



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 22 September 2010

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ECONOMY, ENERGY AND TOURISM COMMITTEE
25th Meeting 2010, Session 3

CONVENER

Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Rob Gibson (Highlands and Islands) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Gavin Brown (Lothians) (Con)

*Christopher Harvie (Mid Scotland and Fife) (SNP)

*Marilyn Livingstone (Kirkcaldy) (Lab)

*Lewis Macdonald (Aberdeen Central) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Nigel Don (North East Scotland) (SNP)

Alex Johnstone (North East Scotland) (Con)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

David Whitton (Strathkelvin and Bearsden) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Paisley South) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Graham Birse (Edinburgh Chamber of Commerce)

Colin Borland (Federation of Small Businesses)

Garry Clark (Scottish Chambers of Commerce)

Jackson Cullinane (Unite)

David Dalziel (Chief Fire Officers Association Scotland)

David Dickson (Wm Morrison Supermarkets)

Stewart Forrest (Union of Shop, Distributive and Allied Workers)

Robert Milligan (Scottish Police Federation)

Ian Tasker (Scottish Trades Union Congress)

Dave Watson (Unison)

LOCATION

Committee Room 6

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 22 September 2010

[The Convener *opened the meeting at 09:31*]

Decision on Taking Business in Private

The Deputy Convener (Rob Gibson): Good morning and welcome. I remind everyone to turn off their mobile phones and BlackBerry-type devices because they can affect the sound system, even when they are on silent mode. I have received apologies from Iain Smith, who cannot be here, from Chris Harvie, who will be about 15 minutes late from the bus, and from Marilyn Livingstone, who will be about 30 minutes late.

I welcome everyone to the 25th meeting of the committee in 2010. We have four items on the agenda, the first of which is a decision on whether to take in private item 4, which is consideration of the evidence that we will hear later on the enterprise agency review, and any future discussions of that nature. Do members agree to do that?

Members *indicated agreement.*

Protection of Workers (Scotland) Bill: Stage 1

09:32

The Deputy Convener: Item 2 is discussion of the Protection of Workers (Scotland) Bill. I welcome Hugh Henry, who has stewarded the bill.

Today, we will hear the views of two panels of witnesses on the proposals. I invite the members of the first panel to introduce themselves, after which we will move straight to questions.

Jackson Cullinane (Unite): I am an official of Unite the Union.

Dave Watson (Unison Scotland): I am the Scottish organiser, Unison Scotland.

Ian Tasker (Scottish Trades Union Congress): I am assistant secretary of the Scottish Trades Union Congress.

Robert Milligan (Scottish Police Federation): I am the vice-chairman of the Scottish Police Federation.

David Dalziel (Chief Fire Officers Association Scotland): I am from the Chief Fire Officers Association Scotland.

The Deputy Convener: I will start with a general question that each of you might have a view on. Given the existence of the Emergency Workers (Scotland) Act 2005, what is your general view on the need for the introduction of a bill to develop that concept?

Ian Tasker: I will start off, because the STUC was very much involved in the discussions that led to the introduction of the 2005 act. At that time, we had a number of meetings about how far it would extend. Many of our affiliates that did not represent what had been defined as the blue-light emergency services were unhappy about the fact that, despite the number of attacks on and incidents of verbal and physical abuse against their members every year, the 2005 act appeared to provide no protection for that population.

However, we welcomed the package of non-legislative measures that was introduced at that time, and there has been welcome activity in Scotland to raise the profile of attacks against all workers but, in recent years, the effectiveness of the public awareness campaign on the extent of the problem has reduced as the funding for it has been reduced. We still see attacks against the remaining health workers who are not covered by the legislation, local government workers—including construction workers who carry out emergency services—and retail, finance, transport

and postal workers. They all face attacks day in and day out.

We must consider how we can extend the legislation to cover verbal abuse, because we often hear reports of that happening. The public awareness of verbal abuse is low, but when it involves threats to individuals, it is a very serious offence. Even call centre workers receive threats from people who say that they know where the worker stays or that they will be waiting for them when they leave work.

We need a serious debate on how we can extend the provisions for emergency workers to all workers who carry out public services.

The Deputy Convener: I hope that the committee can provide that serious debate.

Jackson Cullinane: I will add to what Ian Tasker said about the history of the issue and the position that some of the STUC affiliates adopted vis-à-vis the Emergency Workers (Scotland) Bill, which became the 2005 act. At that time, our union argued quite strongly that the bill should be extended to cover public transport workers in particular, and I have to say that the situation is still horrific, particularly for bus workers.

I will describe a couple of incidents to the committee. In Glasgow recently a driver was slashed, and drivers have been punched and spat on, for the simple act of asking for the correct fare. The worst cases that we have heard of involve a driver who was shot with air-gun pellets through his window, and another who was attacked by someone wielding a sword.

A couple of years ago a survey was conducted by First Glasgow, which showed that on average 23 bus windows are broken every night—which is 8,000 per year—causing eye and facial injuries to drivers and passengers. Another survey, by First Glasgow staff, showed that 57 per cent of staff said that they expected to be attacked or abused in the course of their work. That is clearly not acceptable.

When those staff are asked why they have not reported the incidents, they clearly say that it is because they believe that no attempt is made to apprehend or punish the perpetrators. We do not view the bill as something to be used instead of other measures—we have campaigned for years for the installation of closed-circuit television cameras, unbreakable glass and so on—but it is a necessary part of the package if we are to prevent those incidents from taking place.

I urge the committee and the Parliament to recognise that the issue does not stand in isolation from some of the major policy positions that the Parliament must consider. For example, if there is a push—quite rightly—to tackle climate change

and improve the environment, it must be recognised that public transport has a role in that. The reality is that people will use public transport only if they believe that it is safe to do so. Given the type of incidents that I have highlighted, there will be a fear among the general public, and unless something is done to address such incidents, people will be deterred from using the public transport system.

David Dalziel: The 2005 act has already been mentioned, and I want to provide some context around its use or otherwise in any given year, although it is clear that the situation changes from year to year. In the fire service alone—just to be parochial—we suffer about 300 reported attacks on fire crews across Scotland in any particular year, which is fortunately not as high as the level of attacks on public transport workers.

Conversely, the number of prosecutions in proceedings under section 1 of the 2005 act—which covers police, fire and ambulance services, as opposed to health workers and others—bubbles around the 50 mark. If the numbers for ambulance worker and police attacks are added to the 300 attacks on the fire service—which I am sure makes a significant difference—and the resulting figure is contrasted with the 50 prosecutions under the 2005 act, it seems that the current legislation is not being used as widely as it might be.

Robert Milligan: Before I summarise our position, I want to say that I fully respect the motivation behind the bill.

The Scottish Police Federation believes that assaulting someone in the execution of their duties is a serious offence, and that the justice system should treat it as such, but we do not think that the bill contains the best way of doing that. We support the common law and think that the Crown and the judiciary are flexible enough to deal appropriately with the peculiarities of each case, bearing in mind that every standard prosecution report that is referred to the procurator fiscal includes a section purely for remarks in which the reporting officer outlines the aggravations to the offence.

We are concerned that the principle of everyone being equal before the law is being challenged and that a hierarchy of victims may be created. We are also concerned about the difficulty of proving motivation. Instead of dealing with the common law, which requires us to prove an assault, a breach of the peace or threats, we will have to find time to prove motivation. We are concerned that our members' jobs are becoming harder and more time consuming.

I will not go into the figures, although I have them and will gladly circulate them. Figures for

police assaults from central Glasgow division equate to every police officer in the division being assaulted twice a year. I want the committee to bear in mind seriously that passing legislation does not guarantee protection from attack.

The Deputy Convener: It would be helpful if you could make the figures available to the committee in writing.

Dave Watson: Unison Scotland supports the principles of the bill. Sadly, violence at work remains a serious problem for staff facing the public. We conduct an annual survey on the issue; the new one will be published next month. Last year, 30,000 incidents were recorded by public service workers in Scotland. I emphasise the word “recorded”, because many incidents are not recorded, for a variety of reasons. The systems are too complicated—many staff feel that incidents happen so often that, if they were to record them, they would be constantly filling in forms. I refer only to incidents in our sphere of influence—there are further incidents in other areas.

We see legislation not as the only solution but as part of a three-pronged solution. First, we need campaigns to raise public awareness, to try to make abusing people who serve the public unacceptable in the same way as drink driving is no longer acceptable. Secondly, workplace measures are important. We have made progress in the health service. I am pleased to say that this year local government, which had lagged behind somewhat, has come on board with new guidance that we have developed with colleagues there. We hope to see the benefits of that in the next couple of years. Practical workplace measures are important.

Legislation is the third prong. It is important not just because of the deterrent and punishment elements, but because of the public policy message that it sends. The Emergency Workers (Scotland) Act 2005 was an important step forward. However, we said at the time—and have said since in extensive discussions with ministers and officials—that it was too limited in scope. There are provisions to extend the scope of the 2005 act, but it is limited somewhat by its overarching emergency circumstances provisions.

Serious physical assaults should be—and are—dealt with by the common law. However, below that there is a level of incidents—some physical, some of other types—that are nonetheless particularly traumatic, especially for public-facing workers, who are not used to dealing with violence. Hopefully, most members will never face violence—if they are particularly unlucky, it may happen once or twice. That is a hugely traumatic and, usually, costly experience for the public sector, because the people concerned suffer

illness and ill health and often take some time to recover from the incident.

I am sure that you will test us on whether the bill is necessary. I am happy to deal with points made by the Scottish Government and others, but we think that the numbers indicate that the justice system does not take such incidents seriously enough. Parliament should show that it is serious about the problem by supporting the bill and sending a clear public message.

The Deputy Convener: Before I open the floor to members, I remind you that it is not necessary for every one of you to answer every question. We are here to hear a wide range of views, but please make your points as specifically as possible.

09:45

Lewis Macdonald (Aberdeen Central) (Lab): I will start by asking for comments from several of you on the Emergency Workers (Scotland) Act 2005, which it is clear is the model, as it is already in place. David Dalziel said that, although the number of prosecutions has increased under that act, it is still lower than the number of cases that arise. What is the overall assessment by the fire service and the Scottish Police Federation of the 2005 act’s usefulness and effectiveness for your members? I am also interested in the trade unions’ view on how the act has worked and the lessons that it has for the bill.

David Dalziel: Firefighters do not—thankfully—suffer anything like the level of attacks that police officers do, but the level has remained static since the 2005 act was introduced. The number of attacks dropped slightly last year, but the figures have stayed at about 300 incidents each year. As another witness said, the vast majority of incidents are—thankfully—verbal assaults, and few result in physical injury, unlike attacks on our police colleagues. Nonetheless, verbal assaults or attempted attacks on crews—whether with missiles, laser pens or bricks, or recently petrol bombs and fireworks—are traumatic, whether or not they result in injury.

Initially, passing the 2005 act raised awareness hugely. That put Scotland ahead of the rest of the UK again in passing legislation to protect sections of the workforce. My colleagues south of the border and in Wales were jealous of that and remain so. However, the act has not resulted in a reduction in attacks. The vast majority of cases that are reported to the police are proceeded with under other legislation, such as that on common assault, reckless endangerment or breach of the peace. The 2005 act is not widely used.

Robert Milligan: Annually, more than 8,000 offences are reported under section 41 of the Police (Scotland) Act 1967. That section has fallen

into disrepute for the rank-and-file police officer, because all that it does is clog up the court system. An offence under that section is the first offence to be plea bargained away. Our experience of such aggravations is that the accused is unlikely to plead guilty to a section 41 assault on a police officer and is far more likely to plead guilty to common-law assault or breach of the peace. The courts and the judiciary do not take the aggravation seriously.

Lewis Macdonald: Does any other witness have a view?

