

## SPECIAL COMMUNICATION

# Comprehensive smoke-free legislation in England: how advocacy won the day

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**Objective:** To examine how a government committed to a voluntary approach was forced by an effective advocacy coalition to introduce comprehensive smoke-free legislation.

**Methods:** A diary was kept from the start of the campaign in 2003, backed up by journal and press articles, and information downloaded from the web. Regular public opinion polls were also carried out to supplement government surveys and polls conducted by the media.

**Results:** The 1997 Labour Government was committed to a voluntary approach to deal with the problem of secondhand smoke. By 2003, efforts to persuade government to introduce regulation of workplace secondhand smoke through a health and safety code of practice with exemptions for the hospitality trade, had failed. Despite a lack of support from the government, including the health minister, a new strategy by health advocates focusing on comprehensive workplace legislation was able to succeed.

**Conclusions:** In a democracy it is crucial to develop public knowledge and belief in the extent of the risks of secondhand smoke. Gaining public and media support for the issue can ensure that government has to take action and that the legislation will be enforceable. The interests of the tobacco industry and the hospitality trade differ and this can be used to gain hospitality trade support for comprehensive national legislation in order to ensure a level playing field and protection from litigation.

Many advocates in England worked over decades to develop support for effective measures to protect the public from passive smoking. Their work was crucial; it inspired considerable growth in public support and voluntary increases in the number of smoke-free places. However, this study centres on national level attempts to lobby the Labour Government which came into power in 1997 to bring in smoke-free workplace legislation.

## BACKGROUND

In 1998, the white paper “Smoking Kills”<sup>1</sup> proposed an approved code of practice (ACOP) to the Health and Safety and Work Act with an opt-out for the hospitality trade, a market-led voluntary approach which became known as the Public Places Charter. Officially launched in September 1999, it was backed by the United Kingdom’s principal hospitality trade groups, which oversaw its implementation.

Funding for work to implement the charter was provided by AIR—an acronym for “atmosphere improves results”—with its emphasis on ventilation as a “solution” to the smoking problem, a well known industry tactic to try to prevent legislation despite its proved lack of effectiveness.<sup>2</sup> AIR received funding from the Tobacco Manufacturers’ Association (TMA), although the TMA did not seek to make this widely known. The

ties between the tobacco industry and the hospitality trade have been documented elsewhere.<sup>3</sup>

The charter group submitted its final report to the Department of Health in May 2003. Only 43% of pubs were compliant against a charter target of 50%, and one in three pubs was completely non-compliant. Fifty-six per cent of charter compliant premises still allowed smoking throughout and only a handful provided a totally smoke-free environment.<sup>4</sup>

The relevant ministers had still not signed up to the ACOP to ensure that the remaining workplaces would go smoke-free, and showed no signs of doing so. So with the voluntary Public Places Charter a near complete failure, the ACOP no longer viable and government ministers unwilling to consider legislation, government policy on secondhand smoke had ground to a halt.

## CHANGE OF STRATEGY

Health advocates’ strategy had centred on lobbying for implementation of the ACOP, which allowed an opt-out for the hospitality industry. But by mid-2003 it was clear this strategy would not succeed.

ASH decided to develop a coalition to lobby for comprehensive legislation with the key message that everyone has a right to a smoke-free workplace. This position, adopted first by a small core group including the Royal College of Physicians, the British Medical Association and ASH, was hampered by an initial scepticism that comprehensive legislation would be viable. However, it was essential to the success of the strategy. It took six months to achieve unanimity and develop a viable coalition.

The campaign strategy was to build a broad coalition and to lever political action by government through coalition pressure; and also through

- promoting evidence-based arguments
- proactive and reactive media coverage
- building positive public opinion
- developing local action by working with local authorities
- sectoral action working with employers and lawyers; and
- political support in both Houses of Parliament.

## POSITIVE MEDIA COVERAGE

From the start, the campaign balanced a proactive and reactive media campaign, which proved highly effective, particularly given the lack of any large public relations budget.

The strategy was to build a set of key messages around the idea that secondhand smoke was a workplace killer, particularly for bar workers, and that the only solution was comprehensive legislation. The media plan included utilising

**Abbreviations:** ACOP, approved code of practice; AIR, atmosphere improves results; ASH, Action on Smoking and Health; TMA, Tobacco Manufacturers’ Association

a range of media opportunities, opinion polls and surveys, and profile raising events.

