

# **Smoking in the Workplace**

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## Summary and overview

The Government has published proposals to prohibit smoking in most workplaces in England. The law is expected to come into effect in 2007. Scotland has already passed legislation to ban smoking in all indoor workplaces: the Smoking, Health and Social Care (Scotland) Act takes effect in March 2006. The Welsh Assembly has voted in favour of smokefree workplaces and will be granted powers under the Health Bill to implement regulations to this effect. An order allowing similar smokefree measures for Northern Ireland has also been announced. This is likely to be implemented shortly before the law in England comes into force.

Until new legislation requiring smokefree workplaces is introduced, employers should continue to protect staff by adopting a smoking policy. This report provides guidance and information for employers and employees on existing legal, health and practical aspects of implementing workplace smoking policies.

The TUC, Asthma UK and ASH propose a three-pronged approach to smoking in the workplace: namely, recognise the impact of smoking in the workplace, understand the legal obligations, and develop a policy in consultation with staff.

### I. Recognise the impact of smoking in the workplace

#### Health Costs

Smoking is still the largest preventable cause of death and disability in Britain today. Every year, smoking results in more than 114,000 deaths in those aged over 35. Two in ten deaths at all ages, and more than a quarter of deaths in those between the ages of 35 and 65, are also directly attributable to smoking.<sup>1</sup> Smoking is reducing the female advantage in life expectancy and widening the social class divide in mortality.

In addition to the impact of smoking on smokers, the harmful effects of *passive smoking* are now established beyond reasonable dispute in authoritative literature. The only remaining 'controversy' is that orchestrated by the tobacco companies through its paid scientists and misinformation campaigns. The major sources include:

- Two major studies published in the British Medical Journal in October 1997<sup>2 3</sup>
- The UK government's advisory Scientific Committee on Tobacco and Health (SCOTH).<sup>4</sup>
- The United States Environmental Protection Agency<sup>5</sup>
- The California Environmental Protection Agency.<sup>6</sup>
- The World Health Organisation<sup>7</sup>

A separate ASH [Passive Smoking Briefing](#) contains a detailed account of the current state of knowledge.<sup>8</sup>

These studies established that passive smoking is a cause of lung cancer, impairs lung function generally and causes heart disease. Moreover, it aggravates respiratory conditions such as [asthma](#) and bronchitis. In the case of asthma, other people's tobacco smoke is an extremely common trigger for attacks, causing problems for up to 80% of people with asthma.<sup>9</sup> Passive smoking has also been linked to an increased risk of stroke in non-smokers.<sup>10</sup>

#### Economic Costs

Smoking may also cause reduced productivity due to smoking breaks or other costs – [one Canadian study](#) estimated the annual costs per smoker to be over C\$2,000. There is also the risk of increased absenteeism due to ill health or even early retirement of valuable workers. Other costs include cleaning and fire risks.

## **Social Costs**

For non-smokers, smoking is an infringement of what they consider to be a reasonable right not to have to breathe other people's tobacco smoke while at work. Consequently, smoking in the workplace has a disruptive influence on staff morale and harmony.<sup>12</sup> It is a problem that can easily be solved in most workplaces by controlling smoking and having a proper support system in place for smokers who want to give up smoking.

The various impacts are further discussed in Section 1: [Impacts on Smoking in the workplace](#)

## **II. Understand the legal obligations and risks**

Health and safety at work legislation requires that employers protect their staff from harmful substances in the workplace and take reasonable and practicable measures to secure the health, safety and welfare of their employees. The evidence clearly shows that environmental tobacco smoke (ETS) is harmful, as it may cause a variety of conditions, ranging from mild to fatal, in exposed non-smokers, and therefore the general provisions of the Act should apply. The problem is that this has not yet been made explicit, which means it is not enforced by Environmental Health Officers and employees have to go to court to test the law if the employer will not control smoking – which is a difficult step. Employment tribunals have found in favour of employees forced to leave their jobs on account of exposure to passive smoking. Smokers have also tested their right to smoke, in the courts, but have not been successful.

The Health & Safety at Work Act 1974 does imply that employers have a duty to control smoking in the workplace where practical but the regulations, codes of practice and guidance that implement the legislation do not currently spell this out. A legal opinion sought by ASH has established that the date of “guilty knowledge” has now passed – that is, that employers should know that passive smoking is harmful and are obliged, therefore, to act to minimise workforce exposure to this hazard. However, until new legislation is formally introduced by the government, the current guidance remains incomplete and ambiguous - and only really helps if the employee is forced to leave work.

Legal aspects are discussed in Section 2: [The law and smoking in the workplace](#).

## **III. Develop a smoking policy in consultation with staff**

Despite the absence of any legal compulsion, thousands of workplaces have introduced smoking policies, reflecting a broad concern for the rights of non-smokers at work. There are, however, many workplaces that still permit smoking - often small establishments: places where the boss is a smoker, or where the issue has simply never been raised and practices common in the 1950s persist. This is out of step with the eighty-five per cent of people, including 71% of current smokers, who believe that smoking should be restricted at work.<sup>13</sup>

An employer has a duty to protect employees from tobacco smoke - but imposing an immediate and pervasive smoking ban may create new problems and does not address the very real difficulties that may be faced by smokers. Smoking behaviour is rooted in a powerfully physically addictive substance, nicotine, and employers should recognise that employees may need help. Having a smoking room is an option, but there are pros and cons with offering such facilities and the right solution may differ from one employer to the next. However, based on observations of workplace smoking policies there is now a large amount of evidence to suggest that the following key points contribute to a successful policy:

- Acceptance of the right of employees not to be exposed to tobacco smoke;
- Consultation with employees and trades unions;
- A timetable to bring in changes;
- Support for attempts to quit smoking;
- That the policy be strictly enforced and subject to normal disciplinary procedures;
- Deciding on whether there will be a well-ventilated smoking room and/or how long it will be retained;
- Clear policies on smoking that apply to both visitors and employees at all levels, with transparent guidance on breaks and how smokers should make up the time.

Guidance on implementing a policy is discussed in Section 3: [Implementing a workplace smoking policy](#) and a sample policy can be viewed at Appendix 1.

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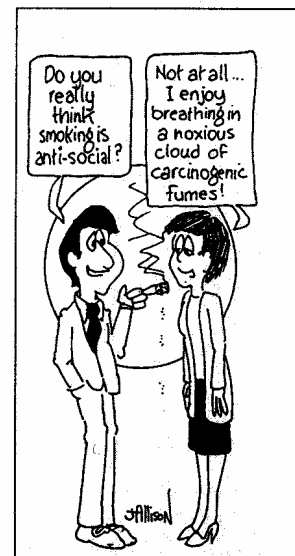
# ONE

## Impacts of smoking in the workplace

There are three main problem areas associated with smoking in the workplace: the harm passive smoking causes to non-smoking employees and customers; absenteeism and loss of smoking staff due to ill health or even death; lost productivity and other additional costs. These are considered in the three sections below.

### 1.1 Harm to non-smokers

The authoritative report of the government's Scientific Committee on Tobacco and Health (SCOTH) demonstrates that passive smoking is a cause of heart disease<sup>3</sup> and increases the risk of lung cancer by 20-30 percent.<sup>2</sup> Exposure to passive smoking can increase a non-smoker's risk of having a stroke by up to 82 percent.<sup>10</sup> In 1993 the [US Environmental Protection Agency](#)<sup>14</sup> classified tobacco smoke as a Class A carcinogen. (This puts tobacco smoke in the same category as asbestos and arsenic.) The government's advisory committee on tobacco estimates that there are several hundred lung cancer deaths each year resulting from passive smoking in the UK<sup>4</sup>, while more tentative estimates suggest several thousand deaths a year from all passive smoking-related disease. Breakdown products of tobacco smoke have been found in the human foetus. Children are particularly susceptible to the effects of passive smoking and are more likely to suffer from a variety of respiratory complaints.<sup>15</sup> Research funded by the National Asthma Campaign has shown that babies whose mothers continue to smoke during pregnancy have almost a 50 per cent increased risk of being wheezy or having breathing problems.<sup>16</sup>



For most people, passive smoking is an irritation and cause of discomfort or minor conditions but people with asthma are particularly vulnerable to attacks brought on by exposure to smoke.<sup>17</sup>

Passive smoking has been found to be an independent risk factor for a number of conditions and diseases in adults. These include:

- Heart disease
- Lung cancer
- Stroke
- Nasal cancer
- Asthma exacerbation
- Reduced Fertility
- Decreased lung function

There are other diseases for which the evidence is less conclusive, identified by the California Environmental Protection Agency and listed in its 1999 Report.<sup>14</sup>

### 1.1.1 Fatal diseases

According to a British Medical Journal study, a passive smoker typically takes in up to 1% of the smoke that an active smoker inhales.<sup>3</sup> If the risk to health was 1% that of active smoking, this would still be very high compared to other hazards in the workplace - simply because the risks of active smoking are so great. A regular smoker has a one in two chance of dying prematurely as a result of smoking. This breaches the common regulatory practice of reducing the risk of deaths in the workplace to below 1 in 10,000.<sup>18</sup>

#### Lung cancer

The SCOTH report concluded that passive smoking is a cause of lung cancer in adult non-smokers.<sup>4</sup> This should be regarded as an authoritative scientific view and ASH's legal advice suggests it would be regarded as authoritative in law<sup>19</sup> - that is, employers can no longer claim the science is uncertain or that they had no knowledge of the problem.

The British Medical Journal found that:

*"The excess risk of lung cancer was 24% (95% confidence interval 13% to 36%) in non-smokers who lived with a smoker (P<0.001). Adjustment for the effects of bias (positive and negative) and dietary confounding had little overall effect; the adjusted excess risk was 26% (7% to 47%). The dose-response relation of the risk of lung cancer with both the number of cigarettes smoked by the spouse and the duration of exposure was significant. The excess risk derived by linear extrapolation from that in smokers was 19%, similar to the direct estimate of 26%."*<sup>2</sup>

The study of 37 other studies on this issue concluded that there was, "compelling confirmation that breathing other people's tobacco smoke is a cause of lung cancer."<sup>2</sup>

In 1998, a study commissioned by the World Health Organisation (WHO) showed a probable link between environmental tobacco smoke (ETS) exposure and lung cancer in non-smokers.<sup>7</sup> The [WHO study](#) is mentioned here because the tobacco industry and a newspaper has claimed, wrongly, that the study shows that "passive smoking doesn't cause cancer."<sup>20</sup> In fact, the study showed a 16-17% increase in lung cancer risk, but because of the sample size it was not possible to conclude that this study in isolation proved the link with 95% confidence – the confidence was 80%. However, this finding, when taken with other studies and other types of evidence, strengthens the scientific consensus that passive smoking can cause lung cancer in non-smokers. It certainly does not support the tobacco industry argument that there is no significant risk.

