

*Professor Raman Bedi
Chief Dental Officer - England*



Gateway Ref: 5136

September 2005

*Professor Raman Bedi
Chief Dental Officer - England
New Kings Beam House
Room 11/1/9, 11th Floor
22 Upper Ground
London SE1 9BW*

*Tel: 0207-633-4156
Fax: 0207-633-7665
Raman.Bedi@dh.gsi.gov.uk*

To:

SHA Chief Executives
Directors of Public Health at SHAs
PCT Chief Executives
Directors of Public Health at PCTs

Copies to:

Regional Directors of Public Health
Consultants in Dental Public Health

Fluoridation of Drinking Water

Dear Colleague

1. I am writing to explain why fluoridation now offers PCTs/SHAs a realistic option of reducing health inequalities which PCTs should include in their consideration of measures to improve the oral health of their populations. This letter provides guidance on a new legislative framework governing the consultations and assessment of public opinion that SHAs need to undertake where they propose to make arrangements with a water undertaker to increase the fluoride content of a water supply. It also advises on the technical and legal issues SHAs need to address in conducting consultations and making arrangements with water undertakers including the means by which water undertakers may be indemnified against any liabilities arising from the fluoridation of water.

Background

2. The University of York report A Systematic Review of Water Fluoridation¹, published in September 2000 concluded that water fluoridation increased the number of children without tooth decay by 15 per cent. There is also accumulating evidence of the benefits of fluoridation to the oral health of adults.
3. All water supplies contain some fluoride and it was from observing different patterns of dental decay in areas of differing levels of naturally fluoridated water that the benefits of fluoride were first observed. Currently around six million people in England receive water, which either has had its level of fluoride adjusted to, or has a natural fluoride content of around 1 milligram per litre.
4. Evidence of the potential fluoridation offers for reducing health inequalities may be found from the contrasting levels of tooth decay in areas of similar population mix. In Sandwell the water supply was fluoridated in 1986. Over the following 10 years, the amount of tooth decay in children had more than halved. During the same period Bolton, with a comparable population mix, saw little change in its children's oral health.
5. Arrangements for all the existing fluoridation schemes were made before 1985. The Water (Fluoridation) Act 1985, which was consolidated in the Water Industry Act 1991, was intended to regularize the legislative framework, but it proved to be ineffective. Section 87 of the Act stated that, when requested by health authorities, water undertakers (water companies), "may increase the fluoride content of the water supplied by them within that area". No new schemes were introduced under this legislation. Water undertakers did not feel equipped to make decisions on what they considered to be a public health issue and their representatives pressed for the legislation to be amended to make SHAs responsible for these decisions.

The New Legislative Framework

6. Section 58 of the Water Act 2003² (“the Water Act”) included wide-ranging amendments to the provisions on fluoridation in section 87 of the Water Industry Act 1991³ (“the Act”). Most significantly, section 87(1) was amended to impose an obligation on water undertakers and now reads:
“If requested in writing to do so by a relevant authority, a water undertaker shall enter into arrangements with the relevant authority to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.”
7. New section 87(2) goes on to provide that a water undertaker shall not be required to enter into such an arrangement until an indemnity has been given by virtue of section 90 to the water undertaker and to any licensed water supplier, which is entitled to one. New section 89(1) requires a relevant authority (the appropriate SHA in England, the National Assembly in Wales) to consult and ascertain opinion in accordance with regulations made by the appropriate authority (the Secretary of state for Health in England, the National Assembly in Wales) before taking any step mentioned in section 89(2). Guidance on these regulations is given at paragraphs 17-38 below.
8. The other most significant amendments involve provisions for
 - co-operation between two or more SHAs (or an SHA/SHAs and the National Assembly for Wales (“the Assembly”)) where they request a water undertaker to enter into arrangements in respect of adjoining areas i.e. where a water distribution system spans their boundaries **(S.87(8))**
 - determination of terms by the Secretary of State and/or the Assembly where an SHA/the Assembly and a water undertaker fail to agree the terms of an arrangement to fluoridate (see paragraph 15) **(S.87B)**
 - new regulation-making powers for the Secretary of State and the Assembly to reduce the target concentration of fluoride from 1ppm (if, for example, in the future, research evidence suggested that different targets might be appropriate) **(S.88A)**
 - a SHA or the Assembly to make arrangements for a lower target concentration where it is not technically practical to achieve the target of 1ppm (to be covered in subsequent guidance on a model agreement) **(S.87A)**
 - enabling water companies to supply fluoridated water in areas not covered by arrangements under s87 where it is necessary to do so due to operational constraints, such as dealing with serious deficiency in supply (to be covered in subsequent guidance on a model agreement) **(S87C)**

