

Dear Regulatory Policy Team,

I am responding to the consultation on the marketing of e-cigarettes as the Tobacco Control Strategy Lead for Sandwell Metropolitan Borough Council.

Sandwell is a Metropolitan Borough formed in 1974, and is one of seven authorities that make up the West Midlands conurbation, with a population of 309,000.

In 2010, councils were granted direct responsibility for tobacco control in a public health context. In Sandwell, smoking represents one of our biggest public health challenges. Sandwell Council works strategically with a wide range of partners to de-normalise smoking in communities by:

- ensuring non-price measures such as advertising restrictions, smokefree laws and health warnings are in place locally;
- enforcing the minimum price of tobacco;
- providing information and advocacy;
- providing effective stop smoking programmes;
- restricting access to minors, and;
- controlling the illicit trade.

The principles of public health evidence-based practice are fundamental to the delivery of tobacco control locally. Although there is an emerging evidence-base for e-cigarettes / electronic nicotine delivery systems (ENDS), we still do not have scientific verification from a competent national regulatory body that the devices are safe and effective and of acceptable quality. The World Health Organisation have therefore announced that, 'consumers should be strongly advised not to use any of these products (ENDS), including electronic cigarettes'.

Furthermore, in section 4.4 of the consultation document, it states that CAP and BCAP acknowledge that there is much uncertainty amongst the public, policy makers and health professionals about e-cigarettes, including their potential for harm, for addiction and their relationship with tobacco. Therefore, as ambassadors for health, we must consider our duty of care and our responsibility to the consumer.

Due to the complexities of e-cigarettes / ENDS, including the potential to re-normalise smoking, our response to the consultation is simple; do **not** amend section 10 of the BCAP Code. Bring the marketing of e-cigarettes in line with the rules of the laws that govern the use of conventional tobacco products.

Kind regards,

Tobacco Control Strategy Lead

SANDWELL METROPOLITAN BOROUGH COUNCIL

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**For all our sakes
Save e-cigs**

Dear Sir or Madam,

Save E-cigs Response to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice's (BCAP) Consultation on the Marketing of E-cigarettes

Save E-cigs welcomes the opportunity to respond to the CAP and BCAP consultation of the marketing of e-cigarettes.

For 2.1 million people throughout the UK, e-cigarettes have and continue to provide a viable alternative to smoking tobacco cigarettes. They have enabled those using them to leave smoking behind, either on a full or part-time basis. This should be a cause for celebration, not a cause for concern.

This campaign has been established to try and provide a united voice for e-cigarette users, but also their friends and families, the forgotten millions in this debate.

The friends and family of smokers also benefit when a smoker switches to e-cigarettes. They are no longer putting their own health at risk through passive smoking, their homes are happier, healthier places, and most importantly, they no longer have to worry about their friend or family member dying prematurely of a smoking related illness.

This campaign wishes to see e-cigarettes robustly regulated as a consumer product and freely available to those who want to switch, not just for the sake of smokers, but for all our sakes!

The advertising and marketing of e-cigarettes and e-liquids is vitally important. E-cigarettes are still a relatively new product and unlike tobacco products do not have the same brand recognition, based on tens of years of intensive advertising. E-cigarettes also do not benefit from having prominent shelf space in thousands of petrol stations, newsagents, and supermarkets throughout the UK. The less harmful alternative is therefore at a disadvantage compared to tobacco cigarettes. Consumers therefore need to be able to access reliable information about e-cigarettes so that they can then make an informed decision; as a campaign we believe advertising is crucial in providing this information and raising awareness of e-cigarettes.

As a campaign representing e-cigarette users, their friends and families, we want to see the responsible advertising of e-cigarettes. We have no interest in supporting some of the more provocative or overtly sexual adverts that have appeared recently. These adverts only serve the interests of those opposed to e-cigarettes. With this in mind, we believe that e-cigarettes should be marked primarily at former smokers and existing vapers (users of e-cigarettes).

Yours faithfully

Campaign Director
Save E-cigs

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes. However, as e-cigarettes are less harmful than tobacco cigarettes it must be possible to market them as such. Save E-cigs would go as far as to say that it would be irresponsible to prevent such advertisements.

Question 2: What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

Save E-cigs believes that advertising that shows e-cigarettes being used should be allowed if they are primarily aimed at former smokers and existing vapers. Save E-cigs would particularly like to see adverts involving second and third generation e-cigarettes, after all, these are the products that over 70 per cent of vapers use.

Rule 2: *Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.*

CAP and BCAP acknowledge that there is significant concern about the potential indirect promotion of tobacco products via advertising for e-cigarettes. However, they are mindful that the similarity of e-cigarettes to tobacco products is their chief appeal to those seeking a tobacco alternative and that new rules cannot unreasonably restrict marketers from showing their product.

At the time of writing, the rules in the BCAP Code and ASA adjudications are between them operating to restrict visuals of e-cigarettes being shown on television; BCAP currently considers this to be a disproportionate restriction. Both CAP and BCAP propose that this new rule would not be breached by visuals of products, including in use, provided that it was clear from the ad as a whole that the product shown was an e-cigarette and not a tobacco cigarette. This rule should therefore be read in conjunction with Rule 4. BCAP, in particular, is keen to hear from respondents who consider that the BCAP Code may need to specify additional protections in recognition of the greater reach and intrusiveness of broadcast advertising.

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes. Save E-cigs welcomes the recognition that e-cigarettes are not tobacco products; they are consumer products and should be regulated accordingly. Save E-cigs is however concerned that those organisations and individuals opposed to e-cigarettes regularly state that e-cigarettes are a gateway to smoking tobacco. This is of course not the case and countless research, including work by Action on Smoking and Health¹ and the American Cancer Society² has proven this. These individuals and groups do not wish to see advertising that positively discriminates in favour of e-cigarettes. It is though vital that e-cigarette adverts are able to make a positive distinction between e-cigarettes and tobacco cigarettes. Regulators should not be preventing existing smokers and former smokers the opportunity to make an informed decision to switch to a less harmful alternative.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?

Save E-cigs has no interest in promoting tobacco products or tobacco consumption. Therefore Save E-cigs supports reasonable measures to prevent the indirect promotion of tobacco products in any e-cigarette advertisement.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

No. E-cigarettes are less harmful than tobacco cigarettes and clearly deliver a potential health benefit to a smoker switching from tobacco cigarettes to e-cigarettes. As Professor Robert West, Professor of Health Psychology and Director of Tobacco Studies at University College London recently said:

"A recent expert panel judged e-cigarettes to be at least 20 times safer than cigarettes. There can be no doubt that if every smoker switched to them it would save tens of thousands of lives every year."

¹ ASH surveyed 12,597 adults in 2010 – the questions focused on e-cigarette use and awareness in Great Britain. The preliminary survey was followed up by an additional study of adult smokers and non-smokers in February 2012 and more recently in 2013. ASH also surveyed children and young people aged 11 to 18 in March 2013.

² [http://www.jahonline.org/article/S1054-139X\(12\)00409-0/fulltext](http://www.jahonline.org/article/S1054-139X(12)00409-0/fulltext)

There is nothing contained with an e-cigarette that provides a potential health benefit. The potential health benefit is derived from the fact that the vaper is no longer smoking or smoking fewer tobacco cigarettes. Save e-cigs wish to make it clear that e-cigarettes are not a medicinal product, they are simply a viable alternative to conventional tobacco products that allow their users to continue their nicotine use without any of the harm associated with tobacco.

Save E-cigs would though like to make it clear that no electronic cigarette manufacture should be allowed to advertise their products as supporting a legitimate and approved nicotine dependency withdrawal. Any e-cigarette manufacturer wanting to make such claims should seek to have their products medicinally regulated by the relevant authorities.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

No, for the reasons set out in answer to question five.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

No, for the reasons set out in answer to question five.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

Yes,

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

No. Save E-cigs believes that alcohol is a legal product and already subject to its own advertising and marketing rules. Within these rules, Save E-cigs has no problem with the use or portrayal of e-cigarettes.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

No. Save E-cigs believes that gambling is a legal activity and already subject to its own advertising and marketing rules. Within these rules, Save E-cigs has no problem with the use or portrayal of e-cigarettes.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

No.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

Yes. Save E-cigs does not support the sale of e-cigarettes and related products to under 18s.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes.

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

Yes.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.

Yes.

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

Save E-cigs believes that the same rules for advertising should apply whether or not an e-cigarette contains nicotine.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

As Professor Robert West, Professor of Health Psychology and Director of Tobacco Studies at University College London recently said:

“E-cigarettes are about as safe as you can get. We know about the health risks of nicotine. Nicotine is not what kills you when you smoke tobacco. E-cigarettes are probably about as safe as drinking coffee.”

That said, nicotine is an addictive substance, therefore it should be acceptable to discriminate positively in favour of e-cigarettes not containing nicotine, in the same way it should be possible to positively discriminate an e-cigarette from a tobacco cigarette.

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

Medicinal products are an entirely different product to e-cigarettes used by 2.1 million people in the UK. These products are consumer products and should be regulated accordingly. This consultation makes clear that medicinal products are subject to their own code. This is how it should be. Save E-cigs would not like to see any confusion being allowed to arise between consumer products and medicinal products.

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

No. This definition fails to take into account the range of products available; at least 5,000 at present, nor does it take into account e-liquids which can be sold separately. Finally, it makes no reference to e-cigarettes and related products that do not contain nicotine.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.

Save E-cigs spends a significant amount of time challenging the misinformation regarding e-cigarettes that appears in the media on a daily basis. This misinformation comes from a variety of sources including public health charities/organisations and the media itself. E-cigarette manufacturers would rightly not be allowed to get away with making equally misleading statements and we see no reason why the media and public health charities/organisations should be allowed to get away with making misleading statements, particularly when also little or no recourse for the electronic cigarette manufacturers harmed by such misleading statements.

Save E-cigs would like to see these statements understood as marketing communications. Furthermore, Save E-cigs believe CAP and BCAP should develop a regulatory regime for those, not covered by the proposed regime set out in this consultation, like the media, charities, and other organisations that make public statements on e-cigarettes.

It is vitally important that all those reporting on or writing about e-cigarettes do so responsibly. Irresponsible and alarmist reporting has the potential to put smokers off making the switch to a less harmful alternative. As a campaign Save E-cigs have no interest in the uncritical promotion of e-cigarettes either. All we are asking for is balanced and factual statements.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

Save E-cigs has been encouraged by the tone of this consultation. Save E-cigs hopes that as CAP and BCAP develop their rules for the advertising and marketing of e-cigarettes that they continue to be guided by scientific evidence and not pushed off course by some of the more vocal opponents of e-cigarettes who clearly have their own agendas.



Scottish Coalition on Tobacco (SCOT) response to the CAP/BCAP consultation on the marketing of e-cigarettes *April 2014*

The Scottish Coalition on Tobacco (SCOT) is a campaigning coalition of 13 health and medical organisations that have a shared interest in matters relating to tobacco and health.

Members of the coalition are: ASH Scotland, British Heart Foundation Scotland, British Lung Foundation Scotland, British Medical Association, Cancer Research UK, Chest Heart & Stroke Scotland, Macmillan Cancer Support, Royal College of Nursing, The Roy Castle Lung Cancer Foundation, Royal College of Physicians of Edinburgh, Royal College of Psychiatrists, The Stroke Association (Scotland office), and the Royal Environmental Health Institute of Scotland.

SCOT welcomes the opportunity to respond to this consultation. The rapid rise in popularity of e-cigarettes as an alternative to tobacco cigarettes has important potential benefits in reducing the harms from smoking among smokers who are unwilling or unable to quit. However there are also risks to be managed, including preventing uptake of e-cigarette use among young people who would not otherwise have experimented with nicotine products, and possible problems arising from the 'renormalisation' of smoking behaviour.

This is the agreed SCOT coalition response representing the majority view of members and does not necessarily represent the view of each member organisation. If individual members have taken a different position on particular points, or are providing a more detailed response to the consultation, this will be reflected in their own submissions

We are largely in agreement with the general principles set out by ASH in their submission to this consultation, with additions in **bold text**, below.

1. Regulation of un-licenced electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. Electronic cigarettes and other nicotine containing products **should be required to be advertised** as an alternative to smoking cigarettes or other tobacco products **for existing smokers only**.
4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.

5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

SCOT also believes that it is important, given the novelty of these products, that the rules remain open to rapid revision in light of any new evidence surrounding e-cigarettes themselves, or the impact of e-cigarette advertising on young people under 18.

Response to Consultation Questions

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

SCOT agrees that the rule should require marketing communications/advertisements for e-cigarettes to be socially responsible. In order for this rule to operate effectively, we suggest it should be clear what 'social responsibility' entails. We believe this should include:

1. An explicit requirement for all advertising and promotion to present e-cigarettes as alternatives to tobacco cigarettes intended for existing current tobacco cigarette smokers (see response to Rule 3)
2. Prohibition of any feature of communications/advertisements that would suggest to a reasonable person that using e-cigarettes has positive qualities as a 'lifestyle choice' other than as an alternative to tobacco cigarettes for existing smokers. This is important for descriptions of perceived user effects that exist largely as a consequence of nicotine dependence (e.g. terms like 'satisfying' should not be permitted).