#### Heart disease

For lung cancer, the risk to non-smokers is approximately in line with exposure. However, the risks for heart disease appear to be sharply non-linear: Passive smokers may face 25% of the risk faced by active smokers, though they take in only 1% of the smoke. According to a study published in the British Medical Journal, a passive smoker may have as much as half the heart disease risk faced by a 20-a-day smoker.<sup>3</sup> Given that some 26,500 active smokers die from heart disease each year as a result of smoking,<sup>1</sup> the effect on non-smokers could be very large. A 1994 study<sup>21</sup> of Chinese female workers found that exposure to passive smoking at work increased the chances of coronary heart disease and concluded that urgent public health measures were needed to reduce smoking and to protect non-smokers from passive smoking. It is thought that a small exposure to ETS causes the blood to thicken - a phenomenon known as 'platelet aggregation'. This thickening does not increase linearly as smoke exposure increases - if it did, a smoker's blood would solidify! Thus, for low levels of smoke, a passive smoker faces a high proportion of the heart disease risk faced by an active smoker.

A Japanese study published in the Journal of the American Medical Association in 2001<sup>22</sup> revealed that just 30 minutes of passive smoking can impair the coronary blood supply of non-smokers to the same extent as a smoker. The study found that the lining of the coronary arteries was damaged by tobacco smoke, reducing their blood carrying capacity. The heart and circulation system are very sensitive to small doses of tobacco smoke.



## Stroke

Passive smoking exposure increases the risk of stroke in non-smokers by 82% in men and 66% in women. These figures are from a recent study based on research conducted in New Zealand, published in a British Medical Journal specialist publication, *Tobacco Control*.<sup>10</sup> Given that stroke is a very common condition, this means that passive smoking is having a serious health impact on non-smokers. Even though passive smokers typically take in around 1% of the smoke of an active smoker, this study suggests that passive smokers face about one seventh of the excess risk of stroke faced by an active smoker. This appears to be a non-linear effect whereby small exposures to tobacco smoke give a relatively high risk of illness.

Based on the findings of the [SCOTH](#) report and of a review by the Californian Environmental Protection Agency,<sup>6</sup> ASH has calculated that, each year in the UK, about 600 lung cancer deaths and up to 12,000 cases of heart disease in non-smokers can be attributed to passive smoking.<sup>8</sup>

### 1.1.2 Sub-lethal effects

Most people encounter and conceptualise ETS as an irritation, perhaps leading to minor conditions and discomfort. The reality is that there is no safe level of exposure to passive smoking. One recent survey found that 55% of non-smokers would mind if people smoked near them. The respondents believed that tobacco smoke caused them a variety of health problems:<sup>13</sup>

- Bad for health 46%
- Affecting their breathing or asthma 25%
- Irritating their eyes 20%
- Making them cough 21%
- Making them feel sick 8%
- Giving them headaches 6%

Exposure to ETS, therefore, is both a welfare issue and a serious health hazard for employees. Because of these and several other risks associated with passive smoking, the Chartered Institute of Environmental Health ([CIEH](#)) argues that:

- *There is a significant risk to health from exposure to environmental tobacco smoke;*
- *Unless by their own choice, no-one should be exposed to environmental tobacco smoke;*
- *All places where people are working should be free of environmental tobacco smoke.* 23

### 1.1.3 People with asthma

For people with asthma, ETS can cause serious health problems. The [National Asthma Campaign](#) reports that tobacco smoke is a common trigger of asthma attacks for 80%<sup>9</sup> of the 3.4 million people with asthma in the UK.<sup>24</sup> One survey found that 74% of children with asthma said that smoky places made their asthma worse.<sup>25</sup>

Both active and passive smoking are among the risk factors closely associated with a poor prognosis and relapse in asthma symptoms.<sup>26</sup> One study showed how exposure to tobacco smoke for one hour caused a 20% deterioration in the lung function of adults with asthma.<sup>27</sup> In the workplace, people should be protected from exposure to substances that can aggravate existing asthma or cause the development of asthma.

### 1.1.4 Children

While children account for a small part of the work force, children are present in many workplaces for long periods of time; for instance in shopping malls, schools, youth clubs, leisure centres, youth and community centres, etc. The SCOTH report concluded that passive smoking is a cause of middle ear disease, asthma attacks, respiratory tract diseases (such as bronchitis and pneumonia) and Sudden Infant Death Syndrome (cot death) in children.<sup>4</sup>

Infants and children exposed to ETS are more likely to develop pneumonia, bronchitis, asthma, and middle ear disease. It has been estimated that the number of children exposed to passive smoking in England has halved<sup>28</sup>, but even so one reason infants and children may be more susceptible to harm

from ETS is that their lungs and other respiratory tissue are still developing. The infant lung has an immature immune system and very small airways that are vulnerable to obstruction.<sup>29</sup>

## 1.2 Absenteeism, illness and death amongst smokers

Smoking is associated with around 50 diseases, and smokers are more likely to be ill and require time off. As well as major illnesses such as cancer, bronchitis, emphysema, strokes and heart disease, smokers are more susceptible to coughs, colds and flu. The cost to the employer is not just in sick pay but also lost productivity and output, while there are additional burdens on non-smoking colleagues. Non-smokers may also suffer increased illness from the effects of passive smoking.

A study of 300 employees in Glasgow published in the Journal of Occupational and Environmental Medicine (September 2001) found that non-smoking workers exposed to passive smoking at work suffer up to 10 percent reduced lung function. Lung function is a measure of how much and how quickly air can be forced in and out of the lungs.<sup>30</sup>

Another study in Scotland estimated that absenteeism due to smoking cost employers more than £33 million during 1995.<sup>31</sup> A business may also lose highly-valued or vital staff due to illness or death through smoking. Half of all teenagers who currently smoke will die from diseases caused by tobacco if they continue to smoke. Twenty-five per cent of them will die before the age of 70, losing, on average, 23 years of life.<sup>32</sup> Before death, there may be a long period of incapacitation in which the smoker is unable to work and the general quality of a smoker's life will be poorer.

Restricting smoking in the workplace does not necessarily turn smokers into non-smokers, but it does increase the likelihood that smokers will try to quit, and that they will succeed. A study of Australia Telecom found that after a no-smoking policy was brought in on average smokers smoked 3-4 cigarettes less each day and enjoyed a higher quit rate than the local community.<sup>33</sup> Given that 71% of smokers say they would like to give up,<sup>13</sup> a non-smoking atmosphere could help smokers to reduce consumption or quit - especially if the employer introduces a cessation programme with the aim of increasing staff welfare and productivity.

## 1.3 Tobacco companies oppose smoke-free workplaces

The tobacco industry itself recognises that smoke free environments help smokers to quit:

*The immediate implication [of smoking bans] for our business is clear: if our consumers have fewer opportunities to enjoy our products, they will use them less frequently and the result will be an adverse impact on our bottom line.”<sup>34</sup>*

*“What do these health claims, the heightened public sentiment for smoking restrictions, increasing nonsmoker annoyance toward smokers mean for this industry? Lower sales, of course. The Tobacco Merchants Association took a look at smoking restriction legislation and cigarette consumption between 1961 and 1982. The conclusion: that restrictive smoking laws accounted for 21 percent of the variation in cigarette consumption from state to state during that time.... Those who say they work under restrictions smoked about one-and-one-quarter fewer cigarettes each day than those who don't....That one-and-one-quarter per day cigarette reduction then, means nearly 7 billion fewer cigarettes smoked each year because of workplace smoking restrictions. That's 350 million packs of cigarettes. At a dollar a pack, even the lightest of workplace smoking restrictions is costing this industry 233 million dollars a year in revenue.”<sup>35</sup>*

*“The voluntary restriction of smoking — by businesses, associations, public agencies and even labour unions — is one of the most damaging and most insidious challenges we face.”<sup>36</sup>*

Only the tobacco industry and their front organisations argue that there is no risk from passive smoking. [The Oregon Health Board](#)<sup>37</sup>, [International Agency on Cancer Research \(IARC\)](#), and [ASH](#)<sup>38</sup> amongst others provide comprehensive evidence about how the tobacco industry has [actively campaigned](#)<sup>39</sup> to confuse the public and legislators over the risks of passive smoking.

The reason why the tobacco industry tries to distort the evidence on passive smoking and oppose restrictions is because the more smoking is restricted the more likely smokers will

consider giving up. Simply put, smoking restrictions are bad news for tobacco sales but good news for the health and safety of all staff.

#### **1.4 Is there an 'acceptable' level of passive smoking at work?**

Several studies show that there is no safe level of exposure to passive smoking.<sup>40</sup> Repace et al<sup>41</sup> in the United States have calculated that typical levels of airborne nicotine in public places range from 1 to 100 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ). Exposure to an average of  $7.5 \mu\text{g}/\text{m}^3$  of nicotine for 40 years corresponds to a probability for passive-smoking-induced mortality of 1 per 1000 from lung cancer and 1 per 100 from heart disease. This is very high compared to other environmental hazards.

An Australian report<sup>42</sup> citing the US EPA report noted that:

*" The USEPA defines 'acceptable' risk levels for environmental carcinogens and toxins in air, water and food as 1 per 1,000,000. The typical excess population risk generated by passive smoking range is about 2 per 1000 for lung cancer and about 2 per 100 for heart disease. This represents 200 times more than the acceptable risk level for lung cancer, and 2000 times the acceptable risk level for heart disease."*

A British study of non-smoking adults working in bars showed nicotine intakes equivalent to half a cigarette per day. These findings were based on salivary cotinine measurements taken from premises where doors and windows were open to provide natural ventilation.<sup>43</sup> A study of non-smoking employees working in licensed premises in central New South Wales found that, after at least of four hours work, employees had four-times the carbon monoxide levels of workers in a smoke-free workplace, and about one-third of the non-smoking employees had carbon monoxide levels consistent with 'light smoker' status.<sup>44</sup>

The recent banning of smoking in bars in California provided an opportunity for a before-and-after study of bar workers.<sup>45</sup> The study found that 74% of bartenders initially reported respiratory symptoms when bartenders' median exposure to environmental tobacco smoke (ETS) was 28 hours per week. At follow-up, ETS exposure at work had declined to a median of two hours per week and 59% of the initial group no longer had symptoms. Of the 77% initially reporting sensory irritation symptoms, 78% had no symptoms at follow-up. Complete cessation of workplace ETS exposure was associated with the greatest improvements in respiratory health.

