



Dr Sarah Wollaston MP  
Chair Health Select Committee  
House of Commons  
London  
SW1A 0AA

28<sup>th</sup> August 2015

Dear Sarah

We are writing to you on behalf of the Smokefree Action Coalition. While we were of course very pleased that legislation was passed to introduce standardised 'plain' packaging of tobacco products, we are increasingly concerned that current and likely future funding cuts to public health budgets together with policy changes with respect to regulation threaten the sustainability of the NHS. We understand that the Secretary of State for Health is appearing before the Health Select Committee in early September and we think that these issues could usefully be raised with him.

According to the NHS Five Year Forward View, even after the £10 billion in additional NHS funding committed by the Government, there will be an annual funding shortfall of £22 billion by 2020. The report sets out clearly that *"The future health of millions of children, the sustainability of the NHS and the economic prosperity of Britain all now depend on a radical upgrade in prevention and public health."*

Despite this, the Chancellor recently announced £200 million in-year cuts to DH funding for local authority controlled health budgets, amounting to a reduction of 6.2% in what is supposed to be a 'ring-fenced' budget. The SFAC calls on the Government to reverse this decision and is deeply concerned that further cuts are threatened in the current Spending Review, which is designed to deliver a further £20 billion cuts in departmental budgets over the next four years. This is a particular issue for public health budgets, given that spending on the NHS is prioritised.

With such serious cuts to public health budgets, it is even more essential that policies which encourage behaviour change at population level are implemented, as these are the most effective, and indeed cost-effective, way of achieving the necessary *'radical upgrade in prevention and public health'*. Such policies are often best introduced by regulation rather than on a voluntary basis, as this ensures consistency in approach and a level playing field for all businesses. A good example is smokefree laws, which the Better Regulation Executive itself cited as a case study of effective regulation.

Suggested important changes in regulation include changing the licensing laws to include a public health objective, as is the case in Scotland, and to require tobacco retailers to be licensed. The public health objective, if enforceable, would give local authorities greater

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powers to improve public health by limiting the number of alcohol licences to reduce alcohol-related violence and health-related harms. The Government agreed to include the prevention of health harm as an objective in its response to the 2012 consultation on the Licensing Act 2003 and committed to consider the best way to proceed with such legislation. Although this proposal was widely supported, including by the Local Government Association, to date legislation has not been brought forward. Licensing tobacco retailers would give local authorities greater powers to control the illicit market, which is a source of cheap tobacco particularly to underage smokers.

However, such regulatory changes are made increasingly difficult, because of the way in which the Government is seeking to apply its regulatory reform agenda. This currently requires each Government department to remove regulations worth twice the cost to business of any new regulation it wants to introduce, a principle known as *'One In Two Out'* or OITO.

The system has been made even more difficult by the recent decision of the Regulatory Policy Committee that any regulations which drive down industry profits count as an 'in' for the purposes of the OITO process, while any consequential benefits to business from changing purchasing behaviour by consumers are not taken into account. So, for example, tobacco regulations which reduce cigarette sales are counted as a 'cost' to business, but consequential spending by consumers on products other than tobacco are not counted as a 'benefit'. No clear explanation has been given as to why the RPC has made this change, as according to the BIS Better Regulation Framework Manual, dated July 2013 and most recently updated in March 2015 with the same wording, only direct impacts to business should be scored for OITO. To quote from the manual, *"subsequent effects that occur as a result of the direct impacts, including behaviour change, are indirect. These are not scored for OITO"*.

In addition, the Government has committed to achieve at least £10 billion of savings to business by reducing regulation over the next five years, and it has acted to widen the remit of the RPC by confirming that actions of independent regulators will be brought within the scope of the business impact target, through the first-session Enterprise Bill in this parliament.

These changes will make it even more difficult to regulate to improve public health in future. Around one in three 11-year-olds in the UK is overweight or obese, and obesity, together with smoking, drinking and lack of physical exercise are the leading causes of avoidable death and disease. As you know, that is why the Health Select Committee in its report earlier this year on the impact of physical activity on diet and health recommended that the Government takes steps to stop the marketing of unhealthy food and sugary drinks to children. But any strengthening of the current rules on advertising to children could be prevented by the rules on reducing regulation, which will in future catch in its remit independent regulators like OFCOM.

The effects of strengthened rules in reducing sales of unhealthy foods, or in reducing advertising revenues, would count as a regulatory 'in' requiring the removal of another regulation worth twice the cost to business, while the benefits in reductions in obesity and related diseases such as type 2 diabetes would be considered irrelevant. This doesn't make any sense. It is appropriate that costs to business of regulation should be considered in deciding whether a regulatory measure is effective, and cost-effective, but this should be considered in conjunction with the potential wider social and economic benefits of such regulation.

While we are pleased that legislation was passed to introduce standardised 'plain' packaging of tobacco products, we are deeply concerned that the Department of Health is being forced to remove regulations with costs to business of twice the value of lost profits to tobacco companies as a result. The primary purpose of the Department of Health is to *"help people stay in good health and live independent lives"*, not to regulate business. It is therefore very difficult for the DH to find

regulations to remove, particularly since it has been removing regulations since 2010, first under 'One In One Out', then, since December 2012, under the even tougher, 'One In Two Out' standard.

The OITO system needs to be revised to include not just costs and benefits to business, but costs and benefits to wider society as well. Alternatively there should be an exemption for public health measures, in the same way as regulations on civil emergencies and financial systemic risk are exempted. As it is currently structured, the Government's approach sets an unreasonable hurdle for new regulations and actually threatens rather than supports appropriate regulation. We therefore think that the OITO system is not fit for purpose and the problems it is causing need to be considered by the Better Regulation Executive Framework Review as a matter of urgency. We urge the Health Select Committee to raise this with the Secretary of State for Health in the first instance and to request the Minister responsible for the 'Better Regulation' agenda to also respond to the issues set out in this letter.

Yours sincerely



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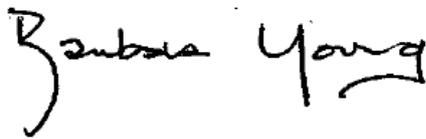
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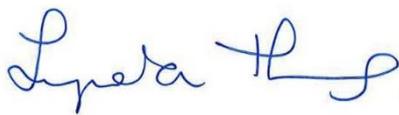
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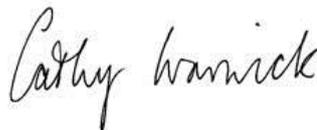
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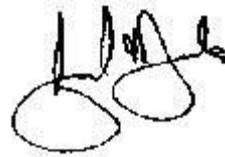
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### On behalf of the Smokefree Action Coalition

[1] Members of the Smokefree Action Coalition came together initially to lobby for smokefree workplaces and are now committed to reducing the harm caused by tobacco more generally. There are now over 300 members, for more information see: <http://www.smokefreeaction.org.uk>.

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