Central to the effective media strategy was finding ways of promoting the evidence base for the harm caused by second-hand smoke. Seminal reports were published at different stages in the campaign on the evidence for going smoke-free.<sup>5-6</sup> Tactics also involved using medical and scientific experts expressing their concerns at profile raising events,<sup>7</sup> and the exploitation of reactive opportunities such as publications of international research into secondhand smoke.<sup>8</sup> Each organisation in the coalition played to its strengths as well as taking full advantage of reactive media campaigning opportunities when they arose.

Developing the domestic evidence base effectively and quickly in response to political changes was crucial. For example, research was executed within months which showed that government proposals to exempt pubs that did not serve food would worsen health inequalities.<sup>9-10</sup> And when health minister, John Reid, publicly said he feared that banning smoking in public places would lead to more smoking in the home, so harming children,<sup>11</sup> a paper was put together for a Royal College of Physicians' report collating the domestic and international evidence against this.<sup>4</sup>

Media coverage was highest when legislation was consulted on or passing through parliament but was maintained throughout the campaign. ASH started detailed media monitoring in March 2004; from then on audience reach was measured. (This is defined as the cumulative number of people exposed to coverage in which ASH was mentioned in all UK media including TV, radio and press coverage but not including the internet.) On average, between March 2004 and February 2006 when the Health Bill was passed in the Commons, smoke-free stories mentioning ASH reached an audience of 4.5 million people a week, which is a good indicator of the levels of coverage.

## PUBLIC OPINION

Public opinion is key in any campaign trying to influence politicians. In England, the problem advocates faced was not that the government did not accept the evidence on the harmfulness of secondhand smoke but that it did not believe that there was sufficient public support for action. It is necessary to mobilise such support in an active fashion: in the words of the health minister's political adviser, "If you want action on passive smoking then show us that there are votes in it."<sup>12</sup>

In Spring 2004, ASH commissioned the market research company MORI to carry out a piece of research analysing the level of support in Great Britain for the overall concept of smoke-free workplaces and also location by location, to benchmark public opinion so that changes could be measured during the campaign. A sample of 4000 enabled analysis by country and by region. Four out of five of those polled supported a law to ensure that all workplaces were smoke-free but opinions varied when people were asked about specific environments, ranging from 96% wanting hospitals and clinics smoke-free, to only 49% wanting smoking ended in pubs and bars.

Analysing responses by voting intention, of particular interest to politicians, showed that voters were significantly more supportive of smoke-free legislation than non-voters. When asked whether they wanted pubs and bars smoke-free, only 38% of non-voters agreed compared to between 50% and 56% of voters.

The poll also illustrated the very different answers you get depending on how the question is framed. This poll asked a number of different questions of the same respondents all in one interview (questions were rotated to ensure the responses

were not biased by the order of the questions). For example, 90% of Labour voters agreed that all workers had a right to a smoke-free environment but only 74% wanted all enclosed workplaces, including public places, smoke-free. When asked if they wanted pubs and bars smoke-free, only 49% answered yes. The poll was used to argue that if the government framed the issue as a yes/no issue of workplace and public health and safety, then it would get majority support for comprehensive legislation.

Polling can also be used to raise the public profile of the issue. A consultation called "The Big Smoke Debate," started in London by the London Health Commission in October 2003 which ran for three months, is a good example of how to do this. The consultation involved a publicity campaign inviting the public to register their opinions on the website or via a "freephone" telephone line. By September 2004 seven regions had participated in the debate and published results,<sup>13</sup> making this the largest ever survey on smoking in England, with over 125 000 people completing questionnaires. The results were consistent with representative polls, with 79% of respondents saying they would support a law to make all workplaces smoke-free.

Polling results also showed clearly the impact of political leadership. There was a significant difference between England and Scotland in the change in public support for smoke-free legislation to include pubs and bars from May 2004 to December 2005.<sup>14-15</sup> This can be attributed to the political leadership shown in Scotland and lack of leadership shown in England, since both in England and Scotland active campaigns were being run and the national media cover both countries. In the first poll in Spring 2004, support in Scotland for smoke-free pubs and bars was lower than in England: only 39% compared to 51% for England. But by 10 November 2004, following a comprehensive consultation process, Jack McConnell, the Scottish first minister announced that a comprehensive ban on smoking in all enclosed public places would be introduced by the spring of 2006 saying that: "We in this parliament have a chance to make the most significant step to improve Scotland's public health for a generation."

Unfortunately, the decision in Scotland had no impact on politicians in England and in December 2005 the English government was still promoting partial legislation for England and Wales which would have exempted pubs and bars that did not serve food and private members' clubs. Public support for smoke-free pubs and bars in England had still risen from 51% to 66% of the population but in Scotland support had risen even more from 39% to 70% of the population as a result of the political leadership in Scotland, where comprehensive legislation was supported by all the political parties.

