

RadioCentre and RACC joint response to CAP and BCAP Consultation on the marketing of e-cigarettes

Introduction

1. RadioCentre and RACC are jointly responding to BCAP's consultation paper "Consultation on the marketing of e-cigarettes" dated 27 February 2014.
2. As you know RadioCentre is the industry body for commercial radio and its members represent 90% of commercial radio listening and revenue. RadioCentre is a director of BCAP, the industry body that writes and reviews the BCAP Code rules.
3. The RACC, administered by RadioCentre, pre-vets over 27,000 radio ad scripts each year on behalf of commercial radio stations to ensure compliance with the BCAP Code, thereby enabling high standards of consumer protection. The RACC is an observer of BCAP.

Background

4. RadioCentre and RACC welcome the proposals for new rules for e-cigarette broadcast advertising and endorse the rules as an appropriate and effective mechanism of overseeing high advertising standards for this relatively new sector that will continue to grow.
5. Both RadioCentre and RACC have attended BCAP Committee meetings where the proposed rules have been drawn up, discussed and fine-tuned and, as such, we have no significant comments to make on the rules in general. We do, however, have comments on proposed rules 11, 13 and 14 ("under 18s only", scheduling and radio central copy clearance) and on question 28, as follows:

Answers to questions 19, 21, 22 and 28 (where they relate to the BCAP Code only)

6. **Rule 11/Question 19: "Do you consider that a rule is necessary which requires that ads state that products are not suitable for under 18s?"**

No. We agree with the Committees reservation against a tag such as "over 18s only", for the reasons outlined in the consultation paper. Our view is that responsible scheduling to help ensure that under 18s are not exposed to radio advertising (see paragraph 7 below), control on content, (i.e. tightly-drawn rules to help minimise harm), and compulsory pre-clearance (see paragraph 8 below) are sufficient to help protect under 18s. We fully endorse the findings of the Navigator 2004 research prepared for the RAB research (referenced in the consultation) which showed that messages had no positive effect. (It may be, however, that some e-cigarette manufacturers include a reference to "over 18s only" on a voluntary basis).

7. Rule 13 (amendment)/Question 21: “Do you agree with e-cigarettes being included in this list of scheduling restrictions?”

Yes. We recommend responsible scheduling to help ensure that under 18s (who may not legally be sold e-cigarettes) are not exposed to radio advertising messages. As with other categories of advertisement such as alcoholic drinks, gambling and slimming products, stations will achieve this by not scheduling the ads “in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18”.

8. Rule 14/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. The RACC has been clearing ad campaigns for e-cigarette manufacturers on radio since 2011. It has done this effectively, evidenced by only one partly-upheld ad complaint by the ASA, (Zandera Ltd), developing consistent clearance policy and issuing a guidance note to its customers (available at www.racc.co.uk). It therefore has expertise in the pre-clearance of e-cigarette advertising on radio. As an emerging sector and advertisement category facing both licensing by the MHRA and regulatory scrutiny, both RadioCentre and the RACC feel it is sensible for central clearance to continue for e-cigarette campaigns. RACC therefore recommends that the addition of “e-cigarettes” is added to BCAP Code Rule 31.1 (31.1.5) and to the “Special Category” list in Section 1 ‘Compliance’.

9. 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?”

Yes. The RACC recommends that B/CAP issue a Help Note to guide broadcasters, non-broadcast media and advertisers on the practical interpretation of the new rules. RACC suggests that guidance, based on past ASA rulings, should cover the acceptability of statements such as “no chemicals”/“no tar”/“low tar” and switching from cigarettes to e-cigarettes.

In summary

Aside from the comments made in paragraphs 6-9, RadioCentre and RACC fully endorse the content of the new rules as timely and proportionate self-regulation.

RadioCentre / RACC
28 April 2014

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CAP and BCAP Consultation on the Marketing of E-Cigarettes

Response from Rotherham Tobacco Control Alliance

Our response has been based, in part, upon that developed by Action on Smoking and Health (ASH). We support the general principles CAP/BCAP's rules should be consistent with that have been proposed by ASH.

