



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 3 March 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 3 March 2020

CONTENTS

	Col.
INTERESTS	1
CONVENER	2
DECISION ON TAKING BUSINESS IN PRIVATE	3
PROTECTION OF WORKERS (RETAIL AND AGE-RESTRICTED GOODS AND SERVICES) (SCOTLAND) BILL: STAGE 1	4

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

7th Meeting 2020, Session 5

CONVENER

*Michelle Ballantyne (South Scotland) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Alison Harris (Central Scotland) (Con)
*Dean Lockhart (Mid Scotland and Fife) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Pete Cheema (Scottish Grocers Federation)
Robert Deavy (GMB Scotland)
Stewart Forrest (Union of Shop, Distributive and Allied Workers)
Paul Gerrard (Co-operative Group)
Daniel Johnson (Edinburgh Southern) (Lab)
Ewan MacDonald-Russell (Scottish Retail Consortium)
Gillian Mawdsley (Law Society of Scotland)
Superintendent Ian Thomson (Police Scotland)
Paul Togneri (Scottish Beer and Pub Association)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 3 March 2020

*[The Deputy Convener opened the meeting at
09:46]*

Interests

The Deputy Convener (Willie Coffey): Good morning, and welcome to the seventh meeting in 2020 of the Economy, Energy and Fair Work Committee. I remind everyone in the gallery to turn electronic devices to silent mode, as they might interfere with the committee's work.

Agenda item 1 is declarations of interests. I invite Michelle Ballantyne and Alison Harris to declare any relevant interests.

Michelle Ballantyne (South Scotland) (Con): I declare that I am a major shareholder in and director of a manufacturing company. I am also the managing trustee of a large estate that was left to the benefit of the people.

Alison Harris (Central Scotland) (Con): I declare that I am a practising chartered accountant. I refer everyone to my entry in the register of members' interests.

Convener

09:47

The Deputy Convener: Agenda item 2 is the choice of a convener. The Parliament has agreed that only members of the Scottish Conservative and Unionist Party are eligible for nomination as convener of the committee. I understand that Michelle Ballantyne is the party's nominee for the post.

Michelle Ballantyne was chosen as convener.

The Deputy Convener: Congratulations, Michelle. I hand over the chair to you. Good luck.

The Convener (Michelle Ballantyne): Thank you.

Decision on Taking Business in Private

09:47

The Convener: Agenda item 3 is a decision on whether to take items 5 and 6 in private. Do members agree to take those items in private?

Members *indicated agreement.*

Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill: Stage 1

09:47

The Convener: Under agenda item 4, we will take evidence at stage 1 of the Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill, which is a member's bill. We have three panels of witnesses today, so we will be tight for time. I ask all members and witnesses to try to keep their questions and answers tight, so that we can get through everything efficiently.

I welcome Gillian Mawdsley, who is a policy executive from the Law Society of Scotland, and Superintendent Ian Thomson, who is with safer communities at Police Scotland. Members will ask questions, and we will start with Richard Lyle.

Richard Lyle (Uddingston and Bellshill) (SNP): I remind everybody that I am a member of the cross-party group on independent convenience stores.

The committee is aware of concerns about high levels of violence and abuse that are directed at retail workers and that the situation might be worsening. What is the scale of the problem? Is it getting worse? I direct that to Superintendent Thomson, because I want to know the police's experience.

Superintendent Ian Thomson (Police Scotland): Is the situation getting worse? It is difficult to say on the basis of what is reported. One issue that we have in understanding the extent of the problem is that our processes for recording crime do not facilitate an intuitive way of breaking down the information to identify the specifics in relation to crime against retail workers.

From a general point of view, we have seen a decrease in violent crime over a number of years. There is evidence that it has flatlined over the past year or so. The police recognise the significant impact of violent crime—it affects every community in Scotland—and we see tackling it as a priority. We continue to work not just in the legislative framework but, more importantly, with our partners, with a view to preventing violent crime and finding a sustainable solution in that regard.

Richard Lyle: There is a perception that the justice system does not always take abuse of retail workers seriously—the point that you have just made, I think—and that reporting of incidents will not lead to prompt or rigorous police action. It is

perceived that cases will not be prosecuted and that, if they are, they result in light sentences. Would you like to comment? The question is perhaps directed to Gillian Mawdsley.

Gillian Mawdsley (Law Society of Scotland):

That is quite a general statement, so perhaps we can break it down. It is important to look at the criminal justice system as a whole. As you know, there are different stages in the process. It would be useful to ascertain at exactly what stage of the process there is a failure to address violence towards workers, which is clearly unacceptable and a problem.

In my written evidence, I refer to the different stages. I am aware of the committee's time constraints, but I am happy to go through that. You mentioned light sentences, which is, if you like, the conclusion of the process. I did not find in my work any suggestion that, where such offences are being convicted, there is light sentencing. That particular aspect could be addressed if it were a problem, because clearly there are rights of appeal with regard to sentencing. There is also the Scottish Sentencing Council, which has a role in guidelines, if that were felt to be appropriate. That is only one stage.

I would pick up one point from what Superintendent Thomson said. The Government keeps official statistics on crime, and the difficulty here is that there is a generality of offences that occur in retail environments or towards retail workers. Better specification or availability of information would inform us whether there has been failure to report, failure by the police, failure by the Crown Office and Procurator Fiscal Service or failure by the courts. Does that help?

Richard Lyle: Yes.

Jackie Baillie (Dumbarton) (Lab): My question is for Ian Thomson. I am curious to know what factors the police take into account when deciding what action to take when there is an incident of abuse against a retail worker.

Superintendent Thomson: That will depend on the circumstances. We treat violent crime, antisocial behaviour and disorder as priorities across Scotland, whether they involve a retail worker or any other member of the public. We recognise the important role that retail workers play in the community.

When we receive a call to say that somebody has been physically assaulted or abused, we ensure that the police attend. We have a process of assessing the risk to the individual, based on the circumstances. Police officers will attend and carry out the appropriate investigation, which primarily involves speaking to the victim, getting a note of the circumstances, identifying whether a crime has been committed and, even if a crime

has not been committed, considering whether other action needs to be taken. If there is sufficient evidence to arrest, which can come from many places, such as closed-circuit television, witness interviews or police officers' observations, the individual will be arrested and subsequently charged. The investigation carries all the way through to a report to the procurator fiscal.

Jackie Baillie: My experience locally, though, is that the violence stops after the police have attended and no further action is taken. Is that common, or is it peculiar to my area?

Ian Thomson: It is difficult to comment without knowing the circumstances. No police officer will have a policy of saying, "We will not take further action on this." The decision will be based on the individual circumstances, and if there is evidence to suggest further criminal activity, that will be taken into account. We have a duty to keep people safe to report evidence of a crime having been committed, including recording it.

Jackie Baillie: My next question is for Gillian Mawdsley. Do you anticipate any practical or legal difficulties with enforcement, based on the way in which the proposed offence and aggravation are framed?

Gillian Mawdsley: The aggravation element raises an interesting question about the bill, which contains an offence and an aggravation. The problem with an aggravation is that one can argue that one source of evidence might not be sufficient if the aggravation is a fundamental part of the crime, so there might be a need for corroboration. That is a potential difficulty in relation to how an incident sparked off.

The other issue is that we are used to dealing with aggravations in relation to protected characteristics. In a matter of weeks, Parliament will be considering the hate crime bill—we expect it imminently—and that might provide some guidance on how we deal with aggravations. That might provide an opportunity to consider the type of aggravation that is being framed in this bill. Depending on how that bill is set out—I have no idea about that—it might provide the opportunity to highlight the issue. That is my suggestion, which I hope is helpful.

Jackie Baillie: It is. Thank you.

The Convener: I have a question for clarification from Mr Thomson. You have said that the decision would be based on what has occurred, and Gillian Mawdsley commented on corroboration being an issue, but in your experience does lack of corroboration cause cases not to be taken forward?

Superintendent Thomson: If we do not have corroboration, it can be difficult to substantiate the

crime. Corroboration can come from different places and depends on the individual circumstances—for example, CCTV can be valuable. I do not want to speak on behalf of the lawyers, but it is important to understand that the sufficiency of evidence to charge does not need to be at the same level as is needed to get a conviction. That means that the corroboration can give us sufficient evidence and confirmation of the crime and indicate that the accused person was identified. I hope that that answers your question.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Police Scotland's written submission suggests that non-punitive measures might be appropriate when dealing with young people who have engaged in abusive behaviour. Will you expand a wee bit on that and say when it might be considered appropriate?

Superintendent Thomson: That is important. There is a challenge in striking a balance between how we prevent crime and the potential impact on the people who are affected by the crime or on those who commit it. From my experience, and from the work over the past few years on violence reduction, it is evident that enforcement activity alone is not a successful approach to preventing crime. Enforcement is an important element, but it must be part of a wider plan. That wider plan involves understanding the causes of crime and of people acting in certain ways in order to build on that primary prevention element and try to intervene before crime takes place.

As we have seen in other areas, criminalisation of children is not always the best outcome in relation to the life chances of an individual and their ability to carry on their life without going back to offending. I believe that there is more value in providing an opportunity for a child to do something else. That could be through a referral to an appropriate third sector organisation or other organisation that can assist with the child's offending behaviour, with a view to changing the behaviour, rather than putting the child in front of the court and imposing a punitive measure.

Colin Beattie: I am thinking about the evidence that you gave to Jackie Baillie about deciding what action to take in relation to a specific incident. You were clear that you respond to calls from retailers that have a problem and that you intervene and try to take evidence, but that sometimes you have problems with corroboration. How would all that change if the bill were to be enacted?

10:00

Superintendent Thomson: In relation to the incident itself, there would be no significant change in how we go about our business. However, the bill adds a bit about "hinder and

obstruct", which is not covered by other legislation, so that would change our response because there would be an additional offence. However, if the circumstances are such that there is legislation for a crime or offence and that crime or offence takes place, our approach would in effect be the same.

Colin Beattie: So you would follow the same police procedure to try to determine whether an offence had taken place and whether action needed to be taken. Would that change at all?

Superintendent Thomson: No, it would not.

Colin Beattie: You mentioned the offence of obstruction or hindrance, which is a big issue in the bill. Currently, that is not a criminal offence. Can you give an example of an incident involving obstruction or hindrance? How would you define that? It is a slightly unfair question, but I am asking it just the same.

Superintendent Thomson: If the bill is enacted, we need to be clear about that definition. From the point of view of an operational police officer, a lack of clarity is not good when you are going to attend an incident. From training all the way through to practical operational application, it needs to be made clear exactly what would constitute an offence.

Colin Beattie: If the new offence of obstruction and hindrance is to be introduced, should it be subject to criminal sanctions?

Superintendent Thomson: I have concerns about the end-to-end process and the outcomes, given what the bill is trying to achieve. The ultimate aim is to make a safer environment for retail workers and to prevent crime from happening in the first place. From what I have read, it would appear that the bill is lowering the threshold of criminality. From my experience, if it involves age-restricted products, that introduces the possibility of involving offenders who are children and young people, and—

Colin Beattie: Are you thinking about the sale of cigarettes and alcohol?

Superintendent Thomson: Absolutely. There is a risk that the end does not justify the means. The outcome might not be achieved and it would criminalise children and young people, which would have an adverse impact on their life choices. That is not to say that one person is more important than another, but I go back to the outcome that we want to achieve. It is deplorable if anyone working in the retail trade feels that they are likely to be a victim and is afraid. That is not acceptable and that abusive situation must be eradicated and prevented. We will do everything in our power to do that. However, we need to think about the outcome. I am not sure that going

through a criminal process and going to court will necessarily prevent such crimes from taking place.

