



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 3 November 2015

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HEALTH AND SPORT COMMITTEE
29th 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:

Brian Coane (Institute of Practitioners in Advertising)

Nathan Critchlow (University of Stirling)

Graeme Dey (Angus South) (SNP) (Committee Substitute)

Sarah Hanratty (Portman Group)

Bruce Milne (Social Work Scotland)

Guy Parker (Advertising Standards Authority)

Lieutenant Colonel Jonathan Roberts (Salvation Army Scotland)

Chief Inspector Tim Ross (Police Scotland)

Robert Sandeman (Scottish Courts and Tribunals Service)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Health and Sport Committee

Tuesday 3 November 2015

[The Convener opened the meeting at 09:32]

Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill: Stage 1

The Convener (Duncan McNeil): Good morning and welcome to the 29th meeting in 2015 of the Health and Sport Committee. As usual, I ask everyone to switch off their mobile phones because they can interfere with the sound system. I also point out that some members are using tablet devices instead of hard copies of our papers.

Agenda item 1 is our third evidence-taking session on the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill. Given that we are going to have two round-table sessions, I suggest that in order to get to the evidence we forgo the introductions and instead have people introduce themselves when they first participate in the discussion. I hope that that is okay.

We have received apologies from Andrew Tighe, who is policy director of the Scottish Beer and Pub Association. His plane was cancelled last night as a result of fog and travel problems down south. Our sympathies are with him. Moreover, my deputy convener Bob Doris is, for understandable reasons, not with us this morning, and Dennis Robertson is also not here, because of illness. We expect Graeme Dey to join us as substitute later.

We will go straight to questions.

Rhoda Grant (Highlands and Islands) (Lab): What is the impact of advertising on alcohol consumption? When advertising regulation was previously tightened up to ensure that it was not being targeted at children, there was a decrease in the number of young people drinking. Would further tightening up have the same impact?

Sarah Hanratty (Portman Group): Rhoda Grant is absolutely right: drinking among children in Scotland has been going through a significant change over the past 10 years. The journey that we are on is very encouraging.

The Portman Group regulates all marketing except advertising—Guy Parker from the Advertising Standards Authority is here to represent the advertising sector. The idea is that the regulatory framework must be comprehensive and with no gaps in order to ensure that alcohol

marketing is responsible, is not targeted at children, and is adult in its content and nature.

There has been an incredibly strong journey. A self-regulatory framework can have great benefits; the Portman Group's "Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks", for example, is already in its fifth edition. It was first published in 1996 and has gone through a number of changes, variations and improvements and it keeps flexing and adapting as new marketing channels, approaches, styles and trends come in. I would be happy to provide further detailed evidence on the changes that have happened in the sector.

Lieutenant Colonel Jonathan Roberts (Salvation Army Scotland): Although we agree that self-regulation is a positive thing, we think that the provisions of the bill would take it a step forward by targeting advertising that is aimed at children. We also see the value in wider restrictions, because the evidence shows that it is not just targeting that affects children's consumption; wider exposure to advertising in society generally also affects it. So, whether or not advertising is targeted at children, it is exposure to it that really has an impact on their intention to consume and on their level of consumption when they begin taking up alcohol. That is our point of view, and we have lots of evidence that points in that direction.

Guy Parker (Advertising Standards Authority): Based on evidence, we do not think that restrictions on top of those that are already in place are necessary. We regulate ads in all media, including on posters, and we apply strict rules that put the protection of young people at the heart of our regulation through two routes. First, there are placement restrictions that prevent ads from being targeted at minors and which also reduce the likelihood that they will see alcohol ads. They do not remove the likelihood that they will see alcohol ads—one could not do that without a complete ban—but they significantly reduce it.

The second route is content restrictions that ensure that ads do not appeal particularly to young people. For example, ads are not allowed to reflect or to be associated with youth culture, and they must not link alcohol with daring, antisocial, aggressive or irresponsible behaviour, or with seduction, sex or social success; they must not show alcohol being handled or served irresponsibly; and they must not depict people drinking or playing a major part in the ad if those people are, or even just look, under 25—not under 18, but under 25, which is a kind of built-in buffer.

The rules are pretty strict and were strengthened significantly in 2005 in response to evidence that was presented by the then Government as part of its alcohol harm reduction

strategy. In the past 10 years, as Sarah Hanratty has explained, consumption, including underage drinking in Scotland, has been going in the right direction; it has been declining.

The question from Rhoda Grant was about the evidence base. The most recent reviews of evidence are the 2009 review from the University of Sheffield school of health and related research—SCHARR—which was commissioned by the then Government and was a big independent review. There was also a 2009 review by the science group of the European Union alcohol and health forum that looked at evidence at a wider Europe level, and last year there was a global Cochrane review. All those reviews conclude that there is either a lack of evidence or only limited evidence on the impact on consumption of alcohol advertising. There is also a lack of evidence about the positive impact of advertising restrictions. By a positive impact, I mean the ability of an ad restriction to deliver a reduction in drinking or in harmful drinking.

There is limited evidence. The SCHARR review talked about indicative evidence of a small but consistent impact of advertising on consumption by young people and on consumption at population level, but it also talked about there being much stronger evidence about such things as the connection between price and drinking. I have to say that the evidence is pretty limited.

We have to regulate in accordance with the principles of good regulation, which require us to ensure that our regulation is targeted and proportionate. There are other principles, but as far as the evidence base is concerned, the key principle is about having targeted and proportionate regulation. In the context of drinking patterns—and, indeed, the welcome changes in those patterns—and given the evidence base, which points to alcohol advertising's limited impact on drinking, including young people's drinking, we think that the existing rules are set at the right level.

We apply the rules very strictly. Last month, for example, we banned a YouTube ad by Heineken for Strongbow, because we thought that it implied that alcohol is as important as or more important than personal relationships. The ad was very jokey, but it did not get off because of that. In July, we banned a television ad for the Diageo brand Smirnoff for implying that drinking Smirnoff is completely changing the nature of the social event and making it much more joyous and fun.

I should, nevertheless, put that into context. Each year, we get about 37,000 complaints about a total of 17,000 adverts across all media and all products and sectors and, last year, 187 of those complaints related to about 140 ads for alcohol. We are therefore talking about a very small

minority of the whole. We think that our regulation of alcohol advertising is much more important and requires much more resource than is implied by that percentage of complaints about alcohol ads, but those figures show that there is not a lot of public concern about the alcohol advertising that people are seeing.

Finally, one of the things that came out in the SCHARR review was the disagreement in academic research over whether advertising bans reduce consumption or increase it through the obviously unintended side effect of increasing price competition among competitors. After all, the more you restrict advertising, the fewer options companies have on what they can do with their budgets, so money that was previously in advertising budgets, which had been mostly—although not exclusively—used for brand advertising in order to compete with others on increasing brand share, is then much more likely to be put into charging lower prices or price promotions, if they are allowed. The evidence that links price to consumption is a lot stronger than the evidence that links alcohol advertising to consumption.

Nathan Critchlow (University of Stirling): I am from the institute of social marketing at the University of Stirling and am working on a project that is funded by the Salvation Army. As far as the Scottish context is concerned, I should raise awareness of a longitudinal study that was conducted by the University of Stirling and published in 2011 that looked at exposure to alcohol marketing among 12 to 14-year-olds in Scotland. In the first wave of that study, significant associations were found between increased awareness of and involvement with alcohol marketing, and drinking behaviour and intentions to drink in the next year. When the young people involved were followed up two years later, it was found that exposure to alcohol marketing was significantly associated with drinking among those who were not drinkers at baseline, and with increased consumption among those who were. It is important to highlight that study, given that it was conducted in Scotland.

Brian Coane (Institute of Practitioners in Advertising): I am from the Institute of Practitioners in Advertising. The IPA asks that people consider the impact and effect of the bill not just with regard to protecting children from harm, but on the wider advertising industry in Scotland. It could have quite a negative impact on an industry that is, in Scotland, very much a force for good that has a good track record in producing campaigns that do social good. In fact, just this weekend we saw that the work on the detect cancer early programme to increase early detection of lung cancer has had very positive results.

Advertising and advertising agencies are an important part of, and driver in, Scotland's creative industries. They fuel things such as website and application development, and illustrators, film makers and photographers all benefit from them. Part of the benefit of the advertising industry is that it is part of the events ecosystem, which is a strong part of Scotland's economy. Events such as T in the Park and venues such as the SSE Hydro in Glasgow have benefited from the expertise of IPA member agencies.

In that context, we ask that when Parliament considers restricting any product or service, it takes into consideration the negative impact that restrictions might have on the industry in Scotland and the industry's positive effect on the economy.

09:45

Jonathan Roberts: Nathan Critchlow clarified the issues to do with one research study, but there have been several reviews of the research literature over the years, and the majority of longitudinal studies show that increased exposure to alcohol marketing leads to increased consumption. The results of those surveys are accepted by researchers and health bodies. For example, the World Health Organization and the British Medical Association accept that not just targeted marketing but increased exposure of all kinds lead to increased consumption.

The Salvation Army supports many people who have alcohol misuse problems later in life, most of whom date their problems to their childhood experiences; the habits and behaviours that were formed in childhood have affected them throughout their lives. We are really concerned about the impact of exposure to marketing on under-18s, because of what happens to people not just when they are under 18 but as life goes on.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Guy Parker's opening statement was useful, but it would be helpful to compare the measures that are currently in place with the three advertising-related proposals in the bill. I think that you might have covered some of that in your written evidence, Mr Parker, but it would be useful to have on the record what the bill proposes and what you think is already in place. You dealt with enforcement in terms of the content of adverts, but I wonder about enforcement in relation to the three proposals: you know what they are—the 200m restriction, advertising in shops and supermarkets, and sponsorship.

Sarah Hanratty: I want to urge caution about the evidence for restrictions because, as Guy Parker said, there is not clear evidence that marketing bans and restrictions drive reduced

consumption. The most comprehensive analysis of restrictions on marketing that we have is the Cochrane review, which I urge the committee to look at.

There is much to welcome in the bill; for example, the proposal on alcohol education for young people is fantastic. The committee has a great opportunity to recommend widening the approach to include life skills and resilience training. Single issues take up a lot of time in schools, but a whole programme of resilience and life skills training for children can be just as effective, if not more so. The Drinkaware Trust provides such ready-built systems; the committee might want to look at its programme called intuition.

