



HOUSE OF COMMONS

Digital, Culture, Media and Sport Committee

Oral evidence: What next for the National Lottery? HC 154

Thursday 30 June 2022

Ordered by the House of Commons to be published on 30 June 2022.

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Members present: Julian Knight (Chair); Kevin Brennan; Clive Efford; Damian Green; Jane Stevenson.

Questions 269 - 322

Witnesses

I: Andrew Rhodes, Chief Executive, Gambling Commission; and John Tanner, Executive Director, Gambling Commission.



Examination of witnesses

Witnesses: Andrew Rhodes and John Tanner.

Chair: This is the Digital, Culture, Media and Sport Select Committee and our latest hearing on what is next for the National Lottery. We are joined today by Andrew Rhodes, the Chief Executive of the Gambling Commission, and John Tanner, the Executive Director of the Gambling Commission. Andrew and John, thank you both for joining us this morning. Before we begin, I would like members to declare their interests.

Kevin Brennan: I have received hospitality from the Betting and Gaming Council, as outlined in my Register of Members' Financial Interests entry.

Chair: I have received hospitality from Ascot Racecourse. That done with, our first questions will come from Kevin Brennan.

Q269 **Kevin Brennan:** Good morning to both our witnesses. This is now a fast-moving situation given yesterday's court ruling. I completely understand that we can't get into matters in court cases that are sub judice, but am I right in saying that yesterday's court ruling on the freeze on the process means that you can now proceed with the awarding and the detail of preparing the Allwyn bid for running the National Lottery?

Andrew Rhodes: First of all, I am glad that the judge handed down the decision yesterday before we appeared here.

Kevin Brennan: For the record, can you explain to the Committee what the decision was?

Andrew Rhodes: Yes, of course. There are two elements of litigation that are ongoing at the moment. The first element is a challenge from four parties to a decision to award the fourth National Lottery licence to Allwyn. The second piece of legislation is the Gambling Commission's application to the High Court to lift the automatic suspension that comes into play as soon as someone brings a challenge of that nature. The judgment that was handed down by Mrs Justice O'Farrell yesterday found in favour of the Gambling Commission and found that we should be allowed to go ahead and enter into the agreement with Allwyn.

On your precise question, the judge has ruled that that is what we should do. There is a hearing tomorrow. We have brought forward a draft order that we would like the judge to issue, which authorises us to commence the implementation and the contracting period with Allwyn. It is quite possible that the other litigants may wish to resist that, so there will be a hearing on that tomorrow. There will also be a hearing on the consequential of the application to lift the court case next week, but the other litigation will be at some later point. It may or may not be expedited, based on Justice O'Farrell's ruling.

Q270 **Kevin Brennan:** In layperson's terms, we have not quite reached the



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stage at which we know for certain that Allwyn will be running the National Lottery in future and that Camelot will not be running the National Lottery in future—or have we reached that stage?

Andrew Rhodes: I agree that it is not quite. The judge has made a very clear ruling. It is very clear in its support of the Gambling Commission's arguments as to why we should proceed. We now need an order to be issued by the court for us to be able to proceed, which then formalises the lifting of the stay. A judgment has been made that we should proceed and Allwyn should be the licensee now, but we have not yet had a court order that allows us to enter into that agreement. As I say, there will be a hearing tomorrow on some of those aspects.

Q271 **Kevin Brennan:** Should we expect clarity on this matter after the hearing tomorrow?

Andrew Rhodes: I think we will have clarity tomorrow on whether the judge has issued an order or whether leave to appeal has been requested by the other litigants. That could be refused, it could be granted, and there are possibly some further stages. We have of course asked for that to be expedited because it is very important—for lots of good reasons that the Committee has talked about before—that we are able to enter into that agreement as soon as we can.

Q272 **Kevin Brennan:** The court case that will be settled some time in future—it could drag on for some considerable time—will be more about whether or not Camelot and any associated parties would have any claim for damages because of the processes that were followed by the Gambling Commission in awarding the new licence; is that correct? Is that what it is about, essentially?

Andrew Rhodes: That is absolutely correct. If we assume that Mrs Justice O'Farrell's judgment of yesterday carries through and we commence the implementation, she has ruled that damages are an adequate remedy in the event that the commission is found to have made a fatal mistake. That is the only course of action available. If the parties continue, that litigation would take place at some future date. We are not clear yet when that would be. It was anticipated with an expedited trial that it could be somewhere between October and January but, again, it will depend now if the court decides that still needs to be expedited or not. That is a matter for the court.

Q273 **Kevin Brennan:** You will be aware that there are press reports that if the court case came out in Camelot's favour damages could amount to as much as £600 million. Is that figure accurate?

Andrew Rhodes: It is almost impossible to calculate an accurate figure because it will depend on lots of different issues. I have seen a number of figures used and, given that we have probably not seen the full extent of the claims the parties will want to bring, it is far too difficult to estimate what that would be. There is nothing that the Gambling Commission can do to prevent someone seeking to bring legal action. The High Court has



agreed very clearly with us that we should be able to proceed, but there is nothing we can do to prevent someone bringing legal action and in itself that can incur damages if we are unsuccessful.

Q274 **Kevin Brennan:** The same reports also suggest that if that were the case and damages were to be awarded, ultimately that money would come out of the good causes that the National Lottery is there to promote. Is that correct?

