

JUSTICE 1 COMMITTEE

Wednesday 2 June 2004
(*Morning*)

Session 2

£5.00

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JUSTICE 1 COMMITTEE

22nd Meeting 2004, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mr Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

Marlyn Glen (North East Scotland) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)

Helen Eadie (Dunfermline East) (Lab)

Miss Annabel Goldie (West of Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

THE FOLLOWING GAVE EVIDENCE:

Martin Gaughan (T&G Scotland)

Paul Hopson (Royal College of Nursing)

Peter Hunter (Unison Scotland)

John Ironside (Chief and Assistant Chief Fire Officers Association)

Alex McLuckie (GMB Scotland)

Dr William Morrison (Royal College of Physicians of Edinburgh)

Roddy Robertson (Fire Brigades Union Scotland)

Ken Ross (Fire Brigades Union Scotland)

Ian Tasker (Scottish Trades Union Congress)

Dr Peter Terry (British Medical Association)

David Wynne (Chief and Assistant Chief Fire Officers Association)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

The Chamber

Scottish Parliament

Justice 1 Committee

Wednesday 2 June 2004

(Morning)

[THE CONVENER *opened the meeting at 10:15*]

Emergency Workers (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning, everyone. I welcome you to the 22nd meeting in 2004 of the Justice 1 Committee. I ask members to do the usual and switch off their mobile phones and so on if they have not already done so. Apologies have been received from Margaret Smith, and Stewart Maxwell will join us later.

Item 1 is consideration of the Emergency Workers (Scotland) Bill. I refer members to the written submission that has just been received from one of the organisations that will give evidence to the committee today. All the other written submissions were circulated prior to the meeting. I also refer members to committee paper J1/S2/04/22/3, which is supplementary evidence from the Chief and Assistant Chief Fire Officers Association in conjunction with the Strathclyde fire brigade. It gives details of attacks that have taken place on fire crews in Strathclyde.

I welcome the panel from CACFOA and the Fire Brigades Union Scotland. Thank you for coming along. David Wynne is the firemaster and the community safety portfolio officer of Dumfries and Galloway fire brigade; John Ironside is from Lothian and Borders fire brigade; and Ken Ross is the regional secretary of the Fire Brigades Union Scotland. We will go straight to questions.

Margaret Mitchell (Central Scotland) (Con): Good morning, gentlemen. Given the fact that firefighters are already protected in both common and statute law from being impeded in carrying out their duties, will the bill give you greater protection?

Ken Ross (Fire Brigades Union Scotland): I think that the bill will give us better protection. It has, under the common law, been difficult to get convictions for the attacks that we have suffered over the past few years. The bill is a specific measure under which emergency workers will receive more protection.

David Wynne (Chief and Assistant Chief Fire Officers Association): I believe that the bill will

give our staff greater confidence that action will be taken against people who perpetrate attacks on fire crews or fire service personnel. It will also give greater prominence in society to the fact that such events are unacceptable to society at large.

Margaret Mitchell: So, the bill will be a deterrent.

David Wynne: Yes.

Margaret Mitchell: Is there a need for legislation primarily because of the problem of assaults on fire workers or because they are being impeded in their duties? Is it because of a mixture of both? If so, what is the percentage of each?

David Wynne: The evidence that CACFOA has is that attacks are not just physical assaults but can be verbal attacks. For example, our fire control staff who answer emergency calls are, on occasion, threatened in the line of their duties. There are not just physical attacks; there is a range of actions that include verbal assaults, intimidation and threats.

Ken Ross: Over the years, attacks have been on the increase for a wide range of reasons. In our submission, we say that it is outwith the powers of the fire service to address the problems that we currently face. It is helpful—following the attacks that we have suffered in recent years—that the message is being sent out that such attacks are unacceptable. However, we are concerned that the range of emergency workers that is specified in the bill may well exclude other workers who see themselves as emergency workers. I do not know whether the bill will send out a different message to them.

Margaret Mitchell: That takes us to a matter that we will explore more thoroughly later. Can you give me an idea of the percentages? Is there a 50:50 split between assaults and impeding and verbal abuse? Can you give us a flavour of what you think the most prominent problems are?

John Ironside (Chief and Assistant Chief Fire Officers Association): The figures that we submitted show that in Scotland there were 48 verbal attacks on firefighters, two physical assaults with weapons, 10 physical assaults by unarmed assailants and 120 incidents in which missiles, such as stones, were thrown at crews and appliances. Crews have been hit by missiles and appliances have been severely damaged. The highest incidence is of missile attacks, which outweigh verbal abuse attacks by at least two to one.

Margaret Mitchell: Is there under-reporting of attacks? Do your figures reflect only incidents that were reported or are such incidents always reported? Are you happy that your figures are an accurate reflection of what happens?

John Ironside: I suggest that there is under-reporting. Brigades are trying to address that situation by encouraging firefighters to report instances of near misses as well. Many firefighters tend not to report verbal abuse or throwing of missiles that do not hit appliances or individuals. We have evidence that such incidents are not reported, so we are trying to encourage people to report all incidents that involve attacks on fire crews.

Margaret Mitchell: You have said that it would be easier to get a conviction through legislation and that a strong deterrent message would be sent out by that. Would anything else, such as sentencing powers, add to the deterrence aspect? Would legislation make it easier to monitor assaults or other incidents? Are there any other reasons why you think the bill would be good legislation and would be helpful to you?

Ken Ross: It is interesting to compare the consultation paper with the bill because the paper discussed a wider range of issues and measures that should be implemented. We should think not just in terms of deterrence or considering events after the fact, whether that is looking at closed-circuit television or using other measures to deal with an incident after it has happened; we must be more proactive. Certainly, fire services try to do that through community fire service initiatives such as education programmes in schools and in community groups.

I know that the bill is concerned specifically with how to penalise people who attack emergency workers, but it is a bit disappointing that the bill does not refer to wider measures that would try to avoid incidents taking place in the first place. I do not know whether such measures could be included in the bill.

David Wynne: The bill certainly gives prominence to attacks on emergency workers. I am not sure whether I can answer the specific question on sentencing powers, but a proactive approach is part of a range of interventions to address such issues. We would support an approach that builds attacks on the fire service into a wider concept of antisocial behaviour. The bill is only an aspect of such an approach; it is only one among a series of processes in the toolbox.

Margaret Mitchell: So the bill will help to raise awareness, create a deterrent and clarify the law a little. Do you think that that is all positive and helpful?

David Wynne: Yes.

The Convener: Before the next question, I should welcome Roddy Robertson. I am sorry, but Roddy was not on my list. You are, of course, very welcome to the Justice 1 Committee. Feel free to speak when you want to. I know that you are

anxious to deal with the question of who the bill should cover, so we will explore that question next. I know from your written submission that you feel that the bill should cover a wider range of workers. Therefore, I ask you first: who should the bill cover?

Roddy Robertson (Fire Brigades Union Scotland): The first aspect of the bill that we are concerned about is the question of people who assist emergency crews in the execution of their duties, whether they be electricity or gas workers, the people who shut off the mains in a building that is on fire, or JCB operators. We saw recently the ways in which many people who were not fire service personnel assisted in the incident in Maryhill. We use people with specialist skills from other agencies and, in an emergency situation such as the Maryhill incident, they could find themselves under the same form of attack as ourselves. Therefore, we are concerned about who the bill should cover.

Another group that we notice is missing from the bill is mountain rescue people. The bill mentions the Royal National Lifeboat Institution and HM Coastguard, but there is no mention of mountain rescue people. We regard them as coming under the definition of emergency services. However, the issue is not so much about defining other groups as being an emergency service; we believe that the bill should cover people who are acting with emergency services.

The Convener: Should the bill aim to identify any worker who is saving a life or protecting someone's safety in emergency circumstances? Should they be within the scope of the bill? Should that aim be at the heart of the bill?

Roddy Robertson: Absolutely. We thought that the bill's intention was to protect people who are carrying out emergency duties. It is easy to sit down and say that we have 999 services but, as we have said, there is a list of at least nine types of worker that have been defined. We see the definition as going a bit further than the bill does. A nurse in a hospital accident and emergency department would be covered, but if that nurse was to move into a ward that was not an accident and emergency ward, would the nurse still be covered under the legislation? The problem relates to the definition of what a person is doing, rather than what they are.

The Convener: Is it important to identify services or circumstances in which workers are more likely to be in line for attack? The question is, if the definition of who is to be covered is so wide, what deterrent effect would the proposed legislation have? Where should a line be drawn? Why would it be drawn simply at public services, for example? Perhaps any person who is carrying out duties in the line of their employment should

be protected, but I wonder whether that would dilute the effect of what the bill is trying to do.

Ken Ross: I appreciate the Minister for Justice's concern about not wanting to dilute the core issues in the bill, but it is appropriate to define what an emergency circumstance is for the purposes of individuals who are assisting emergency workers. However, there is a contradiction that relates to emergency workers. Roddy Robertson has suggested that, under the proposed legislation, an emergency worker will be an emergency worker if they are carrying out an emergency task, but will no longer be an emergency worker if they are doing a different task. That is cause for concern.

Workers in the fire services are always on duty and on call. Even if an officer is carrying out fire safety work, for example, and is not at an emergency incident, they can be called on at any time. Someone might injure an officer at such a time, which might mean that an appliance was put off the run, or was no longer available. Five minutes later, there could be an emergency call to a house fire, which that vehicle would be unable to attend. There would then be a delay in the response, which could, of course, be the difference between a person's living and dying. I am trying to encapsulate the fact that if a person is on duty, they should be covered by the legislation as an emergency worker.

The Convener: We will explore emergency circumstances later. David Wynne might want to add to what has been said.

David Wynne: There are two aspects to the issue. First, the bill should cover all fire service staff. Those staff might not be sitting on fire engines or attending emergency incidents, but they can nonetheless be subject to verbal or physical attack in their line of duty.

In the wider context, fire service and emergency responders rely on a range of other agencies to support them in dealing with emergency incidents. I do not have a direct example to give members of somebody being physically or verbally attacked at an incident, but we believe that the bill should cover individuals who are engaged in emergency work.

The Convener: Whom do you mean by that?

David Wynne: I mean a range of people; emergency planning officers or people who support emergency workers in dealing with emergency incidents could be covered.

The Convener: You mean people in the field.

David Wynne: That is right. People from Network Rail or other agencies who happen to be providing expert guidance and support to the fire

service and other emergency services could be covered.

The Convener: Would not they be covered by the definition of a person assisting the emergency services?

David Wynne: I read in the guidance that it is intended that people be covered under those circumstances, but I am not sure how far that takes things. I thought that you asked about who the bill should embrace. I am trying to suggest that, rather than be specific, a generic term could embrace anybody who supports the emergency services under emergency circumstances.

The Convener: I would like to be clear about who you think should be covered. Earlier, I asked whether the bill should cover workers who, in the line of duty, are protecting people's safety or lives. If that was the criterion, I can see why a planning officer, an engineer or an electrical worker would be covered, because they would be assisting. However, should anyone else be covered? Are we talking about staff sitting at desks or answering phones?

10:30

David Wynne: I will give the example of fire control officers, to whom I referred earlier. On occasion, those officers are physically threatened. Their role is to take the emergency call and then support an incident as it unfolds. They are in direct contact with the emergency crews. It is not usual, but it is not unusual, for those staff to be threatened on the phone because they are asking someone to do something that that person finds unacceptable. We suggest that the bill should cover people who are employed in the fire service while they are on duty. That would include fire control staff and our support staff.

The Convener: So you want to widen the scope of the bill to cover all fire staff.

David Wynne: Yes, we do. We argue that those staff members support emergency workers at incidents. You could argue that they are technically already covered by the bill. However, when we discussed the bill, we felt that it should be widened to include all staff on duty.

The Convener: In that case, putting one's own life at risk to save others would not be the applicable test. Are you saying that someone who is assisting, albeit from an office, is putting their life or safety at risk? I am trying to draw a distinction. I acknowledge totally what you say about the unacceptability of staff receiving verbal or physical threats. However, if we create a new offence, should we distinguish between people who offend against those who are putting their safety at risk to save others, and other people

who—although committing an offence—should be dealt with differently?

David Wynne: I understand that argument, but I am trying to say merely that staff who provide support during emergency incidents can be under stress, even though they might not face a direct threat of physical violence. There is a cost to the organisation if those people are not available to carry out their normal duties. In severe cases, such stress can cause people to retire on the ground of ill health. They might not be under threat from a missile being thrown or some other physical act, but they should be included in the bill in order to cover all circumstances.

Michael Matheson (Central Scotland) (SNP): I want to concentrate on the definition of those who are covered by the bill in section 1. In trying to list all the people who should be covered, it is inevitable that some will be left out. I wonder whether we have to consider the matter differently.

In response to the convener, you spoke about call staff and support staff. There are two categories of staff who deal with emergencies—operational staff and support staff. I wonder whether the definition for the fire services should be wider than that which is in the Fire Services Act 1947 and whether it should cover people who are called on by a fire brigade to assist it in discharging its duties.

