the exemptions granted to An Garda Síochána in our own data protection legislation which otherwise fully applies to the area of law enforcement. Getting data protection law right is important in order to give concrete expression to the right to protection of our personal data and to do so in a way that does not inhibit innovation in the rapidly changing Internet world in which we live.

I hope these comments are of assistance to the committee. I am very happy to answer questions members may have.

Deputy Seán Kenny: I thank Mr. Hawkes for his very informative presentation. I have a number of short questions. Does he foresee any data protection issue arising in the context of the use of biometric passports? How can data on European citizens be protected at a European level from digital fraud and theft?

Mr. Hawkes referred to the controversy over the level of surveillance of European citizens by intelligence services. I understand officials from the European Commission recently met US diplomats to discuss this issue. However, it is not solely a matter for the United States, as there are other countries involved, too. At the recent Dublin summit MEPs were almost unanimous in expressing their concern that data harvesting had been conducted on EU citizens who were not involved in any criminal activity. Does the Data Protection Commissioner have views or observations on these issues in the context of EU law?

Mr. Billy Hawkes: I thank the Deputy for his very pertinent questions. On the question regarding biometric passports, the collection of biometric identifiers is an important issue in the context of data protection. It comes down to the core issue of the extent to which the State is entitled to demand personal data from us in order to pursue or ensure a particular public interest. In the case of passports, the argument for using biometric data is to improve the quality of passports in terms of avoiding people presenting false passports or tampering with them. There have been some well-documented cases of Irish passports being misused in different contexts.

This is particularly important in the context of preventing people from crossing borders to commit crime or engage in terrorist activity. There is an obvious wish to try to ensure, as far as possible, that the document presented by an individual is genuine and is not being used by someone to cross a border to commit a serious crime, in the worst case scenario, or, in other cases, to evade legitimate immigration controls. There is a proposal in the draft regulation to treat biometric data as sensitive personal data deserving of special protection. That is something which many of us would support.

The second question posed by the Deputy relates to digital fraud and the very legitimate concerns about the amount of fraud and crime being committed, particularly on the Internet. It is an area in which there is a constant struggle between increasingly sophisticated criminals and our much put-upon law enforcement authorities. The international effort to combat such crime is underpinned by the Convention on Cybercrime which quite a number of EU member states have ratified, although I gather it is still under consideration by Ireland. Crucially, it involves an effort to combat some of the most sophisticated criminals operating and to provide law enforcement authorities with the tools required to deal with such crime, but to do so in a way that does not interfere excessively with the rest of us who are not committing crimes on the Internet.

To some extent, this issue relates to the Deputy's third question about the mass surveillance of individuals in the pursuit of law enforcement and anti-terrorism objectives. While that issue has arisen most recently in the context of US Government activity in this area, it is important to remember that it is also very much a European issue. There is, for example, at European level, a data retention directive to which each member state has been obliged to give effect. It obliges all telecommunications companies to retain details of mobile phone calls and their location. The purpose of this retention is to permit law enforcement authorities to have access to such information when they are pursuing crime. Obviously, there have been some examples in Ireland where the Garda Síochána has successfully prosecuted people based on information obtained on the location of a person when an alleged crime was committed. It is an issue that is being dealt with as a political issue between the European Union and the United States.

There is a question about achieving a proper balance between the right of the majority who do not commit any crime to have their privacy respected and, on the other hand, the challenges facing governments and the pressures on them from their citizens to protect them from terrorists who use the Internet to communicate for nefarious purposes. Where that balance should lie is an issue of much concern to us in Europe, as the data retention directive shows, as it is to the United States. This is quite apart from the well known fact that European intelligence agencies engage in similar practices to those revealed in the United States. From a strictly data protection point of view, it concerns the issue of access by law enforcement authorities or intelligence services to the data of the innocent majority versus the public value of protecting us from terrorism. I do not come to the committee with any solution in this regard. It is essentially a political discussion about where that balance should lie. It is for parliaments to make this decision. The committee will have observed the ongoing extensive discussion in the United States on where the proper balance should lie within its system.

In the case of the data retention directive, there are challenges, including one from Ireland, to the European Court of Justice about the proportionality of the measure. Those of us concerned with data protection hope the recent revelation on the US side will lead to greater public and parliamentary consciousness that there is an issue to be dealt with and a balance to be struck between competing public interests. Many of us consider the balance is being struck on the wrong side of the line in protecting individuals. Ultimately, this is an issue for governments and

parliaments to resolve in the interests of their citizens.

Senator Ivana Bacik: I thank Mr. Hawkes for his thorough overview of the directives. What is the likely timeline for the adoption of the package and its implementation into Irish law?

In the context of the surveillance carried out by the United States and EU member states, I am concerned by two aspects of the right to privacy. The first is the right to be forgotten, the right to demand the deletion of data. The proposed regulation states, “controllers have to take reasonable steps to delete data, taking into account available technology and the means available to the controller”. Is this adequately enforceable?

The second aspect is that of consent, a thorny issue. In the new regulation the Commission states that whenever consent is required for data processing, it will have to be given explicitly rather than be assumed. Again, that sounds good, but, in the context of the surveillance we now know about, how is that a real proposition? How can we have confidence that consent would be required in that way?

Mr. Billy Hawkes: The timescale for implementation is in the lap of the political gods. The objective is to have the legislative package approved by next May when the European Parliament elections will take place. The Deputy will be aware from the address by the Minister for Justice and Equality, Deputy Alan Shatter, of the efforts he deployed during the Irish EU Presidency to push the package through and significant progress was made. I am assured by those who know the system, including my colleague Mr. O’Dwyer, the deputy commissioner, who is just back from Brussels, that the challenge of getting this through purely on technical grounds by next May is significant. It will require a significant political push both in the Council of Ministers and the European Parliament to get the package through, taking into account the significant differences that still remain on key issues about the package.

It has always been recognised that the so-called “right to be forgotten” is a slogan. Giving it concrete expression is more challenging. The concept is understood as the idea, particularly in the world of the Internet, that one should have some sense of control over information on oneself. In concrete terms, what this boils down to is, first, a requirement on organisations to limit the collection of data. Clearly, there is written into the regulation, as there is in existing law, an obligation to only collect information that is necessary to deliver a service.

A second issue concerns the retention of data. In other words, one should only retain personal data for as long as is necessary to achieve the purpose for which it was collected in the first place. The third issue concerns the right to request the deletion of data where one believes there is no reason to hold on to it. As the Minister made clear in his presentation, much as one would like it, one does not have the right to have one’s criminal record erased. It will not go that far. However, the Oireachtas will be considering spent convictions legislation which has the objective of giving people the chance to move on after they have met their debt to society. In practice, once one is reported in a newspaper, there will always be a record of what one may have done. The challenges in this area are significant.

A particular challenge is presented by the idea that where the data were originally collected by one organisation but have been replicated across the Internet, how far can one realistically expect action to be taken to delete all traces of them. It is a difficult challenge. Within data protection law it is about maintaining the existing principles of minimising the collection of data, deleting the data when they are no longer required and then making reasonable efforts to

respond to requests for deletion of data both by the original organisation and where they may have been replaced.

The concept in Europe is that we have the right to control the collection of our personal data. The issue of consent goes to the heart of the fact that data protection is a fundamental right. What it means in different contexts is a difficult issue. On the one hand, one wants to have the right respected by giving us full control over what data are collected and used in important issues. On the other, there are other cases where, if one insisted on data protection being used in dealing with Internet advertising or website pop-ups that occur every second, data protection would become more unpopular than it already is in some circles. There is a balance to be struck in this regard, recognising that there are other interests involved. For example, the State has a right to collect information on one's income, regardless of whether one likes it. Accordingly, there is no issue of consent when dealing with the Revenue Commissioners. There is an increasing tendency for the State to insist on its right to access data. That is a balance issue for parliamentarians rather than for me to consider. It is a difficult issue.

The new resolution maintains the idea that consent is a very important legal basis but not the only one. It also maintains that there can be a legitimising of data collection when there is a public interest involved, as when the law lays down that one must give details of one's income to the Revenue Commissioners, one must give relevant details to the State if one seeks means-tested benefits, etc. Although it is controversial, there is also a recognition in the new law, as there was in the existing directive, that an organisation can also assert that it has a legitimate interest in using one's information to pursue its own commercial interests, but there is a balancing test, so the legitimate interests of an organisation are balanced against one's right to data protection.

Stepping back from the details of the law, data protection has always been a set of principles to be applied in particular contexts. That situation will not change, although we are now dealing with the regulation that is to be applied uniformly across the EU. There will still be large areas for interpretation and for how the law should be applied in particular contexts, which will mean that my successors and I will continue to be in work for some time to come.

Chairman: Is Senator Bacik happy enough?

Senator Ivana Bacik: Yes.

Deputy Pádraig Mac Lochlainn: I thank Mr. Hawkes and the Chairman. There are concerns about the potential transfer of data between the EU and the US and other third countries given that the data protection frameworks in those countries might have less protection or fewer rights. Could Mr. Hawkes elaborate on some of the concerns that have been aired? The Irish Congress of Trade Unions, ICTU, has expressed concerns on the rights of workers and the exchange of data between employers. In its document it refers to the right to establish a workplace data protection committee. There are issues such as the analysis of social media data and the use of GPS to see where workers are. Some of that may be legitimate and some may not. ICTU has a very serious concern about the use of automated data in profiling for employment. What are Mr. Hawkes's thoughts on those matters?

Mr. Billy Hawkes: On the issue of international transfer of personal data, the EU asserts that it has stronger data protection than any other region of the world. Arising from that, it asserts the right to insist that when the data of European citizens is transferred outside the EU it should continue to be protected. Various mechanisms are provided in both the existing law and

the planned law to provide for that. There is a balance to be struck in this area because, again, in the Internet world in which we operate our data tends to flow all around the place. At one moment it could be in a data centre in Ireland but ten seconds later it could be in a data centre in Japan or the US.

This issue has come very much the fore regarding the issue Deputy Seán Kenny raised, because in recognition of the significant economic relationship between the EU and the US, a special deal was done when the original data protection directive entered into force, called safe harbour. This provides that the EU will recognise that data transferred to the US is adequately protected if the company concerned signs up to the safe harbour principles, which are essentially EU data protection principles. By doing that they bring themselves under the jurisdiction of the US Federal Trade Commission, which has very strong enforcement powers and has taken enforcement action against a number of major companies because, *inter alia*, they have not complied with the obligations they signed up to under safe harbour.

From an Irish perspective we recognise particularly the number of US multinationals we have here and the importance to their business that there be a free flow of data between their Irish subsidiaries and US headquarters, balanced against the rights of Irish and European citizens to insist that their data be protected. From our experience the majority of companies take their responsibilities under safe harbour very seriously. Signing up to safe harbour involves a careful examination of a company's data protection practices across its different activities and subsidiaries. For those companies that treat it seriously it is a demanding issue for them. In general we find the US multinationals we deal with have a very strong approach to compliance and their obligations under safe harbour.

Whereas there is pressure on the safe harbour system because of the fact of access by US intelligence and law enforcement to some data, there is the opposite economic argument in terms of free flow of data. The new regulation tries to maintain this balance between the need to protect the rights of European citizens when data goes outside the country - various mechanisms are proposed for that which are very similar to the existing mechanisms - and recognising that in the Internet-driven world data must flow for commercial reasons.

The two other questions related to the rights of trade union members. They are very valid points. European data protection law gives workers rights in the workplace. We are regularly involved in the vindicating those rights, including in the specific areas the Deputy mentioned, particularly GPS tracking. Our website provides guidance that GPS tracking is for tracking vehicles, not individuals. In the workplace one continues to have rights under European law, so in the case of social media use, for example, it is important that workers know exactly what the limits are, whether they are not allowed to use social media and the extent of those limits.

The Deputy mentioned profiling, which the new regulation addresses specifically. There is a need to be careful about the profiling of individuals to avoid putting people into boxes where they may not belong.

Deputy Finian McGrath: I welcome Mr. Hawkes. In his presentation Mr. Hawkes spoke about data protection authorities having teeth and the example of a CEO being potentially fined €1 million. Mr. Hawkes also said he liked to work with companies. I am getting a mixed message. I am specifically zooming in because of our experience with the banking industry and the crisis that was caused by senior bankers across the EU. Is there a mixed message there? I hope it is not a question of light touch regulation for such people, because white collar crime is not taken seriously enough. If a Minister or a senior garda is proven to have passed private

Garda information to someone, what action can the Commissioner take and what are the consequences?

