

HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 30 January 2002
(Morning)

Session 1

£5.00

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HEALTH AND COMMUNITY CARE COMMITTEE 3rd Meeting 2002, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

COMMITTEE MEMBERS

Bill Butler (Glasgow Anniesland) (Lab)

*Dorothy-Grace Elder (Glasgow) (SNP)

*Janis Hughes (Glasgow Rutherglen) (Lab)

*Mr John McAllion (Dundee East) (Lab)

*Shona Robison (North-East Scotland) (SNP)

*Mary Scanlon (Highlands and Islands) (Con)

*Nicola Sturgeon (Glasgow) (SNP)

*attended

WITNESSES

Simon Clark (FOREST)

Malcolm Chisholm (Minister for Health and Community Care)

Professor Gerard Hastings (Centre for Tobacco Control Research)

Dr Sinéad Jones (British Medical Association)

Dr Lynn MacFadyen (Centre for Tobacco Control Research)

Dr Charles Saunders (Fife NHS Board)

Dr Sheila Stevens (Royal Pharmaceutical Society of Great Britain)

Alison Strath (Royal Pharmaceutical Society of Great Britain)

CLERK TO THE COMMITTEE

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ASSISTANT CLERK

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LOCATION

Chamber

Scottish Parliament

Health and Community Care Committee

Wednesday 30 January 2002

(Morning)

[THE CONVENER *opened the meeting at 09:39*]

The Convener (Mrs Margaret Smith): Good morning, everybody. Welcome to this meeting of the Health and Community Care Committee. I apologise to the people who were removed from the public gallery. We had private business that we had to discuss before we began the business of the day.

I have received apologies from Bill Butler.

Item in Private

The Convener: Members are asked to consider item 4 in private. We will discuss a draft response to the Executive on organ donation for transplantation and will refer to a draft report on organ donation on which the committee is working. Do we agree to discuss the item in private?

Members *indicated agreement.*

Tobacco Advertising and Promotion (Scotland) Bill

The Convener: Item 2 is continuing evidence on the Tobacco Advertising and Promotion (Scotland) Bill. We will hear evidence from four different groups.

First, I welcome Simon Clark, the director of the Freedom Organisation for the Right to Enjoy Smoking Tobacco. I ask you to begin with a short statement after which we will ask questions. We have your submission in front of us.

Simon Clark (FOREST): Good morning. I thank members for the invitation to address the committee.

Members of the Scottish Parliament are being encouraged to introduce a ban on tobacco advertising ahead of the rest of Britain and Europe. We believe that politicians have no business banning the promotion of a perfectly legal product. Our main objection is that censorship of tobacco advertising is the most blatant attack on free speech and on an individual's right to receive legitimate consumer information. We particularly object to the ban on websites carrying information about tobacco products, because an individual's decision to access a website is clearly an active, not a passive, act.

A bill such as the Tobacco Advertising and Promotion (Scotland) Bill demands exceptional justification. The main pretext for the bill is that it will improve health. It is said that, by banning tobacco advertising, consumption will be reduced by at least 2.5 per cent. Where is the evidence for that? In 1996, the consultants KPMG found overwhelming evidence that advertising bans on tobacco products do not reduce tobacco consumption. A 1999 report published by the well-respected Institute of Economic Affairs showed that, in most years, consumption in Iceland, Norway, Finland, Italy and Portugal, which introduced bans between 1971 and 1983, did not fall as quickly as it did, on average, in countries in the Organisation for Economic Co-operation and Development that did not have bans.

If you believe that tobacco advertising is linked to consumption, how do you explain that consumption is now rising in Britain with no help from increased advertising? Ironically, a ban would reduce people's exposure to the prominent health warnings that are on all tobacco advertisements in newspapers, magazines and billboards throughout the country.

Anti-smoking campaigners say that tobacco advertising encourages young people to smoke. A

1990 report by the Office of Population, Censuses and Surveys on why children start smoking found that advertising had no significant influence. There is also an interesting comparison between Norway and Hong Kong. In 1990, 36 per cent of Norwegian 15-year-olds, who were born in the year in which tobacco advertising was banned in Norway, smoked. In Hong Kong, where tobacco advertising is unrestricted, only 11 per cent of 15-year-olds in 1990 smoked.

A ban on tobacco advertising is a disproportionate response and is wholly unacceptable to anyone who supports liberal values. Free speech is free speech, whether it is religious, political, artistic or commercial. The bill, ladies and gentlemen, is an affront to that concept.

Mary Scanlon (Highlands and Islands) (Con): You have addressed most of the questions that I wanted to ask. In your submission you say that the measures that legislators employ

"are carefully designed to achieve their objectives".

I would support the ban if I thought that it would achieve the objective, but there is a lot of conflicting evidence.

You mentioned research on OECD countries and non-OECD countries, which I asked about last week. I understand that the research was based on figures up to 1990. You also mentioned a report by the Institute of Economic Affairs from 1999 and a KPMG report. Can you give me more up-to-date evidence on whether a tobacco ban would be effective? What percentage reduction in smoking would a ban be likely to achieve?

Simon Clark: I cannot, because all the reviews that I have read tend to be based on surveys and reports from the 1980s or early 1990s. Both sides of the debate are struggling to find up-to-date research.

Mary Scanlon: But you mentioned a report from 1999.

09:45

Simon Clark: Yes, that was a report by the IEA, which reviewed all the previous surveys. You must remember that although 1990 sounds out of date, the research relates to what happened in countries that banned smoking in the 1970s. When the figures came out in 1990, they covered a 10 or 15-year period. There are a lot of grey areas. Although both sides of the debate can argue about the effect of tobacco advertising on consumption, the figures seem to be clear. When tobacco advertising is banned, consumption drops off initially, but goes back up over a longer period.

Evidence suggests that in countries where tobacco advertising has been banned,

consumption continues to be greater than in countries such as Britain, Ireland and the Netherlands that have successful records in reducing smoking. I cannot speculate on why that is. Countries like Britain, Ireland and the Netherlands, where advertising continues to be allowed, do quite well in reducing consumption. There appears to be no link whatever between tobacco advertising and consumption. A lot of people have made that point.

Mary Scanlon: It is an important point. I refer you to paragraph 6.1 of your paper, which states:

"Common sense would strongly suggest that the more smoking is attacked by earnest politicians and government-funded bodies, the more attractive it becomes to young people ... what better way to rebel than to start smoking?"

Are you honestly saying that if we sit here and tell people what to do, they will do the opposite?

Simon Clark: Yes, because children are like that.

Mary Scanlon: What about adults?

Simon Clark: A large number of children rebel, whether it is against parents, authority or whatever. It is clear that most children take up smoking not because of advertising, but because of peer pressure. They see it as a way of rebelling and of showing how grown up they are. Even the anti-tobacco lobbying group Action on Smoking and Health has admitted openly that children take up smoking because of peer pressure, brothers and sisters or seeing their parents smoke. Advertising apparently has no effect.

Mary Scanlon: But you must agree that smoking is detrimental to health. That goes without saying.

Simon Clark: I accept that there are health risks associated with smoking, but it is a very—

Mary Scanlon: So what would you introduce to reduce the effect of smoking on the health of adults and children?

Simon Clark: I would not be so presumptuous as to tell other adults how to live their lives. Most adults know the health risks of smoking. We have certainly never denied it; anybody who denied that there are health risks associated with smoking would be crazy. At the end of the day, adults have to be allowed to live their lives in the way they wish. They have to be allowed to make their own choices. A danger in modern society is that—if I may say so—politicians want to tell people how to live their lives. That is counterproductive.

Nobody wants to see children smoking. I support the idea of introducing identity cards to make it harder for children to go into shops and buy cigarettes. At the moment the onus is completely on the tobacconist or the shopkeeper.

The present Westminster Government is partly to blame for the rise in children's consumption of cigarettes, because it has put taxation up to a level that encourages a massive amount of smuggling into this country. Children can get hold of cheap tobacco quite easily on street corners, in clubs or wherever they might be. Perhaps the committee is not considering taxation, but the high taxation rate has, no doubt, led to the increase in smoking among adults and children in the UK in the past few years.

The Convener: You said that no one should tell adults how to live their lives. Modern motor cars can travel at 120mph; are you suggesting that we should not have a speed limit on our roads and that people should be able to drive at whatever speed they want and, potentially, kill people?

You are saying that there is no role for politicians at all. The effects of smoking cause 13,000 deaths a year, which costs the national health service in Scotland £140 million to £180 million annually. In a democratic society, we would be defective in discharging our duty to the people whom we represent if we did not try to save people's lives.

Simon Clark: There are several arguments in that. Certainly I accept that the Government has a role in educating people about the health risks of smoking. The problem is that, as the anti-smoking culture takes over in this country, the Government is going beyond education. Taxation is being used as a form of social engineering, to coerce people to give up smoking. That is a wrong use of taxation.

I believe that nagging people to give up smoking is counterproductive. A great many people, I believe, dig their heels in and say, "No, I am not going to be told what to do."

I accept that the Government has a role to play in education, but it can go too far. Smokers would be concerned if politicians were to suggest a ban on smoking, but a ban on tobacco advertising will not affect the majority of smokers.

We are concerned about the principle of the thing. An anti-smoking culture has been created which, as we have seen recently, has led an employer to sack an employee who smoked in his own time, not at work. That might be a one-off case, but I suspect that we will see more and more cases like it if the Government encourages the anti-smoking culture.

The Convener: You said that a ban on advertising would not affect most smokers. However, your submission states that the tobacco companies are not interested in attracting new smokers through advertising; the advertising is there to encourage companies to develop new products and to tell people about them in a

competitive and shifting marketplace. Therefore there would be an effect on smokers if we were to ban tobacco advertising.

Simon Clark: A ban would have an effect; it would affect the manufacture of new products. For example, there has been a lot of talk over the past few years about a possible smokeless cigarette. If a company were to develop such a product, but knew that it could not market it, I suspect that it would cut back on research and development. There is no point in developing new products if they cannot be marketed.

Thirty years ago, we did not have filter-tipped cigarettes. I am not making health claims about filter-tipped cigarettes, but would they have been developed and manufactured if the company had been unable to advertise and market them?

The Convener: There is a problem with that argument. We have a wonderful institution in this country, called the free press. I would guarantee that if a company developed a smokeless cigarette, someone in the press might just pick up the story and tell people about it without having to rely on the tobacco companies to do it for them.

Nicola Sturgeon (Glasgow) (SNP): I have two quick observations. First, a cigarette that did not have tobacco in it would not fall foul of a ban on tobacco advertising, so your argument is bogus.

Secondly, you seem to be arguing that banning tobacco advertising will encourage young people to rebel and increase their consumption of cigarettes. If that were a valid argument, it would strike me as a pretty good reason for the tobacco industry to support a ban on tobacco advertising.

You state in your submission that you receive donations from tobacco companies. Exactly what proportion of your funding comes from the tobacco industry?

Simon Clark: We have always been open about that. It is about 96 per cent.

Nicola Sturgeon: Is it therefore reasonable to say that you are the mouthpiece of the tobacco industry and that it is hardly surprising that you argue against a ban on tobacco advertising?

Simon Clark: I understand why you say that. I will tell you the history of FOREST in about one minute. The organisation was set up about 22 years ago, with no funding from anybody, by a former battle of Britain pilot who was a lifelong pipe smoker. Funding has to come from somewhere to set up a smokers' rights group and an office and to put across a point of view. One cannot realistically approach sweet manufacturers or car manufacturers for such funding. The only people who will fund us are the tobacco companies.

