



Protecting policies from the tobacco industry: Guidance to support Trading Standards in complying with Article 5.3 of the WHO Framework Convention on Tobacco Control

Prepared by Trading Standards officers and the Illicit Tobacco Partnership
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Endorsed by the Chartered Trading Standards Institute



Why has this guidance been produced?

This guidance has been developed by Trading Standards officers and the Illicit Tobacco Partnership, coordinated by Fresh and whose members include the Greater Manchester Health and Social Care Partnership, Action on Smoking and Health and the SPECTRUM Research Consortium. It has been developed in consultation with colleagues in the endorsing organisations and it is designed to help local authority Trading Standards services deliver tobacco control policies in line with the UK's obligations as a Party to the WHO [Framework Convention on Tobacco Control](#) (FCTC), the first global health treaty, and to the [Illicit Trade Protocol](#) to the FCTC. This document illustrates established best practice for those working in Trading Standards.

Article 5.3 of the FCTC requires the UK Government and public bodies to protect public health policies with respect to tobacco control 'from commercial and other vested interests of the tobacco industry' and WHO has produced specific [guidelines](#) exist to support compliance.

HMRC has also developed [guidance](#) for its staff on interacting with the tobacco industry to ensure its compliance with Article 5.3, noting that *"HMRC should limit interactions with the tobacco industry, including any person or organisation that is likely to be working to further the interests of the tobacco industry. In the event interactions are required, these should be conducted with maximum transparency to demonstrate compliance with the FCTC. Such interactions must occur only when and to the extent strictly necessary to enable effective regulation of the tobacco industry and tobacco products."*

The Chartered Trading Standards Institute has a policy on engagement with the tobacco industry which states that: *"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. [We will] ensure that we are compliant with FCTC and will continue to review this."* Local authorities are also responsible for meeting the treaty obligations and many have publicly shown their commitment by signing the [Local Government Declaration on Tobacco Control](#).

Why do policies need to be protected from the tobacco industry?

Cigarettes are the only legal consumer product that kills when used as intended, containing thousands of toxic chemicals, many of which are cancer-causing. All tobacco, no matter where it is bought or which brand

it is, will kill up to two thirds of two long term smokers, causing life-limiting conditions such as COPD, heart disease and stroke. As England's Chief Medical Officer has said, lung cancer is caused 'almost entirely' for profit. Tobacco use remains the leading cause of premature death and preventable disease and the cost of tobacco hits poor communities hardest, where rates of smoking are highest. In England every year there are around 70,000 premature deaths caused by tobacco with smokers losing years of active life through tobacco-related diseases.

Despite all of this, tobacco companies are becoming increasingly known for their efforts to appear 'socially responsible'. Examples in which they portray this image include committing to stop selling cigarettes in the UK yet continuing to grow their markets in other parts of the world; claiming their development of novel products will reduce tobacco related harm despite the absence of conclusive evidence and their continuation to sell cigarettes, and offering support to local authorities with cleaning up litter whilst continuing to damage the environment throughout the tobacco supply chain. Of relevance to Trading Standards is the 'support' offered by tobacco companies to deliver tobacco enforcement despite their complicity in tobacco smuggling, their targeting of young people and their efforts to maximise brand awareness in an increasingly regulated environment. All of these 'socially responsible' activities – and many more – are designed to distract attention away from the damage caused by the tobacco industry.

How should Trading Standards respond when contacted by the tobacco industry?

Trading Standards services are a vital part of the response to the tobacco epidemic and a key player in tobacco control efforts. Because of this position, Trading Standards are a common 'route in' for tobacco companies to attempt to undermine local authority tobacco control policies. When this happens, Trading Standards should refuse any offers of support from the tobacco industry if they are to comply with Article 5.3 of the FCTC. At the very least, Trading Standards are required to be transparent about any contact with industry. Sometimes it is not clear that it is the tobacco industry that is making the approach: industry funded groups such as the Tobacco Retailers Alliance and public relations (PR) agencies have also been known to make contact with local authorities. A useful database of industry 'front groups' can be found on the STOP website [here](#). PR and other agencies seeking to make contact with Trading Standards on tobacco matters should always be asked to disclose their clients in case they are working on behalf of a tobacco company.

The tobacco industry's main role in tobacco enforcement is to comply with any and all legislation designed to reduce the harm caused to children and adults.