Dave Watson: The short answer is that people do not know what happens under the EWA because the justice directorate does not keep statistics for people to analyse. In the first year of the EWA's operation—2005-06—an attempt at grouping incidents by occupation was made, but that was dropped after 2005-06. After that, the categories were ambulance workers and everybody else, which I presume is because ambulance workers formed the largest chunk in the first year. No explanation was given for dropping the statistics, although the committee that dealt with the Emergency Workers (Scotland) Bill criticised the justice department for not keeping those statistics.

The use of the EWA is limited. One reason for that—it also applies to the Protection of Workers (Scotland) Bill—is that the EWA has wider provision. That is partly because the sentencing provisions came into line with the common law. From our point of view, what is useful about the EWA is that it deals not just with physical assaults but with hindering and obstruction. We would like the bill to be strengthened on that, too.

In its submission to the committee, the Scottish Government's justice directorate says that the Crown Office and procurators fiscal take all matters into account in proceeding with prosecutions and in aggravating offences. Where is the evidence for that? Not one single statistic has been put before the committee to support the argument that fiscals and the Crown Office do what has been said. Such statistics are not kept. In 2004, the Justice 1 Committee asked questions about that and was told that the operational database was being looked at and that improvements would be made. I cannot count the number of meetings that I have had with justice officials over the years at which I have been told that the database would be reviewed and that they would be able to give us the statistics. The statistics have never been produced.

All that the Scottish Government's submission does is give two anecdotal examples of cases that probably would not be prosecuted under the EWA anyway. In anecdotal evidence, my colleagues in the legal profession—people with whom I went to

law school and who are defence agents and fiscals—tell me, bluntly and privately, that an aggravation is simply plea bargained away. In a busy court on a Monday morning, the aggravation might be cited but, if the defence agent said, "Okay—he'll plead guilty if you drop the aggravation," the aggravation would be dropped. If we had the statistics, I suspect that they would show that the aggravating provisions are not used much. On that basis, we do not believe that the common law is being used properly, so there are strong public policy and practical reasons for having legislation.

Ian Tasker: Recently, there have been two concerning incidents of assaults on fire service personnel. One, which was reported in the media and took place in Edinburgh, emphasises the importance of the issue of impeding workers, as it involved the firefighters' hoses being slashed by attackers. That might not be capable of being classed as an assault, but it is evidence of the firefighters being impeded in their duties. The other incident, which I have not seen reported in the media, involved a youth getting into the cab of a fire appliance and attempting to drive it off. Such incidents are concerning, but they might not be classed as assaults against a firefighter.

I echo the comments that were made about the Crown and the judiciary not taking such matters seriously enough. That was raised in the early days of the non-legislative measures, when we had round-table discussions involving the Association of Chief Police Officers in Scotland and the Crown Office. At that time, it was clear from the discussion groups that we held with workers that, when issues were reported to the police, they were not taken forward for prosecution. Workers sometimes blamed the police for that, but it was the fault not of the police but of the prosecution service.

Lewis Macdonald: What we have just heard makes it clear that how these matters are dealt with in the courts is critical to the usefulness of the existing legislation and, therefore, to the usefulness of incoming legislation. Would it be unfair to characterise the comments that we have heard as saying that, often, cases are simply not taken through to prosecution because fiscals either bargain away the aggravation aspect or do not raise it in the first place? If I understood Robert Milligan correctly, he supports that view but comes to the opposite conclusion. In other words, he agrees that not enough cases are prosecuted and taken through to a conclusion, with regard to the aggravation element, to make the law as useful as he would like it to be, but the conclusion that he draws from that is that he does not like the law.

Robert Milligan: That is correct. If the intention is to make a statement, I would point out that

every right-minded person in Scotland already agrees that any assault is serious. That is the bottom line.

It has been suggested that no attempt is made to apprehend these people, but I have yet to meet the cop who does not want to apprehend someone—that is just part and parcel of what we do. I do not see what the bill adds to that.

The way in which we report offences under the common law means that there is sufficient flexibility for the judiciary to deal with that appropriately. As someone said, however, where is the evidence of that happening? I do not think that legislation is the answer, but sentencing guidelines might be. The message that everyone should be free to go about their business without the fear of being abused in any particular way is important, and I support the motivation behind the proposal, but the Police Federation is not convinced that legislation is the answer to the question.

Lewis Macdonald: Does the fire service have a view on this issue of aggravation? Does the fact that the Emergency Workers (Scotland) Act 2005 allows an additional charge of aggravated assault make it easier for the Crown to secure convictions for the common-law offence in the first place?

David Dalziel: It has not been our experience that that has been the case. Occasionally, we have to prompt the Crown Office and Procurator Fiscal Service to use that additional legislation, just as Robert Milligan has outlined.

“Easier” is not the right word, as that just derogates the whole thing. It seems that there is a much greater chance of success if the common law is used in terms of assault, breach of the peace or reckless conduct, and the penalties that go with those offences can be fairly substantial. The 2005 act raised the issue, of course. However, certain incidents—such as those that Ian Tasker mentioned—are already covered under the Fire (Scotland) Act 2005, which is the primary piece of legislation, and therefore no additional legislation was required in order for them to be dealt with.

We work well with police colleagues and the Crown Office with regard to assaults on fire crews, without using that additional legislation.

Lewis Macdonald: Might there be a case for making it easier to use that additional legislation, in order to secure more convictions?

David Dalziel: If we stick with the Emergency Workers (Scotland) Act 2005, it would be extremely helpful for sentencing guidelines to be reinforced and awareness raising to be carried out. However, as Robert Milligan said—I do not speak for the Scottish Police Federation, clearly—

where there is statute law, the arresting officer is obliged to use that first and, in some instances, it might have less chance of successfully going through the judicial system than a prosecution under the common law.

Lewis Macdonald: A common feature of the police and fire service responses is that, for the Emergency Workers (Scotland) Act 2005 to have more effect, tougher or clearer sentencing guidelines would be required. Do you agree?

David Dalziel: Yes.

Robert Milligan: Yes.

Lewis Macdonald: Do the trade unions support that view? If so, does that mean that, if it is to be useful, the bill needs to be clearer about sentencing guidelines from the outset than the Emergency Workers (Scotland) Act 2005 is?

Dave Watson: We need to be a little bit careful, because we are confusing two things. The aggravation is part of the common law, not the EWA. We are talking about the Crown Office guidelines on common-law assault. That is the aggravation for which no statistics are given and nobody can tell us whether it has ever been used or is used significantly.

We represent the third of the uniformed services that are covered by section 1 of the EWA—that is, ambulance workers. It is clear from statistics that we have had from the justice department that the act is being used in relation to assaults on ambulance workers. I know from talking to fiscals that they like the hindering and obstructing element of section 1 of the EWA because it is easier to prove that an accused was hindering or obstructing an ambulance worker who was trying to get to somebody than it might be to prove breach of the peace or common-law assault.

When the charge comes in, it is obvious that colleagues from uniformed services were acting as a uniformed presence. However, the problem for Unison is that most of the victims in the 30,000 incidents that I mentioned are not uniformed public service workers but people who work in care homes, schools or the reception areas of council offices. The public service element may not even be mentioned in the report, so it is not immediately obvious that there is such an element to the incident, even if where it happened is mentioned. That sometimes gets lost in the system, which is why we need better data.

Such incidents are often lower-level assaults than those on the uniformed services and, therefore, not as suitable to be tried as assault cases. They are the sorts of assault that, if they happened on a Saturday night outside a pub in Glasgow, would not get as far as the sheriff court on a Monday morning. However, if somebody is

serving the public as part of their daily work, they do not expect such treatment. It is not part of the culture and has a traumatic impact.

There is a difference. The bill is important for the vast majority of our members who suffer thousands of incidents of violence. I understand why the uniformed services take a different view, but we take a different view from them because our members have a different experience.

Lewis Macdonald: I am sure that colleagues will follow through the implications of that for Hugh Henry's bill. In relation to the experience of ambulance staff, does the proposition that the Emergency Workers (Scotland) Act 2005 would be more effective with more specific sentencing guidelines ring any bells with you? If it does, would that have any implications for the bill?

Dave Watson: It does. I would like clearer guidelines not only for sentencing but for prosecution. Nobody knows where the problem is because there are no stats, but my suspicion from talking to people and having looked at the cases—I head Unison's legal services, so I see all our legal cases in this policy area—is that it is with not the judges but the prosecution process. I would like there to be stronger prosecution guidelines, better collection of data and better training for fiscals. Those are the areas in which I would like the rules to be strengthened.

It is difficult to draw conclusions on the operation of the EWA from the limited statistics. We cannot draw any real statistical correlation from the three or four years of statistics on it, although I notice that the Scottish Government's submission attempted to do so. However, if you are looking for some statistical evidence, I point out that our survey shows that assaults in the health service have gone down and the EWA covers most health workers, whereas assaults have gone up in local government and the EWA does not cover most of those staff. I do not claim any great statistical correlation any more than I suspect the Scottish Government officials do—it is too early to tell—but, if you are looking for correlation rather than cause and effect, I point out that bald statistic to you.

10:00

Stuart McMillan (West of Scotland) (SNP): Good morning. From your understanding of the bill, what constitutes a public-facing worker? Do you have any examples of such a worker?

Ian Tasker: The unions' view is that it is anyone, whether employed or self-employed, who provides a service to the public. They might be a shopkeeper, for example. The method of service delivery involves contact, physical or otherwise, between the worker and the public. We carried out

numerous focus-group exercises as part of the initial non-legislative measures and we looked at various jobs including doctors' receptionists, nightclub bouncers, stewards and parking wardens, for whom there are major problems. That approach came from the Scottish Government at the time, not the trade unions. A public-facing worker is any worker who is involved in delivering a service on behalf of their employer to a member of the public.

Dave Watson: As you know, there is a definition in section 1(3)(b), which describes the worker as

"interacting with those members of the public for the purposes of the employment".

It requires more clarification, as we said in our submission. Although it is fine for obviously public-facing people, our difficulty with the definition is not the interaction with the public but the "purposes of the employment" bit. For example, imagine a housing clerk in a reception area who deals with a member of the public who says, "I'm going to get you." Most of our members who work for local authorities live in the communities they serve, so it is not unlikely that they could bump into that same aggravated customer in the pub on Friday night and be assaulted or otherwise abused. The argument in court would be whether that encounter was for the "purposes of the employment". We need to discuss and tighten up the definition. We would like the committee to consider that at stage 2, when we will probably come up with a definition amendment to address the issue. The definition issue does not undermine the principles of the bill, but the definitions need to be tightened up in that and one or two other areas that we highlighted in our submission.

Stuart McMillan: As I read all the paperwork, I thought of an example. If a security worker who is a shift worker is on a day shift, they probably deal with the public regularly. However, if they are on a night shift, perhaps on a building site, they would not expect to deal with the public regularly. Would that shift-pattern worker be covered by the bill?

Dave Watson: They would, because they would meet the definition of a worker who provides a service to members of the public. The other thing that you need to define is who is a member of the public. That is the thing about legislation; the rules operate their own lexicon—so we need to define some of the issues. However, there are common-law provisions, such as the concept of causation, that could help you to make the legal link in that regard. We can get round the problems by making definitions a little clearer and drawing on examples from common law or statute. For example, we argued that "the purposes of employment" would fit better into the EWA because we lifted it from the Police (Scotland) Act 1967. The courts are used to

using that type of provision, which has been used to protect police officers for many years. We wanted to use a similar provision so that the protection afforded to police officers would be afforded more generally to other workers in the public sector. The bill has rightly used better wording than even the EWA, but you can still tighten up the language so that there is less scope for interpretation that might be unfavourable and exclude people.

Robert Milligan: One point that immediately springs to mind is that if we are not very sure what the answer is in this committee room, how is a cop who is working at 2 o'clock in the morning in the middle of Glasgow supposed to know? I return to the common-law aggravations. One category relates to the place of the assault, which I would extend to include someone's place of occupation. Another category is the character of the victim, which I would extend to include the person who has been convicted. Those avenues already exist and are already used.