General Principles

1. Electronic cigarettes should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
2. As far as possible, electronic cigarettes should be advertised as an alternative to smoking cigarettes or other tobacco products.
3. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
4. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people
5. Electronic cigarette advertising should always include a clear warning that they contain nicotine, an addictive drug, and a toxic substance that should be stored and consumed safely and away from children.
6. Where e-cigarette products do have a medicines licence, they should be advertised and marketed in a way that is appropriate for medical and healthcare products, which may include specific claims of health benefits (e.g. that they may help in quitting smoking), where these are well supported by scientific evidence.

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 e-cigarette advertising and promotion should be socially responsible. However clarity on what is and isn't 'socially responsible' would make this rule easier to apply without misinterpretation. For example:

1. *Explicit reference to the fact that electronic cigarettes are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently consume tobacco products.*
2. *A prohibition on wording that suggests that consumption of electronic cigarettes has positive qualities that may be mistakenly perceived to exist by consumers, as a consequence of the addictive nature of the product. 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. *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 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?

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

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. All e-cigarette advertising and promotion should be directed at existing tobacco users and not at potential new users of nicotine.

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 this rule. Advertising of such 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.

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.

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 and wording of this rule, with the following proposed amendment.

*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 to be worded to make it as difficult as possible for any e-cigarette manufacturer to target those who do not currently use tobacco. Therefore, 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.*

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 consider that two principles should be applied in a revised wording of this rule. First: no advertisements or communications should present electronic cigarettes in such a way as to glamorise and hence promote their use to non-tobacco users. Secondly: presenting a connection with alcohol would be acceptable if and only if this is done in a way that helps to promote the electronic cigarette to existing tobacco users. An example might be an advertisement set in a private social occasion such as a party or dinner, where a tobacco user opts to use an electronic cigarette as an alternative to

tobacco use. One reason why this would be a useful (“socially responsible”) revision is that social drinking is well associated with failed attempts to quit smoking.

We agree that electronic cigarettes should not be associated with illegal drugs. We also agree that they should not be associated with 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 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 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.

We support the wording 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 support the proposed rule that young people should not play a significant role in the advertising of electronic cigarettes, but note that the age of sale restriction to be brought in for the products will be 18 years. We acknowledge CAP/BCAP’s rationale for selecting age 25 as an age at which people clearly look and sound more adult than adolescent.

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.

We agree with this proposed rule as it will concur with the proposed age of sale restriction.

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?

We agree with the proposal that all radio advertisements for e-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?

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.

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 stopping smoking.

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?

Advertising of electronic cigarettes on social media is also increasing so we would like CAP/BCAP rules to be extended to also include these advertising media.

DRAFT

Consultation on the marketing of e-cigarettes

Please find below the response from L. Rowland and Co. (Retail) Ltd./a Rowlands Pharmacy regarding the above consultation. Rowlands Pharmacy operates a chain of over 500 community pharmacies in England, Scotland and Wales.

A number of community pharmacy owners have recently started selling e-cigarettes within their pharmacies and therefore the question of advertising those products is both current and important to us.

- 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
- 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?**
No comment
- 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
- 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 comment
- 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.**
Yes
- 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.**
Yes
- 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
- 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

- 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

- 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

- 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

- 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

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

Yes, The use of alcohol (particularly to excess) and the use of nicotine are two lifestyle 'drugs' that have wide public health effects. For the same marketing message to essentially promote the use of e-cigarettes with alcohol seems irresponsible.

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

Yes. There is a danger that the use of e-cigarettes could be seen to be glamorous if marketed in a James Bond-esque, Monte Carlo way.

- 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

- 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 believe that operating machinery should also be included.

- 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

- 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

- 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. These products should only be sold to adults (over the age of 18 years) and retailers will be expected to enforce this restriction. It is therefore helpful if this is included in marketing messages from the outset as it will help provide legitimacy for the retailer when sales are refused.

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

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

Yes

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

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.