However, two studies from Hong Kong should remind workplace decision makers of the fact that passive smoking adversely affects all staff in any indoor environment and that there is no safe level of exposure to environmental tobacco smoke. In May 2001, a University of Hong Kong study found that passive smoking kills 150 workers a year in Hong Kong.<sup>46</sup> A second study of Hong Kong policemen, found that non-smoking men exposed to passive smoking at work for more than a year were twice as likely to take time off sick. The study also found that they were 30% more likely to have required treatment for respiratory symptoms in the preceding 14 days than their colleagues working in a smoke-free environment.<sup>47</sup>

#### **1.5 Productivity**

A US Government estimate suggests a productivity gain of 3% associated with improving air quality in the workplace.<sup>48</sup> Smoking breaks take time and may cause frequent interruptions to the working day. Each smoker may vary in terms of the length and frequency of their smoking breaks, and whether the breaks taken are additional to or contained within regular breaks enjoyed by all staff. A plausible daily pattern of nine cigarette breaks lasting 10 minutes each equates to one working day per week. This may create inequalities in the workplace if non-smokers feel that they are working longer hours for the same pay. Local authorities, including Harrow, Thurrock and Tower Hamlets have responded to this problem by requiring smokers to clock off while taking cigarette breaks. Although, employers who wish to consider this option may face a small amount of initial vocal opposition, in October 2001, it was found that the policies were working well and that from day one they were very well received by the vast majority of non-smokers.<sup>49</sup>

In 1996, one study estimated that lost productivity due to smoking was costing employers in Scotland more than £1.2 million per day, or £292 million per annum.<sup>50</sup>

The Canadian national health ministry, [Health Canada](#)<sup>51</sup>, has calculated the additional cost to an employer of employing a smoker as being up to C\$2,565.<sup>52</sup> (note: 2.3 \$C = 1 UK pound) The breakdown is as follows:

<b>Annual cost per smoking employee (1995, C\$)</b>	
<b>Cost Factor</b>	<b>Cost</b>
Increased absenteeism	230
Decreased productivity	2,175
Increased life insurance premiums	75
Smoking area costs	85

Productivity may also be impaired as a result of poor morale caused by friction between smokers and non-smokers over smoking breaks, official and unofficial. In effect, non-smokers will be covering for smokers at these times. In addition, morale may be further damaged by the reluctance of non-smokers to have people smoking near them.

A study in Scotland<sup>53</sup> found that 93% of Scottish workplaces had a smoking policy: 34% operated smoke free buildings, and 53% restricted smoking to a "smoke room". The estimated cost of smoking related absence in Scotland is £40 million per annum. Total productivity losses are estimated at approximately £450 million per annum. In addition, the resource cost in terms of losses from fires caused by smoking materials is estimated at approximately £4 million per annum. In addition, there are costs from smoking related deaths and smoking related damage to premises. The study also shows how smoking cessation interventions in the workplace can yield positive cost savings for employers, resulting in gains in productivity and workplace attendance which may outweigh the cost of any smoking cessation programme.

## **1.6 Additional expenditures**

Smoking can create a number of extra costs for employers.

- Additional cleaning and redecoration.
- Special ventilation requirements.
- Provision of special facilities for either smokers or non-smokers, effectively resulting in higher property costs.
- An increased fire risk, resulting in higher fire insurance premiums than for premises in which smoking is banned. According to the most recent Home Office figures, smoking causes 10% of accidental fires in the workplace.<sup>54</sup>

## **1.7 Company image and public opinion backs smoking restrictions**

Employers should always be mindful of changing attitudes in society. One important reason for having a smoking policy is to do what staff, customers, suppliers, shareholders and other stakeholders regard as good practice. Public opinion – even among smokers – strongly favours restrictions on workplace smoking. The latest study by the Office for National Statistics recorded public attitudes to restrictions on smoking as follows:<sup>13</sup>

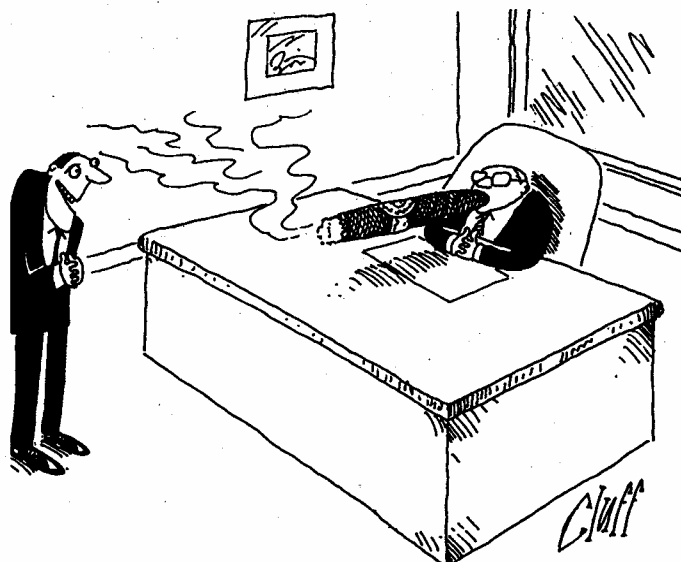
Percent agreeing that smoking should be restricted...	Smoking status			
	Current smoker	Ex-smoker	Never smoked	All adults
...at work	73	88	92	86
...in restaurants	73	92	94	88
...in pubs	28	59	65	53

This shows a high degree of support, from both smokers and non-smokers, for restrictions on smoking in the workplace – even in places where smoking has been regarded as ‘normal’ for a long time.

## TWO

### The law and smoking in the workplace

**Disclaimer** The authors offer this analysis on the basis of their own knowledge and experience gathered over a number of years working in the field. Readers of this text who wish to consider legal action are strongly advised to obtain advice from a qualified lawyer about their own particular circumstances. This can be gained either via your trade union or a solicitor. ASH, the TUC and the National Asthma Campaign accepts no responsibility for any actions taken on the basis of this document. There are several legal approaches that may offer the non-smoker protection from passive smoking in the workplace. However, at present the law is not clear and, in the end, the decisions of courts and employment tribunals are always made on a case-by-case basis. It is currently impossible to point to legislation or case law that unambiguously creates a clear legal requirement to ban smoking in the workplace. There are three main legal approaches: (1) Health and safety legislation, (2) Employment law, (3) Common law (suing for damages). These approaches and the experience to date are discussed in turn in the sections below.



*"I'd be honoured to be your passive smoking victim, F.W."*

#### 2.1 Health and safety legislation

Health and safety law that bears on smoking at work includes:

- The Health and Safety at Work Act 1974
- European Union Directives
- Regulations implementing the legislation above:
  - Management of Health and Safety at Work Regulations 1992, as amended in 1994 to implement the Pregnant Workers Directive
  - Workplace (Health, Safety & Welfare) Regulations 1992, with their Approved Code of Practice

To assess the likely success of drawing on this legislation, ASH has obtained a legal opinion from an eminent barrister, John Melville Williams QC.<sup>19</sup> (This opinion is available from ASH priced £25.)

The opinion suggests that, in the light of current medical evidence regarding ETS, in most circumstances the law already requires employers to ban smoking in the workplace. The opinion examines the development of knowledge surrounding passive smoking and concludes that employers can no longer use the excuse of scientific uncertainty or that they do not know of the danger.

The Health & Safety at Work Act 1974 effectively requires employers to do what is reasonable and practicable to ensure the health, safety and welfare of their employees (see 2.1.1 below). ETS has clear impacts on both health and welfare, and in the vast majority of circumstances, it is both reasonable and practicable to ban smoking where people work. There may be some employers who argue that certain categories of workplace may be exceptions, such as the hospitality industry or residential care, where people also live. However, even if this is accepted, workplace smoking policies that fall short of a complete ban, such as restricting the time non-smoking staff spend in areas where smoking is allowed, may be deemed to be a reasonable and practicable alternative.

Though the legal advice is clear it can only be tested in court, and there is not yet case law to back it. Though the legal advice suggests a case would be successful, employees cannot yet say, "The law requires smoking to be banned."

### 2.1.1 The Health & Safety at Work Act 1974

This Act, which imposes criminal liability, has been an important part of health and safety law since 1974. Since 1 January 1993, though, some parts of it have been amended and supplemented by the implementation in the UK, through regulations, of European Union Directives (see 2.1.2). Nevertheless, the requirements of the 1974 Act are taken as the minimum standards for the new regulations.

Section 2(2)(e) of the Health and Safety at Work Act places a specific duty on the employer in respect of employees:

*"to provide and maintain a safe working environment which is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work".*

This means that if a risk to health can be demonstrated, for example if a worker with a respiratory condition is forced to work in a very smoky atmosphere which may make that condition worse, the employer must take action to deal with the risk. Health and safety inspectors can take enforcement action if necessary in these circumstances, but ultimately it would be for the courts to decide in a particular case whether the risk to health was significant.

In addition, under Section 7 of the Act an employee is required not to put fellow employees at risk unnecessarily.

Employers also have a common law responsibility to provide a safe place and system of work. They should act to resolve complaints from employees that their health may be at risk from a smoky environment.

When considering risk, the key factor is not whether the employer knew about the dangers, so much as whether s/he ought to have known, in the light of the knowledge available at the time. It can be argued that, under the Act, employers have been required to take action on passive smoking at work since the publication of the Fourth Report of the Independent Scientific Committee on Smoking and Health in 1988, if not earlier. However, to date no employer has been required by legal action under the Act to do this - that is, by the powers of the health and safety inspectors to issue enforcement orders. This may be because many employers respond before the possibility of such action is raised. It may also be because taking action under the Act is primarily the responsibility of an enforcement agency, the Health and Safety Executive (or local authorities for many service sector enterprises), and such agencies have yet to prioritise the resources necessary for a test case in the UK courts.

### 2.1.2 European Union Directives

In addition to UK legislation, regulatory changes have taken place, with European Union (EU) requirements overlaid on the existing health and safety regulations. Several EU Directives relating to health and safety in the workplace have come into force, by means of regulations, at various dates since 1 January 1993.

Health and safety of workers framework directive [89/391/EEC](#), brought into force as **The Management of Health and Safety at Work Regulations 1992**,<sup>55</sup> has wide-ranging provisions and sets down minimum requirements for the effective managerial control of health and safety matters in the workplace.

The Workplace health & safety directive, [89/654/EEC](#) brought into force as **The Workplace (Health, Safety and Welfare) Regulations 1992**,<sup>56</sup> covers the work environment, safety, facilities and housekeeping. This Directive does not prohibit smoking in the workplace, but does require that where rest areas are provided, there must be non-smoking areas. Thus, during breaks a worker is entitled to smoke-free air, but not while actually working! There are also mandatory risk assessments that should ensure smoking in the workplace is taken more seriously.

The pregnant workers directive [92/85/EEC](#), which provides general obligations on employers to protect the welfare of employees that are pregnant, have recently given birth or are breast-feeding.



### 2.1.3 Health and safety regulations

Regulations are 'secondary legislation', which are introduced for detailed implementation of general duties expressed in the Health & Safety at Work Act 1974 or EU Directives. There are two particularly relevant sets of regulations.