We would very much welcome alcohol awareness training and intervention as an alternative to a fixed penalty. Much success comes through brief intervention, and having a conversation about how alcohol is becoming a problem can be an effective way of pre-empting bigger problems down the line.

As, I am sure, the committee expected me to say, we think that the legislative proposals in section 9 might not be needed. There is already a strong voluntary agreement from advertisers and brand producers not to feature alcohol advertising within 100m of schools. Many of the major producers have rolled out that approach across the whole United Kingdom.

There are numerous poster sites; one of the big challenges and opportunities in the regulatory system will be to police that and to define what we mean by advertising, promoting or marketing. Obviously, we must also consider the potential impact on small high streets. For example, if there are three shops, the high street is half a mile long and there are a couple of schools or a nursery and a crèche, in effect, you will have banned any sort of alcohol marketing or advertising along that whole high street.

There can be a big impact on local economies. The importance of the night-time economy in a responsible and enjoyable place that people want to go to can be a huge driver of economic value for small town centres, so I would be very cautious about looking at restricting through legislation when people can come up with clever and innovative voluntary agreements to achieve the same end.

Guy Parker: Two of the three advertising-specific measures that are proposed in the bill do not fall within our remit so I cannot comment on them with any great degree of expertise. The two that I am talking about are the proposed restriction on ads so that they appear only in licensed areas of off-sales premises and the sponsorship

restriction, which Sarah Hanratty will be happy to talk to you about, I am sure, because the Portman Group's code covers sponsorship; we do not cover sponsorship arrangements.

The measure that relates directly to the regulation that we deliver is the proposed ban on alcohol advertising within 200m of schools, nurseries, children's playgrounds and so on. I come back to the point that I made in my opening remarks about making sure that there is the right correlation between what the evidence is telling us about the impact of alcohol advertising on people—including young people—and the level of regulation that we are delivering.

Of course, deciding what the right standards, rules and restrictions should be is a judgment call, but it is important that we take into account the evidence base that I talked about, which indicates that, yes, alcohol advertising has an impact on consumption, including by young people, but it is only a small impact and is substantially less than the impact of other factors on young people, such as parents, peers, price, availability and so on. There is a danger that people think that we are going to get more than we actually will get if we bring in extra advertising restrictions.

My earlier point about us having to be evidence-based means that we cannot just consider the impact of our regulation on protecting people, particularly young people. We must also consider the impact on the other side of the ledger—on adults' rights to see responsible alcohol advertising and on businesses, on advertising-funded media and on poster contractors that are funding bus stops and other street furniture that communities welcome—otherwise our regulation could get pulled up at judicial review for not being in accordance with the principles of good regulation.

We do not think that the evidence base is there to justify a 200m exclusion zone. In built-up areas, particularly in Scotland, where I imagine that there are a lot of schools, nurseries and playgrounds, I would have thought that it would rule out poster advertising to quite a high degree. I do not have figures for the percentage of poster sites but the restriction would be quite significant. That is our position on the one measure out of the three advertising proposals in the bill that I am in a position to speak on.

The Convener: So it is not an in-principle objection, it is about the practicalities and the impact. We have the 100m ban and the proposed measure is an extension of that. Why would we not extend the zone if it has had some success? Some of the written evidence claims that the voluntary code contributed to the reduction in underage drinking, and your audit confirmed that trend.

Brian Coane: It is about the practicalities, in a sense. As I mentioned, the bill would potentially lead to a complete ban on outdoor advertising in certain locations. We are not aware that the register of schools, crèches, nurseries and playgrounds that would be needed to implement the provision exists.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): But we already have the 100m exclusion.

Guy Parker: We do not have a 100m ban at a national level. It is a voluntary commitment.

The Convener: Richard, I know that you are desperate to come in, and you will be given an opportunity to do that. Please do not—

Dr Simpson: Sorry.

Guy Parker: May I respond to your question, convener? It is a judgment call and it is absolutely about practicalities. If you want to do everything that you can do and your only consideration is to ensure that advertising is having absolutely no impact on consumption, including by young people, the obvious thing to do is to ban it all. My point is that a responsible regulator must balance that side of the argument with, for example, the economic impact of banning advertising and other things such as unintended consequences.

I talked about the economic impact on businesses that rely on advertising for funding, and we must take that into account when we make our judgments about where we draw the line and what restrictions we put in place. I also talked about the fact that there could be an unintended consequence: because people would no longer be allowed to spend part of their budget on alcohol advertising, they would put it into reducing their prices. There is much stronger evidence linking prices—

The Convener: The bill has other aspects. We are dealing with advertising this morning, but we have been dealing with the other issues. The bill does not present advertising as a standalone measure, as a number of other measures are proposed. In addition, the Government is currently stuck in the course of introducing minimum unit pricing, so there are a whole range of issues at hand.

I will bring in Nathan Critchlow and Jonathan Roberts in a moment, but as we have discussed before, and remembering that some of us are laypeople, we need to deal with the current situation of promotions against advertising. Maybe we can address whether the proposals can be considered to tidy up the position and create clarity for everybody.

Nathan Critchlow: The Cochrane review, which was cited earlier, concluded that there was a lack of robust evidence for or against the

implementation of advertising restrictions and it recommended that such restrictions should be implemented within a high-quality, well-monitored research programme to ensure that there was evaluation over time of all relevant outcomes in order to build the evidence base. I just wanted to clarify that that was the review's conclusion.

The Convener: We always get an argument for more research and study from academics.

Jonathan Roberts: It is accepted by a number of people that self-regulation does not work. It is good as far as it goes, but it is not as effective as statutory restrictions. A report that the European Commission sponsored in 2012 showed so many instances of advertisers getting round the Portman codes. Also, we do not feel that the sanctions are very strong. Once the advertising is out there, the job has been done and any action that is taken is retrospective. The impact has already been made. Self-regulation is not as strong as statutory restrictions such as those in the bill.

However, good as the measures in the bill are, we feel that they do not go quite far enough. On the 200m restriction, we wonder where that distance has come from. Has any evidence been provided to show that advertising within that perimeter is more effective or powerful than advertising beyond it? A study in America showed that there were 900 instances of alcohol advertising within 450m of schools in Chicago, so across a wide perimeter, strong messages are being put across.

We take on board the economic impact. If measures were taken, we would want a proper cost benefit analysis to be done. However, plenty of other businesses want to advertise, so I am sure that the economy would not suffer totally as a result of a lack of alcohol advertising.

10:00

Brian Coane: Mr Chisholm talked about the practicalities and Guy Parker talked about the area that is covered. On the issue of sponsorship, one of the things to consider is multi-audience cultural events, where children's events and adults' events are running at the same venue or location. The Portman Group code, which I am sure Sarah Hanratty will talk about in more detail, suggests an aggregate total of 75 per cent of over-18s, whereas the proposal in the bill is for a majority of over-18s. In that sense, the Portman Group code is stronger, although it allows an aggregate from several events rather than an individual event. Therefore, an alcohol brand can still sponsor an event where children's activities are happening as part of an adult event because the majority of those attending will be over 18. Evidence to the committee from YouthLink Scotland supported the

idea of not restricting young people from taking part in events at national stadia or major cultural spaces that have commercial sponsorship by an alcohol brand.

Sarah Hanratty: I will give a bit more detail about the sponsorship code. It is a great example of leadership by Scotland that we have a United Kingdom-wide sponsorship code in the first place. Comprehensive guidelines were developed in Scotland, working with the industry through the Scottish Government alcohol industry partnership. The Portman Group was able to take that great start and work with all the rights holders, major events and sports such as Scottish rugby and Scottish golf to develop a comprehensive code of conduct and practice that helps to use alcohol sponsorship for the Scottish good as well, in so far as it ensures that there is a binding commitment to promote both responsible drinking and diversionary or other activities that will help to promote sports or cultural events at grass-roots level.

A number of comprehensive and fairly sophisticated measures are included in the guidelines. Brian Coane talked about stadia. If you are sponsoring a major stadium that is going to run events for children, you make a commitment to cover up the hoardings. Teams that contain under-18s cannot be sponsored. A football team containing more than 75 per cent of under-25s cannot have alcohol sponsorship either. If there is an under-18 in a team, you cannot use that person to promote your brand in any way. A lot of sophisticated and quite tight controls exist.

The other point to make is that sports sponsorship and cultural and events sponsorship are a huge part of Scottish culture and wellbeing. Many of us would argue that it is a great joy to go to a sporting or cultural event or an arts festival and enjoy a drink. What we are all aiming to do here—I think that we have a shared vision—is to normalise the responsible and moderate consumption of alcohol. The danger of blanket bans, brown paper and blacked-out windows is that you start to create a whole sense of excitement around a product that, when used in moderation, is a strong and enjoyable part of our cultural heritage.

We have lots more detail on the sponsorship code. I would reiterate that it can be used to promote responsible drinking. One of the great examples was Jenson Button roaring around the streets of Edinburgh last year—I do not know whether any of you saw that. It was part of a big brand sponsorship for Johnnie Walker. There, you have blanket coverage of global sports icons telling kids not to drink and drive—it is not cool; do not do it. A message like that, from people of that ilk, resonates more strongly than when it comes

from somebody looking slightly more serious. Provided that that kind of sponsorship is strictly and tightly controlled, it can be used in a powerful and meaningful way. The self-regulatory framework is an excellent way to do that without a cost to the Scottish taxpayer.

Richard Lyle (Central Scotland) (SNP): The responses from Sarah Hanratty and Brian Coane lead into the question that I wanted to ask Ms Hanratty, and I want to explore what they have said as well as the point that Guy Parker made earlier. First, I wonder whether Ms Hanratty can talk about the statement in the Portman Group submission that

“the Portman Group’s Code on Alcohol Sponsorship already goes further than the provisions contained in the Bill to protect children from alcohol sponsorship”.

Secondly, you refer in your submission to the reference in the bill’s explanatory notes to the loi Evin—I hope that I have pronounced that right—which banned alcohol advertising, marketing and sponsorship in France. You point out that, as a result of the ban, which as you say was “introduced in 1991”, the exact opposite happened in France; the ban

“failed to reduce underage drinking in France and instead has been accompanied by two decades of increasingly harmful consumption among French children”,

the proportion of people between 18 and 25 who got drunk actually doubled and the proportion of 15 to 30-year-olds drinking a certain amount increased from 20 to 25 per cent. In other words, the ban failed.

First, then, why is the Portman Group code better than what is proposed in the bill? Secondly, why do you think the French ban failed?

