

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 Directorate of Public Health including Camquit (Cambridgeshire's Stop Smoking Service) at Cambridgeshire County Council by Dr Ailsa Lyons, Health Improvement Specialist, Cambridgeshire County Council.

Electronic cigarettes

The following are relevant facts about "electronic cigarettes" that should guide the final rules on how they are marketed and 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. They do not burn tobacco and do not create smoke, therefore are not products of combustion, like cigarettes. They are therefore much closer in kind to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.
3. Using electronic cigarettes is likely to be much less dangerous than smoking, and a significant proportion of current consumers¹ use them as an aid to cutting down on cigarette use or quitting smoking altogether. However, there is a dearth of evidence on their safety and efficacy.
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.

It has been estimated in 2013 there were 1.3 million users of electronic cigarettes in the UK, and it is likely the number has grown significantly 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. There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. As electronic cigarettes are relatively new on the market and there are relatively few research studies looking at electronic cigarette use, it is difficult to know for certain whether young people are using electronic cigarettes as a "gateway"

¹ Survey of smokers' attitudes to e-cigarettes. YouGov 2010. Total sample size was 1380 UK adult smokers.

for smoking. Research carried out for ASH suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes in this manner. However, this could change particularly if advertising and promotion of electronic cigarettes was allowed to glamourise the use of these products and promote their use to young people.

See attached summary of ASH data on use of electronic cigarettes:

http://www.ash.org.uk/files/documents/ASH_891.pdf

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 television, 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”.

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. 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 electronic 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 electronic cigarette advertising and promotion should be socially responsible. This rule should be more clearly worded, so that it establishes some key markers of social responsibility. These would include:

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. Another example is “healthy”, while early research suggests that the majority of electronic cigarettes on the market are likely to be less harmful than traditional cigarettes, there is no evidence to suggest that they are good for health, or “healthy”.
3. All advertising should contain a prominent reference to the toxicity of nicotine and the need to store and use electronic 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. See below for suggested additional wording to rule 2 in bold and italics.

“Marketing communications / advertisements must contain nothing that ***features characteristics identifiable as tobacco brands or which promotes any design, colour, imagery, logo style that might be associated in the audiences’ mind with a tobacco product. They must also contain nothing*** which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown, ***but they must not be shown in ways that promote smoking or tobacco products.***”

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

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

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

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

We agree with the 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 electronic cigarette advertising and promotion should be directed at existing tobacco users and should not capture 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 of this rule. However, we would prefer the use of the term “electronic cigarette” to “e-cigarette”, as we consider this on balance to be a more informative description. 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 traditional cigarettes. Electronic cigarettes are totally different from cigarettes. They do not burn tobacco and do not create smoke, therefore are not products of combustion, like traditional cigarettes.

Our suggestion for revised wording is: “Marketing communications / advertisements must make clear that the product is an electronic cigarette **and should not use any descriptor that might reasonably be expected to create confusion with traditional 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.

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, after “encourage” we would wish to insert the words “either explicitly or implicitly” to read as follows: Marketing communications / advertisements must not encourage ***either explicitly or implicitly***, non-smokers or non-nicotine users to use e-cigarettes.

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 a principle should be applied in a revised wording of this rule, that no advertisements or communications should present electronic cigarettes in such a way as to glamorise and hence promote their use to non-tobacco users.

We of course agree that electronic cigarettes should not be associated with illegal drugs. 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 electronic cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

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

We agree with the inclusion and 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 age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and that the highest rates of smoking are amongst young people in their early twenties. By the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers. We would like to see electronic cigarettes promoted to all smokers who are over 18 in age as an alternative to smoking. The use of the age of 25 conforms with rules on alcohol advertising but we do not think it is justified in this case given that switching to electronic cigarettes is significantly less harmful than smoking, which is very different to the detriment which can be caused by taking up regular drinking of alcohol. 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.

We agree with the inclusion and wording of this rule.

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 inclusion and wording of this rule.

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 our comments on 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?

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. Social media is a rapidly growing medium which has been used to promote electronic cigarette use and we believe this is a major challenge which needs to be considered by CAP.

CAP and BCAP Consultation on the Marketing of E-Cigarettes

28 April 2014

About Cancer Focus Northern Ireland

This response to the CAP and BCAP consultation document is submitted on behalf of Cancer Focus Northern Ireland. Cancer Focus Northern Ireland is a local cancer charity, established to support cancer patients and their families, to help people take positive steps to a healthier life by lowering their risk of cancer, and to bring a more hopeful future by working for better public policies and funding ground-breaking research.

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.

Action on Smoking and Health (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

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.

⁴ MHRA. Nicotine Containing Products. Web page accessed 2nd April 2014.

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 non-smokers had heard of electronic cigarettes so advertising is not required to raise awareness of the product, but rather to promote individual brands to smokers.³

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

⁵ Robinson S & Bugler C. Smoking and drinking among adults, 2008. General Lifestyle Survey 2008. ONS, 2010.

⁶ Opinions and Lifestyle Survey, Smoking habits amongst adults, 2012. ONS, Sept. 2013

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

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.

CAP/BCAP consultation on the marketing of e-cigarettes

Cancer Research UK Response

Summary

Cancer Research UK welcomes the opportunity to respond to the CAP/BCAP consultation on the marketing of electronic cigarettes (e-cigarettes) and commends CAP and BCAP for taking a lead in developing bespoke marketing rules for e-cigarettes. Cancer Research UK believes that e-cigarettes are almost certainly much safer than conventional tobacco cigarettes and may help smokers to cut down or quit smoking. A balanced approach is needed towards e-cigarettes – one that maximises its potential to help people quit smoking, whilst minimising the risks of unintended consequences that could promote smoking. To do this we believe that the rules are needed to ensure that e-cigarettes are not marketed to non-smokers including children or contribute to a ‘re-normalisation’ of smoking amongst the general public.

We believe that proportionate and reasonable rules for the marketing of e-cigarettes should be based on two related principles: e-cigarettes must be promoted as an alternative to tobacco and that they should only be marketed to those who are smokers and/or users of nicotine containing products. Alongside this it is necessary to ensure that there are robust and clear rules to prevent these products being marketed to people under 18 and ensure that e-cigarette marketing is informative and factually accurate.

In our response we make the following recommendations:

- E-cigarette marketing communications should be responsible and not undermine current health messages on the benefits of quitting.
- E-cigarette marketing communications should not promote the use of tobacco and only show tobacco in a negative light if at all.
- E-cigarettes must be shown as an alternative to tobacco in marketing communications.
- E-cigarette products must be correctly identified as e-cigarettes and not use misleading terms.
- E-cigarette marketing communications must state whether the product contains nicotine, and if it does state that nicotine is highly addictive.
- E-cigarettes marketing communications should only be aimed at those who are current smokers and/or those who are using nicotine containing products.
- E-cigarettes communications should not be linked with activities and a location where using them is unsafe and guidance should be given on them being shown in enclosed public spaces.
- E-cigarette marketing communications should not be likely to appeal to those under 18, should not feature people who may seem under the age of 25 and should state that the product is unsuitable for under 18s.
- The media and scheduling of e-cigarette marketing communications and advertisements should be restricted to limit exposure to under-18s.
- The rules identified below as amended, are also appropriate for both e-cigarettes without nicotine, those licensed as medicines, alongside existing rules for promoting medicines, and non-licensed e-cigarettes with nicotine.
- We believe that further rules are needed to prohibit e-cigarette marketing on the basis of flavour(s).
- We also would like proposals for specific rules and guidance for e-cigarette marketing on social media.

Who we are

Every year around 330,000 people are diagnosed with cancer in the UK. Every year more than 150,000 people die from cancer. Cancer Research UK is the world's leading cancer charity dedicated to saving lives through research. Together with our partners and supporters, Cancer Research UK's vision is to bring forward the day when all cancers are cured. We support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2012/13 we spent £351 million on research. The charity's pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. We receive no government funding for our research.

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

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

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

We support the principle of this rule but recommend a change in the wording.

The marketing and advertising of e-cigarettes should be socially responsible. We believe that to be socially responsible e-cigarette advertisements and marketing communications should explicitly identify their products as alternatives to tobacco cigarettes. This will help prevent them being marketed in ways that appeal to non-smokers. (see response to Questions 5-7)

It is important that e-cigarette marketing communications are promoted in ways that are consistent with current health messages about smoking and tobacco. Tobacco is the single largest cause of preventable cancer in the UK. Smoking causes 1 in 4 cancer deathsⁱ and is associated with about 60,000 cancers a year.ⁱⁱ It is therefore important that health messages aimed at helping people quit smoking are not undermined. A study by Stirling University and commissioned by Cancer Research UK found that 22% of the 991 marketing communications and articles promoting e-cigarettes studied referred to quitting or cutting down.ⁱⁱⁱ It is not clear whether the promotion of these products is always consistent with health messages. While it is important that e-cigarettes are seen as an alternative to tobacco, marketing communications and advertisements should not undermine the message that quitting smoking is the best option to improve health. They should also not promote dual use of both e-cigarettes and tobacco cigarettes which may undermine quit attempts.

Therefore we recommend the following change to the wording of Rule 1:

“Marketing communications and advertising for e-cigarettes must be socially responsible **and should not undermine current health messages on the health imperative of quitting.**”

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

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

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

We support the inclusion of this rule but recommend a change to the wording.

It is very important that e-cigarettes are not used to promote the use of tobacco products or show tobacco products. This rule should complement the existing rules on the marketing of tobacco product in the CAP and BCAP codes. We believe the scope of the rule could be more clearly defined to include the design, colour, imagery, logo style that might be associated with a tobacco product. This will ensure that it more closely aligned to the current rules captured in BCAP rules 10.3 and 10.4 and CAP rule 21.1.

To provide further clarity we also believe it would be to better to ban any reference to tobacco use (including "smoking") except that which is unambiguously negative. We believe that this would reduce the risk of unintentionally promoting tobacco. The application of this rule should also prohibit wording that suggests that consumption of e-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.

Therefore we recommend the following change to the wording of Rule 2:

"Marketing communications /advertisements must contain nothing which promotes *any design, colour, imagery, logo style that might be associated 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 except in an unambiguously negative light*. This rule is not intended to prevent cigarette-like products from being shown, *but they must not be shown in ways that promote smoking or tobacco products*."

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

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

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

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

We support the principle of this rule but recommend a change to the wording.

We believe that e-cigarettes should be promoted explicitly as an alternative to tobacco products. We note the leading reason smokers report having used e-cigarettes is to "help me reduce the amount of tobacco I smoke, but not stop completely" (31%) followed by help in a quit attempt (30%); and "to help me keep off tobacco"(29%).^{iv} It is therefore consistent with smokers' perceptions that all e-cigarettes are promoted as an alternative to tobacco. This approach would

help ensure that marketing communications and advertisements are not appealing to non-smokers and non-nicotine users.

We agree that e-cigarette advertisements and marketing communications should not contain a health or medicinal claim unless the product is licensed by the MHRA. This would help provide greater clarity for consumers as to which products are shown to actually help promote quitting. We also agree with the proposed definition of health claims drawn from the EU Directive for nutritional and health claims (EC) No 1924/2006.

We recommend the following change to the wording of Rule 3:

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

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

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

We support the rule but recommend a change to the wording.

Given the relative novelty of these products, it is important that e-cigarette advertisements and marketing communications clearly differentiate their product from tobacco cigarettes. We therefore support the requirement that the marketing of the products makes it clear that the product is an e-cigarette. We also believe that both the terms ‘e-cigarette’ and ‘electronic cigarette’ are appropriate, although we note that the latter term is one that has been used in both the EU Tobacco Products Directive and by the MHRA. It is also important that a single term is used for all products that fall under the definition of e-cigarette. We do not believe that any other terms should be used to describe e-cigarettes. Alternative names for e-cigarettes could cause confusion and mislead consumers to believe that they are free of nicotine or have lower levels of nicotine. Examples include: ‘e-shisha’, ‘shisha pens’, ‘e-hooks’, ‘vaping pens’.

