

From: [REDACTED]
Sent: 20 June 2012 19:35
To: Tobaccopacks
Subject: Statement in Opposition to UK Government's Proposed Plain Packaging for Cigarettes Legislation

To The UK Department of Health,

Please find below our comments in regard to the Department's consultation on plain packaging, which our organization argues against. We advise the Department to proceed with Option 1: Do Nothing (i.e. maintain the status quo for tobacco packaging).

Statement in Opposition to UK Government's Proposed Plain Packaging for Cigarettes Legislation

The American Council on Science and Health
New York, NY USA

June 20, 2012

Introduction

The American Council on Science and Health (ACSH) has been in the forefront of anti-smoking education for the consumer since our founding in 1978. We have numerous publications on this most important public health issue, perhaps the most important being our monograph, *Cigarettes: What the Warning Label Doesn't Tell You*, published in 1996 and revised several times since.

We have a mission: to evaluate health and science studies and claims based on sound science and peer-reviewed publications. The most important ethos we adhere to is to not take at face value assertions based on inadequate data, which we have found to quite often be agenda-driven or politically based rather than scientifically based.

In recent years we have become devoted proponents of harm reduction as a means of helping addicted smokers to quit deadly and addictive cigarettes. This has led us to work in common with those tobacco companies who have also shifted their emphasis from recruiting more cigarette smokers, towards a harm reduction philosophy. While we were at first uncomfortable in that arena, we continue to believe that reducing the toll of cigarettes is the most important task we have if we hope to save lives and prevent premature disease.

Our Position Re: Plain Packaging

With the above as background, ACSH scientists decided to look into the issue of plain packaging (PP) of cigarettes for its potential to benefit public health, by reducing cigarette consumption among adults, as well as any possible effect on youth initiation and inhibition of quitting/cessation. We as always planned to place any such PP benefits on the scale against clear, likely, and potential consequences, both as relevant to cigarette consumption as well as to the society in general.

This task became much simpler upon review of the evidence for PP benefits: there is simply no evidence to support an association between PP and a decline in cigarette consumption. In fact, no such studies have even been undertaken, to the best of our ability to find them. The same is true for effects on initiation and cessation.

This seems to be another issue which, while seeming to be an obvious approach to reduce the toll of smoking, turns out to be composed of "smoke and mirrors" upon careful inspection. In other words, mandating uniform PP for cigarette packs is analogous to the "obvious" benefits of banning candy cigarettes and menthol: no significant benefits to public health can be expected.

Non-health Concerns

PP implementation will likely have the unintended and unwanted or counterproductive effects enumerated here, not to be construed as inclusive as some issues are outside of ACSH's field of expertise:

a — PP will likely force cigarette makers to resort to price competition as opposed to brand competition. Since the best documented method of reducing cigarette consumption is via price increase through taxation or otherwise, this effect will clearly be the opposite of that desired.

b — It is obvious that PP cigarettes will be significantly more amenable to criminal counterfeiting, and therefore more attractive to them. As discussed at the 2011 meeting of the U.S. Tobacco Merchants Association, which we attended, spokesmen for the General Accounting Office and the Bureau of Alcohol, Tobacco and Firearms are well aware of the

extensive problem of illicit (untaxed) and counterfeit cigarettes already permeating our borders. While we are not so familiar with the analogous situation in the UK, we can only believe that whatever the extent of the problem now, it will be enhanced by several-fold if the counterfeiters need not be concerned about brand identities — their only requirement will be a word processor with the appropriate font styles and sizes. This will probably become a bonanza for such smugglers, whose products will not only be sub-standard, but probably cheap enough to be purchased by young people, who will not be required to show age documentation to buy these illicit smokes, nor will they remit taxes.

From these perspectives, it seems that it is more likely than not that a PP mandate would actually increase rather than diminish cigarette consumption. Given the absence of evidence of actual benefit, ACSH strongly urges the UK government NOT to legislate Plain Packaging for cigarettes. Such an extensive requirement has vast potential to wreak havoc and a small likelihood (if any) of enhancing public health.

As we here at ACSH are not well-versed in international trade accords, nor the nuances of intellectual property — although we have learned a fair amount based on this topic relevant to the WTO and TRIPS issues — we do not choose to weigh in on those aspects. That being said, there is no need in our opinion to even get to those points, as the lack of a positive risk-benefit equation for PP should, we hope and believe, lead to its defeat in Parliament.

[REDACTED]

President

[REDACTED]

Medical and Executive Director

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Response of the Confederation of Netherlands Industry and Employers VNO-NCW
to the UK Department of Health

Concerning the consultation on Standardised Packaging of Tobacco Products.

August 3, 2012.

The Confederation of Netherlands Industry and Employers (VNO-NCW) is the largest employers' organisation in the Netherlands. VNO-NCW represents the common interests of Dutch business, both at home and abroad. Over 160 (branch) associations (3 of which in the tobacco sector) are members, representing more than 115,000 enterprises. They cover almost all sectors of the economy, including more than 80% of all medium-sized companies in the Netherlands and nearly all of the larger, corporate institutions.

We respond to the UK consultation, because in our view this envisaged UK policy has far reaching effects on the way (Dutch exporting) business (in the tobacco sector, but potentially also in other related sectors) can operate in a free economy.

We consider the UK plans not to be in line with better – and smart – regulation, and to constitute an unwelcome precedent.

The concerns expressed below are all the more relevant at a time when the regulator's focus ought to be on jobs and growth in the EU.

1. *The importance of smart regulation*

The UK is known for its policy of "better" and "smart" regulation, and the discipline of conducting impact assessments. This is very welcome because this approach ensures that the net effect of a piece of legislation is positive. Properly applied, "smart regulation" can secure that regulation is necessary, effective, fit for purpose and that its unintended consequences are both limited to the unavoidable and outweighed by the positive impacts. Consistently applied, it plays a crucial role in securing the competitiveness of both our countries as an investment destination.

However, the ability of regulation, including the regulation of consumer products, to stifle economic growth, job creation, competition and competitiveness without offering an adequate benefit in terms of social, economic or other policies is well documented.

The issues discussed below are a case in point.

