



**UK Health Forum Response to CAP and BCAP consultation on the marketing  
of E-Cigarettes**

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## About the UK Health Forum

The UK Health Forum is a charitable alliance of professional and public interest organisations working to reduce the risk of avoidable non-communicable diseases (NCDs) by developing evidence-based public health policy and supporting its implementation through advocacy and information provision. The UK Health Forum is part of the Smoke Free Action Coalition – an alliance of over 250 health and welfare organisations committed to reducing the harm caused by tobacco.

### General remarks

We note that 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 in the future. We therefore recommend that **these rules should cover all non-tobacco nicotine containing products**, not just electronic cigarettes, so that they remain fit for purpose as the market evolves. This should apply to all the proposed rules.

We share the concerns of other members of the Smokefree Action Coalition that the use of the descriptor ‘e-cigarette’ or ‘electronic cigarette’ has increased concern about these products, the potential for confusion with tobacco cigarettes and given rise to misunderstandings about what they are and their risk profile. It would be helpful if CAP/BCAP rules required the use of terminology which describes the products as ‘vapourisers’, their use as ‘vaping’ and users as ‘vapers’, and prohibited use of the terms ‘e-cigarette’, ‘electronic-cigarette’, ‘smoking’, and ‘smokers’ in relation to these products.

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

*Q1. Do you agree with the inclusion of this rule? If not, please explain why and provide any suggestion you may have for improvement.*

*Q2. What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?*

No, we do not agree because it is unclear what is intended by ‘socially responsible’ and what test would apply to determine whether a marketing communication or advertisement was in breach of this rule.

It should be replaced by specific rules which require explicit reference to:

- a) the fact that e-cigarettes and other nicotine containing products are an alternative to tobacco, and that they are not suitable for use by people who do not currently consume tobacco products;
- b) The need to store and use e-cigarettes and associated products safely and away from children.

Specific rules should also be considered to prohibit wording which refers to positive qualities of the product that are a consequence of the addictive nature of the product. For example, any reference to products ‘satisfying’ or giving ‘satisfaction’ should not be permitted.

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

Q3. 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.

Q4. Do you have any comments or evidence which can help to inform CAP/BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised.

Yes, we agree that this rule should be included, but we do not agree with the wording of this rule. We recommend that the rule should include specific prohibition of the use of **'design, colour, imagery or logo style that might be associated with a tobacco product'** and that it should state that **'cigarette-like products must not be shown in any way that might promote smoking or tobacco products.'**

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

Q5. Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Yes, we agree with the proposal.

Q6. Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Yes, we agree with the proposed definition.

Q7. Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

Yes, we agree with the proposal.

Consultation on this question is incomplete unless CAP/BCAP also invite and consider views on the inclusion of the provision in this rule that: 'e-cigarettes may be presented as an alternative to tobacco'.

We do not agree with the inclusion of this provision as drafted because - to be consistent with the principle that all advertising and marketing should only be directed at existing tobacco users - this rule should require that e-cigarettes are presented as an alternative to tobacco. More appropriate wording would be **'e-cigarettes should always be presented as an alternative to tobacco.'**

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

Q8. Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion of this rule in order to ensure that advertisements do not give rise to confusion between these products and smoked tobacco products.

However, to reduce the possibility for confusion, we recommend that terminology shared with smoked tobacco products is avoided. The term 'vapouriser' instead of 'e-cigarette' or 'electronic cigarette' is both a more accurate description of the product and more likely to reduce confusion with cigarettes. Similarly, avoidance of the term 'smoking' in relation to these products would help to discriminate their use from cigarette smoking.

The rule should be revised to require that: **marketing communications/advertisements for electronic cigarettes should describe them as vapourisers and not use the term e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes or smoking.**

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

*Q9 Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions for improvement.*

Yes, we agree with the inclusion of this rule.

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

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

This rule as drafted is inadequate to achieve the intended protections for non-smokers and non-nicotine users who should not be addressed by any marketing communications / advertisement for these products. We recommend that **a requirement that all marketing communications/advertisements are presented as an alternative to tobacco** (see comments to rule 3) is a necessary supplement to this rule.

