

Legal restrictions on the marketing of commercial milk formulas and the cost-of-living crisis

The cost of infant formula in the UK has been increasing at an unjustifiably fast rate. There are many ways in which the impact of these price increases on families can and should be mitigated, urgently, to safeguard infant health. Solutions include improving the Healthy Start scheme, ensuring that emergency pathways are available for infant feeding support, instituting controls on infant formula prices and raising awareness of the nutritional equivalence of all infant formulas. Actions that contravene or require weakening of current marketing restrictions are inappropriate; the cost-of-living crisis should not be exploited by commercial milk formula manufacturers or retailers for marketing purposes. It is possible to provide families with relevant infant and young child feeding support that is appropriate to their individual context and free from commercial influence.

The problem

The cost of infant formula in the UK has been increasing rapidly, with an average price increase of 24%¹ in two years from 2021 to 2023, and the only own brand product seeing a 45% price increase over the same period (First Steps Nutrition Trust, 2023a; 2023b). This is a serious concern for low-income families who feed their babies formula because currently, for many, infant formula is their sole food source² and where breastfeeding is not possible there are no safe alternatives³.

The extent of the observed price rises for infant formulas seem unjustifiable. While we acknowledge that these rises are in part driven by increasing input and fuel costs, reductions in agricultural production and labour shortages, commercial milk formula companies are also protecting their large profit margins. This is evidenced in documented growth in the UK 'baby milk' market, which grew by £23.3m in 2022 because of an 8.6% increase in the value of sales, yet only a 6.7% volume increase. The top five brands saw an even larger increase in the value of sales (9.1%) on an even smaller volume increase (4.7%) (Grocer, 2022a; 2022b).

In addition, there are huge price differentials between brands of infant formula. The monthly cost of feeding a 10-week-old baby using the only own-brand product is £37 per month but this rises to £88 per month if the most expensive ("premium") brand is used (FSNT, 2023b). This is despite the fact that all infant formula must

¹ This is the average of the seven 'standard' powdered first infant formulas sold by market leaders Danone and Nestlé, which are the most widely available and used products (FSNT, 2023a).

² UK public health recommendations for optimal health are that infants should be exclusively breastfed to around 6 months of age. Where this is not possible the only safe alternative is infant formula (in combination with breastfeeding or for exclusively). This is because infants have very specific nutrition needs and vulnerabilities. From around 6 months of age, solids should be introduced but breastmilk/infant formula is still necessary and meets a substantial proportion of the infants' nutritional needs (NHS, 2023a; SACN, 2023).

³ Follow on formula is marketed for use from 6-12 months but is deemed unnecessary by the NHS which recommends non breastfed infants are given infant formula for 0-12 months (NHS, 2023a). Growing up and toddler milks marketed for use from 12 months of age are also deemed unnecessary by the NHS which states that cows' milk can be given as a suitable choice as a main drink for children from one year of age (NHS, 2023a).



meet the same nutrition composition standards laid down in law (Commission Delegated Regulation (EU) 2016/127; The Food for Specific Groups Regulations, 2020), meaning all are nutritionally equivalent and judged to be safe and suitable to support adequate growth and development.

The solutions to ensuring infant food security

Improve Healthy Start: In the immediate term it is vital that pregnant women, infants, and young children in households on the lowest incomes are supported to access nutritious diets. The Healthy Start scheme is meant to do this by providing vitamin supplements and a monetary allowance to buy fruit, vegetables, pulses, cows' milk, and first infant formula if needed (NHS, 2023a). The current value of the Healthy Start vouchers are not enough to pay for a week's supply of infant formula. Therefore, this programme needs urgent improvement, including: increasing the value of payments in line with food inflation (including rising prices of infant formula), expanding eligibility, improving access and uptake, and taking actions to ensure that the scheme can meet its nutrition objectives (Sustain & Food Foundation, 2023).

Ensure emergency pathways for infant feeding support: Local Authorities have a statutory responsibility to provide a range of essential services to their communities, including children's safeguarding, children's, and adult's social care (i.e., family support) and public health services (House of Lords Library, 2019). This should include inclusive and accessible infant feeding support. In the cost-of-living crisis, with many families experiencing food insecurity, Local Authorities and Health Boards should provide appropriate financial and practical support for infant and young child feeding in a way that protects, promotes and supports optimal infant and young child nutrition and health, as outlined in available guidance (Unicef UK BFI, FSNT & NIFN, 2022).