Although I am proud to receive money from the tobacco companies, we are as independent as we can be in the circumstances. I will give you an idea of our independence. We have just lost about a third of our funding because the company Gallagher Tobacco Ltd no longer funds us. All last year, we carried out a big campaign against HM Customs and Excise because of its treatment of ordinary shoppers who go across the English channel to buy cheap booze and fags. Gallagher Tobacco was disturbed by the campaign because it was trying to work closely with HM Customs and Excise for its own good reasons.

Had we not been independent, we would have done what we were told, but I was prepared to lose a third of our funding because I believe in our independence. I sit here as someone who is independent; I am not here to represent the tobacco industry.

Nicola Sturgeon: Some people might find it a bit difficult to believe that the tobacco companies would continue to provide 96 per cent of your funding if they did not feel that you were promoting their message.

Simon Clark: It is important that an organisation such as FOREST should take part in the debate. Most of our work is media-related rather than political. If it were not for FOREST, the smoking debate would be one-sided. Every debate has two sides. FOREST is the only smokers group that is available 24 hours a day, seven days a week to speak to the media. It is important that, in a democratic society, both sides of the debate are put. It is important for the credibility of the Health and Community Care Committee that I am expressing a different point of view from that expressed by most witnesses.

Nicola Sturgeon: I agree whole-heartedly that both sides of the debate must be heard. In the interest of democracy, it is also important that the committee and the public know exactly what agenda a witness may or may not have.

Simon Clark: As you know, our submission mentions where our money comes from.

Nicola Sturgeon: You say in your submission that advertising is not directed at attracting new customers, but at encouraging existing smokers to switch brands. How do you expect people to believe that? Tobacco companies are losing 13,000 customers every year through tobacco-related deaths and yet you expect us to believe that tobacco companies are not trying to recoup that loss by encouraging new people to take up smoking. I refer you to a 1998 study that shows that much tobacco advertising is increasingly directed at areas of potential market growth, particularly at young people and those living in deprived communities.

Simon Clark: Those questions must be directed to the tobacco industry. I am not here to represent the tobacco industry. Instead, I am here to say that, as far as smokers are concerned, a ban on tobacco advertising is a restriction on their freedom to receive consumer information. We are particularly concerned at the attempt to ban advertising via the internet. The idea that people may not actively look up a tobacco company's site and get information that might help in their choice of purchase of a legal product is extraordinary. There is no way that websites are being thrust into peoples' faces.

Nicola Sturgeon: I have difficulty with the argument that you are not directing advertising at young people, and yet you are extremely concerned about website advertising, which most people would accept, is—

Simon Clark: You keep saying "you" as if I am the tobacco industry. I am not the tobacco industry.

Nicola Sturgeon: We might disagree on that, but we will leave that argument to one side.

Your written submission repeatedly states that tobacco advertising has a social purpose—it gives people information about different brands of cigarettes. How credible is that argument? When I see a tobacco billboard, the image is the only thing that strikes me. Usually, a picture portrays smoking as good and there is information about the content of the cigarettes in small print at the bottom of the advertisement. What information does a tobacco advertisement contain that a cigarette packet does not? I do not understand the argument that the point of advertising is the information in the adverts.

10:00

Simon Clark: Tobacco advertising has become more obscure over the years—that is one reason why losing advertising will not make a great difference to many smokers. I do not think that banning advertising will have any marked effect on overall consumption. If any Government or group of politicians wishes to introduce a bill to ban anything, they must be clear about their aims and must be pretty certain that the effect will be marked, otherwise they will make a pointless political gesture.

Dorothy-Grace Elder (Glasgow) (SNP): I thank you for producing a paper in advance of the meeting—that is always helpful. I have a couple of questions. What do you think of claims that other witnesses will make—such claims have already been made in submissions—that much tobacco advertising is deliberately aimed at children and young people and that there is a correlation between children's awareness of tobacco adverts

and their subsequent uptake of smoking? Such uptake usually occurs at a young age—from about 13 onwards.

Simon Clark: You would need to ask the industry if advertising is directed at children. I understand that the industry has operated under severe restrictions in the past 20 or 30 years.

We discussed how much information can be obtained from tobacco advertising. As far as I am aware, there is no evidence that children are encouraged to take up smoking as a result of seeing tobacco advertisements. All the evidence suggests that they take up smoking as a result of peer pressure. I do not think that anybody is arguing that advertisements are the main reason for children taking up smoking. We agreed that many advertisements are extraordinarily obscure.

Dorothy-Grace Elder: One wonders why the tobacco industry is putting tens of millions of pounds into advertising if it is apparently unable to recruit smokers to replace those who have died.

Simon Clark: Again, you would have to ask the tobacco industry that question rather than me. I represent adult smokers. We do not want children to smoke. There is a concern that children are not mature enough and do not have enough information about the health risks of smoking, so they cannot make a valid judgment about whether to smoke. It is not in the interests of adults who wish to continue to smoke unmolested, if you like, for children to smoke. The argument about children's smoking is always used as an excuse to attack adult smokers. Anything that can be done to discourage children from smoking is good.

Dorothy-Grace Elder: I think that you will agree that funding for health education to discourage children from smoking is low. You said that about 90 per cent of your income comes from the tobacco industry. Will you tell us what the round figure is?

Simon Clark: For 2002, it will be about £160,000.

Dorothy-Grace Elder: That is more than some anti-smoking groups have, although that must be balanced against the fact that the British state is bankrolled by the tobacco industry—£7.5 billion is taken by the state in tobacco tax.

Simon Clark: I was about to say that I have made my contribution to the anti-smoking campaign.

Dorothy-Grace Elder: Will you give us guidance on what other, perhaps subliminal, forms of advertising the tobacco industry might turn to if obvious tobacco advertising is banned?

Simon Clark: Again, I am sorry, but you will need to ask the industry.

Dorothy-Grace Elder: You know how it operates. Can you take a few educated guesses?

Simon Clark: To be perfectly honest, I do not know how it operates. I rarely sit down with representatives of the tobacco industry. I have perhaps one meeting a year with tobacco companies to discuss funding for FOREST, but how they operate—

Dorothy-Grace Elder: Your submission alludes to the fact that they will turn to other forms of promotion, such as movies that feature people smoking.

Simon Clark: No. ASH Scotland suggested that; it has on several occasions suggested that we ban movie stars smoking on film or stop soap stars smoking on television because they encourage people to smoke. That makes me laugh as well, as the best-known soap star in Britain who smokes is the character Dot Cotton. I cannot believe that seeing her on television encourages children to start smoking. We get into dangerous territory when we start suggesting that we should ban smoking in movies and on television. Again, the issue comes back to free speech.

The Convener: I point out that the bill does not cover that issue.

Dorothy-Grace Elder: No, but I asked about forms of promotion, which Mr Clark was unable to specify.

The Convener: I emphasise that the bill does not cover issues such as television images in soap operas, so the discussion is spurious.

Shona Robison (North-East Scotland) (SNP): Mr Clark, you have said consistently this morning that you believe that advertising does not impact on new recruits—that is, young people—but is targeted at existing smokers. It was put to you that, in order to fill the gap that is created by smokers dying or giving up, new smokers must be found to keep the tobacco companies going. Do you accept that?

Simon Clark: As far as I understand it, tobacco advertising is aimed at a mature market. However, I suggest again that you need to speak to the advertising and tobacco industries to discover exactly whom they target.

Shona Robison: Hang on. I get the feeling that when you do not want to answer a question you say that the matter is for the tobacco companies. I am asking you what your opinion is. From where do you think that the tobacco companies get their new recruits?

Simon Clark: I do not know where they get their new recruits and I do not care, because I have come here to represent adult smokers. The

question of new recruits is a matter for the tobacco companies.

Shona Robison: Hang on. You are saying that you do not—

Simon Clark: You treat me all the time as though I represent the tobacco industry. I am here to talk about freedom of speech and the fact that I believe that a ban on tobacco advertising goes against that freedom, particularly freedom of commercial speech. Adult smokers want to have access to information about a legal product that they wish to buy.

I return to the issue of the internet. We talked earlier about the lack of information in adverts. Even cigarette packets have little information on them. However, on a website, adult smokers can get as much information as they want about particular products. That is why we are concerned that the bill should not cover internet advertising.

Shona Robison: You have said consistently that you are here to represent adult smokers, yet your written evidence refers to young people and puts forward the proposition that a ban on tobacco advertising would be counterproductive. Even in your evidence, therefore, you deal with the issue of young people smoking and try to dispel the fear that advertising will attract young people. However, you sit here saying that you do not care where the advertisers get the new recruits. Are you trying to have your cake and eat it?

Simon Clark: I do not think so. I was asked to put in a submission and I tried to cover points that I was concerned might not come across in submissions from your other witnesses, most of whom are in favour of a ban on tobacco advertising. We included in the submission a couple of quotations from other organisations that do not believe that tobacco advertising encourages children to smoke. I am not sitting here saying, "FOREST says this and that." Our job is to get across to people such as you that there are arguments that go against the line that a ban on tobacco advertising will automatically reduce consumption among under-age smokers.

Shona Robison: For your information—and I am surprised that you are not aware of this—the Enterprise and Lifelong Learning Committee is taking evidence from representatives of tobacco companies.

Simon Clark: I found that out yesterday and I was a bit surprised that—

Shona Robison: It is a bit misleading for you to say that the companies' voice is not being heard.

Simon Clark: I was surprised that the representatives will not be speaking directly to this committee; I believe that they are seeing another committee, which is reporting to you. I believe that

it is important that you get the best possible view of the whole debate and that you see representatives of the advertising and tobacco industries directly. Getting their view third hand seems a bit odd.

Nicola Sturgeon: You have repeatedly said that you are not giving us the view of the tobacco industry, but you are now saying that it is important that we hear your evidence so that we can get the views of the tobacco industry. It has to be one thing or the other. I am having difficulty with your argument that you are not here to promote the views of the tobacco industry.

Simon Clark: I think that that is a bit of a cheap shot. A lot of the questions that have been put to me should be put to representatives of the tobacco industry instead. It would make sense for you to hear directly from the tobacco and advertising industries. They could give you the replies that you seek—which I clearly cannot give you—face to face.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Your submission states:

"a ban on advertising ... is ... unlikely to have any effect on the consumption rate".

Paragraph 6.3 of your paper draws a comparison to the use of illegal drugs. In particular, you discuss the case of the death of Leah Betts and the subsequent call for people to stop using ecstasy. You say that you believe that, because of the televised reports of her death,

"young people's consumption of ecstasy increased significantly."

You say that, if tobacco advertising were banned, the same thing could happen with cigarettes. How do you make that extrapolation?

Simon Clark: I am not saying that that will happen; I was quoting a letter in *Marketing Week* from Philip Circus, the director of legal affairs at the Institute of Sales Promotion. I thought that his argument was interesting and I wanted to bring it to the committee's attention. His point is that, despite the enormous amount of publicity following the death of Leah Betts about the possible dangers of ecstasy, the number of young children who use ecstasy is rising all the time. His argument is that, however much things are publicised, there is no direct correlation with consumption. It is often said that children have a high awareness of tobacco advertising. Perhaps they do, but awareness does not automatically lead to purchasing, smoking and becoming a smoker. People can be aware of an advertisement without going out and buying the product.

Margaret Jamieson: Your logic suggests that we should repeal the Misuse of Drugs Act 1971 in order to reduce the number of people who are using illegal substances.

Simon Clark: I am not saying that. I thought that Philip Circus's letter was interesting.

