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Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 8 September 2015

Session 4

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HEALTH AND SPORT COMMITTEE
23rd Meeting 2015, Session 4

CONVENER

Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)
*Rhoda Grant (Highlands and Islands) (Lab)
*Colin Keir (Edinburgh Western) (SNP)
*Richard Lyle (Central Scotland) (SNP)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Nanette Milne (North East Scotland) (Con)
*Dennis Robertson (Aberdeenshire West) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Charlie Cunningham-Reid (JTI UK)
Katherine Devlin (Electronic Cigarette Industry Trade Association)
Mark Feeney (Community Pharmacy Scotland)
John Lee (Scottish Grocers Federation)
Guy Parker (Advertising Standards Authority)
Alan Teader (Vaporized)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Health and Sport Committee

Tuesday 8 September 2015

[The Convener opened the meeting at 09:45]

Interests

The Deputy Convener (Bob Doris): Good morning and welcome to the 23rd meeting in 2015 of the Health and Sport Committee. I ask everyone in the room to switch off their mobile phones, as they can interfere with the sound system. As you can see, some members are using tablets instead of hard copies of papers. We have received apologies from our convener Duncan McNeil, which means that I, as the committee's deputy convener, will chair today's meeting.

Agenda item 1 is a declaration of interests. At this point, I welcome Malcolm Chisholm to the committee—it is great to have him here—and put on record our thanks to Richard Simpson, who I believe has run up a total of 10 years of working on health in the Scottish Parliament.

I invite Malcolm Chisholm to declare any interests that might be relevant to the committee's work.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I usually declare my membership of the trade unions the Educational Institute of Scotland and Unison.

The Deputy Convener: Thank you very much.

Health (Tobacco, Nicotine etc and Care) (Scotland) Bill: Stage 1

09:46

The Deputy Convener: Agenda item 2 is consideration of the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. First of all, members might be aware that youth events were held in the Parliament and Inverclyde using video blogging, with young people recording their views on restricting the sales of e-cigarettes and banning smoking in parts of hospital grounds. Having watched the video, I think that we should thank all those who provided their views in such an impressive way.

Moving on to our evidence session, I would normally introduce our witnesses, but given that this is a round-table session, I thought that everyone, including committee members, could introduce themselves. I am deputy convener of the Health and Sport Committee.

John Lee (Scottish Grocers Federation): I am head of public affairs for the Scottish Grocers Federation, which is the national trade association for Scotland's independent convenience store sector.

Rhoda Grant (Highlands and Islands) (Lab): I am a Highlands and Islands MSP.

Katherine Devlin (Electronic Cigarette Industry Trade Association): I am president of the Electronic Cigarette Industry Trade Association.

Dennis Robertson (Aberdeenshire West) (SNP): I am the MSP for Aberdeenshire West.

Colin Keir (Edinburgh Western) (SNP): I am the MSP for Edinburgh Western.

Guy Parker (Advertising Standards Authority): I am chief executive of the Advertising Standards Authority.

Nanette Milne (North East Scotland) (Con): I am a North East Scotland MSP.

Charlie Cunningham-Reid (JTI UK): I am head of corporate affairs for JTI—or Japan Tobacco International—UK, which last November acquired the company Zandera and, with that, one of the United Kingdom's largest e-cigarette brands, E-Lites.

Richard Lyle (Central Scotland) (SNP): I am a Central Scotland MSP.

Alan Teader (Vaporized): I am head of marketing and communications at Vaporized, which is one of Scotland's largest e-cig retailers.

Malcolm Chisholm: I am the MSP for Edinburgh Northern and Leith.

Mark Feeney (Community Pharmacy Scotland): I am policy and development pharmacist at Community Pharmacy Scotland, and am also a practising community pharmacist.

Mike MacKenzie (Highlands and Islands) (SNP): I am a Highlands and Islands MSP.

The Deputy Convener: Thank you. I welcome all our witnesses to the meeting. As there will be no opening statements, we will move straight to questions. Malcolm Chisholm will be first.

Malcolm Chisholm: Thank you very much, convener. First of all, I must apologise because I will have to go out for a short time in the middle of the meeting, so I thank Bob Doris for letting me in first.

I want to start with a specific question. One of the proposals in the bill is that e-cigarette retailers will need to be on the tobacco retailers register. However, that proposal has been objected to by, among others, Community Pharmacy Scotland, which says:

"The stigma of having to be on the tobacco retailers' register will likely mean that many community pharmacies will choose not to supply"

nicotine vapour products.

I am quite interested in the general role of community pharmacies in relation to this, but my specific question is whether that problem would be avoided if there were a separate register for people who dispense e-cigarettes. Would that get round the problem, or would Community Pharmacy Scotland still object? I would also welcome others' views on that question.

Mark Feeney: The first thing to say is that we have not given any specific guidance on the products and it is up to our members to use their professional judgment. The available evidence means that one could make a case to supply them or not to supply them. There is different evidence from different reputable sources.

As we stated in our evidence, the stigma of being linked to a tobacco register would mean that many of our members would choose not to supply the products because tobacco in general is incompatible with health care services.

There is a need for some form of controls, but community pharmacies are already regulated by the General Pharmaceutical Council according to strict standards, as are pharmacists and pharmacy technicians. It would be up to the individual members to decide whether to register on a separate register for NVPs, but it would certainly be a positive step away from the tobacco register.

The Deputy Convener: I am going to let other witnesses comment before I let Mr Chisholm in with a supplementary question. If witnesses wish to speak, they should try to catch my eye, but do not do so with subtlety because I am not that good at that sort of thing.

Katherine Devlin: Thank you for the question, Mr Chisholm. It is a concern that is shared by the industry. The electronic cigarette industry is almost 95 per cent independent of the tobacco industry and there is quite a passionate devotion to keeping it that way. Most electronic cigarette retailers are very keen not to be viewed as promoting tobacco products or as having anything to do with the tobacco industry.

