Who sets the agenda?

Learning the lessons from the Responsibility Deal’s failure to tackle junk food marketing and promotion

July 2016
Summary

This briefing paper examines the Responsibility Deal’s lack of progress on food marketing and promotion measures, to see how the Government’s Childhood Obesity Strategy might successfully avoid repeating such mistakes.

The Responsibility Deal was the Government’s flagship public health policy between 2010-15, encouraging industry to make voluntary pledges on food to “support and enable people to adopt a healthier diet”.

The marketing and promotion of healthier food choices was billed as one of the four “pillars” of the Responsibility Deal. However, the London School of Hygiene and Tropical Medicine’s evaluation of the programme found that “interventions aimed at reducing the marketing of less healthy foods, which are shown to be an effective public health intervention, are absent”. Professor Susan Jebb, chair of the Responsibility Deal’s Food Network (the body co-ordinating stakeholders from government, manufacturing, retailers, caterers and civil society) has also concluded that “we have given voluntary agreements to control the promotion of unhealthy options the best possible opportunity to fly. Now we need to look to harder policy options to secure progress.”

The Children’s Food Campaign has analysed briefing papers and minutes from the Responsibility Deal Food Network’s own high level steering group to reveal what lay behind the failure to make any real progress on reducing the marketing and promotion of foods high in fat, sugar or salt during the five years of the Responsibility Deal. The Government should draw on these lessons when finalising and implementing its Childhood Obesity Strategy.

Key lessons for the Government

- Don’t delay implementing measures on marketing and promotions
- Don’t let industry set the terms of its own commitments
- Introduce mandatory measures, and also penalties for inaction
- Don’t rely on voluntary self-regulation
- Don’t offer any further ‘last chances’ for industry to self-regulate
The context

Why robust action is necessary

Children are eating too many calories, which is fuelling high levels of obesity. Many of these excess calories come from sugar. Children tend to be consuming too much saturated fat and not enough fibre in their diet as well.

One in five children are overweight or obese when they enter primary school; rising to approximately one in three children by the time they start secondary school. Obesity rates have plateaued at very high levels and are showing no appreciable signs of any fall, whilst the gap in obesity rates between children living in less and more deprived areas is ever increasing.

Childhood obesity is associated with conditions such as insulin resistance, hypertension, asthma, sleep problems and poor mental health, as well as an increased risk of developing cancers and heart disease in later life. In addition, 28% of 5 year-olds have tooth decay and the number one cause of hospital admissions for that age is tooth extractions.

There is also an economic cost. Health problems associated with children and adults being overweight or obese cost the NHS more than £6 billion annually. Almost 10% of the NHS’s budget now goes on treating Type 2 diabetes and its effects.

The power of marketing

Public Health England’s evidence review concluded that “price, promotions and marketing are all effective strategies influencing preference for, and purchasing of, high sugar products in England.” Research shows that food promotions can influence children’s behaviour in a number of ways including their preferences, purchase behaviour and consumption.

Food and beverage producers aim to build long term relationships between young consumers and their brands. Children as young as eighteen months can recognise brands and children as young as three have been shown to prefer branded, over identical unbranded food. Evidence shows that many children are unable to critically interpret advertising, and that younger children are not able to discriminate between advertising and other media content.

Children are constantly exposed to food marketing: on TV, on radio, on the internet, in emails, social media and text messages, at the cinema, in comics and magazines, in supermarkets, on food packaging, and for some even at school. Much of this marketing is weighted heavily towards unhealthy foods, with very few advertisements promoting healthy options. Repeated analysis of the programmes most watched by children – the prime time early evening and mid-evening slots, up until 9pm – found that advertising of products high in fat, sugar or salt was one of the most popular categories of adverts to be shown at that time. Marketing therefore plays a significant role in influencing children’s dietary choices. Children should be protected from commercial interests that encourage them to eat less healthy food and drink.
Lessons from the responsibility deal

Lesson 1: Don’t delay in implementing measures on marketing and promotions

The Responsibility Deal experience:

Food promotion was always seen as an integral part of the Responsibility Deal; the “fourth pillar”. The Chair of the Food Network, Professor Susan Jebb, repeatedly outlined how promotion was an area of work that had been identified for action at the outset and was of high importance to Ministers. Yet, according to the timeline set in March 2011, work on promotions would not start until 2012. By October 2013, the new minister Jane Ellison could announce nothing more than it was still “an area for action” and that the Government “will be discussing with the food industry actions it might take to reduce exposure to marketing and promotion of less healthy foods”. Progress on the issue was further postponed, as other areas of the Responsibility Deal took longer than expected to get underway.