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

SCOT agrees with the general principle behind this rule, but suggests that it needs to be strengthened. An increasing number of e-cigarette companies are owned by tobacco companies, which presents issues with regard to the World Health Organisation Framework Convention on

Tobacco Control (FCTC) Article 5.3¹ on the protection of health policy from the commercial interests of the tobacco industry. The use of e-cigarette advertising as a potential vehicle for the promotion of conventional tobacco products is a concern. Hence, to reinforce the statutory prohibitions on tobacco 'brand stretching' activities in the UK we suggest the explicit inclusion of the prohibition of any features of design, colour, imagery, or style that would be viewed by a reasonable person as likely to confuse viewers between e-cigarettes and tobacco cigarettes.

The rule should be clear that in instances where tobacco products are shown, they are shown in an unambiguously negative light. Finally we suggest the last sentence of the rule is strengthened and extended as follows (addition in italics): 'This rule is not intended to prevent cigarette-like products from being shown *however they must not be shown in ways that promote smoking or tobacco products.*'

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the principle behind this rule, however because of the novelty of e-cigarettes and uncertainties over their long-term impact, we believe the wording should be strengthened to **require** (not just permit) e-cigarettes to be presented as an alternative tobacco cigarettes **for current tobacco cigarette smokers only**.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion of this rule, and in combination with Rule 3 above, would like to see all marketing communications/advertisements being required to make clear the product being advertised is an e-cigarette, and that it is an alternative to tobacco cigarettes for tobacco smokers only.

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

¹ WHO, November 2008. Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Available from: http://www.who.int/fctc/guidelines/article_5_3.pdf

SCOT agrees with the inclusion of this rule and the requirement to be clear about whether the product contains nicotine or not (see our response to Questions 23 and 24 below). Where products contain nicotine, the marketing communication/advertisement should clearly state that nicotine is addictive.

As a general point SCOT believes it is important for all these rules to be open to rapid revision as evidence around e-cigarettes accumulates (for example, if any of the product ingredients – as administered in e-cigarettes – are found to have adverse health effects, either in general or among particular population subgroups, this should be required to be communicated to the viewer).

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

SCOT agrees with the inclusion of this rule, however suggest it be strengthened to prohibit any encouragement to try e-cigarettes amongst non-smokers/non-nicotine users **either explicitly or implicitly**.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

SCOT agrees with the inclusion and wording of this rule.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

SCOT agrees with the inclusion of this rule. We would add that marketing communications/advertisements should also be preventing from stating or implying that the use of e-cigarettes is permitted in all enclosed public places covered by the restrictions on smoking tobacco cigarettes. In reality, these policies vary across premises, so advertising that presents e-

cigarettes as products that 'can be used anywhere' (or similar) is inaccurate and undermines the policies of organisations that have restricted e-cigarette use in order to more effectively enforce the legislative ban on smoking tobacco cigarettes.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

SCOT agrees with the inclusion and wording of this rule and supports strong safeguards to prevent marketing communications for e-cigarettes from appealing to people under 18.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

SCOT agrees with the inclusion and wording of this rule.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Given the evidence the impact of this kind of warning is unclear, and it could paradoxically drive increased interest in the product among under 18s, SCOT does not recommend proceeding with this rule unless there is compelling evidence that such a statement will deter use of e-cigarettes among people under 18.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

SCOT agrees with the principle of minimising the impact of e-cigarettes advertisement on people under 18. However it is not clear whether the 25% threshold is appropriate, and SCOT partners note in their own responses to the consultation that some high impact communications channels (e.g. advertising associated with major motion picture events) may be under the 25% threshold, however because of the large total number of viewers these communications still reach substantial numbers of young people. We would ask CAP/BCAP to consider total impact as well as relative thresholds when attempting to minimise the impact of e-cigarette marketing communications on people aged under 18.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being “advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18”]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

SCOT agrees with the intent of this amendment, however (similarly to the response to Question 20 above), we also ask BCAP to consider the total impact of e-cigarette advertising and look at further restrictions to limit the advertising of e-cigarettes in or alongside programmes that may not be directed at or appeal to audiences under 18, but nevertheless attract a substantial viewership of under 18s due to their popularity (e.g. prime time early evening programming or sporting events).

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP’s policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

SCOT believe that, given the novelty of e-cigarettes and the evolving marketing approaches for them, there is a need to have strong oversight of the early stages of the e-cigarette advertising market. Because of this, we consider it appropriate to require all advertisement for e-cigarette across all channels and mediums (both broadcast and non-broadcast) to be centrally cleared. This situation could be changed at a later date, dependent on scientific evidence on the products themselves, or the impact of their marketing.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

SCOT believes these rules should apply to e-cigarettes that do not contain nicotine. If these were exempt, it would create a potentially problematic loophole as non-nicotine e-cigarettes can be visually and functionally identical to their nicotine-containing counterparts.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

SCOT believes that the above rules for e-cigarettes should apply to all e-cigarettes whether they are licensed medicines or not, with the addition that products licensed by the MHRA may make the therapeutic claims for which they are licensed.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

SCOT agrees with the proposed definition of e-cigarettes, with the addition of including non-nicotine containing e-cigarettes.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

As stated at the start of this response SCOT consider it vital that these rules remain open to rapid revision as the scientific evidence on e-cigarettes (both the products themselves, and the impact of their marketing) accumulates.

SCOT are also concerned about the absence of any specific mention or rules regarding the promotion of e-cigarettes through social media. While we recognise that CAP rules are applicable to online marketing communications, we believe the particular appeal of social media to under 18s necessitates specific recognition in the guidance.

SCOT would also recommend, in line with the World Health Organisation's Framework Convention on Tobacco Control Article 5.3² on the protection of public health policies from the vested interest of the tobacco industry, that future consultations on matters pertaining tobacco control require respondents to explicitly disclose any associations they have with those involved in the manufacture or sale of tobacco products.

² WHO, November 2008. Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Available from: http://www.who.int/fctc/guidelines/article_5_3.pdf

E-Cigarettes Consultation
Regulatory Policy Team
Committee of Advertising Practice
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In 2014 Scotland Welcomes the World



28 April 2014

Dear Regulatory Policy Team,

We welcome the opportunity to contribute to the CAP/BCAP consultation on the marketing of e-cigarettes.

The Scottish Government recognises that e-cigarettes may potentially help many people smoke fewer cigarettes, or even stop altogether. While it is important to note that they have not been proven to be safe, the current evidence suggests they are almost certain to be less harmful than smoking tobacco.

On the other hand, the Scottish Government is concerned that the devices may have the capacity to re-normalise smoking behaviours. Nicotine is an addictive substance and promotional activity (of both nicotine or non-nicotine products) may increase their appeal to young people.

Protecting young people has always been at the core of Scottish Government smoking policies. We believe this is the approach that should also be adopted for E-Cigarettes. For that reason, the Scottish Government supports robust action to restrict promotions, advertising and sponsorship deals that feed nicotine addiction, especially in contexts attractive to young people.

The Scottish Government supports the general principles set in both the University of Edinburgh Tobacco Control Research Group and ASH Scotland's response. In particular:

1. Regulation of un-licenced electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should **not** be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.

3. Electronic cigarettes and other nicotine containing products should be required to be advertised as an alternative to smoking cigarettes or other tobacco products for existing smokers **only**.
4. Electronic cigarettes and other nicotine containing products should **not** be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
5. Electronic cigarettes and other nicotine containing products should **not** be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

Donald Henderson

Head of Public Health Division

Consultation Questions

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

The Scottish Government agrees that the rule should require marketing communication and advertisements for e-cigarettes to be 'socially responsible'. The Scottish Government agrees with ASH Scotland that for the effective functioning of this rule, it is important to be clear what 'social responsibility' entails in this context.

This should include:

1. An explicit requirement for all advertising and promotion to present e-cigarettes as alternatives to tobacco cigarettes for existing current tobacco cigarette smokers.
2. Prohibition of any feature of communications and advertisements that would suggest to a reasonable person that using e-cigarettes has positive qualities as a 'lifestyle choice' other than as an alternative to tobacco cigarettes for existing smokers. This is important for descriptions of perceived user effects that exist largely as a consequence of nicotine dependence (e.g. terms like 'satisfying' should not be permitted).

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

The Scottish Government agrees with the general principle behind this rule, but believe it needs to be strengthened. While there is already a statutory prohibition on tobacco 'brand-stretching' activities in the UK, the possibility remains that e-cigarettes which resemble tobacco cigarettes could be used to implicitly or explicitly promote tobacco cigarette smoking. As an increasing number of e-cigarette companies are owned by tobacco companies this is an issue of great concern in relation to and the World Health Organisation's Framework Convention on Tobacco Control Article 5.3¹.

¹ http://www.who.int/fctc/guidelines/adopted/article_5_3/en/

Because of this, the Scottish Government believes this rule should be strengthened to include to a prohibition of any features of design, colour, imagery, or style that could reasonably be expected to confuse viewers between e-cigarettes and tobacco cigarettes or could reasonably be viewed as promotion of 'smoking' behaviour.

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

The Scottish Government agrees with the proposed wording of this rule and the proposed definition of health claims for the purposes of this rule. As set out above, while current evidence suggests e-cigarettes are likely to be less hazardous than tobacco cigarette smoking, there is uncertainty over their long-term impact, or the level of appeal they are likely to have amongst young people. As set out above, the Scottish Government supports a precautionary approach to advertising and promotion activities.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

The Scottish Government agrees with the inclusion and wording of this rule.

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

The Scottish Government agrees with the inclusion and wording of this rule, and the requirement to be clear about whether the product contains nicotine or not. The Scottish Government also agrees that e-cigarettes that do not contain nicotine should be subject to the same rules as nicotine containing e-cigarettes as set out in the response to Questions 23 & 24.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

The Scottish Government believes robust regulations must be put in place to ensure that communications and advertisements do not encourage non-smokers or non-nicotine users to use e-cigarettes. The Scottish Government believes this rule should be strengthened to prohibit any encouragement to try e-cigarettes amongst non-smokers or non-nicotine users either explicitly or implicitly.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

The Scottish Government agrees with this rule and that no exceptions should be made for adverts to link to alcohol or gambling contexts / environments, particularly as many organisations have brought in place restrictions to prohibit use indoors. Communications / advertisements should be careful to not undermine those.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

The Scottish Government strongly agrees with the inclusion and wording of this rule.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

The Scottish Government strongly agrees with this rule and that it should apply to both nicotine and non-nicotine e-cigarettes. As already set out, the Scottish Government is concerned about the risk that promotional activity increases the appeal of E-Cigarettes to young people. A report commissioned by Cancer Research UK - The Marketing of Electronic Cigarettes in the UK (2013)² found that some e-cigarette adverts appealed to young people in a range of different ways. Protecting young people from exposure to promotion of both nicotine and non-nicotine e-cigarettes is central to the Scottish Government's ambition in developing a policy for these products.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

The Scottish Government agrees with the inclusion and wording of this rule in line with our response to Rule 9.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

The Scottish Government notes the consultation document makes a comparison with the impact of alcohol warnings. However, we would comment that age restrictions on alcohol are well understood. E-cigarettes are new products and such restrictions are not yet in place. We suggest that further consideration is given to these differences.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

The Scottish Government agrees with the inclusion of this rule. However, we would encourage further consideration of the 25% limit. This could still result in a high number of under 18s being influenced by marketing communications.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

²http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/cr_115991.pdf

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

The Scottish Government agrees with the inclusion and wording of this rule.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

The Scottish Government agrees that all adverts for nicotine and non-nicotine e-cigarettes should be centrally cleared.

Additional Questions

Question 23 & 24:

- **To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?**
- **Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?**

The Scottish Government strongly believes that these rules should apply to both nicotine and non-nicotine e-cigarettes. This is because both types of products can look the same. Also, some types of e-cigarettes have user-replaceable parts and a choice of nicotine or non-nicotine fluid refills. Exempting non-nicotine e-cigarette from these rules could cause a great deal of confusion and potentially creates loopholes for 'cigarette like' non-nicotine e-cigarette to be used to implicitly promote the smoking of tobacco cigarettes.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

As far as possible, in line with the terms of the medicines license, the Scottish Government believes that these rules should apply to all e-cigarettes regardless of whether they are licensed medicines or not.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

The Scottish Government agrees with the proposed definition of e-cigarettes, with the addition of including non-nicotine containing e-cigarettes also.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

The Scottish Government believes the rules should support the general principles set out at the start of this document. The rules should also support the approach set out in the recently agreed EU Tobacco Products Directive³ and the World Health Organisation's Framework Convention on Tobacco Control Article 5.3.

³ http://ec.europa.eu/health/tobacco/products/revision/index_en.htm

**Committee of Advertising Practice and Broadcast Committee of Advertising Practice Consultation
on the Marketing of E-Cigarettes**
February –April 2014

Sefton Health and Wellbeing Board Consultation Response

This is a response on behalf of the Sefton Health and Wellbeing Board. The main objective of the board is to work together to improve the Health and Wellbeing of the Sefton population. The Board is chaired by Cllr Ian Moncur, Cabinet Member for Children, Families and Leisure and includes key Council Directors, CCG Board Members, NHS England, Sefton Healthwatch and is supported by the Deputy Chief Executive of Sefton Council.

The organisations represented on the Health and Well Being Board have worked together over the last ten years to successfully reduce smoking prevalence in Sefton, We believe that to successfully reduce the harm caused by tobacco to the people who live and work in Sefton we need to ensure that young people do not become addicted to tobacco. By introducing rules to regulate the marketing and promotion of electronic cigarettes will help to support this aim.