We also believe that it is necessary to prohibit the use of descriptors that could be reasonably associated with tobacco cigarettes such as the term ‘smoking’. However, we accept that there is a potential tension between calling these products ‘e-cigarettes’ and prohibiting the term ‘smoking’.

Therefore we recommend the following change to the wording of Rule 4:

“Marketing communications / advertisements must make clear that the product is an e-cigarette **and not use any other terms to identify the product. They should also not use any descriptor that might reasonably be associated with tobacco products such as smoking to describe use of the product.**”

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

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

We support this rule but recommend a change to the wording.

Given that nicotine is very addictive, it is important that e-cigarettes state whether they contain nicotine. In addition, we believe that all advertisements and marketing communications must state that nicotine is highly addictive. Such an approach would be in line with the EU Tobacco Products Directive which will require all e-cigarettes to show the nicotine content and a warning of the addictiveness of nicotine on the product label.

Therefore we recommend the following change to the wording of Rule 5:

*“Marketing communications / advertisements must state clearly if the product contains nicotine **or if it does not. They should clearly state that nicotine is highly addictive if the product contains nicotine.** They may include factual information about other product ingredients.”*

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

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

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

We support the principle of the rule but recommend a change to the wording.

There is a consensus that e-cigarettes are almost certainly much safer than smoking tobacco cigarettes, however, the full health implications of e-cigarette use are currently unknown. The level of toxicants found in e-cigarette vapour is generally substantially lower than that found in conventional cigarette smoke.² However, the health implications of long-term exposure to nicotine and propylene glycol, the main chemicals in e-cigarette vapour, and other chemicals in e-cigarette vapour are also not fully understood. Given these facts we believe that it would be irresponsible to promote these products to non-smokers or non-nicotine users. Therefore we fully support the principle of this rule.

However we believe that the rule could go further whilst remaining proportionate. In the consultation it is suggested that the rule would prohibit marketing communications that would explicitly encourage non-smokers and non-nicotine users to use e-cigarettes. This would give scope for tactics to implicitly promote e-cigarettes to a wider audience beyond smokers and users of nicotine containing products. The study by Stirling University commissioned by Cancer Research UK on the marketing of e-cigarettes showed that one of the strategies used by independent e-cigarette manufacturers was to make e-cigarettes a lifestyle ‘must have’ accessory.³ The authors argued that this would make it appealing to non-smokers. Therefore we would consider it reasonable to require all advertisements and marketing communications to be aimed at smokers and/or those who are users of nicotine containing products.

Therefore we recommend the following change to the wording of Rule 6:

*“Marketing communications / advertisements **must be aimed at those who currently smoke tobacco or use nicotine containing products.** They must not **explicitly or implicitly** encourage 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.

We support the principle of this rule.

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

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

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

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

We support the principle of this rule.

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

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

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

We support the principle of this rule but believe that further guidance could be given on the issue of the use of e-cigarettes in enclosed public spaces and workplaces.

We agree that e-cigarette marketing communications and advertisements should not be linked with activities or locations in which using them would be unsafe or unwise.

E-cigarette use also should not be shown in the presence of people who could be reasonably considered to be under 18.

We also believe that CAP and BCAP should provide guidance to ensure that marketing communications do not imply that e-cigarette use is permitted in all enclosed public spaces when such rules vary between premises. We note that the ASA has already ruled against advertisements

which have promoted messages that mislead people on the use of e-cigarettes in enclosed public spaces.^{vi} However, it is a subject often referred to in e-cigarette marketing communications.³

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

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

We support the principle of this rule and its wording.

It will be illegal for those under the age of 18 to purchase nicotine products including e-cigarettes under the Children and Families Act 2014. We believe that it is important to ensure that e-cigarettes marketing communications do not appeal to young people who are under 18, particularly those who do not use tobacco cigarettes and may not otherwise become addicted to nicotine.

We therefore fully support the inclusion of a rule to prevent marketing communications and advertisements from appealing to people under 18 and agree that they should not reflect or be associated with youth culture or portray characters that would appeal to people under 18. We are also pleased that this rule will prohibit the use of adolescent and juvenile behavior from e-cigarette marketing.

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

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

We support the inclusion of the rule and its wording.

It is important that e-cigarette marketing communications and advertisements do not appeal to young people. We believe that this rule is needed to help prevent e-cigarette advertisements being attractive to young people. Given the potential risk for people under the age of 18 to identify with those who appear to be 18 and 25 years old, it is reasonable to prohibit people who are or seem to be under the age of 25 being shown in a significant role in e-cigarette marketing communications or advertisements. The rule also offers less room for error and abuse. The rule avoids ambiguity as people shown in marketing communications or advertisements could not be mistaken for people under the age of 18.

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

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

We believe on balance that it is sensible to state that the products are not suitable for under-18s. We believe that this clarity can be helpful due to the relative novelty of the product and may help improve awareness that the products are unsuitable for under-18s.

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

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

We agree with the principle that e-cigarettes should not be directed at people under 18 given both the risk of addiction to nicotine and the fact that it will be illegal to sell such products to those under 18.

However we do not believe that this rule goes far enough in protecting under-18s from exposure to marketing communications for e-cigarettes. Popular films aimed at adults may still attract a large audience of under-18s even if this represents a small proportion of the total audience. For example, *Skyfall* as an adult orientated film was allowed to show alcohol advertisements. While the viewership of under-18s was only 12% the film reached almost one fifth of the total UK population.^{vii} Therefore a 10% threshold would be better and help direct marketing communications to audiences that are overwhelming over 18 and reduce children and young people's exposure to e-cigarette promotions.

- **Rule 13: [Amendment to existing BCAP ruling]**

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

We support the inclusion of e-cigarettes being included in this list of scheduling restrictions. We believe that this will help prevent e-cigarettes being marketed to young people.

However we note that that these scheduling restrictions are likely to be insufficient to reduce children's exposure to e-cigarette advertisements. Prime time early evening programming and sporting events are likely to draw a wide audience. Although not principally directed at under-18s they are likely to attract a large audience of them. This issue was highlighted by Ofcom as a potential reason for why children had viewed more alcohol advertisements in 2011 compared with 2007.^{viii} We would therefore like to see proposals to restrict the scheduling of e-cigarettes further to prevent children being exposed to e-cigarette advertisements.

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

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

We support the requirement that all radio broadcasters must ensure Radio Central Copy Clearance for e-cigarette advertisements.

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? Please provide any relevant evidence in support of your response.

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

We believe that all the new marketing rules should apply to e-cigarettes that do not contain nicotine given that these products may be particularly attractive to young people and is easily confused with e-cigarettes containing nicotine. We believe that the proposed rules, with the suggested amendments, would be suitable for e-cigarettes not containing nicotine. This will ensure that there is a consistent approach to marketing of all categories of e-cigarettes. We do not believe that any further rules are needed for these 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?

We believe that the marketing of e-cigarettes regulated as medicines should fall under the rules for marketing and advertising of medicines under the CAP and BCAP codes as well as the proposed rules for e-cigarettes with the amendments suggested above (with the exception of rule 3). We believe that this will help to ensure that there is a consistent approach to the marketing of all categories of e-cigarettes.

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

We support the proposed definition of e-cigarettes which is consistent with the definition in the EU Tobacco Products Directive.

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

We do believe that e-cigarettes should not be allowed to be marketed on the basis of their flavour(s). We are concerned that such promotions could be attractive to non-smokers and non-nicotine users, particularly children. We believe that a further rule should be developed to prohibit e-cigarette marketing communications and advertisements on the basis of their flavour.

We note that the evidence base for the impact of the advertising and marketing of e-cigarettes is currently limited. We therefore advise that CAP and BCAP provide sufficient flexibility to ensure that its rules can be updated quickly if further evidence shows that changes to its rules are needed to protect public health.

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

We note the absence of any specific recommendations for the promotions of e-cigarettes through social media. We recognise that CAP rules are applicable to online marketing communications, but believe that specific rules and guidance are needed given the unique nature of social media and its appeal among those under 18. The application of these rules on social media is particularly important given the evidence showing large and widespread promotional activity of e-cigarettes on

social media.³ We would welcome proposals for the regulation of marketing of e-cigarettes through social media.

April 2013

ⁱ Peto, R., et al., Mortality from smoking in developed countries, 1950-2000. . 2nd ed. 2005, Oxford: Oxford University Press

ⁱⁱ Parkin DM. Tobacco-attributable cancer burden in the UK in 2010. BJC 2011; 105:S6-S13

ⁱⁱⁱ De Andrade, M and Hasting, G (2013) The marketing of e-cigarettes, Cancer Research UK

^{iv} ASH (2013) Use of e-cigarettes in Great Britain among adults and young people (2013)

http://www.ash.org.uk/files/documents/ASH_891.pdf

^v Parkin DM (2011i). Cancers attributable to consumption of alcohol in the UK in 2010. Br J Cancer 105 (S2):S14-S18; doi: 10.1038/bjc.2011.476

^{vi} Advertising Standards Authority (2012). ASA Adjudication on Desert Point Ltd. Available at:

http://www.asa.org.uk/Rulings/Adjudications/2012/10/Desert-Point-Ltd/SHP_ADJ_199372.aspx

^{vii} http://www.cinemaadvertisingassociation.co.uk/caa_alcohol.pdf

^{viii} Ofcom (2013) Children's and young people's exposure to alcohol advertising 2007-2011

Consultation on the marketing of e-cigarettes

This response has been prepared by the CEnTSA Age Restricted Sales group on behalf of the 14 local authorities in the CEnTSA region.

CEnTSA are committed to ensuring effective partnership working between local authorities across Central England to achieve measurable improvements in Trading Standards for all those who may benefit.

What does this mean in practice?

Trading Standards Services, within local authorities are responsible for a wide range of laws governing services and goods that are bought, hired and sold. Our officers give advice, investigate complaints, undertake inspections and test and sample products and services.

Independently we work to protect our residents and businesses, but as a partnership CEnTSA encourages and builds on the strengths of each authority, sharing best practice and improving service delivery region wide.

Strong links between the Trading Standards services within our regions are vital in providing the best service possible to the people and businesses of the Midlands. If you want to find out more about how CEnTSA works across the Midlands contact.

centsa@warwickshire.gov.uk





Prior to addressing the questions within the Consultation the group reviewed the executive summary and in responding took account of the following broad issues:

- Growing public concern
- Broad tobacco prohibitions
- Particularly children and young persons

Trading Standards has a long tradition of protecting people from harm; particularly children. They engage with businesses to offer advice and assistance to ensure that products they supply do not pose a risk to the public.

The main concerns around this type of product is that it undermines the progress made to de-normalise the concept of smoking and that under 18's are particularly vulnerable to the sophisticated advertising of them.

GENERAL RULES

Rule 1

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

Question 1:

Do you agree with inclusion and wording of this rule?

Response:

The consensus of the group was that this was fundamental. There is a broad range of advertising media that this product is currently advertised on which include but not limited to: Billboards, Magazines, T.V, Internet, Newspapers, Social Media, Cinema, Transport, Radio

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?

Response:

As noted above there is a range of media where such products are advertised and main concerns discussed relate to the actual “volume” of the advertisements along with the perceived glamorisation of their use by association with celebrities’ and potential for product placement.

Rule 2 (Read in conjunction with Rule 4)

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 intended to prevent cigarette-like products being shown.

Question 3:

Do you agree with inclusion and wording of this rule?

Response:

This rule and subsequent questions were read in conjunction with Rule 4. Fundamentally this product is not a Tobacco Product however it can easily be mistaken for a real cigarette.

Products are however emerging that do not look like cigarettes but there is still an association with smoking.

Overall the group felt that there needed to be prominence in any advertisements stating that the product is an e-cigarette so that it is not easily confused with traditional cigarettes; the group discussed that it is unfortunate that the product by its very name ‘e-cigarette’ may be already closely associated with traditional cigarettes.

It is important to try and future proof the rules by looking at what type of products and advertising may evolve in the not too distant future and not to focus on just what is available now.

These products do not contain tobacco and not all products contain Nicotine.