We agree with the principle of a register, because we think that it will help with enforcement. However, we think that the name of the register is important. There are a number of age-restricted products for which it might be useful for enforcement officers if there were a register for traders in those things, including tobacco, electronic cigarettes, glues, knives, scissors, alcohol and anything else that is age-restricted. We wonder whether an option might be to consider having a register for all age-restricted products, which could be named as such in a very non-stigmatising way so that our friends in the pharmacies would not have any problem and it would free up the opportunity for them to sell electronic cigarettes.

I have concerns about Scottish Government resourcing if it were to set up separate registers. I would hope that costs could be mitigated by taking an intelligent approach to renaming the current administrative system, rather than creating two systems.

Alan Teader: I want to echo Katherine Devlin's comment. I agree that there needs to be a register. At the moment, specifically with electronic cigarette retailers, there is a divide. There is a lot of self-regulation in the industry—while some companies abide by that self-regulation, others do not.

A register is definitely needed, but I agree with Katherine Devlin that we need to step away from the association with tobacco products. Electronic cigarettes do not contain any tobacco and making people aware of that is something that we struggle with daily. Putting electronic cigarette retailers on a list that is called a tobacco retailers list would go against a lot of our hard work.

John Lee: Convenience store retailers would prefer not to have a separate register. Our members have whole-heartedly embraced the tobacco retail register, which has full compliance, is cost free and is not onerous to access and register with. We would prefer not to have a

separate register with which our members would have to take time to comply. In addition, we would prefer not to see a proliferation of registers relating to age-restricted products. It is easy to forget how many age-restricted products there are—for example, liqueur chocolates are age restricted, as are lottery tickets, fireworks and certain DVDs. For the sake of compliance, we would prefer a single register for tobacco and NVPs.

Charlie Cunningham-Reid: JTI would fully support a register for e-cigarette retailers. It is important to note that e-cigarettes are now available in thousands of retail outlets across the country, including grocers—which are represented by John Lee—and newsagents.

I reiterate that from a retailer's perspective there needs to be some simplicity; if there are many different registers, the situation will become very complex and burdensome.

The Deputy Convener: If no one else wishes to comment, I will go to Katherine Devlin and Malcolm Chisholm after that.

Katherine Devlin: I just want to clarify that we are not suggesting that there should be multiple registers, because that would be an administrative nightmare for all the retailers. We would like the current register to be renamed, which could be a very simple extension to the plug-in that the retailers are already doing. That would be the most cost-effective and efficient solution for both Government enforcement and retailers.

Malcolm Chisholm: I do not know whether I have a supplementary question on that particular issue, because amid the differences there is some agreement that we need to change the bill in some way to deal with concerns.

I have another question that is relevant to our general discussions on the bill and with which Community Pharmacy Scotland might be able to help. Last week, Professor Linda Bauld indicated that devices that contain more than 20mg/ml of nicotine would be covered as medicinal products under the European tobacco products directive, which might be relevant to the regulation as soon as it applies. Does that level of nicotine cover a lot of e-cigarettes or just a very small number? Perhaps Community Pharmacy Scotland or one of the industry representatives can enlighten me.

Katherine Devlin: I will have a go. At the moment—before the TPD's implementation—our data show that about a third of the market products have a nicotine concentration above 20mg/ml, or 2 per cent. When the restriction comes in, no one will seek a medicinal licence for a product over 20mg/ml: they will instead cease selling such products, which means that a third of the market will potentially not be properly catered for. The directive is currently being challenged through the courts.

Members need not have an immediate concern about medicinal products suddenly appearing on the market, because the licensing process is too onerous and no one will do it. It will just mean that every product has a concentration below 2 per cent.

Mark Feeney: A number of CPS's members have worked with manufacturers on products that have a concentration over 20mg/ml. We share the concern that it is unlikely that a product will come to licence soon because of the onerous aspects of the process. There should be a role for a licensed product, particularly given the emerging evidence from the national health service's smoking cessation service. We would welcome licensed medicinal products to the market as soon as is practicably possible.

Mike MacKenzie: I have a very brief question, which might promote our understanding of the issue. You mentioned the figure of 20mg/ml. Can anyone shed any light on how that ratio was chosen? Has the figure been plucked out of thin air? Is there evidence to support the choice of that figure?

The Deputy Convener: Before Mike MacKenzie asked his question, Katherine Devlin indicated that she wanted to comment. Do you still want to comment on that, Katherine?

Katherine Devlin: I can certainly answer that question. From what we saw of the TPD process, the original figure was 4mg/ml, which is 0.4 per cent, which had been derived—mathematically inaccurately—from nicotine replacement therapy concentrations. There was a significant lack of understanding in the European Union institutions about how nicotine concentrations work and how nicotine in electronic cigarettes is delivered to the user. By the end of the agreed process, the level was still at 4mg/ml, but in the last three weeks of trialogue, the entire article was rewritten behind closed doors and was considerably extended with no process whatsoever. It appears that the figure of 20 mg/ml was plucked from the air during that last-minute process—if you can call it a process. It does not bear much resemblance to any kind of evidence base that would support the level being necessary or desirable.

10:00

Mike MacKenzie: Would you mind sharing with the committee some written evidence specifically on that?

Katherine Devlin: I will certainly try to put some evidence together for you.

The Deputy Convener: That is helpful. Mark Feeney did not indicate that he wanted to answer, but I saw him nodding his head there. Do you want to add anything?

Mark Feeney: From speaking to my research colleagues, I understand that there is no evidence base for the 20 mg/ml figure.

The Deputy Convener: Okay. Thank you for putting that on the record.

Rhoda Grant: What is so onerous about the process of getting e-cigarettes registered as medical devices? I understand that there is such a product registered as a medical device, but it has not been brought to market. It seems to me that if these products were registered as medical devices, that would provide a degree of reassurance as to what was in them, their safety and the like. I think that that is one the problems that people have with them. We think that anything that stops people smoking is good, but because we do not really know what is in e-cigarettes, what chemicals are used and what their impact is, people are following the precautionary principle. What are the issues with registration?

Mark Feeney: I am afraid that I am no expert in how to get a product licensed through the Medicines and Healthcare products Regulatory Agency or the European Medicines Agency. I understand that it is very expensive and that the MHRA would put tight restrictions on a product—it would be restrictive to most companies to bring a product to market.

