

# The UK voluntary agreement on tobacco advertising: a comatose policy?

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## Abstract

**Objectives** – To monitor tobacco advertising in Oxford and Nottingham, UK, for adherence to voluntary controls.

**Method** – Three systematic surveys (two in Oxford) plus opportunistic monitoring of tobacco advertisements for breaches of the voluntary agreement on tobacco advertising. Comparison of these results with UK figures for 1989/90, 1990/91 and 1991/92.

**Results** – Oxfordshire Action on Smoking and Health (OXASH) submitted 58 %, 30 %, and 11 % of the total UK complaints in 1989/90, 1990/91, and 1991/92, accounting for 50 %, 81 %, and 10 % of the nationally acknowledged breaches. Nottinghamshire ASH submitted 48 % of the UK complaints in 1991/92, reporting 74 % of the acknowledged UK breaches. In all, I was responsible for notifying the monitoring committee of 97 % of all the acknowledged breaches in the UK in 1991/92. Almost all breaches on shopfront advertising were due to the health warning being absent or obscured, whereas breaches on posters were due to being located near schools. Many complaints were for matters exempt from the agreement, such as the unauthorised use of cigarette brand logos on toys. Doubtful cases were usually decided in favour of the tobacco industry. Nine items submitted by OXASH in 1989 breached the letter of the agreement but were not counted as breaches.

**Conclusion** – Breaches of the UK voluntary agreement are common but monitoring is generally non-existent. A voluntary agreement does not provide adequate protection for children.

(*Tobacco Control* 1993; 2: 209-14)

## Introduction

Tobacco promotion increases consumption, according to those within the advertising industry,<sup>1</sup> the World Health Organisation (WHO),<sup>2</sup> and those who have researched the issue.<sup>3-5</sup> In particular, tobacco advertising reaches and influences young people.<sup>6-8</sup> This has been implicitly acknowledged by successive UK governments, which banned direct cigarette advertising on television in 1965<sup>9</sup> and have negotiated three consecutive agreements with the tobacco industry to control direct

tobacco advertising,<sup>10-12</sup> as well as an agreement on sports sponsorship.<sup>13</sup>

The Voluntary Agreements on Tobacco Advertising, in summary, specify the wording of health warnings, the minimum size of the health warning area, and the minimum size lettering required for different types and sizes of advertisement; prohibit the placing of posters advertising cigarettes where they are visible from within school playgrounds; and require adherence to the Cigarette Code. This code (also a negotiated voluntary agreement) covers the content of advertisements. For example, cigarette advertisements may not appeal more to those under 18 than to the general public, nor use glamour, success, sexuality, or machismo to promote cigarettes. Exclusions from these agreements include cigar advertisements and retailers' own promotional material.

The current system of voluntary agreements has many other flaws. The agreements are negotiated in secret between the tobacco industry and the Department of Health. The tobacco industry is unlikely to concede anything which will affect its sales and, because of being party to the negotiations, can either suggest measures which appear concessionary but have a sound marketing basis or can avoid the impact of governmental suggestions by using the long lead-in periods during protracted negotiations and the ensuing delay before the new arrangements come into force.

The WHO<sup>14</sup> and all the major health professional organisations and medical charities in the UK have called for a ban on tobacco promotion.<sup>15,16</sup> The Chief Economic Adviser to the Department of Health has confirmed that a ban on tobacco advertising would reduce consumption,<sup>17</sup> which is one of the government's avowed targets in its White Paper (policy document) *The Health of the Nation*.<sup>18</sup> However, the position of the UK Government has been to oppose the proposed EC Directive (to ban all tobacco promotion except at the point of sale) on the grounds that voluntary restriction are "better" and "more flexible" (personal communication from Baroness Hooper, Parliamentary Under-Secretary of State for Health, 19 February 1990).

Inadequacies of the monitoring of the first Voluntary Agreement have been reported.<sup>19,20</sup> Oxfordshire Action on Smoking and Health (OXASH) therefore decided in 1989 to see whether subsequent Voluntary Agreements were better at protecting children.

