

# **HEALTH AND COMMUNITY CARE COMMITTEE**

Wednesday 6 February 2002  
*(Morning)*

Session 1

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## HEALTH AND COMMUNITY CARE COMMITTEE 4<sup>th</sup> 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

Dr Mac Armstrong (Scottish Executive Health Department)  
Lesley Conway (Cancer Research UK)  
Sir John Crofton (Scottish Royal Colleges)  
Professor Neil Douglas (Scottish Royal Colleges)  
Sally Haw (Health Education Board for Scotland)  
Dr Robert Monie (Scottish Royal Colleges)  
Mrs Mary Mulligan (Deputy Minister for Health and Community Care)  
Professor Elaine Rankin (Cancer Research UK)  
Martin Raymond (Health Education Board for Scotland)

### CLERK TO THE COMMITTEE

Jennifer Smart

### SENIOR ASSISTANT CLERK

Peter McGrath

### ASSISTANT CLERK

Graeme Elliott

### LOCATION

Committee Room 1



## Scottish Parliament

### Health and Community Care Committee

*Wednesday 6 February 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 09:32*]

**The Convener (Mrs Margaret Smith):** Good morning, everybody. Welcome to this morning's meeting of the Health and Community Care Committee.

### Item in Private

**The Convener:** Item 4 on today's agenda is a draft report on organ donation for transplantation. Do members agree to discuss that item in private?

**Members** *indicated agreement.*

## Subordinate Legislation

### National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2002 (SSI 2002/17)

**The Convener:** SSI 2002/17 is a negative instrument. No members' comments have been received and no motion to annul has been lodged. Do members agree that the committee does not wish to make any recommendation in relation to the instrument?

**Members** *indicated agreement.*

### Scottish Commission for the Regulation of Care (Consultation on Transfer of Staff) Order 2002 (SSI 2002/18)

**The Convener:** Similarly, no members' comments have been received on SSI 2002/18 and no motion to annul has been lodged. Do members agree that the committee does not wish to make any recommendation about the instrument?

**Members** *indicated agreement.*

## Tobacco Advertising and Promotion (Scotland) Bill: Stage 1

**The Convener:** We move to agenda item 3, to take further evidence on the Tobacco Advertising and Promotion (Scotland) Bill. A number of people are with us this morning. We welcome first Professor Elaine Rankin and Lesley Conway from Cancer Research UK. Do you wish to make a short statement before we ask questions?

**Professor Elaine Rankin (Cancer Research UK):** Yes, thank you. I am professor of cancer medicine at the University of Dundee and I am supported by what used to be the Imperial Cancer Research Fund but, as members will know from the press, is now, after the ICRF's merger with the Cancer Research Campaign, Cancer Research UK. I specialise in treating patients with lung cancer.

Smoking is the biggest cause of preventable ill health and premature death. If we can reduce the numbers of people who smoke, we will reduce the numbers of deaths not only from cancer but from chest and heart disease and significantly improve the overall health of the nation. The most rapid way to stop premature deaths and the burden of disease is to stop current smokers from smoking, which means that we should first target adults.

Sir Richard Peto says that if we are able to encourage many adults who smoke to give up over the next decade or two—I am not suggesting anything too ambitious—and halve cigarette consumption by 2020, we will prevent a third of tobacco-related deaths and halve the number of tobacco-related deaths in the next 50 years. As a result, stopping adults smoking will have a major effect on the nation's health.

We also need to stop new smokers taking up the habit. As the committee has already heard, tobacco contributes to 22 per cent—almost a quarter—of the deaths in Scotland. In the United Kingdom, smoking kills 330 people a day or 120,000 a year. I always find it slightly strange to compare how the UK Government acted in response to the deaths of the four people in the Hatfield train crash or to the 160 people who have died so far as a result of BSE with how it acts in relation to the 330 people who die each day from tobacco-related diseases. One might conclude that Government action in that respect has been paltry, although I am not in a position to say whether that has anything to do with the £7.5 billion tax income from cigarettes. We know that tobacco advertising encourages people to smoke and to think that smoking is okay—if the Government allows it, it must be okay. Furthermore, it adds legitimacy to the smoking habit. However, tobacco kills.

Scotland is in the unenviable position of having the world's highest incidence of lung cancer. Smoking contributes to one third of all the deaths from cancer. I am sure that not many people have come before the committee and asked members to put them out of a job, but if you reduced the number of people who contract cancer because of smoking, you would be putting me out of a job.

In Scotland, tobacco is very bad news, certainly as far as lung cancer is concerned. We need only compare the situation in this country to that in England. I realise that comparisons are always invidious, but details from a 1999 "Health Bulletin"—which we would be happy to leave with the clerk—show that the tobacco-related incidence of lung cancer in Scotland is around 100 men in every 100,000; in England, the figure is 72 men in every 100,000. Much worse is the fact that tobacco-related lung cancer causes more deaths in Scotland. The figure in Scotland is 80 men in every 100,000 compared with 60 men in every 100,000 in England. There have been all sorts of debates about mortalities and the reasons why people do better in one country than in another. Indeed, Tony Blair talks about increasing the gross national product. Making specific comparisons between the situations in Scotland and in England really brings home how poorly the Scots are doing.

We know that mortality from lung cancer is much greater among more deprived populations; in fact, mortality is three times higher in those populations than in the least-deprived population. That statistic reflects factors such as poor nutrition and the fact that more deprived people visit their doctors later. It also reflects the fact that they are smoking a lot anyway, so when their cough worsens, they do not realise that it might signify something serious.

Prevention and targeting prevention measures are extremely important. For example, another survey in a "Health Bulletin" shows that women aged 35 are more likely to smoke if they leave school early. Approximately twice as many women who leave school at 16 smoke, in comparison with those who leave after that age. Sixty per cent of women who live in rented accommodation smoke, versus 30 per cent. Fifty-nine per cent of women who have a low income smoke, versus 29 per cent. The figures are similar for women who do not have a car. If we examine the poorer part of the population, women aged 35 are more likely to smoke. They are the role models for their children: if mum smokes, the children are likely to smoke; if the women's partners smoke, the children are four times more likely to smoke.

Children are an obvious target for us. Ninety per cent of smokers started smoking before the age of 18. In Scotland, 30 per cent of 15-year-olds smoke. Members should remember that tobacco is as addictive as cocaine or heroin, but—because

we can advertise it—tobacco is okay. Half of those who start to smoke in their teens and continue to smoke an average of a packet of cigarettes a day—20 cigarettes a day—will die of a tobacco-related disease in their prime. Prevention is extremely important.

There is no doubt that advertising promotes tobacco consumption. The Scottish Executive has placed a ban on tobacco advertising at the heart of its cancer prevention strategy. That fine aspiration needs to be converted into strong legislation for the good health of the nation. Cancer Research UK supports a ban on advertising. Like many others, we would prefer a UK ban, but, given the dire situation in Scotland that I have outlined, banning advertising in Scotland would be at least a beginning.

**Mary Scanlon (Highlands and Islands) (Con):** My question relates to how effective a ban on tobacco advertising would be in achieving the good public health that you mentioned. In your paper you make the persuasive statement that:

"In France, Belgium, New Zealand and Norway, where bans were introduced ... per capita consumption of cigarettes has dropped by between 14 and 37%."

However, World Health Organisation figures show that a ban could reduce tobacco consumption by 7 per cent and other figures indicate that a ban would reduce consumption in the UK by 2.5 per cent. You mentioned Norway. The figures that I have for Norway indicate that a ban was introduced in 1975 and, although tobacco consumption rose and fell until 1989, the latest figures show that the present level of consumption is equal to the 1975 level, when the ban was introduced. How effective would a tobacco advertising ban be in achieving the cessation in smoking that we all want? I have to say that the figures are confusing.

**Professor Rankin:** The figures are confusing. I am afraid that there are lies, damned lies and statistics. The devil will quote scripture to defend any argument. I am not qualified to discuss in detail the different figures for the precise effects on smoking of a ban on tobacco advertising. I am afraid that matter lies outside my area. However, our press director may know a little more about the subject.

**Lesley Conway (Cancer Research UK):** The figures that we quoted in our submission support those of the Centre for Tobacco Control Research, which is funded by Cancer Research UK. We cannot produce different figures. We support the centre's view, because we commissioned it to do research to show that bans are effective in reducing consumption.

**Mary Scanlon:** Your paper emphasises that consumption dropped

"where bans were introduced as part of a tobacco control strategy".

Therefore, you suggest that the ban works alongside other factors.

The other paper that I have in front of me says that although Iceland, Norway, Finland, Italy and Portugal all introduced bans, cigarette consumption in those countries is higher than in other Organisation for Economic Co-operation and Development nations that have not introduced a ban. Could those countries have introduced other measures, instead of introducing a ban?

**Lesley Conway:** That could be the case. I believe that there are different measures for different countries. So far, although the European Union is trying to make the tobacco control measures as comprehensive as possible in all European countries, the measures are not universally applied in Europe. If the committee wishes, our unit for prevention and control at the European institute could consult on that further.

**Mary Scanlon:** In order to be effective, would any ban on tobacco advertising need to be accompanied by other measures, or would a ban on its own achieve the sort of figures that we have been talking about?

**Professor Rankin:** A ban would support all the other measures that are taking place. At the moment, the fact that we are saying, "Stop smoking because smoking is bad for you" while still allowing tobacco advertisements creates a dichotomy. That makes things very difficult.

The major thing that will stop smoking will be if smoking is no longer cool. Consider what has happened with drink driving. Although drink driving is banned, people do not leave the pub at night and think, "Oh God, I shouldn't be driving because I have had one too many." As often as not, it is one of their friends who will say, "You have drunk too much. Give me the keys." The pressure from society will have most impact. However, the Government must also give clear-cut support by saying that tobacco advertising is a bad thing.

09:45

**Nicola Sturgeon (Glasgow) (SNP):** I am sure that you will agree that, while we can all bandy about statistics, it is difficult to be precise about the percentage reduction in smoking that will result from a ban, because the overall result will be determined by the other measures that accompany the bill.

Leaving the statistics aside, we have heard from other witnesses over the past couple of weeks, who have given us other good reasons for banning tobacco advertising. We need to begin the process of denormalising smoking. As you indicated, the

most important thing that a Parliament can do is send a clear and consistent message on smoking. To say that smoking is dangerous while allowing cigarettes to be freely advertised sends a mixed message. Young people are particularly aware of those mixed messages and are less likely to listen to anti-smoking messages if they see adverts that encourage them to smoke. Do you agree with the previous witnesses who made those arguments?

**Professor Rankin:** Absolutely. Anything that will denormalise smoking is important. It is difficult to get the figures for what a ban on advertising would do as part of a whole strategy. With all due respect to Mary Scanlon, I am not sure that it matters whether the reduction in smoking is 2.5 per cent or 10 per cent. If a ban on advertising reduced the level of smoking at all, there would be a major impact on public health because of the number of people who smoke. Denormalising smoking by any means is to be welcomed.