### 2.1.4 The Management of Health and Safety at Work Regulations 1999

These regulations (29<sup>th</sup> December, 1999) update the Framework Directive 89/391/EEC, impose specific requirements to assess the risks to health, safety and welfare in the workplace, to continually review and revise these assessments and to take preventive and protective measures. In the general principles of prevention, the legislation states:

*“SCHEDULE 1  
Regulation 4*

#### *GENERAL PRINCIPLES OF PREVENTION*

*(This Schedule specifies the general principles of prevention set out in Article 6(2) of Council Directive 89/391/EEC)*

- (a) avoiding risks;*
- (b) evaluating the risks which cannot be avoided;*
- (c) combating the risks at source;*
- (d) adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;*
- (e) adapting to technical progress;*
- (f) replacing the dangerous by the non-dangerous or the less dangerous;*
- (g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;*
- (h) giving collective protective measures priority over individual protective measures;*  
*and*
- (i) giving appropriate instructions to employees.”*

The key message from this directive is that the employer's duty is to avoid risks altogether if possible. If not, then risks should be combated at source, with priority given to measures that protect everyone at the workplace and therefore yield the greatest benefit; i.e. collective protective measures have priority over individual measures. In this context, it can be argued that, given the evidence about passive smoking, tobacco smoke should be included in any risk assessment. It follows that appropriate measures must then be taken to deal with the risk, and this could well include an effective smoking policy.

### 2.1.5 The Workplace (Health, Safety and Welfare) Regulations 1992

These bring into force the Workplace Directive. The Approved Code of Practice<sup>57</sup> for these regulations requires that where rest rooms and rest areas are provided, arrangements must be made to ensure that non-smokers can use them without experiencing the discomfort of tobacco smoke. This means that employers must either provide separate rest rooms or areas for smokers and non-smokers, or prohibit smoking in rest rooms and areas. The regulations have applied to all workplaces since 1 January 1996. In addition, the Approved Code of Practice requires that, “Effective and suitable provision shall be made to ensure that every enclosed workplace is ventilated by a sufficient quantity of fresh or purified air.”

## 2.2 Employment Tribunals

With this approach, non-smokers may claim that smoking in the workplace has caused them distress or forced them to leave employment. The non-smoker would allege that the employer was in breach of the law that governs the relationship between employers and employees. The key legislation is the Employment Rights Act 1996.

### **2.2.1 The Employment Rights Act 1996**

The relationship between the employer and employee is regulated by the contract of employment, which is subject to the general principles of statute law. Under the [Employment Rights Act 1996](#) employees must now be provided with written particulars of the key terms of employment by the end of eight weeks from the start of employment. It should be noted, however, that the statement itself does not constitute the whole contract. Terms and conditions of employment may also be derived from other sources - for example from collective agreements, staff hand-books and works rules - while custom and practice may be applied to fill any gaps that exist in a contract.

In addition to the express terms of the contract - i.e. those which are expressly stated to be part of it - there will also be *implied terms*. These may be implied by statute, e.g. the Health and Safety at Work Act 1974, or by common law. These implied terms include the common law obligation placed on the employer to take reasonable care of the employee. In fulfilling this duty employers are entitled to follow recognised practices to deal with risk. They must also keep abreast of current developments in knowledge regarding those risks. As soon as an employer knows of a risk, or could be expected to know, there is a duty to take all reasonable steps to protect employees. This obligation extends to cover the premises, plant, equipment and tools, a safe system of work and competent and safe colleagues.

In theory a non-smoker exposed to passive smoking at work over a period of time who has, as a result, suffered adverse effects to his/her health, could claim that s/he had been constructively dismissed. This is because there is an implied term of mutual trust between the parties to a contract of employment and the employer has an obligation to take proper notice of an employee's concerns. In situations, therefore, where non-smokers are forced to endure passive smoking in the workplace it is possible that a claim of constructive dismissal would be successful. However, this is very much an unsatisfactory and uncertain last resort.

There have been a number of employment tribunals directly related to smoking at work. Most actions have involved smokers bringing constructive dismissal cases against their employers because a policy restricting smoking had been introduced. The first such employment tribunal case took place in 1984. The clear pattern of decisions since then has been one of increasing support for employers wishing to introduce a policy restricting smoking. Even the first decision, which found in favour of the employee, regarded the restriction of smoking by the employer as 'laudable'. In those cases won by smoking employees, the decision has been based on faulty procedure on the employer's part in introducing policies or in handling the disciplinary process.

There have been two landmark Employment Tribunal cases: one involving a smoker (see 2.2.2) and one involving a non-smoker (see 2.2.3). Each brought a constructive dismissal case against their employer.

### **2.2.2 The Dryden Case - is there a right to smoke?**

The Dryden Case came before the Employment Appeal Tribunal (EAT) of Scotland in 1992: *Dryden vs. Greater Glasgow Health Board* [IRLR 469].<sup>58</sup> The EAT held that the employer was not in breach of contract for introducing a no-smoking policy, having properly consulted the work force and given due warning.

This judgement makes it clear that an employee who smokes cannot insist on an alleged implied term of their contract entitling them to smoke, or to have access to smoking facilities. The fact that the smoking ban may make life at work hard on the smoking employee is of little consequence if the policy is introduced for a legitimate purpose. The legitimate purpose must be for the employer to have regard to the safety and welfare of the majority of non-smoking employees.<sup>59</sup>

### **2.2.3 The Dorrington Case - is there a duty to prevent smoking?**

This came before the Employment Appeals Tribunal (EAT) of England in 1997: *Dorrington vs. Waltons & Morse*. Jill Dorrington was a former employee at Waltons & Morse, a law firm in the City of London. She claimed that she and other non-smoking colleagues were forced to work in a smoky environment even after a smoking policy was implemented. She sued the company for constructive dismissal and won the case before an industrial tribunal who ruled that it:

*“ ... is an implied term of every contract of employment that the employer will provide and maintain a working environment which is reasonably tolerable to all employees ... Such a term must apply to such matters as noise levels, smells and the quality of air which the employees breathe.”*

Her former employers appealed to EAT against the ruling but their appeal was dismissed. This case highlights the potential for success of any constructive dismissal case brought by an employee who finds tobacco smoke in the workplace unpleasant, and whose employer will not do anything about it. Under this ruling there is no requirement for the employee to prove that their health has been affected.<sup>59</sup>

## **2.3 Suing for damages resulting from passive smoking**

### **2.3.1 The common law**

The law of negligence may allow for victims of passive smoking - particularly those with existing complaints such as asthma or bronchitis - to claim compensation. The law says that if somebody suffers some medically diagnosable condition as a result of exposure to a hazard in the workplace, an employer can potentially be held liable, if they should have had reasonable foresight of the risk to that individual. It does not matter if the employer did not think about it - the law says they should have done.

No claim in the UK in respect of passive smoking has yet been decided in favour of the claimant in a personal injury case, though as shown in the previous section, there has been success in Employment Tribunals. Indeed, rigorous proof would be required that a non-smoker's health had been damaged by tobacco smoke at work and not by any other substance, nor by exposure outside the workplace. However, given the number of non-smokers exposed to ETS at work, and increasing awareness of the issue, it may only be a matter of time before an individual will be able to prove that damage to their health was caused by passive smoking.

Concern about the possibility of legal action being taken by employees affected by ETS has been one of the forces motivating employers to introduce smoke-free policies. There has been one victory in an industrial injury benefit claim (see 2.3.2) in addition to three out-of-court settlements (see 2.3.3, 2.3.4 & 2.3.5). Up to November 1998, there had been two UK court cases relating to ETS (see 2.3.6 & 2.3.7), but these were not successful.

### **2.3.2 Joan Clay - legitimately claiming social security**

In August 1990, in a case brought before the Social Security Commissioner, Miss Joan Clay, a civil servant suffering from bronchial asthma aggravated by tobacco smoke, successfully maintained that exposure to passive smoking in her workplace had injured her lungs, and that she had suffered an industrial accident.<sup>60</sup> The decision, which was concerned with the provision of the 1975 Social Security Act, was the first in which a statutory body recognised that passive smoking damages health.<sup>61</sup>

### **2.3.3 Veronica Bland - out of court settlement**

In January 1993 a local government employee, Veronica Bland, reached an out-of-court settlement of £15,000 with her employer's insurance company, in respect of the damage to her health which she alleged had been caused by passive smoking at work. Her case was backed by the trade union NALGO (now part of UNISON) and was the first known settlement of its kind in this country. It served to alert employers and employees to their potential legal liability, although it sets no legal precedent since it did not come to court.

Veronica Bland claimed damages for pain, suffering and loss of amenity, and for some disadvantage in the labour market in that she would have to work in a smoke-free environment in the future, and for the cost of settlement. The employers, Stockport Metropolitan Borough Council, introduced a smoking policy in 1990, before the case was brought, but several years after Veronica Bland first complained about her problems with passive smoking at her workplace.<sup>62</sup>

#### **2.3.4 Elizabeth Ashby - out of court settlement**

In February 1995, Elizabeth Ashby received an out-of-court settlement of £2,500 from her former employers, Chartered West LB Ltd., in respect of injuries sustained as a result of exposure to ETS. In 1988, the Department of Employment recommended that Elizabeth Ashby, who is a registered disabled person with a history of severe lung problems, be employed in a smoke-free area. Between 1988 and 1991 smokers were gradually introduced to the area where Elizabeth Ashby worked and in February 1991 she became so ill that she had to be admitted to hospital.<sup>63</sup>

#### **2.3.5 Beryl Roe - out of court settlement**

In July 1995, Beryl Roe received £25,000 compensation for damage to her health caused by passive smoking at work from Stockport Metropolitan Borough Council. Beryl Roe retired in 1987 aged 51, prior to Stockport Council introducing their smoking policy in 1990. She claimed to have suffered eye, nose and throat symptoms as well as bronchitis from exposure to ETS which has meant that she has not been able to work since 1987.<sup>64,65</sup>

#### **2.3.6 Agnes Rae - lost on a technicality, but establishes a key principle**

In April 1997, Agnes Rae, a non-smoker in a workplace where smoking was allowed, brought a case against her employer, Glasgow City Council, claiming that no proper ventilation had been provided to remove tobacco smoke from the air. She further claimed that no warning was given to her on the dangers of ETS. The Court dismissed her claim on a legal technicality. However, this was not a clear cut defeat. The action was, in part, brought under Scottish law using Section 7 of the Offices, Shops & Railway Premises Act 1963. This requires effective and suitable provision for securing and maintaining the ventilation of every work room by the circulation of adequate supplies of fresh or artificially purified air. In considering this, the Court held that the section was “ ... plainly directed at the mischief of foul air in the atmosphere of the workplace; tobacco smoke which fouled up the atmosphere clearly fell within that mischief.”<sup>66</sup>

#### **2.3.7 Sylvia Sparrow - lost damages claim, but key principle accepted**

In May 1998, Sylvia Sparrow, a nurse backed by the Royal College of Nursing, lost a case in which she sued her former employers for loss of earnings due to illness caused by passive smoking in her workplace, a residential nursing home. The judge ruled that her employer had taken reasonable steps to protect employees from the hazards of tobacco smoke and, in so doing, accepted the principle that employers have a duty to take appropriate action to avoid excessive exposure to ETS. It is worth noting that what is reasonable protection from ETS for a nurse on call in a residential nursing home is probably far from being reasonable protection for, say, an office worker in a bank.