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In particular, the site of poster advertisements, the presence of health warnings, and their adequacy (both size and whether obscured) were monitored, with the aim of answering the following questions: How common are breaches of the Voluntary Agreement? What are the nature of such breaches? How do they differ from apparent breaches which are deemed by the monitoring committee to comply with the Agreement? Are these decisions consistent? Does the existence of the Voluntary Agreement and the Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship (COMATAS) prevent the recurrence of notified breaches?

This paper details the findings of three years' surveillance for OXASH and compares the results with the national figures published by COMATAS.<sup>21-23</sup> Similar monitoring was undertaken for Nottinghamshire ASH for 1991/92; these results are also included, together with incidental findings from London.

### Methods

The Oxford monitoring took place in three phases. The first and third phases were systematic surveys, examining all shopfront advertisements in specified areas for apparent breaches of the 1986 Agreement (then in force). The second phase was "opportunistic", looking for apparent breaches while passing tobacco advertisements. For the first survey, conducted in January and February 1989, five areas of Oxford were examined. The third phase was conducted along a single shopping street in December 1990.

In Nottingham, all tobacco advertising along three-mile routes in three adjacent areas of the city was surveyed in October 1991. Opportunistic monitoring then continued over a wider area of the city.

All tobacconists, newsagents, grocers, petrol stations, and other identified retailers of tobacco and sites of hoardings in each area were visited. Equipment required included a 35-mm camera, tape measure, pen and paper, and transport. For each possible breach a close-up photograph of the advertisement and a photograph of the shopfront to aid identification were taken. The height of the advertisement and the height of the health warning area were measured and a note made of whether or not the tar group was mentioned. For each apparent breach, the following were recorded: date; name and address of shop or owner and site of hoarding; type of promotional material (window poster, door open/closed sign, fascia board, projecting sign, canopy, hoarding); and the nature of breach (eg, no health warning, health warning area too small, or health warning covered).

Complaints of apparent breaches detected in the first survey were sent to COMATAS in March 1989. Complaints of further apparent breaches were sent periodically thereafter.

COMATAS is composed of equal numbers of tobacco industry representatives and civil servants from the Department of Health, with

an independent chairperson, appointed by the Secretary of State for Health. On receipt of a complaint, it is forwarded to the tobacco company concerned with a request to investigate the complaint. At the quarterly meeting of COMATAS which follows the completion of that investigation, the committee discusses the findings and a decision is made on whether or not the subject of the complaint breached the agreement. This decision is then conveyed to the complainant in a letter from the chairperson of COMATAS. When a breach of the agreement is acknowledged by COMATAS or the company concerned, it is rectified. There are no penalties, however long or flagrantly the agreement has been breached.

The results of our complaints were compared with the relevant Annual Report of COMATAS, which covered complaints received by COMATAS during the same period. In view of discrepancies and inconsistencies in COMATAS' use of the term "inadvertent" breach and number of breaches identified, all correspondence from COMATAS was reviewed by a second person. Results have also been included from "opportunistic" monitoring in London. The length of time between posting a complaint and receiving a definitive response was calculated.

### Results

#### GENERAL FIGURES

During the three periods studied, I submitted 63%, 46%, and 75% of all the complaints received and I identified 65%, 81%, and 97% of the UK breaches acknowledged by COMATAS (tables 1-3). The median times between posting complaints to COMATAS and receiving a definitive reply were five and a half, eight, and four and a half months for the three periods.

The proportion of OXASH complaints deemed to be in breach of the agreement rose between the first and second periods from 10% to 61% ( $\chi^2 = 36.8$ ,  $df = 1$ ,  $p < 0.0005$ ). This is partly because after the results of the first survey were received, I sent fewer complaints about items COMATAS had pointed out were exempt from the voluntary agreement (such as advertisements in place before 1983 or for cigars) or had ruled were not in breach of the agreement despite my evidence to the contrary (discussed below).