**The Convener:** Several witnesses have highlighted that the bill omits to deal with brand sharing or brand stretching, whereby companies make use of the logos of tobacco firms on other products. Should that be included in the bill? Do you know of any work that is being done to examine the effect of such advertising?

**Professor Rankin:** I certainly welcome the inclusion of such issues in the bill. One of the slides that I use when I am lecturing medical students shows an African chieftain dressed in all his jewellery, ivory and so on. He looks absolutely magnificent but he is wearing a tee-shirt that says "Marlboro" right across the front. I am sorry that I cannot show that to the committee today.

I am not qualified to talk about the impact of brand stretching, but I think that Professor Hastings, who was funded by the Centre for Tobacco Control Research, explained much of it last week.

**Mr John McAllion (Dundee East) (Lab):** Your written submission mentions that the University of Strathclyde carried out analysis of the internal documents of advertising agencies. The analysis showed that the young and the poor are a key target. Will you expand on that and say whether tobacco advertising targets other population groups such as women?

**Professor Rankin:** One is aware that teenage girls are the group for whom it is cool to smoke. I am not aware of any adverts that are directly related to young women smoking. That is not my area of expertise, but that of Professor Gerard Hastings, from whom the committee took evidence last week.

**Lesley Conway:** I think that Professor Gerard Hastings said that some adverts are directed at women and that some cigarette companies had

changed their tactics to using packaging that appealed to women. We certainly support all that the document "Keep Smiling: No one's going to die" said.

**Mr McAllion:** Are you aware of any research that shows that the reduction of smoking in Scotland would have an impact on the household income in deprived communities? Are there any examples from Europe, for instance, that show that?

**Lesley Conway:** I do not know of any at the moment, but epidemiologists in Scotland and Europe are investigating it.

**Mr McAllion:** You say in the second-last paragraph of your submission:

"Tobacco use is also the single biggest cause of health inequalities".

Could it be argued that deprivation leads to tobacco use, which contributes to health inequalities? Could it be argued that people are not poor because they smoke but smoke because they are poor?

**Professor Rankin:** That is difficult to tease out—it is a chicken-and-egg question. There is no doubt that more poor people smoke, whether from choice, habit or because their parents smoked, which has a very significant impact. Their role models are their parents and peers. In the more deprived populations, more people smoke so there are more role models for smoking and people in those communities are more likely to take it up.

**Mr McAllion:** Is it also the case that advertising is targeted at the poor population because the tobacco companies know that that is where most smokers are?

**Professor Rankin:** Yes.

**Mr McAllion:** A ban on advertising would therefore be most beneficial to those living in deprived communities.

**Professor Rankin:** One would certainly hope so.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** What is your view on how effective or workable the ban would be if it were introduced in Scotland, given advertising in global television coverage, particularly of sports? Would we be able to involve sports groups in the ban and persuade them that, if they were competing in certain areas and the competition was to be televised in Scotland, they should cover up the brand promotion?

**Professor Rankin:** That is almost impossible. One loophole in the ban is obviously that the Parliament can ban advertising only in so far as the devolved powers allow it to. The populace of Scotland will continue to be exposed to advertising



in films on television, for example. That does not detract from the general public health message that the view of the Scottish Parliament, if it were to pass the bill, would be that tobacco advertising is undesirable. Advertising will sneak through. There will be advertising on the web and in films. There will be product placement in films. We can do nothing about that. That does not mean to say that we should not attempt to start.

**Margaret Jamieson:** Given that some sports events even in England are sponsored by some of the tobacco companies—for instance, snooker, which attracts a significant number of viewers in Scotland—there is no way that the ban could be effective. Such events would still be shown and, in the case of snooker, Embassy cigarettes would be advertised in every home that was watching. Therefore, the ban would not have much effect. I know that that example is true for only a few days each year, but if advertising were still able to trickle in, that could be counterproductive.

**Professor Rankin:** It may be that Scotland could give the lead to the rest of the UK. Perhaps that is a political point. As far as I am aware, the UK Government's manifesto still includes the introduction of a ban on tobacco advertising. Our problem in Scotland is such that we should just get on with it here, albeit accepting that the ban would be imperfect. At least it would show some acknowledgement of the role that tobacco advertising has in making people continue to smoke or to take up smoking. Something is certainly better than nothing.

**Nicola Sturgeon:** On sports advertising, do you agree that the problems that global television poses, which are difficult to deal with, would apply equally to a UK ban? It is as difficult to stop the grand prix being beamed into televisions south of the border as it is in Scotland. On that front, we need at least a European-wide ban, and we probably need an international ban.

I wonder if you are aware that the proposed bill gives Scottish ministers the power to ban sponsorship. The bill is pragmatic, as the UK Tobacco Advertising and Promotion Bill is, in the sense that it allows for the delay of the implementation of that power until 2006, when a European Union ban is likely to be in place.

**Professor Rankin:** I was not aware that the bill allowed for that.

**Dorothy-Grace Elder (Glasgow) (SNP):** You mentioned that the death rate for accidents and train crashes, for example, or for tragedies such as BSE, is comparatively small compared with the horrendous death rate that results from tobacco. You linked the tobacco death rate with the Government's taking of about £7.5 billion in tobacco tax. Does not the Government's taking of

£7.5 billion in tobacco tax normalise tobacco in the public mind, in a similar way to that in which adverts normalise tobacco?

**Professor Rankin:** I would not put it like that.

**Dorothy-Grace Elder:** The Government seems to regard the huge sums of money that it takes from smokers as a respectable source of revenue that keeps the state going.

**Professor Rankin:** There are two sides to that. Your point of view is that the fact that tobacco tax generates a large amount of revenue for the state means that the tax is regarded as a respectable way of raising money. The opposite argument is that, by increasing the tax on cigarettes, one might encourage people to give up because they cannot afford to smoke. Some people give up because the tax is so high that they cannot afford £4 a day for their cigarette habit.

**Dorothy-Grace Elder:** In your written evidence, you refer to the fact that the amount that is spent on marketing by the tobacco industry has risen from £100 million to £130 million in the UK. You add:

"Worryingly only around ten percent of this figure is spent on adverts persuading smokers to quit."

Cancer Research UK always has to campaign for money. Would not persuading the Government to give you more of the £7.5 billion that it receives in tobacco tax for you to spend on propaganda against tobacco be another way of dealing with the problem?

**Professor Rankin:** Any money from the Government to help health and research would be extremely welcome. However, I would much prefer the money to be spent on preventing people from starting to smoke and helping them to quit. We need to devise more user-friendly means of helping people to quit.

**Dorothy-Grace Elder:** Do you agree that rather a mixed message is going out to the public? There is a touch of hypocrisy in sending out the message that it is perfectly acceptable for the state to take huge amounts in tobacco tax, while, at the same time, it condemns tobacco on the health front.

**Professor Rankin:** The whole tobacco area is full of mixed messages.

**Dorothy-Grace Elder:** Will you talk the committee through your campaign for a ban on tobacco advertising, describing the high and low points that you have experienced in a long struggle over a number of years?

**Professor Rankin:** I think that that is a question for Lesley Conway.

**Lesley Conway:** We have had a long struggle. Our charity first identified the link between lung

cancer and smoking in the 1950s. One could say that it has been a 50-year struggle. Since then, we have always supported a ban on tobacco advertising as a measure of tobacco control. As Professor Rankin said, that is the biggest public health measure that could be taken in the UK.

We have done a lot of research that exposes the tobacco manufacturers' methods of advertising, which, as we have said, exploit the young and the poor. We have come to the conclusion that there are many measures that could prevent smoking in western countries. Voluntary regulations have failed in the past, and there might be a continuing battle if tobacco manufacturers find loopholes in the law in the future.

**Dorothy-Grace Elder:** Do the manufacturers always jump ahead of you because they have the funds to find new ways of getting their propaganda across?

**Lesley Conway:** Yes—I could not have put it so eloquently.

10:00

**Professor Rankin:** A paper two years ago in *The Lancet* considered the way in which the tobacco companies were lobbying one of the International Agency for Research on Cancer campaigns on lung cancer. The paper pointed out elegantly, with a great deal of evidence, the devious means that tobacco companies use. I can furnish you with that paper.

**The Convener:** Thank you. We now move to the next set of witnesses.

**The Deputy Convener (Margaret Jamieson):** Good morning gentlemen and thank you for attending. Do you wish to make a statement before we ask questions?

**Professor Neil Douglas (Scottish Royal Colleges):** Good morning and thank you for inviting us. I am the vice-president of the Royal College of Physicians of Edinburgh and professor of respiratory and sleep medicine at the University of Edinburgh. I introduce Robert Monie, who is a respiratory physician at the Southern general in Glasgow and is representing the Royal College of Physicians and Surgeons of Glasgow, and Professor Sir John Crofton, who is, among other things, past president of the Royal College of Physicians of Edinburgh.

We are here today to represent the Scottish royal colleges. The Royal College of Physicians of Edinburgh, the Royal College of Physicians and Surgeons of Glasgow and the Royal College of Surgeons of Edinburgh wished to be closely identified with what we are saying but felt that, because the smoking problem relates mainly to physicians, the three of us, as respiratory

physicians, should present the case. The three colleges represent 16,000 consultants in the United Kingdom, including almost all consultant physicians and surgeons in Scotland, and another 12,000 beyond the UK.

Our qualification for being here is that all three of us currently practise or previously practised as respiratory physicians. Sir John Crofton, whom many of you will know, is undoubtedly a world authority on the health issues related to smoking. Among his many accolades, he has been chairman of the tobacco committee of the International Union Against Tuberculosis and Lung Disease and has been awarded the World Health Organisation medal for his work on tobacco smoking. Despite the fact that he is 90 next month—he would not wish me to tell you that—he is very much on top of his field.

The committee has heard a lot of evidence during the past days and I do not wish to reiterate statistics that members have heard numerous times. Of the 13,000 Scots who die from smoking each year, half are within our field of lung cancer or chronic bronchitis and emphysema. The colleges of physicians and surgeons believe strongly that it is inappropriate to promote a product that kills 35 Scots a day. As the committee has heard repeatedly, 22 per cent of all deaths in Scotland are premature preventable deaths that result from smoking. We believe that every attempt should be made to prevent those deaths.

Having reviewed the available evidence, we believe that a tobacco advertising ban, in conjunction with general prohibition of any form of tobacco promotion—that is important—would result, according to our best estimates, in a 6 to 7 per cent fall in tobacco consumption. That would prevent around 800 premature deaths per year in Scotland.

That is all that we want to say as an introduction. We are happy to field questions.

**Mary Scanlon:** My point concerns speculation about the effect of a ban on tobacco advertising. You said that a ban would cause a 6 to 7 per cent fall in tobacco consumption, which is at variance with Cancer Research UK's figures. However, I feel suitably reprimanded by Elaine Rankin, who said that any reduction would be helpful.