Charlie Cunningham-Reid: I reiterate what Mark Feeney said. JTI is relatively new to e-cigarettes, but we are looking to develop many different products in the future. My understanding is that to get a product MHRA registered costs many millions of dollars and that it potentially takes many years to get the evidence that the health claims that are made are valid. There will probably not be a huge number of products available as MHRA-registered products in the near future.

Katherine Devlin: I will give the committee, with the product that I have here, which is the one that I use—although obviously I will not use it here—an idea of why medicine licensing is not the way forward. There are eight different manufacturers involved in its production. We have discussed with the MHRA how it would license products such as this, which are the type of products that vapers and smokers need to make the switch fully from smoking. The cigalike products that could be broken down enough and reformulated to get a medicines licence are not effective and are not attractive enough to smokers to enable significant numbers to make the switch fully away from smoking, which is the public health goal.

It is also important to remember what the Public Health England report suggested about licensed medicinal products. No matter what kind of relaxations of licence restrictions have been given to NRT products—they were put on the general sales list and it became much easier to license tobacco-harm reduction products including patches, gums and so on—they still did not become attractive to smokers. Attractiveness to smokers is where we can really reap the full public health benefits and potential of the products that we are discussing. They need to be the products that really work for people and the ones that they will actively want to switch to.

Mark Feeney: My understanding from the research is that the devices that are most effective in smoking cessation will be more difficult to get licensed. That is of particular concern; we would hope for a pragmatic approach being taken to that so that the most effective products for cessation can be used with smoking cessation services.

Dennis Robertson: My first point is for Katherine Devlin. I was slightly confused by what your submission said about non-nicotine products, which you suggest would be outwith the scope of the regulation. My understanding is that all vapour products will be within the scope of the bill, so I am a bit confused that you related the bill to nicotine products only.

My second point is for JTI. I think you have taken a sensible approach in terms of ensuring that products stay out of the hands of under-18-year-olds—both tobacco and electronic cigarettes. However, you say in the introduction to your submission that users should always be aware of the risks involved. What do you see as being the risks involved with e-cigarettes?

The Deputy Convener: I was going to bring in Katherine Devlin first, but I think that Charlie Cunningham-Reid wants to come in.

Charlie Cunningham-Reid: JTI does not make any health claims for its e-cigarette products at this point. Regarding the risks, we believe that because e-cigarettes are still nicotine products we need to make sure that we are responsible in how we market them. Of course, when TPD2 comes in next May there will be 30 per cent coverage health warnings on all e-cigarette products' packaging. We agree with that. It is necessary to highlight that the products are not entirely risk free.

There is a lot of research coming from various bodies: that research is positive for the e-cigarette industry. It shows that e-cigarettes are potentially a less harmful way of smoking, but at this stage JTI would not claim that they are absolutely risk free.

The Deputy Convener: I will give Dennis Robertson the opportunity to come back in.

Katherine Devlin has a specific question to answer on non-nicotine products, but Mike MacKenzie has a supplementary question. Is it specifically on the health aspect?

Mike MacKenzie: Absolutely. I fully accept that we should take a precautionary approach to e-cigarettes, but can anyone shed any light on how the risks of their use might compare with, for instance, the risks of eating too many doughnuts? We have an obesity problem and it would be helpful for us, as parliamentarians, to get an understanding of the level of risk that we might face from vaping. Perhaps the risks are unknown, but it would be helpful for us to get a pointer to what kind of ball park we are in.

The Deputy Convener: That works out perfectly, because Katherine Devlin has another question to answer as well.

Katherine, will you answer Mike's question first?

Katherine Devlin: I can certainly try.

I absolutely support the desire of any and all Government bodies to take a precautionary approach. It is certainly true that we do not yet know everything that there is to know about electronic cigarettes and vaping—we cannot yet know what the long-term effects will be—but there is an awful lot that we know.

We know a lot about the basic chemistry: we know a lot about what the product is made up of and how those chemicals behave in combination when heated. More work is taking place on that. We are doing an extensive period of toxicological research at the moment to feed into the standards work that we did and in preparation for TPD.

The most important fundamental thing that we know is that vaping is not combustion. It is not setting fire to something and producing the by-products of combustion, so we know that it does not give off any polyaromatic hydrocarbons. It does not give off any dangerous tar and all the things that we know cause masses of long-term health damage and, indeed, quite immediate health damage in some cases as well.

We know quite a lot, but we do not know enough. Therefore, in taking a precautionary approach, it is important that we strike a balance because, to take a truly precautionary approach, we always have to weigh up the balance of both sides. We must always set it in the context of what we know, which is that 50 per cent of smokers continue to die prematurely from smoking-related disease. That is an alarming rate. We know that vaping involves none of the harms that are associated with smoke. It must be orders of magnitude safer than smoking. That is not to suggest for one second that it is safe. Nothing is safe. If you barbecue bacon, that releases a huge amount of carcinogens. Does that mean that everyone should stop barbecuing bacon? It is a question of choice, is it not?

Mike MacKenzie: Indeed.

Katherine Devlin: Can I also answer the other point?

The Deputy Convener: So long as you do not mention bacon or doughnuts. [*Laughter*.]

Katherine Devlin: If you wrap your bacon around your doughnuts, you will be well away.

We still have significant concerns about the general, pervasive attitude of policy makers—to be fair, that does not include this Parliament—in focusing on the nicotine, while missing the fact that, whether or not the products contain nicotine, all the products are for inhalation. That is what is important. If the standards are not in place and the rules are not properly followed for the manufacturing of the products, they could potentially do significant damage and harm to the lungs.

In the industry we are all well aware of the problems of diacetyl as an ingredient in electronic cigarettes. It can lead to popcorn lung. It can cause permanent, irreversible lung damage. I am certain that none of the industry colleagues with whom I have worked would ever want to do that to one of their customers. However, it matters that the regulation, legislation and standards apply to all vaping products, irrespective of the nicotine content.