#### **2.3.8 Colette Comstive – Wins damages for injury to her unborn child**

In May 2000, Colette Comstive claimed that passive had smoking affected her unborn child. Ms Comstive argued that her son Matthew, now seven, suffers asthma and recurring chest infections after she was forced to work in a smoky office during her pregnancy. Despite her complaints, her employer, the catalogue company Great Universal Stores, failed to move her to a smoke-free environment at its office in Burnley.

Mrs Comstive worked as a part-time telephone clerk for GUS. She said that of the 100 staff in the open-plan office, around 90 smoked. She was often forced to sit next to a smoker and even the non-smoking table, to which she was eventually moved, was surrounded by clouds of smoke.

Following a four-year legal fight, the boy was awarded £5,000 by a judge in chambers. GUS, which denied liability, also agreed to pay costs. Her son will receive the cash, which has been invested by his legal team, when he is 18.

#### **2.3.9 Other cases of interest**

In the case of workplaces that are also public places, there have been two interesting court cases. The first case was Newton vs. Bournemouth International Centre (BIC). In 1998 Lynne Newton, an asthma sufferer, attended a concert at BIC having been assured that the venue banned smoking. Mrs Newton was forced to leave soon after the start of the concert after becoming ill due to people smoking. The venue had clear no-smoking signs but staff made no attempt to enforce the ban. On 12<sup>th</sup> July 1998, at Bournemouth County Court, District Judge Dudley Edwards ruled that the owners of BIC (Bournemouth

Council) were in breach of contract for not enforcing the smoking ban. Mrs Newton was awarded a £40 refund, £30 costs and £62 compensation.<sup>67</sup>

The second case was Farren vs. Reading Borough Council. In July 1999 Cecilia Farren, an asthma sufferer, attended a music and dance festival at the Rivermead Centre in Reading. Ms Farren was unhappy that a smoking ban, advertised in the programme and at the venue, but not in advance, was not being enforced by Council stewards. On [13 July 1999](#)<sup>68</sup>, at Reading County Court, Judge Mildred ruled that Reading Borough Council had neglected its duty of care by not enforcing the smoking ban and awarded compensation and costs to Ms Farren. The Council was not deemed to be in breach of contract as the smoking ban had not been advertised in advance.<sup>69</sup>

### **2.3.10 Current cases (October 2001)**

This section offers a sample of cases where employees are currently taking recalcitrant employers to court because they have failed to address the health risks of passive smoking at work.

- The GMB trade union is representing [Mickey Dunn](#) in a claim for personal injury due to passive smoking. Mr Dunn worked as a croupier in Napoleons Casino, London. He believes that his employers did not protect him from the risks of passive smoking.
- On the [20 November 2000](#), Margaret Pacetta won the right to sue her former employer, the Clydesdale Bank. Mrs Pacetta is seeking £50,000 damages from the bank after alleging that she was inhaling other employees' cigarette smoke even after a smoking ban was introduced. Mrs Pacetta was medically retired from the bank in 1996 and launched her legal action. The claimant argues that she developed serious respiratory problems because of passive smoking and uses inhalers and steroids to treat her chronic asthma condition. Even following the imposition of the ban in 1992 employees continued to smoke when they came in to read files. The bank maintains that Mrs Pacetta's workroom was never a designated smoking room and that any exposure she may have had to cigarette fumes from other staff smoking ceased following the introduction of the 1992 ban.
- [50 Irish pub staff](#) are suing the tobacco industry and the hospitality industry, claiming that passive smoking at work harmed their health.

## **2.4 Overview of International Litigation**

The following is a sample of just a few landmark cases concerning passive smoking in the workplace.

### **2.4.1 Owen Brown – teacher wins compensation for smoky staff room**

In [late July 2001](#), the official Australian compensation agency paid substantial compensation to a teacher who claimed smoke-filled staff rooms contributed to chronic lung disease. Melbourne art teacher Owen Brown required a lung transplant because of a condition which a court described as involving "emphysema, asthma, chronic bronchitis, bronchiectasis." Smoky conditions in the staff rooms of three schools where the 54-year-old non-smoker taught for over 30 years contributed to the condition. A court awarded around \$100,000 compensation (£35,600). Workcover, responsible for the compensation payout, said the case would not be considered a precedent.

### **2.4.2 Marlene Sharp – Barmaid wins A\$450,000 from employers**

In May 2001, [Marlene Sharp](#), a former barmaid in Australia, became the first non-smoker in the world to win damages from her ex-employer for cancer caused by environmental tobacco smoke. Marlene Sharp, supported by The Liquor, Hospitality and Miscellaneous Workers Union (an Australian trade union) sued the veterans' club in New South Wales where she worked for negligence. A jury at the New South Wales Supreme Court ruled in her favour and awarded her A\$ 450,000. Ms Sharp, 63, has never smoked, but for 11 years she worked in a smoke-filled bar at the Wollongong military veterans' club. When she developed a cancerous lump in her throat six years ago, she was convinced that it was the result of this passive smoking. A four-man jury at the New South Wales Supreme Court agreed with her and ruled that the club where she worked was negligent.

This case has led to the Liquor, Hospitality and Miscellaneous Workers Union organising a campaign with the support of doctors and hospitality workers. The campaign aims to force insurers to outlaw smoking in pubs, clubs and gaming venues.

### 2.4.3 Norma Broin – Class Action wins US\$350 million from tobacco industry

Norma Broin worked as an airline attendant. In 1989 she discovered that she had lung cancer, despite her never smoking. She became convinced that her frequent headaches, ear infections and bouts of bronchitis stemmed from her exposure on airplanes. In 1990, the US Congress banned smoking on domestic flights. As lead plaintiff in a class action against the tobacco industry, 60,000 other attendants were also ruled eligible to join. The case began in 1991 and was eventually settled by the four tobacco companies, Brown & Williamson Tobacco Corp (the US subsidiary of British American Tobacco), Philip Morris Cos. Inc., R.J. Reynolds Tobacco Co. and Lorillard Tobacco Corp in October 1997. The case had been the first class-action suit against the tobacco industry to reach trial and the first linking liability to second-hand smoke.

### 2.4.4 Nanny Nooijen – Dutch Court upholds right to work in a smoke free environment

On 25 April 2000, a judge agreed that a postal service worker had the right to work in a smoke free environment. The judgement in the Breda district court, upheld a postal worker's complaint that her exposure to tobacco smoke at the city's sorting office infringed her right to work in a smoke-free environment. The court ruled that Nanny Nooijen's employers had failed to satisfy the constitutional rights of citizens under the employment law, which obliges employers to ensure that workplaces cause no harmful effects to employees' health. Her employers were ordered to establish a smoking ban throughout the entire premises within 14 days, and only allow smoking in separate well-isolated smoking areas.

## 2.5 Summary of legal position

### 2.5.1 Health and safety legislation

The Health and Safety Act, EU Directives and regulations do not provide a clear duty to ban smoking in the workplace. However, two European Directives can be applied to smoking in the workplace.

- [Workplace Health & Safety Directive 89/654/EEC](#)
  - This directive requires rest areas to be adequate to prevent discomfort to non-smokers.
- [Pregnant Workers Directive 92/85/EEC](#)
  - This includes general duties to ensure the welfare of women who are pregnant or breast feeding. This can be applied to the welfare of women in smoky environments.

There is no safe level of exposure to passive smoking at work so there is a strong argument that general principles embodied in this legislation require employers to ban smoking unless they can show it is unreasonable or impractical. Legal advice for ASH suggests that, in the light of firm evidence regarding the health effects of passive smoking, the law already requires employers to ban smoking in most workplaces.<sup>19</sup> Legislation does require that where there are rest areas there must be non-smoking provision, and the work place must be adequately ventilated.

### 2.5.2 Employment law

It is clear that the most straightforward legal redress is available in an Employment Tribunal, based on the Dorrington judgement. In this approach, *there is no requirement to demonstrate that serious harm was caused*. The Dorrington judgement emphasises the duty of the employer to provide a tolerable environment in which employees can undertake their duties. Unfortunately, recourse to an Employment Tribunal suggests that a major conflict with the employer has already arisen and the employee has left employment. However, the judgement could be used to inform discussions and the development of workplace smoking policies and to engage the involvement of trades unions.

### 2.5.3 Common law - suing for damages

This route is difficult because of the burden of proving that ETS caused harm, and that this was the result of negligence by the employer at a time when the employer should have been aware of the risks of passive smoking and taken measures to prevent exposure to ETS. Given the current lack of clarity in the law, potential legal actions involving claims of damage done to the health of an employee by ETS must be examined on a case-by-case basis. However, the Clay, Bland, Ashby and Roe cases show that solidly based cases involving ETS do have a reasonable chance of success, and lawyers are giving

employers legal advice to that effect. The Rae and Sparrow cases show that, depending on the specific details of a case, courts will accept that the law can offer workers legal protection from ETS, but that they will apply tests of what is regarded as reasonable and practicable measures for an employer to take.

## **2.6 Smoking in the workplace – proposals in the Government’s Health Bill**

The Health Bill, published in November 2005, sets out the Government’s proposals for a ban on smoking in most workplaces. Proposed exemptions include private members’ clubs and pubs that do not serve food. These will be covered in separate regulations. If passed, the law will come into effect in 2007. As stated in the introduction, separate arrangements exist for Scotland, Wales and Northern Ireland. All government buildings and NHS premises should have comprehensive smoking policies in place by the end of 2006.

# THREE

## Implementing a workplace smoking policy

### 3.1 Different types of workplace

It is impossible to generalise about all workplaces, but if it is accepted that non-smokers have a right not to suffer a workplace that is polluted by tobacco smoke, then it is important to introduce a credible workplace smoking policy. However, in developing a workplace smoking policy it may be useful to distinguish between 'straightforward' and 'problematic' workplaces.

#### 3.1.1 Straightforward workplaces - the vast majority

The vast majority of places in which people work - including offices, factories, shops, etc. - can be classed as straightforward. Many have already banned smoking, although a significant minority continue to allow non-smokers to be exposed to ETS. As explained above, the Health & Safety at Work Act 1974 requires employers, "to provide and maintain a safe working environment which is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work". In straightforward workplaces this should mean banning smoking where people are at work because it is reasonable and practicable to do this – and it has been done in many places. Such a ban can take many different forms, ranging from a complete ban on smoking during working hours through to the provision of smoking rooms and formal smoking breaks. In these places, the main questions will relate to the treatment of smokers, enforcement of the policy, and complaints or violations.