You mentioned mountain rescue. I am a member of a mountain rescue team and I must admit that the only abuse that I have ever taken has been from my colleagues on the team. Mountain rescue teams are called on by the police but are not covered by the bill. I suggest that, when one of the 999 agencies calls on another party to provide operational assistance, that party should be covered by the bill, no matter who it is. A slightly different argument holds for support workers, but I wonder whether what I suggest would be a better way to deal with the issue, rather than trying to compile a list of who should and who should not be covered.

David Wynne: I would support such a proposal. I suspect that the issue would be tested in a court of law when an offence had been presented to the procurator fiscal.

Ken Ross: As much as we welcome the bill, we are concerned about it; we do not want to see firefighters being viewed as a special case. As far as we are concerned, we are not a special case. It is appropriate to say—indeed, it is absolutely correct to say—that we should not be hindered in carrying out emergency work. If there are to be prescriptive lists, I agree that people will be left out; such a list will look exclusive and we are concerned about that aspect of the bill.

I will move on to the question of people who assist firefighters. Certain workers or support staff have a direct impact on the operational capability of the fire service. One example that comes quickly to mind is hydrant operatives—the individuals who go out and maintain and service hydrants. If there were to be an incident in a street in which the hydrant was not working because our hydrant operative was hindered in doing their work, that would have a direct effect on the capability of firefighters to deal with an incident.

We could get very technical and very complicated and come up with 100 examples, but that is the sort of area that David Wynne was talking about. I agree that the more we broaden the list, the greater is the risk of dilution.

As I said, I am concerned that firefighters not be made a special case. On the other hand, however, if we are to go down the road of specifying who is to be covered, we would have to consider the people who make specific contributions to the service's operational capabilities. That comment is not exclusively about firefighters; it opens up the situations of other support workers.

Michael Matheson: I understand what you are saying. The fire hydrant operative is a good example, particularly in the school holidays when there can be difficulties in that respect. I wonder, however, whether there is a need to take a different approach.

A fire brigade will call upon certain people for assistance. I am thinking of the International Rescue Corps, which gives assistance in particular situations. Technically, its members would not be covered by the bill, but if they were called out by the fire brigade they would be included automatically under the provisions of the bill.

Another example would be the sort of incident in which a fire brigade might call upon Transco to seal off a gas leak, for example. If that were to happen, it could be argued that such Transco workers should be covered by the bill. That might be a better way to address the matter.

David Wynne: I support that suggestion.

The Convener: Section 1(3)(b) mentions:

“a member of a fire brigade maintained in pursuance of the Fire Services Act 1947 (c.41) or a person who, not being a member of such a fire brigade, is paid by a fire authority under section 3(1)(b) of that Act for rendering services and is doing so”.

Do those provisions cover any member of a fire brigade?

Roddy Robertson: Part of our problem with that paragraph is that the fire services legislation is about to be rewritten; we should see a new fire services act before the end of the year. I am not

sure how the provisions of section 1(3)(b) will fit in with those of the new act: I do not know what the new act will say.

The Convener: Sure—we are aware of the forthcoming legislation. Would the provisions of section 1(3)(b) deal with the point that you made earlier?

Roddy Robertson: No, because that section relates only to people who have been paid.

David Wynne: I do not believe that section 1(3)(b) covers the individuals who we have just described who support the fire services in certain situations. They are certainly not paid by the fire service or the fire authority.

The Convener: I was thinking about the personnel about whom you spoke earlier—those who assist your work.

David Wynne: I am sorry.

Ken Ross: I read that part of the bill in conjunction with the definition of an emergency situation. The individuals who are detailed in section 3(1)(b) will come under one of those emergency situations. David Wynne and I suggested that although people such as hydrant operatives are not working necessarily in emergency situations, their work has a direct impact on the operational capability of firefighters in emergencies.

If we consider section 1(3)(b) in isolation, it could be said that a hydrant operative would be covered. However, if we look at it in relation to an emergency situation, I think that those operatives would not be covered. I may be reading it wrongly, but that is my understanding of the provision.

The Convener: We will come to that—Bill Butler will ask about emergency circumstances, so we can come back to section 1(3)(b). However, you are saying that such operatives should be covered later in the bill under emergency circumstances.

Ken Ross: Yes.

Bill Butler (Glasgow Anniesland) (Lab): I will pick up on the point that Ken Ross made about hydrant operatives and the fact that, in your view, section 1(3)(b) would not cover that type of support worker because under section 1(5), the circumstances would not be emergency circumstances because they are not “present or imminent”. Is that what you are saying?

Ken Ross: Yes.

Bill Butler: Do you see that as being a failing in the definition of emergency circumstances? Would you like to see that definition amended or extended and, if so, how?

Ken Ross: The definition under section 1(5) is tight and prescriptive. For the reasons that we

have just discussed, we can see that the group of workers that we have been using as an example would not be covered. I keep harking back to the phrase, but this is about the operational capability of the service. There are individuals who are not in the front line, but who have a direct impact on the front line’s capability. I suggest that the definition of emergency situation in section 1(5) must be expanded to cover that group of workers, who have a direct impact on our capability.

Bill Butler: It is about operational capability and the support staff that allow that operational capability to operate at as near 100 per cent as possible. You believe that there is a deficiency in the bill in that respect.

Ken Ross: There is definitely a deficiency. I know that I have used the phrase “operational capability” a lot—it is common within the fire service—but it would be helpful if it were in the bill because it is a phrase that will be used by all the emergency services. Our support workers have a direct impact on our capability to attend and assist those whom we seek to assist, and we are affected if they are impeded.

Bill Butler: Do any other of the witnesses have anything to say about that particular point?

David Wynne: I agree with Ken Ross. Our written submission highlights that we believe that the phrase “responding to emergency circumstances” in section 1(4) should be replaced with the phrase “on duty”. That comes back to the same point that was made earlier and is supported by the arguments that Mr Ross has just presented about section 1(5).

Bill Butler: Mr Robertson, you made a point about nurses who move from an accident and emergency ward to another part of a hospital and are no longer working in an emergency situation. Did you mean that you would like the bill to be extended to cover all emergency workers who are carrying out non-emergency duties? If so, why?

Roddy Robertson: To be honest, I did not want the bill in the first place. For several years we tried to stop publicity in the newspapers and television about attacks on firefighters. To a certain extent, we tried to deal with the problem in our own way.

Bill Butler: In their evidence, the officers who spoke earlier said that even if the incident is a verbal assault or someone throwing a missile that misses, it should be reported. Do you think that you were wrong to try to deal with the problem in your own way?

Roddy Robertson: No. We never discouraged people from reporting incidents—that was never the intention. We discouraged reporting of such incidents to the press and other media. I do not know whether the gentleman from CACFOA can

back me up, but it is only in the past four or five years that attacks on firefighters have become tabloid news. As those attacks were reported, it was not just the instances that we recorded that increased; there were copycat attacks. On one day, an area in Glasgow might get a headline on the front page of the *Evening Times* because of an attack on a fire engine and two days later, exactly the same thing will be done in an area in Paisley to attract the same headline. That has happened. Such reporting has caused a snowballing of attacks.

Bill Butler: That is a serious enough circumstance, but is it like the not-so-serious circumstance that I was reading about, in respect of which you ask newspapers that, if they describe fire hydrants being set off maliciously, they do not show kids playing there because that attracts copycat incidents?

10:45

Roddy Robertson: Absolutely. I honestly think that media coverage has increased attacks and has given people the idea of behaving in that way. As Mr Ross pointed out, the bill represents the final stage in the process of getting to where we should be in terms of dishing out punishments for offences, but we would have much preferred the committee to discuss educating the community about the fire service. The proposed fire services legislation will cover such areas, which we regard as more important than setting out punishments.

Bill Butler: I understand that. I will move on to ask a question that I had intended to ask later. The submission from Strathclyde fire brigade mentions wider measures such as

"community safety initiatives to tackle the problem at source through education",

CCTV and other non-legislative measures. Do you regard such measures as equally important to or more important than the proposals in the bill, or would such measures work in tandem with the bill?

David Wynne: Your question raises a number of issues. We started to talk about the role of the media and the risk that the prominent coverage of attacks by the media encourages further attacks. That is certainly a factor, but we should put it into context. The proposed new laws would assist us in dealing with antisocial behaviour in the form of attacks on fire crews and emergency workers.

Bill Butler: You described the bill as being one tool in a toolbox. Do you see educative measures and sanctions as complementary, rather than mutually exclusive?

David Wynne: Yes. I agree with the witness from the Fire Brigades Union that we should seek

to prevent attacks from occurring in the first place, through work with communities and through a range of other work to integrate the fire service into communities so that it is accepted by them. Nevertheless, we should be able to use legal sanctions against individuals who perpetrate attacks. The deterrent effect that was mentioned is an important aspect of the bill.

Bill Butler: Mr Ross, do you agree that there should be sanctions as well as the proactive initiatives in education to which Mr Robertson referred?

Ken Ross: I do. There is more than one reason why attacks take place, so we need more than one approach to solving the problem. That combination of elements is a must if we are to address all the aspects to the problem. It is right to say that we must be proactive in educating people and trying to prevent attacks from happening in the first place, but adequate measures must also be in place to punish people who carry out such attacks and to act as a deterrent. We place the greatest emphasis on the proactive, preventive approach.

Bill Butler: Do the other witnesses agree that there should be sanctions as well as proactive initiatives to educate people about how to behave properly?

John Ironside: I agree with David Wynne and Kenny Ross. Strathclyde fire brigade has introduced a number of community education initiatives and has recently fitted CCTV to six fire appliances for a trial period. We have had quite a lot of success in detecting people who have attacked crews in hot spots and those people have subsequently been identified and reported to the procurator fiscal.

Bill Butler: How successful have educational initiatives such as the juvenile fire-setter scheme been?

David Wynne: It is difficult to answer that. There is empirical evidence that the juvenile fire-setter scheme has a beneficial impact on reoffending and a range of other issues in the wider context of antisocial behaviour, but it would be difficult to say that the scheme has had an impact on attacks on firefighters because I do not think that fire setting and attacks on crews are necessarily correlated. Nevertheless we should consider that area with a view to providing evidence in the future.

Bill Butler: What is the FBU's view on that?

Roddy Robertson: We believe that the initiatives have been working and have had some effect. I cannot get my head round the idea that we are a special case and different from other workers. We are protected by the present law. The bill aims to give us a bit more protection by introducing an aggravated assault but, to be

honest, I am uncomfortable with the fact that we are being singled out as different from other workers. The way forward is not through CCTV, which is another detection method rather than a prevention method. I firmly believe that energy should be put into schemes such as the junior fire-setter schemes and the phoenix projects.

Margaret Mitchell: I want to explore the circumstances in which hydrant workers work. There is no present or imminent danger, but there may be a causal link to an emergency circumstance. We are trying to protect key workers while covering circumstances that others might find themselves in, without diluting the bill. If at some point an incident took place and a hydrant did not work because it had been tampered with, would that be covered by a causal link? Could we say that the reason why it was not working and the cause of the imminent danger was the previous incident and then apply the legislation at that point?

Ken Ross: It would be possible to retrace our steps. If a hydrant did not work, we could ask the hydrant worker in that area why that was the case. If he had been attacked in the street when he was there to repair or maintain the hydrant, that would give a causal link to the incident. That is a fairly easy process to carry out. However, we are entering into the danger area of including absolutely everybody. I know that you are concerned about the dilution of the bill, but I return to the issue of operational capability. The front-line emergency workers are not the only people who carry out the work of the fire services. The front-line staff rely on support staff to ensure that they are operationally capable of carrying out their tasks. If we are to protect emergency workers, the support staff must be included in that because they are part of the package.

Margaret Mitchell: I understand that, but the circumstances that I outlined ensure that their work is covered without going down the route of a blanket cover. That is another issue to consider.

The Convener: Something occurred to me when Margaret Mitchell was asking that question. I understand why Ken Ross wants it to be clear in the bill that someone who assists front-line staff when they are in the throes of saving lives is covered. I do not see why they would not be covered, as long as there is an emergency circumstance. The support staff would be covered either because they are assisting the emergency workers or because they are employed by the fire service. Michael Matheson has been having a look at the bill while we have been talking. We are clear that section 1(3)(b) covers all members of the fire service. I accept that you would like to widen the definition of emergency circumstances, but hydrant operatives or planning officers would

clearly be covered in the same way that a fire service officer would be covered.

Ken Ross: We should read section 1(3)(b) in conjunction with the definition of an emergency situation. Section 1 defines an emergency worker and then goes on to talk about the circumstances in which workers would be covered.

The Convener: Nobody will be covered by the bill unless they can show that there are emergency circumstances that are likely to cause serious injury or harm and so on. I hear what you say about widening the definition of emergency circumstances, but at present the people whom you are talking about seem to be covered. Even if you widen the scope of what you mean by emergency circumstances, they will still be covered.

Mr Stewart Maxwell (West of Scotland) (SNP): I should declare an interest, in that I know three of the panel members from my previous employment: John Ironside, Roddy Robertson and Ken Ross. I do not know David Wynne.

I am interested in what you said about the inclusion of other workers and fire brigade support staff. From your comments, I am not sure where you intend to draw the line. Would you include hydrant operatives, support staff who work in the station, or the staff of the laundry service that cleans the kit?