Margaret Jamieson: Why use it in your evidence to the committee?

Simon Clark: Because I thought that his point was an interesting one. He said:

"in the eyes of young people, bans and warnings, not advertising, legitimise smoking."

I thought that that was relevant to the committee's inquiry.

Margaret Jamieson: Another logical interpretation is that, if we said to kids that they did not need to go to school any more, that would increase the number of children who attended. That is taking the argument to absolute extremes.

Simon Clark: It is, but, with respect, you took it to that extreme, not me.

Margaret Jamieson: I was just following the logic that you are using in trying to persuade us this morning.

Simon Clark: I do not think so. You are putting words into my mouth.

The Convener: You said that when adults suggest to children that they should do something, the children do the opposite.

Simon Clark: Some children.

The Convener: That was the premise of your argument at the beginning of your evidence.

10:15

Simon Clark: One must ask why consumption among young people has gone up during the past few years. No one knows the answer to that; we are all speculating. There is a lot of anti-smoking education and propaganda, but many people have switched off and no longer listen to it. Some people are digging in their heels and being deliberately rebellious.

I am sure that many members have children. Some children do exactly what adults want, but others do the opposite—that is human behaviour. I am not saying that all children do the opposite of what they are told, because that is not the case. I have debated smoking with children and it is obvious that 99 per cent of children below the age of 11 or 12 are, quite rightly, vehemently opposed to smoking. At 12 or 13, there is a sudden sea change; about a third or a half of children of that age take up smoking for whatever reason. I do not know why they move away from the hard anti-smoking line.

Mr John McAllion (Dundee East) (Lab): I want to be clear about your attitude to advertising. Your submission makes advertising sound like an

altruistic exercise that is carried out by the tobacco companies for the sake of finding new products that will be safer for consumers. Even you realise the importance of the power of images. Your organisation is called FOREST, which stands for Freedom Organisation for the Right to Enjoy Smoking Tobacco. That word conjures up an image that is a million miles away from the damage that nicotine and tar do to people's health. You deliberately project an image that is counter to the reality of what you campaign for because you understand that images are important.

Simon Clark: We campaign for smokers' rights and adults' rights to choose how they live their lives without being told what to do by other people. This is not intended as a pun, but I think that FOREST is a healthy image. FOREST is one of the ludicrous acronyms that were popular for new organisations in the 1980s—ASH, which likes to create an image around its name, is another example. I do not know why the organisation came up with the ludicrous name FOREST.

Mr McAllion: I am asking why your organisation is called FOREST.

Simon Clark: It is called FOREST because FOREST is an acronym for Freedom Organisation for the Right to Enjoy Smoking Tobacco, which is a long-winded title.

Mr McAllion: It is a very laboured acronym, which presents an image that is contrary to the effects of tobacco on smokers.

Simon Clark: I was not around in 1979 when the name was thought up.

Mr McAllion: You should change it.

You told the committee that, although advertising and marketing might increase awareness of products, it does not influence decisions to buy them. Is that claim serious? Britain has one of the biggest and most powerful advertising industries in the world. If advertising does not influence people to buy products, why are companies wasting their money?

Simon Clark: You must put that question to the tobacco industry.

Mr McAllion: You said that advertising does not influence people.

Simon Clark: As I understand it, advertising is about brands. A 1 per cent change in the market from one brand to another—from Silk Cut to Benson & Hedges—is worth millions of pounds to the tobacco companies. The market is mature. The companies no longer advertise the concept of cigarettes; they advertise individual brands, which is why, for example, Silk Cut advertisements have a flash of purple in them and Benson & Hedges advertisements have a gold block. They advertise

brands more than the generic product.

Mr McAllion: Do you accept that the companies spend millions on advertisements because they know that advertising influences people's decision to buy the product. If people's decisions were not influenced, the companies would not spend the money.

Simon Clark: That is the crux of the matter. The advertisements influence existing adult smokers.

Mr McAllion: Just a minute. In Britain alone, 13,000 existing adult smokers die every year as a result of their smoking habit. That is 130,000 in 10 years or more than a quarter of a million in 20 years. Across the world, the tobacco industry is losing millions of customers every year. That is why tobacco companies are spending money on tobacco advertising; it is not because they are trying to influence existing smokers but because they are trying to replace dying smokers with new victims. Do you accept that?

Simon Clark: I know that, in recent years, the amount of money spent on advertising in the UK has not gone up and yet the number of people who smoke has crept up slightly. There does not seem to be a link between advertising and consumption. In the old Soviet Union, there was no advertising at all until 1989, but at that point 80 per cent of the male population smoked.

Mr McAllion: There was no capitalism in the Soviet Union until 1989, so there was not much point in advertising.

Let us talk about sponsorship. Are tobacco companies really interested in racing cars, or are they interested in the fact that lots of people who are potential smokers watch racing cars, which gives the companies a brilliant chance to promote their products?

Simon Clark: The tobacco companies would have to answer that question. Racing car sponsorship is to do with brand advertising.

Mr McAllion: You are trying to oppose a ban on advertising, so you have to make a case that convinces members of the committee that advertising does not have an effect on people who are watching car racing and see Embassy Regal tipped, or whatever, advertised on the cars. I think that it must have an effect, otherwise the tobacco companies would not put money into car racing.

Simon Clark: I have told you that tobacco advertising has an effect on existing adult smokers and persuades some of them to change brands. I have seen arguments that say that advertising encourages non-smokers and under-age children to start smoking, but I believe that there is sufficient evidence from plenty of other organisations that says that that case has never been made. I do not deny for a minute that

advertising encourages existing smokers to change brands. You must remember that tobacco is a legal product. Why should an industry not promote its product if it is legal? It does not make sense to ban the advertising of a legal product. Unless you want to run a nanny state, what possible excuse is there to introduce such bans?

Mr McAllion: Are we running a nanny state if we ban heroin, crack cocaine or marijuana?

Simon Clark: Those are illegal drugs. That is the hypocrisy of the whole debate. Surely we should be talking not about tobacco advertising but about banning tobacco. The hypocrisy of Governments in the west is that they are happy to take money from smokers—Britain takes £7.5 billion in taxation—while making it difficult for smokers to smoke in public places, and they now want to take away a source of information about that legal product. The whole debate is hypocritical.

Mr McAllion: So FOREST supports prohibition.

Simon Clark: Of course we do not. Prohibition does not work, as we well know.

Nicola Sturgeon: Throughout your evidence, you have argued that you want advertising to continue because it is the only way in which companies can communicate information about specific brands to existing smokers. Is that a fair summary?

Simon Clark: Yes. Even if magazine, newspaper or billboard advertisements were banned, I would like smokers to continue to be able to get information about tobacco products via the internet. By accessing advertising on the internet, they would be making the choice of calling up a specific website.

Nicola Sturgeon: Are you aware that, under the bill, existing smokers would be perfectly entitled to ask for and have sent to them information from tobacco companies about specific brands? All that the bill seeks to ban is public advertising of tobacco that is directed at specific groups to encourage them to take up smoking. The bill would not prejudice existing smokers in pursuit of information in any way. If you are aware of that, do you accept that much of your argument today has been entirely bogus?

Simon Clark: No. I do not accept that, otherwise I would not be here. I do not believe that, in a free democratic society, people should ban free commercial speech. What will we get next? Will we have a ban on advertising fatty foods and dairy products?

Nicola Sturgeon: The bill does not prevent a tobacco company that has been asked for information by a smoker from giving that information. The bill does not harm or diminish in

any way commercial freedom of speech, as you put it. What is harmed or diminished is the ability of the tobacco companies ruthlessly to target young people and people in deprived communities, encouraging them to take up smoking so that the industry can replace the 13,000 people that it is losing every year and protect its profits. That is what the bill is about. Many of the arguments that you have made today have missed that point.

Simon Clark: I return to the issue of freedom of speech. Freedom of commercial speech is as important as other kinds of free speech. You are putting in place obstacles that would prevent people from accessing consumer information. At the very least, people should be allowed to get information via the internet. If an adult chooses to call up a specific website to get information about a product that he or she has chosen to buy, I cannot see what is wrong with that. To ban it would be to go down a very dangerous road.

The Convener: You have made your point. We have covered all the issues that we wanted to raise with you. Thank you for coming this morning.

We will now hear from representatives of the British Medical Association. Good morning and welcome to the Health and Community Care Committee. After you have introduced yourselves and made a short statement, members will ask questions about your comments and your written submission.

Dr Charles Saunders (British Medical Association): Good morning. I am the chairman of the BMA's Scottish public health committee. My colleague, Sinéad Jones, is director of the BMA tobacco resource centre.

Every day doctors come into contact with the suffering and death that is caused by smoking. We know that smoking accounts for about 13,000 deaths in Scotland every year. The cost to the NHS in the United Kingdom of smoking-related illness is £1.5 to £1.8 billion a year. For some time, it has been BMA policy that tobacco advertising should cease. We have repeatedly urged the Government to legislate for a comprehensive ban on all forms of tobacco advertising and promotion. We are therefore pleased to be asked to make a submission to the Health and Community Care Committee in support of the Tobacco Advertising and Promotion (Scotland) Bill.

In Scotland we have an opportunity to lead the way in passing legislation to ban tobacco advertising and to illustrate the benefits of doing so. However, although we support a ban on tobacco advertising in Scotland, we believe that a UK-wide ban would be more effective. From the available evidence, it is obvious that a ban on tobacco advertising would be effective in

improving the health of the Scottish public. Evidence shows that smokers have a higher incidence than non-smokers of chronic disease and premature death and that each year the health service spends billions of pounds treating diseases that are brought on by smoking. Smoking is one of the main causes of health inequalities in Scotland.

Evidence also shows that the tobacco industry advertises to encourage smokers to consume more and to attract new customers. Significantly, the evidence shows that 60 per cent of the public are in favour of a ban on tobacco advertising, which would reduce consumption. Conservative estimates suggest that a comprehensive advertising ban would reduce tobacco consumption and could save around 300 lives in Scotland each and every year. I am happy to answer any questions that the committee might have.

10:30

Mary Scanlon: We are trying to get to the bottom of how effective a ban on tobacco advertising would be. The FOREST document says:

"a ban on tobacco advertising is an attempt to discriminate against adult smokers in the name of 'saving' them from their own folly, a most dangerous delusion for politicians in a free and democratic society."

Paragraph 6 of the BMA's submission refers to an analysis of 48 studies, which

"found that tobacco advertising significantly increased tobacco sales."

Paragraph 8 of the submission refers to the analysis in 22 OECD countries between 1960 and 1986, which

"concluded that increasingly strict regulation of advertising causes corresponding reductions in tobacco consumption."

What was the difference between the reduction of tobacco consumption in the OECD countries that introduced a ban on tobacco advertising and the reduction in OECD countries that did not introduce a ban?

Dr Sinéad Jones (British Medical Association): We are very interested in the evidence base for the bill. The BMA believes that the bill will be effective, because we have strong evidence that advertising bans have been effective in reducing tobacco consumption.

You asked me about studies. The best and most up-to-date resource is a World Bank report that was published in 2000. It summarises in a way that makes it easy for those of us who are not health economists to understand all the evidence on advertising expenditure and tobacco consumption, advertising bans and tobacco

consumption, and the effect of bans in certain countries.

The background papers to the World Bank report considered all the evidence up to the year 2000. Comparison between countries in which a comprehensive ban on advertising has been introduced and countries in which no ban has been introduced clearly indicates that the rate of decrease in tobacco consumption—the fall in tobacco consumption—is much more rapid in the countries where advertising has been banned. I have a graph that shows that—I will give a copy to the clerk. I think that that is the study to which you refer.