Dean Lockhart (Mid Scotland and Fife) (Con): I have a follow-up question for Superintendent Thomson. It would be helpful for the committee to understand what the police see in practice when they get a call in relation to retail sector workers who are being abused. Are there typical circumstances or one or two scenarios that the police see commonly when they are called out, perhaps involving drugs or alcohol? Can you paint us a picture of what you see in practice?

Superintendent Thomson: Members will understand that, as a superintendent, I no longer turn up at shops and deal with such incidents. However, I am aware of what happens through my experience and through speaking to officers. There is no typical example—it is dependent on the individual circumstances and the behaviour of the individual who is causing the alarm or committing the violent crime. It is evident that a range of things can happen, from people standing there and being abusive—a hate crime element can sometimes come into that—to people being physically assaulted. From a policing point of view, the important thing is to understand what powers are available to us to deal with those circumstances. Ultimately, that protects everybody concerned at the point of risk of harm to the individual.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): My question is for Gillian Mawdsley. The submission from the COPFS argues that current laws allow it to respond appropriately to reports of abusive behaviour against retail workers. What is your view on that issue in general? Do we need the bill?

Gillian Mawdsley: The bill has an excellent motivation. We are aware that there is a problem, because it has been reported and there is lots of evidence. The problem is that a number of offences can already be used for prosecution. I agree with the Crown Office submission that there is a range of offences that can be used.

As we identified in our submission, it would be useful if various offences that are currently not being prosecuted were identified. They could then be analysed so that it could be considered whether there are gaps in the current legislation. If gaps can be demonstrated, there might well be a need for legislation, whether through this bill, the hate crime bill that is to be introduced, or other legislation. I am having difficulty identifying gaps.

An example was given to me this morning of a retail worker being spat at. That is totally unacceptable and would be prosecuted as an assault under current legislation. The problem is that somebody has to report it to Ian Thomson in

order for him—with sufficient admissible corroborated evidence—to take it to the Crown Office to be prosecuted in the public interest. It might be that a gap in corroboration or in awareness is causing the problem. I am open to scenarios being presented and to being asked whether something can be prosecuted under current legislation.

Willie Coffey: Thank you.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I declare that I am the convener of the cross-party group on independent convenience stores.

Carrying on the conversation about whether there is a gap in the legislation, I have a couple of points to raise. The British Retail Consortium's survey suggests that there has been a 100 per cent increase in incidents of violence involving retail workers. The Union of Shop, Distributive and Allied Workers has suggested that 70 per cent of shop workers in Scotland have experienced verbal abuse, 42 per cent have been threatened by customers and 18 workers are assaulted every day.

If there is no gap in the legislation, why are we seeing an increase in attacks on shop workers? What is the problem? Is it underreporting? What is causing the situation in which we see crime generally in Scotland dropping, yet an increase in retail workers facing problems, whether it be harassment, obstruction or physical abuse? What is the real issue that we need to tackle?

Gillian Mawdsley: For the criminal justice system to be engaged, an incident needs to be reported. I do not doubt that the figures that you have quoted clearly show a rise in incidents.

The first thing that we need is better specification of exactly what is meant by those figures. Violence is obviously unacceptable—Mr Thomson has referred to that and we totally agree—so the question really is, what sort of conduct do those figures represent? Once you have identified what sort of conduct it is, you can ascertain whether it is criminal.

We talked about hindering, and I completely echo what Mr Thomson said in relation to it. Clarity of the law is needed—is the law clear? I would have thought that the law has a range of offences that can be used for the majority of incidents, but as I keep saying, I am more than open to being presented with a scenario and someone saying “No, there is a gap—that is not prosecutable”.

There probably is underreporting, although that is speculation by me. There may be a lack of understanding—

Gordon MacDonald: On that point about underreporting, do you have figures to suggest

how many cases are reported, in how many cases it is decided that a crime has occurred, and how many cases arrive in court?

Gillian Mawdsley: Those are the figures that I alluded to earlier. It would be useful to have them. The official statistics come from different organisations. Some come from Police Scotland, and some come from the Crown Office or the Scottish Courts and Tribunals Service. They all treat things differently, as I know from my previous professional experience.

We do not have information that says, "This violent incident occurred in the retail sector." What is recorded is an assault and a conviction. It may occur in a shop, and many convictions may relate to shops or to the premises that you are concerned with. We need a better evidence base. I do not doubt the information that the retail organisations are giving about a rise in criminal problems for their staff. There is a better evidence base across the whole Scottish criminal justice system, which I alluded to when we talked about question 8. If we could get that clearer, we might have a better understanding of the point in the system at which the failure arises.

There may be underreporting, and Ian Thomson gave some potential reasons for that. People might not think that anything will happen if they report, so they do not do it. They might not realise something is a crime; they might think it is the norm for the job. We are aware of all those underlying issues, not just in relation to this type of offending but to offending in general.

People need to have confidence. Employers must support them, rather than saying, "You don't want to report that; I don't want to lose you when you go to court as a witness." Some people look at the justice system and think that it will take forever to get a result, or that the results will not be fed back to the staff, or that the staff will still have to deal with the same people coming into the same shops and doing the same thing. How are you going to stop them? A fine will not stop them. Community payback may or may not stop them. That all illustrates why people underreport. There are problems at the source and there are things that we could do to understand that better.

Gordon MacDonald: You are suggesting that there must be a culture change. Do you agree that introducing the bill would send a clear message that society should not tolerate abusive behaviour? Would that not improve retail workers' fear of going to work to face daily abuse?

Gillian Mawdsley: I would agree with you if the legislation addresses gaps. My concern is that legislation, or criminal prosecution as Ian Thomson has said, tends to be a last resort. People need to be empowered to know that what

they are suffering is criminal, and that it should be prosecuted. They need better awareness of the raft of measures and they need better information, better support from employers and perhaps some kind of directed campaign.

We talked about what has been done for the national health service in England. That could be the model for better joint working among all the criminal justice partners and the retail sector to try to start a campaign here. There have been some successful public awareness campaigns for issues such as speeding. If the Government was really behind it, something like the English NHS campaign might be a first step.

That runs in parallel with what we spoke about earlier: the need for a better understanding of underreporting and of which part of the system is failing to support retail workers.

Superintendent Thomson: It is important to have clarity about the information that is available and the events that take place. You asked about the causes of behaviour. That is the crux of the matter. If we understand that, we have an opportunity to build in preventative measures that will divert people away from that behaviour. The offences would not happen, and that would be a success.

There are lessons to be learned from some of the work that we have done recently. Relying on just the police data is a point of failure. There is underreporting, so we do not get the full picture from the police data; we get the full picture from the partnership data. The surveys on how people are feeling are a rich source of information that helps our understanding. We work with partners in an effort to understand the issues and identify the earliest opportunity to intervene and be proactive to stop the person offending in the first place.

10:15

We are absolutely committed to working with the retail trade. We do that across Scotland at local level and at national level, through the Scottish Business Resilience Centre. We do a lot of engagement on education and understanding the rights of the individual at work, how people can keep themselves safe, the encouragement of management, and the layout of shops. We do a lot of proactive work in that area, because it is valuable in reducing the impact of poor behaviour.

The Convener: A few years ago, the early and effective intervention to divert 16 and 17-year-olds from prosecution was introduced. It has been suggested that if the bill was enacted, it would make people feel safe, and shop workers would feel better because there would be prosecutions. However, in many cases, diversion from

prosecution would cut right across that. Would that be an issue?

Superintendent Thomson: No. Diversion from prosecution is about the outcome. It is there for a reason—it represents an attempt to prevent criminalisation of people and to give them the best life chances by setting them on a path that will avoid their becoming criminals who cause harm in the community.

The legislation that is in place that allows interventions to be made in relation to individuals' offending behaviour is extremely important in helping people to recognise that it is unacceptable to put up with that behaviour but, ultimately, we want the people who commit such offences not to commit them again.

The Convener: If the bill was enacted, it would allow the police to be called and the person to be charged, but there could then be a diversion from prosecution on the basis of a "Two or three strikes and you're out" approach.

Superintendent Thomson: That would be further down the line. There is already legislation in place that allows the police to be called, and they will deal with that.

The Convener: You do not feel that it is necessarily the case that diversion from prosecution would cut across the bill.

Andy Wightman (Lothian) (Green): I want to pick up on some of the points that Gordon MacDonald raised. The Law Society's submission talks about the need for research on whether cases are being reported and not progressed and on whether, when cases are reported, issues have arisen to do with the need for corroboration. Is it the Law Society's position that you do not believe that the bill is necessary until research shows that there is a need for it?

Gillian Mawdsley: There is a difficulty with the bill. It is well motivated, but the difficulty lies in identifying where there are gaps at the moment. If the gaps exist, the scenarios would demonstrate where there is a failure. There are lots of things happening here, and it is a complicated landscape. If we could find the gaps—the absence of criminal offences or behaviour that is not being prosecuted that should be criminal—the bill would be necessary, but there is an absence of such data, and that comes back to some of the points that I made earlier.

Andy Wightman: Although most of the offences that the bill would create are already covered by existing legislation, it has been suggested that, if it were to become law, it would send a message to retail workers in particular that would show that we care about them and about the fact that they are

suffering abuse. As a matter of public policy, is the law there to send messages?

Gillian Mawdsley: The law is very useful for sending messages. That is why we have legislation that criminalises or decriminalises offences. The law is important in that respect.

As Mr Thomson said, other things can happen before we get ultimately to legislation. We are all aware of campaigns, to which I have already referred, that talk about the existing law. We are not talking about a lacuna here; as far as I am aware, law is available to prosecute most of the offences that are being referred to and I am not aware of any gaps. There is a need for more awareness, and encouragement and support need to be given. A lot can be done without necessarily making new legislation.

As to whether I think that a specific campaign is needed, I would certainly encourage something being done. We should not sit here and say that the position that is being reported by the retail organisations and all the figures are okay. Something is not working; however, there are solutions we could use before we get to new legislation.

Proposed bills, such as the hate crime bill, that are coming through will be major pieces of legislation for the Scottish Parliament. They might provide other opportunities that we do not know about at the moment. Something should happen, but I am not sure that it should be legislation.

Andy Wightman: I will move on to the proposal to create a new criminal offence of obstructing or hindering retail workers. Comparisons have been made with existing legislation on emergency workers that makes it a criminal offence. What are your views on that comparison? Is it a valid one?

Superintendent Thomson: Again, I recognise the importance of what retail workers do.

The legislation that exists around restricting access to goods such as age-restricted products, that can cause harm in the community, is an important part of keeping people safe; there is no getting away from it. The community works together and with the police to do that.

I am a wee bit uncomfortable with the direct comparison with emergency workers. My powers and duties as a police constable are enshrined in law, and are primarily for prevention of crime and protection of life. I understand why there is an offence of obstructing police officers or other emergency workers, because the consequences could be—I am not saying that they are all the time—life-threatening. Equally important is the fact that the powers that have been conferred on me as a police constable are very different in relation to shop workers.

It is about what we are trying to achieve. If such an offence were to exist, what would its value be to prevention of crime? It will not come with the additional power for an individual member of the retail trade to act in a particular way. If somebody obstructs or hinders me while I am at the locus, I can arrest them. I have a power that supports that.

Turning obstruction or hindrance into a criminal act that means that offences would go through the criminal justice system. If ultimately the person is not going to be prosecuted in court or be given a custodial sentence—I understand that there is a presumption against custodial sentences of less than 12 months—it loads the activity at the point when the call is made and the police get involved. If the Government and the legislators decide that that is the right thing to do, we will fully support that, and we will attend and carry out the law; that is what we are there to do. However, we need to look at the potential outcome and what we are trying to achieve, to see whether that is the best way to do it.

Andy Wightman: Do you have anything to add, Ms Mawdsley?

