HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the European Union

Home Affairs, Health and Education (Sub-Committee F)

Inquiry on

TOBACCO PRODUCTS DIRECTIVE

Evidence Session No. 1 *Heard in Public* *Questions 1 - 23*

WEDNESDAY 6 MARCH 2013

10.58 am

Witnesses: Dr Jean King and Jaine Chisholm Caunt

Members present:

Lord Hannay of Chiswick (Chairman)
Lord Avebury
Lord Blencathra
Lord Judd
Lord Mackenzie of Framwellgate
Baroness Prashar
Lord Richard
Lord Sharkey
Lord Tomlinson

Examination of Witnesses

Dr Jean King, Director of Tobacco Control, Cancer Research UK, and **Jaine Chisholm Caunt**, Secretary General, Tobacco Manufacturers' Association.

Q1 The Chairman: Good morning, and thank you for coming to give evidence to us on the EU's proposal for the revision of the original Tobacco Products Directive. This Sub-Committee is now known as the Home Affairs, Health and Education Sub-Committee and we are responsible for scrutinising the European Union's health legislation as it is put forward. Given the importance of this proposal, we have decided to carry out what we call "enhanced scrutiny" on it. That is to say, we have invited key stakeholders and those involved in this issue to provide oral evidence this week and next week to inform our deliberations. Next Wednesday, we will also be hearing from Anna Soubry MP, the Parliamentary Under-Secretary of State at the Department of Health. Once those evidence sessions are over, we will write to the Minister—not a full report, but a detailed letter—outlining our thoughts and recommendations on the Commission's proposal.

That is the background. As you know, the session we are in at the moment is open to the public. A webcast of the session goes out live as an audio transmission and is subsequently accessible via the Parliamentary website. A verbatim transcript will be taken of your evidence and this will be put on the Parliamentary website. A few days after this evidence

session, you will be sent a copy of the transcript to check it for accuracy. We would be grateful if you could advise us of any corrections as quickly as possible. If, after this session, you wish to clarify or amplify any points made during your evidence, or you have any additional points to make, you are welcome to submit supplementary evidence to us.

Perhaps we could start, if you do not mind, by introducing yourselves. If you wish to make some brief opening remarks, it would be entirely welcome, but if you wish to proceed to questions without making introductory statements, that would be equally welcome. It is entirely a matter for you to decide. Which of you would like to begin?

Dr King: I am Dr Jean King. I am Director of Tobacco Control at Cancer Research UK. I would like to make an opening statement. It is a brief one.

I would like to thank the Committee for giving us this opportunity to put the case for this important piece of legislation. The proposals for the revised Tobacco Products Directive will protect children. Smoking is an addiction of childhood, and 70% of smokers start to smoke under the age of 18. Two thirds of smokers want to quit and regret starting. Smoking remains the leading cause of avoidable disease and death across the EU, killing 700,000 people every year, 100,000 of those in the UK. We need to update the Directive because of new scientific evidence, changes in the market, varying regulations across the EU and, most importantly, our obligations under the global treaty, the Framework Convention on Tobacco Control—the FCTC.

There is strong and growing independent evidence for the measures in the proposals. We will come on to those, especially around the large mandatory picture warnings; replacing misleading information on packs; removing flavours; banning super-slims and different shapes of packs; and measures to reduce illicit trade.

Cancer Research UK is a scientific research organisation, but we feel compelled to do everything in our power to reduce smoking and the scourge of tobacco in the UK, because

it causes over a quarter of all cancer deaths, and all of those are preventable. We base our positions on peer-reviewed academic evidence, unlike the tobacco companies, who rely on their own funded data and reports. The World Health Organization clearly stated in the FCTC that there is a fundamental and irreconcilable conflict of interest between the tobacco industry and public health policy and, furthermore, that Governments should limit their interactions with the tobacco industry only to those strictly necessary for regulating their products. We have strong published evidence of the ways in which the tobacco industry sought to prevent the 2001 Tobacco Products Directive coming into being. We see similar tactics and misleading information happening again.

I will be very pleased to expand on these points. Yesterday's report in "The Lancet" shows that we are not doing as well as we want to do in health terms and that tobacco is the leading cause of this. We and the entire public health community believe that these proposals in the draft Directive are crucial for protecting future generations from becoming the next tobacco statistics. Numerous polls show that the public here in the UK and across Europe want this, too. Thank you.

Q2 The Chairman: Thank you very much. It is helpful to have that on the record. Would you also like to make an opening statement, after introducing yourself, of course?

Jaine Chisholm Caunt: Yes, I would. Thank you. I am Jaine Chisholm Caunt and I am Secretary General of the Tobacco Manufacturers' Association. The Tobacco Manufacturers' Association, or TMA, is the trade association for tobacco companies operating in the UK. It has three member companies: British American Tobacco UK Ltd, Gallaher Ltd and Imperial Tobacco Ltd. The TMA also welcome this opportunity to contribute the views of our members to the scrutiny of the proposed revision of the Tobacco Products Directive. The TMA and its members support appropriate, proportionate, evidence-based regulation of our

industry. We do not want minors to smoke and we support effective measures to reduce youth smoking.

The TMA believes the proposal to revise the Tobacco Products Directive contravenes the principle of subsidiarity and has no proper legal basis. Public health measures are primarily a national competence and the EU has no legal competence to adopt harmonising measures such as the Directive with the direct objective of protecting public health regarding tobacco. Further, the proposal is inconsistent with a number of legal obligations, including freedom of expression and trade, and the protection of intellectual property rights.

The proposal is premised on fundamentally misguided and outdated notions of smoking behaviour. Providing more information to smokers or regulating packs or ingredients will not lead to a change in smoking behaviour.

However, the proposal will raise significant economic and social unintended consequences. It proposes significant restrictions on a wide range of businesses including retailers, manufacturers, packaging companies, design agencies and wholesalers, which will affect over 70,000 UK jobs. It is premised on the belief that impeding legitimate business operations will effect a behaviour change in smokers. However, this is unlikely to be the case. Academic literature and the Commission's own research have consistently identified the influence of peers and family members who smoke, and the ready availability of tobacco, as being the fundamental reasons for youth smoking initiation. For tobacco-control measures to be effective, they must address these issues.

The draft proposes sweeping changes that would affect packaging, labelling, ingredients and brand choice of an already highly regulated industry, whose supply chain and manufacturing employs almost 1.5 million people across Europe. The proposals include attempts to move towards further standardisation of pack and product design through the use of 75% health warnings, the prohibition of slim cigarettes, a ban on selling cigarettes in packs of less than

20 or hand-rolling tobacco in pouches of less than 40 grams, and a ban on characterising flavours such as menthol. This goes against common sense and restricts free trade at a time of economic crisis and high unemployment across Europe. For instance, many people in the UK purchase packs of 10 cigarettes or 12.5 grams of hand-rolling tobacco as a way of managing or reducing their consumption. Forcing consumers to purchase 20 cigarettes or handle tobacco in packs of at least 40 grams would in effect obligate people to super-size their tobacco consumption.