The diminished number of complaints did not represent greater adherence to the Voluntary Agreement; although the number of OXASH complaints was 63% less in the second period, the number of acknowledged breaches found rose by 120%. Of the 145 separate tobacco advertisements found in half a mile of one shopping street in the third phase of the Oxford study, 15 (10%) breached the agreement, despite being an area which had been surveyed (and the reported breaches corrected) in the first phase of the study the previous year. Of the 11 shops in this road, five (45%) displayed at least one advertisement in breach of the Agreement.

Table 1 Summary of complaints submitted by author to COMATAS, March 1989 – March 1990: third report

Category	UK <sup>a</sup> no (%)	Oxford no (%)	Oxford as % of UK	Total <sup>b</sup> no (%)	Total <sup>b</sup> as % of UK
Tobacco industry breaches	11 (7)	2 (2)	18	4 (4)	36
“Inadvertent” breaches	9 (5)	8 (8)	89	9 (9)	100
Total items in breach	20 (12)	10 (10)	50	13 (12)	65
Exempt as pre-1983	45 (27)	18 (19)	40	22 (21)	49
Other exempt	9 (5)	15 (15)	166 <sup>c</sup>	15 (14)	166 <sup>c</sup>
Other not in breach	58 (35)	32 (33)	55	33 (31)	57
Total items not in breach	112 (67)	65 (67)	58	70 (67)	63
Referred to ASA <sup>d</sup>	2 <sup>e</sup> (1)	1 <sup>f</sup> (1)	50	1 (1)	50
Unable to reach a conclusion	7 (4)	7 (7)	100	7 (7)	100
Still under investigation	18 (11)	9 <sup>g</sup> (9)	50	9 (9)	50
Total complaints made	168 (100)	97 (100)	58	105 <sup>e</sup> (100)	63

<sup>a</sup> Complaints reported in Third Annual Report of COMATAS<sup>b</sup> Total complaints submitted by author (from Oxford and London)<sup>c</sup> see text for comment<sup>d</sup> Advertising Standards Authority<sup>e</sup> 1 breach; 1 pending<sup>f</sup> 1 breach<sup>g</sup> 1 breach; 3 exempt as pre-1983; 5 not in breach

Table 2 Summary of complaints submitted by author to COMATAS, 1 April 1990 – 6 June 1991: fourth report

Category	UK <sup>a</sup> no (%)	Oxford no (%)	Oxford as % of UK	Total <sup>b</sup> no (%)	Total <sup>b</sup> as % of UK
Tobacco industry breaches	10 (8)	10 (28)	100	10 (18)	100
“Inadvertent” breaches	17 (14)	12 (33)	71	12 (22)	71
Total items in breach	27 (23)	22 (61)	81	22 (40)	81
Exempt as pre-1983	20 (17)	4 (11)	20	14 (25)	70
Other exempt	8 (7)	4 (11)	50	9 (16)	113 <sup>c</sup>
Other not in breach	48 (40)	3 (8)	6	6 (11)	13
Total items not in breach	76 (63)	11 (31)	14	29 (53)	38
Referred to ASA <sup>d</sup>	3 <sup>e</sup> (3)	2 <sup>f</sup> (6)	67	2 (4)	67
Unable to reach a conclusion	6 (5)	0 (0)	0	1 (2)	17
Still under investigation	7 (6)	1 <sup>g</sup> (3)	14	1 (2)	14
Complaint withdrawn	1 (1)	0 (0)	0	0 (0)	0
Total complaints made	120 (100)	36 (100)	30	55 (100)	46

<sup>a</sup> Complaints reported in Fourth Annual Report of COMATAS<sup>b</sup> Total complaints submitted by author (from Oxford and London)<sup>c</sup> see text for comment<sup>d</sup> Advertising Standards Authority<sup>e</sup> 1 breach<sup>f</sup> no breach<sup>g</sup> still pending

Table 3 Summary of complaints submitted by author to COMATAS, 7 June 1991 – 4 June 1992: fifth report