Although support did not rise as high in England as in Scotland, the fact that the coalition was able to demonstrate that support for smoke-free pubs and bars rose from one-half to two-thirds of the English population between Spring 2004 and December 2005 was central to the success of the campaign.

## LOCAL ACTION

Local laws had brought into effect smoke-free environments in the United States, Australia and Canada and had been suggested as a solution for the United Kingdom too. But UK local authorities cannot pass their own legislation, so would still have needed central government support.

However, local laws were potentially attractive to the Labour Government because they removed the responsibility of central government for any subsequent problems. At a meeting with the coalition organised by the Labour Party committee developing the party's manifesto for the next general election,

a coalition member who was also a local councillor therefore suggested local action as an option.

Following this in November 2003, the Labour Party launched what it called “The Big Conversation,”<sup>16</sup> a public consultation which included the question: “Should councils have the power to ban smoking in public and workplaces?” The responses were overwhelmingly positive. ASH was told that 85% of respondents supported the proposition, although these figures were not published, the party saying publicly only that it received “significant support.”<sup>17</sup>

This was a turning point for the campaign. Local legislation was not the ideal but for the first time legislation was on the agenda. And from then on it stayed there. It also opened another door for the campaign—it became a lever on the hospitality trade, helping to get the trade to support national level legislation as the lesser of two evils (for more on this see sectoral action below).

ASH worked with the Chartered Institute of Environmental Health to support the developing movement at local level for smoke-free environments.<sup>18</sup> In two years, more than 50 local authorities expressed an interest in going smoke-free, led by Liverpool and London which started taking bills through Parliament to give them comprehensive local powers. The effective and well funded campaign by Liverpool, one of England’s major cities, was crucial.

## SECTORAL ACTION

One of ASH’s key aims was to split the hospitality trade from the tobacco industry as in many countries they had previously worked in parallel to support a voluntary approach to second-hand smoke. The strategy was based on our analysis of preference sets, which found that if the voluntary approach is no longer on offer, then for the hospitality trade the next best option is national legislation, whereas for the tobacco industry the next best option is local action (table 1).

For central government, local legislation is less risky than national legislation. For the tobacco industry, local legislation is the next best option to a voluntary approach as it is less effective and enables the tobacco industry to fight it location by location. However, for the hospitality trade, particularly in the United Kingdom where it tends to be large in size and widespread geographically, the local option is the worst choice because the trade wants uniformity across all its outlets. Labour’s support for the local option therefore flushed out the elements of the hospitality trade and enabled us to split them from the tobacco industry. This was what ASH had always intended.

Extra pressure was put on hospitality trade employers to go smoke-free by threatening them with the possibility of employee legal action under existing health and safety law. ASH collaborated with the major trade union law firm Thompsons to achieve this.<sup>19–21</sup>

Both these initiatives had a significant impact on the hospitality trade which was the desired aim. The hospitality trade wanted a level playing field and protection from litigation, which comprehensive national legislation would provide. In fact, although none of the more than 50 cases on

Thompson’s books made it to court before the legislation was passed, the threat of court action proved sufficient.

In May 2004, the head of the British Hospitality Association said publicly that a smoking ban was now “inevitable” and the voluntary approach was “yesterday’s battle.”<sup>22</sup> From then on the hospitality trade as a whole began to line up slowly but surely behind national legislation and no longer presented a united front to government supporting voluntary measures.

## POLITICAL ACTION PRECEDING A GENERAL ELECTION

Political action included work to build government support and, secondly, especially after the general election in May 2005, in parliament.

One of the problems with the issue of the regulation of secondhand smoke is that numerous different government departments have an interest in it. This was a potential problem, and friction and lack of agreement between government departments had led to little progress by 2003. However, it also provided potential opportunities to help lever change, particularly at a time when health minister, John Reid, was not sympathetic to legislation.

Coalition members were building up relationships with civil servants and political advisers in the relevant government departments and developing lobbying capacity. ASH had developed a small media and public affairs team—equivalent to two and a half fulltime members of staff—to run the campaign which produced communications and policy materials throughout. These included comprehensive parliamentary briefings and the Smoke-free Action website.<sup>23</sup> ASH also developed local networks of campaigners and supporters and delivered extensive media and lobbying training to local activists. This was a crucial part of the work because it ensured that a growing number of campaigners across the country had the motivation, materials and means to push the smoke-free case in local and regional media. It also helped to ensure that the campaign had a consistent media message without ASH being seen to control the debate or issue inappropriate instructions to health professionals, trades unionists and other key supporters. The UK discussions section of the international tobacco control email network, GLOBALink, was used as a campaigning tool, reaching over 700 key people.