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

*Q12. Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions for improvement.*

Yes, we agree. Any such link would surely fail the test of 'legal, decent, honest and truthful'.

*Q13. Do you consider that alcohol should be included in this rule? If not, please explain why and provide any suggestions for improvement.*

Yes, we agree that alcohol should be included. We are concerned about the potential of nicotine containing products to encourage excessive alcohol consumption by countering the depressive effect of alcoholic drinks.

Q14. Do you consider that gambling should be included in this rule? If not, please explain why and provide any suggestions for improvement.

We do not have an organisational view on the inclusion of 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.**

Q15. Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions for improvement.

Yes, we agree with the inclusion of this rule.

**Rule 9. Marketing communications /advertisement 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.**

Q17. Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions for improvement.

Yes, we agree with the inclusion of this rule.

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

Q18. Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions for improvement.

Yes, we agree with the inclusion of this rule.

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

Q18. 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/BCAPs consideration of this rule.

No, we do not consider it should be required that ads make such a statement. There is good evidence that 18+ messages on products are ineffective and can have a perverse effect of increasing the allure of 'prohibited' products among children.<sup>1</sup> Protecting children from inappropriate marketing for e-cigarettes should be achieved by ensuring there are sufficiently robust rules to restrict their exposure to e-cigarette marketing. See comments to rule 12.

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<sup>1</sup> American Legacy Foundation, Getting to the Truth: Assessing Youths' Reactions to the truthsm and 'Think. Don't Smoke' Tobacco Countermarketing Campaigns, First Look Report 9, June 2002. Sly, D & Heald, G, Florida Antitobacco Media Evaluation (FAME) Follow-up report, February 2001. Teenage Research Unlimited, "Counter-Tobacco Advertising Exploratory," Summary Report, January-March 1999.

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

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

We agree with the principle but we question the use of the 25% of audience calculation on which this rule is to be implemented.

CAP/BCAP need to assess whether media that is most popular with children and young people will be covered by the 25% threshold measure. This is particularly relevant to BCAP rules for TV advertising where many early evening 'family' programmes would fall outside this threshold. This means that some of the programmes with the highest absolute numbers of viewers under the age of 18 would potentially permit advertising for e-cigarettes because large numbers of adults are watching at the same time.

**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']**

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

We agree with the inclusion but refer to our concerns under Q20 that the mechanism of determining these scheduling restrictions should be tested for effectiveness.

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

Q22. Given BCAPs policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

We agree that all broadcast advertisements (both radio and television) should be centrally cleared prior to broadcast to ensure compliance in this sensitive and evolving area of product advertising. In addition, advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

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?*

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 reviewed and revised in the light of emerging evidence.



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## **CAP and BCAP Consultation on the Marketing of E-Cigarettes**

**Response from Gerard Hastings, Marisa de Andrade,  
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**Institute for Social Marketing, University of Stirling and the Open University**



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## About the Authors

The first three authors are researchers at the Institute for Social Marketing based at the University of Stirling. They all have a long-term research interest in examining critically the role of marketing in society. They have worked on various public health research projects related to tobacco, alcohol, food, and pharmaceuticals and recently worked on a review of the marketing of electronic cigarettes in the UK for Cancer Research UK. The authors are members of the UK Centre for Tobacco and Alcohol Studies and have received funding from the British Heart Foundation, Cancer Research UK, the Economic and Social Research Council, the Medical Research Council, and the National Institute of Health Research, under the auspices of the UK Clinical Research Collaboration. Professor Hastings was appointed as a Special Advisor to the House of Commons Health Select Committee during its separate enquiries into the tobacco (2000), food (2004), pharmaceutical (2005) and alcohol industries (2009), and was awarded an OBE in the Queen's Birthday Honours List 2009 for his services to healthcare.

The Institute for Social Marketing brings over 30 years' experience to the study and dissemination of social marketing theory and practice. We began work in 1980 as the Advertising Research Unit at the University of Strathclyde, with a particular interest in mass media communications and their impact on public health. In 1992, our broadening interest in the whole marketing process led us to create the Centre for Social Marketing. In 1998 our work on tobacco was recognised by Cancer Research UK, who helped us establish the Centre for Tobacco Control Research. In 2004-05 the team moved to the University of Stirling under a joint venture with the Open University.