Gillian Mawdsley: I support much of what Ian Thomson says. Retail workers who carry out those assessments are, in effect, complying with legal requirements, so there is a similarity. However, the police have certain powers that retail workers do not have. There is a similarity with organisations such as the Health and Safety Executive and trading standards departments, which have similar powers of inspection and whose staff would not have the type of protections that are being envisaged for retail workers.

There is a difficulty with using words such as “obstructing” and “hindering”. Although you and I might have concepts in mind if we were to define them, they almost leave what might be unclear concepts to be defined by case law or reported decisions in due course. That would mean that there was no clarity in the law at the outset. If you are considering creating criminal offences, the one thing that we support is absolute clarity, so that people know that if they take action X, it is criminal, which is the ultimate sanction. That is the difficulty with using the words “obstructing” and “hindering”.

Andy Wightman: I might be wrong, but my understanding is that “obstructing” and “hindering” are not defined in the Emergency Workers (Scotland) Act 2005. Is it your position that those words are more easily discernible in that act because police constables, firefighters and ambulance workers are clearly on a mission, as it were?

Gillian Mawdsley: I have probably been a little bit broad in what I said, because “obstruction” is

definitely used in legislation and we have a common understanding about it.

It is perhaps “hinder” that is the issue. If I hinder you, I can do so in lots of ways, such as by not answering your questions. There is also the point that you are making about the fact that if, for example, the police were to arrive on a scene and I refused to give information, that would be an offence, because the police have certain powers. This is not quite the same situation, which is one of the difficulties in widening the offence to include the word “hinder”, because it could just be me being a bit stroppy.

We should not criminalise conduct that should not be considered criminal and perhaps we should not leave it to case law and the courts to clarify whether something is criminal. I have concerns about that particular aspect.

Andy Wightman: I presume that there are statistics on the use of the powers under the Emergency Workers (Scotland) Act 2005.

Gillian Mawdsley: There should be statistics on the number of convictions and prosecutions.

Andy Wightman: We can follow that up.

I want to talk about the proposed statutory aggravation that has already been referred to.

The Convener: Mr Wightman, before you continue, I think that Mr Thomson wants to come in.

Superintendent Thomson: I want to make a further point on “obstructing” and “hindering”.

In some of the written submissions, a concern was expressed around the age restriction for the sale of alcohol, which is particularly challenging for some retail workers. I want to highlight and make people aware of the powers that sit under the Licensing (Scotland) Act 2005. If somebody was to refuse to leave premises where alcohol is sold, there is a power for a police officer or other appropriate person who has been empowered to come along and ask the person to leave. If they did not leave, they would be committing an offence and could be removed by force. That legislation means that, although a police officer needs to turn up and deal with the situation, if the person refuses to leave and prevents the retail worker going about their business and serving other people, there is an opportunity for something to happen.

Andy Wightman: Okay. Thank you.

Let us move on to the statutory aggravation. Do you agree that, given that statutory age restrictions on products are designed in the public interest, retail workers carry out a duty that advances the public interest?

Gillian Mawdsley: Yes.

Superintendent Thomson: Yes.

Andy Wightman: Do you see merit in the proposed statutory aggravation? I ask because the Crown Office and Procurator Fiscal Service tells us that, in the prosecution guidance, there is already a ground for aggravation if an offence is committed against someone

“in the course of their employment”.

Is more research on that needed? Is the prosecution guidance sufficient or would a statutory aggravation in primary law help?

10:30

Gillian Mawdsley: I said that aggravation is interesting because I equated it with the proposed hate crime bill. As far as prosecution is concerned, the circumstances of the incident will be taken into account, exactly as the Crown Office has said, to decide whether it prosecutes in the public interest. Arguably, aggravation is not required. Similarly, any sheriff would take into account exactly how something arose.

The point that we were making was that we see the fact that an employee has a duty to ask for something, if you like, as a trigger. The circumstances are probably already taken account of and I was concerned about the need for corroboration of how the incident started. I could see that as a difficulty, whereas the incident itself—the broad picture of the abuse, no matter how it occurred—might well be prosecuted anyway. As the circumstances come out in court, one source of evidence might be, “This started when I asked for identification,” then the sheriff would be able to say, “I’m sentencing here and I note that this incident arose out of the retail worker exercising their absolute right to ask for proof of age.” That point could be emphasised in sentencing without the need for aggravation.

Andy Wightman: The problem is that you are relying on the discretion of individual sheriffs to think about that, whereas if there were a statutory aggravation, the prosecution could clearly draw attention to it and ask for it to be considered, and it would have to be considered. The question could not be avoided.

Gillian Mawdsley: That is probably a fair comment. If we want to be sure, the fact that the incident occurred because somebody was doing their job and asking for identification needs to come through from the police report into the Crown Office report, then into the court for it to take account of it. I would like to think that that happens; I am not saying that it does.

Richard Lyle: Mr Thomson, various changes have been made to the Licensing (Scotland) Act 2005 in the past few years. We cannot buy alcohol before 10 am and we certainly cannot buy it after 10 pm. Has the 10 am change made any difference to the number of assaults on shop workers?

Superintendent Thomson: The easy—or difficult—answer is that I do not know.

Richard Lyle: It is amazing the amount of people who go into my local shop at 9 o’clock in the morning wanting to buy a can of beer. They have to be told that they cannot, and they do not want to wait about for an hour. It would be interesting to know whether there is any information about that.

Superintendent Thomson: I do not have that information.

Richard Lyle: I will certainly ask the next panel of witnesses the same question.

Superintendent Thomson: No bother. It makes sense that if the period in which you cannot buy alcohol—

Richard Lyle: As a policeman, do you think that we should relax the licensing laws?

The Convener: I think that we are straying from the issue and should move on.

Alison Harris: The written submission from the Law Society says that

“the problem of violence against retail workers requires a multifaceted approach.”

What does that involve? Could you expand on that, please?

Gillian Mawdsley: I think that I expanded on it at the beginning. There is clearly a problem—that has been outlined. Whatever the solution is, it is not working.

By “multifaceted”, we mean that it starts with the person who is receiving the abuse. They have to be empowered to be able to report it. They need the support of their employer—there needs to be that complete engagement. There is also a role for the police in the community with regard to the person who is perpetrating or the people who are offending. Is that role in the local schools? Are there particular targets? That is about local policing.

Assuming that an incident has been reported, we move on to the need for a better understanding. The general role of the legal profession is to make sure that people understand the law and the reasons for either prosecution or failure to prosecute because of insufficient evidence.

The Crown Office is the prosecution side and it proceeds in the same way as it does in any other criminal case, but it has a role in communicating public interest prosecutions.

When the cases go through court, sheriffs should be encouraged to give reasons for sentencing. There is a role in looking at sentencing in the way that Superintendent Thomson has talked about. We are talking about low-level offending. I am not suggesting that it is not serious, but it is unlikely, given the presumption against short sentences, to result in a custodial sentence, so offenders are not being taken out of the picture. It comes back to some of the alternatives to prosecution—not quite mediation, but some of the other alternatives—and a community approach.

By “multifaceted”, I meant looking as a community at the problem—at whether, in your local constituency, there are particular hot spots—and looking at the bigger picture for Scotland, which is your duty here at this committee. That is what I meant by “multifaceted”.

Alison Harris: Thank you. Do you want to add anything, Superintendent Thomson?

Superintendent Thomson: No—I agree with everything that Gillian Mawdsley said.

Alison Harris: That is helpful—thank you.

Dean Lockhart: I appreciate that Superintendent Thomson will not have the precise numbers, but roughly what percentage of reports of abuse of retail workers end up being prosecuted?

Superintendent Thomson: I do not have that information, which is one of the challenges. Although the offences are within that bigger umbrella, as has been said, and we have processes in place for dealing with them, we do not currently have the reporting facilities to extract that information intuitively, so it is difficult to access.

Dean Lockhart: I appreciate that. Thank you.

The Convener: Before we close this evidence session, I will introduce Daniel Johnson, whose member’s bill this is, and give him the opportunity to ask questions.

Daniel Johnson (Edinburgh Southern) (Lab): I remind the committee that I am a member of USDAW, the shopworkers union, and I am a director of a business that has retail interests.

Can Superintendent Thomson explain the utility of section 90 of the Police and Fire Reform (Scotland) Act 2012?

Superintendent Thomson: You will need to remind me of section 90.

Daniel Johnson: Section 90 describes it as being

“an offence for a person to assault”

a person acting in the capacity of a police officer and it creates an offence of obstructing or hindering a police officer.

Superintendent Thomson: I am sorry—what is your question in relation to that, again?

Daniel Johnson: Is that bit of legislation, which was passed a mere few years ago, useful?

Superintendent Thomson: Yes, absolutely; it is a useful bit of legislation—

Daniel Johnson: If there was already a common law offence of assault, why was it necessary to rearticulate that in the 2012 act?

Superintendent Thomson: I understand, from the information that I have to hand, that it was about recognising the potential threat to life to emergency workers, in particular police officers and fire officers, and the consequences and impact that could result from an individual’s action. However, I was not involved in that conversation.

Daniel Johnson: I am sure that the panel recognises that legal requirements are placed on retail workers to ensure, through challenge 25 and other measures, that people who buy age-restricted items are old enough to do so. Is it fair to say that retail workers, when they are conducting those age checks, are upholding the law and, in that regard, are acting as agents of the law?

Superintendent Thomson: It is about definitions, I suppose.

Daniel Johnson: Are they upholding the law or not?

Superintendent Thomson: They definitely play an important part in relation to upholding the law—absolutely. It is a key element of keeping people safe. The law is there primarily to prevent harmful products and items going into communities in the hands of people who are not seen to be fit to be in possession of those things. Shopworkers who prevent such items getting into communities make a really valuable contribution to the wider safety of those communities.

Daniel Johnson: When people uphold the law, which retail workers do—there is a sanction of up to a year in prison for failing to do so—it is only right that they have the specific protection of the law, such as police officers have under section 90 of the 2012 act. What are the panellists’ reflections on that?

Gillian Mawdsley: We have answered that question in the sense that we have alluded to differences between the police position and the position of retail workers. I totally accept that those

positions interact, because retail workers uphold the law. That is a precursor of the criminal prosecution that might follow, and it is important that that is part of the circumstances of the offence. The circumstance initiates what happens afterwards.

I suggest that offences already take account of that factor. If the punishment is not specific enough, that is a different matter, which I referred to in a previous answer.

Daniel Johnson: I have a final comment. The Emergency Workers (Scotland) Act 2005 has been used 8,251 times since it was passed. Almost 100 offences were convicted under that legislation last year.

The Convener: I would like clarification on that point. Somebody who is selling an age-restricted product is required to comply with the law, and to uphold the law as they know it. If there is any breach of that law, it is the police who are called to deal with that, not the shopworker. The protection for police officers in the 2005 act is to prevent somebody from hindering a police officer who is trying to arrest or get to an offender, and to prevent people from stopping the police dealing with an incident. Is that correct?

Superintendent Thomson: Absolutely.

The Convener: Thank you for the helpful evidence that you have given. We will suspend for a couple of minutes while we change panels.

10:41

Meeting suspended.

10:43

On resuming—

The Convener: We will recommence. We are quite short of time, as we have three panels today.

I welcome our witnesses—and please excuse my pronunciation; this is a challenge for me today. Dr Pete Cheema is chief executive of the Scottish Grocers Federation; Ewan MacDonald-Russell is head of policy and external affairs from the Scottish Retail Consortium; Paul Togneri is senior policy manager for Scotland at the Scottish Beer and Pub Association; and Paul Gerrard is campaigns and public affairs director of the Co-operative Group.

We have a series of questions from the members. You can decide who wants to answer, though we will be short of time for all four of you to answer. We will keep it quite tight.

Richard Lyle: I know that USDAW will be represented on the next panel, but I am going to

quote from a page on its website, which says “Customer under the influence” was

“refused alcohol and became abusive and threatened staff.”