We are therefore writing to demonstrate our support to the introduction of specific advertising rules in relation to electronic cigarettes and set more detailed responses to each consultation question below. We also ask that these rules are implemented at the earliest opportunity in response to the increasing marketing activity being undertaken with these products.

Consultation Response

Rule 1: Marketing communications / advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 2: What specific advertising approaches, if any that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

Sefton Health and Wellbeing Board (SHWB) Response: We agree with the principle that all marketing communications and advertisements be socially responsible. We also believe that there can be improvements made to this rule.

Marketing should ensure that it is distinguishable as an alternative form of tobacco and therefore not intended for use by non-smokers. Until there is robust evidence it should also not be promoted as a stop smoking aid.

Advertisements should not glamorise e-cigarette use or smoking tobacco products and it should not be seen as a way of promoting tobacco. Therefore the word cigarette should not be used as this can be seen as promoting cigarette smoking on television. Health claims should not be included as this is promoting the use of e-cigarettes. All advertising should contain a prominent reference to the toxicity of nicotine and the need to store and use e-cigarettes and refill containers safely and away from children.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?

SHWB Response: We agree with this rule but it should also ensure that it is made clear that it is an alternative to tobacco and for current tobacco users, not an alternative to starting to smoke. We do not want to increase the number of people addicted to nicotine inadvertently as nicotine is still an addictive substance that is harmful to health. Therefore, advertisements should clearly state that using e-cigarettes containing nicotine is addictive, possible side effects of nicotine and that nicotine is a toxic substance the dangers and risks associated should be highlighted.

Another recommendation is the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

SHWB Response: We agree with this rule, we would recommend replacing permission to present electronic cigarettes as an alternative to tobacco with a requirement to do so. In order to be consistent with the general principles set out above. All e-cigarette advertising and promotion should be directed at existing tobacco users and not at potential new users of nicotine. It should be ensured that adverts do not glamorise or have sexual content and ensure that it is clearly stated that e-cigarettes are addictive.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

SHWB Response: We agree with the inclusion of this rule. Preference would be towards the term “electronic cigarette” to “e-cigarette”, as it provides a more informative description. Advertising products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with cigarettes.

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

SHWB Response: We agree with this rule.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

SHWB Response: We agree with the inclusion and wording of this rule however as stated above we believe that all electronic cigarettes should be required to be advertised and promoted as an alternative form of tobacco and not directed to people who are currently non-smokers.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

SHWB Response: No advertisements or communications should present electronic cigarettes in such a way as to glamorise and hence promote their use to non-tobacco users. We of course agree that electronic cigarettes should not be associated with illegal drugs or gambling.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

SHWB Response: We agree with the inclusion and wording of this rule.

Rule 9: Marketing communications / Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

SHWB Response: We agree with this rule. We believe that to support this rule e-cigarette adverts should not be included before the watershed to limit children and young people's exposure to e-cigarette advertisements. We are concerned about how this rule can be adhered to with sponsorship of sports such as televised football programmes whereby the sponsorship will be televised to young people and product placement within television shows that again may appeal to young people.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

SHWB Response: We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. The use of the age of 25 is in conformity with rules on alcohol advertising and therefore we agree with this rule.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

SHWB Response: Placing an 18+ message may not create the desired effect with children and young people. Instead, as stated above, preference is to not advertise or promoted in a way that could appeal to young people and non-tobacco users.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

SHWB Response: We agree with the inclusion and wording of this rule.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

SHWB Response: We agree with the inclusion of electronic cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

SHWB Response: We agree with this rule. We feel that it should be very explicit on how this can be achieved nationally in a robust fashion. The sanction involved for breaching this should be of a significant degree to ensure that this is adhered to. Radio adverts should still need to state that nicotine is addictive in the same way that alcohol adverts carry a drink aware message.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.

SHWB Response: As electronic cigarettes have been around for less than ten years the market is still evolving and advertising of these products is a relatively new phenomenon. Therefore we think that all electronic cigarette advertisements should be centrally cleared prior to publication/transmission.

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

SHWB Response: We agree that these rules should be applied to those devices that do not contain nicotine, as these devices are often called electronic cigarettes it can be hard to distinguish if the product contains nicotine and could lead to normalising of smoking behaviours.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

SHWB Response: We do not consider that additional rules need to be considered

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

SHWB Response: The above rules should apply to all electronic cigarettes including those that are licensed as medicines.

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

SHWB Response: We agree with the proposed definition.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

SHWB Response: There is no reference to use of social media in the rules as currently drafted. Social media is a rapidly growing medium which has been used to promote electronic cigarette use and should also be considered by CAP.

Dear Sir/Madam,

Re: Consultation on the marketing of e-cigarettes CAP and BCAP proposals for new rules. Response on behalf of Sheffield Tobacco Control Programme Accountable Board.

In Sheffield during 2013/14 our Stop Smoking Services have seen a 30% reduction in the number of smokers accessing the service and an increase in the use of e-cigarettes has been identified as a contributing factor to this situation. We have a number of concerns around the use of e-cigarettes in the city and welcome the opportunity to consult on the marketing rules that will apply to e-cigarettes in the future.

We feel in Sheffield that e-cigarettes present a significant challenge to policy makers, in that they present as a healthier alternative to tobacco smoking. They are popular with smokers and appear to be an effective adjunct for many people to help them stop smoking. Replacing conventional cigarettes with e-cigarettes has the potential to reducing harm from cigarettes and a body of evidence is developing to support this.

However more research is needed to determine the most successful way to stop smoking using an e-cigarette. There is a vast range of e-cigarettes and they currently not regulated so the ingredients and amounts of nicotine contained in e-cigarette products vary. We believe that licensing of e-cigarettes via the Medicines and Healthcare Products Regulatory Authority (MHRA) is an important step in managing the risk of poor and ineffective products that have not yet been proven to be successful in supporting people to quit smoking. Locally we have found there is lack of clear and consistent advice/information on:

- how much nicotine e-cigarettes contain
- content of other chemicals in these products
- how to use e-cigarette products to reduce/stop smoking
- how to store and maintain e-cigarette products safely.

Furthermore we are concerned about theoretical risk that e-cigarette's may act as a gateway into nicotine dependence for non-smokers, in particularly children and young people, either via continued use of electronic cigarettes or other forms of tobacco such as cigarettes amongst people whom would otherwise have not taken up either habit. The harmful effects of smoking on health are well documented. Cigarettes contain over 4000 chemicals and 60 plus carcinogens. Nicotine has less serious adverse effects on health than other chemicals found in tobacco however our understanding of harm to health from long term use of nicotine alone is not well established.

Within Sheffield (as in other places such as Liverpool) local insights have identified that young people who had not previously been smokers are experimenting and using e-cigarettes. It is crucial that we eliminate opportunities to advertise these products to children or non-users of tobacco products to ensure we limit the potential for harm.

We are also concerned that e-cigarettes undermine our efforts to de-normalise smoking. The Smokefree legislation has reinforced in many people's minds that smoking has gone from a normal, widely accepted activity to one that is abnormal and unaccepted. We know that people are strongly influenced by social norms and advertising plays a significant role in projecting these norms within our society. We are mindful that tobacco advertising has been banned since 1965 and advertising cigarettes of any description on television and in other mediums threatens the now established practice of Smokefree public places, such as at work or on public transport and feels like we are taking steps backwards not forwards.

Most adult smokers become addicted to nicotine before the age of 19. We need to find ways to discourage the use of e-cigarettes amongst non-smokers, particularly children and young people, whilst not preventing existing smokers from using them if they find them to be a useful aid to stopping smoking.

With the latter in mind please find our responses to the consultation on the marketing of e-cigarettes below.

General Rules

Rule 1: *Marketing communications / advertisements for e-cigarettes must be socially responsible.*

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with inclusion and wording of this rule that e-cigarette advertising and promotion should be socially responsible however we would like further detail to be added to ensure clarity around the term socially responsible. We would like to see some socially responsible criteria defined within the rule. For example, *"Marketing and advertisements for e-cigarettes must be socially responsible and must not be linked to sexuality, sexual attractiveness, enhanced sporting ability, aggressive behaviour"*

In recent months we have seen graphic advertising of e-cigarettes by British American Tobacco taking place with sexual content that has offended over 1000 viewers. These strategies were very effective in recruiting people, particularly young people to become smokers in the 1950's. Many smokers began their habit because they felt smoking would make them appear cool and sexy. This could be the case for "Vaping" due to the similar appearance of e-cigarettes to mainstream cigarettes. Advertising in this way could lead to an increase use of both.

We would also like explicit reference to be made in e-cigarette advertisements to the fact that electronic cigarettes are an alternative to tobacco, and that they are therefore not suitable for non-smokers, and children under 18 years of age.

Advertising should contain reference to the need to store and use e-cigarettes and refill containers safely and away from children.

We have had reported incidents where parents have been giving e-cigarettes to their children, wanting to provide a safer alternative to smoking. This is obviously concerning as this normalises the use of nicotine and cigarette like products to young people. We are unclear of the potential harm this could be causing. Furthermore we do not know if young people are sustaining their use of e-cigarette products or changing to smoking cigarettes or using both? A further concern is that they could potentially overdose on nicotine from dual use.

Question 2: What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

None.

Rule 2: *Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.*

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree in part with this rule. E-cigarettes are so similar in appearance to mainstream cigarettes that by allowing them to be shown in advertisements this will be in our view promoting the use of cigarettes/tobacco products. However we understand that CAP and BCAP acknowledge that new rules cannot reasonably completely restrict marketers from showing their product. We recommend that the rule specify's a cap/limit on the amount of time allowed for visuals of e-cigarettes being shown on television advertising (for example: 10-20% of TV advertisement air time). We would like this rule to state that e-cigarette visuals should not be excessive in any advertisement.

We would also recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour should be included within this rule. This is particularly important as we know many of the tobacco companies are now leaders in the e-cigarette market and as such will be promoting e-cigarette products/brands and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.

Possible wording of this rule could include:

“Marketing communications / advertisements must contain nothing which promotes any design, colour, imagery, logo style that might be associated in the audiences’ mind with a tobacco product. They must also contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent e-cigarette products from being shown, however e-cigarettes must not appear excessively in any advertisement or marketing of communication”

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised.

No.

Rule 3: *Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.*

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

No we do not agree with the proposal to prohibit health claims. There is a growing body of evidence to suggest that e-cigarettes are a safer nicotine delivery system to smoking tobacco and therefore we feel that it is reasonable to allow marketers of e-cigarettes to state that e-cigarettes are a “healthier” alternative to smoking tobacco in advertisements of their products. Smokers may be encouraged to use e-cigarettes and stop using tobacco products this has the potential to achieve significant public health gain.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We do not agree that this definition should be used please see information provided in Question 5.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with the proposal to prohibit medicinal claims. We agree that any product that makes a medicinal claim must be appropriately authorised as a medicine or medical device.

The proposal to prohibit medicinal claims being made in the marketing and advertisements of e-cigarettes is particularly important as there is currently a lack of rigour and testing into the safety and efficacy of e-cigarettes. In Sheffield we believe that licensing of e-cigarettes via the Medicines and Healthcare Products Regulatory Authority (MHRA) is an important step in managing the risk of poor and ineffective products that have not yet been proven to be successful in supporting people to quit smoking.

Rule 4: *Marketing communications / advertisements must make clear that the product is an e-cigarette.*

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with this rule. Any advertising must distinctly be recognised as an e-cigarette not as a cigarette containing tobacco.

Rule 5: *Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.*

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with the inclusion this rule but would prefer the rule to be worded more strongly. Wording could include: "*Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They **must** include factual information about other product ingredients.*

Some e-cigarettes contain additives similar to those that are found in mainstream cigarettes consumers need to be made aware of these so they can make an informed choice. We have seen products locally that have contained acetone for example. We would also like this rule to include the following wording:

"Marketing and advertisements of e-cigarettes should not include the promotion of flavours that would appeal to young people".

Anecdotal evidence locally has identified that the promotion of e-cigarette flavours such as vanilla, cappuccino, red bull and sugar has played a part in the popularity of e-cigarette use amongst young people.

Also advertising of e-cigarette products should not describe them as "smoked", or use any other descriptor (other than the generic name "electronic cigarettes") that is misleading and could create confusion with cigarettes.

Prohibited Approaches

Rule 6: *Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.*

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with the inclusion and wording of this rule. We welcome the statement that the Committees "are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine". Promoting the use of e-cigarettes to non-users of tobacco or ex-smokers is completely inappropriate. In Sheffield we are very concerned about the appeal of e-cigarettes to young people - it is viewed by some of our young people as the new "in-thing".

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We do not agree that it is sufficient to set a principle that such adverts “must not *explicitly* encourage those who do not currently use nicotine to start”. *Implicit* promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be worded as to make it as difficult as possible for any e-cigarette manufacturer to target those who do not currently use tobacco. Therefore, after “encourage” we would wish to insert the words “either explicitly or implicitly” to read as follows: “Marketing communications / advertisements must not encourage **either explicitly or implicitly**, non-smokers or non-nicotine users to use e-cigarettes”.

Published evidence alongside local anecdotal evidence demonstrates that use of e-cigarettes maybe a gateway to nicotine addiction amongst children and young people who were previously non-smokers. Below we have provided some evidence from the UK and America:

1. *Young People’s Perceptions of Electronic Cigarettes*, Centre for Public Health, Liverpool St John Moores University.
2. <http://blogs.bmj.com/bmj/2014/03/20/simon-chapman-why-is-big-tobacco-investing-in-e-cigarettes/>
3. *Electronic Cigarette Use Among Utah Students (Grades 8, 10, and 12) and Adults*, Utah Department of Health. Dec 2013.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with the proposal to prohibit linking e-cigarettes with illicit drugs?