2. *Gradual erosion of intellectual property protection – A slippery slope*

First and foremost, we understand from par. 4.6 of the consultation document that the options for the revision of the UK legislation under discussion would include many

different aspects of standardised packaging and restrictions on information to be permitted on packs.

VNO-NCW firmly believes that strong and effective protection of intellectual property rights is key to boost innovation potential, and it has consistently opposed any unjustified restrictions to intellectual property rights.

In Europe, also the European Commission, in its communication on "A single market for Intellectual Property rights", rightly states that "IPR shape the everyday life of citizens". More specifically, it stresses that "the protection of brand equity stimulates investment in the quality of products and services by helping the customer identify the relevant producer of goods and services, particularly in sectors which rely heavily on brands and customers' brand loyalty".

The UK options currently under discussion would all but destroy the brand equity in the sector concerned, with the added threat of a spill-over effect on other consumer goods industries.

The envisaged policy options would eliminate one of the main functions of a trademark, which is to distinguish a manufacturer's products from those of his competitors. It would by the same token confuse the consumer whose right to be informed about the origin – and therefore the quality – of the brand he purchases seems to be entirely overlooked.

Owners of intellectual property rights take a high degree of comfort in the protection afforded by national, EU and international law. Many rights holders in other sectors would be alarmed if it became clear that those provisions no longer protect them from what would be tantamount to brand expropriation.

Brand protection, and the protection afforded to other intellectual property rights in general, are elements of a whole legal architecture the respect of which we all have fought hard to spread across the world. VNO-NCW has, for many years, consistently opposed any undermining of this regime, be it only because of the lamentable example this would set on the UK, European or international scene, but also because repeated, "limited" exceptions risk eroding the system to the point of crumbling.

3. *The concept of "attractiveness" as a basis for regulation*

VNO-NCW has previously also expressed the concerns raised in the broader business community by any intention to regulate products and/or packaging on the basis of the concept of "attractiveness". We consider this concept to be a subjective notion, which should in no way serve as an appropriate regulatory standard in any consumer product area, including tobacco products.

Any business by definition seeks to make their products attractive to their consumers by means of a distinctive quality, content, shape, aesthetic, taste or packaging. This is the way business needs to work in a competitive environment if it is to gain or maintain market share against its competitors.

Any piece of legislation that seeks to prevent companies from making their products attractive to their consumers therefore needs to be considered with extreme caution, in particular given the arbitrary nature of this concept.

Businesses have a right to be protected from arbitrary regulatory interventions. Properly applied, smart regulation provides this protection, as does the attendant requirement for regulators to produce an evidence base linking the proposed regulation to a legitimate policy objective. In the specific case under discussion, there can be no doubt that the reduction of smoking is such a legitimate policy objective. However, reducing the attractiveness of tobacco products and of their packages as a means of reaching the objective can only be legitimate if the evidence demonstrates that this is likely to lead to a reduction in smoking.

For such a heavily interventionist step to be taken in a free market, the evidence must be serious, science-based and uncontroversial. We understand that this is not necessarily so in the case under discussion.

However, looking as it does beyond this particular case of intended tobacco regulation, we wish to reiterate our serious concern that regulation on the basis of attractiveness alone would constitute a dangerous and alarming precedent which we believe is bound to affect other sectors.

Mindful that attractiveness-based regulation could easily become a means of circumventing the need to produce meaningful evidence to justify regulation in other sectors, VNO-NCW believes that the concept of attractiveness as a regulatory tool should be rejected, or at the very least subjected to very stringent conditions:

- the evidence base for adopting any such measure must be sound, science-based and uncontroversial;
- the proposed measure should not significantly undermine a product's distinctiveness *vis-à-vis* its competitors;
- the proposed measure should not reduce perceived or actual product quality, thus frustrating consumer expectations;
- above all, it should not be of such a nature as to undermine the fundamental rights, including intellectual property rights, enshrined in the (European) Treaty, or the freedom to conduct a business proclaimed by the EU's Charter of Fundamental Rights.

These comments, and the strict conditions spelt out above, should apply to all aspects of products deemed to make them attractive, be it their appearance, their taste, or their composition.

4. *Standardising the shape of products and packages*

From the consultation document, VNO-NCW understands that thought is being given to provisions imposing on tobacco product packaging a standard shape and format, which incidentally also implies regulating the shape of the products therein contained.

Under 114 TFEU, the (European) Union has a competence to approximate consumer information on product packaging and indeed, this competence has been exercised in many contexts. It is however difficult to comprehend how imposing a standard shape, format and appearance on consumer products will enhance consumer information about the product. Quite the reverse is true: such a measure would by definition remove the distinctiveness which the consumer relies on when purchasing products of any kind.

In other words, not only would the options under consideration definitely not improve the functioning of the UK or internal market for the consumer, they are also likely to be an anti-competitive measure in that producers would no longer be able to distinguish their products from those of their competitors.

Again, looking beyond the specific case under discussion, VNO-NCW believes that it would be of significant concern to many producers of consumer goods if the UK were to assert competence to regulate the appearance, shape and size of all product packaging and possibly the resulting shape of the products therein contained.

Besides, it should notably be borne in mind that, in many industrial sectors, packages are often protected by design rights or by patents, and in some cases the shape of a product can even be recognised as a trademark. This would be yet another breach of intellectual property rights, yet another example of gradual erosion of the system.

In sum, the intended interference in the market would not benefit consumers, would be anti-competitive, would not improve the functioning of the (internal) market and would infringe a variety of intellectual property rights. Such an unwarranted precedent is of serious concern to business across-the-board.

5. To conclude.

Responding to the questions in Appendix A of the Consultation document, we would like to urge the UK Department of Health to go for option 1 (Q.1). We answer questions 2, 3, 4 and 13 with no; and questions 5, 6, 7, 8, 9, 11 with yes.

Any further steps on the path of standardised packaging, would:

- negative effects on illicit trade,
- negative effects on investments, trade and jobs,
- erode brands equity, damage competition, and eliminate pack innovation,
- will raise barriers to entry for new brands,
- have significant negative (cashflow and credit) impacts on retail sector,
- deny consumers the ability to choose branded products,
- expose minors to greater health risks, because it will them lead to cheaper, illegal, and unregulated markets,
- unjustifiably infringes fundamental legal rights to property, expression and trade.