Mary Scanlon: The information that we received last week and the information that we received from FOREST concluded that in Iceland, Norway, Finland and Portugal the ban did not lead to falls in tobacco consumption that were as great as the reduction in consumption in non-OECD countries. Who is right?

Dr Jones: We feel that that represents selective use of the evidence by FOREST.

Mary Scanlon: It was not just the FOREST paper that came to that conclusion. Another paper did, too.

Dr Jones: That is correct. However, both papers were referring to the same study. That study compared tobacco consumption in countries in which there were partial bans on advertising until 1973. The study considered the effect of measures that were introduced before 1973. Although some of the countries under examination had comprehensive advertising bans, the study looked at the effects of a ban on television advertising alone. That is why the study indicated that the effect of a ban was small. The message is that, to be effective, the ban must be comprehensive and cover more than one aspect of the media.

In summary, we argue not only that what you have heard is selective quoting of the available evidence, but that the original paper was also selective, because it considered the effects of a ban on television advertising only.

Nicola Sturgeon: In his opening statement, Dr Saunders said that the BMA would prefer a UK-wide ban on tobacco advertising. I think we all agree with that. However, in the absence of a UK ban, is it the BMA's view that it would be better to proceed with a ban in Scotland than to do nothing?

Dr Saunders: Yes, absolutely. We would be totally behind a ban of tobacco advertising throughout the UK—that would be the most effective option. However, if the UK is unable to go down that route at the moment, Scotland would be

well advised to introduce a ban on tobacco advertising. That would be effective in reducing the number of people who take up smoking and it would help to reduce the number of people who continue to smoke. The answer is a categorical "Yes".

Nicola Sturgeon: The World Health Organization's definition of a comprehensive ban is a ban on advertising in one or more media. Do you consider that the bill fulfils that definition and would therefore ensure a comprehensive ban?

Dr Jones: In terms of that definition, the bill's provisions would be classed as a comprehensive ban.

Dorothy-Grace Elder: I was going to ask about your Norwegian statistics but Mary Scanlon has covered some of that.

However, in general FOREST was punting—as have many people—the forbidden fruit argument. That argument is that a ban will make tobacco and tobacco products more attractive. Do you have any concerns about that?

Dr Saunders: I was taken by some of the arguments and questions that were put to FOREST by the committee. The argument that banning something increases consumption is difficult to sustain. The examples that the committee used were good.

Undoubtedly, some people see rebellion as a way of expressing themselves. I do not believe that a ban on advertising would have the effect that FOREST suggested. There is a difference between telling people "You will not do that", which is easy to rebel against, and a ban on advertising. Advertising is used to recruit children into smoking and to help to prevent smokers from giving up.

Dorothy-Grace Elder: I have a couple of quick questions. If tobacco advertising is aimed at recruiting new smokers, what effect would a ban have on existing smokers—who we would believe are the target if we were to accept what FOREST says?

Dr Jones: The aims of tobacco advertising are threefold. There is the recruitment of young smokers. There is also evidence from the tobacco industry's advertising agencies that advertising is used to rally the troops, in that it is used to encourage adult smokers to ignore the health risks of tobacco and to continue to smoke. It is also used to encourage people who have already quit smoking to lapse and to begin smoking again. That is of particular concern to health professionals and the medical profession because we know that if people stop smoking even late in their career as a smoker, there are significant health gains to be made at any age.

The Government has put a substantial amount of money into helping smokers to quit but, while advertising continues, that money is not being spent to its best possible advantage.

Dorothy-Grace Elder: I accept that. The Government has put a reasonable amount of money into quitting schemes, but you will accept that the Government accepts massive amounts of money from taxation—the Treasury has received £7.5 billion in a year from tobacco tax and £10 billion the previous year. I notice that although you attack the tobacco industry, at no time have I heard the BMA criticise the Treasury for accepting these mammoth sums from tobacco tax. Will you comment on that?

Dr Jones: The BMA's policy is that taxation is an effective measure in decreasing tobacco consumption, in encouraging people to quit and in deterring young smokers. We are in favour of tobacco taxation. However, we have made the point—especially given the disproportionate burden of tobacco-related disease that is suffered by, and the economic burden on, the poorest people in society—that money from taxation should be ploughed back into services to help smokers.

Dorothy-Grace Elder: Do you mean all the money that is made from taxation? You are up against tens of millions of pounds of tobacco industry spending on advertising.

Dr Jones: We have not called for all the money to be used. We have called for the Chancellor of the Exchequer to fulfil the commitment that he made to put 5 per cent—

Dorothy-Grace Elder: Five per cent of £7.5 billion is not very much. Thank you.

The Convener: Previous witnesses have said that one omission in the bill that it would be useful to address is the issue of brand stretching or brand sharing, which is a subliminal form of advertising and which—evidence suggests—is particularly effective in relation to young people. Will you comment on that?

Dr Jones: We have good evidence that brand stretching is an increasing problem and that it becomes more so after any form of advertising ban is in place. In a way, if expenditure on advertising is banned in one medium it will pop up elsewhere. Experience from Europe in particular shows that there has been an increase in that type of indirect marketing of tobacco in countries—for example, France—where there is an advertising ban. I understand that this is a matter of reserved and devolved powers, but the evidence base is there to support—

The Convener: We are awaiting a legal decision as to whether we have the power to do

something about brand stretching, but if we had the power to do something about it, would you be in favour of us doing so?

Dr Jones: We would support that fully.

Janis Hughes (Glasgow Rutherglen) (Lab): Do you know of any evidence of tobacco companies undermining voluntary regulations?

Dr Jones: Yes. I draw the committee's attention to a report that I have brought with me today, which you will probably hear more about from Professor Gerard Hastings and his collaborator, Lynn MacFadyen. It is a report that we published last year in conjunction with their centre at the University of Strathclyde, and is an analysis of internal documents from the tobacco industry's advertising agencies.

The report outlines in detail, using quotes, the type of brief that advertising agencies work to when they market tobacco. To boil the report down, it shows that the voluntary regulations that are in place at the moment are viewed as a barrier to be overcome creatively by advertising agencies, so the code is not being respected in spirit or in letter. That is obvious if one examines the complaints that the Advertising Standards Authority has received about tobacco advertisements. For example, a complaint was made last year about an advertisement for Lambert & Butler cigarettes, which encouraged smokers to think of cigarettes as friends and in that way promoted cigarette smoking as something that would bring you friends and make you popular. That was in direct contravention of the voluntary code.

We have other examples of what we feel are code violations, but the complaints were not upheld by the Advertising Standards Authority. It is an area of particular concern to us, because regulation is simply not working.

Margaret Jamieson: Do you have evidence that tobacco advertising has a greater effect on some population groups than it has on others, for example on women and children? It would be good if you supplied us with such evidence if you have it.

10:45

Dr Jones: Absolutely. There is good evidence from the United States regarding the consumption of tobacco and the prevalence of smoking among young women from 1944 onwards. It shows clearly that, when the tobacco companies decided that they would target young women in the early 1970s, smoking among those groups soared and the brands that the women were smoking were the newly launched and advertised brands that had connotations of femininity, women's liberation and so on.

Other studies have been undertaken that show that children are up to three times as vulnerable as are adults to certain tobacco advertising. I can supply the background papers to support that. We are also concerned about smoking among low-income groups. We have only to look at the billboards to see the new trend of advertising on the basis of price. Tobacconists now offer king-size roll-ups for those who cannot afford to buy a packet of king-size cigarettes at £4, so that they can roll themselves 20 with a nice little kit for £2.50. Tobacco advertisers are definitely targeting vulnerable groups, and the evidence exists to show that.

Mr McAllion: How important do you think that sports advertising and sponsorship is in promoting tobacco?

Dr Jones: There are two things that concern us about that. First, sports sponsorship and advertising in sports has been proven to influence the attitudes of young people towards tobacco and their beliefs about it. It has made them more likely to start smoking. The best example is probably tobacco advertising at formula 1 events, which influences young men, but there is also evidence of the influence of cricket sponsorship. Secondly, we abhor any association between anything as deadly and unhealthy as tobacco and the glamour, national pride and physical prowess that are normally associated with sport. We are concerned about that.

Mr McAllion: The two examples that you gave—formula 1 racing and cricket—are international sports that are broadcast globally by satellite television. Is it difficult to ban advertising on such globally delivered products?

Dr Jones: That is the challenge that is faced by many countries in Europe and elsewhere that have introduced national advertising bans. In France—where I lived for several years—a tobacco company can stage a formula 1 event, but it cannot show the brand name. Eddie Jordan's Benson & Hedges car, for example, does not have "Benson & Hedges" on it—it has "Buzzin Hornets" and "B&H". When those events are broadcast elsewhere in Europe, the viewers do not see tobacco advertising. However, in Belgium, until last year, there could be such tobacco advertising, and it would have been relayed around the world.

John McAllion points out the need for international measures. We have made some progress on sports sponsorship through agreement with international sporting bodies. For example, the World Health Organisation recently launched an initiative for tobacco-free sport and has reached agreements with the International Olympic Committee, FIFA and FIA—the Fédération Internationale de l'Automobile, which is the formula 1 association—to phase out sports

sponsorship. However, we need to look to European directives and perhaps globally to the treaty that the WHO is trying negotiate at the moment, which would commit all countries that sign up to it to the control of tobacco promotion and sponsorship.

Mr McAllion: How far away is that treaty?

Dr Jones: There will be another round of negotiations in 2003. It is hoped that it will be finalised in spring 2004.

Mr McAllion: It is perfectly reasonable for a country to say that it will not stage a sporting event if that event advertises tobacco, but the danger is that the event will move elsewhere and will be broadcast to that country by satellite television. Governments have no control over that.

Dr Jones: I acknowledge that, but in some cases in Europe it has proved to be a concern that is mooted heavily before an advertising ban, but which has not been realised; the French grand prix is an example. When the tightened-up law on tobacco sponsorship was going through the French Parliament, the tobacco companies and so on all said, "We will not sponsor this competition ever again." In fact, the law was passed and sponsorship was not withdrawn. That is an example of why there are legitimate concerns. We can encourage people to move away from tobacco sponsorship; the worst scenario might not happen should the ban be put in place.

Shona Robison: In addition to the research that you are already committed to sending to the committee, do you have any evidence that quantifies the effect on household income of a reduction in smoking levels in line with the best in Europe?

Dr Jones: Yes. I will find that information.

Nicola Sturgeon: This morning FOREST put forward the argument—which seems to be a central argument of the tobacco industry—that advertising is not directed at new smokers; it is simply a brand-switching exercise. Does that argument have any credibility?

Dr Jones: No.

Nicola Sturgeon: Is there evidence to support that?

Dr Jones: There is not.

Nicola Sturgeon: Do you mean—

Dr Jones: I mean that there is evidence to support our case. The evidence is on our side on the matter.

I will leave the committee with a number of reports that have carried out analyses of every country in the world that has enacted some form of ban on advertising. I will also leave the committee

with a report that I have just received from the World Health Organisation, which documents what is happening in various European countries in relation to banning different types of promotion and advertising.

The history of tobacco control has involved sound evidence on the effects of tobacco smoking, on passive smoking, on taxation and on bans on advertising being called into question at every stage of legislation's passage. That is not an accident; that is what the tobacco industry does. It seeks to place ungrounded doubts in the minds of legislators throughout the world. The situation in Scotland is no different.