Sarah Hanratty: I, too, find it hard to pronounce that particular law—the loi Evin—but the French alcohol marketing ban is often cited as the magic bullet that will solve underage drinking and make the whole problem go away. However, what has happened in France since the introduction of the law in the 1990s is the complete opposite of what is happening in Scotland. Rates of teenage drinking have increased over the period. The matter is too complex for us to make a direct causal link suggesting that the lack of marketing is driving consumption—I would not go that far myself—but the figures show that such a move is not a magic bullet that will suddenly cause a change in direction and result in a cultural shift. An incredible shift is happening in young people’s drinking in Scotland, and we need to build on that instead of using a law that does not seem to have achieved its aim.

As for the Portman Group code, I mentioned at the beginning of the session that the code on naming and packaging has been updated and

changed five times in, I think, the past 20 years, and the sponsorship code was introduced in 2014. I have cited many examples, including the fact that images of under-25s cannot be used in promotional marketing; the idea behind that is that, although the legal age for drinking is 18, the risk is that a 16 or 17-year-old might identify with what happens in that blurry period between 18 and 24.

The code is not voluntary and those in the industry do not get to choose whether it applies to them—it applies to their drinks marketing, whether they like it or not—but the idea behind this self-regulatory code is to keep a real separation between adult marketing and the sort of marketing that might appeal to children. In the same way, there are strong restrictions on the use of cartoon imagery and the colours and fonts that are used in brands. All those issues have been looked at carefully and addressed in the codes.

One great example is the logos that are used on children’s replica kits. That issue did not have to be legislated for, because, as I think a previous witness to the committee pointed out, voluntary action and discussions with the Portman Group resulted in the code containing an absolute restriction on branding on children’s replica kits. It already cannot feature on merchandising, but it should not feature on children’s replica kits either. Those are just some examples of how far we can go. This is a progressive approach that can flex and be flexible in response to changing circumstances.

The Convener: Are there any other responses to Mr Lyle’s original question?

Guy Parker: There has been a steady decrease in the annual alcohol consumption of people in France over the past 40 or 50 years from a very high point. That decrease started long before the adoption in 1991 of the loi Evin—the French law that is often mentioned when people talk to us about why the restrictions that we have in place in the UK do not mirror those in France. It even slowed down slightly after the adoption of the law, although I doubt that there is any causal relationship between those two things.

In 1999, an official French Government evaluation report said that the law had been ineffective in reducing high-risk drinking patterns. Even the French anti-alcohol campaign group accepted that the effects of the law were weak because problem drinking patterns were on the increase and had been in the past 20 years, particularly among young people. The problem of binge drinking—harmful drinking among young people—in France is getting worse whereas, in the UK, I am happy to say that our problem is getting less bad. Nonetheless, the anti-alcohol non-governmental organisation in France continues to advocate the continuation of the ban on symbolic

grounds. However, the point that I have been making is that, as a regulator following the principles of good regulation, the ASA cannot make decisions on symbolic grounds; we must have good evidence that our decisions are proportionate and targeted.

The Convener: We are dealing with international brands. Sarah Hanratty represents people throughout Europe. As drinkers in the UK throughout the period that we are discussing became more mature, the market became more restrictive and more markets were sought. Our whisky brands market extensively to young people throughout Europe. It is a younger person's drink in Europe, rather than an older person's drink, as it is here.

Whether regulation is voluntary or legislative, there needs to be discussion about it, and movement on it, all the time. The industry would not have had a voluntary ban unless legislation was proposed. If we were not having the debate about whether to legislate for alcohol consumption, what would we be doing? People would just be getting on with it and aggressively marketing their brands, would they not? Is it not their responsibility to sell and grow their products?

Guy Parker: I cannot speak for alcohol companies but, when they talk to us in the context of the ASA regulatory system, they talk about the importance of ensuring that their advertising is responsible. They do not want to be implicated in advertising that might have harmful effects. They also have a long-term eye on their business and, if they are irresponsible, the authorities might restrict their ability to do business.

It is not right to say—you are probably not saying this—that, in the absence of law or some other form of imposed regulation there would be a complete free-for-all. One of the driving forces behind the self-regulation of advertising in the UK has long been the recognition that, if advertising is responsible—and if the advertising industry funds an ASA system that ensures that advertising is responsible and takes the day-to-day decisions out of the industry's hands, because it cannot take decisions about its own ads and be credible—that will better maintain people's trust in advertising. Businesspeople are called upon to be far-sighted, which it is harder and harder for them to be because of quarterly results, targets and expectations. However, they will tell you that the reason why that works for them is that, if people are more rather than less likely to trust advertising and to find it responsible, not misleading, not harmful and not offensive, it works better for the companies.

10:15

Jonathan Roberts: The evidence is that consumption has increased over the years while the French law has been in place, but who is to say that it would not have increased even more without the law? We do not have the research to show that. Also, other forms of advertising have come in during that period, such as digital marketing, which we expect have undermined the stipulations of that law. We always need to come back to the fact that the longitudinal research shows that, over a period of time, exposure to marketing of all kinds increases consumption, and that applies whether it is targeted or not.

On sporting and cultural event advertising, we are surprised that the proposal in the bill is not as stringent as the voluntary codes. I think that that has already been mentioned in relation to the proportions of the intended audience. The question that we would ask about that is how we can judge one proportion in one event against another proportion in another event. For example, if there is an event with 50,000 people and the majority of the intended audience are young people, we are looking at 25,000 people. If there is an event with 5,000 people and, again, young people are the majority of the intended audience, we are looking at more than 2,500 people. We could have an instance where, in one event, we would have to ban advertising because it was targeting the same number of people as a larger event that had the same number of young people but was allowed to go ahead.

I am probably not making this very clear. Because of the different proportions between events, we might have 4,000 young people attending one event where advertising was banned and 4,000 young people attending another event where it was not banned. There would be the same number of young people and the potential impact would be the same, but because the proportions relate to different total figures, there would be different approaches. Our concern is that that needs to be tightened up and the processes around how proportions are applied need to be clarified.

We also recommend that the proportions are lowered, at least to the 25 per cent that is part of the voluntary code, but maybe to as low as 10 per cent, which I think a House of Commons committee recommended in recent times, or even, which would be our recommendation, that a total ban be introduced on alcohol advertising at sporting and cultural events. As has been said, it is not just targeted events but exposure as a whole that affects young people.

The Convener: I am aware of the time and I still have committee members who want to contribute,

as well as the member in charge of the bill, so I ask for quick responses to those comments.

Brian Coane: I do not think that a total ban on alcohol advertising at sporting and cultural events would fit within the bill's intention, which is about preventing children from harm. Alcohol brands support events such as the Ryder cup and services such as mountain rescue. Funding comes from alcohol brands to support organisations and events in Scotland, and that is a good, positive way for brands to promote themselves in a responsible way.

The IPA would endorse what Guy Parker said. Our aim is for our membership to influence their clients—the alcohol producers—to market their brands responsibly. The best brands and those that will be most successful are those that behave in a responsible manner, and we seek to influence clients in that regard as much as possible.

Sarah Hanratty: On Jonathan Roberts's comments, I would urge comfort. I take his point about the ratios, but the fundamental backstop is that advertising or any sort of in-brand sponsorship must not be designed in such a way that it would particularly appeal to children. Where it is adult in nature, the 75:25 split is pretty strong. It is stronger than what the rest of Europe has. I think that it runs something more like 70:30, but we go further than that. However, the key point is that the advertising must appeal to adults and not to children.

Jonathan Roberts: I would like to make a brief response to that point. Advertising at football clubs and sponsorship of shirts might be aimed at adults but they are bound to appeal to children. How can you not say that they appeal to children? I would have thought that that was self-evident—football appeals to children, so the sponsoring of events would have an effect on them as well.

Sarah Hanratty: That takes us back to whether exposure to a brand drives children to take action. We must make it clear that children are exposed to huge numbers of brands through marketing and advertising in their daily lives. There is a clear filtering system and there are a lot of complexities around how marketing and advertising work, but we must look at the situation in a positive way. Let us take Jenson Button as an example of a childhood hero. Hearing the message, "Don't drink and drive," from Jenson Button is fundamentally a stronger and more positive brand statement than lots of lessons in school. That can work as part of a healthy and sensible culture and there is a real opportunity for Scotland to look at such voluntary partnerships and frameworks and to keep strengthening them and making them fit for purpose as we go forward.

Guy Parker: Mr Roberts is quite right to say that we do not know what would have happened if the loi Evin had not been enacted. However, I think that I am right in saying that, in the presentation of the bill, the loi Evin has been quoted as a success in terms of its impact on reducing consumption or harmful drinking, and I do not think that that case has been made. The point about digital advertising is a good one, because we all know that one of the things that has changed markedly about the world that we live in is that there has been a digital revolution in the past few years, including the use of social media.

The ASA system covers advertising in digital media. Quite a lot has been said about how advertisers—not just in the alcohol sector but in general—are exploiting social media to advertise irresponsibly to children. We did a study a year or so ago that looked at the social media habits of under-18-year-olds. Of the 427 ads that our children saw, three of them were for alcohol. All those ads were on Facebook and the children were served those ads because they had lied about their age and said that they were over 18. That tells a different story about the arguable inadequacies of self-declared age verification as an age-gating system, but it causes us to question what I think is a bit of a myth—the idea that children are being absolutely bombarded with advertising on social media. If they were, and if that was taking the place of advertising in other media, why are we happily seeing a decline in consumption, including among young people, in this country?

Mike MacKenzie (Highlands and Islands) (SNP): Part of what I wanted to ask may already have been covered, but I would like to get a wee bit more information from Sarah Hanratty and Guy Parker about the French experience. The received wisdom in Scotland for many years has been that, along with our sick-man-of-Europe status, we also have an unhealthy relationship with alcohol. However, from what I am hearing this morning, as Guy Parker has just indicated, the statistics show that we are on a good trajectory, at least by comparison with France, which is on a bad trajectory. Where is the base level of those trajectories? Are the French going to a bad place but in a much better place overall, and are we going to a good place but starting from a much worse place? I am interested in getting that kind of context.

The Convener: We shall see which of the witnesses can help with that question.

Sarah Hanratty: Mike MacKenzie is absolutely right to ask that question. People often cite UK statistics, and that is fine, but when we look at Scotland we are starting from a much higher perspective, particularly in terms of young people's

drinking. In 2004, two thirds of 13-year-olds in Scotland had tried alcohol, whereas in 2013, 68 per cent of 13-year-olds in Scotland had not tried alcohol. That is a hugely positive generational shift. That is not to say that Scotland was not starting from a low level, but there has been a significant reduction.

