

# **HEALTH AND COMMUNITY CARE COMMITTEE**

Wednesday 6 March 2002  
*(Morning)*

Session 1

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## HEALTH AND COMMUNITY CARE COMMITTEE

6<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

Mr Tim Lord (Tobacco Manufacturers Association)

Mr Chris Ogden (Tobacco Manufacturers Association)

### CLERK TO THE COMMITTEE

Jennifer Smart

### SENIOR ASSISTANT CLERK

Peter McGrath

### ASSISTANT CLERK

Michelle McLean

### LOCATION

The Chamber



## Scottish Parliament

### Health and Community Care Committee

Wednesday 6 March 2002

(Morning)

[THE CONVENER *opened the meeting at 09:33*]

### Items in Private

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

Under agenda item 1, the committee will consider whether to discuss items 4 to 13 in private, for a range of reasons. I think that that is the highest number of items that we have ever had to discuss in private session.

On the public health inquiry, we want to discuss the potential remit and the witnesses. We want to discuss cancer services in Scotland in private for the same reason. On hospital acquired infections, Arbutnott allocations and the health plan, we have points to raise with the Executive.

We have a request from the Finance Committee to consider what we can do to assist with its inquiry into the private finance initiative. We have to consider our forward work plan, the proposed mental health legislation—including the potential requirement for an adviser—and our draft report on fuel poverty.

Do members agree to discuss agenda items 4 to 13 in private?

**Members** *indicated agreement.*

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

**The Convener:** Item 2 is our final evidence-taking session at stage 1 of the Tobacco Advertising and Promotion (Scotland) Bill. Mr Tim Lord and Mr Chris Ogden of the Tobacco Manufacturers Association are here to give evidence.

Good morning, gentlemen. Thank you for your attendance and for your written submissions to the committee, which have been useful in advance of the meeting. Do you want to begin by making a short statement? My colleagues and I will then ask questions.

**Mr Tim Lord (Tobacco Manufacturers Association):** Thank you and good morning. I have been the chief executive of the Tobacco Manufacturers Association since January 2002, when I succeeded David Swan. We thank the committee for the opportunity to give evidence.

Because I have only two months' experience in the job, and given that the learning curve has been steep and continues, I am sure that members will understand that I might deflect some questions to my colleague, Christopher Ogden, who is director of trade and industry affairs at the TMA.

The views of the TMA and its member companies have been set out in detail in our submissions to the committee. Before we take questions, I will summarise our position.

First, we agree that regulation of access to tobacco products, and of tobacco advertising and promotion, is necessary to reduce child access and to discourage children from taking up smoking. Secondly, we believe that the industry is already tightly regulated by agreements between the industry and health ministers. Those agreements are described as voluntary, but their terms and procedures for enforcement are laid down by ministers.

The voluntary agreements work. Since they have been in force, tobacco consumption has fallen more in the United Kingdom than in almost every country in Europe, including those countries in which advertising bans have been introduced. There is no consistent or reliable evidence to demonstrate that legislation that bans tobacco advertising is essential to the reduction of consumption.

It is claimed that legislation is needed to stop tobacco companies targeting children. Children should not smoke and should be strongly discouraged from doing so. Our members do not

direct their advertising at children—they are not allowed to do that under the existing regulations.

Legislation to ban tobacco advertising—and all other possible means of promoting brands—is unlikely to achieve health policy objectives. Perversely, the opposite might happen because, without advertising, or at least some form of marketing to existing adult smokers, price and distribution will be the only means by which brands will be able to compete. Consumers will end up buying low-priced brands and—which is important—low-priced imported brands. As prices fall, consumption will rise. That will encourage youth smoking.

As a result of the UK's policy of a high tobacco tax, 30 per cent of cigarettes that are consumed in the UK, and 70 per cent of hand-rolling tobacco, are now duty paid or smuggled. Tobacco consumption has increased for the first time since the early 1970s. Children gain access to those cheap cigarettes. The Treasury has lost billions—£12 billion, to be precise.

A total advertising and promotion ban, combined with continuation of a high-tax policy, will create even more disorder in the market and make it less likely that health policy objectives will be met. If the Scottish Parliament insists on legislating despite those likely consequences, the legislation should be framed with health policy objectives foremost; it should be evidence-based, proportionate and compatible with the European convention on human rights. In the view of the TMA, the proposed bill falls short of those criteria in a number of areas, as we have outlined in our written submission.

There is a better, alternative route that the committee could promote and by which it could be assured of achieving the desired result. That route, which could be implemented swiftly, is joint full and detailed exploration by the Scottish Minister for Health and Community Care and the industry—represented by the TMA—of the possibilities that the existing regulatory framework of voluntary agreements offers to best regulate the advertising and promotion of tobacco in Scotland.

**The Convener:** Thank you.

Before we move to questions, I want to pick up on points that you made in your oral and written submissions about legal aspects of the bill. I inform members that I have sought legal judgments on various points in the TMA's written submission. On the TMA's claim that the bill is not competent, the Parliament's legal advisers examined the bill's legislative competence and advised that the bill as introduced includes a statement by the Presiding Officer on its legislative competence, as is required under section 31(2) of the Scotland Act 1998 and rule 9.3.1 of the

Parliament's standing orders. I have received legal advice that the bill does not breach the ECHR or European law. On directive 98/34/EC, the fact that the bill has not been notified to the European Commission does not affect its competence. The equivalent Westminster bill was similarly not notified to the EC.