- matters in respect of which an indemnity may be given and the forms and terms of such an indemnity to be made the subject of regulations (see paragraphs 39 – 41 and Appendix 3 **(S.90)**)
- a new requirement for SHAs with fluoridation schemes to monitor their effects on the health of their populations and to publish reports on their findings at 4 yearly intervals. **(S.90A)**. Discussions are underway with directors of public health and public health observatories about implementation of this duty. Guidance will be issued in a subsequent CDO letter.
- existing (pre-1985) schemes to be treated as if they were established under the new Act except that the consultation requirements for proposals for new schemes will not apply to them (see paragraph 32) **(S91)**
- outstanding requests to water companies to fluoridate to remain extant unless they have been rejected in writing by the water undertaker or withdrawn by the SHA (see paragraph 33) **(S.91 (11))**.

Evidence base on fluoridation

9. Information on relevant research studies and the measures the Department of Health (“the Department”) is taking to strengthen the evidence base on fluoridation are contained in **Appendix 1**.

Consultation process

Preliminaries

10. It is generally Primary Care Trusts who identify concerns about the oral health of their populations and should identify the options for securing improvements. Their considerations will be informed by the decennial adult and children’s dental health surveys⁴ and the NHS surveys coordinated by the British Association for the Study of Community Dentistry⁵. If it is felt that fluoridation of water is the most effective solution, the Primary Care Trusts should discuss this with their SHAs.
11. If SHAs decide to proceed with exploring the benefits of fluoridation, before carrying out a consultation under section 89(1), they should consult the water undertakers concerned as to whether the arrangements would be operable and efficient or, in the case of termination of an arrangement, whether this would be reasonably practicable. This is a statutory requirement under section 87 (11) of the Act intended to ensure that a SHA does not publish proposals for a fluoridation scheme which are incompatible with the operation of the water distribution system.

12. If the area, which it is practicable to fluoridate, extends to areas for which a neighboring SHA(s) is responsible, the neighboring SHA(s) should be invited to participate in the consultation and a 'lead SHA' identified. This is because each SHA would need to enter into an arrangement with the water undertaker in respect of its own area, bearing in mind the duty to co-operate in such circumstances, under section 87(8) of the Act. Generally, the SHA with the largest population to receive fluoridated water under the proposed scheme would act as the 'lead' SHA.
13. There is also a statutory requirement under section 87 (7) for the SHA to consult the Water Services Regulation Authority (WSRA) about the terms to be included in any fluoridation arrangements under section 87, in particular terms which affect the operation of the water undertaker's supply system. The WSRA monitors the way in which water companies provide a good quality and efficient service at a fair price.

Legal considerations

14. The arrangements SHAs make with water undertakers can be complex legal agreements. It is therefore essential that SHAs consult their own lawyers at the outset of the process. The lawyers will be able to advise on the legal aspects of the consultation and the negotiation of arrangements with water undertakers.

Arbitration

15. If an SHA is unable to reach agreement with a water undertaker about the terms of a proposed arrangement (or a variation to an arrangement) under section 87B of the Act, it may refer the matter to the Secretary of State for Health for determination.
16. Under section 87B the Secretary of State has the power to determine the terms of the arrangements as she sees fit or refer it to such other person, as she considers appropriate.

The Water Fluoridation (Consultation) Regulations 2005 No. 921⁶

17. The Regulations⁶ elaborate on the consultation requirements provided for in section 89 of the Act. Guidance on their interpretation and application is given below.
18. **Regulation 1** (application) provides that the Regulations apply to fluoridation arrangements in respect of water supplied to premises in an area wholly in England. The National Assembly for Wales will be making Regulations for fluoridation schemes in Wales and, in due course, the Secretary of State and the Assembly will collaborate on Regulations for any schemes, which would cross the border between England and Wales.