#### 3.1.2 'Problematic' workplaces - hospitality and residential workplaces

Problematic workplaces are those where it can be argued that smoking is somehow material to the business – or at least that is the perception. There are two obvious categories of workplace covered by this. Firstly, parts of the hospitality industry - pubs, restaurants, hotels, etc. Although the debate surrounding pubs and restaurants is often conducted from the perspective of the customer, the workers in such establishments also have rights under the law and these people may be some of the most heavily exposed to passive smoking. The second category is workplaces where people also live - prisons, psychiatric hospitals, residential nursing homes, offshore installations etc.

In both categories, allowing (or not allowing) smoking is a genuine business concern that is more significant than in, for example, an insurance office or a clothes shop. In many of these places a complete ban on smoking may still be an option, but it may also be possible to introduce measures which protect non-smokers, but fall short of an outright ban on smoking. These could include:

- segregating and sealing smoking areas;
- using ventilation to improve air quality in those areas in which smoking is permitted;
- limiting employees' exposure to ETS by monitoring and restricting the amount of time they spend in smoking areas.

From the point of view of the customer, 88% of people (including 73% of smokers) believe that smoking should be restricted in restaurants, while 53% (including 28% of smokers) believe that it should be





restricted in pubs. There is also widespread support (86%) for restrictions on smoking in workplaces / public places such as post offices and banks. Forty five per cent of people take the provision of no smoking areas into account when selecting a place to go for a meal, with 22% doing so for drinking.<sup>13</sup> The issues for smoking policies in these workplaces will be broader and more complex – and may result in greater expenditure, for example, on ventilation.

### **3.1.3 How common is exposure to passive smoking at work?**

It is often and wrongly asserted that passive smoking at work is part of a bygone era. In a 1999 poll conducted by MORI for ASH, 21% of non-smokers questioned came into contact with tobacco smoke either continuously or frequently in the workplace, while 18% did so occasionally. This suggests that over three million non-smokers are continuously or frequently exposed to tobacco smoke where they work.<sup>70</sup>

A recent survey found that only 44% of the workforce is working in a totally smoke-free environment.<sup>13</sup> In 1997, a survey of 1,500 workplaces in Scotland found that 79% of them had no-smoking areas and that, of these, 22% had banned smoking completely.<sup>71</sup>

## **3.2 Trade Unions**

Representatives of trades unions should be involved in the consultation process for establishing a working policy. If you are in conflict about smoking in your workplace, a trade union may be able to help: a [list of trade unions](#) is available from the TUC. The Trades Union Congress (TUC) has itself had a formal policy on smoking and health since 1981, when it resolved to work with affiliated unions to help educate their membership and help people to stop smoking. It also recommended that unions should be advised to negotiate non-smoking areas, time off for attending smoking cessation courses and workplace smoking disincentive schemes.<sup>72</sup>

The latest [edition of the TUC's "Hazards at Work"](#) contains guidance on smoking (see Useful Contacts). Many individual unions also offer advice to members and reps, and this advice should be drawn on to support the development and implementation of workplace smoking policies. The TUC and unions offer structured training for safety reps which covers smoking issues. Two trade unions, the GMB and Prison Officers Association, have called for smoking to be banned in the areas where their members work.

## **3.3 Issues which commonly arise when introducing a workplace smoking policy**

### **3.3.1 Rights and responsibilities**

It is often said that smoking at work is something that employees should sort out for themselves, or that smoking is a personal habit which should not be regulated by workplace rules.

These are insufficient responses to the problem. Employers do not ask employees to vote on whether guards should be fitted to dangerous machinery, or about the handling of asbestos or toxic substances. There are also rules regarding temperature, noise, ergonomics, lighting, etc., that are not left to the process of unequal negotiations between employer and employee. In our view, it is incumbent upon employers to provide a safe working environment, and ensuring non-smokers are free from the health and welfare risks of exposure to ETS may well be a necessary part of complying with current health and safety law.

Because smoking is seen by some as a purely personal habit, attempts to restrict smoking in the workplace are sometimes interpreted as a direct infringement of a smoker's individual choice to smoke. This argument ignores the non-smoker's individual right to breathe smoke-free air.

Tobacco smoke is a known and measurable health risk. Smokers are free to smoke in a setting where they are not infringing the freedom of others to avoid exposure to this risk. Smoking policies are not about whether or not people smoke, but when and where they smoke and whether their smoke affects others.

It is also worth noting that restrictions on smoking do not relate to a factor inherent to a person, such as sex, colour or class, but to an activity in which a person may choose whether or not to engage. In this respect it is wrong to claim that they are discriminatory.

However, it is important for employers to recognise that smoking is not entirely a matter of free choice - nicotine is an addictive drug. In 1998, the SCOTH report stated, "Over the past decade there has been an increasing recognition that underlying smoking behaviour and its remarkable intractability to change is addiction to the drug nicotine. Nicotine has been shown to have effects on brain dopamine systems similar to those of drugs such as heroin and cocaine."<sup>4</sup> For this reason, it is not possible simply to wish away the problem of smoking in the workplace as it may involve smokers in difficult temporary nicotine withdrawal during the day, or a struggle to break the addiction altogether. Responsible employers must be willing, in the beginning at least, to offer help or to make special provision for smokers.

Sections 3.2.2 to 3.2.13 below discuss many of the issues that arise in defining a workplace smoking policy.

### **3.3.2 Contractual requirement for the employee to be, or to become, a non-smoker**

A few companies have made it a contractual requirement that employees be non-smokers, and that any new employee who is a smoker give up smoking completely, within a fixed period of time of starting work for the company. The company in turn should offer help to the smoker in quitting (see 3.3.11). The key problems with this policy are: an intrusion of work into private life; the potential for invasions of privacy in monitoring the policy; some smoking staff being effectively forced to live a lie; and the possibility of ex-smokers lapsing and thus losing their jobs. Proponents of such policies would argue that the health of the employee is a legitimate concern and cost to the business, and that smoking facilities and breaks are also a cost if people continue to smoke during work time.

### **3.3.3 Complete ban on smoking inside, or outside, the workplace during work hours**

This option does not permit employees to leave the workplace to smoke. It is easily understood and enforcement is made simple because there can be no argument over the details. In addition, the protection of everyone from ETS is guaranteed. However, it requires some fundamental changes and a greater focus on the needs of the smoker, including offering support for smokers who may wish to reduce their smoking or to give up entirely (see 3.2.11). The reasons for adopting this policy may be similar to the previous one, but the restriction is less intrusive as it does not cover time outside work hours. During work time, employers may be concerned about the company image if staff are working off-site.

### **3.3.4 Complete ban on smoking in the workplace**

Again, this option is easily understood, but employees can leave the workplace to smoke. It has become a common sight to see workers smoking outside office blocks or factories. Enforcement is made simple because there can be no argument over the details. In addition, the protection of everyone from ETS is guaranteed. The policy should be introduced to meet the health and safety legislation but in some industries this policy will be introduced for additional reasons - for instance to comply with safeguards that apply to chemical plants and factories that prepare food.

A particular consequence of this policy will be the possible appearance of huddles of smokers outside the premises, accompanied by the inevitable litter of smokers' debris. Some companies get over this problem by positioning ash trays outside entrances. Another difficulty may be the health problems suffered by staff who stand in one of these huddles and are exposed to cold and rain from time to time. However, pro-smoking groups have tended to exaggerate the risks of exposure to outdoor conditions - risks that everybody deals with all the time. The key aspect of this approach is that it forces employees who 'must' smoke to leave the premises. This may act as a deterrent to frequent smoking breaks and encourage smokers, who may feel their habit is increasingly marginalized, to quit.

### **3.3.5 Provision of smoking rooms, outside smoking areas, etc.**

This is a common solution for employers who introduce a smoking policy. However, it requires that the building design allows for it, that space can be made available and that a financial investment is made. In the case of a smoking room, it is essential that proper insulation and ventilation are installed to stop escaping tobacco smoke becoming a problem.

While smoking rooms appear to look after the welfare of smokers in the short term, they may help to sustain smoking in the longer term. Smoking rooms can have a tendency to become a sort of informal social hub for the workforce and may encourage new employees to 'fit in' by joining the smokers. For those trying to quit smoking, a difficult and laudable task, the smoking room may represent temptation and prompt relapse at inevitable moments of weakness. The availability of a warm and nearby smoking room may encourage more smoking breaks than if the employee has to leave the premises. While smoking rooms offer the appearance of kindness and support for smokers, there are also good arguments for not providing smoking-dedicated areas. These arguments include the issue of staff harmony. Often non-smoking colleagues perceive their smoking colleagues as constantly shirking work and "can only ever be found in the smoking room". Non-smokers often complain that smokers get more breaks than them.

### **3.3.6 Smoking breaks during working hours**

Smoking breaks take time and may cause frequent interruptions to the working day. This may create friction because people think they are being treated unequally in the workplace if non-smokers work longer hours for the same pay. The regular disappearance of smokers for unofficial smoking breaks can cause resentment among non-smoking colleagues, as can the provision of official smoking breaks. One option is to only allow smoking breaks during any official tea, meal or other rest breaks which all staff take. Another problem is that if a smoking room or an outside smoking area is not provided, the non-smokers will not be protected from ETS. It is worth remembering that for many workers, "nipping out for a quick fag" is simply not an option and smoking is in effect banned. For example, miners and long-haul flight attendants.

### **3.3.7 Clocking-off or working extra hours for smoking breaks**

One solution to the problems caused by smoking breaks, official and unofficial, is to require smokers to clock-off while taking cigarette breaks. This may resolve the problem of resentment among non-smokers, but the savings on the wage bill may not make up for any losses in productivity. An argument against such a policy is that non-smokers may also take informal breaks (for example for coffee), and although these may not be as frequent or as long as for smoking, it may seem unfair that the same rules do not apply. If this is not the case, then requiring employees to clock off may be one way to reflect the burden of smoking on the business.

As ever fewer workplaces use clocking systems, clocking-off is often simply not an option. In these cases, requiring smoking staff to work more hours in return for smoking breaks may be viable as well as making up for any loss of productivity. In January 1999, Thurrock Council closed its designated smoking areas and banned employees from smoking on its premises. Council employees who want two 15-minute smoking breaks a day are required to work 39½ hours a week instead of the standard 37 hours. Staff wishing to take smoking breaks are issued with contracts agreeing to the extended week.<sup>73</sup>

### **3.3.8 Allowing employees to vote on smoking restrictions**

It can be argued that health and safety is not a matter for democracy but should be determined by best practice. Firstly, voting on smoking restrictions does not offer protection from ETS to non-smokers. The right to smoke and the right not to be exposed to smoke should not be given equal status or decided on a majority. It is not right to allow a smoking majority to inflict harm on a non-smoking minority. Secondly, if there is a fine, and possibly constantly shifting, balance between smokers and non-smokers, there could be calls for a never ending series of votes. Finally, it would almost certainly lead to the rapid growth of tension between smokers and non-smokers, with all that that implies for productivity and morale.