As we have a panel of medical experts before us, I want to ask them about the effectiveness of their profession's advice to patients on stopping smoking. Have you done research on that issue?

**Professor Douglas:** Much research has been done on that issue, which is one reason why we are here. Once people are hooked on the addictive substance of nicotine, it is difficult to stop them smoking.

**Mary Scanlon:** You are saying that they do not pay any attention to what you say.

**Professor Douglas:** As you well know, that is not what I am saying. We achieve cessation of smoking with less than 10 per cent of the people whom we see in hospital with lung disease and who say that they want to stop smoking. It is difficult for them to stop, despite the availability of nicotine substitutes and all the advice that we can give them. The majority of those patients continue to smoke and put themselves at increasing risk of lung disease and cancer.

It is important to prevent people from smoking in the first place. An important plank of that strategy is to stop the normalisation of tobacco and its promotion by the tobacco industry.

**Dr Robert Monie (Scottish Royal Colleges):** By the time that a doctor sees a person, they will already have smoking-related damage. The Tobacco Advertising and Promotion (Scotland) Bill is trying to prevent that damage from occurring. The committee has heard much about lung cancer, but little about the disability that is caused by chronic bronchitis and emphysema, which results in people being unable to breathe properly and move about. Those people often have a much more painful and lingering death than do those who have lung cancer.

**Mary Scanlon:** So we are saying that the ban would be more likely to be effective in the longer term by preventing people from being introduced to smoking, but would be less effective for hardened smokers.

**Sir John Crofton (Scottish Royal Colleges):** On the issue of the normalisation of smoking, there was a recent UK public health survey on whether banning tobacco advertising would make smoking less normal. Sixty-four per cent of the general population was in favour of a ban, and 54 per cent of smokers said that a ban would help because it would stop the normalisation of smoking. The committee will realise that about 70 per cent of smokers want to give up cigarettes.

To return to the point about giving up smoking, when nicotine replacement therapy was first used, in a London clinic, it was highly successful. The clinic achieved a cessation rate of about 30 per cent. Previous surveys of general practitioners who had advised people to give up showed that only about 4 per cent usually gave up, meaning that they had been off cigarettes for a year.

Following the great initial success of nicotine replacement therapy, the British Thoracic Society research committee did a trial that involved patients with smoking-related diseases in 100 centres in the UK. A control group was given normal advice about stopping smoking and another group was given nicotine replacement

therapy. The research committee was disappointed, however, because the rates of cessation were about the same—9 per cent—for both groups.

As Neil Douglas pointed out, his patients and those of his physician colleagues—just like the patients who came to see me in the past—are at the end of a process in which they have been advised repeatedly to stop smoking. Those patients are often not motivated to stop and are at the tail end of the process. They form the most difficult group. It is important to get to smokers early, and that is why the normalisation issue is important.

Similar problems are found in working with people in deprived areas. I was involved with one of the first community health projects, which was in Pilton in Edinburgh. We dealt initially with the local people's priorities and it took 10 years before they would consider smoking to be a problem. Previously, they regarded smoking as normal. The smoking issue is complicated.

**Mary Scanlon:** As we have such a panel of experts with us today, I want to ask whether I am right in thinking that nicotine replacement therapy has a success rate of about 9 per cent. You said that 70 per cent of smokers want to stop smoking. How effective are the drugs that are used to help people stop smoking?

**Sir John Crofton:** The answer to your first question has to be put in the context of the sort of smokers that you are dealing with. With most smokers, the success rate is higher than 9 per cent. Relatively light smokers can get off cigarettes quite easily, but the more addicted smokers need therapy. It is hard to get an overall picture because people who have casual cigarettes every now and then can give up spontaneously, whereas people who are extremely addicted need additional help.

**Professor Douglas:** The numbers for people who have attended a clinic because they are determined to give up smoking and do not have end-stage lung disease will show a much higher success rate than the numbers for all comers, including people who have been referred to a general practice or a hospital clinic. The question is rather like asking how many people would give up smoking if there were a ban on tobacco—you could come up with any figures you wanted. The main message is that the numbers are disappointing. Secondary prevention of smoking is difficult to achieve. We have to prevent teenagers from starting, which is what the bill aims to do.

**Sir John Crofton:** We should remember that, in 1948, 65 per cent of British males smoked whereas now the figure is only 30 per cent. That process has been extremely gradual. The most

important factor was the foundation of Action on Smoking and Health in 1972—I have a nice slide that demonstrates that. Until that point, the number of women smokers had been rising; after that point, it declined. Until ASH started presenting its message to the public, the tobacco companies alone talked about smoking and their message was that it was respectable.

**Janis Hughes (Glasgow Rutherglen) (Lab):** We are considering whether a Scotland-wide ban rather than a UK-wide ban, which we might have to wait for, would be effective. Your submission says that tobacco trade publications should be banned, as well as advertising in Scottish editions of UK publications. Given that not all publications have Scottish editions, how effective would it be to have only a Scotland-wide ban?

**Professor Douglas:** We are completely convinced that a Scotland-wide ban would have an effect. Clearly, it would not be as effective as a UK-wide ban, which, in turn, would not be as effective as having a Europe-wide ban, which, again, would not be as effective as a worldwide ban. However, we must start somewhere and we have no doubt that this is where to start.

**Janis Hughes:** You also suggest that advertising other than

“very local point of sale advertising”

should be banned. What do you mean by that? Why should any point-of-sale advertising be allowed?

**Professor Douglas:** In principle, we are not in favour of any tobacco advertising. However, that phrase was written with specialist tobacconists in mind. Perhaps we tried to mince our words more than we should have done.

**Janis Hughes:** Okay. I thought that there might have been some hidden meaning.

**Sir John Crofton:** That idea was included in the English bill because tobacconists said that point-of-sale advertising in their shops would not affect children.

Another worry, particularly in relation to ethnic minorities, is children having access to tobacco sweets. Skol Bandits were banned in the UK but oral tobacco in general was not. The tobacco companies could use oral tobacco to get round the ban.

**The Convener:** One of the issues that might be said to have been omitted from the bill is brand stretching. If we found that we had the legal capability to include brand stretching in the bill, would you welcome its inclusion?

**Professor Douglas:** Yes. We would regard that as absolutely essential, if it were legally possible. We are not legal experts.

**The Convener:** We are awaiting a response from our so-called legal experts on whether we can do that. You would welcome the inclusion in the bill of brand stretching.

**Professor Douglas:** Yes. We have seen too many examples of devious behaviour in tobacco advertising.

10:15

**Mr McAllion:** Paragraph 4.2 of your submission mentions research by the World Bank and others, which you say provides excellent evidence

“that advertising has a particular appeal to children.”

Does that evidence or any other evidence show that tobacco advertising deliberately targets certain population groups such as children, women or people on low incomes?

**Sir John Crofton:** Very good research has been undertaken in Scotland—I do not know whether you know of it—which shows the big effect that advertising has on children.

**Mr McAllion:** That is slightly different. Advertising might be aimed at the population in general but have a particular effect on children, or it could be targeted deliberately at children. Is there evidence to show the latter?

**Sir John Crofton:** The advertisers claim that the advertising is not targeted at children, but that claim is contradicted by the research that was undertaken by Gerard Hastings, who gave evidence to the committee. You have probably heard the details of that research.

**Dr Monie:** Professor Hastings mentioned to the committee the Regal campaign that involved a rather anti-establishment figure called Reg. Professor Hastings undertook research that showed that that campaign was heavily targeted at children and had a big influence on them. In Glasgow, one such advertisement was put up—I do not know whether it was asked for by the tobacco company or whether it was put up by the owners of the hoarding—near two schools and children walked past it every day. I think that the tobacco advertisers target kids—the evidence is there.

**Mr McAllion:** Is it only kids who are targeted? Are women and deprived communities also targeted?

**Sir John Crofton:** Yes. That is a major problem. People all over the world are worried because smoking has increased among young women in recent years. It is thought that that is partly because they see photographs of actresses and models smoking. It is difficult to know, because the problem is multifactorial, but that is thought to be one of the reasons for the recent increase in

smoking among young women in most European countries and elsewhere.

**Mr McAllion:** Is there any evidence or research to show that reductions in the incidence of smoking have an economic impact on deprived communities?

**Sir John Crofton:** Yes. Some good research was done in London a year or two ago. It was shown that there is a direct relationship between degrees of poverty and smoking rates. I am talking not just about social transfer and the things that the committee has heard about today, such as owning a car, but about a linear effect on communities. The research showed that the lower people's income was, the higher their smoking rate was. The highest smoking rates were found to be in some of the streets that were more than 70 per cent occupied by single mothers and very poor, unemployed people. As I often say, if tomorrow looks hopeless, health benefits that will come years ahead mean nothing.

**Mr McAllion:** So, in that respect, the Treasury strategy of increasing the tax on tobacco to deter people from smoking is not working in deprived communities. The people who can least afford it are still smoking.

**Sir John Crofton:** That is one of the great paradoxes. There is good evidence from a third-world country, Bangladesh, where many poor people are on the brink of starvation, that a smoking earner greatly reduces the nutrition of the children, because there is less money for food. There is some evidence of a similar effect in this country, although the evidence is more difficult to get.

**Margaret Jamieson:** What is your view of the effectiveness and workability of the bill in the context of sports advertising through global television coverage? Would that work against the ban or would it be of no consequence?

**Sir John Crofton:** Finland is a good example of how important that is. Finland, which had had a high smoking and mortality rate, introduced a lot of legislation in, I think, the 1960s, which forbade all promotion. The smoking rate went down quickly after that, but then a Finnish driver was extremely successful in international motor racing. The television coverage from abroad came into Finland when he was a success and young people's smoking went walloping up.

**Professor Douglas:** Clearly the effect of such advertising would be deleterious, but it would be a relatively small affair compared to the benefits of the ban. Furthermore, technological change is so rapid that it is now possible to change the advertising on a hoarding that is within shot of a television camera to advertise something else for transmission in a different part of the world or a

different country. Although the problems with television coverage are theoretical, they are entirely surmountable. The advertising world will ensure rapidly that it gets money in Scotland for advertising a different product.

**Sir John Crofton:** There is good evidence that, in Norway, there was no loss of income from advertising after a ban was introduced. Other sponsors came in and the advertising income was just as high. In fact, within a year or two, it was higher.

**Shona Robison (North-East Scotland) (SNP):** In paragraph 3.1 of your submission, you say that you would like a

"general prohibition of any form of tobacco promotion."

Will you say a bit more about what you mean by that and how it would differ from what is in the bill at the moment?

**Sir John Crofton:** The bill contains a lot of specifics. Norway started off with a bill that had an itemised ban and the tobacco companies, which have a lot of brilliant people, found ways of advertising that were not specified in the legislation. That is why a general prohibition was introduced; if the tobacco companies thought up something new, it would be caught under the general prohibition. The state of Victoria in Australia did the same.