This is from Bellshill, in my constituency:

“Because Scottish licensing laws are not clear to customers, I receive abuse on a regular occurrence.”

This is from Irvine:

“Daily abuse from customers under the influence of drugs and alcohol.”

This is from Glasgow:

“Couldn’t sell alcohol before 10 am got an earful and told I’d ruined her life.”

The committee is aware of the concerns that exist about the high levels of violence and abuse that are directed at retail workers, and the situation might be getting worse. How would you describe the current state of affairs? What are the causes? Is some of the abuse a result of the changes in the licensing law, which mean, for example, that alcohol cannot be sold before 10 am? What would you do to remedy the situation?

10:45

Paul Gerrard (Co-operative Group): You asked what the scale of the problem is. The latest data that we have for the Co-op Group, which has 350 stores in Scotland, shows that there was a 1,800 per cent rise in abuse between the end of quarter 3 in 2017 and the end of quarter 3 in 2019—a two-year period—and the number of cases of violence increased by 650 per cent over the same period.

It is true that that is partly a result of better reporting. It is also partly a result of a broader phenomenon that is evident in the USDAW and British Retail Consortium data, which shows that violence against shopworkers is getting worse. It is getting worse from the point of view of not just the incidence of such cases but the level of violence and abuse. It is at levels that my colleagues in the Co-op have never seen.

I would like to give a voice to one of my colleagues by recounting an incident that illustrates the point about alcohol. A customer was refused a bottle of wine, and she took exception to that. That resulted in the customer assaulting three members of the team, as well as another customer. The police were called, and she was eventually arrested, charged and released. My 67-year-old colleague on the till was left shaken and confused about why she should put up with that level of abuse. Every week in Scotland—this is just in the Co-op stores, although others on the panel will say the same—nearly 100 colleagues are abused or attacked.

Richard Lyle: Are those assaults committed during the day? Are there assaults between 9 and 10 am in the morning, or are they committed later in the evening? Some Co-op stores are open until 11 o'clock at night, and some are open 24 hours a day.

Paul Gerrard: The most common time for assaults is between 12 and 6. However, a significant number of assaults—probably about a quarter of all incidents—happen before 12. I do not have the data on the number of incidents that occur before 10 am, but I can find that out and send the information to the committee, if that would be helpful.

Richard Lyle: That would be interesting to know.

Dr Pete Cheema (Scottish Grocers Federation): I will not give the committee any statistics because, for the past five years in my role as chief executive of the Scottish Grocers Federation, I have done just that. Every year we provide members with statistics. We have said the same thing at a parliamentary reception and we have run campaigns. We have done everything that the previous panel talked about and we have had enough.

When I came to Scotland in 1988, I was shocked by the torrent of abuse that I received. We have 248 age-restricted products to deal with. The Parliament legislates and we have to deal with all that legislation every day. I have been spat at, called names, threatened, attacked and had my tyres slashed and my windows broken, and not just in one store—I have had stores right across Scotland. That is current.

Legislation changes from time to time. When I came here in 1988, the amount of racial abuse that I used to suffer was incredible, and it was not until the Race Relations (Amendment) Act 2000 that people stopped calling me “Paki” or “Black bastard”. That act changed the culture and the attitude. What needs to happen now is that the bill needs to go through so that retail workers can do their jobs properly and in a safe environment.

I was told that abuse of a retail worker is a low-level crime. Is it really? Let us say that a retailer breaks the law by giving out an age-restricted product to someone when they should not. A low-level worker on the national minimum wage who earns between £8 and £9 an hour will be fined £5,000, yet abusing a retail worker is a low-level crime. Is it really? The police do not come out because it is perceived to be a low-level crime.

People talk about underreporting. Really? What do they expect people to do when they have no faith in the police or the procurator fiscal? It is time that that changed.

The Convener: That silenced everybody.

Ewan MacDonald-Russell (Scottish Retail Consortium): It is statistically probable that, during the course of this morning's evidence, a retail worker will be abused. There are nine incidents a day and thousands of incidents a year. The updated BRC crime survey will come out later this week and we will send that to the committee when it is published.

On Mr Lyle's question, the Scottish Retail Consortium has been supportive of measures to tackle alcohol. We have supported the processes that have been introduced. We implemented minimum unit pricing two weeks after the price was set by the Scottish Parliament. However, our workers and colleagues are having to deal with the consequences of implementing public policy. They are happy to do that. It is our duty and we work on behalf of society. As we see society changing, we see more duties being placed on retail workers. We accept that we can do those things and we play our role in the community. However, we are talking about finding a mechanism and a way to do that.

The status quo is not acceptable. Every way we look at it, from the experiences of our members, the national statistics and the experience of the members of the Scottish Grocers Federation, we can see that something has to be done. We think that aggravation is the right way forward and we are very supportive of Daniel Johnson's bill. Our main point is that the status quo is not acceptable and we are asking for help for our workers.

Paul Togneri (Scottish Beer and Pub Association): I concur with the messages that have been conveyed by my colleagues on the panel. Since 2005, when we introduced the “Challenge 25” process on a voluntary basis, we have seen an increase in the number of incidents in which there is a challenge or an altercation—that is when most of the abuse happens. In 2010, it became a statutory requirement that everyone under the age of 25 be asked for identification and that has increased the number of instances that have the potential to lead to abuse.

Specifically on Mr Lyle's point on changes to the Licensing (Scotland) Act 2005, currently the provisions regarding licensing are covered by five different acts. We have called for a consolidated act, as have colleagues on the panel. That would be helpful. Separately, the member's bill would specifically address the issue of abuse, which is a problem that our staff face on a daily basis, and which is increasing.

Richard Lyle: Would the bill also cover people who work in pubs?

Paul Togneri: Yes, it would.

Richard Lyle: Dr Cheema, I stand with you on your comment that racial abuse—and any kind of abuse—should be opposed. I can understand why you are really—actually there are no words that I can say. There is a perception that the abuse of retail workers is not always taken seriously enough. Do you agree that that is a problem and, if so, what impact does it have?

Dr Cheema: The impact is huge. People who work in retail are usually family members or people who know one another—they are people who work in the community, and the knock-on effect is huge. Often, people do not want to work at the counter because they know that they will get abuse, so they would rather do something else. We are the biggest private sector employer. We need this protection.

The committee asked the previous panel about sales between 9 o'clock and 10 o'clock in the morning. We have had scenarios where someone wants to buy alcohol before the permitted time, the sale is refused—the retailer cannot do anything else; all that he can do is refuse—and the person decides to take the product and throw the money down. That person has decided that he has purchased the product. I ask the committee: what would you do? If you phoned the police, would they come out? Has an incident actually taken place? I will tell you what would happen. The police would ask, "Did you get paid for it?" You would say, "Yes" and they would say, "So, what's your problem?" That is just one scenario in which the new offence would kick in.

Richard Lyle: I am certainly not advocating that anybody do that.

Dr Cheema: I understand that, but it happens. We have 248 age-restricted products to deal with. The "Challenge 25" process was introduced by the Scottish Grocers Federation many years ago, even before it was legislated for. We are responsible retailers; all that we ask is that the legislation that you pass on to us will help us to deliver that.

Paul Gerrard: Just to build on that, we have done a freedom of information request across all 43 constabularies in the United Kingdom on police response rates to issues that we report in our stores. That gives some evidence relating to what Dr Cheema said. A number of police forces, one of which is Police Scotland, have not responded, but if we get that data, I will provide it. However, I can give you an idea of the figures. We should bear it in mind that only the most serious offences are reported to the police, because there is little confidence in their response, so it is a bit of a vicious circle. Across the UK, two thirds of issues that are reported to the police result in no police attendance. Those will be cases involving the kind of incident that Dr Cheema has described—and I

could describe more. In those cases, two thirds of the time, the police do not attend.

A second point is that the impact on colleagues is not just immediate; it lasts a long time. Last year, we published research by Dr Emmeline Taylor. Her report was called, "It's not part of the job': Violence and verbal abuse towards shopworkers—A review of evidence and policy", and I will happily provide it to the committee. Dr Taylor said that the consequences of some of the abuse and attacks that shopworkers face are akin to post-traumatic stress disorder. As Dr Cheema said, many of our colleagues need to work in a certain shop, as it might be the only shop that they can work in. If such a person has been attacked in that shop, they will need to return to the place of their trauma. We never normally ask anyone who has suffered such trauma to go back to the place where they suffered it.

Honestly, I think that we all agree that retail workers do not believe that the police care or that the criminal justice system cares, and they are not sure whether elected representatives care about them, because so little is being done.

Dr Cheema: The Co-op and Scotmid Co-operative have put in place processes with local police stations whereby the retailer fills out forms and delivers the audio and video evidence to the police station, to speed up the process. However, even though that work has already been done, it sometimes takes the police four to six weeks to respond.

Paul Togneri: What Mr Gerrard said about shopworkers' perceptions is certainly the case with bar workers. Their perception is that the law is not on their side and, in fact, that it is up to them to uphold the law. Bar workers are told a lot about the restrictions on them relating to who they can sell to and what state the person can be in, and they face a £5,000 penalty should they fail to uphold some of those restrictions.

Anything that sends the message to retail workers that the law is on their side and that Parliament supports them would therefore be a welcome addition. In the previous five to 10 years, there has not been much that has sent a clear message of support, and I believe that the bill would do that, which is one of the reasons why we welcome it.

We believe that the bill would also highlight certain incidents and lead to an increase in reporting of incidents. As has been said, many retail workers think that not much action will be taken, as it is a low-level crime. Some people say that dealing with such issues is part of the job and is to be expected in that line of work. We do not think that that is true; that is not a reasonable excuse. The bill would help to end that view.

11:00

The Convener: I think that Jackie Baillie wants to explore those issues a bit more.

Jackie Baillie: Some of the issues have already been explored by the panel. As you might have heard from the previous panel, the police said that all reports of intimidation, threats and violence towards retail workers are taken seriously and all are investigated. I have to say that that is not my experience, and it does not sound as if it is the experience of your members. Mr Gerrard, is the two thirds figure that you gave typical? Does it apply across the board or does it relate just to your stores? I am curious to know.

Paul Gerrard: The two thirds figure is from a freedom of information request covering all 43 constabularies in the UK. Not all constabularies have responded, and not all constabularies hold that data. That figure does not include Police Scotland, because, as you heard earlier, Police Scotland does not hold that data.

I would be surprised if the situation differed much among constabularies—that is point 1. Point 2 is that it is not our experience that the police always come out when an incident is reported. I am a former law enforcement officer, I worked for Her Majesty's Customs and Excise for 20 years and I feel nothing but support and sympathy for police officers. However, the truth is that they are very stretched and they do not consider the matter to be a priority. If you asked my 5,000 colleagues in the Co-op stores in Scotland, they would agree that the police very rarely come out to incidents.

Jackie Baillie: Do you think that passing the bill would make the police change their minds about how they behave?

Paul Gerrard: I think that that would do a number of things. It would send an important message; sometimes legislation is about the message that it sends. Dr Cheema's experience of the Race Relations (Amendment) Act 2000 is a really good example of that—I think that the impact was in the message.

When I was in HM Customs and Excise, I was afforded protection under section 16 of the Customs and Excise Management Act 1979, because I was carrying out public duties. For those who now work in HM Revenue and Customs, section 31 of the Commissioners for Revenue and Customs Act 2005 does the same thing.

What my colleagues do for those 240-odd age-restricted items is what I used to do in customs. I was abused and I was threatened there, but I had protection, and that made me feel that I was not on my own. I think that, too often, shop colleagues—as Dr Cheema just described in

relation to the gentleman who refused to sell alcohol at 9 in the morning—feel that they are on their own. I would not underestimate the importance of that messaging to hundreds of thousands of retail staff.