The Convener: I thank Dr Saunders and Dr Jones. We will no doubt make use of the information that they will supply us with.

We will have a five-minute comfort break.

10:53

Meeting adjourned.

11:05

On resuming—

The Convener: I welcome our next witnesses, who are Professor Gerard Hastings and Dr Lynn MacFadyen from the Centre for Tobacco Control Research. Good morning and thank you for your attendance and for your written submission. After your short opening statement, we will ask questions.

Professor Gerard Hastings (Centre for Tobacco Control Research): Thank you for inviting us to give evidence. The Scottish Parliament is undertaking an incredibly important initiative, so it is a pleasure and an honour to be able to help with the committee's deliberations. I will make three or four points and then hand over to my colleague Dr Lynn MacFadyen.

The first point is that we need to recognise that smoking is a complex behaviour that is caused by many factors. By the same token, there are many steps that society can take to reduce smoking. That said, it is now clear from a vast array of evidence that advertising contributes to the level of smoking in society and that a ban on advertising would reduce that level.

There are three broad bunches of evidence to support that. First, there are so-called time theory studies, which examine the correlation between the levels of smoking and advertising in a particular society over time. Secondly, there are studies that have examined the impact of smoking bans that have been put in place in certain countries.

For those first two sets of evidence, the best that we can do is to recommend two sources: the World Bank's report, which the BMA witnesses mentioned earlier, and Clive Smee's report, which was published some 10 years ago by the English Department of Health. I am sure that members will have come across Clive Smee's report before, but if necessary we can provide a photocopy of it—because the report is quite old, we have only one copy. Both those reports examine the broad array of studies that have been carried out. They conclude that advertising has an effect.

Thirdly, consumer studies, which are also important, have examined the problem by using the approach that commercial advertisers take, which is to talk to consumers to see what consumers think about advertising. Such studies have found consistently that the more aware of, appreciative of and familiar with tobacco advertising people are—this is particularly true of young people—the more likely they are to be smokers. Furthermore, studies that extended over time have found that the kids who, at time 1, are more appreciative of tobacco advertising but do not smoke are more likely to become smokers at time 2. We can provide the committee with a report—again, it is quite old, but it does the job—which is called "From the Billboard to the Playground", which we produced just before the Clive Smee report. Our report also examines some of those data, but both reports are useful sources.

The second thing to remember is that we are talking about preventing not only the advertising of tobacco but its marketing. Marketing means the segmentation and targeting of specific groups. It involves techniques such as brand stretching, point-of-sale material, sponsorship and packaging. All those contribute to building powerful brands. It is crucial to recognise that we are talking about brands that influence young people. We will leave with the committee a paper, which the *British Medical Journal* reproduced, that shows how all the different marketing techniques have a dose-response effect: the more advertising you have, the more smoking you get. By the same token, the more advertising you remove, the less smoking you will have.

My third point, which has not been mentioned to date, is that we need to raise our eyes above the idea that advertising works purely on the individual. We need to consider the social context of tobacco advertising. Simon Clark bemoaned the fact that we are developing an anti-smoking culture. You will not be surprised to hear that I totally endorse that idea, because that is exactly what we need to do.

We need to recognise that children take up smoking because they are in a social context of

which advertising is a part. For years, studies have shown that children reckon that smoking is not that serious because countries allow it to be advertised—after all, heroin is not allowed to be advertised. That gives children a certain message and they are not stupid.

There are high levels of smoking in low income groups in areas such as Castlemilk and other deprived parts of Scotland, where there is an intense pro-smoking culture.

Finally, on the general social level, it is important that we recognise that a ban has a significant symbolic element. It is important that Scotland is standing up and saying that it takes smoking so seriously and that promotion of tobacco—unlike any other product—will be controlled. That is an important message to get across to everyone in Scotland. It is a pleasure to see Scotland taking the lead, not just in the UK but, to a certain extent, in Europe too.

Tobacco smoking is an enormous public health problem—it is uniquely pernicious. It is also unique in that, unlike other major public health problems—such as malaria or HIV—tobacco has a clever and well-resourced proponent of the problem. The problem is akin to taking on the mosquito, but giving it an MBA first. We must acknowledge that the groups in society that public health workers consider as vulnerable, the tobacco industry considers as lucrative.

Dr Lynn MacFadyen (Centre for Tobacco Control Research): We have relied on voluntary regulations as a means of controlling the effect of tobacco advertising but, ultimately, voluntary regulations are doomed to failure. Trying to strip out aspects of advertising that we fear might appeal to young people is a bit like trying to predict what aspects of music or art people might like. Advertising works in the same way; it is a creative process. The only way to ensure that advertising does not reach, appeal or affect young people is to remove it altogether.

I want to pick up on a point that Simon Clark made. He suggested that advertising is an important source of rational information for smokers and that by removing that source of rational information we would be infringing smokers' rights. That is a nice idea, but advertising does not work like that. It does not work by providing rational information—it is a valuable source of imagery, symbolism and aspirational ideas. That is what advertising is about and that is what smokers buy into. If we read the internal documents of the tobacco advertising industry—many of them are referred to in our publication, "Keep Smiling: No one's going to die"—the importance of aspirational imagery in advertising is made clear. The industry places great emphasis on trying to encode much of that aspiration in its

advertising in order to appeal to what it calls "young adult smokers".

Nicola Sturgeon: You said in your submission and again this morning that a Scotland-only ban would be desirable if no legislation was forthcoming from either the UK or Brussels. Some people argue the opposite and say that a Scotland-only ban would be ineffective because of the cross-border flow of advertising. What do you say?

Professor Hastings: "Ineffective" is the wrong word. A Scotland-only ban might be less effective, but would still have a beneficial effect, in the literal sense of reducing the number of smokers. We need to go beyond Europe. We need to think about global controls, which is what the World Health Organisation is doing.

As I said, the other way in which Scottish action on the issue is crucial is in the symbolic value of a ban. A ban would say to the people of Scotland that the Scottish Parliament takes the issue extremely seriously. That is an important message to get across, particularly to young people. A ban would say that we recognise that smoking is a significant cause of ill health in Scotland, so much so that we will treat tobacco as a product that is quite different from any other. That is to be applauded.

Dr MacFadyen: Our research has shown that there is a dose-response relationship between young people's contact with various forms of marketing communications and the likelihood of their being smokers.

There are health benefits in stripping away as many forms of marketing communications in Scotland as we can. That would be a step forward. It might not be the ideal, but it would represent a tremendous improvement on the current situation under voluntary regulations.

Nicola Sturgeon: You said that voluntary regulation is doomed to failure. Why? Do you have evidence of voluntary regulations being circumvented by the tobacco industry?

Dr MacFadyen: Many of the quotations in "Keep Smiling: No one's going to die" show how agency creatives and the tobacco advertising industry try to push the regulations to their limits. The document contains plenty of evidence of how the tobacco companies interpret the regulations to their maximum benefit.

Professor Hastings: I have two things to add. As Lynn MacFadyen said, a whole section of "Keep Smiling: No one's going to die" is devoted to the fact that creatives see getting round voluntary regulation as a challenge. For example, they recommend that their clients advertise in Spain to holidaymakers, so that they do not have to worry

about health warnings or regulations that apply in the UK.

11:15

If the committee would like a specific example of the problems with voluntary regulation, I can cite research that we did in Glasgow on the Regal campaign, which featured a character called Reg. A clever, tongue-in-cheek, very low-tech campaign was produced around the creative concept of a big, fat, bald, middle-aged guy saying that he smoked a certain brand of cigarettes because his name was on them. The campaign consisted of a series of cocking-a-snook-type jokes that kids absolutely loved. At that point, the regulations specified that ads were not allowed if they appealed more to children than they did to adults.

We had to undertake a very extensive and expensive exercise, funded by the Health Education Authority in England, to establish that the campaign appealed most to children. It took us six months to get the research funded, to conduct that research, to write up the paper, to publish it in the "British Medical Journal" and to establish that the ads appealed more to kids than they did to adults. At that point, the campaign was withdrawn.

The episode reminded me of my old Bible classes and the woman who had told lies being told to pluck a goose on the way to market and to clear up the feathers after she had done it. That is exactly the problem: once a campaign has been run, the cat is out of the bag. Once one has managed to establish that it contravenes regulations, it is too late.

Mary Scanlon: Your submission to the committee contains a very impressive list of references. Can I call on your expertise by asking you to clarify the research that has been done on countries that have introduced a ban on tobacco advertising? What effect has that had on the consumption of tobacco in those countries, as compared with consumption in OECD countries that have not introduced a ban? Different points of view on that matter have been presented by different organisations. Has tobacco consumption fallen more in the countries that have introduced a ban on tobacco advertising?

Dr MacFadyen: From the Clive Smee report, it is clear that banning tobacco advertising has an effect on per capita consumption of tobacco. The statistics are different for different countries because they have different tobacco control measures. Some countries have done more to support legislation banning tobacco advertising.

The World Bank estimated that, in European countries, the European Union directive on the advertising of tobacco products was likely to reduce consumption by about 7 per cent.

Econometric studies of that kind are necessarily complicated because they try to create a mathematical model for a social science problem. They try to create variables for the effect of public health policies, consumption and the amount spent on advertising. In some ways, such studies do not capture what happens in the real marketplace. They do not allow for the potential impact of a tobacco advertising ban on sub-aggregate groups—for example the importance of a ban for young smokers; their models relate to the smoking population as a whole.

In France, there has been a drop in consumption of about 15 per cent since the French introduced a bill in 1993, including an important and impressive reduction in smoking prevalence among young people. Ultimately, young people will benefit most from a ban on tobacco advertising.

Mary Scanlon: Yes, it has been said that a ban on tobacco advertising will reduce consumption. From your research, is the reduction in consumption in countries that have introduced a ban greater, less or equal to the reduction in consumption in countries that have not introduced a ban?

Dr MacFadyen: It is difficult to answer that question because so many different things are happening in different countries. People who want to introduce a ban on tobacco advertising must understand that that is an essential element of a broader and more comprehensive tobacco control policy.

Mary Scanlon: That brings me to my final point. In your paper, you say that you estimate that there would be a 2.5 per cent reduction in consumption following the introduction of a UK ban on advertising. You go on to say:

"while the Scottish bill is not as extensive as the proposed UK bill, it is an essential element of a coherent tobacco control policy."

How great would the reduction in consumption be following the introduction of a bill that covered only Scotland? What other elements are required in that "coherent tobacco control policy"?

Dr MacFadyen: The figure of 2.5 per cent is based on the Government's figure, which was published at the launch of the UK bill. However, in view of the tobacco control community in general, it is a conservative estimate.

Other important elements of a comprehensive tobacco control policy include measures such as a decent taxation policy, support on the ground for smokers who want to give up smoking, a sensible prevention strategy that is aimed at young smokers and initiatives to tackle clean air issues and smoking in public places.

Mary Scanlon: You say that a Scotland-only bill

would be less extensive than Westminster legislation. The point that I would like you to address is this: the estimated reduction of 2.5 per cent is based on the UK bill; what estimate would you gauge for the Scottish bill?

Professor Hastings: I caution the committee against trying to demand too much precision. Such estimates are not an exact science—we are talking about a social phenomenon that has dozens of different causes, all of which constantly fluctuate. We know for certain that reducing tobacco marketing in all its forms will have a positive effect on the smoking epidemic. We cannot say whether that reduction will be 1.5 per cent or 2 per cent, or whether Smee's estimates of 10 years ago—which were much greater—will be more in line with actual reduction. If we pretended that we could be that precise, we would be misleading the committee. We know that a ban on tobacco marketing is a good idea in so far as it is possible for people involved in social sciences to know these things, which are notoriously difficult to pin down.