The tobacco companies are terribly clever at getting round a ban. For instance, in one of the countries in which advertising was forbidden, the companies paid students to go into pubs and cafes that were used by students and hand out free cigarettes of their brands. That is not covered in the bill, but you could cover it by prohibiting any form of promotion.

**Shona Robison:** There is an argument that it would be difficult to envisage every possible loophole. It seems to me that countries that have already introduced bans have had to pass subsequent legislation to fill the gaps that are identified when tobacco companies try to circumvent the legislation. Is your basic point that you want the ban to be as full as possible at the outset to avoid loopholes?

**Sir John Crofton:** Yes. The items that are in the bill are good, but you should start with a general provision that can catch the various ways of getting round the ban.

**Dorothy-Grace Elder:** Would it be practical to administer a ban on advertising in Scottish editions of UK publications? You kindly answered Janis Hughes's earlier questions. I am concentrating on a ban on advertising in Scottish editions of UK publications. Do you envisage any pitfalls and difficulties with such a ban?

**Professor Douglas:** I am sure that it might result in resistance from the publishers, but it is achievable. In lots of countries, advertising is different because products that are not on sale in one country are on sale in another country. Especially since the advances in electronic publishing, it is relatively easy to substitute another product. It is not like the old days, when it took forever to set up the type.

**Dr Monie:** The other thing is that, although publications may be worried about the loss of advertising revenue from tobacco companies, as Sir John has said, other sponsorship comes forward quickly and new advertisers will move into the gap that is left.

**Dorothy-Grace Elder:** Yes, but advertisements could still enter Scotland in English publications—for example, in newspapers that were printed in London or Manchester. Some publications could cross the border, as we have seen in court cases in which publications in Scotland were forbidden to picture somebody but those south of the border were not. Would such a ban not create a rather confusing situation for the Scottish newspaper industry, and do you not think that the industry would object to it?

**Professor Douglas:** I am sure that it might. However, we have to start somewhere. We will not achieve a 100 per cent ban on tobacco advertising in all published material in Scotland—some things will come through that cannot be stopped—but we have to start somewhere.

**Dorothy-Grace Elder:** I want to refer briefly to what I discussed earlier, with the previous witness. You talk about the appalling death rates from smoking. We know that the tobacco companies plough up to £130 million a year into advertising. Your organisations do not seem to have made any stand against, for example, the normalisation of tobacco by successive Governments, which have accepted vast tobacco tax revenues. The figure stands at £7.5 billion currently and it was £10 billion in the year before last.

**Professor Douglas:** We do not see that as normalising tobacco; we see that as an effective means of decreasing tobacco consumption and a pragmatic way of generating income for the Government.

**Dorothy-Grace Elder:** It is very pragmatic indeed, is it not? The Government is accepting what some might call dirty money, but the tax is not reducing tobacco consumption in poor areas, is it?

**Sir John Crofton:** Yes it is. There is good evidence that the tax is reducing tobacco consumption in poor areas, although it has not reduced consumption sufficiently. Nonetheless, there is good evidence that, if the tax is increased,

more poor people than rich people give up. Over the years, rich and educated people have given up smoking much more than the poor have, but the tax has a differential effect. That has been shown in this country and in Canada.

**Dorothy-Grace Elder:** You mentioned that in Norway and Finland there has been considerable success in getting people to give up smoking since advertising bans were introduced. However, Norway and Finland are now prosperous countries in comparison with our own.

**Sir John Crofton:** Finland was not prosperous when it introduced that legislation. It had a difficult time following the collapse of the Soviet Union, where a lot of its exports went. Norway is rich because it has a lot of oil.

**Dorothy-Grace Elder:** Briefly, what do you think of the disparity between the amount that is spent on health education against tobacco and the amount of tax levy and the billions of pounds that are gathered by the Government?

**Sir John Crofton:** We all echo your concern. However, it is worth remembering that, when the tobacco tax increased—not this year, unfortunately, but last year—Gordon Brown allocated 25 per cent of that additional tax to health education against smoking. Some of the money was deliberately passed over.

**Dorothy-Grace Elder:** A few million pounds, compared with billions of pounds.

**Sir John Crofton:** It was nothing like what the tobacco companies spend. We would be grateful if you could put pressure on the Government to increase the amount that is available.

**Dorothy-Grace Elder:** It is up to you to hit the Government as hard as you hit the tobacco companies.

**Professor Douglas:** We have tried.

**The Convener:** Thank you very much for your evidence, gentlemen. We will take a short comfort break of five minutes.

10:29

*Meeting suspended.*

10:41

*On resuming—*

**The Convener:** Our next witnesses are the Deputy Minister for Health and Community Care, Mrs Mary Mulligan, and Sally Haw and Martin Raymond from the Health Education Board for Scotland. Are we awaiting the chief medical officer for Scotland?

**The Deputy Minister for Health and Community Care (Mrs Mary Mulligan):** My understanding is that he is coming to the meeting. He must be en route.

**The Convener:** We await his arrival with anticipation.

Do you want to start with a short statement, after which we will move on to questions, or do you want to start with questions?

**Mrs Mulligan:** Each of us has a short statement. I suggest that Sally Haw starts and I will follow. I hope that the chief medical officer for Scotland, Dr Mac Armstrong, will have arrived by then.

**Sally Haw (Health Education Board for Scotland):** Thank you for your invitation to address the committee. As the committee has heard, smoking exacts a heavy toll on the health of people in Scotland. We heard earlier that there are 13,000 smoking-related deaths in Scotland each year. We also estimate that about 10,000 babies are born each year who have been adversely affected by exposure to the effects of smoking while in the womb.

We know also that more than four in 10 children are exposed to environmental tobacco smoke in the home. Having reviewed the evidence, we have come to four key conclusions about the impact of advertising on smoking prevalence and the probable impact of an advertising ban. I will quickly run through those conclusions.

First, we believe that tobacco advertising increases tobacco consumption and smoking prevalence. Secondly, young people are particularly susceptible to the impact of advertising. They have become a key target for the tobacco industry. Thirdly, a comprehensive, UK-wide advertising ban would reduce tobacco consumption, improve health and save lives. Finally, we believe that a Scotland-only ban would be less effective and less enforceable than a UK-wide ban. However, we recognise that a Scotland-wide ban would represent a clear acknowledgement of the dangers that smoking poses and would be entirely consistent with a range of tobacco control initiatives that are being implemented.

10:45

**Mrs Mulligan:** I, too, thank the committee for the opportunity to give evidence. I begin by reiterating what we say in the opening paragraph of our memorandum. The Executive is committed to banning tobacco advertising and promotion in Scotland. We need a ban that is both effective and enforceable. We do not rule out Scottish legislation, but we consider—as the Parliament agreed when it passed the Sewel motion last

year—that a UK bill will deliver a more effective and comprehensive ban.

As the committee has heard, smoking is the greatest cause of preventable disease and ill health in Scotland. It is an equalities issue and many of its victims are hidden. The Executive is already acting on a number of fronts to reduce smoking. Those fronts include: prevention activities; smoking cessation services, including making nicotine replacement therapy available on prescription; support for a voluntary charter to increase non-smoking facilities in public places; and measures to prevent under-age sales of tobacco.

The case for banning tobacco advertising, as part of a comprehensive tobacco control strategy, is clear. I do not think that anyone here would disagree with that. A ban on tobacco advertising is one of the Executive's commitments in its programme for government and the UK Government has reaffirmed its manifesto commitment to legislate to introduce a ban during the current Westminster Parliament. While we have never ruled out Scotland-only legislation, we believe that Scotland-only action would have limited effect. A UK-wide ban would be more comprehensive and more readily enforceable. It would include a ban on brand sharing, which has been brought to the committee's attention, and it would avoid inconsistencies that would be exploited by the tobacco industry.

Lord Clement-Jones's bill has finished its committee stage in the House of Lords and its report stage will begin on 1 March. Once the bill clears the House of Lords, the UK Government will decide whether to give it time in the House of Commons. Of course, I am not in a position to say whether that will happen, but given the UK Government's support of the bill to date, I hope that it will. Malcolm Chisholm and I continue to press our Westminster colleagues for early UK action.

Tobacco advertising and promotion should be banned in Scotland as soon as possible but the Tobacco Advertising and Promotion (Scotland) Bill is premature. We should not use our valuable parliamentary time to consider Scottish legislation until we are clear that a more comprehensive UK ban is not going to be delivered.

**The Convener:** Dr Armstrong has arrived.

**Dr Mac Armstrong (Scottish Executive Health Department):** I am pleased to have the opportunity to address the committee. As the presentations today have repeatedly emphasised, tobacco has a major adverse effect on the health of men, women and children in Scotland. In fact, those in our communities who experience the most adverse life circumstances bear the greatest

burden of tobacco-related disease and premature death.

As chief medical officer, I support unequivocally all effective action that is directed at reducing this totally avoidable threat to health. I fully support the Chancellor of the Exchequer's approach to tax policy, as price impacts effectively on smoking levels. We also need an effective ban on advertising as part of the range of anti-smoking measures put forward in the white paper, "Smoking Kills".

I have some concerns about the Tobacco Advertising and Promotion (Scotland) Bill, based on my awareness that UK-wide legislation would be more comprehensible, more comprehensive, more enforceable and would have a much greater influence on health in Scotland.

For that reason, immediately after the Queen's speech in June 2001, I wrote to my counterpart in England, Professor Liam Donaldson, to express my dismay at the omission from the Queen's speech of any mention of a UK bill to deal with tobacco advertising. However, as the committee has heard, there is a strong possibility that UK-wide legislation will be introduced soon.

Scottish action against smoking must encapsulate much more than legislation against the advertising and promotion of tobacco. We have a responsibility to develop a pro-health culture, to act—individually and as groups—as exemplars and to encourage public opinion in favour of health for everyone. Smoking prevention is a major part of that initiative. We need to encourage pregnant women and their partners to give up smoking and to protect children from the harmful effects of tobacco smoke. We need to take effective action to break the cycle of smoking and poverty.

**Mary Scanlon:** I will ask the minister about the effect of a ban on tobacco advertising on smoking rates. I refer to the Health Education Board for Scotland's paper, which says that introducing a partial ban in Scotland would probably lead to a fall in the smoking rate of about 1 per cent and that a UK-wide ban would be more likely to lead to a fall of 8 per cent.

The minister said that the Westminster bill would go to report stage on 1 March. We would obviously want to support a more effective and enforceable ban. How long does the minister estimate we will have to wait for the Westminster bill?

**Mrs Mulligan:** The UK regulatory impact assessment suggests that the reduction in smoking under a UK-wide ban would be about 2.5 per cent. The impact would obviously be less if the ban was purely Scottish and the impact was felt only in Scotland.

On the time scale for a UK ban, we hope—as I said in my opening statement—that the readings in the House of Lords will be completed during March. Following that, the bill has to go to the Commons stage. Because of the way in which the House of Commons works, the process would have to be completed by July, when the Commons finishes its annual session. That is the time scale within which Westminster is working.