Further, the proposed ban on menthol cigarettes and the prohibition of slim cigarettes are an unjustifiable restriction on rights of adults who choose to consume a legal product, as well as damaging to legitimate businesses. Smokers of products that will be prohibited overnight will either move to smoking other products or their demand will be matched by illegal supply. Attempts to further standardise packaging would also create opportunities for criminal gangs to profit and sell illicit tobacco to children. This is a key concern, which, we believe, led to more than 500,000 people opposing plain packaging in the recent UK consultation. Each of the TMA's member companies responded to the Commission's public consultation, but their views and those of thousands of EU citizens appear to have been ignored.

According to figures quoted by the Department of Health, the numbers of 11 to 15-year-olds in the UK who smoke is at a historic low of 5%. The TMA believes there are more effective ways to reduce youth smoking still further, which focus on direct action to reduce access opportunities to tobacco.

In conclusion, let me reiterate that we support proportionate and evidence-based regulation, but the proposal is neither. We also believe that proposals that fundamentally misunderstand smoking behaviour inevitably will not work, and that any new regulation must be necessary, proportionate, evidence-based and in line with better regulatory principles.

Q3 The Chairman: Thank you very much. That is a very full statement. Does anybody want to raise points on the opening statements, or shall we move on to questions?

Lord Judd: I would just like to raise one point on what you have just said. You emphasised the rights of the individual very much in your statement. Do you ever consider the rights of the public in terms of funding the consequences of smoking?

Jaine Chisholm Caunt: The amount of revenue that actually goes into the Treasury from people who smoke more than outweighs the cost that has been calculated from any smoking-related illnesses. At the moment, the Treasury receives in excess of £12.1 billion a year in taxation and VAT.

Lord Avebury: Can we look at this entirely as a financial question? What account do you take of the suffering that is caused to people who get cancer as a result of smoking? Is that not even more important than the equation you have just drawn, between the amount raised in taxation and the amount that is spent on therapies for people who incur ghastly diseases as a result of smoking?

Jaine Chisholm Caunt: I believe looking at this solely in financial terms is a very reductive way of looking at value of human life, but fundamentally it is the right of adults to choose to smoke if they wish or not. Those under the age of 18 should be protected from doing so.

The Chairman: I think we will not have a general debate at this stage. We will ask questions on your statement and we will then go into our own questions. I have one question. I want to ask you about subsidiarity. I notice that you take the view that the proposal is not justified on the grounds of subsidiarity, which is a view that is taken by various people around Europe. Did the Tobacco Manufacturers' Association actually contest the subsidiarity of the original Directive and, if so, was it not ruled by the European Court of Justice as being a legitimate use of European law?

Jaine Chisholm Caunt: I did not work for the Tobacco Manufacturers' Association at that point, so I am afraid I cannot answer your question. However, I can certainly provide evidence after this session.

The Chairman: Yes, and also on the point about whether the European Court has ruled; obviously I do not mean on this Directive—because it is not a piece of EU law at the moment—but rather the original Directive. If you could let us know, it would be very helpful.

Lord Tomlinson: On the same point, I believe Imperial Tobacco is one of your members.

Jaine Chisholm Caunt: It is.

Lord Tomlinson: In a letter that was sent by Mr Ross, the head of Political Affairs UK, he actually prefaces a point he is making in paragraph 3 by saying, "Whilst welcoming the concept of updating the European Tobacco Products Directive, which was adopted in June 2001 and so needs to be brought up to date, we believe that this proposal", and it then goes on to makes some criticism, but it does not make the criticism of the need for updating the 2001 Directive. Are you suggesting that he is wrong?

Jaine Chisholm Caunt: No, I am certainly not suggesting he is wrong. If you have a direct comment on Imperial's statement, it is probably best addressed to them. The comment I made earlier is about the fact that we believe that any regulation should be necessary, proportionate, evidence-based and in line with better regulation. We do not oppose regulation per se.

Q4 The Chairman: Yes, we will come to that question in the questions we are putting to you in a minute, but that exchange has been useful, too. If we could start by going straight into the question we have just been discussing: do you agree that the current Tobacco Products Directive, which was agreed in 2001, needs to be updated?

Dr King: Yes, we do. The current Directive was a very important piece of legislation for protecting children, especially. It now needs updating; it is more than 10 years old. There is new scientific evidence, especially on the effectiveness of health warnings, the misleading nature of quantitative data on packs and the effects of certain ingredients and so on.

There are new products that have come on the market: packs with quirky opening devices, super-slims, and so on. Research shows that these are especially attractive to children. Currently, Member States that wish to go further in response to the scientific evidence—for example to have larger health warnings—cannot do so. Of course, some countries are considering standardised packaging.

For these reasons, the Directive needs updating. However, crucial, and by far the most important reason, is that the 2001 Directive precedes the Framework Convention on Tobacco Control. Both the EU and all the Member States have ratified this treaty. It sets out a comprehensive set of measures that, taken together, will greatly reduce the toll of tobacco on health and mortality in the EU. We think we have obligations under that treaty, especially articles 9 and 10 on content and disclosure, article 11 on packaging and labelling, and article 15 on illicit trade. For all these reasons, we feel the Directive needs to be updated.

The Chairman: You expressed your view in reply to Lord Tomlinson just now, in answer to his question. Is there anything you would like to add?

Jaine Chisholm Caunt: In addition to that, just because 10 years have passed since adoption of the original Tobacco Products Directive, it does not mean that the EU can either act outside its competencies or should adopt measures that lack a credible evidence base. We are concerned about the legality and the subsidiarity principle, as mentioned before.

The Chairman: We will come on to the legality point in a minute, and you will let us have a response to my question. Thank you very much.

Q5 Lord Mackenzie of Framwellgate: Can you tell me whether you believe that the current proposal adequately reflects the outcome of the Commission's public consultation in 2010 on the revision of the Directive?

Dr King: Yes, we do believe it reflects the outcomes of the consultation. All credible public health bodies across the EU are calling for a range of measures to protect children from tobacco that are evidence-based—that is, based on independent research from scientists and doctors and published in peer-reviewed journals. As mentioned previously, these include large mandatory picture warnings on the front and the back of the pack; replacing the misleading tar, nicotine and carbon monoxide levels with qualitative data and quit lines; removing characterising flavours that reduce the harshness and increase the attractiveness to children; removing these sorts of products from the market; and controlling illicit trade. We believe there is very good evidence for that. This was the view expressed by all credible health bodies across the EU.

The Chairman: Did you participate yourselves in the consultation with the Commission?

Dr King: Yes, we did.

The Chairman: Did you get the impression it was being properly and even-handedly operated—that is to say that everyone, whatever view they had, was able to participate in it?

Dr King: Yes, we did.

Lord Mackenzie of Framwellgate: Was there any evidence given by law-enforcement agencies on whether it would affect criminal trafficking of cigarettes?

Dr King: Not that I am aware of, but, certainly, we would have presented the evidence that we have on illicit trade and what the real causes of illicit trade are.

Lord Mackenzie of Framwellgate: What is that?

Dr King: It is to do with availability and is, really, a law-and-order issue. It is not an issue around labelling and packaging. I can go into that in more detail later on.

The Chairman: Would you like to say anything about this issue?