Jackie Baillie: I assume that everyone on the panel agrees with that, so I will move on to the next question—forgive me. Let us assume that you get past the barrier that is the police. What happens with prosecution in the courts? Are you confident about prosecution and sentencing?

Dr Cheema: Nobody ever comes back. The process is there, but it does not happen. That is the reality.

In response to the earlier point about data recording, we know that the police do not record. Nor does the Scottish Government.

At the time when the Race Relations (Amendment) Act 2000 came in, race crimes were not recorded; it was not until after that that race crime started to be recorded. We cannot wait another five or 10 years for this bill to be passed while we carry on in the same vein. We just cannot. We need this now. We need it not only to give retail workers confidence but to send out a message, from you, that there is zero tolerance of crime.

Jackie Baillie: Mr Togneri, is the experience different in the pub sector, or is it the same?

Paul Togneri: It differs. It differs by area, and within an area it differs from pub to pub, depending on the situation, I think. However, we definitely share the view that Dr Cheema is conveying about the message that such incidents are entirely unacceptable. We entirely back that.

Colin Beattie: The police have said that it is sometimes appropriate, when dealing with young people who are being abusive, to use measures other than prosecution. The main reason is to avoid the negative impact of a criminal record on their future; a criminal record builds problems for times to come. What are your views on that?

Dr Cheema: I will turn that around. What is your view about a retail worker breaking the law in order to protect a young person?

Colin Beattie: That is an impossible question to answer.

Dr Cheema: Is yours not also an impossible question for us to answer? As far as I am concerned, there should be zero tolerance. If the young person is breaking the law, they are breaking the law, but we are unable to deal with it because there is nothing in place, yet there is something in place for the retail worker who breaks the law.

Colin Beattie: Let us look at this logically. Might we be in danger of unnecessarily criminalising a whole group of young people? Is that necessary? Is that what we should be doing? I am thinking of situations in which there is obstruction and hindrance, which is an uncertain offence.

Dr Cheema: What, in that case, is the difference between a young person slapping somebody or putting a knife into somebody and then threatening a shop worker to make them sell an age-restricted product?

Colin Beattie: I did say that, as yet, we have no definitions of “obstruction” or “hindrance”.

Ewan MacDonald-Russell: There are a couple of points to make to address the question. On the point about young people, one of the aims of putting in legislation retail workers’ right to be protected is deterrence. We want to acknowledge that shop workers deserve not to be abused or hindered. To an extent, we do not want prosecutions because they would in some ways represent a failure of the legislation because they would imply that the behaviour that we are trying to stop is continuing.

How “hindrance” is defined will be important. I am not nearly knowledgeable enough about criminal law to have the details, but we note in our written evidence that, particularly in relation to intentionality in hindrance, we must be cautious to ensure that what happens is appropriate. If there were other ways to deal with the issue, it would not be a primary issue for us. The point is about whether we are making an offence to change how retail workers are looked at and protected.

Paul Gerrard: I absolutely agree. I am here to defend and speak up for the safety of my colleagues.

A difference can be made, however, in terms of what happens next. Superintendent Thomson said this extremely well—ultimately, there is the outcome to consider. A prosecution might lead to a custodial sentence or a fine, but many cases, particularly those involving young people, might require different kinds of interventions. I have an example that is not from Scotland, so I apologise for that, although it is applicable.

An offender in the Midlands had a £1,000-a-week crack and heroin habit, so she was having to steal £160,000 a year from stores. She did that for 20 years, from the age 14 to age 34. She stopped when she was eventually put on a rehabilitation course and she got treatment. She has now not offended in three years. Moreover, she is counselling young people about not getting into that kind of situation.

I agree that it is never, for any reason, acceptable to attack a shop worker, but what

happens to an offender is important. They might need a custodial sentence, but let us not lose sight of the ability to change people’s lives. That does and must exist.

Colin Beattie: We can all quote extremes of what might happen with retail workers. I could use Dr Cheema’s example of a knife being pulled, or whatever. That is already a criminal offence that would be dealt with fairly seriously.

I am trying to understand where the offence of obstruction or hindrance would apply? What are its extremes? How do we determine what is criminal and what is not? It seems to be difficult. Should we consider a more general offence that applies not just to retail workers but to other people who are going about their business? Should not they be protected in the same way? I am thinking of people in utilities services and so on, who are also subjected to abuse from time to time.

What examples can you give of obstruction or hindrance that would crystallise them in our minds?

Ewan MacDonald-Russell: The situation is slightly different for retail workers, although if there are analogous examples, we would support protection for them.

Retail is unlike any other profession. You cannot control the space, and you cannot control people coming in and doing things in your physical premises. That is why shop work is distinct from other roles. We must remember that retail is not just about stores; it also includes online shopping and hospitality. There might be two people in the environment, but people often work alone. There are lots of scenarios in which we are trying to find the right mechanism for protection.

On defining hindrance and obstruction, that is about how we find the right way to prevent somebody holding a worker, or blocking them from getting out of a flat, or blockading them in a store. At the moment, nothing can be done about those things, beyond involving the police if the situation gets serious. That is what we are grasping at; we recognise that it is a difficult area.

Colin Beattie: I still have not heard a definition that clarifies what would constitute obstruction and hindrance and at what point that would become criminality.

Dr Cheema: You are asking for a scenario. Let us work on one. Somebody comes in before the permitted time and requests an age-restricted product, but the retailer says, “I’m sorry, but you can’t have that. It’s not the right time, so you’ve got to come back after 10 o’clock.” The customer then insists on getting the product, although it has been explained to him that the shop is not allowed to sell it, and that there will be a £5,000 fine if it is

sold to him. That is when such behaviour is triggered and the person becomes abusive.

Colin Beattie: Age-restricted products are a specific area of concern. To my mind, that is a different argument. What would count as obstruction and hindrance in a general retail situation, outside sale of age-restricted products?

Dr Cheema: Age-restricted products are the main issue.

Colin Beattie: They are the main issue?

Dr Cheema: They are the main issue. We are also being hindered in carrying out our duties. Those duties are the legal obligations that the Scottish Parliament and the UK Parliament have given to retail workers.

Colin Beattie: What examples do we have of that? I understand the issue of age-restricted products. I have a lot of sympathy, but it is a separate issue.

Dr Cheema: When you say it is a separate issue, what do you mean?

Colin Beattie: It is a separate issue in so far as it is a definable issue, where there is already a considerable concern. It is separate from the generality of the retail trade.

Dr Cheema: If workers are being stopped from carrying out their duty, they are also hindered. Let us say that a queue forms, and the second and third people have to get to work but the shop worker cannot carry on with their duties. Surely that is a hindrance?

The Convener: I think you should wind up. We are going around in circles.

Colin Beattie: We are not getting anywhere, but it seems that age-restricted products—which are the main examples that you are giving, and the only examples so far—should be looked at separately. I will leave it at that.

The Convener: You are saying that there are jobs that staff need to get on with, and that they can be hindered from getting on with those if somebody is kicking up a fuss about an age-restricted product.

Dr Cheema: The average number of staff in a convenience store in the retail sector is two to three at any time.

The Convener: We will move on, as we are short of time. I can give time at the end if you want to pick up on anything.

Alison Harris: I will not ask my question, having heard previous evidence.

The Convener: Do you have any other questions?

Alison Harris: I will come in later.

Dean Lockhart: We are looking at the Scottish position, for obvious reasons, but can any of the panel indicate whether there are more effective powers elsewhere in the UK to deal with the concerns that are being raised?

Ewan MacDonald-Russell: My British Retail Consortium colleagues are campaigning on the issue across the four UK nations. We want to see action. Scotland is a little ahead at the moment: we would like the Scottish Parliament to lead on this. We are looking for more powers and protections across the board.

In response to the issue that was raised earlier about data, to substantiate Mr Gerrard's point I note that we collect data from across our whole membership, in Scotland and UK. We do not see a huge change in the trend, but there is an increase in the problem.

11:15

Paul Gerrard: The Co-op has for the past 18 months been running a campaign called "Safer colleagues, safer communities".

Ewan MacDonald-Russell is right that Scotland is ahead on the issue. Debates at Westminster—at Prime Minister's questions last week, and at Westminster hall two weeks ago and before the UK general election—are at nowhere near the same point. There is a private member's bill from Alex Norris, who is the Labour and Co-operative Party MP for Nottingham North, which is similar to Daniel Johnson's. However, at the minute, although there is recognition of the seriousness of the issue, the rest of the UK is not nearly as advanced as Scotland. I have seen no conversation in Westminster of such detail and clarity.

Dean Lockhart: Thank you.

Just so that I understand the nature of the problem, are the abuse and concerns the same across the UK, or do you face particular issues in Scotland?

Paul Gerrard: I can speak for the Co-operative Group. We have 2,500 stores across the UK. The issues are similar in Glasgow and Gillingham: challenging shoplifters causing violence and abuse, age-restricted product sales and general abusive behaviour in stores.

Ewan MacDonald-Russell: The only differentiation that we see is between types of store. Larger stores that tend to have more colleagues are better for members of staff to support each other. It is harder for convenience stores, although our members from that sector put in a huge amount of security, including CCTV. The

fewer people there are, the harder it is. Overall, it is a huge challenge.

Dean Lockhart: That is helpful. Thank you.

Andy Wightman: Dr Cheema and Mr Gerrard both said that there is little faith in the police and in the Crown Office and Procurator Fiscal Service in relation to prosecution of people who assault, threaten or abuse retail workers. Would the bill change that? Legislation, in and of itself, will not change anything if the problem is that the law enforcement and prosecution services are not following up as they should.

Dr Cheema: You heard the previous panel say that it is “low-level” crime. Low-level crime does not get picked up by the police; they just do not deal with it. There have been instances in the past—

Andy Wightman: We must not take those comments out of context; I do not think that Gillian Mawdsley from the Law Society was saying that assault was “low-level”.

Dr Cheema: If you look back, you will see that what she said was that those types of crime are—quote—“low-level”.

Andy Wightman: Is it your position that the crimes that are specified in section 1 of the bill are not low level? They vary from assault to hindering.

Dr Cheema: As I said earlier, no type of crime should be tolerated.

Andy Wightman: I understand that. What I am trying to find out is what difference will legislation that, in effect, restates law that already exists make, if your members and retail workers do not have confidence in the police and the Crown Office?

Dr Cheema: Legislation will give them a bit of faith that somebody out there is listening to them. It will enforce—

Andy Wightman: But will it make any difference? If Parliament were to pass the bill, or something that is broadly its shape, that would provide a lot of reassurance and all the rest of it, but if it is not followed through with enforcement, we are just gesticulating.

Paul Gerrard: I would not underestimate the power of a sovereign Parliament “gesticulating”, because that can be really powerful. It would also be powerful for law enforcement, because the truth is that the issue is not prioritised. An aggravated offence that carries a higher tariff very often prompts a better police response.

As I said, I speak as a former law enforcement officer. There is the issue of resources being needed in order to be able to respond. It is not out of badness or wickedness that police are not

responding; it is because they do not have the resources. The proposed legislation would increase the importance of the issue—the Scottish Parliament will have passed an act. What needs to follow is for the police to have the resources.

I apologise for speaking more from a UK perspective than from a Scottish perspective, but I point out that cuts across the police services have hit neighbourhood policing; neighbourhood police were often the people who would respond to problems in stores.

Andy Wightman: I understand the issue of resources, but if we elevate the offences in one element of the criminal justice system without changing the resources, the deficit will simply fall elsewhere.

Paul Gerrard: Policing is all about prioritisation.

Andy Wightman: I understand that, but the committee is not involved in scrutiny of policing budgets.

I will ask about the proposed age-related products statutory aggravation. Colin Beattie indicated that he is quite sympathetic to doing something in that area, as am I. I cannot speak for other members of the committee. As has been said, the people who work in retail provide a public service that we have asked them to provide.