The group therefore agree with this rule. However we have some concern about the last sentence. We would not wish to see cigarette like products being shown due to the association with traditional cigarettes and the perception that this may contribute to the normalisation of cigarette smoking which we are trying to discourage.

E-cigarettes are not a tobacco product (at this stage anyway) and this needs to be made clear in any advertising media.

Question 4:

Do you have any comments or evidence which can help to inform CAP and

BCAP's goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?

Response:

The group discussed possible examples that could be provided. (Group to respond)

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?

Response:

E-cigarettes that have been licenced should be used as a cessation product and advertised as such; they should not be marketed as an alternative to tobacco. Although from a health perspective there may be harm reduction benefits caution needs to be applied to those products falling outside the definition of a medicinal product; particularly when no particular testing has been carried out to substantiate any such health benefits.

Therefore the group agree that health claims should be prohibited.

Question 6:

Do you agree with the proposal definition of health claims for the purposes of this rule?

Response:

The group agree that the comparison to Regulation (EC) No 1924/2006 on nutrition and health claims made on food is an appropriate one and will provide a good benchmark for such claims.

Question 7:

Do you agree with the proposal to prohibit medicinal claims?

Response:

The group agree with the proposal to prohibit medicinal claims; however there was some concern within the group with the second sentence as stated above; products should not be presented as an alternative to tobacco as this increases the normalisation of cigarette smoking.

Rule 4

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

Question 8:

Do you agree with the inclusion of the wording of this rule?

Response:

The group agreed and referred to the disclaimer doctrine in the Trade Descriptions Act 1968 in that any disclaimer used had to be as “Bold, precise and compelling as the description itself”. There should be no room for ambiguity in the advertising of these products.

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 the inclusion and wording of this rule?

Response:

The group agreed that this needs to be the case. If other information is included then a further comparison with food law was discussed and the group felt that other information needed to be clear and in the same field of vision.

There is concern that information should not be ambiguous and not inadvertently promote any unproven health benefits.

PROHIBITED APPROACHES

Rule 6

Marketing communications/advertisement 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?

Response:

The group were in agreement with this Rule.

The group were aware that some work had been undertaken in the North East/West and that it was found that some school children are using this product even though they have not smoked traditional cigarettes.

Anecdotally the group felt that there may be local evidence that some users had not previously used traditional tobacco products. There has been a growth in low cost "Pocket Money" products which may encourage young people to try products as opposed to purchasing traditional tobacco products.

See attached document showing placement of e cigarettes where you would usually find traditional penny sweets

Question 11:

Do you consider 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

Response:

The group felt that the Rule was proportionate, and exactly what is needed to prevent non-smokers from starting to use these products; otherwise this would undermine the progress made on reducing the normalisation of smoking.

The group were concerned that the second part of the question was virtually impossible as it is difficult to determinate the audience.

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 lining e-cigarettes with illicit drugs?

Question 13

Do you consider that alcohol should be included in this rule?

Question 14:

Do you consider that gambling should be included in this rule?

Response:

The group agreed with this Rule as applied to questions 12, 13 and 14. It is important that such products are not glamorised and the same care needs to be taken in their marketing to prevent them being socially acceptable; particularly to young people.

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?

Response:

The group agreed with this Rule

Question 16:

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

Response:

The group discussed that e-cigarettes should not be advertised in use on public transport, in the workplace, in pubs/clubs; again this can lead to normalisation and is unwise to do so as users may think it acceptable to use such products in these situations which can lead to confrontation and conflict. They should not be marketed or associated with places that young people have access to such as sports grounds and cinemas.

PROTECTION OF CHILDREN AND YOUNG PERSONS: GENERAL

Rule 9

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

Question 17:

Do you agree with inclusion and wording of this rule?

Response:

The group strongly agree with this Rule.

There is a broad range of advertising media that this product is currently advertised on which include but is not limited to: Billboards, Magazines, T.V, Internet, Newspapers, Social Media, Cinema, Transport and Radio.

Young people are heavily influenced by celebrity culture and social media.

Rule 10

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

Question 18:

Do you agree with the inclusion and wording of this rule?

Response:

The group agree.

Rule 11

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

Question 19:

Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18's?

Response:

The group agree. The Children and Families Bill will introduce an age restriction on the supply of such products to under 18's.

Business advice has already been provided suggesting that it is best practice (until legislation dictates) not to supply such products to under 18's.

There have not been significant complaints around the supply of such products to under 18's,

PROTECTION OF CHILDREN AND YOUNG PEOPLE: TARGETING (CAP CODE ONLY)

Rule 12

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

Question 20:

Do you agree with inclusion and wording of this rule?

Response:

In principal the group agree but feel that it would be difficult to implement in reality; particularly in and around Social Media

PROTECTION OF CHILDREN AND YOUNG PEOPLE: SCHEDULING (BCAP CODE ONLY)

Rule 13

Amendment to existing BCAP rule 32.2

Question 21:

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

Response:

The group agree that this amendment reduces the likelihood of young people being influenced by the product. It may however be difficult and due to parental control requirements; particularly for on-demand programming.

RADIO CENTRAL COPY CLEARANCE (BCAP CODE ONLY)

Rule 14

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

Question 22:

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

Response:

The group agree that there should be clearance as long as the other Rules are taken into account from the code.

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?

Response:

The group are concerned that all products associated with the habit of smoking potentially contribute to the re-normalisation of smoking which should be avoided; this is whether or not the product contains nicotine. Therefore any Rules should capture all such products.

Question 24:

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

Response:

The group consider that it is irrelevant whether or not a product contains nicotine. The issue here is a matter of fact and clarity is required in that if a product contains nicotine or not then it needs to be clear in the advertising. The group refer back to the response to Question 8 above; The group agreed and referred to the disclaimer doctrine in the Trade Descriptions Act 1968 in that any disclaimer used had to be as **“Bold, precise and compelling as the description itself”. There should be no room for ambiguity in the advertising of these 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?

Response:

Product licences issued by the MHRA will control such products and what claims can be made.

Marketing used and controlled in health care environments such as doctors' surgeries and hospitals should not be subject to the rules of

this code. This will ensure that there is an opportunity, in a controlled medical environment, to advertise the benefits of the properly licenced cessation products.

This is to be distinguished between widespread, mainstream advertising that should comply with the Rules of the code.

Question 26:

Do you agree with the proposed definition of e-cigarette?

Response:

Any definition needs to be consistent across any regulation and/or Code as defined in the Tobacco Products Directive.

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?

Response:

The group have combined its response to Q27 and Q28. They discussed general concerns around product placement, celebrity endorsement, television advertising and programs and Social Media.

Care needs to be taken around cinema advertising of such products and whether advertising is shown prior to and around films below an 18 certification. Association with sports needs to be avoided in and around venues and on kit. There was also discussion around 'pop up' shops in shopping precincts and how the stall holders approach potential customers; they should not be approaching people who look under 25; this is also the case for any demonstrations of the products.

The group were also concerned about "Volume" Control – e.g. flooding the market with a particular product on every billboard in a close proximity.

Advertisers should not imply that it's a "Safe Product"

Advertising Examples

<http://www.nicoventures.co.uk/media-news/vype-social>



Chartered
Institute of
Environmental
Health

Consultation on the marketing of e-cigarettes - CAP and BCAP proposals for new rules

Response from the Chartered Institute of Environmental Health (CIEH)

28 April 2014

The Chartered Institute of Environmental Health

As a **Chartered professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,000 members across England, Wales and Northern Ireland.

For correspondence relating to this consultation response and for any further information

Chartered Institute of Environmental Health
Chadwick Court
15 Hatfields
London SE1 8DJ
www.cieh.org

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CIEH support for submission made on behalf of Action on Smoking and Health (ASH)

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- Rule 1: Depiction of the use of electronic cigarette products
Safety aspects
- Rule 5: Visible vapours and odours

Section 1: Position Statement of the Chartered Institute of Environmental Health (CIEH)

The CIEH has a longstanding involvement in tobacco control activities and we campaigned for over 20 years for protection for workers from secondhand smoke. We have had important roles in the development and implementation of smokefree legislation and we continue to provide technical advice and practical guidance, particularly to local authority regulatory officers who are involved in securing compliance, the majority of which are environmental health officers.

Our Principal Policy Officer, who has prepared this response to your consultation, is recognised as an expert in developing and securing compliance with smokefree legislation. He has also been a professional member of NICE Policy Development Groups responsible for providing the evidence based guidance to inform both policy and practice in relation to reducing smoking:

- Member of NICE PDG *Smoking cessation services*
NICE public health guidance 10 Issued: February 2008
- Member of NICE PDG *Tobacco: harm-reduction approaches to smoking*
NICE public health guidance 45, Issued: June 2013

The adoption of harm reduction approaches to smoking is particularly significant in relation to the use of electronic cigarette products.

Section 2: CIEH support for submission made on behalf of Action on Smoking and Health (ASH)

The CIEH is a founder member of the Smokefree Action Coalition whose members collectively possess a wide range of academic and practical expertise in all aspects of tobacco control. <http://www.smokefreeaction.org.uk/about.html> The coalition has been closely observing and monitoring the increasing use of electronic cigarette products and the associated advertising and promotional activities. Our shared concerns and proposals for controls and safeguards are properly contained in the comprehensive response to this consultation provided to you by Action on Smoking and Health (ASH).

The CIEH endorses and commends to you the statements and recommendations provided to you by ASH.

Section 3: Particular concerns of CIEH and its members and 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?

Depiction of the use of electronic cigarette products

Our members have expressed concerns to us regarding the use of electronic cigarette products in such a manner as to undermine compliance with and enforcement of the requirements of our highly successful smoke-free legislation. This is because of the close resemblance of some electronic cigarette-type products to smoked tobacco products. Some of these simulate not only 'real' cigarettes but also cigars, pipes and water-pipes.

Throughout the UK smoking is prohibited by law in virtually all enclosed workplaces and public places, on public transport and in vehicles used for work. This is because of the conclusive scientific evidence of the harm that can be caused not only to the smokers themselves, but also to people other than the smoker through the inhalation of so-called 'secondhand smoke'. However, the smokefree legislation is only concerned with smoking tobacco and other 'lit' materials, that is to say, when combustion or burning is taking place. For this reason, it is not an offence to have an unlit cigarette in your hand or your mouth, and neither is it an offence to use an electronic cigarette product.

The concerns are that if people are allowed to use electronic cigarette products in places where the law prohibits smoking, or where no-smoking policies are in place, then they may be mistaken for actually smoking. This may encourage others to smoke believing either that it is permitted to do so or that no action will be taken against them for doing so.

Of course there is no reason why these products should be made to resemble 'real' cigarettes and other tobacco products so closely and it is accepted that many do not. However, many have the appearance of thin white tubes with a glowing end and simulated filter. Indeed referring to these products as 'cigarettes' only adds to the confusion and is not necessary.

The advertising and promotion of electronic cigarette products is an important aspect to consider in reducing this confusion and maintaining the 'smokefree' status of workplaces and public places. This is particularly important in those premises such as pubs and clubs and where alcohol is available, which were previously closely associated with smoking activities and still are in many countries of the world. In this regard we are particularly concerned about depictions which 'glamorise' the use of electronic cigarette products in these venues.

Indeed without sufficient controls it is possible that advertising and promotion of electronic cigarette products can create a mistaken belief that smoking is interchangeable with using

electronic cigarette products. At best this could cause confusion about what is and what is not permitted and prohibited. At worst, this could encourage irresponsible people to use electronic cigarette products as a deceit to evade detection of smoking in contravention of the law. Our members report that, although not widespread, attempts are being made to do so.

Safety aspects

Until such time as the safety of the use of these products can be assured, including the re-charging of batteries, advertising should contain reference to the safety precautions of using electronic cigarette products including not using them in areas where combustible products and used or stored, e.g. explosives, and where points of ignition are prohibited e.g. in proximity to flammable liquids and gasses.

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.

Visible vapours and odours

Some electronic cigarette products emit substantial quantities of visible vapour and the addition of flavourings and scents can give rise to odours which are objected to by other people and give rise to complaints.

In order to avoid giving rise to complaints some consumers will wish to avoid purchasing products with ingredients that could cause the effects and the policies of some employers may stipulate this as a requirement of permitting their use.