### **3.3.9 Can an employer take on only smokers or non-smokers?**

Yes, as there is no legislation banning this, an employer is free to specify only smokers or non-smokers in job adverts. However, people's smoking habits may change over time and this could lead to problems. One example of this would be a woman smoker, in a smoking workplace, who becomes pregnant and decides to take her doctor's advice to quit for the sake of her child's health.

### **3.3.10 Ventilation**

The introduction of a smoking policy is sometimes objected to on the grounds that improved ventilation will solve the problem. This is not the case and can lead to the employer gaining a false view that they

may have reduced the chance of litigation. Moreover, employers can waste a great deal of money upgrading their ventilation equipment, when a ban on smoking would be simpler and more cost effective.

Ventilation systems which rely on filtration are not, in the normal course of events, effective in removing anything other than the particles from tobacco smoke; and some cannot even deal with many of the particles present, which are particularly fine.

Ventilation systems which re-circulate the air, commonly by air conditioning, are equally ineffective. Air conditioning systems usually filter the air, then re-circulate 80-90% of it, bringing in a 'mix' of 10-20% from outside. However, the rate and speed of air circulation required to reduce smoke in the air to an acceptable level would be so high that the result would be a large volume of air circulating in the building. Added to this, no ventilation system can protect non-smokers from smoke drifting directly towards them.

The Independent Scientific Committee on Smoking and Health<sup>74</sup> and the Health & Safety Executive support the view that ventilation systems alone cannot be seen as an acceptable solution to the problem of tobacco smoke in the air.

### 3.3.11 Help for smokers after the introduction of a no smoking policy

Nicotine is an addictive drug and surveys show that around 70% of smokers would like to give up.<sup>13</sup>

Many companies offer help to smokers when a smoking policy is first introduced. Options can include: distributing advice leaflets; paying for nicotine replacement therapy, such as patches or gum; and providing on-site counselling. For further information, see 'Useful Contacts' at the end. It may also be possible to offer 'temporary cessation' support - essentially by making nicotine gum or patches available to help smokers with short-term withdrawal symptoms if they continue to smoke outside working hours.



### 3.3.12 Penalties for breaches of the policy

Any smoking policy should be made part of all employees' contracts or terms and conditions of employment. Breaches of the policy should, therefore, be subject to normal disciplinary and grievance procedures. The onus is on the employer to ensure that the policy is enforced and there is growing case evidence to suggest that the policy must be enforced.

### 3.3.13 Timing

The exact manner in which smoking is banned is a matter for each employer. However, generally we would recommend a two-stage, gradual process. The first, or transitional, stage would involve banning smoking in all work and common areas, but with provision being made for smoking rooms or outside smoking areas. During this stage, help should be made available to staff who want to reduce their smoking or give up completely. The second stage would involve a complete ban on smoking inside, or outside, the workplace during working hours. The timetable for this two-stage process must be fixed and made clear in the smoking policy.

## 3.4 Implementing a workplace smoking policy

Workplace smoking policies are not about whether or not individuals choose to smoke, but about where and when they smoke. ASH has developed a draft policy to start you off. Workplace smoking policies aim to eliminate or control a substance known to pose a health hazard and cause welfare problems in the work site, and should be classed with other policies framed in accordance with occupational health,

safety and welfare requirements. This means that the employer should consult the workforce, either through union-appointed safety representatives (and the safety committee, if it exists) or, if these have not been appointed, some other method. These consultations should cover the nature of the problem (its scale, effects on workers and so on), and any possible steps which might be taken to address the problem, including a smoking policy. Consultations must be genuine (i.e. the employer's plans should be open to change) and in good time.

A formal workplace smoking policy clearly sets out for all employees the conditions and the areas in which smoking is, or is not, permitted. Properly constructed, it will ensure that both employers' and employees' legal rights and obligations are upheld and benefit the health of all employees. Properly negotiated, it will raise awareness about an important public health issue, and reduce friction in the workplace between smokers and non-smokers. The financial costs of developing and implementing a smoking policy are one-off or time-limited and may be summarised as follows:

- time to consult and negotiate with the work force;
- time to prepare, implement, monitor and evaluate the policy;
- time and other costs associated with informing the work force about the issues;
- publicising the policy;
- possible re-arrangement of staff working areas and making changes to accommodate smoking areas;
- providing help for smokers who want to stop smoking.

There are five steps involved in introducing a workplace smoking policy. A model for these is discussed below, but this will need adapting to suit the circumstances of each workplace.

#### **3.4.1 Step 1 Setting up a working party**

The formation of a working party is central to the process of developing, implementing and monitoring a smoking policy. The working party must represent all elements of the work force including: smokers and non-smokers; representatives of unions, safety reps and professional bodies; as well as health and safety staff. The working party must have direct lines of accountability and communication to senior management.

#### **3.4.2 Step 2 Informing the work force**

It is important that everyone in the workplace is informed about the health hazards and other problems associated with passive smoking. The better informed the work force, the more receptive it is likely to be to a policy. Possible ways to raise awareness of the issues are: as part of other work-based health promotion programmes; distribution and display of educational literature; other promotional materials; via in-house publications; or by inviting an outside expert to speak to employees. It is also important that employees understand their own personal responsibility in relation to current legislation, and are made aware of the process which will be used to arrive at the policy.

#### **3.4.3 Step 3 Consulting the work force**

Before making the changes required for the introduction of a smoking policy, it is recommended that employers consult the work force. This is best practice and also, technically, this could constitute a change in terms and conditions of employment. The process of consultation, which should include unions and safety reps, is also important in identifying the needs of employees, and establishing and resolving difficulties and conflicts of interest, should they arise. One way of allowing employees to express their views is by conducting an in-house questionnaire. A [sample questionnaire](#) is offered in Appendix 2 of this document to help with this. Other ways are through meetings, group discussions, interviews, in-house newsletters, or suggestion boxes. An important component of consultation is offering feedback to staff. Consultation is vital, but it should not become a cause of unnecessary delay, nor be used to justify a decision to take no action.



#### 3.4.4 Step 4 Develop the policy

The information collected from consulting with the work force provides a baseline from which to begin formulating a policy. The areas that a policy could cover are:

- Operating principles that guide the smoking policy – such as the rights of non-smokers and compliance with any legislation that relates to smoking in the work place.
- The places and times that smoking is permitted, if it is permitted at all. The policy should cover different categories within the workplace: such as meeting rooms, open plan areas, personal offices, communal areas like corridors and vending areas, rest areas and canteen, outdoor and adjacent to the workplace.
- Provision of rest areas. Employees must have the option of smoke free rest areas.
- Arrangements, if any, for smokers. It is up to the employer in consultation to decide on provision for smokers, such as smoking rooms and policy regarding smoking outside the office – and whether to provide facilities such as shelters or litter bins and street sweeping.
- The arrangements for visitors or members of the public that enter a workplace.
- Contractual obligations or conditions – such as time allowed for smoking breaks, clocking on/off, additions to the working day to equalise working time with non-smokers.
- Complaints procedure.
- Consequences of failure to comply with the policy.
- Support for smokers that wish to quit such as smoking cessation services, on site counselling and subsidised smoking cessation aids.
- Technical improvements such as improved ventilation where smoking is allowed. However, ventilation should not be used as the only solution to tackling passive smoking.
- The approach to be adopted for employees with higher health risk – such as people with asthma or pregnant women. This requires a specific response to the relevant EU legislation. This need not involve identifying people at risk, but knowing what to do if an employee identifies themselves as at increased risk.
- Working practices, such as rostering, that reduce employees' exposure to smoke.

The policy needs to be regularly reviewed - it could become more restrictive after an initial adjustment period. As such it is necessary to devise procedures for reviewing the policy, ensuring compliance and resolving disputes – including naming the persons and posts responsible.

#### **3.4.5 Step 5 Implementing the policy**

The final step involves announcing the final policy to the work force, checking that all necessary arrangements and adjustments have been made, and ensuring that a mechanism is in place to monitor the policy in the months following implementation. Managers, union officials and other key personnel should clearly understand the background to the policy and how it has been developed. Where appropriate, employees should be officially informed of the policy and appropriate notice be given to effect a change in their contract of employment.

Copies of the policy should be displayed in key locations. All new employees should be given a copy of the policy and it should be mentioned in job advertisements and at interviews. Signs should be erected so that it is readily apparent where smoking is and is not permitted.

Any adjustments to the policy following introduction must not compromise the goal of protecting non-smokers from ETS.

### 3.5 Ten practical tips for employees

If you are an employee unhappy about the smoking policy in your workplace – or the absence of one – then there are some steps you can take that will help you achieve changes.

1. It is important to try to avoid conflict and legal threats if possible. Until new legislation is agreed, the legal position is still too vague to give you a cast iron guarantee of success. A legal approach will probably mean that working there subsequently will be difficult, and your best chance of legal success would probably be claiming compensation for loss of your job! The legal approach is to be used with great care and caution.
2. Start by seeking a friendly compromise. Try to explain the problem as you see it to your employer. There may be an approach that is acceptable to everyone, such as making a smoking room available. The employer may simply have never got round to making a policy. Even if there was a pro-smoking boss, people move on and new managers may be more sympathetic. Talk to your non-smoking colleagues to see if anyone else thinks that there is a problem. Smokers may also agree – remember 73% of smokers believe smoking should be restricted at work. If other people agree, make a joint approach to the employer.
3. Find out if your workplace already has a smoking policy that is being ignored – you might be surprised how often this happens. If this is the case it may constitute a breach of your Contract of Employment or Terms & Conditions and should be drawn to the attention of your employer first through a friendly chat and then in writing. However, you are strongly advised to contact your trade union representative or seek legal advice before it reaches this stage.
4. Keep a diary of the times and places that you have felt ill, or uncomfortable, as a result of other peoples' tobacco smoke. This will help make your case clearer to your employer. Furthermore, should you resort to the law, an industrial tribunal will favourably view diary evidence of specific events. A diary will help you avoid having to make vague statements such as 'it made me ill over time'.
5. Point out to your employer that the medical evidence and advice on passive smoking has become much stronger in recent years. By showing that there have been recent developments, you are offering the employer a reason to reassess and change. A good example of this evidence is the Government's Scientific Committee on Tobacco and Health report of March 1998, which said:

*Exposure to environmental tobacco smoke is a cause of lung cancer and, in those with long term exposure, the increased risk is in the order of 20-30%. Exposure to environmental tobacco smoke is a cause of ischaemic heart diseases and if current published estimates of magnitude of relative risk are validated, such exposure represents a substantial public health hazard. (2.32, 2.33)*

*Smoking in public places should be restricted on the grounds of public health. [...] Wherever possible, smoking should not be allowed in the work place. (2.37)*

6. Make your employer aware of the existing law relating to rest areas (which must have non-smoking sections isolated from smoke) and adequate ventilation. Your employer also has an implied contractual obligation to provide conditions fit for you to work in.
7. After the initial contact with your employer, ensure that communication is conducted in writing. Minutes should be kept at any meetings. Keep a copy of all letters, memos and minutes.
8. Consult your union representative. If you're not a member then you might consider joining one. If there is no union present in the workplace you can still join a union as an individual. Many unions are very supportive of members suffering from the effects of passive smoking, a number have even supported legal action by members. For advice on the most appropriate union for you to join phone the TUC on 020 7636 4030.