Category	UK <sup>a</sup> no (%)	Nottingham no (%)	Nottingham as % of UK	Total <sup>b</sup> no (%)	Total <sup>b</sup> as % of UK
Tobacco industry breaches	17 (14)	12 (21)	71	15 (17)	88
“Inadvertent” breaches	14 (12)	11 (19)	79	15 (17)	107 <sup>c</sup>
Total items in breach	31 (26)	23 (40)	74	30 (34)	97
Exempt	12 (10)	4 (7)	33	10 (11)	83
Other not in breach	61 (51)	11 <sup>d</sup> (19)	18	21 <sup>e</sup> (24)	34
Total items not in breach	73 (61)	15 (26)	21	31 (35)	42
Unable to reach a conclusion	9 (8)	0 (0)	0	2 (2)	22
Still under investigation	6 (5)	6 (11)	100	10 (11)	167 <sup>c</sup>
Total complaints made	119 (100)	57 <sup>c</sup> (100)	48	89 <sup>c</sup> (100)	75

<sup>a</sup> Complaints reported in Fifth Annual Report of COMATAS<sup>b</sup> Total complaints submitted by author (from Nottingham, Oxford and London)<sup>c</sup> see text for comment<sup>d</sup> Includes 7 pre-1983 advertisements of which the tobacco companies were previously unaware<sup>e</sup> Includes 12 pre-1983 advertisements of which the tobacco companies were previously unaware

## NATURE OF COMPLAINTS

The bulk of the complaints appertained to shopfront advertising (28/36 in 1989/90). Others were about the siting of hoardings, the content or placing of magazine advertisements, and toy cars.

## NATURE OF BREACHES

Most of the breaches (20/29) felt by COMATAS to be the direct responsibility of

the tobacco industry were advertisements put up since 1983 but with no or too small a health warning.

The so-called “inadvertent” breaches fell into two main categories: either the health warning had not been installed, or had even been removed, by the agent or retailer (16/36), or it was present but not visible because of being covered by a flower display, goods on sale, waste bins, or mobile signs (19/36).

#### NATURE OF ITEMS DEEMED NOT TO BREACH THE AGREEMENT

Advertisements which had been in place since before 1983 did not require a health warning under the terms of the first (1983) or second (1986) Agreements. The current Agreement requires a health warning to be placed on such advertisements if and when the tobacco industry knows of their existence: such advertisements notified to COMATAS for the first time are not considered to be in breach of the Agreement (unless the industry admits it already knew the advertisement was there).

In four cases from the first OXASH survey, the health warning area was agreed by COMATAS to be less than the minimum specified by the relevant Voluntary Agreement (eg, 14.6% of the total area instead of 15%) but COMATAS stated: "the Committee as a whole decided that such small differences in the size of the health warning were not significant." Nine items in Oxford in 1989 breached the letter of the Agreement but were not considered by COMATAS to be breaches. Although seven door open/closed signs were not considered breaches, the Committee recommended a different design be used in the future. Other items, which depended on logical extrapolation of the Agreement, were always decided on in the industry's favour; letters from COMATAS included comments on the "need for flexibility" in applying the regulations. For other complaints, the health warning was considered to be adequate.

#### NATURE OF ITEMS EXEMPT FROM THE AGREEMENT

Most complaints falling into this category were for toy cars carrying cigarette brand logos and sometimes names. In April 1990, Sir Peter Lazarus, who then chaired COMATAS, wrote: "At present the tobacco companies have no legal recourse to prevent the use of their logos on other products, in particular toys." In response to recent complaints, the current chairperson, Sir John Billeloch, wrote on 10 June 1992: "the situation remains the same." Many other complaints about cigarette advertisements were not breaches of the Voluntary Agreement because they dealt with content, which is covered by the Cigarette Code and monitored by the Advertising Standards Authority (ASA), not COMATAS.