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Yes we agree that alcohol should be included in this rule.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

Yes we agree that gambling should be included in this rule

We feel it crucial to prevent e-cigarette's from being promoted/advertised in any way that contributes to the harm of health and wellbeing of the population. The harm caused to both physical and mental health and society as a whole are well documented for each of these behaviours (*Gambling, use of alcohol, illicit drugs*). Rule 7 links to rule 1 advertising and promotion of e-cigarettes should be socially responsible. We suggest rule 7 could be made stronger and wording could be detailed as follows:

"No marketing advertisements or communications should present electronic cigarettes in such a way as to glamorise and must not link e-cigarettes with gambling, alcohol or illicit drugs and hence promote their use to non-tobacco users.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with this inclusion and wording of this rule.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

Yes. Operating and using machinery.

Protection of children and young persons: general

Rule 9: Marketing communications / Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with the inclusion and wording of this rule. Many young people began their habit in the 1950's because they felt smoking would make them appear cool and sexy. The tobacco industry used characters such as the Marlborough Man and Smoky Jo to recruit young people to smoking. The Marlborough man was depicted as rugged, sexy, action man who climbed mountains, rode horses bareback whilst simultaneously smoking a cigarette. Smokey Jo Camel, a cartoon character was depicted as "Smooth" and "Slick" a role model to emulate. He rode a motorbike, wore sunglasses and played the piano in blues bars. He was risk taking and cool. We need to be mindful that some producers of e-cigarettes will be the tobacco industry who has a long history of successfully recruiting young people to use their products.

We need to ensure we protect young people effectively and prevent advertising of e-cigarettes in this way.

In Sheffield we are concerned that e-cigarettes undermine our efforts to de-normalise smoking. We are concerned that e-cigarette advertising if conducted in a way that appeals to young people could lead to an increase use of e-cigarettes by both smokers and non-smokers. Therefore the inclusion of this rule is essential to ensure that marketers are not directing/advertising their products to young people (under 18) through social norms approaches and or characters/role models that would appeal to them.

Rule 10: *People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.*

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes we agree with the wording and inclusion of this rule. We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and that the highest rates of smoking are amongst young people in their early twenties. By the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers. The use of the age of 25 is in line with rules on alcohol advertising.

Rule 11: *Marketing communications / advertisements must state that products are not suitable for under-18s.*

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

We do consider that this rule is very necessary. Within Sheffield insights have identified that young people (under 18) who had not previously been smokers are experimenting and using e-cigarettes. It is crucial that we eliminate opportunities to advertise these products to children or non-users of tobacco products to ensure we limit the potential for harm. We are concerned that e-cigarette use will become a gateway to lifelong use of nicotine either via continued use of electronic cigarettes or other forms of tobacco such as cigarettes.

We have also had reported incidents where parents have given e-cigarettes to their children as a safer alternative to smoking. This is obviously concerning as this normalises the use of nicotine and cigarette like products for the young person. We are unclear of the potential harm this could be causing. Furthermore we do not know if young people are sustaining their use of e-cigarette products or reverting back to smoking cigarettes or using both? Thus this is a further potential hazard in that they could overdose on nicotine from dual use.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being “advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18”]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree with the inclusion of electronic cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP’s policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

Electronic cigarettes have been around for less than ten years and the market is still evolving. Advertising of these products is a relatively new phenomenon. Therefore we think that all electronic cigarette advertisements should be centrally cleared prior to publication/transmission.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

They may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

The same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

There is no reference to use of social media in the rules as currently drafted. Social media is a rapidly growing medium which has been used to promote electronic cigarette use and we believe this is a major challenge which needs to be considered by CAP.

A rule to depict all of the following branding/packaging of e-cigarettes should clearly identify that the product contains nicotine and how much and should state that e-cigarettes should not be used by non-users of tobacco and under 18's.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

Please see the general statement at the beginning outlining the position within Sheffield.

A further point we feel needs to be considered is safeguarding against marketing and advertising of e-cigarettes to pregnant women and women who are breastfeeding. As highlighted earlier we do not yet have full understanding of the safety and efficacy of e-cigarette products.

Consultation on the Marketing of E-Cigarettes

Response from:

Shropshire Public Health
Shropshire Council

25 April 2014

Answers to Consultation Questions

Rule 1: *Marketing communications / advertisements for e-cigarettes must be socially responsible*

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

We agree with this rule though it, and all subsequent rules, could be strengthened to cover all non-tobacco nicotine containing products, not just electronic cigarettes, so that they remain fit for purpose as the market evolves.

Rule 2: *Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.*

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

As far as possible, electronic cigarettes and other nicotine containing products should be advertised as an alternative to smoking cigarettes or other tobacco products.

We agree with this rule but suggest an amendment that advertisements '...must contain nothing which promotes the use of, or brand identity of, a tobacco product.....'

Rule 3: *Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.*

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the proposed wording except that we would recommend revising to '... Electronic cigarettes should be presented as an alternative to tobacco.'

Rule 4: *Marketing communications / advertisements must make clear that the product is an e-cigarette.*

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the proposed wording of this rule.

Rule 5: *Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.*

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the proposed wording of rule 5.

Rule 6: *Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.*

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We would like to see revised wording to this rule in that *Marketing communications / advertisements must not encourage or target non-smokers or non-nicotine users to use electronic cigarettes*

Rule 7: *Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.*

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

We agree with the inclusion of this rule.

Rule 8: *Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.*

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

We agree with the inclusion of this rule.

Rule 9: *Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.*

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion of this rule.

Rule 10: *People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.*

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule to support the Challenge 25 agenda to preventing young people gaining access to age restricted products.

Rule 11: *Marketing communications / advertisements must state that products are not suitable for under-18s*

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

We do not see that this rule is necessary so long as the other rules are in place to ensure electronic cigarette advertising is socially responsible.

Rule 12: *Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.*

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule.

Rule 13: *[Amendment to existing BCAP rule]*

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree with the inclusion of electronic cigarettes in this list.

Rule 14: *Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.*

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

We agree that all advertisements for electronic cigarettes must be centrally cleared.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

The current lack of regulation and consequent inconsistency in safety and quality controls among different products has the potential to cause confusion therefore all electronic cigarettes should be subject to the same rules until such a time as they are properly regulated and there are clear safety standards for all devices.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

The current lack of regulation and consequent inconsistency in safety and quality controls among different products has the potential to cause confusion therefore all electronic cigarettes should be subject to the same rules until such a time as they are properly regulated and there are clear safety standards for all devices.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

We would propose that products licensed as medicines should be able to include specific health claims, such as any health benefits as opposed to smoking tobacco or their use as aids to cutting down and stopping smoking, where they are well supported by scientific evidence.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

It should be made clear that these rules apply equally to all forms of media, including social media.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.

Due to the toxicity of electronic cigarette liquid refills and increasing reports of ingestion of the liquid advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.



Smoke Free Newcastle Response to the CAP and BCAP Consultation on the Marketing of E-Cigarettes

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About Smoke Free Newcastle

This response to the CAP and BCAP consultation document is submitted on behalf of Smoke Free Newcastle.

Smoke Free Newcastle is a multi disciplinary and multi-agency group, coordinated by Newcastle Hospitals Community Health and chaired by Newcastle City Council, which oversees tobacco control issues across the city. It uses a comprehensive eight strand evidence based approach to plan and carry out tobacco control plan activity in the city. These strands are designed to support three key objectives of motivating and supporting smokers to quit, protecting from secondhand and other tobacco related harm and to prevent the uptake of smoking. Smoke Free Newcastle was established in 2004 and works closely with Fresh; Smoke Free north east, the UK's first dedicated regional tobacco control programme.

In Newcastle one in five deaths (18%) of deaths among adults over the age of 35 years are estimated to be as a result of smoking¹. 22.9% of adults in the city are estimated to smoke regularly², rising to 34.9% among routine and manual workers. These figures remain well above the England averages (19.5% and 29.7% respectively) and have a huge impact on health inequalities.

¹ NHS Information Centre, Statistics on Smoking in England, 2010. <http://www.ic.nhs.uk/pubs/smoking10>

² Public Health England; Tobacco Control Profile Newcastle. Data from Integrated Household Survey – all prevalence data (Jan – Dec 2012) <http://www.tobaccoprofiles.info/profile/tobacco-control/data#qid/1000110/pat/6/ati/101/page/0/par/E12000001/are/E08000021>

Relevant Facts

The following are relevant facts about “electronic cigarettes” that should guide the final rules on how they are advertised.

1. Electronic cigarettes are not cigarettes in any meaningful sense; they are nicotine delivery systems that do not contain tobacco, and where the nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in reality to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.³
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.^{4 5}
4. Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

Latest estimates by Action on Smoking and Health (ASH) indicated that in 2013 there were 1.3 million current users of electronic cigarettes in the UK, and the number has continued to grow since then. This number is almost entirely made of current and ex-smokers; with perhaps as many as 400,000 people having fully replaced smoking with e-cigarette use.⁵ In the North East, latest YouGov survey data suggests that around 13% of adults have tried e-cigarettes. There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking.⁵ However, this could change particularly if advertising and promotion of electronic cigarettes glamorises the use of these products and promotes their use to young people. Anecdotally in Newcastle, school health advisors and several secondary school teachers have recently reported increasing numbers of young people using electronic cigarettes.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely in about mid-2016), unless they are authorised as medicinal products. This means that no TV, radio, electronic or print advertising will be allowed. The advertising permitted will essentially be limited to advertising which only has domestic reach such as billboard, bus and point of sale. The UK Medicines and Healthcare Products Regulatory Agency (MHRA) has said that it: “continues to encourage companies to voluntarily

³ Royal College of Physicians. Harm reduction in nicotine addiction: helping people who can't quit. A report by the Tobacco Advisory Group of the Royal College of Physicians. London: RCP, 2007.

⁴ West, R. Brown, J. Beard, E. Trends in electronic cigarette use in England. Smoking Toolkit Study. March 2014. <http://www.smokinginengland.info/latest-statistics/> accessed 2nd April 2014.

⁵ Use of e-cigarettes in Great Britain among adults and young people (2013). ASH. London. May 2013. http://www.ash.org.uk/files/documents/ASH_891.pdf accessed 2nd April 2014.

submit medicines licence applications for electronic cigarettes and other nicotine containing products as medicines”.⁶

This is an evolving market and it is highly likely that novel nicotine containing products, which do not fit within the category of ‘electronic cigarettes’ will enter the market. For example; in Newcastle shisha steam stones are a product which have entered the market as well as electronic shisha. Smoke Free Newcastle therefore recommend that these rules cover all non-tobacco nicotine containing products, not just electronic cigarettes, so that they remain fit for purpose as the market evolves. This generic point applies to all the rules.

As a general point the use of the descriptor ‘e-cigarette’ or ‘electronic cigarette’ has exacerbated general concern about these products and misunderstandings about what they are and their risk profile. Increasingly users themselves are referring to these products as ‘vapourisers’, their use as ‘vaping’ and users as ‘vapers’. In Newcastle a number of electronic cigarette shops have opened referring to ‘Vaps’ in their names, further adding to the confusion around these products. Smoke Free Newcastle thinks it would be helpful if CAP required this terminology and prohibited the use in advertising of the words ‘e-cigarette’ or ‘electronic cigarette’ and descriptions of their use as ‘smoking’ and users as ‘smokers’. If this is not considered possible at the very least it should be required that the full term ‘electronic cigarette’ be used and not the shortened form ‘e-cigarette’ as this provides a clearer description of what they are.

General Principles

Smoke Free Newcastle therefore recommend that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Regulation of unlicensed electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. As far as possible, electronic cigarettes and other nicotine containing products should be advertised as an alternative to smoking cigarettes or other tobacco products.
4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

⁶ MHRA. [Nicotine Containing Products](#). Web page accessed 2nd April 2014.

6. Electronic cigarettes advertising should clearly state that nicotine is addictive and that consumers should not start to use any nicotine delivery device unless they are already addicted to nicotine.

Answers to Consultation Questions

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Smoke Free Newcastle suggests a revision to rule 1 to read (revisions in bold):
Marketing communications/advertisements for **electronic cigarettes and other nicotine containing products** must be socially responsible.

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

Smoke Free Newcastle agrees with the principle that electronic cigarette advertising and promotion should be socially responsible. This rule should be more tightly worded however, so that it establishes some key tests of social responsibility. These would include:

1. Explicit reference to the fact that electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently consume tobacco products.
2. Wording which suggests that electronic cigarettes and other nicotine containing products have positive qualities, as a consequence of the addictive nature of the product, should be prohibited. An example would be the use of the word “satisfying”, which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any “satisfaction” for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms. The nature of nicotine addiction should be explicit.
3. Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Smoke Free Newcastle suggests revised wording to rule 2 in bold below;

Rule 2: Marketing communications / advertisements must contain nothing **which promotes any design, colour, imagery, logo style that might be associated in the audiences’ mind with a tobacco product. They must also contain nothing**

which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like products **must not be shown in ways that could reasonably be expected to promote smoking or tobacco products.**"

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

Smoke Free Newcastle agrees with the proposed rule as a starting point but believe it needs to be strengthened. In 2013, 91% of smokers and 71% of non-smokers had heard of electronic cigarettes so advertising is not required to raise awareness of the product, but rather to promote individual brands to smokers.³

We recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Smoke Free Newcastle recommends replacing a *permission* to present electronic cigarettes as an alternative to tobacco with a *requirement* to do so. This is because, in order to be consistent with the general principles set out above, all advertising and promotion of electronic cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine.