I have spoken to one of Scottish Government officials about the issue. She assured me that that is not the bill's intention and that it was deliberately constructed to capture all products. My concern relates to the pervasive use of the term "NVP". The NVP, again, focuses on the nicotine rather than on the vaping products, which are all for inhalation. I hope that that clarifies the issue a little. The vaping products are covered in the bill, but they could be covered more clearly.

Dennis Robertson: That helps—

The Deputy Convener: I will let you in, Dennis. First, I want to give Richard Lyle a heads-up that we will move the conversation on to another area in a second; I know that he has a specific question to ask before that.

Dennis Robertson: The submission was confusing to some extent, so I thank Katherine Devlin for clarifying the situation.

We are hearing—I suspect that perhaps all the witnesses accept this—that there is a risk factor, although in some cases the risk factor is unknown. All vaping products have a risk associated with them, as does smoking with tobacco, obviously.

Richard Lyle: I turn to the topic of advertising, which I am sure that Guy Parker would like to comment on. Katherine Devlin said that, at the last count, there are more than 500 vaping products on sale in, as Charlie Cunningham-Reid said, thousands of premises.

Many years ago, we stopped advertising tobacco on television. I was shocked when I saw an advert for a vaping product on television one night. If there are more than 500 products and—with the greatest respect to the people who are selling them—they are backed by tobacco companies in some way, why do we allow television advertising for the products when we have done away with tobacco advertising on television?

The ASA's submission says that it had received only 644 individual complaints about e-cigarette advertisements. In one case, someone complained because they thought that they had seen an advert on a children's channel, but the ASA proved that not be the case. However, I am concerned because children and teenagers watch television and, even with the age restrictions that we are putting in place, they may walk into shops and ask for the vaping devices. Why are we advertising the products on television?

The Deputy Convener: Alan Teader has indicated that he wants to respond; I ask others who want to respond to do that, too. I invite Guy Parker to make the initial response.

10:15

Guy Parker: Thank you. The really short answer is that they are different products: e-cigarettes are not tobacco. The interesting question behind Richard Lyle's question is whether the advertising of e-cigarettes will in some way normalise tobacco smoking again and provide a gateway into smoking for people who would not otherwise have smoked, particularly children. We are all worried about that. That is the concern of people who are part of the public health debate.

The issue of whether, broadly speaking, e-cigarettes are—net—likely to be a gateway into or out of tobacco smoking has been debated for a few years. The evidence, although it is not conclusive, seems to be that e-cigarettes are, net, quite a significant potential and actual gateway out of smoking. The evidence seems to suggest that we are drawing the lines correctly when it comes to the advertising rules—perhaps I would say that, wouldn't I? The most recent evidence, including in the PHE report that was published last month, is that e-cigarettes are used almost exclusively by adults and there is little evidence of their use by never-smokers or children who have not already tried tobacco. Where children are experimenting with e-cigarettes—and they are doing so—those who do not smoke do not seem to be sticking with them and becoming regular e-cigarette smokers. The evidential points underline the argument that e-cigarettes are a net gateway out of smoking, rather than a gateway into smoking.

The evidential basis is critical in informing where we, as the advertising regulator, should set the rules. E-cigarettes seem very largely to be used as a substitute product, in that people who were smoking tobacco are now smoking e-cigarettes or are smoking less tobacco because they are partly vaping rather than wholly smoking. Those are really important considerations for us, because, unlike the situation in relation to other things that are regulated and for which we write rules on advertising, if we make it harder for the advertisers of e-cigarettes to advertise their products responsibly—and I hope to have an opportunity to talk about some of the rules that we have made to ensure that they do advertise responsibly—there is the potential for them to be less successful in marketing e-cigarettes, and the evidence and arguments seem to show that successful marketing of e-cigarettes equals people switching from tobacco.

That is what underpins our approach. We thought long and hard about whether to remove the restriction on showing e-cigarettes in use in telly ads. E-cigarettes were allowed to be advertised, but in November last year we brought in new rules that removed a restriction on their being shown in use. The rule had not been written with e-cigarettes in mind, because they did not exist at the time. We wondered whether we were making the right decision, and given the evidence that Action on Smoking and Health, PHE and others have produced, we think that we did. However, we thought very hard about the issue.

Richard Lyle: You used to have—

The Deputy Convener: Richard, I want to mop up comments from witnesses before I bring you back in. I am sure that Guy Parker will want to respond to what is said.

Alan Teader: I want to pick up on three main points in relation to what Richard Lyle said. First, he asked why e-cigs should be advertised and, more important, whether adverts will be seen by under-18s. As Guy Parker said, there are quite heavy restrictions on electronic cigarette advertising, which limit what we can say—I agree with that. Of course, under-18s might see adverts on TV or in the streets. On my way here today I passed a few adverts for Budweiser, where a bottle of Budweiser was shown with a cheeseburger and the phrase, "the perfect power couple". Any child could walk past the advert and think, "Oh, a beer and a burger, that sounds fun." It is important to realise that children will see

adverts for other things that they should not be taking up, as well as adverts for e-cigarettes; the age-restriction rules are the means of policing their take-up of such products.

Secondly, Richard Lyle made the point that some e-cigarette companies are owned by tobacco companies. I would say that e-cigs are closer to NRT than to cigarettes. NRT products can be advertised, because they offer a way to move people away from tobacco products. It is important to make that comparison.

Thirdly, it was suggested that e-cigarettes are a potential gateway into smoking, with teenagers seeing the adverts and thinking, "Oh, maybe I'll try an e-cigarette and then move on to cigarettes." I do not think that that happens. I cannot imagine anyone picking up a product and then deciding to move on to something that is more expensive and smells worse and which they know is bad for them. I cannot see people making that leap.

Katherine Devlin: I, too, want to pick up on Richard Lyle's point about tobacco industry ownership and the independent sector. We did some research earlier this year that showed that of the 407 companies in the UK, six are tobacco owned. The vast majority of the sector is independent of the tobacco industry and is firmly entrenched in that independence—and would never sell out to the tobacco industry. It is important to recognise that there is a very distinct split between tobacco industry interests in the area and the independent sector.