19. **Regulation 3** provides for representations about proposals concerning fluoridation arrangements to be made by individuals affected and bodies with an interest. The references to “individuals affected” are to
- individuals living in the area to which the arrangements relate and
 - those people who work regularly in that area. This group is included because they are likely to drink or otherwise consume significant amounts of water whilst at work.
20. **Regulation 3** also requires that the SHA publish details of the proposal in one or more newspapers circulating in the area and in such other accessible media as the SHA considers appropriate to bring the proposal to the attention of individuals affected and bodies with an interest. **Appendix 2**, which provides more detailed guidance on the conduct of local consultations, contains proposals on the media that could be used including local radio and TV, and websites.
21. **Regulation 3** also requires that an SHA give notice of the proposal to every local authority affected by the proposal, i.e. County Councils, District Councils including Unitary Authorities, London Borough Councils, or the Common Council of the City of London. The Greater London Authority would also need to be consulted about proposals for schemes in London. Local health services and local authorities are required to work closely together in developing and implementing wide-ranging Health Improvement Programmes for their populations. Proposals for fluoridation schemes should be seen in this context. SHAs should therefore keep their local authority partners well-informed about the options for reducing tooth decay and should seek to work with them in developing an oral health improvement strategy.
22. SHAs should seek the views of their local authority/ies at every step of a consultation on fluoridation. Subject to the views of the LAs this might most appropriately be carried out through the Local Authority Overview and Scrutiny Committees (“OSC”) under the duty upon SHAs under section 11 of the Health and Social Care Act 2001 to involve and consult recipients of health services directly or through representatives. However, it should be noted that water fluoridation is not a substantial development or change to health services within the terms of the Local Authority (Overview and Scrutiny Committees Health Functions) Regulations 2002. Therefore, the consultation arrangements set out in these regulations do not apply. Where more than one LA is affected, they should be invited to nominate a lead LA (and OSC) as the initial point of contact during consultations.

23. The other "bodies with an interest" that SHAs are advised to notify of their proposals include
- Patient and Public Involvement Forums
 - professional bodies representative of doctors, dentists and other health care professions
 - voluntary organizations concerned with the health and social care of children, adults and older people
 - Consumer Council for Water and other consumer groups
 - companies/businesses operating in the area who use water in the manufacture or processing of products intended for human consumption (e.g. producers of food and drinks)
 - environmental organizations.
24. **Regulation 3** goes on to prescribe that in publishing details of their proposals SHAs shall include
- details of the nature of the "step" (see paragraphs 26 and 27 below) they propose to take
 - the reasons for the proposal
 - the area affected by the proposal
 - the period, which must be at least 3 months from the date when the details are first published, in which representations can be made.
25. Guidance on the conduct of consultations at **Appendix 2** advises on how SHAs can meet these requirements.
26. Section 89(2) of the Act gives details of "the steps" relating to fluoridation schemes before which a SHA must conduct consultations and ascertain public opinion.
27. In addition to requesting a water undertaker to enter into arrangements for a new fluoridation scheme under section 87(1), the steps are
- requesting a water undertaker to vary any such arrangements in prescribed circumstances
 - giving notice to a water undertaker to terminate any such arrangements; and
 - maintaining any such arrangements in prescribed circumstances.
28. In defining the circumstances when consultations were required on varying and maintaining fluoridation schemes we sought to balance the public interest with the need to give SHAs, through the water undertakers, sufficient flexibility to manage and operate fluoridation schemes efficiently.

29. Accordingly Regulation 4 (1) prescribes that a request to vary an existing fluoridation scheme is a step within section 89(2) (i.e. it requires consultation) in the following circumstances. First, the circumstances are that the variation affects the boundary of the area to which the fluoridation arrangements relate. Second, the number of houses that would be affected by the variation, either by being brought within the area (i.e. newly fluoridated) or by being excluded from the area (i.e. had fluoridated water withdrawn), exceeds 20% of the number of house within the area at the time the request is made. However this does not apply where a variation of any degree would lead to houses being fluoridated in the area of a neighboring SHA, which is not a party to the arrangements governing the existing fluoridation scheme. In such circumstances, that SHA would need to undertake consultations and, if the outcome was favourable, enter into fluoridation arrangements as if the variation was a proposal for a new fluoridation scheme.
30. The term “houses” is used as a proxy for resident population. Information should be available from the water undertaker on the number of domestic premises receiving water within water distribution systems. Because the variation has to affect the boundary of the area fluoridated, additional houses built within the area, e.g. an ‘infill’ development would not need to be put to consultation.
31. **Regulation 4(2)** prescribes that maintaining an existing fluoridation scheme is a step within section 89(2) (i.e. requires consultation) if it involves the replacement or upgrading of the fluoridation plant other than for the purpose of meeting operational or health and safety standards. In practice an SHA would decide to take such a step on the advice of the water undertaker,