Jaine Chisholm Caunt: Yes. The Commission actually held a public consultation on revising the TPD in 2010. This consultation received over 85,000 responses overwhelmingly opposing any further changes to the TPD. Subsequently, however, the Commission decided to carry out its own Eurobarometer survey, with questions that were posed in such a way that it was almost inevitable that the results would support its position. Even so, many of the responses do not support the Commission's positions. It is hardly surprising that individuals and business across Europe most likely to be affected by proposals for the TPD, such as retailers and consumers, would be most motivated to respond to a public consultation, but it is also of concern that there are 12 measures, which did not feature in the public consultation or the RAND report, that are now included in the TPD proposal. These include bans on slim cigarettes and menthol products, the standardisation of pack requirements and tracking-and-tracing provisions. The sidelining of public opinion and the inconsistent use of the consultation questions do not give confidence in the robustness of the public consultation process, and the TMA would be interested to know what plans the EU has to fill these gaps in the consultation process.

Lord Mackenzie of Framwellgate: Would you say the consultation was rigged?

Jaine Chisholm Caunt: That is not a statement that I am making.

Lord Avebury: Would you agree that it is not difficult for well-funded tobacco manufacturers to generate and sponsor large numbers of representations in a consultation?

Jaine Chisholm Caunt: If you have a business that is very directly affected by proposals on the consultation, as I said before, you will be very strongly motivated to respond. That is why there were so many responses to this particular consultation and also why there were 500,000 responses in the recent UK consultation on plain packaging, which covered a very

wide range of not just ordinary members of the public, but businesses such as packaging companies and design companies.

Lord Avebury: I am talking about artificial responses that were prompted by the tobacco manufacturers and which might have appeared to come from ordinary citizens, but actually were peddling the tobacco manufacturers' line.

Jaine Chisholm Caunt: I am not aware that there were any artificial responses.

Lord Avebury: I am sure you are not.

Q6 The Chairman: I notice you refer to retailers and manufacturers. I was rather surprised that you did not refer to producers—growers of tobacco—of whom there are rather a large number in the European Union, who no doubt made their views known very loudly.

Jaine Chisholm Caunt: I believe so, absolutely.

Dr King: There were serious concerns about the quantity of responses, in terms of there appearing to be multiple responses from the same source. It was not possible to verify that these were independent individual responses from informed people. There was certainly some research looking into that. I would be happy to make that available to the Committee. We do think that the Commission needs to tighten up its procedures on consultation responses to make sure that this cannot happen.

Lord Blencathra: It is just innuendo that the responses may have been rigged; there is no hard evidence that this was rigged.

Dr King: I believe there was some evidence that there were multiple responses, rather than individual named people, which is what we are very careful to do when we ask our supporters to respond to consultations.

Lord Sharkey: Has the Commission itself commented on the quality of responses?

Dr King: I believe they have; I would have to look into that, but I believe they have.

Lord Sharkey: I think we would be very interested to see their response.

The Chairman: Could you let us know what you find out from that?

Dr King: Definitely.

Q7 Lord Tomlinson: I would like to go back to this whole question of the legal basis, and start at scratch again. Do you believe that the Commission's proposal has a proper legal base? That, really, is a yes-or-no question. I will then ask the supplementary questions accordingly.

Jaine Chisholm Caunt: Our view is no.

Lord Tomlinson: Okay.

Dr King: Our view is yes.

Lord Tomlinson: Can I ask you, who says no, where the deficiency is, specifically, in the legal base?

Jaine Chisholm Caunt: The proposal is a health measure designed as an internal-market measure. It is actually based on article 114. However, article 168 of the EU Treaty expressly prohibits the EU adopting harmonising measures in the areas of public health regarding tobacco, with the protection of public health as their direct objective. In other words, the EU has no competence to act unilaterally in this regard.

Lord Tomlinson: What is your reaction to that?

Dr King: We have taken legal advice on this, and our understanding is that, according to EU treaty article 114, the EU has a mandate to regulate products, taking as its base a high level of health and consumer protection. Given the very great harm caused by tobacco, as I have already alluded to—700,000 deaths a year across the EU—clearly, the legal basis for protecting the health of EU citizens is very strong.

Lord Tomlinson: Bearing in mind the imperative to be balanced, can I ask you why you think parliaments in some Member States—Greece, Italy, Sweden and Czech Republic in

particular—have decided to use reasoned opinions on the proposals, because they think that legislation could be carried out more effectively at national level?

Dr King: I think this is beyond my competence; I am not a lawyer. I do know that when the original Tobacco Products Directive went through—we have a report that we circulated on this—as many legal obstructions as possible were presented to try to prevent it happening. There is good evidence that arguments that the industry has been advised are groundless are used none the less, because there are large profits that can be used to perpetuate legal debates. However, I am not able to comment specifically on that question.

The Chairman: If I may say so, this is not purely a legal question. It would be helpful if you could say what you think of the proposition that Member States are better placed to handle this issue than the collectivity of the European Union. That is a policy issue, not just a legal issue. I wonder if you could say a little bit about that.

Dr King: Certainly at the moment what we have is inconsistency across the EU: some countries have picture warnings and some countries do not. It would make a lot of sense—and it would be consistent with the workings of the internal market—to have consistent regulation across the EU in terms of what size health warnings, having picture health warnings because we know they are more effective, and removing products like this from the market. If it only happens in some countries and not others, it is going to be far less effective and it is not going to be in line with internal market working well.

Lord Tomlinson: That is twice you have said "products like this", and I cannot see what you are referring to.

Dr King: I am sorry; can I pass it around to you?

Lord Blencathra: If it is permissible, Chairman.

The Chairman: Are these slims?

Dr King: Yes, these are slims.

The Chairman: You are going to let us have a letter about whether or not there has been a contest of the legal base in the past, by either the Tobacco Manufacturers' Association or their representatives at the EU level, and the result in the European Court of Justice. However, is there anything more you would like to say on this competence issue?

Jaine Chisholm Caunt: I would just reiterate a couple of other points. First of all, I should also make the point that I am also not a lawyer. However, our belief is that this particular proposal does breach the principle of subsidiarity; in fact, eight Member States' parliaments have already lodged objections with the EU on this point.

Lord Tomlinson: That does not mean they are necessarily agreeing with you; it means they are saying that they believe it can be more effectively at national level.

Jaine Chisholm Caunt: Yes.

Q8 Lord Tomlinson: Do you know what a tobacco manufacturer who wrote to me had in mind when, in his letter, he said that the proposal is constitutionally flawed. We have possibly dealt with that, about interpretation. He went on to say, "It creates tensions with international law and infringes fundamental rights". Would you go that far?

Jaine Chisholm Caunt: Certainly we would say that there are concerns with the proposal and how it sits with different aspects of international law, including the WTO and the trade-related aspects of products and sales, and also various other international law proposals, which I am quite sure have been outlined at some length in that particular response to you.

Dr King: Could I come back on that? I would draw attention to our obligations under the Framework Convention on Tobacco Control, which calls for large health warnings on the front and back of packs, and which calls for standard sizes of cartons, so that you do not have quirky openings and small packs and so on. There is a whole range of measures within the FCTC that this revised Directive will bring us in line with. At the moment we are

behind. We are lagging behind on, first, our obligations and, second, the best international standards that are being applied in some other countries.

Lord Richard: Coming back to the same quote from the letter that we all received from Mr Ben Townsend, Head of Government Relations at JTI UK—

Lord Tomlinson: They are not one of your members.

Jaine Chisholm Caunt: Yes, that is one of our members.