Ken Ross: The question goes back to Michael Matheson's comments on prescriptive lists and it is difficult to answer. I am not looking to draw the line anywhere, as—I will be quite frank about it—we are trying to encompass as many people as possible. I think that that is appropriate, because the fire service comprises not just the operational staff but a wide body of people who work towards the operational capability to provide the service. It is difficult to say where I would draw the line. We started to use the hydrant operatives example continuously, but I just threw it in as an example. We could go down a ridiculous road and talk about people who are employed by the fire service in minor roles that are detached from the operational side, but I do not suggest that we should encompass absolutely everybody in that sense.

I know that there are difficulties with prescriptive lists and I do not think that I would like to see that either—I agree with Michael Matheson about that. I would like to include anyone who has a direct impact on operational capability. You mentioned kit cleaning, but I do not know whether that is a good example. In most brigades, and certainly in Strathclyde, there is plenty of spare gear, so that should not be an issue. It is not the case that we cannot go on incidents because the cleaners are late bringing back the gear—I know that that has happened, but I think that we have moved beyond

that. I know that I am not answering the question very well. I do not like prescriptive lists, but if an individual can show that they have a direct impact on the operational capability of the service, that would be enough for them to prove that they are covered.

Mr Maxwell: I accept what you say, but I am concerned that if somebody impedes a non-uniformed member of staff—such as a hydrant operative, which is an obvious example—it is perfectly possible that they would be unaware that the staff member was carrying out work for the fire service. I do not know how one would prove that they were aware of that. If an incident occurred at some future date and there was a problem, I do not know how the offence of which the person was accused could in law be aggravated by something that happened in the future. Are you suggesting that we could trace back and say, “Because of something that happened afterwards, you should suffer an increased penalty”?

Ken Ross: I take your point. If someone who is not obviously a fire service worker is attacked, the individual who perpetrated the attack could be prosecuted under the bill even though they did not know that the individual whom they attacked worked for the fire service. However, I think that that is unlikely. To be honest, I think that it is quite clear that such staff are fire service workers, even in the case of hydrant operatives. I return to my original response. It is difficult to have prescriptive lists, but—I keep harping on about it—if someone has a direct impact on the operational capability of the front-line service, they should be covered by the bill.

Mr Maxwell: Roddy Robertson seemed uncomfortable about the bill. John Ironside talked about using CCTV and other methods to catch those who attack firefighters while they are carrying out their duties. Given your discomfort and comments about using the common law and current statute law, do you think that the bill will provide protection over and above what is available under the common law and statute?

11:00

Roddy Robertson: I do not think so. As I said, perhaps the bill highlights what might be termed a form of aggravated assault. The other workers whom we are talking about might be dealt with under the forthcoming fire services legislation. That could be similar to the situation under the Police (Scotland) Act 1967, to which paragraph 1.9 of the consultation paper refers. That act covers any person who

“assaults ... obstructs, molests or hinders a constable in the execution of his duty”.

I imagine that the forthcoming fire services legislation will have a similar provision to deal with

such behaviour towards somebody who is acting in pursuance of their fire service duties. That would probably take into account the wider scope of people whom we are talking about. I understand why the bill has been introduced, because the subject has become very public, but I do not think that it will make a bit of difference to the number of attacks on fire crews.

John Ironside: I disagree with part of what Roddy Robertson said. The bill will provide some benefit and enhancement. I am not sure whether the number of attacks on fire crews will reduce initially. The bill is part of the bigger toolbox to which we have referred, which includes community safety and education initiatives. However, the bill will give our staff, firefighters and other emergency workers great assurance. It identifies a problem in society and highlights the fact that such behaviour is unacceptable.

Mr Maxwell: Is that a good use of legislation? Should we codify the common law just for comfort or for publicity and press-release reasons? I accept that it is reprehensible that people are attacked. Attackers should feel the full force of the law. However, I agree with Roddy Robertson that the bill does not seem to provide more protection than is currently available. Is it acceptable to pass law for promotional reasons?

John Ironside: No. The bill is not just for promotional purposes. In my opinion, the law courts have not dealt with some attacks on emergency workers and on firefighters to whom I have talked. I was assaulted quite severely and that case was dealt with. We are attacked day in, day out. The existing legislation does not deal effectively with attacks on emergency workers.

Mr Maxwell: Do you accept that that is a problem with enforcement of the law rather than with the law itself?

John Ironside: That may be the case.

Roddy Robertson: A serious house fire occurred in Paisley last Friday night. Four people turned up in a car, then disappeared. When they returned two minutes later, they had full-length swords. They proceeded to enter a close with swords to sort out whatever was going on. None of our firefighters was assaulted and that would not have been recorded as a near miss, because nobody in the fire service was threatened. At another fire later that night, people turned up and walked down a close with two revolvers. How will the bill stop that happening? I do not see how the bill will make a bit of difference to such incidents.

Mr Maxwell: You do not think that the bill will add anything to current statute or common law, but you touched on the forthcoming fire services legislation changing the level of protection for fire service staff. I understand that the Fire Services

Act 1947 covers only firefighters who are performing firefighting duties. Would it not be simpler to amend that act or to put a section in new fire services legislation to widen the scope from firefighting duties to all duties? That would provide the same protection as is available to police officers under the Police (Scotland) Act 1967. Would that be more appropriate?

Roddy Robertson: Taking that path rather than passing the bill would be more beneficial for my union's membership. I cannot emphasise enough the fact that I do not see how the bill—apart from the publicity that it will attract—will make a difference to people in Ferguslie Park, Wester Hailes or wherever attacks are committed. The only thing that the bill will do is punish the people in society who could least afford it and bring the full weight of the law to bear on them. We should invest in the education of those people at the very start of their lives rather than invest in the measures that are proposed in the bill.

David Wynne: I have already acknowledged that a range of different measures could contribute to reducing the number of attacks on emergency workers. By giving the issue prominence and by providing a demonstrable conviction or offence, the bill could assist in reducing such attacks, including attacks against fire officers.

Mr Maxwell: Will you explain why you believe that the bill will reduce attacks on firefighters?

David Wynne: I accept that such a provision for firefighters could be built into the proposed Scottish fire services bill, but my argument is that the bill before us covers all emergency workers. My position is that firefighters should be included within the generic definition of emergency workers. I accept that there is an argument that protection is provided by the common law, but I believe that the bill would contribute to the overall ability to deal with people who perpetrate attacks.

Mr Maxwell: That is the question that I am trying to get at. What additional aspect would be contributed by the bill?

David Wynne: It will contribute by providing a specific identifiable offence.

Mr Maxwell: Are such attacks not already covered by the common law?

David Wynne: I do not have wide experience in the matter, but I am not sure how many convictions were secured for the, I think, 202 attacks on fire crews that took place between April 2002 and March 2003.

The Convener: Roddy Robertson mentioned that he was a bit uncomfortable about the law singling out the fire service. Would he be more comfortable if we legislated more generally against violence at work? In addition to having measures

that protect fire service workers, should we strengthen the legal penalties so that all those who face physical assault or verbal abuse at work are protected?

Roddy Robertson: I understand where the bill is coming from and what it is trying to achieve. Initially, we perhaps did not grasp the fact that the bill identifies not only situations that are liable to lead to death but those that could result in serious injury. We are often attacked at fires where there is no imminent danger to life. When I read the bill initially, I thought that it would provide protection only in cases where lives are put at risk to save the lives of others. However, I think that the bill covers the wider issues as well as damage to the environment.

I believe that a worker is a worker. Workers should be entitled to go to their work and carry it out without fear of attack or assault. We are no different from anybody else in such circumstances. We expect to be able to go to work and come home from work without being attacked.

The Convener: The committee acknowledges that, in theory, we should not seek to give more protection to one group than to another. For instance, shop workers face violence at work. However, I would have thought that, no matter who they are, workers who put their own safety at risk in providing any service should be given added protection under the law. Whether or not you believe that such protection acts as a deterrent, surely the legal position should be clear to everyone. When someone puts their life at risk in the line of duty in order to save someone else, they should be able to do so in the knowledge that those who attack them will incur heavy penalties.

Roddy Robertson: I have no problem in accepting that.

Ken Ross: I hope that we have not misled the committee slightly, but part of our concern about not wanting to be a special case comes from the fact that, for many years, the fire service has enjoyed neutrality. We are not viewed like the police, who attract a certain type of attention. Firefighters and ambulance workers have always enjoyed that neutrality, although there have been more attacks on ambulance and fire crews in recent years. We are quite precious about that neutrality, so that is why we are concerned when we see ourselves being put on a prescriptive list of special cases. We want to move away from that. That is the core of our concern.

Roddy Robertson: Our biggest objection to CCTV is that it would mean that, in the not-so-good areas into which we have to go, we would be seen as collecting evidence for and being part of law enforcement. That is a big concern of ours and it is why the FBU has objected to CCTV for a number of years.

David Wynne: I agree entirely with the convener's analysis, because fires or other emergencies place special circumstances on emergency work. The basic tenet of the normal workplace does not demand that employees go beyond delivering their service or work, but the fire service's work often requires firefighters to go beyond what is safe to do under normal working conditions. I could illustrate that by discussing how health and safety legislation applies.

Michael Matheson: We have focused on a number of specific aspects of the bill. Are there any other parts of the bill to which you would like changes to be made to assist in its implementation?

Roddy Robertson: The only point that I will make is the one that I made earlier on the proposed fire services bill and the references to the old Fire Services Act 1947, which will become redundant once the proposed bill is enacted. I do not know how the Emergency Workers (Scotland) Bill will take into account the proposed fire services bill and how the two of them will come together.

Michael Matheson: Do you mean the specific mentions of the 1947 act?

Roddy Robertson: Yes. I imagine that it would be possible for the bill to refer to "the fire services legislation regarding offences", and that it would similarly be possible for the fire services bill to refer to the Emergency Workers (Scotland) Bill but, at the moment, this bill refers to the 1947 act. It has missed out the Fire Services Act 1951, which amended the 1947 act.

Michael Matheson: I imagine that any proposed fire services bill will cross-refer to the Emergency Workers (Scotland) Bill, which will apply to any successor legislation to the 1947 act. That is primarily a technical issue.

David Wynne: I suspect that this will get me back into the discussion that I had with Mr Maxwell, but we submitted evidence that there is a worrying increase of premeditated acts in which malicious calls are made for fire crews to attend an incident at which traps have been set to worsen the effects of the attacks. I am not sure whether it is easy to address that in the bill or whether it is better to address it elsewhere, but the sanctions in the bill seem to be quite lenient on premeditated attacks.

Michael Matheson: That is a fair point, but I would think that it would be a matter for the Crown Office and Procurator Fiscal Service when it took a case before the courts and that the courts would take such circumstances into account when passing a sentence. It probably could be prescribed for in the bill, but I do not know whether that would be wise, because it would tie the courts' hands.

David Wynne: I accept that argument, but I presented the issue for the opposite effect. The bill should not tie the courts' hands and prevent them from taking further sanctions where there are severe circumstances in which an attack is premeditated.

Ken Ross: Paragraph 3.5 of the consultation paper refers to a number of wider measures, such as sharing evidence, partnership working and community service issues. It would be helpful to have a reference to them in the bill, because it would make the bill look less reactive and less about punishment if we referred to how to resolve the issues and make progress on reducing the number of attacks.

Mr Maxwell: I will carry on from where we left off a few minutes ago on the financial impact of the bill. In the financial memorandum and the Executive bill team's evidence to the committee, the Executive stated that it envisages that there will be no additional prosecutions, or a very limited number of such prosecutions, because of the bill. It also does not believe that there will be any expense for the Crown Office and Procurator Fiscal Service and it expects the bill to have no impact on the prison service. I wonder whether the witnesses will comment on that view, particularly in light of David Wynne's earlier comment that the bill will give added protection to the fire service.

11:15

David Wynne: I will say only that attacks are increasing and are under-reported. Although I would not argue with another profession, I wonder whether historical evidence has been used in the financial memorandum. We are trying to highlight an increasing trend and make forecasts.

Mr Maxwell: But this is the Executive's forecast of what will happen if the bill is passed.

David Wynne: I suspect that it is based on historical evidence. However, I am not in a position to defend that comment.

Ken Ross: We could look at the issue in two ways. On the one hand, if the bill does not lead to an increase in prosecutions and so on, people might wonder what the point of it is and whether it is a waste of time. On the other, it could have been designed as a preventive measure to stop people making these attacks in the first place. However, as far as preventive measures are concerned, the committee knows that we feel it more appropriate to take an approach that combines education, partnership and evidence sharing instead of simply scaring people out of carrying out such attacks.

Margaret Mitchell: You expressed some concern about being singled out as a special case.

However, although we accept that no one in any line of work should be assaulted or impeded in carrying out their duty, do you accept the convener's point that you are a special case because you put your own lives in danger and that assaulting or obstructing you puts other people's lives in danger? That is not the case for the vast majority of public sector workers. The bill seeks to give you more protection on that basis alone, although whether it fulfils that intention is another matter.

Roddy Robertson: We might accept that, but what about the train driver who is struck by a brick flung off a bridge while driving 200 passengers or the bus driver who is assaulted on his bus while carrying 40 passengers? After all, they are responsible for those lives.

Margaret Mitchell: I think that you are put in such a situation every time you are called out.