Marketing communications and advertisements should be required to state whether or not visible vapour will be produced and whether or not odours will be emitted.

Rule 5 should be amended to read as follows (see emboldened type):

*Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. **They must state whether visible vapours and/or odours will be produced when the product is in use.** They may include factual information about other product ingredients.*

Consultation on the marketing of e-cigarettes

CAP and BCAP proposals for new rules

Submission by the
Cheshire and Merseyside Tobacco Alliance
25 April 2014



About the Cheshire and Merseyside Tobacco Alliance

The Cheshire and Merseyside Tobacco Alliance (CMTA) has been in operation since 2000. This sub-regional network currently includes the nine Cheshire and Merseyside local authorities and covers a total population of around 2.6 million people.

The CMTA aims to facilitate a strategic overview of tobacco control within Cheshire and Merseyside and support the development of tobacco policy and management of initiatives at a local strategic partnership level.

Membership currently consists of: the designated tobacco control leads for each local authority; Stop Smoking Service Leads and other relevant agencies with a remit for tobacco control such as Trading Standards; NGOs and public sector organisations including the Fire and Rescue Service and the Police.

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Website: <http://www.heartofmersey.org.uk/Tobacco%20Control/CMTA.html>
Twitter: @CMTAsmokefree

Electronic cigarettes

The availability, advertising and use of e-cigarettes have increased dramatically in recent years in the UK, helped by an absence of regulation on their sale and promotion. This became more apparent during 2013 when almost all our tobacco control work streams were increasingly being affected by e-cigarettes in Cheshire and Merseyside. This included our work to maintain and achieve smokefree hospitals; the implementation of smokefree play areas in parks, smokefree homes and cars and Smokefree Squads; and to support Local Stop Smoking Services. Our partners were also reporting the increased use of e-cigarettes among young people and the concern about their potential to cause harm including through acting as a gateway to tobacco smoking.

Consequently, the Health Equalities Group) in partnership with the Centre for Public Health, Liverpool John Moores University carried out the following research on behalf of the Cheshire and Merseyside Tobacco Alliance

E-cigarette access among young people in Cheshire and Merseyside. Findings from the 2013 North West Trading Standards survey

Findings suggest that substantial numbers of young people in Cheshire and Merseyside are accessing e-cigarettes, and that many of these have never smoked tobacco cigarettes, or have tried and not liked them.

Young people that are most likely to use e-cigarettes are those that are already engaged in risky substance use behaviours, including cigarette smoking, binge drinking, drinking in unsupervised settings, and alcohol-related violence.

Full report: <http://www.cph.org.uk/wp-content/uploads/2014/03/E-cig-Trading-Standards-final-report.pdf>

“Most people I know have got one.” Young people’s perceptions and experiences of electronic cigarettes

Findings suggest that e-cigarettes are a prominent part of youth culture in Cheshire and Merseyside, particularly as interest among nonsmokers continues to grow. For young people, much of the appeal of e-cigarettes is in the variety of colours and flavours available, with participants suggesting that there are very few limits to their access of these devices.

Young people demonstrated a clear lack of understanding of the health implications of e-cigarette use, showed great uncertainty as to the safety and efficacy of the devices, and revealed a very limited awareness of current advertising and marketing strategies.

Full report: <http://www.cph.org.uk/wp-content/uploads/2014/03/ECig-focus-groups-final-report.pdf>

Our response

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

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

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

CMTA agrees with this rule. Clarifying the definition of an e-cigarette however, could strengthen things. It is important that other products, especially in a fast moving market are also covered by the rule. For example handheld, portable shisha pens and hookah pipes, some of which contain nicotine and all of which are inhaled in a similar way to a cigarette. Suggested rewording as follows:

Marketing communications/advertisements for e-cigarettes and other nicotine containing products must be socially responsible.

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

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

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

CMTA agrees with this rule but believe it should be strengthened. Denormalisation of smoking is an important part of tobacco control. It refers to the breaking down of community acceptance and tolerance for smoking.¹ Children, are greatly influenced by their sense of what is normal and attractive, which is in turn influenced by the imagery and social meaning attached to different behaviours portrayed in advertising, media and youth culture.² E-cigarettes are strikingly similar to conventional cigarettes in that they involve

¹ Scollo MM and Winstanley MH (2012) Tobacco in Australia: Facts and issues. Available from www.TobaccoInAustralia.org.au

² Hastings G and Angus K (2008) Forever cool: the influence of smoking imagery on young people. Available at: www.management.stir.ac.uk/about-us/?a=19777

being placed in the mouth and inhaled. Therefore, e-cigarettes should not be shown. However, if they are, they should not be shown actually being used by an individual.

E-cigarette brands are or will be produced and promoted by tobacco manufacturers. Therefore 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.

CMTA agrees with this rule. It is important that e-cigarettes and other nicotine containing products are positioned as an alternative to tobacco and not as a product in their own right. E-cigarettes are only appropriate for use by people who currently consume conventional cigarettes.

The second sentence of the rule should be changed to ***E-cigarettes and other nicotine containing products may however be presented as an alternative to tobacco.***

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

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

CMTA agrees with this rule. As with the above rule, it is important that e-cigarettes and other nicotine containing products are positioned as an alternative to tobacco and not as a product in their own right. The best way of doing this is to refer to the product as an 'e-cigarette' rather than other terms that are sometimes used such as 'vapouriser'.

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

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

CMTA agrees with this rule but believe it should be strengthened. A warning should be included on all advertising that states, 'E-cigarettes contain nicotine, which is highly addictive.'

Consideration should be given to changing the second sentence of the rule as follows: ***They should include factual information about other product ingredients.*** However, this information must not be at the expense of the warning about the addictiveness of nicotine.

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

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

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

CMTA agrees with this rule. It is important that e-cigarettes are only advertised and promoted as an alternative to tobacco. It must be made as difficult as possible for any electronic cigarette manufacturer to target those who do not currently consume conventional cigarettes either explicitly or by more subtle means.

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.

CMTA agrees with this rule. The findings from our research cited on page 3 of this document describe the association between alcohol and e-cigarettes. In summary:

There were strong relationships between e-cigarette access and young people's drinking behaviour. Three quarters (73.8%) of all participants reported drinking alcohol and of these, most (79.9%) reported binge drinking at least occasionally. Young people that drank alcohol at any level were more likely to have accessed e-cigarettes than non-drinkers while drinkers that reported binge drinking were more likely to have accessed them than non-binge drinkers. A third of young people that reported drinking at least weekly and binge drinking had accessed e-cigarettes.³

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

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

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

CMTA agrees with this rule.

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

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

CMTA agrees with this rule.

The effectiveness of this rule could be threatened due to the difficulty of defining what constitutes behaving in an '**adolescent or juvenile manner**'. Rule 10 below goes some way in ensuring that e-cigarettes are not promoted to or

³ E-cigarette access among young people in Cheshire and Merseyside. Findings from the 2013 North West Trading Standards survey
<http://www.cph.org.uk/wp-content/uploads/2014/03/E-cig-Trading-Standards-final-report.pdf>

portrayed among young people. Despite these issues the wording of Rule 9 should remain as it is.

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

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

CMTA agrees with this rule. Although the age of sale restriction of e-cigarettes is likely to be 18, it is important that when advertising the products, the rule needs to air on the side of caution by ensuring that people using e-cigarettes are clearly aged 25 and above. This means that the risk of people perceiving those shown in advertising being aged 18 are under is minimised. The use of the age of 25 is in line with rules on alcohol advertising.

This rule should not prevent young adults aged between 18 to 25 years old who consume conventional cigarettes to access e-cigarettes as an alternative. Other communication channels can be used to target this audience.

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

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

CMTA agrees with this rule.

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

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

CMTA agrees with this rule.

Rule 13: [Amendment to existing BCAP rule]

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

CMTA agrees with this rule.

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

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

CMTA agrees with this rule.

Advertising of these products is a relatively new phenomenon. Therefore, all broadcast e-cigarette advertisements should require central clearance prior to publication/transmission. In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

Additional questions

E-cigarettes which do not contain nicotine

Although some e-cigarettes do not contain nicotine, CAP and BCAP consider that their advertising may still present the same or similar issues as nicotine-containing e-cigarettes.

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

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

CMTA agrees that e-cigarettes, which do not contain nicotine such as handheld shisha pens and hookah pipes should be treated in the same way as e-cigarettes containing nicotine. E-cigarettes not containing nicotine clearly have the potential to cause confusion if they are subject to a different set of advertising rules than nicotine-containing products. In many cases it is impossible to distinguish between products containing nicotine and products without nicotine and even if they don't contain nicotine they may be used like a conventional cigarette.

E-cigarettes which are licensed as medicines

Advertisers may obtain a license for their product from the MHRA. This would permit them to make smoking cessation claims and marketing for such products would be subject to the rules in section 12 (Medicines, medical devices, health-related products and beauty products) of the Code, which can be found here.

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?

CMTA agrees that MHRA licensed products, supported by scientific evidence, should be able to be advertised as aids to cutting down and stopping smoking.

Definition of electronic cigarette

Notwithstanding the need to decide to what extent these rules will apply to e-cigarettes that do not contain nicotine, for the purposes of these rules CAP and BCAP propose to use the definition of e-cigarette provided in the *Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products*.

That definition is as follows:

“Electronic cigarette’ means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption of [nicotine-containing] vapour via a mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges.”

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

CMTA agrees with the definition.

Further comments

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

CMTA believes that 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. This information could be included within our recommendation to strengthen Rule 5 and placed alongside the ‘E-cigarettes

contain nicotine, which is highly addictive' amendment.

Please see recent news reports:

<http://www.theguardian.com/society/2014/apr/14/e-cigarette-poisoning-figures-soar-adults-children>

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?

CMTA believes that the proposed rules must apply to social media advertising.

The proposed rules need to be revised in the light of emerging evidence.



Department of Health

*From the Chief Medical Officer,
Professor Dame Sally C Davies*

Richmond House
79 Whitehall
London
SW1A 2NS

www.dh.gov.uk

25 April 2014

E-cigarettes Consultation
Regulatory Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
London
WC1V 6QT

Sent by email: e-cigarettes@cap.org.uk

Dear Regulatory Policy Team

Response to the Consultation on Marketing of E-Cigarettes

I agree with the decision to consult on the proposed rules concerning the marketing of E-cigarettes. The market for these products has developed very rapidly over the last few years and there is considerable uncertainty about the risks and the benefits of their use. The consultation document provides an excellent summary of the concerns about short and long term safety of the products, the impact on children and young people and the possibility of renormalisation of smoking in public places. This has to be set alongside the possible, though as yet unproven potential for harm reduction when these devices are used as part of a smoking cessation programme.

At present the evidence base is far from complete and more research is needed but we should be cautious in our approach, particularly to ensure that young people are protected until we know more of the health impacts of these products.

The proposed rules seem to me to represent a proportionate response which brings clarity to an issue in which uncertainty is leading to confusion and concern. I support the wording of all of the proposed rules but all of these measures are necessary and I would not want the proposal to be weakened in any way.

I suggest two further changes to the proposed regime. Firstly, I support the proposal that radio broadcasters must ensure that advertisements are centrally cleared. I think this rule should also apply to television broadcasters. We already have examples of inappropriate advertisements for these products being withdrawn following complaints, after they were broadcast. Given the unusual nature of these products, which contain a highly addictive

drug, it seems sensible to take this extra step to prevent inappropriate advertising and I am unclear why a distinction is made between radio and television broadcasts.

Secondly, research into the safety and effectiveness of these products is accumulating quickly and in a couple of years we may have much better evidence of the true health impact of these products which may cause us to reappraise the marketing rules. It would be helpful if a regular review process were established to revisit the proposed rules in the light of this rapid pace of change.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sally C Davies', with a stylized flourish at the end.

**PROFESSOR DAME SALLY C DAVIES
CHIEF MEDICAL OFFICER
CHIEF SCIENTIFIC ADVISER**

Hello,

Apologies for the late submission, but Children in Scotland would just like to endorse the consultation response submitted by the Scottish Coalition on Tobacco. Please let me know if you need any more information.