Suggested revised wording for rule 3 is given below:

"Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. **Electronic cigarettes and other nicotine containing products should** be presented as an alternative to tobacco."

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Smoke Free Newcastle agrees with the proposed wording (including square brackets) of this rule

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

Smoke Free Newcastle agrees with the prohibition of medicinal claims, as defined in the rule above. Only those products which have been licensed as medicinal aids should be able to make any claim along such lines.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Widespread concerns about nicotine containing products have been stimulated at least in part by the use of the term “e-cigarette” and the misperception that these products are “smoked”. Therefore Smoke Free Newcastle recommends that the term “vapouriser” be required in preference to ‘e-cigarette’. If this is not accepted then the descriptor “electronic cigarette” is preferable to “e-cigarette”, as we consider this on balance to be more informative. Advertising of such products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with tobacco cigarettes.

Smoke Free Newcastle suggests the following revised wording for rule 4:

“Marketing communications / advertisements for **electronic cigarettes should describe them as vapourisers and not use the word e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes.**”

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Smoke Free Newcastle agrees with the inclusion and wording of this rule, including the words in square brackets. (See question 24 below). Additionally we would welcome the inclusion of a sentence to say that nicotine is addictive in nicotine containing products.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Smoke Free Newcastle does not agree that it is sufficient to only set a principle that adverts must not *explicitly* encourage those who do not currently use nicotine to start. *Implicit* promotion to intended target groups of consumers is an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make it as difficult as possible for any

electronic cigarette manufacturer to target those who do not currently use tobacco. Therefore, we would wish to revise as follows:

“Rule 6: Marketing communications / advertisements must not **target either explicitly or implicitly**, non-smokers or non-nicotine users to use **electronic cigarettes or other nicotine containing products.**”

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

Smoke Free Newcastle agrees with the inclusion of this rule, with the following proposed amendment shown in Question 10. We welcome the statement that the Committees “are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine”. However, our support for rule 6 depends on acceptance of our modified rule 3 above that, all electronic cigarettes should be *required* to be advertised and promoted as an alternative to tobacco.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Smoke Free Newcastle agrees with the inclusion of this rule revised (in bold) to include other nicotine containing products.

“Rule 7: Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with gambling, alcohol or illicit drugs.”

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

Smoke Free Newcastle agrees with the inclusion of this rule revised as follows.

“Rule 8: Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with activities or locations in which using them would be unsafe or unwise; such as driving, **working with children, when preparing or serving food.**”

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Smoke Free Newcastle supports this rule. Additionally we believe that marketing communications / advertisements should include a requirement that electronic cigarettes cannot not be allowed to be shown as a ‘fashion’ accessory.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Smoke Free Newcastle supports this rule. The use of the age of 25 provides conformity with rules on alcohol advertising. It also helps to ensure that de-normalisation messages on smoking are supported.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP’s consideration of this rule.

Smoke Free Newcastle recognises that placing an “18+ message” on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective.⁷ We would prefer a revised set of rules, on the principles set out above, which require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users. But in order to provide additionality to this approach Smoke Free Newcastle would welcome the addition of a clear warning message that nicotine is an addictive

⁷ American Legacy Foundation, Getting to the Truth: Assessing Youths’ Reactions to the truthsm and ‘Think. Don’t Smoke’ Tobacco Countermarketing Campaigns, First Look Report 9, June 2002. Sly, D & Heald, G, Florida Antitobacco Media Evaluation (FAME) Follow-up Report, February 2001. Teenage Research Unlimited, “Counter-Tobacco Advertising Exploratory,” Summary Report, January-March 1999.

substance and that electronic cigarettes are not intended for use by those not currently smokers.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Smoke Free Newcastle agrees with the inclusion and wording of this rule. It could be made more explicit by adding 'or location' after 'context'.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being “advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18”]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

Smoke Free Newcastle agrees with the inclusion of electronic cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP’s policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

Smoke Free Newcastle agrees that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission. In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, Smoke Free Newcastle believes that they should be subject to the same rules as other electronic cigarettes, subject to Rule 5 above.

Anecdotally, Newcastle City Council's Public Safety and Regulation Services note that products such as shisha, whether using electronic or steam stones, are perceived by users, and in particular younger users, as being 'healthier' or 'cool'. It is of note that this trend has been picked up upon by local licensed premises who make provision of shisha, with no distinction regarding tobacco or otherwise in content a key part of their advertising on flyers and other mechanisms for example, social media. It is therefore important that the rules cover **all** tobacco and non-tobacco containing products.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

Smoke Free Newcastle recommends to CAP and to the MHRA that the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

Smoke Free Newcastle agrees with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

Please see the general statement of facts and principles set out at the beginning of this consultation response.

There is no reference to use of social media in the rules as currently drafted and Smoke Free Newcastle would urge clarity that these rules apply equally to social media.

There is no reference to product placement of electronic cigarettes or their use in television programmes popular with young people under the age of 18 years. Smoke Free Newcastle would urge clarity that these rules apply equally to broadcast television and film media. For example electronic cigarettes have been shown to be used in the soap opera East Enders, a programme regularly watched by those under the age of 18 years.

This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.

CAP and BCAP Consultation on the Marketing of E-Cigarettes

**Response on behalf of Smokefree County
Durham Tobacco Control alliance**



28 April 2014

CAP and BCAP Consultation on the Marketing of E-Cigarettes

28 April 2014

About Smokefree County Durham Tobacco Control Alliance

This response to the CAP and BCAP consultation document is submitted on behalf of the Smokefree County Durham Tobacco Control Alliance. The alliance is a local partnership made up of key individuals/organisations committed to improving the health of local people by working to reduce smoking prevalence. The alliance has developed a comprehensive five year tobacco control action plan delivering evidenced based actions based on eight key strands of tobacco control to address the causes and impacts of tobacco use, and monitors the progress of actions on the plan. The focus of the plan is to protect children, in particular protecting them from becoming future lifelong smokers. The alliance's tobacco plan has an ambition to reduce smoking prevalence in County Durham to 5% by 20130 (currently 22.2%, 2012), and has a bold vision to drive the ambition which states-

“That a child born now in any part of County Durham will reach adulthood breathing smokefree air, being free from tobacco addiction and living in a community where to smoke is unusual. We owe it to our children to make this happen”

The alliance is also part of the FRESH- Smokefree North East programme that has been working in partnership with a number of regional and national agencies. The County Durham alliance is one of the 12 localities in the north east that is working collectively to tackle tobacco issues.

Relevant Facts

The following are relevant facts about “electronic cigarettes” that should guide the final rules on how they are advertised.

1. Electronic cigarettes are not cigarettes in any meaningful sense; they are nicotine delivery systems that do not contain tobacco, and where the nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in reality to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.¹
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.^{2 3}
4. Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

¹ Royal College of Physicians. Harm reduction in nicotine addiction: helping people who can't quit. A report by the Tobacco Advisory Group of the Royal College of Physicians. London: RCP, 2007.

² West, R. Brown, J. Beard, E. Trends in electronic cigarette use in England. Smoking Toolkit Study. March 2014. <http://www.smokinginengland.info/latest-statistics/> accessed 2nd April 2014.

³ Use of e-cigarettes in Great Britain among adults and young people (2013). ASH. London. May 2013. http://www.ash.org.uk/files/documents/ASH_891.pdf accessed 2nd April 2014.

Latest estimates by Action on Smoking and Health (ASH) indicated that in 2013 there were 1.3 million current users of electronic cigarettes in the UK, and the number has continued to grow since then. This number is almost entirely made of current and ex-smokers; with perhaps as many as 400,000 people having fully replaced smoking with e-cigarette use.³ In the North East, latest YouGov survey data suggests that around 13% of adults have tried e-cigarettes. There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking.³ However, this could change particularly if advertising and promotion of electronic cigarettes glamourises the use of these products and promotes their use to young people.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely in about mid-2016), unless they are authorised as medicinal products. This means that no TV, radio, electronic or print advertising will be allowed. The advertising permitted will essentially be limited to advertising which only has domestic reach such as billboard, bus and point of sale. The UK Medicines and Healthcare Products Regulatory Agency (MHRA) has said that it: “continues to encourage companies to voluntarily submit medicines licence applications for electronic cigarettes and other nicotine containing products as medicines”.⁴

This is an evolving market and it is highly likely that novel nicotine containing products, which do not fit within the category of ‘electronic cigarettes’ will enter the market. We therefore recommend that these rules cover all non-tobacco nicotine containing products, not just electronic cigarettes, so that they remain fit for purpose as the market evolves. This generic point applies to all the rules.

As a general point the use of the descriptor ‘e-cigarette’ or ‘electronic cigarette’ has exacerbated general concern about these products and misunderstandings about what they are and their risk profile. Increasingly users themselves are referring to these products as ‘vapourisers’, their use as ‘vaping’ and users as ‘vapers’. We think it would be helpful if CAP required this terminology and prohibited the use in advertising of the words ‘e-cigarette’ or ‘electronic cigarette’ and descriptions of their use as ‘smoking’ and users as ‘smokers’. If this is not considered possible at the very least it should be required that the full term ‘electronic cigarette’ be used and not the shortened form ‘e-cigarette’ as this provides a clearer description of what they are.

General Principles

We therefore recommend that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Regulation of unlicensed electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. As far as possible, electronic cigarettes and other nicotine containing products should be advertised as an alternative to smoking cigarettes or other tobacco products.

⁴ MHRA. [Nicotine Containing Products](#). Web page accessed 2nd April 2014.

4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

Answers to Consultation Questions

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Suggested revision to rule 1 to read (revisions in bold): Marketing communications/advertisements for **electronic cigarettes and other nicotine containing products** must be socially responsible.

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

We agree with the principle that electronic cigarette advertising and promotion should be socially responsible. This rule should be more tightly worded, so that it establishes some key tests of social responsibility. These would include:

1. Explicit reference to the fact that nicotine is **a highly addictive substance**. Electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that they **should not be used** by people who do not currently consume tobacco products.
2. Wording which suggests that electronic cigarettes and other nicotine containing products have positive qualities, as a consequence of the addictive nature of the product, should be prohibited. An example would be the use of the word “satisfying”, which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any “satisfaction” for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms.
3. Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children. Organisations like the Child Accident Prevention Trust are becoming increasingly concerned about the risks to children of nicotine poisoning from e-cigarettes and the liquid refills.

<http://www.capt.org.uk/who-we-are/news/e-cigarettes-highly-toxic-young-children>

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Suggested revised wording to rule 2 in bold

Rule 2: Marketing communications / advertisements must contain nothing **which promotes any design, colour, imagery, logo style that might be associated in the audiences' mind with a tobacco product. They must also contain nothing** which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like products **must not be shown in ways that could reasonably be expected to promote smoking or tobacco products.**"

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

We agree with the proposed rule as a starting point but believe it needs to be strengthened. In 2013, 91% of smokers and 71% of non-smokers had heard of electronic cigarettes so advertising is not required to raise awareness of the product, but rather to promote individual brands to smokers.³

We recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

We would recommend replacing a *permission* to present electronic cigarettes as an alternative to tobacco with a *requirement* to do so. This is because, in order to be consistent with the general principles set out above, all advertising and promotion of electronic cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine. Suggested revised wording for rule 3 below:

"Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. **Electronic cigarettes and other nicotine containing products should** be presented as an alternative to tobacco."

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the proposed wording (including square brackets) of this rule

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the prohibition of medicinal claims, as defined in the rule above. Only those products which have been licensed as medicinal aids should be able to make any claim along such lines.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Widespread concerns about nicotine containing products have been stimulated at least in part by the use of the term “e-cigarette” and the misperception that these products are “smoked”. Therefore we would recommend that the term “vapouriser” be required in preference to ‘e-cigarette’. If this is not accepted then the descriptor “electronic cigarette” is preferable to “e-cigarette”, as we consider this on balance to be more informative. Advertising of such products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with tobacco cigarettes.

Our suggestion for revised wording for rule 4 is:

“Marketing communications / advertisements for *electronic cigarettes should describe them as vapourisers and not use the word e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes.*”

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule, including the words in square brackets. (See question 24 below).

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We do not agree that it is sufficient to only set a principle that adverts must not *explicitly* encourage those who do not currently use nicotine to start. *Implicit* promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make it as difficult as possible for any electronic cigarette manufacturer to target those who do not currently use tobacco. Therefore, we would wish to revise as follows:

“Rule 6: Marketing communications / advertisements must not **target either explicitly or implicitly**, non-smokers or non-nicotine users to use **electronic cigarettes or other nicotine containing products**.”

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We agree with the inclusion of this rule, with the following proposed amendment. In Question 10. We welcome the statement that the Committees “are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine”. However, our support for rule 6 depends on acceptance of our modified rule 3 above that, all electronic cigarettes should be *required* to be advertised and promoted as an alternative to tobacco.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

We agree with the inclusion of this rule revised (in bold) to include other nicotine containing products.

“Rule 7: Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with gambling, alcohol or illicit drugs.”

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

We agree with the inclusion of this rule revised as follows.

“Rule 8: Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with activities or locations in which using them would be unsafe or unwise; such as driving.”

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed.