**Mary Scanlon (Highlands and Islands) (Con):**

On that theme, I refer to paragraph 52 of the TMA's written submission, which says:

"We ... reiterate our view that the Bill is a disproportionate interference with the TMA's members rights of freedom of expression under Article 10 ECHR and an infringement of their property rights ... in violation of Article 1 of Protocol 1."

Paragraph 53 says that the bill is likely to be a "prohibition" that will be

"in breach of Articles 28 and 49 of the EC Treaty which prohibit restrictions on the free movement of goods and services."

We have received our legal advice. Can you tell us where you stand?

**Mr Lord:** Yes. We feel that the bill should be referred to the EC. It is interesting that the Scottish Parliament and the Westminster Parliament did not agree with that view, but that the Dutch and the Danes, in similar legislative reviews, felt that it was appropriate to refer the matter to the EC. We asked for clarification in a letter to the EC. A key reason for doing so was that, if a bill is enacted and subsequently questioned by the European Parliament, that could cause much confusion for our members.

Yesterday, we received a one-paragraph response from the EC, which states:

"In response to your letter of 12 February regarding the United Kingdom and Scottish Tobacco Advertising and Promotion Bills, I would like to inform you that according to the services of the Commission, the bills are notifiable under Directive 98/34/EC. The services of the Commission intend to inform the UK authorities that the draft bills should in its view be notified under that Directive."

We received that response by fax at 5.35 yesterday.

**The Convener:** I presume that you would be happy to give us a copy of it.

**Mr Lord:** With pleasure.

**Mary Scanlon:** I will leave it at that, as it is obvious that we will have to return to the matter.

In paragraph 30 of your written submission, you seem to question the claims of previous witnesses regarding the Smee report. You say that the balance of evidence supports the conclusion that advertising has a positive effect—I am sorry, but I think that I am reading the Smee report's conclusions.

What effect will the ban on tobacco advertising have on the consumption of cigarettes, in your view?

**Mr Lord:** We have read many of the statements from previous witnesses. For us, the overwhelming conclusion is that studies around the world and reviews of the relevant literature provide no convincing evidence that a ban on tobacco advertising will result in a reduction in tobacco consumption. For every study that states that there might be a reduction in consumption, another states that there will be no such reduction. On framing legislation in that context, we do not believe that there is convincing and irrefutable evidence that an advertising ban will impact on consumption.

I am relatively new in my role, but I have gone through the Smee report and I can find no reference in it to an estimate of a reduction in consumption. The report could not come to a conclusion about the likely impact on tobacco consumption of a tobacco advertising ban in the UK.

On the other hand, if we compare the absolute consumption of tobacco in about 1996 with what it was in the early 1970s when the voluntary agreement was established, we see a 37 per cent reduction in tobacco consumption. There has been a significant reduction in the number of people in the UK who smoke. That reduction is greater than the reduction in virtually every other European country. The evidence that advertising bans bring about a reduction in tobacco consumption is unclear, whereas hard figures are available for the voluntary agreement.

09:45

**Mary Scanlon:** Given the irrefutable evidence that tobacco is linked with heart disease and lung cancer, what effect will the bill have on public health? What action should be taken on smoking to enhance public health in Scotland?

**Mr Lord:** We see no reason why the bill would result in a reduction in tobacco consumption in Scotland. To bring about a reduction in smoking, in the consumption of cigarettes and in the number of children who smoke, the health ministries should sit down with the industry. The voluntary agreement that has been in place since the 1970s has been modified 11 times, I think, because we have sat down with ministers to understand their agenda and their objectives. We would be more than happy to sit down with the Scottish Executive health department to discuss whether it would be possible to amend the voluntary agreement in line with the health objectives.

Reduction of the number of children who smoke is difficult. We have examined much of the research that has been done by independent

organisations, such as the study that was done by Goddard back in 1990. In 2001, the *Nursing Standard* supported our review of a 1998 study that was done by someone whose name I have forgotten. In those studies, the reasons that children gave for starting to smoke included peer pressure, the fact that their parents smoke, or their being a girl. The reasons relate to the home, to peers and to elders. Those are the areas that need to be addressed if we are to generate a reduction in child smoking. What is interesting is that advertising does not feature in those studies and in others.

**The Convener:** It is indisputable that there is a difference of opinion on the effect of advertising. The issue is made more complicated by the fact that different countries have introduced different types and levels of bans, which are set in different contexts. You are correct to say that there are two sides to the debate but, despite all that, the Smee report to which you referred states:

"The balance of evidence thus supports the conclusion that advertising does have a positive effect on consumption."

Before I defer to my colleagues who want to ask other questions, I want to ask whether the TMA would support the principles of the bill if there were conclusive evidence that advertising increases consumption and that a ban would most likely decrease consumption.

**Mr Lord:** It is difficult to answer a hypothetical question. We have examined a lot of the evidence from around the globe for banning tobacco advertising, but we have not found convincing evidence. You have quoted Smee's qualitative comments, which were made after Smee was unable to produce an estimate of what the reduction in consumption would be.