I am not in a position to say whether the bill will definitely complete its Commons stage. However, the indications are that it will be successful, given the support that the Government has given the bill in its passage through the Lords.

**Mary Scanlon:** Are you saying that the bill will be successful sometime between now and 2005—that is, in the current Parliament?

**Mrs Mulligan:** No. The bill will complete its passage through the House of Lords during March and then move on to the Commons stage, which would have to be completed by July this year.

**Mary Scanlon:** Are you confident that it will be?

**Mrs Mulligan:** As I said, it is not within my power to say whether that will happen, but I am reassured by the fact that the Government has supported the bill as it has made its passage through the Lords.

**Mary Scanlon:** Whether a UK-wide ban would be more effective and enforceable is a judgment for parliamentarians. Should we spend our time going through with a ban in Scotland, given that, although it would help, it would, as you have said, not be as effective as a UK-wide ban? Can we get clear-cut advice on the Westminster timetable?

**Mrs Mulligan:** Unfortunately, that is out of my hands. The timetable is dependent on the procedures of the Lords and the Commons. I am reassured because of the support that the Government has given the bill as it has progressed through the Lords stages.

**The Convener:** On the timetable, if the UK Government decides to take up the bill and give it parliamentary time, it would have to be passed before July. If that did not happen, the process would have to begin again. Is that correct?

**Mrs Mulligan:** That is my understanding.

**Nicola Sturgeon:** We have waited since 1997 for action to be taken at a UK level. It strikes me as a bit strange that a Scottish Parliament committee is being asked to put aside a bill on the basis of a vague hope that the UK Government will do something about a ban in the next few months.

That is an observation. My first question is for HEBS. The HEBS submission states that a partial ban—which this bill is not; according to the World



Health Organisation's definition, it would constitute a comprehensive ban—would produce a reduction in consumption of about 1 per cent. We heard evidence from Cancer Research UK that, even if that was the case, a ban would still be worth pursuing because it is worth striving for any reduction in consumption. Cancer Research UK also made the point—as several witnesses have done over the past two weeks—that, statistics aside, the most important thing is for Parliaments to send a consistent message on smoking. For Governments and Parliaments to say that smoking is dangerous and then allow advertising is confusing and undermines the anti-smoking message. Do you agree with that?

**Sally Haw:** In the absence of a UK-wide ban, we would support a Scotland-only ban. There would be a small reduction in tobacco consumption, which would be beneficial. However, as you say, the most important aspect of a ban may be symbolic—a recognition of the dangers associated with smoking. We are keen to present consistent messages.

**Nicola Sturgeon:** I have two quick questions for Mary Mulligan. First, you say in your memorandum and you have said again this morning that the Executive does not rule out Scottish legislation at some point. I presume that that means that, although your submission uses the word ineffective on a couple of occasions, you do not think that a Scotland-only ban would be ineffective. You might think that it would be less effective, but if you thought that it would be ineffective you would have ruled out completely the prospect of a Scotland-only ban. Can you confirm that, although it might not be your preferred course of action, a Scotland-only ban would have some effect if it were passed into law?

My second question relates to one of your criticisms of the bill, which is that it would be difficult to enforce. You refer specifically to the influence of global television and make the point that it would be difficult to stop advertising being beamed into Scottish households. That might be a reasonable observation, but do you agree that it could equally be made in relation to a piece of UK legislation? It would be as difficult to stop the grand prix being broadcast to English households as it would be to stop it being broadcast to Scottish households. Do you agree that what is needed is European or international action?

**Mrs Mulligan:** On your first question, I think that the bill would be ineffective because, even if we accept that the impact would be a reduction of 1 per cent, that is less than half of the 2.5 per cent reduction that we would expect from a UK-wide ban.

**Nicola Sturgeon:** That is less effective, not ineffective.

**Mrs Mulligan:** It would not be as effective. Therefore, we do not think that this bill is the best way to proceed. A bill is progressing through the UK Parliament. If that was not the case, the Executive's position might be different. Should the UK bill not be successful this year, we would consider the lesser option of—

**Nicola Sturgeon:** So, if there is no UK ban on the statute book by July, the Scottish Executive will take action in Scotland. That would mean that the committee would have to start the process all over again. Would that be a sensible use of parliamentary time?

**Mrs Mulligan:** It is not a sensible use of parliamentary time to debate the matter when we know that a more effective bill is going through the House of Lords and will go through the House of Commons.

**Nicola Sturgeon:** You cannot guarantee that.

**Mrs Mulligan:** You have brought about the duplication of work, not us. We are happy to wait for the more effective piece of legislation that will be passed in the UK Parliament.

On your second point, we cannot control global television or advertising, even through UK legislation. We are more concerned about the ability to control newspapers and magazines, which can be bought over the border and brought into Scotland. They contain advertisements that we would not be able to ban by passing this bill.

As you know, there is also discussion in Europe about tobacco advertising. I hope that that will go further. We all want to remove advertising that promotes tobacco and cigarettes, because we recognise the damage that smoking does. The issue is how we approach that removal. We want the most effective possible ban within the UK. We think that we can get that if we wait a few months longer for the UK bill to make its passage.

11:00

**Margaret Jamieson:** I want to pick up on the HEBS written evidence and Dr Mac Armstrong's comments in relation to how we consider individuals who are nicotine addicts. How we treat individuals who are addicted to nicotine, as opposed to heroin, is a problem. The HEBS evidence refers to the fact that nicotine is a highly addictive, psychoactive drug that acts on the same part of the brain as heroin and cocaine. However, nicotine addicts are treated differently from other drug addicts. Recently, the NHS has borne the cost of NRT and the new drug, Zyban. Are you sending a mixed message to nicotine addicts?

**Sally Haw:** We have understood how nicotine acts on the brain only in the past 10 years. The Health Education Board for Scotland welcomes

the availability of NRT and Zyban on prescription. They are among the most effective ways of managing smoking cessation. They are available to low-income people, who are the most highly nicotine-dependent group.

The tobacco advertising ban would be part of a range of measures that address smoking cessation and prevention and nicotine addiction. The ban would have an impact on smoking prevalence and health in Scotland.

**Dr Armstrong:** There is a fundamental difference between our treatment of the products nicotine and heroin—if I can call heroin, which is an illegal substance that is subject to a great deal of control, a product. Heroin use is illegal except when medically indicated. Tobacco, with alcohol and a range of other psychoactive products, is available legally. My colleague from HEBS said correctly that only in the past few years have we begun to get a handle on the physical and chemical basis of addiction and been able to understand in those terms what doctors have known in psychological terms for decades. However, the tobacco industry denies that tobacco—in particular its component, nicotine—is an addictive substance.

Previously, we could define nicotine addiction only in psychological terms; now we can do so in physical terms. Zyban is an exciting prospect. It is only the first of a range of behaviour-modulating compounds that will give us a better handle on treating all forms of addictive and compulsive behaviour, including addiction to tobacco. I very much welcome that. The Executive was right to make NRT available across the board. Consumers need a range of choices, so that they can have what they need.

I leave you with my overarching concern about the bill. As I said in my opening statement—I do not want any equivocation about this—we need to ban tobacco advertising in this country. By “this country” I mean that we need to ban as globally as possible. There is every prospect that we will be able to ban on a UK basis. However, as Ms Sturgeon correctly said, the most effective measure would be to ban on a European basis. Measures are in hand to achieve that goal, but not at the pace at which we are able to move in this country.

My strongest recommendation to the committee is to play a long, careful and diplomatic game. I would hate this otherwise excellent proposal to have an unintended consequence. If this piece of legislation were to go through quickly in Scotland, it would collide with the Westminster process and delay the Westminster timetable, which has to be completed by July. I would hate the result of the passage of the legislation in Scotland to be that the Westminster legislation had to be unpicked,

with attempts to pass a series of amendments to a tight timetable, resulting in time running out. I am sure that that is not what the committee would want to happen. It would be a disaster for all of us in the UK.

As I understand it, the Scottish parliamentary timetable is not limited by a rigid adherence to passing legislation in one parliamentary year. I advise members to play a long game and to keep their eye on what is happening so that we can have a win-win situation. We can have belt and braces.

**The Convener:** Would you not accept that there is another argument—that the Scottish Parliament taking evidence and acting on the issue is a lever on the UK Government? We know that a Liberal Democrat peer's bill is going through Westminster, but we have not had categorical assurances that the UK Government will support it. If we could be given such assurances today—if there was a letter from the Prime Minister saying that the Government would support the bill—there might be a different reaction from the people round the table. However, we do not have those assurances.

The minister has said that the Scottish Parliament will take the issue into its own hands if the UK Government continues to prevaricate. The argument is therefore that we are acting as a lever to get exactly what we all want.

**Dr Armstrong:** You are totally correct and I applaud what you are doing for that reason. All I am suggesting is that you should be careful about the timing.

**Dorothy-Grace Elder:** I wanted to ask the minister and Dr Mac Armstrong about the amount of money that is spent on countering the tobacco companies' propaganda. Tobacco companies spend about £130 million a year on tobacco advertising and promotion. Approximately how much does the Scottish Executive give to HEBS and to anti-cigarette campaigns throughout Scotland?

**Mrs Mulligan:** We give approximately £3.25 million a year to HEBS and £264,000 to ASH, which also works in the field.

**Dorothy-Grace Elder:** Anything else?

**Mrs Mulligan:** The money is part of a package. The ban on advertising must be seen as part of a package of measures. We cannot just ban advertising and think that we have solved all our problems. We have to consider health education; treatment; the addictive properties of tobacco and, in particular, nicotine; the selling of tobacco to people who are under-age, which is a justice issue—

**Dorothy-Grace Elder:** I appreciate that, but the figures that you gave me come to roughly £3.5

million. That is set against the tobacco lords' £130 million in Britain, which equates to about £11 million in Scotland. The Government gained £7.5 billion in tobacco tax in Britain last year and £10 billion the year before that. Scotland's share of that was about £1 billion. Can the Executive's counter-advertising campaign really be effective if it is giving only £3.5 million when the Government is taking £1 billion in tobacco tax in Scotland, £10 million of which, according to ASH, comes from illegal cigarette sales to child smokers?

**Mrs Mulligan:** Nobody is saying that the amount that is being spent on those particular projects will compete against the huge amount that is being spent on advertising, but I am not sure that anyone is saying that we should match that amount of money. You know that money that is taken through tax-raising powers is used for a whole range of Government initiatives, none of which we want to lose. By banning advertising, we can tackle the advantage that the tobacco companies have in being able to spend that money in that way. That is why, while the bill that we are discussing is important, the measures in it will be more effective on a UK basis.

**Dorothy-Grace Elder:** You are virtually saying that the Government is being pragmatic about the issue and that the state is largely dependent on the Treasury's addiction to tobacco tax. We are not hearing much about the amount that you are investing in counter-propaganda.