The tobacco industry's only legitimate role in tackling illicit tobacco is limited and clearly defined:

- **An obligation to co-operate when their products are diverted into illicit channels**
- **when seized illicit tobacco products are suspected to be counterfeit – not non-UK duty paid or brands with no legal market in the UK – and a Section 9 statement from the relevant brand holder is required for prosecution.**

The following principles, adapted and developed from the legal advice sought by CTSI, outline best practice for Trading Standards compliance with Article 5.3:

- Decline offers of support from and meetings or partnerships with the tobacco industry, citing conflict with the guidelines on Article 5.3 and also the Local Government Declaration if your authority has signed this.
- Be transparent: document and make publicly available any contact with the tobacco industry.
- Any contact should be as narrow as possible to achieve the goals required.
- Let public health colleagues know about any approaches from the tobacco industry.

Below are some common scenarios that are experienced by Trading Standards along with guidance on responding based on best practice principles. This guidance does not preclude local authorities from going further in terms of protecting public health from tobacco industry interference, and advice in some scenarios

can apply to others. This guidance should be read in conjunction with the [ASH toolkit on Article 5.3](#) and WHO FCTC Guidelines on Article 5.3.

Common scenarios and relevant guidance

[The tobacco industry requests a meeting with your Trading Standards service](#)

[The tobacco industry offers support to tackle illicit tobacco](#)

[The tobacco industry offers intelligence on illicit tobacco, underage sales or other tobacco or related products regulations](#)

[The tobacco industry offers training support](#)

[The tobacco industry offers support to tackle underage sales](#)

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

[The tobacco industry reports that it has been working in partnership with your local authority](#)

[The tobacco industry makes an approach in relation to e-cigarette regulations](#)

[You are invited to attend or take part in a forum to discuss vaping enforcement](#)

[You need to procure a third party supplier to support enforcement work](#)

The tobacco industry requests a meeting with your Trading Standards service

- Article 5.3 guidelines state that “Parties [in this case, Trading Standards] *should 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*”. If it is deemed that the meeting is ‘strictly necessary’ on these grounds, local authorities should ensure that such interactions are conducted transparently. Interactions should be conducted in public, for example through public hearings, through publishing a notice of interactions, and disclosing records of such interactions to the public.
- Trading Standards should record in a document the decision making process relating to the engagement, showing that Article 5.3 guidelines were taken into account and setting out the reasons why engagement for certain limited ends would aid the implementation of the relevant public health policies. An exception can be made for requests for a Section 9 statement which should be recorded internally (see next section).
- Particular care must be taken to ensure that potential risks of engagement are taken into account. Make it a requirement of any contact that the industry cannot use any engagement for promotional purposes either in public, or with policy makers or public bodies.

The tobacco industry offers support to tackle illicit tobacco

- One of the few instances in which the tobacco industry has a role in tackling the illicit tobacco trade is when the illicit tobacco products concerned are counterfeit. The Trade Marks Act 1994 places a statutory duty on Trading Standards to respond and deal with such matters. In these circumstances the relevant 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 after a seizure has been made. 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. This situation does not relate to products that are non-UK duty paid or brands with no legal market in the UK. Best practice recommends that it is unnecessary for a brand holder or other tobacco industry representative to be present during warrants or to visit local authority officers in order to examine the seizures: after a seizure has been made, sample packs can be posted to the brand holder for examination. This will safeguard the local authority against the perception of a real or potential partnership or cooperation with the tobacco industry.
- There are a range of alternative offences to the Trade Marks Act which can be pursued, including using regulations relating to Reduced Ignition Propensity cigarettes, labelling and packaging requirements under the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Regulations 2015 or one of the banned practices under Consumer Protection from Unfair

Trading Regulations 2008 (CPRs) and licensing provisions. These alternative offences do not require tobacco industry involvement.

The tobacco industry offers intelligence on illicit tobacco, underage sales or other tobacco or related products regulations

- Tobacco-related intelligence offered by the tobacco industry can be submitted via the Trading Standards Regional Intelligence Analyst through secure channels 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, Trading Standards do not need to handle the intelligence, saving local authority time and providing protection from claims of partnership working with the industry.
- Intelligence should never be delivered during a meeting.