One of the biggest measures that we should all focus on is past-week drinking. People agree that that is the best way to look at drinking habits. I pulled out an incredible statistic from the Scottish schools adolescent lifestyle and substance use survey recently on past-week drinking, which was that just 1 per cent of Scottish 13-year-olds said that they had tried alcohol in the past week; the comparable figure in 2004 was 10 per cent.

A huge generational change is going on. Again, we do not know why that is the case, but social media tells us that 10 to 13-year-olds' leisure time is fundamentally different now from what it was 10 or 20 years ago. We have to recognise that, for younger generations, alcohol is just not such a big thing any more. However, it is still significantly harmful for many.

One of the biggest areas that we must look at is the variation in health harms from alcohol, both regionally and in class and socioeconomic aspects. Some people are definitely suffering disproportionately more, although they should not be. We should be looking at targeted tackling for them.

Jonathan Roberts: We acknowledge that consumption of alcohol has fallen quite markedly in Scotland, but the levels are still very high. For example, 32 per cent of 13-year-olds still say that they have drunk alcohol, and 70 per cent of 15-year-olds say that. In comparison, only 2 per cent of 13-year-olds say that they have smoked and only 9 per cent of 15-year-olds say that they have smoked. The figures for alcohol are markedly higher than those for smoking and are still at an unacceptable level.

With reference to what I said previously about the French law, who is to say that the figures would not be lower if there had been greater marketing restrictions over that period? We cannot argue one way or another on that, but our basic point is that the figures are still too high. I think that that presents a good case for marketing restrictions being put in place.

Nathan Critchlow: We often refer to France as the default example of legislative processes for alcohol marketing, but other European countries are moving forward with that. Finland and Norway in particular have quite high restrictions on the levels of marketing. A study published in 2006 showed that those countries have some of the lowest levels of consumption in Europe. The

suggestion is that there is an inverse relationship between the strength of policy and the amount of alcohol that young people consume. There is a broader picture outside the French example.

Mike MacKenzie: Since the dawn of mankind, we have never been able to resist forbidden fruits. My underage drinking experience, which seems just a heartbeat ago, was that forbidden fruit sometimes tastes sweeter. Instead of banning advertising, perhaps we should use the powerful tool of advertising to advocate responsible drinking. I wonder whether we would be in danger of creating the problem that we seek to deal with if we went down the route of banning alcohol advertising.

The Convener: What we have heard this morning is about proportionality. We are on a journey, where all around the table agree that there should be responsible marketing of alcohol. The issue is the extent of the restriction on advertising rather than the principle of it, is it not?

10:30

Mike MacKenzie: If you will indulge me for a second, convener, I will explain what I am getting at. Guy Parker mentioned that the ASA banned an advert that said that the party would go better with Smirnoff. My life experience suggests that the party probably would go better—maybe not with Smirnoff, but certainly with uisge-beatha. Perhaps life in general might go a wee bit better with a bit of that, provided that it is in moderation.

My understanding of our young people is that they can abide hypocrisy even less than I can. Guy Parker said that companies are keen to ensure that people trust their advertising, but instead of having such a blunt instrument, is there an opportunity for having an instrument that is a wee bit more precise, honest and helpful? I am keen to hear what the witnesses have to say on that subject.

Guy Parker: On the ruling that you mentioned, Diageo, which markets Smirnoff, would probably agree with you that we should not have banned the ad, but the rules are strict, and we thought that we should ban it. There is a distinction between applying strict content rules rigorously and banning advertising, which can send the forbidden fruit message that you talked about. I have made this point a couple of times but, were there to be a ban, I would worry more about advertising budgets being used to provide lower prices.

Sarah Hanratty: I echo that. I am sure that Brian Coane would also say that our creative industries, particularly in their work around the Scottish brands, are fantastic—it gives a rich tapestry to life to see the different stories that are created around brands. As consumers, we love

that. We are past the age when people wanted just the facts. In the modern world, it would be difficult to take that approach, even though that is what we wanted a fraction of time ago. However, the creativity must be constrained by a sensible, practical and proportionate framework. We are trying to achieve that with our self-regulatory frameworks.

Jonathan Roberts: I have a quick response to the point about the forbidden fruit. Surely that applies more to the availability than to the advertising of alcohol. A restriction on advertising alcohol does not make it less available; rather, it just makes it more attractive. I do not think that the forbidden fruit argument stands.

Nanette Milne (North East Scotland) (Con): My main question was about social media, but it has been answered, so I will touch on the Norwegian situation. I think that the Salvation Army Scotland's submission mentioned the effect that Norway's complete ban on advertising has had on reducing alcohol consumption. Do we know that that is the case? We all know that alcohol in Norway is prohibitively expensive. Does that have more of an impact than the ban on advertising? Do we know what matters there?

The Convener: Nathan Critchlow raised the issue, so perhaps he has further information about that.

Nathan Critchlow: The study to which I referred took policy from multiple components. As Guy Parker mentioned, marketing is just one subcomponent. The study rated the overall strength of the Norwegian policy, of which marketing was one component. It did not isolate the independent effect of marketing on consumption; rather, it was an overall five-star policy review that looked at a correlation between the policy and the level of alcohol consumption.

As is the case with France, I do not believe that the Finnish or Norwegian alcohol restrictions have been robustly evaluated. That ties in with what other witnesses have said about the evidence needing to be more robust before we can be fully sure whether it is for or against an advertising ban. I think that the Cochrane review reflected that, too.

Nanette Milne: I certainly would like to see more evidence on that.

Colin Keir (Edinburgh Western) (SNP): I have been taking some notes. Are we in danger of trying to produce something without fully considering the matter? We are not as isolated as we perhaps were in years gone by. We have instant access to television screens and channels all over Europe. I am thinking about recent major sports events. The rugby world cup was heavily influenced by Heineken, we have the Guinness PRO12 rugby league and there is the Ryder cup

with Johnnie Walker. As for product placement, I have just been to see the James Bond film "Spectre", and Heineken was prominent in one of the scenes. When considering the markets that, for example, the rugby world cup reaches, how do you calculate what percentage of advertising is aimed at adults, which means that the rest is aimed at kids?

Are we getting into a really technical area that we have no control over? Is this sort of thing international and available to all? Let us face it: the rugby world cup down in England was a spectacular success, but every time there was an interview, the interviewee had a big Heineken sign behind them.

Do we have to be a bit more realistic? I can see the point of restrictions on such advertising within, say, 100 yards of a school, but the fact is that alcohol is predominant in our lives and culture. I wonder whether going down the road of overregulation would end up with our looking a touch hypocritical and the whole thing not working at all.

The Convener: Mr Roberts, should we treat alcohol the same as we treat tobacco?

Jonathan Roberts: Yes—I think that we should. The fact that we can see certain things at international sports events does not mean that we should not try to cover the areas for which we are responsible and reduce such marketing in our jurisdiction.

I acknowledge that powerful marketing goes on at international sports events and that we cannot do much about that. The advertising industry is powerful, and I think that, during the world cup in Brazil, the Government was forced to change its policy because FIFA wanted such advertising. That shows that, even when Governments have regulations in place, they can be overpowered by the strong lobbies that are against them. Nevertheless, those powerful forces should not stop us in Scotland taking the steps that we feel it is possible to take.

Guy Parker: We do not think that tobacco and alcohol are the same thing and should be treated in the same way with regard to societal protections. The key difference is that people can drink responsibly—and, indeed, most people do—but they cannot smoke responsibly.

Colin Keir: My final question is short. Given the list of events that I just read out, which involve multimillion-pound investment from drinks companies, has anyone looked at the effect of an international ban on alcohol advertising at such events? How much money would go missing from sports sponsorship?

Sarah Hanratty: We do not collect such detail or have a single big figure, but I know that Ireland has been looking at the potential impact on sports and grass-roots sporting activity of a ban on sports marketing and, as a result, has delayed a decision on the matter.

There are a couple of very interesting reports out there, including a sportscotland report on the value of sport to Scotland that I think concluded that it is worth £2 billion in value and 50,000 jobs. Moreover, there was an Oxford Economics report on the gross value added of the hospitality sector to Scotland, and that, too, might be worth looking at.

It is a shame that Mr Tighe is not here to give you more detail—I am sure that he might be able to follow up on this—but I believe that the beer sector has looked at sports sponsorship by beer brands and concluded that it is worth something like £300 million, £50 million of which is being reinvested in grass-roots sports. I do not have a single, detailed figure for the value, but quite significant finance is involved.

Brian Coane: Advertising agencies in Scotland benefit from contracts with alcohol producers that work in that field, and that expertise enables us not only to help them but to compete globally. Some of the events that Mr Keir mentioned and some of the brands that are working internationally can draw on the expertise from agencies in Scotland.

Without that experience, we will find it more difficult to compete and agencies' ability to contribute to the creative sector in Scotland will be reduced. It is worth remembering that the creative industries are one of Scotland's most important sectors and account for, I think, 68,000 jobs. Advertising is a driver of that sector and helps to generate positive income for Scotland's economy.

Jonathan Roberts: If I remember rightly, the question was raised at a previous session and Dr Rice responded along the lines that there are plenty of non-alcohol companies out there that are willing to be sponsors. He said that only one team in the English Premier League is sponsored by an alcohol firm, and that firm is from the far east. Plenty of firms have the capacity and are willing to sponsor; sport does not rely totally on the alcohol industry. Dr Rice agreed that the impact would need to be analysed, but he did not feel that it would be totally negative.

Colin Keir: It was me who asked the question previously, which is why I mentioned competitions and not necessarily clubs. The focus appears to have changed.

Brian Coane: There is support from alcohol sponsors from an international level right down to small club level. It is challenging to find sponsors

to replace that. It is not as straightforward as saying that there are lots of other companies that will take the place of alcohol sponsors. That is not necessarily the case, particularly in the view of agencies that are based in Scotland, which have a proximity to alcohol brands that are based in Scotland, to which they can offer services. At a lower level and at smaller events such as Highland games, community clubs benefit from the support of alcohol brands. I mentioned mountain rescue earlier. Alcohol sponsorship provides support in a number of ways at local and international levels.