The rules should be equally applicable to non-nicotine containing products. The act of vaping mirrors that of smoking and therefore normalises the activity regardless of whether the e-cigarette contains nicotine or not. It is often this physical act which perpetuates the smoking behaviours of the user to continue smoking/vaping. Furthermore, the products are unlikely to have undergone much safety assessment and therefore we should also be alert to the fact that products could be being promoted which could have widespread public health consequences from their use.

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.

No

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?

They should be equally applicable although health claims will need to be allowed given their licensed nature.

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

Yes. We are aware of at least one product which will be coming to market which uses an aerosol to 'charge' a cigarette-style device containing a one-way valve which releases the atomised nicotine. We believe this definition covers this device despite the device not being an electronic cigarette.

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.

No

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?

No

CAP and BCAP Consultation on the Marketing of E-Cigarettes

23 April 2014

About The Royal College of Paediatrics and Child Health

The Royal College of Paediatrics and Child Health (RCPCH) is responsible for training and examining paediatricians in the UK. The College has over 14,500 members in the UK and abroad and sets standards for professional and postgraduate medical education. The RCPCH is part of the Smokefree Action Coalition and supports the consultation response already submitted by ASH.

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 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 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

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.

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’. Further, the e- prefix has its own glamour, suggesting modernity and sense of connectivity. 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.
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 appeal 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?

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

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 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?

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. Glowing red tips upon inhalation should not be used. 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.

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 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.

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. This is vital. 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?

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 **unless explicitly targeted at current smokers**. 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 subject to the above amendment. 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.

An 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=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 20.⁶ 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 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 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.

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

⁸ 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.

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 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 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; given the wide use of social media by children and young people it's imperative 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: Response from the Royal College of Physicians (RCP) and the UK Centre for Tobacco and Alcohol Studies (UKCTAS)

The Royal College of Physicians (RCP) plays a leading role in the delivery of high quality patient care by setting standards of medical practice and promoting clinical excellence. We provide physicians in the United Kingdom and overseas with education, training and support throughout their careers. As an independent body representing over 29,000 fellows and members worldwide, we advise and work with government, the public, patients and other professions to improve health and healthcare. Our membership is drawn from over 30 medical specialties; and our primary interest is in building a health system that delivers high quality care for all patients. (see <http://www.rcplondon.ac.uk/> for further information).

The UK Centre for Tobacco and Alcohol Studies (is a research network of 13 university teams, funded under the auspices of the UK Clinical Research Collaboration, to carry out research and policy development to reduce the harms to individuals and society from tobacco and alcohol use (see www.ukctas.ac.uk for further information).

Electronic cigarettes, nicotine and harm reduction

The RCP has long argued^{1,2} for radical changes to the market in nicotine products in the UK, with the objective of encouraging as many existing tobacco smokers as possible to switch to an alternative, low hazard source of nicotine. The principle behind this approach is that smokers smoke for nicotine but are killed by tar, and that the hazards of nicotine use alone are sufficiently low that the smoker who switches to a smoke-free nicotine supply will realise almost all of the health benefits achieved by smokers who quit nicotine use completely. At the time of the 2007 report on harm reduction² the only alternatives to smoking were smokeless tobacco and conventional medicinal nicotine replacement therapy (NRT), though electronic cigarettes were becoming available.

The commercial success of electronic cigarettes, which, in the UK, are currently used almost exclusively by current or past tobacco smokers, suggests the technology has potential to replace tobacco smoking and thereby realise huge public health gains. There are however also potential dangers including if e-cigarettes are taken up by non-smokers and act as a gateway to smoking (for which we note there is currently no evidence in the UK) and if e-cigarette use and marketing enable the renormalisation of smoking. The RCP and UKCTAS therefore welcome the health potential of these products but also support regulation to ensure that they are safe and effective, and to prevent marketing that encourages non-smokers, and particularly children, to use these products or renormalises smoking. Consequently, we respond to these consultation questions with the objective of trying to ensure that electronic cigarettes, and other non-tobacco nicotine products in development (not all of which are electronic cigarettes) are used widely among the 10 million current smokers in the UK, but as little as possible among current non-smokers and to ensure that the tobacco industry does not use e-cigarette advertising as a means of promoting smoking.

