

TOBACCO CONTROL

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Editorials

Voluntary agreements: designed to fail

Imagine that you are the Health Minister of Ruritania. Your medical advisors tell you that smoking is the country's largest preventable cause of death and disease, and you believe them – even though the numbers they cite are much higher than you had appreciated. You are also under very public pressure from the Ruritanian Medical Association (RMA) to take firm action to reduce smoking, particularly among young people. The RMA are especially incensed by both the content and the extent of tobacco advertising and promotion, claiming that this encourages smoking amongst young people and negates the impact of health education. The RMA and other pressure groups are demanding a ban on tobacco advertising and promotion, as recommended by the World Health Organisation.

You have to do something, but while you are being pressured publicly by the health lobby, you are also subject to two additional forms of pressure. First, you are being lobbied privately by the tobacco industry and its supporters in advertising, the media and elsewhere. Second, you are aware that if you did support a ban on tobacco advertising, the odds are that you would not get support from your colleagues in government; and if you kept pressing, you would probably be moved to another portfolio. You are only too well aware that in 1979 a former British Health Minister with an outstanding record on smoking control, Sir George Young, told a conference in Oslo that Ministers who take a strong line on tobacco control are destined to find themselves moved sooner than they had expected – and was himself moved from the health portfolio only a few weeks later.

But you have to do something. The RMA will not go away, and the media keep asking what you are going to do.

And then, riding to the rescue on a white charger, come the combined forces of the tobacco industry offering a solution to all your common problems. They will introduce a new code of practice for tobacco advertising – a voluntary agreement; they will ensure that it is properly policed; and they will guarantee that all manufacturers abide faithfully by its provisions. Another problem is solved: you make an announcement full of tough talk about the dangers of smoking and the need for action; and even if there is criticism from some cynics, you point out that they have to give the new system a chance to work before condemning it out of hand. You are off the hook, and the only price you have had to pay is a public promise to the industry not to legislate against their advertising and promotion for a period of perhaps five years – by which time someone else will be Health Minister.

This scenario has been played out over and over again around the world by Ministers who should know better and companies that do know better. There might have been some justification for accepting a case for voluntary

agreements with the tobacco industry in the early 1950s, when there was little experience with them, but even as long ago as 1967, the late Senator Robert Kennedy used words which would be just as appropriate today: "If we were starting fresh, I would say the first line of action would be industry self-regulation of advertising. But we have witnessed a charade of purported self-regulation for some years. The codes of self-regulation have been largely ineffective, and I see little hope for change".¹

Since then, voluntary agreements have been tried and have failed around the world with depressing monotony. They are invariably offered by tobacco companies when legislation is threatened; they are always attractive to governments unwilling to face some of the realities of the death and disease caused by smoking; and even discussion or negotiation about voluntary agreements helps to buy the tobacco companies time, which is the most crucial commodity for them.

Around the world, voluntary agreements fail and fail again for the simple reason that they were never intended to succeed. The tobacco industry only willingly accepts agreements that it knows to be worthless. These agreements suffer from some or all of the following failings: no body has authority to enforce them; if an independent body is charged with their enforcement, that body (which often includes direct or indirect representatives of the industry) will not take any firm action; the rules do not proscribe some of the industry's worst excesses; the wording of agreements is loosely phrased, with "weasel words", so as to allow many different interpretations; much depends on interpretation of the "spirit" as well as the letter of the agreements and the "spirit" is always interpreted to favour the industry; the agreements cover certain forms of direct brand advertising only and usually not, for example, company advertising, advertising connected with sports sponsorship, or many other forms of sales promotion; the codes are framed without any regard to the extensive literature now available about influences on children and young people; no attention is paid to the quantum of advertising; there are no penalties for breach of the agreements; the agreements are so ill publicised that there are few complaints; investigation of complaints takes so long that the offending advertisements have ceased long before any decision is reached; and in the rare event that a tobacco company is criticised by the controlling body, for current advertising, the company simply carries on regardless.