The University of Stirling has won the Queen's Anniversary Prize for Higher and Further Education for ground-breaking social marketing research by the Institute for Social Marketing. The Queen's Anniversary Prizes for Higher and Further Education are awarded biennially to universities and colleges in the further and higher education sectors and are the UK's highest form of national recognition open to academic and vocational institutions. The Prize is awarded for the Institute for Social Marketing's research into the effects of marketing on health and the effectiveness of policies designed to protect health by controlling this marketing.

Three authors (de Andrade, Hastings and Angus) conducted the first comprehensive study of marketing and media coverage e-cigarettes in the UK, in traditional and online channels in 2013. The report was funded and published by Cancer Research UK<sup>i</sup> and a peer-reviewed paper was published in the BMJ.<sup>ii</sup>

Sally Casswell is Professor of Social and Health Research and the Director of the SHORE and Whariki Research Centre, College of Health at Massey University, New Zealand. Her research interests are in social and public health policy, particularly in relation to alcohol and other drugs. She has carried out research on the development and implementation of public policy at the national and community level and in the evaluation of these initiatives. A focus for some years has been on commercial marketing of alcohol products. She is involved in international alcohol policy as a member of the WHO Expert Advisory Panel on Drug Dependence and Alcohol Problems and SHORE is a WHO Collaborating Centre. Professor Casswell also has an active involvement with the NGO sector including GAPA (Global Alcohol Policy Alliance) of which she is chair of the Scientific Advisory Board. Professor Casswell is a Fellow of the Royal Society of New Zealand and an Officer of the Order of New Zealand.

Funding has been gained from the Marsden Fund, Health Research Council of New Zealand, government ministries, Health Promotion Agency, World Health Organization, NIH (U.S.) and IDRC (Canada).

## Introduction

The last fifty years' of UK tobacco control shows that voluntary codes on advertising content simply do not work. Similarly, industry voluntary codes have been evaluated as ineffective in limiting exposure of young people to alcohol marketing and they did not they make any effective difference to content<sup>iii</sup>.

When children need to be protected from the negative impacts of advertising, mandatory controls on the amount of advertising present the only effective solution, and these controls need to be comprehensive. Whilst we are now dealing with a new product in the electronic cigarette (e-cigarette), the increasing involvement of the tobacco multinationals in the sector means that we are faced with the same industry. There is also every need to expect, and guard against, the use of e-cigarettes by these companies to promote their fiscally much more important tobacco business.

It is important, of course, to recognise the possible benefits of e-cigarettes for addicted adult smokers, and ensure regulation does nothing to impede their access to them. In this sense, the e-cigarette is more akin to alcohol than tobacco – the advertising should reach adults but not children. Sadly, voluntary codes on advertising have been as unsuccessful for alcohol as they have for tobacco.

## Four Lost Decades

The first calls to limit tobacco advertising came in the early 1960s and the next four decades saw the implementation of numerous voluntary codes on message content and partial controls on channels. If these measures had worked there would have been no need for the hard-won Tobacco Advertising and Promotion Act (TAPA) in 2002, which banned tobacco advertising outright. However the TAPA was felt to be necessary, and since implementation has been hailed as massive step forward for tobacco control and child protection. Through the WHO Framework Convention on Tobacco Control, the comprehensive advertising ban has now become established as a key plank of effective tobacco control. Sadly though, in the UK there were several lost decades of voluntary codes when children were left unprotected from tobacco promotion.

The existence of a Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship (COMATAS) did not prevent the recurrence of notified breaches. Systematic and opportunistic surveys concluded: *'Breaches of the UK voluntary agreement are common but monitoring is generally non-existent. A voluntary agreement does not provide adequate protection for children.'* It was noted that even those knowledgeable of the Voluntary Agreement did not complain to COMATAS or other bodies as they were *'cynical after a decade of dismissed complaints and inaction over repeated breaches'* which offered only a *'façade of action'*.<sup>iv</sup>

## Controlling Content

Controls on advertising content are problematic for two key reasons:

- (i) There is no evidence base to support them. The extensive peer-reviewed research done on tobacco<sup>v</sup>, food<sup>vi</sup> and alcohol<sup>vii</sup> promotion shows that it is advertising per se that encourages young people into the market, not particular channels of advertising or types of message. If we want to protect young people from the advertising for a particular product, we have to reduce their exposure to any form of promotion for it; not just adjust the message and channel mix.

