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Thursday 13 August 2009

Displaying the truth about policymaking

Newly released correspondence shows how UK government tobacco policy is being created by anti-tobacco groups.

Patrick Basham

A common accusation made by campaigners is that big business and corporate interests unduly influence government policy. But an important trend in recent years has been the co-opting of non-governmental organisations – often with very clear vested interests of their own – to do research and create policy for government departments. This is bad news for independent, objective policymaking. Here, Patrick Basham looks at recently released correspondence that shows how the formulation of recent tobacco policy is a case study for this trend.

For several months, the UK government has been pushing legislation through Parliament that will ban the display of tobacco products in shops. At the core of its justification for this legislation are several claims, repeated by ministers both in Parliament and to the press, and included in the government's *Consultation on the Future of Tobacco Control* document.

The government's claims supposedly trump any opposition, on whatever grounds, to this measure. These claims include the following:

1. An objective appraisal of the evidence shows that tobacco advertising and displays lead young people to smoke;
2. Banning display bans will result in fewer youth smokers;
3. Banning tobacco displays in other countries has resulted in fewer youth smokers;
4. Banning tobacco displays will not result in significant costs to retailers.

But now that the Department of Health (DoH), in response to a freedom of information request, has made public much of its correspondence related to the proposed display ban, we know that most of these claims are, in fact, untrue. Further, we know that the DoH has repeatedly violated government policy on the management of risk, and repeatedly misled others about its violations.

Let's begin with the first claim, that the evidence, when objectively and transparently evaluated, shows that tobacco advertising in general, and tobacco displays as one form of advertising, lead young people to smoke.

The requirement that legislation about risks be based on transparent, objective and sound evidence is a key part of government policy on risk. For example, the Treasury's *Orange Book on the Management of Risk* (2004) requires that measures on risks must be based on 'openness and transparency' and extensive, sound evidence. Similarly, the Risk and Regulation Advisory Council (*Tackling Public Risk: A Practical guide for Policy Makers*) notes that, in dealing with risk policy, 'It is vital that risk is approached with an open mind and without preconception'.

Further, the House of Lords Select Committee on Economic Affairs' *Report on Government Policy on the Management of Risk* (2006) noted that 'the most important thing that government can do is to ensure that its own policy decisions [about risk] are soundly based on available evidence and not unduly influenced by transitory or exaggerated opinions, whether formed by the media or vested interests'.

So just who, then, in the DoH was responsible for conducting a wide-ranging, objective, and transparent review of the evidence about tobacco advertising and tobacco displays and their supposed effect on young people? It certainly wasn't regular civil servants with expertise on

tobacco issues who approached the issue without a vested interest. Instead, according to an email sent on 23 March 2009 from the DoH to a Canadian equipment company, 4 Solutions Display, the review was a product of Cancer Research UK, a charity that has also acted as an advocacy group consistently calling for bans on tobacco displays.

That email from a DoH manager said: 'We're basing our policy primarily on the work of Cancer Research UK, who have provided a report showing how display drives cigarette smoking among young people in the UK.' Moreover, not only was the display ban based on the work of Cancer Research UK, but the organisation had a senior official working in the DoH two days a week when the display ban policy was being formulated.

In effect, the government's policy about tobacco displays is not the result of wide-ranging research, evaluated objectively and transparently, but rather was based on a single report produced by an advocacy group campaigning for a display ban, and helped along by a senior official from that group working inside the DoH. What's objective, evidence-based, comprehensive, or transparent about that?

This makes clear why the government has consistently neglected its own evidence about tobacco advertising and young people; namely, it was highly inconvenient to the policy put together with Cancer Research UK. For example, Eileen Goddard's *Why Children Start Smoking* was produced for the DoH in 1990 and, unlike the studies on tobacco advertising cited by Cancer Research UK, is a longitudinal study that followed the same young people over time during the crucial period when they became susceptible to smoking.

Goddard found that becoming a young smoker was not statistically associated with being aware of tobacco advertising or being able to name more brands of cigarettes. Indeed, most young people did not like tobacco advertisements.

It also shows how the government has misled the public about the evidence supporting this legislation. For example, David Taylor, chair of the All-Party Smoking and Health Group, asked the health secretary what research the DoH had commissioned and evaluated on the effects of tobacco displays on youth smoking. Public Health Minister Gillian Merron replied that the DoH had 'assessed the role of tobacco displays on smoking in young people based on a variety of research and evidence', which makes it appear that the government followed the requirements of risk assessment by examining all of the available evidence.

But, as the DoH's March email notes, the minister's comment is highly misleading since the policy is based not on a variety of research and evidence, but almost exclusively on the 'work of Cancer Research UK'.