Roddy Robertson: I fully accept the convener's point that at times we put our skills on the line to save other people. In those circumstances, I can understand where the bill is coming from. However, our ability to stay neutral has been very precious to us over the years and has kept us out of a lot of trouble. For example, because of the neutral role that the service in Northern Ireland managed to maintain throughout the troubles, no firefighter was ever murdered in a terrorist attack. We have played the same role on the UK mainland and want to get back to that position. We do not want to be seen as a target. Instead, we pride ourselves on our neutrality and will help everyone, regardless of their circumstances or who they are. I do not think that the bill will provide our people with much more than a feeling of comfort.

The Convener: It is helpful to know your position when you make such a statement. However, as far as your example of the train driver is concerned, we would expect the full force of the law to be brought to bear on such a matter. Under the bill, you would have the same protection. The Crown Office has pointed out that the procurator fiscal will decide on the appropriate court to deal with such matters. The higher the court that deals with the offence, the stiffer the penalty will be. We would expect that to happen with regard to attacks on any workers.

I thank the witnesses for their extremely helpful written and oral evidence, which has given us the fire service's perspective on the bill.

We move on to our second set of witnesses this morning. We have a panel from the Royal College of Nursing, the British Medical Association and the Royal College of Physicians of Edinburgh. I welcome Paul Hopson, the vice-chair of the UK health and safety committee, which is part of the

Royal College of Nursing; Dr Peter Terry, the deputy chairman of the Scottish council of the British Medical Association; and Dr William G Morrison of the Faculty of Accident and Emergency Medicine and the council of the Royal College of Physicians of Edinburgh. We will go straight to questions.

Margaret Mitchell: Good morning, gentlemen. Do you think that the bill will provide health care workers with greater protection?

Paul Hopson (Royal College of Nursing): RCN Scotland welcomes the Emergency Workers (Scotland) Bill, but we have some reservations. Nurses and other health care staff have a right to be safe at work irrespective of whether they are based in hospitals, other health care premises or even in the community.

Dr Peter Terry (British Medical Association): We agree with that. We welcome the intent behind the bill, but we have concerns about its limitations.

Dr William Morrison (Royal College of Physicians of Edinburgh): I echo that. The thrust and intent of the bill are good, but I do not know whether it will provide extra protection.

Margaret Mitchell: I will not explore which staff are affected just now because we will go down that road in some detail later. Why is statutory provision necessary? Is it because of the problem of assaults on health care workers, is it because health care workers are being impeded in their work so that they cannot carry out their duty properly, or is it a mixture of both?

Paul Hopson: From our point of view, it is a mixture of both. Malcolm Chisholm said last week that there had been an increase of 14.9 per cent in assaults on front-line staff. Nurses give 80 per cent of care to patients and the public and they are the most vulnerable to assault.

Dr Terry: I tend to agree. The assault issue gets most attention and the impeding of staff at a local level is also a problem. However, we have to see the health service as a system; if any part of that system is impeded in any way, the whole system is affected.

Dr Morrison: Physical violence, despite the fact that it happens on the front line, is still not terribly common. It is upsetting when it happens, but there is far more obstruction and verbal assault. The bill represents an attempt to provide uniformity. I note the Lord Advocate's previous attempts to tackle the problem. In the locality where I work, we have had some success in discussions with the police, the procurator fiscal and the courts in ensuring that the matter is taken seriously under existing legislation. However, I realise that that is not the case everywhere and the bill might provide some uniformity.

Paul Hopson: It is not just front-line nurses who are affected; it is all health care professionals, whether they work in accident and emergency or in any ward area that receives emergency admissions—porters, domestics and nursing care assistants right across the field.

Margaret Mitchell: As I say, we will explore that issue more thoroughly later—I know that you are anxious to talk about it. However, before we do that, can you tell us why you think that the bill will give you more protection? You have mentioned uniformity. Are there other reasons why the introduction of the statutory offence will give you more protection? For example, will it be a deterrent if it is publicised?

Dr Terry: Yes. I think that it will be a deterrent—I hope so, otherwise why do we have courts and sentences? Society—which it is your job to reflect—has seen such attacks, whether physical or verbal, as something different. They are attacks on people who are trying to help society as a whole and society would like the people who are trying to help to be protected. I hope that the bill will be a deterrent. It is just one measure—there are others that I am sure you have heard about or read about. The bill sends out a message and will, I hope, be a deterrent.

Paul Hopson: I back up that statement. There have been problems and the bill will send out the clear message that violence and aggression against public health workers—whether medical or paramedic—in any emergency situation will not be tolerated. The bill will send out that clear message in Scotland and highlight to the whole United Kingdom that such attacks will not be tolerated in Scotland.

Margaret Mitchell: The RCN has reported that there is a degree of under-reporting of incidents. Will the bill help in that respect?

Dr Hopson: It will be very important, because the message will be going out from the Scottish Executive and the justice system to nursing staff that violence and aggression towards staff will just not be tolerated.

Margaret Mitchell: That is helpful. Would anyone else like to add anything?

Dr Morrison: Yes, I have a couple of points to make. We have undertaken a fair bit of inquiring and have found that there is under-reporting for several reasons. There is under-reporting locally not so much because staff feel that they will not be taken seriously, but because there is a significant concern among them—both medical and nursing staff—about taking things further due to their reluctance to go through the judicial system. People do not like, or they fear, appearing in court for two reasons. First, it puts them in the awkward position of having to stand and give evidence.

That is unavoidable, but it is a concern that has been voiced to me. Secondly, time off is valuable and people have frequently had to go to court on their valuable days off. That concern might seem a minor one, but it has been raised with me by a lot of staff.

Margaret Mitchell: Do you think that the introduction of a statutory offence will mean that there will not be the same reluctance? Do you think that it will be easier to prosecute? Will the process be easier so that people will use it more?

Dr Morrison: I do not know, but I cannot see how an increased likelihood that a case will go to court will help. I realise that there is no way out of that and that people have to stand up and be counted; the problem is that people do not particularly want to do that.

Margaret Mitchell: That is useful information. Thank you.

Mr Maxwell: Good morning. I am interested to hear that you think that the bill will be effective in sending out a message to the general public. It may well send out a message, but do you think that it is appropriate to use legislation to send out messages? Are there additional measures in the bill that will give protection to health service workers in a way that does not happen under current statute and common law?

Dr Terry: I see where you are coming from, but the legislation has to reflect the view of society about various criminal activities. If it sends out an appropriate message at the same time, that is all well and good, but I do not think that that is the primary purpose of legislation. The purpose of legislation is to protect society in different circumstances. Perhaps previous legislation has been inadequate for health care workers. The bill moves some way towards reflecting what society as a whole thinks about such activities.

11:30

Paul Hopson: I agree. The nursing profession has in no way felt that it has been protected by legislation and appropriate punishments for perpetrators of violence and aggression. However, extending additional legal protection to only some health care workers could be interpreted by members of the public in such a way that attacks on other members of staff who are not included in the new legislation will not be treated so seriously.

Mr Maxwell: I hear what you say about messages that we send out and reflecting society's desire to show how reprehensible we find such attacks, but I am curious as to whether you believe that there is additional protection that is not currently available under common law and existing statute. Is it the case that the existing

common law and statute are okay but are not being properly used?

Dr Morrison: As I said, we have tried to address matters locally and we have had some success in doing so. As a result of discussions with the police, we have adopted what would be called a zero-tolerance approach—the local courts have done so, too. There is legislation that can be used, but I think that the bill will provide uniformity and, as I have said, perhaps the matter will be taken more seriously in other areas. There is a message in the bill not only to the general public, but to health service staff that they are being considered and taken seriously.

Dr Terry: Mr Maxwell has presented the situation as an either/or one, but I do not think that it is. There is probably some evidence that existing legislation has not necessarily been used to its best advantage and there might be potential for improvement in that respect, but I cannot see any reason why there should not be an additional layer of protection for a certain group of workers in certain circumstances. As far as I can see, that is all that we are trying to do.

Mr Maxwell: That is a perfectly valid point. On what you said about the deterrent effect of legislation, do you believe that legislation of any sort—including the Emergency Workers (Scotland) Bill—deters people from carrying out such attacks?

Dr Terry: Society has used legislation for a long time to try to deter aberrant behaviour.

Mr Maxwell: I wonder whether such people might think about the bill when they attack health service workers.

Dr Terry: I listened to the previous evidence; there is an issue to do with educating society. Of course, there must be such education, but in general I think that, while society believes that punishment of aberrant behaviour provides some kind of deterrent, it is appropriate for that kind of deterrent to be gauged according to what the behaviour has been.

Mr Maxwell: Section 3 of the bill deals with hospital accident and emergency premises and health workers. I wonder whether the additional offences that are set out in section 3, in conjunction with the protection of all emergency workers under section 1, provide sufficient legal protection for health care workers in dealing with emergencies in hospital premises. Should the bill go even further than it does?

Dr Morrison: We all seem to be saying that we do not want to be a special case—the committee heard that from one gentleman earlier this morning. I will add to that by saying that I am not sure why accident and emergency premises—the

bill says “premises” rather than departments—should be a special case. They are by no means the only area of hospitals where emergency work is carried out. I am not sure if it is possible to say that there are any clinical areas of a hospital where emergency work is not carried out. I think that the definition should be extended. It is very nice to be thought of separately from everybody else—which tends to happen anyway in accident and emergency—but I would contend that the issue is about more than just the physical environs of what is known as the accident and emergency department or premises.

Paul Hopson: Speaking from RCN Scotland's point of view, I totally agree with what has been said. You have singled out hospital accident and emergency premises, but a lot of emergency work is carried out outside accident and emergency, even when patients are being transferred from the accident and emergency section. Emergency work might be carried out in any specialty area in the hospital—in wards dealing with care of the elderly, for example. The patient could be going to the mental health care section of a hospital, to an accident and orthopaedic ward or to a medical and surgical ward. The definition should not depend on accident and emergency, because emergency situations arise in all areas within the health service and within any acute hospital—and even in the primary care setting.

Dr Terry: I agree with my two colleagues. The bill will run into some difficulty if its scope moves away from the emergency worker towards the emergency worker working in specific situations. If the bill is not amended, I foresee that the definition could be a difficulty. I agree that the bill's scope should be extended outwith the accident and emergency department. As has been said, emergencies occur throughout the health care system. They occur in the community, in general practitioners' surgeries and in patients' homes.

Mr Maxwell: There is a clear unanimity of approach: all hospital premises should be covered, rather than just accident and emergency.

Dr Terry: I also mentioned the community.

Mr Maxwell: I will come on to the community—I will ask a separate question about that later. Effectively, you are saying that not just accident and emergency departments should be covered, but all hospital premises.

Paul Hopson: Yes.

Mr Maxwell: Should the provisions be extended to all types of workers or to any additional workers who are involved in hospital premises? Obviously, not just nurses and doctors are involved, but a whole range of staff.

Paul Hopson: RCN Scotland would be looking for the provisions to be extended right across the work force of the national health service. They should cover health service workers who work in general practices, in dentists' practices and in the community. There are nurses who do not always work in uniforms; they will sometimes go out to do work in the community in ordinary day clothes and they, too, are subject to violence and aggression. The provisions should apply right across the NHS.

Dr Terry: We agree. We work in teams—a porter who transports a patient or who transports specimens from one place to another is just as much a member of the team as others are. Attacking them and stopping them getting a blood sample to a laboratory, for example, might be just as important an incident as one involving someone else.

Paul Hopson: On the point about those who work out in the community, a lot of people, including health visitors and district nurses, go out alone and can be susceptible to assault. Admittedly, such cases are not as common as they might be in the acute hospital setting or even sometimes in the primary care setting, especially in the learning difficulties and mental health care parts, but every health care worker should be able to deliver a service to the community without being assaulted.

Mr Maxwell: I am sure that the witnesses have been clear on this, but I would like to confirm that you are calling for the bill to cover all health care premises and all health care staff—or all NHS staff.

Paul Hopson: Yes.

Mr Maxwell: I presume that that includes staff who are working in private medical facilities.

Paul Hopson: Yes, because they, too, provide a service to the public. Even staff who work in nursing homes should be included.

The Convener: On the basis of that principle, I presume that you would not draw the line at health workers.

Paul Hopson: I would extend the protection to all health care workers. I am not talking about just—

The Convener: I understand that. I am asking whether you would extend it to all workers or just to workers who work in health.

Paul Hopson: It should be extended right across the public sector to anybody who works within the public sector.

The Convener: Why stop at the public sector? Why not include the private sector?

Paul Hopson: Even within the private sector—

The Convener: You see where this is going. The issue that the committee is wrestling with is that there is justification to include everybody. We start from the assumption that the law should protect all workers from violence, assault and being prevented from carrying out their duties. One could perhaps put that to one side and say, "Perhaps the law is inadequate and we should look to strengthen it." Do you see no difference in any setting at all between those who are more vulnerable and those who might be less vulnerable?

Paul Hopson: We are concerned with health care professionals who work in the NHS and the private sector and we hope that the Emergency Workers (Scotland) Bill will eventually bear out—

The Convener: I understand your position. I am just trying to tease out whether you think that your own statistics, for example, bear out the fact that some workers are, in reality, more vulnerable than others. Some of the statistics in "Violence at work: the experience of UK doctors", for example, bear out the evidence from elsewhere that those who work in the psychiatric sector report more incidents of assault than those who work elsewhere. Are you saying that there is no difference across the various sectors in which you work? Are you all equally prone to assaults and violence?