There is a significant body of peer reviewed independent research into the causes of smoking initiation, cessation and relapse. Peer pressure, parental influence, social and cultural norms, price and access are all identified as causal factors in relation to youth smoking initiation, but packaging is never cited.

That is why we would like to invite the UK government to consider alternative, effective and proportionate solutions to the envisaged legitimate public health goals.



The Swedish Tobacco Manufacturers' Association Response to the Department of Health's Consultation on Standardised Packaging of Tobacco Products.

Introduction:

The Swedish Tobacco Manufacturers' Association (STMA) is the trade association for tobacco companies that operate in Sweden. It is funded by its two current member companies: British American Tobacco Sweden AB and JTI Sweden AB.

The STMA also supports the Tobacco Retailers Alliance (TRA) a network of 26, 000 independent shopkeepers who all sell tobacco as part of their product range. <http://www.tobaccoretailersalliance.co.uk/>

STMA's Response to the Consultation

The STMA supports Option 1: do nothing (i.e. maintain the status quo for tobacco packaging).

1. Flawed Process

The Department of Health's (DH's) process does not meet the Government's required standards:

- The Consultation on Standardised Packaging of Tobacco Products (the *Consultation*) and Impact Assessment (*IA*) are part of a flawed policy-making process. The process shows that the DH has abandoned its commitment to Better Regulation principles and is seeking to advance policy despite them.
- The decision to consult at this time in these circumstances reinforces the STMA's concern that the DH may well have already decided to introduce standardised packaging, whatever the evidence shows. Internal DH documents show it has sought evidence presuming standardised packaging will be effective.
- The DH is not giving its own regulatory measures a chance to work, ignoring HM Government's regulatory reform agenda. The DH has said it has to show that standardised packaging will have an effect in achieving any of the stated public policy objectives over an above that of existing measures, but cannot do so.
- The DH has set the tests in such a way to achieve the desired outcome. This is contrary to Better Regulation principles and cannot hide the fundamental lack of evidence to justify standardised packaging.

The IA is inadequate to support the introduction of a measure such as standardised packaging. Even the Regulatory Policy Commission (RPC) has classified the IA as 'Amber', meaning it has "areas of concern that should be corrected". This is perhaps unsurprising when, in its recent report Improving Regulation

March 2012, the RPC specifically criticises the performance of the DH in producing balanced and robust Impact Assessments:

"The most common flaw in these IAs was that analysis of wider economic impacts was incomplete. For example, tobacco IAs tended to provide a full analysis of benefits, but failed to estimate the full economic costs to producers and retailers."

In summary, the IA fails to adequately assess:

- The costs associated with implementing standardised packaging to manufacturers, both direct costs and those associated with the competitive effect of such a measure. The measure represents a restraint of free trade and amounts to a deprivation of manufacturers' most valuable assets; their brands.
- The impact on adult consumers' rights to product choice, product information and fair competition.
- The impact on retailers from (i) creating additional costs and unnecessary time-wasting by making everyday activities such as retailing, re-stocking and stock-taking much more onerous than necessary, to (ii) the impact on smaller retailers by shifting the competitive advantage significantly towards larger retailers.
- The impact standardised packaging would have on undermining innovation.
- The Government's own 'One In One Out' policy - by proposing legislation that will have additional costs on business, before the full costs of the previously enacted Display Ban' regulations have yet to be realised.

2. The STMA is categorically opposed to standardised packaging

The STMA considers that only Option 1- no change - is appropriate and wishes to emphasise its opposition to standardised packaging.

The STMA agrees that minors should not smoke and that smoking must be a matter for informed adult choice. The STMA's member companies only market their products to adult smokers.

A. Misunderstanding of Role of Packaging

The consultation is based upon a series of assumptions and assertions that are wrong, and which have the effect of incorrectly defining the debate regarding tobacco packaging. Adult smokers use packaging to identify, obtain information about and choose tobacco products, easily and without confusion.

Tobacco packaging and pack labelling is not a predictor of youth smoking. The considerable body of evidence and research which exists on the predictors for smoking initiation does not substantiate any link between packaging and youth uptake. Even when the DH itself has previously identified "trigger factors" for smoking by minors, packaging was not one of them. Instead the DH linked youth smoking initiation to a complex range of socio-economic factors including age and gender, home life, peer pressure, truancy and exclusion from school. The Consultation is, however, concerned with packaging from this perspective. As a result of this flaw, standardised packaging will not reduce youth smoking.

Furthermore, the STMA rejects the notion of reducing the "appeal" (or "attractiveness") of tobacco packaging as a valid public policy objective, and considers that it adds nothing to the need to identify and assess a relevant policy rationale. "Appeal" per se fails established criteria for issue definition in terms of it being a regulatory goal or objective: it is lacking in any evidential foundation and is inherently uncertain and arbitrary.

Finally, the DH must recognise that changes to packaging and pack labelling regulation engage fundamental legal, economic and commercial rights of tobacco product manufacturers and consumers.

These include the right of manufacturers to brand their packaging and pack labelling in accordance with principles of the market economy and competition policy, their property right in their brands (including trademarks, goodwill and brand equity), their rights to communicate product information to their consumers, and their right to conduct their business (including the free movement of goods within the EU).

B. Standardised packaging will be disproportionate, will unjustifiably affect the rights of stakeholders and is likely to have unintended consequences.

Packaging and pack labelling are fundamental to the operation of a market economy in legal tobacco products, consumer choice, innovation, product information and brand value.

Packaging and pack labelling are also fundamental to consumer choice in a competitive market. Manufacturers, retailers and consumers must be able to identify and distinguish products, without confusion. This is an essential function of packaging, pack labelling and trade marks. Mandating standardised packaging would infringe legally protected rights of manufacturers and consumers. If it could be adopted at all, such a measure would represent an extraordinary attempt to deprive the STMA's members of their most valuable assets. It is wrong for any liberal democracy and free market economy to go this far.