Mr. Billy Hawkes: On the question of whether we could be accused of soft touch regulation, in Ireland we have a culture of talking to people. That translates into explaining clearly to companies and organisations what is expected of them. Data protection is a set of principles that must be applied in particular circumstances. It is not always easy to interpret those so we see it very much as part of our duty to set out our expectations to companies and organisations. We expect them to comply with them. Organisations are left in no doubt that if they do not comply we will take enforcement action. Our law does not give us direct fining powers. It gives us the power to order organisations to stop doing things with personal data. We use this power when we believe it is justified to do so. We also have the power in certain areas to bring companies to court, for example, for spamming, and we use it extensively. I recognise the issue raised and the importance of being seen to be a firm regulator. Culturally, as an Irish person, we have a tradition of speaking to people. The Garda Síochána is not armed, which is something I am sure all committee members support. It means a different approach *vis-à-vis* the State and the citizen which the committee probably wants to retain.

On the passing of data, we have been involved in the issue and it is a clear breach of data protection law. We are engaged in a detailed audit of the Garda Síochána in which this issue, among others, is being considered. We continue to have a very significant focus on high standards of data protection in the Garda Síochána because of the amount of sensitive information it holds. We show this by the detailed nature of the audit we are carrying out and regularly have contact with the Garda Síochána with a view to ensuring its obligation to protect data is fully understood and respected throughout the force. We continue to insist on this as we carry out our work.

We do not have the power to fine the Garda Síochána, but we do have the power to take enforcement action, if necessary. If we were to find a blatant example which it was not correcting - this has not happened to date - we could order it to take actions with which it would have to comply. To be fair to it, at a corporate level, it understands its responsibilities in this area. We understand the challenges in having to deal with an organisation with 13,000 members and trying to get them all into line. We are most focused on getting across to the culture of the organisation that it is not in order to pass on private information outside the force.

Chairman: Is Deputy Finian McGrath happy?

Deputy Finian McGrath: I am not.

Chairman: I know, but I mean happy with the responses.

Deputy Finian McGrath: I am not happy about the issue.

Deputy Niall Collins: Mr. Hawkes has addressed the substance of the question I was going to ask. When the audit is completed, will he come back to the committee to give us a presentation on the outcome?

Chairman: As this is the Oireachtas Joint Committee on Justice, Defence and Equality, issues of justice are very much of interest to us.

Deputy Marcella Corcoran Kennedy: Will Mr. Hawkes explain a little more the household exemption proposal in Article 2(2)(d)? Is the Data Protection Commission working on the

challenge of protecting data against the ability which has developed minute by minute to hack into various State agencies?

Mr. Billy Hawkes: The household exemption is already provided for in law and states that when one operates as a private individual in dealing with family or personal issues, data protection law, in terms of the responsibilities of an organisation to give access to data and only collect the minimum amount, should not apply. In a family circumstance one does not ask one's child whether one can take a photograph and *vice versa*. There are issues about its extent and how far it should go. The general view is that people operating on social networks are covered by the household exemption and, therefore, do not take on the obligations under data protection law, even though the social networks have certain obligations.

Security is a bottom line issue in data protection law and is strengthened in the new law in terms of the obligations on organisations to ensure they have the appropriate security measures in place to protect the data given to them. This is strengthened in the form of an obligation on organisations to report security breaches to regulators and the individuals affected. We already have this in Ireland, on the basis that it is compulsory for telecommunication companies under European law. As a type of soft law, we have a code of practice which states one should report such breaches to the commission and the individuals affected. It is a bottom line issue in data protection law. It is challenging because of the sophistication of those attacking information systems and it is certainly an issue on which we focus very strongly in audits.

Deputy Marcella Corcoran Kennedy: I appreciate the need to give people a certain amount of freedom, but I am trying to get my head around the challenge to protect people's data while protecting others from them. As far as I am aware, one can establish anonymous profiles on social media networks. Is it right that this should be the case? I can see the reason for it in some jurisdictions, but in others I can see it being abused in ways we would not have foreseen. Facebook, Twitter and other sites have benefits, but there is another element which is very negative, distressing and disturbing. Has the commission explored this? Will it be affected by what is being done?

Mr. Billy Hawkes: That is a very interesting question. I know the context in which it has arisen, with the tragic cases of suicide linked with bullying activity on a particular social network which allowed anonymous use. We have been challenged because, as part of our audit of Facebook which comes under our jurisdiction, we have accepted that it is entitled to insist on a real names policy, but this approach was challenged in another member state which took the opposite view because of the right in its law to operate anonymously. I do not have a solution. All I can say is we were perfectly happy and upheld Facebook's right to insist on a real names policy and accepted its argument that it limited, somewhat at least, the potential for the bullying of people. It is a debate which will probably go on. It is not affected as such by the new regulation, except I suspect that there may at some stage be a formal ruling on whether there is a right to anonymous use of the Internet, or whether, as Facebook asserts, it is entitled as a matter of its terms and conditions to insist on a person using his or her real name.

Deputy Marcella Corcoran Kennedy: If somebody does something unlawful under the cloak of anonymity, can he or she be tracked through GPS?

Mr. Billy Hawkes: As I understand it, in principle one can be tracked. A person cannot really operate anonymously in the sense that if a court order is directed to a social network to identify an anonymous person, it can be done. There have been many cases where this has happened. People who thought they were anonymous ceased to be anonymous and legal action

was taken against them.

Deputy Marcella Corcoran Kennedy: There is comfort in that.

Mr. Billy Hawkes: Yes.

Chairman: I apologise on behalf of members who must leave, but the Dáil and the Seanad are now in session. We are in the middle of dealing with the Gambling Control Bill and last week a number of operators and interested bodies and parties came before the committee. The Remote Gambling Association spoke about how European data protection legislation prevented the sharing of personal and private information between operators. It arose with regard to gamblers wanting to self-exclude themselves from betting. Using Denmark as an example, it is the view of the organisation that the proposed office for gambling control in Ireland, or the body appointed by the regulator, would be permitted under current data protection law to collect information from operators to compile a central database. The database could then be accessed by operators to check whether an individual had self-excluded from a competitor. The importance is obviously that if somebody has self-excluded from one operator, it is in his or her own interest not to engage with another and start gambling again. Would it be possible to do something such that, say, if I were to self-exclude from Paddy Power online, that information would be provided for a central operator and shared with all other operators? Then, if I were to decide to go to another operator, the central operator could point out that I had self-excluded from another operator and could not use its services either.

Mr. Billy Hawkes: That comes back to a point raised by Senator Ivana Bacik. Once a person consents to it, for example, by saying, “I wish to exclude myself from gambling because I have a compulsion in this area and I am happy to be excluded from all gambling sites”, he or she is giving consent and there is not an issue in that regard.

Chairman: Is it technically and organisationally possible for that to happen?

Mr. Billy Hawkes: I do not see why not. If I understand the question correctly, somebody who is a compulsive gambler, who wants to stop gambling and the temptation to engage in it, who essentially says, “Stop me from gambling”, and who wants this to be known to all gambling sites, has given his or her consent. There is no issue from a data protection point of view, at least that I can see, in having such persons registered on a central database to which every operator would have access.

Chairman: Some of the operators had a different view last week when they said they were not sure. It is useful, therefore, that this issue has been clarified for us. Mr. Hawkes might keep an eye on it because it is something we will be working on as the legislation goes through. Members are interested and the operators also wanted to engage on it, having seen it as a stumbling block. I thank Mr. Hawkes for that clarification.

On another issue, does a company have the right to demand personal data? For example, if I telephone a company to look for spare parts, can it ask for my name, address, telephone number, date of birth and so on? Can I refuse to give them? Very often one goes online and companies look for all of this information. What do they need it for?

Mr. Billy Hawkes: The basic principle of data protection is that a company should only collect the minimum information it needs to deliver a service to a person. To take the example given by the Chairman, if he rings to look for spare parts, presumably the company needs his name and address and, depending on how he pays for them, his credit card details. That should

be it. Companies should make it clear that if they want other information for marketing and so on, they must ask the customer whether it is okay to give the information. Responsible websites make this clear and there will be an asterisk beside the parts one has to fill in while the rest will be optional. That is what data protection law calls for.

Chairman: What are “big data”?

Mr. Billy Hawkes: “Big data” are among those buzzwords where there are large collections of data, whether in the State or the private sector. It is usually mentioned in the context of the capacity to analyse that data. For example, to take the information available from traffic cameras on the flow of cars through a city, one can analyse the data to better figure out where to build new bridges or provide traffic lights. In the case of states, there is the analysis of patterns. An example would be the big data held by the Revenue Commissioners and the Department of Social Protection, the biggest data holders in the State. This operates in analysing patterns of behaviour to detect wrong behaviour, where people might be evading tax in the case of Revenue, or where they might be defrauding the system in the case of the Department of Social Protection. That is what it means in general. Its relevance to data protection is the extent to which there should be a right to access data for other purposes, particularly when it is accessed in a way that is going to harm a person.

Let me give an example. If a person is in receipt of a social welfare payment and, separately, the Department of Social Protection, as it has a right to have, has information from the Private Security Authority that the person concerned has a licence to be a doorman, an inspector may turn up on his or her doorstep and ask why he or she is not working. It would be a fair cop if the person was, in fact, cheating the system. However, if he or she is genuinely unemployed and cannot find a job, one can imagine how he or she might feel. That is the negative side of it. Overall, “big data” is a generic term where there are large databases and there is the capacity to use them for good and evil.

Chairman: I assume that if we could have Ireland as a hub for data storage, it would be of benefit to us also in EU terms. I understand that is happening, too. On another issue, what are pseudonymous data?

Mr. Billy Hawkes: They are personal data which have been made less personal by removing some of the identifying points. There are various levels of pseudonymisation. Again, it is a discussion point as to whether we can have totally anonymous data. Given the amount of data available on us in the world, people have proved that something we might think is totally anonymous can, in fact, be linked with an individual. Pseudonymous data are somewhere between anonymous, where they cannot be linked with a person, and personal, which can definitely be linked with a person. Again, it is a whole can of worms on its own.

Chairman: This whole area is fascinating. “Privacy by design” are other buzzwords. What do they mean?

Mr. Billy Hawkes: It is saying that when one is developing a product or service, one should think about the privacy implications and try to build privacy protections into either the product or the service.

Deputy Marcella Corcoran Kennedy: My question is slightly outside what we are discussing in terms of regulation of this proposal. I have been hearing a lot of talk lately about the dark net and the fact that there is another Internet running in parallel or below the Internet and

to which certain individuals have access. I would have thought this would be of concern to the Data Protection Commission. Is it something it intends to look at?

Mr. Billy Hawkes: No. To be fair, the dark net is a matter for the police and outside our remit. Again, it is one of the things that can be viewed as positive or negative. As I understand it, one use of the dark net is where political activists in countries where such activity is suppressed would use it to try to operate anonymously, which one might regard as positive. The negative side is where it is used by people like child pornographers and so on to pass their data. This is very much within the area of police activity and, again, shades into the earlier discussion of what is the correct balance in the extent to which law enforcement agencies should have access to people's data. It is not an easy one.

Chairman: My final question concerns the storing of information on smart cards, although I am not sure whether it comes under this package. I note that across Europe there has been a move to try to put more and more information on cards, for example, health identification, social security information and so forth. Are there guidelines on not having too much information on one card, for example, having all social security and health information on one card? What is Mr. Hawkes' view?

Mr. Billy Hawkes: Done properly and with the full consent of the person concerned, it can be very positive to have a card which facilitates access to services. Again, it is down to how it is used, what protections are in place and what degree of control there is. This is an issue that will come before the Houses by way of proposals for a new health identification card. We already have it in the public services card. It is an area in which we are actively following the issue with a view to ensuring people's rights are respected, that they have the maximum control over what is included in such a card and, in particular, that there is proper security for the data contained on such a card.

Chairman: I have found this a fascinating discussion. As we talk about the dark net and so on, there are shades of "Star Trek". It is moving into a new realm which we are coming across more and more. I thank Mr. Hawkes and Mr. O'Dwyer for engaging with us. No doubt we will meet again in the not too distant future to discuss other issues.

Sitting suspended at 10.50 a.m. and resumed at 2.10 p.m.

Heads of the Gambling Control Bill 2013: Discussion

Chairman: The purpose of this part of the meeting is to hear from a number of those who made a written submission on the heads of the Gambling Control Bill 2013. In light of the large number of participants, I request that the following procedures be adopted. Members and witnesses should wait to be called upon by the Chair to make their contributions. This is to allow the sound operators to activate the correct microphone and for the parliamentary reporters to attribute each contribution to the correct person. All contributions should be made through the Chair, so therefore it is not necessary to respond directly to a member who may be behind the speaker.

This is the twelfth time we have such a large number of people so it is not unusual that people co-operate. To ensure proper engagement, I ask members not to make a speech but to ask direct questions and get a response. If members wish to make a speech they can do so in

either the Dáil or Seanad.

We are joined by Mr. Madis Jääger and Mr. Geoff Taylor from the Olympic Entertainment Group. The representatives from the Licensed Gaming Association of Ireland are Mr. Brian Freney, Mr. Barry Galvin, and Mr. Aubrey McCarthy. Mr. Paul Mullins is from Aiséiri. From the Rehab Group we have Ms Angela Kerins, Mr. Frank Flannery and Ms Sonya Felton. Mr. Kevin Murphy is from Bet Beware Limited. The representatives from the Irish Amusement Trades Association are Mr. Jim Rickard and Mr. John Roche. From O'Connell Mahon Architects we are joined by Mr. Brian O'Connell and Ms Yvonne McNamara. Also in attendance are officials from the Department of Justice and Equality, Mr. Hugh Boyle and Mr. Barry Quinn.