Paul Hopson: Of course we are. Everybody is prone to that.

The Convener: Equally?

Paul Hopson: Yes.

Dr Terry: We may not agree on this point. I see the difficulty with which the committee is tussling and I do not envy you your job. I suspect that we will come down on the side of health care workers—people who provide health care directly or who assist in the direct provision of health care.

I listened to the earlier discussion. It is perhaps difficult to make a case for including, for example, the people in the laundry who clean the bed linen, as they are not directly providing health care or assisting people who are directly providing health care. I suspect that you will have to make a distinction and craft the bill accordingly, assuming that you wish to change it.

Dr Morrison: That is correct. It is clear from the statistics that some areas are more vulnerable and prone to attack than others. However, within those areas, one of our most abused groups of employees is receptionists, who are the first contact for people who attend our department.

The Convener: Do you mean verbal or physical abuse?

Dr Morrison: Both, although mainly verbal. They are in the front line and are particularly prone to being verbally assaulted.

The Convener: I will put to you the same question as I put to the fire service organisations. The receptionist should have the full force of the law behind them if they face violence or physical abuse. We are exploring the bill; we are not trying to comment on the rights or wrongs of it at this stage. If, rather than making a special case for anyone, the bill is really trying to protect the public—in the sense that your members are putting their lives at risk in order to safeguard someone else's safety or their life—surely the law should impose a higher penalty against people who assault those who are putting their lives on the line. No matter whether we are talking about accident and emergency services or care for the elderly, should the law not make a distinction if someone is putting their life on the line in emergency circumstances?

11:45

Dr Morrison: That is a little melodramatic. We do not spend every waking hour at work putting our lives at risk. Most of the time, our job is a lot more mundane than that. If the proposals are restricted to situations in which we put our lives at risk, we should simply forget about them right now. Most of the situations in question will involve dispatching or providing emergency care—or simply providing care. I thought that the thrust of the bill was to provide us with some protection as we went about our daily duties. I am not comfortable with the small-print reference to putting our lives at risk.

Bill Butler: I realise that the problem is where to draw the line. Let us think about this for a moment. I wonder whether all the witnesses will comment on the definition of emergency circumstances in section 1(5). Dr Morrison has said that his job is more mundane than the situations covered in the bill and that he does not put his life at risk every minute of the day. However, the bill is intended to cover emergency circumstances in which people are hindered from tending a person's serious injuries or illness or dealing with

“a worsening of such injury, illness or harm”

to the point that life is endangered. Do you agree with the bill's definition of emergency circumstances?

Dr Morrison: I do not disagree with the three categories of emergency circumstance outlined in section 1(5). However, as we have all said, the provisions need to be extended beyond that definition.

Bill Butler: How would you extend the definition?

Dr Morrison: As we have said, the definition of the personnel involved in emergency circumstances should include health care workers who are discharging their duties. I know that that is very general.

Bill Butler: I understand that, but that is probably part of the problem that we are wrestling with. For example, Mr Hopson said that the provisions should cover all health care workers in hospitals or out in the community and then said that it should cover all public sector workers. Indeed, why not include all private sector workers as well? The definition grows and grows. Should the bill's provisions cover a private sector worker who works in a hospital's newsagent or florist outlet? That is what Mr Hopson seems to be suggesting. Do you not agree that we really have to draw the line somewhere?

Paul Hopson: Yes, you probably do. Then again, someone working on hospital premises would automatically be covered by health and safety legislation and would become an associate employee of the hospital. There are different definitions—

Bill Butler: So other legislation or common law would cover that situation. However, we are trying to give extra protection to workers in emergency circumstances. Dr Terry, what is your view of the bill's definition of emergency circumstances?

Dr Terry: It poses enormous difficulties. The bill seeks to cover emergency workers and then tries to define emergency circumstances. In many cases, you are trying to deduce the emergency worker from the emergency circumstance, which leads to some difficulty. The example that you gave of the florist at the front door of the hospital—

Bill Butler: Or the receptionist, as you mentioned.

Dr Terry: The receptionist is a health care worker, but I do not think that the florist at the front door of the hospital is a health care worker. As I have said, the committee will have to draw that line and I do not envy you that task. I think that there is a specific difference between those two workers.

The bill's definition should relate more to emergency workers—in other words, to people who in some part of their work provide emergency care. Even accident and emergency consultants do not always provide emergency care; they sometimes do all sorts of other things that do not involve emergencies. If the bill were both to define those individuals as emergency workers and to define a group of people who were necessary to assist them in their emergency work, the whole issue would become much clearer. That would avoid people having to worry about whether something happened in the accident and

emergency department rather than in the corridor outside the accident and emergency department, for example.

Bill Butler: So the definition should focus on the worker who carries out emergency work.

Dr Terry: No, it should focus on a worker who at some stage is required to carry out emergency work for the benefit of the public. The definition should include those people who have to assist the emergency worker in carrying out their work. That would mean that porters, for example, who are required to transport specimens, patients and so on would be included.

Bill Butler: That goes back to what we heard from the first set of witnesses about operational capability. We should be considering anything that would impair the operational capability of people who were on duty. In other words, we are talking about a whole-team approach. Is that what you are saying?

Dr Terry: That is what I would say.

Paul Hopson: I certainly agree with Dr Terry. That is the first issue that should be considered in the bill. I know that I am giving the impression that I am looking right across the board, but obviously we are considering health care settings.

Bill Butler: Your submission indicates that you are worried that there would be two levels of protection for workers.

Paul Hopson: Very much so. The message that we are getting from talking to the work force—the people who work in accident and emergency sections throughout Scotland—is that they are worried that the bill will result in a two-tier system, whereby it will be okay if a member of staff is assaulted outside an emergency work situation.

Bill Butler: Of course—I take your point on that.

Mr Maxwell: I want to return to the discussion that we had earlier about emergencies that involve staff who are working outwith hospitals. Such staff are obviously still health care staff. Do you think that the offences as set out in the bill will provide sufficient legal protection for health care workers in those situations?

Paul Hopson: The present wording of the bill means that that message is not conveyed clearly.

Mr Maxwell: Perhaps there is a difference between the message coming out and whether the offences provide sufficient protection. Do you think that the bill will protect workers who work outwith hospitals? If you think that it does not, is that just an impression? Might it be the case that the bill does protect those workers?

Paul Hopson: If I was examining how the bill is worded, I would conclude that the way in which it

reads does not give the work force the impression that workers who are involved in dealing with emergencies outside hospitals are covered.

Dr Terry: I tend to agree with that. The bill is strongly oriented towards hospital—if not accident and emergency department—staff. An awful lot of assaults on health care workers occur in the community and in general practice surgeries. The only murder of a health care worker that has occurred in Scotland relatively recently took place in a general practice surgery; that was about eight years ago.

Mr Maxwell: Do you not think that medical practitioners and registered nurses are covered by the definitions in section 1(3) and by section 1(2)? Section 1(2) says:

“A person who assaults, obstructs or hinders another while that other person is assisting an emergency worker who is responding to emergency circumstances commits an offence.”

Even section 1(1) refers to an emergency worker. Would not medical practitioners and registered nurses be covered irrespective of where they are?

Dr Morrison: It would be difficult to say that general practitioners, community midwives and community psychiatric nurses respond to emergencies in the vast majority of their work. They deal with more routine work, which tends to be when the most serious assaults occur, rather than in fraught circumstances in which somebody is dying before their eyes. In my experience, assaults tend to happen late on a Friday or Saturday night when somebody has had to wait too long to be seen—they might have a fairly minor problem, but they attach great importance to it and alcohol and drugs might be thrown in. That is where most of the problems that you are trying to get at come from.

Mr Maxwell: So does your problem with the bill lie in the second half of section 1(1), which refers to a situation

“while the worker is responding to emergency circumstances”?

Dr Morrison: Yes. The definition of an emergency worker that Dr Terry suggested would be fine. Those people do not always work in emergencies. If we could find a wording that suggested that and could get away from stating that the worker has to be dealing with an emergency, we would be heading in the right direction.

Paul Hopson: From our point of view, it would send a clear message if the wording were adjusted.

Bill Butler: Following on from what Dr Morrison said, would the words “on duty” suffice?

Dr Morrison: I am not sure. Perhaps we should speak to the BMA representative. Frequently, I work when I am not on duty, as many of us do.

Dr Terry: I suppose that that might lead to some problems. However, you have the idea of where we are trying to head. Perhaps wording such as "in the course of their employment" would work. I am repeating myself, but it is the reference to emergency circumstances that creates the difficulty.

Margaret Mitchell: I understand that anyone can find themselves in emergency circumstances—they might find themselves outside the accident and emergency department and be subject to an assault. However, does not the balance of probabilities suggest, as I think Dr Morrison said, that attacks are more likely to occur in accident and emergency because of the nature of the work that is carried out there and the Friday and Saturday night syndrome, when more people come in and workers are more vulnerable? The bill recognises that assault is probably more common in those circumstances than it is when emergency workers are elsewhere, although I fully accept that they could find themselves in the same situation.

Dr Morrison: I do not dispute that we probably see more verbal and physical attacks than people in other areas. That is because we are at the front door and situations spill over from the streets into our department. However, there are other acute areas in the hospital and, in particular, there is an increasing number of acute medical wards. When I spoke to our staff in an acute admissions ward recently, I was surprised by how many attacks and unpleasant situations they have. I do not dispute that most assaults take place in accident and emergency, but I am not convinced that the rest of the hospital would be served too well by making us a particular case.

The Convener: Does anyone dissent from the view that, statistically, accident and emergency is one of the places where one finds prevalence of physical assault or verbal abuse?

Dr Terry: There is a difference between incidence and prevalence. Something like 90 per cent of patient contact episodes occur in the community in general practice surgeries. Although the incidence of attacks in general practice surgeries is relatively low, the number of attacks is quite high because of the volume of work and patient contact episodes that take place. On the other hand, accident and emergency has a higher incidence of attacks, although its throughput is not as high as in general practice.

12:00

Michael Matheson: I suspect that if we dropped the word "Emergency" from the title of the bill, we

might start to make progress in finding a way through some of the difficulties that have been mentioned.

From what you have said, one problem is that there might be a greater incidence of assaults in emergency departments, but I would argue that staff working in the community are probably more vulnerable, which is a distinctly different issue. Given the way in which the bill is currently drafted, should we have an emergency workers bill, or should there be a workers protection bill? Should we drop the idea of having an emergency workers bill and have a bill that focuses on workers carrying out some type of duty, whether they are in the health sector or any other sector?

Dr Morrison: Whether there should be a workers bill is possibly up to members to decide. I still support the Emergency Workers (Scotland) Bill, but I think that all of us have said that the provisions should not apply only when emergencies are being dealt with. The thrust of the issue relates to people who deal with emergencies, but who may be discharging their duties in a non-emergency way. I am not sure whether I have made that point clear. I do not have any difficulty with the fact that the bill is an emergency workers bill, but the definition of exactly what it should cover needs to be changed.

I certainly agree that people in the community are more at risk. The point has been made that we have geared ourselves up for such incidents because we see more of them, as you are gearing us up in making us a special case. We have closed-circuit television, there is rapid response from the police and various measures are in place because we expect things to happen. The same does not apply in the community.

Paul Hopson: I agree with Michael Matheson that people who work out in the community are at as high a risk as people in accident and emergency, but we recognise that perhaps a greater number of people in accident and emergency will be involved because they are obviously at the front line in receiving patients into hospitals.

That is how society currently is. The statistics on violence against health care staff are particularly worrying. The recent NHS Scotland information and statistics division report on occupational health and safety showed that one in 10 national health service staff was subject to physical abuse last year, which translates to two members of staff being assaulted every hour of every day. Apart from security and protective service staff, nurses are the occupational group with the highest risk of suffering violent assaults while working.

From the RCN's 2002 working well initiative, we know that one in three nurses and midwives will

suffer a violent assault during the course of their careers. Health and Safety Executive figures also show that 46 per cent of nurses have reported being worried about violence at work.

Dr Terry: The definition of an emergency worker in section 1(3) of the bill is quite good. If the people who are included in section 1(2) were brought into section 1(3) and included as emergency workers, that would pretty much cover things. They could be called emergency workers or people who at some stage during their working life will have to undertake emergency work or assist somebody who is undertaking emergency work, although the latter title is perhaps a little long. As long as emergency workers are defined adequately, we will be moving in the right direction.

Michael Matheson: There are two issues. The first is the definition of emergency workers and the inclusion in that of support staff who may assist. The second is the fact that the bill kicks in only when the workers are responding to an emergency situation.

Dr Terry: That is a problem.

Michael Matheson: You are saying that you would like the provisions of the bill to apply whether or not the individuals are responding to an emergency situation on the basis that they may, at some point, have to respond to an emergency situation.

Paul Hopson: Yes.

Michael Matheson: Is that what you are saying?

Dr Terry: Yes. That is what I am saying.

Michael Matheson: That would fundamentally change the bill from being an emergency workers bill.

Dr Terry: I am aware of that.

Michael Matheson: That takes us back to my initial point. I wonder whether there is a need to have an emergency workers bill. You are saying that you need a bill to protect workers in carrying out their duties irrespective of whether they are responding to an emergency.