Moreover, standardised packaging would have a serious, negative impact by:

- creating consumer and retailer confusion in the supply chain and at point of sale;
- exacerbating illicit trade (already up to £3.1bn per year - £8.5m per day – is lost to the Treasury) as counterfeit products will become easier to make, distribute and sell. Standardised packaging will make the work of HM Revenue and Customs, the UK Border Agency and Trading Standards harder when identifying illicit products. The increase in illicit and counterfeit tobacco products across the UK could result in increasing access to products for those societal groups the DH is most concerned with protecting, including minors. Illicit traders don't care who they sell to – and frequently target children. A study carried out by Tobacco Control groups in the North of England concluded that 14 and 15 year olds were twice as likely to buy illicit products than adults. This concern is also echoed in current government policy :

"The availability of illegal tobacco products undermines public health objectives and impacts on the health of both individuals and wider communities; circumventing health labelling requirements and age of sale restrictions.... Unregulated distribution networks associated with smuggling make tobacco more accessible to children and young people and perpetuates health inequalities across socio-economic groups" [HMRC Tackling Tobacco Smuggling Strategy 2011];

- diminishing contributions to the economy, including loss of efficiencies and business to suppliers, wholesalers, retailers, ink manufacturers, designers and packaging suppliers, and other costs caused. The tobacco industry directly employs over 5,700 people in the UK, and indirectly supports a further 66,000 British jobs in retailing, distribution, packaging, warehousing, design and marketing, wholesaling and many other businesses. The threats posed to British business are serious. They range from the effective 'commoditisation' of tobacco as a product for wholesalers and retailers, with inevitable consequences to turnover; to unworkable protocols for wholesale and distributors, particularly those that operate across national boundaries; to loss of innovation, investment and sophisticated anti-counterfeiting technology, for packaging supply chain companies.
- causing serious and unnecessary damage to competition in the market because standardised packaging will very probably result in an increased focus upon price as one of the most important

remaining dimensions of competition, barriers to new market entrants will be increased and consumer switching will be reduced;

- possibly encouraging young people to take up smoking as an act of rebellion (the DH raised this as an issue in its 2008 Future of Tobacco Control consultation, but fails to consider the point in this Consultation);
- have implications for any business that creates wealth for the UK economy through IP, brands and trade marks. That is why organisations such as the Anti-Counterfeiting Group, the British Brands Group, Business Europe, the CBI, The Institute of Trade Mark Attorneys, and the International Chamber of Commerce are opposed to it. Standardised packaging will make the UK the European 'testing ground' for whether standardised packaging breaches national and international intellectual property laws.

C. There is a lack of an evidence base for standardised packaging.

There is no evidence that clearly and credibly demonstrates the effectiveness of standardised packing in relation to achieving any of the stated public policy objectives. This lack of conclusive evidence extends to the issue of youth initiation.

The UK Government decided in 2008, after the Future of Tobacco Control consultation, not to proceed with plain packaging as the evidence is "speculative" and "needs to be developed" before regulatory action should be taken. This remains the position in 2012.

The objectives of the DH seek to change smoking behaviour but the DH has no behavioural evidence to rely on. The evidence it does have – including a "Systematic Review" which is systematic in name only – is unreliable and unconvincing. Grouping together individually unreliable consumer surveys does not change the fact that the component parts are flawed. Not only do none of the 37 studies reviewed in the Systematic Review consider how standardised packaging might change smoking behaviour generally none of these studies consider how standardised packaging may change the smoking behaviour of the specific population groups identified in the Equality Impact Assessment as been more likely to smoke.

The DH is forced to try and justify standardised packaging using the "best guess" and "subjective views" of its preferred group of individuals to predict a quantitative change in smoking behaviour. This is not a reliable proxy for actual behavioural evidence in a public policy context. This future panel of un-named experts side-steps Better Regulation requirements.

The materials relied on are so weak that the DH's IA can only say that there are "plausible scenarios" under which standardised packaging "could be effective". This falls short of what the DH is required to show – there is no "robust and compelling" case that standardised packaging will work.

Mandated "standardised packaging" as a regulatory tool is wholly disproportionate to the purported public policy objectives it seeks to address. There are alternative, and less restrictive, means of achieving the same objectives.

3. Infringement of Legal Rights

Standardised packaging will, in short, be inconsistent with legal rights, including:

- the harmonised European and international system of trade mark protection under Directive 2008/95/EC, Council Regulation (EC) Number 207/2009, the WTO Agreement on the Trade Related aspects of Intellectual Property ("TRIPS"), and the Paris Convention for the Protection of Industrial Property which, inter alia, prohibit the imposition and restrictions on the registration and use of the trade marks based on the nature of the goods.

- the harmonised European and international system of protection for other Intellectual Property Rights including, inter alia, patents and design rights;
- the right both to property and to the freedom of communication protected by the European Convention on Human Rights and the EU Charter on Fundamental Rights; and
- the principle of free movement of goods within the EU, as protected by Article 34 of the Treaty on the Functioning of the European Union.]

4. Alternative Solutions

The DH should assess and evaluate existing legislation and other, less restrictive and more proportionate options. These could include making proxy purchasing of tobacco illegal; as it is for alcohol and is already the case in Scotland. The STMA believes that reducing minors' access to cigarettes is a far more effective public health intervention.

Minors' access to tobacco can also be further reduced by clamping down on the illicit market in tobacco (and not fuelling it further through policy initiatives like standardised packaging) as the illicit market is another major source of tobacco for under 18s, as noted in HMRC's 2011 "Tackling Tobacco Smuggling" strategy.

The STMA and its member companies also already fund youth access preventions schemes including Citizencard, "No ID, No Sale" in shops, and the "Real Deal" campaign for fake-free markets, all of which focus on preventing children's access to cigarettes from a range of retail sources. The STMA and member companies would like to continue and expand this work, and would like to discuss how this can be achieved in collaboration with government including HMRC, DCLG, BRDO, Trading Standards and others.