Best wishes,

Policy Officer

Children in Scotland
Princes House
5 Shandwick Place
Edinburgh EH2 4RG

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Nothing written referred to or repeated here is or may be taken for an offer or commitment

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CINEMA ADVERTISING ASSOCIATION RESPONSE TO THE CAP and BCAP CONSULTATION ON THE MARKETING OF E-CIGARETTES.

The Cinema Advertising Association (CAA) is the professional body representing cinema advertisers in the UK. As such it maintains a Copy Panel which pre-clears all on-screen cinema advertising in line with the UK Non-broadcast Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). The CAA Copy Panel is chaired by an independent copy consultant, and its proper application of the CAP Code is policed by the Advertising Standards Authority.

RESPONSE TO PROPOSED RULES

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

Question 1.

The CAA would ask CAP if such an unmediated rule is appropriate as it seems merely to restate present CAP Code 1.3 without expanding on what is socially irresponsible for e-cigarettes specifically. At this stage, it may give the impression of unthinkingly applying the first rule for alcohol advertising onto e-cigarettes. CAP could be imposing this rule without the general public agreement that already exists appertaining to the antisocial effects of alcohol.

Question 2.

It could be strongly argued that to advertise e-cigarettes as something that might be used in the home in preference to tobacco cigarettes where children are present, is a socially responsible approach. However, the wording of proposed rule 1 could prevent this particular advertising approach. Ditto the use of e-cigarettes in cars.

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.

The CAA agrees with the wording of this rule

Question 4.

The CAA is not aware of any evidence or comments which could inform CAP and BCAP's goal of preventing the indirect promotion of tobacco products, other than it being clear within the ad that the product being advertised is clearly an e-cigarette.

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.

The CAA feels that without an appropriate MHRA licence, a positive health advantage to the e-smoker cannot be made, but a positive 'healthier' or 'preferable' claim might be made for third parties in the same enclosed space as the e-smoker on the grounds that the exhalate of e-cigarettes is preferable to tobacco exhalate.

Question 6.

The CAA would argue that the intended definition is debatable. Food / food supplements are absorbed by the user and not by anyone around them. Similarly so for cosmetics. This is not so for either tobacco or e-cigarettes. Would it not be reasonable to claim that breathing an atmosphere containing e-cigarette exhalate, is preferable to breathing one containing tobacco cigarette exhalate?

Question 7.

The CAA agrees that medicinal claims can only be made for licensed medicines. In this respect e-cigarettes will need to be licensed by the MHRA - like nicotine chewing gum and nicotine patches - before they can make claims that they will benefit the user as an aid to giving up tobacco cigarettes.

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

Question 8.

The CAA agrees with the inclusion of this rule as there should be no confusion between a non-tobacco and a tobacco product.

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.

The CAA believes this rule to be appropriate.

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

Question 10.

The CAA feels this rule should be adopted as it is a clear reflection of social responsibility (Present CAP Code 1.3)

Question 11.

Presently the CAA feels this rule is proportionate. The express promotion of a drug (nicotine) to those who do not already use it, is likely to be seen as socially irresponsible. For e-cigarettes without nicotine, the promotion of a product which apes the physical process of tobacco smoking to those who do not smoke is likely to be seen as deeply cynical if not actually socially irresponsible. There is also the matter of possible but as yet unknown side-effects of inhaling those chemicals contingent to e-cigarette technology irrespective of whether or not the product contains nicotine. In this light particularly, promotion to non-smokers could be perceived as socially irresponsible.

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

Question 12.

The CAA only partially agrees with the proposed rule, in that the use of e-cigarettes should not be linked with illicit drugs. This is on the grounds that to associate the consumption of a legal drug or substance (if the e-cigarette does not contain nicotine) with illegal drugs, would be to blur the socially accepted difference between the two.

Question 13.

The CAA does not feel that the inclusion of alcohol in this rule to be appropriate. It could prevent the promotion of e-cigarettes as a socially preferable alternative to real cigarettes where the use of e-cigarettes might be far preferable to third parties, e.g. in social venues or on social occasions.

Question 14.

It is difficult to comprehend the purpose of this prohibition. Whereas alcohol is generally recognised as reducing inhibitions - which might lead to unwise styles of gambling - the CAA is not aware of any evidence that nicotine has a similar effect.

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.

CAP might wish to consider whether or not it would be in accord with public attitude to prohibit the use of e-cigarettes in a car when children are present. The anticipated law on smoking in cars is based not on a risk of loss of control but purely on the presence of children and the harm tobacco smoke may do to them. It will remain legal to smoke in your car when there are no children in it. Indeed, it is arguable that without the risk of burning tobacco, the use of an e-cigarette is potentially less dangerous than the use of a real cigarette when driving.

Question 16.

The CAA cannot think of any potentially dangerous situations regarding e-cigarettes.

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.

The CAA feels this rule properly reflects social responsibility.

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.

The CAA would prefer to include this rule. It is conscious that both products promote the consumption of a legal drug where the e-cigarette carries nicotine. This rule ensures that those under-18s who do see the ads for such products are less likely to identify with the characters in the ad. Even if the e-cigarette does not contain nicotine, promotion of the product in a way which might be attractive to under-18s would be perceived as being socially irresponsible.

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

Question 19.

The CAA is ambivalent regarding this proposed rule, not only because of the points raised in the proposal consultation paper. Presently it is not considered necessary for alcohol or gambling, where there are point-of sale-controls, although the CAA has liked to see an 18+ strap on advertisements for online gambling. Any straps might be better used, and read, in declaring whether or not the product contains nicotine and in what quantity. On the other hand, public feeling may be such as to expect an 18+ strap. On balance, the CAA would prefer not to see an 18+ strap, but would recommend close monitoring of public response to its absence.

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

The CAA agrees with this proposed rule: presently all e-cigarette commercials may only be screened with films permitted to carry alcohol advertising.

ADDITIONAL QUESTIONS**Questions 21 & 22 are not considered appropriate for a CAA response****Question 23**

The CAA feels that non-nicotine and nicotine e-cigarettes should be treated the same. There is public concern that e-cigarettes could lead to tobacco cigarettes. This may be predicated on the inhalation of nicotine often common to the two, but there seems to be a general belief that the reasons for initially starting to smoke are psychological (parental smoking / peer pressure / a desire to change self-image / being 'grown up' etc.). These psychological reasons are also held to be reinforced through the image of the act of smoking and its presentation, and this image is similar whether or not the 'cigarette' contains nicotine, or even tobacco.

Question 24

Although there appears to be no substantial body of peer-reviewed evidence-based work on the above set of beliefs they are frequently cited in health-related articles (without supporting references). Pragmatically, therefore, the above beliefs should be treated as being true. For this reason, the CAA would not recommend any additional rules (or rule exceptions) for non-nicotine e-cigarettes.

Question 25

Under the proposed rules, appropriately approved and licensed e-cigarettes could be promoted as possible aids in giving up tobacco cigarettes. Whether or not this included non-nicotine e-cigarettes would be for the MHRA to decide. Therefore the CAA does not see MHRA licensing as requiring additional rules over and above those already proposed.

Question 26

Yes. The proposed definition appears adequate.

FURTHER COMMENTS**Question 27**

The CAA does not presently propose any additional rules

Question 28

No further comments.

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E-cigarettes Consultation
Regulatory Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

6 April 2014

Dear Regulatory Policy Team

Consultation on the marketing of e-cigarettes: CAP and BCAP proposals for new rules

Please find appended a response to the consultation on advertising of e-cigarettes. I am broadly supportive and think the proposals are a proportionate and reasonable balancing of the concerns about unintended consequences of advertising e-cigarettes and the importance of e-cigarette advertising as a driver of switching from smoking to e-cigarette use. The latter is extremely positive for health and it is important to protect the commercial freedom to advertise e-cigarettes, *for public health reasons*.

I have been an advocate for 'harm reduction' approaches since 1998, and now run the Counterfactual blog (www.clivebates.com), which has specialised lately in the policy agenda for low risk recreational nicotine products. I have no competing interests, and my focus is on securing the best public health outcomes arising from the emergence of these products. I became involved in these issues as Chief Executive of Action on Smoking and Health from 1997 to 2003. Though I have retained an interest, I do not speak for former employers now.

Yours sincerely

Clive Bates
Director, Counterfactual Consulting Limited

Attached: consultation response.

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1 Response to consultation - general remarks

(Note: to be included as a response to question 28)

1.1 In praise of e-cigarette advertising

From a public health perspective, it is a huge success when smokers switch to e-cigarette use or 'vaping' - almost the same as quitting completely. It is a success if the 'buzz' is with vaping and smoking feels and becomes outdated. To that end, edgy, sexy, fun advertising for vaping should be understood as a good thing for health. Advertising is also important in building brands and consumer confidence. Advertising is vital in communicating and rewarding innovation, which is especially important in a fast developing sunrise industry. Advertising is important in challenging incumbent industries (the cigarette market) by allowing disruptive upstarts to communicate with the incumbents' customers. Even if these are tobacco companies, it is positive if BAT's e-cigarette arm competes effectively for Philip Morris's cigarette market and *vice versa*. Too much control or prohibition of advertising protects the incumbent products and vendors, while favouring those entrants with well developed retail distribution networks and experience of marketing without advertising: namely, the existing cigarette vendors.

1.2 Attitude of the public health establishment

Tobacco control advocates have largely misunderstood, downplayed or ignored the pro-health role of e-cigarette advertising and tended to focus on risks, real and imagined, with its worries about children, gateway effects, that e-cigarette ads might somehow be 'renormalising' smoking, or that it is part of a tobacco industry conspiracy. Take, for example, this article published in the BMJ: [Promotion of e-cigarettes: tobacco marketing reinvented](#) - it is largely an account of effective advertising not to the taste of the authors, but with no evidence of harm or unintended consequences. A number have pointed to the resemblance between some e-cigarette ads and some vintage cigarette ads, as if that is, *self-evidently*, a bad thing. In fact, it should surprise no one that [some e-cig ads share semantics and semiology with cigarette advertising](#): they are both advertising a similar recreational behaviour to aspirational smokers. *However, e-cigarette adverts are not adverts for smoking.* The e-cigarette ads are advertising brands that are completely different to cigarettes and advertising products that are 99-100% less dangerous. No-one has so far produced a plausible explanation for how this can be advertising cigarettes or encouraging smoking. Paradoxically, the risk aversion found in significant parts of the public health establishment protects the *status quo*, and in this case, that means protecting the cigarette franchise.

1.3 Marketing to young people

There are concerns about advertising directed at young people, defined as those under 18. Almost all stakeholders agree that the products and related advertising are intended for adults and any deliberate appeal to adolescents is both unethical and commercially unnecessary. The target customer is clearly existing smokers, and that market potential remains huge for the e-cigarette companies – estimated at US\$800 billion world wide, of which they have captured less than one percent at present. Even so, it is important to be proportionate in our concern for young people. Use amongst under 18s is extremely low, and to the extent this is an alternative to smoking it is likely to be beneficial.

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1.4 Consistency with alcohol advertising code

The approach proposed seems consistent with that taken for alcohol (non-broadcast, broadcast) which is a proportionate balancing of risk management and commercial freedoms, including protections for children without infantilising adults. We should note that e-cigarettes are significantly less risky than both cigarettes and alcohol. E-cigarettes do not cause intoxication and violence or have many of the chronic health impacts of excessive alcohol consumption. It would be wise therefore to regard application of the alcohol restrictions to e-cigarettes as an outer boundary in terms of a proportionate response to risks.

1.5 Attitude of e-cigarette companies

It is clear that the larger companies want more controls over advertising and can feel discomfort if one firm acts irresponsibly and tarnishes the reputation of the industry. This is largely welcome, but it is important not to allow the innate conservatism of some of the larger companies to lead to excessive controls on advertising. Advertising is part of the innovative environment and small companies or entrants may want to use it more aggressively than the larger companies. As argued above, this is likely to have pro-health consequences. Companies may respond arguing they can live with the proposals, but the real test is whether the restriction of commercial freedom has a health or social protection justification.

