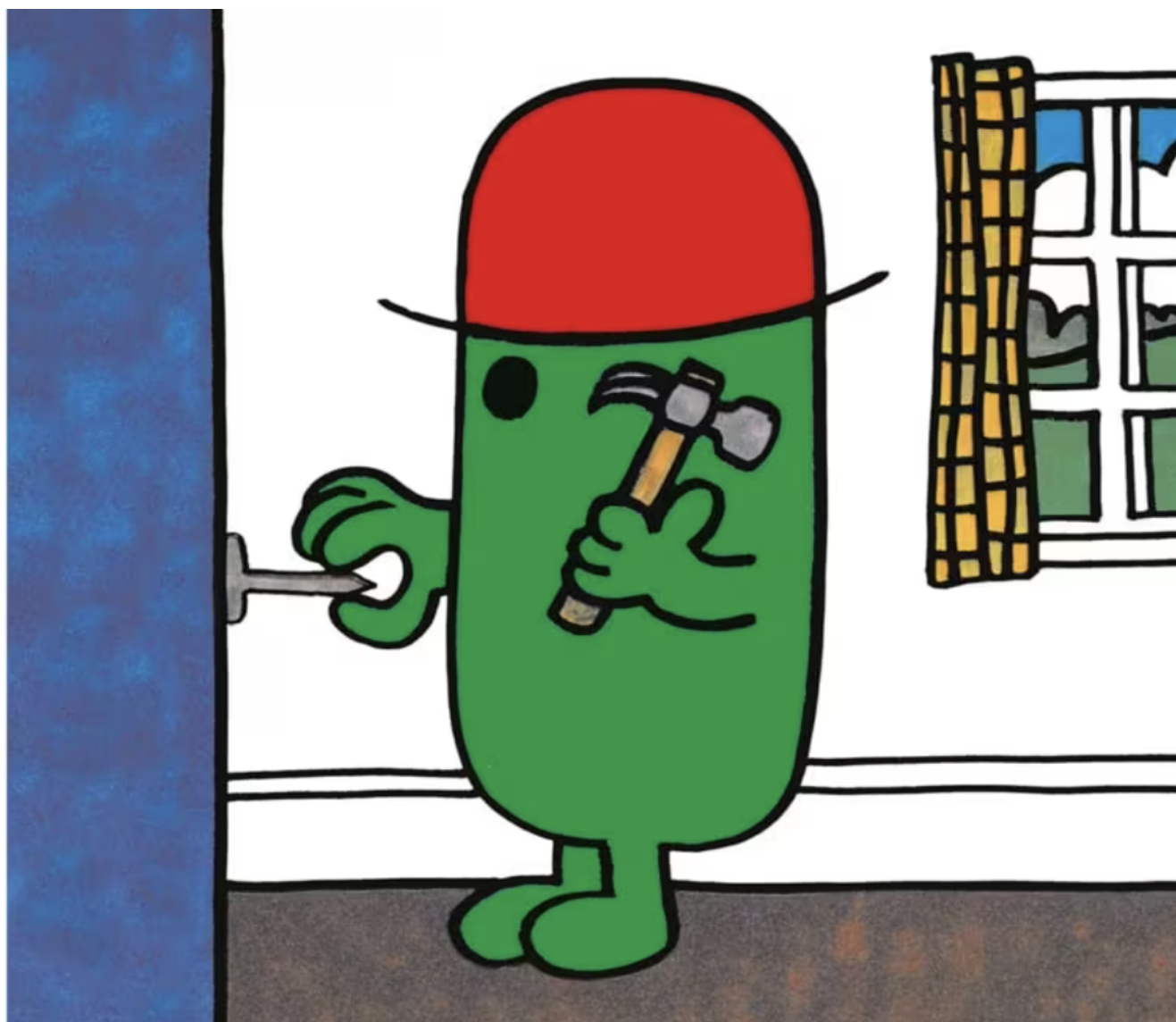


UK policy on tobacco and vaping - a muddle and a mess

written by Clive Bates | 20 March 2024



Mr Muddle is confused

The government set a “smoke-free” goal to reduce smoking to below 5% by 2030 [[briefing here](#)]. This is a good idea. It would always be a challenge to achieve this, and it requires an acceleration of progress for the remainder of the decade. But it would inevitably rely heavily on smokers switching from smoking to safer alternatives, such as vaping, nicotine pouches and smoke-free tobacco products. Instead of going all-in on promoting switching, the government has instead introduced a pointless but controversial headline measure on smoking, the Smoke-free Generation, and a range of restrictive and punitive policies that will

suppress the uptake of vaping by smokers.

1. Smoke-free Generation (SFG)

The Smoke-Free Generation (SFG) is the Prime Minister's flagship proposal. Under this measure, it would be permanently illegal to sell tobacco products to adults born after 1 January 2009. Since it is already illegal to sell to people under 18, this policy *only* applies to adults, defined in the UK as people aged 18 or over.

There are two fundamental problems with this:

1. It should not apply beyond the age of 21
2. It should only apply to *combustible* tobacco - it is supposed to support a *smoke-free* goal

Additionally, the government is busy with ill-conceived measures (bans and taxes on vaping—see below) that would throttle efforts to address both youth and adult smoking. So, while introducing this measure, they are hard at work aggravating the problem it is designed to resolve. The strategy here is a muddle, to put it kindly.

Here are some of the concerns about the smoke-free generation policy.

Raising the age of majority indefinitely into adulthood

- SFG only makes a difference to adults. It is *not* a youth protection measure. We already have age-of-sale laws that cover everyone under 18. If there is an appetite to do *something*, then extending this age to 21 would be acceptable and would not open new issues of principle.
- SFG raises fundamental new issues about the age of the majority and, therefore, the appropriate relationship between the adult citizen and the

state. A change of this nature requires much deeper deliberation than the government has managed so far, and it should meet considerable resistance in parliament. It would be unhealthy in a democracy if it was just waved through.