Stockholm, August 8th 2012

[Redacted signature]

Chairman
Swedish Tobacco Manufacturers' Association

[Redacted signature]

Board Director
Swedish Tobacco Manufacturers' Association

[REDACTED]

From: [REDACTED]@chl.cam.ac.uk>
Sent: 09 August 2012 17:33
To: Tobaccopacks
Subject: FW: Message from [REDACTED], Cancer Research UK - we need your help

Dear Sir / Madam,

I am the Professor of Medical Oncology at the University of Cambridge and chaired the National Cancer Research Institute Lung Clinical Studies Group for 6 years. Even though I have a great interest in lung cancer research, it is clearly the case that lung cancer is first and foremost a preventable disease as over 85% of cases are attributable to smoking. For this reason, I am now directing my research towards smoking cessation and diagnosis of lung cancer at very early stages in its development.

It will always be of primary importance to discourage people from taking up smoking in the first place. The evidence clearly shows that putting cigarettes in plain, standardised packs makes the pack less attractive and health warnings more prominent to children. For this reason, I would like to express my support for introducing the plain packaging of tobacco products into the UK.

There is no reasonable doubt that advertising and promotion increase the likelihood that adolescents smoke. Packaging is an important part of this – it is designed to be attractive and communicate the “personality” of a brand. Packs can act as “badge products” and an extension of a person’s identity. Therefore, plain packaging needs to be part of a comprehensive approach to reducing smoking amongst young people.

Internal documents from the tobacco industry show how they value packaging as an important promotional tool, and how it has grown in importance for them as other forms of advertising have been restricted. Plain packaging is needed to close the loop hole of packaging. The tobacco industry says plain packs will increase smuggling – but the existing packs are already so easy to forge they use covert markings to discriminate them from illicit packs.

The crux of the issue should be public health. Smoking remains the largest preventable cause of cancer. Overall, 100,000 deaths are caused by tobacco each year in the UK. Eight in 10 smokers start by the age of 19 – the beginning of an addiction that kills one in two of its long term users. Protecting children from tobacco marketing is crucial. This is also a measure that has strong public support, as well as the support of key health organisations and charities across the UK, such as Cancer Research UK, and globally such as the World Health Organisation (WHO).

I welcome this consultation on the issue and sincerely hope for a positive outcome that sees plain packaging being introduced to the UK as soon as possible.

Yours faithfully,

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The TMA Response to the Department of Health's Consultation on Standardised Packaging of Tobacco Products.

July 2012

Introduction:

The Tobacco Manufacturers' Association (TMA) is the trade association for tobacco companies that operate in the UK. It is funded by its three current member companies: British American Tobacco UK Ltd, Gallaher Ltd (a member of the Japan Tobacco International group) and Imp rial Tobacco Ltd. <http://www.the-tma.org.uk/>. These companies and/or their related entities will be responding to the Consultation in their own right, and this response draws on their submissions (in particular, for instance, in relation to Appendix B of the Consultation) and the materials relied on therein.

The TMA also supports the Tobacco Retailers Alliance (TRA) a network of 26, 000 independent shopkeepers who all sell tobacco as part of their product range.
<http://www.tobaccoretailersalliance.org.uk/>

TMA's Response to the Consultation

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- The decision to consult at this time in these circumstances reinforces the TMA's concern that the DH may well have already decided to introduce standardised packaging, whatever the evidence shows. Internal DH documents show it has sought evidence presuming standardised packaging will be effective.
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- The impact on retailers from (i) creating additional costs and unnecessary time-wasting by making everyday activities such as retailing, re-stocking and stock-taking much more onerous than necessary, to (ii) the impact on smaller retailers by shifting the competitive advantage significantly towards larger retailers.
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The consultation is based upon a series of assumptions and assertions that are wrong, and which have the effect of incorrectly defining the debate regarding tobacco packaging. Adult smokers use packaging to identify, obtain information about and choose tobacco products, easily and without confusion.

Tobacco packaging and pack labelling is not a predictor of youth smoking. The considerable body of evidence and research which exists on the predictors for smoking initiation does not substantiate any link between packaging and youth uptake. Even when the DH itself has previously identified "trigger factors" for smoking by minors, packaging was not one of them. Instead the DH linked youth smoking initiation to a complex range of socio-economic factors including age and gender, home life, peer pressure, truancy and exclusion from school. The Consultation is, however, concerned with packaging from this perspective. As a result of this flaw, standardised packaging will not reduce youth smoking.

Furthermore, the TMA rejects the notion of reducing the "appeal" (or "attractiveness") of tobacco packaging as a valid public policy objective, and considers that it adds nothing to the need to identify and assess a relevant policy rationale. "Appeal" per se fails established criteria for issue definition in terms of it being a regulatory goal or objective: it is lacking in any evidential foundation and is inherently uncertain and arbitrary.

Finally, the DH must recognise that changes to packaging and pack labelling regulation engage fundamental legal, economic and commercial rights of tobacco product manufacturers and consumers. These include the right of manufacturers to brand their packaging and pack labelling in accordance with principles of the market economy and competition policy, their property right in their brands (including trademarks, goodwill and brand equity), their rights to communicate product information to their consumers, and their right to conduct their business (including the free movement of goods within the EU).

B. Standardised packaging will be disproportionate, will unjustifiably affect the rights of stakeholders and is likely to have unintended consequences.

Packaging and pack labelling are fundamental to the operation of a market economy in legal tobacco products, consumer choice, innovation, product information and brand value.

Packaging and pack labelling are also fundamental to consumer choice in a competitive market. Manufacturers, retailers and consumers must be able to identify and distinguish products, without confusion. This is an essential function of packaging, pack labelling and trade marks. Mandating standardised packaging would infringe legally protected rights of manufacturers and consumers. If it could be adopted at all, such a measure would represent an extraordinary attempt to deprive the TMA's members of their most valuable assets. It is wrong for any liberal democracy and free market economy to go this far.

