

HEALTH COMMITTEE

Tuesday 22 June 2004
(*Afternoon*)

Session 2

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HEALTH COMMITTEE

17th Meeting 2004, Session 2

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North East Scotland) (Con)

*Helen Eadie (Dunfermline East) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

*Shona Robison (Dundee East) (SNP)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Paul Martin (Glasgow Springburn) (Lab)

Mrs Nanette Milne (North East Scotland) (Con)

Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Stewart Maxwell (West of Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Peter Allan (Dundee City Council)

Gordon Greenhill (City of Edinburgh Council)

Marjory Burns (Scotland CAN)

Professor Gerard Hastings (Centre for Tobacco Control Research)

Liz Manson (Dumfries and Galloway Council)

Christine Owens (Roy Castle Lung Cancer Foundation)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Health Committee

Tuesday 22 June 2004

(Afternoon)

[THE CONVENER *opened the meeting at 14:01*]

Items in Private

The Convener (Christine Grahame): I welcome people to the 17th meeting in 2004 of the Health Committee.

I ask members to turn to agenda item 1, which is to ask whether they are prepared to take items 4 and 5 in private. Item 4 concerns the draft stage 1 report on the Breastfeeding etc (Scotland) Bill. We will be required to finalise the report at next week's meeting, so I ask members whether they agree to take the item in private on that occasion, too, to allow us to consider the drafting.

Members indicated agreement.

The Convener: Under item 5, on the work force planning inquiry, we will consider reports from fact-finding visits and discuss proposals for further activity, including the names of potential witnesses for formal evidence taking. On that basis, I ask whether the committee agrees to take item 5 in private.

Members indicated agreement.

The Convener: I take the opportunity to thank all the members of the public, community representatives, national health service staff and health board and health council members who met committee members during recent visits to the Western Isles, the Borders region, Glasgow and Argyll and Clyde. Many individuals took time out of busy schedules at short notice specifically to meet members and we are very grateful to them. The issues and ideas for action that they raised will help to inform our further work on the work force planning inquiry.

Those who met members and others who are interested in this element of the committee's work can view the reports of the fact-finding visits on the committee's website.

Subordinate Legislation

**Regulation of Care
(Social Service Workers) (Scotland) Order
2004 (SSI 2004/268)**

**National Health Service (Tribunal)
(Scotland) Amendment (No 2) Regulations
2004 (SSI 2004/271)**

14:03

The Convener: I turn now to agenda item 2, which is to consider two negative instruments: the Regulation of Care (Social Service Workers) (Scotland) Order 2004 (SSI 2004/268); and the National Health Service (Tribunal) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/271). The Subordinate Legislation Committee had no comments to make on either of the instruments. No members' comments have been received and no motions to annul have been lodged. Is it the committee's recommendation that we do not wish to make any recommendation on the instruments?

Members indicated agreement.

Prohibition of Smoking in Regulated Areas (Scotland) Bill: Stage 1

14:04

The Convener: We move on to item 3 and paper HC/S2/04/17/1, which has been circulated to all members. I welcome our first panel of witnesses. Gordon Greenhill is environmental health manager, regulatory services department, City of Edinburgh Council—this is a long title—and representative of the Society of Chief Officers of Environmental Health in Scotland. We need an acronym for that. Liz Manson is operations manager in the policy and performance unit of Dumfries and Galloway Council. Peter Allan is policy planning manager at Dundee City Council.

Kate Maclean (Dundee West) (Lab): Obviously, for the committee to agree the bill's principles, members would have to feel that it would have a direct benefit for health. I know that the City of Edinburgh Council and Dundee City Council have banned smoking in the workplace. I wonder whether you have found any evidence that employees have stopped smoking because of the ban. Do you think that there is any direct link between banning smoking in the workplace and people giving up smoking?

Some of the medical evidence that we heard last week seemed to suggest that people at least reduce the amount that they smoke if there is a ban in the workplace. My experience of a workplace smoking ban was that I smoked just as much over the course of a day but in more concentrated pockets, when I was able to. Do you have any evidence of the benefits of workplace bans for the cessation of smoking?

Gordon Greenhill (City of Edinburgh Council): We ran quite an intensive campaign that included smoking cessation classes that had a good take-up. I do not know whether figures were produced to show how many people continued to smoke after they had attended the classes. I would be grateful if we could get back to you with a written submission on that.

Kate Maclean: That would be useful.

Peter Allan (Dundee City Council): We do not have evidence of the reduction of smoking among smokers either.

The Convener: Can I ask you to move your microphones a little closer to you? I am fighting against fans, here—not fans of me personally, unfortunately, but fans of the electronic variety.

Peter Allan: We believed that it was important for us, as employers, to protect the health of our

employees, customers and service users. We believed that there would be spin-offs from our workplace ban in the lives of individuals and families and in society as a whole. We felt that it was important to protect non-smokers by reducing the opportunity for people to smoke. We have heard that smokers welcome that, as it helps them to quit if the opportunity or the time that is available to them to smoke at work is reduced. Most of all, we wanted to contribute to the denormalisation of smoking to demonstrate that workplaces—like so many other places, including trains, buses and cinemas—are becoming places where it is unacceptable to smoke. We wanted to be part of that change in culture across the board.

The Convener: You are going to write to us. Do you have any statistics? Anecdotally, we are hearing that banning smoking in workplaces will deter people from smoking or reduce their smoking. Did you measure that in your council areas?

Liz Manson (Dumfries and Galloway Council): Dumfries and Galloway Council is about to undertake a baseline survey of staff as part of the Scotland's health at work scheme. However, we do not have any statistics to confirm the smoking levels across the council.

Janis Hughes (Glasgow Rutherglen) (Lab): As you know, the bill currently seeks to ban smoking only in regulated areas. However, Dundee City Council's submission states:

"There is a strong view that the prohibition of smoking in regulated areas should also specify alcohol."

Can you give me some explanation of that statement? I would also welcome comments from the other witnesses.

Peter Allan: It is our view that we need to extend the measure to all public places. We believe that that was the best option to emerge from the Scottish Executive's consultation exercise and we would support it. As it stands, the bill is positive about creating a comfortable environment for people when they are eating, but we think that it should go beyond that to protect employees and customers from passive smoking in places such as bars where alcohol is served. The council has not yet made a decision on the consultation, but all the discussions that we have had about health improvement and health inequalities suggest that we would support a total ban because of the benefits to employees and non-smokers.

Gordon Greenhill: The concept that I ask you to consider is the effecting of cultural change by enforcement. As an enforcer, we ensure that people comply with something or not, whether it is a good law or a poor law. On the whole, the bill is to be welcomed as good law.

People did not stop drink driving or put on their seat belts as a matter of course until legislation was introduced. At the moment, we are effecting a cultural change in Edinburgh in relation to littering through the use of fixed-penalty notices, more than 1,700 of which have been served and paid.

The Convener: It is more important that they are paid.