To answer the question slightly obliquely, it is possible that, through dialogue, we could agree to introduce into the voluntary agreement provisions that would reduce the number of vehicles for tobacco promotion that are available to manufacturers. However, I do not really want to get into all that now. We are more than happy to sit down and discuss with health ministries ways in which to achieve health objectives.

**Mr John McAllion (Dundee East) (Lab):** Mr Lord, I wish to tackle you on the idea that advertising does not affect the consumption of tobacco because it is aimed exclusively at existing smokers. Indeed, you say that under the voluntary agreements any tobacco advertising that

"has the purpose or effect of increasing consumption"

is not allowed. In your letter to Nicola Sturgeon, you give the statistic that between 1971 and 1996 consumption dropped by 37 per cent. Is that a UK statistic?

**Mr Lord:** Yes.

**Mr McAllion:** In Scotland during that 25-year period, about 13,000 smokers died every year. A much larger number of smokers died in Britain every year during that period. Does that 37 per cent drop reflect the number of smokers who died from cancer?

**Mr Lord:** It represents the absolute reduction in cigarettes smoked. Does that answer your question?

**Mr McAllion:** No. The point that I am trying to get at is that, if non-smokers are not affected by advertising, consumption is reducing because smokers are dying from cancer. Do you accept that?

**Mr Lord:** That is not what I mean. I mean simply that the number of cigarettes smoked throughout the UK reduced by 37 per cent, which reflected a reduction in the incidence of smoking among men and women and a reduction in the number of cigarettes smoked.

**Mr McAllion:** You concede that, during the period from 1971 to 1996, millions—or thousands, anyway—of new smokers took up smoking.

**Mr Lord:** I suspect that that is true.

**Mr McAllion:** Your argument is that they were totally unaffected by advertising.

**Mr Lord:** It is not I who says that; it is said by people who are expert in the area and who talk to children, such as Goddard did in the 1990s, and by the *Nursing Standard* report, which reviewed the literature. It is said by people who have attempted to understand why children smoke. With respect, that is what we need to examine. Those people gave reasons why children smoke, which I referred to earlier.

**Mr McAllion:** It is difficult to prove that the purpose of advertising is to target particular groups. Let us consider brand stretching. Why do tobacco companies sponsor motor cars and have the names of their products all over the cars? Is it to attract people who are not smoking, particularly young people, who find racing driving exciting?

**Mr Lord:** Would you like me to talk about formula 1?

**Mr McAllion:** Whatever. You stretch brands into designer clothes that young people wear. You stretch them into exciting sports that young people watch. You are targeting young people. You are trying to encourage them to smoke.

**Mr Lord:** Let us be absolutely clear: we have a voluntary agreement and we do not target young people. The objective of our advertising is to persuade existing smokers to make an alternative brand decision.

**Mr McAllion:** So only smokers watch formula 1 car racing.

**Mr Lord:** Let us talk about formula 1. That is an example of where the voluntary agreement can have effect. We can talk only about the United Kingdom, because the TMA's remit is restricted to the UK. Following discussions on formula 1 with the Department of Health, we have made some changes to the way in which sponsorship is managed in the UK. Cars do not have cigarettes branded on them. Cameras are not supposed to go on to—

**Mr McAllion:** But the names of products are branded on the cars.

**Mr Lord:** The brand names?

**Mr McAllion:** Yes. People know exactly what those names mean. Just because there is not an image of a packet of fags on the car does not mean that people do not know what Rothmans and Gallaher are.

**Mr Lord:** We have achieved a situation in the UK where formula 1 cars do not carry cigarette brands.

**Mr McAllion:** In snooker, everyone knows what Benson and Hedges is; they do not have to be told. Snooker players do not have to have a packet of fags branded on their waistcoats for people to understand what Benson and Hedges is. That is brand stretching. That is attracting people who are not smoking. Your advertising is deliberately designed to attract non-smokers.

**Mr Chris Ogden (Tobacco Manufacturers Association):** If I may, I will chip in, because I have been more directly involved with the operation of the voluntary agreements. It is important for the committee to understand, as I am sure members do, that the term "voluntary" does not mean that we can take it or leave it. The agreement is voluntary only in the sense that we have chosen to submit to a set of regulations that were imposed by the Government, without the need for legislation. The voluntary codes are strict and are rigorously applied.

**Mr McAllion:** To brand stretching?

**Mr Ogden:** They apply to advertising, promotion and sponsorship.

**Mr McAllion:** Let us be absolutely clear: do they apply to brand stretching?

**Mr Ogden:** They apply specifically to tobacco brand advertising and promotion and to sponsorship. Other goods are not our concern. We represent the tobacco manufacturers and we are concerned with the brands of tobacco and cigarettes that they sell and manufacture.

**Mr McAllion:** I would like to be clear about that,



because that answer was not clear. Is a racing car with the word "Rothmans" on it covered by the voluntary agreements?

**Mr Ogden:** Absolutely.

**Mr McAllion:** Is the Benson and Hedges snooker tournament covered?

**Mr Ogden:** In the United Kingdom, a racing car would not display the word "Rothmans", because the voluntary agreement forbids the use of identifiable brand names on cars at events in the UK.