Moreover, standardised packaging would have a serious, negative impact by:

- creating consumer and retailer confusion in the supply chain and at point of sale;

- exacerbating illicit trade (already up to £3.1bn per year – £8.5m per day – is lost to the Treasury) as counterfeit products will become easier to make, distribute and sell. Standardised packaging will make the work of HM Revenue and Customs, the UK Border Agency and Trading Standards harder when identifying illicit products. The increase in illicit and counterfeit tobacco products across the UK could result in increasing access to products for those societal groups the DH is most concerned with protecting, including minors. Illicit traders don't care who they sell to – and frequently target children. A study carried out by Tobacco Control groups in the North of England concluded that 14 and 15 year olds were twice as likely to buy illicit products than adults. This concern is also echoed in current government policy :

“The availability of illegal tobacco products undermines public health objectives and impacts on the health of both individuals and wider communities; circumventing health labelling requirements and age of sale restrictions.... Unregulated distribution networks associated with smuggling make tobacco more accessible to children and young people and perpetuates health inequalities across socio-economic groups” [HMRC Tackling Tobacco Smuggling Strategy 2011];

- diminishing contributions to the economy, including loss of efficiencies and business to suppliers, wholesalers, retailers, ink manufacturers, designers and packaging suppliers, and other costs caused. The tobacco industry directly employs over 5,700 people in the UK, and indirectly supports a further 66,000 British jobs in retailing, distribution, packaging, warehousing, design and marketing, wholesaling and many other businesses. The threats posed to British business are serious. They range from the effective ‘commoditisation’ of tobacco as a product for wholesalers and retailers, with inevitable consequences to turnover; to unworkable protocols for wholesale and distributors, particularly those that operate across national boundaries; to loss of innovation, investment and sophisticated anti-counterfeiting technology, for packaging supply chain companies.
- causing serious and unnecessary damage to competition in the market because standardised packaging will very probably result in an increased focus upon price as one of the most important remaining dimensions of competition, barriers to new market entrants will be increased and consumer switching will be reduced;
- possibly encouraging young people to take up smoking as an act of rebellion (the DH raised this as an issue in its 2008 Future of Tobacco Control consultation, but fails to consider the point in this Consultation);
- have implications for any business that creates wealth for the UK economy through IP, brands and trade marks. That is why organisations such as the Anti-Counterfeiting Group, the British Brands Group, Business Europe, the CBI, The Institute of Trade Mark Attorneys , and the International Chamber of Commerce are opposed to it. Standardised packaging will make the UK the European ‘testing ground’ for whether standardised packaging breaches national and international intellectual property laws.

C. There is a lack of an evidence base for standardised packaging.

There is no evidence that clearly and credibly demonstrates the effectiveness of standardised packing in relation to achieving any of the stated public policy objectives. This lack of conclusive evidence extends to the issue of youth initiation.

The UK Government decided in 2008, after the Future of Tobacco Control consultation, not to proceed with plain packaging as the evidence is “speculative” and “needs to be developed” before regulatory action should be taken. This remains the position in 2012.

The objectives of the DH seek to change smoking behaviour but the DH has no behavioural evidence to rely on. The evidence it does have – including a “Systematic Review” which is systematic in name only – is unreliable and unconvincing. Grouping together individually unreliable consumer surveys does not change the fact that the component parts are flawed. Not only do none of the 37 studies reviewed in the Systematic Review consider how standardised packaging might change smoking behaviour generally none of these studies consider how standardised packaging may change the smoking behaviour of the specific population groups identified in the Equality Impact Assessment as being more likely to smoke.

The DH is forced to try and justify standardised packaging using the “best guess” and “subjective views” of its preferred group of individuals to predict a quantitative change in smoking behaviour. This is not a reliable proxy for actual behavioural evidence in a public policy context. This future panel of un-named experts side-steps Better Regulation requirements.

The materials relied on are so weak that the DH’s IA can only say that there are “plausible scenarios” under which standardised packaging “could be effective”. This falls short of what the DH is required to show – there is no “robust and compelling” case that standardised packaging will work.

Mandated “standardised packaging” as a regulatory tool is wholly disproportionate to the purported public policy objectives it seeks to address. There are alternative, and less restrictive, means of achieving the same objectives.

3. Infringement of Legal Rights

Standardised packaging will, in short, be inconsistent with legal rights, including:

- the harmonised European and international system of trade mark protection under Directive 2008/95/EC, Council Regulation (EC) Number 207/2009, the WTO Agreement on the Trade Related aspects of Intellectual Property (“TRIPS”), and the Paris Convention for the Protection of Industrial Property which, inter alia, prohibit the imposition and restrictions on the registration and use of the trade marks based on the nature of the goods.
- the harmonised European and international system of protection for other Intellectual Property Rights including, inter alia, patents and design rights;
- the right both to property and to the freedom of communication protected by the European Convention on Human Rights and the EU Charter on Fundamental Rights; and
- the principle of free movement of goods within the EU, as protected by Article 34 of the Treaty on the Functioning of the European Union.

4. Alternative Solutions

The DH should assess and evaluate existing legislation and other, less restrictive and more proportionate options. These could include making proxy purchasing of tobacco illegal; as it is for alcohol and is already the case in Scotland. The TMA believes that reducing minors’ access to cigarettes is a far more effective public health intervention.

Minors' access to tobacco can also be further reduced by clamping down on the illicit market in tobacco (and not fuelling it further through policy initiatives like standardised packaging) as the illicit market is another major source of tobacco for under 18s, as noted in HMRC's 2011 "Tackling Tobacco Smuggling" strategy.

The TMA and its member companies also already fund youth access preventions schemes including Citizencard, "No ID, No Sale " in shops, and the "Real Deal " campaign for fake-free markets, all of which focus on preventing children's access to cigarettes from a range of retail sources. The TMA and member companies would like to continue and expand this work, and would like to discuss how this can be achieved in collaboration with government including HMRC, DCLG, BRDO, Trading Standards and others.


Secretary General, Tobacco Manufacturers' Association


July 2012

APPENDIX A: Consultation Questions

The TMA refers to the responses of its member companies to the questions at Appendix A of the Consultation.

APPENDIX B: Consultation-stage impact assessment questions

The TMA's member companies will be responding individually to Appendix B.

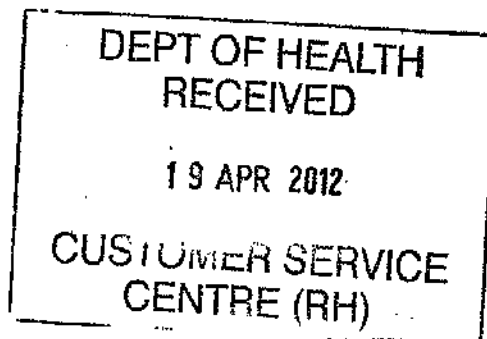


HOUSE OF COMMONS

LONDON SW1A 0AA

Anne Milton, MP
Parliamentary Under-Secretary of State
Department of Health
Richmond House,
79 Whitehall
London SW1A 2NS

17 April 2012



Standardised Packaging of Tobacco Products

I am writing in response to the Department's Consultation on Standardised Packaging of Tobacco Products.