Sarah Hanratty: I very much support Brian Coane's point—we often focus on the big, blue riband events, but we must remember that there are many layers of sponsorship, right down to small local teams, pub teams and less popular sports, where it is much more difficult to attract funding.

The Convener: One area that we have not covered, which will come up with the next panel, is the criminal sanctions, and sanctions in general, that the bill would bring in. Mr Roberts has suggested that additional sanctions would be necessary if the bill was to be taken seriously and that organisations that breached the rules should face a ban on future marketing activity for an appropriate period.

Jonathan Roberts: Our feeling is that this is such a serious matter that stronger sanctions need to be in place to deter the industry from marketing as it does currently. The £5,000 maximum fine and the fixed-penalty notices are all well and good—they are good steps—but we would see as more effective a 12-month suspended sentence where, if a breach took place within that period, there would be a further 12-month ban on advertising. That is the step that we suggest—a stronger sanction.

I go back to the idea of self-regulation, whereby we do not think that the sanctions are strong enough to deter people from marketing inappropriately. With statutory regulation, we would want stronger sanctions to act as a deterrent.

The Convener: We have the written evidence, but we just want something on the record.

Guy Parker: I cannot really comment on criminal sanctions—that is not my area. I can talk to you about the sanctions in the ASA system because that is what I know about.

Compliance rates are pretty high with the advertising codes that we police. When companies are unable or unwilling to comply with the codes, we can deploy various sanctions to bring them into line.

In the alcohol sector, there is almost no non-compliance and almost no need for us to go to sanctions. The fact that companies really do not want an ASA ruling against them is an extremely powerful deterrent. I cannot invite the committee into an investigation, because our investigations are confidential, but I would love to be able to do that so that members could see how hard companies such as Diageo and Heineken fight to persuade us that, in their judgment, their ad is on the right side of the line. With their far-sighted hat on, those companies support the ASA system but, when it comes to battles about individual adverts or ad campaigns, they will fight like tigers to avoid an ASA ban, because the adverse publicity that such a ban attracts is very bad for them.

10:45

The Convener: Is a hearing a serious step and is it a nuclear option? If a company is in breach, is it brought to a hearing? When does the ASA's work take place and is it confidential? Is there engagement with the company before a case gets to that stage? It is only when you cannot get movement that it progresses to that stage.

How can the committee evaluate the work that is being done and the scale of the problem? That evaluation would not necessarily be based only on the number of hearings. Saying that there were 10, 20 or 30 hearings a year would give us no indication of the debate that takes place or the work that goes on to confirm that regulations are being met and to get best practice, would it?

Guy Parker: I think that the figure gives you an indication. Last year, we published around 800 or 900 rulings against companies. Those are the conclusions of the most formal investigations that we undertake. We do lots of other work, which is dealt with in a different way, to secure changes to ads and bring them into line. The most formal investigations result in ASA rulings, which we publish weekly on our website. We made about 900 such rulings last year. If we look at the proportion of those that relate to alcohol ads, that gives an indication—based on the number of complaints—of how well the alcohol sector is complying with the code. That is only an indication, but it is an indication.

We undertake surveys from time to time, when we look at all the alcohol ads across various media for a month—it is normally the month that leads up to Christmas, so it is normally December. We analyse the ads against the codes and work out which ones look to us to be prima facie in breach of the code. For obvious reasons, we do not conduct 500 or 600 investigations, but we get an indication of the compliance rate, which tends to be high.

The area where we, as a system, are challenged when it comes to persuading companies that are unwilling or unable—normally unwilling—to comply relates to much smaller online companies that mislead people. They often do not have a reputation to care about; they just want to fleece people for money and they use advertising and marketing to do that. Over the past few years, we have had to devote the most thought to our sanctions in that area. Happily, we now have an increasingly successful legal backstop arrangement whereby trading standards services suspend the websites of such companies, so even in that area—where it is hardest for a self-regulated and co-regulated system such as the ASA to ensure that people stick to our rules—we are beginning to get really good outcomes.

Sarah Hanratty: On the part of the Portman Group, I think that the sanctions are pretty fierce. We have the support of all major retailers, so if the lay panel that makes the rulings finds that a product is in breach, an instruction goes out across the retail estate to remove the product until it has been changed or adjusted. One of the biggest issues is that the costs of repackaging and having to renegotiate a sponsorship deal are significant for a company. The best anecdote that I can give is that one of the very senior directors who is in charge of this has a personal key performance indicator that stipulates that, if he breaches one of the industry codes, his bonus is shot for that year. That is how important compliance is, right down to individuals having a responsibility to ensure it.

Dr Simpson: The current regulatory framework in Scotland is that there is a ban on promotions within 200m of premises and there is a voluntary ban on advertising within 100m of schools. Have there been any problems with the current regulatory system and voluntary system? Clearly, everybody is agreed that the bans should be in place, as the promotions ban is in the law and the advertising ban is in the voluntary code under the Portman agreement. The companies would not have introduced that if they either had not been under pressure or had not felt that it was reasonable. Are there any problems with that? My proposal is simply for a 200m advertising ban to bring our approach into line with the 200m promotions ban, except in one case it is premises and in the other it is schools. It is a very modest measure, which will not solve our drinking problem but will bring things into line.

I have one other thing, which is a correction—

The Convener: Richard, I think that you have asked a couple of questions already. Are there any problems with the existing regulatory system?

Sarah Hanratty: I am happy to go first. It is a voluntary code, and I am sure that Jonathan

Roberts will quickly tell me that a few are flying under the radar. As you can imagine, the system is fairly complex, because of the number of poster sites, but, thanks to Twitter, for example, a brand can be alerted fairly quickly if a poster has slipped through the net. Companies do their best through their media buyers to ensure that the voluntary code is upheld, and together with the Outdoor Advertising Association—I must apologise; I know that it has changed its name—

Brian Coane: It is now called Outsmart.

Sarah Hanratty: Perfect. Because it is voluntary, a company that gets an alert can let its media buyer know very quickly, and the poster in question can be removed.

Jonathan Roberts: I am sorry to disappoint Sarah Hanratty, but I cannot point to any particular instance. However, I know anecdotally of breaches of the 100m voluntary exclusion zone.

On the general point about self-regulation, I come back to certain reports that have been issued. For example, in 2010, the House of Commons Health Select Committee looked at advertising practices in the industry and communications organisations and concluded with the plain statement that self-regulation does not work. Moreover, the European Commission report of 2012, which I alluded to earlier, said:

“we find potential violations of the Portman Code in relation to the display of instances that may ‘suggest any association with bravado, or with violent, aggressive, dangerous or antisocial behaviour’ ... ‘suggest any association with sexual success’ ... or ‘suggest that consumption of the drink can lead to social success or popularity’”.

That report was able to identify a number of breaches of the code and concluded, along with the House of Commons Health Select Committee, that self-regulation does not work. That general comment on self-regulation applies to the 100m exclusion zone and the other aspects that we have been looking at.

Guy Parker: As we do not police either of the restrictions that Dr Simpson has highlighted, I am afraid that I do not know the answer to the question whether there have been any problems with them.

On Jonathan Roberts's point about the conclusion by the Health Select Committee inquiry in 2009-10 that self-regulation does not work, I had the pleasure of giving evidence to that inquiry, and I have to tell you that the experience was very different from the one that I am having at this meeting. During the hour and a half or so when I was being interrogated, I had no doubt that that was going to be the committee's conclusion, even though it was some weeks or months before its conclusions were to be published. I do not know

why that was, but the committee seemed to be interested in only one side of the argument.

Obviously I do not agree that advertising self-regulation does not work—I think that it does. It is difficult to strike this elusive balance between protecting people and allowing responsible advertising, and it is a job that calls for fine judgments. Generally, however, I think that we do it well. That said, I am no defender of self-regulation across the board. Some can be effective, and some is not—it very much depends on the circumstances. Obviously, though, I think that advertising self-regulation in the United Kingdom is effective.

Nathan Critchlow: I will go through some of the bill's components with reference to evidence that the University of Stirling published back in 2011. First of all, 53 per cent of 12 to 14-year-olds were aware of alcohol marketing on posters and billboards, although I note that it is not possible to say whether that was within the restrictions outlined in the bill; 61 per cent were aware of sports sponsorship; and, with regard to a part of the bill that has been relatively untouched this morning, 55 per cent were aware of in-store alcohol advertising. I simply bring those figures to members' attention.

Dr Simpson: Do the advertising people have any comments about problems in this respect?

Brian Coane: I am not aware of problems with the restriction. The concern is that, if I understand it correctly, the bill would extend the restricted area for outdoor advertising from 100m to 200m and extend the scope to include nurseries, crèches and playgrounds as well as schools. As I said, I do not know whether analysis has been done on the impact that that would have, taking account of the geography of all such locations to consider where advertising would be allowed. My judgment is that a 200m restriction would be significant and might have the effect of banning advertising in some urban areas. It would be good if analysis were done to map accurately all the locations and show where a ban would be imposed.

Dr Simpson: You do not think that there are problems with the 100m ban, but you are concerned that 200m is too much. Would it be easier for everyone if we went down the route that the Salvation Army and many other people who are concerned about the alcohol problem want to take and had a total ban on billboard advertising? Would that be the simplest solution?

Brian Coane: I do not think that that would be a solution. What we are advocating is that advertisers who advertise responsibly should be able to do so. The codes that we talked about are

in place to ensure that advertisers advertise responsibly.

Dr Simpson: The discussion about the loi Evin was interesting. The WHO is clear that the main drivers of alcohol consumption are price and availability—we know that. However, the industry would not spend literally billions of pounds on advertising if it did not have some effect. The question is whether it is reasonable to control advertising of alcohol as opposed to other goods and services and to take a more restrictive approach because we think that alcohol advertising has an effect. The tobacco industry argues that advertising is not about consumption but about different brands. We know that that is fallacious, but is that the argument that is being put forward here?

Guy Parker: The evidence is that alcohol advertising has a small and consistent effect on consumption. I do not have figures on this, but I am sure that a lot of the money in companies' advertising budgets is there to try to get brand share from competitors rather than grow the market, although it is not exclusively there for that. Like you—I am sorry to put words into your mouth—I am suspicious of the argument that advertising is only about encouraging brand switching. I do not think that that is the case, because sometimes there are new products that establish new categories, and the new categories grow.