**Mr McAllion:** What about snooker tournaments?

**Mr Ogden:** At televised events, the brand image would not be portrayed on screen, although its name may be included in the title of a tournament.

**Mr McAllion:** Are designer clothes that just happen to carry a brand name banned under the voluntary agreement?

**Mr Ogden:** Having a brand name on clothes is banned. If a participant in a sport, whatever it is, has branded clothing—

**Mr McAllion:** I am not talking about sport; I am talking about designer clothes.

**Mr Ogden:** As I have tried to point out, that is an entirely separate matter.

**Mr McAllion:** So designer clothes are not covered by the voluntary agreement.

**Mr Ogden:** They are covered only in the sense that, if goods or services carrying tobacco brand names are portrayed in such a way that smoking is encouraged or addressed, they are banned.

**Mr McAllion:** So simply carrying the name is not banned.

**Mr Ogden:** If the name appears on another product that has nothing to do with tobacco, that is permitted. Some aftershaves carry tobacco brand names.

**Mr Lord:** It was said that the voluntary agreement lacks a statutory basis. However, the agreement has changed a number of times—at the request not of tobacco companies, but of ministers—to match changes in elements of the health agenda. We expect changes to be made in future. We could sit down with the health department in Scotland to discuss areas of concern and changes to the voluntary agreement. That is one of the offers that we are making to the committee.

**Mr McAllion:** I cannot believe that the industry is spending £30 million a year to target people who already smoke.

**Mr Lord:** We bandy around figures such as £30

million—

**Mr McAllion:** That is your figure, not mine.

**Mr Lord:** That is correct; I do not dispute the figure. However, no tobacco brand appears in the top 10 advertised products in the UK.

**Mr Ogden:** The total amount spent on car advertising is about £250 million.

**Mr Lord:** All the data to which I refer come from external sources. The amount of money that is spent on advertising cigarettes is relatively small compared with the amount that is spent on advertising detergents, cosmetics, toiletries, cars and banks. The biggest advertiser in the UK is the Government.

**Mr McAllion:** The Government does not kill you, at least not yet—although that depends on which country you live in.

**Nicola Sturgeon (Glasgow) (SNP):** I want to pursue advertising, targeting and consumption. Many people have difficulty accepting your assertion that tobacco companies are not interested in using advertising to attract new customers, even though every year in Scotland the industry is losing 13,000 people through death alone. To some extent, the intentions of the tobacco companies are irrelevant, because whatever the adverts are intended to do, everyone will see a billboard advertising a packet of cigarettes, regardless of whether they live in a deprived or a non-deprived area or whether they are young or old.

For the purposes of my question, I will accept—albeit with difficulty—your assertion that advertising is directed solely at existing customers. Does not that reinforce the sense that smoking is normal, strengthen existing smokers' positive perceptions of smoking and operate to undermine anti-smoking messages and initiatives aimed at supporting people to give up smoking? Even if we accept the arguments that you make, is effective advertising not damaging to the efforts that are being made to persuade people to give up smoking?

**Mr Lord:** I have no evidence to support that, although I understand what you are saying.

**Nicola Sturgeon:** Do you not feel instinctively that that is likely to be the case?

**Mr Ogden:** The rules to which we conform are absolutely clear. Tobacco advertising must not encourage people to start smoking or encourage smokers to smoke more. It must be targeted at existing smokers.

At this point it might be worth mentioning commercial considerations. Manufacturers in the UK are operating in a declining market. Through premium branding, they are attempting to manage

decline in an orderly way. Government also has an interest in that, in so far as revenue is affected. As Tim Lord has explained, if advertising is denied to UK manufacturers, the whole health policy will be undermined by cheap imports, which will no longer have to break through the barrier of the established premium brands because they will be cheaper and more widely available. Such a measure would be counterproductive.

The cigarette code is absolutely precise on what is and is not permitted. On every advertisement and every piece of promotional material, 20 per cent of the space has to be devoted to a health warning. Together with the image of the brand, there is always a health warning to inform adult smokers of the health issues.

10:00

**Nicola Sturgeon:** I do not dispute that you target your advertising at existing customers. However, the Government's priority should not be to manage the decline of the tobacco industry; it should be to cut the number of people who die of smoking-related illnesses every year. Even if you target your advertising only at existing customers, that surely undermines the efforts of the Government and of Government agencies to encourage existing smokers to give up smoking. It may be that 20 per cent of every advert is a health warning, but 80 per cent concentrates on the product that is killing people. Even if we accept what you say, the effect of cigarette advertising is surely, at the very least, to reinforce positive images of smoking among existing customers and to undermine efforts to cut the number of people who smoke and who die from smoking.

**Mr Lord:** We have to remember that cigarettes are not banned in the United Kingdom and that the tobacco industry is a legal industry.

**Nicola Sturgeon:** I accept that.

**Mr Lord:** We believe that we have a right to talk to adult smokers. At the moment, the voluntary agreement allows us to use the posters to which you have referred. In 1997, we went to the Government in Westminster with proposals, one of which was to give up using posters. We were trying to help the new Government to deliver our perception of what its health objectives were. The Government refused to talk to us. Those proposals were on the table back in 1997. I say that to re-emphasise a point that I made previously. Voluntary agreements are living and breathing things—we can add, we can take away and we can negotiate.