Application of consultation requirements to existing fluoridation schemes

32. As indicated in paragraph 8, an amendment in the Water Act provided for existing fluoridation schemes (arranged prior to the Water Fluoridation Act 1985) to be treated as if they were made under the Act in all respects bar one. The exception is that there is no requirement to consult on the existing schemes as if they were proposals for new schemes. However, the requirement for consultation on variations, termination and maintenance of schemes, in the circumstances described in paragraphs 28 to 31 above, apply to existing schemes.

Outstanding requests to water companies to fluoridate

33. As indicated in paragraph 8, an amendment in the Water Act provided for requests made before the passing of the Water Act to remain extant unless they have been rejected in writing by the water company or withdrawn by the SHA or its predecessor and remain capable of implementation.

Ascertaining public opinion

34. Regulation 5 **prescribes** the circumstances in which a SHA may proceed with a proposed “step” regarding fluoridation arrangements, i.e.
- proposals for a new scheme
 - a variation in an existing scheme in the circumstances described at paragraphs 29 – 31; or
 - replacement or upgrading of fluoridation plant in the circumstances described in paragraph 32.
 - notice to a water undertaker to terminate fluoridation arrangements.
35. The circumstances are that, “having regard to the extent of support for the proposal and the cogency of the arguments advanced, the Authority is satisfied that the health arguments in favor of proceeding with the proposal outweigh all arguments against proceeding.”
36. The response to the consultations will indicate the extent of support for a proposal. For example SHAs will need to take into account
- representations that include the results of a public opinion survey conducted by a recognized independent research body
 - resolutions passed by local authorities
 - letters received from individual members of the public
 - letters received on behalf of community organizations
 - resolutions passed by or letters received from professional organizations
 - resolutions passed by or letters received from Patient and Public Involvement Forums
 - letters received from community representatives, including MPs and individual councilors
 - representations from all relevant bodies.
37. Given that the Regulations require SHAs to take account of the cogency of the representations and their relevance to the “health arguments”, a SHA cannot base its decision solely on a simple count of the representations for or against the proposal. In weighing the cogency of the responses SHAs will need to consider if
- they are evidence based and, if so
 - the quality of the evidence (the Department’s standard brief will be updated to cover developments in research on fluoridation)
 - the relevance of the representations to the health arguments over fluoridation; and
 - the nature of the individual/ body making the representations. As the Cabinet Office Code of Practice on Consultations referred to in Appendix 2 indicates, “ Particular attention may need to be given to representative bodies such as business associations, trade unions, voluntary and consumer groups and other organizations representing groups especially affected. In order to ensure that responses are analyzed correctly, it is important to understand whom different bodies represent, and the methodology used to gain members’ input into the response.”

38. In making its decision the SHA will also need to have regard to the requirement in the Code to publish a summary of responses to the consultation, any changes made to the proposal in the light of the responses, a summary of the next steps for the policy and the reasons for the decision.

Indemnities

39. Under section 87(2) of the Act a water undertaker is not required to enter into arrangements with an SHA to fluoridate a water supply until the Secretary of State has granted it an indemnity against any liabilities it may incur in complying with fluoridation arrangements.

The Water Supply (Fluoridation Indemnities) (England) Regulations 2005⁷

40. The Regulations⁷ set out the form and terms of the indemnity, which the Secretary of State may, with the consent of the Treasury, give a water undertaker or a licensed water supplier.
41. A note on the interpretation and application of the regulations is at Appendix 3. Once negotiation of new arrangements is complete, a SHA should apply to the Department to obtain Treasury approval to issue of an indemnity.