My father is a retired Chest and Heart Physician.

Every Christmas Day, until I was about 18, was spent on my father's hospital wards as my father, in the traditional way of consultants at that time, carved the Christmas Turkey for patients, etc.

My abiding memory is that one half of every ward was made up people dying from lung cancer.

It is not a good way to go. One literally suffocates and it must be unbelievably miserable dying, gasping for every last breath.

This was in the 1950's and 60's.

Most of the men, and it was predominantly men, who had been struck down with lung cancer, had started smoking as young men, either in the First or Second World Wars.

When they started to smoke, the evidence connecting cigarette smoking and lung cancer was not clear.

Indeed, the tobacco industry robustly challenged the evidence of the causality and connection between smoking and lung cancer for a very long time.



Today, I don't believe that there is anyone, including the tobacco industry, who seriously challenges the assertion that "smoking seriously damages one's health". Not only is there clearly a far greater risk of contracting lung cancer, but also other cancers, such as mouth cancer, and other smoking related diseases, and as you state in your letter, 1 in 2 smokers is likely to die prematurely from a smoking-related disease.

The costs to the NHS, public health and the toll on human health of smoking are very considerable.

However, I suspect that there is a limit to what one can do in terms of increasing existing tobacco control initiatives, without simply stimulating the illicit tobacco market, and I suspect that a not insignificant number of cigarettes smoked in the UK have been imported illegally from overseas.

Clearly one of the most important issues is to seek to ensure that younger people understand the risks of smoking.

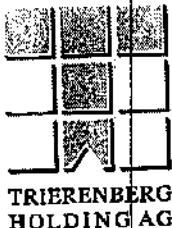
If your figures are correct, a significant number of young people start smoking regularly whilst they are still at school and before they reach the age of 18.

Duty on tobacco is already high and I suspect if we were to further increase tobacco duty, that would simply further encourage counterfeit or smuggled cigarettes. However, could I suggest that a proportion of tobacco revenue duty is allocated for specific health education campaigns in schools, targeted at helping to ensure that young people are fully aware of the dangers of smoking.

There is nothing more discouraging of smoking than having a father who had various bits of cancerous lungs in glass jars on his study desk !

TB

Tony Baldry



Mark Prisk MP
Minister of State for Business & Enterprise

Ministerial Correspondence
1 Victoria Street
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United Kingdom

E-mail: [REDACTED]

Traun, July 24th, 2012

UK Public Consultation on standardized packaging of tobacco products

Dear Minister

First of all, please allow us to introduce our group and the business we are operating in, followed by an overview of our views and concerns on the above subject:

The Trierenberg Holding AG with its headquarters in Austria is a leading global player in the production and converting of speciality papers for the cigarette industry and has been a family-run business for more than a hundred years. At present we have 9 subsidiaries in the tobacco business worldwide, all of them being leading and renowned suppliers to the industry.

Our main competence lies in the production of "Tipping Paper", a highly complex and sophisticated product. Tipping Paper is such (printed) component of the cigarette which combines the tobacco rod with the filter element. Tipping Paper is not a "standard" product as the requirements from a technical, regulatory and quality perspective are very high and keep rising every year. As a forward-looking and innovative company we have always invested to meet all these necessary requirements. By permanently investing considerable resources in R&D, in the protection of our intellectual property and our equipment, we have become one of the leading suppliers, providing new and innovative solutions. Having said this, we have applied for a number of patents to not only secure our valuable know-how and experience but our also highly-qualified jobs and therewith our whole business.

One of our subsidiaries is situated in the United Kingdom – TANN UK Limited based in Glossop, Derbyshire. Founded in 1968, TANN UK has been a member of our group since 2002 and currently employs 62 persons.

From our local General Management and the media we have learned that the UK Government is considering tightening the existing tobacco regulations. In this connection a Public Consultation on "Standardized Packaging" for tobacco products is currently taking place and has been extended until August 10th, 2012.

In the name and on behalf of the Trierenberg Holding AG and TANN UK Limited we would like to express our opinion and concerns on how the intended measures could

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impact our overseas business in the UK mainly supplying the local market and where considerable investments are planned.

Beforehand, please let us briefly describe why it is not comprehensible to us that the United Kingdom is considering Standardized Packaging because the topic of Plain or Standardized Packaging is already part of the intended revision of the Tobacco Products Directive, currently in process within the European Union.

Bearing that in mind, it is not understandable why the United Kingdom is – completely single-handedly – pressing ahead in this connection as the general outcome on the EU-level is not clear yet. Moreover, the United Kingdom has already implemented extensive and wide-reaching measures in this field, just to mention the ban on vending machines or the display ban at the Point of Sale.

Although we are not in favor of the approach of the United Kingdom in connection with Standardized Packaging, we certainly exercise our right of free speech and TANN UK participates in the Public Consultation being led by the UK Department of Health.

Moreover, we would also like to take this letter as an opportunity to express our concerns on the topic of Plain/Standardized Packaging in more detail.

As a starting position, we wish to point out that we are NOT against the implementation of additional regulations for tobacco products in principle. The adoption of appropriate regulations aimed at the protection of young people and non-smokers against the dangers of smoking is definitely appreciated. However, we firmly oppose the implementation of inappropriate and excessive legal restrictions which are not proven to reach the intended aims and bear the risk of inestimable and negative consequences for the economy as well as society more widely.

Incentive Effect

Experience keeps showing that especially young people show an above-average interest in "forbidden fruits" which obviously have an appealing charm for them.