Dr Morrison: I do not think that it would change the bill fundamentally. We are talking about emergency workers, but they are not always responding to an emergency. As I have said, I may be responding to a dire emergency or I may be treating somebody with a sprained ankle but I may have to deal with an emergency shortly afterwards. I am not sure that the hospital florist ever deals with an emergency. I think that there is a distinction to be made.

Michael Matheson: I say that it would change the bill significantly because the bill defines

“emergency circumstances”. I take on board what you are saying, but the bill defines “emergency worker” and then defines “emergency circumstances”. If we decide to take away the definition of “emergency circumstances”, those covered comes down to a range of individuals who may respond to some type of emergency.

Dr Terry: That is what we are asking for. That is what we would like. As I said earlier, it is section 1(5) that we have difficulty with and the qualification that there have to be “emergency circumstances”. Such circumstances are very difficult to define. Emergency circumstances can occur on medical or psychiatric wards. In an emergency, a porter might be required to transport a specimen from the labour ward to the blood transfusion unit, or vice versa. I think that you will have a lot of difficulty in defining emergency circumstances. The easiest thing would be to drop that definition and define the workers more carefully.

The Convener: We have pressed the Law Society of Scotland on the technical matter of whether, if we wanted to widen the scope of who we want to protect, we could keep the narrow definition of an emergency situation—perhaps not. I understand where you are coming from. What concerns me about your position is the fact that I do not think that we could draw the line. If we removed the emergency aspect of the bill, I would not see the logic of having a higher penalty in law. The bill could cover any worker who might be involved in an emergency situation, which is fine. I would have difficulty in drawing the line at health care workers. Somebody used the phrase “in the course of their employment”. I do not see why the law should attach any lesser penalty in a case in which someone else is attacked or physically abused in the course of their employment.

Dr Terry: All that I can say in defence of that is what I said earlier. Society as a whole regards attacks on health care workers and other workers—you heard from the fire brigade representatives earlier—in hospital or in the community as something different from general assault. As far as I can see, that is why the bill has been devised.

Paul Hopson: I agree with what Dr Terry says. The bill gives the wrong message, to a certain degree. I do not envy your job in drafting it. Nevertheless, the ideas are right and, with some adjustment, the bill could put the right message across.

You must define the people who are concerned, which is difficult. We are talking about medical practitioners as defined under the Medical Act 1983, as well as nurses, midwives and health visitors. When we get down to the definition of “emergency circumstances”, the wording might require to be adjusted.

Margaret Mitchell: Instead of focusing on the idea—which I fully accept—that any health care workers can find themselves in emergency circumstances, and thereby be emergency workers who should be covered by the bill, I would say that the reason for singling out accident and emergency workers is that, because of the very nature of their work, the consequence of impeding or assaulting them might be a loss of life. That is more likely regularly to be the case in an accident and emergency department than it is elsewhere. It might happen elsewhere but, given the nature of accident and emergency departments, loss of life there is relatively high. That is the reason why staff who work in accident and emergency departments have been included and, if you like, singled out. That is not to create a two-tier situation; it recognises the practicalities of their job. Because they are dealing with emergencies—the recent factory explosion, for example—loss of life is more likely to be something that accident and emergency staff have to contend with, and so the prevention of loss of life is more likely to be hampered in their circumstances. That is why the bill singles them out.

Dr Morrison: If that is the thrust behind the bill, you are legislating for nothing. In 12 years as a consultant, and a lot more time as a trainee, I cannot think of any incident of being verbally abused or physically assaulted in which life was at risk. That has not happened to me under such circumstances.

The Convener: You will appreciate that I am playing devil's advocate in asking you this. What, in law, makes you as a doctor different from a shop worker?

Dr Morrison: You had better ask the general public about that. I have never tried to make a case for my being anything different. As Dr Terry said, there is a general perception among the public that assault on hospital staff when they are going about their duty is in some way different, or is a greater crime than would be the case if other workers were concerned. I do not know whether your perception is different, but that is certainly mine. It would appear to be Dr Terry's perception, too. I have not made a case for my being considered differently.

The Convener: You will appreciate the difficulty of the job that we have to do here. We are trying to examine what the differences would be if the legislation were to be framed in different ways.

Mr Maxwell: You might have just answered this in your last comments, but is it not the case that any member of the public might respond to an emergency situation? I am referring to people who, while walking along the street, come across a fire, road accident or any other emergency situation. If that is the case—I am sure that you

accept that it is—what is the difference between an emergency worker, such as a firefighter, a nurse or a doctor, responding to that incident and an ordinary member of the public responding to that incident? Would they not be in exactly the same situation? If they are assaulted or impeded when responding to an incident, should they be offered less protection in law because they do not happen to be a member of the health profession or a firefighter?

Dr Terry: I think that I mentioned earlier a possible phrase along the lines of "in the course of their employment". As a doctor responding to an emergency as a member of the public, when I am off duty and not working, I would expect to be treated as a member of the public and to have the same protection as any other member of the public. When I am working in the hospital in the course of my duty, that is when the differentiating factor comes in.

To respond to Margaret Mitchell's comment on the possibility of an assault on an accident and emergency worker resulting in consequences for the patients there, I would suggest—despite having no evidence for this—that an assault or impediment to someone working in the community is, in many ways, far more severe. A general practitioner working in an isolated area might have several ill patients to see or visit in one morning. Impeding them in the course of that work might have more severe consequences than impeding a consultant in an accident and emergency department. After all, those departments are situated in hospitals where many other health care workers are able to cover for a consultant who is assaulted during an emergency.

12:15

Bill Butler: I want to ask about wider measures. Dr Morrison mentioned CCTV and rapid response from the police. Could the Executive and other bodies introduce other education or training initiatives or greater security measures in hospitals or out in the community to improve the protection of health care and other workers?

Dr Morrison: I am probably going to be particularly unhelpful by saying that I do not know the answer to that question. The bill is a brave attempt to address the problem, although I do not know whether it will act as a deterrent or not. I certainly do not think that someone who is trying to remove my head at 3 o'clock in the morning will have the legislation uppermost in his mind.

Most forms of physical assault have an undercurrent of drink and drugs. CCTV is helpful, mainly for providing evidence after an event has taken place; I do not think that it acts as a deterrent.

Bill Butler: So the problem is societal.

Dr Morrison: Yes, and it spills over into hospitals.

Bill Butler: Obviously, the use of CCTV and rapid response teams might mitigate the situation. Would it be possible to introduce any other training measures?

Dr Morrison: It would be good if we could train the general public not to assault staff. In association with the police, we have held courses for all staff on de-escalation techniques and basic self-defence.

I probably take a slightly different view on an issue that was raised earlier. I am not a great fan of the proposal that security guards or the police should be a permanent presence in hospitals or accident and emergency departments. That can be as provocative as it can be preventive.

Dr Terry: I will not pretend that the bill will provide the solution to the problem. Indeed, far from it—it is simply one aspect of an approach that we welcome. You have already mentioned most of the steps that we might have suggested. For example, we would propose the introduction of security measures such as CCTV and panic buttons and better communication for those in the community who are running into difficulties. Indeed, under out-of-hours arrangements, GPs are now escorted on their visits, usually by a retired policeman.

The fundamental point is that society must be educated. There is perhaps a slight deficit in staff training, but we also need training in other aspects of our work, not just this one.

Paul Hopson: Many trade unions and professional organisations have carried out very detailed work on violence and aggression and there have been many publications on the subject. I should mention that the Scottish Executive Health Department has also undertaken a lot of work on this issue. For example, in 1999, it produced the document "Towards a Safer Healthier Workplace", which sought a 25 per cent reduction by 2006 in the injuries, accidents and incidents that result from violence and aggression. Moreover, in January 2003, the Executive issued the final "Managing Health at Work" partnership information network guideline, which contains a section on violence and aggression at work and recommends safer practices and violence and aggression policies.

Bill Butler: Are such strategies having a positive impact?

Paul Hopson: I was just about to say that the Scottish Executive Health Department set up 10 projects on violence and aggression. Indeed, last week, Malcolm Chisholm announced that the final

reports on those commendable projects are now in the public domain. A lot of work can be done on all the training aspects of those 10 projects; however, a lot of work still needs to be done on staff education and on the working environment and accident and emergency departments. For example, we need to consider electronic lock-down processes, how to deal with non-public areas, how to implement and evaluate the guardian angel lone worker system and so on. The list is endless. I hope that the amount of good work that is being carried out will help the situation when it is rolled out across the whole of NHS Scotland.

The Convener: We will have to leave the questioning there. I thank the witnesses very much for their interesting contribution, which the committee will find useful in its deliberations on the bill.

Dr Morrison: It might save the committee time later if I point out that the specialty of accident and emergency medicine is having its name changed to emergency medicine. Please do not ask me why that is happening, but it might alter some of the evidence that you have received.

The Convener: You heard it here first. Thank you for that information.

I imagine that committee members would appreciate a two-minute comfort break. We will take our third panel of witnesses after that.

12:21

Meeting suspended.

12:28

On resuming—

The Convener: I welcome our last—but not our least—panel of witnesses, which consists of trade union representatives. Peter Hunter is the legal officer of Unison Scotland, Martin Gaughan is regional organiser of T&G Scotland, Alex McLuckie is senior organiser of GMB Scotland and Ian Tasker is the Scottish Trades Union Congress's health and safety officer.

Before we begin, I declare my interest as a GMB member. Do any other members require to declare interests?

Bill Butler: I declare my interest as a member of the GMB.

Margaret Mitchell: I am a member of the Educational Institute of Scotland.

Bill Butler: I am an EIS member, too.

The Convener: I know all the panel members, but I am sure that they know all of us.

We will move straight to questions. We have just short of an hour. I hope that you have had the opportunity to hear some of the previous evidence; if you have not, we can recount it for you. We will start with Margaret Mitchell.

12:30

Margaret Mitchell: I will ask you what has become a monumental question, now that we have heard the evidence of the previous two panels. Do you consider that the bill will provide greater protection for emergency workers, as they are defined in the bill, given that they are already protected by common law and, in some cases, under statute?

Ian Tasker (Scottish Trades Union Congress): The STUC's feeling is that, although we welcome the bill, there are issues in relation to some of the definitions in the bill that might confuse matters and result in a greater use of plea bargaining, for example. We have some concerns that, as it stands, the bill might not be as effective as we had originally thought that it would be.

Peter Hunter (Unison Scotland): Unison's perspective is that we recognise that many of the incidents that the bill is designed to address are already dealt with by the criminal justice system as common-law assault, breach of the peace or other charges.

There are two key issues for us. The adoption of the bill as part of a package of wider measures would represent the greatest concerted effort to tackle the problem that there has been in Scotland. That could have an impact on any previous under-reporting of crime. We hope that the result of that would be that greater protection would be offered.

The identification of some types of assault of this nature—in our view, the definition should go wider than just emergency workers, but we will come on to discuss that—would have a deterrent effect. There would be publicity around the creation of a new offence. Employers would, for example, display material of the kind that can be seen in railway stations, which says that railway staff are entitled to work free from fear. The bill would provide the opportunity to create, in public sector services in which there is contact with the public, a culture whereby those types of assault were not acceptable. Such behaviour never has been acceptable, but the creation of such a culture would make it especially unacceptable. The bill and other measures will show that there is a resolution within the criminal justice system and among employers to do something about the problem. My answer to your question is that the bill will provide greater protection.

Margaret Mitchell: In your view, does the need for that protection relate primarily to the assaults

faced by emergency workers—as defined in the bill—or does it relate to their being impeded in their duty or to some other reason?

Peter Hunter: My view on that is that there needs to be greater clarity on those two functions of the bill. Are we concerned that the emergency service that is received by people whose lives are at risk is being impaired in some way by people who are assaulting, impeding or otherwise obstructing emergency workers, are we concerned about the workers who are being attacked or are we considering both issues?

I submit that the occasions on which the life of a patient or a recipient of a service is put in danger because of an attack on a public service worker are far less frequent than those on which public service workers or emergency workers—however one cares to define them—are simply attacked. If we look after public service workers generally, we will by definition look after the patients. If we do things the other way round—if we try to prevent the impairment of service delivery to people whose lives are at risk—we might protect the patients but we will not necessarily protect the staff. If we protect the staff, both patients and staff will be protected. A tweaking or refinement of the bill in that regard would be productive. It would retain the current objectives and would offer greater protection to the workers.

Margaret Mitchell: That is extremely helpful. We have been trying to tease out the balance this morning—to find out whether we are legislating for the consequences of such acts or the acts themselves.

You mentioned that you thought that the bill would result in better reporting, would have a deterrent effect and would produce greater awareness. Can you think of any other reasons for the bill? Will it clarify the law?

Peter Hunter: To be honest, I do not know whether it will, because at the moment, the common law has the potential to be quite powerful. Since the Lord Advocate's direction in February, there have been one or two isolated examples of better use of the criminal justice system. There is an argument that the law is clear at the moment, but there is a difference between clarity and efficacy. In trying to make the law more effective, we are making it less clear. The earlier evidence makes it clear that the jury is still out on clarity—if I may use a legal expression—and you will know whether the law is clearer, as well as more effective, only once you have finished your deliberations.