The question is whether the rules and restrictions that are in place are a proportionate response to the evidence. The ASA system and the Portman Group—obviously I am here to talk about the ASA system—already police alcohol advertising substantially more strictly than we police advertising of the vast majority of other products and sectors. There are advertising rules in the broadcast and non-broadcast codes, which cover all advertising for all products and sectors and ensure that ads are not misleading, harmful or offensive. Both codes contain detailed sections on alcohol, which contain some of the rules that we have been talking about and further restrict alcohol advertising through placement and content rules. The judgment that the ASA system has made over the years is that those restrictions are right, given the potential harms that result from people drinking irresponsibly.

Sarah Hanratty: I am sure that Brian Coane and his teams know that, if they are marketing alcohol, they are subject to much stricter rules and tougher codes than apply to most other products in the UK.

We have to go back to first principles. We are seeing a generational shift and there is definite improvement, on which we must build. That shift is being achieved not by restricting marketing but by

people working together. There is an opportunity to look at local partnerships. There are great pilots going on and there are things such as the best bar none scheme, pubwatch schemes and work with street pastors.

Alcohol marketing is just one small part of people's propensity to drink and how they drink. We know that peer influences are huge, as well as familial background and socioeconomic factors. All those other factors are hugely important. We can target those areas much more effectively while strengthening our already pretty tough codes. That sort of partnership approach would see another great downward shift.

11:00

Jonathan Roberts: As you would expect, I agree with Guy Parker that advertising affects consumption. He asked the right question, which is whether we are making a proportionate response to that. The current voluntary codes do not do that, which is why we support the bill, as far as it goes, although we want it to go further, of course. The point is that alcohol marketing normalises alcohol consumption among young people and the aim of Dr Simpson's bill is to denormalise it, because this is not just about peer pressure or the family environment; it is the whole culture around alcohol that enables peer pressure and the family environment to be effective that needs to be tackled.

I think that it is a proportionate response to put these restrictions in place to denormalise drinking among children and young people. We are not trying to stop people drinking. We are not trying to ban alcohol totally for everybody. We are just saying that marketing has a powerful impact on people's drinking habits in childhood and beyond, leading to the kind of problems that we see in adults later in life.

Guy Parker: Can I just make one clarification? The UK codes that we police are not voluntary. You may have been talking about the other voluntary arrangements, such as the 100m poster restriction, but the UK codes are not voluntary. You cannot opt out of them.

The Convener: Richard—one final question.

Dr Simpson: Yes, it is almost a correction. Although it is true and very welcome that, according to the Scottish schools adolescent lifestyle and substance use survey, the number of people drinking at 13 and 15 has reduced—Sarah Hanratty quoted the very good figures around that—we do not know why. The education stuff that I introduced when I was the justice minister may have helped, but who knows? I should also point out that, as is the case in almost every other

northern European country, the ones who do drink are drinking more heavily.

In other words, a bivalent approach is occurring now, which really makes life difficult. If we denormalise drinking, which is the purpose of the bill, for primary school children by having nothing within 200m of schools, they will be less likely to be exposed to alcohol advertising. Do the witnesses agree that that measure could have a small but possibly useful effect in changing the perception of alcohol among the very young, so that the group who drink heavily will be slightly less affected, which will then continue the welcome downward trend?

Guy Parker: I do not yet understand how a UK-wide advertising regime such as the ASA system, which we are responsible for, can be a part—a relatively small part, I would argue—of a context where alcohol consumption is decreasing but also in part responsible for a minority drinking more. I would have thought that you need to look much more closely and carefully at who those people are and where they are based, because I think that Sarah Hanratty is right. There is very wide variation and there are some problem areas around the UK and within Scotland. We need to look at what is happening there and think very locally in our interventions to try to change that picture.

Sarah Hanratty: I will just echo that. The focus on alcohol education, together with the tough clamp-down on underage sales, preventing alcohol sales to children, has been a huge success. Normalising the responsible consumption of alcohol should be the shared vision and I think that we can all get behind that in a huge way.

The next big challenge is around proxy sales to underage drinkers. I know that there are a couple of local Scottish pilots that have been a great success and I commend those to the committee—it is targeted, Google Earth stuff. We need to get right down to the details and find out why that 10 per cent is drinking and what is going on in their lives. That is what we need to look at.

The Convener: That concludes this evidence session. Thank you all very much for your time, your written evidence and your attendance today. It has been very helpful. We will suspend and set up for the next panel.

11:05

Meeting suspended.

11:09

On resuming—

The Convener: We now have our second evidence session of today's meeting, which is also about the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill. The session will focus primarily on justice matters.

I welcome our witnesses: Tim Ross, chief inspector at Police Scotland; Robert Sandeman, director of operations at the Scottish Courts and Tribunals Service; and Bruce Milne of criminal justice social work development at Social Work Scotland. Thank you for your attendance this morning.

In the interests of time, we will go directly to Richard Lyle for our first question.

Richard Lyle: Our witnesses are people who will have to implement the bill or work with the bill and its effects. I would like to hear their views on the drinking banning orders, the adjustment of the police process in relation to fixed penalties and clarity in the operation of the approved courses. In particular, I would like to know Police Scotland's view on the proposal to mark the items being sold in an individual shop in certain circumstances, so that they could be traced back if there is underage drinking in the area.

The Convener: I thank Richard Lyle for that question. None of the other committee members will have any questions left now. If the witnesses could respond to some of that, I will allow other members to develop some of the issues and ask supplementaries.

Chief Inspector Tim Ross (Police Scotland): I will start with the last question, which was about bottle-marking schemes. There have been examples of bottle-marking schemes that have worked in different areas of Scotland in the past. It is quite an interesting proposal, to see whether that can be formalised by application to the licensing board.

Police Scotland's past experience has been that bottle-marking schemes have proved effective when they have been community-based—when there has been involvement of the trade and the community in trying to prevent underage drinking, which is one of the aims of the bill. The first bottle-marking scheme that I was aware of was perhaps 10 or 15 years ago, and the landscape around licensing has changed a lot since then. I am not entirely clear what the proposal would deliver for us and for communities in relation to preventing drinking. We have different ways of enforcing things now, such as test purchase and challenge

25, which have perhaps nullified some of the benefits of bottle-marking schemes.

Nevertheless, I think that bottle-marking schemes have their place, certainly on a voluntary basis as a way of reinforcing retailer responsibility and getting retailer buy-in to the issue. From a police enforcement perspective, potentially there is better evidence that allows us to take further enforcement action in the form of some of the tactics that I have just mentioned. I do not know whether that has been helpful, but I think that bottle-marking schemes are most effective when there is community and local buy-in.

The Convener: As there are no other initial comments, we will allow some of the other committee members to develop the issue. We visited Newcastle recently and there were some good examples there.

Do witnesses have any thoughts on the courts and the proposals for deferment rather than fines or other penalties?

11:15

Robert Sandeman (Scottish Courts and Tribunals Service): The SCTS has focused on particular parts of the bill that require the courts not to do something. For example, the bill asks the court to explain its reasons when it does not impose a drinking banning order. We have significant apprehension about those particular aspects.

On the general operability of the proposals, we are not particularly concerned about drinking banning orders being imposed under the bill. Relatively few drinking banning orders were imposed in England and Wales under the Violent Crime Reduction Act 2006 and, based on that experience and adjusting for population size in Scotland, we will not be talking about large numbers in the positive; those will be absorbable within existing business and we are not particularly concerned about those.

We do have a concern—which I can talk about in a bit more detail if you like, convener—about both the negative operation of DBOs and the general practitioner notification scheme that is proposed in section 31. The issue for us is really one of numbers and time. The submission that we made in response to the call for evidence mentions some costings, but since then we have been looking at what the provisions would mean in practice, on a day-to-day court basis and I will give you an idea of the numbers.

We estimate that, in the minds of the Crown and judges, about 53,000 cases a year may be appropriate for a drinking banning order. That is based on about half of all cases having an alcohol

element. We can translate that into the time that would be needed to explain why the court is not granting an order, which we would be required to do under section 21(7). It states that,

“If the court .. decides that the conditions”

relevant to the banning order are not met,

“it must give its reasons”

for that

“in open court.”

Section 21(8) states:

“If the court decides that the conditions are not met in relation to the offender”—

that is, if a banning order was up for consideration but the court decided on balance not to apply one—

“it must state that fact in open court and give its reasons.”

If we allow for about two minutes of consideration, which is a fair estimate—I have probably taken much longer than that just to explain some of the background—and multiply that by 53,000 cases, it translates into about 350 additional court business days a year just to explain why something is not being done. We are apprehensive about that aspect. That is as neutral as I can be about it.

On a positive note, I do not think that we are necessarily talking about alarming numbers of orders, although colleagues from the police and social work might have a different view, and there will be an experimental period as the provisions are tested and as they bed in.

Malcolm Chisholm: I am interested in the submission from the Scottish Courts and Tribunals Service because it covers areas that nobody else has covered. Would it be fair to say in summary that your main concerns about the bill are about cost rather than issues of principle? I did not totally understand one point because I do not know enough about court processes, but I take it that the jurisdiction for applications to vary and revoke is not particularly a cost issue. You might want to explain that one, but is it fair to say that the other concerns are more about the cost implications?

Presumably, you would argue for more staff or whatever to do all of the associated work, although I suppose that the alternative, given your last point, would be to amend the bill so that you would not have to explain what you have not done. Would a lot of your concerns be met if you did not have to explain why you were not issuing a banning order?

Robert Sandeman: As you say, the broad principle is not an issue on which the courts service has a particular position. It is a matter of policy.

However, in relation to making the provisions practicable and administering them, I note that the negative obligations in sections 22(7) and 22(8), which I referred to, would be significant for the courts in practical terms if they were to go ahead. Removing them would not affect the courts' ability to impose orders if they thought that it was relevant to do that. Does that answer all your questions?

Malcolm Chisholm: As I said, I did not quite understand the statement:

"We would suggest that further consideration is given to the application process and in particular to ensuring that a sheriff in a second court is aware of the detail or the original application."

I am not sure what the procedure behind that is.

Robert Sandeman: A lot of those issues can probably be resolved by ensuring that, if a case transfers, the relevant judge understands what is going on and the background. Such issues can probably be ironed out on implementation rather than necessarily needing to be ironed out in the bill.

Rhoda Grant: My question is on a different subject. The Scottish Courts and Tribunals Service said in its written evidence that it was concerned about the provision on GP notification, but I think that it is more concerned about how it would work in practice than about its purpose. Most people, perhaps, would sign up to the purpose, because there would be an intervention that would give people the support that they need to prevent offending reoccurring. How could it work in practice? I suppose that I am handing the question back to you: if the policy is good, how can we make it work in practice?