Andrew Rhodes: That is not clear at this point. The funding for the National Lottery competition is paid for out of the National Lottery Distribution Fund, as is the regulation of the lottery. It will be a matter for the Secretary of State for DCMS to decide where any damages are paid from. One possible fund is the one you described. It is also possible that it could come from somewhere else. It is very clear in the ruling that we received yesterday that the judge finds that the public interest is very significantly in favour of proceeding in the way that we are and any possible damages figure is considerably less than the benefits to good causes of us proceeding.

Q275 **Kevin Brennan:** Wouldn't it be the supreme irony if, after 30 years of running the lottery and making considerable profits from running the lottery, Camelot's final act of its argument that it is in the best interests that it should run the lottery to promote causes was to take £600 million out of those same good causes?

Andrew Rhodes: I don't think that is something I ought to comment on.

Kevin Brennan: I didn't think you would.

Andrew Rhodes: There is nothing we can do to prevent someone wanting to bring action on this, but we have been very clear that we think we have run a very robust competition. We feel we have done the right things and we think that is what will come out in court.

Q276 **Chair:** Is Camelot just in a state of high dudgeon over this? I believe that it is owned by the Ontario Teachers' Pension Plan and I can imagine what the Ontario Teachers' Pension Plan would think of a situation whereby effectively a court action that it is indulging in could basically rob the futures of young people across this country by taking such huge sums from good causes. I imagine the whole industry must be kept awake at night just thinking about it.

Andrew Rhodes: It is an issue for it to consider about what it will do with its legal action. As I said, it is up to it if it wishes to pursue that. We have run the strongest competition for the National Lottery since 1994. That is what we set out to do and that is what we have achieved. There are parties who are unhappy with that decision. We believe that we have the decision right and it is for the courts to take a view on that. As I say, we have had one ruling so far, which is not on the merits of the claims against us, but has argued that it is absolutely in the national interest that we should proceed.



Q277 **Chair:** The transition is an 18-month process, isn't it?

Andrew Rhodes: Yes. There is a minimum implementation period of 19 months, which we hope to commence very soon.

Q278 **Chair:** Does "very soon" mean immediately or after the summer? When is the clock ticking, basically?

Andrew Rhodes: As I said to Mr Brennan, we have applied for an order from the judge to allow us to commence implementation. There is a hearing tomorrow and that will tell us what that hearing has ruled. I can't be precise about exactly when we would start because it is still subject to some further deliberations by the High Court, but clearly we are seeking to do that as soon as possible, for various good reasons.

Q279 **Chair:** Camelot has been criticised following the award of the third licence for failing to live up to impressive promises of its returns for good causes. What due diligence is done on such claims?

Andrew Rhodes: I can talk about how we have assessed the bids in the fourth licence and then I think John will add some detail about how we have been able to score that to make sure that we end up with something that is very reasonable.

Q280 **Chair:** Has Camelot's failure in that area—the return to good causes—been impactful on the decision that has been made?

Andrew Rhodes: For the fourth licence?

Chair: Yes.

Andrew Rhodes: The fourth licence bids have been assessed based on the bids themselves—

Q281 **Chair:** In isolation, without thinking about the fact that in this instance Camelot obviously veered its business model towards those areas that return less to good causes?

Andrew Rhodes: There are two things on that. The first is that we assess the bids in their own right. We have done that for all the bidders and we had four final bidders. That is what we do; we don't bring in other factors that may not be relevant for the bidders.

The construction of the fourth licence is different in how the operator makes money from it. Under the current regime, 95% of profits from sales after deductions for costs go to good causes and 5% go to the operator. Under the fourth licence—I can't say what the percentages are for the bidders because that is part of litigation—the principle is that there is a surplus generated after costs and that surplus is shared between good causes and the operator, which means that it is not incentivised on sales, it is incentivised on driving the best returns for good causes. That then means that it has an incentive to drive the most beneficial gains for good causes, which are largely draw-based gains.



Q282 **Chair:** Is that an example of learning the lessons of the failure of the third licence?

Andrew Rhodes: It is an example of how the third licence needs to evolve. It has lasted for longer than it was intended to. It was intended to last until 2019. The National Lottery Commission, not long before it was subsumed into the Gambling Commission, extended that licence for a further four years, which Parliament has been quite critical of and critical of the terms as well. In the construction of the licence we have tried, as much as anybody humanly can, to future-proof it against developments in technology, society and certainly in making sure that the profit share is determined by benefits to good causes more than anything else.

Q283 **Chair:** Camelot has some brass neck, doesn't it, in coming back to try to challenge these rules when you consider the fact that you have had to construct a licence in a way to stop it navigating around it to boost its own profits rather than returns to good causes?

Andrew Rhodes: As I say, good causes get 95% of the sales. The construct of the third licence was at a time before a number of things had evolved. We have also built into the fourth licence a much greater freedom for the operator to be able to innovate and to anticipate changes. That has been core to that construction. I am not going to comment on Camelot's motivations, but we have taken the lessons from the first three licences and built that into the fourth to make it as robust as we possibly can. We think it will be a much better deal for good causes because of the way it encourages development of the right types of games and the right type of participation.