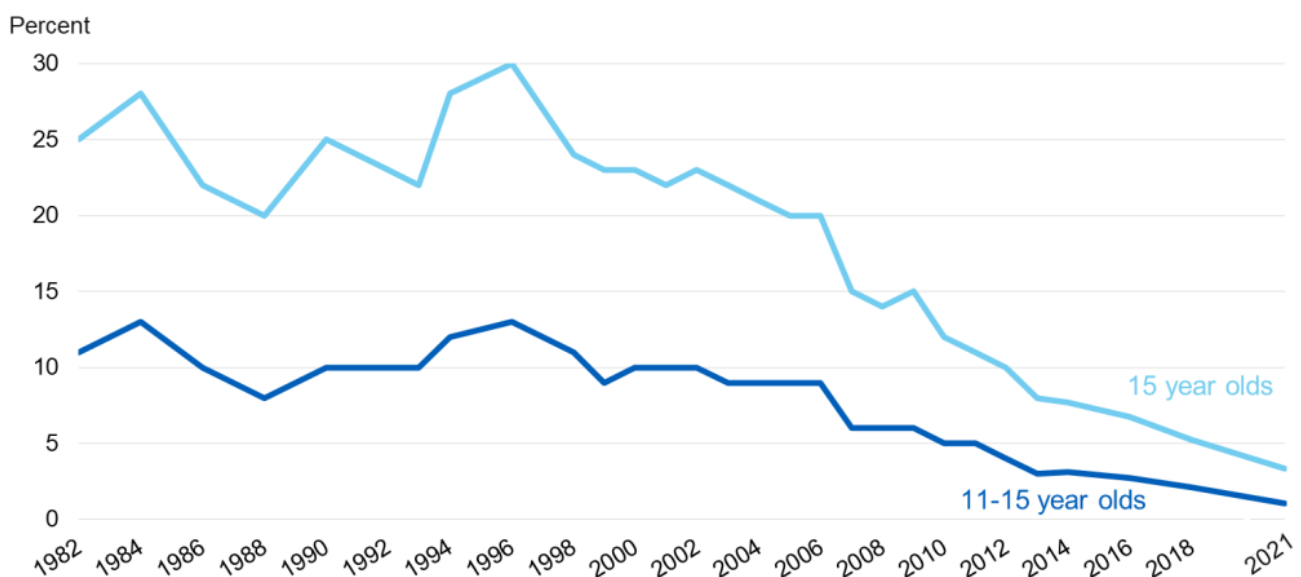
- Existing age restrictions (18) have not stopped one in eight (12.2%) of 16-17-year-olds being current cigarette smokers in 2023 ([Smoking Toolkit Study](#)). SFG would mainly increase the amount of commerce undertaken outside the law, nourishing criminal networks and creating illicit trade between older and younger tobacco users.
- SFG is targeted at precisely the wrong population for public health purposes. The problem is the existing 6.4 million base of existing adult smokers ([ONS](#)), which is generally concentrated in poorer communities or experiencing some form of disadvantage. The SFG measure does not reach them. However, the anti-vaping measures proposed by the government will make it harder for them to switch and support continued smoking.
- SFG only affects people who are unlikely *ever* to suffer from smoking-related diseases. We know from epidemiology that people who quit smoking by age 40 avoid all the excess risk of serious smoking-related disease ([Cho et al. 2024](#)). The “smoke-free generation” created by this legislation would start to turn 40 in 2049. It is *inconceivable* that they will still be smoking by then. Smoking will be obsolete, and people will either not use nicotine at all or use it in much safer forms – such as vaping or pouches. Even if vapes (etc) do not reach everyone now, 22 more years of innovation and normalisation will drive out smoking. In countries such as the United States, smoking has already been almost entirely displaced by vaping among younger people.
- While it is possible to construct contrived polling questions that appear to show public support for the measure, it should not be assumed that the public will just go along with a measure targeted at adults, once it is clear how it would work. [See Christopher Snowdon: No, Sunak’s smoking ban does not command the overwhelming support of Conservative voters](#) (Conservative Home, March 2024).
 - *Everyone agrees that people born after 2008 should not currently be allowed to buy tobacco, but that doesn’t mean that they should never be allowed to buy tobacco. [...] Leaving aside the liberal objections, it is simply preposterous to ban one group of*