**Nicola Sturgeon:** If you are happy to stop advertising on billboards, as you were in 1997, why do you not just do it?

**Mr Ogden:** With or without advertising, awareness of tobacco products and their availability will not go away. As Tim Lord said, tobacco is a legal product. We have to face the increasing problem of smuggling and the availability of tobacco in pubs and car-boot sales around the country. Even at Ayr races, where we undertook one of our pack-collection studies, we found that, on average, 30 per cent of discarded cigarette packs were non-UK duty paid. That is the level of penetration in Scotland. People are aware of the products.

Our manufacturers, which employ British workers, contribute hugely to the balance of payments. They are attempting to maintain the premium brands for those who wish to continue smoking. If you take away advertising and brand positioning, people will still be aware of tobacco.

We have more practical and positive measures to contribute, such as denying access at point of sale. We are all concerned about children having access to tobacco products and we have put considerable resources into supporting a national proof-of-age scheme called CitizenCard. I understand that, in Scotland, the Young Scot card can be used for proof of age at point of sale. That is the kind of thing that we want to co-operate with and contribute to—positive and practical measures to help to meet policy objectives in a way that is mutually beneficial.

**Bill Butler (Glasgow Anniesland) (Lab):** You have talked about the existing voluntary system that governs tobacco advertising and sponsorship. Will you outline for us the consequences for a company that is found to be in breach of those regulations?

**Mr Ogden:** The voluntary agreements are overseen by the Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship. Until 1999, it met under an independent chairman. The last chairman was Sir Clive Whitmore. He retired in 1999 and the Government chose not to replace him. However, the committee still meets. When complaints are received, they are dealt with by representatives from the TMA and Government departments: the Department of Health and the Department for Culture, Media and Sport, which is concerned with sponsorship issues. Complaints are considered against the code and adjudications are made. In all events, we defer to the Department of Health's decision. If there is a breach of the code, our companies act promptly to redress it.

Over the years, the average number of complaints that have been upheld has been about a dozen a year. I will spell out some instances of those breaches. One of the rules of the voluntary agreement requires that no posters should appear within 200m of any school. There have been

breaches in which posters have been found, for example, 180m from a school. That has been the fault of the poster contractor—the bill sticker has simply got things wrong; there was human error—but the companies address such instances immediately.

In 1996, the companies undertook to remove all permanent shopfront advertising. Advertising was removed from the thousands of retail outlets up and down the country. However, after the deadline, some shops that had closed down and were boarded up or had grilles across them still had permanent display material in them. When that was discovered and complaints were made, the complaints were upheld as a technical breach of the code. The sales representatives from the companies went to the local estate agents, established who had the keys to the properties and entered to remove the material from the closed properties. That is the extent of the commitment to conforming to the voluntary agreements.

**Bill Butler:** Do you consider those actions adequate? Are any financial penalties invoked?

**Mr Ogden:** No financial penalties are invoked. I suppose that the penalty that overhangs the whole matter—the ultimate sanction—is for the Government to refuse to proceed on a voluntary basis and to hasten legislation. Details of the complaints are published in an annual report. The process is open.

**Bill Butler:** You suggest in your submission that, instead of legislation, we should consider a new system of voluntary regulations and that that could be explored for Scotland. What could such regulations bring to bear that is not already in place, given that what seems to be in place is not all that exacting, certainly not financially? Would you consider complying with a voluntary system to which financial penalties were attached?

**Mr Lord:** I am not sure that we want to get into negotiations at the moment.

**Bill Butler:** I am asking a hypothetical question.

**Mr Lord:** We would be happy to discuss anything. I have not answered your question directly because I am not going to.

**Bill Butler:** Would you care to elucidate? Could you throw a little more light on your comment?

**Mr Lord:** I go back to the tangible example that I gave in response to Nicola Sturgeon's question. In 1997, we made a proposal to the Westminster Government that we would, among other things, stop using posters. We are keen to understand what the Government wants and to respond to that. Over the past 20 or 30 years, we have responded to successive Governments by amending the voluntary agreement to reflect their

needs. We are happy to do that.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** On page 4 of your submission, you suggest that there is

“an unwillingness to explore other less restrictive measures”,

such as

“the use of the existing voluntary agreements on the regulation of tobacco advertising and sponsorship”.

You also claim that the restrictions that are proposed in the bill are “disproportionate”. Would you like to expand on that in light of the comments that you have given to the committee?

**Mr Lord:** The main point is that, if we had clear evidence that advertising bans had an effect on consumption from places where such bans have been implemented, it would be difficult to argue what we argue. We do not consider that there is a clear or consistent message from around the world about the impact of a ban on advertising tobacco consumption. To draft legislation around the premise that an advertising ban will reduce consumption is disproportionate and inappropriate.

**Dorothy-Grace Elder (Glasgow) (SNP):** I thank the witnesses for their advance submissions, which are always useful. Has your organisation—or have member companies—ever made donations to political parties, whether Opposition or Government parties?