Dorothy-Grace Elder: I will sum up briefly. I think that the nub of your argument is that allowing advertisements for tobacco products to appear everywhere normalises tobacco and gives the impression that its use is all right.

I will move on from that. Do you have any research—you could provide it to us later—that shows roughly how much the tobacco companies spend on advertising, either in the UK or, preferably, broken down to show spending in Scotland? We would be interested to see the might that people are up against. Have you pulled together figures that show how much is being spent in Scotland on counter-advertising health propaganda against smoking? We know that that expenditure is minimal, but we would like to know how much—or how little—is spent in comparison with the Treasury's £7.5 billion take from tobacco tax.

Professor Hastings: We are happy to help the committee on those points, but we will have to go away and work on them. We cannot produce that information off the top of our heads, although we could give you a good guess.

Dorothy-Grace Elder: What is your guess?

Professor Hastings: The figure that is usually used is based on the industry as a whole, which spends about £100 million a year on advertising of one kind or another.

Dorothy-Grace Elder: Is that figure based on spending in Britain?

Professor Hastings: Yes. The pro rata figure for Scotland is at least 10 per cent of that amount. Some of the comments in "Keep Smiling: No one's

going to die" show that the tobacco companies perceive Scotland to be a particularly lucrative potential market because we have a lot of smokers. From their point of view, we are a nice target.

Part of the problem with getting figures for you is that the industry does not release that sort of data. That takes us back to the sort of studies that build a model of how advertising impacts on society. One of the factors that those models depend on is accurate information about how much is spent on advertising. If that information is not known, a shadow of doubt is cast on the studies because they will have involved guesswork.

Dorothy-Grace Elder: Do you agree with the ASH estimate that the tobacco tax take from illegal sales to child smokers in Scotland is £10 million?

Professor Hastings: If ASH has given you that figure, it will be correct. ASH is very good on those matters.

Dorothy-Grace Elder: There is a good deal of passive inhalation of hypocrisy in relation to the Treasury's involvement.

The Convener: You said that it is difficult to quantify how much is being spent. One of the reasons for that relates to the brand-stretching sports sponsorships that take various forms and are a little more subliminal than the average billboard.

Last week, our witnesses told us that the brand-stretching element is missing from the bill. If we had to pass legislation in the absence of a UK bill, we would try to make our legislation as comprehensive as it could possibly be. Do you think that brand-stretching advertising should be included in the bill? Would it be possible to do that? We are waiting for a legal response on whether we would have the power to do it. Has a similar initiative met with success elsewhere?

Professor Hastings: The bill must grasp the nettle of brand-stretching advertising, partly because direct advertising of one sort or another is easier to control. There is evidence from various countries that if one form of tobacco advertising is banned, the industry does exactly what you would expect it to do—if you close one bolthole, it will jump to another. If one form of communication is banned, the industry will use another.

Nine months ago, we were commissioned by the Department of Health in England to produce a report on brand stretching. Using business literature, rather than health literature, we came up with a definition of brand stretching: a mechanism for companies of all sorts to move from one product to another using the brand that they have built up with the public. Richard Branson is a good example of that as he has used brand stretching to

great effect—whether it will work with trains remains to be seen.

Careful decisions have to be made to ensure that the new product benefits from the brand and that the old product benefits from the addition of the new product. There is a symbiotic relationship. It is silly to argue that brand stretching does not encourage smoking—the point of brand stretching is that there is a logical connection between the products. Our report considers some of the dose response research that Lynn MacFadyen has talked about, which shows that the effect is greater when more types of marketing are used.

The report also contains a simple experiment that we conducted with the students at the University of Strathclyde. We showed them advertisements for various items, including one for Camel boots and one for Marlboro Classics clothing, and asked them what was being advertised. Virtually all of the students said that cigarettes were being advertised. There is your answer.

The Convener: Will you give us a copy of that report?

Professor Hastings: Yes.

Mr McAllion: Several times this morning, the World Health Organisation's work at a global level in relation to tobacco sponsorship and advertising has been mentioned. Do you have any written information on that subject that you could give us?

Dr MacFadyen: We could pass along some documentation about the framework convention on tobacco control.

Mr McAllion: Thank you. Listening to the witnesses this morning, a question occurred to me. If it is right to ban tobacco advertising and sponsorship and to encourage an anti-smoking climate, is it also right to have tobacco as a perfectly legal product and a major source of tax revenue for the Government?

11:30

Professor Hastings: There is a pragmatic argument for not banning tobacco. America went down the prohibition route with alcohol and proved that that is no solution. Also, it puts the cart before the horse. The problem is not the smoker but the tobacco industry. Adult smokers are highly addicted to a highly addictive substance. The other year, the Royal College of Physicians produced a report showing that nicotine is as addictive as heroin and cocaine. With heroin and cocaine, we have policies that enable people who are highly addicted to those substances to keep getting access to them because we know that we cannot just take addictive substances away from people. We need to manage the high level of

addiction carefully.

On the subject of the framework convention on tobacco control, there is an important lesson for Scotland. That international convention, which the WHO is trying to negotiate, is an attempt to control tobacco marketing across the world. Some of the strongest representations are being made by third-world countries and, ironically and sadly, some of the biggest hurdles are being presented by developed countries. For example, the third-world countries would like a global ban on tobacco advertising—they do not want Philip Morris preying on their populations. A ban on tobacco advertising is not a viable idea in the USA, for reasons relating to that country's particular culture in relation to freedom. It is important that developed countries such as Scotland take a lead and say that they think that it is right to ban tobacco advertising. Even though Scotland is small, that will help in the WHO's negotiations.

Mr McAllion: Is there a danger that the USA will use the WHO as a means of stopping a worldwide ban on tobacco advertising?

Professor Hastings: The USA is probably bigger than me and will bash me in if I criticise it too much.

Mr McAllion: Go on, I do it all the time.

Professor Hastings: Of course there is a danger that the USA will use the WHO as a means of stopping a worldwide ban on tobacco advertising. There is plenty of evidence of the USA doing that sort of thing.

International regulation of big business is an important issue, not only in relation to tobacco. It is an area in which Scotland could and should be taking a lead. This bill is a small example of that and I offer you my congratulations.

The Convener: Thank you for attending today and for offering to supply us with more information.

Our next witnesses are from the Royal Pharmaceutical Society of Great Britain. We have with us Dr Sheila Stevens and Alison Strath.

Alison Strath (Royal Pharmaceutical Society of Great Britain): We thank you for the opportunity to provide verbal evidence on the Tobacco Advertising and Promotion (Scotland) Bill. The committee has received a copy of our written submission and I would like to highlight a number of key issues.

Smoking is the most preventable cause of ill health and preventable disease in the UK. We know that more than 120,000 people die each year from tobacco-related diseases. That equates to 13,000 people in Scotland and one in five people in Glasgow.

A number of members of the Health and

Community Care Committee are also members of cross-party groups in the Scottish Parliament relating to areas such as cancer, asthma, mental health, palliative care and children and young people. Members will be aware of the impact of smoking on those groups of vulnerable people.

We know that tobacco advertising appears to increase the risk of young people smoking and that the level of smoking is particularly high among people with mental illness problems. Links with social deprivation are also clear. In Glasgow, 37.5 per cent of people smoke. The proportion rises to 50 per cent in areas of social deprivation.

Against that backdrop, the Royal Pharmaceutical Society welcomes any measure to improve public health and therefore that of the people of Scotland. Improving public health is at the heart of the Executive's agenda, so a ban on the advertising and promotion of tobacco has an important part to play. However, that part needs to be played as part of an integrated strategy for improving health, which includes helping smokers to quit.

We know from previous work that the most cost-effective interventions in smoking cessation policies are those in which health care professionals give smokers consistent and brief advice about giving up smoking and support with nicotine replacement therapy. Pharmacists have an important role to play in counselling and advising smokers on giving up smoking and on the use of nicotine replacement therapy.

In Glasgow, we have seen investment of £1.5 million in smoking cessation support through community pharmacies as part of an integrated strategy. It is unfortunate that that is not common throughout Scotland, although we hope that the Minister for Health and Community Care will make an announcement in the forthcoming strategy for pharmaceutical care about greater involvement in that area.

The Royal Pharmaceutical Society looks forward to working with the Scottish Parliament in helping people to give up smoking and improving the health of the public.

Nicola Sturgeon: I have two quick questions. You say in your written submission that you support the prohibition of tobacco advertising in the United Kingdom—I think we all do. In the absence of UK legislation, would you support a move to ban tobacco advertising in Scotland only?

Alison Strath: Yes, we would see that as a first step, but we would also support consideration of a ban from a UK, European and global perspective.

Nicola Sturgeon: Again in your written submission you say that you would want any ban to be associated with and accompanied by

positive measures. Will you say a bit more about what those measures might be and whether any could appropriately be included in legislation?

Alison Strath: The important aspects are to consider a ban on advertising tobacco as part of an integrated strategy. We need to ensure that we work to help people who are addicted to tobacco to give up smoking. That involves not only the work of health care professionals but the broad branch of how we work to improve public health and awareness in communities. We have to consider how we play into the general health improvement agenda.

There are examples of where we have people working together in an integrated and structured way to deliver short, sharp consistent advice to smokers, particularly in primary health care teams. We also have to work with people to give them both psychological and physical support in giving up smoking.

Shona Robison: Do you think that there is potential for interaction between the provisions of the bill and the role of the community pharmacy in promoting smoking cessation? Will you say a bit more about that?

Alison Strath: The bill picks up part of the strategy that we have about how to help people to give up smoking. It is important that that is picked up in other areas of policy throughout the Scottish Parliament. We have to consider how we work in setting the health agenda and in the wider social context. The bill gives an opportunity to play into the strategy, but we have to take it up in other areas of policy development. We have to integrate the approach right across the system.

Mary Scanlon: In your written evidence you say:

"We hope that the bill would provide an opportunity for better thinking on how to integrate services and identify those professions that are best placed to ensure effective cessation campaigns."

Will you explain what role you see for pharmacists in that?

Alison Strath: When we are considering developing smoking cessation policies, it is important that all the players are involved in the debate that underpins those policies. We must acknowledge that, in primary care, people are often not seen as part of the team because they live under a different roof or provide services in a different way. They must be integrated into a structured policy about how we develop areas such as smoking cessation.

I was pleased that the NHS MEL—the management executive letter—made a strong statement that health boards should consider involving not only GPs and nurses but pharmacists

in the provision of smoking cessation services. We must consider how we follow up whether that happens in reality. Money is often allocated in pots and is spent in various ways. It is important that we follow through our agendas with actions. The public do not need an appointment to see community pharmacists, so community pharmacists are well placed for a much broader attempt at helping people who do not necessarily recognise that they have smoking-related health problems to give up smoking.

Mary Scanlon: Are you suggesting that as well as doing prescriptions, pharmacists should provide support, advice and counselling to people who wish to give up smoking? How could that be done in the majority of pharmacies?

Alison Strath: It happens already. The public can buy nicotine replacement therapy. Whenever pharmacists make such a sale they and their staff give advice on how to use the treatments and explain to customers that they can come back and ask questions if they need to. There are a number of schemes around Scotland in which pharmacists give out nicotine replacement therapy under patient-group directions. The therapy is being supplied free of charge, on the NHS, to patients who cannot afford to pay for their prescriptions. Those schemes are part of an integrated strategy throughout the health service—they fit in with what other providers are doing. The question is how we take innovative practice and ensure that it is standard practice throughout Scotland, so that all patients benefit from such services.