9. If tobacco smoke is making you feel ill, make an appointment to see your doctor. Find out if your GP would be prepared to write to your employer outlining how s/he believes passive smoking is affecting your health. This is particularly important if you are pregnant, suffer from asthma or have any breathing or heart problems.
10. If all else fails, consider consulting a solicitor, preferably one with experience of employment law (unions offer this service for free to members) to obtain a legal opinion as to whether your Contract of Employment or Terms & Conditions are being contravened. ASH recommends Thompsons solicitors who specialise in employment law. They operate a freephone service for initial queries relating to smoking at work. Call: 0800 587 1270.

## Useful contacts

### Action on Smoking and Health (ASH)

102 Clifton Street, London, EC2A 4HW (Tel. 020 7739 5902; Fax. 020 7613 0531).  
e-mail: [enquiries@ash.org.uk](mailto:enquiries@ash.org.uk)

ASH offers confidential advice to both employees and employers on issues associated with smoking in the workplace and on developing workplace smoking policies.

ASH's workplace resources contain this guide, as well as other documents and links aimed to help anyone interested in introducing a workplace smoking policy.

### Asthma UK

Summit House, 70 Wilson Street, London, EC2A 2DB (Tel. 020 7786 4900)  
Asthma UK runs a confidential helpline for people with asthma on 08457 01 02 03.

### Trades Union Congress (TUC)

Congress House, Great Russell Street, London, WC1B 3LS (Tel: 020 7636 4030)  
The TUC offers training for safety reps and issues guidance in the form of "Hazards at Work", a 300 page ring-binder manual covering all health and safety issues (£20 to union members from TUC Publications at the above address). Individual unions also often provide policy statements, guidance and information to members. If you believe joining a trade union can help, a full list of the 70 trade unions that are affiliated to the TUC can be found on the [TUC website](http://www.tuc.org.uk); [www.tuc.org.uk](http://www.tuc.org.uk). A series of TUC rights leaflets are available on the *know your rights line* 0870 600 4 882. Lines are open every day from 8am-10pm. Calls are charged at the national rate.

## Sources for further information

As a first point of contact you are recommended to visit their websites:

### WHO-Europe Partnership Project

This activity is part of a wider project to reduce tobacco dependence and aims to foster partnerships with private enterprises, to significantly increase the prevalence of smoke free places. The projects offers examples of policies and [case studies](#) across Europe of how companies have developed their smoke free workplaces.

### Health & Safety Executive Information Centre

Tel. 0845 345 0055  
The HSE Information Centre provides advice on policy matters.

### Chartered Institute of Environmental Health

For help and advice on the enforcement of health and safety matters you will need to check your local telephone book. Broadly speaking, for the manufacturing sector this is handled by local Health & Safety Executive Inspectors and for the service sector by Local Authority Inspectors. The Chartered Institute of Environmental Health [Policy Statement](#) can also be found on the internet.

### James Repace Fact sheets on second-hand smoke

Excellent information provided by [Repac Associates](#), a consultancy specialising in all aspects of second-hand tobacco smoke.

## Organisations offering help to employees in quitting smoking

### [NHS Stop smoking resources](#)

This website offers advice on how you can help colleagues quit smoking.

### **QUIT**

QUIT, a national charity, operates the freephone QUITLINE (0800 00 22 00, Monday to Friday, noon to 7.00pm), which is staffed by trained smoking cessation counsellors who can provide practical help and advice to those who are trying to stop smoking. In addition, QUIT Corporate Health Services provides a range of workplace help for smokers who want to give up.

## Appendix 1 – Sample Smoking Policy

### Draft Workplace Smoking Policy

Smoking policy for (name of organisation) \_\_\_\_\_  
Effective from (date) \_\_\_\_\_

#### Introduction

Passive smoking - breathing other people's tobacco smoke - has now been shown to cause lung cancer and heart disease in non-smokers, as well as many other illnesses and minor conditions.

Section 2(2)(e) of the Health and Safety at Work Etc. Act 1974 places a duty on employers to provide a working environment for employees that is:

*“... safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.”*

The employer acknowledges that breathing other people's tobacco smoke is both a public health hazard and a welfare issue. Therefore, the following policy has been adopted concerning smoking in (name \_\_\_\_\_ of \_\_\_\_\_ organisation)

#### General principles

This smoking policy seeks to guarantee non-smokers the right to work in air free of tobacco smoke, whilst also taking account of the needs of those who smoke.

All premises will be designated smoke-free from (date) \_\_\_\_\_ with a limited number of clearly marked separate smoking rooms. Smoking will only be allowed in the separate rooms, which may not be used for any other purpose. Smoking whilst on duty will only be allowed during official break periods.

#### Common areas

Smoking is not permitted in the following areas:

- Lifts
- Corridors
- Stairways
- Restaurant / Canteen
- Rest rooms
- Meeting Rooms
- Toilets
- Reception Areas
- Entrances
- Car Parks
- Other areas (specify as necessary) \_\_\_\_\_

#### Work areas

Smoking is not permitted in any work area. This applies to all offices and work areas, whether occupied by one person, or shared by two or more. Anyone who wishes to smoke must do so during official break periods and only in the designated smoking rooms.

#### Smoking rooms

Designated smoking rooms are provided at (locations) \_\_\_\_\_

The employer will ensure that the smoking rooms are kept clean and are properly ventilated. Contaminated air from the smoking rooms will not enter the general air circulating in the rest of the building.

#### **Vehicles**

Smoking is not permitted in company vehicles. . The policy of no-smoking will apply to the car park.

#### **Unions / Health & Safety representative**

This policy has been devised in full consultation with all of those employees who are concerned with health and safety in this workplace. It enjoys the support of the relevant representatives.

#### **Informing staff of the policy**

The employer has informed staff 90 days in advance and will provide all members of staff with a copy of this policy upon their request.

#### **Visitors and temporary staff**

Visitors and temporary staff are expected to abide by the terms of this policy. The following arrangements have been made for informing them of its existence:

#### **Adequate signage**

Receptionist / Person greeting will inform the person of the policy, to be reinforced via the invitation letter or email if required.

#### **Recruitment procedures**

Job advertisements, job descriptions and interviews will include reference to this policy. On their appointment, all new staff members will be given a copy of this policy.

#### **Help for those who smoke**

This policy recognises that passive smoking adversely affects the health of all employees. It is not concerned with *whether* anyone smokes, but with *where* they smoke, and the effect that this has on non-smoking colleagues. However, it is recognised that the smoking policy will impact on smokers' working lives.

In an effort to help individuals adjust to this change, the following help is being provided:

- Up to five hours off to attend any course that will help smokers to quit
- Smoking Cessation support provided by ....

#### **Enforcement of the policy**

Breaches of this policy will be subject to the normal disciplinary procedures.

#### **Implementation, monitoring and review**

Responsibility for implementing and monitoring this policy rests with senior managers. Twelve weeks notice will be given of the introduction of this policy.

Monitoring this policy will be carried out at three, six and twelve months following its implementation. A formal review of the policy will be conducted after eighteen months. Trade unions and health and safety representatives will be consulted over the results of the monitoring and review.

#### **Changes to the policy**

Twelve weeks notice will be given of any changes made to the policy. Trade unions and health and safety representatives will be consulted in good time about any proposed changes.

## Appendix 2 – Sample Questionnaire

### Questionnaire on Smoking at Work

The purpose of this questionnaire is to find out your opinions about smoking at work. Your answers, together with those of your colleagues, will be used along with other information to produce a smoking policy which is best suited to this organisation.

Your responses are completely confidential, although you may wish to add your name and/or department/section at the bottom.

For further information please contact (named individual) \_\_\_\_\_

at (department / room) \_\_\_\_\_

to whom the completed questionnaire should be returned by (date) \_\_\_\_\_

***Please tick the appropriate boxes.***

**1) Which of these phrases best describes your view about smoking at your usual work area?**

Tick one.

- Smoking should not be allowed
- There should be separate areas where smoking is permitted
- Smoking should be allowed in all areas
- Don't know

**2) Which of the following best describes your usual work area?** Tick one.

- Private office
- Shared office
- Open plan office
- Shop floor
- Vehicle
- Outside
- Other (please specify) .....

**3) Which of the following best describes you?** Tick one.

- A non-smoker
- An ex-smoker
- A smoker who wants to give up
- A smoker who wants to cut down
- A smoker who doesn't want to give up

**4) Do people currently smoke in your usual work area?**

- Yes
- No

**5) Are you bothered by tobacco smoke at work?**

- Yes
- No

**6) If you are bothered by tobacco smoke at work, how does it affect you?** Tick any that apply.

- Worries about its affect on my long term health
- Asthma attacks
- Allergic reaction
- Breathing difficulties
- Feel sick
- Eye irritation
- Headaches
- Coughing
- Stuffy or runny nose
- Loss of concentration
- Clothes and hair smell

**7) Where do you think that smoking causes problems?**

Please tick the box on each line that is nearest to your opinion.

	No problem	Some problems	A lot of problems	Don't know
Corridors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting rooms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Open plan offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reception areas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Restaurant / Canteen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rest rooms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shared offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shop floor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stairways	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toilets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vehicles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**8) Have you ever had, or wanted, to move away from the area in which you where working because of other people's tobacco smoke?** Tick one.

- Frequently
- Occasionally
- Never

**9) Have you ever taken time off work because passive smoking in the workplace has affected your health?**

- Yes
- No

**10) Which of the following policy options do you think should be introduced here?** Tick one.

- Smoking allowed everywhere
- Smoking permitted only in a separate smoking room
- Smoking not permitted anywhere
- Other (please specify) .....

**Questions 11-17 are for smokers only.**

**11) Do you smoke in your work area?**

- Yes
- No

**12) Would you smoke less, or try to quit, if you could not smoke in your work area?**

- Yes
- No

**13) Do you smoke somewhere other than your work area?**

- Yes
- No

If yes, where? .....

**14) Would you smoke less, or try to quit, if you could not smoke at all during working hours?**

- Yes
- No

**15) How would you be able to cope if you could not smoke at all during working hours? Tick one.**

- Very easy
- Easy
- Difficult
- Very difficult

**16) How would you be able to cope if you could only smoke at certain times in a designated smoking room? Tick one.**

- Very easy
- Easy
- Difficult
- Very difficult

**17) Would you use help to quit smoking if it were offered at work?**

- Yes
- No

**18) What sort of help would you like?**

- Nicotine Replacement Gum
- Nicotine Replacement Patches
- Telephone Helpline
- Workplace support groups



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For links to the source material, view these references on the ASH web site version of this report. This can be found at [www.ash.org.uk/?workplace](http://www.ash.org.uk/?workplace)

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