Food promotion ended up being the poor cousin to the other three pillars, deprived of the focus, civil service time and political leadership that those areas were given. The absence of almost any commitments by individual companies on food promotion during that time gives credence to the notion that industry took its cues from government on where the priorities for action lay. When the Responsibility Deal’s Food Network did finally turn its attention to trying to compose a food promotion pledge, it then proved very difficult to instill companies with any sense of urgency or import about the merits of signing up to even a lowest common denominator of options.

By delaying action for so long, the hard decisions were left to just a year before a General Election. By this time there was neither the political will for keeping industry around the table, nor the parliamentary time for alternative strategies once the original plan for a collective pledge on food promotion had been scrapped. Consequently little of note happened.

The Lesson

A firm timetable needs to be set out from the start, with a series of actions scheduled for immediate and imminent implementation.

In addition, leadership and resources matter. The Government needs to commit to overseeing changes to food marketing over the long-haul, and not just in the period immediately after the announcement of the obesity strategy.

Lesson 2: Don’t let industry set the terms of its commitments

The Responsibility Deal experience:

The London School of Hygiene and Tropical Medicine’s evaluation of the Responsibility Deal’s food pledges found that the majority of proposed interventions “favoured information provision, awareness-raising and communication with customers which may have limited effect”. These soft nudge ‘behaviour change’ options may be simpler for companies to implement, but tend to have a much more limited effect compared to structural changes to the food itself (i.e. reformulation) or the way it is marketed. Some companies did choose to reformulate their products, but many fewer pledged to change their marketing approach.
For an area of action that was meant to be the fourth pillar of the Responsibility Deal, simply tacking on vaguely-worded options about food promotion to new pledges was never going to be enough. Yet this was the strategy used with the calorie reduction pledge, and also raised when creating pledges on salt and saturated fat. Although Professor Susan Jebb indicated that actions should also include behaviour change activities such as promotion of lower fat options to consumers, few were forthcoming.

Even of those marketing commitments made under the Responsibility Deal, the majority were short-term trials and promotional activity, far from guaranteed to be turned into sustained practices and permanent commitments. A few retailers (for example Sainsbury's, Tesco's and The Co-operative) and manufacturers (Britvic and Pepsico) made public commitments on permanent change, but – like other pledges – it was hard to ascertain exactly how ambitious or not these actually were.

Without any quantifiable targets, there existed the potential for industry to over-claim their successes and for Government to give unwarranted positive publicity to certain companies and to the efficacy of the Responsibility Deal itself. The pledges announced in the Department of Health’s own press releases about the saturated fat pledge and the fruit and vegetable increased consumption pledge were not all as impressive as first appeared. Indeed, independent analysis has found that one-third of interventions announced as part of the Responsibility Deal were ‘clearly’ underway prior to those announcements, and another third were ‘possibly underway’.

In addition, one of the much-touted successes of this period – Lidl, Tesco and Aldi’s commitments to remove sweets and chocolate from their checkouts and replace them with healthier options – happened mainly outside of the Responsibility Deal, and was instead heavily influenced by the effective Junk Free Checkouts campaign. Indeed, despite positive statements on the issue from the then Public Health Minister, the Responsibility Deal failed to agree on a collective retail pledge on checkouts.