Stuart McMillan: I will give another example. On the next panel we have a witness from Morrisons. Years ago, I used to work for a couple of supermarkets. When I was thinking about the bill, I took myself back to that time. Someone who works on a supermarket shop floor works with and faces the public, but what would happen if they were assaulted when they had left their station of work and were officially on their break and heading to the staff canteen? They would not officially be working. Would they be covered under the bill?

Dave Watson: That is not a problem with the bill. It is fairly clearly understood in employment law that someone who is going for their break is doing so for the purposes of employment. As always with legislation, the issue would be for judges to interpret. There are provisions that need to be tightened up but, to be honest, that one is fairly clearly understood.

Stuart McMillan: In some of the evidence we have received it is suggested that there is already a two-tier system and that, if the bill were passed, there could be a three-tier system. Mr Milligan spoke about a hierarchy of victims. We would have the Emergency Workers (Scotland) Act 2005 and the proposed legislation, if it were passed, which would cover public-facing workers, but what about someone who works in a factory, shipyard or engineering works, is not in a public-facing role and is assaulted? There are a few question marks on that. Why should those people not be included in the bill?

Ian Tasker: We would have to extend the example you have used and consider where the assault came from. If it was from a colleague, it is covered under employment legislation. Employers

should have the appropriate policies in place to ensure that they can take action against that individual. There are options in other areas of business for an employer to take a prosecution against an individual who has stolen money from it, so surely the employer should be able to seek prosecution if there has been a serious attack by one colleague on another. Other areas of legislation cover situations in which an individual does not provide public services but there is still the likelihood of attack against them.

Jackson Cullinane: We must keep the purpose and target of the bill clearly in mind. As Ian Tasker has explained, if someone is assaulted in the course of their work, measures are available right now to deal with that. The bill is trying to address the thought and the culture that exists among some members of the general public that somebody who provides a public service to them is an easy target and, if they do not get 100 per cent satisfaction from that person, they can take out their anger on them and abuse them. The bill is part of that much wider package, which is why it needs to be stressed that it is required.

David Dalziel: Stuart McMillan talked about tiers, or levels, of victims and Dave Watson talked about the need for prosecution and sentencing guidelines. High-level campaigns such as the campaigns on domestic violence and road traffic offences, which are also despicable offences, have been successful. The raising of awareness in general is to be applauded. The bill is intended to raise awareness, which is a laudable aim.

We could find lots of examples of groups of workers who would be excluded. As we reshape public services over the next five to 15 years, tensions will rise. There is already the potential for that for a variety of reasons, as people lose employment and so on.

A huge section of our workforce deals with the public by phone. Intimidation and threats of violence over the telephone, in e-mails or in writing have an equally damaging and traumatic effect on victims. There is a spectrum of activity, but the common law tends to deal with most of it. My trade union colleague mentioned employment law, which provides protection across the piece.

I do not think that anyone would argue with the bill—it is spot on—but there is an issue to do with equal application of the protection of the law throughout the workforce.

Stuart McMillan: I am a member of the Parliament's Equal Opportunities Committee, which is reaching the end of an inquiry into trafficking. Yesterday, the committee heard evidence on the sex industry. Would the bill apply to people who work in the sex industry? Would it

encourage people to come forward and complain about issues?

Dave Watson: We do not represent staff who work in that industry, so I cannot claim particular expertise in that regard, but it seems to me that some of the tests under the bill would cover people in that type of industry.

An equal opportunities issue that we identified in our submission is that the EWA is drawn up in such a way as to cover male-dominated professions. I think that that was unintentional. The value of the bill is that it would draw in a much wider group and female-dominated occupations would start to get similar protection. In equal opportunities terms, the bill has strong merits.

Stuart McMillan: In written evidence to the committee, the Scottish Government suggested that the bill would not add anything new to existing legislation. The witnesses commented on the issue; do you have anything to add?

Dave Watson: Those are the same arguments that the same officials and the legal establishment churned out against the Emergency Workers (Scotland) Bill. I well understand—I am qualified in Scots law—the view about the wonders of the common-law approach to the issue. It can be argued that elements of the bill are covered by our allegedly all-encompassing common-law provisions, but there are areas in the bill and the EWA that are not well covered by the common law, particularly in relation to lower-level offences. We would also like to strengthen bits of the bill by bringing in more EWA-type provisions.

The legal profession and officials missed the point that passing legislation is about not just deterring and punishing but sending out a clear public policy message. Ministers have been promising to extend the EWA for the past two or three years, but they have done nothing about that. Officials promised to produce a consultation paper on extending the EWA, but that has not happened either. Something has to be done. The bill would send a public policy message that the Parliament is serious about doing something about the 30,000 people who are the victims of incidents each year. I would not underestimate the public policy benefit of passing the bill, even if what it does is technically covered by the common law—although nobody can prove that, because they do not even bother to keep the statistics.

10:15

Robert Milligan: I repeat what I said earlier: we are concerned that the bill does not bring anything new to the table for us—although we fully understand the motivation behind it. Our concerns are about the law becoming more complex. That is not just an administrative matter or an issue of

delivering justice on the streets of Scotland; it is even more about the court set-up. We have to review it on the basis of a reducing workforce. I understand the motivation behind the bill, as I have just said, but I do not see what it brings that is new.

Hugh Henry (Paisley South) (Lab): I understand Mr Milligan's frustration, and that of his members, regarding the law not necessarily being seen through to a conclusion. Considering the effort that police officers put in, we can understand why some of them are so aggrieved that those efforts come to nothing. That is the case in other areas, too. Most members here will have constituents who complain bitterly about antisocial behaviour, but the authorities do not use the powers.

I wish to clarify something with Mr Milligan, following the logic of what he has been saying about parts of the Police (Scotland) Act 1967 being brought into disrepute and about the emergency workers act. Do you think that the emergency workers act should be scrapped, because it has no value?

Robert Milligan: That is a difficult question, as we are speaking with hindsight. Our position on the Emergency Workers (Scotland) Act 2005 is exactly the same position as I have been describing today. The courts do not place sufficient emphasis on what is reported to them. If they did, the full and proper application of the common law would negate the need for any other aggravator or any other act.

Hugh Henry: Your view on the Emergency Workers (Scotland) Act 2005 is different from the Government's view. Your view on the bill before us is with the Government—that there is no need for it—but it is your view that there is probably no need for the 2005 act, whereas the Government believes that there is a need for it and it has extended it and promised to extend it further.

Robert Milligan: I would not say that I am against the Emergency Workers (Scotland) Act 2005. I would not like to see any dilution in it. I am sure that David Dalziel will have a view on that, too.

Hugh Henry: You say that you do not want any dilution in that legislation. Why should a police officer get protection under the Emergency Workers (Scotland) Act 2005 but a social worker taking a child into care should not receive protection under the bill?

Robert Milligan: Because those protections exist under the common law.

Hugh Henry: But they also exist under the common law for the police officer. Why should the

police officer also get protection under the 2005 act?

Robert Milligan: It is there for the police officer under the common law, as well as by using the act.

Hugh Henry: So you are saying that there is no need for the Emergency Workers (Scotland) Act 2005.

Robert Milligan: I am not advocating that. I would not want to see a dilution in it.

Hugh Henry: There is an important point here. The Police Federation does not want there to be a dilution of the 2005 act and it is quite content for the police to continue to be covered by it, but it does not believe that the same type of protection would be necessary, under the bill, for a social worker taking a child into care, for a bus driver in the situation that Jackson Cullinane described or for a shop worker. You spoke about a hierarchy, but you want protection in terms of that hierarchy.

Robert Milligan: I still think that the protection would exist under the common law anyway.

The Deputy Convener: I am trying not to open this part of the discussion out, but David Dalziel is next.

David Dalziel: In the best traditions of the blue-light services, I will come to the police's assistance yet again. The point is valid. It is not a matter of saying that police officers, fire officers or anybody else has a particular right to more protection. The point about sentencing has been covered a few times already. If the Emergency Workers (Scotland) Act 2005 and your very laudable bill, Mr Henry, had additional penalties that were reinforced through sentencing guidance and guidance to prosecutors, and if those penalties were widely publicised—that is another key point, connected with the name and shame aspect—in other words, if the 2005 act and the bill had actual clout, that would be in everyone's interests.

That is not an excuse. I do not want to make the argument that uniformed public services are different from other public services, all of whom, particularly social workers and front-line health care workers—our ambulance colleagues are covered already—are knowingly and almost without option put into volatile and hostile environments. We are no different to them in being exposed more frequently to hostile and violent situations from which we have less opportunity to walk away. We have less opportunity to walk away than workers in static situations such as those in benefits offices who have screens, CCTV and security guards. We cannot take all of that to incidents. The case can be made that there is a difference between us. That said, there should be

no difference in terms of the protection of the law. I agree on that.

Ms Wendy Alexander (Paisley North) (Lab): David Dalziel drew the remarkably important analogy between the issue before us and domestic violence. Over the past 30 years, there has been a change in culture in which we have not simply relied on common law. There has been a battery of measures of the type he described, including sentencing and prosecution guidelines, awareness raising and significant changes in statute. The analogy is a helpful way in which to think about where we are on the issue before us. We are in something of a halfway house: we are in the slightly odd position of people saying either, "Let us step back," or, "Let us continue to move forward."

Despite the essential hostility of the prosecution authorities to using—indeed to the introduction of—the EWA, there have been 1,000 prosecutions in a remarkably short period of time. The fact that 1,000 prosecutions have been made in three years suggests a gap that the act was helpful in addressing. The essential question that arises is whether there are further gaps. Self-evidently there must be, given that there are 30,000 incidents. If we are trying to achieve behavioural change, how should we move forward? I invite David Dalziel and Robert Milligan to comment on that.

From the trade union side, Dave Watson made the fascinating point that we have seen fewer assaults at the margins of the health service but continue to see them in local government. Part of the issue is the public perception that there is no sanction against someone who assaults a bus worker at 2 am or loses the rag completely and makes threats against someone because their housing benefit has not been paid. Most members of the public believe that there is no sanction against that behaviour. There are, however, the beginnings of awareness that there is a sanction against, and that public opprobrium will be directed at, someone who interferes in the work of the emergency services of any kind. How can we build a growing awareness of the issue? Will the bill help to build awareness that it is unacceptable to assault people, verbally or otherwise? The public seem to believe that there is no sanction, as do many managers. I will leave it there for the meantime.

Ian Tasker: A few weeks ago, I was on the train from Glasgow to Paisley at about 7 o'clock. After Cardonald station I noticed that the ticket collector was having problems with a male passenger. As the train drew into Paisley station, the man appeared to attempt to spit on the guard. The train doors opened and the individual walked off the train. He did not run; he seemed to have no

perception that he was in trouble. The conductor was left in a state of trauma. He rang the emergency button. The driver came along with the spit kit. The train was delayed substantially. I went to see what was going on. Indeed, I was the only passenger who provided assistance to the guard. It appeared that he had not been spat on—no traces of saliva were found, although we took a swab. The public attitude to the event brought home the situation to me. By coincidence, it happened when we were preparing our evidence on the bill. Once you have had a personal experience such as that, you realise how vulnerable such workers are. The inconvenience to the travelling public was the factor on that occasion. The member is right in what she said on the matter.

The pattern of domestic violence is over a prolonged period. We would not want to equate the seriousness of domestic violence with the seriousness of the attacks, but our members who serve the public are finding that such behaviour builds up over a prolonged period and, if their employers do nothing about it, it has a health effect on individuals. These are not one-off incidents—workers face these incidents day in, day out, and they are looking to the law for protection.