Funding of fluoridation schemes

42. Under section, 89(6) of the Act fluoridation arrangements must include terms requiring SHAs to meet the reasonable capital and operating costs incurred by water undertakers in giving effect to the arrangements. Subject to the availability of funding, the Department will contribute up to 60% of the capital costs of new schemes or the replacement of plant required to maintain existing schemes.

Model Agreement.

43. We will shortly be issuing a draft model agreement covering the main terms to be included in arrangements between a SHA and a water undertaker (or water supplier) to be used with this guidance letter.

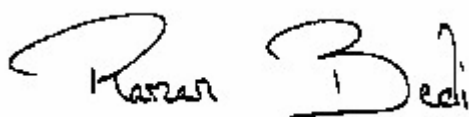
The Code of Practice on Technical Aspects of Fluoridation

44. The Drinking Water Inspectorate (DWI) of the Department for Environment, Food and Rural Affairs (DEFRA) has provided technical guidance on fluoridation in *The Code of Practice on Technical Aspects of Fluoridation*⁸. In 2005 the DWI published a new edition of the code following consultations with the Department, SHAs and the water industry.

Action

45. In discharging their duty to improve the oral health of their populations and in particular to reduce inequalities in oral health, Primary Care Trusts (“PCTs”) are encouraged to consider the option of fluoridating their water supplies. PCTs who decide to pursue this option should consult their SHAs at an early stage. **(paragraph 10)**
46. Where SHAs decide, to explore this option they should discuss the boundaries of the water distribution system with their local water undertakers and the likely capital and recurring costs. If the boundaries include other SHA areas, the SHA should consult the other SHAs and, if they agree to co-operate, a ‘lead SHA’ should be identified to conduct a joint public consultation. **(paragraph 12)**
- 47..At this stage the SHA(s) should retain expert legal advice. **(paragraph 14)**
48. In proceeding the SHA(s) should
- consult the Water Services Regulation Authority. **(paragraph 13)**
 - discuss their proposals with the local authorities that would be affected. **(paragraph 22)**
49. If the SHA(s) then decided to proceed with a formal consultation they should follow the guidance in **paragraphs 17 –25 and Appendix 2** and assess the outcome in accordance with **paragraphs 34-38**.
50. If the assessment shows that the health arguments in favour of proceeding outweigh all arguments against proceeding with the fluoridation scheme, the SHA(s) should
- apply to the Department for an indemnity to be issued to the water undertaker. **(paragraphs 39–41 and Appendix 3)**
 - negotiate a agreement along the lines of the model to be issued shortly **(paragraphs 43)**.
51. SHAs should also undertake public consultations if they propose to
- vary or terminate a fluoridation scheme in the circumstances described in **paragraphs 29 - 30**; or
 - maintaining a fluoridation scheme except in the circumstances described in **paragraph 31**.

Yours sincerely,



PROFESSOR RAMAN BEDI
Chief Dental Officer - England

References

¹ *A Systematic Review of Water Fluoridation*

www.york.ac.uk/inst/crd/pdf/fluorid.pdf

² *The Water Act 2003*

<http://www.opsi.gov.uk/acts/acts2003/20030037.htm>

³ *The Water Industry Act 1991*

http://www.opsi.gov.uk/acts/acts1991/Ukpga_19910056_en_1.htm

⁴ *The Adult Dental Health Survey 1998*

Office of National Statistics, POBox 29, Norwich NR3 1GN

The Child Dental Health Survey 2003

www.statistics.gov.uk/children/dentalhealth/

⁵ *Surveys conducted by the British Association for the Study of Community Dentistry* <http://www.bascd.org/>

⁶ *The Water Fluoridation (Consultation) Regulations 2005 No. 921*

[http://www.opsi.gov.uk/si/si2005/20050921,htm](http://www.opsi.gov.uk/si/si2005/20050921.htm)

⁷ *The Water Supply (Fluoridation Indemnities) (England) Regulations 2005 No. 920*