Lord Richard: Yes, it is one of your members. It is Gallaher, is it not? "The proposal is constitutionally flawed. It creates tensions with international law and infringes fundamental rights, notably to property, expression and trade." What rights does it infringe in relation to property? What rights does it infringe in relation to expression? What rights does it infringe in relation to trade?

Jaine Chisholm Caunt: I believe the reference is to rights to intellectual property and freedom of expression.

Lord Richard: How does it interfere with that?

Jaine Chisholm Caunt: Because of the requirements around standardisation of packaging and what this might actually do in terms of trademark infringement and the ability to communicate information about a product with consumers.

Lord Richard: I am sorry; I do not follow that. Try it again with me, because I did not follow you. Why does it infringe intellectual property rights?

Jaine Chisholm Caunt: The requirements for standardisation of pack, as proposed in the Tobacco Products Directive, would actually see 75% health warnings. In reality, the space left for branding would in fact be less than 25%, because many Member States also have a requirement for fiscal marks. This would significantly impact on both manufacturers' trademarks, branding and patents that have been developed—for example by packaging manufacturers.

Lord Richard: Your argument is that if you have the health warning on the package as large as the Directive wants, it only leaves enough space on the package to have the intellectual rights or the name of the company displayed on the packet, and that somehow infringes the intellectual property rights of the company owning that name. Is that right?

Jaine Chisholm Caunt: Yes. This particular issue has also been raised with the World Trade Organization.

Lord Richard: What about rights of expression?

Jaine Chisholm Caunt: There is a right for freedom of expression. Manufacturers should be able to communicate information about their products to consumers.

Lord Richard: There is a bit on this. Looking at this, there is a bit of information on this, is there not? Are you saying you cannot get that information on a standardised pack?

Jaine Chisholm Caunt: The requirements that are proposed for standardisation of packs—including 75% health warnings, which would, in reality, leave less than 25% of the space, and the fact that it would effectively create a standardised shape and opening for packs—contravene a number of patents, trademarks and branding issues. However, as I said at the beginning, I am not a lawyer. I am very happy to submit further evidence to this Committee.

Lord Richard: I was just going to ask that. It says that, "The rights being infringed are protected by UK law, the EU Charter, the ECHR and under international law, WTO and bilateral investment treaties." Could you give us a piece of paper setting out which bits of which codes are infringed?

Jaine Chisholm Caunt: Absolutely, I would be very happy to provide further written evidence after this hearing.

Q9 Lord Mackenzie of Framwellgate: I have a quick one for Dr King. You obviously agree that the European Union should standardise the rules throughout the Union. Would

Dr King: Obviously, we would very much wish to see the sorts of smoke-free legislation that we have here in the UK, because it is has been effective, popular and we have seen large decreases in acute heart attacks and so on. We did not want a Directive on smoke-free at the time, because we did not want countries to have possibly very strong legislation weakened through the process of the EU, but yes, we obviously want to see countries adopting it. There is a recommendation on smoke-free. We would like to see Member States strongly encouraged to enact their obligations under the FCTC, which is for comprehensive smoke-free legislation, as we have here.

Lord Mackenzie of Framwellgate: Would that be advisory rather than directing?

Dr King: Given that several countries have it already, I am not quite sure what the process is, but we are very concerned that whatever comes through are the strongest possible measures.

The Chairman: A recommendation is only that, as you know. It does not have the force of law, as Lord Mackenzie said. It advises Member States, but they are free whether or not to take the advice. They seem to be doing that, because some have stricter prohibitions than others.

Lord Blencathra: I have a quick one. Dr King passed around two packets of cigarettes. Pardon my ignorance: what is objectionable about those packets? Why must all packets open the same way?

Dr King: We have very good research evidence and it is summarised in a report that we made available to the Committee. It is this report on the packaging of tobacco products. It looks at the literature; it looks at interviews with young people. It is very clear on two counts. These packs are attractive; they are targeted at young girls and women. They look

like lipsticks or perfume. If you look inside, the cigarettes are very slim. Some of them have flowers on them. These are packs that are designed to attract young girls and women to smoke. Regarding the packs that open quirkily—I did not bring one with me; perhaps I did—there are ones that open like cigarette lighters and so on. Boys find these very attractive. There is a lot of evidence around the attraction of these sorts of innovative pack designs to young people. I did want to push back on this argument about adult choice; we know that smoking is an addiction that is started in childhood. At the ages that children start to smoke, it is not an adult or informed choice. We have very clear evidence, as set out in this report, that packaging is designed to attract youth smokers. It is very effective in that way.

The reason we pass them around is because if you are not a smoker or you have not been one for a while, you might be quite surprised to see that this is how some of the packaging is looking now. As the evidence shows, young girls find them attractive. It encourages them to start smoking.

Q10 Baroness Prashar: Do you think that this proposal would produce a level playing-field in terms of marketing requirements for tobacco and the public health requirements across the European Union?

Dr King: Yes. It should be a priority to protect the health of consumers while ensuring a level playing-field for industry. A level playing-field is assured through consistent measures across the EU. Protecting health must be a priority because of the health harms. I do not want to keep going on about it, but one in two consumers die from using this product. It is not a normal consumer product in that respect. We believe that having consistent regulatory measures in terms of health warnings, structures of packs and so on, as we have been talking about, would create a level playing-field.

Baroness Prashar: What do you think?

Jaine Chisholm Caunt: We do not think so. We do not think this proposal would create a level playing-field across the EU. The original Tobacco Products Directive harmonised regulations concerning the manufacture, presentation and sale of tobacco products across Europe back in 2001. There are also currently harmonised technical standards regarding the measurement and display on packs of tar, nicotine and carbon monoxide yields. However, this current proposal will not improve the functioning of the internal market. Member States are permitted—and, indeed, encouraged—to go further than the stated requirements of the Tobacco Products Directive. Fundamentally, bans on whole product categories will not create a level playing-field. All that it will do is create a market opportunity for those illicit tobacco sellers who will see a new product that they will be able to sell when legitimate retailers will not.

The Chairman: The point you make about Member States being encouraged to adopt a higher standard is a normal approach across the EU; it is normally welcomed in most fields, is it not? Certainly, in the field of banking regulation, for example, the ability for a country, like this country, to have a higher standard is considered to be a good thing. You consider it to be a bad thing.

Jaine Chisholm Caunt: It is not a harmonising thing, which is ultimately what this particular article refers to, article 114. In reality, there is not much of an internal market for tobacco products, anyway, because of the fact that you have to have health warnings in particular languages for particular Member States. Certain countries require fiscal markings; others do not. There is no wholesale retail market for tobacco products anyway.

The Chairman: Surely, manufacturers of almost any product have to provide information on the packaging in the language of the country they are selling it in. There is nothing uneven about it, is there? It is just normal, unless we are all going to speak Esperanto.

Jaine Chisholm Caunt: No, but there is nothing in this particular Tobacco Products Directive that is going to help to create level playing-field, which is the question I was asked.

The Chairman: I take that point; that is the view of your Association.

Q11 Lord Sharkey: Do you think the Commission's scientific evidence base for this proposal is sufficiently robust? It might help us if, in answering that question, you were to try to characterise what the evidence base actually is.