When a pledge on responsible promotion was finally discussed in detail, at the July 2013 meeting of the Food Network, some of the potential areas for action had either already been taken off the table or were proposed to be de-prioritised. Moreover, initial discussions about the need to identify what could be considered poor practice relating to promotions, and not just the good practice, never progressed and that idea was swiftly dropped – again a sign of how the Department for Health gave industry the power to shape the agenda.

The Lesson

“The Responsibility Deal approach is fundamentally flawed in its expectation that industry will take voluntary actions that prioritise public health interests above its own.”

Industry has a vested interest in keeping potentially more challenging issues from being tackled; instead wanting the emphasis to be on taking positive actions and supporting good practice. It isn’t appropriate for retailers and manufacturers to be setting the terms of what they would agree to. Matters which affect public health should be led by Government, in association with the medical profession and civil society; with industry coming to the table only once the top-line priorities, rules and actions have been set.
Lesson 3: Introduce mandatory measures, and also penalties for inaction

The Responsibility Deal experience:

Department of Health officials and ministers conducted almost a year's worth of talks with senior executives from the food retailers and food manufacturers to discuss possible collective action to address the levels of marketing and promotion of foods that are high in salt, fat, saturated fat and sugar. However, in April 2014 those talks broke down without agreement.33

At no point in the negotiations did the Government ever appear to countenance anything other than voluntary measures. Just as with the Responsibility Deal as a whole, there was nothing done by Government to coerce industry involvement, tie them down to specific, quantifiable actions, or spell out what might happen if an agreement wasn't reached. There was no incentive for retailers and manufacturers to commit to the hard choices needed. As one industry analyst succinctly put it, “whatever the Department of Health sees as moving forward will be moving backward for industry”.34

Relying on individual company actions, has proved to be a fairly fruitless course. Even the chair of the Food Network has referred to being “underwhelmed by the response from business to calls for more responsible promotion” and was “particularly disappointed with the lack of activity” by the end of 2014, especially given that over a year had been spent on discussions.35

Promotional activity is a very commercially sensitive area, and despite attempts it was very difficult for companies to have collective discussions on food promotions.36 The problem for food producers and retailers is “how to behave competitively in a market where, to achieve progress, everyone needs to move in the same direction at broadly the same time and where there are currently no sanctions for doing otherwise”.37

This issue of the need for a level playing field – of the type regulation brings – has been publicly recognised by the chief executive of Sainsbury’s, Mike Coupe.38 The British Retail Consortium (BRC) itself have reiterated that only legislation would force companies to take significantly more sugar out of food, and that a voluntary approach will not be effective in limiting promotions either. Andrew Opie, the BRC’s director of food, said: “if the government did want to intervene around promotions, we’d expect it to be based on sound evidence and it would need to be through regulation and not a voluntary agreement.”39

The Lesson

Food marketing and promotion is particularly ill-suited to a voluntary approach. There needs to be proper and fully independent mechanisms to hold companies to account, or to force them to act in the first place. Without them industry will make little progress on its own.
Lesson 4: Don’t rely on advertisers to voluntarily self-regulate

The Department for Health set a lot of store on the Committee of Advertising Practice (CAP)’s previous review of online marketing of less healthy food to children. Yet when this literature review was finally published, it simply reaffirmed the status quo and reminded companies to follow the existing rules, without any consideration of whether those rules are being effectively enforced. 40

Three years ago, when the Children’s Food Campaign first presented the advertising regulator with scientific evidence on the impact of advergames (online game connected to brands or products) and with case studies on how companies were using the lax rules covering digital marketing to promote less healthy foods to children online, it was met with similar indifference and inaction. 41

Only now have CAP finally agreed to consult on whether to harmonise the broadcast and non-broadcast rules relating to the marketing of HFSS food and drink to children, so that online marketing is held to a similar standard as that on television currently is. This was welcome news – as is the fact that both the Food and Drink Federation and the Advertising Association have agreed to the principle that “children under 16 should not be exposed to HFSS advertising.” 42

However, the proposals under consultation by CAP are likely to be too weak to be effective in adequately restricting children’s exposure to the marketing of HFSS products. This particularly applies to the proposals on brand advertising; on not extending the age children are protected to under 18; on only defining an advert as having ‘particular appeal’ to children if children make up more than 25% of the audience; and in inviting the advertising and food industry to apply for exemptions to implementation of the rules. In addition, CAP is refusing to consult on applying the rules to all non-broadcast media. Areas currently outside the remit CAP has chosen for itself include brand characters, packaging, labelling, in-school marketing, in-store placement and sponsorship. These forms of marketing will still not be covered under the proposed new rules.