1.6 The proposed code is a reasonable reconciliation of these perspectives

On the whole, the proposed rules are a good compromise. They do more than enough to respond to the largely unfounded fears of some in the public health establishment, while leaving space for the necessary creativity and buzz within a responsible framework for the emerging e-cigarette industry. It is to be hoped that the arbitrary, disproportionate, discriminatory and legally baseless ban on most forms of advertising envisaged in the EU Tobacco Products Directive is overturned in court, and a code more like the rules envisaged in this consultation becomes the norm for controlling e-cigarette advertising.

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2 Response to consultation - responses to specific questions

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

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

No. I would prefer this to be expressed in the negative: *must not be socially irresponsible*. This is because the definition of 'socially responsible' is highly subjective and open to moralistic interpretations. The slight change of wording places a stronger onus on the complainant to show that the advert is irresponsible, rather than on the advertiser to show that it is responsible.

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

The problem would be excessive restrictions arising from prudish or excessively risk-averse interpretations of 'socially responsible'. There would for example be complaints that e-cig ads were socially irresponsible because they resembled cigarette ads. It would be better if the complainant had to demonstrate a harm arising from the claim of irresponsibility.

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

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

No. There are two objections to this:

Firstly, this practice is already covered by the [Tobacco Advertising and Promotion Act \(2002\)](#) and [relevant statutory instrument on brand sharing](#). Those trying to advertise tobacco products should be aware that this law applies and has stronger sanctions than an ASA code.

Secondly, if it is decided that this rule is an important reminder and will remain in the code, the protection in the second sentence should be extended to include vaping: the behaviour, not just the product. Suggested wording: *This rule is not intended to prevent use of e-cigarettes or cigarette-like products being shown.*

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

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This goal is met by the controls of the Tobacco Advertising and Promotion Act (2002). It would be more appropriate to remind advertisers of this carefully worded legislation than to create new rules that may introduce ambiguities or even conflicts with the legislation - implying that some practices are permitted, when they are not actually permitted under the Act.

2.3 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, this is inappropriately restrictive. Not all health claims are medical claims of the type licensed by the MHRA. Health claims other than those regulated by MHRA should be permitted, subject to the general requirement that they are true and fair. At this point it would be better to use the exact wording of the governing [Medicines Directive, 2001/83/EC](#) as implemented in the UK by [Human Medicines Regulation 2012 \(regulation 2\)](#) which defines medicines by presentation as:

any substance or combination of substances presented as having properties of preventing or treating disease in human beings

Furthermore, [advertising of medicines in the UK is governed by the MHRA](#) and includes both statutory and voluntary controls. This rule should be reworded to correctly dovetail with medicines regulation. *Marketing communications / advertisements must not contain claims that they have properties of preventing or treating disease [unless the product is licensed for those purposes as a medicine by the MHRA, and is subject to the controls on advertising medicines]. E-cigarettes may however be presented as an alternative to tobacco. Health claims other than those covered by medicines regulation must be true and fairly expressed, and be supported by evidence.*

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

No. Some provisions are required to govern health claims that fall outside the definitions that would require the products to be regulated as medicines. For example: 'vapour contains no tar' could be construed as a health claim but it would not be regarded as medical claim. In fact, it is not clear that declaring that 'e-cigarettes are a more healthy alternative to smoking' would constitute a claim to be treating or preventing disease. There is no serious dispute that this claim is correct - yet ASA ruled it inadmissible in the recent [Ten Motives](#) case. That claim would not be classed as medical claim but the advertiser should be able to communicate this as long as it is true, which it is.

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

Yes. There is no option but to exclude medical claims as these have to be managed under medicines legislation.

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

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

No. I question whether this is necessary - no compelling rationale is given for this in the consultation document. It is unclear what function this serves, and what would be lost if an advertiser chooses to advertise an e-cigarette brand without saying it is an e-cigarette. Not all advertising is literal and prosaic, and this requirement may constitute an unnecessary barrier to advertising creativity, or campaigns that build over time. Unless some harm would arise from this, it is hard to see why it would be needed.

Additionally, there is a danger than the language 'e-cigarette' will become obsolete or that different devices will have different descriptive names. It is difficult to anticipate the development of this industry in a way that would make this rule broadly applicable in the present or enduringly applicable in the future.

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

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

No. This is unnecessary, and it is not clear what harms it is supposed to prevent. There is no analogous requirement to state that alcohol or caffeine products contain alcohol or caffeine respectively. It is very unlikely that a person would be able to buy e-cigarettes unaware that they contain nicotine - this is addressed on the packaging.

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

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

No, 'encourage' is too broad as it is impossible to stop a given advert having some impact outside its target audience. It is impossible to strictly delineate target audiences, and to design advertising that does not have an effect outside the target audience. Any adult has the right to buy these products and it is quite possible that they will appeal to ex-smokers, who miss their nicotine consumption and would like to have it back but with minimal risk. It follows that we should not be too concerned about some 'spillover' of advertising, as adults should be free to make choices about using these products and should not be infantilised by excessive caution in advertising. However, it should not be acceptable for a company to actively pursue non-nicotine users - the code should focus on the *intent* of the advertiser, not a peripheral outcome. Suggested wording: *Marketing communications / advertisements must not target non-smokers or non-nicotine-users.*

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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

This rule, modified as suggested above, is proportionate.

2.7 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. Illicit drugs are not legal and their advertising is not permitted. Even though vapour products may be a viable harm reduction option for consumers of some illicit drugs, it is not appropriate to advertise these advantages commercially.

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

No. Alcohol consumption is a legal activity and alcohol advertising is permitted. One possible situation in which e-cigarettes have an advantage is in a pub that permits vaping. There is no rationale for preventing these associations - even though it is unlikely that any company will use them.

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

No. Gambling is a legal activity and gambling advertising is permitted. Casinos are a setting where vaping may be permitted. There is no rationale for preventing these associations - even though it is unlikely that any company will use them.

The over-arching requirement not to advertise in a way that is socially irresponsible should cover any possible detriments arising from associations with alcohol and gambling. Although it is likely that companies involved would accept this rule, it is important that the new code does not curtail commercial freedoms without a proper justification.

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

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

No. There is no evidence that driving while using an e-cigarette is dangerous or more dangerous than smoking or eating while driving, which are both permitted. It is not analogous to hands on mobile phone use, which also involves distraction into a conversation. In fact, to the extent that e-cigarette use offsets

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nicotine withdrawal symptoms, it may reduce risk. A rule like this should be reserved for those situations where there is official advice or legislation against using the product. It should not be for the advertising regulators to determine what this is.

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?

If this rule persists, then rather than list activities, it would be better to state the general case ('unsafe or unwise') and give an example rather than create an exclusive list. Given that e-cigarette use is possible in some circumstances where cigarette use is not, discretion is required. For example, vaping while snowboarding might seem unwise, but it could be simply adventurous and aspirational without creating material danger (beyond that of the snowboarding itself).

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

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

Yes. This is based on 18.14 of the [Code provisions on alcohol](#). The experience and precedents developed through alcohol related adjudications will form useful guidance to the application of this age-related language to e-cigarettes. There is therefore a high premium on keeping the language near to identical with alcohol given that in both cases the identical issue is faced: how to limit advertising that appeals to under-18s. There is no hard and fast delineation between appeal to the target group (adults) and the unintended group (under 18s), so it is important to retain the language - *particularly to people under 18* - implying that under 18s are the main target audience, whether intended or not.

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

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

Yes. This has been used for control of alcohol advertising and as the e-cigarette code will be addressing the same problem, the approaches should be aligned.

Counterfactual

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

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

No, these warnings are counterproductive and, paradoxically, an inducement to under 18s through implicit adult branding. I agree with the 'boomerang effect' argument mentioned in the analysis in the consultation document. There is some support for this in [focus group research commissioned by ASH in 2000](#), when I was chief executive. Unsurprisingly, some adolescents dislike being classified as children and are attracted to things that have been defined as adult 'forbidden fruit' for the by the authorities.

I think the level would stay about the same, because I think some people would start because they weren't allowed

yr 8 girls, 12-13 yrs, smokers, Newcastle

It probably wouldn't discourage them, it would make them more keen to try it...when you're told not to do something, you want to do it more!

yr 10 girls, 14-15 yrs, smokers, Birmingham

There is at least a clear danger that these warnings would make the product more attractive to under-18s. The rule should not proceed unless and until there is compelling evidence that unintended consequences would not be material.

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

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

Yes. This is appropriate and consistent with the approach taken for alcohol.

2.13 Rule 13: [Amendment to existing BCAP rule]

32.2 These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18: [...]electronic cigarettes

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

Yes. This is consistent with directing advertising away from under 18s.

Counterfactual

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

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

Yes. By analogy with the approach taken to alcohol.

2.15 11.1 E-cigarettes which do not contain nicotine

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

These rules should apply to all vapour products. The function of advertising is primarily to develop brands rather than specific products. It is possible that a vendor would have brands that cover non-nicotine vapour products.

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

No. It is important to emphasise the low risks associated with these products; the limited potential for abuse and addiction in new users; the potentially substantial health gains that may arise; the importance of commercial freedoms in securing health gains. The greatest risk comes from self-defeating elements in public health who want advertising for these products banned or severely limited to sterile medicalised public information communications. I hope the Committee will resist calls from these counter-productively risk averse organisations and recognise the vital role that advertising could play in tackling one of the most serious public health challenges of the 21st Century.

2.16 11.2 E-cigarettes which are licensed as medicines

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

These rules should *not* apply to e-cigarettes licensed as medicines as there is a separate regulatory regime for advertising medicines. However, in determining how the statutory and voluntary controls for advertising medicines are applied in practice, the MHRA and PAGB should be mindful of this guidance and avoid creating great asymmetries in the controls applied to e-cigarettes licensed as medicines and those sold as consumer lifestyle products.

2.17 11.3 Definition of an e-cigarette

That definition is as follows:

“Electronic cigarette” means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption of [nicotine-containing] vapour via a mouth piece.

Counterfactual

Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges."

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

Yes. This is a minor variation and improvement on the definition used in the EU Tobacco Products Directive. The definition should be extended to all vapour devices, not just those using nicotine. The rules also need to apply to liquids sold separately from any device. This could be achieved either by changing the rules throughout to refer to both e-cigarettes and e-liquids, or the addition of the following to the definition above: *the rules applicable to e-cigarettes will also apply to refill containers and nicotine containing liquids or solids sold separately.*

2.18 11.4 Further comments

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

Yes. Communications made by health and medical charities working in this field should be understood as marketing communications and partly fund-raising activities peripheral to their core research or membership operations. I would like to see a code of practice for charities that make public statements in this field - much of which is 'anti-advertising' and would not meet the 'legal, honest, decent and truthful' standards to be set for e-cigarette advertisers. There are many misleading statements, but little recourse for individuals or businesses harmed or misled by such statements.

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

Please see opening contextual remarks at the beginning of the response.

Ends

6 April 2014

RESPONSE TO CONSULTATION ON MARKETING OF E-CIGARETTES

CYGNET UK TRADING LIMITED

1. Introduction

Cygnnet UK Trading Limited trading as blu eCigs (UK) ("blu (UK)") welcomes this opportunity to participate in the consultation process being facilitated by the Committee of Advertising Practice ("CAP") and the Broadcast Committee of Advertising Practice ("BCAP") regarding the advertising of electronic cigarettes in the United Kingdom.

As a leading electronic cigarette manufacturer, blu (UK) fully supports any proposal that would provide clear and proportionate advertising rules based on substantiated science and public health considerations for electronic cigarettes in the United Kingdom.

2. About blu (UK)

blu (UK) is a wholly owned subsidiary of Lorillard, Inc. ("Lorillard"). Lorillard is listed on the New York Stock Exchange (NYSE: LO) and currently markets its electronic cigarette products in the US and UK under the brand name, "blu eCigs." Its move into the electronic cigarette market has been relatively recent following significant transactions in 2012 and 2013, but the businesses it now operates have been active in the e-cigarette market for several years.