Dave Watson: I was closely involved in the EWA—the campaign for it, the drafting and the amendment stage—and I clearly remember being told by the legal establishment and officials at the time that there would be no prosecutions under it. They did not say that there would be one prosecution or very few; they said that there would be none. There have been 1,000 prosecutions, although that is not enough when you consider that we are recording 30,000 incidents a year. It is important to remember that most of those incidents are reported in the local press, and the courts are aware of them. The focus on a particular group of people raises awareness of the issue.

If we are looking for an analogy with domestic violence, it would be that there is a culture—albeit a declining culture—that it is acceptable to abuse people who serve the public. Thousands of our members work in call centres. I have listened to some highly educated and fairly well-off people who think it is okay to shout abuse down the phone. They would not do it face to face, but they think it is okay to do it to a call centre worker at the end of a telephone.

There is also a culture in a number of professions of pressure not to report incidents. We get it in schools, for example, and in social work. In the guidance that we developed for local government, I wrote a case study of a legal case I handled that involved a child in a particular school

who should not have been in that school. There was clearly a pattern of behaviour. Although the violent incidents became increasingly serious, there was pressure from the parents to keep the child in a mainstream school. The headteacher resisted moving them until the inevitable happened and a serious assault happened. The director of education said to the headteacher, “Sorry, this child can no longer stay in this school.” That culture in the professions means that incidents are recorded less than they should be and staff are told, “This is part of the job.” That is precisely the culture that used to exist with domestic violence; it was considered acceptable. We changed that culture in domestic violence, but we have not changed it yet in relation to assaults on staff. For us it is a longer-term issue; legislation is not a panacea. We are not claiming that if the bill is passed everything will be all right. You have to do the awareness raising and you have to put in the measures, but legislation sends important messages and you as legislators must send out to the public the important message that violence against workers is not acceptable.

Ms Alexander: I have a technical point. In its evidence on the bill, the Federation of Small Businesses raised the issue of self-employed workers. Clearly, the isolation of the bus driver at 2 am is awful, but there is also the self-employed shop owner whose shop is open late at night and who is on their own. This is more of a stage 2 issue, but I would like the panel’s views on whether self-employed workers should be brought within the scope of the bill.

Dave Watson: The short technical answer is yes, and the way in which to do that refers back to my answer to Stuart McMillan’s earlier question, which is that we have to define in the bill what we mean by the “purposes of the employment”. There are definitions of worker in other legislation that would not cover the self-employed, but we are not bound by them; we could write a definition that covered such workers.

Gavin Brown (Lothians) (Con): I am keen to explore the gap Dave Watson mentioned. He said that if there was a serious assault it would be dealt with by the common law but that there is a level underneath the common law that is not being dealt with. If a bus driver is slashed with a knife or attacked with a sword, that could be dealt with under the common law, but Ian Tasker gave the example of spitting at a train conductor. While, technically, that could be dealt with under the common law, I would guess that in practice it often is not. Obviously, serious assaults can always be dealt with under the common law. Other than spitting, what acts and types of behaviour do you envisage being dealt with by the bill?

10:30

Dave Watson: Let us be clear. In theory the common law covers a wide range of incidents. Even if you just push somebody, in theory that is an assault and, in theory, breach of the peace might cover some other incidents. I say “in theory” because the reality—especially in our cities—is that our courts are busy places and the prosecutors are under enormous pressure. If you go to Glasgow sheriff court on a Monday morning, you can see that.

The reality under our current system is that although, in theory, the law is there, in practice incidents that involve lower-level assault and intimidating behaviour—for example, the person who walks into the housing office and does not get the allocation that they want, the new bath that they want or such like and does not physically assault anyone but makes pretty pertinent threats about what will happen to a member of staff once they get them outside the building—are unlikely to be pursued by the prosecuting authorities. In some cases they may be, but generally they are not. That is the difference.

In theory, the common law touches these things and cases will be pursued when there are serious offences, when the offence is clear and when there are clear offences in relation to uniformed staff and others that have a high profile. The problem arises when it comes to people like our housing clerks, people in social work reception areas and reception areas in hospitals, and porters who deal with the violence in the accident and emergency departments in hospitals on Saturday nights. It is about all those groups of people, who are not the obvious people. In the eyes of the prosecution authority, the incidents are often not serious enough to justify prosecution, but in the eyes of our members they are hugely traumatic experiences and they rightly expect us to do something about them.

Gavin Brown: Thank you. I will move on to another issue.

We have heard a number of questions about the EWA and its impact. We have clear statistics on the number of successful prosecutions: there were 54 in the first year and the figure has gone up to 301 in the most recent set of statistics. Those statistics can, of course, be argued either way, although the Scottish Government ultimately took the view that we should probably not try to argue the case either way.

What impact do you think the EWA has had on the number of attacks on emergency workers, as opposed to the number of successful prosecutions? Successful prosecutions are one thing but, in respect of the number of attacks, we have heard from the fire service that it estimates

the number of attacks to be about 300 a year and thinks that the figure has remained the same over the period. I think the STUC’s submission states that it believes that, on the whole, attacks on people who are protected under the EWA are in decline. It is always difficult to get specific numbers, but can any of you give us statistics, now or as we go forward, on the number of attacks? Such information may have come from surveys of your members and so on. We have heard some anecdotal evidence, but it would be useful to have statistics that are as good as we can get.

Dave Watson: It is widely recognised that we do probably the most detailed annual survey and report of assaults on public service workers generally. Obviously, we cover the widest group of workers. Unfortunately, we will not report on the survey until next month, but it will still be relevant, so we will send you our annual report once we get it.

The survey has its limitations. It shows that the overall figure is that there were almost 30,000 assaults and we break the figures down by health, local government, police and other groups, because what we are doing is taking the data from public service organisations that collect the recorded incidents through their systems. The problem with that approach is that it requires the member of staff who has been the subject of the incident to fill in a report on the incident, but a wide variety of reporting systems are used. For example, one local authority requires that a 16-page form be filled in every time there is an incident. You will not be surprised to learn that not many members of staff bother to fill it in. I am pleased to say that other local authorities have better systems and use a relatively simple form.

Other local authorities and public bodies do not do a great deal with the forms when they get them in. One authority, not a million miles from the Parliament building, just sticks all the recorded incidents on a spreadsheet and all you get is a long spreadsheet with names, which are not even broken down by department. I have to say that how that authority makes any risk assessments or judgments is beyond me. We have been fairly critical of that.

There is a problem with how the data are collected and evaluated, and it is difficult to take effective workplace measures if that evaluation is not done.

Having given all those caveats, I can tell you that the data that we receive show about 30,000 incidents in the latest recorded year. They vary from relatively low-level incidents to serious ones, and there is inevitably a triangle with a large number of low-level incidents on the base and some of the well-publicised ones at the top.

As I said, the quality of the data is such that I am always wary about drawing conclusions—I say that every year in the report that I write. The Scottish Government also has stats. It gets them every year, and it can tell us how many prosecutions there have been and how many have failed. It has those data if you want to see them. In fairness, most prosecutions are successful and, ultimately, there are not that many failures.

It is difficult to draw correlations between the EWA and movements in the statistics that we get. There is an apparent correlation in that assaults on health staff, who are largely covered by the EWA, are going down, while assaults on local government staff, who are not covered, are going up. My health warning for that finding is that the health service has had a longer go at introducing effective workplace measures, policies and procedures. For example, it has a common data collection system. Local government does not have that, and it has taken us a number of years to get local government to take the issue more seriously. I am pleased to say that we have published guidance on that this year. I hope that the new guidance, with standard reporting systems and so on, will start to show results over the next two, three and four years. However, the improvement will not be any quicker than that.

You need to conduct a study over a number of years to see where the data are going and how they are collected, and to measure improvements in collection and analysis of data and in the workplace measures that public authorities are putting in place to deal with the issues. If you do all that, you might get a picture of the situation. At the moment, however, for the three or four years since the legislation was passed, data on actual incidents, which are faulty for all the reasons that I have mentioned, are only a broad indicator. I would not draw any hard conclusions from them one way or another. In fairness, I do not think that the Scottish Government is trying to do that either. It is pointing one way and we are using the data to point another, but neither of us claims that there is overwhelming data that points either way.

Gavin Brown: Your survey counted 30,000 incidents last year. What breakdown do you have of types of incident? You talked about a pyramid.

Dave Watson: Sadly, we cannot provide such a breakdown, because there is no consistent method of collecting the data. We ask every employer we deal with to give us its recorded statistics and its recording system. For the reason that I have indicated—everyone collects the data differently—we cannot break them down properly. We can break the information down by employer group, so we can tell you the statistics for health, local government and police, but we cannot break down the information in local government by

department. It might be possible in health, but every local authority organises differently. For example, we may get statistics from one local authority from a department that covers social work and housing, but in another local authority social work will be stand-alone or grouped with another service. Therefore, it is not possible to break the statistics down.

We certainly do not have occupational groupings. We have said, to local government in particular, that it is important to have common occupational classifications for the data. How departments are managed is not relevant; the occupational groupings are what matter. If employers could collect the data in occupational groupings, they would be able to target workplace measures at where the vast majority of incidents take place. Some local authorities could not even say geographically where the incidents are. Those are the two pieces of information that we need: occupational groupings and where incidents are happening. If we knew that, we could focus the measures at local level and, in national policy terms, we would be in a position to tell you about the measures that we would like the Government to take administratively, and the Parliament to take legislatively, to address the issue.

Robert Milligan: I want to echo Dave Watson's frustration. It is remarkably difficult to deal with raw data and turn it into a more victim-focused input. That frustration is shared in the police.

It is also difficult to measure prevention by looking at the raw data on assaults. Has the number of instances come down? In the case of the national health service, is that because staff are better trained in how to defuse situations? Does having cops stationed in hospitals have an effect? It is really difficult to put a figure on the roles of the violence reduction unit, the state hospital cops and that type of stuff. For me, it is a wee bit difficult to give massive credence to the raw data.

David Dalziel: I will add a couple of contextual comments. I agree with everything that has been said about statistics—they can be used any way you want to use them. It is clear that, since the 2005 act was implemented, the severity of violence has not altered much. We still get head-butts, we still get threatened with knives and we still get bricks and other missiles being thrown at people and vehicles.

There are some schemes that we, in the fire service, have found very beneficial, such as intelligence-led projects that aim to reduce the level of risk. During the fireworks period around November our work peaks, just as police work does when the pubs close. There are also certain areas of our society—socially deprived and excluded areas—on which we have the data to

support an expectation of higher levels of potential threat to responding crews. We have seen some benefit in using diversionary schemes such as street football schemes, which I know our police colleagues also use, and engaging with communities to target antisocial behaviour. We now see those areas narrowing a wee bit, the threat levels reducing slightly and—which is important for us—the severity of attacks reducing. For example, it has become quite rare for people to aim fireworks at crews, although that used to be quite a common occurrence.

Marilyn Livingstone (Kirkcaldy) (Lab): I apologise to the panel for being late. A train was derailed at South Gyle and I have been all around the country this morning. I apologise if you have already answered this question.

I agree with the comments of my colleague, Hugh Henry, and with the analogy that Wendy Alexander drew with domestic abuse. For me, the request that we have received in the written submission from Unison, asking that we ensure that all public sector workers are offered the same level of protection, is the crux of the matter. That is especially the case if, as Gavin Brown was exploring, there is a gap in protection. I accept that there are different levels of risk in different jobs, but there is a question of equity that cries out loud and clear. At the moment, we do not offer all the people who serve our communities the same level of protection. I want to explore with Robert Milligan the question how the EWA protects certain workers while the common law is good enough for others. I am not convinced about the answer, so I would like to explore that. Is there inequality at the moment?