Gordon Greenhill: With the co-operation of the local media in publicising them, fixed-penalty notices have had a good effect in changing people's attitudes. If we want to use the law as a method for controlling and changing people's attitudes, the bill probably does not go far enough or range widely enough to address the problem of smoking in public places.

The Convener: In my haste, I have not passed on apologies from Mike Rumbles or welcomed Stewart Maxwell back to the committee. I do so now.

Mr David Davidson (North East Scotland) (Con): I return to a comment made by Peter Allan. I think that he referred to the right of employees to work in a smoke-free area. Is he suggesting that Dundee City Council supports the introduction of a statutory right for people to work in a smoke-free area, or does it take the more flexible position that people should have the choice to work in such an area?

Peter Allan: We respect the right of our employees to work in a smoke-free environment. However, that causes us problems in respect of people who provide services in the homes of individuals who may be smokers. We are conscious that there is a tension between the right of an individual to smoke, which is a legal activity, in their home, and the right of our employees to work in a smoke-free environment. In our view, all employees should have the right to work in a smoke-free environment, which has implications for the hospitality sector. We like to bear in mind the fact that, from an inequalities perspective, people who work in the hospitality sector are likely to be on low wages and to have poor quality of life. We think that the measure is important to protect a vulnerable section of the work force.

Mr Davidson: I am not agreeing or disagreeing with you, but if we follow your argument to its conclusion, the bill would remove any choice from the owner or manager of a business who wants to provide choice for customers. If there were a separate smoking zone, staff would have the right not to serve people there, but would you allow a member of staff who was prepared to serve there to do so? I am trying to tease out the practicalities of what you are saying about the bill.

Peter Allan: In our view, the situation could be simplified if there were a comprehensive ban on

smoking in public places. As health improvement organisations, local authorities have a responsibility to protect the health of their citizens. In some instances, the protection of health is a greater good than the provision of choice.

Gordon Greenhill: The situation that the member describes does not apply, because the employer has a duty of care to the individual concerned. It is not a case of someone choosing to go into a smoky atmosphere to serve people. The employer should make a risk assessment to determine whether that person should go into the area, so that the choice is not left to the individual employee.

Mr Davidson: Is that the position under current legislation?

Gordon Greenhill: Yes.

Mr Davidson: You are talking about the application of current legislation, rather than an effect that the bill would produce.

Gordon Greenhill: Yes. The member is suggesting that the provisions of the bill would be applied and that there would be clear delineation of areas in establishments in which people could smoke. You are also suggesting that proprietors could decide whether they wished to have such areas and that employees could decide whether they wished to enter them to serve people. I do not think that that situation applies because, as part of their duty of care, proprietors must protect all their staff.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): Are employers required under the duty of care and health and safety regulations to monitor the length of time that any one worker must work in a smoke-filled atmosphere, whether in a restaurant or pub or in someone's home? I am thinking of a home help who might have to be in someone's home for longer than normal.

Gordon Greenhill: In that situation, each set of premises would have to undergo a risk assessment. That is the norm in any case—a risk assessment should be made of each working situation in all businesses. The situation of each employee would have to be considered individually, which would make the process more onerous than it is at present.

Dr Turner: Would a length of time be stipulated?

Gordon Greenhill: I am not medically qualified to say how long someone has to be in a smoky atmosphere before they are affected; that is a question for the medical profession. However, we would monitor the time and the intensity. If someone is in a room where 40 people are smoking, the effect is more intense.

14:15

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): We have asked employers in the health service about how they apply the current legislation. From what I have just heard, it seems that councils are not complying with their duty of care. You allow your employees to go to areas where they will be subjected to second-hand smoke. Is there not a contradiction there? It is difficult enough to comply with the current legislation, but now we are talking about legislating again, which will cause further difficulties with compliance.

Gordon Greenhill: The bill contains exemptions.

Mr McNeil: We have heard evidence, week after week, that no level of second-hand smoke is acceptable. We have heard that being subjected to second-hand smoke for very short periods harms a person. I presume that you are here to give evidence because you are in favour of the proposed legislation, but you do not comply with the existing legislation.

Peter Allan: You will find that such tensions often exist when public services are provided for individuals who are vulnerable because of their health—for example, people who are in long-term care in hospitals or who are housebound. Organisations have to balance the responsibility to deliver services to people in need and the responsibility to protect their staff. We have reached a compromise in Dundee in our commitment to staff. We recognise people's right to work in a smoke-free environment, but we accept that, on occasion, they will have to go into smokers' homes. When that happens, we try to support staff. We make individuals aware that our staff are coming and we ask them not to smoke while our staff are there and, if possible, to clear the environment of smoke that has been there. We have to balance those needs.

If a home-care worker has a list of service users, we try to ensure that they do not have days when all the people they visit are smokers. We try—

The Convener: That is not relevant to the bill.

Peter Allan: No, but I am answering the question that I was asked.

The Convener: I understand, but I have to make it clear that some things might not be relevant to the bill.

Mr McNeil: It is relevant. Organisations are coming here and asking us to legislate. Many of their arguments are based on the effect of passive smoking on bar staff, for example. It is contradictory for organisations that have not resolved such issues for their own staff to come here and ask us to pass legislation that will impact

on someone else's staff. Therefore, I would argue that my question was relevant.

The Convener: Sometimes our questions get into wider areas of banning smoking in all kinds of public place, but we are trying to take evidence on this particular bill. It is quite legitimate to go a certain distance into other areas, but the bill is limited and we must write our report based on evidence that relates to it.

Peter Allan: The comparison that Mr McNeil makes might be fair in relation to employment law, but the situation of a person who serves drink to a person who has chosen to go into a bar is fundamentally different from that of a person who gives a service to someone who, because of their health, has no choice in the matter. People who are in long-term care in hospital and who may be terminally ill, and people who are housebound, have been deprived of choice. How we accommodate their needs is important.

Mr Davidson: If I could bring the discussion back to the bill, does each of your councils operate totally smoke-free cafes and so on that are open to the public?

Gordon Greenhill: I think that the answer is yes, but I would like to check that. I cannot think of any premises that the council runs where people are allowed to smoke. That includes the City Chambers for the purposes of wedding functions and so on. I would need to check whether, when we subcontract, we have that condition in the terms of leases for all premises. Generally, we do apply such a policy, but I would have to check the detail.

The Convener: That is fine—you can give us supplementary written information on that.

Liz Manson: Dumfries and Galloway Council's policy is for a complete ban on smoking other than in designated areas. Designated areas do exist in certain facilities, for example in our film theatre and arts centre. Some buildings are completely smoke free. It depends on the nature of the facility, and it is up to the manager to determine the policy.

Peter Allan: The most complicated areas for Dundee City Council are where we have franchised out parts of buildings to licensed premises. I think that, in those instances, smoking is still allowed. There is a bar in the Dundee Contemporary Arts centre, which is a popular social facility, where smoking is allowed. As a council, we are faced with the challenge of how to apply some of the principles of what we are discussing today to such facilities.