To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message ‘Friends don’t let friends smoke’. This advertisement conformed to the general principles we set out, however strict application of rule 9 as it stands would have prevented it being shown as it included two friends behaving in a juvenile manner. This was part of a narrative about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes.

Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children. This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to smokers that smoking cuts you out of family life. We therefore believe rule 9 should be revised and the second two sentences removed.

See links below for the ads in question:

<http://www.youtube.com/watch?v=NKbfXT2M0JI&feature=youtu.be>

<http://www.youtube.com/watch?v=lrSavppUj1k>

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.⁵ The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.⁶

⁵ Robinson S & Bugler C. [Smoking and drinking among adults](#), 2008. General Lifestyle Survey 2008. ONS, 2010.

⁶ [Opinions and Lifestyle Survey, Smoking habits amongst adults, 2012](#). ONS, Sept. 2013

The use of the age of 25 is in conformity with rules on alcohol advertising but we do not think it is justified in this case given that use of electronic cigarettes as an alternative to smoking is much less harmful than heavy alcohol consumption. We would therefore suggest a revision to the rule to read:

Rule 10: People shown using electronic cigarettes and other nicotine containing devices, or playing a significant role must neither be, nor seem to be, under 18. People under 18 may be shown in an incidental role but must be obviously not using e-cigarettes.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective.⁷ We would prefer a revised set of rules, on the principles set out above, which require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule. It could be made more explicit by adding 'or location' after 'context'.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree with the inclusion of electronic cigarettes in this list.

⁷ American Legacy Foundation, Getting to the Truth: Assessing Youths' Reactions to the truthsm and 'Think. Don't Smoke' Tobacco Countermarketing Campaigns, First Look Report 9, June 2002. Sly, D & Heald, G, Florida Antitobacco Media Evaluation (FAME) Follow-up Report, February 2001. Teenage Research Unlimited, "Counter-Tobacco Advertising Exploratory," Summary Report, January-March 1999.

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We agree that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission. In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

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Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to Rule 5 above.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

We would recommend to CAP and to the MHRA that the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

Please see the general statement of facts and principles set out at the beginning of this consultation response.

There is no reference to use of social media in the rules as currently drafted and it needs to be made clear that these rules apply equally to social media.

This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.

CAP and BCAP Consultation on the Marketing of E-Cigarettes

28 April 2014

About Smokefree Northumberland Alliance

This response to the CAP and BCAP consultation document is submitted on behalf of Smokefree Northumberland Alliance (SFNA) using the ASH response as a template. SFNA operational group is a range of agencies and organisations working in partnership to achieve common goals in relation to tobacco control for the people of Northumberland. The Alliance meets regularly on a quarterly basis with the aim of developing and overseeing the implementation of a tobacco control action plan for the county. The SFNA acts as the vehicle for delivering the operational tobacco control elements of the Health and Wellbeing Strategy Northumberland County Council (NCC) and is accountable to the Smokefree Northumberland Alliance Strategic Group.

NB. SFNA comments are highlighted in blue and represent the view of Smokefree Northumberland Alliance not Northumbria Healthcare NHS Foundation Trust or Northumberland County Council.

Relevant Facts

The following are relevant facts about “electronic cigarettes” that should guide the final rules on how they are advertised.

1. Electronic cigarettes are not cigarettes in any meaningful sense, they are nicotine delivery systems that do not contain tobacco, where the nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in kind to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.¹
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.^{2 3}
4. Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

ASH estimated that in March 2014 there were 2.1 million current users of electronic cigarettes in the UK, a tripling of the number of users since 2012. This number is almost entirely made of current and ex-smokers; with perhaps as many as 700,000 people having fully replaced smoking with e-cigarette use.³ There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking.³ However, this could

¹ Royal College of Physicians. Harm reduction in nicotine addiction: helping people who can't quit. A report by the Tobacco Advisory Group of the Royal College of Physicians. London: RCP, 2007.

² West, R. Brown, J. Beard, E. Trends in electronic cigarette use in England. Smoking Toolkit Study. March 2014. <http://www.smokinginengland.info/latest-statistics/> accessed 2nd April 2014.

³ Use of e-cigarettes in Great Britain. ASH. London. April 2014.

change particularly if advertising and promotion of electronic cigarettes glamourises the use of these products and promotes their use to young people. Tavernise (2014) writes that six US electronic cigarette companies had more than doubled their marketing budget from 2012 to 2013 totalling \$59 million and reports a number of US electronic cigarette companies have provided sponsorship and giveaways to 227 events (2012 & 13) including music festivals, parties and motor sports competitions. This would suggest that within the US the electronic cigarette companies are operating at events where young people attend en masse.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely in about mid-2016), unless they are authorised as medicinal products. This means that no TV, radio, electronic or print advertising will be allowed. The advertising permitted will essentially be limited to advertising which only has domestic reach such as billboard, bus and point of sale. The UK Medicines and Healthcare Products Regulatory Agency (MHRA) has said that it: “continues to encourage companies to voluntarily submit medicines licence applications for electronic cigarettes and other nicotine containing products as medicines”.⁴

This is an evolving market and it is highly likely that novel nicotine containing products, which do not fit within the category of ‘electronic cigarettes’ will enter the market. We therefore recommend that these rules cover all non-tobacco nicotine containing products, not just electronic cigarettes, so that they remain fit for purpose as the market evolves. This generic point applies to all the rules.

As a general point the use of the descriptor ‘e-cigarette’ or ‘electronic cigarette’ has exacerbated general concern about these products and misunderstandings about what they are and their risk profile. Increasingly users themselves are referring to these products as ‘vapourisers’, their use as ‘vaping’ and users as ‘vapers’. We think it would be helpful if CAP required this terminology and prohibited the use in advertising of the words ‘e-cigarette’ or ‘electronic cigarette’ and descriptions of their use as ‘smoking’ and users as ‘smokers’. If this is not considered possible at the very least it should be required that the full term ‘electronic cigarette’ be used and not the shortened form ‘e-cigarette’ as this provides a clearer description of what they are.

General Principles

We therefore recommend that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Regulation of un-licenced electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.⁵
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. As far as possible, electronic cigarettes and other nicotine containing products should be advertised as an alternative to smoking cigarettes or other tobacco products.
4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.

⁴ MHRA. [Nicotine Containing Products](#). Web page accessed 2nd April 2014.

⁵ MHRA. The Blue Guide: Advertising and Promotion of Medicines in the UK. Third Edition. August 2012. <http://www.mhra.gov.uk/home/groups/pl-a/documents/publication/con2022589.pdf> accessed 11th April 2014

5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

Answers to Consultation Questions

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

We agree with the principle that electronic cigarette advertising and promotion should be socially responsible. This rule should be more tightly worded, so that it establishes some key tests of social responsibility. These would include:

1. Explicit reference to the fact that electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently consume tobacco products.
2. Wording that suggests that consumption of electronic cigarettes and other nicotine containing products has positive qualities perceived to exist by consumers as a consequence of the addictive nature of the product should be prohibited. An example would be the use of the word “satisfying”, which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any “satisfaction” for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms.
3. Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.
4. Advertising should reference the need to store electronic cigarette and associated equipment safely stored away from pets.

Revise rule 1 to read (revisions in bold):

Rule 1: Marketing communications/advertisements for **electronic cigarettes and other nicotine containing products** must be socially responsible.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Rule 2 should offer a tight definition of the term ‘cigarette-like’.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

We agree with the proposed rule as a starting point but believe it needs to be strengthened. In 2013, 91% of smokers and 71% of nonsmokers had heard of electronic cigarettes so advertising is not required to raise awareness of the product, but rather to promote individual brands to smokers.³

We recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products. See below for suggested additional wording to rule 2 in bold and italics. [Prohibit aesthetic designs as with regular tobacco cigarette packages prior to the Plain Packaging ruling.](#)

“Rule 2: Marketing communications / advertisements must contain nothing ***which promotes any design, colour, imagery, logo style that might be associated in the audiences’ mind with a tobacco product. They must also contain nothing*** which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like products ***must not be shown in ways that could reasonably be expected to promote smoking or tobacco products.***”

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the proposed wording (including square brackets) of this rule, except that we would recommend replacing a *permission* to present electronic cigarettes as an alternative to tobacco with a *requirement* to do so. This is because, in order to be consistent with the general principles set out above, all advertising and promotion of electronic cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine. See below for suggested wording.

“**Rule 3:** Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. ***Electronic cigarettes and other nicotine containing products should*** be presented as an alternative to tobacco.”

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Widespread concerns about nicotine containing products have been stimulated at least in part by the use of the term “e-cigarette” and the mis-perception that these products are “smoked”. Therefore we would recommend that the term “vapouriser” be required in preference to ‘e-cigarette’. If this is not accepted then the descriptor “electronic cigarette” is preferable to “e-cigarette”, as we consider this on balance to be more informative. Advertising of such products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with cigarettes.

Our suggestion for revised wording for rule 4 is:

Rule 4: “Marketing communications / advertisements for *electronic cigarettes should describe them as vapourisers and not use the word e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes.*”

Rule 4: Suggest using the term ‘electronic vapouriser’.

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule, including the words in square brackets. (See question 24 below).

Rule 5: Prohibit statements that refer to other product ingredients (e.g. fruit, menthol, herbal) as being healthier than nicotine containing products.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We agree with the inclusion of this rule, with the following proposed amendment.

We welcome the statement that the Committees “are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine”. However, our support for rule 6 depends on acceptance of our modified rule 3 above that, all electronic cigarettes should be *required* to be advertised and promoted as an alternative to tobacco.

We do not agree that it is sufficient to set a principle that such adverts “must not *explicitly* encourage those who do not currently use nicotine to start”. *Implicit* promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make

it as difficult as possible for any electronic cigarette manufacturer to target those who do not currently use tobacco. Therefore, we would wish to revise as follows:

“Rule 6: Marketing communications / advertisements must not *target either explicitly or implicitly*, non-smokers or non-nicotine users to use *electronic cigarettes or other nicotine containing products.*”

Rule 6: The rule should include the words ‘*increase current levels*’ within the sentence ‘The Committees are concerned that advertising should not be a medium by which people are encouraged to begin, re-establish or increase their current use of nicotine’.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Rule 7: Consider the inclusion of legal highs.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

We agree with the inclusion of this rule revised (in bold) to include other nicotine containing products.

“Rule 7: Marketing communications / advertisements must not link *electronic cigarettes or other nicotine containing products* with gambling, alcohol or illicit drugs.”

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

We agree with the inclusion of this rule revised as follows.

“Rule 8: Marketing communications / advertisements must not link *electronic cigarettes or other nicotine containing products* with activities or locations in which using them would be unsafe or unwise; such as driving.”

Rule 8: To consider not only using but also ‘charging’ (in-car charging) and or refilling.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed.

To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message 'Friends don't let friends smoke'. This advertisement conformed to the general principles we set out, however strict application of rule 9 as it stands would have prevented it being shown as it included two friends behaving in a juvenile manner. This was part of a narrative about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes.

Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children. This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to smokers that smoking cuts you out of family life. We therefore believe rule 9 should be revised and the second two sentences removed.

See links below for the ads in question:

<http://www.youtube.com/watch?v=NKbfXT2MOJI&feature=youtu.be>

<http://www.youtube.com/watch?v=IrSavppUj1k>

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.⁶ The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.⁷

The use of the age of 25 is in conformity with rules on alcohol advertising but we do not think it is justified in this case given that use of electronic cigarettes as an alternative to smoking is much less harmful than heavy alcohol consumption. We would therefore replace '25' with '18'.

Rule 10: Consideration for the possible affects of vaping during pregnancy should be explored.

⁶ Robinson S & Bugler C. *Smoking and drinking among adults*, 2008. General Lifestyle Survey 2008. ONS, 2010.

⁷ *Opinions and Lifestyle Survey, Smoking habits amongst adults, 2012*. ONS, Sept. 2013

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective.⁸ We would prefer a revised set of rules, on the principles set out above, which inter alia require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

Rule 11: Consider a clearer definition of 'vulnerable adults' and would this include members of marginalised communities (eg Lesbian Gay Bisexual and Trans where prevalence of smoking is usually higher).

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule. It could be made more explicit by adding 'or location' after 'context'.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree with the inclusion of electronic cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

Electronic cigarettes have been around for less than ten years and the market is still evolving. Advertising of these products is a relatively new phenomenon. Therefore we think that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission. In addition advertisers should be

⁸ American Legacy Foundation, Getting to the Truth: Assessing Youths' Reactions to the Truth and 'Think. Don't Smoke' Tobacco Countermarketing Campaigns, First Look Report 9, June 2002. Sly, D & Heald, G, Florida Antitobacco Media Evaluation (FAME) Follow-up Report, February 2001. Teenage Research Unlimited, "Counter-Tobacco Advertising Exploratory," Summary Report, January-March 1999.

recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to Rule 5 above.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

We recommend to CAP and to the MHRA that as far as possible the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect, whilst also ensuring consistency in all permitted advertising of electronic cigarettes. So, for example, CAP rules would prohibit endorsement by celebrities and health professionals and free samples.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 26: [To be mindful of the rapid development of new products and that CAP & BCAP guidance may have to adapt accordingly.](#)

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

Please see the general statement of facts and principles set out at the beginning of this consultation response.

There is no reference to use of social media in the rules as currently drafted and it needs to be made clear that these rules apply equally to social media.

This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.