Q284 **Damian Green:** It is interesting that we are having this discussion and we are having to slightly tiptoe around an existing court case and there are some things you can't say, but almost more disturbing for me was the period leading up to the award, where inevitably some of the applicants would come and seek to talk to members of this Committee. I have vivid memories of one meeting where they said to me, "Basically, we can't tell you anything interesting because the Gambling Commission has said we are not allowed to reveal any information about our bid." Apart from the point of, "Why am I here—what is the point of this meeting?", that struck me as a wider point about the process. If you apply the full rules of commercial confidentiality to this kind of bid, of course there are huge commercial interests involved, but there are also public interests involved that would militate towards greater openness. Do you feel, looking back on the whole process—I appreciate that it is still going on in the courts—that it is too secretive?

Andrew Rhodes: I think it is very difficult to navigate. There is a huge public interest in the National Lottery, quite rightly. It is a huge national asset. We have to maintain commercial confidentiality in assessing the bids. Applicants were able to say they were an applicant, but if they shared confidential information that may prejudice their bid or allow



someone else to take an advantage or to undermine the competition, that would potentially be worse for the outcomes for the National Lottery.

The current construct under the National Lottery Act 1993 in how we conduct this is that we must receive written bids for the competition under Section 5 and assess them, and clearly under the commercial regulations we are expected to maintain confidentiality. I appreciate that it is a very difficult topic. Applicants will want to talk about the benefits of their bids, but it is a matter of public procurement that these things are normally kept confidential. It has been difficult for us to navigate through that because of the level of interest, and it remains so.

John Tanner: Can I answer that? There was a fairly extensive process from March 2018 onwards in engaging with the market and the stakeholders more generally about how the licence was going to be developed and the development of that licence. It was only at the point at which we entered into the competition itself that the requirements of confidentiality, under what was termed the application process agreement, kicked in. There was a fairly extensive engagement with parliamentarians, retail groups and lottery distributors, and indeed the wider lottery market, up to that point.

Q285 **Damian Green:** But when you get to the sharp end it goes into normal commercial confidentiality. In my experience, Whitehall in particular often uses commercial confidentiality as a way of hiding stuff rather than necessarily illuminating, but that is a slightly different and wider subject. For the recommendations that we might make about the future process, would it be possible to run a reasonably fair application system with less confidentiality at the last few stages?

Andrew Rhodes: That is a very good question. It would need to be a different process under the National Lottery Act from the one that exists now. I think Parliament would need to take a view, and may well take a view after we have completed this competition, that possibly it should be run differently. I have been in the commission for just over a year now, John a few years longer than me, and we have heard many views on how the competition should be run. I think it would be a matter for others to decide later if they felt that it could be run differently and should be run differently.

We have run it according to the process that we have, which takes us to this position. I completely understand the frustration that people want to understand what people have bid and why and to express a view on that. The current National Lottery Act requires that the Gambling Commission makes its decision on who should receive the licence, so it is solely for the Gambling Commission, which is how the Act is constructed. Of course that could be changed and constructed differently.

Q286 **Damian Green:** Thank you, that is very interesting. I will move on to something else. We have heard in the course of this inquiry from society lotteries—the smaller lotteries—as well. Having done this competition, do



you think these small society lotteries are a threat to the duty to maximise returns to good causes from the National Lottery?

Andrew Rhodes: Not from anything that we have seen in our research and monitoring. I can flip to the relevant page, but I think that about 90% of lottery participation comes from the National Lottery. We have not seen that figure move particularly. Society lotteries play an important role in fundraising and supporting other causes and we have not seen that present a threat. It is a little harder to measure right now because of the pandemic, which has affected fundraising for a number of organisations in terms of what their contact points will have been, so it is harder for us to get complete data over that period. It is not something that we currently believe is a particular threat, but we continue to monitor it and have done so for some time.

Q287 Damian Green: One of the criticisms we have heard is that the latest statistics on society lotteries have not been published by you and that the decisions on their prizes and so on made by DCMS depend on those statistics. The people who depend on them have not seen them, yet decisions are being made that affect their future. Why haven't they been published?

Andrew Rhodes: I am happy to check specifically and write to the Committee on this. My understanding—I will double-check this—is that the disruption during the pandemic has given us a less reliable baseline as to how society lotteries are actually operating. We obviously saw during the pandemic significant changes in the way people interacted with the National Lottery and we are waiting to see whether those patterns restore to their previous position. We saw enormous movements into the online purchase of lottery tickets because of lockdowns and various other things. That will have affected society lotteries also. That is my understanding, but I will happily write to the Committee with further information on any data and when anything will be shared.

Q288 Damian Green: I am sure that will be very welcome. Do you think somebody, perhaps the Gambling Commission, should have a duty to incubate potential bidders—British-based bidders—for future competitions? We all know the controversies over some of the existing bidders. Would it be better if we had people eager to do it and competent to do it who were British-based?

Andrew Rhodes: We are asked this question quite often. The procurement law requires us to have an open competition. If Parliament wants to change that, it would be a matter for Parliament. There was one British bidder in the final four for this competition, so it is certainly possible for that to happen. Our statutory objectives, which stem from Section 4 of the National Lottery Act, require us to run the lottery, make sure it is promoted, make sure it is run with propriety and players' interests are safeguarded, but then finally to maximise returns to good causes. That is why we run a strong competition. That does not exclude anyone from running it.



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I think it is a difficult question as to whether we should incubate bidders and how that would work with a fair competition. I think that would be a matter for Parliament in procurement law and how that would work. Do you want to add anything, John?