**Mr Lord:** The TMA has not. I cannot speak for our member companies.

**Mr Ogden:** I cannot speak for them on that, either. My understanding is that the current practice is not to make donations to political parties. I do not know what happened in the past and would not want to comment on it.

**Mr Lord:** We could get the answer for you.

**Dorothy-Grace Elder:** Yes, you could give the committee the answer in writing later. Donations have been made to political parties while they were in opposition, but donations to parties that are in government are perhaps more important. We would also like to know the sums from individual companies, because over the years there has been a known relationship between some political parties in government and the tobacco industry. That leads on to the tax issue—

**The Convener:** Can we ferry back to the points that you were—

**Dorothy-Grace Elder:** I am leading on to the tax issue.

**The Convener:** I do not particularly want you to go down that line of questioning.

**Dorothy-Grace Elder:** I am sure that you do not.

**The Convener:** I would prefer you to go down the line of questioning that we talked about, which included consideration of identity cards. That is what you told colleagues you were going to ask about.

**Dorothy-Grace Elder:** We will hop on to that.

You make the point that smuggling is related to total tobacco sales. The Chancellor of the Exchequer has lost £9 billion since 1997 as a result of the illicit cigarette trade. You also say that children have gained easier access to tobacco products as a result of indiscriminate illicit sales by rogue traders. I am not entirely certain how much more difficult it is for children to obtain cigarettes illicitly from a small shop than from rogue traders. Perhaps you could expand on that.

**Mr Lord:** Yes, with pleasure. Thirty per cent of the UK tobacco market is contraband product. Of that, 5 or 6 per cent consists of people who go to Europe to buy cigarettes for personal consumption. Although some of that amount is indeed for personal consumption, some of it consists of products that are brought back by white van man. A large proportion of the remaining 20-odd per cent of cigarettes are counterfeit cigarettes that come from places outside the European Union. How do children get hold of those products? Those products are sold on high streets, in car parks, at boot sales, in pubs and in many locations. I can name streets—for example, Holloway Road in London—where people selling those products can be found.

**Dorothy-Grace Elder:** I presume that the people involved are adults, who sell the product on to children.

**Mr Lord:** No constraints on whom they sell their products to apply to such people. If a 10-year-old child goes up to a guy who is selling on the street, that guy will sell to the child. Shopkeepers are under an obligation not to sell to children under the age of 16 and are increasingly encouraged to ensure that the young people to whom they sell have proof of identity. That is one of the schemes that we support, as my colleague indicated. Trading standards officers are vigilant in ensuring that that obligation is enforced.

**Dorothy-Grace Elder:** Are you saying that, overall, the heaviest threat of illicit sales to children has moved from rogue shopkeepers to the sale of contraband cigarettes on the streets, in which advertising does not feature?

**Mr Lord:** Yes—you will never have heard of many of the brand names involved, although you will have heard of some of them, especially in the case of counterfeit cigarettes. Such cigarettes are uncontrolled. None of the regulations that normally apply to the purchase of cigarettes applies to street sales, much of which is run by organised

crime. That is frightening. We use the term “disorderly” to describe street sales. If you pay £4.50 for a pack of cigarettes from a retailer, you may pay only £2 on the street corner.

10:15

**Dorothy-Grace Elder:** You spoke about proof-of-age cards to show retailers that people were buying cigarettes legally. Is that idea now less important because street contraband sales pose a greater threat?

**Mr Lord:** You are correct: cards will work only in the legitimate retail sector. The Government will have to address contraband sales, especially, as you suggest, because of sales to children.

**Dorothy-Grace Elder:** The Government has its own billboards and is currently advertising the fact that it has recruited 900 extra Customs and Excise officers to combat illegal tobacco sales. I have no doubt that you approve of that.

**Mr Lord:** Indeed.

**Dorothy-Grace Elder:** Why do you think that the Government has recruited 900 extra Customs and Excise officers to fight cigarettes but not to fight heroin?

**Mr Lord:** I cannot speak—

**The Convener:** I think, Dorothy—

**Dorothy-Grace Elder:** Is it because heroin does not bring in tax revenues as tobacco does?

**The Convener:** I do not think that that is an appropriate question—

**Dorothy-Grace Elder:** I do.

**The Convener:** Well, you may do, but I am in the chair and I do not. That is my ruling.

I thank the witnesses for attending and for answering our questions.

## Petitions

### Multiple Sclerosis (PE223 and PE431)

**The Convener:** As members know, we periodically review the situation regarding petitions. PE431 is on behalf of the Multiple Sclerosis Society Scotland. The Public Petitions Committee has asked us to consider the petition alongside petition PE223, which, I believe, is on beta interferon.

PE431 calls on the Scottish Parliament to take the necessary steps to ensure that patients who may benefit from beta interferon and glatiramer receive it as soon as is logistically possible. Members should note that the Executive made an announcement on beta interferon trials on 4 February 2002. We all very much welcomed that announcement. I suggest that we take no further action on PE431 and PE223 at this point.

*Members indicated agreement.*

**Mr McAllion:** Would it be appropriate, convener, for you to write back to the petitioners, or would you prefer to write back to the Public Petitions Committee to ask it to write to the petitioners? It is important that we keep petitioners informed.