adults from buying a product that is still on the shelves for another group of adults.

- SFG “endgame” proposals were proposed and then [reversed in both New Zealand](#) and [Malaysia](#). As far as I am aware, there are no other examples of this policy in place or in the pipeline.

The disappearing problem?

The problem of youth smoking is disappearing – youth smoking has declined dramatically over the last couple of decades. The chart below (source [NHS Digital, 2022](#) - 2021 data) shows a sustained decline in regular smoking among the school students surveyed. Only around 3% of 15-year-olds were classed as regular smokers, down from 30% in 1996.



Regular smoking - 11-15-year-olds, NHS

One argument in favour of the Smoke-free Generation policy I’ve heard a few times is that it doesn’t do much because the problem it is supposed to address is vanishing anyway. It follows that the issues it raises will not be so troublesome because it doesn’t do very much. However, it must also be viewed in terms of *opportunity costs* and the efficient expenditure of political capital. My concern is that this flagship policy misses the point (the stock of 6.4 million smokers who are already adults) and diverts attention from doing something more serious to address the smoking burden in that population. It also provides cover for taking

ill-judged and counterproductive actions on vapes, *which do address the the real public health problem.*

Unjustified extension to smoke-free tobacco products

As well as the problematic age-related issues described above, the measure is irrationally and counterproductively extended to *non-smoking tobacco* - such as heated tobacco products and smokeless tobacco. There is good evidence that such products can substitute for smoking for some people and have a net public health benefit. We have extensive evidence that snus has reduced smoking and related diseases in countries that allow it (see [Ramström, 2024](#)) At least one heated tobacco product has been designated “appropriate for the protection of public health” by the US FDA ([here](#)) and these products have transformed the market in Japan.