Dr King: Yes. I would say yes and I do say yes. As I said previously, I represent a scientific research organisation. We base all of our policy positions only on very sound scientific evidence that has been produced independently by credible experts, and has passed the peer-review test and been published. There is good evidence that the measures in the proposal are proportionate and will help drive down the number of young people taking up smoking. There is strong evidence for the key measures in the proposal, for example on health warnings; many reports draw attention to the value of health warnings, especially the academic review by Professor David Hammond in 2011. There is a recent review from the German Cancer Research Center. I am happy to make these available. Of course, the FCTC, in developing its own proposals, scrutinised the evidence very carefully, too. The Hammond review only took papers of a certain quality, and it looked eventually at 94 published papers. These showed that health warnings are effective—they discourage smoking initiation and they encourage smokers to try quitting—that picture warnings are more effective than text-only warnings, and that the larger the warning the more effective it is. Currently, several countries around the world do have larger picture warnings on the front and back of packs: for example, Australia, New Zealand and Canada. This is the international standard. We would argue that in having less than 75%, the EU would not be reaching the international standard.

Lord Sharkey: If I understand that point, you seem to be saying that because Australia and New Zealand have 75% it sets an international standard.

Dr King: Yes, I am. The larger the health warning, the more impact it has. It is more noticeable.

The Chairman: If I may say so, you are not precisely saying that it sets an international standard.

Dr King: It is a benchmark, if you like.

The Chairman: You are saying it provides some scientific or reasonably scientific material for judging whether or not the point of view you expressed is right or not.

Dr King: I am also saying that we would strongly urge the EU to be at the international standard and not below it. If we know that the larger it is the more effective it is, why would we settle for something less than that?

The Chairman: If I may say so, the phrase "international standard" is a bit misleading.

Dr King: Gold standard.

The Chairman: I do understand what you are saying, which is that countries that have applied this particular rule about size seem to be producing evidence that it is effective. That point is well taken, but I do not think it is wise to talk about international standards where they do not really exist.

Dr King: I apologise; yes, that is ambiguous. Perhaps we could use the term "gold standard".

Q12 The Chairman: I should keep off the word "standard". It seems to me that the point is well taken, from the experience of these two countries, but I do not think it should be expanded into quasi-legal language.

Dr King: Okay, thank you. In terms of the current quantitative data on tar, nicotine and carbon monoxide, there is again a lot of research evidence that these are misleading people, who tend to assume that they relate to levels of harm, which is a spurious finding. They do

not relate to how people smoke in real life. There is also good evidence that if you tell people qualitative information about what is in tobacco, it can have quite an impact on their intention to quit and so on. Telling people that cigarettes contain arsenic or formaldehyde and so on can have a big impact. We strongly support the measure to replace the misleading quantitative data with more effective qualitative data, especially with quit lines, so that people have the information to hand at the point that they may be thinking about trying to quit. Certainly, in the year they introduced picture warnings in Belgium, there was a very large increase in calls to their quit line. It was very effective measure in that respect.

On packaging, I have referred to this report; it looked at a large number of studies and concluded that the pack is a marketing tool. Young people especially associate characters of the pack with image and identity. The more attractive the pack and the more innovative the design, the more they want to be associated with the pack. When we show them plain packs, they really do not want to be seen with those. We have referred to the super-slim packs.

As I have mentioned, there are many studies on standard packs, which of course are not plain packs: they retain the health warning; they retain the duty-paid stamps; and they retain other features and covert markings. However, they would be in a standard colour, size and shape. When we show those to young people, they really do not want to be seen with them. We especially find that packaging is influential with girls, so we strongly support measures that will standardise packs. In the current proposals we have the idea of not having funny openings and doing away with the super-slims. We strongly support those and we think there is a strong evidence base for those.

On super-slims, research shows that descriptors such as "slims" and the skinny packs and pink colours are misleading. They appeal to young girls; they associate them with less harm. The term "slims" reinforces the belief that smoking can help control weight. The super-slim

market is one of the biggest-growing sectors in this field. We think that this is a sign that they are being effective in attracting young girls to smoke. Of course, the health warnings are less noticeable: you cannot see them very well on the small packs.

I have mentioned the cuboid pack shape. We support having a minimum of 20, because price is an important factor in youth smoking. Again, the smaller the pack the more likely young people are to be able to afford them. Pack sizes less than 19 have already been banned in about 16 Member States.

In terms of flavours, this is very well articulated in the FCTC. It is clear that there are additives and flavours put into cigarettes that help new smokers get over the initial harshness and which are attractive to young people. We think there is strong evidence that additives increase palatability and should not be allowed. We would be happy to provide more evidence on this, if you would like it.

Jaine Chisholm Caunt: We do not think that the Commission's scientific evidence base for this proposal is sufficiently robust. Given that it has been 12 years since the last Tobacco Products Directive, this proposal is remarkable for the lack of credible scientific evidence to justify additional action. The impact assessment that was produced for the TPD assumes the proposals will deliver a 2% reduction in smoking prevalence; however, this 2% figure appears to be nothing more than a finger-in-the-air best guess. There is no credible or reliable scientific evidence to support this assertion, and it is not just the tobacco industry that questions the evidence. For example, a judgment in 2012 from a senior US federal court of appeal found that there was not a shred of evidence that large pictorial health warnings reduce smoking, yet exactly the same evidence is relied upon by the Commission in support of its proposals.

I would also like to make a point about slim cigarettes. Very much the point that Jean King is making is that they are associated with young women. In fact, consumer preference for

slim cigarettes is much more associated with Member State cultural preferences. For example, in Bulgaria, 30% of the market is slim cigarettes; in the UK it is only 0.4%, which is probably why most of you have not seen one of these packets before.

Q13 Lord Sharkey: I have a very quick supplementary question, if I may. When the health warnings were increased in size last, I think it was to 50%.

Dr King: We are currently at about 40%.

Lord Sharkey: When they were last increased in size, to about 40%, is there compelling evidence of the effect than had on consumption or incidence?

Dr King: The point about these measures is that you are not necessarily going to see a direct impact. Certainly, however, when they introduced large health warnings in Canada they saw a decline in youth smoking. That was part of a comprehensive set of measures and we always say you need a comprehensive set of measures. You will not necessarily be able to show a direct effect for one measure on its own. For example, if you introduce large warnings but the price falls down, cigarettes are still going to be available to young people. Certainly, however, countries that have introduced large warnings have among the lowest smoking rates for young people.

Lord Avebury: If the manufacturers do not believe the Directive is going to reduce smoking, why on earth are they spending so much money in opposing it?

Jaine Chisholm Caunt: They are opposing it because of the fact that it is going to have serious negative unintended consequences. We actually think it could increase youth smoking as opposed to reducing it.

Lord Avebury: Surely you should welcome it, then.

Jaine Chisholm Caunt: Certainly not. None of my member companies want minors to smoke. We support a whole range of initiatives to prevent them from doing so. We do not

want young people under the age of 18 to start smoking. Smoking is purely something for adults who choose to do so in knowledge of the risks of smoking.

Q14 The Chairman: Why do the tobacco companies spend large amounts of money on advertising and designing packets and so on if they are not trying to persuade more people to buy the cigarettes inside them than would otherwise do so?