However, the problem with the bill is that the aggravation would apply only to section 1 offences. Parliament might not approve some or all of the section 1 offences, in which case the aggravation would fall. I am just speculating on what Parliament might do. We do not know what it will do, but it might take the view that the offences are already covered elsewhere and are therefore not needed. As a consequence of that, the bill’s aggravation provisions would also fall.

Should the aggravation apply not only to the section 1 offences but to any offence against a shop worker that is prosecuted, whether under the common law or the Criminal Justice and Licensing (Scotland) Act 2010? At the moment, it does not apply to those offences.

Ewan MacDonald-Russell: I think—after a quick read-through to make sure that I cover this—that the SRC’s answer would be yes. We think that it is easier to take a broader aggravation approach. It is not that we are not supportive of what the bill proposes; we simply support the easiest way of ensuring that we catch such offences properly.

There are temporal elements to consider—for example, when a shop worker refuses an age-related product sale and somebody gets them later in the car park. There is a question about how we amend or develop legislation to capture

those sorts of things. We are not precious about how we get to that outcome.

I apologise for not giving a very specific answer, but I do not want to get it wrong.

Andy Wightman: Let us take the hypothetical situation in which section 1—or part of it—falls. Let us say that the obstruction and hindrance provision falls. Is it the case that you would like the aggravation to apply in respect of any prosecution of someone who assaults or threatens a retail worker, regardless of whether that prosecution is pursued in relation to the offences in the bill?

Ewan MacDonald-Russell: Yes.

Andy Wightman: Do the other witnesses agree with that?

Paul Togneri: That would be helpful and would go a long way towards starting the cultural shift that is required. It would send the message that we have all highlighted needs to be sent.

Andy Wightman: What is your response to the evidence from the Law Society of Scotland, the Crown Office and Procurator Fiscal Service, and the Scottish Government that all the offences in section 1 are already covered? Assault is covered by the common law, threatening and abusing is covered by the Criminal Justice and Licensing (Scotland) Act 2010 and, according to the COPFS, obstruction and hindrance could be prosecuted under breach of the peace. The aggravation of committing an offence against someone while they are in the course of their employment is already covered by the prosecution guidance. What is your response to that?

I understand that action is not being taken—that the police are not investigating such offences and that people are not being prosecuted—but the argument is that laws exist that can deal with the situation as it stands.

Ewan MacDonald-Russell: I will be very brief so that I do not repeat myself. It is a question of recognising that retail workers and retail places are different. The aggravation would be to ensure that the penalties are sufficient and are more of a deterrent.

I have another small point to make, which might sound inconsequential but is not. Much of the behaviour that we are talking about is behaviour that will always be hard to identify in law. I am thinking of instances of micro-aggression and behaviour that might constitute abuse for which there will not be corroboration, because it involves a single person speaking at a checkout where there is no audio recording or other evidence from colleagues. By creating an offence that makes it clear that retail workers are different and deserve protection, we can change the people's calculus on that circumstance. We will make workers feel

more confident that they will not be subjected to such behaviour, and make customers think differently and recognise the need for respect. That is a minor thing that involves a cultural shift.

That is partly why I think that we must not underestimate the value of a legislative approach that seeks to change the culture for ordinary people who might be frustrated, such that they do not take that frustration out on retail workers. That is what we are reaching for in a very general way.

Andy Wightman: Okay. Finally, I want to pick up on your earlier point about the retail environment being different because members of the public have unhindered access to it. That is unlike a solicitor's office or the Parliament, for example, where who gets access is, or can be, controlled at the door. Is that difference an important factor in your support for the bill? How significant is it?

Ewan MacDonald-Russell: How retail works and the responsibility to engage with everyone are quite important. There are lots of reasons why the bill is not analogous to the Emergency Workers (Scotland) Act 2005, but the original justification for that act was about how emergency workers will always be vulnerable because they have to go to places and cannot control their circumstances. That element is becoming more and more true of retail workers. Obviously, the other parts of the 2005 act about life-saving are not analogous to the bill. The point about not controlling the environment is a relevant criterion, which is why we draw on it.

Dr Cheema: In retail, there are circumstances in which there are lone workers. The difference for the retailers is about ensuring that they can carry out their legal duties in a safe and proper environment without being hindered and aggravated.

Andy Wightman: Okay. Thank you.

Alison Harris: Would you like any changes to be made to the bill?

Paul Togneri: A lot of age-verification checks take place at the doors of premises by door staff. We would like the bill to branch out to include protections for those staff, who will be on the front line of age-verification checks in many cases.

Dr Cheema: I think that the bill will carry out everything that we require.

Paul Gerrard: We work very closely with USDAW, and it will be interesting to hear what it says in the next evidence session. It is not usual for all the major trade bodies, employers and unions to speak with one voice on an issue, but it has been very noticeable from debates across the United Kingdom that the major retailers and USDAW are absolutely at one on the matter.

Gordon MacDonald: Because of our time constraints, I will ask a couple of brief questions. Will you confirm the number of workers whom the bill would protect, whether they work in the convenience store sector or in the bar and club sector?

Dr Cheema: There are 44,000 workers in our retail members. That does not include the beer and pub and hospitality sectors.

Paul Togneri: There are 45,000 workers across pubs in Scotland.

Ewan MacDonald-Russell: The most recent Scottish annual business survey says that there are about 240,000 retail workers.

Gordon MacDonald: Thank you very much. That helps to paint the picture of what the bill could do.

We have talked a lot about needing a culture change, possibly similar to the change that was needed in relation to the legislation on seat belts and the laws on drink-driving, for example. We need to send the message that the abuse of retail workers is not acceptable. The bill is not a panacea for all the ills that the convenience store and pub and club sectors face. What other action that is not included in the bill does the sector want in order to help to protect retail workers?

Paul Gerrard: As I said before, I think that Scotland is ahead of the rest of the UK on the issue in general. Last year, one thing that the UK Home Office did was a public awareness campaign, which focused more on shopworkers and getting them to be comfortable and confident about reporting abuse. The #AlwaysReportAbuse campaign was run by the Association of Convenience Stores in England and Wales and was really helpful. It did two things: it encouraged colleagues to report and it encouraged businesses to ensure that they do the right thing.

I do not agree with what the Law Society of Scotland has said about businesses possibly preventing or discouraging colleagues from reporting abuse, because I have never seen that—certainly not through the Co-operative Group. I would be very surprised if that were true of many businesses. However, the need to have a public awareness campaign or a sector awareness campaign on the importance and unacceptability of abuse says something.

11:30

Ewan MacDonald-Russell: From our point of view, there are three points around coherency. First, we speak to our members a lot and, to echo Mr Gerrard's point, we know that a huge amount of effort is put into protecting workers. Across the UK, our members spend more than £1 billion a

year on protecting workers and on crime prevention, and that will continue.

Secondly, we want to work in partnership with the police. The Scottish Business Resilience Centre is a good example of that joint working.

The third point, which concerns what goes on in this building, is about the coherency of public policy. Many of the triggers for the behaviour that we see are consequence of public policies. Some of those policies are good decisions, and we support them, but there must be coherency and clarity, people's voices must be heard and there must be a strategic approach.

Obviously, we are working with Government on a retail strategy. That kind of wider and more sectoral work on understanding the impacts of policy is essential. That is one thing that is often not thought about when we talk about public policy measures that retail workers enact.

Gordon MacDonald: You mentioned that your members spend £1 billion on protecting workers and so on. Can you give us a flavour of the nature of that spend? Obviously, employers have a duty of care for their employees. Furthermore, there are a lot of family-owned businesses in the convenience store sector, and the employers want to protect their family members. The same thing goes for bars and pubs. What are the various sectors doing to protect employees and family members?

Paul Gerrard: I can speak only for the Co-op. Although we are a relatively big business, we are a small-format business, which is a slightly different thing. Also, we do wholesale to lots of family-owned independent stores and independent co-operative societies, such as Scotmid.

In the past three years, we have spent about £140 million UK-wide, and we will do that in the coming three years, too. About £20 million of that was spent in our Scottish stores. That spending is on a few things: physical stuff, guards and the design of stores, which involves issues such as where you put stuff.

One of the most important things that we have done concerns the use of technology to connect colleagues on the shop floor. Sometimes, there will be three or four colleagues in the store—one in the back, one on the till and one on the floor, and so on. All our colleagues have headsets, which means that they can speak to each other at any point, which is important. We have also connected our colleagues to a central control room, which is provided by a private supplier. That enables them to be connected to the outside world. If there is an incident and they press the alarm button, that store is taken over by the central control function, and the control room gathers the evidence to send to the police,

instructs the colleagues what to do and sends out announcements.

You need to spend money. A big business such as the Co-op can afford to spend the equivalent of £8,000 a year, on average, on security measures in a store, but my worry is that many of the most at-risk stores—the small, family-run independents—do not have that resource. We are at risk because of our format: our stores are small, local and community based. The equivalent family-run businesses might not have the same kind of money to spend, which means that they will be most at risk.

Ewan MacDonald-Russell: That is a far better explanation than I could give. The only thing that I would add is that, now, we often see retailers acting almost as quasi-judicial bodies whereby, if someone is acting in a way that is bad but their behaviour is not at the level at which the police will or can take action, a retailer will ban that customer and start other internal processes. In those situations, there is a lot of support for workers. That might not count towards the spend that we are talking about, but it involves recognising that there might be a degree of post-traumatic stress, which will require mental health support and so on. A lot of that sort of thing goes on, too.

Paul Togneri: On our part, there is the promotion of best practice via the Scottish Business Resilience Centre, and there is the Best Bar None Scotland's accreditation scheme, which all pubs in Scotland are eligible to join. Our approach also involves partnership working. Pubs that might have a problem with violence, abuse or other such issues will usually work at having the best relationship possible with licensing standards officers and local police. Ensuring that those connections exist is an important part of our work.

Dr Cheema: One factor that has been missed so far is the amount of community work that retailers carry out to ensure that they know everybody and that, ultimately, they are safe. They try to get on with everybody in order to eradicate the kind of thing that we are talking about. Yes, we invest in CCTV and so on, but it is important to note that more and more people are becoming stressed in their work because of the situations that we have been discussing today. That is why we have employed the Retail Trust and are using its retail hub: we are trying to eradicate some of that stress by putting services behind our efforts. However, the situation is difficult, and it is getting worse.

Daniel Johnson: May I make a point, convener?

The Convener: We are short of time, so only if it is really important.

Daniel Johnson: The previous panel was questioned about legal protection and the idea of employers of other categories of worker being obliged to protect the life and limb of their employees. Retail workers are upholding the law by restricting access to age-restricted items such as alcohol, tobacco, battery acid and offensive weapons—items in relation to which there could be real consequences to life and limb if they are sold inappropriately. Is that a fair reflection of the situation, Mr Gerrard?

Paul Gerrard: I think that it is. Certainly, however, there are some differences. For example, we do not sell knives in our stores now because of the risk that poses, but we sell things such as acid and so on. If such items get into the wrong hands, there can be devastating consequences. That also goes for other age-related items such as alcohol and so on. I am not sure that the impact of those sales would be exactly the same, but I would not underestimate the implications of those products being sold in an unrestricted way. That is why Parliament brought in the safeguards.

The Convener: I thank the witnesses for what has been an interesting session. If anyone thinks of something that has not been covered today, they can write to us to let us know.

We will suspend the committee for a minute while we change witnesses.

11:36

Meeting suspended.

11:37

On resuming—

The Convener: I welcome Stewart Forrest, who is the Scottish divisional officer for the Union of Shop, Distributive and Allied Workers, and Robert Deavy, who is an organiser at GMB Scotland.

Gentlemen, you have just heard the previous evidence session. We are looking to build on that and will be asking you about broadly the same issues.