It seems the government and its advisers are more anti-tobacco than they are pro-health. The government has a “Smoke-free” target to reduce smoking to 5% by 2030. These smoke-free tobacco products could be part of the solution. It makes no sense at all to include them in the “Smoke-free Generation” ban.

Will it work?

We have to get beyond the idea that bans make the banned product or behaviour disappear. In 2023, one in eight (12.2%) 16-17-year-olds in England were classified as current smokers ([Smoking Toolkit](#)), yet we have an age of sale restriction that applies up to age 18 - so it is clearly not watertight!

Where do young people get their cigarettes? The [survey](#), *Smoking, Drinking and Drug Use among Young People in England, 2021* (published 2022), found that 15-year-olds asked to name their usual source (more than one answer was allowed) named the following:

- 31% said they were bought from a newsagent, garage, supermarket or other shop
- 52% said they were given cigarettes

- 30% said they bought from friends, relatives or others
- 9% had found or taken cigarettes
- 6% bought from the internet
- 4% from market stalls

The point is not the specific numbers that used each source (and I would expect these to vary with age and consumption per week) but that the sources used can adapt over time in response to regulation. I expect that as purchasing from primary sources (shops) becomes more difficult, a secondary age-stratified market will emerge – possibly linked to a broader market for contraband that avoids tax. That’s not to say that these age restrictions do not have an effect – they may (at least initially) raise transaction and time costs, and some people will not want to deal with illegal activity, even at a distance. It makes it marginally more challenging to purchase tobacco. These policies create frictional resistance rather than insurmountable barriers.

Is it right?

With any policy, we should obviously ask whether it will work. If it is unlikely to work, there is no need to go further. However, even if it is likely to work, we should also ask whether the proposed intervention is “right” or “appropriate”, taking wider considerations into account. The “Is it right?” question is rarely even a reason for pause in the lusty pursuit of ever stricter regulation by tobacco control activists [see my [discussion of New Zealand endgame policy](#)]. But an excellent new paper by Karl Erik Lund and Gunnar Saebo points out that it *really needs to be*:

Strengthening of the infrastructure for tobacco control can be seen as a “help” to people who—due to some sort of “decision failure”—continue to smoke against their own will. However, for those who want to continue smoking for reasons that for them appear rational, such measures may appear unwanted, punitive, and coercive. Is it within the rights of regulators to ignore peoples’ self-determination for the sake of their own good?

Lund, K. E., & Saebo, G. (2024). Challenges in legitimizing further measures against smoking in jurisdictions with robust infrastructure for tobacco control: How far can the authorities allow themselves to go? Harm Reduction Journal,

I am not going to rehearse the “autonomy” arguments against denying one set of adults access to something available to another set of adults on an age-discrimination basis. *We either respect adult autonomy or we do not.* It is legitimate to oppose (or support) these measures on an “in-principle” basis.

And is this measure a sledgehammer? What if these measures prevent people smoking who wouldn't be in great danger of harm - occasional users, people who like a cigar, people who are okay with smoking when young but will quit before 40? Isn't that overreach?

A better age-related smoking policy

If the government insists on doing something, it would be better to confine this measure to raising the age of sale to 21 and restricting its scope only to *combustible tobacco* (i.e., smoking) products, not smoke-free tobacco or “C-21”. The economist Michael Pesko eloquently makes the case for C-21 ([Pesko, 2022](#)).

There are benefits of raising age-of-sale laws for combustible tobacco only, such as through a Combustible 21 law that would prohibit the sale of combustible tobacco to individuals under 21 years of age but leave open the opportunity to legally purchase e-cigarettes and smokeless tobacco products..

[Pesko, 2022](#)

C-21 could be introduced in the UK in 2027 and have a greater positive effect on the government's 2030 targets than SFG, which would only apply to 21-year-olds by 2030.