I draw people's attention to something that the New Nicotine Alliance said in its submission to the committee:

"An advertising ban on these products only serves to offer protection to the tobacco trade. We would contend that responsible advertising would serve to promote the idea of switching away from lethal tobacco products to a much safer option."

In that context, it would be useful to hear from Guy Parker about the ASA rules—how they were constructed, why they were so constructed and how they are working in practice. The rules are very robust and the ASA has good systems in place to ensure that advertising, particularly television advertising, reaches a target audience. There are clever mechanisms for ensuring that adverts reach the right target audience.

The Deputy Convener: I will give Guy Parker the opportunity to come back in later.

Charlie Cunningham-Reid: Let me respond to a couple of the points that Katherine Devlin made. The brands that are owned by tobacco manufacturers—and certainly our brand, E-Lites—are significant players in the segment. We do not have conclusive data on market share at the moment, but I think that the E-Lites brand has about 15 per cent market share, which is significant. A company such as JTI has a lot to offer the e-cigarette industry, in terms of our research and development capabilities, our resources and so on.

On advertising, I reiterate everything that Guy Parker said. I do not think that there is evidence that e-cigarette advertising is leading to e-cigarettes being a gateway product. We fully support every activity to ensure that under-18s, non-smokers and non-e-cigarette users are not encouraged to use our products.

Advertising makes the e-cigarette market more competitive and innovative. It encourages new products and new entrants to come into the market. It increases awareness of the products that are available, and overall it can keep that segment growing.

We are very much at a crossroads. We think that about 2.5 million people in the UK use e-cigarettes, which have been advertised for the past few years—we certainly advertise very responsibly at the moment. It would be a shame if we started to overregulate the industry now, so that innovative new products and new ideas could not be introduced in future and the trends that we are currently seeing could not continue in the long term.

The Deputy Convener: I will briefly give the running order. John Lee has indicated that he wishes to speak, so I will bring him in. I will then come back to Richard Lyle before I bring in Guy Parker.

I just want to check whether Mike MacKenzie wishes to speak about the specific point that we are discussing.

Mike MacKenzie: My question is within the remit of advertising.

The Deputy Convener: Okay—we will take a question from Mike MacKenzie and then finish with Guy Parker. After that, I will invite new bids from any MSPs who want to move the conversation on.

I will bring in John Lee just now.

John Lee: Richard Lyle has highlighted one of the most important issues in the bill. As we were developing our submission in response to the call for evidence, we became very interested in a statement from specialists in nicotine science and public health policy that was sent in 2014 to the director general of the World Health Organization. There were 10 principles in the statement. Principle 6 stated:

"It is counterproductive to ban the advertising of e-cigarettes and other low risk alternatives to smoking",

such is the tobacco harm reduction potential of these products. One of those specialists was Professor Linda Bauld, who I understand gave evidence to the committee last week.

We used that statement to form our opinion on advertising. We agree with the view that any ban on advertising e-cigarettes would be completely counterproductive in terms of realising the potential for reducing tobacco harm.

I just wanted to mention that to Mr Lyle. I would be happy to share the statement with him if that would help.

The Deputy Convener: Thank you, John—you have been very patient. I will bring Richard Lyle back in before we move to Mike MacKenzie's question.

Richard Lyle: I find the comments quite interesting—it is as if there is a new dawn in advertising e-cigarettes. In the past, different brands were advertised nightly. I think that it is Alan Teader's advert that I have seen on the television; I am not exactly sure. When I first came across e-cigarettes, they were being sold on a stall in a shopping precinct. They have now moved into shops and garages, and there are also e-cigarette shops that sell the different products.

I will ask Guy Parker the question again. If we came to a point at which 10 companies wanted to advertise, would you allow those 10 adverts nightly, or would you restrict them to one advert?

The Deputy Convener: Guy Parker can come back on that point, but he can also mop up on the question that Mike MacKenzie is about to ask.

Mike MacKenzie: I apologise, convener—when I introduced myself I should have said, "My name's Mike MacKenzie and I'm a vaper." I have not had a cigarette for more than three years, which I regard as nothing short of a miracle as I was a very heavy smoker for a very long time.

One of the things that concerns me is in the general area of advertising. It is the disparity between the evidence that we have heard from health professionals and others about the potential benefits of e-cigarettes and the evidence that we are seeing from the Scottish Parliament information centre, for instance.

SPICe conducted a helpful survey that shows that the devices enjoy a pretty negative perception in the public mind and among some policy makers. I am struggling to understand why that might be the case. While those public perceptions remain, I believe that it lies within the scope of advertising to attempt to change them. Perhaps a change in public attitudes would lead to better policy.

I support the precautionary principle, but is there scope, rather than taking the negative approach, to go beyond that and take a more positive approach that will lead to better public health outcomes?

The Deputy Convener: I think that we should give you a bit of time, Mr Parker—it is quite a while since we heard from you, and quite a lot of comments have been made. Perhaps you can mop some of them up and deal specifically with the points that Richard Lyle and Mike MacKenzie have made.

10:30

Guy Parker: I will deal with Richard Lyle's point first. I would allow 10 ads rather than one in an evening's TV ad schedule. If the ads are responsible and are complying with our rules—they are not targeting under-18s or indirectly promoting tobacco, for example—and if, as is currently the case, the evidence shows significant health benefits at a population level from smokers or would-be smokers switching some or all of their smoking to vaping, I cannot see why there should not be 10 ads rather than one, because those 10 ads might deliver even more switching.

We have to keep the situation under close review. We do not know what the next generation of e-cigarette products is going to be like. It might be that, unlike the situation that appears to exist in relation to the current generation of e-cigarettes, they will prove attractive to younger people who would not otherwise have smoked. We have to keep an eye on that.

On the other end of the spectrum, we have to keep an eye on the evidence relating to the safety of individual products, which, at the moment, is weak. We know that PHE and others say that vaping is roughly 20 per cent less harmful than smoking. That is good, but there is a paucity of product-specific evidence at the individual product level.