¹ Tobacco Advisory Group of the Royal College of Physicians. Protecting smokers, saving lives. The case for a tobacco and nicotine regulatory authority. London: Royal College of Physicians; 2002.

² Tobacco Advisory Group of the Royal College of Physicians. Harm reduction in nicotine addiction. London: Royal College of Physicians; 2007. <http://www.rcplondon.ac.uk/sites/default/files/documents/harm-reduction-nicotine-addiction.pdf>

We recognise that it is likely that regulatory changes currently in progress will mean that from 2016 or 2017, electronic cigarettes and other nicotine devices will come to market under regulation either as medicines or under the terms of the revised EU Tobacco Products Directive (TPD). Those marketed as medicines will be subject to medicines advertising controls, which include pre-screening of all advertisements before use. Those marketed under the TPD will be subject to a prohibition of cross-border advertising, which severely restricts advertising opportunities. The present consultation therefore relates to measures which are urgently required to control advertising in the interim period before these new controls come into force.

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?*

We agree with this principle but the rule needs to be explicit in stating that marketing should be aimed only at current or former cigarette smokers, and that inappropriate advertising should be prevented pro-actively by pre-approval, rather than reactively in response to complaints. Cigarette-like products should not be shown in ways that might reasonably be expected to promote smoking or tobacco products, for example, the act of smoking such products. The rule should also refer to nicotine containing devices rather than just e-cigarettes, since there are products in development that also look like cigarettes but do not use electronic cigarette technology.

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?*

All electronic cigarette suppliers are commercial companies with an explicit interest in maximising product sales, and hence use. Although currently used almost exclusively by current or former smokers, when this market becomes saturated suppliers will look to the non-smoking population, which includes children, to expand their sales. Advertising should therefore be designed as far as is possible to target and inform only the population of current smokers, or former smokers who are still using nicotine. Any glamorisation of electronic cigarette use, advertising featuring young people or non-smokers, advertising promoting the act of smoking, and advertising likely to appeal in other ways (such as through the use of humour) to audiences other than those implied by the characteristics of those portrayed in the advertising³, and any advertising that might reasonably be expected to promote smoking or tobacco products should therefore be prohibited.

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.*

We agree with this rule but would urge that it is phrased to also prevent the use of shared logos or patterns that would allow brand stretching or cross promotion of tobacco products. Many electronic cigarettes on the market today are produced by tobacco companies, and this proportion is likely to rise. These companies will not be slow to see the opportunities to promote their tobacco products through forms of design, imagery and colours that correspond to or evoke recall of existing tobacco

³ Hastings GB, Ryan H, Teer P, Mackintosh AM. Cigarette advertising and children's smoking: Why Reg was withdrawn. *Br Med J* 1994;309:933-937

logos and brand identities. This problem will be reduced but not resolved if legislation to require standardised tobacco packaging is introduced.

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?*

Indirect promotion has been achieved in numerous ways by tobacco companies seeking to exploit opportunities to advertise while apparently complying with existing tobacco advertising prohibitions. A classic example is the use of the colour red, the 'red roof' design, and the barcode substitute logo to evoke *Marlboro* branding on Ferrari Formula One racing cars⁴. For this reason we would like to see the rule include the prohibition of any design, colour, imagery, logos or styles that could imply an association with or confusion with any existing tobacco product, or any promotion of smoking-like 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.*

No. Although the precise magnitude of any hazard from long-term use of electronic cigarettes is unknown, as is the purity and effectiveness of most products currently available on the market, none is remotely likely to be as hazardous as smoked tobacco. We suggest that advertisements should be required to provide factual information that electronic cigarettes are likely to be much less hazardous than smoking, since the purpose of advertising from a health perspective is to encourage as many smokers as possible to quit smoking. This could be done by stating that the products do not contain the harmful chemical found in cigarette smoke. We also suggest that advertisements should include the NHS Quitline number and/or PHE SmokeFree URL.

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.*

Health claims should be reasonable and accurate. It is reasonable and accurate to say that the product is less hazardous than a cigarette by virtue of not containing the harmful chemicals found in cigarette smoke.