2. Regulation and taxation of vaping products

Next we look at how the government is holding back the real solutions to the problems of smoking.

Real-world reactions to regulation, bans, and taxes

The government's policy is also wrong in the way it wants to crack down on vaping. The problem is that vaping and smoking are connected economically – they are substitutes. Press down on one and expect more of the other. There is a significant demand for vapes from adults who wish to use them as alternatives to smoking. The government understands that switching to vaping dramatically reduces risk to the user. So, vapes can and should play a significant role in addressing the problem of the stock of 6.4 million smokers and do the heavy lifting in meeting the government's smoke-free target.

To its credit, the government is introducing a new [Swap to Stop scheme](#) to help low-income and otherwise disadvantaged smokers to switch. But these regulations and price signals send confusing messages about the desirability and affordability of making a change.

Yet, the government's policy is to make the switch from smoking to vaping more difficult, less appealing, and more expensive. It will do this via, respectively, a ban on disposables, new powers to ban flavours, and a new tax – the Vaping Products Duty.

The critical insight to appreciate here is that a ban on a product does not cause the banned product to disappear or guarantee the people using it will become abstinent. A ban amounts to a perturbation in a complex adaptive system of economic relationships and personal behaviours.

The effect of these measures will be to trigger three general reactions:

1. *Behaviour change*. Users will switch to products not banned, including relapse to smoking, not quitting smoking in the first place, and not being diverted from smoking initiation. Because of the relative risks would only take a slight uptick in smoking relative to the no-policy counterfactual to completely swamp any benefits from these measures.
2. *Illicit market*. The banned products will become available through illicit criminal supply. This is already out of hand in the UK (perhaps 50% of the disposables market). The policy really represents a decision to increase

the proportion of the market supplied illegally and outside the framework of regulation and responsible retailing.

3. *Workarounds*. Consumers and producers will avoid regulation by, for example, home-mixing their e-liquids, a dangerous alternative to professional, regulated manufacturing.

More specifically, what matters is how people using these products (or who might have used them in future) respond to this perturbation. These are some of the plausible responses:

1. Return to smoking
2. Take up smoking instead of vaping
3. Fail to switch to vaping from smoking in the future
4. Become or remain a dual-user instead of exclusive vaping
5. Switch to vaping products not banned
6. Switch to illegally supplied banned vaping products
7. Switch to other non-tobacco nicotine products, such as pouches
8. Switch to heated tobacco products or snus (if available)
9. Try other substances use or other risk behaviours
10. Try user workarounds (e.g. to respond to flavour bans and nicotine limits)
11. Enter the illicit supply chain as a seller or distributor
12. Become abstinent and switch to only virtuous behaviours

Frankly, no one knows the balance of 1-12 in each of the populations of interest (adults, low SES adults, youth, youth who would otherwise have smoked).

It would only take a slight uptick in 1-4 above for the whole thing to quickly become a net negative for health and equity.

3. A ban on disposable vapes

These products are successful for a reason. They are easy to use, low-cost, and do not have up-front costs. They are ideally suited for the first steps away from smoking. We must be careful when overruling people's expressed preferences as shown by what they buy. We don't know what they may do instead.

The ban affects far more adults the youth

We know from [Jackson et al. 2024](#) that the disposable ban will affect 2.6 million adults (18+). The government is coy about the youth figures, but ASH's YouGov [survey](#) gives the following for 11-17-year-olds in 2023 (data from this survey is cited selectively by the government):

- 7.6% were currently vaping (3.9% less than once a week, 3.6% more than once a week).

The population of 11-17-year-olds in 2021 was 5.33 million (Britain), so a crude approximation would be:

- Adults = 2.6 million (Jackson et al.)
- Youth (< once per week) = 207,000 [3.9% of 5.33m]
- Youth (> once per week) = 192,000 [3.6% of 5.33m]

Also, ASH says the proportion of teen vapers who say they most frequently use disposables is 69%. That would be 275,000 young people using disposables (an unknown split between less than and more than weekly)—so about 9-10 times as many adults are affected as youth. This is primarily an adult measure, even if the intent is to address youth vaping.