#### DISCREPANCIES IN THE FIGURES

The distinction made by COMATAS in its Annual Reports between "inadvertent" breaches (said to be beyond the control of the tobacco industry) and other breaches appears to be arbitrary. There was full agreement between the author and the reviewer regarding assigning categories to each reply from COMATAS. However, it is obvious from table 3 that there is disagreement with the official COMATAS figures. This is borne out by the answer to written Parliamentary Questions, in which it was stated that OXASH identified 35% of the UK breaches acknowledged in the 3rd Annual

Report<sup>24</sup> (50% in table 1) and that Dr Mindell reported 90% of the UK breaches in the 5th Report<sup>25</sup> (97% in table 3). In the reply to the 64 complaints arising from the first Oxford survey, two complaints were stated by COMATAS to be in breach of the Agreement and a further four items were stated to be inadvertent breaches of the Agreement, since they were the result not of the actions of the tobacco industry itself but of its agents or retailers (not party to the Agreement). In addition to these six breaches, one item was referred to as "not really a breach" despite its marked similarity to another complaint, deemed by COMATAS a breach; both advertisements had apparently been put up incorrectly. Another item, where the retailer had removed the health warning, was deemed a "justifiable complaint but not a breach because it was the retailer's fault"; four other apparently identical complaints in the same survey were deemed to be inadvertent breaches. Another two complaints, about health warnings covered by another poster or a display, were deemed not a breach because they were due to the retailers' actions, yet an identical complaint from the second phase was counted as an inadvertent breach.

The most recent letter from COMATAS is unambiguous, in that it summarises into which category each complaint falls. However, six of the breaches were omitted from an earlier letter from them and were notified to me six months later only because of my enquiries, after spotting inconsistencies between the number of items pending in the most recent report and the number of complaints for which no answer had been received.

The number of breaches of the Agreement was also minimised by the committee's policy of counting all examples of a particular breach as a single breach. For example, in 1991/92, four identical posters in London were deemed one breach while in Nottingham 15 complaints were deemed to be three breaches. The figures in tables 1-3 use my figures for numbers of complaints but COMATAS' replies for numbers of breaches: the figures do not therefore add up.

Close examination of the 3rd and 4th Annual Reports revealed that the decisions on complaints received during the relevant period but still under investigation at the time of writing the report were not published in subsequent reports, thus further reducing the number of acknowledged breaches (table 1). This anomaly was corrected in the 5th Annual Report.

#### PREVENTION OF REPEATED BREACHES

COMATAS does not prevent the recurrence of identical breaches. One Oxford retailer continued to cover the health warning of his shopfront cigarette advertising display with rubbish bins on the pavement for half a year after being told this breached the Agreement. During this time, the window advertisement was even changed to a different cigarette brand, so someone must have visited the shop at least



once on behalf of the industry. After repeated complaints, the display was eventually removed.

Three different cigarette advertisements were placed on the same bus shelter outside an Oxford school over a period of five months, all in breach of the Agreement. The third was put up after COMATAS had ruled that the site could not be used for cigarette advertisements.

In Nottingham, a window poster without a health warning has been in place since before 1983 and remained there at least eight months after the chairperson of COMATAS wrote "The Companies agreed in the current Voluntary Agreement to add the appropriate health warning to advertising material, in cases where it pre dates this Agreement. The Committee are assured that in [this case] this has been carried out." (J Belloch, letter to Nottinghamshire ASH, 9 April 92). The reason eventually given for the advertisement remaining, without a health warning, was that the shop was closed and the advertisement was holding a broken window in place! (J Belloch, letter to Nottinghamshire ASH, 10 December 92.)

### Discussion

Amos and co-workers surveyed a stratified random sample of locations used by children and young people in 1987<sup>26</sup> and found that 63% of shops with tobacco advertising displayed an advertisement which breached the Agreement or Code. The equivalent figure for the third phase of this study in Oxford, in 1990, was 45%. However, in the Edinburgh study, breaches quoted were those identified by the researchers. In this paper, breaches are those accepted as such by COMATAS or the ASA. For example, Amos and her colleagues included as shops displaying at least one breach the 36% of shops with an advertisement depicting a child's toy – a jigsaw puzzle – although it was not deemed by the ASA to be in breach of the Cigarette Code.

The trend they found between their first<sup>27</sup> and second<sup>28</sup> surveys towards tobacco advertising on shopfronts has continued: a few breaches were on bus shelters but both the tobacco advertisements and the breaches are principally on shopfronts.