References

Tavernise, S (2014) *E-Cigarettes Are Targeted at Youths, Report Says*. The New York Times: The New York Times

CAP and BCAP Consultation on the Marketing of E-Cigarettes

24th April 2014

About Smokefree South West

This response to the CAP and BCAP consultation document is submitted on behalf of Smokefree South West. Smokefree South West is commissioned by 11 Public Health teams based in local authorities across the region to deliver an evidence-based programme to create a Smokefree future for our children. This is achieved by accelerating the reduction in smoking rates across the South West to make tobacco use less desirable and accessible.

Answers to Consultation Questions

General Rules

Rule 1: *Marketing communications / advertisements for e-cigarettes must be socially responsible.*

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 2: What specific advertising approaches, if any that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

We agree with the principle that electronic cigarette advertising and promotion should be socially responsible. This rule should be more tightly worded, so that it establishes some key tests of social responsibility. These would include:

1. Explicit reference to the fact that electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently consume tobacco products.
2. Wording that suggests that consumption of electronic cigarettes and other nicotine containing products has positive qualities perceived to exist by consumers as a consequence of the addictive nature of the product should be prohibited. An example would be the use of the word "satisfying", which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any "satisfaction" for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms.
3. Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.

Revise rule 1 to read (revisions in bold):

Rule 1: Marketing communications/advertisements for **electronic cigarettes and other nicotine containing products** must be socially responsible.

Rule 2: *Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.*

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's goal of preventing the indirect promotion of tobacco products while still permitting

We agree with the proposed rule as a starting point but believe it needs to be strengthened.

We recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products. See below for suggested additional wording to rule 2 in bold and italics.

Revised rule 2: Marketing communications / advertisements must contain nothing which promotes ***any design, colour, imagery, logo style that might be associated in the audiences' mind with a tobacco product. They must also contain nothing*** which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like ***products must not be shown in ways that could reasonably be expected to promote smoking or tobacco products.***"

Rule 3: *Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.*

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement

We agree with the proposed wording (including square brackets) of this rule, except that we would recommend replacing a *permission* to present electronic cigarettes as an alternative to tobacco with a *requirement* to do so. This is because, in order to be consistent with the general principles set out above, all advertising and promotion of electronic cigarettes and

other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine. See below for suggested wording.

Revised rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. ***Electronic cigarettes and other nicotine containing products should*** be presented as an alternative to tobacco.”

Rule 4: *Marketing communications / advertisements must make clear that the product is an e-cigarette.*

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We do agree with the wording of this rule but refer back to our previous suggested amendments in terms of providing more clarity to the consumer to avoid any confusion i.e. avoid imagery that may simulate that of a cigarette or be a cue to smoke. In addition, there are widespread concerns about the terms used for nicotine containing products which have been stimulated at least in part by the use of the term “e-cigarette” and the mis-perception that these products are “smoked”. Therefore we would recommend that the term “vapouriser” be required in preference to ‘e-cigarette’. If this is not accepted then the descriptor “electronic cigarette” is preferable to “e-cigarette”, as we consider this on balance to be more informative. Advertising of such products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with cigarettes.

Our suggestion for revised wording for rule 4 is:

Revised rule 4: “Marketing communications / advertisements for *electronic cigarettes* should describe them as vapourisers and not use the word *e-cigarette*, *electronic cigarette*, or any other descriptor that might reasonably be expected to create confusion with cigarettes.”

Rule 5: *Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.*

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the inclusion and wording of this rule, including the words in square brackets. *We also feel it may be necessary to include factual information on other ingredients.*

Prohibited Rules

Rule 6: *Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.*

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence

We agree with the inclusion of this rule, with the following proposed amendment.

We welcome the statement that the Committees “are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine”. However, our support for rule 6 depends on acceptance of our modified rule 3 above that, all electronic cigarettes should be *required* to be advertised and promoted as an alternative to tobacco. We do not agree that it is sufficient to set a principle that such adverts “must not *explicitly* encourage those who do not currently use nicotine to start”. *Implicit* promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make it as difficult as possible for any electronic cigarette manufacturer to target those who do not currently use tobacco. Therefore, we would wish to revise as follows:

Revised rule 6: Marketing communications / advertisements must not *target either explicitly or implicitly*, non-smokers or non-nicotine users to use *electronic cigarettes or other nicotine containing products.*”

Rule 7: *Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.*

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Smokefree South West supports tough restrictions on the advertising and promotion of alcohol products. We note that alcohol is a major cause of cancer in the UK and is associated with 12,500 cancers a year in the UK¹. While we do not think use of alcohol in promoting e-cigarettes is necessary or advisable, we do not believe there is a strong justification to prohibit the appearance of alcohol in a promotion for e-cigarettes, so long as the other CAP/BCAP rules for marketing alcohol and for marketing e-cigarettes (as amended here) are fully adhered to.

However, we would be concerned if the promotion of e-cigarettes was used in the context of a pub, bar or restaurant or any context which falls under the smokefree legislation banning the use of tobacco cigarettes in enclosed public spaces. Although there is no legal ban on the use of e-cigarettes in enclosed public spaces, we would be concerned that the promotion involving the use of e-cigarettes in an enclosed public space could mislead the public. (See response to questions 15 and 16)

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

We agree with the inclusion of this rule revised (in bold) to include other nicotine containing products.

Revised rule 7: Marketing communications / advertisements must not link ***electronic cigarettes or other nicotine containing products*** with gambling, alcohol or illicit drugs.”

Rule 8: *Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving*

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

We agree with the inclusion of this rule revised as follows.

Revise rule 8: Marketing communications / advertisements must not link *electronic cigarettes or other nicotine containing products* with activities or locations in which using them would be unsafe or unwise; such as driving.”

Protection of children and young persons: general

Rule 9: Marketing communications / Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed.

To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message ‘Friends don’t let friends smoke’. This advertisement conformed to the general principles we set out, however strict application of rule 9 as it stands would have prevented it being shown as it included two friends behaving in a juvenile manner. This was part of a narrative about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes.

Revised rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth

culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We support the inclusion of the rule and its wording.

It is important that e-cigarette marketing communications and advertisements do not appeal to young people. We believe that this rule is needed to help prevent e-cigarette advertisements being attractive to young people. Given the potential risk for people under the age of 18 to identify with those who appear to be 18 and 25 years old, it is reasonable to prohibit people who are or seem to be under the age of 25 being shown in a significant role in e-cigarette marketing communications or advertisements. The rule also offers less room for error and abuse. The rule avoids ambiguity as people shown in marketing communications or advertisements could not be mistaken for people under the age of 18.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective. We would prefer a revised set of rules, on the principles set out above, which inter alia require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

Protection of children and young persons: targeting (CAP Code only)

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the inclusion and wording of this rule

Protection of children and young persons: scheduling (BCAP Code only)

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We support the inclusion of e-cigarettes being included in this list of scheduling restrictions. We believe that this will help prevent e-cigarettes being marketed to young people.

However we note that that these scheduling restrictions are likely to be insufficient to reduce children's exposure to e-cigarette advertisements. Prime time early evening programming and sporting events are likely to draw a wide audience. Although not principally directed at under-18s they are likely to attract a large audience of them. This issue was highlighted by Ofcom as a potential reason for why children had viewed more alcohol advertisements in 2011 compared with 2007.ⁱⁱ We would therefore like to see proposals to restrict the scheduling of e-cigarettes further to prevent children being exposed to e-cigarette advertisements.

Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why

Electronic cigarettes have been around for less than ten years and the market is still evolving. Advertising of these products is a relatively new phenomenon. Therefore we think that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission. In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

Additional questions

E-cigarettes which do not contain nicotine

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to Rule 5 above.

E-cigarettes which are licensed as medicines

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

We would recommend to CAP and to the MHRA that the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Definition of electronic cigarette

“Electronic cigarette’ means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption of [nicotine-containing] vapour via a mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges.”

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Further comments

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP’s consideration of this issue?

We do believe that e-cigarettes should not be allowed to be marketed on the basis of their flavour(s). We are concerned that such promotions could be attractive to non-smokers and non-nicotine users, particularly children. We believe that a further rule should be developed to prohibit e-cigarette marketing communications and advertisements on the basis of their flavour.

We note that the evidence base for the impact of the advertising and marketing of e-cigarettes is currently limited. We therefore advise that CAP and BCAP provide sufficient flexibility to ensure that its rules can be updated quickly if further evidence shows that changes to its rules are needed to protect public health.

There is no reference to use of social media in the rules as currently drafted and it needs to be made clear that these rules apply equally to social media.

This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.

Relevant Facts

The following are relevant facts about “electronic cigarettes” that should guide the final rules on how they are advertised.

1. Electronic cigarettes are not cigarettes in any meaningful sense, they are nicotine delivery systems that do not contain tobacco, where the nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in kind to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.
4. Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.
5. Some electronic cigarettes replicate a tobacco cigarette and thus have the potential to renormalize smoking or act as a cue to smoke.

To this end we feel it is important that e-cigs do not replace the use of cigarettes where cigarettes have been banned from use.

Popular films aimed at adults may still attract a large audience of under-18s even if this represents a small proportion of the total audience. For example, *Skyfall* as an adult orientated film was allowed to show alcohol advertisements. While the viewership of under-18s was only 12% the film reached almost one fifth of the total UK population.ⁱⁱⁱ Therefore a 10% threshold would be better and help direct marketing communications to audiences that are overwhelming over 18 and reduce children and young people’s exposure to e-cigarette promotions.

6. They are also currently often confused with tobacco cigarettes in public places and as a result have been prohibited on some premises.

General Principles

We recommend that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Regulation of un-licenced electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. As far as possible, electronic cigarettes and other nicotine containing products should be

advertised as an alternative to smoking cigarettes or other tobacco products.

4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.

5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

ⁱ Parkin DM (2011i). Cancers attributable to consumption of alcohol in the UK in 2010. Br J Cancer 105 (S2):S14-S18; doi: 10.1038/bjc.2011.476

http://www.cinemaadvertisingassociation.co.uk/caa_alcohol.pdf

Date: 23 April 2014	
Report title:	Consultation response on the marketing of e-cigarettes
From:	South East London Illegal Tobacco Network

RECOMMENDATION(S)

1. Response on the Committee of Advertising Practice (CAP) and Broadcasting Committee of Advertising Practice (BCAP) consultation on the marketing of e-cigarettes. Please agree the written response and supporting evidence which will be submitted by 5pm on Monday 28th April 2014.

BACKGROUND INFORMATION

2. New rules are required to address growing public concern about the widespread advertising of e-cigarettes. There has been a massive rise in the use and availability of e-cigarettes in recent years and they are now widely advertised in the non-broadcast media. The CAP code contains no specific rules concerning e-cigarettes. Section 21 specifically prohibits the advertising of tobacco products but this does not apply to e-cigarettes because they are a non-tobacco product. The Consultation poses 28 questions set within three broad categories: General, Prohibited Approaches and Protection of Children. Once the new rules are implemented e-cigarettes will be exempted from the specific tobacco rules.

KEY ISSUES FOR CONSIDERATION

General Rules

3. Rule 1: Adverts for e-cigs must be socially responsible

Q.1 Yes

Q.2 Yes

4. Rule 2: Adverts must not show the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Q.3 The Network does not agree with the wording of this rule. Advertising of e-cigarettes replaces the prohibited advertising of tobacco products. It fills the gap left by this prohibition and adverts for cigarette-like products are now everywhere. This is the obvious intention of the companies who place the adverts. It negates the good work done by the original tobacco advertising ban. Marketing of e-cigarettes should be questioned until the evidence base states they are a safe product. There is very little quality control which often means there is a difference between what is on the label and what is delivered to the

user. All health professional bodies currently state not to promote e-cigarettes and monitoring and reporting the use of them is essential.

Q.4 See 3 above.

5. Rule 3: Adverts must not contain health or medicinal claims.

Q.5 Yes

Q.6 Yes

Q.7 Yes

6. Rule 4: Advert must be clear that the product is an e-cigarette.

Q.8 Yes but this should relate to the visuals as well as any wording. It should not be sufficient to create a visual advert where the product could be a cigarette or an e-cigarette then place wording nearby saying to the effect ‘...this is not a cigarette...’

The Network is concerned about the potential indirect promotion of tobacco products via advertising for e-cigarettes. E-cigarettes companies have already used STOPTOBER campaign (campaign to help stop smoking) for their benefit by producing Switchtober. Public Health England stated they had spoken to the companies concerned. All Public Health campaigns must not be linked with a substance such as the e-cigarette that is not promoted by professional bodies.

Rule 5: Advert must state if the product contains nicotine.

Q.9 Yes and the rules should apply to all e-cigarette and e-shisha products which do not contain nicotine. Analysis results have shown inaccuracies in the labeling for the concentration of the nicotine and even whether the product contains any nicotine at all. The matter is complex. Report authors should seek to structure it to ensure it is accessible e.g. sub-headings, bullet points, tables, executive summary. A number of traders of e-shisha products have been found online and do not comply with the E-Commerce Regs and again the information to the consumer is very poor. Test purchases have since been made of e-shisha pens in April 2014. This has highlighted the various issues below

- Labelling which doesn't show traceability lack of manufacturer/importer information
- Lack of clear instructions for use or of the chemical contents.
- There's concerns about how e-shisha pens work electrically and of the by-products inhaled when in use
- Does the e-shisha solvent carrier involved and the wick material have any safety impact on the user in use?
- Does the battery and its heat source pose any risk in creating possible explosive vapours?
- The refillable e-shisha pens liquid products, have CHIP warnings re toxicity but do not state the what the actual chemical is inside. One example states on the bottle '**may or may not contain nicotine**'.
- Bottles containing refillable e-shisha pens are not in child resistant packaging and looks like an eye drop bottle. Sometimes they have images of food and smell of foods. For example, strawberry thus making them more child

appealing. One incident has occurred when a young child drank the liquid and died.