I welcome all the witnesses and thank them for their written submissions. There is significant interest in this important legislation. We in the Joint Committee on Justice, Defence and Equality have also engaged in pre-legislative scrutiny of other Bills, in which we look at the Bills before they are published so that we are an aid to the Minister and his officials in the Department in getting the best possible legislation.

I welcome the visitors in the Gallery and thank them for their presence.

I remind members to ensure mobile telephones are switched off as they cause interference with the sound recording system, even when left in silent mode.

Before we commence, I will advise of the position regarding privilege. Witnesses are protected by absolute privilege in respect of the evidence they are to give to the committee. However, if they are directed by the committee 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. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect parliamentary practice to the effect that where possible they should not criticise or make charges against any persons or 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.

The format of the meeting is that each group will be invited to make an opening statement, which should be of about five minutes. That will be followed by a question and answer session with members.

I now invite the Olympic Entertainment Group to make their opening statements.

Mr. Madis Jääger: I thank the Chairman for affording the Olympic Entertainment Group the opportunity to present our submission. We forwarded our powerpoint presentation and comments on the submission.

In view of the time limit I will comment only on the most important points in our submission. In the second slide, Olympic Entertainment Group is a publicly listed company, celebrating its 20th anniversary and operates in seven different jurisdictions. The group has 20 years experience of operating casinos in central and eastern Europe. As a publicly listed company we must respect the standards and accept responsibility for complying with the conditions on licensing, compliance, responsibility and transparency. These are the core values on which we base our submission.

The third slide summarises the four key areas for discussion. The most important consideration is that gaming is conducted in a safe and controlled environment. What I mean is that regulating casinos is a small part of the gambling business. The gaming industry has developed so fast that the type of gaming changes. It does not matter whether it is an online casino, a casino or gaming arcades, it is important that all regulations are applicable for all the gaming.

Gambling can be a problem in the gaming industry. We as casino operators are aware of the problems. I believe most respected casino operators want to limit problem gambling. This is crucial. We have established measures of decreasing problem gambling in society. In Estonia we have initiated the introduction of a self exclusion ban and I can refer to public services in Estonia. When one puts oneself on a self exclusion list one cannot withdraw the application. I think this is one of the drivers of reducing the gambling addiction problem in Estonia in the past three or four years.

We deal with problem gambling, not only in the casino but with online gaming or slot arcades. This is definitely necessary. Based on our experience in Estonia, we have nationwide centrally controlled self-exclusion lists which applies to online as well as land based casinos.

The third area is about gaming equipment limitations. Under the current wording the maximum number of gaming tables is set at 15 and the maximum number of slot machines is limited to 25 in a casino. In contrast, there are no limitations on gaming arcades or on minimum bets or maximum wins for other sorts of gaming. We believe it is necessary to regulate to make the sector equally transparent and fully controllable. I recommend, based on the European standards and the proven setup of casinos, that 15 tables is okay but there should be five to seven slot machines per gaming table. Therefore, casinos would need to be a little bit larger, have more investment and provide much nicer products in order to attract experienced and larger casino companies to invest in Ireland. Let me give an example. In each of the countries in which we have set up, we have flagship casinos with approximately 15 tables and between 100 and 140 slot machines, following investment worth €10 million, and we employ at least 200 people. I recommend the same format for Ireland.

The last matter is on regulation and how alcohol is treated in casinos. It is a myth that when people drink they lose control of their gambling. My colleague Mr. Geoff Taylor can comment on what happened in the UK where the serving of alcohol was originally prohibited but its introduction has had no negative effect on gaming.

Chairman: I remind the delegation that we are against time.

Mr. Geoff Taylor: I shall be brief. The evidence is available for all to read on what happened when the law was relaxed in 2003. Quite a number of people opposed the relaxation of the law but the change went ahead. I keep in touch with UK operators and, as far as I can see, there has been no negative impact. There has not been an alcoholic Armageddon as some people had predicted and the relaxation of the law has proven to be quite a visionary move.

Chairman: I thank the delegation for their comments and for keeping within the allotted time. I call on the Licensed Gaming Association of Ireland to commence.

Mr. Barry Galvin: I thank the committee for the invitation to appear today. I will give a brief overview of the Licensed Gaming Association of Ireland's observations and proposals on the Bill.

The members of the Licensed Gaming Association of Ireland are all holders of current

gaming licences and court certificates. They all operate in areas where Part 3 of the Gaming and Lotteries Act 1956 has been adopted. My firm has represented clients in the sector for many years. Recently it has been involved in substantial cases where the Gaming and Lotteries Act 1956 was an issue. In 2012 there were 57 licensed premises throughout Ireland, which were mainly located in holiday, leisure and seaside locations. In most cases the businesses have been family-run for several generations and are part of the commercial fabric of these locations. Practically all of the businesses comprise the same traditional model of two segregated business offerings. One is a family amusement area that is open to children and adults alike while the other is a gaming area that is restricted to over 18s. The committee should note that one does not get a gaming licence unless one supplies amusements in the same building, so that is a matter of legislation.

The family amusement area machines can be split into two main categories. First, there are pure amusement machines such as video shooting games, car simulator and video games, pool, air hockey, table soccer and pinball. Second, there are amusements with prize machines such as prize cranes, skill prize games, quiz prize games and redemption machines. All of the members will have seen these amusements and will be familiar with them. In the gaming area the machines are a combination of traditional and electronic slot machines and automatic table games.

The present regime in Ireland operates under the 1956 Act, as amended. In order to receive a gaming licence operators must provide a court certificate on an annual basis and the Revenue Commissioners issues the licence. The requirements are as follows: confirm correct zoning and planning for the operation; apply, receive and adhere to opening and closing hours; confirm that an annual inspection by a fire officer has been carried out - the same as a public house - and confirm compliance to the court; provide the court with a complete listing of the number and type of machines available for play; hold a tax clearance certificate; pay €505 per machine per annum, plus a premises licence of €630 for each premises; provide amusement facilities in addition to gaming; provide confirmation by the Garda Síochána that a licence has been operated in the previous 12 months in the correct manner; provide satisfaction to the general public that the licence has been operated in the correct manner in the previous 12 months; and place advertisements of the application in the newspapers circulated in the area to allow public objections.

The association has compiled a detailed submission that addresses particular heads of the Bill and I shall restate some of them. The first one is on security of tenure. The Bill envisages examining the situation and makes no provision for the continuation of existing long-standing businesses. The LGAI views the initiative as entirely inappropriate because it does not take into consideration past and present participation and investment of the licensed proprietors of gaming or amusement arcades. The Bill opens up a number of uncertain possibilities, in many cases without the possibility of participation or objective challenge. Some parts of the legislation might well be a disproportionate interference with the right to work on private property. We propose that there should be recognition of the existing licensed proprietors and their investment in the business.

We submit that appropriate arrangements should be provided to ensure a smooth transition to the new licensing regime. Some of the gaming machines around the country have been licensed for many years. They are a source of income and employment for a large number of people. We maintain that constitutional and EU-protected proprietary rights have been established that cannot be taken away except in certain circumstances that are in the public interest and on payment of appropriate compensation.

As I have already explained, under the existing Act one is obliged by law to provide amuse-

ment. In other words, if one is supplying gaming one must also provide amusement machines. The new Act proposes to exclude amusements from a gaming premises, a measure opposed by the LGAI. In past decades it has been a legal requirement for the granting of a gaming licence that amusement machines be operated on the same premises as gaming. They have been and are traditionally separated from each other, as age restriction is relevant. For the reasons set out in section 5 of the submission, it is proposed that existing and future gaming licence holders be obliged to operate a supervised access controlled doorway to separate amusement and gaming areas. Also, any new arrangements would be implemented for future premises as part of the planning process.

With regard to opening hours, we submit that the proposed times are too restrictive. The current operating times for a 2A licence are from 10 a.m. to 2 a.m. We suggest that regime should continue for existing licence holders. The times are already licensed by the court, with strict examination and regulation. The times are adhered to by the licensed operators and the business model has been scaled to these times in recent decades. It is also important to note that the critical timeframe of 11 p.m. to 2 a.m., especially on weekend nights, is pivotal for the commercial viability of the industry. Additionally, the fact that the main commercial competition comes from the operation of the same machines online 24 hours a day should be taken into consideration. We also propose that the closing time for a 2B licence should be 10.30 p.m. all year round, with the additional facility to grant a seasonal extension to allow for festivals and other activities associated with holiday, leisure or seaside locations.

Chairman: I apologise for the interruption, but the allotted time has been exceeded. In order to be fair to everybody I ask Mr. Galvin to summarise his presentation.

Mr. Barry Galvin: I apologise. I timed my presentation and thought it was five minutes in duration but it is taking longer. Let me make five points. The definition of an amusement machine should include crane-type machines. It is strongly suggested that gaming machines should be prohibited in bookmakers. That has been proposed in the new Act, and it is strongly opposed. The LGAI opposes the proposed promotion regime because there should be no possibility of direct contact. However, the fund to assist persons who have suffered from addiction is welcome. In view of the time it will take for the Bill to go through and because of the huge number of illegal gaming machines in place we believe an interim authority should be put in place almost immediately for the benefit of the taxpayer and the industry.

Chairman: I thank Mr. Galvin for his presentation and his co-operation. I invite Mr. Mullins, Aiséirí, to make his presentation.

Mr. Paul Mullins: We have already made a short submission to the Deputies and Senators on the committee. The Aiséirí group established in Cahir, County Tipperary in 1983, has primary addiction treatment centres in counties Tipperary, Wexford and Kilkenny and a halfway house in Waterford. We are pleased to be invited to place our views and experience in working with problem and pathological gamblers to the committee.

Aiséirí has two adult treatment centres in Wexford and Tipperary and the Aislinn Adolescent Education Centre in Ballyragget, County Kilkenny, which works with 15 to 21 year olds, male and female. The adult centres take 12 residents over a four week residential treatment programme and the adolescent centre works over a six week residential treatment programme. Since its foundation in 1983, Aiséirí has been working with problem gamblers using the 12 step recovery programme. This programme has proved successful for hundreds of thousands of people suffering from alcohol, drugs and gambling addictions. The most important issue about

the 12 step programme lies in the fact that it works.

However, due to the changing and challenging nature of problem gambling, including Internet and gambling on social media sites, we have developed individual treatment plans based on the gambling clients' pathway model. We try to follow best practice in the area and, therefore, offer value for money in terms of a better treatment episode for all those presenting with a gambling problem. We assess using recognised assessment tools such as the South Oaks Gambling Screen and the diagnostic statistical manual, DSM 5 of the American Psychiatric Association. We are happy that the gambling Bill includes treatment, education and research. Aiséirí will conduct its own research on past and current residents in a two year period 2012 to 2013 and present it to the Department in early 2014. We hope it will assist in the final legislation.

We recommend that education on the dangers of gambling and betting be introduced to all secondary and tertiary education in Ireland, that a prevalence study be carried out to determine numbers and those in danger of moving from social gambling to problem gambling. During the past few years, and certainly since the financial crisis in Ireland, we have witnessed an increase in those presenting with a gambling problem. The financial implications for a pathological gambler and his family are for the main part long term placing a huge burden on both those suffering from this insidious addiction and their families.

We would like to work with all concerned including the gaming and betting industry in helping the problem gambler. We need to work together and the provision of a statutory framework and a fund as is the case in the United Kingdom is to be welcomed. For far too long gambling has been seen as the poor relation of the other addictions currently affecting Irish society, this is alcohol and drugs. It destroys as many, if not more lives. Research suggests a higher rate of suicide among problem gamblers than in the other addictions I have mentioned.

Gambling has been called the hidden addiction and those of us working at Aiséirí have witnessed at first hand the devastation wrought by gambling. We agree with the compulsory training of staff in terms of recognising the incidence of potential problem gambling with their customers. This alone may help in the reduction of pathological gamblers as we recognise that a small cohort of the gaming and betting industry's customers contribute a disproportionate amount of their profits.

We have gained invaluable experience in working with problem and pathological gamblers across our adult and adolescent centres and have previously conducted research among adolescent gamblers and with members of Gamblers Anonymous. Both of these studies are available at *academia.org* and were sent to the Minister for Justice and Equality. We hope to be in a position to offer a day programme for problem gamblers in 2014, as not everyone can avail of a four week long residential treatment episode and costs remain a hindering factor for those seeking help.

I thank the committee for the invitation and wish it the best in its endeavours to complete the gambling Bill.

Chairman: I thank Mr. Mullins for his presentation and for staying within the time limit. I appreciate that. I invite Rehab to make its opening statement.