Helen Eadie (Dunfermline East) (Lab): What are your views on using the criminal law to reduce passive smoking?

Gordon Greenhill: We have a problem with the concept. As you are probably well aware, the criminal courts are busy as it is. We would like there to be a split between two means of enforcement. First, the person who is causing the offence, that is the smoker, should be subject to a fixed penalty, which is a quick, effective method of getting across the message that they have perpetrated an offence. Much of the experience of applying such legislation suggests that it does not clog up the courts. For the very few people who do not pay their fixed penalty, the matter should become criminal and go before the procurator fiscal.

Secondly, there should be a criminal element to not showing signs and not properly enforcing the legislation where people are allowed to smoke in regulated areas. Proprietors protect a large number of people and should comply with the law, so the criminal element should apply. Unfortunately, two officers would be required to enforce the bill because, under Scots law, there must be corroboration.

Liz Manson: I agree with that.

Helen Eadie: Does—

The Convener: Is the proposed law more likely to be obeyed in the observance than by having to be enforced? In other words, do you think that the penalties will not need to be imposed and that, because people know that they exist, they will not breach the law?

Peter Allan: We are looking for compliance, not punishment.

The Convener: That is what I was seeking to say—thank you.

Peter Allan: We are looking for a deterrent. Sometimes we need legislation to create a new norm and to advise people of their rights and of which rights they may exercise with other members of the community. It is important that, whatever model of penalty we agree on, communities are convinced that we will take the matter seriously. There is no point introducing legislation and telling communities that we have adopted its provisions if we do not enforce them. If we did that, we would start to lack credibility and any momentum that had been developed would be lost.

Helen Eadie: Could I finish off my question, convener?

The Convener: I am so sorry, Helen—I thought that you had already done so.

Helen Eadie: That is all right. Would a voluntary approach or action to promote better ventilation be a better alternative?

Gordon Greenhill: No—emphatically no. That approach has been tried by other local authorities,

notably Birmingham City Council, but it does not work.

Ventilation systems are variable: a system is brand spanking new on the day that it is installed; it works well and makes the air changes that it was designed to make. However, it gets dirty and thumped about—people put things into it that they should not and so on—which means that by day two it is not so effective. By the time that day 102 is reached, the system does not shift the air as it should.

I have come across voluntary schemes in my 30 years in local government. I am clear that enforcement works and voluntary schemes do not work.

Liz Manson: We have some experience of voluntary schemes because of the schemes that the licensing boards are running in our area. A number of premises across the region are picking up on the issue and, generally speaking, the voluntary bans are being observed. We support a legislative proposal that has the same basis as the seat-belt argument, which is that, generally speaking, people want to comply with the law. Legislation raises the profile and gives an added seriousness to the issue.

Mr Davidson: I want to return to the issue of enforcement on which all of you submitted detail, in particular City of Edinburgh Council, which included evidence about the five-day rule and so on. As the bill is drafted, is it likely that it would place an undue demand on enforcement agencies? How will enforcement be run?

Gordon Greenhill: It is optimistic to suggest that the bill, as currently drafted, would be cost neutral for local authorities, as the explanatory notes that accompany the bill, which include the financial memorandum, suggest. Complaints would be made and an extra burden would be placed on authorities during inspections. It would be another piece of work that would have to be done. There are 17,000 premises in Edinburgh alone in which we enforce the health and safety at work regulations. If legislation adds another factor, the time that inspections take would increase and the frequency of inspections would reduce.

From the point of view of how enforcement would work, the bill is quite well framed. I am referring to the provisions for both the proprietor and the offender—the person who has lit up. However, it is not clear who would do the enforcement. It is optimistic to suggest that the police would do it, as it would not be high on their list of priorities. I am not sure whether the Association of Chief Police Officers in Scotland will give evidence to the committee, but enforcement would be well placed within the local authorities. A minimal input of finance would address the proper enforcement of the bill.

Mr Davidson: Would the City of Edinburgh Council put on a special team that would be available to answer calls and queries during restaurant opening hours?

Gordon Greenhill: That is a good question. We should take a look at what is happening in enforcement at the moment. It is a wonderfully active field, which in the main is due to the Scottish Parliament.

The Convener: I am not sure whether that is a compliment.

Gordon Greenhill: In the field of local government, it was a compliment. A number of areas that were poorly enforced have been addressed. The Antisocial Behaviour etc (Scotland) Bill will introduce the need for councils to have teams in place to address various forms of antisocial behaviour. The noise component of the environmental health provisions allows for fixed-penalty notices and the Scottish Parliament has wisely funded the bill to ensure that local authorities have teams in place to issue the FPNs.

It would not be a great burden on authorities if complaints were added to the remit of their teams. Given that they are on call or out and about in the area doing inspections on a 24-hour basis and not in a 9-to-5 scenario, complaints about smoking in public places could be added to their remit.

We also need to consider the recommendation of the Nicholson report for licensing officers. A large number of the premises that would be covered by the bill would fall under the umbrella of licensed premises. Any licensing enforcement people who would be put in place would be funded from the liquor licence. A picture is beginning to emerge of a number of funds under which enforcement of the bill's provisions could be financed. Councils should address the issue from a best-value perspective and consider how best to address all the different crossovers that relate to such premises.

I would envisage a team that addresses some forms of antisocial behaviour, including noise complaints and the like, liquor licensing enforcement and complaints about someone lighting up in a premises, all of which would need immediate action. If we do not respond to complaints, the public become disillusioned. If that happened, we would end up with just another piece of law on the statute book that is not enforced.

A multitude of different pieces of legislation that are coming to fruition will be greatly beneficial if local authorities use wisely the skills and moneys that are available. I think that the bill will be effective, but I still think that further funding would be required for the core daily inspections that would take place.

Mr Davidson: Can you send us a note to say how much extra funding would be required for City of Edinburgh Council?

Gordon Greenhill: Yes.

14:30

Liz Manson: We agree that the enforcement arrangements need to be clarified. Environmental health officers would be happy to assume the additional responsibility, provided that resources were made available.

Members will not be surprised if I point out that rural authorities have facilities that are spread across a wide geographical area. It could be difficult to respond to a complaint that was 20 or 30 miles away from where the dedicated 24-hour team was situated. Our teams would be able to respond quickly in our urban locations, such as Dumfries and Stranraer, but we would have an issue about responding quickly in some of the remoter areas.

Peter Allan: On the issue of costs, although providing local authorities with the resources necessary to carry out the task might be viewed as an increased call on the public purse, we should bear in mind the fact that long-term savings could accrue for the health service from the improvements in people's health and quality of life.

The Convener: In addition, if the culture change that you mentioned happened, there would not be the need for so much enforcement.