<http://www.opsi.gov.uk/si/si2005/20050920.htm>

⁸ *The Code of Practice on Technical Aspects of Fluoridation of Water*

Supplies <http://www.dwi.gov.uk/regs/infolett/2005/0505fluoridationCOP.pdf>

Appendix 1

Evidence base on fluoridation

1. The York report¹ called for more good quality research on fluoridation and the Department asked the Medical Research Council (MRC) to suggest where it might be possible to strengthen the evidence currently available. In publishing their report *Water Fluoridation and Health*² Dr Paul Harrison, Acting Director of the MRC Institute for Environment and Health, said: "There's no reason to think that water fluoridation is responsible for any adverse health effects. But there is a lack of research on some important aspects, which is why we're highlighting the need for more research."
2. MRC identified the need for up-to-date research to provide an estimate of the effects of water fluoridation on dental cavities in children and adults against a background of widespread use of fluoride toothpaste. They also called for new studies on the extent of dental fluorosis in fluoridated and non-fluoridated areas and further studies to address the issue of social inequalities in relation to water fluoridation, dental cavities and fluorosis.
3. MRC considered a number of possible health outcomes, other than dental health, related to water fluoridation including the possibility that fluoride plays a role in hip fractures or cancers. Evidence to date suggests that fluoride has no effect on hip fractures, but such an effect could be important in public health terms. MRC concluded that if new studies show that the uptake of fluoride from artificially fluoridated water is substantially higher than from naturally fluoridated water, then it will be necessary to further investigate the long term effects of fluoridation on hip fractures.
4. In this connection DH commissioned the School of Dental Sciences at the University of Newcastle to undertake a study comparing the bioavailability (absorption) of fluoride in water in which fluoride occurs naturally with artificially fluoridated water. The report of the study³ published in June 2004, shows that the researchers found no evidence for any differences between the absorption of fluoride ingested in artificially fluoridated drinking-water and in drinking-water in which the fluoride is present naturally at fluoride concentrations close to 1 part per million.
5. MRC found no firm evidence linking water fluoridation to cancer in general, or to specific cancers, but recommended an updated analysis of the data on fluoridation and cancer rates. MRC also suggested that any new studies on the causes of bone cancer could easily include an assessment of exposure to fluoride.

Appendix 1 (cont)

6. MRC considered suggestions that fluoride may be implicated in various other health effects. The group concluded that there was no evidence for these suggestions and therefore, made no specific recommendations for research to be undertaken in these areas, although it would be appropriate to keep the area under review.

References

¹ *A Systematic Review of Water Fluoridation*

www.york.ac.uk/inst/crd/pdf/fluorid.pdf

² *Water Fluoridation and Health*

www.mrc.ac.uk/pdf-publications-water_fluoridation_report.pdf

³ *Bioavailability of fluoride in drinking-water – a human experimental study*

www.ncl.ac.uk/dental/research/diet/fluoride.htm

Appendix 2

The Conduct of Local Consultations

1. A key document is the Cabinet Office Code of Practice on Consultation¹. As well as the general principles referred to below the code includes guidance on identifying stakeholders, the drafting of consultation documents and their dissemination.
2. Key principles relevant to the conduct of consultations are
 - consultation is a continuous process that needs to be started early in the development of a new policy
 - informal consultation with stakeholders should be conducted prior to the written consultation. Not only does this lead to a more informed consultation process but it also ensures that stakeholders are engaged early and have a better understanding of the policy
 - as far as possible consultation should be a completely open process with no options ruled out
 - the consultation document should
 - include an executive summary from which consultees should be able to decide if the consultation is relevant to them
 - ask focused questions and be clear about the issues on which views are being sought
 - explicitly state the assumptions made about those who are likely to be affected and encourages correspondents to challenge these assumptions
 - indicate particular areas where the consultees' response would be particularly valuable.
3. As indicated in paragraphs 22 – 23 of the letter, SHAs will need to involve local authorities directly in determining the scope of a local publicity campaign to inform the population affected.
4. As paragraph 10 of the letter indicates, generally we would expect PCTs to initiate proposals for a fluoridation scheme. A SHA will only proceed if it is satisfied, from exploratory discussions with water undertaker that it is technically feasible and that there are cost benefits. Specialist staff of the SHA will need to explain the reasons for this decision.
5. At the same time, the SHA will have to organise consultations in which both supporters and opponents of fluoridation have the opportunity to participate. And the SHA will need to conduct an open and transparent assessment of public opinion. The decision on the outcome of the consultation will need to be taken at an open meeting.