Richard Lyle: USDAW has collected examples of abusive behaviour, which I will quote. On age-restricted sales, we see this example:

“Broxburn—‘Customers very aggressive when refused sale of age restricted products, particularly alcohol.’”

On the throwing of goods:

“Inverurie—‘Customer threw items of their shopping at me as they were unhappy about the price’”.

On shoplifters:

“Fife—‘Shoplifter tried to head-butt me’”.

On belittling behaviour:

“*Wick*—‘Asked if I was stupid, spoken to like a child.’”

On assault:

“*Dingwall*—‘One customer elbowed me on purpose when I went past’”.

On verbal abuse:

“*Dundee*—‘I have had customers shout at me if something doesn’t go right and called many names’”.

and

“*Inverness*—‘A Woman was very upset about our lack of 10p bags and got verbally abusive.’”

Finally, on what can happen after work:

“*Edinburgh*—‘I have been stopped in the street going home and verbally abused by a family member of a shoplifter that I had caught previously that day. I feel very uncomfortable being put in that situation as these people know where I live and are known to be violent!’”

Are you saying that this is regularly happening all over Scotland?

Stewart Forrest (Union of Shop, Distributive and Allied Workers): Yes. I want to start by stating that a job in retail is a real job, just the same as being a police officer, an emergency service worker or a firefighter is a real job. A lot of people spend their whole career in retail.

USDAW represents 30,000 members in retail in Scotland. The survey that you quoted from was part of our freedom from fear campaign. We have been running the campaign throughout the UK since 2003. A Scotland-specific survey is part of that campaign, and we have noticed that, since 2015, assaults and abuse of our members in Scotland are increasing significantly. You quoted our 2019 survey, which we would be happy to share with the committee on request.

Richard Lyle: Many committee members know that I was a grocery manager in a Co-operative for 14 years in the early part of my career. For my last question, I will again quote USDAW, which says that life on the front line of retail can be pretty tough for many shopworkers, that there is still a lot to do to help protect them, and that USDAW’s message is clear: abuse is not part of the job. Do you agree with that?

Stewart Forrest: Yes, absolutely.

Richard Lyle: Thank you.

Jackie Baillie: You may have heard the police say in their evidence that reports of threats, intimidation or violence against retail workers are all taken seriously and thoroughly investigated. Is that your members’ experience?

Stewart Forrest: It certainly is not the experience of USDAW members. Through their participation in our surveys, people are telling us

that that is not the case. Such reports are not taken seriously. They see that, when people have been abusive, if they spend a lot of money in the store, they might be excluded from the store for that one shopping visit, but then they are back in. The majority of our members live in the community that they work in, and that can cause problems outside work.

Robert Deavy (GMB Scotland): I had to deal with an incident in Blantyre about a year and a half or two years ago. A gang of youths was consistently robbing the store in Blantyre, threatening the security guard with a knife and baseball bats, telling him that they were going to stab him and attack any staff who got in their way. The store would call the police, who would not turn up, although they knew who those youths were. It took a critical article in a national newspaper for the police to act and to go to the store and deal with the incident. I will happily send that article; it is easy to find.

The experience of GMB members is that the police do not appear. There is no point in reporting crimes such as shoplifting; the police do not have the resources to deal with them. The bill, if it becomes law, would empower shopworkers to feel more confident in reporting.

Everyone who spoke in the earlier evidence sessions, from the Law Society to retail representatives, admits that this is a growing problem. Is that not enough to tell you that the current law is not doing enough to stop it? We need to try something different.

Jackie Baillie: Assuming that people get through the stage of police involvement, do you have confidence in prosecutions and sentencing? Have you any examples?

Robert Deavy: People do not have the confidence to report an incident in the first instance. First and foremost, they do not feel that they get support from the management in the store. In the stores that I deal with, when I raise with the manager what a member has said, the overriding response is that the store is too busy. They want to deal with that customer and get them out as quickly as possible, rather than report an incident. I believe that the bill will help to give retail workers the confidence to say to their manager, “I need to report this—it is a crime.”

We all know that we cannot assault people. We all know that we cannot verbally abuse people for their ethnicity, or for being pregnant. However, in retail there is an acceptance, and certainly we hear this from our members, that verbal abuse—although not so much assault—is just part of the day-to-day job.

We keep mentioning the sale of age-restricted products—alcohol, tobacco and so on. That is just

one part of it. These things happen all over stores, whether in the front, when someone is selling alcohol, or up the back, when someone is getting goods for a customer. The problem is that, as we all know, the retail market is volatile. Retailers are struggling to keep pace with one another. Reductions in staff are leaving a lot of our members as lone workers in parts of the store. The problem is not just to do with age-restricted goods: it is happening in stores all over Scotland. It does not matter where someone works.

Does that answer your question, Ms Baillie?

11:45

Jackie Baillie: It does. Thank you.

Stewart Forrest: It is USDAW's opinion that some employers are more reluctant to push for a prosecution than others.

If the bill became law, knowing that there is a stronger law that would be more enforceable would be of comfort to our members.

11:45

Willie Coffey: The experience in Blantyre that Robert Deavy described sounds as if it was criminal behaviour in any case. Mr Deavy, if the police fail to turn up to such incidents, would the bill solve the problem?

Robert Deavy: It might, because, as the previous panel mentioned, these incidents would become a priority and the police might react to them as a priority.

The problem that our members faced in Blantyre was that the police knew who the individuals were—they were young boys who were well known for their behaviour. The police decided that they would let them do what they were doing and pick them up later. The police did not go to the scene of the crime where our members were being threatened—they might have picked them up later in the local park, for instance.

Willie Coffey: But you think that the bill would help to overcome that issue.

Robert Deavy: I do not know; it is about giving retail workers more empowerment in their job by knowing that someone has their back.

If any committee members were to go into a store now and ask retail workers whether they believe that the Government supports them and the law protects them, I think that most of them would say no. That is very sad.

The Convener: Is it not an education and training issue? There are laws, but if retail workers do not feel that those laws are there for their protection, does that mean that there is a

disconnect in terms of their understanding of the existing laws?

Stewart Forrest: There is training on the implementation of some laws and the consequences that our members would face if they do not adhere to them.

I do not think that a lot of employers encourage our members to report verbal abuse to the police. Having a stronger law and a campaign to advertise it would be better for our members. They would feel more comfortable knowing that better protection would be in place. At the moment, they do not believe that there is protection.

The Convener: Is a stronger law required, or just a law with a specific name? Are you saying that the current laws are not strong?

Stewart Forrest: It is our opinion that the current laws are not being enforced. Based on what the previous panel said, we all have a joined-up approach to this: us, the trade representatives who gave evidence earlier and the Co-op, which does a lot of work with us in the UK. We support the bill for the benefit of our members.

The results of USDAW's UK survey—which has been going for a number of years—are bad, but the Scottish results, when they are separated out, are even worse. There is a major problem here, and it is growing. Colleagues on the previous panels have said that they recognise that the problem is growing.

The problem is not only with age-restricted sales; it is with drunk people who go into shops with alcohol and try to buy more but are refused it, or with people who are refused alcohol when they try to buy it for minors. There are a lot of trigger points, and it falls on retail workers to police them. If they do not, they get disciplined and potentially fined and taken to court.

Robert Deavy: Willie Coffey asked whether the bill would help to overcome the problems. Laws were already in place to protect emergency services workers in the police, fire and ambulance services before the Emergency Workers (Scotland) Act 2005 was brought in. It is reasonable to say that that act has helped those workers to do their jobs. Although the laws were already there, tightening them up and making them more specific has helped those workers.

Bringing in a law that is specifically for retail workers would tighten up laws that are already there and give retail workers a bit of support and encouragement to report crimes. I believe that it would help.

Colin Beattie: Stewart Forrest said that the current laws are not being enforced. If more new laws were brought in, would those be enforced?

Stewart Forrest: We would hope so. As someone on one of the previous panels said, if a stronger law was in place, there would be more chance of the police attending an incident and enforcing that law. At the moment, our members are telling us that they feel that the issues that are happening in retail are not being taken seriously, and they have to live with that. We do not want them to be scared to go into their work. There might be various reasons why they work in their own community—childcare, for example—so they cannot just move stores if they have a bad experience. They go into work every day, so they need to know that a strong law is in place for their protection.

Colin Beattie: If current laws were properly enforced, would that do the job?

Stewart Forrest: I cannot answer that question, because they are not being enforced.

Colin Beattie: Okay.

Robert Deavy talked about the focus on age-restricted products. When I asked the previous panel about alternative scenarios involving the obstruction and hindrance of retail workers, they could not come up with any examples. Are you able to give me an example that does not relate to an age-restricted product, which, to me, is a different scenario?

Robert Deavy: I do not know whether members have seen the video that was taken in a store in Toryglen, which went viral. One of our members was given an instruction by their management to place reduced items—stuff that was going out of date—on the shelf so that it could be sold that day. A crowd of customers was already there waiting, and when our member went to put out the items, he never got close to the shelf. He was basically set upon, as if by a pack of wolves, and received an injury in the line of work. Would that not be classed as hindrance? He was doing his job, but people could not wait five minutes while he put stuff on a shelf to get a 10p lettuce, a chicken, or whatever it might have been. The video is out there—I believe that another colleague filmed it because the situation was so vicious. Our member received an injury in the line of work that day.

I think that the previous panel touched on what happens if someone refuses to leave the store. What are our members supposed to do? If they call the police, the police will not turn up. Are they supposed to just stand there all day? They cannot do that as they have a job to do, so that is hindrance. Would a manager accept a member of staff standing there all day with an abusive customer because they refuse to leave the store?

There is a policy in place that, if a customer gets abusive or violent towards one of our members, the member is supposed to remove themselves

from the situation. However, that is not always possible because the abusive person might physically stop them.

Colin Beattie: There is a concern that, if young people are being abusive, we will criminalise them by prosecuting them for causing hindrance and obstruction. I have heard one or two examples of hindrance and obstruction, but I do not really understand what the limits are. What behaviour would be considered hindrance and obstruction? You have given an example of an extreme case, but which lesser cases would trigger criminality? I am concerned about young people being unnecessarily criminalised at an early age, which would affect their entire future.

Stewart Forrest: In the convenience sector, groups of youths sometimes stand outside stores, or come in and out of the store and annoy or are abusive to the retail staff, which can be viewed as hindrance. Some of our members have been abused and followed home after they have tried to put people out of the store. That behaviour is hindrance and is not related to age-restricted products. A law to support workers must be put in place as the current law is not working. Although I agree that we might not want to see youngsters with a criminal record, what else should we do?

Colin Beattie: So you believe that, if the bill became law, it should be vigorously applied to young people causing problems in shops.

Stewart Forrest: If they were causing problems with the police, would the law be vigorously pursued? I am sure that it would be.

Robert Deavy: None of us wants to criminalise every young person in Scotland. We were all young at one point, although it was a long time ago for me. The bill is about sending a message. We are talking about people who are doing their jobs and, as the first panel mentioned, they are low-paid jobs. The people doing those jobs are predominantly females and they deserve protection at their work.

I am sorry but, whether someone is young, middle-aged or old, if they go into a store with the deliberate intention of abusing a shopworker, yes, they should be criminalised—I stand by that. If someone is willing to learn from their actions and if that criminalisation makes them see the error of their ways and prevents it from happening again, that is a good thing. We go on about people carrying a record for the rest of their lives, but that is a bit of an exaggeration—it does not really work like that, because there are spent criminal records and so on, so we need to be careful about that.

We need to protect people at their work. A specific law protecting retail workers might encourage employers to give more importance to protecting their workers and their duty of care.

Simply putting up a poster at the front of the store that says that people will be prosecuted for certain actions might make people think twice. It has certainly worked on public transport. For example, there are posters on trains saying that abuse of staff will not be tolerated but, at the moment, we do not see such posters in many stores. Those might prevent people from being abusive.