Mary Scanlon: So if someone is having difficulty giving up smoking, they can pop into the pharmacy at any time of day and night—well, within working times—and someone is there to offer them support, advice and counselling.

Alison Strath: Absolutely. We must underpin that so that it is policy across the board in all areas.

Janis Hughes: You gave us a literature review in which you discussed studies carried out in Aberdeen and Northern Ireland that referred to “cost per life year saved”. Will you explain the health economics of that?

Alison Strath: I do not have the figures in front of me, but I am sure that we can supply them. We will go back to the papers to get the detail. The studies show that by involving pharmacists and other health care professionals in giving integrated, structured support to patients and by training all health care professionals we can make more effective intervention to help people give up smoking.

One of the problems is that without a structured approach, people will often relapse. They need to be encouraged to go back on to the cycle of

change. The way in which addiction services work is that people go through various stages in a cycle—thinking about giving up, wanting to give up then actually giving up—and we make a different intervention depending on where the patient is in that cycle. The important thing is to give health workers training so that they know how to make the most effective intervention.

Once people have begun to give up we can help them with the psychological aspects—such as helping them with coping strategies and advising them “what to do if”—and with physical support, which is the nicotine replacement therapy. Much work has been done to show that those two elements are the most cost-effective way of providing smoking cessation support. If we use short, sharp, consistent advice across the board, and the supply of nicotine replacement therapy, we can effectively tackle the issue. Figures show a high level of quit rates for that approach, compared with approaches that do not involve structured support.

11:45

Mr McAllion: We have heard evidence this morning that suggests that tobacco advertising is targeted at deprived neighbourhoods. Is the society satisfied that there is an adequate network of local pharmacies in deprived neighbourhoods to provide advice and therapy and so on? Is it not the case that such pharmacies are under commercial pressure from the big chains and that some of them are closing down and withdrawing from the very neighbourhoods that most need their support?

Alison Strath: The society supports the network of community pharmacists throughout Scotland. We do not have a needs assessment, to track whether the numbers are right in different areas, but we know that a good network of pharmacies provides services in the majority of areas. They are often the only health care providers, particularly in deprived areas. New developments tend to be in green belts rather than deprived areas. We have a great resource that we must build on. It is important that we ensure that the network remains viable, to provide such services and that trusts and boards consider how they can encourage and nurture the network of primary care and work together to deliver effective services to the patients and public they serve.

The Convener: There are no further questions. Thank you for your contributions, both written and oral.

11:47

Meeting adjourned.

11:49

On resuming—

Hepatitis C

The Convener: Agenda item 3 is hepatitis C. We are joined by the Minister for Health and Community Care, Malcolm Chisholm. Welcome, minister.

The Minister for Health and Community Care (Malcolm Chisholm): Thank you.

The Convener: I am sorry that we have kept you waiting. We are running slightly late this morning. Members will recall that when we compiled our report on hepatitis C, we commented on the fact that the Executive had set up an internal inquiry into the issue, which had been adversely commented on by the Haemophilia Society and others. We suggested that it would be a good idea that, when such groups were set up in future, the Health and Community Care Committee should have some input into their remit and possibly some say over the people who served on them. We welcome the fact that the minister has accepted that suggestion and that the committee's input is being requested in the case of the new expert group on compensation. The minister has come to discuss the matter with us today.

We will go through the comments in the letter that we sent to you, which picked up on some of the outstanding personnel and remit issues, and we will then enter into a dialogue with you on that important group. Do you want to say anything before we ask specific questions?

Malcolm Chisholm: No. I gave an undertaking to discuss the matter with you and that is what I am going to do. You made your position clear in the debate and I made clear the Executive's position. We do not agree entirely, but we agree on the way forward for the group. Some differences will emerge, but I hope that we can meet halfway on some of the issues. I will take your questions one by one and see how it goes.

The Convener: We have a few questions on the membership of the expert review group on financial support arrangements. We welcome the fact that patients groups will be involved in that group, as we recommended. It might be appropriate for the expert group to contain two members from patients groups that have a direct interest in hepatitis C. There are two reasons for that. The first is the scale and seriousness of the hepatitis C problem. The second is the fact that we were aware, during the compiling of our report, that hepatitis C is a problem not only for haemophiliacs, but for non-haemophiliacs who have been infected. The Haemophilia Society is good at making the points that haemophiliacs

might want to hear, but we want to broaden the group's membership to include representation of non-haemophiliacs.

Malcolm Chisholm: I have no problem with that. I was going to suggest it, but I thought that I would rather wait and answer your questions one by one. I do not have a problem with that suggestion.

The Convener: Okay. Will the Haemophilia Society be consulted on the identity of its representative? Will it be able to choose someone?

Malcolm Chisholm: Again, I am quite comfortable with that suggestion.

The Convener: It has also been suggested that there should be three lawyers on the expert group. Other committees have been hearing from people who do not hold lawyers in great esteem. However, do you agree that it would be useful to have three lawyers on the group to provide different perspectives? What different perspectives would you expect them to bring? Would it be beneficial to appoint a lawyer from a country that has introduced a no-fault compensation system?

Malcolm Chisholm: There might be some difficulties with the latter proposal, although I imagine that it would be good for the group to hear evidence from such people. On your first question, I agree that lawyers might be able to bring different experiences to the group.

As an obvious example, it might be appropriate to have a lawyer who has worked with people who are pursuing claims because of harm that they have suffered. It could also be argued that it would be appropriate to have someone who has worked on the other side, on medical defence, but the former example, of someone who has worked with people who are pursuing claims, is perhaps the more crucial. Nevertheless, it might also be reasonable to have a lawyer who works on the other side of the fence, such as someone from the Central Legal Office who works for the health service in such situations. An academic lawyer might also be considered.

Those are the categories that I have in mind, but I am quite flexible. I think that it is appropriate to have three lawyers. If the chairman were a lawyer, there would certainly be no reason to have three other lawyers. However, it is reasonable to have a total of three lawyers, because of the strands that I have indicated. Members may want to suggest other strands that I have not flagged up. Some people have said things to me privately, but I do not know whether they want to go into such matters now.

Dorothy-Grace Elder: Do you think that it would—

The Convener: I am sorry, Dorothy-Grace, but—

Dorothy-Grace Elder: Would it be appropriate to have a lawyer from the Irish Republic, which has already paid out no-fault compensation?

The Convener: Minister, you do not have to answer that question.

Dorothy-Grace Elder: Why not?

The Convener: There is a convener for a purpose. It is Nicola Sturgeon's turn to ask a question. After that, I shall allow you to question the minister.

Nicola Sturgeon: If the group had three lawyers, especially three commercial lawyers or lawyers working in private practice, it could be said—I say this as a lawyer myself—that lawyers have a vested interest in not having a system of no-fault compensation, because they make more money out of taking cases through the courts. However, as long as there is balance in the group in terms of points of view and backgrounds, the arrangement that you suggest is probably reasonable.

I am interested in why you think that there are problems in appointing a lawyer from another country to the group. The Chhokar inquiry, which was chaired by a judge from Northern Ireland, immediately springs to mind. I am not sure why there would be a difficulty with having a lawyer from elsewhere serving in the group.

Malcolm Chisholm: It would be highly relevant to look at other countries. I am not persuaded that having a lawyer from another country, rather than simply examining what happens there or hearing evidence about it, would be particularly necessary. There are many other ways to find out what is happening. I know that there are specific circumstances in the Republic of Ireland, for example, which it would certainly be interesting to know about, but I do not think that we need an Irish lawyer in the group to get that perspective.

Nicola Sturgeon: The committee's view was that there are certain lawyers—their names escape me at the moment, although they could be provided to you—who have done some very good work in that area, particularly in Ireland. They may have something valuable to contribute to the process. Will you think about that further? Even if you decide not to have one of those lawyers in the group, will you undertake to ensure that such experience will be fed into the process? We probably have something to learn from other countries.

Malcolm Chisholm: I have already indicated that we will consider the experiences of other countries. I am sure that the group will be interested, as will I, to find out more detail about

those experiences, which are relevant and interesting.

Dorothy-Grace Elder: I urge the minister to give serious consideration to appointing a lawyer from the Republic of Ireland who has dealt in detail with no-fault compensation. Beyond that, I urge him to call one or two Government witnesses from the Irish Republic, which has gone through years of dealing with the matter, as we have. There has been a full public inquiry, which is reporting soon, and the Irish Government has already paid out no-fault compensation. Lawyers have played a key role in that process. I understand that you are willing to concede that there might be two lawyers, not three, in the group. Am I correct in that evaluation? Your written statement said that there would be three.

Malcolm Chisholm: I said that there would be three in total.

Dorothy-Grace Elder: I thought that perhaps you were saying that to have three is not necessary. I urge you to look at the Irish situation. You could get someone from Ireland to be in the group. Their presence in the group, rather than merely as a witness, would no doubt give added confidence to the representatives of patients and to others. We could then gain a large amount of information that we would not be able to gain fully from a one-off witness. That would be most useful.

12:00

Margaret Jamieson: On the experience of lawyers in the group, in recent years, specialist lawyers in the claims field have made significant inroads. In my previous career with Unison, we used lawyers who are now recognised in the profession as experts through their work for asbestos workers and miners, for example. I hope that people with similar expertise will be invited.

I do not think that the point that Dorothy-Grace Elder tried to make—not very successfully—on who should give evidence and who should not is a matter for us. Once we have discussed the membership of the expert group with the minister, we should leave it up to the group to determine how it should conduct its business. The committee certainly would not like somebody else telling us how to conduct our business.

Malcolm Chisholm: The points that you have made are helpful, particularly the point on lawyers who have worked with people who have suffered harm and pursued claims. It would be entirely appropriate to have people with such experience in the group.

Mr McAllion: You suggested that it would be a good idea for the committee to consider the Republic of Ireland's experience. If there is no lawyer with a Republic of Ireland background or

experience in the investigation group and if nothing in its remit says that it should consider the Republic of Ireland's experience, how will we know that it will not completely ignore that experience?

Malcolm Chisholm: I think that the committee is going to make the point that it wants me to take things out of the notes.

Mr McAllion: I did not know that you thought that considering the Republic of Ireland's experience would be a good idea.

Malcolm Chisholm: I am trying to respond to your question. The situation in the Republic of Ireland is interesting but different. The differences are as interesting as the similarities. Margaret Jamieson's point stands. If we appoint an expert and representative group with a remit, we must trust it to some extent to do its work.

Mr McAllion: Expert groups are famous for sticking to their remit. If something is not in their remit, they will not do it.

Malcolm Chisholm: You are suggesting that there should be something in the remit that refers to consideration of the experience of other countries. I am prepared to think about that. The suggestion has not been made before, so I will not give an instant response, but we will certainly think about it.

The Convener: That comment can act as a bridge from the membership of the group to its remit. The committee will note the minister's response. We did not raise that issue in our letter.

In the letter, we wanted to clarify your intent. The notes on the remit that you sent state:

"The group should note the existing approach that 'the NHS does not pay compensation when it has no legal liability for the harm suffered by the patient'".

Will you clarify whether the group's intent is to consider whether that approach will be appropriate in the future or whether the definition of legal liability will have to be enlarged?