In April 2012, Lorillard acquired the brand name, other intellectual property rights and the manufacture, distribution, research and development capabilities of blu eCigs, the leading electronic cigarette company in the US at the time. blu eCigs had an approximate 47% share of the US retail market for electronic cigarettes for the year ended 31 December 2013.

The blu eCigs acquisition in the US was followed in October 2013 with the purchase of the assets and operations of a UK electronic cigarette company then known as SKYCIG through blu (UK). SKYCIG was the leading premium brand of electronic cigarettes sold in the United Kingdom at the time of the acquisition. In May 2014, the SKYCIG product will be rebranded as blu eCigs in a £20 million advertising campaign which follows the expansion of the blu eCigs brand into Europe. blu is therefore one of the main players in the electronic cigarette industry both in the UK and globally.

blu (UK) is also actively involved in the electronic cigarette industry through its membership of the Electronic Cigarette Industry Trade Association ("ECITA")¹. ECITA was formed in

¹ ECITA: <http://www.ecita.org.uk/>

2010 with members comprising electronic cigarette vendors and manufacturers who are committed to the excellence, quality and safety of their products.

3. blu (UK)'s Stance on the Need for Advertising Rules

The electronic cigarette market has experienced a rapid growth in the United Kingdom over the past 5 years.

The recent rise in adjudications by the Advertising Standards Authority ("ASA") against electronic cigarette companies demonstrates there is a need for clarity as to the advertising standards applicable to the industry. We therefore support CAP's and BCAP's initiative, and welcome the prospect of clearer guidelines. We believe it to be uncontroversial that any regulatory approach in this market should be (i) specific to the products in question, (ii) proportionate and (iii) based on substantiated scientific and public health considerations.

At blu (UK), we fully recognise our responsibility to consumers in relation to the manner in which we advertise our products. As a result, we have already developed and implemented advertising and marketing policies and guidelines to govern the advertising and marketing of our products. These policies are updated in accordance with the applicable laws and rules regulating the advertising and marketing of electronic cigarettes. blu (UK) has therefore imposed on itself guidelines in this area. In many respects they mirror the suggested approach in the consultation, but in some they differ. blu (UK) is willing to discuss the contents of its current guidelines with CAP and BCAP on a confidential basis if that might assist. These guiding principles are based, in large part, on our strong belief that advertising should not target young people or non-smokers, but instead should be directed solely at adults who wish to use electronic cigarettes in order to reduce their consumption of tobacco.

4. General Comments on the Consultation

blu (UK) acknowledges CAP's and BCAP's desire to understand whether concerns expressed about nicotine-containing e-cigarettes are justified. In particular, there has been a debate about their potential for normalising smoking and questions over whether they may act as a gateway to nicotine or tobacco for the young or non-smokers. We comment on that below, but will first address our suggested principles that the advertising rules should be (i) applicable to nicotine-containing electronic cigarettes (rather than tobacco cigarettes or any other product or activity), (ii) proportionate and (iii) based on evidence from the scientific and healthcare communities.

4.1 Electronic Cigarettes

Electronic cigarettes (or 'e-cigarettes') generally comprise a battery, an atomiser and a fluid-filled cartridge, which may or may not contain nicotine. The products are electronic vaporisers.

Electronic cigarettes are not tobacco products, and an advertising regime based along similar lines as those for tobacco products would be inappropriate as electronic cigarettes do not have the same public health considerations. Furthermore, a portion of electronic cigarettes on the market do not contain nicotine and do not raise the same issues as nicotine-containing electronic cigarettes.

As a general observation, certain commentators advocate the same restrictions on electronic cigarettes as those that apply to tobacco cigarettes. Electronic cigarettes and tobacco products are, however, very different, and should be considered independently. Electronic cigarettes do not rely on the combustion of tobacco nor do they contain the same harmful components as tobacco cigarettes. A major difference is that electronic cigarettes do not contain tar, a mixture of chemicals which can contribute towards lung cancer in smokers. In addition, there are over 4,000 chemicals present in tobacco cigarettes of which more than 70 are recognised to be carcinogenic².

In comparison to tobacco cigarettes, the ingredients found in electronic cigarettes are relatively few. Electronic cigarettes may include distilled water, nicotine (when applicable), glycerine, propylene glycol and flavourings. Likewise, in comparison to the smoke generated by combustion of tobacco cigarettes, the vapour emitted by electronic cigarettes contains very few constituents.

4.2 Scientific Evidence

There is of course a substantial body of scientific evidence that has grown in volume since the 1950s that shows the public health risks associated with smoking tobacco cigarettes.

Although the electronic cigarette market is younger, there is a growing body of scientific data on the use of electronic cigarettes, their safety and efficacy and their potential effect on smokers, non-smokers and young people.

Although research on electronic cigarettes will continue, many harm reduction proponents already agree that the current available scientific evidence is sufficient to conclude “[e]-cigs

² <http://www.cancerresearchuk.org/cancer-info/healthyliving/smokingandtobacco/whatsinacigarette/smoking-and-cancer-whats-in-a-cigarette>

*might be the most promising product for harm reduction to date.*³ The current weight of the scientific evidence regarding safety is that the vapour from electronic cigarettes only exposes users to toxic chemicals comparable to the exposure from use of therapeutic nicotine replacement products already on the market. A recent study comparing electronic cigarette vapour to mainstream cigarette smoke reported that the *“levels of potential toxic compounds in e-cigarette vapour are 9-450-fold lower than those in the smoke of conventional cigarettes, and in many cases comparable to the trace amount present in pharmaceutical preparations.”*⁴ The authors of the study also stated *“[o]ur findings support the idea that substituting tobacco cigarettes with electronic cigarettes may substantially reduce exposure to tobacco-specific toxicants.”*

Another recent review of the state of the science also concluded that *“[t]he available evidence indicates that e-cigarettes do not raise serious health concerns and can be considered a much safer alternative to conventional smoking.”*⁵

In addition, although much of the evidence is anecdotal regarding the effectiveness of electronic cigarettes as a substitute for smoking, recent clinical trials report promising results. Two large clinical trials provide evidence that electronic cigarettes help smokers reduce or quit smoking, even those smokers who did not intend to quit.⁶ Several additional smaller clinical trials report similar results. Importantly, Polosa *et al.* also stated that *“[t]here is no evidence that large numbers of non-smokers are purchasing or will purchase [electronic cigarettes] and become addicted to nicotine”.*

4.3 Demographic Studies

The demographics of electronic cigarette smokers in the United Kingdom also support the conclusions reached by the scientific community. According to Action on Smoking and Health (“ASH”), there are estimated 1.3 million users of electronic cigarettes in the United Kingdom⁷. Almost all of these users are current or ex-smokers.

In a survey commissioned by ASH, 3% of smokers reported using electronic cigarettes in 2010, with the figures increasing to 7% and 11% in 2012 and 2013, respectively. The main reasons given by ex-smokers for using electronic cigarettes was to help them quit smoking (48%) or to keep them off tobacco (32%). Amongst smokers, the main reasons were to

³ Polosa *et al.* *Harm Reduction Journal* 2013, **10**:19.

⁴ Goniewicz *et al.* *Tob Control* 2013;**0**:1-7.

⁵ Polosa *et al.* at 4.

⁶ Caponnetto *et al.* 2013; Bullen *et al.* 2013

⁷ ASH Briefing: Electronic Cigarettes, March 2014 (see http://ash.org.uk/files/documents/ASH_715.pdf)

reduce the amount of tobacco smoked (31%), quit smoking altogether (30%) or keep them off tobacco (29%). Therefore, 80% of ex-smokers successfully used electronic cigarettes to help them stop smoking or to keep them off tobacco and 90% of smokers using electronic cigarettes indicated that their choice to use electronic cigarettes was influenced by a desire to quit or reduce their tobacco use.

ASH also commissioned surveys of electronic cigarette use in young people aged 11 to 18 in the United Kingdom over a period from 2010 to 2013⁸. The studies showed that of the children who had heard of electronic cigarettes, sustained use was rare and confined to those who currently smoked tobacco cigarettes or had previously smoked. ASH found no evidence of regular use of electronic cigarettes in children who had never smoked or only tried smoking once.

Amongst adult non-smokers, the ASH study showed that only 1% of non-smokers had used electronic cigarettes and none of them currently used them. The figure of 0% remained constant over the three years analysed.

In summary, the scientific and demographic studies show that electronic cigarettes do not pose anything like the health risks of tobacco cigarettes, nor do they form a gateway to smoking. On the contrary, these studies show that electronic cigarettes are likely becoming a useful aid for smokers to reduce their intake of tobacco or to quit smoking altogether. As such, the starting premise for regulation should be that, whilst some caution is required at this relatively early stage, electronic cigarettes have a positive impact on public health overall, rather than a negative one.

5. Responses to the Questions in the Consultation Document

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

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

⁸ Use of e-cigarettes in Great Britain amongst adults and young people, May 2013 (see http://www.ash.org.uk/files/documents/ASH_891.pdf)

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?

Although blu (UK) supports the responsible advertising of electronic cigarettes, it is unclear why '*socially responsible*' should be an express requirement for electronic cigarette advertisements over and beyond what is already provided in the CAP⁹ and BCAP codes¹⁰.

As we understand, only 3 areas within the CAP and BCAP codes make explicit reference to '*social responsibility*': alcohol, gambling and lotteries. Each of these has known socio-economic effects. For example, alcohol has associated health risks and can lead to anti-social behaviour. Gambling and lotteries have potentially addictive effects that impact on wider society rather than simply the individual players.

blu (UK) acknowledges that nicotine as present in electronic cigarettes is addictive, but its addictive properties, absent the concurrent exposure to harmful constituents in conventional cigarette smoke, do not constitute a sufficient basis to treat electronic cigarettes like conventional cigarettes. Further, as discussed in Section 4 above, smokers and ex-smokers¹¹ are the overwhelming majority of consumers of electronic cigarettes, and use the products to either stay off tobacco cigarettes or reduce their consumption of tobacco.

In addition, the term '*socially responsible*' is subjective and open to interpretation. The use of this wording could give rise to complaints to the ASA based on personal interpretation of what '*socially responsible*' means.

We therefore question the need for Rule 1 in its entirety.

In the alternative, if Rule 1 is to be introduced, we would urge CAP and BCAP to provide clear guidance in the Rules as to what '*socially responsible*' means (over and above complying with the rest of the Rules), otherwise the Rules will be uncertain, which is of course to be avoided.

⁹ CAP code 1.3: "*Marketing communications must be prepared with a sense of responsibility to consumers and to society.*"

¹⁰ BCAP Code 1.2: "*Advertisements must be prepared with a sense of responsibility to the audience and to society.*"

¹¹ The studies conducted by ASH indicate that 80% of ex-smokers have used electronic cigarettes either to help them quit smoking or prevent relapse to tobacco use.

To answer Question 2, blu (UK) is not aware of anything which might arise in this area which would not otherwise be covered.

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

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

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

blu (UK) agrees with the inclusion and wording of this Rule. However, the final sentence of the proposed Rule should be clarified so that it is clear to advertisers that the use of electronic cigarettes in advertisements would not be prohibited.

Advertisements whose purpose is to promote tobacco products or whose effect is to do so are prohibited under the Tobacco Advertising and Promotions Act 2002 in any event, however, blu (UK) acknowledges that CAP and BCAP may wish to remind advertisers of this prohibition.

In response to Question 4, although electronic cigarettes superficially resemble tobacco cigarettes, there is no evidence that the physical appearance of an electronic cigarette directly or indirectly promotes any tobacco products. Indeed, the evidence discussed in Section 4 above demonstrates that, if anything, the rise of electronic cigarettes is likely to significantly disrupt and diminish the market for tobacco products and denormalize smoking of tobacco cigarettes.

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

(i) Health Claims

CAP and BCAP define a “health claim” as “any claim that states, suggests or implies that a relationship exists between an e-cigarette or one of its constituents and health”. This definition has been adapted from the definition in Regulation (EC) 1924/2006 on nutrition and health claims made on foods.