**Mrs Mulligan:** No. All of us recognise that the issue of tobacco use is not just about raising funds for the Treasury; the issue is about the damage that it does to the health of people in Scotland and throughout the UK. That is something that the Scottish Parliament, the Scottish Executive and, I believe, the committee are committed to tackling. To equate the two sums of money is not correct. We can build up a programme that will deal in a more productive way with the use of tobacco, while also going ahead with the ban on advertising, which will have an effect in the longer term.

**Dorothy-Grace Elder:** May I put the same questions to Dr Mac Armstrong?

**The Convener:** A quick answer, please.

**Dr Armstrong:** The quick answer is that supplementary to what the minister said, there are a number of additional figures that we need to bring into the equation. For example, about £6.5 million is spent on nicotine replacement therapies per year. Taking the figures together, we are spending about £13 million per year in Scotland on tobacco control.

**Dorothy-Grace Elder:** That figure is still very small in relation to the £1 billion in tobacco tax. You are dependent on tobacco tax, but you are

not proposing that all that £1 billion should go into the national health service. There is a great deal of hypocrisy in that argument. If you want to fight the tobacco barons, why are you not putting more tax money into it?

**Dr Armstrong:** You are treading on a slightly different argument, which is hypothecated tax for the NHS. We have not gone down that line. As you will know, the NHS is founded on the principle that it is free at the point of use and funded out of general taxation. The total tax take goes into the Exchequer and from that total tax take an allocation is made to the NHS. As you will know, with the additional funding, the current Administration is spending historically large amounts on the NHS from that general tax take.

**Dorothy-Grace Elder:** Do you not—

**The Convener:** No, Dorothy-Grace.

**Mrs Mulligan:** The UK Government has made it known that it is quite happy to lose that tax take if it means that people will cease smoking.

**Shona Robison:** I wish to return to Dr Mac Armstrong's comments. I find it quite astounding that our chief medical officer said that we should play the long game. Every single organisation that has come here to give evidence on the bill has said exactly the opposite: that we should have a ban as quickly as possible; that the Scottish Parliament should take a lead; that we have to start somewhere; and that this is an important opportunity to send out a clear message from Scotland. Dr Armstrong seems to be totally out of step with what those other organisations are saying. It is remarkable that that is the view of our chief medical officer. Dr Armstrong, if it came to a choice between a partial ban or no ban, which would you prefer?

**Dr Armstrong:** If it came to a choice of a partial ban that was effective in Scotland and which had the effect of knocking the UK ban out of time, that would be a shame. It would be better to wait that extra couple of months and go—

**Shona Robison:** So you are saying that your preference is to have no ban.

**Dr Armstrong:** No.

**Shona Robison:** No ban in Scotland?

11:15

**Dr Armstrong:** No. I am saying that we should play the timing the right way round. We must have a ban. You have the opportunity to phase the timing of it in a way that the Westminster Parliament does not. It appears to me—although I am no great expert on parliamentary procedure—that, if the UK ban goes through by July, we all win. If it does not, you still have the opportunity to

act immediately behind that and implement your legislation. The minister has already indicated that that would be the right thing to do.

If the respective measures are implemented the other way round, however, there is just a possibility that that will have the effect of knocking the UK legislation out of time. I do not think that any of us would want that. I am simply urging you, as parliamentarians, to have an eye to that. You can win and win on this. I think that you are doing an extremely important job by raising the profile of the matter, and I applaud that. I do not think that there is anything between what I am saying and the other evidence that you have heard.

I started off by saying that I absolutely endorse the proposals. It becomes repetitive to hear the same evidence over and over again, but the evidence of the link between tobacco and ill health is irrefutable, and we need to do something about it. Those signals are very important.

**Mr McAllion:** I seek to clarify your suggestion that we “phase the timing” of the proposals. A stage 1 report on the bill will make a recommendation on whether to support it. Are you recommending that the committee drop the bill?

**Dr Armstrong:** Absolutely not.

**Mr McAllion:** Well, what are you recommending?

**Dr Armstrong:** I am not an expert on the parliamentary timetable, but I am recommending that you have an eye to your own parliamentary timetable and that you ensure that the Tobacco Advertising and Promotion (Scotland) Bill does as your convener suggests, in that your debate will maintain pressure and the profile of the issue and drive the legislation south of the border, and you will play your part in this very important process. If any obstruction is put in the way of the bill down south, that will certainly not be as a result of what you are doing. You are there, in the background, to put in place Scottish legislation, if that is all that we can get.

**Mr McAllion:** As I understand it, you are saying that we should continue to process the bill through stage 1 and stage 2.

**Dr Armstrong:** Yes.

**Mr McAllion:** Is that okay?

**Dr Armstrong:** Yes, I totally agree with that—absolutely.

**Mr McAllion:** And you are not suggesting that we drop it.

**Dr Armstrong:** Not in the least. I would not suggest that.

**Mr McAllion:** Well, that is okay.

**The Convener:** I call Nicola Sturgeon.

**Mr McAllion:** Shall I move on to the other questions about the—

**The Convener:** No. Nicola Sturgeon wants to come back in on this point; I will come back to John McAllion after that.

**Nicola Sturgeon:** I find your line of argument difficult to comprehend. I think that your observations about a potential conflict between our parliamentary procedure and the UK Government's parliamentary procedure have some validity, but is that our problem? This is a devolved matter. Over the past two weeks, witnesses have told us that we have an obligation to take the lead if we think that it is the right thing to do.

If there are complications as a result of parliamentary procedures clashing, surely that is a matter for the UK Government to sort out—and to sort out now. It could do that without any difficulty. The Government could say now—I cannot understand why it apparently cannot—that, when the Clement-Jones bill, the Tobacco Advertising and Promotion Bill, hits the House of Commons, it will give it a fair wind, it will give it parliamentary time and it will support it. That is all that it would take to sort this out and ensure that both Parliaments proceeded in unison. This is not a question of the Scottish Parliament playing canny; it is an issue of the UK Government being sensible about this. Do you not agree with that?

**Dr Armstrong:** That is for the—

**The Convener:** May I—

**Mrs Mulligan:** May I just say—

**The Convener:** May I make a clarification—I think that it is clarification—from the standing orders, on the withdrawal of bills? Rule 9.13 states:

“A Bill may be withdrawn at any time by the member in charge but shall not be withdrawn after completion of Stage 1 except with the agreement of the Parliament.”

The bill could be withdrawn, but such a question would have to go before the whole Parliament. I hope that that provides some clarification.

**Mrs Mulligan:** On the point that Nicola Sturgeon just made, I would suggest, without wanting to get into the technicalities of procedures, that, if the most effective legislation will be achieved through the UK Parliament, it is an issue for us to do everything that we can to ensure that that is the legislation that goes forward.

**Nicola Sturgeon:** It is an issue for the UK Government in that UK ministers are the ones who can resolve the matter. It is within their gift; it is not within ours, as we are acting on a devolved

matter. If they want to stop any complications arising, the answer is for them to say now that the UK bill will be supported at the appropriate time. For the life of me, I cannot understand why they will not do that. My suspicion is that they still do not know whether they will support the bill, yet we are supposed to draw up a Scottish Parliament bill on the basis of some vague promise that might never come to fruition.

**Mrs Mulligan:** It is within our gift to ensure that we do not put any obstacles in the way of what would be the most effective legislation. We are all agreed on that, even Nicola Sturgeon. We have to bear that in mind when we are considering the bill.

**Mr McAllion:** I have another question to ask. The HEBS evidence indicates that tobacco advertising is effective in targeting children and young people. That group is a key target of tobacco advertising. Is there any evidence that other groups in society are also a target of tobacco advertising, for example, women and deprived communities?

**Sally Haw:** Yes. Professor Gerard Hastings's written evidence and his presentation to the committee last week suggested that the market is highly segmented; it is about a marketing exercise. The advertising agencies that work with the tobacco companies clearly identify segments in the market and create promotions around those segments. Women, smokers on a low income and young smokers are all key targets for the tobacco industry.

Our particular concern is about young smokers, who represent the next generation: they will go on to develop smoking-related problems and transmit smoking behaviours to their children. We have raised the key issue about the targeting of young smokers.

**Mr McAllion:** Obviously, those who work in the advertising agencies and those who control the tobacco industry know fine well that when they target those populations, they are targeting those people for early death and ill health. Do you think that that is acceptable in a free society?

**Sally Haw:** There are serious ethical issues about how advertising is created. A comprehensive advertising ban would deal with that issue and would mean that tobacco was no longer a legitimate subject for advertising.

**Mr McAllion:** It is a declared objective of the Scottish Executive to eradicate child poverty and, it is hoped, poverty as a whole. Has any research been done on the likely economic impact on deprived communities of a reduction in tobacco use?

**Sally Haw:** Do you mean the economic impact of a reduction in tobacco consumption?

**Mr McAllion:** Yes. What would be the benefit of not smoking for deprived communities?

**Sally Haw:** We know that people on low incomes spend 15 to 20 per cent of their disposable income on tobacco and that their families suffer from reduced availability of a range of products such as clothing and food. If we can encourage people to stop smoking and provide support for them, there will be direct economic benefits to individual families and to the community.

**Mr McAllion:** A substantial amount of money has been targeted on deprived communities through the social inclusion partnership programme. How much of that is spent on trying to persuade people not to smoke?

**Sally Haw:** My awareness of initiatives to help people stop smoking is based on the money that has come through the white paper, "Smoking Kills". However, urban regeneration initiatives might also support people stopping smoking in a more generic way.

**Mr McAllion:** If a social inclusion partnership programme is spending significant sums on deprived communities, would not it be a good idea if at least some of that money was directed to persuading people in those communities to stop doing something that is causing them significant harm and making them poorer?

**Sally Haw:** That would be a positive measure. However, those initiatives must be integrated with existing initiatives.

**Martin Raymond (Health Education Board for Scotland):** By following where smokers happen to be in the community, most of those existing smoking cessation initiatives tend to take place in areas of deprivation and communities where there is less money. We know that the profile is biased towards lower socioeconomic groups.

**The Convener:** I have a question for HEBS about the evaluations that it has done. How successful have HEBS advertising campaigns been, particularly those that target young people or young girls? HEBS had a high-profile advertising campaign in the past six months. Do you have any idea of the impact that the campaign has had?

**Sally Haw:** That is an important measure, and there is a high rate of awareness of the adverts—there is about 80 to 90 per cent awareness. Martin Raymond has also received a lot of feedback on the recent advertising campaign.

**Martin Raymond:** The STINX campaign in particular was designed to impact on an issue that was raised earlier—the need to create a pro-health culture in a country with a great deal of poor health and a great deal of behaviour that is not

conducive to health. That is an elusive and slippery issue. STINX was not designed to encourage people to give up smoking, but it was designed to discourage young people from starting smoking in their early teenage years. It tried to do that by hijacking and using the mechanisms of youth culture.