Robert Sandeman: We get quite a lot of legislation from the Scottish Parliament and we often have to work out how we will make it practicable. One of the issues around GP notification is really just a practical one: how can the court sensibly and practically find out that a person is registered with a GP? Most people will be registered, but some might not. We think that the best way to do it is in open court, if we do not already have the background information in a report.

Therefore, if I was up before the court, I would be told, "Mr Sandeman, I find you guilty of these offences and I am going to impose a banning order. I am also going to notify your GP about this. Can you please let the clerk know your name and address, et cetera?", then off the offender would go. Rehearsing that would probably take up to a minute. If we multiply that by 53,000, which is the number that we are working with, it adds a lot of time to the court's time. There might be ways around that, but in our written evidence we also

referred to the costs for recorded delivery, to ensure that things are secure.

However, the numbers are not massive. The bigger issue for me, having looked at the matter again in preparation for giving evidence here, is the time one. I heard proportionality mentioned in the earlier evidence session, and the question is whether we have the right tool for the job. Obviously, that is a decision for the committee.

Chief Inspector Ross: On the initial question about the enforcement and what have you of drinking banning orders, I do not anticipate there being, to use Mr Sandeman's term, massive numbers of them. We support the introduction of drinking banning orders and think that they could play a very useful role. For example, in the area of North Ayrshire where I work, drinking banning orders would probably apply to relatively few people but they would provide a really useful tool to try to prevent them from engaging in repeated drinking that fuels alcohol-related disorder or criminal behaviour.

I do not think that enforcement of the drinking banning order would present us with a particular problem resource-wise or what have you. We try to proactively police those who cause us the most problems, and the drinking banning order would be a welcome addition tool.

Bruce Milne (Social Work Scotland): From a social work point of view, most of our consideration is around effectiveness. We have reservations about what the drinking banning orders will give us that is not already there in antisocial behaviour legislation or post-conviction measures such as the community payback order.

On GP notification, the question that comes to mind is how effective it will be in getting people to engage with treatment. If people voluntarily notify who their GP is and their GP is informed but there is no expectation or requirement that GPs will do anything with that information, we would question the proposal's effectiveness. I guess that it is up for grabs unless there is a pilot to see whether it is effective in getting people to engage with counselling, treatment or education.

Rhoda Grant: I want to come back to Mr Sandeman on the issue of court time. How much court time is used by repeat offenders because of alcohol misuse?

Robert Sandeman: I do not have those figures to hand and we do not collect data on the number of convictions relating to alcohol, so I am afraid that we are not necessarily able to answer your question.

Rhoda Grant: So no figures are collected on the number of offences that are committed by

people while they are under the influence of alcohol.

Robert Sandeman: Not as far as I am aware.

Rhoda Grant: Okay—so we do not know what the figures are or how many repeat offences are committed.

Chief Inspector Ross: It is only in recent years that Police Scotland has started mandatorily recording the involvement of alcohol. There is a degree of subjectivity around that. In the past, we were not particularly good at collecting statistics on the number of offences that were prompted by alcohol, but it is something that we do now, so those figures should start to become available.

Rhoda Grant: When did you start collecting that information?

Chief Inspector Ross: I think that it was between 18 months and two years ago that crime reports began to include a section for recording whether alcohol was a factor in the crime.

Rhoda Grant: From that information, would you be able to establish the level of repeat offending by people who continually get into trouble because of alcohol use?

Chief Inspector Ross: Yes, we would be. It is quite easy to identify repeat offenders, repeat victims and what have you.

Rhoda Grant: Would it be possible for the committee to get that information? I do not want to put you on the spot, but it would be really helpful for us to get even a small amount of it.

Chief Inspector Ross: I will look into that and report back on whether we could do that.

Rhoda Grant: Thank you.

Nanette Milne: I have a question on an issue that Bruce Milne touched on. Will the proposed drinking banning order be any more effective than the existing antisocial behaviour order in addressing the problem?

Chief Inspector Ross: I think that it is an additional, highly specific tool that could be used in highly specific circumstances. I do not think that it would be used a massive amount, but there are cases involving people who engage in alcohol-fuelled behaviour for which it would prove useful.

Nanette Milne: Do you think that it is necessary?

Chief Inspector Ross: Is it necessary as opposed to useful? We would have to look at the process for antisocial behaviour orders and consider how effective drinking banning orders could be in the specific circumstances that I mentioned. I suppose that the drinking banning

order is a similar type of order that could be used as an alternative in dealing with such offending.

The Convener: There is another measure that is akin to the principle of notifying a GP in order to help someone to identify that they might have a problem and seek help. We recently visited Newcastle, where a scheme is in place that is claimed to have no cost and which we were told was a no-brainer to introduce—it relates to the issuing of fixed-penalty fines for drink-related incidents and criminality. Part of the fine can be deferred and the person can go and participate in a four-hour course. Is there some merit in that idea, which is aimed at changing people's habits? I do not know whether you are aware of the initiative, but it is claimed that it is successful in reducing repeat offending.

Chief Inspector Ross: Absolutely—I think that there is merit in that. We all know that intervention and prevention are far more effective and cost-effective than retrospective enforcement. If we could influence behaviour, that would be very effective.

When it comes to alcohol, the delivery of brief interventions is a key approach that many alcohol and drug partnerships and health services pursue, because it is seen as being an effective way of influencing people's behaviour. What you describe is similar. If we could identify people who are involved in alcohol-fuelled offending and offer them an awareness course as an alternative to a fixed penalty, that would make absolute sense. It would be particularly useful in the case of young people, who are sometimes not best placed to pay fines. If they cannot pay a fine, things can escalate and, as a result of non-payment of the fine, they can become even more enmeshed in the criminal justice system, which, with the best will in the world, does not always provide the best outcomes for them. I think that that is an extremely positive option.

Bruce Milne: I agree that, in principle, it is a good idea. The questions that come to mind are about the form that the alcohol education and prevention would take and how that would fit in with the community justice reforms and the remit of community justice Scotland in developing practice and quality assurance in such areas. I hope that those things would be joined up in some way to give us a consistent approach across the whole system.

11:30

Richard Lyle: I want to ask the Scottish Courts and Tribunals Service about the date on which a drinking banning order takes effect. Basically, you are concerned about the bill specifying that an order will come into effect either when the court

makes the decision or when the person is released. I find the paragraph in question confusing and I wonder whether you can explain it.

Robert Sandeman: My evidence today is tending to be about timing, and the question is: when does this thing start? We will not necessarily have information on release readily to hand, but I think that that is another issue that can be ironed out on implementation and that a practical solution can be worked out.

Richard Lyle: But do you have concerns about the matter?

Robert Sandeman: Not particularly. Some of our evidence offers refinements to particular elements of the bill, but other parts highlight more substantive concerns.

Richard Lyle: Perhaps I can give you a scenario. A person is released; the drinking banning order that he—I am sorry; I should say “he or she”—was under has not yet run its course, but they go down to the pub anyway and have a couple of jars. The police might then lift them and find out that they have a drinking banning order. The person in question might say, “But it finished at 4 o’clock”, only to be told, “No—it finishes at 6.” Do you see where I am going with this?

Robert Sandeman: Yes. Now that you have explained it to me, I can see that there might be practical issues in which timing will be critical. I suppose that police colleagues, too, will need to think about practical ways of approaching that.

The Convener: We can ask the police. I presume that Police Scotland will know the timings and so on.

Chief Inspector Ross: Confusion can arise. There are a number of time-limited measures—for example, bail conditions—that people can have against them, and there are occasions on which people who have been arrested have been quite adamant that the condition in question no longer applies to them, even though the criminal history system or whatever says that it does. We then have to discuss the matter. However, such cases are relatively few in number and, whenever they arise, they are generally sorted out without too much issue. It is all about putting the proper systems in place to ensure that people are aware of the exact restrictions and times.

Richard Lyle: Having never been in that position, I need to ask this question. I used to be a justice of the peace many years ago, but can you tell me whether an individual gets a slip of paper from the court that tells them the time that their bail condition or whatever is up?

Robert Sandeman: I need to refresh my memory as to what the bill requires the courts to do. I think that, at the time, the nature and effect of

the order has to be explained to the individual. That is one of the things that will need to be absolutely nailed down, and it is where guidance and discussion with partners on implementation will be critical.

The individual will know that the condition will expire at 12 o’clock on Tuesday, for example, after which they can go back to the pub. In that respect, there are certain issues that, although still legal in nature, are more about the cultural changes that Dr Simpson refers to in his policy memorandum. The question is: what happens at the end of these orders? Does life for the person go back to normal, or are they monitored? Such questions are not necessarily for the court to decide.

Chief Inspector Ross: Of course, the measure must include the approved courses, because ultimately this is all about trying to influence future behaviour. If the effect of the drinking banning order is that, at its end, everything goes back to normal and the individual goes back to the pub, not very much will have been gained from it. The approved courses are therefore a very important part of the approach, and they have to make a difference. That is really difficult to measure. The approach is a long-term one.

I listened with interest to some of the debate about advertising. The picture is complicated and there are many influencing factors, but approved courses are a vital part of making the approach work.

The Convener: A particular type of individual would be involved. I think that you mentioned people who are particularly problematic or violent. You support such action for particular groups or individuals to keep them and the community safe.

Chief Inspector Ross: Yes. There is legislation to deal with people who are violent on premises and to restrict their access to premises in the future, for example. The approach in the bill is perhaps at a slightly lower level than that. I do not know what the percentage might be, but if we could say that we could influence future behaviour in even 20 per cent of cases and reduce the drinking of those people, which would have a knock-on benefit in respect of criminal behaviour, health and all the expenditure that we have, that would probably be a success.

The Convener: There would also be a reduction in court time and expense.

Chief Inspector Ross: Absolutely.

Malcolm Chisholm: I have a couple of other questions about the written evidence. I thought that I had exhausted my questions to the Scottish Courts and Tribunals Service, but in its submission it referred to having to explain the order,

"including the effect of the order and the consequences of not complying with it. We would consider this to constitute legal advice".

I was rather surprised by that. Surely if a person does not comply with the order, there will be a factual consequence. That will not really be legal advice; the facts of the situation will just be stated.