John Tanner: I think it would be very difficult because you would end up with at least a subset of potential applicants and others could argue that they had an advantage because they had a particular relationship with the commission or whoever was doing that incubation. In addition to the point that Andrew made about one of the final four having been a British applicant, another one was in the process of being taken over and would have been under British ownership by the point of taking over the licence had they been successful. If you look at it in those terms, that is ultimately 50% British applicants at the point of handover, had we got to that with either of them.

Andrew Rhodes: The National Lottery licence requires a special purpose entity, which has to be based in the United Kingdom. Even if an operator is from another part of the world, it must operate a company within this country to hold the licence. That is also an important part of the construct.

John Tanner: And the funds must be held in the UK.

Q289 **Clive Efford:** Thanks for coming to give evidence to us today. What is the relationship of Allwyn with Sazka?

John Tanner: Allwyn is a group within what was the Sazka Group. The Sazka Group has recently rebranded and renamed itself as Allwyn.

Q290 **Clive Efford:** The UK-based entity that you just talked about is Allwyn Entertainment UK, but that is entirely owned by Sazka?

John Tanner: Yes. As I say, it is now Allwyn. It is going through a process of a name change and restructuring itself at the moment.

Clive Efford: The entire company or just the UK—

John Tanner: Yes, the entire company.

Q291 **Clive Efford:** The decision to make it your preferred bidder was back in March, when we were obviously well into the threat of action in Ukraine—there was talk of sanctions and things. Did that make you review your decision in any way?

Andrew Rhodes: There are two elements to what we do. The first is a series of fit and proper tests, which are undertaken on every applicant. We go through all of that and when the UK Government—and other Governments, because we assess this in all territories—imposed sanctions because of the Russian invasion of Ukraine, we then assessed the applicants against those sanctions. We undertook detailed work on the Allwyn application, but also on the Camelot application, and because



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Camelot is the holder of the third licence we undertook a number of inquiries into the Ontario Teachers' Pension Plan wider ownership group.

There are requirements under Section 5 of the National Lottery Act as to who receives money from the National Lottery—so, these are beneficiaries. There were no implications for the funding stream for the bids with anything connected to sanctioned entities in the Russian action, but we also looked at the wider ownership groups to make sure that there was nothing there that might pose an issue in being a beneficiary of National Lottery funds and we were very satisfied that there were no issues. John, do you want to add anything to that?

John Tanner: I will add one point of detail to what Andrew said. The additional checks that we conducted in respect to sanctions were against all four applicants, not just the preferred applicant and the reserve applicant, as it turned out to be. As part of that process—as I am sure you are aware, because Karel Komárek has made public statements about this—Sazka declared its involvement in a joint natural gas facility with Gazprom. I don't believe that Gazprom is sanctioned as an entity, but I am in a position to say now that the Sazka Group has been working with the Czech Government on divesting itself of its shareholdings in that joint natural gas storage facility, which we understand is part of Czech critical national infrastructure. We expect an announcement on that in the next few days. It is not relevant to and it is outside of the National Lottery funding streams, as Andrew said, and it is not subject to sanctions.

Q292 **Clive Efford:** No, it is not subject to sanctions, but obviously that is an ongoing situation. We have had further individuals sanctioned this week. In your due diligence, did you talk to Government Departments about Karel Komárek and check whether there was any possibility that he may be sanctioned at some time in the future?

Andrew Rhodes: We have undertaken fit and proper checks and we looked at that as we went through the wider sanctions issues. Karel Komárek is a Czech national. He has spoken very publicly about his experiences and what he described as Soviet occupation while he was growing up. Our fit and proper checks are permanent. They are permanent tests under our statutory objectives. If at any time anyone became sanctioned, that would potentially render them no longer fit and proper and we would have to take the required action. We are not aware of any impending issues, but obviously we keep the sanctions regime under review.

Q293 **Clive Efford:** Yes, but the sanctions regime was progressing and developing at that time. Did that lead you to have any discussions with Government Departments about your preferred bidder—or any of the other bidders, for that matter?

Andrew Rhodes: I won't disclose here what other measures we took for the assessment of confidential information, but we did undertake further



checks just to identify if there were any issues that were not already disclosed through our fit and proper checks that we should be aware of, and none were drawn to our attention. We undertake further vetting procedures once we have a confirmed preferred applicant that we enter into the licence with and that is a standard part of the lottery licence process.

Q294 Clive Efford: On this process of separating off Sazka from the Kremlin—because Gazprom is owned by the Kremlin—you announced that Allwyn was your preferred bidder back in March, but we are now in June, just about to go into July. What guarantees do we have that that process will be completed and that once it has the National Lottery it just carries on business as usual?

Andrew Rhodes: As John just said, we are expecting an announcement in the next few days. That facility is held as a joint venture to specifically prevent Russian ownership or outright ownership of Czech national infrastructure. We have understood for a while that the Czech Government were in discussions to look at nationalising that particular facility because of its importance and in the light of what has happened with Russian aggression in Ukraine. We know that the Sazka Group, or rather now the Allwyn Group, wants to remove itself from that. It has taken steps to remove itself from anything else connected to Russian business. As I say, we have applied the exact same tests and questions to the existing licence holder's interests as well.

Q295 Clive Efford: Are you satisfied that that will happen? It is not just that gas storage facility, is it? Mr Komárek has numerous business interests in various European countries, including Russia.