With the Advertising Standards Authority (ASA), the self-regulatory body which applies the rules, based in the same offices as CAP and sharing some of the same staff, there are real questions about its neutrality and effectiveness.

There is a significant danger that the Government will simply once again delegate the making and monitoring of the rules to an industry-led process, instead of setting the agenda and rules itself, and making sure that implementation happens speedily.

The Lesson

The Department for Health's faith that “current co- and self-regulatory arrangements offer the best protection to consumers, especially children” seems extremely misplaced. 43 It should be Government – through, for instance, its Childhood Obesity Strategy – which sets the ambitious policy goals for the Committee of Advertising Practice to then align their rules to meet. These should always seek to match international best practice, and adhere to World Health Organisation recommendations.
Lesson 5: Don’t offer any further ‘last chances’ for industry

Professor Susan Jebb emphatically made clear in her 2015 Responsibility Deal New Year message that on public health measures “there is a limit to how much you can do by voluntary means” and that limit was reached with the “disappointing” failure to agree a pledge on responsible promotions. She chided industry that “80% of consumers are looking for a healthier diet and a collective pledge would have sent a strong signal that food businesses in England are putting health at the heart of their business strategy”.

The Lesson

Unlike at the start of the Responsibility Deal process – the food and drink industry is in no position to argue that the voluntary approach can work for food promotion, or that they should be given more time to adopt such measures voluntarily. The Government must recognise that the situation has moved on significantly since 2011 and change its approach and policies accordingly.
Learning from other experiences of voluntary agreements

The Royal Society for the Protection of Birds (RSPB) published a report which reviewed the effectiveness of over 150 voluntary schemes across a range of sectors and issues to determine how well they perform. This research showed the impact of most voluntary schemes was limited, with the majority setting unambitious targets, and many also failing to achieve ‘unambitious’ targets. Many schemes were undermined by low rates of industry participation and the resultant lack of a ‘level playing field’ for those participants seeking to improve their performance. The research found nothing to support the claim that voluntary approaches can be an effective alternative to regulation. Within the specific field of marketing, there are three case studies which illustrate the RSPB’s findings very clearly:

Case Study 1 – the Scottish ‘Responsibility Deal’:

In April 2013 the Scottish Government announced it would ask the British Standards Institute to work collaboratively with industry and civil society to produce a benchmark for the responsible marketing of food and drink. But by the end of that year this plan was shelved, after food industry participants withdrew from discussions, unprepared to countenance the suggested recommendations, even though they were meant to be a compromise. Industry objected far less when the Scottish Government then came back with a programme which the Scottish Grocers’ Federation described as now “more aspirational than prescriptive” and that “sets a direction of travel rather than imposing compulsory compliance on retailers”. Even the idea of a nationwide standard for healthy tills had been watered down to become simply “encourage [retailers] to make fresh fruit available at tills, replacing some confectionery where practical”.

The Scottish experience shows that even a half-way house between a voluntary agreement and regulation on food promotion – a ‘Responsibility Deal plus’ approach – is unlikely to bear fruit. As Pete Ritchie, Director of Nourish Scotland, reflects: “it’s a limited strategy to ask people to play a game differently while the rules stay the same. Relying on exhortation alone doesn’t work. That is why other aspects of public health like smoking are underpinned by legislation and regulation.”

Case Study 2 – Tobacco:

The Tobacco Advertising and Promotion Act in 2003 resulted from the recognition that voluntary agreements were completely unworkable in a competitive market, with the Health Select Committee concluding: “the evidence we have reviewed from the advertising agencies leads us to conclude that, once more, voluntary agreements have served the industry well and the public badly”.