I agree with the point that Mike McKenzie made. One has to consider the potential benefit of responsible advertising positively—forgive me if I am misquoting you—and not make the wrong policy decisions out of very well-meaning and well-founded fears about issues such as making smoking normal again and the possibility that the products will act as a gateway for young people.

Banning responsible advertising of e-cigarettes has two or three potentially bad consequences. One is that you ban the ability of e-cigarette manufacturers and marketers to responsibly advertise products that, according to the evidence, are helping people to switch away from tobacco—even if there is some safety issue, it is not nearly as bad as the safety and health issues they had when they were smoking tobacco.

Secondly, it sends a message to the world at large that e-cigarettes are as bad as tobacco. We saw in the report that ASH produced last month or the month before that 21 or 22 per cent of people think that e-cigarettes are as harmful or more harmful than tobacco and that something like 40 or 44 per cent think that they are pretty harmful and do not know that, actually, e-cigarettes are much less harmful than tobacco. Those figures represent a big proportion of people. If those people say in the media that e-cigarette advertising has been banned, that will reaffirm their view that e-cigarettes are a bad thing.

There are other arguments connected to unintended consequences, such as those that were rehearsed earlier, which involve restricting the ability of companies to compete, preserving the market share of the incumbent operators and so on.

Whatever you think of advertising, it is an engine of product development—of improving products to provide better product experiences for consumers. In this area, where we really want e-cigarettes to evolve so that they are liked more and more by smokers or would-be smokers and people vape rather than smoke, that sort of innovation is key, and I would say that advertising needs to be there to drive that innovation.

Dennis Robertson: Earlier, we heard that there are potential risks. To some extent, we do not know what they are, but I accept that they are a lot less than smoking. From the community pharmacy perspective, should advertising be specifically targeted at smoking cessation and send a message that this product can help people to come off tobacco?

Every time that I hear the word “vaper”, it is followed by the word “cigarette”—that is the key word, regardless of whether we are talking about e-cigarettes or not. In terms of advertising, I wonder whether the word “cigarette” is still sending out a negative message.

I take the point about the positivity of trying to move forward from the harmful smoking of tobacco products to using a less harmful product. Do we have the balance right, though? With regard to Community Pharmacy Scotland, should advertising be specific only to moving from tobacco to a less harmful product?

The Deputy Convener: That is helpful, Dennis, as Mark Feeney from Community Pharmacy Scotland is due to speak next. I am sure that you have points that you wish to make, Mark, but it would helpful if you could deal also with some of what Dennis has just said.

Mark Feeney: Sure. I think that the most important thing is that we maximise the benefits of the products. I believe that there is going to be more of a role in the future for NHS smoking cessation services and I would imagine that a licensed medical product would have an easier time with the Advertising Standards Authority.

Tobacco causes a lot of harm, so our concern is how we can maximise the benefits of the alternative products. The EU recommendations about dual licensing are correct, and we will get the most benefit from that. We just want to see a situation where the benefits are maximised.

I will touch on Mike MacKenzie’s point about perception. The public’s perceptions of e-cigarettes seem to be outwith the evidence, but that is also the case for healthcare professionals. There is no consistent guidance for healthcare professionals on the appropriate way to treat an e-cigarette user or an NVP user. It would be a big help to the healthcare professional community if we had consistent guidance on how we should support people who might wish to quit smoking or just reduce it through using e-cigarettes. Consistent guidance in that regard would be very helpful.

Katherine Devlin: I will try to be brief, but there are rather a lot of points to cover.

Picking up on what Richard Lyle said earlier about testing and not being certain about the quality of the products on the market at the moment, we recently provided technical information for the publicly available specifications that the British Standards Institution published in July, which includes some guidance on testing protocols and recommendations on what information to convey to consumers about that side of things. We hope that that will see a shift towards doing more testing and providing better information to consumers ahead of tobacco products directive implementation, which is under challenge and may or may not actually happen, although it obviously should not happen. Article 20 is an abomination, but there we are.

The difficulty with advertising bans is that that sends to smokers the message that they might as well carry on smoking, which cannot be a good thing to tell smokers because we know that smoking causes immense amounts of damage. Unfortunately, medicinal claims are forbidden and we cannot tell the truth about the products. Marketers of the products are not allowed to tell the truth and say “This product is demonstrably able to help you move away from tobacco smoking.” We are not allowed to say that the product is safer or healthier than smoking—we are not allowed to tell the truth. It is therefore very difficult for the people who are providing the products to convey honest and informative messages to the public.

That is why I agree with Mark Feeney's call for better guidance from policy-making bodies. Such guidance would be enormously helpful if it allowed healthcare professionals to be out there telling the truth to the public, given that the marketers are not allowed to do so.

The only other point that I have is about the try-before-you-buy issue, which we might come on to later in the meeting. Convener, do you want me to leave that issue just now?

The Deputy Convener: The evidence session might run until 11 o'clock or so. I will give you the opportunity later to put something on the record about the try-before-you-buy issue.

Katherine Devlin: Okay.

The Deputy Convener: Alan Teader wants to come in now, and Mike MacKenzie has indicated that he wants to come back in afterwards.

Alan Teader: I want to pick up on Dennis Robertson's point about the term "e-cigarette". We have spent an awful lot of time, energy and money in the UK demonising the word "cigarette". We all know that cigarettes are bad, and I think that that view has been ingrained in society for a good number of years. However, a new product has suddenly become prominent on the market that has just the letter "e" in front of the word "cigarette". The term is "e-cigarette", but the emphasis is still on the word "cigarette".

The problem is that we have demonised the word "cigarette"—as a society, we have almost done it to ourselves—and that attitude follows on to the word "e-cigarette". At the moment, the media pretty much control what the public think about e-cigarettes and, unlike the companies, the media are not limited in what they can say. That is definitely a problem and it is causing the public feeling about e-cigarettes. People have come in to some of our stores claiming all kinds of things, such as that e-cigarettes are worse than cigarettes and have poison in them. That is generated by the media and we are unable to combat it effectively because of the limitations on us.