Jaine Chisholm Caunt: It is perfectly legitimate for tobacco companies—

The Chairman: Sorry, but I did not say it was not legitimate. I am asking why they do so. You just said that tobacco companies are not trying to persuade people to smoke more.

Jaine Chisholm Caunt: Tobacco companies compete for market share amongst existing smokers over the age of 18. The importance of brand choice, which is signalled by different packaging, is one of those features. I should say that one of the reasons that such a lot of money is spent on packaging is not somehow to have a design to attract young smokers; it is a very explicit anti-counterfeiting device. I have some materials, which I will leave behind for the panel, which have been prepared not by me or the tobacco companies but by the packaging industry and the component parts who actually produce all of the different features involved in tobacco packaging, including things like hot-foil embossing, bevel edging, innovative pack designs and holograms. The change in colours and shapes make it much harder for counterfeiters to replicate these products and come to market.

Lord Blencathra: Could I just double-check something Dr King said? The large pictorial warnings of falling teeth and rotting bodies do not work on their own; there is no evidence to suggest they work on their own. If the price were to fall, it could be counterproductive.

Dr King: No. What I said, with respect—sorry if I did not say it clearly enough—was that it is difficult to ascribe a percentage decline in smoking prevalence to one measure taken in isolation, but in those countries that have large health warnings we have seen declines in

young people smoking. They have among the lowest rates in the world. We are very clear, from what young people tell us, that health warnings have an impact on them.

Lord Blencathra: You also said that if there were a price drop, it could be counterproductive.

Dr King: Price drops can be counterproductive to most tobacco-control measures, because they make things more available.

Q15 Lord Avebury: Do you think that the inclusion of non-tobacco nicotine-containing products within the scope of the proposal is sensible?

Dr King: No, we would prefer non-tobacco nicotine-containing products to be regulated for a number of reasons, but not within the Tobacco Products Directive. They are not containing tobacco, and the public already confuses the risks of the tar in tobacco with nicotine, which is the addictive substance, obviously. As we want to support people to use nicotine-replacement products in helping them to quit, we do not want this confusion about the two. There is very good and growing evidence that nicotine-containing products that are non-tobacco products help smokers cut down and may assist in quitting attempts. I am thinking now of some of the novel products, like e-cigarettes and so on, we want to be available to smokers, so they can help them. We know the majority of smokers would like to quit, but they should have access to safe and reliable products that deliver a consistent dosage. Currently, there are some good and some poor products on the market. We need to regulate them as we regulate other nicotine-containing products: as medicines. We do not want them to be marketed to non-smokers or to children. Again, regulating them under medicines regulation would help to protect them in this respect. The WHO has also called for more research in this area. We know that the Medicines and Healthcare products Regulatory Agency has been looking at this for the last two years; we expect them to report in May. We think that the Commission and the EU could benefit from the deliberations and

findings of that study. We do want to see them regulated, but not under the Tobacco Products Directive.

The Chairman: You would like to see Government opposing inclusion of this in the Directive; is that right?

Dr King: Yes. We would like to see them regulated under medicines. We would like them to counter-propose that they be regulated as a medicine rather than as a tobacco product.

Q16 Lord Avebury: Above a certain threshold they will be regulated and treated as medicinal products. Below that threshold, they will be covered by the Directive. It is not clear to me what that threshold would be and whether that is evidence-based. Is there some evidence that shows us the medicinal effects of products containing above a certain concentration of nicotine are effective, whereas below that level they are not?

Dr King: The levels that are in the proposal do not appear to have any clear scientific basis, because how much nicotine they get depends very much on the characteristic of the person using the product. We would prefer all non-tobacco nicotine-containing products to be regulated under medicines, where they can be looked at. The levels, however, do not really make sense to us, as such.

Lord Avebury: Would it be possible for you to let us have reference to the evidence on the effectiveness of these proposals, medicinally?

Dr King: Yes, certainly.

Jaine Chisholm Caunt: As the trade association for tobacco manufacturers, this particular area is outside my remit. However, I would note that the inclusion of non-tobacco products in a Tobacco Products Directive is yet another example of competence creep on behalf of the EU. In the UK, the MHRA is currently reviewing the regulatory framework for e-cigarettes. We feel this body should be allowed to conclude its review.

Lord Avebury: Has this proposal been looked at by NICE? Does either of you know?

Dr King: I am not aware whether they have looked at it or not.

Lord Sharkey: Do you know what the evidence base is that leads the Directive to say that below a certain nicotine threshold these products must feature a health warning?

Dr King: We would not support a health warning on the basis that we do not know that there is sound evidence. Again, what you take into body, in terms of nicotine, depends very much you are using product, how deeply you inhale, if it is, say, an e-cigarette and so on. I am hoping the MHRA may clarify some of this, but we would not support health warnings on these products, because they add to this confusion about whether nicotine is harmful versus whether the other constituents of tobacco are harmful.

Lord Sharkey: I understand entirely; I was interested in whether you were aware of the evidence that led the Commission to propose that below a certain threshold they should feature a health warning.

Dr King: No, I am not aware of the evidence.

Q17 Lord Judd: I would like to revert to something we were talking about a little earlier. You were saying, for example, that the issue of slim cigarettes was of more concern to Bulgaria than ourselves. Presumably, if we have more Bulgarian people living here, that issue will change. To come back to the issue itself, however, what I would like to pursue on this front is this: do you or do you not accept the evidence from studies that suggests young people do believe that slim cigarettes are less harmful to their health?

Would you also comment on the reality that it is not just slim cigarettes, but the language used in marketing generally? For example, these are terms such as "low tar", "light", "ultra light", "mild", "natural", "organic", "without additives", "without flavours" or "slim". It is also names and pictures and figurative or other signs. Would you agree or would you not agree that this encourages people—I do not believe it is just the young, but particularly the young—to think that these things make smoking less hazardous?

Jaine Chisholm Caunt: I am not aware of any evidence that young people consider slims or other product categories less harmful; in fact, all tobacco products, certainly those within the UK, are prominently displayed with picture health warnings and textual health warnings, regardless of the type of product. It says, covering 40% of that pack, "Smoking kills".

The Chairman: Why, in that case, do the tobacco companies put all these phrases on their publicity?

Lord Tomlinson: Because they are forced to.

Jaine Chisholm Caunt: As I referred to in my previous answer, tobacco companies compete for market share between existing smokers and they design different packets and different designs to appeal to different consumers. This is an adult choice.

The Chairman: I understand that, but the distinction you are making—that tobacco companies are competing against each other, but are not trying to increase the overall smoking of cigarettes—is a little bit difficult to sustain, since if all the tobacco companies were enormously successful in their promotions, presumably the overall figure would go up.

Jaine Chisholm Caunt: That is the case, that tobacco companies compete for market share from each other—

The Chairman: That is what I thought; my arithmetic is not very good, but it does get that far.

Jaine Chisholm Caunt: However, the reality is that the market is such that even very small percentage changes from one brand to another can mean quite a difference to an individual company, but that is the intention.

The Chairman: I take that point, but I do not think it is the total answer to the question of why tobacco companies are spending so much money promoting these phrases or these words, which are designed—I think you have recognised this—to make their product more attractive.

Jaine Chisholm Caunt: The concept of attractiveness is inherently subjective. Who is to say which particular product or packaging is attractive?