- (ii) Advertising is immensely subtle and complex, making content regulation all but impossible. Messages are communicated by hint and association rather than literal statements – colour, music, mood, tone and even smell all enable advertisers to connect with the potential customers’ aspirations and insecurities. It is worth revisiting the tobacco companies’ advertising agencies’ internal documents (including client and creative briefs, market research and media schedules) disclosed by the 2000 Health Select Committee Enquiry into the tobacco industry and the health risks of smoking. These talk *‘of smoking [as] a “rite of passage,” with young people looking for “reassurance” and “an identity”<sup>viii</sup>*. Successful cigarette brands exploited these emotional needs and insecurities. The success of Marlboro Lights, for example, *‘derives from its being the aspirational lifestyle brand . . . The Diet Coke of cigarettes,’* and *‘to be successful any Gallaher brand will have to tackle Marlboro’s coolness of image—smokers do smoke the image as well as the taste’*. As one creative brief put it, *‘we want to engage their aspirations and fantasies—“I’d like to be there, do that, own that”’*. Detailed and typically qualitative market research was therefore conducted to guide the development of *‘image building campaigns’* and provide *‘an infusion of style, coolness and aspiration . . . that will boost B&H’s [Benson and Hedges] image with style conscious 18-24s’*. This work took place despite clear rules in the then voluntary agreement prohibiting the association of smoking with social success or any attempts to play on the susceptibilities of those who are emotionally or physically vulnerable, especially young people<sup>ix</sup>.

Such subtlety evades oversight and the rules become a creative stimulus rather than an obstacle. In the current consultation, injunctions to be *‘socially responsible’* (consultation rule 1) or avoid appealing *‘particularly to young people under 18, especially by reflecting or being associated with youth culture’* (consultation rule 9) defy definition, let alone regulation. Is a tobacco multinational being socially responsible when it sponsors youth prevention campaigns? What exactly is *‘youth culture’*? Does Formula 1 qualify? Premiership football? Lily Allen? And how is the advertiser supposed to target the 18 year-old whilst avoiding the 17 year-old, especially when the latter wants nothing more devoutly than to be an 18 year-old? The regulator has to adjudicate on all this, and legitimises the process and the advertiser by default.

These complexities and problems have become all the greater with the advent of digital marketing, social media and user-generated content. While the CAP code covers adverts placed in *‘new media’* and *‘marketing communications on marketers’ own websites’*, a recent report on the marketing of e-cigarettes in the UK written by the authors (de Andrade, Hastings and Angus) and published by Cancer Research UK illustrates how difficult it is to monitor these platforms and how easily the code can be breached or circumvented.<sup>x</sup>

They are also just as apparent for alcohol as tobacco. During another Health Select Committee enquiry in 2009, this time into alcohol, involving the disclosure of internal documents of advertising agencies used by the drinks industry, the failure of voluntary codes was amply demonstrated by the case of *‘Carling Starlings’<sup>xi</sup>*. This cinema and television advertising campaign used visuals of a flock of starlings and an evocative soundtrack to evoke the concept of belonging. Despite complaints, it was deemed not to have breached the code prohibiting appeals to sociability because it *‘did not imply alcohol contributed to the popularity of an individual or the success of a social event’*. However, the internal documents uncovered in the enquiry revealed the thinking behind the campaign: *‘Carling celebrates, initiates and promotes the togetherness of the pack, their passions and their pint because Carling understands that things are better together.’* This splits into *‘3 Aspects of Belonging ... Initiation: Expressions of the moment when an individual joins a group and finds a happy home in the pack—the moment of belonging; Celebration: An expression of the*

*sheer joy of belonging; Contagion: An expression of the magnetic power of the group—the power of belonging’ ... ‘Broadly speaking each piece of communication will either celebrate “Join Us” by championing the benefit of togetherness or facilitate “Join Us” by providing and enhancing experiences where togetherness is key.’<sup>xii</sup>*

The Carling Starlings advert is still readily available online.

