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Health and Sport Committee Official Report 10 March 2010

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Scottish Parliament

Health and Sport Committee

Wednesday 10 March 2010

[The Convener *opened the meeting at 09:32*]

Subordinate Legislation

National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2010 (SSI 2010/22)

The Convener (Christine Grahame): Good morning, everyone. I welcome you to the Health and Sport Committee's eighth meeting in 2010. We have a heavy agenda, so I am kicking off as fast as I can. I remind everyone to switch off mobile phones and other electronic equipment. We have received no apologies.

Agenda item 1 is consideration of five negative instruments. The first is SSI 2010/22. The regulations amend existing regulations on the national health service superannuation scheme in Scotland. The cover paper sets out more detail on the amendments. The Subordinate Legislation Committee raised several drafting points on the regulations, which it drew to our attention. Are members content not to make any recommendation on the regulations?

Members *indicated agreement.*

Food Enzymes (Scotland) Amendment Regulations 2010 (SSI 2010/26)

The Convener: The regulations correct an error in the Food Enzymes (Scotland) Regulations 2009, which I am sure that all the committee members noticed.

Ross Finnie (West of Scotland) (LD): We did.

The Convener: The Subordinate Legislation Committee drew our attention to the fact that the regulations breached the 21-day rule. If members have no comments on the regulations, are they content not to make any recommendation?

Members *indicated agreement.*

National Health Service (Appointment of Consultants) (Scotland) Regulations 2010 (SSI 2010/28)

The Convener: The regulations amend the NHS (Appointment of Consultants) (Scotland) Regulations 2009 to make it a requirement that a

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consultant must be on the specialist register before they may take up an appointment as a consultant in Scotland. The Subordinate Legislation Committee had no comments to make on the regulations. If members have no comments on the regulations, are they content not to make any recommendation?

Members *indicated agreement.*

Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2010 (SSI 2010/42)

The Convener: The regulations amend the Personal Injuries (NHS Charges) Regulations 2006, which make provision for the charges that a person who pays compensation to an injured person is liable to pay where that injured person has received NHS treatment or ambulance services. The Subordinate Legislation Committee had no comments to make on the regulations. If members have no comments on the regulations, are they content not to make any recommendation?

Members *indicated agreement.*

Food for Particular Nutritional Uses (Miscellaneous Amendments) (Scotland) Regulations 2010 (SSI 2010/48)

The Convener: The regulations amend the Food Labelling Regulations 1996 and the Notification of Marketing of Food for Particular Nutritional Uses Regulations 2007 to reflect changes to relevant European Union directives. The Subordinate Legislation Committee had no comments to make on the regulations. If members have no comments on the regulations, are they content not to make any recommendation?

Members *indicated agreement.*

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Petitions

Off-sales Alcohol Purchases (Age Limit) (PE1187 and PE1191)

09:35

The Convener: Item 2 is consideration of PE1187, by Greig Muir, which calls on the Scottish Parliament to urge the Scottish Government to reconsider its plans to raise the age for off-sales alcohol purchases from 18 to 21; and PE1191, by Tom French, on behalf of the coalition against raising the drinking age in Scotland, which calls on the Scottish Parliament to urge the Scottish Government to drop its proposal to raise the age for off-sales alcohol purchases from 18 to 21.

The committee is invited to consider whether it wishes to close the petitions on the basis that it will

consider the issues that they raise as part of its consideration of section 8 of the Alcohol etc (Scotland) Bill on the sale of alcohol to under-21s; consider the issues that they raise as part of its consideration of section 8 on the sale of alcohol to under-21s but keep the petitions open until the bill completes its passage through the Parliament; or propose and agree an alternative approach.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): It is appropriate to close the petitions on the ground that you suggested, convener. I make the additional comment that the Government has dropped its national plan for raising the age to 21 and, therefore, at least part of the petitioners' call has already been answered. The proposal in the bill is to empower licensing boards to raise the age to 21 locally, if they so wish, so there is now no national policy to raise the age.

The Convener: Indeed.

Ross Finnie: I do not agree. The Parliament still has to make that decision. That is what is in the bill.

Mary Scanlon (Highlands and Islands) (Con): The petitions provide helpful evidence. Most of the people who have given evidence said that the age being 18 in one area and 21 in another would be confusing and would simply displace the problem. I would like to keep the petitions open until the bill is passed. There is considerably more debate to be had on the issue.

The Convener: Does anybody want to do anything else? I see that Richard Simpson is happy to keep the petitions open because we are dealing with the issues.

Dr Simpson: Yes, I am happy to keep them open if others feel that way.

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The Convener: Unless there are any additional comments, we will keep them open during our evidence gathering.

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Alcohol etc (Scotland) Bill: Stage 1

09:37

The Convener: Item 3 is oral evidence on the bill. We have three panels before us, and committee members will be glad to hear that I intend to have five-minute rest breaks in between each panel, which will help witnesses as well.

The first panel of witnesses consists of organisations that represent the alcohol manufacturing industry. I welcome John Beard, the chief executive of Whyte & Mackay Ltd; Mike Lees, the managing director of Tennent Caledonian Breweries; Gavin Hewitt, the chief executive of the Scotch Whisky Association; Bob Price, policy adviser for the National Association of Cider Makers; David Poley, the chief executive of The Portman Group; and Fergus Clark, Scottish member of the Society of Independent Brewers.

Before we proceed to questions, I remind members of the information that has been provided on aspects of competition law and the need for commercial organisations not to contravene it in respect of issues such as commercial decisions on future product pricing. I am sure that, if the gentlemen on the panel are not able to answer a question because it may breach competition law, they will be able to say so.

I am not sure how many of the witnesses have previously been before a committee. The format that we will follow is that I will ask committee members for their questions and, if you wish to respond, you should simply indicate to me and I will call you in order. You should not feel obliged to come in every time if a question is not relevant to you.

Mary Scanlon: I would like to ask Whyte & Mackay about its statement on jobs and minimum pricing, but first I will ask Gavin Hewitt about the Scotch Whisky Association's press release last week. I think that the association now contends that minimum pricing is not competent within the European Union. We have spent a lot of time deliberating on that. Will Mr Hewitt clarify whether minimum pricing is or is not competent under European Community rules?

Gavin Hewitt (Scotch Whisky Association): Our clear position is that minimum pricing is illegal under EC rules. That position was reinforced by last week's European Court of Justice judgment, albeit that the case related to tobacco. The ECJ judgment made absolutely clear the court's position on minimum pricing and was consistent with the court's jurisdiction over 30 years. Since the first case on minimum pricing was raised in

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1978—in a case relating to the pricing of spirits in the Netherlands—the court has ruled against minimum pricing and has never varied from that opinion for 30 years. The reason why minimum pricing is illegal is that it is not the least trade-restrictive measure available to address the issue.

The Convener: If no other witnesses want to comment, I will allow other members to ask a supplementary question.

Ross Finnie: Mr Hewitt, your position is absolutely unambiguous, which is sometimes to be commended, but I would like to know why you are so clear, when the entire ECJ judgment relates to article 9.1 of Council directive 95/59/EU, which deals with tobacco. Why are you absolutely clear—you expressed no equivocation at all—that a ruling on directive 95/59/EU applies to directives on alcohol?

Gavin Hewitt: I accept that the judgment was on the tobacco directive, but the language of the court's opinion was consistent with the language on all minimum pricing issues that have come to the ECJ. The court's judgments have never varied and have been consistent for 30 years. Therefore, the comments—[*Interruption.*]

The Convener: Bear with me for a minute, Mr Hewitt. I asked everyone to switch off mobile phones and other electronic equipment. That includes anyone in the public gallery.

Gavin Hewitt: The language that is used in this ECJ judgment is consistent with the previous jurisdiction of the ECJ. Given that the court's position has been consistent from a case in 1978 right through to last Thursday, we are convinced that there is no dubiety whatsoever that minimum pricing is illegal in the terms that are proposed.

Ross Finnie: Is the Scotch Whisky Association clear, then, that no distinction at all should be drawn between the tobacco directive and any directive on alcohol? Are identical terms used regarding the relationship between the price and the floor price that is described and narrated in directive 95/59/EU? Are absolutely identical terms to be found in any directive on alcohol?

Gavin Hewitt: There is no alcohol directive, whereas there is a tobacco directive. The narrow issue that the court addressed was the application of the tobacco directive and the legal provisions on tobacco that were introduced in Austria, France and Ireland. However, the language that is used in the court's judgment—it refers to the need for least trade-restrictive practices and for other

measures—makes it absolutely clear that its view on minimum pricing is consistent.

Ross Finnie: I wholly accept that the language is consistent and is quite clear in declaring minimum pricing on tobacco to be illegal, but the

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scope of the judgment is, nevertheless, explicitly directed to directive 95/59/EU.

09:45

Gavin Hewitt: That is exactly what I said. The judgment relates to the tobacco directive, but the language of the judgment can be taken out of that judgment and applied to minimum pricing in other areas. The consistency of the language in ECJ jurisprudence is considerable. The court has used the same language in all the cases that have previously come before it.

Ross Finnie: We do not actually have a judgment in relation to alcohol.

Gavin Hewitt: There is no directive on minimum pricing on alcohol.

The Convener: Mary Scanlon, do you want to return to that topic or move on to another one?

Mary Scanlon: I think that we will just have to leave that one for now.

I come to Whyte & Mackay. We have been told that there will be very little change in the price of whisky, but you say that a minimum unit price of 50p will mean a price rise of 37.5 per cent on a bottle of whisky, so all brands will be sold for the same price, and the biggest impact of that will be on the own brands. You say that the result of that will be the loss of 300 jobs. Is that an exaggeration or is it reality? That is quite a serious concern. Can you explain how you came to those figures? Also, distilleries in the Highlands, such as Tomatin, do a lot of own-brand whisky, so I am worried that it might affect other big producers as well.

John Beard (Whyte & Mackay Ltd): Whyte & Mackay recognises that Scotland has chronic alcohol-related issues and we want to be part of the solution. Sixty per cent of Whyte & Mackay profits are generated in the United Kingdom and we are the leading player in the supply of own-label products. Minimum pricing will have a serious impact on our business and on that of other companies.

The bill gives no explicit figure for a minimum price, so we used a figure of 50p for our study. I have heard lower minimum price figures, and significantly higher ones. When we put our submission together, we calculated that adding 50p would increase the price of own-label whisky by 37.5 per cent, which would have a huge impact on us as a manufacturer, on a lot of consumers and, I argue, on a lot of low-income families. The bottling facility that we have in the Grangemouth constituency would be severely impacted by the introduction of a 50p minimum price, as would our main grain distillery in the Highlands, near Inverness. It is on that basis that we calculated that we could lose 300 jobs.

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Mary Scanlon: That is a serious concern. Your submission mentions that, if Scotland imposes a minimum price, as well as an effect on jobs it will increase cross-border, internet and mail order sales. Have you done any assessment of the sales that are likely to be lost to Scotland as a result of the minimum price?

John Beard: We have not done an explicit study, but there are enough precedents to suggest that it

is a serious problem for Scotland. I will give examples in a moment, but I can summarise it by saying, in the context of wine, for Calais, read Carlisle. The committee will see the retailers later this morning, and you might want to ask them how well stores do on the Northern Ireland border with Ireland. I believe that one retailer's biggest store for the sale of alcohol throughout the UK is just across the border.

Mary Scanlon: I believe that it is Sainsbury's in Newry.

John Beard: I was thinking of another example. It is a huge problem. I do not think that it is as much about individuals driving down to Carlisle as it is about organised crime, white van man, illicit sales and people who are already selling tobacco illegally on council estates in the central belt. My point is supported by evidence from Sweden, where there is a monopoly on alcohol but, somewhat bizarrely, it has only a 57 per cent market share.

Michael Matheson (Falkirk West) (SNP): I presume that your assessment of the potential job losses from the introduction of a minimum price of 50p per unit is based on the modelling that the University of Sheffield has done on the impact that such a measure would have on consumption levels. Is that correct?

John Beard: No, it is not. Our assessment is based on the fact that own-label products would increase in price overnight—in our example, by 37.5 per cent to £14—whereby they would arguably be at precisely the same price as leading brands. The own-label product that we supply is of excellent quality but, given the choice of the leading brand at £14 or own label at £14, arguably, consumers would choose the brand. Indeed, I believe that the retailers will not give consumers that option.

Michael Matheson: So you argue that own brands would no longer be popular and, as a result, consumption of them would drop.

John Beard: Ultimately, the decisions are made by retailers. From a consumer perspective, to have eight or nine products all priced exactly the same at £14 is not consumer choice, and the retailers would make a decision on that basis.

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Michael Matheson: I want to be clear about how you got to that point. Is it your contention that retailers would delist the provision of own brands, or that they would continue with own brands but consumption of them would drop because they would be comparable in price to branded products?

John Beard: One of the retailers' submissions identifies what it would be likely to do. I would hate to recommend this, but retailers would probably delist the own-brand products totally if the two types were identically priced, because their role is different from that of branded products. You should ask the retailers about that.

Michael Matheson: So the job loss figures that you have arrived at are based largely on the presumption that retailers would delist the provision of own brands.

John Beard: Correct.

Michael Matheson: I welcome the fact that Whyte & Mackay recognises that Scotland has chronic alcohol-related issues—I think that that is what you said. It is clear from Whyte & Mackay's written submission that you believe that that must be addressed. In a lot of the evidence that the committee has received so far, price has been highlighted as one of the major factors that drives alcohol consumption. I am therefore interested in your view on whether any measures should be taken to

address the price of alcohol to deal with what you described as a chronic issue.

John Beard: I said at the outset that we want to be a positive player in looking for a solution. Various actions can be taken. The industry has taken significant initiatives on many fronts and those need to be given time to bear fruit. It is reasonable to explore promotions. I argue that, to an extent, promotions are a key driver of behaviour, so that is worth exploring. We support the introduction of a ban on selling below cost or below duty, defined as duty plus VAT. If that was workable, we would welcome that. Over and above price, there are huge issues related to enforcement and huge opportunities related to initiatives from other people round the table.

Gavin Hewitt: I will pick up on Mr Beard's point about a ban on below-cost selling. The Scotch Whisky Association has advanced the idea of a ban for transparency purposes on below-tax sales, by which we mean selling below the level of the duty applying to the drink plus the VAT applying to that duty. That would give a clear basis on which action could be taken—if people tried to sell below that price. Another beneficial effect is that it would answer one of the issues that health professionals have raised. They worry about tax not being passed on by retailers to consumers and that retailers will simply absorb any increased tax. A

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ban on selling below tax levels or cost levels—whichever you like—would answer that issue.

Michael Matheson: That is helpful. Whyte & Mackay says in its submission that introducing a minimum unit price of 50p would lead overnight an "astronomical" 37.5 per cent average price increase on unbranded products. How much would the ban on selling below duty and VAT that Mr Hewitt suggested increase the price of Whyte & Mackay's unbranded products?

John Beard: I do not have that specific information with me but we can provide it to the committee after the meeting, if that would help. I can say, though, that there would be a difference between whisky, at 40 per cent alcohol by volume strength, and vodka, at 37.5 per cent.

Michael Matheson: Given your concerns about potential job losses as a result of the bill, I think that that information would certainly help us to understand the impact of this other proposal on your business and jobs in your sector.

John Beard: I am very happy to provide it.

Michael Matheson: That would be very helpful.

The Convener: I should perhaps say to witnesses that if they want to provide any additional information they should do so in writing to the committee clerks to ensure that it gets into the public domain.

I believe that Rhoda Grant has a supplementary.

Rhoda Grant (Highlands and Islands) (Lab): I now have two, if that is okay.

The Convener: It is early days. There will be someone with three.

Rhoda Grant: Indeed. The Scotch Whisky Association's submission says that competition law prohibits a move to ban below-cost or below-duty sales. Is that because people simply do not discuss the cost of manufacturing drink products? Can we in the Scottish Parliament amend the law to overcome the problem or are we unable to deal with it ourselves?

Gavin Hewitt: The ECJ's judgment last week helped us enormously in that respect, because it made it absolutely clear that a ban on below-cost sales was not illegal. Such bans are already in operation in Europe, particularly in Spain, Italy and Portugal. It is within the Scottish Parliament's powers, if it wishes, to make provision for a ban on below-cost sales or what we prefer to call, for the purposes of transparency, a ban on below-tax sales.

Rhoda Grant: What I am trying to get at is how we ascertain cost. We can easily establish duty and VAT, but cost is more difficult to work out. As I

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understand it, your submission suggests that commercial confidentiality and competition laws would prohibit a ban on below-cost sales.

Gavin Hewitt: It is illegal for supermarkets to compare prices and come to an agreement among themselves on cost; it is not illegal for a Parliament to decide what cost is. In effect, legislation could be introduced that defines cost. As I say, such laws are in place in Spain, Portugal and places like that. It is of course very difficult to use cost in that way but that is why I have emphasised an approach based on the excise duty and the VAT that attaches to the duty. They are extremely clear and could, for the purposes of transparency at the very least, provide a bottom level. I encourage the Parliament and the committee to look at the issue of below-cost sales.

Rhoda Grant: May I ask my second supplementary, convener?

The Convener: Yes. I sense confusion, so I am starting a B list of members with supplementaries to run alongside my A list of members with substantive questions. The next on the A list is Richard Simpson. Bear with me, Richard.

Rhoda Grant: Who would buy own-brand products? Who are they marketed at and who are the main purchasers?

10:00

John Beard: The marketing of own-brand products is driven by the retailer. The products are branded as Tesco own label or Sainsbury's own label. The main purchasers are people who are loyal to the individual retailers. Subjectively, I believe that the main purchasers are primarily consumers on lower incomes. During the recession, there has been an overall shift in the purchase of fast-moving consumer goods towards lower retail priced goods, whether alcohol or other products. The reasonable assumption is that the main purchasers of own-brand spirits will be consumers who are on lower incomes.

Ross Finnie: I have a supplementary question on the alternative to minimum pricing that Gavin Hewitt and the Scotch Whisky Association have proposed—they have a strong view on duty and VAT. I understand the argument that Mr Hewitt advances for transparency, but I want to be clear that we are comparing apples with apples and pears with pears.

Mr Beard's concern is about applying a 40p per unit price to a product that is 40 per cent alcohol by volume. I appreciate that prices move, so we are in some difficulty here, but maybe we can find some common ground. If you were selling a 40 per cent ABV own-label product for something in the order of £8 or £8.30, applying the 40p per unit

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price would take that to £11.30. Are we in that kind of territory?