Ms Angela Kerins: I thank the committee for inviting us to address it today. We welcome the opportunity to emphasise some of our key concerns regarding the general scheme of the gambling control Bill 2013. This issue affects not only Rehab but all the other charitable lot-

teries. I am aware the Association of Charity Lotteries in Ireland has made its own submission.

The Rehab Group operates Ireland's largest charitable lottery and we are particularly alarmed about proposals included in the scheme in relation to such lotteries. We believe that the implementation of current proposals would result in the complete elimination of charities from the lottery marketplace, because of the preferential and discriminatory position afforded to the national lottery. This will increase dependence on Exchequer funding and increase charities' reliance on other types of fund-raising, which have also been seriously impacted by the recession.

During the past three decades the impact of the national lottery on Rehab's lottery activities has been catastrophic, due to the unfair legislative regime currently in place. In 1987, Rehab held a strong 25% share of the lottery market. In 1989, following two years of operation by the national lottery, our market share had dropped to just 5%. Today our market share is just 1%, the national lottery being 98% and all other charity lotteries combined share that remaining 1%.

In 1996, following many years of negotiations with the charitable lottery sector, the Government introduced the charitable lottery compensation fund. This recognised the inability of charity lotteries to compete with the national lottery as a result of the severe restrictions created by the cap on prize funds provided for under the Gaming and Lotteries Act 1956. No restrictions apply to the prize funds of the national lottery.

In 2012, the Government took the shocking decision, without consultation, to phase out the charitable lotteries compensation fund. In this context, a complete removal of the cap on prize funds of charity lotteries would be the only correct and legal approach. However, the proposed general scheme continues to place an absurdly low cap on the prizes which can be distributed by charitable lotteries. It limits the monthly prize fund to €400,000 while the national lottery can offer unlimited prizes and has offered weekly prize funds of up to €190 million, through the Euromillions lottery. The new proposed limit of €1,750 of a top prize on scratch cards will have a particularly catastrophic impact on charitable lotteries as it reduces the current prize fund limit by 82.5% and will render them entirely unattractive to consumers and, therefore, uncompetitive in the lottery marketplace.

In the absence of a fair and reasonable charitable lottery compensation fund, we urge the committee to recommend that the cap on prize funds be removed entirely, to ensure fair competition and to prevent abuse of dominance in the marketplace by the national lottery. This is an issue which we believe must be rectified before the sale of the national lottery is completed.

The proposed scheme further exacerbates issues in regard to competition in the marketplace by failing to recognise the size of lotteries in its requirements for a minimum charitable contribution. We propose that the proceeds of a lottery be defined in terms of net gaming revenue - the money that the charity actually receives after the payment of prizes. This is the approach which has been adopted for the national lottery. A rising scale of charitable contribution would ensure that the bigger the lottery, the greater the percentage paid to good causes.

We have grave concerns about the structures which will underpin the regulation of gambling and lottery activities in Ireland. Instead of the establishment of an office, located within the Minister's Department, to oversee a small number of gambling and lottery activities, we propose the establishment of a specific regulatory authority, with an independent board, which is fully transparent and beyond political influence, charged with overseeing the operation of all gambling and lottery activities in Ireland. Unfortunately, it is the case that, in the absence of a fair and reasonable charitable lottery compensation fund and, in light of the current proposals

to continue to cap prize funds for charitable lotteries, the future of charitable lotteries is very bleak. It is likely that many of the legislative proposals provided for in head 19 will quickly become obsolete as this anti-competitive legislation fully eliminates the ability of the charity lotteries to compete in the marketplace, and therefore their ability to operate at all, thereby creating an absolute monopoly for the national lottery.

We would like to thank the committee for its attention and will be pleased to answer any questions members may have. My colleague, Mr. Frank Flannery, may wish to add a further comment.

Mr. Frank Flannery: I have nothing to add, but would reiterate the key point that from our point of view this is strange legislation, although it is long overdue as the 1956 Act is obsolete and unfit for purpose. This legislation seems to be dedicated to suppressing the charity lottery sector, which long predated the 1956 Act and was a key player. Outcome from lotteries supplemented and started much of the good causes which developed in Ireland over the past 60 years. As well as making the scratch card business alien to charity lotteries, as this Bill is designed to do, it also commercialises the bingo sector, a sector which was always reserved for the good cause part of our society.

The Bill makes no provision at all for good cause involvement in the casino. The new creative piece of the legislation and much of what the Bill does is out of sync with what has developed and is developing in the rest of Europe. We are concerned about the impact it will have on the not-for-profit sector in Ireland, excluding it from an area of activity which has been key to the growth and development of that sector and all that it has meant for Ireland.

Chairman: Thank you. I now invite Mr. Kevin Murphy, from Bet Beware, to make his opening statement.

Mr. Kevin Murphy: Bet Beware Limited is a not-for-profit organization established by a group of concerned individuals with backgrounds in the betting and gambling businesses. It has the objective of focusing on the very real issues of a social and economic nature associated with all forms of betting and gambling activity that impact on individuals and society in general. While the organisation neither condones nor condemns betting or gambling, it holds the opinion that betting and gambling, contrary to industry spin, is not entertainment or fun. In the vast majority of cases, individuals participate with the real or imagined expectation that they will win. Most lose and many experience anxiety and varying degrees of depression as a consequence of their losses.

This presentation, coupled with our response document, is an attempt to present our views to the persons responsible for the drafting of the legislation for eventual presentation to the Oireachtas. In the main, the response focuses on the off-course betting industry, an industry where certain members of our group have extensive business experience. It is however the intention of Bet Beware to engage with the Office of Gambling Control Ireland, OGCI, when it is established, in an effort to influence various aspects of the regulatory framework. However, to use a phrase borrowed from head 33, page 43 of the general scheme document, there is a serious disparity in the matter of “equality of arms” for organisations such as ours in engaging with Government on this issue in comparison with the vast resources that the off-course betting industry has up to now committed, and will continue to commit into the future, in its efforts to ensure that legislation is structured in a way that favours the profit and greed driven objectives of most, but not all, of its members, to the detriment of not only the poor and vulnerable members of society but of society in general.

The off-course betting industry would like to think of itself as well regulated. However, one of its most senior executives and founder of a major bookmaker enterprise has stated that over the years it has been able to drive a coach and four through the Betting Act 1931, helped in no small measure by the inability of an unresourced Garda Síochána to monitor and enforce the 1931 Act. Bet Beware believes that unless the legislation is rigid in structure and the OGC monitors the industry in a comprehensive and detailed manner, a coach and four will be driven through this new legislation by the off course betting industry.

I would like to comment on some of the heads of the Bill. Head 1 deals with the definition of a bet. “Bet” needs to be defined in more precise detail for the protection of users of betting services and, in particular, in the interests of fairness and transparency. The definition could be: “a bet is a wager made on an event to be decided in the future”. It is important that “decided in the future” should be part of the definition. It is universally accepted that a bet is a wager made on an event that is decided in the future rather than commenced or started in the future.

Furthermore, the definition of “betting” should exclude any reference to virtual events. Serious doubts exist about the integrity and fairness of virtual events. The result is known before the event takes place, that is before the event is concluded or finished. There have been instances in the past year alone where results of these virtual events have been shown on television screens in betting shops, before the advertised time of the event. Bet Beware believes that there should be a prohibition on virtual events in the new legislation and that this prohibition should not be considered for repeal until such time as the OGC has undertaken a detailed investigation into all aspects of virtual events.

The definition of “fixed odds betting terminals” needs to be examined specifically so as to eliminate all possible loopholes.

Chairman: I must interrupt for a moment. Mr. Murphy has used almost all of his time, so I will ask him to sum up and we will then return to questions.

Mr. Kevin Murphy: The reason I say this is that the stakes are massive. If FOBTs were permitted to operate in this country, the industry would take a mind-boggling €150 million per annum in profit, mainly from the poor, vulnerable, depressed or simply foolish individuals.

Chairman: Thank you, Mr. Murphy. We will move on now to the Irish Amusement Trades Association.

Mr. John Roche: Our association was founded in 1979 to represent gaming and amusement arcades across the State. We currently represent both gaming arcades licensed under the Gaming and Lotteries Act 1956 and amusement arcades which are licensed by the Revenue under the Finance Act 1992. Today, I will deal with some of the headings of the proposed legislation that affect our sector, but we have submitted a more comprehensive submission to the committee which members may look at later.

Under head 1, which deals with definitions and interpretation, we are a little concerned about the proposed definition of an “amusement hall” or “amusement arcade”, which refers to any covered area having amusement machines only and which is open to young persons as well as adults. Our concern is that under the present planning regulations, an amusement arcade allows, and is described under SI 600 of 2001 of the planning and development regulations, as a premises for the playing of gaming machines, amusement machines or other video games. If this proposed specific definition is to be included in the Bill, it would mean that every arcade in

the country would have to reapply for planning permission if it opts to be a gaming arcade. I suggest that when the OGC issues licences to either an amusement arcade or a gaming arcade, the licence should stipulate precisely what the operator is entitled to have at that premises and that licence should be displayed where it is visible to the public. In other words, it would not interfere with the existing planning regulations or with the planning for existing premises.

We have no great difficulty with regard to the definition of an “amusement machine”. However, we would ask that the words “or by use of credits” be dropped from that particular definition. The reason for this is that an amusement machine is a low stake machine. We do not think there is any need for the use of credits in a low stake amusement machine - one with a low payout or a payout of what is known as nugatory value - under the terms of this Bill. The opposite would apply in respect of the definition of a gaming machine. We believe that the terminology on the use of credits could be inserted into the definition of a gaming machine. There would probably be a greater cashflow in the operation of a gaming arcade rather than an amusement arcade, and the use of credits would probably result in less money being in machine boxes. From the point of view of security, money management and so on, that would be of help to the operators of gaming arcades.

Head 2 deals with commencement, transition and Short Title. This point was mentioned by Mr. Galvin of the Licensed Gaming Association of Ireland, who stated that section 2(2)(vi), which states, *inter alia*, “Having a betting or gaming licence (a) immediately prior to the time of commencement, or (b) at that time” would not automatically entitle a person to the renewal of a licence. While we accept that this is the norm in any application for a new licence under most existing legislation, and while we did not expect otherwise in the new Bill, we would draw the committee’s attention to recommendation 18 of the report *Regulating Gambling in Ireland*, which reads: “The Committee recommends that in the development of a new regulatory regime careful consideration be given to the status of amusement halls currently licensed under the 1956 Act.” We believe that the spirit of that statement should also apply to arcades formerly licensed under the 1956 Act and now licensed by the Revenue Commissioners under the Finance Act 1992. This is particularly the case when we consider that of the 114 local authorities, only 43 operate the 1956 Act. This is important because gaming is currently regulated in this State by two distinct Acts which contradict each other - namely, the Gaming and Lotteries Act 1956, which applies to approximately 60 arcades, depending on whether it is high or low season, covering about 6,000 machines in 43 local authority areas, and the Finance Act 1992, which applies to about 100 arcades containing about 7,000 machines in 71 local authority areas. The 1992 Act is in total contradiction to the 1956 Act and our association had that discussion with the Department of Finance back in 1992. There was a dispute about it between ourselves and the Revenue Commissioners in 2001. The dispute went the whole way to the High Court and we were in and out of that court between 2001 and 2003. One hundred and seventy thousand euro later - €70,000 from our side and I assume the same amount on the Revenue side - when the Finance Act 2003 came in, it reinstated the relevant sections of that Act, which brought us exactly back to 1992. In 2013, we are now still where we were in 1992, with two Acts completely contradicting each other, which is of service to absolutely nobody.

The solution to the problem is contained in the framework document. If the recommendations in the framework document for the application of the new Gambling Control Bill 2013 apply nationwide under the normal rules, regulations and criteria that are laid down, those endemic problems which have existed for more than 20 years will be solved. If this Bill is enacted by the Oireachtas, it will be easily enforceable because it will be quite transparent, it will be socially acceptable as it will be guaranteed to be fair to the customer, and it will also be

economically viable, which is very important to us.

I would like to talk about the number of machines in the country. We must deal with this as well. It has been mentioned that there could be 20,000 machines in unlicensed venues. We do not believe that is the case. The figure of 20,000 does not take into consideration the 7,000 machines that operate under the 1992 Act - we call them the 1992 arcades - nor the couple of thousand machines that are down at any given time for storage or seasonal reasons. We accept that there are possibly as many as 5,000 machines moving around the country and being put into takeaways, hackney offices, the back rooms of pubs and so on. However, if the recommendations of the framework document on licensing are taken on board, then all people who deal with the handling of machines - distributors, suppliers and so on - will be included and we will hopefully solve that particular problem completely.

We are in total agreement with the establishment of the social fund. We probably have some views as to how it should be applied. We also have some views on the advisory committee. We hope that the provisions on the hours of business will become an operational matter rather than a policy matter, so that every application to the OGCI for a licence would be treated on its merits, as is the case currently with applications to the District Court under the 1956 Act, and the OGCI would decide on the basis of the information supplied and the reaction of the local authorities and the Garda Síochána what hours would apply to the individual arcade.

Chairman: Thank you very much for that. I finally call on the witnesses from O'Connell Mahon Architects to make their presentation.

Ms Yvonne McNamara: I thank the Chairman, members of the committee and departmental officials for their time. Mr. O'Connell and I are here on behalf of Mr. Richard Quirke, who has a 30 year involvement in the gaming sector in Ireland. We wish to address the committee on just one aspect of the heads of this Bill. Under the heads of the Bill as they currently stand, there is no prospect of the licensing of a resort casino in Ireland. When we refer to a resort casino, we are talking about a casino that is part of a dedicated entertainment complex that may involve hotels, restaurants, a spa, conference facilities, an equestrian centre and so on. Under the heads of the Bill as they currently stand, such a resort casino cannot be licensed. The proposed regulator would not have the power to do so. The mechanism for that restriction is under head 18 of the Bill, which places a limiting restriction on the number of gaming tables allowed in a casino and the number of gaming machines. Head 18 states that one single casino can have 15 gaming tables and up to 25 gaming machines. If the legislation goes through with that restriction, we will have a restriction in Ireland that exists nowhere else in Europe at the moment apart from Cyprus. While we do not say it is a mistake to stand alone on an issue, we say it is a mistake when that stance is against the international evidence and policy on casinos. We say it is a mistake when that stance is against home-grown policy put down in a detailed report less than three years ago by the Department itself, following on from another report in 2008 which recommended that the licensing regime allow for resort casinos. We also say that it is a mistake when that prohibition seems to go against the very spirit and idea behind the legislation.

The idea behind that legislation is that all kinds of gambling environment can be licensed, but they are to be subject to extreme scrutiny in terms of applicants, applications and ongoing regulation, which we welcome. What we cannot welcome is the arbitrary selection of resort casinos as the only type of gambling that cannot be licensed under this Act. When we look for a reason this might be the case, we come up empty. In terms of resort casinos, it is well accepted in international practice, and also, as I say, in the home-grown policy that we have, that there are, possibly, alone among types of gambling, social benefits to be obtained from resort casinos.

There is the tax revenue that is to be had from it; considerable licensing revenue when there is an operation of that scale; but, more important, the considerable economic benefits that come from the setting up of a resort casino in a particular locality. The committee will have Appendix 2, the more detailed submission that we have submitted, that shows the evidence from the United Kingdom and the United States of resort casinos being used as an instrument of social policy because of what they bring. When they set up in a particular locality, there is massive capital investment and significant employment opportunities are developed that are there at the construction stage and ongoing. I refer the committee to the fact that this is not notional. In the case of the north Tipperary venue which has recently gone through the planning process, these figures have acquired some reality. It is estimated that, for a period of five to seven years of construction, there would be 800 construction jobs in it and, ongoing, there would be expected to be 1,300 jobs and, furthermore, a development of approximately 500 jobs in the locality as a result. These are real benefits.

We are not blind to the fact, very eloquently put by Aiséirí, that there are costs and risks associated with gambling, but we respectfully submit that those risks are less attendant with resort casinos than with other types of gambling. The risks, I suppose, could be divided into three categories - compulsive gambling issues; disproportionate effects on poorer areas; and a criminality issue.

With compulsive gambling, we submit that a resort casino, which, of its nature, involves not only gambling but many other entertainment options, is not the natural recourse of somebody who wants to engage in compulsive gambling. A resort casino is more of a leisure activity. We are not saying that it would never happen in a resort casino but what we are saying is that responsible casino owners in a resort casino can take steps, and would have steps imposed on them by regulation, to ensure that they have the procedures in place to spot issues and that they take steps to ameliorate and mitigate any such issues.

Although I realise my time is coming to an end, I wish to address the position in Ireland with disproportionate effects on poorer people. That is a serious issue - however, I really wonder how seriously we take it in this country - where the national lottery is all pervasive. There are outlets for the national lottery on every street. There are bookies on every street corner. The national lottery is advertised as a way to transform one's life. In these circumstances, where these are convenience ways to gamble, it is our submission that these, in fact, hit the lower economic group much more than a resort casino where one must get in a car and plan one's trip and one is going to a place where it is not just gambling. I refer the committee to the appendices where there is hard evidence on those who frequent resort casinos.

Lastly, searching around for a reason for this arbitrary exclusion of resort casinos, we come up empty. It seems to be an aesthetic objection. It seems to be an objection to the scale of the physical building which is difficult to understand in a country such as Ireland, where there is a well-developed planning process and in which the north Tipperary venue has gone through that process recently - Mr. O'Connell can speak to that.

My final comment, merely to wrap up, is that we submit respectfully that resort casinos are different. They have social benefits. They carry risks like any other type of gambling but, we say, lesser risks and risk that can be mitigated and ameliorated more easily, and for that reason, the restriction in the heads of Bill at present that effectively prohibits them should be taken out.

Chairman: I thank everybody for being so co-operative in staying within time. Apologies for being that little bit rushed with time. We have the full submissions which we will be going

through anyway. The intention of today's meeting was to tease out the main bullet points and the issues the witnesses really wanted to bring to the attention of members. I invite members who want to ask questions of any group to indicate. I ask them to focus on questions. A question and answer format works best.

Deputy Anne Ferris: I thank everybody who came in today and made a presentation. Most of the members have gone through the submissions in detail and it was good to hear the main points the witnesses had to make today.

On the Chairman's direction, I will do my best not to make a speech. I suppose it is a little confusing for the lay person who is not involved in the business to differentiate between amusement and gaming. During all of this, I visited a number of places where there machines of both types. There were those claw machines where one takes the little dollies out and also the slot machines, all mixed in together, and I did not think that was right. I am coming to my question. I have two.

Chairman: To whom is Deputy Ferris addressing the questions?

Deputy Anne Ferris: To the licensed operators, to Mr. Galvin. I note that he represents the Licenced Gaming Association of Ireland, LGAI, and I am not too sure what is the difference between his association and Mr. Roche's association. I am not asking this question; it is a rhetorical question. Do I take it that the members of Mr. Roche's association do not have gaming licences?

I will ask this question first anyway. Mr. Galvin stated in his presentation that we should preserve the operations that have licences - that is clearly right - and either license or close down, where necessary, the operations that do not have licences using interim measures. What does Mr. Galvin envisage those measures are?

Mr. Barry Galvin: A great difficulty in Ireland has been identified in that the ability to operate a gaming machine is a function of the local authorities and only 43 local authorities in Ireland have permitted gaming. That means in every other area where gaming is carried on, it is unlicensed by definition. First, it is a situation which is unacceptable in a rule of law country. Second, it creates significant inequality for those who pay the licence. Licensed persons pay €630 per premises and €505 per machine, and they are restricted to hours and other constraints.

It is a complex area of law. It will take time for the new Bill to come in. What is being suggested by the LGAI is that one would even the playing field in the meantime. One could not license those who are not licensed because that would be illegal but one could even the playing field by ensuring a mechanism is put in place by which they comply, for example, one could make arrangements to collect a fee for each machine to go to the Government because there is a loss of, according to one estimate, €9 million. If, when the Bill comes in, what will happen is that the local authority function will go out of it and there will be no prohibition on gaming *per se* but everyone who can show that gaming would be appropriate in a particular place would be licensed. Pending that there should be an interim task force to ensure that the Revenue VAT is paid on it, that the machines are in some way regulated and that a licence fee equivalent to that of the licensed persons would be collected for the State. It would require some small amendments to the existing legislation and would be very much an interim process. After that, the licensing process could take its course.

Chairman: Mr. Roche wanted to respond to the same question.

Mr. John Roche: My association represents arcades which were licensed under the 1956 Act and also those who hold a licence from the Revenue Commissioners under the 1992 Finance Act. As I pointed out, the situation is a mess. Effectively, one Act contradicts the other.

There is no difficulty for the Government or the Revenue Commissioners to identify where the arcades are which operate under the 1992 Act because they have licences issued under section 120 of the 1992 Act. The reality is that neither the 1956 Act nor the Finance Act 1992 is viable in the operation of this business. I say this as someone who has a foot in both camps. The only solution to the problem is as contained in the gambling control bill 2013, namely, the putting in place of a mechanism which will ensure applications to the OGCI for licences from those who hold certificates under the 1956 and 1992 Acts will only be successful if they meet the criteria set down. One is often surprised by the ones that do not meet the criteria.

Deputy Anne Ferris: I agree with Mr. Roche that it is a mess. I am not too sure how this came to be provided for in the 1992 Finance Act. Are members which the association represents applying for licences through the courts?

Mr. John Roche: No. Under the 1992 Act, applications for licences are made to the Revenue Commissioners.

Deputy Anne Ferris: The application is made in writing to Revenue.

Mr. John Roche: Yes and the applicant must comply with the requirements in respect of planning permission.

Deputy Anne Ferris: There is contradictory evidence in both. I presume if I were operating a small shop such as a hairdressing salon and wanted to install one of these machines on the premises, I would require a licence. From what we are hearing - I have read many of the submissions - some operators do not have licences. Reference was made to the local authorities. I live in Bray. Bray Town Council banned the installation of these machines, except in certain places. I understand Dublin councils have done likewise. However, there are many of them in premises in Dublin city centre, Dún Laoghaire and Tallaght. I do not believe they should not be permitted in bookmakers, takeaways and so on without a licence from the courts.

Chairman: The objective of this exercise is to identify issues and try to ensure they are rectified in the legislation. Members are raising important issues which in a way are historical. The interim issue is also important because it will take some time for this legislation to come into force. As such, it is no harm to draw attention to them. I ask Mr. Roche for a brief response to Deputy Anne Ferris's questions.

Mr. John Roche: We are as opposed as anybody else to the installation of machines in the back of taxi offices, takeaways or newsagents. Mr. Rickard, other members of the association and I have been involved in this area since the late 1970s. It would take me a month to explain how the situation developed pre and post-1992. We will endeavour to do so at a more opportune time.

All arcades are licensed in one way or the other. As I said, I represent members on both sides. No one in the sector is able to comply fully with the terms of the 1956 or 1992 Act. For this reason, it is essential that this legislation is enacted.

Chairman: Does Deputy Anne Ferris have more questions?

Deputy Anne Ferris: I have one question about addiction, but I will wait until later to ask it.

Deputy Niall Collins: Will members have more than one opportunity to ask questions?

Chairman: The Deputy has the floor for as long as he needs it.

Deputy Niall Collins: It was stated at last week's hearings that there were up to 20,000 unlicensed machines in the country. Mr. Roche said the correct figure could be as low as 5,000. Do any of the organisations present today or who were here last week represent the operators of these 5,000 or 20,000 machines?

Mr. Brian Freney: The LGAI represents current court certificate holders of gaming licences. Mr. Roche has mentioned that there are different licences in this regard. Some of the 20,000 unlicensed machines referred to last week are operated under an amusement licence. There are two licensing regimes. As pointed out, to obtain a gaming licence one has to go through a strict regulatory process annually. An amusement licence is a little different. It is granted by the Revenue Commissioners and all one needs to obtain such a licence is a tax clearance certificate. There is no mandatory inspection in regard to the number or type of machines held. Some of the 20,000 machines referred to are covered by the amusement licence regime. An issue arises in regard to the siting of machines in takeaways, pubs and so on. This is a serious issue in the context of accountability, tax payments and so on. The machine in question may be of such little value that even if Revenue was to remove or seize it, it could be replaced with another one.

Mr. Roche referred to machines in storage. I have been involved in the industry for 30 years and my father was involved in it before me. I am not aware that there are thousands of machines in storage. In this business people use the machines until they go out of fashion. When they go out of fashion, they are then sold for the best price or thrown in a skip. As I said, there are two types of licence in the industry, an amusement licence and a gaming licence. The difference between the two is huge.

Chairman: Will this legislation solve the problem as Mr. Freney sees it?

Mr. Brian Freney: I believe there is a need for two amusement licences and a strong gaming licence. Much will be achieved with very clear and simple definitions.

Deputy Niall Collins: My next question is to the delegates from Rehab. I was concerned to hear during its presentation that it was being squeezed out of the market. We are all aware of the good work the organisation does. I read in a newspaper recently that it had initiated legal proceedings against the State. I would like to know the reason it has chosen to take the legal route to address-----

Chairman: The Deputy cannot raise issues that are before the courts. I must ask him to confine his questions to the heads of the Bill.

Deputy Niall Collins: What is at issue is linked with the charitable lotteries fund. What happens in that regard in other countries?

Chairman: I must ask the delegates to also refrain from commenting on matters before the courts.

Mr. Frank Flannery: Deputy Niall Collins will have gathered from earlier comments we made that we believe the Irish system in the lottery field is geared towards the creation of a

monopoly. This is being ruthlessly reinforced in the legislation before us. Why this is being done raises another question. What happens in many other European countries is quite different, which has been positive for us. The Deputy may be aware of the ONLAE, a famous Spanish lottery. He may also have heard of its lottery, the ONCE, which is specifically for blind and visually impaired persons. The ONLAE lottery has a turnover of €8 billion to €9 billion per annum, while the ONCE has a turnover of between €2.5 billion and €3 billion and supports thousands of people. This has always been agreed to by the Spanish regulatory system. They both operate under legislation which allows them to operate and compete effectively in the marketplace. There is another very substantial lottery in Catalonia. Spain has one of the most successful national lotteries in the world and can also provide for the not-for-profit charitable sector. The position in Holland is somewhat similar. I will not describe what happens in too many countries.

Chairman: We would just like to get the picture.

Mr. Frank Flannery: Three charitable lotteries in Holland share close to 30% of the market and support causes throughout the country. The state controls the other 70% with a major national lottery. Its legislative framework allows this to happen and it is very satisfactory. The position in Sweden is also similar. The position in the United Kingdom is slightly more complex, but it has a far more liberal regime under which good cause lotteries work alongside a massive national lottery run by Camelot, a company about which Ireland will possibly become more knowledgeable in the time to come.

I know of no precedent for the extremely stentorian monopolistic regime being imposed in the lottery world in Ireland. We have found it extraordinarily difficult to have any rational discussion, let alone come to a conclusion, on it. I do not want to comment on further matters. Ireland is out of step with the fair and rational procedure found elsewhere in Europe and almost anywhere else.

Chairman: Does Mr. Flannery see a mechanism in the Bill to change this?

Mr. Frank Flannery: This was worked out approximately 18 years ago and all of the political parties were very much involved. Arrangements were made between the charity lottery sector and the State to allow the national lottery to develop along the lines it has and the charity lotteries to be compensated in a realistic way for agreeing to it. Fianna Fáil and the Labour Party were in government for much of the time, followed by the rainbow coalition made up of the Labour Party, Fine Gael and Democratic Left. Every party was fully involved and it was 100% agreed to. It lasted to the satisfaction of all parties until very recently when it was concluded without any discussion or warning in quite a remarkable way, to use the kindest language I can come up with. As a result, the charity sector faces being squeezed out almost entirely of the sector of which it was one of the great developers in the 1940s and 1950s and much of what has been done since was built on this work. We find this very hard to take. If the compensation mechanism which was agreed to by all political parties and operated so satisfactorily for so long will be removed in this way, the provisions for prize caps in the legislation must also go because this was the arrangement which was in place. We will agree with the price caps to allow the Government to develop what it wants, provided this is done. This was a business arrangement agreed to on all sides. I am not saying it was a legal arrangement, but it was a business arrangement with which everyone acquiesced and we do not want it to be pulled away without discussion or comment.

Chairman: We are having a discussion about it today which will be useful.

Mr. Frank Flannery: If there is no compensation, there should be no prize cap.

Chairman: That is why, I am sure Mr. Flannery will agree, this process is so useful.

Deputy Niall Collins: Will the delegates outline what it will mean for service delivery if the fund is eliminated and the cap remains in place? What will this mean for Rehab? We know what it does.

Ms Angela Kerins: It will not only have an impact on Rehab. It will have a significant impact on services provided by many other organisations, including Gael Linn, the Asthma Society of Ireland and the Irish Cancer Society. The income we earn through charity lotteries is independent and sustains many services the State cannot afford. The proposed legislation will make a very bad situation absolutely worse. If anything, it will eliminate the charity lotteries. In a time of austerity when the Government cannot afford the services required by people with disabilities and older people, it will prevent us from earning our own income to deliver services. It is very disappointing. Over a number of years we came to an agreement to allow the national lottery to grow and the mat has been pulled from under our feet. If the legislation remains as drafted, it will eliminate the charity lotteries. For the first time it will put a cap of €1,750 on the top prize.

Chairman: As part of this pre-legislative process the committee makes recommendations to the Minister who, in fairness, has accepted many of our recommendations in the past. That is why the process is so useful now, as opposed to when a Bill is published, after which it is virtually impossible to change, as one can imagine.

Deputy Niall Collins: I have some questions for Mr. Quirke's representatives. The site in County Tipperary was mentioned and I read about it in the press. Planning permission was granted by An Bord Pleanála. What is the argument for having a resort casino as opposed to a stand-alone casino? Some of the reasons in favour of a resort casino venue proposal as opposed to a stand-alone casino were mentioned and I would like elaboration on them.

Chairman: I ask Mr. O'Connell to focus on the heads of the Bill.

Mr. Brian O'Connell: The issue is whether resort casinos should be permitted. The County Tipperary venue is probably a very good example of a resort casino on an international and European scale and it would probably be useful to indicate what this is. As it has received planning permission, to a large extent, the aesthetic urban argument is now history. With regard to the benefits of a resort casino over those of a stand-alone casino, a resort casino merges activities; as such a unique site would no longer be created for the purposes of gambling, as it would be incorporated as a normal piece of entertainment in a much larger setting where there were diversions all the time.

The County Tipperary venue is set on a site of approximately 1,000 acres and is a very big development. It has a 350-bed resort casino hotel. A casino hotel differs from a standard hotel; while it has all of the tourist attractions of a standard hotel, it also contains as part of its core a casino floor. This is a segregated area on the basis that it is controlled. There is also an uncontrolled area, as well as many common areas which operate between them. There are also banqueting and function rooms. The industry which comes with it is associated with conferences. As all projects need a specific feature to identify them, in this case it is the fact that James Hoban, the architect of the White House, was born close by. He was one of the first Irish pure architects and a student of Thomas Ivory, the famous Cork classical architect. He designed the

White House for Washington who intended it to be a banqueting suite to avoid it being characterised as a palace, in which every month 500 citizens of the United States would be banqueted. This never happened, but it was Washington's intention and the building was designed for this purpose. Our intention is to replicate the building as it was in 1831 when Hoban died. It will form an essential part of the resort casino and be one of its key theme areas.

The resort will also incorporate horse racing and Horse Racing Ireland has endorsed it. It was seeking an international racecourse to replace the three venues close by in County Tipperary with one major racecourse for Munster. That is incorporated, with the support of Horse Racing Ireland, HRI, into the project. We also have Horse Sport Ireland, which has come into it on the equestrian side of horse sport. There will be an international scale venue for Horse Racing Ireland. Bord na gCon is also supporting it and there is a back-to-back arrangement with diversity, using the grandstand on one side for a greyhound track and on the other a horse racing facility. It is a diverse development that is modern and highly flexible. It is a resort development on the basis that all the infrastructure provided - the supply of water and sorting of drainage, for example - will be the equivalent of a small town in scale. That is what a resort casino is.

Chairman: Could we get back to the heads of the Bill? The initial point was that the heads do not allow this to happen.

Deputy Niall Collins: Could we get clarification on the point regarding the heads of the Bill? I am trying to get my head around the issue. An Bord Pleanála has granted planning permission for this and the legislation would indicate it cannot be licensed.

Chairman: It is proposed legislation and our job is to sort through that.

Deputy Niall Collins: Is there a mechanism within the heads that would allow a Minister to license a venue?

Chairman: When the Bill is published, we can consider that. It would come back to us for amendment, as all legislation does. This is just a proposal and we are teasing out issues today. Does Deputy Lowry have a brief comment?

Deputy Michael Lowry: Could we ask Department officials to take it up?

Chairman: No.

Deputy Michael Lowry: I wish to make a point.

Chairman: I will allow Deputy Niall Collins finish his questions first, if I may, and we can return to others who have indicated earlier.

Deputy Niall Collins: I have three questions to be put to Mr. Murphy. He mentioned the definition of a bet in his statement so will he expand on that? I am not a gambler, ordinarily, so will he explain virtual racing, fixed odds betting terminals and television roulette?

Mr. Kevin Murphy: I mentioned the definition of a bet should contain the words to the effect that a bet is a wager on an event to be decided in the future, as opposed to something that is commenced in the future but whose outcome is decided by a computerised random number generator. It is universally accepted that a bet is a wager on an event to be decided in future. The term "decided in the future" is a very serious part of the proposition. Recently, all we need to do is look to the all-Ireland hurling final a few weeks ago, as with 30 seconds to go, all the guys who backed Cork thought they had won their bets. The ball came to a Clare man in a

seemingly impossible scoring position who put it over the bar and it ended as a draw.

Chairman: Do not remind us.

Mr. Kevin Murphy: There was a case in 2012 where Manchester City won the English Premiership not with the last kick of the game but the last kick of the season. That event was decided when the referee blew the final whistle after the last kick of the season. With racing - either horse or dog racing - there are examples every day of the week where horses or dogs win by a nose, which is the minimum distance in racing. The event is decided only at its conclusion. That is why the legislation must encompass such words in its definition.

I was asked about virtual racing as well. Virtual racing was introduced to the market in January 2003 and evidence was given to the committee last week that it was a response to the foot and mouth disease outbreak in the country in 2001. That is not completely true, as it was introduced in 2003 as a response by the UK bookmakers when they tried to formulate a mechanism to avoid paying a levy on live horse racing to the horse racing levy board in the United Kingdom. Virtual racing was introduced to the market by a company called 49s Limited, which was wholly owned by the three major bookmaker organisations in the UK. It was broadcast to the market - as we heard in evidence last week - by a company called Satellite Information Services, SIS, which was almost totally owned by the UK headquartered bookmakers.

I will read from the 49s Limited virtual racing blurb. It states: "Virtual racing is a computer-generated presentation of a horse or greyhound race. A random number generator determines the first, second, third and the rest of the finishing order after the start of each race." The result is known before the event is over. It continues, "All runners have fixed odds that reflect their chance of winning." With this betting proposition, the company promoting it is owned by a bookmaker and the company that broadcasts it is substantially bookmaker-owned. The result is known at the start of the event and not at the conclusion.

The advocates of virtual racing would lead us to believe the entire process is supervised and monitored by a firm of auditors. We all know, to our cost in Ireland, what supervision by a firm of auditors means.

Chairman: I have to stop the witness as we are getting into different territory altogether.

Mr. Kevin Murphy: Deputy Collins also asked about fixed odds betting terminals and television roulette.

Deputy Niall Collins: It is important that the committee teases this out, as it is a major share of the betting market. We know there are "integrity systems" with live racing and although I know we are under pressure for time-----

Chairman: It is not that. We must be careful that we do not cast aspersions on anybody.

Deputy Niall Collins: I understand that.

Chairman: I mentioned it at the beginning and it is important we do not cast aspersions. What is the question?

Deputy Niall Collins: Virtual racing was mentioned last week and we are getting an alternative view. I am asking for an alternative view on the fixed odds betting terminals and television roulette, which form part of the market.

Mr. Kevin Murphy: Fixed odds betting terminals are simply slot machines, with 90% of the activity on the terminals effectively roulette. They are controlled by random number generator devices, so again the result is known before the event finishes. The UK Government was convinced to legislate for them approximately ten years ago and permit their use in betting shops. It was acknowledged by spokespersons for the Government of the day that this was the wrong decision. The fixed odds betting terminals are acknowledged by many betting observers to be highly addictive, although the betting industry has argued there is no evidence for this and has challenged unresourced voices of concern to produce evidence-based research in this respect. We argue that the substantially resourced betting industry should provide the evidence-based research that these terminals are not addictive and harmful to individuals in society.

Based on the audited accounts published by the private limited company bookmakers in the United Kingdom with regard to operations in that district, and not converting the figures from sterling to euro, we estimate that if the terminals were legislated for in Ireland and permitted in betting shops, they would take €150 million in profits out of the Irish economy. The majority of this profit would be taken from the social welfare-funded pockets of the poor and vulnerable in society.

Chairman: Does the Deputy have further questions?

Deputy Niall Collins: I have two questions for Mr. Murphy. Last week I asked a question about uncollected winnings. I am anxious to tease out that aspect as well as deposits held, which probably relates to online gambling. Some of the small print was brought to my attention during the week. One of the bookmaking organisations states that the account is not a bank account and is therefore not insured, guaranteed or otherwise protected by any deposit or banking insurance scheme. If individuals have online accounts, it appears those moneys are not insured and if the company folds there is no compensation arrangement in place. Will Mr. Murphy elaborate on that?

Mr. Kevin Murphy: The Deputy also asked me about television screen roulette.

Deputy Niall Collins: I did.

Mr. Kevin Murphy: Television screen roulette was introduced in Ireland in late 2010, predominantly by the major bookmakers. It is a gaming activity. Gaming activity is prohibited in betting shops under section 19(3) of the existing Betting Act 1931 and under Chapter 5 of the Gaming and Lotteries Act 1956. It is therefore unlawful for roulette to take place in a betting shop.

Chairman: We are considering the future now. What do you want to happen? What head of the Bill are we discussing?

Mr. Kevin Murphy: The Bill makes it quite clear, first, that the Government will not legislate for FOBTs, fixed odds betting terminals. The Bill also alludes to the fact that no FOBT related activity will be permitted in any way. We are aware that the off-course betting industry has made representations to the effect that it would like the legislation to be structured to permit devices such as tablets to be used in betting shops. The rationale for this, apparently, is that the industry claims it would enable it to compete in betting shops with all the websites. However, the reality is that all of the major bookmakers that have betting shops in Ireland have betting websites, so what is the industry saying? Is it saying it needs to be able to compete with itself? That is how it sounds.

Chairman: Are you happy with the proposal in the legislation?

Mr. Kevin Murphy: I am, provided the legislation makes absolutely sure that all the loop-holes are closed.

Chairman: That is why we are here. Does Deputy Collins have a further question?

Deputy Niall Collins: I asked about the moneys that are held.

Mr. Kevin Murphy: Is the Deputy referring to deposits or late bets?

Deputy Niall Collins: Both.

Mr. Kevin Murphy: I will deal with the late bets issue first. There is an issue legislators must consider relating to what are called late bets and uncollected winnings. A late bet occurs when a bet is placed by a punter after the advertised off-time of a race. Despite the fact that almost all betting shops have the most technologically advanced EPOS, electronic point of sale, systems in their shops which print out the time the bet is placed by the hour, minute and second - this information is printed on the customer's receipt - the technology apparently does not extend to the rejection of late bets at the time the punter attempts to place them. This is very convenient for the industry, because the first time the punter knows that his or her bet of €2 or €10 is late is when they go to the counter to present their receipt and ask for their €22 winnings. They are then told the bet was late for payment, that they will not be paid any winnings and their €2 or €10 is returned. Their money will be repaid but they will not be paid any winnings. Interestingly, this phenomenon of punters not being paid on allegedly late bets appears to be particularly prevalent with bets placed on virtual racing.

The majority of punters lose. That is a fact. It was said in evidence last week that the off-course industry gives back approximately 87% of what it takes in. That is correct. However, that does not mean that 87% of the people who gamble in betting shops get their money back. In fact, the vast majority of that 87% goes to the people who are clever and know what they are doing.

Chairman: To return to the heads of the Bill, how are we dealing with this in the Bill? What head are you talking about?

Mr. Kevin Murphy: The late bets and uncollected winnings issue is a social responsibility issue and we are saying there is a clear need for the Government to deal with it by way of legislation, unless the industry wishes to show that it is really interested in social responsibility and puts a voluntary procedure in place. With regard to quantifying it in financial terms, there are approximately 1,000 shops operating in Ireland. It is difficult to quantify the amount of late bets or uncollected winnings, but one source estimates it to be approximately €1 million per annum. As regards the heads of the Bill and social responsibility, we believe late and uncollected bets should be treated by legislators in the same way as dormant bank deposit accounts. If the bet is not collected after a certain period of time, instead of pocketing the money the industry must hand it to the Government to be used for socially responsible purposes.

Deputy Niall Collins: Will Mr. Murphy restate the point he is making about social responsibility?

Mr. Kevin Murphy: The legislation deals fairly extensively with social responsibility. It cannot be the case that one uses an out-of-state adviser, sticks a few leaflets in a dispenser, puts

the dispenser in the back of the shop and then expects to have fulfilled one's social responsibility. The legislation must clearly define the steps the off-course industry must take regarding social responsibility. We contend that, as a starting point for customer awareness, it should be a mandatory requirement that the reverse side of all betting docketts have a printed warning message similar to the health warning that is mandatory on cigarette packets.

Chairman: Are you happy with that, Mr. O'Connell?

Mr. Brian O'Connell: I will come in again at the end, if I can.

Senator Martin Conway: Deputy Collins covered some of the issues I wished to raise. I have two questions for Mr. Quirke's representatives. Earlier Mr. Quirke said this Bill did not facilitate what they are proposing. Does that make his project unviable and will the investors not go ahead with the project? The second question is academic in a sense but very important. Money laundering is a major problem. His type of project could very easily facilitate money laundering. What safeguards does it have in place or what is international best practice to prevent that?

Mr. Brian O'Connell: Mr. Quirke, like anybody else, would support the taking of all appropriate steps to manage money laundering. My general understanding of it, and it is only a broad understanding, is that much of it is to do with recording the people who come and go and identification. In other words, people must identify themselves, and that identification is the first step. However, whatever the appropriate structures are for dealing with control of money laundering - I do not have any expertise in that area - they would be thoroughly approved by Mr. Quirke.

What was the Senator's other question?

Senator Martin Conway: The witness said the legislation did not facilitate his project. Are the investors not prepared to go ahead should the legislation be passed in its proposed format?

Mr. Brian O'Connell: I think that would follow on the basis that if it cannot be legally licensed, it cannot proceed.

Chairman: Before I call Deputy Finian McGrath, will the delegates consider if they wish to make points on money laundering as we are interested in hearing their views on the subject?

Deputy Finian McGrath: My question is directed towards Mr. Galvin. I wish to address the establishment of an interim gaming regulation authority. Mr. Galvin referred to substantial revenue being lost by the State and the need to prevent unlicensed slot machines from being operated in unlicensed premises. Does he know from experience if criminal elements are involved in the use of gaming machines in unlicensed premises? I know that in France and Italy, in particular, the Mafia is directly involved in the use of machines in some pubs and bars.

Chairman: Let me sound a note of caution. If somebody has information on criminal activity, the Garda Síochána is the agency to talk to.

Deputy Finian McGrath: I wish to address the broader issue of gaming in France and Italy.

Mr. Barry Galvin: I am aware of that happening. I am aware of the situation in Cyprus, in particular. We have seen what has happened there recently. There is no evidence that organised crime is involved to any great extent in the gambling industry here. Obviously, there is a small

element of money laundering and the ODC, the ordinary decent criminal, in Ireland will turn to anything that makes a dishonest dollar.

On the loss of revenue to the State, the Licensed Gaming Association of Ireland, LGAI, engaged in an exercise recently. In section 2 of the submission members will see the results of its exercise in a particular county when it investigated how many unlicensed gaming machines there were in it. It is not absolute, but at least we know that there were 432 unlicensed gaming machines. That means an immediate loss of €505 per machine to the State. We have taken the figures from our members and extrapolated them. If one considers the licence fee for each machine, one will see that the amount of money involved is significant. We suggest this issue should be addressed in the interim. The Bill is very difficult, but the problem should be addressed tomorrow.

Deputy Finian McGrath: Is Mr. Galvin's suggestion on the Gaming Regulation Authority on the same lines as that made by Ms Kerins and Mr. Flannery from the Rehab Group in their submission?

Mr. Barry Galvin: Depending on what the Government favours, I envisage a small task force headed up by somebody from the Department of Justice and Equality who would call the shots and a joint task force between the Revenue Commissioners and the Garda Síochána which would identify the machines and ensure Revenue was paid in the next year or two.

Deputy Finian McGrath: My third question relates to casinos and I address it to Ms McNamara. Two reports issued in 2008 which stated resort casinos were forward looking and based on leisure experiences. Do the heads of the Bill run contrary to these two reports?

Ms Yvonne McNamara: Yes. We see this in head 18. Resort casinos which by their nature are large are absolutely excluded under the legislation by a very restrictive mechanism in respect of the scale of casinos. Under head 18, any single casino can only have 15 gaming tables and 25 gaming machines. There is no way, therefore, if the legislation goes through in this form, resort casinos could be licensed, no matter what the beneficial outcomes would be. This seems to be in direct contravention of the 2010 report of the Department of Justice and Equality that recommended that resort casinos be one of the two types of casino licensed under the legislation in recognition of the benefits that go with them.

Deputy Finian McGrath: I wish to address the point made by Ms Kerins and Mr. Flannery in their submission on the cap on prize funds. They strongly support the removal of the cap to ensure fair competition and prevent abuse of dominance. From the viewpoint of the Rehab Group, will they outline the loss of revenue for worthwhile projects?

Mr. Frank Flannery: It is hard to rewind history, but before the national lottery came into being, the Rehab Group accounted for 25% of the lottery market; other charity lotteries would have accounted for a great deal of the rest, while the Irish Hospitals Sweepstakes and other events made up the market. Had the Irish market developed in a free and openly competitive way, the share of the market the charity sector would have now would be at least equal to that in the Dutch example I used. Given that we had the expertise, we would be running at 30% of the current turnover of the national lottery, which would be a turnover of €250 million generating a profit of between €60 million and €80 million a year. That would have a dramatic and transformative impact on the sector. I am just giving the numbers off the top of my head, but broadly that is the scale. That has not happened because of the arrangement made and a lottery compensation fund was put in place to recognise the significant advantage of the State. This

was done in an agreed and co-operative way between the not-for-profit sector and the State in recognition of the fact that both had interests and both needed to be looked after. We were broadly in favour, as we always are, of facilitating the State to achieve its objective. As a result, the immediate loss of revenue to the sector is of the order of €6 million to €7 million a year, which is a significant amount of money.

Deputy Finian McGrath: I have a final question for Mr. Mullins from Aiséirí. I commend the great work that it does and it is a very worthwhile organisation. Its submission recommends that education on the dangers of gambling be introduced in every second level school. Teachers at second level tell us that the curriculum is overloaded because of different health projects. However, I support the idea of introducing education on gambling, but how does one do this when the curriculum is already overloaded? Are there national figures for the numbers of people addicted to gambling? Does Mr. Mullins have a figure for the number of young people or adults who are addicted to gambling from his direct experience in his day job?

I thank all the groups for their excellent submissions.

Ms. Paul Mullins: Deputy Finian McGrath raised the issue of educating young people on the dangers of gambling. The amount of time set aside in the school day to educate young people on alcohol and drugs is minimal. We think we could address this problem by developing a specific short programme about 20 to 30 minutes in length for second level and third level students supported by information leaflets because we believe some education on gambling is better than none.

Deputy Finian McGrath: Yes, I agree.

Mr. Paul Mullins: The Deputy asked for figures for the numbers of people addicted to gambling. There are no figures as no research has been carried out in Ireland. A major element of the gambling control Bill is the research that will guide best practice. Anecdotally - I am going by other jurisdictions - it is between 0.5% and 1.5%, which in Ireland extrapolates to about 40,000 individuals. The level of gambling among adolescents is two or three times the rate among adults. Other than by the number of those attending addiction treatment centres, we have had to go by the number of Gamblers Anonymous meetings in Ireland. In the past 12 months Gamblers Anonymous has held meetings in towns across Ireland that it has not had to hold before in order to deal with the demand. Owing to the anonymity of the organisation, we do not have specific figures. We will be starting our own study at the end of this year and will be in a better position to get these figures which should help the committee with legislation.

Deputy Finian McGrath: I would like to see the delegates come back to us when they have finished that research.

Chairman: That is something to which we can come back.

Mr. Aubrey McCarthy: I am chairman of a rehabilitation centre called Tiglin. It is a national rehabilitation centre and we deal with all forms of gambling. We were approached by the LGAI to put forward a package to see what we could provide if it was allowed to regulate its own industry and the Minister provided a social fund. We submitted education officers to visit schools and undertook a series of case studies.

Deputy Finian McGrath asked about the figures. A study was carried out by Delaney and Wall in UCD which found that approximately 1% of the population - about 40,000 people - suffered from gambling addiction problems. We conducted a study of our graduates since 2009

and found that 68% were co-morbidly addicted to gambling and some other addictions also.

Ms Angela Kerins: Deputy Finian McGrath's question was about the impact and Mr. Flannery mentioned the loss of the €6 million compensation fund. We have an independent and professional evaluation which shows that we have the ability to earn between €35 million and €50 million a year. This is what is affected by the cap on charity lotteries because we do not have an opportunity to develop our business in the way we would like. The Government's decision to discontinue the compensation fund is a really big issue. Organisations such as ours, the Irish Cancer Society, the Hanly Centre, the Asthma Society of Ireland and Irish Autism Action all depended and trusted that a fund would remain in place if a cap remained in place. The fund has now been pulled and we have no way of earning our own income to support public services. Therefore, there is a real and urgent need to deal with the issue this year. I hope removing the cap will also give us an opportunity to earn money.

Deputy Michael Lowry: In respect of the Rehab presentation, the message on the compensation fund and the imposition of the cap has been put across and I certainly agree with it. It was an extraordinary decision and I think the committee should assist Rehab in the form of a recommendation that the issue of the cap be addressed. The presentation refers to the proposed structures in the Bill for regulation. The idea that the regulation would be within the remit of the Department is a throwback to the old days when we had to dismantle the situation where the semi-State bodies were being governed internally within Departments. That is why we established a telecoms and an energy regulator, as well as a data commissioner. I completely agree with Rehab's presentation that this issue needs to be addressed in the Bill. Perhaps the Rehab delegates might expand on their views on this issue.

You will be happy to know, Chairman, that I am not going to regale you about the project in County Tipperary. All I will say is that it is my view that the regulations should be sufficiently flexible to allow a future Minister or Government to at least examine a proposal from an operator within the industry. That is my request.

Chairman: I thank the Deputy for being succinct. It is very much appreciated.

Ms Angela Kerins: I also thank the Deputy for being so generous. We believe the regulation of this aspect should be beyond the political sphere. We believe it should regulate all forms of gambling and lotteries, not just certain selected areas. It should be done independently, whereby we would not have a situation where a Minister could give an order to close down. That is not the modern way of going about things. We believe the board of the authority should be independent and appointed in the same way that boards are being-----

Chairman: Ms Kerins wants it to be regulated under law, the law about which we are talking.

Ms Angela Kerins: Absolutely and independently.

Deputy Anne Ferris: I agree with the point made by Ms Kerins. Perhaps there might be a role for the independent regulator. Certainly the way things were-----

Chairman: Does the Deputy have a question, please?

Deputy Anne Ferris: -----the Department of Justice and Equality and the Garda Síochána had a better regulatory system than the Revenue Commissioners. God bless them, but people from the Office of the Revenue Commissioners could go in and be told that a certain machine

was not a gaming machine and they might not have known the difference. I probably would not know the difference. That is wrong. I know Mr. McCarthy would like to see these machines banned from a number of places, such as bookmakers, public houses, hotels and so on. Mr. Roche reckoned that there were about 7,000 unlicensed machines, while somebody else said last week that the number was about 20,000. If it is only 7,000, we are losing revenue of €3.5 million per year. Let us think of what the Minister for Finance could do in the budget next week with that kind of money on a yearly basis. If it is 20,000 machines, it beggars belief that it is going on like this. That is why we have to move fast.

I wish to get back to Mr. McCarthy-----

Chairman: I am conscious that we have been here for a long while. I do not want to delay people too much longer.

Deputy Anne Ferris: He did not get a good crack of the whip.

Mr. Aubrey McCarthy: What is the question?

Deputy Anne Ferris: My question is about the banning of machines from places families frequent such as hotels, pubs, hairdressing salons and so on and how they should be located in properly licensed places.

Mr. Aubrey McCarthy: Dr. Fiona Weldon of the Rutland Centre conducted a study. When the availability of gambling machines is increased, the level of gambling addiction increases. The study showed that gambling had increased dramatically among males between the ages of 20 and 35 years. In our centre we find that gambling is a silent addiction. The responsibility is on those people in the room who are involved in the gambling industry to try to regulate it as best as possible in order that individuals who are vulnerable and get into trouble with gambling are catered for. That is why we put a proposal to the LGAI. We have a residential facility and offer telephone counselling. We put forward the proposal for the establishment of a telephone gambling helpline and educational offices. We also have outreach services in various counties to show that we are there to deal with the gambling issue. We also have a poster campaign with leaflets. Mr. Murphy said having leaflets in gambling institutions would not solve the problem. However, it would create an awareness that there was help for people who were struggling and that at least they could be pointed in the right direction. We also proposed to the LGAI that everyone coming under the legislation should have his or her staff trained to be able to observe when a person was in trouble or vulnerable. Tiglin offers educational facilities at its centre in Wicklow for staff training. There would be a cost, but such staff training would mean that the 1% of individuals would be able to get help.

Mr. John Roche: Let me clarify what I said about machines. In our experience, the total number of machines is somewhere in the region of 20,000. These figures are available from the Revenue Commissioners. About 6,000 machines, depending on the season, are in arcades licensed under the 1956 Act, while about 7,000 are in arcades licensed under the 1992 Finance Act. We believe, just from what we see every day, that there are probably about another 5,000 machines which are being pushed into the backs of pubs, takeaways and hackney offices, but it will never be possible to find out where they are or who is installing them until the licensing process proposed in the Bill is implemented. I have letters which date back to the period 2004 to 2006 when the association continuously wrote and had a meeting with the then Minister for the Environment, Heritage and Local Government in an effort to eliminate these unlicensed machines.

Mr. Galvin would be more informed than me about the criminal aspects, but on the evidence available to us in the past 34 years, petty criminals are involved in the distribution of machines. I do not think organised criminals are involved. It is more likely to be a guy with a barn or a shed, with perhaps a dozen machines which he puts around the place and pulls out if he thinks there is a difficulty.

Deputy Niall Collins: I have a question for Rehab and another for Mr. Murphy. On a point of clarification, the charitable lotteries compensation fund was established when the national lottery was established.

Ms Angela Kerins: No. The charitable lotteries compensation fund was established in 1995 to 1996 in response to a lot of lobbying during the years by the charity lotteries to gain equality and fair play with regard to prize funds. At the time the Government wished to protect the national lottery, but it eventually sat down with us - it would be very desirable for us to have the opportunity to do so again - and negotiated an agreement under which the compensation fund was established. How the different lotteries participate in the fund is that we take an average of our sales over a three year period and divide the percentage of sales. It was a small fund which starting at £5 million and eventually was €6 million. Last year the Minister decided to close it down over a period of three years. That was a great pity because it had been an agreed position. We took that position because it was a means of gaining income for our services. As Mr. Flannery said, in a situation where there is no charitable lotteries compensation fund the cap on prize funds must be eliminated to allow us to build up our business, albeit from a much lower base than in the 1980s.

Deputy Niall Collins: The sale of State assets is Government policy. The closing down of the fund enables the Government to sell the national lottery without any obligation to the fund. That is the point.

Ms Angela Kerins: Absolutely. That is correct. The proposed legislation makes the situation eight to ten times worse for us because while the total prize fund for charity lotteries is €20,000 in any one week, the Bill proposes that the top prize be €1,750. The proposal is to allow us to have €400,000 a month. That will not get us anywhere. We say scrap the cap on the prize fund for charity lotteries and let us earn money to run the services the State cannot afford to run and on which a great number of people depend. I forgot to mention organisations such as Gael Linn. The Government should either renegotiate a fund with us and come to some agreement or else it should scrap the company and the cap.

Deputy Niall Collins: Am I correct in saying it is possible for the sale of the national lottery to proceed but with an obligation to maintain the fund?

Mr. Frank Flannery: That would probably be a much simpler way to do it. The fund was established initially with a percentage of the good cause proceeds of the national lottery. It was set at a figure of 5% at the beginning. As the national lottery grew, the fund did not grow but instead the percentage had gone down to about 2% by the time it was abolished. There is no reason it should not continue in existence and continue to be funded from the good cause proceeds of the national lottery which would separate it completely from the sale of the lottery. It need not complicate the process at all.

Deputy Niall Collins: I have one question for Mr. Murphy. He referred in his submission to the right to bet legislation.

Mr. Kevin Murphy: The legislators need to address the issue of right to bet legislation which is being addressed in France. The off-course betting industry is perhaps the only industry I know of that does not pay for a certain amount of its raw material. With the exception of horse racing, soccer and perhaps one or other major sport, it does not pay anything for the right to bet on an event. The GAA, probably the greatest amateur sports organisation in the world, puts on marvellous spectacles during the year and the bookmakers derive millions of euro in income from betting on the GAA championships, yet the GAA receives nothing. The right to bet legislation should be given serious consideration when drafting this Bill to ensure events are not swiped from the organisations by the betting industry and that the organisations in question receive an appropriate fee.

Deputy Anne Ferris: I am very confused at this point and need to get my head around the issue. Mr. Roche referred to the 1956 Act and the 1992 Act. I need clarification on the issue of machines for which one must pay and machines which do not require the making of a payment. Would it be possible for me to contact Revenue tomorrow and under the 1992 Act ask for a gaming machine licence because I have a tax clearance certificate?

Mr. John Roche: Technically, the Deputy could do so. However, that has been tried on numerous occasions. What normally happens is that the local authority deals with the request under the planning regulations. If a person was to open a shop tomorrow to sell newspapers and then decide on a whim to install half a dozen machines in a back room, planning permission regulations would not permit it. In the past ten or 12 years the association has been responsible for closing many such outlets. We brought this issue to the fore as far back as 2005 or 2006 - I have the written evidence here - because we knew the difficulties arising from the existing legislation. Our engagement has been with the Minister for the Environment, Community and Local Government, rather than the Minister for Justice and Equality, our argument being that the planning Acts should be used more stringently to prevent that type of thing from happening. It does still happen on occasion, but where we know about it, we go after it.

Deputy Anne Ferris: There is clearly a major loophole in the legislation. I am very concerned about the activities of operators who, despite being banned by the local authority from running gaming machines, have opened up facilities in our town centre and on the outskirts and seem to be getting away with it. That type of thing is supposed to be illegal, never mind the fact that these operators are unlicensed and not paying the fee for the machines. To clarify, my comments are not directed at Mr. Roche. This is completely unacceptable practice.

Mr. John Roche: All I can say is that, technically speaking, the position is that anybody who has an arcade which is licensed under the 1992 Act is obliged to comply with the terms and conditions of that Act. The same applies to anybody who has an arcade operating under the 1956 Act. Regrettably, the position seems to be that it is impossible to comply exactly with either of the two Acts.

Deputy Anne Ferris: The bottom line is that operators are hiding behind the 1992 Act.

Mr. Barry Galvin: There certainly is a grey area in the law. I am satisfied that if there was proper regulatory oversight from today, we could probably stop the gaming machines. We did it in Cork some time ago when there was an individual who had an understanding about whether he was licensed. His machines were seized and that was the end of it. The proposal that has been put to the committee is that there be an interim one-page amendment to address the loophole. It should be the case that if one has an amusement machine, one must have an amusement licence and if one has a gaming machine, one must have a gaming licence. There

is no in-between.

Mr. John Roche: We are absolutely prepared to sit down with officials of the relevant Department to discuss the interim measures that can be introduced in this regard.

Chairman: I have a question for the representatives from the Olympic Entertainment Group. Is their company operating in Ireland at this time?

Mr. Madis Jääger: No.

Chairman: Is it the intention to set up operations here under this legislation?

Mr. Madis Jääger: Our policy is always that we operate only where we have a full licence. In all of the countries in which we operate we are licensed to do so. Moreover, the same applies to our online business; we only operate where we are licensed in order to ensure we are not restricting ourselves in terms of further expansion. There have been possibilities to do business in Ireland, but we have chosen not to do so until the area is fully regulated, licensed and transparent.

Chairman: In other words, when the legislation is updated and so forth, the company will look at Ireland again. Mr. Taylor made the point strongly that the sale of alcohol should be permitted in casinos. Will he comment further on this?

Mr. Geoff Taylor: That is the policy we operate in all of our casinos in the seven jurisdictions. We have not experienced problems in this regard. We have kept in touch with the situation in the United Kingdom and, to the best of our knowledge, there are no major problems there either. As such, we would definitely recommend that the sale of alcohol be permitted.

Mr. Kevin Murphy: Deputy Niall Collins asked me a question about deposit accounts, under head 17, which I forgot to answer. My expectation is that the legislators will need to call in the Central Bank to investigate the basis on which deposit accounts are held for punters. To illustrate the issue, the terms and conditions of one bookmaker state:

Your Account is not a bank account and is therefore not insured, guaranteed, sponsored or otherwise protected by any deposit or banking insurance system or by any other similar insurance system ... As such, we do not provide particular protection for the monies deposited in your Account in the event of our insolvency or a similar event.

There are tens of millions of euro in these accounts. It is an issue to which the Department of Justice and Equality should alert the Central Bank as a matter of urgency.

Chairman: Do any of the other delegates wish to make a final comment?

Mr. Aubrey McCarthy: We have a responsibility to people who suffer from gambling addiction. As such, I hope the 1% allocation will not go into a black hole but will instead be applied for the rehabilitation of the individuals in question.

Chairman: We all acknowledge that this is complex legislation. We have had two full days of hearings and are taking on board all of the issues raised.

Mr. Frank Flannery: We made the point that there was a body of activity we were not willing to discuss here because it is outside our remit. However, the charity lottery side of our organisation would significantly welcome any type of discussion with the Government - any discussion always being better than none - on how this issue could best be resolved to the ben-

efit of everybody concerned.

Chairman: I am sure the people with the power to make decisions are listening to what is going on.

Mr. Frank Flannery: It would be lovely to think so.

Chairman: I hope they are. Do the departmental delegates wish to make a final comment?

Mr. Hugh Boyle: We take the opportunity to acknowledge the quality and detail of the submissions we heard today and last week, which demonstrate the complexity and scale of the task ahead. We have been given a great deal of useful information and many good ideas which we expect will be reflected in the committee's report. I thank everybody for his or her participation.

Chairman: I thank all of the delegates for their input and patience. Some of the delegates from last week are in the Visitors Gallery today. If there is anything that strikes any of the delegates between now and the middle of next month which he or she would like to bring to our attention, I would welcome correspondence to that effect. The interaction with members was very useful, which is why we wanted to keep the initial contributions as short as possible. It is the question and answer format which brings the discussion to life. I thank the committee staff for facilitating this and last week's meeting. They have done fantastic work.

The joint committee adjourned at 4.30 p.m. until 9.30 a.m. on Wednesday, 16 October 2013.