Margaret Mitchell: Are you arguing that the law is fine as it is, but is not being enforced properly? Are we just not taking advantage of what is available in common law?

Peter Hunter: That is not quite correct. The law has shown a marked improvement in the past four or five months because the system has given greater priority to attacks on emergency workers, but there is still scope for naming the assault of emergency workers as an offence as part of a wider strategy to protect employees and patients. If we want consistent, sustained, publicly identifiable improvement across the board and if we are to say that attacks on employees and patients are wrong, we need to go beyond the existing measures, welcome though they are.

Margaret Mitchell: You are kicking up the awareness aspect again.

Peter Hunter: It is very important.

Alex McLuckie (GMB Scotland): I concur with what Peter Hunter said. We need to bring to the attention of the wider public the fact that it is not acceptable to attack those who are delivering a service in an emergency. To go back to your previous question, it is not only a case of having legislation that gives a clear message that such attacks are not acceptable, because such legislation must go hand in hand with educating the wider public that we do not want people to be hindered by unacceptable behaviour when they are doing their jobs in emergencies.

Margaret Mitchell: Thank you. That is very helpful.

Michael Matheson: Should the bill be limited to emergency workers and those who assist them?

Ian Tasker: The STUC's view is that the bill is not wide enough; it should cover more than only emergency workers. In our response to the consultation, we suggested that the definition should cover public service workers as opposed to public sector workers, because that would broaden it out as widely as possible.

Michael Matheson: Which other workers not covered by the bill would you like it to cover?

Ian Tasker: The problem that the trade union movement has is that attacks on workers are widespread throughout the public and private sectors. We have strong arguments for including retail and transport workers, but, as we heard in this morning's evidence, the question is where or whether we should draw the line. The STUC's view is that we should not draw a line at all.

Michael Matheson: That takes us back to the question that I asked previous witnesses. Is the problem in the title of the bill, which refers to "emergency workers"? Should we be legislating to provide for the protection of workers, which is what you are looking for?

Ian Tasker: We agree that a protection of workers bill might be more appropriate than a bill that covers only emergency workers.

Martin Gaughan (T&G Scotland): The bill should be widened to cover the likes of bus drivers. If a bus driver were attacked, that could be an emergency, because there might be 30 or 40 passengers on the bus whose lives would be put in danger. Reference should be made in the bill to transport drivers. The bill should also cover social workers, who go into people's homes and could be—and are—attacked, and community workers, who are also assaulted. There are many types of workers who deliver a service to the public and put their lives at risk daily.

Michael Matheson: One problem with the bill is that it applies only to "emergency circumstances". Individuals such as bus drivers are vulnerable because of the circumstances in which they work. A community nurse who goes into people's homes on her own might be more vulnerable than a nurse who is surrounded by colleagues in a hospital might be. The bill does not consider vulnerability.

Alex McLuckie: You are right. As Ian Tasker and Martin Gaughan said, we would have liked the bill's scope to be wider, to cover the workers that we represent. The Scottish Trades Union Congress said that the bill's scope should be extended to cover:

"any situation where obstruction or assault of a worker or workers would cause consequent and immediate impact on the safety of another person or persons."

It was helpful to listen to earlier witnesses' contributions. There seemed to be a debate about whether we should go ahead with this bill or replace it with a different bill. I would like the bill to be replaced by another bill that would cover more workers.

Ian Tasker correctly made a point about people who provide a public service, as opposed to public sector workers, but the people who are defined as emergency workers in section 1(3) tend to be public sector employees. However, there is an omission, because there is no reference in the bill to local government workers, although some local government workers get involved in emergency situations, as Martin Gaughan said. The bill would apply to a doctor who is attacked after going alone into a housing scheme to carry out their duties and it should apply equally to a home help who is attacked after going into the scheme as a member of an emergency response team. Perhaps this is about how we define "emergency". During the winter months drivers are out gritting the roads. That is an emergency at that time of year, but such drivers would not be covered by the bill if they were impeded as they carried out their duties. Even within the bill's narrow scope, people who might be involved in an emergency situation have been omitted. At the very least, the definition of "emergency worker" should be amended to cover local government employees.

The Convener: Will you rewind a little to the test that you mentioned? You said something about the safety of another person.

Alex McLuckie: We put forward a suggestion during the consultation that the bill should apply to

“any situation where obstruction or assault of a worker or workers would cause consequent and immediate impact on the safety of another person or persons.”

Michael Matheson: Would you like that definition to be in the bill?

Alex McLuckie: Yes.

Michael Matheson: Will Peter Hunter give us Unison's view? When I was in social work, I had to undertake emergency duties and respond to emergencies. Sometimes we had to call in home care services to assist in a situation. We were potentially very vulnerable. The bill is silent on that group of workers; it applies largely to the 999 services and health care professionals.

12:45

Peter Hunter: I am grateful that you asked the question. We made our position clear in our submission to the committee. We have carried out a lot of research with our members about the attacks that they have experienced. I will not go into detail, but I have brought copies of the report of that research with me.

There are many people, from social workers and home-care staff to concierges at the bottom of tower blocks on housing estates, who are in very vulnerable situations. Such people are often in the front line in the battle—if that is the right word to use—against antisocial behaviour in terms of the softer measures that the community often uses to regulate the behaviour of people who might make life difficult, unpleasant or threatening for others. Those concierges, security guards and traffic wardens work in twos or on their own and they are very vulnerable; they perhaps do not have the measures or the back-up that the police, for example, might have to deal with threatening situations. We are keen that that particular set of circumstances should be addressed in some way, preferably through the bill.

Having heard the earlier contributions, we have the benefit of knowing the territory that the committee is operating on and the difficulty about where to draw the line. While I do not want to dissent completely from what Ian Tasker said for the STUC, it is inevitable that a line will be drawn in some respect. I suggest that that task should be approached with a set of objectives. Those objectives should go beyond protecting staff in the course of helping someone who is gravely ill. There has to be a measure that is simply about protecting the staff. That protection should go

beyond emergency workers because, if the committee is saying—as has been said in the wider discussion around the bill—that the bill is part of the Executive's efforts to tackle antisocial behaviour, then all those people who make themselves vulnerable in tackling antisocial behaviour deserve some kind of recognition or protection. From the committee's discussion with previous witnesses it is clear to me that the committee is sympathetic to the kind of people who we are talking about, but there is a balance to strike—this other concern about where to draw the line and still make the legislation effective.

On that line and where to draw it, public service workers can be distinguished from other workers, if that is what you choose to do. There is something about the duty to serve, and to continue to serve in one way or another, even in a threatening situation, which is characteristic of the public sector or public services but is not typical of private sector services. For example, compare a bus operator with a taxi driver. Taxi drivers can, as they regularly do, put their light out and drive past a situation that they perceive to be threatening. A bus driver does not necessarily have that discretion. People in the public sector do not necessarily have to continue to work with people who are known to be a threat; there are resources that they can call upon. However, the nature of performing a service in the public sector means that people have a duty to continue to be in contact with some difficult customers, clients and service users. That is the distinction.

We then ask, “Well, what is the practical application of that?” The bill will not make it compulsory for a judge or a sheriff to pass a higher sentence or to levy a higher fine on people, simply because they have attacked an employee. The bill gives them the option of doing that. Judges and sheriffs will continue to exercise considerable discretion in how such cases are dealt with. It would be for the courts to consider a situation and to decide whether someone was vulnerable, because they were working on their own—as Mr Matheson described—because of the nature of the duty that they were performing, or because they had a duty to continue to perform a service, rather than to pull the shutters down, as someone might do if they were running a shop or a club in which there was threatening or violent behaviour. Those are the kinds of factors that the courts would be able to use, with your guidance, to draw the line between people who are performing a public duty or service, and people who are simply at their work in a more conventional way.

It took me longer than I thought it would to make that point, but that is how I would draw the line.

Michael Matheson: I want to be clear on one thing. You referred to public sector workers and to

people performing a public service duty. If they were performing a public service duty, would you include people who might be working for a private company?

Peter Hunter: We could offer you two approaches to that issue. You could take all the public services back into the public sector, and define them that way—an unlikely event, I admit—

Michael Matheson: I am all for that, but I want to clarify your point. For example, let me ask you about home care. Some councils now use private home care agencies. Whether the workers are people from a private home care agency or from the public sector, I would like to think that they would have the same protection if they found themselves in a vulnerable situation.

Peter Hunter: I agree. Reliance, for example, is easily identifiable as a performer of a public service—irrespective of its position in the public or the private sector.

Mr Maxwell: You have made it clear that you would like the bill to be replaced by another bill or extended to include non-emergency workers and public service workers, as opposed to simply public sector workers. Would you also extend the bill to non-emergency situations, or do you accept that the focus should be on emergency situations?

Martin Gaughan: T&G Scotland welcomes the legislation but would like it to be extended to cover the wider range of people who provide a service to the public. We spoke earlier about people who could be at risk and I would include transport operatives in that scenario. Alex McLuckie referred to people who work in roads departments. Everybody who provides a public service—people such as home carers, community nurses and community midwives—should be covered. We should not be considering only services in hospitals, because some services extend out into the community.

Mr Maxwell: Is your definition of public service not so wide that it encompasses almost everybody?

Martin Gaughan: Far be it from me to say, but I think that every worker should have the right to go to work without the fear of violence. We represent people who work in the transport industry. Almost 60 per cent of them go to work with the threat of violence hanging over them. No worker should be put under that type of stress or strain.

Mr Maxwell: I agree absolutely; that was the point that I was trying to get to.

I wonder whether Alex McLuckie could clarify whether his definition would include shop workers. Would they be protected? It did not sound as if they would.

Alex McLuckie: In our definition, we considered the type of workers who would be delivering a service that would impact on the health, safety and well-being of others. If such workers were impaired in their duties, we wanted them to be covered by the legislation. We would widen the existing definition, but not so far that we would cover everybody—so the answer to your question about shop workers would probably be no. However, I agree with Martin Gaughan's point. From a purist's point of view, we would like to think that everybody in work could be free from any threat of violence and could carry out their duties for their employer, whoever that employer might be.

We are discussing the emergency services today. When people respond to an emergency, they could be confronted with violent conduct or other behaviour that impairs their performance of their functions. Other people could encounter violence when performing their normal duties—that is a particular worry.

The GMB surveyed Glasgow City Council home helps. When they were asked what their problems were, the first problem that they raised was manual handling, but the second problem for a range of the home helps who were interviewed was violence in a client's home. When home helps undertake their duties—and home care duties have changed to deal with personal needs and other matters—they look after the well-being of vulnerable people in our society. If home helps are confronted with violent behaviour that impedes them in undertaking their duties, the bill should cover them, too.

Ian Tasker: The STUC came up with its definition after consulting legal advisers and others and it was felt that that definition would encompass shop workers. The perception is that if a shop worker is staring at a knife, that is an emergency to them. The fact that we are dealing with emergency workers in emergencies confuses the issue for trade unions. We say that the protection that is being offered should cover non-emergency situations.

Peter Hunter: Unison takes a slightly different position. If people who perform public service work that—as I said—has a dimension of duty to it that distinguishes it from other jobs are assaulted in the course of their work, then the assailant must take the victim as they find them. If somebody assaults somebody else who subsequently dies, the fact that the assailant did not kill that person immediately or was not aware that the assaulted person would die is no defence. People must take responsibility for their actions. It is our submission that if, in addition to having assaulted a public sector worker, it can be proved that the assailant knew that that person was a public sector worker

who was doing their duty at the time, that would make the situation still more serious and we would expect the sanction to reflect that.

Mr Maxwell: I am interested in that point, which you also made earlier. You said that the bill would add to current law by giving the courts the option of imposing a longer sentence. I did not quite understand that. Surely the courts already have the option of varying sentences according to the severity of an offence and the circumstances, such as whether the person who was assaulted was a doctor on call, a firefighter who was trying to save somebody's life or a bus driver whose bus crashed after he was assaulted.

Peter Hunter: The courts already have that option, but I understand that the bill has been introduced because we want, through the Parliament, to label a set of crimes and to make them a priority for the prosecution and for sentencing. The will of the Parliament and of the people through the Parliament is that a higher level of seriousness should be attached to this area.

Mr Maxwell: Could that not be achieved by the Lord Advocate giving a direction? You have mentioned that.

Peter Hunter: That would be helpful, but it would not be sufficient. The picture in my mind's eye is of a message on posters in accident and emergency, a housing office's waiting area or other contact points between the public and public service workers, and possibly on council tax bills that go through letterboxes, that says that the public body takes the view that its staff have the right to work free from fear and that if its staff are assaulted, the new criminal charge might be levied. The message would say that the body encourages and supports its staff to report such crimes and works with the police to ensure that such crimes are prosecuted. That sends a very clear message to the community about types of behaviour that will not be tolerated.

13:00

Mr Maxwell: Surely we could do exactly what you suggest without new legislation. Reference was made earlier to the very obvious posters on trains that say how seriously assaults on ScotRail staff, for example, will be treated. Surely legislation is not required to provide posters and leaflets of that nature.