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.*

It depend which medicinal claims. We think that e-cigarettes should be presented as an alternative to tobacco and that advertisements should make clear that they are less hazardous than smoking. Saying that e-cigarettes can help smokers stop using conventional cigarettes would be justified. More formal health claims would need to be justified by appropriate evidence.

⁴ Grant-Braham B, Britton J. Motor racing, tobacco company sponsorship, barcodes and alibi marketing. *Tobacco Control* 2012;21:529-535.

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.*

Not all products likely to be promoted and used as substitutes for smoking, in the way that e-cigarettes are at present, will be electronic cigarettes. It may therefore be inappropriate to require this descriptor – rather that the product provides nicotine (if it does) *without* burning 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 have for improvement.*

Yes. It would be helpful also to know whether the product actually *delivers* nicotine, that is, whether the user *receives* a dose of nicotine. The available evidence suggests that some devices do not achieve this, in which case consumers buy the product, find it ineffective, and go back to smoking. It is also appropriate to inform consumers that nicotine is addictive.

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.*

Yes, but examples from the history of tobacco advertising^{3,5} demonstrate that commercial companies run rings around this kind of statement. It needs to include *or be likely to encourage, or have the effect of encouraging*.

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 believe that advertising should be aimed only at smokers. Whilst some collateral exposure and impact is inevitable, this should be minimised. Hence we think this rule proportionate.

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.

⁵ Hastings G, MacFadyen L. Keep Smiling No One's Going to Die. Centre for Tobacco Control Research and the Tobacco Control Resource Centre: <http://www.tobaccopapers.com/keepsmiling/KeepSmilingReport.pdf>; 2000 (accessed 23 Jan. 2014)

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

Yes.

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

Yes.

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.

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?

Generally, and in absence of specific justification, we believe that portrayal of use in any setting where smoking is currently prohibited or inappropriate (for example, when using oxygen) should be avoided.

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.

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.

No. There are many smokers aged under 25 who might benefit from targeting by advertising. As exemplified in reference ³ above, that age appearance restrictions do not prevent advertisements being designed to appeal specifically to young people. A 25-year age limit would not prevent this from happening. Rule 6 therefore applies.

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.*

Making products 'adult only' increases appeal to many children. Sales to under-18s are already prohibited. We are not convinced that this rule will be effective in reducing promotion to or uptake by young people.

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, though would suggest that the 25% threshold could be lower. We also argue that this should include product placement, celebrity endorsement and other use of electronic cigarettes in the media, including film, television, YouTube and other new media content.

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?*

Yes.

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 see no reason to treat radio advertisements differently. To ensure adherence to the preceding rules, and guard against abuses of this approach, we would argue that all electronic cigarette and other nicotine-containing device advertisements should be cleared by the CAP, and power retained to withdraw advertisements that subsequently appear to be contravening these rules.

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?*

It is inappropriate to distinguish on this basis. Many new generation electronic cigarettes are refillable. These rules should apply to any device intended for use as an alternative to smoking.

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?*

No.

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?*

Products that are licensed as medicines are subject to MHRA controls, which will allow advertising as smoking cessation and harm reduction products. We think this is appropriate for products that have met MHRA licensing requirements and hence are known to deliver nicotine effectively and cleanly.

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

No. The definition excludes products currently in development that deliver nicotine in a formulation that resembles a cigarette, but do not use electronic cigarette technology. The definition should change to include other nicotine containing devices (with the exception of those licensed as medicines).

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

Commercial companies and their advertising agencies are extremely adept at circumventing advertising restrictions and rules. It is essential that the advertising of electronic cigarettes and other nicotine devices remains under close review, so that these rules can be revised promptly in response to abuses and unexpected consequences.

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 refer to our introductory comments. The rules do not refer to social media which is being widely used to promote e-cigarettes and is widely used by young people. We think this needs to be addressed.

Royal College of Physicians of Edinburgh

Response to the CAP/BCAP consultation on the marketing of e-cigarettes

The Royal College of Physicians of Edinburgh (the College) is pleased to respond to the CAP/BCAP consultation on the marketing of e-cigarettes.

