



Guidance for Trading Standards on engaging with the tobacco industry

Prepared by Trading Standards officers in the Tackling Illicit Tobacco for Better Health Partnership
in consultation with Trading Standards colleagues

Endorsed by:



Public Health
England



Section One: Why has this guidance been produced?

This guidance is designed to help local Trading Standards teams deliver tobacco control policies in line with the UK's legal obligations as a Party to the WHO [Framework Convention on Tobacco Control](#) (FCTC). Article 5.3 of the FCTC requires us to protect our public health policies with respect to tobacco control 'from commercial and other vested interests of the tobacco industry'. This document articulates the legal obligations placed on public authorities by the Treaty and illustrates established best practice for those working in this sector.

Section Two: Background information

Impact of tobacco use on public health

Tobacco continues to have a big impact on community health and wellbeing. Tobacco use remains the leading cause of premature death and preventable disease and the cost of tobacco hits poor communities, where rates of smoking are highest, hardest. In England every year there are around 80,000 deaths caused by tobacco with smokers losing years of active life through tobacco-related diseases¹. Cigarettes are the only legal consumer product that kills when used as intended, with one in two of all long-term users dying prematurely from their addiction².

Despite this death toll, tobacco companies have pledged that their core business remains tobacco. In annual statements to their shareholders they forecast growth in profits from sales of tobacco products for decades to come.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213757/dh_124960.pdf

² Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years observations on male British doctors. *British Medical Journal* 1994; 309:901-911

Tobacco companies continue to approach local authorities – and local Trading Standards teams in particular – with offers to support their tobacco control strategies primarily around tackling illicit tobacco but also in relation to other areas of enforcement including age-of-sale regulations. Local Authorities are recommended to examine such offers critically in the light of Article 5.3 and its guidelines and only engage in any collaborative work with the industry where this is considered strictly necessary

Guidelines to Article 5.3 of the WHO FCTC

The World Health Organisation have drafted guidelines to the convention which, although not legally binding in themselves, illustrate how best practice should be adopted. If a local authority decides to diverge from the guidelines it is suggested the reasons for doing so should be documented. A guiding principle of the [guidelines to Article 5.3](#) is that ‘There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.’

There are two key principles which run through the guidelines: that public authorities should maximise transparency in their interactions with the tobacco industry, and should as far as possible *“interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.”*

Guidelines to Article 5.3 highlight in particular the need for parties to ensure that the tobacco industry are prevented from influencing tobacco control initiatives:

“Parties should not accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.”

Responsibilities of Local Authorities

Public health in England is now the responsibility of local authorities, making them key partners in strategies to reduce smoking rates. Local Trading Standards teams play a significant role in this, enforcing tobacco-related legislation including age-of-sale regulations, point of sale legislation and packaging and labelling requirements.

Local authorities are autonomous bodies with elected members playing a pivotal role in the development of policy. Each authority should consider carefully how they protect the interests of public health policy development and may wish to take a stance which is different to this advice. Given the autonomy of local authorities, officers should be guided by local policy as well as this and other guidance that is available..

For example, the Trading Standards Institute published a [policy](#) in January 2014 on engagement with the tobacco industry which states that:

“TSI contact with the tobacco industry will be limited to the purpose of tackling counterfeit tobacco and we will engage in a transparent and open way. TSI, therefore, has made changes to ensure that we are compliant with FCTC and will continue to review this.”

Many local authorities have also signed the [Local Government Declaration on Tobacco Control](#) which includes the pledge that:

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

In addition this guidance should be read in conjunction with the Trading Standards Institute legal opinion on Article 5.3 which concludes that Article 5.3 FCTC is likely to be directly effective in UK law. This means it could be relied upon in legal proceedings brought by an individual or other non-state body against a public authority. An authority that does not act in compliance with the convention may be exposed to risk of judicial review. If a local authority decides to diverge from the guidelines it is suggested the reasons for doing so should be documented.

Section Three: When do Trading Standards need to work with the tobacco industry?

A popular tobacco industry 'route in' to the delivery of tobacco control is their assertion that, as brand holders, they are experts in tackling the illegal tobacco trade. In fact, their role is limited. The only aspect of tackling illegal tobacco that the tobacco industry can reasonably take part in is when the products concerned are counterfeit, governed under the provisions of the Trade Marks Act 1994, which places a statutory duty on the Local Authority Trading Standards service (LATSS) to respond and deal with such matters. In these circumstances a specific tobacco company or their assigned agent can, as the holder of the relevant trade mark, state categorically that a specific product is a genuine brand manufactured by them or a counterfeit version of their own product. Such a witness statement, known as a Section 9 statement supported by the related Trade Marks Certificate, would be required for prosecution and can be obtained in most cases by posting seized products to the company concerned.