Mr McNeil: The bill's supporters claim that enforcement and compliance should not worry us too much because the experience in Ireland suggests that everyone will comply. To be fair, anecdotal evidence suggests that there has been a high degree of compliance with the Irish smoking ban. However, rather than consider what has happened in Ireland, do we have information on compliance in council workplaces and public buildings in Scotland? I receive a lot of traffic from people who complain about people smoking on buses despite the fact that smoking on public transport has been banned for some considerable time. Does that tell us anything about likely compliance with a smoking ban? Is information available on how many complaints local authorities receive? Are local authorities confident that their smoking bans consist of more than just tokenistic no-smoking signs? For example, are you sure that the school janitor does not have a fag in the boiler room? How do councils establish whether the level of compliance is acceptable? Such information might indicate what compliance would be like in Scotland rather than in New York or Ireland.

Gordon Greenhill: There are two elements to that. In the City of Edinburgh Council, it is a disciplinary offence for employees to light up in an

area where they are not meant to do so. I think that the compliance rate is almost 100 per cent. People would be able to tell pretty quickly as they went through the school building whether the janny had had a fag in the boiler room—the smell would be very noticeable. I can find out whether figures are available, but I think that there is almost 100 per cent compliance in the council workplace.

Compliance by the public will not be 100 per cent. We would not need any police officers or environmental health officers if everybody complied with the laws of the land. If all that we had to do was pass a law, that would be great, but things do not work like that in my experience. As with antisocial behaviour, a certain element will flout the law, so the law needs to be enforced. I cannot say what percentage of people do not comply with our current smoking bans, but I imagine that a small hard core of refuseniks might not comply just to test the system. That is why we need the back-up of a good law that is well enforced by the courts.

Liz Manson: Dumfries and Galloway Council has introduced designated smoking areas in a number of its premises, so staff and customers have somewhere to go if they want to smoke. In certain buildings, a ban has been put in place with the approval of the staff in the building. I know of only one disciplinary incident, in which an employee was disciplined for smoking in a council vehicle. I have no other information about breaches of the policy.

The Convener: Do you want to add something, Mr Allan? You do not have to do so.

Peter Allan: I would be surprised if there were many cultural differences between ourselves and the Irish and New Yorkers.

The Convener: We will take evidence from New York next week by video link. That will be a bit glamorous for us. Unfortunately, Arnold Schwarzenegger still has not replied to our letter—I live in hope.

Dr Turner: In its written evidence, the City of Edinburgh Council said that the no-smoking policy in the City Chambers had not resulted in loss of income. The submission goes on to say:

“Concern about a potential loss of income has been noted, although this appears to be an assumption, rather than a statement of fact.”

The evidence from New York, Ireland and various other places is mixed. Do you expect that the income of establishments would be affected by the bill? We have had a lot of anecdotal feedback that suggests that income would not be affected.

Gordon Greenhill: No, I would not expect there to be a loss of income, although I am not an expert

in the trade. There are a number of smoke-free restaurants in Edinburgh that do a very good trade and are well attended by the public. The City of Edinburgh Council's strict no-smoking policy for wedding and other receptions that take place in the City Chambers has not led to a fall-off in income. People are desperate to book our facilities.

People adjust to the requirements that are placed on them. If they need to go outside to have a cigarette—as they do in Ireland—they do so, or they say, “Okay, I won't smoke tonight.” There is no indication from establishments that currently operate a no-smoking policy that that leads to a loss in income.

Dr Turner: That is interesting.

Do you have any figures for the costs of repairs to carpets and toilet facilities on your premises that are damaged by smokers? I have noticed such damage and I am sure that councils incur costs. Have you noticed any reduction in damage in areas where a no-smoking policy operates?

Gordon Greenhill: You make a good point. The grand ceiling in the City Chambers used to be yellow by the end of each year.

The Convener: I did not realise that Jean Turner's role in life was to scrutinise carpets and toilets.

Dr Turner: I am a non-smoker and I notice that carpets and toilet equipment in hotels and other places where people smoke are often ruined.

Gordon Greenhill: I can find out whether our facilities manager has the figures. From a purely subjective point of view, I think that we no longer have those yellow stained ceilings or burned carpets in the City Chambers. Equipment might well be lasting much longer and probably costs have been cut somewhere in the council.

Peter Allan: Dr Turner asked about the economic impact of the bill. Traders in Dundee tell us that they would prefer smoking to be dealt with through a voluntary arrangement, but that if there were to be legislation they would like it to be applied consistently across the trade. Traders want a level playing field. Dundee City Council attaches a condition banning smoking when issuing children's certificates, but it can do so only when a licence comes up for renewal. Because of that, some premises will not have to accept the new condition for nearly two years. Traders think that that is unfair, but the licensing board cannot do more to introduce the condition in children's certificates. Traders would like any legislation to apply consistently to everyone so that it would not affect competition.

The Convener: Would it be simpler to amend licensing legislation than to pass a stand-alone

bill? I am pretty ignorant of licensing law—apart from the licensing of taxi drivers, which I know about for some obscure reason.

Peter Allan: I am no expert, either, but I have been advised that, at the moment, the licensing regulations do not even extend to restaurants unless they have a bar. If the ban on smoking in public places were to be extended to all premises that served food, I do not believe that the licensing regulations would cover them all.

Liz Manson: We have been taking the opportunity to change smoking facilities into other, more positive facilities, such as staffrooms or rooms with nappy-changing facilities, because space is at a premium in many offices and in other premises. In workplaces in which there is a smoking staffroom and a non-smoking staffroom, the imposition of a smoking ban would mean that the smoking staffroom could be used for something that staff would consider as an additional benefit. That opportunity exists.

Shona Robison (Dundee East) (SNP): I have a question about signage. Do any of the witnesses have views on the requirement in the bill that signs should be put up to indicate where smoking is not permitted? In particular, what are your thoughts on the size, shape or wording of those signs? I think that the City of Edinburgh Council had something to say about that.

Gordon Greenhill: It seems that the signs' size—and, in the case of a city that gets a large number of visitors, the languages that are used—will be defined by regulation. It is standard practice for such matters to be defined in legislation and we would expect that to be the case, so that enforcement is easy and practice is uniform across the country.

Liz Manson: We would be happy for local authorities to be included in the list of consultees.

Shona Robison: I want to move on to consider connecting spaces. Do you have a view on the requirement in the bill that, next to regulated areas, there should be areas called connecting spaces, which should also be non-smoking areas? I know that the issue was mentioned in your submissions, but I would like to hear your views.

Gordon Greenhill: There needs to be clarity on what is being enforced. If the bill defined a connecting space as a box with four walls, a roof and a door, that would be wonderful, but many buildings in Scotland are not designed in that way. We should be thankful that that is the case, because variety adds to architectural beauty.

The issue comes down to experience in enforcement and interpretation of design. The space that we are talking about is similar to the intervening ventilated space next to a toilet. I am

afraid that we have returned to discussion of toilets, which is unfortunate. Someone who goes to the toilet in a pub goes through one door and, before they go through the other door into the toilet, there is a wee space. That is for hygiene reasons, such as preventing the spread of germs. That is the concept that the bill is working on. The connecting space could almost be called an intervening ventilated space, because it acts as a buffer zone.