The College supports strongly all initiatives to discourage the take up of smoking and to support smoking cessation.

As a member of the Scottish Coalition on Tobacco (SCOT), the College commends the detailed SCOT response to this consultation, which addresses the major issues around the rapid rise in popularity of e-cigarettes as an alternative to tobacco cigarettes. This 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 which should be recognised when considering marketing, 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.

All College responses are published on the College website www.rcpe.ac.uk

28 April 2014

The Royal College of Radiologists

Response to:

Committee of Advertising Practice - Consultation on the marketing of e-cigarettes

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

Q1 – 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 but social responsibility means that it must not appear glamorous. This is an addictive product so it is important that excessive use is included.

Q2 – 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?

No comment

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.

Q3 – Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

No, we believe that e-cigarettes should not be shown as smoking behaviours need to be discouraged and the behaviours are indistinguishable visually.

Q4 – 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 – smoking behaviours in general need to be discouraged.

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.

Q5 – 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 – smoking behaviours need to be portrayed as not acceptable and simple visuals cannot distinguish between the two.

Q6 – 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.

The e-cigarettes are an alternative to smoking but that does not mean they are better, just different.

Q7 – 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 - e-cigarettes promote smoking behaviours and do not have an ability to be weaned down in the same way as Nicotine Replacement Therapy. To promote the behaviour and then say is useful in assisting behavioural change away from a significant health risk is contradictory.

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

Q8 – 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 it needs to be clear it is an e-cigarette but cannot see how that can be enforced through visuals alone

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.

Q9 - 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 that there is a need to say if the product contains nicotine and that it is very addictive.

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

Q10 – 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 – nicotine is an addictive substance with no evidence of lack of harm in long term users so use should not be encouraged.

Q11 – 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.

It should only be allowed to be marketed at current nicotine users.

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

Q12 – 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.

We agree.

Q13 – Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Yes – alcohol and nicotine are both addictive and have major impact on health and social welfare and should not be linked in any way. Addictive behaviours should never be encouraged.

Q14 – Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

Yes – gambling and nicotine are both addictive and have major impact on health and social welfare and should not be linked in any way. Addictive behaviours should never be encouraged.

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.

Q15 – 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.

We agree.

Q16 – Are there any situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

Any activity using manual equipment or activity that requires manual dexterity e.g. flying.

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.

Q17 – 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 – nicotine is an extremely addictive substance and use should not be encouraged especially in juveniles.

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.

Q18 – 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.

We agree.

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

Q19 – 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.

We agree – it needs to ensure that it does not appear as an “alternative” to smoking for those reaching 18 and therefore needs to be treated in the same way.

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.

Q20 – Do you agree with inclusion and wording of the rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree – e-cigarettes need to be viewed in same way as cigarettes.

Rule 13. Amendment to existing BCAP rule

Q21 – Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree – this is a highly addictive product.

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

Q22 – Given BCAP’s policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared. If you disagree, please explain why.

We disagree – they should be treated as cigarettes and banned from radio.

In summary:

1. E-cigarettes are extremely addictive and should be treated as cigarettes in terms of advertising.
2. There is no evidence as to the long term effects of nicotine inhalation. It is probably less dangerous than smoking but the risks are not well understood, hence the need to limit advertising.
3. E-cigarettes (unlike other Nicotine Replacement Therapies) do not dissociate the smoking behaviour from the addictive drug and do not therefore encourage, assist and/or promote smoking cessation and must be treated as cigarettes.

**The Royal College of Radiologists
April 2014**

E-Cigarettes Position Statement

The sale of e-cigarettes in pharmacies is becoming more prevalent posing an ethical dilemma for our members. This statement has been drafted after examining the currently available evidence on the safety and efficacy of e-cigarettes and in light of current media and advertising campaigns by tobacco and e-cigarette manufacturers.