Even when large seizures of illicit tobacco products have been made and they are suspected to be counterfeit, it is not necessary for the whole batch to be examined. [Intellectual property guidance from the European Union](#) states:

"it may be necessary to obtain and test a reasonable sample of the products since it would be unduly onerous to require right holders to test every item."

Tobacco industry representatives do not need to be present during warrants or to visit local authority officers in order to examine the seizures. In many cases, where LATSS have access to the use of scanning equipment, the authenticity or otherwise of alleged counterfeit products can be determined locally prior to submission of the product to the brand holder. Local authorities are reminded that the scanner only serves as a screening tool for possible Trade Marks offences and other legislation is often more appropriate to deal with illicit tobacco

Section Four: What are the risks of working with the tobacco industry?

Local Authority Trading Standards services continue to have a crucial role in the delivery of local public health strategies, the objectives of which are diametrically opposed to those of the tobacco industry. If a LATSS works with the tobacco industry, experience has shown that:

- the local authority may lose control of any publicity associated with the exercise despite any pre-agreed arrangements, which may include claims that illicit tobacco is more dangerous by containing e.g. rat droppings, floor sweepings and higher levels of harmful toxins. There is no evidence to support these claims.
- the industry could use this as an opportunity to refer to 'working in partnership' with the local authority.

Examples of tobacco industry attempts to demonstrate partnership working to tackle the illicit tobacco trade include:

- At a meeting of the National Markets Group, a local tobacco industry brand representative reported that he was “working in partnership” with a number of local authorities across Greater Manchester. After being asked to clarify, the “partnership” turned out simply to be his sending of intelligence to a number of local authorities in the region.
- In the North East, one of the transnational tobacco companies entered into a partnership arrangement with the Evening Chronicle newspaper (part of the Trinity Mirror media group) which featured three weeks’ worth of tobacco industry-funded advertising on tackling illegal tobacco and published a series of articles based on information supplied by the company which reported that the illegal tobacco trade is increasing and that illicit products are more harmful to health. Tobacco control and Trading Standards colleagues in the North East were able to counter the misinformation provided by the company and use local data to demonstrate that the illicit market is on a sustained long-term decline, that there is no evidence that standardised packaging would lead to an increase in the illicit trade and that all tobacco – legal or illegal – will kill one in two of its long term users.

Section Five: How should LATSS respond if the tobacco industry offers support in tackling tobacco?

LATSS should refuse offers of support from the tobacco industry if they are to comply with the guidelines accompanying Article 5.3 of the WHO FCTC and commit to the delivery of evidence-based tobacco control. Sometimes it is not always clear that it is the tobacco industry that is making the approach – front groups e.g. the Tobacco Retailers Alliance and public relations agencies have also been known to make contact with local authorities³.

In some cases interaction with the tobacco industry is necessary for the purpose of investigating cases of counterfeit tobacco. The following principles, adapted from the TSI legal opinion, should be considered when engaging with representatives of the tobacco industry:

- a. Local Authorities should ensure that the nature of such engagement is as transparent as reasonably possible.
- b. Local Authorities should ensure that the scope of such arrangement is as narrow as possible to achieve the goals and policies which the LATSS has in mind.
- c. It would be worthwhile recording in a document, if only for internal use, the decision making process relating to the partnership / engagement. This could show that the Guidelines were taken into account, and set out the reasons why it was felt that continuing with some form of partnership / engagement for certain limited ends would aid the implementation of the relevant public health policies.
- d. Particular care must be taken to ensure the potential risks which led to the recommended ban on partnerships in the Guidelines are taken into account. So for example it should be made clear to any partners in the industry (if to any extent this does not already happen) that they are required not to seek to use the collaboration in any way to promote themselves or bolster their image, either in public or with other policy makers and public bodies. This would coincide with Recommendations 6.1 to 6.3, which should also be taken into account.