### Comprehensive Controls

Trying to control content is, then, futile. The solution has to be to regulate the amount of advertising. However extensive experience from tobacco shows that such controls must be comprehensive; partial bans do not work because promotional budgets migrate to uncontrolled channels. In the UK, for instance, the disappearance of tobacco advertising from TV in 1965 had no perceptible impact on overall tobacco adspend, which increased year on year throughout the decade.

### Solutions

The answer then, if we want to protect children from e-cigarette advertising and promotion, is a complete ban. There is no evidence to show this will impede adult access to e-cigarettes, or that such controls have prevented adults from accessing tobacco or prescription medicines. Failing an outright ban, the next best solution is to regulate what can, rather than cannot, be said and shown in e-cigarette advertising. This is the approach adopted in France to regulate alcohol advertising. Such a solution would permit the promotion of e-cigarettes in media that adults use. Here, advertisers would only be permitted to make verifiable factual statements about their products, such as nicotine strength, composition, place of origin, means of production and patterns of consumption. All advertisements would also be required to carry explicit health information.

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<sup>i</sup> de Andrade M, Hastings G, Angus K, Dixon D & Purves R (2013). *The Marketing of E-cigarettes in the UK*. London: Cancer Research UK.

[http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@pol/documents/generalcontent/cr\\_115991.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/cr_115991.pdf)

<sup>ii</sup> de Andrade M, Hastings G & Angus K (2013). Promotion of electronic cigarettes: tobacco marketing reinvented? *BMJ*, 347: f7473. doi: [10.1136/bmj.f7473](https://doi.org/10.1136/bmj.f7473).

<sup>iii</sup> Babor T, Caetano, Casswell S, Edwards G, Giesbrecht N, Graham K, et al. (2010). *Alcohol No Ordinary Commodity Research and Public Policy*. Second Edition. Oxford: Oxford University Press.

<sup>iv</sup> Mindell JS (1993). The UK voluntary agreement on tobacco advertising: a comatose policy? *Tobacco Control*, 2(3): 209-214. doi: [10.1136/tc.2.3.209](https://doi.org/10.1136/tc.2.3.209).

<sup>v</sup> Lovato C, Watts A & Stead LF (2011). Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours. *The Cochrane Database of Systematic Reviews*, 10: CD003439. doi: [10.1002/14651858.CD003439.pub2](https://doi.org/10.1002/14651858.CD003439.pub2).

<sup>vi</sup> Cairns G, Angus K, Hastings G & Caraher M (2013). Systematic reviews of the evidence on the nature, extent and effects of food marketing to children. A retrospective summary. *Appetite*, 62: 209-215. doi: [10.1016/j.appet.2012.04.017](https://doi.org/10.1016/j.appet.2012.04.017).

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<sup>vii</sup> Anderson P, de Bruijn A, Angus K, Gordon R & Hastings G (2009). Impact of alcohol advertising and media exposure on adolescent alcohol use: a systematic review of longitudinal studies. *Alcohol & Alcoholism*, 44(3): 229-243. doi:[10.1093/alcalc/agn115](https://doi.org/10.1093/alcalc/agn115).

<sup>viii</sup> Hastings G & MacFadyen L (2000). A day in the life of an advertising man: Review of internal documents from the UK tobacco industry's principal advertising agencies. *BMJ*, 321(5 Aug): 366-371. doi:[10.1136/bmj.321.7257.366](https://doi.org/10.1136/bmj.321.7257.366).

<sup>ix</sup> Ibid.

<sup>x</sup> de Andrade M, Hastings G, Angus K, Dixon D & Purves R (2013). *The Marketing of E-cigarettes in the UK*. London: Cancer Research UK. [http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@pol/documents/generalcontent/cr\\_115991.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/cr_115991.pdf)

<sup>xi</sup> Hastings G, Brooks O, Stead M, Angus K, Anker T & Farrell T (2010). Failure of self regulation of UK alcohol advertising. *BMJ*, 340(21 Jan): b5650. doi:[10.1136/bmj.b5650](https://doi.org/10.1136/bmj.b5650).