Patient Safety

- We recognise that e-cigarettes may add to the number of Nicotine Replacement Therapy (NRT) products currently available, which help people to reduce or quit smoking. However, as of yet there have been limited rigorous peer reviewed studies to support their use as safe and effective NRT products. E-cigarettes are currently unlicensed products with no standardisation of safety, quality or efficacy. As such, they should not be sold or advertised from pharmacies.
- The European Union is currently debating its Tobacco Directive. We support the original June 2013 intention of The Medicines and Healthcare products Regulatory Agency to regulate e-cigarettes as medicinal products as an aid to smoking cessation only. The licensing process would align e-cigarettes with other NRT products and assure the public and patients of their safety and efficacy. Furthermore it would ensure promotion to non smokers was prohibited.
- While we appreciate there is a necessary timescale to ensure patient safety, the licensing process should be as rapid as possible. We are concerned at the precedent of a product being marketed and advertised while regulation as a medicinal product is being progressed.
- If an NRT product is considered the best option for a person attempting to quit or reduce their smoking then pharmacists should encourage the use of licensed NRT products.
- Where someone is unwilling to use a licensed NRT product pharmacists should use their professional judgement when giving advice to patients and the public on the use of e-cigarettes, taking into consideration; current evidence on safety and efficacy; the risks and benefits of using unlicensed e-cigarette products; and the normalising of the smoking habit itself, particularly for young people and non smokers.

Reputational Risk

- As health professionals and providers of NHS care services there is an ethical dilemma supporting the sale of products owned and promoted by tobacco manufacturers.
- As the experts in medicines we cannot support the sale of products with limited scientific evidence on safety.

Public Health

- In order not to undermine recent advances in public health policy, e-cigarettes should be treated in exactly the same way as any other form of smoking, including the same age restrictions as applied to tobacco products and restrictions on their use in public spaces, advertising and displays.
- They should not be irresponsibly advertised and marketed as a lifestyle option or as harmless alternatives to smoking.

Annex 2: CAP and BCAP rule summary with RPS responses.

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

Question 1

We agree with this wording as an overarching principle but the wording could be expanded to advocate socially responsible in the broadest sense in order not to undermine current public health policies.

Question 2

Specifically advertising should not indicate healthy energetic or sporty lifestyles, cultural activity, celebrity endorsement, flavours, or use of e-cigarettes as desirable lifestyle accessories, or in conjunction with popular IT items such as USB sticks.

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

We do not support the use of visuals of e-cigarettes as it is very difficult to differentiate between electronic and tobacco versions. We believe that while these products are unlicensed the advertising rules should directly mirror those for tobacco products. While there is a place for e-cigarettes as an adjunct to help people stop smoking, one of their disadvantages is that they do not break the smoking cycle and so seeing pictures of people 'vaping' could still promote tobacco smoking.

Question 4

E-cigarettes should be subject to the same advertising restrictions as tobacco products until they are licensed and then advertised only as medicinal products as a support to stop smoking. There is no rationale for these products to be advertised to non smokers.

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

Yes we agree with the proposal to prohibit health claims for e-cigarettes. While e-cigarettes can be used as a *potential* aid to stopping or reducing smoking tobacco products, they must not be promoted as a safe alternative or healthy option until more evidence is available. We believe that they should be restricted in the same way as tobacco products due to their visual association with conventional cigarettes and because tobacco companies now own several major e-cigarette brands.

Question 6

The definition is of itself acceptable but in addition to wording restrictions the visuals used should also reflect this principle and not seek to imply health or wellbeing.

Question 7

Medicinal claims cannot be made and should not be advertised until a marketing authorisation is in place and then only within the terms and restriction of that authorisation.

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

Question 8

Yes it would be helpful to always make clear that the product is an e-cigarette whenever advertising is permitted.

- 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

Yes advertisements should always state if nicotine is present but in addition all known ingredients should be listed. This is important for allergy sufferers and to aid investigations into any potential side effects.

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

Question 10

We absolutely support the rule that any advertising should not be directly or indirectly encouraging non smokers or non nicotine users to try e –cigarettes. We have seen reports of increased conventional smoking and nicotine addiction in adolescents in the USA.