In Spring 2004 the government began a public health white paper consultation on action to improve people’s health. March 2004 had seen the extremely successful implementation of comprehensive smoke-free legislation in the Republic of Ireland but health minister, John Reid made very clear at the launch of the consultation that this had not changed his mind; he was still against legislation. Fortunately, he over-reached himself. At a public meeting with journalists present he said: “I just do not think that the worst problem on our sink estates by any means is smoking but that it is an obsession of the middle classes. What enjoyment does a 21 year old mother of three living in a council sink estate get? The only enjoyment sometimes they have is to have a cigarette.”<sup>24</sup>

This led to extraordinary media activity dominating the news agenda for days, in which Reid came under attack by the media

**Table 1** Smoke-free preference set

	Government	Public health lobby	Hospitality trade	Tobacco industry
1st choice	Voluntary	National	Voluntary	Voluntary
2nd choice	Local	Local	National	Local
3rd choice	National	Voluntary	Local	National

and the health lobby. In the middle of it, ASH published survey results showing that 80% of the public supported a law to make all enclosed workplaces smoke-free.<sup>25</sup> John Reid finally agreed to meet us. The coalition leaders went to see him, making clear that the health community was united on this issue. It was clear when we met him that he had been forced to concede that legislation had to be on the agenda: the issue now was what it would contain.

Reid was guided by the public opinion polls which showed that the public overwhelmingly wanted smoke-free public places, including restaurants. The debate was over pubs and bars where public support was 50/50. On 16 November 2004<sup>26</sup> the smoke-free legislation was published including exemptions for pubs that did not serve food (that is, were not also restaurants) and for private members' clubs. From then on the Coalition immediately started to build the case for comprehensive legislation to remove the exemptions.

### POLITICAL ACTION AFTER THE GENERAL ELECTION

In May 2005 the Labour Government was returned with a diminished parliamentary majority. Patricia Hewitt succeeded John Reid as health minister. On 26 October 2005 the government announced that its Health Improvement and Protection Bill banning smoking in workplaces would include exemptions for pubs that did not serve food and private members' clubs.

The Smokefree Action Coalition had been unable to persuade the new health minister to remove the exemptions, despite successfully proving that they would exacerbate health inequalities and would be expensive and difficult to enforce, but had managed to get significant support from other ministers. This led to a public row between cabinet ministers, unprecedented in the Labour Government up until that time, which undermined any claims by government that the proposed legislation was logical and coherent.<sup>27</sup> ASH and the coalition promoted this row by, for example, providing detailed briefings to the media about the actions and views of individual ministers. Coalition partners were able to use contacts and political intelligence to great effect.

The main focus of political efforts now had to move from government to Parliament. The House of Commons Health Select Committee, made up of an all-party group of backbenchers and chaired by Kevin Barron MP, a long time supporter of tobacco control, had decided to hold hearings into the smoke-free provisions of the health bill,<sup>28</sup> which started in late 2005. The committee's hearings were comprehensive. The splits in government continued as the Northern Irish minister announced that he was going to allow his jurisdiction to get rid of the exemptions.

The chair's political skills ensured that the report of the committee, published just before Christmas was signed by MPs from all parties.<sup>29</sup> The report stated that the proposed exemption for non-food pubs was "unfair, unjust, inefficient and unworkable." It concluded that all workers—including bar staff—deserved protection from the dangers of secondhand smoke and that the exemption would undermine the government's goal of reducing health inequalities, since drink-only pubs are concentrated in deprived areas.

Kevin Barron then secured all-party support from the select committee's members for an amendment, which removed the exemptions for non-food pubs and clubs. Seventy-one Labour MPs also signed an early day motion (a device used to record parliamentary opinion) calling for a "free vote" (a free vote is a convention permitting MPs to vote in accordance with their conscience free from an agreed party policy) on the issue, which would release them from the obligation to support the government's proposals.<sup>30</sup> This threatened the government's

majority in the Commons and left an already embattled prime minister facing either defeat or securing the bill only with the support of the Conservative opposition.

Intense lobbying went on by the coalition and Labour MPs to persuade the government to allow its members a free vote. The government finally agreed. This is believed to be the first occasion on which a select committee has proposed an all-party amendment to a current government bill, using its hearings and report on the smoke-free issue, to press the government and official opposition to give a free vote.