Robert Milligan: We are concerned that there should be equality for all under the law, but we are creating a hierarchy of victims and we have always said that that should not be the case. Our role, in its most simplistic form, is to collate the facts and circumstances of each case and report them to the procurator fiscal to be processed through the courts. That is probably where our frustrations lie. There should be equality for all, in its purest sense, under the law, and we are against the hierarchy that has been developed. That has been the case since 1997, which is probably when we were first asked about it.

David Dalziel: It is about equality for both public and private sector workers who engage with the public in the widest sense. The general definition was not intended to be exclusive to public sector workers; it was to include anyone who engaged with the public. I think that we all agree that the bill is laudable in highlighting an issue, but the question that we all seem to be asking from the blue-light side is whether all the legislation will add very much. It certainly would if there were more

severe sentencing and punitive sanctions attached to the offences under both the EWA and Hugh Henry's bill.

Ian Tasker: In relation to equality under the law, I can provide a chart to the committee. When we did the initial work on "Protecting Public Service Workers: When the customer isn't right", there were focus groups to engage people's perceptions of who is vulnerable or not vulnerable and who is deserving or not deserving. In that exercise, I was struck by the fact that people accepted that doctors' receptionists are undeserving yet very vulnerable. If medical staff are protected in their workplace under the Emergency Workers (Scotland) Act 2005 but receptionists are not, there is an issue of unfairness and inequality in the same workplace, which should be addressed.

Marilyn Livingstone: Yes. That certainly struck me.

The Deputy Convener: We have received a wide range of evidence from the panel, and I thank the witnesses for providing that evidence. This is the start of a large amount of information gathering. It has been very interesting and informative—thank you for coming. I suspend the meeting briefly to allow our witnesses to leave and the next panel to appear.

10:45

Meeting suspended.

10:49

On resuming—

The Deputy Convener: I remind members that we are somewhat over time.

I welcome the next panel of witnesses, and invite them to introduce themselves and to make an opening statement before we move to questions.

David Dickson (Wm Morrison Supermarkets): Good morning. I was the subject of a severe assault in my employment. I have followed matters through to Mr Henry's bill, and have asked to come to the committee to explain what happened. My colleague is from the Union of Shop, Distributive and Allied Workers.

Stewart Forrest (Union of Shop, Distributive and Allied Workers): Good morning. I am the deputy divisional officer of USDAW in Scotland, and intend to support Mr Dickson as he gives evidence to the committee.

The Deputy Convener: Can we start by hearing a brief version of the story that you wish to tell us?

David Dickson: Sure. As are people in most stores, we are constantly aware of shoplifting. Shoplifters usually take big expensive joints from the meat department. Unfortunately, we cannot look directly on to the aisle in our store because of where we are situated, but over a period, we became aware of a fellow who seemed to recce the place before taking foodstuffs. He always had the same method of operation, which made him quite distinct, but unfortunately, we could never catch him at it. When we made checks after he had been to the store, we always noticed that stuff was missing.

I had been out of the store on a paid break—I am interested in Mr McMillan's point about breaks. When I was coming back from that break, I recognised the chap I mentioned. He had the usual stuff over his arm, so I was immediately suspicious. I crossed the foyer with the intention of speaking to him—nothing else—but he must have recognised me. He caused a furore and gave me an almighty push against a plate-glass window before I could defend myself. I slid down the window, hit the metal retaining bar at the bottom of it, and was knocked unconscious. I am not sure how long I was unconscious for, but I remember waking up. Quite a lot of people were around, and I was given first aid. It is ironic that, while people were attending to me, other people were picking up the joints of meat that the man had dropped in his panic. That meat was worth about £80. Many other people do such things, but I am talking about a particular character. He was pursued by the police, but was never brought to justice, unfortunately.

I was concussed and still think back to what happened. I sought legal advice through the union. I know that it is clearly stated that, if a person sees somebody like the man I have described, they should notify security, for example, but when a person works hard and somebody is taking away their financial livelihood, they will act by instinct. In hindsight, I realise that the man could have had a knife, a gun or any other weapon and that what happened could have been more severe. However, it annoys and angers me to know that people are doing such things day in, day out, but few of them end up in the courts.

Stewart Forrest: I support Mr Dickson's statement. From a union point of view, we find that staff in stores have tremendous loyalty against people who take goods without paying. That is particularly the case in the retail sector. Mr McMillan will possibly have experienced that. More and more of our members are trying to do their bit by supporting their stores and trying to stop shoplifters, but they get injured. Mr Dickson is extremely brave in coming to the committee. Many of our members get injured in their employment and are not comfortable with speaking in public

about what happened. As a union, we try to log the statistics.

I would like to make the committee aware of USDAW's freedom from fear campaign, which we have run since 2002 to raise awareness of the abuse and assault of our members by the public. This year, our campaign is called keep your cool at Christmas. Christmas becomes a flashpoint in the retail world because, as I am sure you know, shops are extremely busy and queues are longer, and our people on the checkouts tend to be verbally abused more at that time of year.

A lot of the legislation that the Parliament has passed has put slight pressure on our members—for example, the alcohol and tobacco legislation that is now in place. Many of the big retailers have think 21 or think 25 projects running in their stores. It is our members at the front who have to ask for identification, and many members of the public take exception to that even though our people are just doing their jobs. Our members support the legislation that the Parliament has passed, but they are being physically and verbally abused while doing their jobs.

Our previous freedom from fear campaign was run in November last year. Our union reps ran a survey and we also ran an online survey. To share the statistics with the committee, 32 per cent of respondents had been threatened with physical violence and 10 per cent had actually been assaulted while carrying out their duties. We equate that to one shop worker in Scotland being physically or verbally assaulted every 15 minutes while just carrying out their job. Those figures from USDAW's survey tie in with the Scottish crime and justice survey, of which I believe the Parliament is aware. That survey showed that 34 per cent of adults in public-facing employment had experienced verbal abuse and 7 per cent had experienced physical abuse. We find that, more and more, our people are being assaulted while just carrying out their jobs.

Not all our members work in large retail outlets where there are probably better forms of security. Many of them work in small convenience stores with no security back-up, or in filling stations. Another flashpoint is when staff are going through the process of asking for ID or, in a filling station, when they ask someone who drives a motorcycle to take off their crash helmet just for our member's protection. Those are some examples of the issues that USDAW deals with.

The Deputy Convener: Thank you. Do members have questions?

Lewis Macdonald: Like Stewart Forrest, I am impressed with Mr Dickson for coming to tell us his personal tale, because it is not an easy thing to do. What he described is clearly an extreme case.

Will you give us a flavour of your experience in general? Do the statistics that USDAW has discovered across the board for the number of retail staff who have been threatened and assaulted agree with your experience in your workplace? What is the general view from the shop floor of the nature of the threat that your colleagues face and how Parliament should deal with that?

David Dickson: Apart from being a butcher, I am also shop steward within the store. I have to echo what Stewart Forrest said. The majority of the staff are female, and many are the times when I have had occasion to speak to management to try to get some time for female staff who have been upset and are sometimes in tears through verbal abuse from customers. A point was made about the change in the legislation on alcohol and tobacco, and some people will go to extreme lengths to put their point across. There is verbal abuse, but sometimes I feel as though, if there was no counter between them, the customer would be ready to assault the member of staff. It is really quite disheartening.

After my assault, it became clear that, although there is plenty of CCTV in the store, there was none in the area where I was assaulted, so one thing that came out of the assault is that that was rectified.

My real concern is that we, as individuals, come in every day, enjoy our work with a loyal workforce and should not have to take such abuse. I appreciate what has been said about other workers such as bus and taxi drivers and so on. Why should we have to put up with that abuse? We are coming in to do and enjoy our job and that is being taken away from us.

11:00

Lewis Macdonald: If legislation was specifically designed to prosecute people who commit the kind of offence that you have described, do you think that that would deter them? Would it put people off making the kind of threats and upsetting comments that you have described?

David Dickson: It might put the odd one off, but I think that you will find that such behaviour is a habit with the majority of the people whom I was speaking about. Unfortunately, given the system as it is at the moment, with overcrowding in prisons, just putting them away is not the answer. We have to find something, and the strength of the bill is that it will ensure more protection and better results.

Lewis Macdonald: Is it the union's experience that employers in the sector support measures to address these issues?

Stewart Forrest: Employers are supportive of putting a notice up in the window saying that they will not stand for any abuse of their staff, but whether they carry that through is a different question. I back up what Ms Alexander said at the committee's previous meeting: the bill is about raising public awareness of a stronger deterrent.

We are going through the process of dealing with one of our members who was bitten while he was helping his manager to restrain someone. When he went to the police station to have photographs taken of the bite, he asked what would happen to the chap, and the police said that he would probably get a fine or community service. For six months, our member has had to worry about whether he had any infection. Thankfully, he has had the all-clear, but that was an horrific time for that lad. As Ms Alexander said, awareness needs to be raised that a strong deterrent exists. We feel that that approach is not in place at the moment.

Christopher Harvie (Mid Scotland and Fife) (SNP): On habitual shoplifting, there was a case last week, or a fortnight ago, when various members of a fairly notorious Glasgow gang were brought to justice, but plea bargains were involved, which meant that the penalties were ridiculously low. Can the proposed legislation protect against such cases? That group, who featured on a "Panorama" television programme on shoplifting, were not effectively punished.

Stewart Forrest: Some of the people on the previous panel tried to answer that point. All that we can ask for is strong legislation and for that legislation to be implemented. The previous panel expressed some concerns about whether the Emergency Workers (Scotland) Act 2005 is being implemented in full. As a trade union, we seek strong deterrents through the courts against people assaulting our members.

Christopher Harvie: The figures that have been given involve around 30,000 instances of confrontation per year, 20,000 of which seem to come from the national health service and local government. Have you any notion of the proportion of the remainder that comes under USDAW's remit? Some cases will come from transport, which is also seen as a flashpoint, but what proportion comes from the retail area?

Stewart Forrest: On the statistics, the majority are bulked up by the verbal side of things. The flashpoints arise when our members ask for identification, or, if the person is buying alcohol, whether they are buying it for a youth; if so, they will refuse to sell it to them. Some people come into shops with a lot of alcohol in them and try to buy more, and the legislation says that it should not be sold to them. Those are the flashpoints that

can lead to assaults. The public needs to know that there is a strong deterrent.

Christopher Harvie: I recollect from my own experience situations in the public service—particularly in transport, where the systems of operation are extremely complicated as a result of privatisation—that have given rise to flashpoints.

For example, a train stops in the middle of nowhere because of a bridge strike—in other words, a lorry has rammed a bridge. Because the bridge is Railtrack's responsibility, someone from the nearest Railtrack office has to go and inspect it before the train is allowed to go ahead. One can see that, in a crowded train in which the lavatory or the air conditioning is not working, the train staff are at a pressure point in dealing with angry passengers. Such situations are not helped at all by the nature of the command structures in that public service.

It seems that there is some room for improvement in that area, to ensure that such flashpoints do not arise. The obstreperousness of the clientele can certainly play a part in such situations, but there is also the problem of a structure that has a failure built into it.

The Deputy Convener: The panellists are shop workers, so it might be more appropriate—

Stewart Forrest: I cannot comment on the transport side of things, but Mr Harvie's description sits quite well with me as I can relate it to what I said about Christmas shopping, when people have to stand in long queues. I think that he was trying to say that people get frustrated at the train not going anywhere. Members of the public can get frustrated waiting in long queues, and if they are asked for identification when they eventually come to pay for their shopping, that might be the final nail in the coffin.

Christopher Harvie: In such circumstances, an offender can often pull a particular weight, in a sense, by infuriating the people who are in the queue. The process of apprehending the offender can infuriate them, which adds to the pressure on the staff who are involved.

David Dickson: That is also a concern for security people. I have experience of a reasonably large supermarket where there has been only one security guard, and it is not possible for them to be everywhere all the time.