We cannot measure the effect that the campaign had on behaviour. We cannot count the number of young people who may not have started smoking because they were exposed to that piece of advertising. However, we can track the effect that the campaign had on youth culture—the fact that the song from the advert was taken up with such enthusiasm. I know that those are very soft measures, but they are important when we are trying to find ways of changing the culture of a country.

We released the song as a single and sold 13,000 copies of it. On the strength of that, we considered giving up our day jobs and becoming music entrepreneurs. Unfortunately, no one returned our phone calls. However, we got a piece of music containing a very pro-health message into all the main record shops in Scotland, where it remained on display for months. Thirteen thousand people bought the record. That is a measure of how we can influence the culture of Scotland, especially the culture of young people in Scotland. The tobacco companies find it difficult to influence that culture, as do we. However, through STINX we were able to get into it. We are keen to follow up on that success.

**Shona Robison:** A ban on tobacco advertising limited to Scotland would cover billboards, which are targeted at deprived communities. One needs only to drive around Scotland to see the many billboards in those communities advertising low-cost cigarettes. Do you agree that one of the most important elements of a ban on tobacco advertising would be to remove billboards that target low-cost cigarettes directly at deprived communities? Such billboards are often situated around schools.

**Sally Haw:** Removal of billboard advertising would be very positive. However, adverts appear in a range of media and it is important to remove all of them. That takes us back to the notion of having a comprehensive ban.

**Martin Raymond:** I would not underestimate the importance of billboard advertising, particularly for low-income families. As Shona Robison says, there is a strong bias in billboard advertising towards deprived communities. The magazine market, which is another important area, targets young people in particular. That would be very difficult to control through a Scotland-only ban.

**Sally Haw:** Martin Raymond raises a particularly

important issue. Research from the States shows that magazines that have a high youth readership have the largest number of tobacco adverts. It is interesting that they also have the largest number of alcohol adverts. Magazines are an important medium for targeting young smokers.

**Martin Raymond:** Young people identify themselves with magazines according to personality. Young men and boys identify with the culture and philosophy—if I can call it that—of lads' magazines, for example. The fact that tobacco products are advertised in those magazines is a great cause for concern.

**The Convener:** We will bring questioning to a halt there. I thank Sally Haw and Martin Raymond for their evidence.

We will now hear from Nicola Sturgeon, who will metamorphose from a committee member into a witness.

Do you wish to make a statement before we ask questions?

**Nicola Sturgeon:** No. My views and my motivation for introducing the bill are well known. To save time, we could go straight to cross-examination.

**The Convener:** Thank you.

11:30

**Margaret Jamieson:** The committee received evidence about levels of consultation, and individuals said that they had not been directly asked to comment on the bill nor to give you their views before you introduced the bill. Which bodies did you consult? Did you consult individuals?

**Nicola Sturgeon:** I will set out the different stages of consultation. After I announced my intention to introduce the bill, but before the bill was drafted, I held meetings with a range of organisations, including ASH Scotland, the British Medical Association, the Cancer Research Campaign, the Tobacco Manufacturers Association, representatives of the UK internet service providers that have an interest in the bill, and, slightly later, the cross-party group on tobacco control. When I published the draft bill, I sent it for comment to some organisations, including the BMA, the Royal College of Nursing—it had asked to see the bill—Macmillan Cancer Relief and the Cancer Research Campaign.

In addition to that consultation, which I initiated, I received unsolicited submissions from a range of organisations, including the BMA, Macmillan Cancer Relief, the Royal College of Physicians, the RCN, ASH, the Tobacco Manufacturers Association and internet service providers. Except for the last two, all supported the bill. The last two

supported the bill but wanted amendments to be made.

The bill does not contain new proposals. It is modelled closely on the United Kingdom Tobacco Advertising and Promotion Bill—it is virtually identical. There was extensive consultation on the UK bill, so although I was keen to have a range of views on the general principles and the detail of my proposal, I was anxious not to repeat a process that had been undertaken. Extending that would have delayed what I believe to be an important measure.

**Margaret Jamieson:** The committee has taken evidence stating that although some consultation was undertaken—which you have just spoken about—significant individuals were omitted, particularly those in charge of HEBS and the chief medical officer. Would it have been helpful to have them on board?

**Nicola Sturgeon:** I spoke to the then Deputy Minister for Health and Community Care, Malcolm Chisholm. His views, like those of the previous Minister for Health and Community Care, were well known. I do not agree with those views, but I respect them. We have a difference of opinion about the process, but not the end result. I am not sure whether more extensive consultation at that stage with ministers or with the chief medical officer would have changed their opinion.

Some bodies could have been consulted more, but as I said, this is probably one of the most consulted-on proposals to have been brought before the Parliament, because it has had a previous existence as a UK bill. I was anxious not to delay the process. I have consulted widely and been open to representations from anybody. As I said, I even met the Tobacco Manufacturers Association. I was open to hearing from anyone who wanted to discuss the bill in general or in detail.

The final point that I would make is that although in their response to the direct question about consultation some organisations said that they were not directly consulted, as far as I am aware, none of those organisations has expressed disquiet about that or feels that its views have not been properly taken into account.

**Margaret Jamieson:** Other than the Freedom Organisation for the Right to Enjoy Smoking Tobacco.

**Nicola Sturgeon:** Indeed, perhaps other than FOREST. However, the less said about that at the moment, the better.

**Mary Scanlon:** You said that you had consulted the Tobacco Manufacturers Association, which is one of the few groups that has not come along to give evidence. Can you tell us the outcome of your

meeting with the tobacco manufacturers?

**Nicola Sturgeon:** The Tobacco Manufacturers Association told me—orally and in writing—that, in principle, it is not opposed to a ban on tobacco advertising. I know that some people would dispute that, but it is not for me today to challenge what the TMA said. The TMA's main concern was its continued ability to direct-mail its own customers, using the extensive databases that it already holds. It felt that both the UK bill and the Tobacco Advertising and Promotion (Scotland) Bill would restrict its ability to communicate directly with its customers.

We had an honest difference of opinion about that. The bill would not prevent tobacco companies from providing information to people who requested it, but it seeks rightly to limit unsolicited direct mail, because that would be one way in which the tobacco industry might try to get round a ban on tobacco advertising. That was the substance of our discussions. The outcome was that we agreed to differ at this stage. I dare say that if the bill proceeds to stage 2, the TMA will seek to persuade members to lodge amendments to deal with that point. That would be a matter for the Parliament at that time.

**Mary Scanlon:** This morning, the Scottish Royal Colleges mentioned that we should go further in the prohibition of advertising. Would you seek such an amendment?

**Nicola Sturgeon:** I was interested in what the Royal Colleges had to say. I have sympathy with the sentiment of their argument, although I have doubts about the practicality of the all-embracing general prohibition that they were talking about. That might be something that I would like to see in place, but the advice that I have taken in drafting the bill is that a more targeted approach to advertising is the best way to deal with the issue.

There are things that I would like to be included in the bill that are not included. Brand stretching is an obvious example of that—it is not in the bill because the best advice that I had was that it would not be within the legislative competence of the Parliament. As members know, that is something that I would like to change, but at the moment we must live within the powers.

There are limitations because of the limitations of the powers of the Parliament. There are also limitations on any ban on tobacco advertising in that it may seem comprehensive at the point that it is passed, but as times change and the tobacco industry becomes more sophisticated in its approach, new opportunities open up that no one could have foreseen. When Norway first passed a ban on tobacco advertising, it did not include brand stretching, because the concept did not really exist—the legislation had to be changed

later. Although we have a clear starting point in the bill, any ban on tobacco advertising must be monitored constantly and carefully, so that legislators can move to close any loopholes as they open up.

**Mary Scanlon:** Finally, you spoke about your motivation and your commitment to a ban on tobacco advertising. Since you came to Parliament in 1999, what form—through members' business debates, cross-party groups or other measures—has your commitment to smoking cessation taken prior to lodging the bill?

**Nicola Sturgeon:** As Mary Scanlon will know, like her, I was a very active supporter of the UK Government's attempts to ban tobacco advertising. I took a keen interest in that in the Health and Community Care Committee when Malcolm Chisholm came to give evidence. I raised some questions with him then, which later proved to be the right questions to ask—I was very worried about the time scale.

I supported whole-heartedly the Sewel motion to allow the UK Government to legislate, as did Mary Scanlon, and I took from that her support for a ban on tobacco advertising. I have also been extremely supportive of my colleague Kenny Gibson's involvement as convener of the cross-party group on tobacco, which does excellent work.

I bow to no one in my desire to see the number of people smoking in Scotland reduced, and I will support any measure that I think will do that. For the first two years of the Parliament, I took at face value the commitment of the UK Government to ban tobacco advertising, and I was bitterly disappointed when that did not come to fruition.

**Janis Hughes:** One of the crucial issues that the committee has to consider is the difference between a Scotland-wide ban and a UK-wide ban. We have to consider whether a Scotland-wide ban would be effective or whether it would be better to wait for a UK-wide ban. In his evidence, the chief medical officer argued that, if the bill is enacted, there might be a conflict. You disagreed with that. In an ideal world, the bill would be enacted, a UK bill would be enacted and we would all have what we wanted. However, he seemed to think that there could be a conflict with timing. What are your views on that? I understand that you want to press the bill no matter what, because you think that it will have an impact, but do you accept that there might be a conflict and, if so, how do you balance your views?

**Nicola Sturgeon:** I do not just want the bill to be passed in the Scottish Parliament no matter what. Since I introduced the bill, I have been on record saying that, like everyone in the chamber who supports a ban on tobacco advertising, I would

rather that such a ban were implemented on a UK basis. I say that as a nationalist and I have no difficulty with it—I would even rather that the ban were imposed on an EU or international basis. That is why I supported the Sewel motion to allow the UK Government to legislate. That is why I have said repeatedly that if we get a guarantee that legislation will be in place within a reasonable time, I will not, as long as it remains within my power, proceed with the bill. I have been as honest and up front about that as I think it possible to be.

My concern is that there is still no guarantee that the UK Government will legislate for a ban. Although it would be nice to think that a UK ban would be on the statute book by June or July, we do not have a guarantee of that. I would not like us to set aside the bill because of the vague promise that UK legislation will be introduced, as we have been promised that since 1997. I would not like us to get to July, find that there is no UK ban on the statute book and have to restart the process. That would be valuable time lost, as most of the witnesses from whom we have heard have agreed.

I will be honest about my suspicion as to what is happening at UK level, although this is purely my personal opinion. If there were a clear determination to get a ban on to the statute book by July, the Government would have said so by now in order to smooth things here and to give the bill a fair wind when it got to the House of Commons. The Government's continual failure to do that, notwithstanding the difficulties that it is causing its colleagues in the Scottish Executive, causes me to have a lingering suspicion that a ban is not yet a certainty. Given that this is a devolved matter and that we have heard from a range of witnesses about the urgency and importance of a ban, we would be abdicating our responsibility to make progress if we sat back and waited for something at UK level that might never happen. That is my motivation.