<sup>xii</sup> Ibid. (Emphasis added)

## **Welsh Government Response to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation on proposals to introduce new rules for the advertising of electronic cigarettes**

### **About the Welsh Government:**

The Welsh Government is responsible for the health of people living in Wales. This includes developing health improvement policies and programmes which aim to reduce smoking prevalence levels and the uptake of smoking, particularly amongst children and young people. A target has been set in the Tobacco Control Action Plan for Wales to reduce smoking levels from the current 23 per cent to 20 per cent by 2016; and 16 per cent by 2020.

The new regulatory framework for nicotine containing products which has been introduced in the revised Tobacco Products Directive is welcomed. The Welsh Government has also taken steps to ensure that restrictions on the age of sale and proxy purchase of e-cigarettes proposed by the UK Government would apply to Wales if they were to be introduced.

We are concerned that the use of e-cigarettes makes it difficult to enforce the Smoke-free regulations, which banned smoking in public places in Wales. The Welsh Government recently launched a White Paper on a Public Health Bill to improve the health and wellbeing in Wales. One of the proposals included in the White Paper is to ban the use of e-cigarettes in enclosed and substantially enclosed public places.

### **Key Points:**

We recognise that e-cigarettes, along with other forms of nicotine replacement therapy, may be able to help smokers to give up tobacco. However, it is important that non-smokers, particularly children and young people are not encouraged to use e-cigarettes, as there is a risk it would re-normalise smoking and potentially be a gateway to tobacco. The Welsh Government therefore welcomes the efforts made in these proposals to protect the young, the vulnerable and non and former users of nicotine.

The revised Tobacco Products Directive will ensure there are safeguards in place to prohibit the advertising of e-cigarettes at a cross border level. This would put the advertising of these consumer products on the same legal footing as tobacco products. However, this does not address advertising and marketing of e-cigarettes locally in the UK.

The Welsh Government agrees that e-cigarettes which have been licensed as medical products should be able to make health and medical claims in advertisements. The advertising of licensed electronic cigarettes should follow the same guidelines as other medical products to ensure there is consistency.

Warnings about nicotine being an addictive product and any potentially dangerous ingredients need to be clear and consistent for all types of e-cigarettes, including non-medicinal.

The Welsh Government aims for a smoke-free Wales, and any claims such as for example that e-cigarettes are the future of smoking should not be permitted.

**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?*

Response: Advertising of nicotine containing products should always be socially responsible as evidence clearly demonstrates that the product is addictive and should not be used by under 18s. It should not glamorise smoking or encourage people who do not currently use electronic cigarettes to try the product. Sexually explicit language which would breach current advertising rules should not be allowed.

It is not entirely clear how 'socially responsible' would be defined and this should be clarified to ensure this rule is applied consistently and fairly. The advice from the Committee of Advertising Practice on social responsibility for alcohol could be relevant here, particularly with regard to ensuring advertising is not aimed at encouraging children to use e-cigarettes. For children it states that marketing communication should not exploit their vulnerability or lack of experience.

**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?*

Response:

We agree with the first sentence of proposed rule. Images of electronic cigarette being used can look similar to smoking. This should not be allowed as it could encourage people to take up smoking. However, the second sentence should be removed to prevent cigarette-like products from being shown.

There may be circumstances where it is appropriate to show visuals of e-cigarettes. However, the Welsh Government is concerned that the packaging and branding of e-cigarettes are very similar to those used for tobacco products and showing these images during adverts could make them appealing to non smokers.

Any claims, such as for example that e-cigarettes are the future of smoking should not be permitted.

Where such similarities exist, we are concerned that Section 10 of the BCAP Code may, in some circumstances, be breached by allowing packaging and branding to be shown, ie 'does not include a design, colour, imagery, logo, style or the like that might be associated in the audience's mind with tobacco'. A cautious approach to permitting the depiction of e-cigarette branding etc should therefore be adopted and be in line with Section 10 of the BCAP Code.