These adults would be typically people who smoke or used to smoke, and the ban puts their journey out of smoking at risk.

Environmental issues

There are, of course, environmental arguments - but these have been made more emotively rather than scientifically. The question is, how bad is the environmental problem? That requires attention to life-cycle analysis and material flows. It demands a reckoning of the environmental detriment compared to other environmental burdens or the health benefits of smoking cessation - especially as we place high values on each life-year saved (typically £30,000 per QALY).

But the more absurd problem is that banning the lawful supply of these products

also removes the prospect of responsible, law-abiding suppliers who might be able to run a collection and recycling scheme.

4. Bans on flavours

The government is only taking powers to do this at this stage, but it is fraught with dangers. The most recent research confirms that smoking and vaping function as economic substitutes – and that using regulation to press down on vaping increases smoking. An examination of real-world flavour bans in the United States using quasi-experimental economic techniques showed increases in smoking: [Friedman et al. 2023](#)

Over 375 US localities and 7 states have adopted permanent restrictions on sales of flavored electronic nicotine delivery systems (“ENDS”). These policies’ effects on combustible cigarette use, a more harmful habit, remain unclear. Matching new flavor policy data to retail sales data, we find a tradeoff of 12 additional cigarettes for every 1 less 0.7 mL ENDS pod sold due to ENDS flavor restrictions. Further, cigarette sales increase even among brands disproportionately used by underage youth. Thus, any public health benefits of reducing ENDS sales via flavor restrictions may be offset by public health costs from increased cigarette sales.

[Friedman et al. 2023](#)

No one should be proceeding with flavour bans unless and until they are confident it will not lead to an increase in smoking.

5. Taxing vapes

The government has introduced a [Vaping Products Duty](#) in its March Budget statement, though this will not come into effect until October 2026. The consumers’ organisation, the New Nicotine Alliance, condemned the proposal: [The Chancellor’s vape tax is wrong in principle and childlike in application](#) – and for good reasons. The proposal imposes a disproportionate tax on vapes, roughly doubling the cost of stronger liquids. It is based on faulty reasoning and no grasp

of the potential unintended consequences.

A substantial body of evidence shows that ENDS and cigarettes are economic substitutes. This means that when the price of vapes increases, the demand for vapes falls, and the demand for cigarettes rises, all other things being equal [[Selya et al. 2023](#)], including for youth [[Abouk et al. 2023](#)] and young adults [[Friedman and Pesko, 2022](#)]. It is only possible to analyse the impact of a vaping tax by accounting for the effect on alternatives to vaping, including cigarettes.

One U.S. estimate suggests:

“the proposed national e-cigarette tax of \$1.65 per millilitre of vaping liquid would raise the proportion of adults who smoke cigarettes daily by approximately 1 percentage point, translating to 2.5 million extra adult daily smokers.”

[\[Pesko et al. 2020\]](#)

A tax on ENDS protects and promotes the cigarette trade and can easily do more harm than good.

If the government was serious, it could consult the following sources:

1. Selya, A., et al (2023). Meta-analysis of e-cigarette price elasticity. *F1000Research* 2023 12:121, 12, 121. [[link](#)] *“Policies that tax ENDS more heavily than cigarettes have the opposite incentive structure and are likely to exacerbate the tobacco-related health burden.”*
2. Abouk, R. et al. (2023). Intended and unintended effects of e-cigarette taxes on youth tobacco use. *Journal of Health Economics*, 87, 102720. [[link](#)] *“We conclude that the unintended effects of ENDS taxation may considerably undercut or even outweigh any public health gains.”*
3. Friedman, A. S., & Pesko, M. F. (2022). Young Adult Responses to Taxes on Cigarettes and Electronic Nicotine Delivery Systems. *Addiction*. [[link](#)] *“In the United States, higher ENDS tax rates are associated with decreased ENDS use, but increased cigarette smoking among 18- to 25-year-olds, with associations reversed for cigarette taxes.”*
4. Pesko, M. F., Courtemanche, C. J., & Maclean, J. C. (2020). The effects of traditional cigarette and e-cigarette tax rates on adult tobacco product