Appendix 2 (cont)

6. Regional Directors of Public Health, through their involvement in the work of the government offices for the regions, can be expected to bring a wider perspective to consultations on fluoridation schemes.
7. To assist with local consultations the Department is working on a standard brief including information on the effects of fluoridation on oral health, its safety, ethical considerations and cost/benefits and details of the sources from which further information could be obtained. SHAs should find this helpful in giving the reasons for its proposals and informing the wider consultation. *One in a Million - the facts about water fluoridation*² published by the British Fluoridation Society is also a very useful source of information.
8. The brief should complement information the PCTs can provide on the oral health of the local population including average numbers of decayed, missing and filled teeth. Data on DMFT are available from the decennial adult and children's dental health surveys³ and the NHS surveys co-ordinated by the British Association for the Study of Community Dentistry.⁴
9. Experience across the UK over the past ten years suggests that the more pro-active health authorities are in publicising their proposals for fluoridation and promoting their case for it, the more likely it is that people will understand why it would be beneficial and be willing to accept it.
10. In the early to mid-1990s, health authorities in the North East and West Midlands of England mounted very vigorous information campaigns in support of fluoridation and sought the maximum possible response from relevant local organisations and the public. Successful publicity techniques used in one or both of these campaigns, include:
 - pre-consultation **information campaigns** (through the media and through leaflets and posters widely distributed to dental surgeries, GP practices, health centres, clinics, hospital out-patient departments, libraries) on the state of local dental health, inequalities between different geographical areas or sections of the community, and the options for reducing those inequalities
 - offers to make **presentations on the state of dental health** to elected representatives, community organisations, parents' groups, schools and other interested bodies.

Appendix 2 (cont)

11. In addition to the statutory requirements referred to at paragraph 20 of the letter to put notices in the media, at the commencement of the publicity and consultation exercise SHAs are advised to **circulate details to Members of Parliament with constituencies that would be affected by implementation of the proposal, local authorities and, Patient and Public Involvement Forums** an information pack containing copies of the formal consultation document. (Copies of the information pack could then be issued to anyone who enquires about it.) Then an **initial press conference to announce the proposals** could be held followed up by a series of news releases and editorial features to explain the issues in greater detail and to deal with queries and concerns which are raised during the three month consultation period.
12. To complement circulation of the main consultation document
 - a **summary version of the consultation document in leaflet form** could be distributed to locations like dental surgeries, GP practices, health centres, clinics, hospitals, libraries, council offices, schools, colleges and other public places
 - **advertising features could be inserted in major local newspapers** to summarise the key points from the consultation document;
 - **posters** could be displayed in NHS premises
 - **briefing materials** could be distributed widely to health care professionals in order to enable them to respond to their patients' questions about fluoridation
 - a **free telephone information line** could be set up for people to obtain further information about the proposals
 - **inter-active web sites** through which people can seek information and/or record their views.
13. Throughout the consultation period SHAs and PCTs should be able to supply **well-informed speakers for radio and television programmes and debates** and, on request, for public meetings arranged by local community organisations to discuss the merits of fluoridation.
14. They might also wish to consider commissioning independently conducted **opinion surveys** asking a demographically representative sample of the population concerned whether they think fluoride should be added to water to reduce tooth decay.

Appendix 2 (cont)

15. SHAs will wish to consider these publicity techniques to ensure that people are well informed about what is being proposed. Other techniques that might also be included are:

- **focus groups** comprising a cross section of people from the communities affected, or a cross section of users of dental services or parents of children
- consultation meetings with **the water company's customer liaison panel and the regional committees of the Consumer Council for Water.**

References

¹ *Cabinet Office Code of Practice on Consultation*
www.cabinet-office.gov.uk/regulation/consultation/code.htm

² *One in a Million - the facts about water fluoridation*
www.bfsweb.org/One%20in%20a%20million/contents.pdf

Appendix 3

Indemnities in respect of fluoridation

1. Section 90(1) of the Act empowers the Secretary of State, with the Treasury's consent, to indemnify a water undertaker and section 90 (2) a licensed water supplier. Section 90(3) introduces a regulation making power to make provision in relation to the matters in respect of which an indemnity may be given and the forms and terms of such an indemnity. Regulations made under this power contain a standard indemnity.