The security guards get to know who the likely offenders are. If they get caught shoplifting, the easy answer is to say, "You're barred. Don't come back." It is a lot easier to take that way out than it is to effect a prosecution because, at the end of the day, nothing really happens as a result of a prosecution. That concerns a lot of people, given the suffering that they go through. The fact that

nothing will happen to a shoplifter makes security guards wonder what the point is of trying to apprehend them.

Stuart McMillan: Thank you very much for giving us your story, Mr Dickson.

After the incident took place, how did your employer behave towards you? Did it give you the support that you needed at that time?

David Dickson: My employer was very good. It made sure that everything was okay. I had to go up to the hospital and so on. Fortunately, my wife worked close at hand. The supermarket made arrangements for someone to collect her and bring her up, and it made sure that we were escorted to hospital. It tried to get an ambulance but, unfortunately, something had happened that day and one was not available, so it arranged for a taxi to take me up to the hospital.

Afterwards, when I came back to work, my employer made sure that everything was okay and that I could come back. I still think about the attack now. To be honest with you, it still gives me the shivers to think that the guy I went up to—it was an instinctive thing, which maybe I should not have done—could have come at me with a knife. I still think about that—it is always at the back of my mind. Having said that, I would not stand by and let it happen again. If I knew that someone was doing something and I happened to be there, I would try to prevent it, irrespective of the situation.

Stuart McMillan: A moment ago, you mentioned the lack of prosecutions and the tendency just to ban people from stores. Do you think that supermarkets and store owners should use existing legislation to prosecute people more often than they appear to be doing, instead of taking the easy option of barring someone for an hour, or however long?

David Dickson: I whole-heartedly agree with that. Prosecution must be seen to be happening. As I said, the easy option is just to bar people. It would not eradicate the problem if the police were called and the prosecution service took serious action against people, but it would make some petty offenders sit up and think about what could happen to them.

Stewart Forrest: When USDAW speaks to companies at the national level, we suggest to them that they take the same route that they take when someone steals. Normally, they prosecute people who steal, whereas they may only bar someone who verbally abuses staff.

The Deputy Convener: We have been given an excellent insight into a particular set of circumstances, which has been valuable for the committee. It was brave of Mr Dickson to come here to talk about his experience; we welcome

that. I thank both witnesses for their evidence, which adds to our knowledge of these matters.

11:12

Meeting suspended.

11:14

On resuming—

Enterprise Network Inquiry

The Deputy Convener: Item 3 is to take evidence for our enterprise network inquiry. After today's panel of witnesses have introduced themselves, we will move straight to questions.

Colin Borland (Federation of Small Businesses): I am from the Federation of Small Businesses in Scotland.

Garry Clark (Scottish Chambers of Commerce): I am head of policy and public affairs at the Scottish Chambers of Commerce.

Graham Birse (Edinburgh Chamber of Commerce): I am from the Edinburgh Chamber of Commerce.

The Deputy Convener: A wide range of evidence has been presented to us; I am sure that we will receive more. Most of your experience is with Scottish Enterprise, but we are here to look at the whole country. Given the submissions that you have made, what are your general impressions of how Scottish Enterprise and Highlands and Islands Enterprise work for you?

Colin Borland: It is difficult to sum up my impressions in a sentence, because a year after the 2007 reforms were unveiled we had an unprecedented credit crunch and subsequent recession. We cannot be too critical of the failure to foresee those events.

At the highest level, the various parts of the enterprise support network are probably delivering well what they have been charged with delivering. The difficulty that our members have raised with us relates to what the network has been asked to do. In a piece of work that we did a year or so ago, we identified a gap in support for good, solid businesses that were not growing, starting up or looking towards stratospheric growth but had found themselves in difficulty and were seeking support and guidance. I notice that other written submissions to the inquiry have identified the same gap.

I highlight the importance of such businesses to local communities, especially when things become tough. Our submission points out that, although we could not have foreseen the circumstances that arose, the structures that were set up were too rigid to allow rapid adaptation to the financial crisis and subsequent recession. I do not think that there is a case for major structural reform or for ripping things up and starting again—precisely the opposite, given some of the difficulties that we have experienced during the transition period. However, we need to ask exactly what our

enterprise support network should be doing. If we have finite amounts of public money, what represents the best economic value from that? That is an interesting and legitimate debate that we must have before considering any reform or evaluation of the process.

Garry Clark: I agree with much of what Colin Borland has said. This is a difficult time to assess how successful or otherwise the changes to the enterprise networks have been over the past three years. When the changes were implemented in 2007-08, we were just entering a difficult period not just for the Scottish economy but for the economy the world over. As Colin Borland said, it was difficult to foresee that and for enterprise networks that had been set up within a new structure to adapt and respond to the situation quickly.

Over the period in question, there has generally been greater focus in SE and HIE on account-managed and high-growth businesses. A number of businesses now feel divorced from both the national enterprise networks. The other week, when I asked businesses in Fife what they thought of Scottish Enterprise, they said, "Scottish Enterprise doesn't live here any more." Unless businesses are account managed, they do not have an interface with the national enterprise networks. When I asked the same question of the Caithness chamber of commerce in Thurso the other week, I got a pretty similar answer.

We need to examine the totality of support in Scotland. Indeed, Colin Borland made a good point when he said that we should examine what we need enterprise networks to do. At the moment, account-managed and high-growth businesses are being dealt with in the account-managed system in Scottish Enterprise and HIE, and start-ups are being dealt with by business gateway. However, support for businesses anywhere between those levels—the vast majority of businesses in Scotland—varies depending on where an individual business happens to be. Support should be available to those businesses because they are the high-growth businesses of the future. My colleague Graham Birse from Edinburgh chamber of commerce will say a little bit about high-growth start-ups but, as I say, all businesses must be able to avail themselves of support where required.

However, we must also bear in mind that the public sector is not necessarily the only means of achieving such support. Many in the private sector, the chamber network and other business support networks are working hard either in conjunction with the public sector or independently of the sector to provide those levels of support to business. As a result, in looking at the future role of the enterprise networks, we should bear in mind

the large number of private sector organisations that are already geared up to provide support across Scotland and the part that they can play in that respect.

The Deputy Convener: In your submission, you quote a very ancient sage, Gaius Petronius, on reorganisation and what you call "the long history" of trying to achieve efficient management. I take it that you also agree with Colin Borland that reorganisation is not a prime issue in this inquiry.

Garry Clark: We will always need to measure success and the key performance indicators that show whether what we have done with the enterprise networks has been successful. By the same token, businesses are frustrated by the way in which, not only in the enterprise networks but in the education system and all sorts of other areas, the rule book is torn up every two, three, four, five or six years and we start again from scratch. I am not saying that we should not look at the success of the enterprise networks, but I think that this is a difficult—and perhaps atypical—time to do so. Business would certainly not welcome the wholesale changing of things every three or four years. Instead, we need to look at how we can evolve and improve the current system and plug any gaps in it to ensure that businesses receive the support that they need.

Graham Birse: We need and value the enterprise network, and it has delivered significant achievements over recent years. However, its service needs to be considered in the round and in relation to other factors that can impede or enhance business growth. As we all know, the current context is very different from that which existed two or three years ago.

As a result, we need to look at what the enterprise network delivers for business alongside other factors. Those factors include bank lending; costs on businesses, such as the non-domestic rates, about which, as the committee knows, we are particularly concerned; regulation and red tape; the impact of the public sector austerity programme, particularly on the small to medium-sized enterprises that trade with the public sector; and, of course, general market conditions.

Looking at the enterprise network in isolation would be a missed opportunity. We need also to look at other elements of the business package, including how businesses grow, why they are unable to sustain themselves and the factors that inhibit growth.

The enterprise network has nonetheless achieved a great deal, working in partnership with the chamber network in areas such as high growth and through the business gateway. However, its targets and objectives have become too cluttered over recent years; there are too many of them and

they are too complex. The question now is whether we have an opportunity to simplify targets, objectives and KPIs. As Garry Clark said, repeated cyclical reviews perhaps impede the performance of the network. Instead of concentrating on its external clients and customers, it tends to look over its shoulder more often than it ought to.

It is probably true to say that the enterprise network was slow to respond to the challenges of the recession. That could perhaps be said about a lot of organisations, including some businesses, because it was difficult to see the recession coming. The nature of constant review can make it difficult for the network to behave with a degree of flexibility as challenges present themselves. It is also true to say that the enterprise network has become more distant from local businesses since the regional network was restructured several years ago.

The Deputy Convener: Thank you for that introduction.

Marilyn Livingstone: I was interested to hear the witnesses talk about the gap in support. I am a Fife constituency member. Just a few weeks ago, I met local businesspeople, some of whom are Garry Clark's members, and they said the same thing that he said: "Scottish Enterprise doesn't live here any more." They also told me that Scottish Enterprise had become more distant. I will concentrate on that gap.

Obviously, economic regeneration has moved and now comes under local government. One criticism that businesses in my constituency are expressing is that resources and expertise did not follow the move. Local government stopped offering an economic regeneration function a good number of years ago and it just does not have the expertise. It also does not have the resources. When we took evidence on the reorganisation of Scottish Enterprise and the demise of the local enterprise network, John Swinney assured us that local government would cover that element, yet local government colleagues tell us that the resources and expertise have not followed the move. What are your views on that important point?

Garry Clark: As you probably saw from our submission, the picture around the country is mixed. Things changed rapidly in 2007-2008 with business gateway contracts shifting to the local authorities, and it is fair to say that some authorities were better geared up than others at the time. Some local authorities had very well-established local economic development teams who worked with their local enterprise company, the SE network or the HIE network in delivering business support or, certainly, economic development functions. If I think back to the re-

organisation in 2007, I can recollect a chamber telling me that its local authority looked on business as a necessary evil. That is not the attitude that we would expect to produce great results at the local government level over a short space of time.

Over the past few years, local government has moved on. We now have a number of examples of local authorities that have adapted and are working well in partnership with public sector bodies such as Scottish Enterprise and private sector bodies such as the chambers of commerce. There are good examples of areas where that approach has begun to work and to pay dividends. Local authorities were at very different starting points when they went into this, and some reacted more quickly than others were able to.

11:30

Marilyn Livingstone: I am certainly not criticising Fife Council's economic development department, because it is doing the best that it can with limited resources. However, as I say, the issue is that resources do not seem to follow. The concern from business is that we are looking at successive cuts, and because the services are not statutory, they might take a bigger slice of the cuts. There is a worry about that in local government.

Under the recent restructuring of Scottish Enterprise and the new city region set-up, my area is now the east of Scotland. I am concerned about the fact that there is no longer to be a business growth director for the area. There is a huge worry that Scottish Enterprise is becoming even more Glasgow-centric. Will you comment on that?

Garry Clark: We do not have too many worries about the fact that the contracts for the business gateway have been transferred to local authorities. Most businesses have not noticed much of a difference in the day-to-day interaction with the business gateway. However, those contracts will be up for renewal in the next couple of years. We all understand the strictures under which local authorities, in common with bodies in the rest of the public sector, are having to work. Given that economic development does not have a ring-fenced budget in local authorities, we must look forward with a degree of concern. We must work with local authorities to ensure that they continue to prioritise local economic development functions.

Graham Birse can perhaps throw some light on the issue by giving practical examples of how chambers of commerce work with local government and others on a practical day-to-day level to provide the support that we need.

Graham Birse: At a time when United Kingdom public sector debt represents about 65 per cent of

gross domestic product, we clearly need to manage that deficit downwards. How we do that is a challenge for people other than those in this room, but it is clear that we need to sustain growth in the economy over time to generate wealth, support jobs and replace jobs that might be lost in the public sector with more private sector jobs, particularly in SMEs. In our view, it would therefore be not only foolish but negligent of any local authority or public agency to dismantle an economic development support function.