What about the second claim that banning tobacco displays will result in fewer youth smokers? The government, both in the Lords and in the Commons, has relentlessly advanced this idea. For example, in its 2008 *Consultation on the Future of Tobacco Control*, the DoH suggested that one of the benefits of a display ban might be a 'three-percentage-point reduction in the number of regular smokers aged 11-15' that would yield 19,500 fewer smokers in 'each annual cohort'.

But we now know, based on the DoH's email correspondence, that this is simply statistical nonsense designed to hide the fact that the DoH could not confidently expect that removing tobacco displays would make *any* difference to youth smoking. In that same 23 March 2009 email, the DoH manager admits that 'I wouldn't expect to see a significant fall in youth uptake until displays had been removed for approx 10 years'.

If the DoH had bothered to look at the international evidence on the effects of tobacco advertising restrictions, it would have seen that countries that have had advertising bans for 25 years have not experienced statistically significant reductions in youth smoking. In short, the DoH, when not speaking to the Commons or the press, admits that its tobacco display ban will have no immediate effect on youth smoking for a decade, which essentially is to concede that it has absolutely no evidence that it will ever demonstratively work.

Closely aligned to the claim that banning displays will result in fewer young UK smokers is the argument that other countries that have instituted display bans have had declines in youth smoking. The government has repeatedly claimed that the experience of Canada, for example, where several provinces have banned tobacco displays, shows that such bans result in fewer

tobacco sales and fewer youth smoking.

The government, however, knew all along that this was simply not true. For example, Canada's 4 Solutions Display told the DoH in a March 2009 email that removing tobacco displays 'has not caused a decline in tobacco sales or discouraging kids from smoking'. The DoH was informed that 'Tobacco sales...across Canada has not felt a negative impact at all since the dark market was legislated'. Indeed, the 'truth' is that display bans have 'hurt small business and they really are the ones who are feeling the pain of lost income stream'.

Moreover, the government's attempt to misrepresent the experience of Canada with display bans is decisively refuted not simply by the DoH's Canadian correspondence, but by the official evidence from Canada. The Canadian data suggest there are no statistically significant differences between those provinces with display bans and those without in terms of the prevalence of youth smoking.

Finally, what about the government's claim that banning displays will not result in significant costs to retailers? The government has repeatedly claimed that the cost for retailers to cover tobacco displays would be minimal. For example, Lord Darzi told the House of Lords in a letter that the costs for removing a typical 25-square-foot retail tobacco display would be £212, based on estimates received from a company (4 Solutions) involved in the Canadian display ban. But the DoH correspondence shows that Action on Smoking and Health (ASH), the most prominent anti-display organisation, was told directly by 4 Solutions that it was not correct.

On 28 April 2009, Phil Beder, vice president of 4 Solutions, emailed ASH's executive director Deborah Arnott to 'clarify some of the issues surrounding the display ban covers that are presently being explored by your organisation in the UK'. Beder makes it clear that 'The original amount of £200 as discussed with you is for a standard three-foot section known as the Gantry and does not include shipping, installation or specific changes to size or dimensions...For individual stores requiring this type of system the costs could be somewhat prohibitive due to the need for specific builds, warehousing and shipping separately to single locations'. He concludes: 'Single shop all-in cost estimates including all the above specifications is approx. £450' – more than double the figures given up by the DoH.

Just in case ASH did not understand these figures, Beder followed up with another email on 30 April to Arnott. He wrote: 'I want to reiterate that the last email I sent to you (April 28) was a complete clarification of all costs associated with covering of tobacco. I also want to make sure you are not making additional assumptions on costs to suit your internal needs. 4 Solutions Displays cannot produce, deliver and install for the minimal dollars you are publishing nor can any other covers for the retailer be represented for delivery in the fashion we are being quoted. We would ask that you remove 4 Solutions Displays from any of your promotional materials as the numbers are misrepresenting the actually [sic] costs to a wide base of retailers in the UK. I trust that your organisation will insure that the entire financial story is told to all and not choose a single number that doesn't represent the actual facts of the past inquiries.'

Last month, the Commons' Innovation, Universities, Science and Skills Committee produced a report, *Putting Science and Engineering at the Heart of Government Policy*, criticising ministers who introduced legislation that they falsely claimed was based on an objective review of the evidence. As *The Times* (London) noted: 'Government departments should be exposed by their own scientific advisers when they base decisions on political considerations rather than the findings of research.'

What makes the DoH's conduct so reprehensible is not simply that it has consistently misrepresented the evidence about its proposed ban of tobacco displays – to Parliament, to the media and to the public. Far worse, the DoH has abandoned any pretence of objectively collecting and reviewing the evidence about whether such a policy would work, and what its costs would be, by effectively outsourcing this work to an advocacy organisation that already has a well-established position on the matter.

The entire process surrounding the proposed display ban is now so corrupted that the government's only honourable course is to acknowledge this display policy fiasco and withdraw the legislation.

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