Investigate and control infant formula prices: We welcome the Competition and Markets Authority investigation into infant formula prices as part of a broader examination of "indicative products" which have shown high price inflation levels (i.e., large price increases) and are commonly consumed. The purpose of the investigation is to ensure adequate competition in the sectors and therefore contain cost-of-living pressures for consumers (CMA, 2023; Grocer, 2023). The results from this investigation should be available by December 2023 and we are hopeful a price cap on infant formula will be among the recommendations.

Raise awareness of the nutritional equivalence of all infant formulas: Unambiguous public health messaging is needed which makes clear that there is no significant nutritional difference between brands of first infant formula and that they must all conform to the same compositional regulations.

Prevent inappropriate marketing of commercial milk formulas: Such marketing undermines breastfeeding as well as safe and appropriate formula feeding, including coercing parents/carers into purchasing unnecessary and expensive commercial milk formulas.



Why inappropriate marketing matters

The high price of commercial milk formulas, including infant formula, is driven in part by marketing, and related to this, the inclusion of non-mandatory ingredients (e.g., prebiotics such as fructooligosaccharides or FOS, probiotics, nucleotides and 'human milk oligosaccharides or HMO' (which are not from human milk) which manufacturers highlight or make claims about on product packaging and promotional material). These ingredients are permitted by law, but their addition does not provide any health or nutrition benefits, meaning essentially that they are unnecessary (Commission Delegated Regulation (EU) 2016/127; EFSA, 2014). If a component was found to be beneficial to infant health, then it would be required in all products by law. The unnecessary addition of these superfluous ingredients increases the manufacturing cost of the product and therefore increases the cost to the consumer.

Exploitative marketing practices used by the commercial formula milk industry influence the decisions new families make on how to feed their babies, in a way that undermines breastfeeding and safe and appropriate formula feeding (WHO & UNICEF, 2022).

The global commercial milk formula industry is worth USD 55 billion annually and this industry's sophisticated and pervasive marketing tactics have been widely documented, including in the UK, in both the recent Lancet Breastfeeding Series 2023 (Rollins, et al., 2023) and the 2022 WHO-UNICEF Multi-country study describing how the marketing of formula milk influences infant feeding decisions (WHO & UNICEF, 2022).

The UK has one of the lowest breastfeeding rates in the world, with few women in the UK currently meeting their breastfeeding goals; 80% of those who stop breastfeeding in the first six weeks are not ready to do so. (McAndrew, et al., 2012). A large part of the reason is exploitative marketing in a context of inadequate breastfeeding support.

It is for these reasons that current UK legislation restricts the marketing of infant formula, and these restrictions remain relevant and important, especially amid the cost-of-living crisis. Such restrictions include not allowing sales inducements on infant formula at retail level. This restriction does not apply to cash equivalent payments, such as store gift cards (which may be given by food banks and Local Authorities), and many retailers report that they accept these already. However, our understanding about loyalty points and reward schemes is that the Code and UK legislation suggest that points cannot be accrued from purchase of infant formula or redeemed against their purchase. Parents would have to spend an estimated £500 - £1,500 in order to accrue enough points to purchase a tin of formula. Given this reality, our view is that this is not a meaningful or equitable strategy to improve access to infant formula especially among those struggling the most.

We continue to advocate for the current UK legislation on the marketing of commercial milk formula to be strengthened in line with the International Code of Marketing and subsequent World Health Assembly resolutions. In the meantime, it is essential that current regulations are enforced and maintained. We do not believe that the current cost of living crisis provides any grounds for weakening the regulations and on the contrary, that doing so would be harmful to infant health.



We believe that the solutions proposed above would improve access to infant formula for those families that need it, both equitably and at level that will be beneficial to public health while not compromising current levels of protection for parents/carers from inappropriate marketing by the commercial milk formula industry.

Issued by: The Baby Feeding Law Group (BFLG) UK <https://www.bflg-uk.org/>

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