In the current CAP and BCAP codes, the regulation of “health claims” is restricted to those that apply to food, food supplements & nutrition and weight control. As Regulation (EC) 1924/2006 does not apply to electronic cigarettes, we consider it inappropriate to stretch the application of this Regulation to items beyond its scope.

Substantively, it seems very likely that as more scientific studies are conducted it will be possible to robustly substantiate an association between switching from tobacco to e-cigarettes and health benefits. Assuming that such a claim could (now or in the future) be substantiated, the question arises as to whether it should nonetheless be completely prevented by the Rules. It is difficult to see why it should be; on the contrary, assuming substantiation, it would be firmly in the public interest for the potential health benefits of e-cigarettes as an alternative to be drawn to wider attention.

blu (UK) therefore suggests that this restriction is inappropriate.

(ii) Medicinal Claims

blu (UK) supports the proposal to prohibit medicinal claims unless the electronic cigarette has been granted marketing authorisation. However, the wording of the proposed Rule

should be aligned with legislative framework applying to medicinal products and medical devices.

The wording in square brackets is too narrowly worded and should be amended to include products that are licensed by either the MHRA or the European Medicines Agency or are CE-marked medical devices.

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

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

blu (UK) agrees with the inclusion of Rule 4, which is consistent with recent ASA adjudications noting the tendency of other advertisers to fail to state clearly what the product being advertised actually is.

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

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

blu (UK) agrees with the inclusion of this Rule, which is consistent with its pre-existing internal guidelines. However, we would suggest that the wording in square brackets be deleted, since it goes beyond what the current legal framework requires (namely to identify clearly products which contain nicotine).

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

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

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

blu (UK) agrees with the inclusion of this Rule, but is concerned about the use of the term “*encourage*” without qualification.

Dealing first with Question 11, as described above, there is no conclusive evidence from current research that shows electronic cigarettes form a gateway to the smoking of tobacco cigarettes. The evidence appears to support the use of electronic cigarettes as a way for current smokers to reduce their intake of tobacco or as a smoking cessation tool. Further, the overwhelming majority of electronic cigarette users in the United Kingdom are smokers and research shows that electronic cigarettes do not appeal to non-smokers or non-nicotine users (please refer to Section 4 above). Therefore, in blu (UK)’s opinion, there is no basis for any requirement that the advertising of electronic cigarettes be explicitly targeted at nicotine users.

As to the wording of the draft Rule, we consider that the term '*encourage*' is ambiguous. The nature of advertising is such that it is impossible to strictly restrict the exposure of an advertisement to its intended target audience. Accordingly, in the interests of certainty, we suggest that the wording of the Rule should be amended to read either:

“Marketing communications/advertisements must not explicitly encourage non-smokers or non-nicotine-users to use e-cigarettes.”

Or

“Marketing communications/advertisements must not explicitly target non-smokers or non-nicotine-users.”

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.

blu (UK) disagrees with the insertion of this Rule as it goes beyond what is necessary and appears to be based on an unfounded assumption that electronic cigarettes are associated with illicit drugs, gambling and alcohol. We note that no basis is stated in the consultation for any association.

(i) Illicit Drugs

It is of course unlawful in the United Kingdom to promote or encourage the use of illicit drugs in any event and it is unclear why the wording concerning a link with illicit drugs has been included in the Rule. It immediately assumes, without cause, that electronic cigarettes are somehow linked to illicit drugs.

(ii) Gambling and Alcohol

The association with gambling and alcohol also appears arbitrary. There is no evidence that suggests that the use of electronic cigarettes would promote the use of alcohol or gambling, and nothing to suggest that additional regulation is required beyond the separate rules already in place in respect of alcohol and gambling.

We note that blu (UK)'s electronic cigarettes are deliberately targeted to adult audiences (as they must be). One way of ensuring that this targeting is effective is to use adult themes, such as showing the product being used in adult-only venues, such as bars and casinos (treatments which blu (UK) has used in the past). We cannot see any basis for such

treatments being prevented; on the contrary, they help to meet the requirements of the proposed Rule 9.

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

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

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

blu (UK) is concerned that this proposed Rule is also arbitrary and unsupported. Electronic cigarettes are not combustible and their use in particular activities or locations is no different from using another battery operated device. Equally, they do not impair normal brain function in any way (unlike, for example, alcohol), and hence there are no activities of which blu (UK) is aware where it would 'unsafe or unwise' to use electronic cigarettes.

Dealing with the specific matter referenced, the proposed Rule considers the use of electronic cigarettes whilst driving to be “*unsafe or unwise*”. The use of electronic cigarettes whilst driving has not been proven to be more unsafe or unwise than speaking or eating while driving. As the law currently stands, drivers are generally able to smoke tobacco cigarettes whilst driving. Accordingly, the prohibition on linking electronic cigarettes with activities such as driving appears to overreach current domestic legislation and any evidence base.

In addition, there is no guidance provided in the Consultation as to what an “*unwise*” activity would be.

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

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

blu (UK) agrees with the inclusion of this Rule, subject to the last sentence being amended or clarified. blu (UK) objects to the last sentence: "*People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner*" and the reference to the term "*youth culture*" on the basis that the language used is very subjective and open to wide interpretation. Electronic cigarette companies need clear guidance as to what these terms mean otherwise they could be exposed to complaints without any real cause. It would assist, at least, if examples were given as to what constitutes an association with youth culture (for example would this prevent music being played from a current popular band?) and what is meant by '*adolescent or juvenile manner*' (behaviours which it might be thought adults often exemplify).

In the alternative, we suggest that the Rule without the last sentence would still be sufficient to achieve the intended effect:

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

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

blu (UK) agrees with the inclusion and wording of this Rule. As discussed above, blu (UK)'s advertising and marketing guidelines reflect this Rule in any event. In practice, we voluntarily do not use advertising campaigns that would appeal to under 18s and prohibit the use of anyone in our advertising campaigns who appear younger than 25 years old.

<p>RULE 11: Marketing communications/advertisements must state that products are not suitable for under-18s.</p>

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

blu (UK) agrees with the inclusion and wording of this Rule. As discussed above, blu (UK)'s advertising and marketing guidelines reflect this Rule in any event.

CAP-SPECIFIC RULES

<p>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.</p>

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

blu (UK) supports the inclusion and wording of this Rule.

At present, blu (UK) actively polices the placing of its advertisements at a level that complies with this Rule. As discussed in Section 3, blu (UK) would be willing to discuss its advertising policies with CAP and BCAP on a confidential basis.

BCAP-SPECIFIC RULES

RULE 13: [Amendment to existing rule 32.2(.7)]:

32.2 These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:

32.2.1 alcoholic drinks containing 1.2% alcohol or more by volume (see rule 32.4.7)

32.2.2 gambling except lotteries, football pools, equal-chance gaming (under a prize gaming permit or at a licensed family entertainment centre), prize gaming (at a non-licensed family entertainment centre or at a travelling fair) or Category D gaming machines (see rule 32.4)

32.2.3 betting tipsters

32.2.4 slimming products, treatments or establishments (an exception is made for advertisements for calorie-reduced or energy-reduced foods and drinks, if they are not presented as part of a slimming regime and provided the advertisements do not use the theme of slimming or weight control)

32.2.5 religious matter subject to the rules on Religious Advertising in Section 15: Faith, Religion and Equivalent Systems of Belief

32.2.6 live premium-rate services, unless those services have received prior permission from PhonePay Plus to target people under 18.

32.2.7 *electronic cigarettes*

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

blu (UK) supports the inclusion of electronic cigarettes in the list of scheduling restrictions. blu (UK)'s advertising and marketing guidelines require prior consultation with Clearcast and RACC in respect to the content and scheduling of broadcast advertisements.

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

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

blu (UK) supports the central clearance of radio advertisements for electronic cigarettes. However, we would like to air our concerns over the time it currently takes to obtain clearance for an advertisement.

As a company, we have meaningful marketing budgets and timelines. The current timelines for obtaining pre-clearance through RACC are too long in the context of a fast-moving dynamic market, and could hinder clearance of broadcast advertisements. We therefore propose that there should be a mandatory 30-day turnaround period to obtain clearance for electronic cigarette radio advertisements.

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? Please provide any relevant evidence in support of your response.

We have no comment in respect of this question and defer to CAP and BCAP.

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

We do not consider that any additional rules are required.

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 Rules should not apply to electronic cigarettes that are licensed as medicines as the advertising of medicinal products in the United Kingdom principally falls within the remit of the MHRA. By including licensed products in these proposed Rules, there is a danger of

creating an overlap between the two regulatory regimes and uncertainty. A clear provision in the new Rules to this effect should be included.

We understand that the MHRA works with other stakeholders such as the ASA to coordinate policy on consumer protection in any event.

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

The definition for "*electronic cigarette*" to be used in the proposed Rules is set out below:

'Electronic cigarette' means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption of [nicotine-containing] vapour via a mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges.'

We note, however, the proposed definition is a variation of the definition used in the amended Tobacco Products Directive ("TPD") which is due to come into force as European legislation in May 2014 following its publication in the Official Journal of the European Union to include all electronic cigarettes, including those which do not contain nicotine. The amended TPD provides the following definition of electronic cigarettes at Article 2(16):

"electronic cigarette means a product that can be used for consumption of nicotine containing vapour via a mouth piece, or any component of that product, including, a tank and the device without cartridge or tank. Electronic cigarettes can be disposable or refillable by means of a refill container¹² and tank, or rechargeable with single use cartridges."

In general, blu (UK) agrees with the inclusion of a definition for electronic cigarettes, but it should be aligned with the definition in the TPD rather than amending it.

Guidance should also be provided as to what is meant by a "refill container" based on the definition provided in the amended TPD.

¹² 'Refill container' is defined in the TPD at Article 2(17) as "a receptacle that contains nicotine-containing liquid that can be used to refill an electronic cigarette".

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

blu (UK) does not consider any further Rules are required for the advertising of electronic cigarettes.

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

As a major stakeholder in the electronic cigarette industry, blu (UK) welcomes this initiative by CAP and BCAP and also the opportunity to inform the consultation process. This is a fast-growing area and we fully recognise the need for clarity.

Q1 Agree with this inclusion.

Q2. Our main concern is that until e-cigarettes are proven to both harmless and not addictive they should not be associated with any desirable lifestyle that may encourage young people to take up their use.

Q3 We disagree. If their use is directed at smokers *only* then they should be marketed *only* as a quitting aid and fall under the appropriate medical regulations. The potential for confusion and protection of young people from being encouraged to take up what is potentially an addictive substance and potentially a gateway to tobacco use should take precedent

Q4. We think this is the wrong way round. The onus should be on manufacturers to demonstrate lack of harm, the protection of the consumer and young people takes priority.

Q5. Yes. Until they are proven to an extent that is accepted as evidence by the MHRA or similar

Q6. Yes though if manufacturers wish to claim these are a tobacco alternative implicit in this is their recognition that they are potentially addictive as the addiction is the attraction of smoking tobacco and therefore our points earlier are re-inforced

Q7 Yes – see Q5

Q8. Agree

Q9. Yes and further there should be a warning that nicotine is an addictive substance

Q10 and Q11. Yes

Q12, 13 and 14.

All of the above should not be linked with e-cigarettes. If the purpose is to offer an alternative to tobacco then they should be marketed in that manner. By inference if they link with alcohol for example then you are also inadvertently advertising a link between alcohol and tobacco.

Q15.

We agree. They should not be seen using them in enclosed public spaces or with children present – again due to the potential for confusion with tobacco and the possibility of restrictions on their use in enclosed public spaces

Q17. Agree

Q18. No. Why would you need to show an person under 25 in an e-cigarette ad - even in an incidental role?

Q19. If it is the intention that they cannot legally be sold to under 18 then it should say so.

Q20. Agree

Q21. Agree

Q22. Agree

Q23. Agree. There is potential for confusion

Q24.No.

Q25. All of the above should apply. They have been too heavily marketed as an attractive product already and unfortunately there needs to be period of separation before any relaxation of the rules for those classed as medicinal products could be considered.

Q26. Does this contradict the earlier requirement around those that don't contain nicotine? The definition needs to be expanded to include those.