The Water Supply (Fluoridation Indemnities) (England) Regulations 2005¹

2. The Regulations¹ apply to agreements SHAs make with water undertakers and water suppliers whose areas are situated wholly in England. The Assembly will be making regulations for fluoridation schemes in Wales and, in due course, the Department of Health (England) and the Assembly will collaborate on regulations for any schemes which would cross the border between England and Wales.
3. Schedule 1 to the Regulations sets out the form and terms of an indemnity to a water undertaker. Schedule 2 contains the modifications to the Schedule 1 indemnity that would be necessary if the Secretary of State agreed to indemnify a licensed water supplier. This would happen where, through arrangements a SHA had made with a water undertaker to fluoridate a water supply, the water undertaker licensed another supplier to supply all or some of the fluoridated water. (Schedule 4 of the Water Act 2003 amended Section 17 of the Act to introduce a power for water undertakers to license suppliers).

Schedule 1 paragraph 2

4. During debate of the Water Bill the government made clear its intention that no water undertaker or licensed water supplier who fluoridated a water supply should incur any more liabilities than one who did not, provided that that the liabilities were not incurred through negligence. Paragraphs **2 and 3** support this policy by providing for indemnities to cover a range of circumstances in which claims might be made arising from the fluoridation of water.
5. A water undertaker or licensed water supplier might have to defend criminal proceedings where there had been no instances of negligence. Accordingly paragraph 2(3)(d) provides for the indemnity to cover costs of defending criminal proceedings that have not resulted in a conviction. Similarly paragraph 2(3)(e) provides for coverage of costs incurred in respect of any civil liability arising from a criminal offence which is attributable solely to a requirement connected with fluoridation.

Appendix 3 (cont)

6. The exemptions from the cover provided in the indemnity are given in **paragraph 3(1)**. They relate to instances where the water undertaker (or, as a result of the modifications in Schedule 2, the water supplier) its directors, employees or agents have committed a criminal offence, negligence, fraud or some other deliberate wrongdoing. The provision also exempts instances where
 - the Secretary of State has met the cost of the liabilities through a means other than under the indemnity (for example through an SHA)
 - the water undertaker/water supplier is able to recover the costs from a third party and has not taken reasonable steps to pursue recovery
 - the water undertaker has not notified the Department as soon as reasonably practicable of
 - any proceedings or action, or threat of such action, against the water undertaker which might lead to a requirement for the Secretary of State to make a payment under the indemnity
 - any admission of liability or prejudicial statement by the undertaker
 - any agreement by the water undertaker to settle or compromise any such proceedings or action without the prior approval of the Secretary of State for Health.
7. However, subject to the proviso at paragraph 8 below, **paragraph 3(2)**, relieves the water undertaker of the obligation to seek to recover a payment from a third party where the undertaker is or might be entitled to a payment under a policy of insurance or is or might be entitled to a payment under the agreement from
 - a County Council, a County Borough Council or a Regional, an Area, or District Council, or an SHA
 - a body which is liable under the agreement in place of the above authorities; or
 - a body from which one of the above authorities acquired liability under the agreement.
8. The proviso is that, if the water undertaker receives any such payment, the Secretary of State may deduct it from any payment due under the indemnity or recover it where the payment has been made.
9. **Paragraph 4** provides that where the Secretary of State for Health is or may be required to make any payment under the indemnity, she must assist a water undertaker to defend proceedings brought by a third party and to recover any payment due from a third party.

Appendix 3 (cont)

10. **Paragraph 5** provides that where the Secretary of State for Health is or may be required to make any payment under the indemnity, she may take over the conduct of the defence of any proceedings brought by a third party and the conduct of any proceedings to recover any payment due from a third party. The water undertaker is required to provide such assistance to the Secretary of State as she may reasonably require.
11. The reason for these provisions is that the Secretary of State will wish to play a part and possibly take over conduct of the defence of claims with implications for fluoridation schemes generally, eg a claim that fluoridation has harmed some aspect of general health.

References

¹*The Water Supply (Fluoridation Indemnities) (England) Regulations 2005*
<http://www.opsi.gov.uk/si/si2005/20050920.htm>