Peter Hunter: I think that legislation is required. At the moment, there exists the charge of breach of the peace, which is inadequate. In England, if a group of people systematically harass a lone worker who is vulnerable and who becomes greatly distressed, that group's behaviour constitutes a criminal offence of harassment,

which does not exist in Scotland. If no assault were involved, the case would be prosecuted as a breach of the peace. To my mind, such an approach does not convey—in the charge, in the conviction or in the message that is sent to the wider community that reads about the case in the press—the concern and disgust that we feel when people behave that way. Through legislation, we can raise the bar to create a crime to which, in our view, greater stigma would be attached because of the identity of the people who have been attacked.

Mr Maxwell: From those comments, I take it that you believe that passing the bill, or something closely akin to it, would act as a deterrent. You used the word stigma. Do you believe fundamentally that people who assault workers of any sort pay the slightest heed to legislation that is passed?

Peter Hunter: There is an argument that people who commit a crime of any sort do not pay much attention to—

Mr Maxwell: Perhaps I did not phrase the question correctly. The point that I was trying to make is that deterrence is not necessarily achieved by Parliament passing a bill. Deterrence is more likely to be linked to prosecution rates and the levels of fines and imprisonment that are imposed.

Peter Hunter: Deterrence depends on a package of measures. If a person is convicted for breach of the peace and, on comparing notes with their fellow criminals, discovers that they have all been charged with breach of the peace, that does not constitute a deterrent. If people are convicted for assault, or on a hindrance or obstruction charge that has been the subject of publicity accompanying the passage of the bill, there will be a greater deterrent effect.

Mr Maxwell: I have a final question for the panel. Is it reasonable to pass legislation that states, in effect, that certain workers in certain circumstances should have added protection that others will not have? It is still a matter of debate whether the bill will provide such protection. Should all workers in all circumstances have the right to go about their work and normal duties without fear of verbal or physical assault? Should they all be given equal protection under the law?

Ian Tasker: We have touched on this matter already. We believe that it is a basic human right that people should be able to go about their duties without fear of intimidation, violence or injury. We appreciate that emergency workers are being impeded when they try to save lives and we support their position, but we may have difficulties with narrow legislation that does not offer protection to all workers.

Alex McLuckie: I agree with Ian Tasker. It is well documented that trade unions believe that all workers should be able to carry out their duties in a safe environment, free of violence. We do not dispute that. Given the choice, and a blank piece of paper, we would probably come up with a bill that provided such protection. Although the legislation that is before us is limited, I am concerned that we should not lose it. At least if the legislation exists, we can build on it.

I am concerned that you ask us to choose whether or not we should have the bill. One of the previous witnesses was asked why we should have the bill. We want it because there is nothing else. The bill will establish for the first time that emergency workers who are carrying out their duties will receive greater protection, which we welcome. The answer to the question is that we would prefer that everybody be covered, but in the absence of that, we want to build on the bill. I mentioned omissions from the bill earlier.

The committee has spent a bit of time with people who were dubbed witnesses from the health service, but the GMB, Unison and the T&G also have members who are employed in the health service. I have concerns about inclusion in the bill of people who assist emergency workers because legal arguments could arise about when a person is assisting or not assisting.

The Convener: Whatever we do, there will always be legal arguments about who is covered. We are clear that when we legislate we cannot always shut down that possibility. I ask the panel to summarize what they are saying. If you were legislating, what would you want in the bill? You want to widen the scope of the bill to cover public service workers, although the STUC would go further to include other workers.

Ian Tasker: Our policy is that the bill should be all-encompassing.

The Convener: You also said that the bill should cover assaults that obstruct or hinder a worker in their duty—you are saying that there should still be a test. Are you saying that it is not enough for there to be a common assault and that it must be common assault that hinders or obstructs the worker?

Ian Tasker: Yes.

The Convener: Peter Hunter talked about clarifying the bill's objectives. Unison wants the bill to cover attacks on people who deliver a service but who are impeded in doing so.

Peter Hunter: For us, the notion of duty or service is the answer to Mr Maxwell's question about how to justify treating one group differently from another.

The Convener: If we were to legislate for that, should there be additional legislation to deal with

workers who put their lives at risk to save the lives of others, or should that not come into the equation?

Martin Gaughan: The T&G's written submission states:

"We would stress the point that acts of violence or obstruction against public service workers can in themselves create an emergency situation which endangers the public."

The type of people whom we want to be covered are

"Workers engaged in the provision of public services, such as in the health service and public transport",

who encounter threats daily.

The Convener: I am clear about how you would widen the bill and that you want it to cover attacks that obstruct or hinder. However, if we legislated in that way, we could still legislate for another group of workers so that the law would address another set of circumstances; namely, the circumstances that are currently covered in the bill. Should we legislate for both groups of people?

Peter Hunter: Our submission argues that the connection between emergency workers and their saving other people's lives is not necessary. Recently, an assault in Perth royal infirmary resulted in a life sentence for the assailant. The victim was a nurse, but in no way could she be said to be performing life-saving duties at the time of the assault, although her own life was in danger.

The Convener: However, in certain circumstances, fire service workers put their own safety at risk to save others and we know that fire service workers have been attacked while doing that. Do you think that legislation already covers that adequately?

Peter Hunter: If, say, a concierge had been systematically obstructed and harassed by people, no judge would administer the same sentence for that as for an attack on a group of firefighters who had been trying to save lives. The issue is for the courts. In that sense, the bill is too prescriptive. The evidence from the Law Society of Scotland and the procurators fiscal suggests that legislation that is too prescriptive makes it more difficult to secure prosecutions.

The Convener: Do you think that firefighters are adequately covered by the common law?

Peter Hunter: I do not know. I assume that firefighters will be covered by the bill. At the end of the day, regardless of whether the charge that has brought the assailants to court is assault, attempted murder or whatever, provided that the charge is properly pursued on indictment in the High Court, the appropriate measures will—I

presume—be available to the court to deal with the charge severely.

Alex McLuckie: Given that the common law can change through time, I would prefer there to be a statutory aggravation such as already exists, I believe, under current police and fire services legislation. We need such offences to be labelled as statutory aggravations. Arguably, the general definition of that might be left for the courts, which could also decide the severity of the offence and the punishment that goes with it. However, I would prefer that the basis be statutory rather than in common law.

Bill Butler: Mr Tasker said that the STUC's view is that non-emergency workers should be included in the bill, but I think that Mr Hunter's response to Margaret Mitchell took a different line when he said that the common law is quite a powerful device. Is legal protection of non-emergency workers best left to existing common law offences? Do you have a view on that, Mr Tasker, or will you just repeat the STUC line?

Ian Tasker: There is protection within existing law: we welcomed the guidance that the Lord Advocate issued on that. We also welcomed the examples that were provided, which gave us some confidence that the guidance will be followed. I think that we could be placated if it was ensured that the guidance would be permanently adhered to, but the problem with some guidance is that it can get diluted over time. We then return to the situation in which courts hand out sentences that perhaps do not reflect the seriousness of the crime.

Bill Butler: Can I take it that Unison does not quite agree with that view? Does Mr Hunter agree with Mr Tasker's concept of diluted guidance?

Peter Hunter: It is possible that guidance becomes diluted over time, given that the Procurator Fiscal Service is under incredible pressure. The bill is welcome because it is, as I perceive it, part of a package of legislative and non-legislative measures that are designed to achieve a particular end.

13:15

Bill Butler: It is one tool in the toolbox.

Peter Hunter: That is how I perceive it.

If guidance is given to the fiscals to ensure that the undoubted power of existing common law is used to protect people who are not covered by the bill, that will be good. It is not quite what we want but it would be, if you like, our fall-back position. The position that we would not like to be in is the position pre-February 2004.

Bill Butler: As far as I can make out, you all want the scope of the legislation to be extended,

so I will act as the devil's advocate. What are your views on the reasons that have been advanced by the Executive for limiting the scope of the bill to emergency workers and those who assist them? Reasons that have been given include the fact that those workers are particularly vulnerable and that the possible consequences of assaulting or impeding such people are particularly serious. Are the Executive's arguments weak?

Peter Hunter: My view is that the Executive did not want to have a statutory offence in the first place. I might be wrong, but I understand that the Executive's preferred position was initially to use the common law as reinforced or directed by the Lord Advocate's guidance in February. That position developed into the current position—the one that we have just discussed—which is that existing common law, with the guidance, exists for everybody and there will also be specific and narrow additional protection for emergency workers in emergency situations.

The Executive appears to have drafted a bill that is very narrow in its effect, so the residual position for everybody else and for the vast majority of offences is the common law.

Bill Butler: Is the Executive right to draw the provision so narrowly?

Peter Hunter: It has to be drawn in a way that works. I am interested in the alliance of organisations that have come from different positions but seem to have arrived at a similar conclusion: the Royal College of Physicians; the British Medical Association; the Royal College of Nursing; trade unions; the Law Society of Scotland; and, as I understand it, the Scottish Police Federation. Those organisations are saying that the bill as drafted—particularly the fact that emergency circumstances and emergency workers are combined—will perhaps make it more difficult to secure prosecutions because the locus will have to be proved, and there are also the issues of the identity of the worker and knowledge of the identity of the worker.

It may be that in trying to avoid the perceived problem of drafting the bill too widely, we have ended up with something that will be less effective than it might otherwise have been. I am not suggesting any ill motive: the motive is pragmatic and cautious, but I am concerned about the result, which may be weak.

Bill Butler: That is interesting. You are saying that the definition of emergency circumstances needs to be improved. How would you improve it?

Peter Hunter: I will go back to the point that I made earlier about duty. The people concerned are doing jobs that are distinguishable from others because of their public service quality and the nature of their duties—they have an obligation to

continue to serve difficult people or to continue to serve in difficult circumstances because they perform a public service. I would broaden the definition out as far as that. I am aware that that would be significantly broader than what is in the bill.

Bill Butler: Does anyone else have any comments on the matter? Previous groups of witness have said that the use of phrases such as “in the course of your employment” or “on duty” or “something affecting operational duty” might be appropriate. Does that seem reasonable?

Ian Tasker: We stated in our submission that the provision should cover a person from when they go on duty until their shift is finished. We would be happy with that sort of definition. I agree with Peter Hunter that the legislation should cover the period when someone is on duty rather than define an emergency situation.

The Convener: That, however, is not the GMB’s position. You talked earlier about there being a test. It is not just about the person being on duty; they have to be hindered in their delivery of the service.

Alex McLuckie: That is right. In the definition that we proposed, the person would be impaired in carrying out their duties. We were looking for a definition of “emergency” and “emergency worker” that would cover people who were attacked or assaulted while carrying out duties that impact on other people’s safety and well-being.

Bill Butler: Let us turn to wider issues. What steps would you like the Executive or other bodies to take to improve the safety and protection of emergency and other workers? I am thinking of education, training and the use of closed-circuit television. Do you have any comments on wider measures that could be taken?

Ian Tasker: We have been involved with the Executive in considering a wider package of measures. We see education—in whatever form—as being part of that. That is not to say that the problem relates purely to younger people; we must target education to ensure that people of all ages are made aware that attacks on workers are unacceptable. That view is shared by the Scottish Retail Consortium and the Scottish Business Crime Centre.

We welcome the Scottish Executive’s commitment to introduce a package of measures to address training needs and the need to manage aggressive clients. However, resources must be made available to ensure that that work is successful. We see the non-legislative measures as being key to reducing the number of violent attacks. It would be good to see in five years that the bill had had a deterrent effect and that the non-legislative measures had reduced the number of violent attacks against workers.

Bill Butler: Do the other witnesses agree with what Mr Tasker has just outlined?

Martin Gaughan: In our written submission, we acknowledge that the Scottish Executive is committed to the partnership for a better Scotland. T&G Scotland certainly supports that. The question is, how can that be delivered and how can the message be put across to the wider community? It is important that that be done. It is incumbent on employers, the Scottish Executive and the judiciary to do whatever they can to prevent acts of violence from being committed against workers who are carrying out their daily duties.

Peter Hunter: This might sound like a bit of a sop for the Executive, but I think that the Executive would be within its rights to say to public bodies in Scotland that they have a duty as employers to protect their staff. There is evidence that observance of that duty is patchy: it is good in some places but poor in others. The employers themselves might take advantage of the bill—in whatever form it eventually takes—to take additional steps, if reasonably practicable, to protect the health and safety of their staff. The bill would be a new measure at their disposal and the Executive would be entitled to say to employers that it expects them to take on certain tasks.

Alex McLuckie: I agree with what my colleagues have said. We have talked about training and how to deal with violent situations. There should be a public awareness campaign that says that society does not accept people being subjected to assaults and violent behaviour when they are carrying out their duties. There have been a couple of good pilot schemes. In Fife, the number of incidents involving the fire service was reduced when it took part in a pilot scheme to visit schools and talk to school kids. Drink-driving is now no longer accepted by society. We must get to a similar position for our public services and make it clear that it is not acceptable that people are attacked or hindered in carrying out their duties.

The Convener: On that high note, we must draw the meeting to a close. I thank the STUC, the GMB, T&G Scotland and Unison. It has been a helpful and informative meeting and I thank you for your written submissions and oral evidence.

We are closing just in time. We must be out of here by half past 1, because Parliament is having an important visit from the Dalai Lama. I ask committee members for their agreement to defer the two remaining items on the agenda until next week, as we do not have time to deal with them today. Is that agreed?

Members indicated agreement.

Meeting closed at 13:26.

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