Small wonder that the US Federal Trade Commission (FTC) reported to Congress in 1969 on "the futility in relying upon voluntary regulation of cigarette advertising to achieve any significant change in the content and meaning of cigarette advertising".² Twelve years later, the

FTC issued a detailed report on cigarette advertising, in which it reviewed the effectiveness of industry self-regulation and voluntary codes.³ The Commission concluded:

In light of the cigarette industry's position that smoking does not pose a hazard to health, that its current advertising practices do not pose any problems, and that the public is already well-informed, combined with the industry's failure to regulate itself in the past, voluntary industry self-regulation does not appear to be a reasonable alternative as a remedy to the current problems in cigarette advertisements.

So why is the paper by Mindell (published on pages 209–214 of this issue of *Tobacco Control*) significant? Mindell demonstrates that “breaches of the UK voluntary agreement are common but monitoring is generally non-existent. A voluntary agreement does not provide adequate protection for children”. Surely we knew that?

Mindell's work is an important contribution to the literature for three reasons. First, it is important in the context of maintaining pressure in the UK. Ministers and opinion leaders such as journalists change. The new generations will generally not be persuaded by references to past experience in either other countries or previous decades. It is important, therefore, both to maintain pressure, and to do so with information on the agreements currently in place.

Second, in the international context too it is important to keep demonstrating the failings of voluntary agreements. The UK is often used by the tobacco industry in other countries as an exemplar: voluntary agreements, their argument runs, are working perfectly satisfactorily in the UK, so they should be equally acceptable in Ruritania. Mindell provides all the ammunition that is required to destroy this argument yet again. Further, in the international context it is useful to be able to provide up-to-date evidence that voluntary agreements are failing in the country where some of the world's leading multinational tobacco companies are based.

Third, and perhaps most important, Mindell shows that determined public health professionals can be change agents if they set about their work methodically, and with a sound sense of political reality. She has both identified

the current UK voluntary agreement systems as being inadequate, and taken the action necessary to demonstrate this. She has shown the value of persistence, but also of the scientific method when applied to campaigning. Her conclusions are unequivocal, and show that the latest generation of voluntary agreements in the UK are failing as dismally as their predecessors. This provides yet more ammunition for campaigners in the UK and elsewhere seeking to achieve tobacco advertising bans.

It is, however, both encouraging and depressing that a single individual was responsible for well over half the total UK complaints in 1991/92, and, “was responsible for notifying the monitoring committee of 97% of all the acknowledged breaches in the UK in 1991/92”. It is a credit to Mindell that she has been so active, and the results of her work will certainly help to discredit the current UK voluntary agreements, and to support the case for an advertising ban there as elsewhere. How much more could be achieved if other health professionals were as active as this?

The evidence from countries where effective tobacco control legislation has been introduced shows that it results from well planned and co-ordinated action by key health professionals and organisations. If there were only a few more doctors around the world willing to be as professional in their campaigning as they are in the rest of their work, Health Ministers in Ruritania and elsewhere would have the strength to tell the tobacco manufacturers some home truths about voluntary agreements. The manufacturers know better than anyone that tobacco control legislation is designed to succeed, but voluntary agreements are designed to fail and in this they succeed brilliantly.

MICHAEL DAUBE

*Chairman, Australian Council on Smoking and Health,
Perth, Western Australia*

- 1 *Proceedings of the First World Conference on Smoking and Health*, New York: American Cancer Society, 1967: 4–13.
- 2 Quoted in Roemer, R. *Legislative Action to Combat the World Smoking Epidemic*, Geneva: World Health Organisation, 1982.
- 3 Myers ML, Iscoe C, Jennings C, Lenox W, Minsky E, Sacks A. *Federal Trade Commission Staff Report on the Cigarette Advertising Investigation*. Washington, DC: Federal Trade Commission, 1981: 5–10 to 5–16.