The very high proportion of acknowledged UK breaches found in Oxford and Nottingham is unlikely to indicate that they truly have more disallowed advertising than elsewhere in the UK but rather that few complaints are made to the monitoring committee. This is hardly surprising as the Agreements are very lengthy, complex, and not widely available. Monitoring them is time-consuming and requires special visits as decisions are seldom made by COMATAS in the absence of photographic evidence. The monitoring committee has an almost entirely reactive role.

The UK Government has stated that the Voluntary Agreements are working because so few acknowledged breaches of the Agreement have been reported. This is simply because they are not sought. Even those knowledgeable

enough of the Voluntary Agreement to do so, do not complain to COMATAS or similar bodies because they have become cynical after a decade of dismissed complaints and inaction over repeated breaches. Indeed, this paper provides further evidence that such bodies offer only the facade of action. Furthermore, COMATAS' figures must be interpreted with caution because of poor case definition. The distinction between "inadvertent breaches" (said to be the responsibility of the retailer or of the tobacco industry's agent who affixes and inspects the advertisements), breaches which are the direct responsibility of the tobacco industry, and complaints that are not deemed breaches, is applied inconsistently.

The system of multiple Voluntary Agreements does little to protect children. For example, the 1991 Voluntary Agreement contains an undertaking to reduce the number of shopfront advertisements by 50% over the next five years. This allows the replacement of two small, old, tatty advertisements with one bright, new, highly visible and effective poster of twice the size or more! There are such large numbers of tobacco advertisements that halving the number on shopfronts still leaves an unacceptable level of exposure for children. A year after the Oxfordshire survey found 145 shop-front tobacco advertisements within half a mile,<sup>28</sup> a Nottingham parent reported passing 127 tobacco advertisements in one day on the way to and from school.<sup>29</sup>

The Advertising Standards Authority, which was established by the media industries and is not a governmental agency, seldom upholds a complaint about tobacco advertisements, even when they are obviously attractive to children, such as the recent Silk Cut rhinoceros.<sup>30</sup> The Health Education Authority has repeatedly pointed out breaches of the Agreement on sports sponsorship by tobacco companies<sup>31,32</sup> yet the government continues to refer to "a total ban on television advertising of all tobacco products" (personal communication from B Mawhinney, Minister for Health, 11 May 92). Indirect promotion of tobacco by sports sponsorship on television is still permitted<sup>13</sup> and 65% of 9- to 15-year-olds believe cigarettes are advertised on television.<sup>31</sup>

Much tobacco promotion is not covered by the Agreements. Brand-stretching (using well-known cigarette brand names and logos to advertise unrelated products, thus maintaining brand awareness in the public while circumventing restrictions on direct tobacco advertising) is one such area. The unauthorised placing of cigarette brand names and logos on a range of toys and kit cars aimed at pre-school children, primary school children, and teenagers is also exempt; nor is it controlled by the Department of Trade and Industry.<sup>33</sup>

This study demonstrates that the claims made by the UK Government that voluntary restrictions are "successful", "comprehensive", and "effective" (personal communication from B Mawhinney, Minister for Health, 11 May 92), are without foundation. The lax interpretation of the Agreements, and the absence of any independent monitoring and of

sanctions for breaches, allow many advertisements which are clearly against the spirit of the Agreement as well as those which breach the letter.

The principal objection, however, is that the Agreements permit tobacco to be promoted in places and ways that are highly effective at reaching young people.<sup>34</sup> The UK government acknowledged that children are influenced by tobacco promotion and should not be exposed to it when it insisted in the Agreement that posters displaying cigarette advertisements should not be visible from school playgrounds. It is difficult to understand why it remains acceptable for such advertisements to be seen by children outside schools, on shopfronts, and in magazines.

Regardless of the industry's intentions, numerous studies have shown that children notice, recall, and are influenced by tobacco promotion.<sup>31, 35-37</sup> The current British system of Voluntary Agreements is scarcely monitored; complaints are investigated by the tobacco companies themselves; neither the Agreements nor the monitoring system prevents recurrent breaches of the Agreement; and many tobacco advertisements, including those on children's toys, are not covered by the Agreement. Thus these Agreements are not effective in protecting children from tobacco advertising.

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