John Tanner: There is one other facility in Russia that has already been divested, which was an oil terminal that had never operated. That has already been divested of by the company. We are talking about a facility in the Czech Republic that we have been engaged with Allwyn on after it declared this voluntarily—because, as I say, it was not subject to sanctions—since before the award. The position is that we expect an announcement in the next few days to confirm that it has fully disengaged from that, in co-operation with the Czech Government.

Q296 Clive Efford: On GambleAware's request for donations from the National Lottery operator going forward, was gambling harm part of the assessment of each of the bids? Did the assessment process feature a focus on gambling harm, whether it was scratch cards, the protection of young people or the assessment of the gambling harm going forward? Did that form part of the assessment process for each of the bids?

Andrew Rhodes: Absolutely it did. I mentioned earlier on our statutory objectives under Section 4 of the National Lottery Act. As I said, we are required to run and promote the lottery with due propriety. Secondly, we are required to then ensure the interests of players, including player protection. Only subject to those objectives being satisfied do we then



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look at the maximisation for good causes. I am sure John will explain the different elements of what we assess, but those were player protection and elements around safe gambling and how that would be done.

I mentioned earlier, in relation to the Chair's question about profit, that the mechanism for rewarding the operator under the fourth licence is that it gets a share of the surplus. The surplus is driven more strongly by a focus on draw-based games over interactive instant wins and scratch cards, so that is also a feature of the fourth licence. John, can you explain?

John Tanner: I will point the Committee to condition 8 of the fourth licence, which is what the applicants have applied against and forms part of the invitation to apply. Condition 8.1 says, "The licensee must do everything it can to ensure that the interests of every participant in respect of playing with, engaging with, or being exposed to, the National Lottery and every game are protected". That as a definition is wider than the definition that exists in the third licence, because it takes it beyond player protection to all of those who might be impacted.

Below that within condition 8 there is a non-exhaustive list of the matters that the operator must have regard to, and that includes preventing under-age play, not encouraging excessive play, restricting use of credit, price of tickets and so on. There was a very extensive set of requirements, including the provision of a participant protection strategy, as part of the application.

As Andrew said, it formed a fundamental part of the application and the evaluation process. If the Committee bears with me, I will turn to how the evaluation process operated, to build out a little bit on what Andrew said. At the final phase 2 of the application there were three pass/fail elements that the applicant had to satisfy the commission on before its business plan would even be evaluated. Those were propriety, which touches again on your previous question; protecting participants' interests, which is both player protection, as I have outlined in condition 8, but also the provisions for the protection of players' wider interests through the establishment of a new trust; and then financial strength, which is effectively testing the resilience of the operator to be able to operate over the 10 years of the licence. Unless it had passed all those things and had demonstrated a satisfactory participant protection strategy, it would not then pass to the evaluation stage for the remainder of the business plan.

If we set aside the licensee proportion of surplus and turn to the business plan, that included also its branding, portfolio and channels, as well as operations and transition. Within all those elements the evaluators will have looked at elements of player protection over and above what was looked at in the participant protection overall threshold test for pass and fail. For instance, was there anything in the portfolio or the channels that, notwithstanding what it had said in the participant protection strategy or



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otherwise, might create a risk of harm? It was fundamentally at the heart of how we conducted evaluation, as it must be; otherwise, we are in breach of our statutory duties under the Act.

Q297 **Clive Efford:** We have been asked by GambleAware about lottery advertising and whether its branding or a warning about the dangers of gambling should be included in all advertising. Is that part of your intention?

John Tanner: This is an outcomes-based licence. It is not a prescriptive licence, so if you look in the licence you will not find things that say, "The operator must do X" but, as I said, the operator has to do everything it can to ensure that the interests of every participant in respect of playing, engaging with or being exposed to the National Lottery and every game are protected, and that includes protection against harm. How the operator then does that under the outcomes-based licence is ultimately a matter for the operator.

Q298 **Clive Efford:** What if you are dissatisfied with the outcomes?

John Tanner: If we are dissatisfied and if the commission is not satisfied that the operator is doing everything that it can, then it is a matter for enforcement.

Q299 **Jane Stevenson:** I want to stay on gambling harm. You said the licence is not prescriptive, but do you think you can maintain standards without it being more prescriptive?

John Tanner: An outcomes-based licence is no different to many other licences and it is in line with regulatory best practice. There are extensive provisions in the licence for the operator to be required to provide information and data to the commission in respect of all aspects of its performance. I am satisfied that the construct we have there both does reflect best practice and is capable of being enforced against in the event of the operator not being able to demonstrate that it is protecting the matters that must be protected under the licence.

Q300 **Jane Stevenson:** From 2010 to 2020 we saw the instant-win and scratch-card element of the third licence increased massively, while the draw games were quite stagnant. At what point in that period did you have concerns?

John Tanner: I am going to turn to Andrew on this one, because I ran the competition for the fourth licence rather than regulated the third.

Andrew Rhodes: I was not at the commission during that period, so what I can tell you is that currently, or certainly for the 2020-21 year, interaction with instant wins and scratch cards represent 44% of sales and 21% of returns to good causes. That is fundamental in the construction of the fourth licence, which is changing the incentive mechanism.