The Chairman: We are talking here about more attractive in terms of persuading more people to buy them.

Jaine Chisholm Caunt: I am not aware of any evidence that actually supports that.

The Chairman: Then why do they do it?

Jaine Chisholm Caunt: As I said before, tobacco companies compete for market share; they produce different products to appeal to different adult consumers.

The Chairman: I think we are going around in circles a little bit.

Q18 Lord Avebury: If they were all using similar phrases, would that not defeat the object of the exercise of one manufacturer taking away market share from another? Would they not all be in the position of trying to increase their sales?

Jaine Chisholm Caunt: I am neither a salesperson nor a marketeer nor a lawyer; in fact, there seem to be a huge number of jobs that I am not today, but I am very happy to supply additional evidence on this subject, if you would find it of use.

Lord Sharkey: Is it the case that tobacco companies regard the packs as marketing tools?

Jaine Chisholm Caunt: There is a very clear distinction in law between packaging and marketing. The Tobacco Advertising and Promotion Act 2002 explicitly excluded tobacco-product packaging from advertising. It is not the same.

Lord Judd: I am slightly confused by what you are saying, frankly. I would like to ask you first whether you and those you represent accept that smoking harms health, or do you not?

Jaine Chisholm Caunt: Yes, my member companies accept that there are health risks associated with smoking tobacco.

Lord Judd: That is a very important thing you have said; you accept that it harms health.

Jaine Chisholm Caunt: Yes.

Lord Judd: To follow the Lord Chairman's important point, then, why do you spend a lot of energy and time counteracting that argument by using marketing techniques that suggest it does not, or that it can be reduced?

Jaine Chisholm Caunt: I dispute the fact that any of the marketing activity does actually reduce the salience of health warnings, which are very prominently displayed on packaging. It is also fair to say there is an extremely high level of awareness of the risks of smoking across the EU.

Lord Judd: You also use this argument—I am glad it is being pursued—that you are really encouraging free competition between the manufacturers and you are helping manufacturers to have the space in which they can compete with their marketing techniques. Would you accept—I hope I am not putting this emotively; I think it is a very important issue of logic—that if you say you agree that smoking harms health, you are in fact, then, looking for ways in which people can compete in harming health?

Jaine Chisholm Caunt: The tobacco companies all accept that smoking tobacco has associated health risks; however, I am here today to discuss the scrutiny of the EU Tobacco Products Directive and whether or not it has a legal and constitutional basis.

Q19 Baroness Prashar: Do you think the Commission's proposal is compatible with World Health Organization's Framework Convention on Tobacco Control? You mentioned it earlier, Dr King.

Dr King: Yes, we do. We think it does meet obligations. I have got "gold standard" here, but I must not use that term. It does not go as far as it could do, and as far as other countries are going. I suppose we need to ask whether we want to be at the leading edge of protecting our consumers and our public. Certainly, in terms of health warnings, labelling and the conformity of packaging and so on, these are all obligations under the FCTC. It is important, and we believe it is in the current proposal, that Member States can go further if

they want to—for example, on standard packs and so on. There are two areas—one is illicit trade, which we might be coming to—where there is a protocol, which will be a legally binding agreement, that mostly we feel these proposals meet, though we have one or two issues with it.

The other area of the FCTC that we think is very important to continue raising is called article 5.3. It is about the interference of the tobacco industry in tobacco control policies. The World Health Organization has documented a lot of evidence about how tobacco companies have sought to mislead on scientific evidence on the harms, have facilitated smuggling and have lied about the harms in the past, and so on. There is a large amount of evidence. One of the reports that we circulated to the Committee is about the sort of tactics that the tobacco industry used when the 2001 Directive was being developed, in putting out misleading information, using legal arguments that they had been advised were groundless and in exaggerating economic losses. We are seeing all of these again today. We would certainly hope that the Government would look very closely at our obligations under article 5.3, which state there should be interactions only to the extent necessary to regulate the product, because of this fundamental and irreconcilable conflict between the interests of the tobacco industry and public health.

Jaine Chisholm Caunt: The EU has to respect international law; however, we feel that the proposal manages to overstate some aspects of international law and ignore others. Certainly, this proposal is inconsistent with the FCTC protocol to eliminate illicit trade in tobacco products, which was only signed in November; the Member States are currently taking steps to implement it. We certainly do not think there is any need to try to replicate this process at EU level. The TMA also believes that elements of the proposal, such as regarding the pack design restrictions and labelling requirements, infringe the WTO agreement on trade-related aspects of international property rights and the agreement on

technical barriers to trade. It is surprising, we think, that the Commission has not examined the proposal against these binding international-law requirements. At the same time, the proposal overstates the effect of the FCTC guidelines. The EU is simply accepting the non-binding guidelines and giving them binding effect without any consideration of the substance of the issues. For example, the bans on specific ingredients have been taken from the non-binding partial guidelines on article 9 and article 10 of the FCTC without any analysis by the EU. We are also concerned with the frequent misinterpretation of the effect of the FCTC guidelines regarding article 5.3.

It is necessary and right to engage the industry in policymaking. The TMA welcomes this opportunity to appear before you here today. We are concerned, however, that sometimes these guidelines, which have been drawn up as non-binding guidelines, are sometimes used to try to exclude the industry entirely from the democratic process.

Q20 Lord Blencathra: I want to move on to illicit trade, and also discuss plain packaging. First of all, can I have briefly, from each of you, your perception of the size of the criminal racketeering market in tobacco or cigarettes?

Dr King: Based on HMRC data, we have seen a decline in illicit trade from about 20% 10 years ago to about 9%. They base their findings on sales data and studies of smoking-prevalence rates. They are nationally representative. We can see a halving in illicit trade, thanks to very concerted efforts by the agencies, especially the UK Border Agency.

Lord Blencathra: How many hundred millions or billions does that 9% equate to?

Dr King: I am sorry; I cannot tell you that.

Jaine Chisholm Caunt: Unfortunately, that figure was correct two years ago, but it is now out of date. HMRC data is anything up to two years out of date, which is something they themselves acknowledge. The TMA and member companies work very closely with HMRC on illicit trade figures. Our current industry figures show that the current state of the illicit

market is 21% within the UK, and in excess of 47% of hand-rolling tobacco in non-UK-duty-paid in the UK.

The Chairman: We will have to pursue that, of course, with the Minister next week to get the Government's view on these figures, because Lord Blencathra is quite right to be asking. There appears to be a conflict between the two of you as to what the situation is, and we will ask the Minister next week on that.

Lord Blencathra: What is the 21% in pounds, shillings and pence, roughly?

Jaine Chisholm Caunt: The figure of 21% is roughly £8 million a day lost to the UK Treasury in the illicit trade in tobacco.

Lord Blencathra: Do each of you consider that the proposed Directive will actually help combat the illicit trade or make it worse?

Dr King: We believe it will help to combat it. Although there are certain changes we would like to see, tracking-and-tracing systems help to reduce illicit trade. They should conform to the FCTC protocol. However, in conformity with article 5.3 we do not think the tobacco industry should be delegated to developing those systems or to defining data collection and storage, which is in the current proposals.