The tobacco industry offers training support

- Refuse the offer: training needs can be met through the Trading Standards Regional Co-ordinator or through the Chartered Trading Standards Institute without any recourse to the tobacco industry.
- Tobacco companies' interests relate only to the protection of their brand, rendering offers of training by the tobacco industry on trademarks, meaningless.
- There are many other issues that Trading Standards face when delivering tobacco enforcement which are not brand-related, for example, Organised Crime Group networks, continually developing Modus Operandi, complex and deliberately opaque supply chains, legislation, track and trace provision, security features, e-cigarette regulations and so on. The relevant public agencies – such as HMRC, the police and the MHRA – are the only legitimate source of information on these areas

The tobacco industry offers support to tackle underage sales

- Point out 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. It is therefore a function of the Trading Standards service, not the tobacco industry, to take the lead in gathering intelligence and taking 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

- Alert your local public health and communications teams (and Fresh, if based in Northumberland, County Durham or Tyne and Wear).
- Be wary of the purpose of the article: it is likely to be part of industry corporate social responsibility strategies. Ask for the source of and background to the story, a copy of the press release and any quotes that have already been received from other spokespeople.
- If a quote is offered by your local authority, it could state that all tobacco kills, that up to two thirds of term smokers will die early as a result of their addiction and that the tobacco industry should be made to pay for the damage it does to society.
- If the story is about illicit tobacco, a guide on messages to use and messages to avoid is available on the [Illicit Tobacco Partnership](#) website. You could also point out the industry's complicity in tobacco smuggling.

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

- Assuming this is inaccurate (if all the steps above have been taken), correct the perception that you have been working in partnership. Examples include issuing a statement to the relevant outlet if the report appeared in the media; send an email to relevant colleagues who may have read the report; highlight the inaccuracy through your local authority's social media channels. Point out the reasons why Trading Standards will not work in partnership with the industry and make it clear the circumstances through which

this misperception may have arisen e.g. by showing evidence that any engagement was transparent and documented.

The tobacco industry makes an approach in relation to e-cigarette regulations

- FCTC Article 5.3 applies to policies on tobacco as well as its related products, including e-cigarettes, therefore the same general principles can be applied.
- Intelligence offered by the tobacco industry regarding non-compliant vaping products can be submitted via the Regional Intelligence Analyst.
- While vaping products continue to play an important role in supporting tobacco smokers to switch to a less harmful form of nicotine, we must do all we can to prevent sales to children and to remove from sale products which do not comply with UK regulations.

You are invited to attend or take part in a forum to discuss vaping enforcement

- Check who is organising the event to ensure that it does not have links to the tobacco industry. The UK Vaping Industry Association (UKVIA) is an organisation with tobacco industry members and funding. Obligations under Article 5.3 therefore prevent local authorities and other public bodies from participating in their events.
- The Public Health Minister has stated on the record in [Hansard](#) that in adherence with Article 5.3 it would not work with the UK Vaping Industry Association (UKVIA) because of its links with the tobacco industry.
- The Independent British Vape Trade Association (IBVTA) does not have tobacco industry links.
- For the purposes of tobacco control, it is useful and indeed encouraged for Trading Standards to attend and take part in forums to discuss vaping enforcement providing the event isn't organised by the tobacco industry or its affiliates.

You need to procure a third party supplier to support enforcement work

- Work with the procurement team to explore the inclusion of a question which requires potential suppliers to disclose whether they work for the tobacco industry and ask for details of any relevant work
- If the answer is yes, use the information provided to decide whether this presents a conflict of interest to your Trading Standards work. In all cases, document your decision.
- If procurement does go ahead, ensure that safeguards in place to protect your work from the tobacco industry and make the supplier aware of your local authority's obligations under Article 5.3.

What are the risks of working with the tobacco industry?

If Trading Standards work with the tobacco industry, this could lead to claims of "working in partnership" and could jeopardise perceived compliance with Article 5.3.

Chartered Trading Standards Institute legal advice on Article 5.3 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 FCTC may be exposed to risk of judicial review.

What can be done to strengthen your approach to tobacco control?

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

- Endorse the [All Party Parliamentary Group on Smoking and Health report](#) on Delivering a Smokefree 2030. Trading Standards services can also endorse, as can regional Trading Standards groups.
- Join the [Smokefree Action Coalition](#)
- Sign the [Local Government Declaration](#). If your local authority has signed up to the Declaration, use it to ensure tobacco control remains a priority.
- Undertake the [CLear assessment tool](#) on local tobacco control and 'deep dive' tool on illicit tobacco.

A toolkit for local authorities to help them meet their obligations as parties to the FCTC and to the Local Government Declaration on Tobacco Control is available [here](#). This includes a useful webinar which sets out some clear practical advice around trading standards and protection from tobacco industry vested interests.

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