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The health survey of 2018, which I broadly considered the most definitive survey in terms of the risks around some of these products, has said that the National Lottery, including some of these products, is a lower risk, but we have also done quite a lot of work. In 2020 we did an assessment of interactive instant wins in terms of their risks around gambling harm and that led to the suspension of £10 interactive instant wins. That has also happened on scratch cards, because we found there was a much closer association with the risk of gambling harm.

It will vary, it will be very personal, it will depend on individuals and there is no straight line that says, "This product will definitely cause this reaction in someone," but it is about an elevated level of risk. That was removed—I think it might be in Schedule 6, but I could be wrong on that—in terms of that particular element of the licence was changed to permanently remove those levels. That is something that we have also looked at in all the bids for the fourth licence in terms of the bidders' expected distribution of the types of gains and their reliance on them. Again, the mechanism incentivises them much more towards draw-based games, which have the lowest association with potential for risk of gambling harm, but also have the highest returns to good causes, which of course is the fundamental third pillar of our statutory responsibilities for the lottery.

Q301 Jane Stevenson: I note that Allwyn has stated it would want to reverse the slide into scratch cards and instant win and try to claw that back. When the Government did raise the minimum playing age in April 2021 to 18, there were still accounts from 16 and 17 year-olds through which they could gamble up to £350 a week. Could you not have done more to regulate that? Did you have concerns about that? Did you raise them?

Andrew Rhodes: One of the things that we have been using in recent years, and certainly through 2020 and 2021, has been verification of player protection at retail. Clearly, account-based play online is much easier for the operator to keep controls in place and to immediately take steps if anyone appears to be exhibiting any—

Q302 Jane Stevenson: Forgive me for interrupting. That loophole remained—that accounts that were opened before the change in law were still operating for 16 and 17 year-olds. Should that have been dealt with more quickly?

John Tanner: You raise the point about £350. I cannot answer the question on whether a loophole existed after the limit. What I can say is that data that we obtain from Camelot routinely shows that less than 0.01% of players hit that £350 limit. Players can reduce that and other limits within their online account while the current operator also employs a range of online player protection tools, including a system that identifies at-risk and problem play. If players are identified as being at risk through that process by the operator, there is then a series of interventions that take place, ultimately leading to the suspension of



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accounts if play does not return to healthy levels. Also the weekly maximum online wallet load limit for those players is reduced to £100.

Q303 Jane Stevenson: You said the players themselves can regulate the spending limit, but that does not seem a particularly good mechanism. If someone has an issue, I am not sure they are capable of being sensible at that point. Do you think you did enough over the previous licence period to assess online harms? How are you going to make that better in the fourth licence period?

Andrew Rhodes: I think John has already set out the various safeguards in the fourth licence and how central player protection is to that. The National Lottery is a national institution. It needs to be protected and maintained and not do things that would harm that reputation, and player protection is a core part of that.

Clearly, during the life of the third licence things have evolved. Probably at the start when the licence was let, I think Friends Reunited was the biggest online platform, if we cast our minds back, and a lot has happened since then. Clearly, the movement to online has brought challenges.

One of the things that was clear from the bids from the applicants is how they also intended to use account-based play to make sure that play was appropriate. They can of course intervene if they think they see signs of harm, and to John's earlier point, they must do all that they can. That is exactly what I would expect a responsible operator to do if someone is showing evidence of excessive play.

I am not saying it is the case in terms of the loophole. I apologise, I am not close enough in terms of how that operated since I arrived at the commission. I will need to look at that, but on National Lottery accounts the other thing that the operator needs to find a way to cater for are syndicates, where you will see very unusual spend patterns for an individual, but it is not the individual who is playing the lottery to that extent. That is something that operators must wrestle with and make sure that they understand their players and the behaviours that they see through that.

Also for retail, which is a harder area for operators, because it is hard to protect people if you do not know who they are, the move far more towards account-based play and using mobile devices for purchase and things like that will help the operator to ensure that people are staying within reasonable norms of behaviour and it gives it an opportunity to intervene.

Through 2020 and 2021 we have also had with Camelot mystery shopping in retail. There was mandatory training—this will be true of the fourth licence as well—for all retail outlets in how to spot problem behaviour, how to intervene and how to stop selling things to people. It is challenging because there are a lot more lottery outlets in any given



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town, so that is why the training was across them and that is why we do the mystery shopping as well, to ensure that sensible steps are being taken. That will all be a factor in the fourth licence as well.

Q304 Jane Stevenson: Finally, should Allwyn be the next operator, how long will you give it to reverse the slide towards instant gambling? What period do you think is reasonable? Two years?

Andrew Rhodes: I am not going to comment on movement in types of products. That takes me into some of the confidential parts of the bid. I appreciate that comment might have been made in public. It will be from the implementation of its bid, so it will be a new set of infrastructure and it will have its new set of products, if that is what it will be delivering, so that will then begin from the beginning of the fourth licence. That is what it would do, based on its bid.

Q305 Chair: To cover some other areas with you while you are here, we have the gambling White Paper due to be published very soon. Rumours are it could be just days away. One idea that has surfaced in recent times in relation to the White Paper relates to affordability checks—for example, consumers potentially having to submit bank statements or tax returns to bet as little as £100 a month. In November 2020 you did a consultation on the effects of that; why didn't you release that consultation?