In the design of buildings, it is standard practice to incorporate buffer zones or ventilated spaces between different areas. Although the proposal is not ideal—it would probably be better to prohibit smoking throughout the premises—the design of buildings that are as grand as the one that we are in means that it would be difficult to define the space without going down the road of having a buffer zone.

The Convener: Do you agree, Ms Manson?

Liz Manson: Yes.

The Convener: Stewart Maxwell, the bill's proponent, has his regulatory five minutes to ask questions.

Mr Stewart Maxwell (West of Scotland) (SNP): Good afternoon. I was interested in your discussion of fixed-penalty notices. Do you have any thoughts on the idea of fiscals imposing fiscal fines? Would that not be, in effect, the same thing? Would fiscal fines clog up the courts? I think that that was the phrase that you used.

Gordon Greenhill: Fiscal fines would still have an impact on the fiscals' time and on councils' time, because a report would have to be done. As you are probably aware, non-police reporting procedures are quite lengthy for the officers involved. In many cases, the fixed penalty is one and done. At the moment, 98 per cent of the fixed penalties in Edinburgh are being paid. The remaining 2 per cent must then go to the fiscals, who deal with the majority of them through fiscal fines. Obviously, those cases are not publicised, because they have not been through the courts. The small percentage that is left goes for trial. I do not see how using fiscal fines would free up fiscal time. A junior fiscal would still have to read a report, write letters, send them out and so on. Therefore, there would be an impact on the fiscal service.

Mr Maxwell: An extra burden on environmental health officers and local authorities has been mentioned, about which all the witnesses seemed to agree. Do you accept that the bill would not place a burden on environmental health officers to enforce its provisions?

Gordon Greenhill: Absolutely—you are right. The bill does not enable anybody to enforce its

provisions because it does not state what the enforcing body would be. That needs to be clarified.

Mr Maxwell: I will clarify that for you now, if you want. The enforcing body would be the police. I think that it said that in the policy memorandum and in the explanatory notes. If the bill is passed, it will become a crime to smoke in regulated areas. Do you accept that the police are the normal route for the purposes of reporting such criminal activities?

Gordon Greenhill: No. The local authority undertakes the majority of prosecutions in Edinburgh. The local authority is the enforcing body for incidents that relate to health or health and safety and has dual responsibility for fixed penalties for littering, dog fouling and so on.

Mr Maxwell: Yes, but if an individual in a pub broke the law in that pub, would the staff phone the local authority or the police?

Gordon Greenhill: The Nicholson report suggests that they would phone the local authority.

14:45

Mr Maxwell: That is not where we are just now, is it?

Gordon Greenhill: At this moment in time, they would phone the police, but that is a different concept entirely. We are talking about legislation that deals with, for example, someone sitting in a restaurant who lights up a cigarette. Such situations are akin to those covered by legislation that deals with the dropping of litter and dog fouling. The police would not readily respond to, or prioritise, such a smoking incident. The police prioritise calls and, as someone who works in daily, close partnership with the police, if I were to give that incident a ranking, I suggest that it would come in at about a four, which means a four-hour response. Therefore, there would be no enforcement in relation to such incidents.

Mr Maxwell: Do you accept that calling the police would be a last resort anyway? Effectively, the owner or manager of the premises would deal with the problem on site at the time, as they do with incidents such as those that involve people who are under-age trying to buy drink or people causing trouble, or with any other kind of problem on their premises.

Gordon Greenhill: Absolutely—I agree with that entirely. Such confrontational situations can flare up occasionally. However, we very rarely call the police for back-up in relation to fixed penalties. You are saying that the police would inspect premises for the relevant signs and compliance.

Mr Maxwell: No. I did not say that at all.

Gordon Greenhill: So only one half of the bill would be enforced. You said that only the police would be empowered.

Mr Maxwell: I am sorry, but I think that you are misunderstanding me and, perhaps, the bill. The bill says that people such as environmental health officers, who have a locus to go into premises for normal inspections, would have an additional duty—I accept that it would be an additional duty—to inspect premises for evidence of smoking. That would be part of their work load. I am trying to distinguish between their normal duties of going into premises—an extra visit would not be required—and the idea that you mentioned earlier of having special teams, which I find rather strange.

Gordon Greenhill: No, that task would be added on; it would not be a major part of the officers' work. In fact, it would be a tiny part of their work. However, we are talking about meeting the public's needs. The police would not respond to a report of someone lighting up in premises that served food, but if the public believed that nothing was happening about such incidents because those in charge of the premises were doing nothing, they would need to be able to phone someone who would respond. If officers were walking past premises and saw someone smoking there, they would go in and serve a fixed-penalty notice. That is how good legislation works and how cultural change is effected—action is taken there and then.

Mr Maxwell: You accept that environmental health officers and others, including the police, make regular and on-going visits to premises.

Gordon Greenhill: The police do not make such visits to non-licensed premises that sell food.

Mr Maxwell: As far as I am aware, environmental health officers visit all premises that sell food. The police also visit a number of premises—especially licensed premises—regularly. Would the task not become a tiny part—as you said—of the role of those groups and others who make regular visits? I am trying to understand where the idea of special teams and an extra burden comes from.

Gordon Greenhill: No—the special teams would not be an extra burden. I said that an amalgam of legislation is going about in relation to antisocial behaviour and the Nicholson report. If the bill was passed, it would be common sense to add the duties that it creates to those of the teams that are in place.

If one of my officers was undertaking a health and safety inspection and had to add to his checklist a check of the regulated areas and the buffer zones, that would add to the time that the inspection took. If that time was added up for the

17,000 premises in Edinburgh, it would equate to an extra burden.

Mr Maxwell: What does the panel think of the police enforcing the legislation in the same way as it has enforced other legislation—through blitzes? The police could suddenly target and check some premises, just as they target areas for speeding. They respond to public demand when people complain about a matter in their area. Would enforcement be driven by public demand? The police could take action in that way, rather than in the way that Gordon Greenhill talked about.

Gordon Greenhill: That is a standard procedure that we use with the police regularly for many of the pieces of legislation that we enforce. However, it does not effect cultural change or make something the norm if we let matters deteriorate and then undertake a blitz, for which we depend on available police time. I can speak only about the situation in Edinburgh, where the police have extra resource away from their normal duties only one day a week, which is allocated to various tasks throughout the year.

I do not see from where the extra resources will become available to the police to undertake blitzes, which would definitely be an extra burden. Why would we want to have blitzes when we are trying to change people's attitudes to smoking and their attitudes to other people as part of how we interface in the culture of Scotland? We will do that by changing the culture permanently, rather than by having a blitz because it is Christmas and everybody is out drinking and smoking.

Mr Maxwell: I was not suggesting that.

The Convener: Does either of the other witnesses want to comment on the matter?