**The Convener:** I should write back to you, John, as convener of the Public Petitions Committee, to tell you what we have decided and why. You could then write to the petitioners. We usually have to tell you what we have done with petitions, do we not?

**Mr McAllion:** You should do, yes.

**The Convener:** Actually, there is a clarification. I have just been told that we will write to the petitioners.

**Mr McAllion:** But you should also write to the Public Petitions Committee.

**The Convener:** Yes, we will do both.

### Autistic Spectrum Disorder (PE452)

**The Convener:** PE452 calls on the Scottish Parliament to investigate a range of issues relating to the methods of diagnosis and treatment of adults with autistic spectrum disorder in psychiatric wards in Scotland. The petition has been passed to us by the Public Petitions Committee for information. I suggest that we take no further action at this stage.

*Members indicated agreement.*

### Organ Retention (PE370)

**The Convener:** PE370 is from Lydia Reid on behalf of Scottish Parents for a Public Enquiry into

Organ Retention. In December 2001, the Health and Community Care Committee agreed to note the petition and to await the outcome of the Scottish Executive consultation on the findings of the independent review group on retention of organs at post-mortem. The Executive's consultation is continuing and the committee has made a response to it. It is recommended that no action be taken on the petition at this stage. Is that agreed?

*Members indicated agreement.*

**The Convener:** The consultation will end on 31 March. It is for the Executive to decide when it will respond to that.

### Chronic Pain Management (PE374)

**The Convener:** PE374 calls on the Scottish Parliament to act urgently to redress the underfunding of chronic pain management services. The Health and Community Care Committee asked the Executive about its assessment of the needs of patients suffering from chronic pain and about whether the current chronic pain management programmes deliver the appropriate services. We received a response in October 2001. In November, we considered the reply and agreed to write to the Scottish Executive for further clarification of its position on the funding of chronic pain services. Members have a copy of the Executive's response, dated 1 December.

A response is currently being sought to some of the questions that we asked. It is recommended that the petition be continued until that response has been received. We are all aware of the fact that recently there was a debate in the Parliament on chronic pain which generated a considerable amount of public interest. I suggest that, if we continue the petition until we have received a further response from the Executive, we should return to it before consideration of the next round of petitions, as answers have been received to most of the questions that we asked. Once the remaining questions have been answered, we can consider the petition as a separate agenda item.

**Dorothy-Grace Elder:** The head of broadcasting has just told me that there have been well over 100,000 internet hits from 18 countries for the debate on chronic pain. Obviously, most hits have come from the United Kingdom and Scotland.

The head of broadcasting has also given me some of the postings that have been received, which I will pass to the clerks. Some members may want to have those.

**The Convener:** We recognise that there has been a big public response to the debate. Is the committee happy to accept my suggestion that we

continue the petition and return to it as a separate agenda item when we have received the Executive's response?

**Members** *indicated agreement.*

**Dorothy-Grace Elder:** Could we—

**The Convener:** A decision has been taken on the petition.

### **Scottish Ambulance Service (PE381)**

**The Convener:** PE381 calls on the Scottish Parliament to examine the Scottish Ambulance Service's proposals to close five of its eight Scottish operations rooms. The Audit Committee is being kept informed of the business plan and the matter is in its hands. For that reason, I suggest that the committee take no further action on the petition at this time. Is that agreed?

**Members** *indicated agreement.*

### **Scottish Parliament Health Policy (PE320)**

**The Convener:** PE320 is from John Watson on behalf of the World Development Movement. The report that we have received on this matter is currently a private document. It is suggested that the report be discussed further in private at a later meeting. I propose that we continue the petition until our meeting of 13 March, to allow for discussion of the draft report.

We have also received comments from the European Committee, which has chosen to take no view on the draft report or the petition until the Health and Community Care Committee has approved the report. Are we happy to place the item on the agenda for our meeting of 13 March?

**Members** *indicated agreement.*

### **Organ Retention (PE283)**

**The Convener:** PE283 also relates to the issue of organ retention. I suggest that we hold the petition in abeyance until the Executive's consultation on organ retention has been completed. Is that agreed?

**Members** *indicated agreement.*

### **Fuel Poverty (PE123)**

**The Convener:** PE123 is from the warm homes campaign. Item 13 on the agenda for today's meeting is discussion of a draft report on the petition. It is fair to say that work remains to be done on that. Do we agree to consider the petition later?

**Members** *indicated agreement.*

### **Epilepsy Service Provision (PE247)**

**The Convener:** PE247 is from the Epilepsy Association of Scotland. We have received a response on the petition, which calls on the Parliament to ensure that there are co-ordinated health and social services that will benefit the 30,000 people in Scotland who suffer from epilepsy. On 28 November the committee considered two letters from the Executive, agreed to send the letters to the petitioner, to await a response and to decide then whether to take any further action. The petitioners sent a letter to us on 1 February, which members have in their papers. The committee is invited to consider that response, and to decide whether to take any further action on the petition. Are there any comments?

**Mr McAllion:** Epilepsy Action Scotland, formerly the Epilepsy Association of Scotland, suggests at the end of its letter that it would appreciate a chance to speak directly to the committee about the response and the petition. We should give the association the opportunity to do so.