Katherine Devlin rightly said that we are not allowed to use medical professionals to promote our products. They are not allowed to give their personal opinions or other opinions, but we are allowed to use David Hasselhoff or Vinnie Jones. We can use celebrities to promote the products and say that they are great, but we cannot use medical professionals to deliver the message, which seems strange.

The Deputy Convener: Before I bring in Mike MacKenzie, I point out that I will allow each of the witnesses to make a brief statement before the end of the session. Mr Parker, I am conscious that we have not dealt with the powers and sanctions that the Advertising Standards Authority has in relation to the breach of advertising rules and the like. When we get to that stage, there might be an opportunity for you to say something. That is just a step for a hint that no one has asked the question but we were hoping that it would be asked, so it would be helpful if you could deal with it in your summing up, Mr Parker.

Mike MacKenzie: I want to sound a precautionary note. Thinking back on my experience—I started smoking aged 11—I suppose that the motivation was perhaps summed up by Dorothy Parker saying that curiosity is the cure for boredom but there is no cure for curiosity. I suppose the other impulse was what I might call the garden of Eden impulse, in as much as, like a lot of the rest of mankind, I have never been able to resist the allure of the forbidden fruit.

I urge those who are excessively cautious about e-cigarettes to take that factor into consideration. If we demonise these products, we run the risk of making them more attractive to the people we do not want to start using them—youngsters—while denying the opportunity to the people we want to use them, who are the smokers who want to start on a journey to cutting down or stopping smoking. What do the panel feel about that? Do we run that risk in our approach to e-cigarettes in the bill and more generally?

The Deputy Convener: I told the witnesses that we would probably finish around 11 o'clock. Most of the issues have had a reasonable airing. One or two of you might want to reflect on Mike MacKenzie's comments as part of the general round-up, if Mike is okay with that.

If the witnesses want to put something on the record or reflect on something, now is your opportunity to do so. It would be good if it was brief.

I see that my colleague Richard Lyle wants to come in. If you want to be brief and say something that you would like someone to pick up on—

Richard Lyle: No, I was—

The Deputy Convener: Hang on one second, Richard. If you want to make a brief comment that the witnesses can reflect on as we are doing that round, that is fine, but brevity would be good.

Richard Lyle: We have introduced a measure that means that cigarettes are hidden behind doors in shops. Should e-cigarettes still be on the counter and advertised so that everyone can see them, or should the approach be the same as with cigarettes?

The Deputy Convener: The witnesses who will speak later will have more chance to prepare the answer to that. I think that John Lee might wish to comment on it, and he is going to comment last.

As I was saying before Richard Lyle made that good point, if the witnesses have not been able to say something or want to reinforce a point, now is your opportunity to put it on the record. I will go round the witnesses and take those comments now, starting with Mark Feeney.

Mark Feeney: The tobacco strategy is challenging and we need to find novel ways to reach the 5 per cent target by 2034. Evidence suggests that the best chance of quitting smoking is by using an NRT product—it could soon also involve using an NVP—with behavioural support. The NHS has provided that for some years, with community pharmacy being the main supplier.

10:45

There is still a huge role for that type of service. Those of our members who are choosing to stock these products in their community pharmacies are doing that so that they can start a conversation with someone and explain to them the pros and cons of a licensed NRT product—potentially an electronic cigarette if the patient wants to go down that road. There is still a huge role for that type of service, including behavioural support. If a patient chooses to purchase an e-cigarette, they should still be able to access NHS behavioural support services. There is a big public health prize, but we need to be careful that we maximise that opportunity without exposing young people or non-smokers to these products.

Alan Teader: It is good that we have had this discussion. Recently, there have been a lot of knee-jerk reactions to the e-cigarette situation, so such discussions need to happen. Richard Lyle asked whether e-cigarettes should be hidden. It depends on the type of electronic cigarette. If it is the kind that you would pick up at a newsagents or a petrol station—what we would class as cigalikes—I do not think that hiding them would have any impact on sales.

The higher-end products, which have a higher chance of success, need consultation when being purchased. I would never recommend that someone who is looking to move away from cigarettes should just go and pick such a product off the shelf, mainly because they need help to use the product effectively and safely and to ensure the highest chance of success. You will do nothing but harm the consumer by hiding such products.

Charlie Cunningham-Reid: We do not need to overregulate the e-cigarette segment. On Richard Lyle's point, I agree with Mr Teader. It would be completely counterproductive to ban the visibility of e-cigarettes in retail. I think that the e-cigarette direction is correct. We do not see any significant evidence that children or non-smokers are taking up e-cigarettes. Sensible regulation should prevail. We fully support not allowing under-18s to buy e-cigarettes and I think that that element of the bill is completely correct.

I want to raise one more point on a different element of the bill: smoking in NHS premises. There was a lot of discussion about that at last week's committee meeting, which I watched. I will reiterate what we put in our written submission. We think that having an outright ban on smoking on NHS premises is excessive. There is a simple solution that it is probably possible to enact within the bill, which would be to have segregated smoking areas a sensible distance away from hospitals. We should not expect smokers to walk hundreds of yards, if not more, through the cold to go and have a cigarette.

Guy Parker: We recognise the key concerns about e-cigarettes—the arguments about the normalisation of tobacco and the gateway into smoking—but we think that the arguments and the evidence better describe a reality where e-cigarettes are a gateway out of smoking for a lot of people.

We think that the e-cigarette rules that the ASA system has developed and which the ASA is administering are comprehensive and robust and draw the line in the right place. However, we recognise that we need to keep the rules under review because the situation could change quite rapidly if a new generation of e-cigarette products comes in or if people's use of e-cigarettes—particularly young people's use of e-cigarettes—changes. We are conducting a review later this year to look into that.

The current evidence shows the potentially significant public health benefits if smokers or would-be smokers switch some or all of their smoking to vaping. As I have said, we think that responsible advertising could have a part to play in that by encouraging that switching.