Liz Manson: I said that our environmental health staff would be happy to accept appropriate responsibilities as part of their regular inspection services but, as Gordon Greenhill said, that would add something to their checklist, which would have a resource implication. We would expect the police to be alert to the matter as they make their normal visits to establishments. As for the idea of blitzes, in some of our towns and villages in Dumfries and Galloway, a blitz would be on one establishment, which would take a journey of 40 miles to reach.

The Convener: That would be the case in the Borders, too.

Liz Manson: The same concept would apply in the Highlands and Islands. I accept that such measures may be appropriate in urban settings, but that would not necessarily apply everywhere. We would expect the police to pick up the matter as part of their normal visits.

Teams were mentioned because they might respond to a complaint when a proprietor had not

been able to persuade a person to comply with the arrangement.

Peter Allan: Blitzes might be the most efficient way in which the police could respond. They would be less likely to respond to individual cases. If blitzes were the most efficient method, we would support them.

The Convener: I thank all the witnesses for attending.

Committee, we are on schedule, which is commendable. We will move on to our second panel of witnesses. Due to time pressures, Professor Andrew Peacock of the British Thoracic Society cannot participate in the evidence session. The society would like the committee to note that it was keen to give oral evidence and that it made every effort to find a replacement for Professor Peacock. As an alternative to giving oral evidence, the society has offered to submit supplementary written evidence in response to the questions that are asked of the voluntary sector panel. I am grateful to the society for that offer, as I am sure committee members are. We look forward to reading its answers.

I welcome the next group of witnesses. Christine Owens is head of tobacco control at the Roy Castle Lung Cancer Foundation; Professor Gerard Hastings is the director of the Cancer Research UK centre for tobacco control research at the University of Strathclyde; and Marjory Burns is the representative of Asthma UK Scotland on Scotland CAN, which stands for cleaner air now. I know that you sat through the previous evidence. Thank you for doing so. I do not suppose that we will mention toilets any more. Perhaps that will be an end to them. Who knows?

Janis Hughes: Good afternoon. How would you answer the criticism that is advanced mainly by the pro-tobacco lobby—some of whom we have heard evidence from—and which is also supported in some sections of the medical press, that the risk from second-hand smoke has been exaggerated?

Marjory Burns (Scotland CAN): Scotland CAN contends that there is ample evidence of the hazardous effect of second-hand smoke on health. Numerous studies that have been conducted over many years are very persuasive that environmental tobacco smoke is hazardous to health. Indeed, our own chief medical officer agrees with that contention.

Professor Gerard Hastings (Centre for Tobacco Control Research): I reinforce that. Examining the evidence base in this area is fiendishly difficult, because there are so many contentious issues and people come at it from so many different angles. However, ultimately, you have to take the word and the work of serious professional organisations that have examined the

issue and come to a determination. Organisations such as the World Health Organisation, the British Medical Association and the International Agency for Research on Cancer have all agreed that second-hand smoke is a hazard to public health. We have to accept that.

Christine Owens (Roy Castle Lung Cancer Foundation): The Environmental Protection Agency in the United States has classed second-hand smoke as a carcinogen. The BMA tells us—and there is masses of evidence to support it—that there is a need to do something about second-hand smoke. Few reports dispute that. There is a body of evidence that is widely accepted.

Janis Hughes: Professor Hastings, in your written submission you refer to a study in 2002—

The Convener: I am sorry, but I have just received a note to ask Marjory Burns to move her microphone closer. It is a mystery note that is not signed. I am just obeying it.

Janis Hughes: Professor Hastings, in your submission, you refer to an International Agency for Research on Cancer study in 2002, in relation to which you say:

“For non-smokers exposed in the workplace the risk of lung cancer is increased by 16-19 percent.”

Is that study representative or, in your opinion, is the risk greater or lesser?

Professor Hastings: Are you sure that you have my paper?

Janis Hughes: Yes, we have the Cancer Research UK paper.

Professor Hastings: I am sorry, but there are two bits of evidence. There is also the evidence that I submitted last week, which is different.

Many studies have confirmed that second-hand smoke is a problem and the IARC report is typical of such studies.

The Convener: I am trying to find the additional submission from Cancer Research UK Scotland among our papers, but the pages are not numbered. *[Interruption.]* I have now found it; excuse my confusion.

15:00

Dr Turner: In much of the evidence—for example, the Roy Castle Lung Cancer Foundation cited a study from 2002 in *Tobacco Control*—there is a hint that a ban on smoking in the workplace leads to people reducing their smoking habit. Is there evidence of a direct causal link between the two? I know of people in California who stopped smoking because of the ban on smoking. What do the figures demonstrate?

Christine Owens: Several studies demonstrate that link where smoking has been banned, not only in individual workplaces but more generally. There is evidence that, if we had a complete ban on smoking in workplaces, we could hit all the targets required to help people to stop smoking without taking any further action.

I know from some of the work that I have done that, when workplaces introduce smoking bans and support is provided for workers, people quit smoking. When people are giving up smoking, they struggle with going to public places where people are allowed to smoke. People are calling for a bill such as the Prohibition of Smoking in Regulated Areas (Scotland) Bill—smokers are asking for smoking to be regulated.

Professor Hastings: A study, or rather a systematic review of all the studies that had been done previously, was cited in the *British Medical Journal* in 2002. The review came to the conclusion that a ban on smoking increased quit rates by something like 3.8 per cent. Another study is about to be published that is slightly more conservative, but it still reckons that such a ban would double the quit rate. A ban would have an immense public health benefit in that sense, as well as preventing people from ingesting involuntarily a cocktail of rather nasty chemicals.

Janis Hughes: It has been argued in some written evidence that the relationship in the bill between food and a smoking ban reinforces the view that the bill is more about comfort than health. Do you support that view?

The Convener: Do not be paranoid about the microphone, Miss Burns; it is working.

Marjory Burns: No, I do not support that view. It is clear that the public has a strong interest in the comfort factor associated with reducing environmental tobacco smoke; there is no doubt about that. However, it is also clear that a high percentage of people make the connection between second-hand smoke and damage to their health. The benefits of reducing environmental tobacco smoke and the potential health gain are clear to many people.

Janis Hughes: Some organisations, including your own, make it clear in evidence that there should be a ban on smoking in the workplace, which would come under the heading of employment law and would therefore be reserved to Westminster. We are thinking about what powers the Scottish Parliament has to ban smoking and we cannot deal with matters concerning employment law. Do you have any views on that?

Marjory Burns: Scotland CAN supports the bill, but we see it as the first in a chain of steps that have to be taken to regulate environmental

tobacco smoke in all public places. That is the ultimate position that we want to reach, but we will support the bill as a step in the right direction.

Professor Hastings: If we took a step further in Scotland than the measures proposed in the bill and prohibited smoking in all public places, effectively we would achieve the same end. In achieving that end, the issue of banning smoking in workplaces is a technical one. Scotland is perfectly capable of taking a lead on the matter if it wishes to do so.

Shona Robison: This issue has been touched on already, but what amendments, if any, should be made to the bill?