**Mary Scanlon:** We should hear from the petitioner, because there is a legitimate concern. The letter from Epilepsy Action Scotland says that only one health board, the Greater Glasgow NHS Board, gives early diagnosis within four weeks, in accordance with the Scottish intercollegiate guidelines network guidance. It also states that the misdiagnosis rate is up to 30 per cent. The organisation has a genuine case, and I support hearing its evidence.

**The Convener:** If there are no other comments, is it agreed that we will take evidence from Epilepsy Action Scotland?

**Members** *indicated agreement.*

**The Convener:** We will factor that into a future meeting.

We have already dealt with petition PE223.

### **Hospital Services outwith Cities (PE407)**

**The Convener:** PE407 is from the Action Group for Chalmers Hospital. The Public Petitions Committee considered responses from the Scottish Executive and NHS Grampian on the issues that were raised. It agreed to copy the responses to the petitioner and to the clerk to the Health and Community Care Committee, and to take no further action. Given the Public Petitions Committee's response, it is recommended that no further action be taken by this committee. Is that agreed?

**Members** *indicated agreement.*

### Organ Retention (PE406)

**The Convener:** PE406 is again on the subject of organ retention. In keeping with the two previous decisions that we have taken, we should take no action at this stage. Is that agreed?

**Members** *indicated agreement.*

### Myalgic Encephalomyelitis (PE398)

**The Convener:** PE398 calls on the Scottish Parliament to urge the Scottish Executive to carry out a strategic needs review assessment on myalgic encephalomyelitis and chronic fatigue syndrome, and to take a range of other steps in relation to the treatment of and research into those conditions. The Public Petitions Committee considered the petition and passed it to us for our consideration.

We had a debate on the issue recently, soon after the English chief medical officer's report on the matter. Some positive steps were taken in recognition of the condition. The members' business debate on ME was well attended and brought a positive response, if I recall, from the Deputy Minister for Health and Community Care, Hugh Henry. He said that the Executive would examine the issue over a three-month period—that was about a month ago. Any consideration of the issue by the committee should be set against the background that we know that the Executive is examining the issue positively and proactively.

**Mr McAllion:** I declare my interest as the convener of the cross-party group in the Scottish Parliament on ME and as the convener of the Public Petitions Committee. The petitions on this subject are among the most impressive that have appeared before the Public Petitions Committee. The Executive's response, although helpful, does not address the central issues that are raised in the petition. The response refers to the possibility of asking the Public Health Institute of Scotland to consider the feasibility of a Scottish needs assessment programme after the CMO's report is published. We have no information on whether the Executive will actually do that.

Equally, the Executive clearly believes that it should address the suggestion that there should be a centre of excellence, as is called for in the petition. It has recently come to light that research projects into ME are being funded at the moment, but they are all being funded from a psychiatric aspect, which the petitioners are opposed to. There is a short-term working group, and we know who the chairman is, but we do not yet know the group's remit. The cross-party ME group is to elect two patient representatives to that working group.

Would it be possible to appoint a reporter to monitor developments and report back to the

committee on what is happening? The petition needs to be watched carefully.

10:30

**The Convener:** Are there any comments? Everyone seems to be happy with that.

Do we have a volunteer to be the reporter?

**Mr McAllion:** I do not know whether I would be qualified, given that I am the convener of the cross-party group.

**The Convener:** No. Could I have clarification? You said that a reporter should be appointed to monitor the situation.

**Mr McAllion:** To monitor the situation with the working group and report back to the committee.

**The Convener:** We should seek clarification on the points that you have made about finding out about the remit and consider whether we can have input into that remit in the way that we did into the hepatitis C working group. We should seek clarification of some of the other points that are covered by the petition but might not be covered by the short-term working group. If members are happy, we will appoint a reporter to continue with that work on behalf of the committee. Do we have a volunteer?

**Bill Butler:** It should be John McAllion.

**The Convener:** Are you happy to do that?

**Mr McAllion:** I am happy to do it.

**The Convener:** We are happy to accept that you should do it. You can count yourself as being the committee's expert on the issue. It would not make sense to not make use of that expertise.

### Sleep Apnoea (PE367)

**The Convener:** PE367 is from my old friend Eric Drummond and calls for the Scottish Parliament to ensure adequate and equal services for diagnosis and treatment of sleep apnoea. There has been a good conclusion in that Lothian Health Board is considering the service under its health plan. I suggest that we take no further action—

**Mr McAllion:** I am not trying to cause problems but I want to give some information to the committee. Since the Public Petitions Committee took that decision, Eric Drummond has written again to the committee and it will be considering his correspondence at a future meeting. It seems that the Lothian Health Board health plan does not refer to a sleep apnoea clinic. That issue will be raised in the Public Petitions Committee at a future meeting.

**The Convener:** In that case, we should say that we are happy to discuss the issue as a separate

agenda item.

**Mr McAllion:** Once the Public Petitions Committee has dealt with the issue.

**The Convener:** We should check out the situation and discuss the issue as a separate agenda item rather than holding it back until the next round of petitions, especially if all we are doing is seeking clarification before we make a decision. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** That brings that agenda item and the public part of today's committee meeting to a close. We now move into private session. We will take a five-minute comfort break.

10:31

*Meeting suspended until 10:42 and thereafter continued in private until 11:25.*



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