- Some of these tobacco products do not carry the necessary warnings thus making them more child appealing

The e-shisha pens are being sold by wholesalers at around 85 p per unit but at retail up to £20 each.

7.

Prohibited Approaches

Rule 6: Adverts must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Q.10 Yes

Q.11 Advertising should be explicitly addressed only to existing nicotine users. There is clear evidence that e-shisha pens are very popular with young people of school age. E-shisha pens are exactly the same product as e-cigarettes. Most e-shisha pens do not contain nicotine but some do and others incorrectly advertise they are nicotine free when in fact they contain nicotine. Many local schools in SE London have reported an increase in young people's use of e-shisha pens even some pupils selling them within schools. Examples of sponsorship deals with sporting or music events and venues (e.g. Birmingham City) which target young people indiscriminately have become evident. These link the products with a healthy, trendy, cultural or glamorous image. Given the lack of studies into the safety or long-term effects of the product, advertising should only be targeted at existing nicotine users only.

8.

9. Rule 7: Adverts must not link e-cigarettes with gambling, alcohol or illicit drugs

Q.12 Yes

Q.13 Yes

Q.14 Yes

Rule 8: Adverts must not link e-cigarettes with activities or locations in which using them would be unsafe; such as driving

Q.15 Yes

Q.16 Recently the use of an e-cig in a hospital environment caused an explosion. As the quality control of most products is non-existent there is a high risk of explosions and fires in any setting. This is particularly true with rechargeable e-cigs where the charger and the battery are generally of very poor quality.

Also any settings where young children are present or there is a fire risk from flammable products.

Recent incidents with batteries and chargers has highlighted the potential risk of fires when products are left unattended so should not be used in bed.

A fire in Grimsby started after a 5 volt USB charger was left charging a 4.2 volt electronic cigarette. Officers believed the fire was caused because a different charger was used rather than the charger the e-cig was bought with.

The Fire Brigade has included e-cigarettes as one reason for fires on their reports in the last few weeks to monitor the frequency.

10.

Protection of Children and Young Persons: General

11. Rule 9: Adverts must not appeal to young people under 18, especially by being associated with youth culture etc...

Q.17 As legislation will shortly make it illegal to sell the products to young people under 18 this section should be as strong as sections for other prohibited products such as alcohol and gambling.. The Rule should also prevent people being used in adverts who may be seen as a responsible adult to a young person such as teacher or as a role model such as a sportsperson or someone indulging in healthy, trendy, cultural or glamorous activities.

12. Rule 10: Adverts should not show under 25's using e-cigs or playing a significant role.

Q.18 See above. Under 25's should not be in adverts in any way significant or incidental. This is the age suggested for all age verification guidelines. Monitoring of the use of e-cigarettes is required. We would prefer middle age (over 45) to older actors in adverts who are relapsed quitters and current smokers.

13. Rule 11: Adverts must state that products are not suitable for under-18's.

Q.19 We would prefer a statement to be made that the product cannot be bought by an under 18 year old but recognise that this will be an additional cost for the advertiser and may not be effective because of the reasons given in the consultation document.

However, often sellers of these products are not aware of the legal age and this would help reinforce that knowledge.

Protection of Children and Young persons: Targeting (CAP Code only)

14. Rule 12: Marketing communications must not be directed at people under 18 through media selection. No medium should be used if more than 25% of its audience is under 18 years of age.

Q.20 Yes

Protection of Children and Young Persons: Scheduling (BCAP Code only)

15. Rule 13: Amendment to existing BCAP rule to include e-cigs in scheduling restrictions.

Q.21 Yes

Radio central Clearance (BCAP only)

Q.22 Yes All e-cig adverts must be centrally cleared.

Additional Questions

Q.23 Yes the rules should apply to e-cigs that do not contain nicotine. Analysis of products has thrown up many label inaccuracies and efficiencies including

containing nicotine when they state they do not.

Many e-cigarettes have nicotine-free options. Any exemption for nicotine free products would serve to confuse the rulings and provide a potential loophole for those who may wish to exploit it.

Q.24 No

Q. 25 Licensed products should be controlled in the same way as licensed medicines.

Q.26 There should be a phrase which indicates that new products which have essentially the same purpose will be caught even if they differ from the current versions of the e-cig or have a different name eg e-shisha pens, add “or similar products which may or may not contain nicotine” to capture new products.

Q. 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions. Q 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP’s consideration of this issue?

The legislation listed below concerns the areas where alleged breaches in regards to e-cigarettes:

Consumer Protection Act 1987

General Product Safety Regulations 2005 – no supply of on the market place of an unsafe product where there are no specific safety requirements imposed in Community Law [EU]

Consumer Protection from Unfair Trading Regulations 2008 – claims

Business Protection from Misleading Marketing Regulations 2008 – advertising claims

Electronic Commerce Regulations 2002 –online trader identification

Enterprise Act 2002

Consultation on the Marketing of E-cigarettes
Response on Behalf of Swindon Smokefree Alliance

23rd April 2014

The Committee of Advertising Practice and the Broadcast Committee of Advertising Practice are the organisations which create the rules for advertising and marketing in the UK. They are consulting on the creation of new specific rules to govern the way in which e-cigarettes are promoted. These rules are intended to cover the interim period ahead of the UK implementation of the measures in the EU Tobacco Products Directive.

This response to the consultation document is on behalf of Swindon Smokefree Alliance. Swindon Smokefree Alliance is a group of organisations concerned with eliminating health inequalities and protecting the public from the harm caused by tobacco use.

There are three key principles that underpin efforts to tackle the tobacco epidemic – a genuinely strategic approach to tobacco control, effective partnership working and a focus on denormalising smoking. The Swindon Smokefree Alliance is Chaired by the Acting Director of Public Health and Members consist of representatives from:

- Swindon Borough council -Trading Standards and Licensing
- Healthy Schools (including local colleges)
- Great Western Hospital NHS Foundation Trust
- Community Safety Partnership
- Public Health
- Wiltshire Fire Service,
- Stop Smoking Service provider (SEQOL)
- Community representatives
- Smokefree South West

Swindon Smokefree Alliance is in support of the ASH response to the CAP and BCAP consultation and this response is based largely on their response.

Relevant Facts

The following are relevant facts about “electronic cigarettes” that we feel could guide the final rules on how they are advertised.

1. Electronic cigarettes are not cigarettes in any meaningful sense; they are nicotine delivery systems that do not contain tobacco, where the nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in content to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients.
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.
4. Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

Research carried out for ASH suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking. However, this could change particularly if advertising and promotion of electronic cigarettes glamourises the use of these products and promotes their use to young people.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely in about mid-2016), unless they are authorised as medicinal products.

This is an evolving market and it is highly likely that novel nicotine containing products, which do not fit within the category of ‘electronic cigarettes’ will enter the market. We therefore recommend that these rules cover all non-tobacco nicotine containing products, not just electronic cigarettes, so that they remain fit for purpose as the market evolves. This generic point applies to all the rules.

As a general point the use of the descriptor ‘e-cigarette’ or ‘electronic cigarette’ has exacerbated general concern about these products and misunderstandings about what they are and their risk profile. Increasingly users themselves are referring to these products as ‘vapourisers’, their use as ‘vaping’ and users as ‘vapers’. We think it would be helpful if CAP adopted this terminology and prohibited the use in advertising of the words ‘e-cigarette’ or ‘electronic cigarette’ and descriptions of their use as ‘smoking’ and users as ‘smokers’.

General Principles

Swindon Smokefree Alliance agree with ASH in recommending that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Regulation of un-licenced electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.
2. Electronic cigarettes and other nicotine containing products should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
3. As far as possible, electronic cigarettes and other nicotine containing products should be advertised as an alternative to smoking cigarettes or other tobacco products.
4. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
5. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

Answers to Consultation Questions

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

Swindon Smokefree Alliance agree with the principle that electronic cigarette advertising and promotion should be socially responsible. This rule should be more tightly worded, so that it establishes some key tests of social responsibility. These would include:

1. Explicit reference to the fact that electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently consume tobacco products.
2. Wording that suggests that consumption of electronic cigarettes and other nicotine containing products has positive qualities perceived to exist by consumers as a consequence of the addictive nature of the product should be prohibited. An example would be the use of the word “satisfying”, which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any “satisfaction” for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms.

- Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.

Revise rule 1 to read (revisions in bold):

Rule 1: *Marketing communications/advertisements for **electronic cigarettes and other nicotine containing products** must be socially responsible.*

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

Swindon Smokefree Alliance agree with the proposed rule as a starting point but believe it needs to be strengthened. In 2013, 91% of smokers and 71% of non-smokers had heard of electronic cigarettes so advertising is not required to raise awareness of the product, but rather to promote individual brands to smokers.

Swindon Smokefree Alliance agree with ASH in that they recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products. See below for suggested additional wording to rule 2 in bold and italics.

“Rule 2: Marketing communications / advertisements must contain **nothing which promotes any design, colour, imagery, logo style that might be associated in the audiences’ mind with a tobacco product. They must also contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like products must not be shown in ways that could reasonably be expected to promote smoking or tobacco products.**”

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

Swindon Smokefree Alliance agrees with the proposed wording (including square brackets) of this rule, except that we would recommend replacing a *permission* to present electronic cigarettes as an alternative to tobacco with a *requirement* to do so. This is because, in order to be consistent with the general principles set out above, all advertising and promotion of electronic cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine. See below for suggested wording.

“Rule 3: *Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. **Electronic cigarettes and other nicotine containing products should be presented as an alternative to tobacco.**”*

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Widespread concerns about nicotine containing products have been stimulated at least in part by the use of the term “e-cigarette” and the mis-perception that these products are “smoked”. Therefore we would recommend that the term “vapouriser” be required in preference to ‘e-cigarette’. If this is not accepted then the descriptor “electronic cigarette” is preferable to “e-cigarette”, as we consider this on balance to be more informative. Advertising of such products should not describe them as “smoked”, or use any other descriptor that is misleading and could create confusion with cigarettes.

Our suggestion for revised wording for **rule 4** is:

Rule 4: *“Marketing communications / advertisements for **electronic cigarettes should describe them as vapourisers and not use the word e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes.**”*

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement. Swindon Smokefree Alliance agree with the inclusion and wording of this rule, including the words in square brackets. (See question 24 below).

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

Swindon Smokefree Alliance agree with the inclusion of this rule, with the following proposed amendment.

We welcome the statement that the Committees “are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine”. However, our support for rule 6 depends on acceptance of our modified rule 3 above that, all electronic cigarettes should be *required* to be advertised and promoted as an alternative to tobacco.

We do not agree that it is sufficient to set a principle that such adverts “must not *explicitly* encourage those who do not currently use nicotine to start”. *Implicit* promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make it as difficult as possible for any electronic cigarette manufacturer to target those who do not currently use tobacco. Therefore, we would wish to revise as follows:

“Rule 6: Marketing communications / advertisements must not ***target either explicitly or implicitly***, non-smokers or non-nicotine users to use ***electronic cigarettes or other nicotine containing products.***”

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

We agree with the inclusion of this rule revised (in bold) to include other nicotine containing products.

“Rule 7: Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with gambling, alcohol or illicit drugs.”

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

Swindon Smokefree Alliance agree with the inclusion of this rule revised as follows.

“Rule 8: Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with activities or locations in which using them would be unsafe or unwise; such as driving.”

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed.

To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message ‘Friends don’t let friends smoke’. This advertisement conformed to the general principles we set out, however strict application of rule 9 as it stands would have prevented it being shown as it

included two friends behaving in a juvenile manner. This was part of a narrative about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes.

Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children. This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to smokers that smoking cuts you out of family life. We therefore believe rule 9 should be revised and the second two sentences removed.

See links below for the ads in question:

<http://www.youtube.com/watch?v=NKbfXT2M0JI&feature=youtu.be>

<http://www.youtube.com/watch?v=lrSavppUj1k>

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Swindon Smokefree Alliance support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.5 The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.

The use of the age of 25 is in conformity with rules on alcohol advertising but we do not think it is justified in this case given that use of electronic cigarettes as an alternative to smoking is much less harmful than heavy alcohol consumption. We would therefore replace '25' with '18'.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective. We would prefer a revised set of rules, on the principles set out above, which inter alia require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule. It could be made more explicit by adding 'or location' after 'context' as below:

Rule 12: *Marketing communications must not be directed at people under 18 through the selection of media or the context **or location** in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.*

For example electronic cigarettes should not be promoted for sale at entertainment venues at the time when the entertainment is predominantly for those under the age of 18.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

Swindon Smokefree Alliance agree with the inclusion of electronic cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

Electronic cigarettes have been around for less than ten years and the market is still evolving. Advertising of these products is a relatively new phenomenon. Therefore we think that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission. In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to Rule 5 above.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

We would recommend to CAP and to the MHRA that the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of electronic cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

Please see the general statement of facts and principles set out at the beginning of this consultation response.

There is no reference to use of social media in the rules as currently drafted and it needs to be made clear that these rules apply equally to social media.

This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.