It is equally important that we make public money go further in delivering that support and that we ensure that when we spend scarce public money it is as effective as possible. Perhaps we should be looking for best practice in local authorities and working to transplant that to other areas. We are working in partnership with the City of Edinburgh Council on a programme called EARN—economic action resilience network—which in effect is aligning the existing support that is offered by the local authority, the private sector, chambers of commerce, the third sector and Scottish Enterprise and considering how to make it more effective, efficient and accessible to businesses.

Colin Borland: Garry Clark is absolutely right that the way in which local authorities have adapted has been patchy, although I am delighted to say that, when talking to members, we consistently hear good things about Fife Council. In fact, I was talking to officials from Fife Council at a meeting yesterday who were desperate to tell me about the good, innovative and exciting things that they are doing.

In 2000, this committee's predecessor, the Enterprise and Lifelong Learning Committee, published a report on enterprise support. One point that came out of that was about the need for a uniform core of support throughout the country. To an extent, that is what the business gateway contracts set out to deliver. The regional variations come in with local authorities working in partnership to top up those services.

You are absolutely right that the issue is not so much about funding for the business gateway contract, which runs until 2012, as it is about what happens to local economic development services once the squeeze is put on public spending. I am not a politician, but I know what will happen if there is a choice between closing the local business shop and closing the local nursery. Economic development services can be seen as an easy hit. They are vital for the local economy, but I understand why they might be viewed as a soft target by the people who have to make the very tough decisions.

The FSB would be supportive of calls from organisations such as the Scottish local authorities

economic development group to consider making economic development services a statutory service. That would not be a silver bullet—it would not solve every single problem—but we must remember that in some local authorities it is not even certain that an economic development service will be kept.

We support expertise being transferred to local authorities. All small businesses have a link with their local authority, and local authorities should be able to respond to local needs. It therefore makes sense to transfer that expertise. However, if we make that transfer without considering how it will be paid for, issues will arise. The way in which it is done varies, too.

To address that, as well as dealing with the ideas around ring fencing and having the statutory service, we need to think about how to incentivise local government when it makes the tough decisions. If I am told to take a decision looking purely at the bottom line, of course I know what I can save, and I can simply deliver that saving. Hard-wiring the process so that the decision maker is encouraged to think about the wider economic context—for example, in relation to sharing some of the extra economic growth that their decisions deliver—could help to shift the balance slightly in favour of business development and business support services.

Marilyn Livingstone: Some of you will be aware that I chair the cross-party group on construction, which involves lots of small businesses. At every single meeting of the group, their representatives emphasise the importance of getting capital investment right. It is only one part of the picture, but there is a huge call for that from the construction industry. If we do not invest in capital projects we are not spending money to reflate the economy and there is no knock-down in the supply chain. There is huge concern, not just in construction but along the whole supply chain—which is huge—about the need for capital investment to support all the areas that we are discussing. What are your views on that? I think that capital investment is crucial to the Scottish economy.

Colin Borland: You have hit the nail on the head. Construction is not a growth sector—not many businesses in that sector are growing. Where do businesses go for support? The boss of a small construction company that employs a couple of dozen people might be thinking that times are tight, and they might be worrying about their cash flow. Where do they go for impartial advice? At the moment, they are lucky if their local authority provides a top-up and some advice. As far as the national enterprise network is concerned, however, the answer is nowhere.

Our consistent argument has been to ask what represents the best value to the economy in such cases: supporting that business to keep those two dozen people in work and helping it to survive and sustain itself, or putting money into start-ups that have a variable chance of success—important as that is. In the current context, which one represents best value to the taxpayer and will leave our economy in a stronger state? I argue that looking after the established business with its track record of delivering jobs probably wins out.

Graham Birse: We need to examine ways of stimulating infrastructure development and capital projects. Of course, the Scottish Futures Trust is beginning to develop coherent proposals in that respect.

Leaving that to one side, given that in the medium term we are going to have to get infrastructure development money from sources other than public capital budgets, it is difficult to see how existing established policy positions on tolls, for example, or funding through public-private partnerships or the private finance initiative are sustainable.

Christopher Harvie: I spent some of the summer looking after my very elderly parents, which I found involved an awful lot of do-it-yourself work in the house. I also went around home towns and clone towns in Scotland, and one very disturbing thing that I noticed was that the downturn is hitting key enterprises for the home towns, particularly ironmongers. If your high street still has a lot of independently owned shops run by one or two people, the notion of being able to go there and get everything that you require to run your own business disappears when, say, the ironmonger closes down. It is part of the strategy of the survival of the home town. I have noticed, nevertheless, that ironmongers are going. When it hits your own town, it hits hard. According to a proprietor who is based in another Borders town, we lost the ironmonger in Melrose not because it was losing money, but because it was not making a great deal of it.

That, I think, sheds light on the notion of strategic survival—in other words, ensuring that the range of businesses grows instead of simply trying to boost the numbers employed in some general way. Every time a supermarket moves in, one is always regaled with the number of jobs that are going to be created, but there is never any detail about the nature of those jobs and whether they will be any more than part-time positions. When one goes around Scotland, one can be faced not just with empty high streets but with the corpses of supermarkets that have been knocked out by even bigger dinosaurs. Given that Colin Borland took that line, I wonder whether he agrees that strategies in other European countries seem

to be more angled than they are here at allowing small and locally owned businesses to group together and survive through the protection of wholesale chains and particular types of skills and firms.

Colin Borland: I apologise for the jargon, but it will come as no surprise to the committee to learn that we are very much in favour of looking after that business base, which, over the years, has been written off by economic theorists and those involved in enterprise policy as unimportant and uninteresting. The idea is that it will always exist. We believe that over the past decade those small businesses have created two new jobs for every one that big business has shed. A lot of economic analysis downplays the importance of those businesses, but when this recession is over and we get back to growth, we cannot make the mistake of having another contraction in the breadth of that business base. The only way in which we will have a solid platform from which to launch the next set of stratospheric companies is to ensure that we have a solid foundation and an economy that works, which means having a large number of small employers. In the Borders, you are lucky in that the number of people employed in small private sector businesses is one of the highest, certainly in lowland Scotland; indeed, it is about twice the number employed in Glasgow. We do not need to look too far to see the economic argument in that. However, that argument is difficult to win and goes against an awful lot of orthodoxy that we have argued against for a long time.

11:45

The Deputy Convener: How does that relate to the point that has been raised about the enterprise network?

Colin Borland: It is difficult. At the moment, where one can go depends on whether the local authority or another partnership organisation offers support for the industry or type of business. If a business is not in a key sector, is struggling—it is not looking to increase its turnover by £400,000-plus over the next three years and so does not qualify for the growth pipeline—and is not a start-up, the enterprise network as currently constituted would probably not have a role to play, which is what we mean when we talk about the gap in support.

Garry Clark: That underlines a couple of points. As Colin Borland said, local authorities have a crucial role to play in economic development support. They represent a far easier interface between local business and the various loan funds that exist. From that point of view, it is important that they take ownership, because they can really

make a difference to town centres throughout the country.

Also, as Graham Birse said, we need to ensure that all aspects of our economy and economic tools at a Government level pull in the same direction. A report that was published the other week said that Dumfries was the worst example in Scotland of a clone town. Dumfries High Street business rates have risen by about 40 per cent this year, which has not helped that situation one bit.

Christopher Harvie: We are talking about local authorities that, by European standards, are colossal. Most of the opinion that business voices is in favour of reducing their number even further. About two years ago, I was in Mallorca and talked to the head of tourism there. He said that he had to get things through 300 mayors on his prosperous island. In Scotland, what decision will a local authority take when it is faced on the one hand with small businesses and small towns, and on the other with a supermarket that proposes to move in, bringing all sorts of planning gain and economic betterment?

Colin Borland: It is important to clarify that the FSB is not in favour of reducing the number of local authorities for the sake of it. We have not taken a position on that idea one way or the other. We have said that the one thing that we can be sure about is that local authority reorganisation is incredibly expensive, so another reorganisation is perhaps not what we need. We need local authorities to work better and be more responsive. That is happening in certain areas and could be better in others, but I am not entirely sure that that is purely a question of size.

Gavin Brown: In the written submissions and oral evidence, you have talked about a gap in support for medium-sized businesses, for want of a better term. Start-ups could go to the business gateway and the several thousand account-managed businesses are looked after, but you feel that there is a gap in the middle. I described the affected companies as medium-sized businesses, but many are pretty big and they are the vast majority of businesses in Scotland. Will you give some examples of support and services that they got five years ago, for instance, but which they do not get today?

Colin Borland: The service that they got was less contract driven and less focused; they could go in and discuss on-going support. It was not driven so much by a contractor agency and contractual agreements: there was effectively a wider remit. A range of things was available under that set-up.

Gavin Brown: What kind of things?

Colin Borland: Things for businesses that were thinking about expanding, but not to the £400,000 growth pipeline—or the sub-growth pipeline, which is now in the process of coming through—or for those who were concerned about business difficulties. Those sorts of things were available. The client groups were not tightly defined.

Gavin Brown: Is there anything on the Scottish Chambers of Commerce side?

Garry Clark: It is fair to say that, to an extent, those businesses have often been forgotten. Some of them do not feel that they need any support, and they might not—they might be perfectly happy to get on and do what they do best. For other businesses, an issue has come to the fore during the past two or three years in relation to the recession. From a Scottish Enterprise national perspective, there are around 2,000 account-managed businesses, and the purpose of Scottish Enterprise's intervention in that regard is to help those businesses to maximise their growth.

During the past couple of years, the number 1 priority for those businesses has been survival, not growth, and Scottish Enterprise has had to change its outlook very quickly. As others have mentioned this morning, Scottish Enterprise is quite a big ship to turn, particularly immediately after a reorganisation. It has had to look at ensuring the survival of those businesses rather than maximising growth.

Those challenges are being faced by businesses from the bottom all the way to the top of the growth pipeline, from new start-ups to high-growth businesses. As chambers of commerce, we have identified that some businesses need additional support, and we have been working with Government and others to provide an element of that. For example, we have run the business mentoring Scotland programme, which is delivered by chambers of commerce the length and breadth of Scotland, including in the Highlands and Islands. The programme is aimed at intervening in or providing support to 1,000 businesses every year in Scotland. The interventions are very cost-effective and are available free of charge to the business, and they are delivered in partnership with Scottish Enterprise using European funding.

That is a good example of something that is working for many of those businesses. Some businesses feel that they ought to qualify for account-managed status in Scottish Enterprise or HIE, but they do not meet the criteria for whatever reason. We must ensure that we can provide support for those businesses where they seek it. The chambers are keen to provide that type of support, but if we are considering investment at a national level, we must understand that there is a whole range of businesses out there. It is not

about supporting only start-ups and high-growth businesses: there are many businesses that employ many people in between.

Graham Birse: The high-growth strategy has worked. In Edinburgh alone, the high-growth start-ups that we have been supporting with Scottish Enterprise generated £235 million turnover and 2,000 jobs last year. The number of jobs that those businesses create is proportionately greater, so it makes sense to prioritise them.

However, Gavin Brown's question was on those medium-sized enterprises that are beyond start-up but unlikely to qualify or even aspire to high-growth status. It is important to stress the obvious in this context, which is that the responsibility for growing and sustaining a business lies with the business owner, not with Scottish Enterprise, HIE, the Government or anyone else. Often, those business owners look for what support and advice they can find to do that job as effectively as they can and to adhere to their strategies for growth and survival.

Last year, we ran several free events for our members on recovering from recession. We had a panel of experts who talked to our members about issues such as employment law, debt recovery, cash flow, marketing on a zero budget and online search engine optimisation. None of that was about strategic issues—it was not about clusters or other issues that all of us in the room deal with every day. The events could have sold out many times over, because the subjects were on business owners' minds. They want to know how to recover debt, how to manage their profit and loss through the recession, how to downsize without falling foul of employment law and how to maintain their presence in the marketplace even though they have no marketing budget to speak of. Those issues are alive now for many businesses. Were those businesses to decline substantially or even to go to the wall, the impact on unemployment would be substantial, because of SMEs' influence as employers in communities across our country.