John Beard: Not quite. I think there might be some confusion between certain white spirits at 37.5 per cent ABV and certain darker spirits at 40 per cent ABV. Let us say that today's price is £10.18. Applying the 40p per unit minimum price would take the retail price to £11.20, which in itself would be an increase of 10 per cent. The figures that I have quoted, which start from the same base of £10.18, show that a 50p per unit minimum price would mean a 37.5 per cent increase to £14.

Ross Finnie: I use 40p per unit, you said 50p per unit. We are in the same ballpark, but you wanted to stress the impact of a 50p per unit minimum price.

John Beard: At a consumer level, there is a fundamental difference in retail price between 40p per unit and 50p per unit.

Ross Finnie: I am not suggesting that there is not; I was merely talking about the effect of the application of the minimum price.

Mr Hewitt, you have looked at these things closely, because you are promoting this approach. You must know what the duty and VAT is at that sort of level. Would what you are suggesting take the price to £11.30 or, at 40p per unit, would it take us into territory of around £7.90? Although what you are suggesting is transparent, the price that would result would be lower than the current selling price. Therefore your proposal is different to the proposal that the price should relate to the alcohol content. The suggestion from the whisky industry, although very transparent, nevertheless produces a price that is lower than the current low price.

Gavin Hewitt: In the case of whisky, as Mr Beard says, the average price of the low value and own-brand products is in the region of £10—although some whiskies are sold more cheaply than that. A floor price of tax and VAT would not affect the sales of whisky, but it would affect the sales of other products that are pushed in supermarkets.

Ross Finnie: It would be a floor price, but that price would be lower than the current average price that Mr Beard quoted.

Gavin Hewitt: It would indeed be lower than the average price of low value and own-brand whiskies.

Ian McKee (Lothians) (SNP): I was interested to hear your point about having a floor price of excise duty plus VAT. Before you made that proposal on behalf of the Scotch Whisky Association, did you do any formal modelling exercise to look at its effect in various areas? If so, could you send the committee more details?

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Gavin Hewitt: We have not done that, but the position of the Scotch Whisky Association has always been that tax is an issue that is decided by Government, that drink should be taxed according to alcohol content, and that there is a case for a serious review of the duty structure within the UK relating to the taxation of alcohol. Our position on the issues around duty plus VAT flows from that.

Ian McKee: But you have done no modelling to see exactly what might happen in that situation.

Gavin Hewitt: No. I know the effect that it has on whisky, but I have not done modelling in relation to other drinks.

Ian McKee: Mr Beard, you stated earlier that supermarket-brand spirits are bought by people in the lower income level. Is that correct?

John Beard: That is my subjective conclusion.

Ian McKee: Are you aware that people in the lower income level bracket have about three times the incidence of alcohol-related disease that the rest of the community has?

John Beard: That is certainly the case, although issues relating to society, culture, upbringing and housing are far more relevant to that than is the price of alcohol. As I have said, I am not convinced that the introduction of a minimum price would solve the problem, given that people could go to Carlisle to purchase alcohol or order it via the internet. We are supportive of initiatives that involve an output that has a genuine chance of success. However, I do not think that the input of minimum pricing will achieve its stated aims.

In the context of enforcement, I would like to quote some statistics. In 2002, only eight under-18-year-olds were fined for attempting to buy liquor. A further fact is that, since 2002, only two publicans have been fined for serving alcohol to people who were intoxicated. Personally, I find those statistics quite astonishing.

Ian McKee: That is as may be, but this is the Health and Sport Committee, and I am interested in the health aspects of the issue. We know, from previous evidence, that about 1,250,000 people in Scotland drink either hazardously or dangerously, which demonstrates that alcohol consumption is a health issue as much as it is a justice issue. Do you agree with the proposition that raising the price of alcohol will lower consumption and therefore help the health situation in Scotland?

John Beard: You have taken evidence on the Sheffield study, and some of the conclusions that have been drawn from that study have muddied the water. It is interesting to note that, although the alcohol debate has been gaining considerable coverage, alcohol consumption across the United Kingdom is already declining. Price might have a

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role to play in that, but I do not think that it is the totality of the solution.

Ian McKee: I think you will find that consumption in Scotland is pretty level, whereas consumption in England is reducing. This committee is talking about Scotland.

John Beard: That is interesting because I think that the Sheffield study, which has been a key part of your evidence, did not take a Scotland segment as part of its research. That is strange, given that the study is related to Scotland. It is dangerous to be selective and to use UK data on one occasion and Scottish data on other occasions, especially as the Sheffield study, according to its author, is actually a weather forecast.

Ian McKee: We are shortly to receive Scottish data, so that should put your mind at rest on that matter.

John Beard: And yours.

The Convener: There is an issue about measuring consumption and whether the data that are obtained by other methods are as accurate as the data that are based on the sales receipts from the supermarkets. People tend to state that they consume less than they actually do. It will be interesting to hear what the representatives of the supermarkets say about consumption when they come before us.

We move on—

Dr Simpson: May I ask a B-list question before that, convener?

The Convener: You are on my A list, so you can have an A and a B question. Tell me which is first, though.

Dr Simpson: I will do the B question first, as it involves pricing.

The Convener: I should tell the witnesses that we have a little code in this committee.

Dr Simpson: We have had a good discussion about whisky, but that product is generally marketed at a higher price than white spirits. As a physician who has worked in the field of addictions, I know that the issues that affected my harmful drinkers were predominantly connected to vodka and cider. I know that cider is a small part of the market, but how would minimum pricing affect the prices of the own-brand vodka and cider products?

Bob Price (National Association of Cider Makers): The cider industry is a predominantly English industry, with some operations in Wales. Therefore, the introduction of a minimum price would not cost jobs in Scotland; the impact would be across the border in England and Wales.

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I am aware that there has been criticism of the low unit price of alcohol. I have seen reports of a unit price of 36p, and I have read that Kenny MacAskill has said that he has found cider on sale at 50p, which he found outrageous. However, I suggest to the cabinet secretary that those products are marginal in the scheme of alcoholic beverages. I contest Michael Matheson's suggestion that price is the driver of alcohol consumption. If the price of alcohol were to go up, that would affect how much people buy. However, the issue that we want to address is that of alcohol harms. As I said in my written submission, what is being missed in this entire debate is the sociological aspect of why people drink in the first place.

The Convener: I would caution you about that. The committee is well aware of the spectrum of reasons why people consume alcohol, and the sociological factors that are involved. We have taken evidence on those issues in relation not only to the bill, but to other issues.

Bob Price: There is an acceptance that there are major sociological factors that lead people to use alcohol as a coping strategy. If the aim of the committee and the bill is to deal with alcohol harms, more effort should be addressed towards dealing with the harm aspect rather than the overall consumption of alcohol because, in the main, alcohol is consumed responsibly by most people in England, Wales and Scotland.

Dr Simpson: I am not sure that that answers my question, which was about the effect of the proposed policy on the cider industry. However, what you said about jobs was helpful.

One of the problems is that the cider industry is, in effect, a protected industry, as it has a lower level of duty. If we were to follow Mr Hewitt's suggestion of having duty plus VAT, cider would still be protected because the tax that is paid on cider is actually lower. Partly because of that price protection, but also as a result of advertising and other factors, consumption of cider has grown. What percentage of the cider market would be affected if we had a minimum unit price of 40p or 50p? That is not clear from your submission.

Bob Price: Cider sales have not grown in the way that you say they have. Cider still accounts for only one in 12 drinks that are consumed. The overall market share has moved from 6 to 8 per cent, which is still small. The cider industry is not protected in the way that you suggest, either—I am not sure where the word "protection" comes from in that context. Since 1976, when excise duty was put

back on cider, there has been a recognition that the supply chain costs that are involved in making cider mean that it is a more expensive drink to produce than its equivalents. I popped into a local retailer in Edinburgh and found

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that the price of cider was 50p more than the price of beer. Cider is not the cheapest alcohol product. If you go into a pub, you will probably pay around £3.60 for a pint of cider, which is significantly more than the price of beer. Cider has no unfair economic advantage or protection.

If you believe that cheap price means increased consumption, you face a paradox. If cider is the cheapest product, why is it not the market leader? Why is cider not consumed by significantly larger numbers of people?

10:15

Dr Simpson: That still does not answer my question, which is about the effect on the proportion of your market that consists of very cheap products. I accept that there are high-quality brands of cider and perry, but there are sections of your industry that market 3-litre bottles of cider at 25p a unit. The consumption of those products by heavy drinkers is a real problem.

I would like you to submit to the committee an analysis of what effect a minimum price of 40p or 50p would have on those elements of your industry that sell very cheap cider, because I am not clear about that. That would be helpful. I would also like to hear about the effect on the white spirits industry, as some white spirits are marketed in a similar way.

Bob Price: I can give you the information that you require. The Scottish Parliament information centre document lists the current pricing of brands of strong white ciders, and the impact on that of minimum prices of 40p and 50p. That information is available.

Dr Simpson: I want to know about the effect on the market share of the cheaper brands; the document does not include information on that.

Bob Price: Those products represent less than 10 per cent of total cider sales. If that part of the industry disappears, 10 per cent of the cider market will go. That is how small that part of the industry is, and it has a declining share of the market.

The Convener: Before Dr Simpson asks his substantive question, Michael Matheson has—

Dr Simpson: The second part of my question was about white spirits.

The Convener: Does anyone want to respond on that?

John Beard: We are giving evidence principally as a Scottish whisky company—more than 96 per cent of our profits are generated from whisky—but I can give a perspective on vodka, if you would like.

Col 2863

Vodka represents a very small part of what we do. Our primary responsibility is to Scotch whisky, as a product that is indigenous to Scotland. I think that Mr Finnie quoted a figure of £8. We need to be clear about the underlying price for vodka as opposed to whisky. The starting point for the two products is fundamentally different. There is more of an issue with white spirits than there is with

premium, indigenous Scottish whisky, whether that is blended whisky or malt whisky. I know from personal experience of seeing young people arrive for parties that what they have in Coke bottles is more likely to include white spirits than dark spirits—let me put it like that.

The Convener: Michael Matheson has been named in dispatches.

Michael Matheson: I want to respond to Mr Price's comments on what I said about price. The overwhelming majority of evidence that we have received from experts in the field identifies two key factors that drive alcohol consumption: price and availability. That is the context in which I referred to price. I am not sure whether Mr Price thinks that price has no part to play in alcohol consumption; I certainly believe that it has a part to play.

I am interested in the issue that Richard Simpson raised regarding cheap ciders. I recognise that consumption of those products represents an extremely small proportion of the overall level of alcohol consumption in the country, but it is quite a significant problem in a certain group of society.

I would like to share with Mr Price some statistics from Tayside Police on operations that it carried out last year to confiscate alcohol from people who were under 18. According to the figures that it published, the two main types of alcohol that it confiscated, by a considerable margin, were beer and cider. Although beer makes up a much bigger part of the alcohol market in Scotland than cider does, it is clear that a considerable amount of cider is being consumed by young people. In part, that is fuelled by the fact that it is possible to get 2 litres of cider at 7.5 per cent ABV for £2.25, which contributes to the alcohol-related problems among young people in our communities.

Bob Price: Were the figures from Tayside Police split between beer and cider, or was there a composite beer and cider category?

Michael Matheson: In eastern division in Angus, the police confiscated 319 litres of beer, 311 litres of cider, 125 litres of spirits and 185 litres of wines, alcopops and other drinks. In central division, which covers Dundee, they confiscated 1,846 litres of cider, 1,190 litres of beer, 203 bottles of alcopops and smaller amounts of other products.

Col 2864

The figures are disaggregated into different types of alcoholic drinks, but the statistics demonstrate that cider is a major factor in confiscations by the police among those who are under 18.

Bob Price: If we take Fife, for example—

Michael Matheson: Why not Tayside?

Bob Price: Your figures are specific to Tayside, but mine are specific to Fife, and to England.

Michael Matheson: Okay.

Bob Price: One will find particular evidence in particular situations. Two years ago, during the February half-term season, the Home Office ran a campaign throughout the UK to intervene directly in street drinking by children. Various drink products were collected—and we must take the sample size into consideration—but the percentage of cider in comparison with all the other alcoholic drinks that were captured was in line with the product's national average share.

The police figures from the Fife project—I do not know whether they were official or otherwise, but they were shared with us—showed a similar situation. All alcoholic beverages are consumed by people under the age of 18; they do not have a particular favourite. The Fife project demonstrated,

again, that the amount of cider that was confiscated was similar to the national share of that particular product.

Every report that I have read on the Scottish Parliament's website that has been submitted in response to the consultation document makes it clear that no one particular drink is favoured by any particular user or misuser. The Tayside Police figures will feed into the melting pot on the issue as additional information, which takes us back to my earlier point. We keep focusing on the symptoms, but we never focus on the cause or the drivers behind why people drink. It is not necessarily just because the alcohol is available. There is a report by—

The Convener: I will just caution you there. We are dealing with a bill—if we were dealing with an inquiry, we might consider the issue that you have just mentioned. I wish you to accept that we know about many of the causes of why people in various geographical areas and in different age groups in Scotland drink; the committee is well informed on those matters.

We have pretty well exhausted that particular area, but it would be useful if you could check whether the information from Fife can be shared with the committee.

Bob Price: I am sure that it can be.

Col 2865

The Convener: I ask you to provide the information in paper form, so that we can put it on our website for public view.

Dr Simpson: Can you give us the reference for the Home Office campaign? That would be useful.

The Convener: Yes, that would be useful. Other material that the committee would like to consider sometimes emerges during an evidence session—and you will perhaps be pleased to know that you are not coming back to us. We will put that evidence in the public domain so that anyone who is interested in the debate can see it.

We will move on, as Richard Simpson still has a question. I have moved Helen Eadie up the rankings because she has been so quiet. She is jumping the queue—I want her to remember that.

Dr Simpson: We have looked at price pretty thoroughly, although we may want to return to some aspects of it. However, I am concerned that, in the past 10, 15 or 20 years, there has been a massive drive to use alcohol as a loss leader and that the advertising budget for alcohol, particularly from the retailers, has been substantial; it is a huge budget, which runs at something like £200 million.

I am interested in the Portman agreement with the Government on the voluntary rules that govern not encouraging younger people to drink. Will you comment on the report by Professor Gerard Hastings, which was given to the House of Commons committee? I know that the report was based on evidence that the industry submitted but which it thought would be confidential, and that the industry was rather appalled to find that it was being used as a research project. Nevertheless, the paper was very interesting and revealed a lot of background information on some products; in effect, the exchange between the advertising agencies and the industry regarding one of those products, WKD, amounted to "How do we get round the rules?"

I am not saying that advertising or labelling will change things totally, but at least they provide information of a sort to the public. It seems to me that the industry has not been as heinous as the tobacco industry, but that, nevertheless, the voluntary agreements are really not working. What should we do about advertising to make it clear that we will not have people being encouraged to drink by very clever advertising of the sort that is seen regularly on television and elsewhere?

David Poley (Portman Group): First, I will explain what the Portman Group is and what our code of practice covers. We are the social responsibility organisation for UK drinks producers. We have eight member companies, which collectively account for the majority of alcohol that is sold in the UK. Our primary concern

Col 2866

is to ensure that drinks producers market their products responsibly. We do that through operating a code of practice on the naming, packaging and promotion of alcoholic drinks. That code of practice applies not only to our eight member companies, but across the entire producer industry. We have an independent complaints panel and an open and accessible complaints system, so anyone can make a complaint about any product or promotion that they think is in breach of our code. That complaint will be ruled on by the independent panel. The panel's decisions are published and if a product's packaging is found to be in breach of the code, we have a sanction whereby we can ask retailers to stop stocking that product until it has been amended to comply with the code.

Our code is sometimes referred to as voluntary, and it is voluntary, in the sense that the industry has volunteered to put the restrictions on itself in place. Thereafter, the code is mandatory and it becomes binding on the entire industry; if companies ignore the code of practice, they find that their product will not be stocked by retailers.

Our code of practice does not cover advertising on television, radio, in the press and on posters; such advertising is regulated by the Advertising Standards Authority, whose code applies not only to alcohol but to all product sectors. The ASA's code includes a set of rules that relates specifically to alcohol and which closely mirrors the requirements of our code, under which excessive consumption should not be encouraged, advertising should not appeal to under-18s, and so on.

Your first point was about supermarkets. We are a drinks producer organisation, so we do not regulate retailers' activities. Of course, producers do not control the price at which their product is sold—that is controlled by the retailer. Furthermore, if we were to attempt to use our code to control anything related to price, we would be likely to fall foul of competition law, so we cannot go there through our code. We can control the tone of marketing communications otherwise, to ensure that they are responsible and are targeted at over-18s and so on.

10:30

On Gerard Hastings's report, as you say, he obtained a huge amount—we are talking about van loads—of internal industry documentation on the formulation of marketing campaigns. He and the team went through that paperwork and drew out various examples that he claims show that the industry is not complying with the spirit of the various codes, particularly with regard to advertising and therefore the ASA's code rather than the Portland Group's code.

Col 2867

Some of the examples that Professor Hastings drew out might be explained away on the ground that they were taken out of context. For example, he talked about research taking place among under-18s and said that one company had looked at market penetration among 16 to 24-year-olds, but that was not specially tailored work by that company. I think that its research made use of existing Broadcasters Audience Research Board data, which measure television audiences and which, because they are not specifically on alcohol, have thresholds that are drawn at 16 years, 24 years and so on. Those were the best available data that were usable by the company—their use does not mean that the company was seeking to target under-18s. Certain things were therefore taken out of context.

Other things would have been raised by advertising agencies as part of the creative process but eliminated before they got to the stage at which the public could see them. It is a vindication of companies' internal vetting procedures that those things would have been rejected at an early stage.

I suppose the best that one can say is that none of the examples that Professor Hastings raised appears to have resulted in a marketing communication to the public that was found to be in breach of the codes. In the end, that is why we have the independent complaints panel at the Portland Group and the similar independent body at the ASA—to rule on whether end marketing communications are in breach of the codes. Professor Hastings has never made a complaint to us or the ASA about any marketing communications.

I dare say that, if I had access to the last five years of Professor Hastings's e-mails and private correspondence, I could find particular phrases that could be taken out of context. That could suggest that he was less than professional. I do not mean to say that he is not professional. It is just that one might say things in private documentation that could be taken out of context and which give the wrong impression. In the end, you should judge the industry by what is out there and by what comes before the independent panels of the Portland Group and the ASA.

Dr Simpson: I think that what that establishes is that the Portland Group does not have any control over advertising and is not responsible for that. However, you are responsible for labelling, which is an important part of the marketing. The last time that I went round a supermarket, the labelling was still patchy. We do not have clear, substantive labelling. I see from the various documents that you gave us for today's meeting that the intention is that we will have such labelling, but I wonder

Col 2868

how quickly that will occur. I would like you to comment on that.

Also, both the ASA and the Portland Group operate on the basis that, whatever marketing is put out there, there might be a complaint and then there might be action. There is no pre-scrutiny system and no consideration of whether something might push the boundaries or border on being inappropriate. Have any actions been taken against products within the eight companies that you represent?

David Poley: Your last point was about whether we have a purely reactive rather than proactive system of controlling marketing communications. Although the systems are complaints driven, both the Portman Group and the ASA, through its sister organisation—the Committee of Advertising Practice—operate advisory or pre-vetting services so that companies can get advice on their products and on promotions and advertisements before they are run.

Last year, the Portman Group's advisory service gave advice on 350 products or promotions. We received complaints for about eight products. You can see, therefore, that there is a huge skew towards companies getting things right before they issue their products and promotions; that is why we have such a low level of complaints. The ASA and the CAP have a similar system with regard to advertising, in which there is much more activity on the pre-advice side than on the complaints side. A year or two ago, the Portman Group undertook a major independent survey whereby we commissioned a third party to go out and buy a load of products and audit them for compliance with our code. Again, we had a compliance rate of well over 95 per cent. Some of the products that were highlighted by the independent auditors included two from our member companies, which had to be changed. In addition, the independent complaints panel has occasionally found member companies to be in breach of our code, for which they have had to suffer the same sanctions as any other company would. That does not happen often, because the companies are very aware of their responsibilities.

Your first point was about labelling. About four or five years ago, the Portman Group created a website—drinkaware.co.uk—that carried comprehensive information on responsible consumption of alcohol. We got our member companies to carry that website address on all their packaging as a way of drawing consumers' attention to a place where they could go to get advice. The advice on alcohol is complex compared with the straightforward advice on tobacco, which states that every cigarette is harmful and that the message is simply do not smoke. There are complexities around alcohol—

Col 2869

for example, the different advice for men and for women, and the message that drinking in moderation is not necessarily harmful whereas drinking to excess is. That is why we put the information on a website rather than trying to oversimplify the message by putting it all on a label.

Three years ago, the Department of Health asked the industry voluntarily to put certain information on its labelling, including the daily benchmarks for responsible consumption and a warning about drinking during pregnancy. Buy-in to that messaging has been slow and, as Dr Simpson said, implementation so far has been disappointing. However, we recently reached the stage at which all Portman Group member companies have committed to put that labelling on their products. The Department of Health is consulting on the issue, and we are helping to co-ordinate an industry response. We hope that we can achieve the target implementation levels that are outlined in the consultation, for 50 per cent of products to carry the necessary information by 2012, and for 75 per cent of them to do so by 2014. You might wonder why everyone cannot do that, but there are difficulties because the UK message on sensible drinking—and, indeed, the UK alcohol unit—is different from that in the rest of Europe. That means that products have to be labelled specifically for the UK. In the case of certain products—particularly wines, which are often imported into the UK in relatively small volumes and are labelled for the European or global market—it is difficult and more expensive to put the information on the label.

The Convener: I have got myself on the B list now—it is a rare moment. I want to ask about Drinkaware, the alcohol education charity. We are talking not just about examining minimum pricing and related issues, but about informing the public—particularly the young—about alcohol. You say that you have received an increase in your funding recently. Do you have a certain amount to spend in Scotland? Can you advise us what contacts you have with schools and so on?

David Poley: The Portman Group helped to create the Drinkaware Trust, but the Drinkaware Trust is an independent charity, so I do not represent Drinkaware. It is a charity that is funded entirely by the alcohol industry—

The Convener: I appreciate that. I just wanted to know whether you could give us a figure for your funding.

David Poley: From this year, the Drinkaware Trust is receiving £5 million from across the industry. For the first three years of its operation, it received about 85 per cent of its funding purely from the Portman Group, which probably amounted to around £2.5 million to £3 million a

Col 2870

year. I do not know Drinkaware's specific proposals for its work in Scotland.

The Convener: Perhaps we can find out through another route about Drinkaware's work on the education front in schools and so on.

Rhoda Grant: I have a supplementary question on this issue.

The Convener: Okay, but I must then allow Helen Eadie to ask her questions. She has been extremely patient.

Rhoda Grant: Am I still on the A list?

The Convener: You are still on the A list. However, I warn the committee that it is 10.41 and we have another two panels of witnesses to hear from. Short questions would be useful, as would short answers, if appropriate. We have yet to have questions from Helen Eadie, Ross Finnie, Michael Matheson and Ian McKee—so, you see where we are. You can be here until 3 in the afternoon if you like, but I will not be.

Rhoda Grant: My supplementary question is very short. David Poley talked about labelling highlighting the dangers of drinking during pregnancy and cited wine as an example of a drink for which that is not done. However, I understand that, in France, it is mandatory to advertise on all labels the fact that drinking while pregnant is harmful, so I am confused about why you mention wine being a problem, as most of the wine comes from France. Why would it be an issue, and why could we not get up to 100 per cent labelling?

David Poley: In respect of the pregnancy message, the French legislation allows for the use of a logo, which is applicable globally, because there are no language barriers and so on. The difficulty with the rest of the information that the Department of Health wants to put on the label is that it is UK specific—it is the advice from the chief medical officers about the number of units per day that one can drink safely or at a low risk to oneself. Because a UK unit is different from a European unit and because the chief medical officers' advice is not the same as the medical advice in other countries, that information is not applicable in other countries.

The Convener: I am sorry, but which chief medical officer are you talking about? The UK one? We have our own chief medical officer.

David Poley: Sure. The message has been agreed by all chief medical officers.

The Convener: Okay. Fine. I just did not want to get my chief medical officers muddled. Do you want to move on to your next question, Rhoda? Oh, no—sorry. It is Helen Eadie.

Col 2871

Helen Eadie (Dunfermline East) (Lab): That is okay, convener. I will have a word with you afterwards.

The Convener: I will treasure that moment with you, Helen.

Helen Eadie: You know what they say: it takes a lang spoon to sup wi a Fifer—but not this morning.

I want to switch tack and talk about the written submission to the Finance Committee that says that

"Scotch Whisky faces over 600 trade barriers worldwide"

and that minimum pricing threatens whisky exports. The same submission continues:

"If a precedent of overriding trade rules is secured we believe this will lead to a domino effect of 'health-based' restrictions on Scotch being applied in our export markets."

I invite the panel to comment on whether we are looking at a domino effect. About 41,000 jobs rely

on the Scotch whisky industry, which generates £800 million in income to the economy. Figures from SPICe suggest that each employee in the industry has a gross value added benefit to the economy of at least £196,000, in comparison with £46,000 per employee in all other industries. Will the panel comment on the domino effect? We understand all the health issues, but the committee's job is also to understand the other impacts of proceeding with minimum pricing in Scotland. Would anyone like to add to that?

10:45

The Convener: The question was definitely directed at Mr Hewitt.

Gavin Hewitt: I thank Helen Eadie for her question.

Ian McKee: Gavin Hewitt probably wrote Helen Eadie's question.

The Convener: Now, now—naughty, naughty. I can see that a scone break is approaching. *[Interruption.]* Helen Eadie is all right—she is sconed up.

Gavin Hewitt: I dispute none of the figures that Helen Eadie cited, because we have presented them to the Finance Committee and other parliamentary committees. I will explain our concerns, which go back to legality. A Scottish proposal for minimum pricing would have to be acceptable in Brussels and would be challengeable in the European Court of Justice, as a Scottish Government lawyer explained in a previous evidence session. If, perchance, the proposal were acceptable—I say that it is illegal and will not happen—we can see clearly from our experience abroad, and given how much we sell

Col 2872

abroad, that countries that are trying to protect their markets from the penetration of Scotch whisky would use the precedent of a breach of the normal EU and international trade rules to apply forms of discrimination against Scotch whisky, which would mean that we would lose exports.

I will give an example. In the past 15 years, we have been extremely successful in breaking down trade discrimination in Japan, South Korea, Uruguay, Chile and India. That has allowed us to grow our market in those countries. Through using European Commission and World Trade Organization processes, we have removed discriminatory prices or activities against us. Since the WTO's judgment on that, South Korea has tried to find other ways to discriminate against Scotch whisky. One proposal that is still on the table and has not been removed is a health tax, which would, oddly, apply only to spirits of more than 30 per cent proof. The only spirit above 30 per cent that is sold in Korea is Scotch whisky—domestic spirits are in the region of 20 to 25 per cent. It is clear that Korea wants to find another means of protecting its domestic product against the penetration of Scotch whisky. Korea is a huge and extremely important market for us. That is just one example; I could go on, but I will not take up the committee's time. We have set out further examples in the papers.

Our markets overseas would use a Scottish precedent overturning all the rules that are in place to try to protect their domestic products at the expense of Scotch whisky. Our calculation is that £600 million of exports would be lost in one year.

Helen Eadie: One of my concerns is that, if minimum pricing proceeds, money will go into the pockets not of the Exchequer but of commerce. However, I know from our briefing papers that producers might not benefit to the same extent as retailers would—in fact, producers might benefit much less. We will hear evidence later from the retail sector, but what are panel members' comments on that? Our briefing papers show, for example, that a minimum price of 25p, with a discount ban, would result in a total of £72 million for the industry. At the other end of the scale—a 70p minimum

price per unit, with a discount ban—the amount going into the pockets of commerce, rather than to the Exchequer, could be £288 million. I invite members of the panel to comment. Will you directly benefit or will the money go to the retail sector?

The Convener: Mr Lees has not spoken yet. Neither has Mr Clark.

Fergus Clark (Society of Independent Brewers): Not yet.

Col 2873

The Convener: You get ready for it, then. We are coming to the end—you will have to let people know that you have been here, even if it is just by coughing. Mr Lees is next, however.

Mike Lees (Tennent Caledonian Breweries): Various numbers are floating around. The issue will be about what regime is put in place, if one is put in place. Tennent's lager will still have to compete with other mainstream lagers.

The split between the manufacturer and the retailer is a commercial arrangement, which will differ among producers. There will be some benefit, but it is difficult to estimate what it will be until we understand whether the minimum price per unit is 25p, 40p or whatever. It is not for us to comment on what it should be.

There is another side of the coin that nobody is looking at. In my view, if prices go up, the volume will go down, and we must consider the impact of that on our business. There will be a downside as far as the contribution to overheads and other aspects are concerned. At this point, it is difficult to predict the exact impact.

Helen Eadie: Given that the rise in the price would increase the revenue to the industry, that would offset the other aspects. Do you agree that the fall in consumption would be offset by the increase in price?

Mary Scanlon: Is it inelastic?

Helen Eadie: As Mary Scanlon says, price elasticity is a factor.

Mike Lees: We do not really know. We have to model it and see what regime we end up with.

Helen Eadie: You can see how someone like me thinks that it is a bit perverse of the industry not to want the measure. It will put more money in industry pockets.

John Beard: This might be a B-list answer.

The Convener: We have lined your pockets, and you have rallied.

John Beard: Let me put it simply, with concise answers relating to Whyte & Mackay and own-label whisky. If those brands are delisted, double zero is zero.

Mary Scanlon: Could I—

The Convener: I have other members on my B list, and Michael Matheson is ahead of you, Mary. I now ask members with supplementaries to bear in mind that I still have Rhoda Grant, Ross Finnie, Michael Matheson and Ian McKee on my A list. If you could curtail your supplementaries, it would be very helpful. You have a long day ahead of you. Michael Matheson will be followed by Mary Scanlon.

Col 2874

Michael Matheson: Mr Hewitt spoke about the possibility of minimum pricing encouraging further trade barriers in other countries. He said that if minimum pricing was introduced and it was viewed as a breach of European competition law and World Trade Organization rules, that could be used by other countries as an argument for introducing trade barriers against whisky. That is based on the idea of a breach, but there has been no ruling to say that minimum pricing for alcohol is such a breach. How can you say that if minimum pricing is viewed as lawful at both WTO and EU levels and does not constitute a breach, it will inevitably and automatically result in further trade barriers against whisky?

Gavin Hewitt: I thank Mr Matheson for bringing us back to the legal issue. The ECJ has already ruled that minimum pricing is illegal, in a case in the Netherlands in 1978. The ECJ has followed that precedent consistently for the past 30 years. The ECJ has ruled on the issue of minimum pricing for alcohol, especially spirits. I said that if, perchance, the European Commission accepted that an exception from the European and, therefore, the world trade rules could be made for the sake of public health, a precedent would have been set by Scotland—the first country to do so—with the consequences that I set out to Mrs Eadie.

Michael Matheson: Let me be very clear. If the European Court of Justice ruled that minimum pricing, as introduced here in Scotland, was not illegal or a breach of EU competition law, how could that would be used as an argument for introducing trade barriers against whisky?

Gavin Hewitt: Under the Scotland Act 1998, the Scottish Government and the Scottish Parliament must ensure that they are not in breach of the UK's EU obligations. One of those obligations is to observe the jurisdiction and jurisprudence of the ECJ, which has already ruled that minimum pricing of spirits is illegal—end of story.

The Convener: You were asked what the international consequences that you have trailed would be if the European Court of Justice ruled that it is competent for the Parliament to introduce minimum pricing. We will not agree about whether it is legal or illegal—we will start from the proposition that it is legal.

Gavin Hewitt: If Brussels and the ECJ accepted minimum pricing as legal—

Michael Matheson: That is the proposition that I put to you.

Gavin Hewitt: We are moving beyond where we are now.

Michael Matheson: That is the proposition that I put to you.

Col 2875

Gavin Hewitt: All right. The consequences are that our markets overseas—the places where we have had success in removing the discrimination against Scotch—would use the precedent of that exception, which could be made only on the basis of public health, to introduce further discrimination against Scotch. I used the example of Korea, which would say that Scotch whisky has higher ABV than Korean soju and is, therefore, more dangerous to health than soju. Legitimately, Korea could place an extra tax on any drinks over 30 per cent ABV, which would mean that Korean drinks were not taxed. The consequences would be that we would lose a substantial part of the market. As I said to Mrs Eadie, we calculate, based on very firm evidence, that we would lose £600 million a year.

The Convener: Korea might impose a health tax anyway.

Gavin Hewitt: No, such a tax would be illegal. It would be challenged and challengeable in the WTO.

Mary Scanlon: The Government has secret information, which it will not share, that minimum pricing is legal. As Ross Finnie said, you are absolutely sure that it is not legal. If the bill were passed with provision for a minimum price for alcohol, would the Scotch Whisky Association challenge the legislation at European level?

Gavin Hewitt: I am sure that it would be challenged.

The Convener: As we know, the Government has never shared its legal advice with anyone; one can understand why. That is true of Governments of whatever hue, including preceding Governments.

Rhoda Grant, Ross Finnie, Michael Matheson and Ian McKee have questions. If the questions are short, we can put them together, the witnesses can take a note and we can work our way around them, instead of asking them individually. I am concerned about the time.

11:00

Rhoda Grant: My question is very short, and it is to Mike Lees. Given that Tennent's is a premium product, how much do you expect to increase your market share if a minimum price of 40p or 50p is implemented?

Ross Finnie: My question has been slightly skewed by earlier questions. I just want to be clear. I am in no doubt that tackling alcohol problems requires a toolkit of measures but I hope that panel members understand that it is only the essential matters of price control, whether through a minimum price per unit or through a ban on discounting, that require legislation. Panel

Col 2876

members should realise that we understand that when we focus on minimum pricing.

I do not dismiss the economic arguments that have been made in written and oral evidence, but I want to get some understanding on this point. I have reservations about minimum pricing, but I started from the position that those who have a genuine concern about public health are concerned that Scotland has increasing rates of mortality and liver cirrhosis right across the socioeconomic spectrum. They have drawn our attention to a link between consumption and price. I am happy to have an argument about that and set that link against economic and other considerations, but I find it slightly depressing that, with one or two exceptions, your submissions suggest that the evidence on consumption and price is highly suspect and that the argument that is being adduced by those in the public health sector is not worthy of much consideration. I am bound to say that I do not find that approach to be particularly helpful. I do not find it helpful that the industry says that its statistics are totally robust and rubbishes the Sheffield study. Unfortunately, the people whom it quotes to rubbish the study—the Centre for Economics and Business—are not academics and did not carry out peer review, because they are not qualified to carry out peer review. I find such references unhelpful.

Are we saying that the economic argument is far more powerful than the health argument? Are we saying that the health argument is to be rubbished because it has no substance, and the committee should dismiss it? I am not talking about Mr Hewitt personally, but about the argument. I am finding that difficult because we have a much more complex task than that and such simplification is not helpful.

Michael Matheson: I have a brief question for Mike Lees. His company came out in support of minimum pricing; why? What is the rationale behind a company such as Tennent's taking what

appears to be a different position from that of other similar businesses in its sector?

Dr Simpson: Can I add a question about the particular price too? If the minimum price were to be 60p, 70p, 80p or 90p per unit, would the attitude of Tennent's still be the same?

Ian McKee: I will echo Ross Finnie's question to the Portman Group. When Ben Read of the CEBR gave evidence on 24 February, he stated that he had

"no previous experience of peer review"

and that

"before committing to anything on that front"

he

Col 2877

"would like to investigate how you get something peer reviewed",—[*Official Report, Health and Sport Committee, 24 February 2010; c 2778.*]

yet you quote his commercially produced report for an alcohol producer as if it were a peer review of an academic report that has been peer reviewed by other academics and accepted for a journal that only takes peer-reviewed articles. You are not really comparing apples with apples.

I would like to bring in Mr Clark.

The Convener: That is the way to do it. Hello, Mr Clark. You have been famous for not saying anything at all.

Ian McKee: Mr Clark's organisation says in its written submission:

"SIBA's position has always been to support the pub, over 90% of SIBA members production is sold through pubs".

However, we know from other evidence that off-trade sales of pure alcohol per person over the age of 16 in Scotland have increased by 0.6 litres over the past five years, whereas on-trade sales have decreased by 0.7 litres. That may be related to price, as the average price per unit of alcohol sold in the on-trade has increased by 17 per cent to £1.31 a unit in that time, whereas the price per unit of alcohol sold in the off-trade has increased by only 7.5 per cent, or by 3p per unit, from 40p to 43p. Therefore, off-trade alcohol is only about a third of the price of on-trade alcohol. If you support pubs, why are you so opposed to minimum unit pricing, which would alter that ratio a bit and perhaps safeguard some of your members?

The Convener: Before Mr Clark answers that question, I would be pleased if I could get the questions right. Rhoda Grant asked Mike Lees how much he expects his organisation's market share to increase with minimum pricing, whatever the minimum price would be set at. Ross Finnie asked questions across the spectrum about whether economic arguments matter more than health arguments and about the robustness of the economic statistics, so we will leave them until the end. I think that he made the point, as Ian McKee did, that the Sheffield report was being rather set aside even though it has been substantially peer reviewed in prestigious scientific documents. Mike Lees was asked why Tennent's is in favour of minimum pricing. I think that the line that Ian McKee took was that pubs should do well out of the proposals because they have been losing a lot to off-sales.

We will start with Mr Clark.

Fergus Clark: I am representing the Society of Independent Brewers, which has 450 members throughout the United Kingdom, 27 of which are in

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Scotland. We represent the vast majority of small brewers in Scotland.

It has been mentioned that our members supply 90 per cent of their products to the on-trade. There is concern that the on-trade is getting hammered by bad press, as people who have gone into pubs having pre-loaded from off-sales have often not been in a fit state to go out. Many pubs are affected by that, although plenty of legislation is in place that can deal with it—that was mentioned earlier.

It would be fair to say that there could be benefits for Society of Independent Brewers members as a result of minimum pricing but, in general, our members sell their products at prices that are way above any of the prices that have been talked about—even 40p, 50p or more. We are concerned that what has been proposed is the thin end of the wedge. Where would the pricing stop? Will we still be looking at the 40p or 50p mark years down the line, or will the price go up to £1.50?

Ian McKee: To what? I am sorry.

Fergus Clark: I said that what has been proposed could be the thin end of the wedge. If the bill is passed, perhaps the price could move years down the line from, for argument's sake, 50p a unit to £1.50 a unit or whatever.

Ian McKee: The price would be £1.30 a unit before you began to suffer, and no one has suggested that level.

Fergus Clark: Nobody is suggesting that at the moment, but we do not know what will happen in future.

The Convener: Is that foreseen?

Fergus Clark: Yes.

The Convener: I will not take any more supplementary questions, as we have to get through stuff. Rhoda Grant's question for Mike Lees was how much he expects his company's market share to increase with minimum pricing.

Mike Lees: I will be honest and say that we have not specifically extrapolated a share gain with minimum pricing, as we see minimum pricing as one of a number of variables that would affect consumption. Those variables include brand image, consumer choice, and what the retailers decided to do in setting prices and promoting products. Therefore, I cannot give a specific answer to your question. However, I would say that competition would increase but we would still be competitive relative to other products and other categories. Obviously, a minimum price of 40p would have an impact on us in the off-trade but it would not have a massive impact on the on-trade, and our business is 50:50 between the two

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markets. We will gain share through different things, such as the brand, its health impact and its image for consumers. Many variables are therefore involved, of which price is only one. Price affects

the level of consumption, but that is relative when we are competing with mainstream products in the same group.

The Convener: That deals with Michael Matheson's question about why you are in favour of minimum pricing. We tend to forget that you have pubs as well.

Mike Lees: We are Scotland's leading brewer and have been around since 1556. We sell one in three pints and are a significant player in the market. Personally, I have been in the business for 32 years. We are committed to Scotland and we welcome sensible moves to ensure that alcohol is enjoyed appropriately. However, we recognise that there is an issue because a minority of consumers in Scotland abuse alcohol. We welcome the fact that the Scottish Parliament has a role to play in addressing that.

We support minimum pricing because we think that it is one part of the solution. It is not a panacea or a silver bullet, but we think that it is one of a range of measures, including education, that can be used together to tackle the issue. Our condition is that minimum pricing is implemented fairly and proportionately. If it is implemented effectively, we think that it will help to reduce the consumption of cheap, high-alcohol-content products, which consumers with problems are more likely to drink. We have therefore come out in favour of minimum pricing as part of a package of measures. On Richard Simpson's point about the level at which we would stop, the measure needs to be proportionate. If minimum pricing got to a ridiculous point, we would not support it. However, who knows what that level would be?

There are others in the industry who support the principle, including both big and small brewers. I believe that, of the 167 written submissions to the committee on the issue, two thirds are in favour of minimum pricing. I therefore believe that minimum pricing is a way of addressing the problem, but the specifics need to be worked out. It is not for me to do that; it is for parliamentarians to decide what is best. However, there is ample evidence that price affects consumption.

The Convener: Thank you—that is helpful.

I return to Ross Finnie's question about why the economic argument should outweigh the health argument, which is tied to the question of the robustness of the evidence on health. I am sorry to ask the panel to give short answers, but we have been over this question quite a bit already and we are pressed for time.

Col 2880

Gavin Hewitt: Let me tackle the very fair question that Mr Finnie asked. First, we are opposed to only one aspect of the bill—minimum pricing. We are broadly supportive of all other aspects of the bill. The Sheffield report shows that the effect of constricting promotions is comparable to that of minimum pricing. I do not need to develop further the arguments about why we oppose minimum pricing, although I echo John Beard's comment that we are at the forefront of industries in Scotland that want to address alcohol abuse here. However, let us address what alcohol abuse is: 80 per cent of the alcohol consumed in Scotland is drunk by 30 per cent of the people. That is where the harm is; it is not across the community, although I accept that there are examples where that is a problem. We need to address harm and get at that 30 per cent, but minimum pricing may not be the answer.

11:15

John Beard: We were asked to give evidence on behalf of Whyte & Mackay, which is precisely what we have done. Part of the committee's task is to weigh up the economic argument versus the health argument. From our perspective, we are dealing with chronic abuse by a minority, but we are trying to solve it with a sledgehammer for the majority. I am not convinced that that will work, and I am not

sure that the bill is clear about which demographic it is targeting.

David Poley: I acknowledge that the issue is complex, and we recognise the good intent behind the proposed measure. In fact, one of our members is in favour of minimum pricing. Overall, however, we are not convinced that minimum pricing will be a fair and effective measure, because although it will try to target drinks that are believed to be favoured by those who drink excessively—

The Convener: Which one of your members is in favour of minimum pricing?

David Poley: Molson Coors.

As I said, although minimum pricing will try to target drinks that are believed to be favoured by those who drink excessively, it is also likely to affect the poorer members of society, because we believe that they are likely to prefer those drinks as well.

The Convener: Thank you all very much for a very long and extremely helpful session.

11:16

Meeting suspended.

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11:22

On resuming—

The Convener: The second panel of witnesses represents the licensed trade and consumer groups. I welcome Liz Macdonald, senior policy officer at Consumer Focus Scotland; John Drummond, chief executive of the Scottish Grocers Federation; Patrick Browne, chief executive of the Scottish Beer and Pub Association; Paul Waterson, chief executive of the Scottish Licensed Trade Association; and Paul Smith, executive director of Noctis—the voice of the night-time economy. I am intrigued.

I think that you heard the previous evidence-taking session, so you know the format. It was a long session, but I am sure that it was useful to you. I invite members to ask questions.

Helen Eadie: I have a question for Patrick Browne. We have not looked very much at the proposal in section 10 for a social responsibility levy on licence holders. I note that Mr Browne gives quite a lengthy response on that in his submission, in which he quotes Fergus Ewing, who is now one of the Scottish Government ministers—being hoist by his own petard is perhaps the way to describe that. Will Patrick Browne explain why his association is against a social responsibility levy?

Patrick Browne (Scottish Beer and Pub Association): The concept of a social responsibility levy was first raised in the Scottish Parliament back in 2005 during the deliberations on the Licensing (Scotland) Bill. Parliament initially included it in that bill but then removed it, I think at stage 3, hence the words from the minister, as he now is.

I do not want to go through all the points that Fergus Ewing made, but they are relevant to the debate that still exists about the principle of a social responsibility levy. We have a major problem with the lack of detail on how the proposed levy would work. The bill seeks to provide enabling powers, so the Scottish Government could come back with detail at a later point. Our main concern is that, given the fundamental nature of the proposal, it should be introduced through primary legislation, so that we can consider how it would work in practice.

More generally, the Licensing (Scotland) Bill was introduced to tackle alcohol misuse and antisocial behaviour and to stop problems related to licensed premises. The concept of a social responsibility levy tries to turn that basic principle on its head. It suggests that it is somehow acceptable to have a limited amount of antisocial behaviour as long as you pay to have it cleaned up. We think that that is fundamentally wrong. Communities have a right to be protected if there

Col 2882

are problems. That is the main reason why we oppose the principle of a social responsibility levy.

Helen Eadie: Do you have any comments on the letter from the Law Society of Scotland that was spoken about when the Licensing (Scotland) Bill was discussed and which raised questions about how to enforce the law? At that time, Fergus Ewing said that it would be punitive to go down the route of a social responsibility levy,

"as public house premises and clubs pay the Exchequer substantial amounts of money through general taxation and, in particular, through non-domestic rates."

He continued:

"Licensed premises pay high levels of non-domestic rates, and it is right that they should make that contribution, but if this extra cost is levied, premises will have to pay an extra tax ... which is a tax too far."—[*Official Report*, 16 November 2005; c 20731.]

Do you want to add anything on the issue of enforceability?

Patrick Browne: There are major difficulties with trying to identify problem premises in the context of the night-time economy. Licensing boards, through the new licensing standards officers, for the first time have an opportunity to monitor the performance of licensed premises much more closely. Under the Licensing (Scotland) Act 2005, boards have more powers than ever before to address issues and to close down premises that cause problems. The boards already have the vehicle of the 2005 act to address many of the issues that the social responsibility levy perhaps seeks to address.

On the financial aspects, the industry already pays duty and VAT as well as national insurance contributions on behalf of employees. We also contribute through business rates. Increasingly, we are being called on to contribute to business improvement districts, which are another mechanism through which we can address some of the issues. The industry is being asked to address the issues in a range of ways and we are happy to support those. Our concern is that a social responsibility levy would be another one and that it would be too much.

Paul Smith (Noctis): An awful lot of premises do a great deal to ensure that they are well run, safe and good places for people to go to. They go above and beyond the minimum that might be set in a social responsibility levy. One argument is that, if a social responsibility levy was set, the minimum would be all that you would get, and it would not encourage responsible operators to go above and beyond the minimum to create the best possible environment for their customers.

Paul Waterson (Scottish Licensed Trade Association): If somebody is charged with and convicted of a contravention of the Licensing

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(Scotland) Act 2005, it is reasonable to expect them to pay some form of levy. However, to apply a levy throughout the trade would simply be unfair on responsible operators.

John Drummond (Scottish Grocers Federation): I echo Mr Waterson's comments. A general or blanket levy would be seen as unfair and unreasonable. Although we are opposed to a social responsibility levy generally, if any such levy were implemented, it might be acceptable if it were fault based and levied against those who transgressed the law.

Helen Eadie: I have a question on a point of detail that is raised in Patrick Browne's submission. The submission refers to section 10(3)(b) of the bill, which refers to a social responsibility levy for expenditure

"which the authority considers necessary or desirable with a view to remedying or mitigating any adverse impact on those objectives attributable (directly or indirectly) to the operation of the businesses of relevant licence-holders in the authority's area."

The submission comments:

"We would seek clarification as to when an '*adverse impact*' can possibly be '*attributable*' '*indirectly*'? We would suggest that an '*adverse impact*' should only be '*attributable*' '*directly*', and as such we would suggest that this part of the Section perhaps requires to be amended for the sake of clarity."

Can Patrick Browne perhaps expand on that point?

11:30

Patrick Browne: There seems, to me at least—perhaps it makes a bit more sense to parliamentarians—to be a contradiction in the language. It is difficult to understand how something can be attributable indirectly. We are concerned that, if that wording remains, the scope of a social responsibility levy could be broadened and it could become something that is much wider than is perhaps the current intention. We wanted to highlight that wording to try to get some clarification or even assurances from the Scottish Government when it gives evidence.

The Convener: That is a fair point.

We will move on. I have Ross Finnie, Rhoda Grant, Ian McKee and Mary Scanlon, in that order, on my A list.

Ross Finnie: My question is essentially directed to Mr Drummond, but I welcome comments from other panel members.

I want to understand the starting point of the Scottish Grocers Federation's approach to the substance of the proposed legislation. Paragraph 4 of the federation's written submission expresses concern about the Government

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"restricting companies' ability to compete".

The federation argues that such a restriction would be very deleterious to Scotland, which perhaps suggests that we should not have any measures that are specific to Scotland. In addition, paragraph 8 of the submission states:

"Minimum pricing challenges the concept of a 'free market place'".

As a Liberal Democrat, I am quite attracted to the idea that we should not interfere with the free

market, but is the federation suggesting that alcohol is an entirely trouble-free product that may be likened to any other product?

The submission argues that minimum pricing would have no benefit for the vast majority, who would simply be penalised. How does the federation come to that conclusion? Would there be no benefit from reducing the health bill for alcohol harm or from reducing the numbers who die from liver sclerosis? Would there be no benefit to wider society from having fewer people with brain damage caused by alcohol? I just want to be clear about the basis on which that argument is being advanced.

John Drummond: We certainly did not intend such an inference to be drawn from our submission. We understand totally why the Government wants to introduce a minimum retail price and other measures to control the consumption of alcohol. We share the view that some people misuse alcohol and that there is a problem.

On minimum pricing, we are instinctively opposed to any Government interference with what ought to be a free-market situation—

Ross Finnie: I am sorry to be rude, but should alcohol therefore be regarded as an entirely normal product that may be likened to others in a free market?

John Drummond: The sale of alcohol cannot be treated in the same way as the sale of other product groups because, for a start, it requires a licence. Alcohol is a licensed product, so we are well aware that alcohol is different. However, in terms of the mechanics of trading, a free-market situation should generally apply

We are concerned that minimum pricing could have some unintended consequences, which we have noted in our submission. I will not labour the point—it was touched on earlier this morning—but those could include an extension of cross-border trading, the advancement of illicit trade through the trading operations of white van man and increased internet trading of products dispatched from south of the border. All those would impact on small stores, particularly in the south of Scotland and conceivably in central Scotland. Communities

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could be affected if local stores were put into jeopardy as a result of the loss of business.

Liz Macdonald (Consumer Focus Scotland): As a consumer organisation, our normal position is that markets that work well result in competition, fair prices and so on. It might seem surprising, therefore, that we believe that it is sometimes justifiable to intervene in the market, but that is the position that we have taken in this case. We have done so because of the scale of the evidence of the social costs of alcohol and its effects on individuals and communities. The scale of the harm that is caused by alcohol appears to be directly related to the fact that the price of alcohol has fallen significantly in real terms.

Paul Smith: The price of alcohol has not dropped significantly in all sectors. Some evidence was produced earlier that the price of alcohol in the on-trade has increased in the past 20 years; it is the off-trade price of alcohol that has dropped considerably. Unfortunately, there is a link between the off-trade and the on-trade, in the sense that, with the rise and rise of pre-loading, prices in the off-trade are affecting prices in the on-trade. As long as there is such a massive difference between off-trade and on-trade pricing, people will be encouraged to pre-load.

Paul Waterson: That is a crucial part of the argument. We are not in a free-market situation. We are bounded by legislation. The people who are represented by the members of the previous panel sometimes forget that. Under the Licensing (Scotland) Act 2005, we have licensing objectives, and

everything should relate back to those objectives. That is why the issue of minimum pricing must be the cornerstone of our efforts in this area. We must get some form of base price in place so that responsible operators are aware of where the boundaries are.

Price is being used to create a new market for alcohol, and the growth in the off-trade—specifically in supermarkets—is based around price. That is the one issue that we now have to get involved in. Licensing laws are there to balance the needs of business with the need for control. We must bring in minimum pricing. Without that, all the other good work that is being done will get lost because alcohol is frequently sold below cost or at prices that mean that it is cheaper than water.

John Drummond: There is a danger that, in concentrating on minimum pricing, we will forget the other aspects of the bill. I am sure that that is not a criticism that I could levy at the Health and Sport Committee, but it is true of the general debate.

I link Mr Waterson's comments to the measures that are proposed around promotional activity. We

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must remember that, if the policy of minimum pricing fails to become law—I know that there is political opposition to it—we must reconsider the measures that are proposed under the promotions heading. I say that because, in the absence of some mechanism to control pricing, retail stores will be able to conduct deep discounting to an even greater extent than they can at present, which would be counterproductive.

Ross Finnie: Perversely, that is an argument in favour of minimum pricing being used to set a floor.

John Drummond: There should be some mechanism that determines a floor price.

Michael Matheson: I want to clarify the Scottish Grocers Federation's position on the matter. From what Mr Drummond has said in response to Ross Finnie's questions, I take it that the federation is not in favour of a mechanism that interferes with the free market around alcohol. I confess that I do not see there being a free market for the very reason that Mr Drummond outlined—it is a licensed product. We have also heard from Mr Waterson that it is not a free market because of the way in which pricing operates. What we seem to have, especially in the off-trade, is a free pricing system in which people can sell alcohol literally as cheaply as they like. Are you in favour of that approach? Should there be no limits whatever on the pricing of alcohol?

John Drummond: I did not say that. I said that there ought to be some price mechanism to control the floor price. As was mentioned earlier, something around duty plus VAT could be considered.

Michael Matheson: Perhaps I am confused. You said that you do not like any interference in the free market.

John Drummond: That was a general comment. In the specific case of alcohol, we would welcome some pricing mechanism to control the floor price.

Michael Matheson: What should that mechanism be?

John Drummond: I have just suggested that there should be a definition of cost price as duty plus VAT, which would at least give us a starting point. The cost price to Tesco would be totally different from the cost price to Spar, for example; therefore, it would be impossible to agree on a cost price—competition law might not allow it. However, some form of definition by the Scottish Parliament along the lines of duty plus VAT, plus perhaps consideration of content, would give us at least an indication.

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Michael Matheson: Your written submission raises concerns around minimum pricing. What

modelling have you done to evaluate the impact that your definition of cost price would have on the free market?

John Drummond: We have done no modelling whatever; we have just taken comments from members, which I am trying to reflect in a consensual way.

Ian McKee: I, too, am finding it difficult to follow the thread of your argument. I would be grateful if you could help me. Speaking purely about minimum pricing, in paragraph 5 of your written submission you say that the measures in the bill would have a damaging effect on small retailers in particular. However, in paragraph 6, in speaking about the advantages, you say:

"An introduction of a minimum price would have a limited impact on small shops that are not able to offer very low cost promotions."

You point out that

"it has become common practice for supermarkets to loss lead on alcohol as a means of driving up foot fall and increasing market share."

Again, that harms small shopkeepers.

The committee has received a letter from the joint proprietors of one of your members, the Broadway Convenience Store in Oxfords, Edinburgh. The owners of the convenience store, which is situated near two supermarkets, tell us:

"the giant multiples ... sell beers and spirits more cheaply than I can buy them at my wholesaler, and this is clearly a tool to draw customers in, in order to profit from ancillary sales."

They continue:

"The fact that supermarkets are against the proposal, despite the extra profit they could potentially make, demonstrates that they believe that this under-pricing policy makes them more money in the long run".

They urge the committee strongly

"to recommend minimum pricing as a starting point".

I subsequently discovered that, although stores such as the Broadway Convenience Store sell certain grocery products such as milk and bread more cheaply than the supermarkets, the supermarkets use cheap alcohol to attract people who then buy their groceries while they are buying the alcohol. Therefore, it seems to be against the interests of your members to argue against minimum pricing. That is what is suggested by the evidence from people who, I believe, are members of your federation.

John Drummond: They are indeed our members. Mr Williams is an active member and I am well aware of his opinions and views. However, as I said earlier, I am trying to reflect all our members' views. Although some are in favour of minimum pricing, the majority are against the

Col 2888

principle of Government intervention in that aspect of trading, which I must reflect. I have detected that our members would be willing to accept some kind of price mechanism in order to prevent the difference and disparity that exists between the activities of supermarkets and the activities of the businesses that members of the federation run.

11:45

Ian McKee: But you have already agreed that, with some of the mechanisms that you suggest, the supermarkets would win hands down, because they could demonstrate lower costs than the small shopkeeper.

John Drummond: In the absence of minimum pricing, that would be the case, but I am arguing for some other kind of price mechanism to help to control that.

Ian McKee: You think that another price mechanism would protect the small shopkeeper from such depredations.

John Drummond: There might well be such a mechanism, along the lines that I described in relation to determining a floor price. I am sorry if that sounds contradictory. Perhaps we need further discussions.

The Convener: I appreciate that you represent a spectrum of opinion and that you are trying to summarise it, which perhaps put you in a difficult position in some respects.

Does Ian McKee want to ask another question?

Ian McKee: I will forgo that.

The Convener: Goodness me. You have a gold star.

Rhoda Grant: My question is about minimum pricing and the social responsibility levy. It seems to me that the on-trade is keen on the minimum price but not on the social responsibility levy. There is obviously a degree of self-interest there. It has also been argued that it is safer to drink in on-trade premises.

Last weekend, I was out for a meal. I came out into the town centre, which was like a war zone. People were very drunk—it was not late—and they were obviously being served in pubs. Nothing would have induced me to go into one of those pubs, just because of what I saw as people moved between them.

How can we ensure that the current law is implemented? I ask because I do not think that it is. We heard figures from the first panel on how many people had been charged with selling to under-18s and how many had been charged with selling to people who were obviously already drunk. If what I experienced at the weekend is an

Col 2889

example of what happens normally, lots of people are clearly breaking that law. How do we ensure that people enforce it? In a way, breaking that law is counterproductive, because if I had not had that experience when I left the restaurant, I might have gone into one of those pubs for a drink. I felt that I had to get out of there, because it felt like a very unsafe environment.

The Convener: I am delighted to say that Rhoda is not going to name the place.

Rhoda Grant: There were loads of them; it was not just one place.

The Convener: I meant that the city or town is not being named and shamed, because what you experienced probably happens in lots of places.

Paul Waterson: You can argue about whether those people were drinking in pubs or drinking before they came out and how many drinks they had in the pubs. The trouble with the legislation is that if you ask 10 different people, they will give you 10 different definitions of a drunk. It is very difficult for the police to know whether someone got drunk in a pub and was served more alcohol. They might have been drinking before they came in. The pub might be the last place that they were in.

However, you cannot argue with the fact that the off-trade now accounts for two thirds of the alcohol that is sold in Scotland—the big four supermarkets account for the vast majority. We have a problem with people drinking at home and outwith pubs. The police have highlighted that more and more problems are occurring in houses and so on.

We know from other jurisdictions that having a big off-trade drinking population creates problems. Our argument is that that problem has been created and has been accelerated over the past 10 to 15 years by price. The figures show that the Licensing (Scotland) Act 2005 takes care of what is happening in pubs and entertainment venues, because all servers of alcohol must be trained—that will take time to kick in. If you walk about town centres, you will see doormen, whose job it is to keep order and to keep people out.

We are trying to do our best. We are not always perfect—far from it—and we do not claim that we are, but there is now an element of people being seduced by price into drinking more than they would normally. That is happening all the time, and it makes our job at 9, 10 and 11 o'clock on a Saturday night very difficult because people arrive at our premises having drunk excessive amounts of alcohol. They then go home later and have more alcohol in the house, which is a problem.

The Convener: Why are those people being served if they have been consuming substantial

Col 2890

amounts? There is a statutory duty. Is it not a criminal offence to serve someone who is drunk?

Paul Waterson: Absolutely—but they are not always in that state when they arrive in the place. They might have one or two drinks and then they are drunk. We work with the authorities to stop that, but it is a difficult situation. People coming out late, having drunk at home beforehand, is a relatively new phenomenon, and it makes our job difficult. Nobody is saying that the situation is perfect.

The issue is built around price. At weddings and similar functions at hotels, for instance, people are bringing in alcohol and going up to the bedrooms to drink. They do not go to the bar, so we lose control. That is based on price. We have the same problem in nightclubs, when people take in drinks. There are stewards and so on, but we still find that people do that.

Rhoda Grant: If your members implemented the law as it should be implemented, those people who pre-load at home would stop doing it because they would be refused entry into the nightclubs and pubs for being drunk. Even if they come in, appearing to be sober, to buy one drink, you cannot say, "Well, they obviously got drunk on someone else's premises, so we are entitled to sell them as much as would get them drunk." If the law was implemented and policed properly, surely it would put a stop to people pre-loading, if they wanted to socialise. It would also encourage more people to go into

pubs and clubs at night, which many are put off doing at the moment.

Paul Waterson: There is a general realisation about the figures on where the alcohol is coming from. That is a statement of fact. The amount that is being drunk in public houses is not really the problem. We have managed over a long period to stop a lot of the problems in pubs.

If you are saying that the police should enforce the law even more, I urge you to go to Glasgow, where they are in premises all the time. Police forces all over the country are in premises all the time, and a strict regime is in place. We welcome that. We do not want drunk people in pubs—I can assure you of that.

The Convener: I want to move on from enforcement, although I must admit that I put my toe in that water, too. We are really talking about whether people are pre-loading.

Rhoda Grant: It is a question of the social responsibility levy, convener.

The Convener: That is true.

Rhoda Grant: It would be better if there were enough police to sit and watch what the pubs are doing, but there are not enough, to be frank. They are out on the street, trying to corral people who

Col 2891

are very drunk and falling about, and to get them into taxis and home so that they do not do themselves damage.

If there was a social responsibility levy on the pubs that cause the problem—they can be spotted as they are often all in the same area—that would pay for additional policing and ensure that the pubs implement the law. It should not be a choice; we are talking about a law. The pubs who serve people who are drunk are breaking the law, but that does not seem to be being treated with any degree of seriousness.

Paul Waterson: The chief constable of Strathclyde Police is on record as saying that he wants more people to drink in pubs because he believes that pubs are a better-controlled environment. Are you seriously saying that, if we pay doormen to prevent people who are drunk from coming into our pubs and those people wander into a place three doors up, both places should pay a social responsibility fee? That would be totally unfair.

The Convener: I think that what we are saying is that, if the specific premises could be identified, the social responsibility levy could be imposed on them. Do you agree that that would be appropriate? Your good members would not have the fee levied on them, and it would discourage the others who were not so good.

Paul Waterson: Absolutely.

Patrick Browne: It is much simpler than that: the law exists and should be enforced. I am quite sceptical about the claim that the police do not have enough resources to enforce the law. One of our members recently indicated that over the course of three or four hours one Saturday evening they were visited by the licensing board, licensing standards officers, the Security Industry Authority and the licensing police. This is not necessarily about resources.

Another issue that has arisen over the past two or three years has been test purchasing of alcohol for underage sales. The police are now quite open about that, saying that they have put a lid on the problem and have dealt with the offenders and that the issue now is proxy selling. Police activity

should be targeted and any offences that are detected should be followed up with prosecutions. However, under the 2005 act, boards have more power than ever to sanction licences. If the police tell them that there is a problem with a particular premises, they can deal with it by, for example, imposing additional conditions. The problem is that the boards do not seem to have a full grasp of the 2005 act and are still busy issuing to applicants premises licences that were granted 12 or 18 months ago. That is simply unacceptable.

Col 2892

Mary Scanlon: Although my question is directed at the Scottish Grocers Federation, it also applies to pubs throughout Scotland. If I can move things up to the Highlands and Islands—

The Convener: Now there is a surprise.

Mary Scanlon: I can tell you that the white van man gets further north than the Borders.

The Scottish Grocers Federation refers in its submission to

"the closure of small shops"

And suggests with regard to promotional material that

"These restrictions are an anti competitive blunt instrument and will place small shops at a greater disadvantage",

but its support of a minimum unit price seems to indicate that it is quite happy for quite a lot of small shops to be closed. That gives me serious concern. It is not just a matter of promotional material or the white van man. We have heard that the greatest growth in alcohol sales has been through the internet, we have heard about cross-border sales, and we have heard about the social responsibility levy, even with the tax and non-domestic rates that have to be paid. In the Highlands and Islands petrol stations, shops and post offices have had to close. There is no doubt that the alcohol trade can be fairly lucrative, especially if there is nothing else in a 100-mile radius, and can keep places, including pubs, open. After all, in the Highlands a pub is more than just a pub—it almost like the new post office. As I say, I am concerned by your support for a minimum unit price which, by your own admission, would close small shops and have "a detrimental effect" on small communities throughout Scotland.

John Drummond: Thank you, Ms Scanlon. We are—

The Convener: That thanks did not sound heartfelt.

John Drummond: Did it not? Sorry. Thanks for the question.

Mary Scanlon: Try again.

John Drummond: Okay. Could I address your comments, please?

It is certainly not our intention to propose measures that will close stores throughout Scotland. We—and, I am sure, the communities themselves—very much value those stores. Indeed, our recent extreme weather has only heightened the importance of small stores in communities throughout Scotland.

Actually, we have said that we do not want minimum pricing; instead, we want a price mechanism

that helps such stores to survive. If

Col 2893

there is no minimum pricing and the promotion provisions remain as they are in the bill, price will be the only way for stores and retailers in general to promote the product. That will only exacerbate the problem of the difference between the prices that are charged in supermarkets and in small retail stores. We want a mechanism that reduces that effect.

12:00

Mary Scanlon: Only one mechanism is before us today—the bill provides for minimum pricing and restrictions on promotions and promotional material. You are in favour of minimum pricing—despite everything else that goes with it, including the closure of stores—but you are concerned about the impact on small independent convenience stores of restrictions on promotional material. There is not a single Highland glen that the Tesco van does not visit regularly, but that is different from having a local hub and store. I am seriously concerned about not just the future but the sustainability of pubs and shops in communities in the Highlands, given what you are predicting.

John Drummond: We are equally concerned. It is still not clear what is meant by advertising and promotional material, despite the fact that we have asked Government officials to specify that. We must live with that, but it is unsatisfactory at this stage of proceedings.

The majority of convenience stores use promotional leaflets and window bills to advertise what they have on offer—not just alcohol, but all their special offers. If that is placed in jeopardy, small stores will be affected. In most instances, promotional leaflets and window bills are the only means of advertising that they have; they cannot afford to advertise on radio, television and so on. If the Scottish Government wishes to impose a ban on advertising, it should apply to all forms of advertising or to none.

Mary Scanlon: Has the licensed trade done any work to predict the effect of the bill as a whole on small pubs, and hotels with licences in remote areas?

The Convener: I make it clear that we cannot ban advertising—that is a reserved matter. Promotions may serve as a kind of advertising, but there is a legal distinction between promotion and advertising.

John Drummond: As long as a ban applies to all forms of advertising, that is fine.

The Convener: As I made clear, advertising per se is reserved.

Col 2894

John Drummond: I understand what you are saying, but certain aspects of what our stores do may fall into an area of devolved responsibility.

The Convener: I understand.

Paul Waterson: At the moment, rural public houses are in a difficult situation. Many villages have lost their shops, are losing their post offices and will now lose their pubs. In Britain, 53 pubs close each week; in Scotland, the figure is probably two or three. There are a number of factors, but there is no doubt that the biggest is price. The costs that are associated with running pubs are high, but prices are going down. You do not have to be Einstein to work out what happens in such situations, when pubs are trying to compete. If we want to hold on to the community centres that pubs often are, we need to attack the problem of loss leading and alcohol being sold cheaply.

Mary Scanlon: In its submission, Consumer Focus Scotland mentions three times that there is evidence that introducing a minimum price would have an effect on binge drinkers. Given that the Sheffield study did not look at the effect of minimum prices on ages, income groups or binge drinkers, do you have evidence that may be helpful to the committee in that respect? I have not seen any.

Liz Macdonald: Our position is that the evidence in general—I am not talking about the Sheffield study, which built a model based on the evidence—clearly links price and availability with consumption. From that, it is logical to deduce that people who binge drink and drink considerable quantities of alcohol are more likely—

Mary Scanlon: So you have not focused on binge drinking; you have just focused on overall consumption.

Liz Macdonald: Yes.

Mary Scanlon: That is the case even though you have predicted that minimum pricing would have an impact on binge drinkers.

Liz Macdonald: Yes. That is just a deduction from the general evidence.

Mary Scanlon: If there had been an evidence base for that, I would have been interested in it, but there is not.

Liz Macdonald: We have looked at work that the Joseph Rowntree Foundation has done on patterns of drinking and ways of changing behaviour. It has unpicked some of the evidence on how people drink and how general patterns of consumption can conceal interesting pockets of binge drinking among particular groups.

The Convener: Ian McKee has a supplementary.

Col 2895

Ian McKee: Yes, I have a supplementary for Mr Drummond on the threat to small communities and their pubs, which Mary Scanlon raised. My experience of visiting the Highlands is perhaps different from Mary Scanlon's, but I know of small shops and pubs in remote communities that are really struggling to survive. People in those areas might buy the odd bottle of alcohol in an emergency, but they will normally drive to somewhere such as Fort William to stock up at Morrison's or Tesco's, thereby denying the local shops and pubs the custom that might be necessary to keep them going. From that point of view, I would have thought that MUP legislation that would force supermarkets to put up the price of very cheap alcohol would discourage people from making such journeys and would encourage them to buy more in local shops. In other words, it would help to keep communities going rather than put them at risk. Will you amplify that, please?

John Drummond: The position that you describe is fairly understandable, but I do not represent only stores in rural and remote areas. My earlier comments still apply.

The Convener: Was there a difference between what your members in rural areas said and what your members in urban areas said? Was there a divide?

John Drummond: No. Our member stores in rural areas tend to be larger than the type that Mr McKee described, so we are perhaps not comparing apples with apples.

The Convener: We move from apples to a question by Michael Matheson.

Michael Matheson: The apple of the convener's eye.

I turn to the submission that we received from the Scottish Licensed Trade Association. There are a few points that I want to take up with Mr Waterson.

As you may have heard, some of the producers asked that a mechanism other than minimum pricing, such as a duty-plus-VAT approach, be considered. We have heard from Mr Drummond that a mechanism that would create a floor price for alcohol should perhaps be considered. I note that in the fifth paragraph on page 2 of your submission, you are quite dismissive of the idea of using taxation to deal with the price of alcohol. Will you expand on that? You suggest that some of the people who advocate the use of taxation

"do not understand how the industry works."

I would certainly find it helpful to have a better understanding of that. Could you provide an explanation?

Col 2896

Paul Waterson: If there is an increase in duty, many retailers, especially the bigger ones, will simply not pass it on. They will say to the people from whom they buy their wares, "You'll pay that. We won't put it on," so the price remains the same. They have the power in the market to do that because they buy massive amounts. Small operators have to pass on duty increases; they cannot absorb them in the way that supermarkets do. In other words, an increase in duty means that the difference in price between the two parts of the business becomes greater. It is as simple as that. After the most recent increase in duty, there were duty-buster adverts, in which retailers openly said that they were not adding the increase. An increase in duty plays into the hands of the big operators. Having a floor of duty plus VAT would not work because alcohol is a loss-leader for the big retailers anyway, so all that they would do is take the duty plus the VAT and add a penny to it to make the price.

The issue is, in essence, whether alcohol should be used as a loss leader to get people into stores. When people go to Morrisons—or any other supermarket—in a rural area to stock up on alcohol, they also buy everything else that they need from there. In the basket of goods, the alcohol is the carrot to get people into the store so that the retailer can make money from staple products.

Using alcohol in that way goes against responsible retailing, according to any licensing act that I have ever read. Pubs cannot operate in that way, because, although we can serve food, we usually make our money from alcohol.

Michael Matheson: Can you help me to understand the issue further, in terms of pounds and pence? You have said that alcohol is sold as a loss leader at present. If a system of duty plus VAT was introduced, and the retailers added 1p, as you suggested they would, what would be the cost of a bottle of something that is presently a loss leader? What difference would it make to the amount that a person would pay for that product?

Paul Waterson: I would have to get you the figures for a system of duty plus VAT. It would not work in principle, because retailers would simply add a penny so that they could still use alcohol as the carrot to get people in. That is the problem, and it is irresponsible behaviour: the retailers are effectively saying, "There is a serious problem with the way we drink in Scotland, so let's exploit it." It is now exploited to the extent that it is out of control through pricing in that way, which is difficult for us as responsible operators to take in.

The Convener: I take from your comments that if any format other than minimum pricing—the duty-plus-VAT approach, for example—was

Col 2897

introduced, all that would happen is that the supermarkets would absorb the costs.

Paul Waterson: Yes.

The Convener: The small shops, in the main, could not absorb it. Is that broadly the case?

Paul Waterson: People get worried when there is talk of setting a minimum price, for the reasons that I mentioned earlier with regard to who sets it and at what level. For the past 20 years, I have asked what the alternative is, but no one has ever come up with one that works. That is why we support minimum pricing: there is no workable alternative.

The Convener: Mr Smith, did you want to say something?

Paul Smith: To add to Paul Waterson's comments, duty plus VAT would affect hardly any products at the moment. It is an attractive option, but it would not make any difference.

Michael Matheson: That is helpful. I turn to the section of the SLTA's submission that sets out some of your concerns about a social responsibility fee, to which you have already referred this morning.

Your submission raises a specific issue of which I was previously unaware, with regard to the way in which the on-trade and the off-trade pay their rates. There is a clear disparity in the way in which rates are presently calculated, which you feel disproportionately benefits the supermarkets. Can you expand on that, to give us a clearer understanding of how it fits in with the notion of a social responsibility fee? It is a new issue for me.

Paul Waterson: Almost uniquely, pubs and other on-trade premises are rated on turnover—it is unusual and is based on historic practices. Our rateable values—I will try to simplify the matter a wee bit—are usually about 8 or 9 per cent of our total turnover, whereas other types of shops are rated on square footage and rental evidence, which means that very often, from what I can gather, supermarkets' rateable values are around 1 or 2 per cent of their turnover. Supermarkets should be rated in the same way as we are—on their alcohol sales only. That would bring in tens of millions of pounds for the Government coffers to offset policing costs and a lot of other things, which would be especially beneficial at present.

12:15

We are looking for the rates burden to be balanced equally among all those who sell alcohol. That is definitely not the case now. Yesterday, at our conference, we were given an example of one pub with a rateable value of about £130,000 and the rateable value of the supermarket next door is

Col 2898

about £400,000. As you can imagine, their incomes are massively different: the supermarket's income is 50 or 60 times more. It is a very unfair burden on pubs. That is why, when we are asked about social responsibility fees—a lot of people do not know and understand that we are rated in that way—

The Convener: That is news to me—it is extremely interesting.

Paul Waterson: We are paying far more for services than any other businesses; garages are the only other businesses that are, to a certain extent, rated like us. Public houses are rated in that way and the figure is 9 per cent, which is a massive burden on us.

Michael Matheson: Is your view that, in trying to address this issue with supermarkets, their rateable value should be based purely on their turnover in alcohol in the particular establishment?

Paul Waterson: There are other elements, but if they are selling alcohol, they should be rated in the same way as others who sell alcohol. The rates would be about 9 per cent of the alcohol element. If we want to base their rates on the alcohol part, that would be fair enough.

Michael Matheson: Thank you. That is helpful.

Dr Simpson: Can I come in on that?

The Convener: You are next anyway, so you can come in on that point and go on to your next question.

Dr Simpson: Just for clarification, are the rates for the on-trade calculated on the volume of alcohol sold or the amount of money that goes through the pub? What are they based on?

Paul Waterson: It is the turnover of the pub.

Dr Simpson: The financial turnover?

Paul Waterson: The total turnover.

Dr Simpson: So you declare what your income is for that year and you are taxed accordingly.

Paul Waterson: The assessors know our income. It is split between food and alcohol, but it basically works out at 9 per cent of our turnover.

Dr Simpson: That is interesting. There would, of course, still be a differential with supermarkets, because their selling price is a lot cheaper, but their volume is a lot higher.

Paul Waterson: It is the volume.

Dr Simpson: So it still would not be—if it was volumes of alcohol rather than—

Paul Waterson: Sorry, I say volume, but I mean the turnover of alcohol, so it would be the

Col 2899

supermarket's turnover in alcohol sales through the tills. That is the rateable value.

Dr Simpson: It is cash in the till, not volume of alcohol.

Paul Waterson: Yes.

Dr Simpson: I have two quick questions, or at least I hope that they are quick. The first is for Consumer Focus Scotland. The evidence that we have received from you is a shortened version of the big report that was produced, which was much more definitively in favour of minimum pricing. In

this shorter version you have, if I may say so, drawn back a little bit. I have two questions for you. First, the last page of your submission raises significant concerns about low-income groups. Are you surprised that the Government has not asked the University of Sheffield to study the effects on different income groups? I ask that question in particular in the light of the CEBR report, which contains a graph that shows that a 40p minimum price would affect the consumption of only the lower three income deciles. Everyone with an income greater than the lower three deciles would therefore not be affected by a minimum price, so your concerns about lower income groups are well expressed.

Secondly, page 3 of your evidence states:

"There is strong evidence to suggest that young drinkers, binge drinkers and harmful drinkers tend to choose cheaper drinks."

I accept that that is the case for young drinkers, because there is evidence for it, and I accept that it is the case for harmful drinkers, but I have seen no evidence on binge drinkers. In addition, the Sheffield report says that for the 18 to 25-year-old group the effect of a minimum unit price of 40p would be to reduce consumption by only 0.7 per cent. The binge drinking and excessive and increasing drinking in that age group, which is always the hardest-drinking group anyway, are of considerable concern. Do you have any comments on those two points?

Liz Macdonald: On the first point, in relation to low income, you commented on the difference between our earlier paper and the evidence that we have given to the committee. In the earlier paper we spelled out the pros and cons of a minimum price. One of our concerns—it is an obvious concern for a consumer organisation—is the impact that minimum pricing would have on low-income consumers, and we have drawn attention to the possible impact on those on moderate incomes who happen to drink the cheaper products. However, it is not quite as simple as that. I know that you have already had a lot of evidence from the health lobby about how low-income communities suffer the greatest ill effects—there are much higher rates of liver

Col 2900

disease in deprived communities, for example—so you also have to bear in mind the fact that people on a low income stand to benefit from reduced levels of social harm caused by alcohol.

As a consumer organisation, we also caution against making assumptions about what people drink and assuming that low-income consumers always buy the value band. If a moderate drinker who lives on a low income buys a bottle of whisky at Christmas, they might decide to buy a bottle of Grouse rather than Tesco's cheapest. That demonstrates that it is difficult to determine the impact of minimum pricing on low-income consumers. It is possible that minimum pricing will have the impact that we have discussed, so I agree that it would have been useful if the Sheffield study had provided more data about the impact on low-income consumers.

Dr Simpson: Of course, the opposite might be true, in that hazardous drinkers who are well off will not necessarily drink cheap alcohol. Harmful drinkers are a different category; they are 7 per cent of the population, drink a lot of cheap alcohol and would be affected. I am really concerned about hazardous drinkers.

Noctis says in its submission that, apart from a few of its producer members, it is in favour of minimum pricing. However, it also says that, once the price is set, it should not be increased at regular intervals. One of the problems is that the price of alcohol has drifted cheaper and cheaper over the years. Some countries, such as Australia, have introduced a regulator whereby, every six months, the price goes up according to inflation so that it never gets cheaper in relation to the retail prices index or the consumer prices index. I am interested that on the one hand Noctis is in favour, but on the other hand it says that, once we have introduced a minimum unit price, we should just

leave it alone.

Paul Smith: If we say that, it is not exactly what we mean. We mean that if the minimum price is set at 50p when it comes into force at some point in the next few months, we do not want it to be £1.50 at some point in the next year or so.

There are good reasons why minimum pricing could work, such as reducing the differential between the on-trade and off-trade, but we would be concerned about alcohol becoming massively expensive. We are talking about checks and balances in the arrangement. For example, social reference pricing in Canada seems to work reasonably well, but proper checks and balances are in place to ensure that it does so. A few of the prohibitionist voices are very pro minimum pricing as well, but they would want to push the 50p per-unit price fairly rapidly up to £1.50 a unit. Even though we are in favour of minimum pricing, we

Col 2901

want to ensure that the minimum unit price is not increased weekly, monthly or quarterly.

Dr Simpson: I think that the majority of the public health specialists said that the price should be 60p per unit.

The Convener: Paul Smith has made clear his position. Time presses. Helen Eadie will ask the last question to this panel of witnesses and then we will have a little break.

Helen Eadie: The danger of proposing a measure as controversial as minimum pricing is that a range of issues that are equally important do not get the focus that they should get. In that context, I turn again to Patrick Browne's paper, which discusses the variation of conditions for premises licences under section 9. My concern is that a proposal has been put before us about which the paper says:

"there appears to be a lack of clarity as to what the nature of these Regulations will be and when they will be tabled"

by the Scottish Government. My particular concern is about European law and the right to appeal. Could you discuss that further? That is a concern for all of us—we all believe that people should have a right to appeal.

Patrick Browne: Section 9 contains what is potentially one of the biggest long-term impacts of the bill on the trade. There is a principle whereby if a board wishes to change the license conditions of a premises, it has to convene a hearing. Representations are made at the hearing, then the board reaches a decision, which is subject to subsequent appeal, as required. Our concern with section 9 is that it would give boards a blanket power to introduce potentially major changes to people's licences without holding hearings. As our paper mentions, the only recourse would then be by way of judicial review. Our association has had to pursue a couple of judicial reviews over the past few years. Even if we win in a judicial review, our costs are between £10,000 and £15,000.

The Convener: The point is well made. The point about the right to appeal is a good marker to put down with regard to whether the measure is compliant with the European convention on human rights. There should be a right to a fair hearing if there is a variation. You are saying that variations could be made unilaterally.

Patrick Browne: It would be very difficult for any individual licensee to pay out £15,000 to challenge the decision of a board to introduce new conditions, even if the licensee won. Although judicial review might be an option, it will not be available in practical terms, as people will not be able to afford to

pursue it.

Col 2902

The Convener: I will pick up on Helen Eadie's point about section 9, which begins:

"A Licensing Board may ... make a variation of the conditions to which a premises licence in respect of licensed premises within its area is subject."

Would the licensee not appear before the board as the variation was being considered? I am not clear about what would happen.

Patrick Browne: My understanding of the provision is that it would allow a board to impose a blanket change of conditions throughout all premises in its area without having to hold a hearing. The board would meet and choose to add certain conditions to everybody's licence, and it would proceed on that basis using that provision—if the bill is passed.

The Convener: That is an interesting point to put to the Government.

Helen Eadie: I declare an interest: my husband is a member of a licensing board.

As I understand it, the change in the law came into effect only in September 2009. The impact of many of the changes that have been made has not worked its way through the system. It is a matter of concern that different changes could be made by different boards in different areas of Scotland. That might be good in some ways, but in other ways it could be bad. There could be a variety of different effects on people. It has been especially helpful to hear that clarification.

The Convener: Yes, it is helpful to have that point on the record so that the Government can answer it.

Paul Smith: In general, I do not see who benefits from blanket conditions. Issues with individual premises need to be dealt with individually. Having blanket conditions would mean that a whole lot of premises that are doing a perfectly good job would be loaded with unnecessary burdens that really should not be placed on them. Individual problems should be dealt with individually.

The Convener: We probably agree with that. On a consensual note, I think, we conclude this evidence session. Thank you very much for your evidence. I appreciate that it has taken a long time, and that you waited a long time before we started.

12:28

Meeting suspended.

Col 2903

12:34

On resuming—

The Convener: The witnesses on our final panel represent the major retail sector. I welcome David Paterson, who is the Scottish affairs manager at Asda Group; Tony McElroy, who is the corporate affairs manager at Tesco; Richard Taylor, who is the director of corporate affairs at Wm Morrison Supermarkets; Nick Grant, who is the head of legal services at Sainsbury's; and John McNeill, who is

the Co-operative Group's regional chief officer for Scotland, Northern Ireland and the Isle of Man. I declare an interest: I have shopped in all your shops.

Ross Finnie: I will make one minor comment in parentheses. In general, written submissions help committee members to discern witnesses' positions, which helps to concentrate questions. I am therefore bound to say that I am a little disappointed that Tesco, which is a major contributor to the debate because of its major position in Scotland, did not make a submission in response to the initial call for evidence or to the invitation to give evidence this morning. Perhaps that is a company policy, but it is not overly helpful. Tesco's representative might respond to that after I have asked my questions.

I will tackle the two elements of price in the bill. It is clear from the submissions that the supermarkets uniformly oppose any form of minimum pricing. In particular, you feel that efforts should be concentrated—although you do not explain how to do so—on what you describe as the problem people. It is clear that they require special measures. What those measures are is unclear, but you say that they have nothing to do with price.

Why do you think that an all-population approach to pricing, which evidence on public health suggests would be beneficial, does not apply and should be rejected? Asda tells us that minimum pricing

"does not deliver a single additional penny"

of public benefit. Asda says not only that a minimum price would do no good but that it would not reduce health costs, unemployment costs or crime costs. That is interesting, but I do not know what the support for that is.

You take even greater exception to any interference in your ability to provide offers. One submission suggests that that would drive you simply to drive down prices as close to the minimum price as you could go. Will you give me a flavour of the paragraph that would appear in your organisations' corporate social responsibility reports to explain to the public why it was right and an act of corporate responsibility to drive the price

Col 2904

down to near the minimum price and to encourage the maximum number of people to purchase your alcoholic products?

Richard Taylor (Wm Morrison Supermarkets plc): Your first question was about the whole-population approach. It is important to think about the overall aims that the Government wants to achieve through the bill and about how people choose to purchase alcohol. The root of the concern is the question why the 40-something per cent of people—that figure was quoted in a previous evidence session—who regularly drink within the recommended number of units of alcohol should pay more for their alcohol through intervention. Why should people who buy whisky, wine or beer—it does not matter what the product is—and drink it safely and regularly within the guideline limits pay on the whole nation's behalf?

Secondly, there is concern that minimum unit pricing would lead to competition in alcohol being dictated by the amount of alcohol in the product rather than by other measures such as quality. Any public policy intervention can have unintended consequences. There is a fear that minimum unit pricing would skew the market and lead it to be dominated by concern about pricing rather than by the quality of the product as well as its price and other attributes.

Ross Finnie: You are suggesting that there is no difference in quality so the proposal is

discriminatory against low-price products.

Richard Taylor: Clearly, there are differences in quality between products, but if you intervene in the market in such a way, there is a danger that prices will become set at fixed points. If minimum unit pricing is introduced, there is a danger that the price of a product will coalesce around the minimum price for that product—say £4 for a bottle of wine, or whatever it might be for spirits. We might see a drive towards price ranges that coalesce around those price points rather than competition based on different brands and brand quality.

Ross Finnie: Does that not demonstrate the fundamental difference between an alcohol product and any other product—namely, the fact that its alcohol content is a material consideration?

Richard Taylor: I disagree with the view that alcohol is treated as a different product. Yes, its sale is licensed, and when we do promotions we often limit the volumes, but we promote and sell it on the basis of a range of issues including price, quality and availability. It is because of those factors that people choose to shop with retailers such as those that are represented here today.

Nick Grant (Sainsbury's plc): Mr Finnie asked why we instinctively rebel against the blanket approach or the whole-population approach. To

Col 2905

start with, it is probably because we spend the vast majority of our time competing vigorously against each other. That is the nature of our market. There is vigorous, day-by-day, hand-to-hand fighting for market share. That is what we do. Over a period of decades, the figures bear out the fact that, through that process, we have delivered really quite good value for citizens of the country.

As part of that competitive context, we get used to trying to understand our customers. We have the most direct link to customers of anyone who will give evidence to you. Sainsbury's has about 19 million transactions every week. I am sure that everyone else would say that they have vastly more than that, but in any case we have a huge amount of customer contact. If people do not like what we do, they vote with their feet. That is the brutal reality of our business. Market share will switch quickly between supermarkets where people have a choice, and in many places, contrary to what you might believe, people do have a choice of where they shop for their groceries. We are therefore close to customer need.

We are just before the second dip or are still in the first dip of a severe recession, depending on one's view. It would be bizarre for us to present to our customers, 70 to 80 per cent of whom drink well within recommended guidelines, the idea that we advocate a price rise for them at the present time. That would fundamentally go against the grain of our mission as supermarkets. That is my view on the blanket approach.

Ross Finnie: We should perhaps explain to those who are watching the meeting on television screens that there are glass panels between each of you in case you engage in hand-to-hand combat.

Sorry this is not a question—it is just to put the issue into context. In listening to some of the evidence, I am having horrible difficulty working out why, if everyone barring a tiny minority drinks so responsibly, the incidence of cirrhosis of the liver is increasing at the rate that it is throughout the socioeconomic spectrum and age groups. On average, as a nation, we consume a lot, so it is not even a question of stopping the increase—it is already at a level that brings population harm.

That is by way of background. We will not agree, but talking about a tiny minority does not square with the figures on people in hospital and the costs. Of course there is a minority who abuse alcohol,

but the notion of where we are as a nation is difficult.

12:45

John McNeill (Co-operative Group Ltd): As a community retailer with nearly 400 stores

Col 2906

throughout Scotland, the Co-operative is sensitive to the need to tackle harmful and hazardous drinking. Our issue with the population approach is the disproportionate impact on some communities, particularly those on lower incomes. Throughout our estate of stores, we are finding that white van man is picking up part of the market in cigarettes. Our fear is that that will spread to alcohol and, in effect, people will be forced to make a choice about where they get their alcohol from. The assumption is that families who have a set budget will reduce the amount that they spend on alcohol but, alternatively, the result might be a reduction in the amount that is spent on fresh food. We are concerned about the impact on various socioeconomic groups in some communities. That is part of our issue with a whole-population approach.

Ross Finnie: So the price of alcohol is untouchable.

John McNeill: I do not think that we would see it as untouchable.

Ross Finnie: That is what you are saying. I am sorry, but we have weasel words about being very responsible and caring and all the rest of it, but when push comes to shove, your argument is, "Don't touch price."

John McNeill: Our argument is that the simple mechanism of a minimum price would have a disproportionate impact on certain socioeconomic groups. We are saying that a whole-population approach to tackling issues with 20 per cent of the population is a blunt-instrument approach.

Ross Finnie: You say that you are against the whole-population approach, but that you are not saying, "Don't touch price". However, I have not seen in any of the witnesses' submissions any proposal for a more sophisticated way of touching price. That leads me to infer, perhaps unfairly, that your message to the committee is, "Don't touch price."

Nick Grant: Various submissions refer to the duty mechanism as a flexible way in which to target certain types of product that are known to be more difficult and to address certain anomalies in the duty system. The committee probed evidence from cider manufacturers on why cider has allegedly become the drink of choice for certain target groups of problem drinkers. One could make a reasonable case that the political and slightly ad hoc nature of the way in which duty is raised each year has led to a system that is slightly incoherent in its social policy outcomes. We agree that something could be done on that.

Ross Finnie: I wholly agree with that. In earlier evidence, Mr Gavin Hewitt of the Scotch Whisky Association promulgated that the unfairness in the tax system is that it is ad hoc and applies to

Col 2907

different products differently. However, he suggested to the committee that it would actually be better if the tax was based on units of alcohol. Although that would not have exactly the same impact as a minimum price, alcohol taxation would then be almost identical in its effect. I am not clear that that would be good news for the supermarkets.

Nick Grant: Our publicly stated position on duty is that we ask to be involved as an industry in a

discussion on rationalising duty to see where harms could be corrected. Plainly, if that was simply a method of achieving minimum pricing by proxy, that would not be the right thing to do, because that would just take us back to a blanket approach. The policy should target particular groups at particular times and particular products in a way that nonetheless leaves us free to do what we do every day of the week, which is to compete in a relatively free market. I accept that the market is highly regulated, but in terms of the economic fundamentals it is essentially a free market. That is part of what we do, because it is part of our entire mission to deliver benefits to consumers.

The Convener: I hope that I have not missed out anyone in turn because I was distracted. We will hear from Mr Taylor then Mr McElroy.

Richard Taylor: I just want to pick up briefly on the issue of a whole-population approach. As we heard earlier this morning, consumption has potentially plateaued—to use the term that was agreed on earlier—across Scotland. As Mr Grant has mentioned, we are not against using price per se or against considering whether the Exchequer's role in setting duty, as was discussed earlier, might be to impose duty plus VAT as a transparent mechanism below which promotions could not occur.

For clarity, I would not wish the committee to infer, as Mr Finnie implied, that we have no other suggestions. In the longer paper that Morrisons submitted previously, we drew on the European Commission's paper "An EU strategy to support Member States in reducing alcohol related harm", which lists a series of measures including licence enforcement, server training and so on—

Ross Finnie: Sorry, we accept that there needs to be a toolbox. I apologise, but in inferring that your position is "Don't touch price" I was merely asking you to respond by stating whether you had any alternatives. However, I think that that point is now clear.

Convener, with respect, I would also like to hear from Asda and Tesco.

The Convener: Yes, we will hear from Mr McElroy and then from Mr Paterson.

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Tony McElroy (Tesco plc): From a Tesco perspective, we have said that competition legislation rightly forbids retailers from getting together to discuss price. If the Government provided a safe place to have that discussion, we would be prepared to discuss what the policy could look like.

My colleague from Sainsbury's gave some context about the extremely competitive nature of the market in which we operate, but another important piece of context that we should formally record is that, day in and day out, each of us work to meet the substantial hurdles of licensing legislation. We do that through industry-led initiatives such as think 25, through mystery shoppers and through our till prompts that occur whenever people try to buy alcohol. Right across the store, our people are rising to meet the challenge of how to sell alcohol responsibly.

On a separate issue, regarding Mr Finnie's initial concern that we did not provide a written submission, we have had regular meetings with MSPs about alcohol issues. We have also been involved in the submissions of our trade associations and representative bodies—including the Wine and Spirit Trade Association, the Scottish Retail Consortium and the Confederation of British Industry, to name but three—and we made a formal submission to the Government's consultation.

Ross Finnie: However, Tesco was alone among the supermarkets in not responding to the committee's call for evidence. Tesco was also alone in not making a submission when it was subsequently invited to give oral evidence.

Tony McElroy: I do not think that our views are unknown.

The Convener: Nevertheless, it is nice to get a written submission. That is our point.

David Paterson (Asda Group Ltd): One of the important points to make is that we all operate within the legal framework set by the Parliament, whether at UK level or in Scotland, but we operate in a highly competitive environment, primarily because of competition law set by Westminster. We have said repeatedly to the UK Government that if it can provide a safe harbour for discussions on price, alcohol and other things, we would be happy to participate in them, but it has not done so yet.

We are also on the record as saying to the UK Health Select Committee that if the Government wished to introduce some kind of floor pricing through duty plus VAT, we would not oppose that.

Our concern is whether minimum pricing is a proportionate measure, particularly in relation to its impact on our customers, many of whom are on

Col 2909

low and fixed incomes. We are concerned about whether the modelling on minimum pricing will deliver real-world results. The two issues that the model does not include are cross-border trade, where there might be a price differential, and internet sales. We have specific experience of both those issues.

In Northern Ireland, our store in Enniskillen, which is on the border, is the number 1 performing store in our UK chain and the number 6 performing store in the global Walmart chain. That is primarily driven by differences in price. The bulk of the customers in that store drive from Dublin, which is an hour and 40 minutes away, and a third of the transactions are in euros. The difference between the price of beers, wines and spirits in the centre of Dublin and the price over the border in Northern Ireland is around 25 per cent.

The Scottish Government has accepted that it cannot regulate internet sales, but it has said that it thinks that it is a relatively small issue. We do not accept that. Internet sales are a growing part of our business. We believe that our home shopping business will more than double in the next five years and we are seeing very high, double-digit, year-on-year growth in internet sales. We are really concerned that if you set up that price differential, you will not get the reductions in consumption that you foresee, because other methods of sales will come.

Ross Finnie: A previous witness, Gavin Hewitt, said that setting a floor price using duty and VAT was perfectly transparent, which I accept. However, the resulting price would be significantly lower than the current lower price and materially lower than any price that might be achieved by a minimum unit price. What that would do in a public health context is beyond me.

David Paterson: At current levels of duty the price would be lower, but the budget is in two weeks' time and most of us around the table would be surprised if we did not see fairly significant increases in alcohol duty now and in the future. There has been a duty escalator for some time. There is an argument for looking at how duty on alcohol is calculated and the differential between products. The UK Government can look into that. Setting a floor price through duty and VAT would set up a difference in the price architecture—some prices at the bottom would be raised. It is likely that you would then see a change in price architecture throughout the range. That is different to minimum pricing, where you are likely to see the bottom tier come out of the market altogether.

Ross Finnie: Of course, that perfectly correct statement presumes that each and every one of you will not absorb the tax but will add it to the price. Otherwise, the differential would not appear.

Col 2910

However, I do not think that we will discuss that at length.

Nick Grant: I would like to comment on the man-in-the-white-van point—the cross-border trade point. As I have prepared for this meeting over the past couple of weeks I have probably taken a journey similar to that of committee members. I started off thinking that cross-border trade would probably be a fairly insignificant part of the picture. I wondered to what extent people would take action by driving to avoid a higher price in one place. The evidence from our Newry store, which is in the same sort of strategic position as the Asda store at Enniskillen, was that, for a while, it was our top-performing store across the entire estate, merely because it was just across the border. People were coming 100 miles to shop there and you could not park anywhere in Newry. People were parking in lay-bys a mile up the road to get their alcohol. That is a fact—it happened.

13:00

I note that the committee is concerned whether particular groups are targeted in supermarket advertising. For example, it has asked whether poorer groups are targeted with advertising for cheap, strong alcohol. I think that we would all reject that. Minimum pricing, however, would create and undermine markets. For example, if a market were created for the man—or woman—in the white van, the sale of alcohol would be put in the hands of people with no corporate responsibility whatsoever. We would find the white van in the housing estate, selling strong lager at a compelling price. Over the past couple of weeks I have become quite passionate about minimum pricing being absolutely the wrong way to go. All the stores represented on the panel have a big infrastructure and a massive resource to ensure diligent sales of alcohol. We would not want that to be wasted and to see a new market of significant size created for people who have no sense of responsibility whatsoever.

The Convener: Another factor in cross-border sales between Éire and Northern Ireland is the strength of the euro versus the pound. There is another economic factor at work in that case.

Nick Grant: As soon as a price differential was created, people started driving.

The Convener: Yes, but that case involves an exchange rate, which is not the case between Scotland and England. I just put that in as background information. Ian McKee has a supplementary question.

Ian McKee: I have two supplementaries. First, I declare an interest in that I have small shareholdings in two of the companies represented on the panel, Morrisons and Tesco.

Col 2911

Those are not in my declaration of interests, because they were deemed too small in relation to my total investments and the companies' capitalisations, but at this stage in the questioning I should declare them.

Mr McNeill and Mr Paterson alluded to people on very low incomes who would be put at great disadvantage by a minimum unit price. I appreciate that that is what you see from your situation as store holders, but when one looks at the wider picture one sees that such people are at an enormous disadvantage in that the ill health from alcohol in that group is three to four times higher than the ill health of the rest of the community. That is what is happening. I would, therefore, be grateful if you could respond to the total situation, rather than just to the situation from the point of view of sales.

My other supplementary is about cross-border sales. The written evidence from Asda and Sainsbury's is that people who come from southern Ireland to buy their alcohol in Northern Ireland also account for 2 to 2.5 per cent of grocery sales. Does not something similar happen here when

you compete against local shops, in that your low price for alcohol encourages people to go to your stores rather than to their local shop? The competition between you therefore devastates small stores.

The Convener: So, the first question is about the impact on the socioeconomic groups at the lower end of the scale, whom you say will be impacted by a higher price for alcohol but who have the worst health.

Dr Simpson: Convener, may I speed things up by adding my similar question to Ian McKee's first question?

The Convener: Yes.

Dr Simpson: The panel's members have the information on sales of alcohol; above all others, you know what your sales are. It would be very helpful for us to get much more detailed information on sales of alcohol to low-income groups. We have not been able to get that information, which is relevant to one of the major arguments in the discussion about MUP.

The Convener: Indeed. It would be helpful to know what your sales of alcohol have been like over the past five years, because what people tell surveys is different from what actually goes through your tills. The information about your sales could be added together so that we did not disclose individual sales figures to your competitors. We would probably know more from that information than we could get in any other way.

Col 2912

David Paterson: I will pick up on Ian McKee's point about the market share figure of 2 to 2.5 per cent that is in the evidence. That refers to the fact that, between Asda and Sainsbury's, we have about 2 per cent of the grocery market in the Republic of Ireland but we have no stores there.

Ian McKee: That was my point—that people who are coming to buy alcohol cheaply are also buying groceries.

David Paterson: Yes, they come and do their wider shop as well. The alcohol in those stores in Northern Ireland has a higher participation of overall sales by about 4 to 5 per cent than in the rest of our stores in the UK. The alcohol is a clear driver and one of the things that people purchase; equally, other items are also cheaper, and they buy them too.

Ian McKee: Is alcohol not therefore a clear driver to get people away from their local corner shops and into the supermarkets?

David Paterson: In this case, the price differential is driven by two issues. One is the differential in duty and taxation levels between Northern Ireland and the republic; the other is the differential at times with the euro. The figures show that some people will travel, and our point is that, if you create a different pricing regime in Scotland, there will be cross-border trade and people will travel quite some distance to take up the deals.

Ian McKee: My question is whether you are doing the same to small shops. You are creating a price differential for alcohol that encourages people to go to the supermarket, where they then also buy their groceries. If there were no differential, they might buy their groceries in their local corner shop and keep those local shops going.

Nick Grant: With respect, Mr McKee, we sell 30,000 lines in a supermarket. People come for offers on nappies, health and beauty, flowers and Easter eggs. It is possible in discrete policy areas to

become somewhat, shall we say, overfocused on one product. I understand completely why we are focused on this one product, because it has unique quantities and qualities, but a supermarket is a very broad mission, with thousands of lines—I gave the figure of 30,000, but it is probably sometimes more and sometimes less.

People come to the supermarket for a number of reasons. Our general experience of our customers is that they come to buy a big basket or trolley of goods for their entire lifestyle, which includes alcohol. We are not off-licences, and we would not want to become off-licences. We are a broad, mixed mission for our customers, so there are a number of things that we have to do for

Col 2913

them. It is not right to say that we thrash alcohol in order to destroy small shops. That is a distortion.

The Convener: You jumped in there, Mr Grant. I am not scolding you, but Mr McNeill and Mr Taylor are still waiting.

John McNeill: I will build on Mr Grant's point. The Co-op operates a number of community stores. Alcohol is part of the offer in those stores, but only a proportionate part of the offer. Taking a blanket approach to alcohol through minimum pricing might put at risk a number of the smaller stores that serve places where the socioeconomic mix is low income. Either the alcohol sales would move away or people would maintain the same alcohol mix but the stores would be less profitable because we would be selling less fresh food.

Ian McKee: If I could follow up on that, convener, that would be my A question, so you could take me out of the list.

The Convener: How could I resist? Before you follow up, Dr McKee, I apologise to the witnesses for the sunlight in the room. Mr Taylor, I am afraid that in this highly sophisticated building you just have to move your seat—there is no blind or anything. You can sit closer to Mr McElroy—I am sure that you will not fight.

Richard Taylor: I wanted to pick up on Dr Simpson's point about sales data. One important starting point is that we are the off-trade and there is a separation between the point of purchase and the point of consumption. We could provide sales data—we do not have a loyalty card at Morrisons, so the information might be lumpier than that from some of my competitors—but those data will not necessarily give you the information on consumption that you might expect. For example, we surveyed 1,000 of our customers in preparing our response to the Government's original consultation. About 90 per cent of people who bought products on promotion were stocking up for a period of time and 70 per cent were buying for social occasions. It is not always clear, therefore, whether the person who buys the alcohol is the person who will drink it.

Dr Simpson: That was not my question. My question was about the percentage of cheaper alcohol that is purchased by low-income groups. The Sheffield report says that, at the moment, 16 per cent of the average basket of the moderate drinker is cheap alcohol. The point that I have been trying to make throughout these evidence sessions is that a better-off person such as I am does not buy any cheap alcohol. I have never bought it and I have no intention of buying it. However, as Mr McNeill was saying—I know that quite a lot of the Co-op stores will be in less well-off areas—people on lower incomes will purchase proportionately more cheap alcohol even if their

Col 2914

spend is not great. You do lots of work on what groups A, B, C, D and E purchase and how they purchase it—that is crucial to your marketing. You have better information than anyone else on that,

but we cannot get access to it.

Richard Taylor: Morrisons can get that information through sample sizing but we cannot track it through individual sales in that way. The only way in which we could do that would be through monitoring repeat credit card usage, which would not capture some of the low-income groups to which you refer. Particularly at the moment, a lot of people are paying in cash and it is hard to track sales to individuals.

I accept that the overall trend is for lower-income groups to buy the cheaper lines, but that is not always the case. Customers are savvy about mixing branded and own-label products and about mixing value products and premium products. There is no straightforward distinction between rich and poor or between different economic groups in what people choose; that is the nature of the very competitive market in which we operate.

David Paterson: We could provide the committee with some data on that, but it is probably not as detailed as you might expect. We cannot track individual customers and we do not have a loyalty card; we can look only at what is in the average basket. For example, the average spend among customers who buy our Smart Price cider is £20 to £22, with an average of 16 products in the basket. The top 16 products in that basket are all Smart Price products and include coffee, bacon, toilet rolls and bread. That is the way in which the majority of alcohol is purchased in our stores—fewer than 1 per cent of transactions are alcohol only, although that is still a concern to us. Will that shopper be on a low income? We do not generally know, but the fact that they are buying so many value lines suggests that they might be on a lower income.

The Convener: Is it possible for you to give us an idea of national consumption levels, as a percentage of sales in your stores throughout Scotland, or in whatever way you display such information, without breaking the figures down into socioeconomic groups?

Dr Simpson: The Nielsen Company does that.

David Paterson: The Nielsen data would give you the overall figures. All our companies provide data confidentially to the likes of Nielsen, IGD and others. That would be the best method of getting that information.

The Convener: As usual, I am obliged to my colleagues for telling me what I ought to know.

Tony McElroy: In our experience, customers buy alcohol as part of a mixed basket. If the

Col 2915

committee is focused on how we challenge the problematic and dangerous drinkers, we must understand how people are using alcohol, which is where important measures such as bottle labelling, shelf edge activity, Drinkaware and so forth all come to the fore. How people use the alcohol is the crucial element in the equation.

The Convener: As members who visited Helsinki will know, the stores there, which have almost a monopoly on selling alcohol, had educational notices everywhere about consumption and so on. Can we move on?

13:15

Ian McKee: May I follow up on my supplementary? You said that you would let me do that, if you remember.

The Convener: Did I say that?

Ian McKee: Yes.

The Convener: That was remiss of me. I ask members to focus their minds on getting finished before 2 o'clock.

Ian McKee: My final supplementary will be very brief. Mr Grant said—and I presume that others will concur—that alcohol is not a loss leader and that people come into your stores because of the vast variety of things that you offer. We have previously heard evidence—it caused members some consternation—that minimum unit pricing could put up to £120 million into supermarkets' pockets without a penny going to public health education or other initiatives. If I were asking this question as a shareholder rather than a committee member, I might be incensed by your seeming to turn your backs on £120 million, which would, after all, mean a bigger dividend, increased profits and other good things. Why are you turning your back on this bonanza if you are not using alcohol as a loss leader for all the other goods that you sell?

Nick Grant: I suppose that it is possible to regard the ability to set our own price for our customers as a matter of principle.

Ian McKee: A matter of principle. Thank you.

David Paterson: We take a lot of interest in what our customers think about this and its impact on them. You are right; if we look at minimum pricing in purely commercial and market share terms you might expect us to be in favour of it. However, as I said before, we are against it because we do not think that it is proportionate and we question whether the results with regard to reduction in consumption will be achieved.

John McNeill: The Co-operative reinvests its profits in the societies and members who trade with us, but we are concerned that in many communities we might be putting the store itself at

Col 2916

risk, which, as a consequence, would impact on profits.

Tony McElroy: There are far too many unknown elements in the equation to make any properly tangible or meaningful comment. For example, the minimum price itself is a matter for Government and we will not find out what the level of duty will be until we hear the budget in a couple of weeks' time.

Ian McKee: I appreciate that, as such things are unknown, it would be wrong to ask for a precise figure but, surely, as a general principle, adopting minimum unit pricing for alcohol would mean a significant increase in income for supermarkets.

Tony McElroy: There are too many unknowns for us to comment. Our businesses analyse these things logically and given the number of question marks surrounding the issue I do not think that we will be able to address it fully until we know what the minimum price will be. We have said to Government that we will have this conversation if there is a safe place competition-wise, but until we reach that point I do not think that we can have a meaningful dialogue about these numbers.

Mary Scanlon: Bearing it in mind that time is moving on, I will ask two brief questions. First of all, though, in response to Mr Grant's comment that people vote with their feet, I point out that as a resident of Inverness I would have to walk 100 miles to get to my nearest Sainsbury's. That is not always an option.

Nick Grant: I will see what I can do.

Mary Scanlon: Well, it took us 10 years to get Asda there, but if you can get there, that would be even better.

The Convener: Heavens!

Mary Scanlon: I mean that it would be as good as having Asda.

My point is about paragraph 28 of the policy memorandum. I am concerned that we have spent so much time discussing a minimum price, given that, according to a prediction about decreased consumption, a ban on promotions would allegedly be as effective as MUP. Paragraph 28 criticises alcohol being

"promoted in a way that provides a financial inducement to buy more than intended."

That is the rationale for the Government looking at off-sales promotional activity. However, Sainsbury's written submission refers to the

"Lack of evidence for promotions ban."

Morrison's written submission states that

"there is no clear pattern of correlation between the percentage of alcohol on promotion and the volume sold."

Col 2917

Your companies therefore question whether the Government's or the Sheffield report's predictions are right. You seem to say that there is no evidence for what they claim—discuss. [*Laughter.*]

The Convener: That was on the tip of my tongue.

Richard Taylor: Perhaps I can pick up the point about the correlation between promotions and price. The simple view is that the more promotions there are, the more sales there are. However, evidence in our submission suggests that that does not always follow and that people choose products for different reasons. For example, we show evidence for sales of white wine in Scotland over the past three years, and at the points at which the most number of products were on promotion, which was September 2007 and October 2009, sales were relatively quite flat. However, for a product such as Scotch whisky, it looks like there was a closer correlation between promotion and sales, because sales rose at the same time as the number of brands on promotion rose—but that was in the lead-up to Christmas. It can equally be argued that that is when the brands compete for market share and try to get people to choose their product rather than somebody else's. Like much of this debate, the evidence on promotion and sales is quite complex; it is not as straightforward and simple as saying that more promotions means more sales.

Mary Scanlon: You are saying that there is no evidence base for predicting a correlation between a promotions ban and a reduction in the volume sold.

Richard Taylor: Correct. I have not seen any evidence to suggest such a correlation. Alcohol consumption as a whole is plateauing in Scotland. I accept that, potentially, there could be a shift between the on-trade and the off-trade, but we are not seeing an overall change in sales. People

may therefore continue to buy, even if there is no promotional activity.

Nick Grant: The truth about promotions is that they mainly function to attract people to different products and brands. The promotions often exist at the request of the manufacturer or supplier. We would typically be asked by some of the suppliers who have given evidence to you today to run promotions in order to encourage customers to try something different. However, from our position, that is not directly about a net sales increase or consumption increase; it is about switching people between things. From the supplier's and our point of view, promotions encourage our customers to believe in us, in the sense that we have different things to offer them that are all good quality and in the mix, and so on. It is therefore not about driving sales; from the supplier's point of view, it is often about trying something different.

Col 2918

Mary Scanlon: Thank you. I will just go on to my second question.

The Convener: Excuse me, but do the suppliers pay for their promotional spots?

Nick Grant: Yes.

The Convener: They pay quite a bit.

Nick Grant: Well—

The Convener: I know that you cannot tell me.

Nick Grant: They will suggest promotions to us and work with us on them. We will sometimes fund part, they sometimes fund part and we sometimes agree to share if they are launching a new product or trying to revive an old favourite. It is part of a complex marketing conversation between us. There are clear rules now under the grocery suppliers code of practice from the Competition Commission, which provides rules of fairness around how we trade with our suppliers and what we can ask from them and what they can ask from us. However, promotions are often done at their instigation, because they look at market share just as we do.

The Convener: That was a helpful expansion of your answer.

Mary Scanlon: Thank you. That is helpful. If anyone knows about promotions and sales, it has to be you guys.

Asda, which will finally get to Inverness—not that I am advertising—says in its submission that other approaches could be adopted if we have minimum pricing and a ban on promotions. It says in its submission:

"For example it would be perfectly legal to run a promotion such as 'Buy a bottle for a fiver and get a fiver off your shopping'."

I live in Tesco-dominated Inverness. Quite recently, a person could double up their Tesco voucher points so that, if they had £5-worth of voucher points, they could buy £10-worth of alcohol. If everything in the bill is agreed to, including the provisions on promotional measures and minimum pricing, and given that Asda dominates the market and obviously wants to retain or increase its market share, would it be reasonable for it to adopt other approaches that would make purchasing alcohol in supermarkets more attractive to consumers?

David Paterson: We will operate within the legal environment that Parliament sets out. That is why it is important that, when the bill's provisions are being considered, all the potential unintended consequences are considered.

There are a number of issues. Let us consider a system in which there is minimum pricing and a ban on promotions. We recently ran an in-store

Col 2919

voucher promotion that meant that people were given a certain amount of money off products when they shopped with us. They could redeem vouchers against alcohol. I will give a simple example. If Parliament set a minimum price for alcohol and people sold it at that minimum price, but vouchers could be redeemed against alcohol, that would de facto bring the price of the alcohol below the minimum price. Such practices would have to be outlawed in the bill.

There are issues that have perhaps not been discussed that are worth considering. For example, under linear pricing, if a can sells for £1, 24 cans must sell for £24. That model contains a number of flaws, not least because we do not, in general, sell one can or bottle at a time, except niche brands. The market logic of that, if it is not prevented, is that people will de-list and stop selling smaller packs, and the larger pack on display will become the choice. The unintended consequences should be considered. If Parliament wishes to go down the proposed route, it will have to account for those consequences.

Vouchers cannot be used in a number of areas. For example, the voucher that I mentioned could not be redeemed against tobacco or petrol because rules have been set out in legislation to prevent that.

The Convener: That is helpful.

Tony McElroy: The Clubcard has been mentioned, although I think that Nectar points or dividends would be affected, too. The Clubcard is a way of saying thank you to customers—it is nothing else. We operate in an extremely competitive market—indeed, it is probably the most competitive market in the UK—and loyalty is a crucial element in our operations. The Clubcard is one tool that we use to say thanks to customers for their loyalty. There could be an opt-out on alcohol, but it is important to be clear that there is nothing more to the Clubcard than a way of saying thanks. It is a way of building customer loyalty in an extremely competitive market.

The Convener: What else does the Clubcard tell the supermarket? Other than being a way of saying thank you, does it provide other information?

Tony McElroy: Do you mean in respect of customer offers?

The Convener: What else can it be used for? What data do you get from Clubcards? I appreciate that the market is competitive. I have two loyalty cards, and I want to know what you know about me. Do not tell them if you know, Mr Grant.

Nick Grant: We understand what the customer has bought.

Col 2920

The Convener: So the data give you an idea of trends and successes.

Nick Grant: We know what the customer has bought and when, which enables us to understand them so that we can reward their loyalty by offering them things that we know they like or introduce them to new things. It is part of quite a complicated but mature relationship with individual customers,

who know that they are trusting us with their personal data. We treat those data carefully and confidentially and they receive a reward for trusting us with it. In effect, there is a loyalty relationship: if a person is not a consistent customer of a supermarket, they will get a little reward, but not a meaningful reward. That happens because, between us, we struggle for market share and loyalty against constantly switching customers.

13:30

Mary Scanlon: I was not criticising the Clubcard. I have one—and a Nectar card for when I am in Edinburgh. My point is not to justify or question the loyalty cards; my point is that, if all the measures in the bill go through, you are smart enough to be able to find other ways to maintain your market share of alcohol sales. For example, if you find out that a customer buys a certain pie every time they buy a bottle of wine, you can offer a free pie with every bottle of wine. I hope and assume that you would resort to other approaches that enable you to maintain your market share, such as Mr Paterson's offer of giving customers a fiver off their shopping if they spend a fiver on alcohol. That seems reasonable to me in the circumstances. Is that fair?

Nick Grant: I am not a marketing professional but I imagine that such people would spend time thinking about how to maintain market share. As I said, we would never seek to evade or go round the law, but companies think about how to protect and advance their market share. That is in a commercial organisation's DNA; it is what we do.

Mary Scanlon: Yes, of course. Thank you.

The Convener: We must move on. The thought of pies makes me think that we have been sitting here far for too long. Pies and wine might be a bad combination, but not when we are still sitting here at this time of the day. I am aware that, believe it or not, some members have to speak in the aquaculture debate this afternoon. It is fishy.

Helen Eadie: Focusing on price, as we have been doing, sometimes misleads us into thinking that price will be the solution to our problems. One thing that has really influenced my thinking is a report for the European Commission that showed that alcohol is more affordable in other EU countries but that consumption has declined.

Col 2921

Having said that, I was interested to read in Morrison's submission about the possibility that illicit stills and home brewing could become a phenomenon in Scotland. To what extent have those issues featured in the witnesses' thinking?

I also ask the witnesses to comment on the St Neots project, which is especially interesting and has some relevance for the Fife alcohol partnership—Mary Scanlon talked about being a Highlander; I am a Fifer. The project is of interest because it seems to demonstrate a much more holistic way of tackling the problems of underage drinking.

The Convener: I am sorry, I know that it has been a long morning, but what was your question?

Helen Eadie: I would like to hear about the St Neots project, because it tackles underage drinking.

The Convener: Who can talk about that?

Nick Grant: I will pick up the question on the St Neots project because I am proud of the project, which is the product of work involving all the retailers in a group called the retail of alcohol standards group, which I have chaired since 2005. I am not making a party-political point, because all the

companies that are represented here have made a huge contribution to what is an exciting project. It is a way of engaging specific communities in tackling their alcohol problems.

We found out quite quickly that everyone in a community has a part to play: retailers, the police, schools, the on-trade, residents groups and local health professionals. It is necessary to get everyone in the same room to discuss what that community's issue is, as that will differ from community to community. You then start to make the links locally to address the issue. For example, through the St Neots model we can reach out to smaller shops. We all have highly sophisticated training programmes, DVDs and refresher training around think 25, so we can reach out and offer some of that training to smaller shops that would not necessarily have the resources to generate those materials themselves. We can include them in the club for people who take what we regard to be a diligent and responsible approach to sales.

We can also make the situation real for children. One of our early insights was that children regarded trying to get alcohol as a bit of a game. When they were refused in shop A, they would go to shop B and get refused again. They would keep going and rotate the people who were trying to buy alcohol until they struck lucky somewhere. They did not take it seriously. In previous evidence sessions, you have heard about the very low level of prosecutions of under-18s for attempting to buy alcohol; I think that the figure is about eight in one year. I do not think that anyone has a particular

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agenda for criminalising children, but the law is very underenforced. We can take steps such as sending a checkout operator to a school assembly to tell the children what happens when someone is caught selling alcohol to a child in a test purchase or in a real purchase that is observed. They can tell the children that they could receive a fine that often amounts to a week's wages or half a week's wages and will probably be disciplined—and that people are often dismissed for underage sales. The point is that the checkout operator is someone's mother, sister, aunt or whatever. That is one way, within the community, of making some of these alcohol-related issues real for people.

We have moved on from St Neots, which was a very small starting point. We now have an overall agreement with Kent that covers the entire county, where there are now six projects. We have a different relationship with the police, trading standards and the agencies down there, so enforcement feels different.

The University of Kent has recently done an evaluation; if the committee has not already received that evaluation, we should get you a copy of it. When the St Neots project was in its early days, the licensing team in the Government visited it, but for a number of reasons, the idea did not quite catch fire, shall we say. We have moved on from there. Now there has been a formal evaluation by a university, which I think the committee will feel has taken the credibility of the project one step further. There are definite tangible benefits to the local community approach. We can all do that work voluntarily. If we get you the evaluation—

The Convener: I confirm that we do not have it.

Nick Grant: We will ensure that you get it, because we—I think that I can speak on behalf of the retail of alcohol standards group—are very keen to engage Scotland. We have found engagement slightly more difficult in Scotland than south of the border. I am clear that we must not let that prevent us from setting up suitable projects in Scotland. If any committee member wants to express a direct interest in having something start in their constituency or area, or wants to examine the feasibility of that, I can tell you that we are committed to seeing whether we can get things going. That will require the interest and participation of everyone on an equal basis; no one party can do it to the others, if you like—the approach is collaborative rather than being a police thing. I make that offer. Please approach us, because we would love to get something solid going in Scotland, for the reasons why we are all here in the first place.

The Convener: Some of the supermarkets in Scotland have already started such initiatives in certain local authority areas.

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Helen Eadie: We have such a project in Fife.

The Convener: Yes, there are quite a few.

Mr McElroy wants to speak—I was going to call you Tesco. I am getting to the stage at which I might call you by the wrong supermarket name.

Tony McElroy: I have been involved in the Rosyth project, where we are starting to build up some great momentum. Tesco and the Co-op, which happen to be the two multinational traders in the town, are sitting down with all the key stakeholders—the police, trading standards, housing associations, the community council and so on—to have an honest conversation about local alcohol problems and where the focus of our effort and energies should be.

The clear next step is for us to discuss with independent traders in Rosyth how they can benefit from some of the progress that we have made and from our expertise in staff training on think 25, which involves challenging people who look underage or do not have ID. We are building a network and relationships in the area. If we continue to make progress, we will see some tangible benefits locally, especially in relation to underage drinking, which is a strong concern for the local community.

Helen Eadie: David Paterson raised the issue of safe harbours, which is important. The Government needs to be able to address all stakeholders on such an important issue in Scotland. In that regard, I am concerned about serious and organised crime. Last night I watched a programme that I had recorded from the "Don't Get Done, Get Dom" series, which showed examples of the colossal market that exists for vodka. I envisage white van man coming into the huge conurbations in Scotland. How can we tackle that issue? What do the supermarkets do to ensure that their products are safe? It was patently clear from the programme that the products are not safe. The proposal for a minimum price does not deal with product safety. Because of the phenomenon of white van man and the involvement of serious and organised crime, the measure could have unintended consequences.

Nick Grant: I made the point that, love us or loathe us, we are fairly responsible custodians of the sale of alcohol in comparison with some of the elements at the wrong end of the market that could be introduced as unintended consequences of minimum pricing. If the policy sets a level of minimum pricing that tends towards prohibition of alcohol, the tendency will be for criminal elements to be introduced to the market. We know what happened during prohibition—organised crime became involved. A distinct link between the level at which the minimum price is set and the involvement of organised crime is unavoidable.

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The Convener: I would like to move on. David Paterson has a point to make about illicit alcohol production.

David Paterson: The UK Government estimates that duty fraud is worth about £1 billion a year, but that may prove to be conservative. There is a concern that, if that is the situation under the current regime and the price differential is increased, many customers in poorer neighbourhoods will be served by white van man, who will be able to mask illegal product much more easily by saying that it is bona fide English alcohol that was bought in Carlisle.

Tony McElroy: Mr Grant made the point that we are responsible and meet high challenges in order to sell alcohol. My point relates to the proposal for a social responsibility fee. We have concerns about a blanket tax on licensees that does not recognise the good work that is being done and is not fault based.

The Convener: We have noted that from previous evidence.

I will take questions from Rhoda Grant and Michael Matheson. I would like to make Michael's the last question.

13:45

Rhoda Grant: A lot of people have spoken about price and availability affecting consumption. We have heard a lot of evidence about price, and we took some evidence on availability on our visit to Finland. The only Scottish example that has recently come into play has been the change to the licensing laws under which alcohol is now not available to buy in supermarkets until later in the day. Has that impacted on people's shopping patterns?

David Paterson: No—we have not seen a significant impact on sales as a result of the shift to selling alcohol only at specified times.

Rhoda Grant: Have people been shopping later?

David Paterson: There has been a bit of a shift. We had not quite thought about the change to 10 am, which has had an impact on certain groups. Many young mums do the shopping after dropping the kids off at school, and they now cannot buy alcohol as part of a weekly shop that is done at that time of day. We had not envisaged the effect on carers, who might shop for three or four people and deliver the groceries through the day.

There has also been a shift on Sundays. In most cases, the time has gone back to 10 am from 12.00 or 12.30. Instead of buying alcohol with their shopping on a Saturday, some people now do their shopping on a Sunday. Previously, they were

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not able to buy alcohol on a Sunday morning, and they have shifted the day on which they make their purchases.

John McNeill: I concur. Shopping patterns have changed following an initial period. I am not sure that there has been any reduction in consumption as a consequence. There was a fair bit of confusion on the part of some licensing boards about Sundays. It fell on in-store colleagues to communicate the messages to customers about the change.

Michael Matheson: A couple of the issues that I wanted to cover have already been raised by other members.

I am interested to note that Tesco in particular is relaxed about the idea of some form of minimum pricing. Given the concerns that have been expressed by the other supermarkets, why does Tesco appear to be relaxed about the idea of minimum pricing? Are you less concerned than your colleagues in other chains, Mr McElroy, who seem to have worries or anxieties?

Tony McElroy: I am not sure that I would use the term "relaxed". We have said to Government that we are a responsible retailer of alcohol, and if the Government can provide a safe and legal place to have a discussion about what the policy could look like, we would be willing to engage in that

discussion.

We have spoken about problem drinks and the challenge of people who have a difficult and, often, deadly relationship with alcohol. We all want to tackle those issues. We do not want any policy to damage the vast majority of our customers, who enjoy and consume alcohol responsibly. We have made it clear to Government that we are willing to discuss with it what its policy might look like. However, competition law is very tough, and the Government would need to own any such discussions for the measures to be legal.

Michael Matheson: You will be aware that the House of Commons Health Committee recently issued a report on alcohol, which covered the issue of minimum pricing. In paragraph 278 on page 103 of that report, that committee states, in relation to minimum pricing:

"Most of the big supermarkets were opposed, but Tesco is in favour".

Is the Health Committee at Westminster inaccurate in saying that you are in favour of minimum pricing?

Tony McElroy: I have not seen that report. We have said to Government that we will have a discussion—

Michael Matheson: The select committee was quite clear. Its report is unequivocal when it says:

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"but Tesco is in favour".

Is that wrong?

Tony McElroy: We have said to Government that we are willing to have a discussion with it about what a minimum price policy could look like, as long as—

Michael Matheson: With all due respect, the position that is asserted to be Tesco's position on minimum pricing in the House of Commons select committee's report is that "Tesco is in favour". Is that correct, or is it wrong?

Tony McElroy: We have said to Government that we are willing to have a discussion with it about what a minimum price policy could look like, as long as it provides a safe place to have that conversation.

Michael Matheson: So you—

The Convener: I do not want us to have a Jeremy Paxman moment.

Michael Matheson: I will move on to my other questions.

Do all the supermarket representatives present accept in principle the fact that pricing is one of the factors that must be addressed if we are to deal with the issues around alcohol consumption in Scottish society, including all the health and social problems that flow from it? Do you all accept that pricing must be part of the equation in addressing the problem?

Richard Taylor: Pricing clearly has a role to play in people's choices when they buy alcohol. If the price of a product is tripled or quadrupled, there will be a change in behaviour. Many of us argue that

there is already an intervention, although I appreciate that it is not one within the Scottish Government's power as it reserved to the Exchequer in Whitehall. I refer to duty, which influences the price of a product, as does VAT.

John McNeill: Pricing is part of a complex mix of relationships that impact on the consumption of alcohol. We need to be careful about simply focusing on price and unintended consequences. Pricing is certainly part of the mix, though.

Nick Grant: Pricing plainly plays a part in the entire economy of alcohol, so it cannot be excluded from our thinking.

I make a plea: can we please start with the legislation that we already have, which is not being enforced? For example, can we start by not serving drunk people in pubs and clubs? That law is completely underenforced, and it is why our city centres are becoming no-go areas.

The Convener: We are aware of such issues, about which we have heard lots of evidence. The committee takes into account all the evidence that

Col 2927

comes before it, concluding with the evidence from the cabinet secretary, before writing its report.

Col 2928

Thank you very much. It has been a long day. I was almost going to say that it would drive you to drink, but I stress that it is water in my glass.

Meeting closed at 13:52.

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