Professor Hastings: My principal amendment would be to extend its scope. I cannot see the justification for banning smoking simply in places where food is served; such a ban would be a great first step, but only a first step.

Marjory Burns: I agree. As I understand it, the bill makes provision for incremental progress in regulated areas as time goes on.

Christine Owens: The bill is a first stage, but our ultimate aim is for a ban on smoking in all public places. The line should not be drawn at places in which food is served.

Shona Robison: The exempt spaces that the bill would create—previous witnesses have supported them—are areas of hospitals and care homes that are, in effect, a person's home. Would you go as far as to say that smoking should not be allowed in such areas?

Christine Owens: We need to be careful when we talk about that issue. The reasons for banning smoking in such places would definitely be about worker health and safety. The committee should consider other places that have banned smoking to see what has happened there. In New York, smoking was banned in prisons and in public places that were considered to be people's homes. That was done overnight.

The Convener: And there were no riots?

Christine Owens: No.

The Convener: Were the prisoners still getting other drugs? I find that astonishing.

Christine Owens: One of the reasons for my going to New York to ask questions was that I was amazed that that had been done. However, I know from the work that my organisation has done in prisons that massive numbers of inmates ask for support to quit smoking.

The Convener: We will ask about that astonishing fact in New York next week.

Professor Hastings: It is worth noting that Ireland has not chosen the American solution. The law in Ireland has certain specific exemptions that

cover places where, in effect, people's homes are involved. The issue must be dealt with carefully. The Parliament should take advice on the best way forward from people who work in such areas—I do not feel qualified to make a judgment on that.

We should bear it in mind that the great majority of smokers want to stop. We have just completed a survey of adult smokers in the UK, which revealed the horrifying statistic that more than 80 per cent of them regret starting smoking. Smokers often want radical action to ban smoking, because it puts a little strength in their backbone to help them quit.

Shona Robison: Given what you have just said, do you think that the tobacco industry's recent advertising campaign will have little effect? I do not know whether you have seen the advertisements.

Professor Hastings: Tell me more about them.

Shona Robison: They try to promote freedom of choice for people to smoke in public places.

Professor Hastings: Freedom of choice is the ultimate specious argument, when we are talking about a habit that is taken up by kids before they are old enough to make a decision. By the time that they are old enough to decide, they are fiendishly addicted to tobacco.

Shona Robison: Do you have a view on the bill's requirement for areas called connecting spaces—in effect, they would be buffer zones—next to regulated areas?

Professor Hastings: I will broaden out the issue and talk about ventilation, which was discussed in the previous evidence session, and how to cope with the problematic fact that the bill would not introduce a complete ban.

I have just come back from a conference in Ireland, at which the latest evidence on ventilation was presented. The fundamental problem with ventilation is that using it is like trying to empty a bath while the taps are still on. Smokers are still smoking while the ventilator is going. People do not simply smoke for half an hour then stop to let the air clear. As a result, toxins are always present and, unless the ventilators are working at wind tunnel strength, they cannot remove all the toxins. Ventilation just does not work. Buffer zones are required because, as someone put it, crudely, having a no-smoking area in a pub is like having a no-peeing area in a swimming pool. That approach really does not work.

The Convener: That was nearly another reference to toilets. Do any of the other witnesses wish to comment—not on swimming pools, but on connecting spaces?

Marjory Burns: Perhaps I could bowdlerise Professor Hastings's comment. We tend to say that having a no-smoking area is like having a chlorine-free end in a swimming pool; it is physically impossible for such a thing to exist. Scotland CAN accepts that ventilation is not the answer and that, if there are going to be separate smoking and non-smoking areas in pubs and restaurants, there must be buffer zones between them.

Christine Owens: The small print of the manufacturers' guidelines does not guarantee that ventilation equipment will take away carcinogens; it simply says that it will make the air slightly more pleasant for those who are sitting in it.

Mr Davidson: What are your views on using criminal law to reduce the incidence of passive smoking and on the fact that many people could end up with a criminal record? That could affect other aspects of their lives, such as their ability to get insurance.

Marjory Burns: Scotland CAN has been trying for many years to get smoke-free public places through voluntary arrangements. However, that approach has been ineffectual and it is time for statutory regulation. Although we might regret such a move, we see no other way of protecting people's health from the effects of second-hand smoke.

Mr Davidson: Were the voluntary arrangements that you mentioned onerous enough? Should such an approach have been taken in stages, one of which would have been a requirement for separate, distinct smoking and non-smoking spaces to be provided if premises were physically capable of being arranged in that way?

Marjory Burns: With all due respect, that is water under the bridge. The voluntary charter has been shown to be ineffectual. At the time, we agreed to the charter—albeit with some reluctance—because we felt that it would be a step in the right direction and that it was the best that we were going to get. As far as people with asthma, for example, were concerned, even their being able to rely on information at the entrance of premises that told them whether smoking was permitted would be an improvement on their having absolutely no information about whether they were about to enter a smoky zone.

Society has moved on since then. As many polls have indicated—I could quote statistics all day—the majority of people, including smokers, want smoke-free public places. The Office for National Statistics has pointed out that, every time it surveys people on this matter, the trend towards wanting smoke-free public places keeps increasing. As a result, the voluntary charter is no longer a subject for discussion.

Mr Davidson: It took 14 years to establish the Irish model; we are trying to do it overnight. Will the legislation be enforceable? The provisions will create offences under criminal law, so the police will have to enforce them.

Professor Hastings: As far as the Irish example is concerned, a minuscule number of people now have a criminal record as a result of the legislation. The vast majority are perfectly happy to obey the rules. For example, I heard a lovely story from the west coast of Ireland. Guys who were drinking in a pub that was having a lock-in were going outside at 2 am to have a smoke. That speaks to the fact—*[Interruption.]*

The Convener: I hear some disgruntled mumbblings. Do you disagree with that, Duncan?

Mr McNeil: No, but last week when we asked experts about Ireland, they said that they could not comment on facts and figures because the legislation had not yet been in place for a year. There is a lot of anecdotal evidence—

Professor Hastings: The evidence is more than anecdotal. The Office of Tobacco Control—

Mr McNeil: You are giving information that someone could not give us last week about the statistics in Ireland, the level of compliance and so on.

Professor Hastings: I am sorry, but that evidence is available.

Mr McNeil: How long has the ban been in place?

Professor Hastings: Three months, but the Office of Tobacco Control has just produced a report on where it has got to so far. The committee should have that report, which appeared about a week ago.

15:15

Mr Davidson: We have not heard from Ms Owens.

Christine Owens: As you might know, our head office is in Liverpool. A delegation of environmental health officers from Liverpool was sent to Ireland to talk to their counterparts about enforcement because they were worried about what would happen if we get legislation on this side of the Irish sea. They came back absolutely delighted because their counterparts in Ireland had reassured them that the work is not that onerous. I have seen the adverts; people do not have to walk around being the smoking police in outfits like traffic wardens. The New York Bureau of Tobacco Control, to which the committee will speak next week, has a high level of compliance. It has a three-strikes-and-you're-out system for removing people's licences—obviously, that system applies only if licences are in place.