Ref <http://www.science.daily.com/releases/2014/03/140306112208.htm> accessed 18/3/2014

Question 11

Yes we consider this rule to be entirely proportionate. E-cigarettes contain nicotine which is an addictive substance and has several physiological effects on the body including raising of blood pressure which can contribute to serious cardiovascular health problems. We should not be encouraging any increases in the use of addictive substances to the general public, particularly when there is any possibility that this could lead to an increase in tobacco smoking itself.

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

Question12

Yes we agree with this proposal. It is not socially responsible to link e-cigarettes to any other addiction or high risk behavior.

Question 13

Yes we consider it appropriate to include alcohol in this rule. Alcohol is also an addictive substance. Information from people in smoking cessation programmes indicates that drinking alcohol is one activity which can weaken willpower to stay away from tobacco products and result in lapsing back to cigarette smoking. The advertising of e-cigarettes with their visual resemblance to tobacco products and nicotine content could easily also encourage relapse in those trying to quit.

Question 14

It would seem sensible to include gambling as this is also a recognised addiction.

- 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

We agree with this statement but it should be widened to include all other forms of public and private transport. There are reports of asthma attacks being induced by propylene glycol so any use in a restricted space increases this risk, particularly in children. There have also been incidents of fire hazards with USB charger devices which could be used on trains.

We do not yet have safety data on the toxicology of deep inhalation of all the ingredients in the vapour so use in a restricted space where others are exposed to secondary vapour should be avoided.

Question 16

There should be no link to anything with children or family activities.

- 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

This wording should be broadened and reinforced to emphasise the need to be aware of all aspects of life which will particularly appeal to young people and to accommodate future trends which might emerge and catch the imagination of this vulnerable group E.g. advertisements which encourage individual designing and building of bespoke e -cigarettes.

- 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

We would not want to see young people associated in any way with advertising of e-cigarettes.

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

Question 19

We have no authoritative opinion on the merits or otherwise of 'not suitable' warnings being stated on advertisements but are pleased that the UK Government is considering banning sales to under 18s as this will align e –cigarettes with tobacco products in this respect .

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 are under 18 years of age.

Question 20

Yes we approve of the principle of this rule to protect exposure of young people but would question if this % approach will apply to popular social media sites which attract all ages but have a substantial audience of young people. Would this wording protect the younger population from any new sites which emerged in future?

13. (Amendment to existing BCAP rule)

Question 21

Yes we agree that e –cigarettes should be included in the list of scheduling restrictions.

14. Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22

Yes we agree that central clearance would be an appropriate scrutiny prior to broadcasting.

Additional Questions

Question 23 and 24

We consider that the new rules should apply to all e -cigarettes whether or not they contain nicotine. This is because we are taking a precautionary approach with regard to the carriers of propylene glycol and glycerin and other excipients. There is no long term safety data on the use of these products by way of deep inhalation to the lungs and the hazards of e–cigarettes might not emerge for several decades, as was the case with tobacco products. Already we have seen report of cases of lipoid pneumonia attributed to the glycerin used in the aerosols.

Ref: German Cancer Research Center, (Ed), Electronic cigarettes – An overview, Heidelberg 2013

Question25

Any products which are licensed as medicines will have to adhere to the regulations associated with advertising of medicines in general and also be within the terms of their specific marketing authorisation from the MHRA. At the moment there appears to be a dual approach to marketing within the EU and so some products might be marketed as consumer goods in which case all the above rules should apply.

Question 26

This definition should be extended to include e-cigarettes which do not contain nicotine for all the patient safety reasons discussed previously. In addition we have concerns that these products could also be used as vehicles for illicit drugs which can be smoked or inhaled.

Question 27 and 28 No additional comments

CAP and BCAP Consultation on the Marketing of E-Cigarettes

April 2014

This response to the CAP and BCAP consultation document is submitted on behalf of the Royal Society for Public Health (RSPH). We are supporting the ASH position, and therefore the below re-states the ASH response.

The RSPH is an independent, multi-disciplinary charity organisation, dedicated to the promotion and protection of collective human health and wellbeing.

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 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 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 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?

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 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?

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.

“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 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.

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 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

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.⁷ 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'.

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 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.

References

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