The Convener: I will move on to Andy Wightman, because he wants to pick up on some of those issues.

Andy Wightman: On that last point, such posters could be put up now, because assault, abuse and threatening behaviour are crimes.

Mr Forrest mentioned the issue of somebody not leaving a store and that being a hindrance. If the bill became law, in that sort of situation, you would still rely on the police turning up, which you say they are not doing at present.

Stewart Forrest: In the first instance, the retail worker would try to get the person to leave the store. In an extreme case, the worker would maybe end up having to get the police. A lot of times, people leave reluctantly after abusing our members but before it becomes a police matter.

Andy Wightman: You said that, since 2015, there has been an increase in incidents, although I cannot remember exactly what the increase was. The USDAW survey shows that there was an increase after 2015, but that followed a decline. There was a spike in verbal abuse in 2017. There is a graph showing physical violence, which had declined to quite a low level in 2015 and was down further in 2016, but there was a spike in 2017. What is the cause of that spike to pre-2015 levels? Do you attribute it to anything in particular?

Stewart Forrest: Austerity is part of it. A lot of people have had more difficult times. The number of retail staff is shrinking, which perhaps means that there is more opportunity for theft and so on. It seems to be a sign of the times. As I mentioned, particularly in Scotland, the survey is telling us that the situation is getting worse. Our survey found that six in 10 retail workers suffer abuse on an almost daily basis.

Andy Wightman: I just wondered whether you were alluding to any particular piece of legislation or anything like that.

Stewart Forrest: No, I was not.

Andy Wightman: I will return to the question that I asked the previous panel on the section on aggravated offences relating to age-related products. That aggravated offence would apply only if any of the offences in section 1 were to become law. Given the strong evidence that we have heard about the public duty that retail workers are fulfilling in upholding those age-

related restrictions and the penalties that they face, do you believe that the aggravated offence should be available for any crime that is being prosecuted, regardless of whether it is a section 1 offence under the bill? Ultimately, it is up to the prosecution authorities to decide whether to prosecute under the common law and breach of the peace or some other approach. The authorities can decide which approach has the best chance of success in the courts. If they were not prosecuting a section 1 offence, they could not have the aggravation.

Stewart Forrest: We would welcome it if the measures were to be extended to other groups, but we believe that Mr Johnson's bill should be progressed in the form that it has been put before the committee.

12:00

Andy Wightman: Okay. Just to be clear—we have rehearsed this—you are saying that, at the moment, the police and prosecution authorities are not doing enough to protect retail workers. I do not doubt that that is the case and I do not doubt the evidence that you have brought about the level of abuse and the need for something to be done.

The question for this committee is whether the bill is the right way to do what is needed. Is it your view that the bill is mainly—although not exclusively—about sending a clear message that reassures retail workers?

Robert Deavy: I want to be absolutely clear: it is not me but our members who say that the system is not working and that they are facing abuse every day of their working lives. We can only take their word for it; they are in the firing line and they are telling me, as their trade union representative, that they get no protection at work either from their employer or from the police and the courts, who are meant to uphold the law.

Andy Wightman: Do you agree that, if the bill passes as it stands, it will be deemed pretty ineffective if the police and prosecuting officers do not enforce it?

Robert Deavy: Yes, that will be the case if they do not enforce it. That is the same for any law, is it not?

Andy Wightman: Absolutely. That is what I am suggesting.

The Convener: Does Alison Harris want to come back in at this point?

Alison Harris: No, thank you. I have heard a lot of evidence.

Gordon MacDonald: I have a question that is similar to the one that I put to the previous panel. We have talked about the culture change that is

needed and the message that we need to send about protecting workers. We have heard about the number of workers who could be protected by the bill, and, thanks to the evidence that we have heard from you guys on the panel, we understand the problem, to an extent.

The bill is not a panacea that will deal with all the ills that are faced by retail workers and people who work in pubs and clubs. What other action, which is not covered in the bill, should be taken to protect retail workers?

Robert Deavy: I would like more duty to be placed on employers than is currently the case. I can give you a good example. One of my members was assaulted after a situation escalated from verbal abuse to physical abuse. We took the case through the company's procedures to try to get the customer banned. The case went all the way to a senior director of the company, and the end result was that the company would not ban the customer. The company's answer to our member was, "If that customer enters the store, leave the floor." Now, there are 75 other workers in that store. Are they all meant to leave the floor, or is it just that member who is supposed to do that?

I think that the bill will put greater emphasis on the employer's role, but there needs to be a greater duty of care. There is a duty of care, and there are health and safety rules and so on, at the end of the day, but due to the cuts that we see happening all over the retail sector, I think that there is less and less emphasis on the issue, every day.

Gordon MacDonald: Store owners and retail sector representatives told us that they are spending, on average, £8,000 per store—I think that that was the number—to try to protect workers. Are employers doing enough? Apart from the example that you have just given, what other issues would you like to be dealt with?

Robert Deavy: The sector representatives mentioned guards in stores, but there are numerous examples of guards being removed and made to stack shelves, simply because there are not enough staff. I accept that companies are spending a lot of money on CCTV and so on, but guards have a pivotal role. They are there as a deterrent. If someone walks in and sees a guard, they might think twice, but if the guard is not on the podium at the front of the store because they have had to go and put bread or tins of beans away, it is a bit easier to shoplift—as Stewart Forrest said, shoplifting has become much easier because of the lack of staff.

Stewart Forrest: Security has certainly been cut back, as part of the cutbacks that we have seen in stores. A member of the previous panel

said that there is more emphasis on CCTV and verbal communications, but the deterrent is the store security guard, and guards are being moved about at certain times or taken away altogether.

It is not just the employer. USDAW has said that the public also needs to be educated, and we do that through the freedom from fear campaign and the respect for shopworkers events. We go out to supermarkets, large stores and small stores, and try to educate the public by saying, "Look, the people working here are not here to be abused." A good strapline that we use every November is "Keep your cool at Christmas". That time is a flashpoint, because stores are busier. Two or three years ago in Dundee, a large retailer had to close a store because of people fighting over stuff on black Friday. Our members are in that melee, getting injured and abused because they are doing their job.

The public needs to be educated, but Mr Johnson's bill also has to send a message to workers that they will be treated seriously. We also have to get the police and the Crown Office to treat abuse of shopworkers seriously.

The Convener: From what you have said so far, the gaps seem to be in police attendance and prosecution when there is an incident. You have also talked quite a bit about employers' responsibilities and what they need to do.

I am taking a wild guess that the people who abuse shopworkers are not going to pay much heed to new laws that are passed or to what the laws say. How will the message of a new law get to the people who commit those offences in the first place? How will it make a difference to them? Do we need some high-profile prosecutions to get the message out? Is that not the real disconnect?

Stewart Forrest: No—education is the disconnect when it comes to how people behave when they deal with retail workers, although it might take some high profile prosecutions to get the message home.

Again, the police are an issue. They have had cuts, but they also do not take this offence as seriously as some other offences. If there were a stronger piece of legislation that said that such behaviour was breaking the law, maybe they would.

The Convener: Having listened to the evidence today, I note that Gillian Mawdsley said in the first session that it was about understanding where the gaps in the legislation are that need to be filled in order to prevent this problem. There clearly is an issue—I do not think that anybody disputes that—but the panel in the earlier session today said that the laws are there, and nobody seems to have disputed that. You are saying that stronger law is

needed, but when I asked the direct question “Is it about stronger law?”, you said no.

It seems that the main issues that we have heard about are police response times or their not attending at all, shopworkers’ understanding of their rights not to be abused, and the fact that the offenders who are doing it, for whatever reason, do not much care what the law is anyway, given that the law to prevent them from doing it is already there. I am trying to understand how you feel the bill would change those factors. What is the gap that the bill would fill?

Robert Deavy: If someone goes into a store with the intention of abusing or physically assaulting a shop worker, no law that you could produce would stop them. If that is their mindset, you will not stop it.

However, if a law specifically targeted people who believe that the customer is always right—we have all heard that phrase—and so it is their right to abuse a shopworker, it might make them think twice. It might stop them.

I do not think that there is a quick fix. You will never get it down to zero, as much as we all want a situation in which everybody goes to work with absolutely no chance of being assaulted or verbally abused and so on. Realistically, that is never going to happen, but you could do something that puts a greater emphasis on retail workers. A specific law that empowers them by giving them the confidence that they are being protected and that lawmakers and those who are employed to uphold the law—the police—will give them more protection should they face abuse is more important.

Yes, we all know that the law is that you cannot assault people. Most people know how to behave, but that is not to say that there are not some who believe that it is acceptable to assault someone because they are “only a shopworker”. I think that that is what has happened. It now seems to be the case, certainly among my members, that retail workers believe that being abused is part of their job. The proposed law would change that mindset and give people a bit of confidence to report abuse.

The Convener: Are you saying that shopworkers are different to other workers who also deal with the public, or should there be such a law for every category of worker that deals with the public, in order to protect them from abuse from the public?

Robert Deavy: I would welcome anyone being protected at their work. Bear it in mind that we already have a law that protects police officers, firefighters and so on. Are we saying that they are in a higher class of worker than a retail worker? I think that we need to be very careful. In my eyes,

a worker is someone who is trying to earn a living to provide for their family. In my opinion, people should return home from their work in exactly the same condition in which they went to their work, although perhaps a little more tired.

The Convener: Should we therefore not ensure that the laws that we already have apply to all workers, rather than create new layers of law for each specified type of worker?

Robert Deavy: Sometimes you need to create a new layer to make sure that the previous laws are enforced, such as the law relating to emergency workers.

Stewart Forrest: Which is another layer of law.

The Convener: I will leave it there. Mr Johnson, do you want to add anything?

Daniel Johnson: I will follow on from Colin Beattie’s and the convener’s questions regarding the types of people who cause issues. There seems to be a characterisation that the people who fail to comply with requirements around age-restricted products, either because they are under age themselves or are with someone who is under age, are typically under age or are people who generally do not comply with the law. Is there is a typical type of person who causes difficulty for and abuses shopworkers?

Stewart Forrest: Often the behaviour occurs across the board. It was mentioned that there are 200-plus age-restricted products in stores. People might have to be challenged when they buy them, so the behaviour applies across the board.

Robert Deavy: I also think that it goes across the board. The example that I used about escalation involved a 62-year-old woman. I do not think that you would normally associate a 62-year-old woman with that level of abuse. It is not specifically young people or old people—there is a broad spectrum.

Daniel Johnson: On the point about the customer “always being right”, will you reflect on some of the behaviours that might typically be found in a store, such as customers not moving away from the counter and holding up the people in the queue behind them because the retail worker has not done what they asked, whether that is to sell them an age-restricted item or go and check the stockroom? Are people encountering that behaviour and can it escalate?

Robert Deavy: It is certainly more common in the case of sales of age-restricted alcohol or tobacco that, if our members refuse to serve a customer, they will not move. Our member will then call for their manager, who will, in my experience, sometimes override our member’s decision and serve the customer just to get rid of

them. That seems to be the only way to remove such people from the store.

The issue does not exclusively relate to age-restricted products. I am aware of an incident in a store relating to the self-service facility. Self-service is becoming a large part of retail as stores do away with manned checkouts. I have not used one, but if you have, you will be aware that there are often problems with the bagging area. There is usually only one member of staff to deal with 14 or 16 self-service checkouts, and if they do not get there quick enough, the customer can, for want of a better phrase, throw a strop. We had an incident in which a customer threatened to slash our member's throat, and the manager's way of dealing with that was to take the customer to another till to serve them, rather than remove them from the store. It is quite common for customers to stand there and refuse to move.

The Convener: Thank you. As there are no other questions, I thank the panel for coming to give evidence. If there is anything else that you wish to add, please feel free to write to us.

12:14

Meeting continued in private until 13:02.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba