

# Developing Policy on Contact with the Tobacco Industry

## A Briefing for Local Authorities

### Why this guidance has been produced

The tobacco industry has a long history of attempting to undermine government health policy. It is therefore important for local authorities to have a clear policy on managing engagement with tobacco companies and their proxies. A formal policy will ensure that staff and partner organisations understand their responsibilities. It will provide transparency for local residents and protect the council from criticism over unnecessary engagement with the tobacco industry. It will also demonstrate that councils are meeting their obligations as parties to the World Health Organization treaty on tobacco, the Framework Convention on Tobacco Control (FCTC)<sup>1</sup> and to the Local Government Declaration on Tobacco Control.<sup>2</sup>

### What action do councils need to take?

Review existing policy and practice to ensure councils are meeting their obligations under Article 5.3 of the WHO Framework Convention on Tobacco Control and the Local Government Declaration on Tobacco Control.

### Included in this document

1. Overview of Government obligations
2. Suggestions for inclusion in local policy
3. Tips for developing a local policy
4. Issues to consider
5. Further information

## 1. Overview of Government obligations

The FCTC is the first international treaty negotiated through the World Health Organization (WHO). Article 5.3 of the FCTC states that *“in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”*.<sup>3</sup>

Guidelines on implementing Article 5.3 advise Governments (including local governments):

- Not to enter into partnerships, non-binding, or non-enforceable agreements with the tobacco industry
- Not to accept voluntary contributions from the tobacco industry
- Not to accept tobacco industry-drafted legislation or policy, or voluntary codes as substitutes for legally enforceable measures
- Not to participate in “corporate social responsibility” or related schemes funded by the tobacco industry
- Not to permit tobacco industry representation on government tobacco control bodies.

Many local authorities in England have signed up to the Local Government Declaration on Tobacco Control which is a public statement of the councils’ commitment to reduce the harm caused by tobacco.

Signatories commit to: *“Protect our tobacco control work from the commercial and vested interests of the tobacco industry by not accepting any partnerships, payments, gifts and services, monetary or in kind or research funding offered by the tobacco industry to officials or employees.”*

## 2. Suggestions for inclusion in local policy

A stand-alone policy could be developed, or existing council policies (such as a tobacco control policy, or a corporate sponsorship policy) could be updated to include some or all of the following:

- All Council policies and actions will conform with the requirements of Article 5.3 of the FCTC, and the subsequent guidelines, subject to national law.
- Officers and members will interact with the industry only in so far as is necessary to meet regulatory responsibilities.
- Where possible, any information provided by the tobacco industry to the Council, for example intelligence about the sale of illicit tobacco products, shall be submitted in writing.
- When face-to-face meetings with the tobacco industry are necessary, the tobacco industry shall not be permitted to publish details about the meeting, or imply that such a meeting constitutes a partnership with [Insert name of organisation].
- The Council will publish details of any necessary meetings or interactions with the industry, including an explanation of why they were required and how they are consistent with Article 5.3 of the FCTC.
- Where meetings discuss or receive sensitive information, the sensitive material discussed in these meetings may be kept confidential. A broad description of the meeting content should be made available.
- All research used when developing tobacco control policy must be clearly referenced. Tobacco industry sources should be used with caution.
- No funding, either monetary or in kind, will be accepted from the tobacco industry (or their subsidiaries) for any public health or other Council work. This does not include Government mandated payments from the tobacco industry, such as fines, or Planning Obligations (Section 106 payments).
- No partnerships will be entered into with the tobacco industry, for example around tackling illicit tobacco or under age sale of cigarettes.
- The Council will not participate in any “corporate social responsibility” activity undertaken by, or funded by, the tobacco industry or their subsidiaries. The tobacco industry shall not be permitted to infer corporate social responsibility through Planning Obligation payments (Section 106 payments).
- Organisations and individuals engaged with the Council on any area of work or policy related to tobacco control will be expected to declare any tobacco industry funding or support they receive. Where such organisations and individuals do receive such funding or support, or where they refuse to disclose such information, they will be treated as representatives of the industry in respect of this policy.
- Implementation of this policy is the responsibility of [the Monitoring Officer], who will report regularly to Members on its operation in practice.”

### 3. Tips for developing a local policy

#### 1. *Review current activities and policies*

All departments which currently have contact of any kind (including face-to-face meetings or communication in writing) with representatives from the tobacco industry, or one of their affiliated groups, should examine these communications for examples which run counter to Article 5.3. If potential conflicts are found, the departments concerned should be supported to identify new ways of working.

Any existing council policies, in particular tobacco control or corporate sponsorship policies, should be reviewed to determine if the council is already meeting its obligations under Article 5.3. If not, these policies could be adapted to include clauses on contact with the tobacco industry or, alternatively, it may be more appropriate to develop a stand-alone policy.

#### 2. *Consult across relevant departments*

Policies are more easily implemented if the rationale behind their introduction is understood. Therefore it is good practice to invite all departments and staff affected by the policy to participate in its development. The tobacco industry does not have a reputation for ethical behaviour. However, staff outside of tobacco control may not be familiar with the WHO treaty and its applications nor the full extent of the industry's attempts to subvert health policy. Members of staff with existing relationships with the tobacco industry may not understand why these relationships should not continue.

For this reason it may be advisable to work with the communications department to explain why the policy is being introduced. Presentations to team meetings will afford staff the opportunity to ask questions and discuss the policy in more detail.

#### 3. *Agree corporate sign off*

The usual processes for obtaining corporate sign-off should be followed. Relevant stakeholders, for example Tobacco Control Alliance members, should also be given the opportunity to comment on and approve the policy.

It is important that there is buy-in at senior corporate level for the content of this policy to support effective implementation.

#### 4. *Political sign off*

All Elected Members should be invited to review the policy, with specific sign-off sought from Elected Members with portfolio responsibility for the departments affected.

There is a need for political leadership and ownership of this policy as the tobacco industry has been known to try to subvert local policy either directly or through proxies (see below for further details about this practice).

#### 5. *Implementing and communicating the policy*

It is the responsibility of the Monitoring Officer to implement local authority policies. The Monitoring Officer has the specific duty to ensure that the council, its officers, and its elected councillors maintain the highest standards of conduct in all they do, to report on matters he/she believes are, or are likely to be, illegal or amount to maladministration, to be responsible for matters relating to the conduct of councillors and officers and to be responsible for the operation of the council's constitution.<sup>4</sup>

The new policy should be promoted to all staff via council communication channels including intranet, staff briefings and internal newsletters. A statement of support from the Elected Member for Health or Chief Executive would reinforce senior support. A statement for the press could also be prepared in the event that the new policy is reported in the media.

#### 6. *Evaluation and review*

The policy should be reviewed on an annual basis and revised or updated where necessary. This should include examining written reports of face-to-face meetings with the industry to ensure the council has met the requirements of Article 5.3. Attempts by the tobacco industry to meet with Elected Members or Council staff which were refused should be recorded alongside any records of contacts so these can be reviewed to ensure the policy is operating effectively.

## 4. Issues to consider:

**Trading standards and tobacco industry:** Trading standards officers are more likely to come into contact with representatives of the tobacco industry than many other parts of the council. The enforcement role which officers play can mean some contact with industry for the purposes of regulation is necessary. Good guidance on how to manage, limit and be transparent about these relationship is available from Tackling Illicit Tobacco for Better Health partnership

[www.illegal-tobacco.co.uk/problem/undermining-tobacco-control/guidance-trading-standards/](http://www.illegal-tobacco.co.uk/problem/undermining-tobacco-control/guidance-trading-standards/)

**Tobacco industry owned licenced medicines:** There is a growing market for novel nicotine products of which e-cigarettes and Voke are an example. The tobacco industry is moving into this market. In 2013 the MHRA announced that they would be accepting applications to licence nicotine containing products as medicines alongside the existing nicotine replacement therapies already on the market. A product which tobacco company British American Tobacco own the right to sell and market received a licence in 2014 and it is possible other industry-owned products will receive a licence in the future. Our advice to councils is to review their prescribing policies to ensure that they are in line with best practice and to consider prescribing or recommending industry-owned products if they will support local strategies. However, it would clearly be against the WHO FCTC to discuss the development or delivery of health policy with the industry regardless of whether their products are used in the treatment of smokers.

**Third party groups:** The industry fund and support other individuals and organisations to promote their interests. The relationship of these individuals and organisations to the tobacco industry is not always declared when they interact with government bodies. Local authorities should always consider the source of representations which appear to support tobacco industry objectives. For a list of lobbying groups with connections to the tobacco industry, see the [Tobacco Tactics website](#) run by the University of Bath. There is a summary of some of these groups in a [report](#) for the APPG on Smoking and Health.

**Corporate Social Responsibility (CSR) activity by tobacco companies:** Corporate Social Responsibility (CSR) activities are used by tobacco companies to improve their credibility and standing. The guidance to the FCTC states that signatories should: “(D)enormalize and ..... regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility” Examples of where the industry has sought to be ‘socially responsible’ in their relationships with local councils include engagement around cigarette litter. Recently Keep Britain Tidy severed their links with the tobacco industry acknowledging that the industry’s motives for engagement ran counter to the public health interests of councils.

**Pension investment in the tobacco industry:** There are a number of recommendations in the guidelines to Article 5.3 of the FCTC which local authorities may wish to consider in relation to their pension fund. These could form part of a local policy on contact with the tobacco industry or, given the complexities of balancing obligations under FCTC with the fiduciary duties of pension trustees, it may be preferable to treat the issue of pensions separately. There is a commonly held belief that local authorities are “duty bound” to invest in funds which will give the highest returns. However:

- The law regarding the legal duties of pension fund trustees requires that investments are made “in the best interests of members” but does not specify that these interests are only financial. Trustees are required to invest prudently rather than what may be in the short term the most profitable options available and ethical issues can be taken into account when investing pension funds;
- Given that smoking rates are steadily falling, there are doubts about the long-term viability of tobacco industry shares as a profitable investment.

The Local Government Association has sought a [legal opinion](#) on this issue which can be downloaded from its website. [Advice on how the issue might be addressed](#) has also been produced by Fair Pensions (now ShareAction) and Action on Smoking and Health and can be downloaded from the ASH website.

## 5. Further information

1. The [Framework Convention on Tobacco Control](#)
2. [Guidelines for Implementing the FCTC](#)
3. [ASH Briefing on Local Authority pension fund investments](#)
4. The Trading Standards Institute has produced a briefing on [Engagement with the Tobacco Industry](#) which is available to its members.
5. "[Guidance for Trading Standards on Engaging with the Tobacco Industry](#)", available from Tackling Illicit Tobacco for Better Health partnership.

## References

- 1 [Framework Convention on Tobacco Control](#)
- 2 [Local Government Declaration on Tobacco Control](#), Smokefree Action Coalition
- 3 [Guidelines for implementation of Article 5.3](#) of the WHO Framework Convention on Tobacco Control
- 4 [Role of the Monitoring Officer](#), Standards of Conduct in Local Government, Eden District Council

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