See below for some common scenarios along with guidance on responding to any offers that are received. This guidance does not preclude local authorities from going further in terms of protecting public health

³ [Tobacco Tactics](#) has a list of tobacco-related front groups and individuals associated with the tobacco industry including Will O’Reilly, a former Scotland Yard officer now employed by Philip Morris International. The Tackling Illicit Tobacco for Better Health partnership has also produced a [briefing](#) on the tobacco industry and illegal tobacco.

from tobacco industry interference, and advice in some scenarios can apply to others. This guidance should be read in conjunction with the Policy for Local Authorities: Contacts with Tobacco Industry [in print], prepared by ASH.

The general principles are:

- Decline offers of support from the tobacco industry except where strictly necessary.
- The tobacco industry's only role in tackling illicit tobacco is limited and clearly defined: when seized illicit tobacco products are suspected to be counterfeit and a Section 9 statement is required for prosecution.
- Be transparent - document and make publicly available any contact with the tobacco industry, and the decision-making process involved, with the exception of a request for a Section 9 statement which should be recorded internally.
- Any contact should be as narrow as possible to achieve the goals required. For instance tobacco-related intelligence can be submitted via the Regional Intelligence Analyst.
- Make it a requirement of any contact that the industry cannot use this for promotional purposes either in public, or with policy makers or public bodies.
- Let public health colleagues know about any approaches from the tobacco industry.

The tobacco industry requests a meeting with your local Trading Standards department

- Decline the request citing conflict with the guidelines on the implementation of Article 5.3 as the reason (and the Local Government Declaration if your local authority has signed it).
- Where interactions with the tobacco industry are necessary, local authorities should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public.

The tobacco industry approaches your local authority with offers of support to tackle illicit tobacco

- Decline the offer citing conflict with the guidelines on the implementation of Article 5.3 and the Local Government Declaration if your local authority has signed it.
- Be aware that the only instance in which the tobacco industry has a role in tackling the illicit tobacco trade is when the illicit tobacco products concerned are counterfeit, see section 2, above.
- If the offer relates to the provision of training by the tobacco industry on trademarks, refuse the request; training needs can be met through the Regional Co-ordinator or through the Trading Standards Institute without recourse to the tobacco industry.

The tobacco industry offers intelligence on illicit tobacco

- Tell them to submit it to the Trading Standards Regional Intelligence Analyst where it can be put on the intelligence database, checked for cross-local authority border links and considered along with all other intelligence received. This way, LATSS do not need to handle the intelligence, saving local authority time and providing protection from claims of partnership working with the industry.

The tobacco industry approaches your local authority with offers of support to tackle underage sales

- Remind the industry that the enforcement of age restricted sale legislation under the Children and Young Persons Act 1933 (as amended by the Children and Young Persons (Protection from Tobacco) Act 1991) places a duty on the local authority to consider annually the extent to which it is appropriate to carry out a programme of enforcement action. Therefore it is the function of the LATSS to take the lead in the gathering of any intelligence and taking of any requisite action.

You are asked to provide a quote by the tobacco industry/media to accompany an article promoting the tobacco industry role in tobacco control

- If you are in the North East, North West or South West, contact your regional tobacco control office.
- Ask to see a copy of the press release and any quotes that have already been received.
- Be wary of the purpose of the article – it could be reporting on a dubious piece of research from the tobacco industry.
- If a quote is offered, ensure it states that all tobacco kills, that one in two long term smokers will die early as a result of their addiction⁴ and that nationally the size of the illicit tobacco market is declining⁵.

The tobacco industry reports that it has been working in partnership with your local authority

- If this is inaccurate, correct the perception that you have been working in partnership and make it clear the circumstances through which this misperception may have arisen e.g. by holding a transparent and documented meeting.

In all cases, it is recommended that you let your public health colleagues know about the approach that has been made and your response. If you are in the North East, North West or South West, alert your regional tobacco control office.

Section Six: What can be done to strengthen your approach to tobacco control?

If your local authority has not already done so encourage it to:

- Join the [Smokefree Action Coalition](#)
- Sign the [Local Government Declaration](#). If your local authority has signed up to the Declaration, use it to keep tobacco control a priority for your local authority.

If there is a local tobacco control alliance in your area, keep Trading Standards engaged in its discussions and the development of its action plan.

Section Seven: Other useful resources

Briefing for local authorities developing a policy on contact with the tobacco industry [in print], prepared by ASH.

⁴ Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years observations on male British doctors. British Medical Journal 1994; 309:901-911

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249543/131009_Publication_of_Tobacco_Tax_Gap_estimates_2012-13.pdf