I would draw your attention, again, to a report that we circulated on the illicit trade by Luk Joossens. In this report, he clearly shows that illicit trade is about availability and price; it is not to do with standardised packaging or health warnings. It is already easy to counterfeit the packs. People can also tell the difference between them, but, because they are cheap, that is what they go for if they are available. The argument that any of these measures will increase illicit trade, we believe, is spurious. It is also an argument the industry uses for most tobacco-control measures that are suggested, like price increases, covering up points of sale, and so on. We see it as a usual argument that is given. It is a

law-and-order issue. We have managed to halve it in this country, thanks to law and order measures taken by the agencies.

Jaine Chisholm Caunt: We think that there will be serious unintended consequences of the Tobacco Products Directive in terms of the illicit trade, in that it will increase it. Effectively, what the proposals will do is take scores of currently legally available products off the shelves of retailers. We think it is unlikely that smokers will simply decide to stop smoking menthol, for example, if that is their preferred brand; they will simply seek out other sources. This provides a huge market opportunity to the already growing problem of the illicit trade in tobacco in this country.

Q21 Lord Blencathra: Dr King, you keep mentioning that price is the driving factor. If things are cheaper, that is more important than anything else in encouraging smoking use. In front of me, I have written evidence from Roy Ramm, the former Commander of Scotland Yard's Serious Organised Crimes Branch, and another Chief Constable, pointing out that when legitimate cigarettes from Gallaher are selling at £7.50 a packet, but the racketeers, because they are not paying tobacco duty, can bring them in at £4 a packet, there is a huge and massive illicit market, which they say could be increased because of this Directive. Was Roy Ramm wrong? What do you say to that?

Dr King: Certainly, trading standards and other people involved in enforcement do not agree with that position. I would just repeat that it is a law-and-order issue. There have been some very good models of action taken, certainly in the north-east of England: for example, local authorities working with HMRC and other officials. With the proper measures, you control it. You bring it under control through the legitimate means. You do not not introduce something that is going to protect children because there are criminal activities taking place. You do something to stop those criminal activities.

Lord Blencathra: I must get your comment as well, Ms Chisholm Caunt, on this point.

Jaine Chisholm Caunt: We are obviously very concerned about the potential growth in the illicit trade and particularly the risk this presents to children. Not only is illicit tobacco much cheaper to buy than in a retail shop, but if you are an illicit seller you do not ask for ID. In fact, in the north-east, Fresh carried out a survey that showed that 14 and 15-year-olds were twice as likely to buy illicit tobacco as adults.

Lord Blencathra: Dr King, you say it is a law-and-order issue, but Roy Ramm and the other Chief Constable gave evidence to say that standardised labelling may make tobacco products easier to copy, because there will be fewer distinguishing figures to replicate. It will make it much harder for retailers, consumers and police on the streets to distinguish black-market goods from the real thing, making meaningful intelligence operations much harder. He is saying that even these packets, with all their holograms and other things, are more difficult to replicate than the millions of packets of dodgy tobacco we get in from Bulgaria.

Dr King: Actually, those packs are already easy to counterfeit. The counterfeiters are very clever, but there will be covert markings, as there are now, which distinguish illicit from licit products. Those will continue. The standard pack will still have big health warnings. But they are already counterfeiting them. It is not going to necessarily be any easier for them to do. There will be tracking-and-tracing on them, including covert markings to distinguish them so that enforcement officers can tell if it is a legal product or not.

Q22 Lord Tomlinson: I would like to ask you about whether you believe that the other measures that have been adopted in the United Kingdom—measures such as the banning of vending machines, one that you referred to last answer, No ID No Sale, and pictorial warnings on packaging—are both appropriate and effective?

Dr King: Yes, we do. We strongly support the removal of vending machines, which is now virtually complete across the UK, I believe, because they were a very easy source of

cigarettes for children and young people. Measures to try to introduce age verification were shown to be ineffective. We strongly support that. ID cards are easy to fake. We think that test purchasing is effective; you need law-enforcement measures to make sure that underage sales are not taking place. We have discussed picture warnings quite a bit already; we certainly think they are effective and we support them being 75% of the front and back of packs.

Jaine Chisholm Caunt: We did not support the ban on vending machines. We think it is a pity that other alternatives were not found instead. However, we do support measures to reduce youth smoking that are based on reducing children's access opportunities to tobacco. For this reason we are big supporters of No ID No Sale and CitizenCard. We would also call on Government to go further: we believe it should be made illegal to proxy-purchase tobacco as it is for alcohol. In the UK, at the moment it is illegal to proxy-purchase alcohol on behalf of somebody under the age of 18. This is not the case for tobacco, but it is the case in Scotland. We feel this is a very good area for legislation, because it is direct and targets access opportunities.

The Chairman: That is a point we can put to the Minister next week and seek her view.

Q23 Lord Blencathra: Could I ask you each of you what your opinion is on plain packaging?

Dr King: We strongly support it. As we have discussed already, branding is attractive to young people. The colours on packs can lead to people being misled about the relative harm of the product, and it distracts from the health warning. Conversely, standard packs—I have some here with me, if they can be handed up—are not plain packs; they have the health warning; they will have the brand in the standard format. However, they are not attractive. They have been introduced in Australia. We hear that is going very well. There is a lot of misleading information about whether they breach trade rules. There are people saying

transactions times are longer; we do not agree. There is now published academic research showing that there is no impact on transaction times. Again, a lot of counterarguments are being put, but we believe this is the next important measure to protect children from tobacco marketing.

Jaine Chisholm Caunt: There is no credible evidence that links packaging to smoking initiation in the young. However, there is a considerable body of evidence that list factors such as the influence of peers and family members, and access opportunities to tobacco as predictors of youth smoking. Implementation of standardised packaging would at best, therefore, have no impact on youth smoking rates and, at worst, actually increase it through fostering the illicit trade in smuggled and counterfeit tobacco, which, as I mentioned before, already costs the UK Treasury £8 million a day. It also brings organised criminal gangs into local communities.

While the impact of plain packaging on youth smoking is highly speculative, the threat to a large number of British businesses is real. The tobacco sector employs over 5,500 people directly in UK and supports a further 66,000 British jobs in retailing, distribution, packaging, warehousing, design, marketing, wholesaling and many, many other businesses, all of whom are directly affected by developments in tobacco regulation. Further, the proposal would deprive tobacco manufacturers of their trademarks and brands. These concerns, along with many others, led to more than 500,000 people opposing plain packaging in the recent UK public consultation. It is worth noting that the tobacco-control measures in Australia that were referred to, and those elsewhere, are subject to WTO panel disputes and bilateral-investment-treaty arbitrations.

Lord Blencathra: Finally from me, do you believe the EU will or should introduce plain packaging in the future? I think you answered no to that.

Dr King: Yes, we would like to see that, but we would not wish for its introduction to the UK to be delayed. We very strongly hope and support standardised packaging coming in here in the UK.

Lord Blencathra: Would this, which you have passed around, be standardised packaging?

Dr King: Yes, effectively. There would be different pictures.

Lord Blencathra: My only comment is that even I could forge that with my current computer and printer, but I do not think I could forge these.

The Chairman: Thank you for coming and replying so patiently and so fully to our questions. We are having another session, as I said, next week. We will be taking further evidence and talking to the Minister about this. After that, we will be expressing our views on the basis of the evidence we have received, including, of course, the testimony that you have both brought to us this morning. Thank you.