use. *Journal of Risk and Uncertainty*, 60(3), 229–258. [\[link\]](#) “Using two-way fixed effects models, we find evidence that higher traditional cigarette tax rates reduce adult traditional cigarette use and increase adult e-cigarette use. Similarly, we find that higher e-cigarette tax rates increase traditional cigarette use and reduce e-cigarette use.”

5. Cotti, C., Courtemanche, C., Maclean, J. C., Nesson, E., Pesko, M. F., & Tefft, N. W. (2022). The effects of e-cigarette taxes on e-cigarette prices and tobacco product sales: Evidence from retail panel data. *Journal of Health Economics*, 86, 102676. [\[link\]](#) “We document a cigarette own-price elasticity of -0.4 and positive cross-price elasticities of demand between e-cigarettes and cigarettes, suggesting economic substitution.”
6. Saffer, H., Dench, D., Grossman, M., & Dave, D. (2020). E-cigarettes and adult smoking: Evidence from Minnesota. *Journal of Risk and Uncertainty*, 60(3), 207–228. [\[link\]](#) “The taxation of e-cigarettes at the same rate as cigarettes could deter more than 2.75 million smokers nationally from quitting in the same period.”

7. A better policy for vaping

The anti-vaping measures proposed will not address youth vaping, but they will create harmful friction in the efforts to address adult smoking, which is the central public health issue. There are measures that can be taken to tighten up the vaping market – these should focus on:

1. *Responsible retailing*: enforcement of age restrictions and a licensing scheme for retailers of all tobacco and nicotine products.
2. *Responsible marketing*: the packaging, branding, and trademarks of vaping products must become more sedate and not in any way appeal to children.
3. *Responsible supply*: the authorities must ensure the market is dominated by responsible, lawful, and regulated suppliers. This will be a challenge whatever the government does.

I could say more, but I think I will defer to the New Nicotine Alliance: the voice of the consumer to summarise twenty measures that could be done to advance

public health goals ([full letter and briefing](#))

1. Lift the EU-imposed ban on snus
2. Remove the 20mg/ml limit on the strength of nicotine e-liquid
3. Replace excessive and inappropriate warnings on vaping products
4. Replace excessive and inappropriate warnings on non-combustible tobacco products
5. Replace partial bans on vape advertising with controls on themes and placement
6. Replace blanket bans on advertising of low-risk tobacco products with controls
7. Limit plain packaging to combustibles but control themes on smoke-free packaging
8. Require NHS inserts in cigarette packs to encourage switching to smoke-free products
9. Allow commercial inserts in cigarette packs to promote smoke-free products
10. Amend the leaflet requirement in vaping products
11. Drive motivation to switch with improved risk communications
12. Eliminate pointless restrictions on tank and refill container sizes
13. Take a principled approach to flavoured smoke-free products
14. Introduce consumer protection regulation for modern oral nicotine pouches
15. Use fiscal policy to support the transition to smoke-free alternatives
16. Allow use of smoke-free products in public places
17. Impose well-designed age restrictions
18. Strengthen healthcare and public health system response
19. Allow prescribing of e-cigarettes on a trial basis and engage with vape shops
20. Use science and evidence to underpin the strategy

So, yes we are going the wrong way. Doing pointless things on smoking that will stir controversy and miss the point. Doing counterproductive things on vaping that will slow down progress on reducing smoking and put the 2030 smoke-free goal at risk. Not doing the things that could be done if we were serious about reducing death and disease, rather than overreacting to a moral panic or

marching to the tune of the shameless hubris of American billionaires.