Malcolm Chisholm: I struggled with that point in the letter. At one point, the phrase "dancing on the head of a pin" occurred to me, but that was probably unfair and perhaps due to the fact that I struggled to see your point. There is an argument that the group will consider the approach anyway, so why do we need to say that it will do so? However, paragraph 1 of the notes contains the best description of the current situation. The committee's report basically asked us to pay compensation where there is no legal liability. The notes merely state the current situation, which is that

"the NHS does not pay compensation when it has no legal liability".

It is a statement of fact and no more than that.

The Convener: So we were reading more into that than there probably is. The notes also state:

"The group should take into consideration the findings of the Review of Clinical Negligence by the Department of Health in England".

What is the timetable for that review? How will it be taken into account?

Malcolm Chisholm: I have been told that the review group is nearing the conclusion of its work and will report soon.

I am also told that a white paper will be issued in England in the spring. We all know that, in Government, such things can slip, but there is no doubt that the review will be available during the first three months of the expert group's deliberations and before it make its preliminary findings. I am assured that there will be no problem.

The Convener: The committee was disappointed that no express reference was made to hepatitis C in the expert group remit. The minister has received the committee's suggestions. We propose an addition to the Executive's intended remit setting out that, by the end of July 2002, recommendations should be made to Parliament on setting up a mechanism in relation to hepatitis C.

The committee accepts the moral argument for the payment of financial assistance to people who have been infected with hepatitis C. Committee members have articulated some of the more practical, pragmatic problems that we expect the expert group to report on.

In making its suggestions about the remit of the expert group, the committee had two main purposes: first, to see what can be done to assist those who have been infected with hepatitis C; and secondly, to try to build a compensation system that is more fair, equitable and workable.

Malcolm Chisholm: That is the fundamental fault line in the debate, as if we all agreed about the matter, we would not be sitting here today. The Executive's position was made clear in the debate of 10 January 2002. I will quote two sentences that encapsulate our position. The first point is one that I have made more than once. I said:

"It has always seemed to me that any decisions about compensation must be grounded in general principles and criteria and should not be made on an ad hoc basis."—
[Official Report, 10 January 2002; c 5227.]

Secondly, and perhaps more fundamental to the point that was raised by the convener, I said that the approach that we are adopting

"is based on keeping an open mind about what the expert group will recommend while acknowledging the complexities and implications of any course of action."—
[Official Report, 10 January 2002; c 5228.]

I am aware and I accept that that shows movement on my part, but not as much movement as some members wanted. However, I moved from the hardline position that the Executive had taken. Contrary to some reports, exactly the same line pertains in England. I have moved to a position where we are prepared to examine the issue with an open mind. The committee's recommendation is for the Executive to jump over that point and—to echo another famous phrase from another famous occasion—take forward proposals. In the debate on 10 January, it was made clear that we would look at the issue with an open mind and that our recommendations would be based on general principles.

The committee's second recommendation goes much further than the position that we accepted in the debate. I accept that the remit ought to contain something about hepatitis C. At the moment, reference to hepatitis C is included in the note to the remit, which states:

"The group shall consider the situation of patients who have contracted HIV and/or hepatitis C from blood transfusions or treatment with blood products as part of their general considerations."

I am perfectly happy to include that in the remit. However, I cannot go further than our position of 10 January.

The Convener: To include that in the remit would be a welcome move, as the fact that it was included in the note and not in the remit was the cause of some concern.

Nicola Sturgeon: The minister also said in the 10 January debate that he would listen to what the committee had to say about the remit. It seems strange that you come to the committee today with a more or less closed mind on the crucial point that we are making. I think that I speak for the whole committee when I say that we feel strongly that the merits of giving assistance, financial or otherwise, to hepatitis C sufferers, has been established through—among other things—the committee's inquiry. To go back over those arguments would be to create duplication and prolong the agony of hepatitis C sufferers.

We feel strongly that the first task of the expert group should be to devise and recommend a scheme of financial assistance—distinguishable from a general no-fault compensation scheme but designed to bring about some kind of justice for people as quickly as possible. I am still not persuaded by the minister's arguments against that.

Malcolm Chisholm: We disagree fundamentally on that point. There was a lot of agreement during the debate on 10 January but, if there was a fault line, it was on that point. I moved a significant distance, but not as far as Nicola Sturgeon wanted

me to move. She cannot now say that, because I said that I would discuss the remit, I should just reject everything that I said on 10 January. That would be unreasonable. I made the Executive's position clear on 10 January and I have quoted it today. The door has been left open to allow the issue to be reconsidered. However, it would be wrong for me to say one thing on 10 January and then take up a completely different position today.

We will have to accept that that is where the fault line lies, but at least we have a way forward that will enable us, within the next six months, to resolve the issue. As Nicola Sturgeon knows, the issue will come back to the Parliament. We are setting up an expert group to consider the complexities and implications. As I have said, I will put a sentence in the group's remit about hepatitis C. I have agreed that we will have two people who suffer from hepatitis C in the expert group, as well as two other patients. I doubt if there has been an expert group with such strong patient representation. The make-up of the group will ensure that the issues are addressed. I accept that Nicola Sturgeon wants me to go further, but she is asking me to overturn the policy that I stated on 10 January. That would be unreasonable.

Mary Scanlon: In the note on the expert group, the minister says:

"The group shall consider the situation of patients who have contracted HIV".

The minister mentioned complexities. We have asked that the group make recommendations on setting up a mechanism to provide practical and, where appropriate, financial assistance. How wide of the mark is our recommendation on practical and, where appropriate, financial assistance, when compared with the minister's recommendation that the group consider "the situation of patients"?

Malcolm Chisholm: The fundamental point that I made on 10 January, among all the other points, was that we must have a coherent system that contains fundamental principles on the payment of compensation. That system would have consequences for people with hepatitis C.

The main difference between my position and the position of the Health and Community Care Committee is that the committee is saying that we should regard people with hepatitis C as a separate special case, whereas I am saying that we must have a coherent system that can guide our actions. If we do not have such a system, we will simply be making policy incrementally—it will be one group today, another group next year and another group the year after that. We must have a coherent system that is based on clear criteria and principles. The expert group will consider that and, within that context, it will of course consider hepatitis C. However, we cannot prejudge the group's conclusions in the way that

Mary Scanlon suggests.

Mary Scanlon: I want to be clear about the timetable. On the general principles and remit, the minister has said that recommendations should be made by December 2002. Given that a component of the expert group will be people who are fighting for practical and financial measures for hepatitis C sufferers, when, beyond 2002, will you focus on assistance for those sufferers?

Malcolm Chisholm: I said during the debate that I wanted that to be done within six months. That is why the note says:

"Preliminary recommendations should be made by the end of July 2002".

That applies to people with hepatitis C, or to people in a similar situation.

We want to come to a decision on the aspects about which the committee is most concerned as soon as possible after the summer recess. The recommendations should be available by the end of July—we said six months—and the matter will then come back to the Parliament. Other parts of the work might go on beyond that.

We are being realistic; I am trying to stick to the undertaking that I gave to have a delay of no more than six months, but I accept that the more complicated work on clinical negligence, mediation and any new arrangements might take a bit longer. The key part of the work, which is controversial and the part about which people are worried, should be completed in six months.

12:15

Mary Scanlon: If I understand correctly what you have said, we are not as far apart as we thought. Am I correct in thinking that you will produce preliminary recommendations on practical and, if appropriate, financial assistance for hepatitis C sufferers by July 2002?

Malcolm Chisholm: Yes.

Shona Robison: The main concern is the time delay. I do not want to prejudge the outcome of the expert group, but when the recommendations are produced after six months they will not, in themselves, establish a system for payments, if that is the recommendation. Will there be a twin-track approach to allow a potential payment mechanism to be considered at the same time? When the recommendations are produced after six months, we do not want another time delay while a payment mechanism is established. Can work be done to ensure that a mechanism is ready to go if the outcome of the expert group is positive?

Malcolm Chisholm: That alternative proposal prejudices the outcome. If the expert group reaches the conclusion that the committee wants,

the mechanics of payment will not be a major issue and will not take the time that Shona Robison suggests. The fundamental work will be done on providing a coherent system. The mechanics would not involve a long delay.

Shona Robison: Are you giving a commitment that, if the expert group has a positive outcome, there will not be a bureaucratic delay in implementing the recommendations? Are you saying that the practicalities of giving assistance to the people concerned could be in place in a short period?

Malcolm Chisholm: That is my thought at the moment. It would not be appropriate to do the work in parallel as you suggest. That would be an odd way to go about things when we have decided that we must first establish a system that is based on general principles. It would not be appropriate to prejudge the matter. I understand Shona Robison's concern, but the outcome that the committee wants will not involve massive further delay.

Dorothy-Grace Elder: Note 1 on the proposed remit states:

"The group should note the existing approach that 'the NHS does not pay compensation when it has no legal liability for the harm suffered by the patient' and consider whether this is appropriate."

Our concern is the remit of the group and the number and type of people who will be on it. Some of us think that there might be a gap in the procedure when we try to get the minister's assurance that the group will cover a subject. That is what I said earlier in my comment to which Margaret Jamieson referred.

Will the minister assure us that the group will be able to take evidence on what many see as an overall state responsibility, rather than the responsibility of individuals in blood service units 20 years ago? The largest part of this problem was caused by Britain's buying in American blood products, even though America was a well-known high-risk area because of its paid donor system. We know that Britain was getting blood from prisons, for example. Can the minister assure us that he will seek to have that aspect of the issue highlighted?

The Convener: I think—

Dorothy-Grace Elder: It is very important.

The Convener: I think that I speak on behalf of the committee when I repeat the point that Margaret Jamieson made earlier: it is not for us to suggest to people how they should conduct their inquiry.

Dorothy-Grace Elder: I am asking the minister for his view.

The Convener: It is not for the minister to suggest how the group should conduct its inquiry—even more than it is not for us to do that. I welcome the fact that we have a right to say who we think should be members of the group and what the group's broad remit should be. We have made use of that right this morning and the minister has responded positively. It is not for us to tell the group from whom it should take evidence and what that evidence should be.

Dorothy-Grace Elder: I am making a suggestion.

Mr McAllion: I understood that the minister had indicated earlier that evidence from the Republic of Ireland would be considered. That has become a very pertinent issue. We must not close our minds to the fact that, although we are pursuing a particular line of inquiry for our report, other factors may be at play. It is part of the committee's role to help to uncover those factors. The minister has indicated that evidence from other countries, such as the Republic of Ireland, will be considered by the group. Will he confirm that?

Malcolm Chisholm: I said that I would consider the point that has been made about the group's remit. That may be something to put in the notes. I thought that the committee would take a harder line on the notes, but it seems to be saying that they are okay. If we said that the group should consider evidence from the rest of the world, we might be tempting fate and the inquiry might take several years. Perhaps we can mention the evidence from the Republic of Ireland. I do not have a problem with that, because it is an interesting parallel. However, I repeat that in the Republic of Ireland there were different circumstances as well as similar ones.

The Convener: We welcome what the minister has said about the number and identity of the patient representatives on the group, and his point about international comparisons. We welcome the fact that hepatitis C will be mentioned proactively in the group's remit and that preliminary recommendations will be made within six months, by July 2002. We also welcome the minister's comments in response to Shona Robison's question.

As the minister said, there is a fault line between his position and that of the committee. However, after today's discussion, we look forward to the health department producing a finalised remit for the expert review group that the committee can examine. I thank the minister for his evidence, which has been very helpful and useful.

That brings to an end the public part of this morning's meeting.

12:22

Meeting continued in private until 12:25.

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