Andrew Rhodes: That would be a little bit before my time. We have recently released the results of consultation on customer interaction. We have agreed with DCMS that the issues around affordability checks are something for the White Paper. We originally anticipated that the White Paper would be a little earlier than it has been, so we have wrapped our work into the White Paper. That is my understanding. We have, however, published recent guidance that takes effect in September around customer interaction, which is not quite the same, but involves the operators making sure that their customers are intervened with if they are showing any signs of harm, particularly in terms of the frequency and times of play.

It is not always the amount that people gamble with, but sometimes the frequency and pattern of play, particularly in the small hours of the morning and extended periods of play without breaks. That is something that we would be concerned about and that is in the guidance. We expect statements on what the Government would like to see on affordability checks, if that is part of the White Paper, to be covered by the White Paper, and that is what we have agreed to do.

Q306 Chair: To clarify, your consultation that took place in November 2020 was supplied to DCMS and it has informed the White Paper—is that correct?

Andrew Rhodes: That is my understanding. We have submitted our own advice on the White Paper to DCMS, which will be published after the White Paper is published.



Q307 **Chair:** You have no firm plans to consult again on affordability?

Andrew Rhodes: If affordability checks are part of the White Paper and that is an action given to the commission, then there would be a consultation on what form those should take and what levels they should be at.

Q308 **Chair:** It does seem to be very strange that you should announce a consultation in November 2020 on such an important area, which frankly does need scrutiny more widely than just DCMS and the Department, and that was not released publicly. I thought that would be of interest to parliamentarians, rather than for it just to be handed covertly to officials at DCMS. That seems a very strange approach and lacking in transparency, frankly.

Andrew Rhodes: I was not at the commission at the time, so I am very happy to look at what the reasoning was for it not being published. My understanding since I have joined the commission is that we have fed into the White Paper that affordability checks will be considered as part of the White Paper's recommendations, rather than have essentially two bites at that.

Q309 **Chair:** Yes, but do you agree, Andrew—I do take the point that it was before your time, but you are now in charge of the organisation—that this feeds into a general feeling that the commission is not public-facing enough, that we do not get enough, either as policymakers or as the general public, in terms of the work that you do? This is important work. Affordability and affordability checks are of great public interest. It seems to be very strange that this has not been made publicly available. I do not know what is so secret about it that it needs to be handed over covertly to DCMS and then inform the White Paper. We have a right to see it as well and so does the general public, because we pay for you.

Andrew Rhodes: I take your point entirely. As I said, I am not familiar with the reason why it was not published at the time it was completed. It predates me.

Chair: Would Mr Tanner be able to comment?

John Tanner: It was not something I am at all familiar with.

Andrew Rhodes: I am very happy to look at that and write to you on it.

In terms of transparency, there are a couple of things I would say there. We consulted on customer interaction and we have published that. That was publicised quite widely in most recent weeks. We publicise all our activity in relation to action taken against operators, including on the National Lottery. Every quarter we publish official statistics on the prevalence of and participation in gambling. We recently published our pilot work on a new participation and prevalence study, which drew criticism from parts of the industry and drew praise from others. We felt it was the right thing to do to publish it. Some wanted us not to because



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it is not yet at the standard for official statistics, but we felt it was better to publish what we had done so far and we had committed to do so.

Q310 **Chair:** Let us look at the National Strategy to Reduce Gambling Harms. I think you have overseen £40 million in voluntary settlements in that respect to support that national strategy. What assessments do you make of the efficacy of that £40 million investment and how public is that?

Andrew Rhodes: It is all published on our website—any regulatory settlement that we have awarded. They are awarded typically to charities, research organisations and those dealing with the effects related to gambling harm.

Q311 **Chair:** The information is publicly available as to who you have given the money to, but what is not publicly available is exactly what metrics you have decided to use to see if that money has been used wisely. That is not publicly available.

Andrew Rhodes: No. We have published who it has gone to, but not an evaluation.

Q312 **Chair:** So £40 million just goes out the door. You give a list on your website of where that money goes to and we have no idea exactly what metrics you are going to use to see that that £40 million is used wisely.

Andrew Rhodes: When we make an award of a regulatory settlement, someone will apply for it. It must be a suitable body to apply for it and there must be a good business case that we believe will deliver benefit. I think this is an area that again is quite likely touched upon. It has certainly been discussed in relation to the White Paper in terms of how the funding of treatment and gambling harm research should be undertaken and I would expect it to be dealt with there.

It is a difficult area. As a regulator, it is a difficult space to be in when you are deciding what treatment programmes should take place. We have worked very extensively with the Department for Health and Social Care in recent years, encouraging a public health approach to be adopted towards gambling and gambling harms. We have had some good success there and that is something we know the Department for Health and Social Care want to adopt. We think that is a good way forward. We find ourselves in a difficult space trying to bridge that when our core skill is as a regulator.

Q313 **Chair:** What metrics do you use to decide whether the National Strategy to Reduce Gambling Harms works? What metrics internally do you use?

Andrew Rhodes: We look at quarterly data around participation and prevalence around gambling. Our work around the National Strategy to Reduce Gambling Harms has highlighted that research is probably not robust enough. It is telling us what the trends are, but it is not telling us enough about the wider impacts of them. We think there is under-reporting. It is not necessarily that we think that the quantum is worse



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than it was, but the strategy and the work that we have done suggests that there is underreporting here. That is why we have launched the pilot and that is why we have made a financial commitment over the next multiple years in our budget to carry on that work, because we think understanding the level of harms and the wider effects is very important.

Q314 **Chair:** Forgive me, but that seems very slipshod, the idea of this money going out the door and effectively all you do is list the participants in the scheme—the people who are getting the money. I take your point that you go through a rigorous programme—I would not suggest that you do not—to make those assessments, but then you do not seem to have any quantifiable metrics to understand exactly what effect that has had in the wider public. All you have, seemingly, are generalised statistics that would be available anywhere. There is nothing there to say that what you are doing as an organisation has made a blind bit of difference to the public good. There is nothing you can point to.

Andrew Rhodes: The headline rates of gambling harm as measured as an official statistic have been falling. That is a good thing. We are open that we think there is more work to be done to understand the wider effects around gambling harm. We have taken very robust action in relation to several operators to drive up standards. Standards are undoubtedly rising, but there is more that we should do. I am happy to say I am not personally aware of the exact metrics that are used today to measure the regulatory settlements that we have given.

Q315 **Chair:** Are there any metrics?

Andrew Rhodes: I would need to write to you on exactly how we measure them.

Q316 **Chair:** I am sorry, I am a little bit bemused by that fact. You can't tell me whether there are any metrics whatsoever in the organisation to say whether the £40 million that you spend has done any good whatsoever, apart from a general public health figure—is that correct?

Andrew Rhodes: I know that we have funded several programmes that have done very good work. I am not personally able to tell you today exactly how that has been measured, but I am very happy to write to the Committee with the detail that we have and how those are being used.

Q317 **Chair:** Do you have any measures or metrics in place to decide exactly how you are trusted by your licensees, for instance? Is there an overarching survey of that?

Andrew Rhodes: Not presently, no. There isn't.

Q318 **Chair:** What do you do? There seems to be money going out the door and no accountability for that money, apart from when you make the award. This money just splashes out there and you have no idea in terms of what this impacts with the licensees. I am struggling to think precisely as an organisation how you are doing your job, because these seem to be



key measures and indicators of whether you are successful.

Andrew Rhodes: We licence 2,600 operators within this country. Four of them will shortly make up 50% of the gross gambling yield. We have dedicated people who look at each operator. We undertake compliance assessments based on risk in terms of intelligence, risks of the operator and previous track record. We have removed the licences of a number of operators. I am very happy to share that information afterwards—it is all on our website—who have not met those standards. Several others have surrendered their licence after our intervention.

We are currently in casework with a reasonably large number of operators that are not meeting the standard. The typical largest failures we see are on social responsibility, which are essentially gambling harms, and also on anti-money laundering, so keeping crime out of gambling. Those are the two areas that we see the greatest issue with and I think they make up well over 50% of the issues that we see. We regulate that industry.

In terms of our work on gambling harms, we have talked about the Strategy to Reduce Gambling Harms, but a huge part of our work in the last few years has been getting others in the Government who are better equipped to take a public health approach to do so. The Department for Health and Social Care has agreed to do that and has fed into the gambling White Paper in relation to that.

We fine the industry where we believe we need to. That money goes into the central fund of the Treasury. We have fined over £100 million in recent years. You have talked about regulatory settlements; they only typically exist effectively in an early guilty plea by the operator, where it has accepted the breaches and has a credible plan to put those right. If it does not adhere to that credible plan, it will then receive enforcement action, as a number of them have done.

Q319 **Chair:** You have an enforcement side, but there is also the side of distribution. Do you agree that there needs to be a greater accountability or at least a greater oversight on your part of the effects that you are having in the industry, both with licensees but also in terms of preventing harm? Do you agree that you need to up your game in those two areas?

Andrew Rhodes: I have already given you the example of the revised prevalence and participation research. We think there is underreporting in terms of gambling harm. We think there is a risk that some, particularly in the industry, might be complacent. I have seen many quote a 0.3% figure. That anyway would translate to hundreds of thousands of people. We think there is more that we need to do in this area. We have been very open about that. We have invested heavily in that. I do not think anybody would ever say they had arrived at the destination. There is more that we need to do.

Chair: I am going to bring Kevin Brennan in at this point because we are



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running short of time.

Q320 **Kevin Brennan:** Out of curiosity, are you allowed personally to gamble in your position?

Andrew Rhodes: I get asked this a lot. I cannot play the National Lottery, though I did until I took on this job. I am allowed to gamble online. If I win big then I need to declare that, but I cannot go into land-based establishments and gamble. That is under the rules that we have in the commission.

John Tanner: I am not allowed to play the National Lottery. I can honestly say I have never laid a bet in my life, other than buying a National Lottery ticket.

Q321 **Kevin Brennan:** Do you sometimes have a little bet?

Andrew Rhodes: Yes, I do. I have done for a number of years. Obviously I have a different lens. I do it with my own money, just to be clear—

Q322 **Chair:** Not the £40 million?

Andrew Rhodes: Not £40 million either. I have not won big, just to clarify all those things, at any time. The house usually wins. I do it also to see what operators are doing and how they present themselves and how they explain their offers. I think it is important that I have some understanding of that. I will never describe myself as being expert in all those things because that would be quite hard to achieve, but I think it is important that I have a reasonable understanding. Of course, I do speak to operators and others who gamble and those who have been harmed by gambling to get as wide a perspective as I can.

Chair: That ends our session. Thank you very much, Andrew Rhodes and John Tanner.