In general, the public want to comply with the law. There will always be people who break the law, but if they do not break this law they will break another law—that is the way things are. The work will not be as onerous as people think. We must examine other people's experiences, including those in New York, which is more than a year down the line. We must also talk to the people who enforce the law and examine the problems that they have.

Mr Davidson: You describe a situation in which a local authority is the enforcement agency, but the bill suggests that the police and the procurator fiscal should have that role.

Christine Owens: I understand it to be a joint arrangement; environmental health departments will examine evidence of smoking and signage and the police will respond to actual incidents of smoking. The police are placed to respond quickly to such incidents, but in the main I would expect the proprietor to ask the person to either put out their cigarette or leave the premises. The proprietor would take that action and deal with the situation there and then, as they do with other things that people might do in their premises that are not within the law. Proprietors want to comply with the law. They would call the police in the normal way only if someone were to behave in an antisocial manner and cause trouble.

The ban will not be that difficult to enforce, even for the police. I am not saying that there will be no violations, but the number of cases will not increase simply because the police are enforcing the ban, as long as someone is enforcing it and there is a public awareness campaign. Ireland made a good job of letting people know about the law so that they were ready for it.

The Convener: We will obtain a copy of the Office of Tobacco Control report that was referred to, for Duncan McNeil and the rest of the committee.

Helen Eadie: I turn to the practicalities of enforcement and implementation. The written evidence argues that a ban might have a positive economic impact, as demonstrated in Ireland and New York, but some studies record the opposite effect. In particular, an independent review that was conducted by Ridgewood Economic Associates and cited by the New York Nightlife Association records a negative economic impact. Do you have views on that?

Professor Hastings: A large number of studies have been done on the economic impact of bans and an excellent review of those studies was published last year in the journal *Tobacco Control*. The review examined the quality and funding of the studies and found that the 21 studies that were judged to be of high quality—on the basis that they

had objective outcomes and were published in peer-reviewed journals—found that there was no economic impact.

The studies that found an economic impact were either flawed or not published in peer-reviewed journals, and all were funded by the tobacco industry. I recommend that the committee looks at that short paper if it has anxieties about the economic impact of a ban. It is listed in my evidence, and it takes all the papers, considers them objectively and comes to that determination.

The Convener: That is fine; we have got a note of that.

Stewart Maxwell has his regulation five minutes.

Mr Maxwell: I have one question.

The Convener: It might be a five-minute question for all I know.

Mr Maxwell: Much of the evidence has been covered by the questions that have been asked by the committee. David Davidson asked you about the Irish taking 14 years to introduce a ban. What steps have been taken in Scotland and throughout the UK? David Davidson seemed to suggest that we are going to act overnight; I assume that you would not agree with that. I can think of many different attempts that have been made over many years to reduce the smoking rates.

Christine Owens: We have probably spent more than 14 years working towards this point. On a recent study visit to New York, I was delighted to find that we are ahead of the game because we have a ban on advertising whereas the legislation there still has to provide for the tobacco industry's promotional activities in the state. The fact that we have been preparing for a long time is also demonstrated by the availability of smoking cessation support and lots of awareness-raising campaigns. MORI polls show a year-on-year increase in the number of people who support such action.

Mr McNeil: Action has been taken on smoking, but my focus is on the 1.2 million people who smoke and who will have to be encouraged to comply with the legislation. Rightly or wrongly, those people are unconvinced by the passive smoking argument. Smoking kills and we accept that, but all the efforts that you mentioned are focused on stopping people smoking, not on passive smoking, which is still a contentious subject.

Professor Hastings: I am somewhere between the two points of view. We have progressed a long way and it would be wrong to say that we are starting from zero. However, if the bill is to get on to the statute book and be good law, we need to ensure that we take people with us. It is a matter of the legislators recognising that they have to have courage.

The situation in Ireland has been greatly enhanced by the fact that Micheál Martin, the Minister for Health and Children, was prepared to stand up and fight to get the legislation through, despite a lot of opposition and political in-fighting. He had the courage to do that, and he has shown that such courage bears fruit—it is remarkable to go to Ireland and see how easily the ban has been implemented and how pleasant the pubs are. While I was there, I made it my onerous duty to visit some pubs—

Mr McNeil: I tried to do that, too.

Everyone who has given evidence to the committee has said that there could be a better bill.

Professor Hastings: Better than this bill or better than the Irish one?

Mr McNeil: Better than this bill.

Professor Hastings: As I said, I would improve the bill by extending its powers, as has been done in Ireland.

Marjory Burns: I have a couple of things to say to Duncan McNeil. If the choice is the bill or no bill, there is no doubt that it has to be the bill. If you bear in mind the fact that there are 800,000 people in Scotland with lung disease—

Mr McNeil: From smoking, not from passive smoking.

Marjory Burns: No, they have lung disease.

The Convener: Please let the witness finish, Duncan.

Marjory Burns: They have lung disease, which can be caused by a variety of things. Approximately half of those 800,000 people have asthma, and 80 per cent of those people will tell you that environmental tobacco smoke makes their asthma worse. You asked the earlier panel of witnesses about health effects and I assure you that people with asthma suffer immediate effects from being in a smoky environment. They are involuntarily breathing in something that is hazardous to their health and which could send them to hospital, or cause them to have attacks. It can cause people to develop asthma when they would not otherwise have it, whether they are adults or children. The health benefits and health damage are very clear and we support the bill as a way of protecting people's health.

Mr McNeil: The bill deals with passive smoking in public spaces. If I am frustrated with the evidence that has been led so far, it is because the people who have come to the committee have argued about the harmful effects of smoking and passive smoking but they have not reduced their arguments down to passive smoking in public spaces. They still claim that passive smoking in

public spaces contributes to all those effects on health, but passive smoking is only a small part of that. An extreme example of a person who suffers from passive smoking would be someone who shares a house with someone who smokes 60 a day. Is that equal to someone who occasionally goes into a pub?

Professor Hastings: If you are talking about a restaurant, for example, I agree that some people come in and visit it, but other people have to work there. Those people ingest as much smoke as someone who lives with a smoker. There are real issues. If someone lives with a smoker, they can at least negotiate with them and perhaps the smoker will go outside to smoke; I think that a lot of people do that now, particularly if they have children. However, in a restaurant or other place of work, people cannot do that.

The people of Scotland will look back and ask why we did not do something sooner. If the chemicals were coming out of the ceiling tiles, the building would be condemned, but because they are coming out of a tube of paper, we seem to think that that is not a problem.

Mr McNeil: I am not suggesting that it is not a problem; we just have to evaluate the extent of the problem.

The Convener: We will conclude the discussion with Professor Hastings's very interesting metaphor. I thank the members of the final witness panel.

15:26

Meeting suspended until 15:36 and thereafter continued in private until 16:42.

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