As for the impact on the enterprise network, if bespoke one-to-one account-managed advice is not offered, it is important to have a way of delivering practical business advice that enables businesses to grow and prosper. The support might be online or might be delivered through private sector partners such as the chamber network, but it is important not to leave businesses out in the cold.

The Deputy Convener: I am conscious of time. Three members still have questions. Gavin, are you finished?

Gavin Brown: I have one more question. Colin Borland said that the results of the business

gateway and local regeneration becoming local authorities' responsibility have been "patchy"—I think that you used that word. Will you elaborate? What does being patchy mean in practice? Do you have good and specific examples of where the arrangements are and are not working well?

Garry Clark: I will point out a couple of examples. The business gateway structure in the Highlands and Islands is much newer than that in the Scottish Enterprise area, and the feedback on it from chambers has not been great, particularly from smaller businesses—they are directed away from one-to-one advice and towards online advice, which has not been terrifically popular. The general perception of the business gateway in the Highlands and Islands has been fairly poor. Many who have had contact with it have had positive experiences, but many have had negative experiences, especially of the online support.

For positive experiences, I look to my colleague Graham Birse.

Graham Birse: In the year to April, the number of business gateway start-ups in Edinburgh was up by 7 per cent. In the three months to June, the number for Scotland was up by 14 per cent to 2,869 start-ups. Even in a recession, there is lots of evidence of business start-up activity. That is not atypical, because in a recession a number of people from larger organisations find themselves out of work or between jobs, so they are more inclined to take the risk of setting themselves up in business. Those numbers contrast with the amount of money that is available from clearing banks, which is important—I have made that point. Clearing banks' lending was down 7 per cent in the year to June, so it is clear that something is going on in private versus public sector support.

12:00

It is important to consider in the round whether business start-ups should be the overriding priority of the enterprise network in supporting businesses. I think that Colin Borland mentioned that earlier. It is important to consider, for example, whether we should look at the internationalisation of business. One of the success stories that we have been working on with Scottish Development International is the establishment of Scottish Chambers International. In the United Kingdom, growth or recovery from recession is currently sitting at around 0.5 per cent. The recovery is fragile, and it is important that we nourish and nurture it as much as we can. In China, the figure is plus 10 per cent, and the figure in India is plus 12 per cent. Indeed, they are trying to manage their recovery downwards, because their growth is reaching astronomical levels. In effect, the opportunities lie in those areas of the world.

Traditionally, Scottish businesses, apart from the larger ones—the Diageos of this world—have been reluctant to internationalise. Exporting has been seen as something that manufacturers, not service businesses, for example, do. Through setting up Scottish Chambers International as a partnership with a £7.5 million budget over three years, we are offering in partnership with SDI a range of support services to encourage businesses to reach out. Those businesses are established businesses—it is not about start-ups. The aim is to provide support that will enable them to do that and share in the global growth elsewhere.

The Deputy Convener: Thank you for that. That is helpful. Our inquiry into export and import support covered that matter.

Stuart McMillan: My question follows on from the question about which local authorities have dealt better with the change since 2007. Have smaller authorities struggled a bit more? I exclude Highland Council, as it is obviously not a small authority.

Garry Clark: I am not sure that it is as clear cut as that. Glasgow City Council is probably an example of an authority that was set up to engage with the various enterprise networks, and it has probably dealt quite well with the transition. The same could be said of West Lothian Council and North Ayrshire Council, which are much smaller. I do not know whether it is simply a matter of size; rather, I think that it depends on the focus, abilities and skills in the authority.

Colin Borland: Two authorities tend to be quoted back at us. I hesitate to speak on behalf of local authorities, but Angus Council and Fife Council seem to get positive reports on what they deliver and their general attitude.

Graham Birse: And West Lothian Council.

The Deputy Convener: Any advance on that?

Stuart McMillan: My next question is on the Scottish Chambers of Commerce's submission. It mentions the suggestion that there could be a minister for cities, although, as it says, that is

"beyond the remit of this inquiry".

I am genuinely interested in that suggestion. As I do not stay in a city I fear it, as having a minister for cities could take away focus on outlying areas.

Garry Clark: We would not seek to remove any focus on outlying areas; rather, we tried to highlight the need to ensure that the varying challenges that affect our cities and outlying areas are reflected. It is clear that Glasgow, Edinburgh and the Aberdeen area are extremely strong economic performers. We need to build on those areas' unique strengths and ensure that our

economic growth strategy strongly focuses on them. Equally, we need to consider the individual needs of rural areas.

Some rural areas will be able to feed off the success of the city regions, but others might not be quite so geographically suited and require special attention. The cities account for almost half our economy, which clearly means that the other parts of Scotland account for half as well. We need to ensure that the respective strengths, weaknesses and challenges of those areas are fully reflected.

Graham Birse: The important point is not whether we have a minister for cities—there is a minister for rural affairs, so I would not get too nervous if a minister for cities appeared—but how we will grow the Scottish economy.

How do economies grow and flex? If you have time, it is worth looking at the work that Professor Richard Harris at the University of Glasgow has undertaken. It is available online. He is one of the UK's leading experts in identifying gross value added and GDP in regional economies. In looking at the Scottish scenario, we can see that Glasgow, Edinburgh and the north-east represented 43 per cent of the Scottish economy in 2006. The figure has probably grown since then.

What the academics call agglomeration is how economies grow. In other words, if we align and identify some of the factors that impact on growing business—a qualified, competent and well-educated workforce, infrastructure and travel-to-work patterns, property costs, access to markets, taxation, and so on—we see that those are the areas where the economy will grow. On the basis that all boats rise with the tide, there is a case for saying that, by focusing economic development on large city-region areas—I am not talking about Glasgow and Edinburgh narrowly in that context—growth will be achieved in the Scottish economy.

We think that there should be an economic development strategy for cities that recognises that that is the way economies and markets behave and that seeks to import some international best practice to ensure that the recovery in Glasgow, Edinburgh, Aberdeen, Dundee and Inverness is as effective as it can be, and that it spills out into the rest of the economy, bringing the benefits that accrue from that.

Stuart McMillan: My final question follows on from a question that Marilyn Livingstone asked about capital investment. *The Herald* of 20 September contained Brian Ashcroft's comment that he would not like to see any cuts in capital investment. He suggested that if capital investment is to continue, resources could be diverted from elsewhere, such as Skills Development Scotland and general Scottish

Enterprise activities. Do you have any comments on that suggestion?

Colin Borland: What has been said this morning and the written submissions show that 2,200 account-managed companies and another 7,500 businesses will have benefited from various specific support. According to the Scottish corporate sector statistics, there are 289,000 enterprises in Scotland. The impact on our members of a reduction in Scottish Enterprise's budget would not be direct; there might a tangential impact in that economic growth policies would be more difficult to fulfil, but we would not notice a significant impact on the ground. I could not say the same for spending on other forms of economic development support, such as the ring-fencing idea, making it a statutory service, or incentivising local authorities to prioritise economic development. Any diminution in that sort of spending would be damaging for the future.

We have broadly supported attempts to streamline SDS and, although many of our members still find it difficult to navigate the system, improvements have been made. Although I understand the objection that you cannot have business support without including skills, that should not be insurmountable in the current set-up. I certainly see no case for ripping things up and starting again. Whether the streamlining of SDS will result in efficiency savings or whether further efficiency savings will be required is a moot point, but the question whether any money that is available should be ploughed into local economic development, capital projects or whatever is one for you guys and other elected representatives rather than us.

Garry Clark: The key point is value for money, no matter whether we are talking about capital spend in our economy or the results that we are getting from our enterprise networks or Skills Development Scotland. It is all about how much we are putting in and how much we are getting out. Many of the Scottish Futures Trust's recent comments about prioritising capital spend for the national economic benefit have been extremely compelling and we hope that Governments will take a good look at those proposals and find out how we can maximise the benefit from resources that are limited and will, over the next few years, only become ever more so.

We need to ensure that we are getting value for money. We have to look at the services on which we are spending money and ensure that the return is not just acceptable but excellent. That will become more and more important.

Lewis Macdonald: I have one simple question that covers three issues. Have the transfer of local regeneration from enterprise companies to local government, the creation of Skills Development

Scotland as an organisation separate from the enterprise networks and the abolition of local enterprise companies been a success in their own terms or would you revisit each of them?

Colin Borland: With regard to the first item, our written submission makes clear that small businesses tend not to be involved at that level of regeneration. As we are not best placed to comment—beyond saying that we generally support business improvement districts and similar initiatives—I will leave the question to others.

As I said in response to Mr McMillan, we applaud any effort to streamline SDS and make things easier. Too much of what has gone on before has focused on the structure of services and how they interact rather than on the end user. There are certain initiatives such as step forward Scotland that should make it easier for us to operate the system, but I think that it is too soon to tell whether the organisation will deliver everything that was planned or whether we might need to tweak it a little bit. To be fair, it is still bedding down.

I understand the counterargument that you cannot have economic development support without skills, given that the skills aspect is so integral. I am not convinced that SDS could not simply pipe in skills if so required by an economic support agency but, as I say, time will tell.

As for the abolition of LECs, the jury is, as with everything that has happened, still out. The past two years are unprecedented. Time will tell whether we have lost anything. I will say no more than that beyond agreeing with Garry Clark and Graham Birse that the standard, or ordinary, business—I was going to say run-of-the-mill, but I hate to use that phrase—that forms part of that business base feels a sense of loss in that respect.

12:15

Garry Clark: I think that the picture with regard to local regeneration is mixed. There have been some good stories; Lanarkshire chamber of commerce, for example, told us that although the recategorisation of the Ravenscraig redevelopment from national to local seemed to stall the process until fairly recently, the local authorities have got together again and are pushing things forward.

I think that SDS has done an excellent job with apprentices over the past few years, but it is still very young and it certainly took some time to get going. We in the chamber network also feel that, as an encompassing skills body, it could accommodate more skills functions and share a lot more backroom functions.

The abolition of LECs has undoubtedly left many local businesses feeling divorced from the national enterprise network, but the question is whether that is a practical or psychological problem. As long as there are measures in place to ensure that businesses that need support can access it through the public or the private sector, some of those issues can be addressed, but there has certainly been a fall-away in the local connection with Scottish Enterprise and national economic development functions.

Graham Birse: I will not repeat the point that Garry Clark has made, but I will pick up on his final comments about the removal of LECs from the scene. There is precedent for such a move. The previous reorganisation of VisitScotland did away with the area tourist board network. The tourism industry is characterised by a large number of small businesses throughout the country, and there is no doubt that those businesses felt completely disenfranchised with regard to the national tourism strategy and the delivery of support to tourism businesses. However, as Garry Clark wondered, is it reasonable for those businesses to expect to have an account-managed support service at the micro level and for the public sector to intervene in their difficulties? We think not, but it is reasonable to expect that, if there is a national strategy for a sector as important as tourism, or for economic regeneration or redevelopment, as many businesses as possible should be able to buy into it. Without seeking to recreate the local enterprise network, I think that it is probably worth looking again at how businesses can access information on their sector or local economy and how that information is delivered and kept refreshed, renewed and up to date.

It is probably also worth considering how the enterprise network's KPIs, targets and objectives are defined. We think that the process should be as simple and as straightforward as possible and make things quite explicit through output measures. You could argue that there are three such measures—growing businesses, sustaining businesses and growing economies—because if you are doing those things you will be not only creating wealth and jobs, supporting employment and accelerating recovery but possibly supporting recovery in the public sector after we have come through the forthcoming austerity programme.

The Deputy Convener: Thank you very much for your interesting and informative evidence, which has provided us with a lot of food for thought.

We now move into private session.

12:19

Meeting continued in private until 12:40.

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