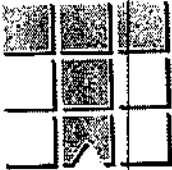
In our opinion, a reasonable and sustainable form of information on the dangers of smoking is much more effective than the implementation of legal restrictions and we are wondering if the intended measures are really adequate to reach the intended aim. In Germany, for example, the proportion of young smokers between 12 and 17 years has decreased from 28% to 13% between 2001 and 2011, thus the smoking rate has more than halved.¹ This result is attributable to specific measures on the prevention of smoking, such as advertising campaigns, brochures, internet-offerings and awareness-raising of the consequences of tobacco consumption in general.²

Illicit Trade & Contraband / Loss of tax income

Especially the implementation of Standardized Packaging implies significant risks. Generic packs would massively support organized crime to produce and distribute counterfeited cigarettes to a much bigger extent than nowadays. Counterfeited cigarettes, as well as the materials used therefore, e.g. Tipping Paper – unlike legal

¹ <http://www.bmg.bund.de/ministerium/aktuell/drogenbeauftragte/pressemitteilung-rauchen-bei-juendlichen-auf-historischem-tiefstand.html>

² The Federal Centre for Health Education (BZgA), http://www.bzga.de/botpresse_231.html



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cigarettes – are NOT subject to strict controls on quality requirements and ingredients as well as health and hygienic standards. The consumption of such cigarettes implies

inestimable risks for the consumers' health. This assumption is shared by officials being involved in this matter in their daily work. Peter Sheridan, former assistant

constable of Northern Ireland, says *"Plain Packaging would boost organized crime" and fears "the proposal, which intends to make more of our young people safe and healthy, will actually make it easier for criminals to threaten the well-being of those closest to us".*³

Apart from the health risk, the increased sale of counterfeited and contraband cigarettes as well as illicit whites leads to a significant loss of tax income for the states. In economically bad times and budget cutting the loss of tax income in the billions weighs particularly hard. According to the latest KPMG study, illegal trade represents a yearly loss of more than EUR 65.3 billion in tax revenue for the EU Member States.⁴ HM Revenue & Customs estimated that 10% of all cigarettes and 46% of Hand Rolled Tobacco consumed in the UK was purchased via illegal channels in 2009/2010 and the UK Government estimates that the illicit cigarette market cost HM Treasury as much as £2.2 billion per year in lost revenue for cigarettes.⁵

Trademark Ban / "Expropriation"

According to nameable experts, Standardized Packaging interferes with national and international laws which leads to a considerable, constitutional highly questionable interference with existing trademark rights. Plain Packaging therefore not only expropriates trademarks but impairs the very essence of manufacturers' right to property, free speech and profession.

Furthermore, Standardized Packaging leads to a devaluation of investments in the establishing of know-how and IP-Rights, particularly trademarks and patents. In the end, a factual, unjustified expropriation of the affected companies could be the result as well as a general decrease of their willingness to invest in innovative solutions.

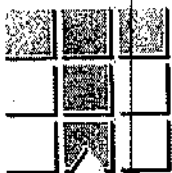
Loss of jobs

Additionally, sight should not be lost of the fact that measures such as the implementation of Standardized Packaging might jeopardize a whole legitimate industry. It has to be considered that together with the affected companies numerous jobs are endangered. Putting companies, jobs and creation of value at risk in an economically tight situation would be extremely irresponsible without having reliable and scientific-based evidence. Within our more than a hundred years existing family-run business we employ more than 1,300 of highly-qualified employees, as mentioned 62 of them in the United Kingdom. Alone in the R&D-Department we currently have 10 employees, this with growing tendency.

³ London Daily Mail June 22, 2012

⁴ www.tobaccojournal.com/Illicit_trade_reaches_record_high.51271.0.html

⁵ "Measuring Tax Gaps – 2011", page 25-27, HM Revenue & Customs, <http://www.hmrc.gov.uk/stats/rmtg-2011.pdf>



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Disproportionate legal restrictions could – apart from the destruction of high-qualified jobs – therefore lead to a situation where we cannot continue our familiar and sustainable investment policy which could also have impacts on our suppliers.

Coming back to the initially mentioned legislative plans in the United Kingdom, we therefore strongly wish to point out that the implementation of any of the intended restrictions could highly influence the future of our production site in the United Kingdom. Moreover, a disproportionate interference to the extent planned would not

only impact the present employment situation but make any further investments uncertain – not only in the United Kingdom.

When it comes to disproportionate and excessive regulations affecting the individual person, the results of the EU-Public Consultation on the revision of the Tobacco Products Directive at the end of 2010 have also once more shown that the mature citizen is very sensitive to paternalism and any restriction of self-determination. Especially the unexpectedly high participation (more than 85.000 participants) in this Public Consultation has reflected the population's significant interest in this issue.

In light of the above raised, serious concerns particularly on illicit trade, loss of jobs and tax income as well as the expropriation of intellectual property, we call for the decision-makers to deal with these concerns in an objective, fair and scientifically based manner, to weigh the pros and cons accordingly and finally to consider all arguments within the decision-making process.

In summary, there are still a lot of open questions which we believe should definitely be incorporated in the discussions on any potential legislative procedure. In our opinion, it is more than questionable if the intended measures represent a proper and adequate way to reduce the tobacco consumption, especially in view of the affected legally protected interests. International studies and bench-marks – like in Germany – have shown that there are other appropriate measures to achieve the desired result. Moreover, putting highly-qualified and crisis-proof jobs at risk – and with that a whole industry – without knowing the precise outcome of the planned measures seems irresponsible and unjustified.

Minister Prisk, Sir, we kindly ask you to support us in this very sensitive matter which might be of existential importance for us.

We thank you in advance for your support and certainly remain available for a personal meeting! In any case please do not hesitate to contact us for any further questions!

Yours sincerely,

TRIERENBERG HOLDING AG

CEO

TANNPAPIER

Managing Director



WHITECLIFFE PRIMARY SCHOOL

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Headteacher: [REDACTED]

Telephone [REDACTED]
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25th June 2012

Dear Sir / Madam

SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism.

Redcar & Cleveland has approximately 26,000 smokers in total with equates to approximately 227 deaths per year attributed to smoking.

Based on this level of harm to individuals, communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.



INVESTOR IN PEOPLE




e-mail: [REDACTED]



We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionary.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children in the North East.

Yours faithfully,


Head teacher