In any free vote pressure from constituents on individual MPs is usually the decisive factor and the coalition was able to ensure that an overwhelming volume of supportive correspondence reached MPs before the debate. The coalition produced a series of high quality factual briefs for parliamentarians, ensuring that the smoke-free case would be well made.<sup>19</sup> Other groups, particularly the Trades Union Congress, which had excellent contacts with Labour MPs, and the hospitality trade with good contacts with Conservative MPs, also worked effectively to secure parliamentary support.

On 14 February 2006, the House of Commons voted by a majority of 200 for comprehensive smoke-free legislation. The prime minister, chancellor, health secretary, public health minister and many other government members voted for the select committee's position and in effect against their original proposals. Subsequently the smoke-free legislation came into force very successfully on 1 July 2007.<sup>31</sup> The government's Regulatory Impact Assessment has estimated that more than 600 000 people will quit smoking as a result<sup>32</sup>—the biggest single public health gain since the introduction of the National Health Service.

### STRATEGY AND TACTICS OF THE OPPOSITION

In the campaign for smoke-free workplace legislation in England it was not the tobacco industry but the government who were the major opponents of the campaign. However, there are some lessons to be learnt from the part played by the tobacco industry and its front groups.

It was clear that the industry had one strategy, which was to use the hospitality trade as a focal point of the argument against smoke-free legislation, on the basis that to make pubs and bars smoke-free was unpopular and would damage the hospitality trade economically. They co-opted the hospitality trade in their support using the argument that voluntary measures were sufficient to deal with any problems caused by secondhand smoke.<sup>2</sup> When use of the evidence base undermined their case on all these points, they were unable to adapt.

In winning the first round of the battle for smoke-free legislation in the 1990s they had been if anything too successful. The voluntary approach the government agreed to in the white paper "Smoking Kills"<sup>1</sup> led to little or no change in the number of smoke-free hospitality venues. So when the coalition began its campaign for smoke-free workplace legislation in 2003, coalition partners were able to argue the voluntary approach was ineffective and the trade was unable to defend itself against this charge.

The industry's key argument was economic, that it would harm the hospitality trade. The evidence from New York<sup>33</sup> and then from Ireland and other jurisdictions showed that this was not the case,<sup>34</sup> although there would have to be some structural adjustment if smoke-free laws were introduced. At this point the argument about the rights of workers to a smoke-free environment, based on the principles of John Stuart Mill,<sup>35</sup> that government has the right to intervene to prevent harm to others, became crucial. However, the government's main concern was that it would be unpopular with a significant

## What this paper adds

- At the second conference of the Parties of the Framework Convention on Tobacco Control (FCTC) in July 2007 strong Article 8 guidelines on protection from second-hand smoke were adopted.<sup>37</sup>
- However, many governments still need much encouragement to adopt best practice guidelines. England is an example where advocacy has succeeded, achieving legislation in the teeth of strong resistance by government.
- In order to sustain international progress it will become increasingly necessary to overcome resistant or hostile governments. The history of smoke-free public places in England is a case study in how to achieve this.

minority of voters. If the tobacco industry could have shown that this was so, they would have won.

The tobacco industry tried to build support against smoke-free legislation. For example, the industry funded front organisation FOREST mounted an advertising campaign "to persuade opinion formers to listen to public opinion and reject calls for a ban on smoking in all public places."<sup>36</sup> But success in splitting the hospitality sector (see sectoral action), meant that by 2004 the tobacco front groups no longer had cross-sectoral support from the hospitality trade, which weakened their political position considerably. In addition, hard though FOREST tried to promote itself as a pro-smokers' rights group, all the polls and public consultations proved that public support for smoke-free was strong and support for FOREST weak and declining, even among smokers.

## LESSONS FOR HEALTH ADVOCATES

- (1) Frame the argument with a clear objective and set of key messages everyone can sign up to based on the evidence—where possible for your jurisdiction.
- (2) Build your coalition around your key messages. Networks of campaigners can be provided with key resources and a sense of direction without ever being told what to do. It's called the "swarm effect."
- (3) Split the opposition. Working out how the interests of the hospitality trade and the tobacco industry differed and using this knowledge to divide them was key to success.
- (4) Exploit your opportunities. This campaign, like most, lacked the financial muscle to pay for expensive public relations and advertising campaigns so developing good media contacts and responding quickly and effectively to any and all opportunities was vital.
- (5) Find your political champions. As a priority identify key political champions and the opportunities for influencing government.
- (6) Create the impression of inevitable success. The appearance of confidence both creates confidence and demoralises the opposition.

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