Robert Sandeman: That is a fair comment. There are more neutral ways to deliver. I suppose that the issue is around how far a person goes, when they are asked to explain something, beyond just saying that it means X, Y and Z. It is sometimes found in court practice that people are asked to go a bit beyond that, which starts to stray more into the realms of advice, but it is possible to do that in-the-middle bit. The approach can be adjusted.

Malcolm Chisholm: I welcome the police's strong messages on drinking banning orders and approved courses. The other subject that Police Scotland covers is fixed penalties. It says in its submission:

"Police Scotland would require some adjustment to our current processes to facilitate fixed penalties".

I thought that Police Scotland already deals with fixed penalties, so I did not totally understand that.

Chief Inspector Ross: We do, but currently the option of someone taking a course rather than paying a fixed penalty is not statutorily available in relation to our processes, so we do not have processes for monitoring how that would work. If a penalty was issued, it would go through our processes and then go to court for notification of payment. The issue is how exactly we would work around the administrative process of being notified that the person had taken up a course as an alternative to payment. It would just be a case of putting a process in place, and some cost might be involved in that. It is difficult to put a figure on that just now, but there would be administrative implications for us.

Malcolm Chisholm: Okay. Thanks.

The Convener: Proxy purchasing as one of the ways in which underage people can get access to alcohol was mentioned in the previous evidence session and in other sessions. General support for the container-marking proposals has also been mentioned. Are there other measures? Would container marking help to tackle proxy purchasing?

Chief Inspector Ross: That is a difficult one. The issue with proxy purchasing, of course, is that the sale of alcohol is not illegal—it is being sold to somebody who is of age. Potentially, bottle marking would not have an effect on proxy purchasing because the retailer would not be doing anything wrong. It really does not make

much difference if bottles are marked or unmarked, as long as they are sold legally. The issue is what happens to the alcohol thereafter. Therefore, I do not see bottle marking having a huge effect on proxy purchasing.

You are right that it is a big problem for us. Influences on drinking were mentioned in the previous evidence session. Peer pressure and older people buying drink for younger people are real issues, and they are difficult to tackle. For example, the transaction between the older person and the younger person really has to be seen if successful action is to be taken. Bottle marking would therefore have a limited effect.

The Convener: My next question might relate to your early experience in the community and what you said about reinforcing retail responsibility.

The police to whom we spoke in Newcastle claimed that they could eliminate certain off-sales by using the marking system. It is not a good way of targeting proxy sales because, often, young people do not use marked products—they get the alcohol from somewhere else. However, the police also told us that the markers were helpful with regard to their suspicions about poor retailers who were prepared to sell alcohol incorrectly. They were also helpful when it came to disciplining those retailers. The system also helped to support vulnerable staff members who come under peer pressure from people in their community or neighbourhood. The markings, alongside posters, campaigns and cameras in the shops, gave those young staff members confidence to deal correctly with young people who were putting pressure on them to sell alcohol. Without those measures, they might have felt that it was easier just to sell the alcohol to those young people.

The police listed a number of positive outcomes from the scheme in Newcastle and the surrounding area.

Chief Inspector Ross: I think that those are the potential benefits of the schemes that I referred to. They have most effect when there is trader buy-in and when we identify premises in a locality that we suspect are being targeted by youths as places that are easy to get alcohol from.

The schemes could be useful. I would like to think that, in many instances, we can work in that way on a voluntary basis at the moment. With regard to whether it would be good to have a legislative power, there are occasions on which it might be helpful for us to be able to go to a board to ask it to impose bottle-marking conditions in a certain area because of a particular problem.

Anything that we can do to support responsible retailers is great. With regard to the irresponsible ones, as I said, although bottle marking in itself rarely leads to enforcement action, it provides

evidence that can enable us to undertake further, more targeted enforcement activity, such as test purchases.

The Convener: If committee members have no further questions, Dr Simpson may ask his questions. Richard—you have lots of time.

Dr Simpson: I thank our witnesses for their general support for the principles. I understand the need to be careful not to overload the time of police and courts.

The information about the number of cases, which Mr Ross was asked to provide, would be useful. In terms of convictions, we know that roughly 40 per cent of the 45,000 people who are admitted to custody have an alcohol problem, and that the proportion is higher—70 per cent—among youth offenders.

Mr Milne talked about treatment. I am not concerned about that, because I think that we have that pretty much sorted. We have community payback orders, the alcohol treatment requirement and so on. Those things are in place for people who have alcohol dependency. However, the thrust of my bill is to pick people up much earlier: we want to catch the ones who are starting off on this trajectory—the ones who come before the courts in connection with relatively minor offences. At the moment—I ask Mr Sandeman to confirm this—the courts do not identify whether there is an alcohol element to the offence unless it involves something quite serious.

Will the measures in the bill—fine diversion, the chance to reduce a drinking banning order by going on an education course and so on—be helpful? Is action at that level more useful? I know that the Scottish criminal justice service tends to deal with more serious issues, including drug treatment and testing orders.

11:45

Bruce Milne: We support people getting access to alcohol education, or whatever services they require, at the earliest point. The community justice reforms are aimed at widening the scope for that, so that support is seen not merely as the statutory criminal justice involvement that people have received in the past. How the assessment process is undertaken—how it is decided that offending is alcohol related, and how the cause of the alcohol use is identified—will be crucial in determining what our intervention should target. Is the aim purely educational, or are there other issues to be addressed during the process? For example, is the drinking because of a bereavement? If so, we would want the person to access services related to that.

The devil is in the detail of how the system would operate, how the assessment would work, and how we would ensure that we do not include people who are alcohol dependent by mistake.

One of the difficulties in use of the alcohol treatment requirement within the community payback order is the measures that are required in order to determine whether there is alcohol dependency. There is a requirement that an assessment be carried out to ensure that we are not imposing a banning order on someone who is alcohol dependent and could have associated health concerns. One of the biggest barriers to an alcohol treatment requirement is in getting such an assessment carried out by a medical person within the timeframe for producing the court report.

Dr Simpson: If the police are now recording whether there is alcohol involvement, and that information will come to the court automatically, and the court will see that there have been a couple of relatively minor offences, would that be enough to say that the person should at least go through an education programme?

Despite our school education system, it is clear from the evidence that people do not know that alcohol is a depressant and can cause problems. The provisions would allow the police to say that a person has committed a couple of relatively minor offences and has been fined a couple of times, or has got into trouble in a particular pub or regular place and could then make the banning order but ameliorate its effects.

Bruce Milne: I support people being educated about alcohol in our education system and among the general population when they come to the attention of the police in relation to offences that have occurred while the person has been under the influence of alcohol. I would want to dig deeper into the role that alcohol played in the offending behaviour. A standard alcohol education programme may have an impact on some people who offend while under the influence of alcohol, but may not be the magic bullet. There may be more to be addressed at the same time.

Dr Simpson: Having been an addiction consultant psychiatrist, I appreciate that there are many different reasons for people getting into difficulty with alcohol.

I will ask the courts service two questions. The bill suggests, I hope, that GP notification would be required only if the person had voluntarily provided their GP details. The courts service would not have to do anything, such as going to NHS National Services Scotland. We are dealing with people who have lower levels of addiction, so provided that they volunteer the information, GP notification would not be a particular difficulty. I presume that the courts service already notifies

others of the court's decisions generally, or publicises them in some way, so that would be a small additional measure.

Robert Sandeman: I suppose that the question is really how to make the system effective. I do not know whether it is appropriate for me to ask questions here, but if you are thinking about a voluntary scheme would you, as part of the criminal disposal, include some form or citation to collect information administratively, telling people that if they give their GP's details they will be contacted as part of the overall criminal process? Psychology is obviously Dr Simpson's department, but if such a scheme were to work how would you put more force behind it than just saying, "If you want to, you can tell us"? If the scheme is voluntary and the spirit of disclosure is voluntary—I ask this wearing not a courts service hat but a civil service hat—would people do it anyway? You may say that they would not. If it is to be more than that, how would we tease out that information? Our thought was that it could be done in court, where the authority and theatre of the occasion would encourage more disclosure, but if the requirement is for something softer than that, we could do more modelling, if the committee would find that helpful.

Dr Simpson: That would be helpful, so we will have a think about that. The idea is to get people to say yes. If they admit to an offence, and that they were drinking at the time—say that it is the second time that it has happened—nothing would happen to them at that point except that they would be fined. My experience of getting the drug courts and the drug treatment and testing orders going when I was a minister has taught me that the consequences for individuals begin when the courts become proactively involved, which they never did before. I know from talking to various members of the judiciary that they found that proactivity to be extremely useful, but I accept your point that we need to be careful not to make too significant an imposition on the courts.

Robert Sandeman: If we are thinking about something more proactive that would prompt a conversation in court or a voluntary disclosure by the person, multiplying that by the numbers that we are talking about—given the high number of cases in which we have at least to consider the issue—even if it were to add only a minute or two to each case, would add a lot on to court time when we are dealing with 50,000 cases, and could push everything else out. We need to consider whether the policy aspiration can be achieved in a different way.

Dr Simpson: We hope that the measure would lead to a reduction of a few percentage points in the amount of cases. That would save a lot more time, because the court would not hear the whole

case. On the DBOs, the intention is that they would be used only if the police or prosecutors raised the question of alcohol; if alcohol was not involved, the courts would not be required to ask the individual whether they had an alcohol problem, and they would be used only in cases where that had been notified. The question is this: how often is it the case that alcohol is not a central part of the problem but a peripheral or minor part of it, that nevertheless causes a person to be in more trouble? How often are such things notified to the court? I would have thought that it does not happen a great deal, but I do not know.

Chief Inspector Ross: That depends on the nature of the report that is submitted to the procurator fiscal. Alcohol might be mentioned quite often, but it might be mentioned only in the general body of the report. We might have to consider how effectively we notify procurators fiscal that alcohol has been a factor. We could make it a discussion that has to be had, or we could require a separate paragraph or a separate tick box—for want of a better expression—to notify the fiscal that alcohol is an issue. That would be similar to what we do to identify cases in which early and effective intervention might be suitable diversions from prosecution for an accused person. We appreciate that that is generally a better option than going into the criminal justice system. We include paragraphs at the end of police reports stating that a case may be suitable for some kind of diversion from prosecution; I see the alcohol notification as being similar. It is a different option that could be useful.

Dr Simpson: Thank you.

The Convener: I thank our witnesses for their time. Indeed, I thank Mr Ross for his repeated time, as we have seen him in another guise today. It was nice to have you back again.

As previously agreed, we will continue the meeting in private.

11:55

Meeting continued in private until 12:12.

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