I will finish by saying that we should beware of the unintended consequence of greater advertising restrictions, however well-intentioned they are. First, the unintended consequence of further ad restrictions could be to prevent e-cigarette companies from powerfully but responsibly advertising their products, and thereby competing with tobacco. Secondly, another consequence could be to send an unintended but clear signal to the outside world that e-cigarettes are the same as tobacco when it comes to safety and health. Thirdly, removing advertising removes a key tool in driving innovation, whereas if things carry on going the way they are, innovation will mean even better competition against tobacco.

The Deputy Convener: We are trying to cover as much of this area of the bill as possible. Could

you put on record your thoughts on the current powers and sanctions and on whether there is a need for any powers to impose sanctions for breach of advertising rules above and beyond either what exists or what is contained in the bill? I know that that is a fairly chunky supplementary question, but it would be helpful for our scrutiny of the bill to get even a brief comment from you about that on the record.

Guy Parker: The sanctions that we have in the ASA system to deal with non-compliance with our advertising rules are good enough to deal with the vast majority of circumstances that we face—certainly the sort of circumstances that we are likely to face in the e-cigarette area, which is very much under the microscope, as the media are interested in the issue of e-cigarettes. It is extremely unlikely that any e-cigarette company that was found to be breaching our rules would try to get away with not complying; we would easily be able to bring them to task.

I do not think that that is the issue. The issue is whether the rules are drawn in the right place and whether they are subtle enough to deal with new technologies such as social media, which we have not really talked about, but I would say that they are. We have a good example of a ruling that we made against a company called Hubbly Bubbly in June this year. We found that claims on Hubbly Bubbly's website and twitter page, and in a video that it posted on its YouTube channel, were in breach of our rules because the company was appealing to people under 18 by featuring in a significant role people who looked or were under 25. We have an under-25 rule that we apply to e-cigarette advertising, much like the rule that we apply to alcohol, to provide a seven-year buffer between 18, which is soon going to be the legal purchase age, and 25, to try to avoid situations where individuals featured in ads may be appealing to younger people because they identify with them—for example, they may be 19 years old but look a bit younger. There are good examples of us enforcing the rules that are in place.

Katherine Devlin: I will try to be brief. Richard Lyle made a point about tobacco displays, and I think that there is an opportunity to replace the tobacco displays, get rid of the tobacco and replace it all with electronic cigarette products. However, on a slightly more serious note, Alan Teader made a good point about the fact that, when it comes to some of the really good products that really work for people, you need a consultation, either with a specialist retailer or with community pharmacists through the NHS services programme.

We are fortunate in the UK to have had Louise Ross leading the charge. She is a stop smoking service manager in Leicestershire and she recently reported some data that I will happily supply to the committee if you have not already seen it. That data demonstrates how effective it has been to have a combination of behavioural support, possibly with some licensed medical products and the use of e-cigarettes, in the context of the stop smoking service. That is the sweet spot. It is that combination that can get us to the smoke-free generation.

I also wanted to mention try before you buy. In retail stores, you need to be able to do a demonstration and allow the customer to try the product before they buy it, so that that can be part of the consultation.

The Deputy Convener: That is now on the record. Thank you for that.

John Lee: There are 5,500 convenience stores in Scotland, which provide more than 32,000 jobs. The total value of sales in the sector is £4 billion per annum. Convenience store retailers are totally committed to selling age-restricted products responsibly. E-cigarettes are sold by most of our members, although the market is relatively new and relatively underdeveloped. Our members see e-cigarettes as something of an uncertain category in that they are unsure how future legislation will impact on those products.

We are very supportive of most of the main provisions in the bill. Most of our members already treat e-cigarettes as age-restricted products and will have an age verification policy in place. It is clear that the proxy purchase of those products should be an offence, although that is always a very difficult problem to deal with in-store.

We have concerns about the proposed ban on advertising. The explanatory notes that accompany the bill suggest that the Scottish Government would not ban advertising at the point of sale, but that is not made explicit in the bill as introduced. We hope that the Scottish Government will address that matter at stage 2.

Overall, we feel that the ban on advertising will be highly counterproductive, particularly given the growing recognition of the potential health benefits of NVPs. On a personal note, I feel that the bill is already somewhat behind the curve. We have seen new evidence from Public Health England, for example, that begins to highlight the potential health benefits of the products, and we are beginning to realise that the market is much more complex and sophisticated than the bill perhaps alludes to. The bill gives the Scottish Government powers to restrict advertising that are far too draconian.

I go back to Mr Lyle's point. The products should absolutely not be subject to tobacco display restrictions. If we go down that route, it is

fair to say that their potential harm reduction impact will simply never be realised.

As ever, we are grateful to the committee for the opportunity to engage directly with it. I hope that it has found this evidence session helpful.

The Deputy Convener: Thank you very much, Mr Lee.

I did not want to stop our witnesses in full flow, but for clarity in response to Charlie Cunningham-Reid's comments on smoking on NHS sites, I say that the bill proposes to enable ministers to ban the smoking of tobacco and cigarettes in parts of hospital grounds. It will be for each NHS board to decide whether smoking is permitted in any other parts of hospital grounds. I say to the witnesses that we will return to that matter and to Richard Lyle that those are not my thoughts, views or opinions. We will return to the matter for scrutiny in next week's evidence session. I do not choose to open up that debate this morning.

Richard Lyle: No. I do not want to deal with that point. I covered it enough last week.

I welcome John Lee's comments. When I first started working, I was a grocer for 20 years. I know about the hard work that many of your businesses and fellow grocers do and compliment them on that.

Katherine Devlin, I agree with the comments—

The Deputy Convener: I am really sorry, Richard, but—

Richard Lyle: I will be brief.

The Deputy Convener: It would be unfair to our MSP colleagues if I let you in to give your comments, as everyone will have their own thoughts and reflections on what the witnesses have said. I tried as hard as I could to give the last word to witnesses rather than MSPs. As well as MSP colleagues having had the opportunity to ask questions, I hope that you all feel that you have had a good airing of your thoughts and opinions.

I thank everyone for coming to the meeting and giving evidence. As previously agreed, we will now move into private session. I will pause for a moment for the public gallery to be cleared.

10:58

Meeting continued in private until 12:18.

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