We have heard a lot about a UK ban being better than a Scottish ban and I have said that I agree with that. However, the worst thing that can be said about having only a Scottish ban is that it would be less effective than a UK ban. It would not be ineffective. We have heard ample evidence that suggests that a ban would have a positive impact on smoking. We have heard the WHO definition, which would class what is proposed as a comprehensive ban.

The most important point for me is the message that the Parliament sends out. I was particularly struck by the ASH study that was carried out at the end of last year by ICM, which showed that about half the people surveyed thought that smoking could not really be dangerous because, if it were,



Governments would not allow cigarettes to be advertised. That is a striking piece of evidence. If we, as Scottish parliamentarians, can do anything to help to send a clear and consistent message, we have an obligation to do so.

**Janis Hughes:** Are you saying that you do not accept that there are risks in pushing your bill forward, given that no one in the Parliament or the Executive can assure us that the Westminster bill will progress? I am interested in Mac Armstrong's comments. How do you feel about his suggestion that your bill may knock the Westminster bill off track? If that happens, we may prevent something—a UK-wide ban—that we would ultimately like to see.

11:45

**Nicola Sturgeon:** I do not accept Mac Armstrong's articulation of the scenario that each Parliament has a piece of legislation that is progressing at the same time, although I do not deny that such a scenario is possible. I dare say that there will come a time when the pieces of legislation will conflict. Mac Armstrong argued that we have to sort that conflict out, but I argue that only the UK Government can do so. The Scottish Parliament has devolved power and we can have regard only to what we have the power to do. We have the power to ban tobacco advertising in Scotland and most of us agree that banning tobacco advertising in Scotland would be a good thing.

I repeat my point: there may be conflict down the line, but the UK Government has the power—today—to resolve that conflict by saying that it will support the Clement-Jones bill when it reaches the House of Commons. The UK Government's failure to do that baffles me and leaves me suspecting that it will not support the Westminster bill. I genuinely hope that I am proved wrong about that, but, in the meantime, we must have regard to what we have the power to do. It would be wrong for us to spend too much time second-guessing what another institution is going to do. Part of the reason for the delay in 1997 was that the UK Government waited on action from Europe. We can all learn a salutary lesson from that. As the ASH Scotland submission says, an institution that has the power to act should not wait for another institution in order to act. We should get on and do what we can. If we do so, we will have fulfilled our responsibilities.

**Shona Robison:** I have become aware through the evidence that we have received that the tobacco companies are flouting voluntary agreements. I ask Nicola Sturgeon to outline how her bill will deal with that problem. If the bill cannot deal with it, what other measures could be taken to prevent the tobacco companies from flouting

those agreements?

**Nicola Sturgeon:** The bill will deal with much of that problem, about which we have received evidence—I have heard a lot about it. The siting of billboards is an example of the ways in which tobacco companies are flouting the voluntary regulations. Under the voluntary code, tobacco companies are not supposed to site their billboards close to schools, yet there is ample evidence that the companies are completely ignoring that agreement. My bill would ban billboard advertising, so it is clear that it would deal with that problem. There is no doubt that the tobacco companies will go to any lengths to get round the voluntary regulations, which is why I believe that, ultimately, legislation is the only way in which to deal with them.

At our meeting last week, Gerard Hastings referred to the publication "Keep Smiling: No one's going to die". If members of the committee read nothing else in their consideration of the bill, I appeal to them to read that publication, as it deals with all the tobacco industry's arguments about what it does and does not do and analyses in detail how the industry goes about getting round the voluntary regulations.

The publication includes the following quotation from Benson & Hedges:

"This is to confirm that we ... have asked Noel"—

goodness knows who Noel is; perhaps he is the company's advertising executive—

"to come up with some implicit branding options for the Jordan team Formula 1 cars for the French Grand Prix. The reason being that all cigarette branding must be removed to comply with Government Regulations."

The publication contains oodles of similar examples. The tobacco companies are in the business of getting round the voluntary regulations because they are in the business of making money from cigarette sales. If we are to prevent them from flouting the voluntary regulations, we have to do so through legislation.

**Dorothy-Grace Elder:** I want to return to the efficacy of a Scotland-only bill, as opposed to a UK or European approach. We have heard many statistics about how the death rate might be lowered. As you have studied those statistics for many months, what is your view on how many lives might be saved?

**Nicola Sturgeon:** So much evidence says that banning tobacco advertising, either partially or comprehensively—we can argue about the definitions of those terms—will reduce smoking consumption and therefore save lives that I could sit here all morning and cite it. In 1992, a UK Government study estimated that a ban would reduce smoking by between 0 and 5 per cent.

When the UK Government published its own bill, it went midway on that figure and chose 2.5 per cent. For Scotland, that would mean that more than 300 lives a year would be saved. The World Bank estimated that a ban on tobacco advertising would reduce smoking by 7 per cent. Evidence from other countries shows that the figure is even greater than that.

It is difficult to be precise about the figure because the size of the reduction depends on what accompanies the ban. Everybody agrees that, to be properly effective, a ban would need to be part of an overall strategy. I am not sure that we will make great progress by arguing about whether a ban would lead to a reduction of 1 per cent, 2.5 per cent or 20 per cent.

**Dorothy-Grace Elder:** You accept that hundreds of lives might be saved. Of course, the figure depends on the extent to which we take a long-term view, as we cannot know whether the number of lives saved might not develop into thousands.

Do you accept that there might be a rapid increase in the number of magazines that come into Scotland from other European Union countries, where tobacco advertising would still be allowed? Of course, that could also happen in a British context.

**Nicola Sturgeon:** Yes, that could also happen in a British context. The bill has been subject to many criticisms—if I may call them that—that would be equally valid in relation to a UK bill. We cannot stop European magazines coming into this country. There is no doubt that, when regulations were introduced banning television advertising, the tobacco companies tried to target British voters abroad by putting a lot of money into advertising in Spain and other holiday destinations. The tobacco companies will try to get round a ban as much as they can, but that is not a reason for not creating one. As I said, we must make a start. We need to keep the ban under review and ensure that we close off as many loopholes as possible.

Statistics are important and I am convinced that a ban on tobacco advertising will save lives. However, as we have heard from other witnesses, a ban will help to bring about the denormalisation of smoking. We are talking about more than just statistics. In many communities and in all our constituencies, there are areas in which smoking is the norm and is the majority behaviour. For many, smoking is perfectly acceptable. Advertising contributes to that.

**Dorothy-Grace Elder:** That happens in the poorest areas. Might not some of the witnesses have been as well to argue for a ban on poverty?

**Nicola Sturgeon:** If I may say—

**The Convener:** Let me halt you there, because I want to bring in John McAllion, who also has a question on that point.

**Mr McAllion:** What are your views on the targeting of particular groups by tobacco advertising? I want to clarify something else. You said that the bill is closely modelled on the equivalent Westminster bill. If both Parliaments are supporting the same bill, in what sense can there be conflict between the two bills as they make their way through the two Parliaments?

**Nicola Sturgeon:** That is a good point. In some respects, there can be no conflict. Although the Scottish bill does not try to go further than the UK bill, it does not contain those provisions of the UK bill that a Scottish bill could not contain. If both bills were passed, we would simply have a Scottish act plus the bits that Scotland cannot do. In that respect, a good argument could be made that there is no conflict between the two bills. The worst that we could say is that there is duplication in the provisions that are in both bills.

**Mr McAllion:** The Scottish Parliament has no control over the Westminster procedure. Equally, this committee has no control over the procedure in this Parliament. If your bill was treated in the same way as other members' bills, when would you expect it to be on the statute book?

**Nicola Sturgeon:** If the committee agrees a report in late February or early March, I understand—although the Parliamentary Bureau has not yet taken any decisions on this—that the stage 1 debate in Parliament would probably take place around April. Stage 2 would then take a few weeks. We are talking about the bill probably reaching the statute book at about the same time as the UK bill, provided that the UK bill gets Government support. The difference between taking control by agreeing to the Scottish bill and relying on the UK bill is that we can be certain that, if we agree to the Scottish bill, we can get it on to the statute book by June or July. We have no such certainty with the UK bill, as we would in effect be relying on another Parliament to do what we want it to do. I tend to opt for certainty over vague hope.

**Mr McAllion:** Okay. Perhaps you can answer the question about targeting particular population groups.

**Nicola Sturgeon:** I have no doubt that tobacco companies ruthlessly target certain groups in society. They target the groups in which they see the biggest potential for market expansion. We have heard evidence about the two groups that they target in particular—young people and people on low incomes.

There is plenty of evidence to show that premium brands tend to be advertised in broadsheets and men's magazines, whereas

cheaper brands are advertised in tabloids. The advertising of cheaper brands focuses on price. For example, one strapline reads:

"Mayfair—20 quality smokes for £2.99".

That clearly targets people on low incomes.

As one of the witnesses said, 90 per cent of smokers begin smoking before their 18<sup>th</sup> birthday. It is clear that young people are a key strategic market. I go back to "Keep Smiling: No one's going to die", which contains a quotation from a Gallaher advertising brief. It says:

"18-24s are a key target and a problem area for Gallaher".

The industry clearly wants to target people in the younger age group.

Again, I make a plea for members to read the document, which contains many examples of that approach. For example, it includes this quotation:

"We want more 18-34 year old blokes smoking B&H than ever before ... So what we need is the coolest, most exciting, white knuckle ride of a campaign ever."

It is game, set and match when we read:

"Much of Hamlet's success is based on getting people young".

That is the hard evidence that the tobacco companies target young people. Much anecdotal evidence comes from observing with one's own eyes. I challenge anyone to drive through Glasgow and reach a conclusion other than that tobacco companies target deprived communities.

**The Convener:** You mentioned that you had considered including in the bill provisions to cover brand sharing and stretching and that the best advice that you had been given was that such things were not within the legislative competence of the Scottish Parliament. What advice did you take and what background work did you do on that issue? If we were to find out, for example, that people felt that the issue of brand stretching was within the Parliament's competence, what impact would including it in the bill have on the timetable that you have outlined?

**Nicola Sturgeon:** I am not sure that it would have an impact on the timetable—the issue would be covered in an amendment at stage 2. I would be delighted to support such an amendment. If the bill can cover brand sharing, it should. That would have an impact on the quality of the legislation, because it would make it better.

I am not sure how appropriate it is at this stage to go into the detail of the discussions that I had. If the clerks scowl at me, I will shut up. The draft bill that I lodged initially contained a section on brand sharing. The advice that I received from the parliamentary legal team was that that was outwith the competence of the Parliament. It related to

sale-of-goods legislation, which is reserved under the Scotland Act 1998. The legal team's view was that it was likely that the bill would not be granted a certificate of legislative competence if that section were included. I would be delighted if we were to hear advice to the contrary.

**The Convener:** Thank you for undertaking that grilling.

11:58

*Meeting continued in private until 12:20.*



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