Case Study 3 – Alcohol:

The London School of Hygiene and Tropical Medicine’s evaluation of the Responsibility Deal’s alcohol pledges found that “only the ban of posters to limit the marketing of alcohol to children and adolescents was considered to be an effective measure”. It also found that rather than education efforts, which did not seem to work, “the marketing of lower-alcohol content drinks along with price-promotions could be effective in lowering the alcohol intake.”
The marketing restrictions roadmap

The Government already has a roadmap to responsible marketing practices. As part of its Responsibility Deal work, the Department of Health clearly set out the areas where action on food marketing and promotion was needed:52

- Balancing marketing and promotion activity to improve the split between the promotion of high fat, salt and sugar foods and healthier foods.
- Store layout or restaurant menu layout and offers to promote healthier choices, e.g. the use of promotion bins, checkouts and aisle ends.
- On-pack marketing and how this might promote healthier choices, e.g. using marketing methods such as licensed and brand equity characters, and packaging that is attractive to children to promote healthier food products, and considering what constitutes best practice in terms of marketing links from packaging to prizes, competitions and give-aways.

Importantly, both the Department of Health and NICE Guidance on prevention of cardiovascular disease recommended that the work should also include wider measures protecting children from promotion of products high in fat, sugar and salt products across all forms of media.53

Public Health England have now recommended “reducing exposure to marketing by setting broader and deeper controls on advertising of high sugar foods and drinks to children”.54

Public Health England’s recommended areas for action on marketing to children are:55

- extending current restrictions to apply across the full range of programmes that children are likely to watch as opposed to limiting this to just children’s specific programming.
- extending current restrictions on advertising to apply across all other forms of broadcast media, social media and advertising (including in cinemas, on posters, in print, online and advergames)
- limiting the techniques that can be used to engage with children, including plugging the ‘loopholes’ that currently exist around the use of unlicensed but commonly recognised cartoon characters and celebrity endorsement within children’s advertising
- tightening the current nutrient profiling model that governs what can be advertised
- consider limiting brand advertising of well recognised less healthy products including through restrictions on sponsorship on eg sporting events
- taking other broader actions such as removing confectionery or other less healthy foods from end of aisles and till points, including in non-food retail settings (eg clothes shops), and discouraging pricing that incentivises the purchasing of larger pack or portion size.
Conclusion

The importance of making healthy eating choices easier and reversing today's obesogenic environment is now widely understood by policymakers. Yet despite the Department of Health and Public Health England setting out a roadmap of many of the steps needed to get there, there has only been very slow progress in achieving these changes.

Analysis of the Responsibility Deal Food Network’s steering group papers, alongside contemporary media reports and commentary, has shed further light on many of the weaknesses of the past purely voluntary approach, and enabled us the identification of those areas where a new approach is needed most.

Key lessons for the Government

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The question is will the Government learn these lessons and adopt a much tougher approach, or will they settle for business-as-usual again? And will all of Public Health England’s recommendations on restricting the marketing of less healthy food and drink to children be fully adopted by the Government in their Childhood Obesity Strategy?

Ultimately, it comes down to who sets the agenda and controls not only the policy-making, but its implementation as well.

The Children’s Food Campaign has always said that letting the food industry, or the advertising agenda, set the terms of its commitments is no way to prioritise public health; nor is refusing to enact penalties for companies who don’t fully implement their commitments, or who don’t sign up at all. Good companies continue to do good things while bad companies continue doing bad things, and no one can stop them. What is really needed is a legal level playing field so all companies have to do the right thing, including an end to marketing junk food at children.

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Children’s Food Campaign: The Campaign aims to improve children and young people's health campaigning for policy changes in our schools, in our communities and throughout our society that would promote healthy and sustainable food environments. The Children's Food Campaign is supported by over 100 UK-wide and national organisations. We are co-ordinated by Sustain: the alliance for better food and farming.

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Email from Pete Ritchie, Director of Nourish Scotland to Children’s Food Campaign, 6 July 2015


Ibid (p25).
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