**Rule 3: Marketing communications/advertisements must not contain health or medicinal claims [unless the product is licensed for these 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 suggestions you may have for improvement.*

Response: We agree with the proposal that adverts for e-cigarettes must not contain health or medicinal claims unless the product has been licensed as a medicine by the MHRA. The same advertising standards will need to apply for licensed e-cigarettes as already exist for other licensed medicinal products. These requirements are set out in the Human Medicines Act 2012 and require that advertising includes the following information:

- The name of the medicinal product.
- If the product contains only one active ingredient, the common name of the medicinal product.
- The information necessary for correct use of the medicinal product, ie one or more indications.
- An express and legible invitation to read carefully the instructions in the leaflet or on the label.
- It is clear that the material or message is an advertisement and that the product being advertised is a medicine.

Using the definition from the EU regulation on the nutritional and health claims made on food could be a useful way of defining health claims for e-cigarettes. However, clarification is needed on whether this would also include the safety of these products as this is also referred to in the nutrition and health claims regulations for food. The Welsh Government would want to see a ban on

making such claims until there is clear evidence that e-cigarettes are safe.

A claim that e-cigarettes are an alternative to tobacco should not include any statement that they can help you to permanently give up tobacco if they have not been licensed as a medical product. There are some risks that a link will be made between licensed products that could help you to quit and unlicensed e-cigarettes. Clear guidelines on what would be permitted under this rule should therefore be published to address this issue.

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

*Question 8: 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.*

Response: We strongly agree with this rule as it important to make it clear that e-cigarettes are being advertised. It should also have to state that the product does contain nicotine, which is addictive.

**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.*

Response: We agree that advertisements must clearly state whether e-cigarettes contain nicotine. The warning should use similar wording as has been included in the Tobacco Products Directive

“This product contains nicotine which is a highly addictive substance. It is not recommended for use by non-smokers or those under 18”.

**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.*

Response: The advertising of e-cigarettes should not encourage non-smokers or those that currently do not use nicotine to start using the product. We are concerned about the risk that advertising could encourage children and young people to start using nicotine, which is a very addictive substance, and that e-cigarettes could therefore be a gateway to smoking.

All advertising should be explicitly aimed at current users of nicotine.

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

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

*Question 13: Do you agree 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.*

Response: We agree with this rule.

Advertising of e-cigarettes should not portray the use of illicit drugs in a positive light, which is a requirement of existing CAP advertising guidelines.

The marketing communications guidelines for alcohol and gambling already makes it clear that advertising should be socially responsible and should not be targeted at children and young people under the age of 18. Any advertising which links e-cigarettes to alcohol and gambling needs to ensure there are also no breaches of these current guidelines. Links to the use of e-cigarettes should also not breach the current advertising guideline that drinking alcohol is not a key component of the success of a social event.

The rules should also consider whether depicting the use of e-cigarettes in pubs and whilst drinking in an advert should be permitted as this reinforces traditional smoking behaviour. Allowing advertising in these settings could also impact on attempts by some pubs, such as the Wetherspoons chain, to introduce voluntary bans on the use of e-cigarettes on their premises.

**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 the 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?*

Response: We agree with this rule. As well as driving, this could also include the use of dangerous machinery or other activities in the workplace which require a high level of concentration. This would ensure consistency with the advertising guidelines for alcohol which do not allow advertising to show drinking whilst using machinery. If as a result of the Public Health Bill White Paper Consultation, the Welsh Government chooses to ban the use of e-cigarettes in public places, the depiction of the use of e-cigarettes in areas covered by the ban, should not be depicted in adverts for use in Wales.

**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 the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.*

Response: We agree that advertising of e-cigarettes should not appeal to young people under the age of 18. The term youth culture is quite broad and could be open to interpretation. A definition could be useful and would assist potential advertisers to ensure they do not breach this rule.

The second sentence of the rule could potentially leave a lot of room for interpretation. The Welsh Government would like this to be strengthened to say that they should not glamorise the use of e-cigarettes to people under 18 which could be a gateway to smoking. This would be particularly important for endorsements from high profile figures from the entertainment industry and from sport which will be very likely to appeal to people under the age of 18.

**Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seen 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.*

Response: We agree that people under the age of 25 should not be shown using e-cigarettes in advertising. This would be consistent with the approach taken for the alcohol guidelines, which has a minimum age of 25 for showing a character drinking alcohol.

We have some concerns about those under 25 being shown even if they are in an incidental role as we do not think e-cigarettes should ever be shown being used in front of children.

iWith regard to the statement in the consultation on plans by the UK Government to ban the sale of nicotine products, including e-cigarettes to under 18s, the Welsh Government would like to clarify that these requirements could also potentially apply to Wales.

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

*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.*

Response: It is important that the unsuitability of nicotine for under 18s is included in the rules on the advertising of e-cigarettes as there is clear evidence that children can become addicted to the nicotine in tobacco from a young age, with two thirds of smokers in the UK start smoking before they turn 18. Young people can quickly develop a dependence on nicotine and may be unable to reduce their risks due to this addiction. The response to Rule 5 suggests wording for a warning being included on adverts that nicotine is an addictive substance which is not suitable for under 18s.

A requirement for a warning on adverts that e-cigarettes are not suitable for children and young people would also reinforce to parents and other adults that children are not encouraged to experiment with e-cigarettes.

Relevant evidence on addiction to nicotine has been included in the Welsh Government's Tobacco Control Action Plan. This can be summarised as follows:

- Smoking Kills: A White Paper on Tobacco (1998). Accessed at <http://www.archive.official-documents.co.uk/document/cm41/4177/4177.htm>.
- Reed D.O. (1993). Preventing adolescent nicotine addiction: what can one do? Journal of the American Academy Physician Assistants 1993;6: 703-710.
- Di Franza J et al (2007). Symptoms of tobacco dependence after brief intermittent use: the development and assessment of nicotine dependence in youth, Archives of Pediatrics and Adolescent Medicine 162 (7): 704-710.

This proposal needs to be considered alongside any other relevant evidence on the uptake of age related products where advertising has included warnings about age of sale and cases of the 'boomerang' effect which is outlined in the consultation paper.

**Rule 12: Marketing communications must not be direct 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.*

Response: We agree with this rule. A ban on advertising e-cigarettes if more than 25 per cent of the audience is under 25 is welcomed and again follows the same guidelines which are in place for alcohol.

**Rule 13: [Amendment to existing BCAP rule to include electronic cigarettes under rule 32.2 of its Code]**

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

Response: We agree with the inclusion of e-cigarettes in this list of scheduling restrictions in the BCAP Code.

**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.*

Response: All e-cigarettes advertising should all be centrally cleared due to the addictive nature of nicotine and the concerns we have highlighted that e-cigarettes could become a gateway to tobacco for children and young people.

*Additional Questions*

**E-cigarettes which do not contain nicotine**

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

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

Response: E-cigarettes that do not contain nicotine should follow similar rules to those that do contain nicotine. If similar rules did not exist, there is a risk that their advertising could normalise smoking or e-cigarette use and be a gateway to increased uptake of tobacco by children and young people, or their use of e-cigarettes containing nicotine.

Non-nicotine containing e-cigarettes should include a message that these products do not include nicotine. Consideration should also be given to including a warning that these products are not suitable for under 18s.

**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?*

Response: All of the above rules for e-cigarettes should apply other than the relaxation on making medical claims (see response to questions on Rule 3). As mentioned above, medical claims made in advertisements for licensed e-cigarettes would need to meet the current guidelines for medicines.

**Definition of 'electronic cigarette'**

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

Response: We agree with the proposed definition of e-cigarettes as it is taken directly from the wording of the relevant EU Directive. Definitions in relevant UK legislation should also be considered.

### **Further Comments**

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

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

Response: We are concerned that the rules do not specifically mention social media. This needs to be closely considered as a high proportion of young people regularly use social media channels. Facebook groups could be set up by e-cigarette companies to encourage people to 'like' a specific brand of a product which could attract young people under the age of 18. This strategy has been used by tobacco companies to increase brand recognition and the Welsh Government would want rules to be put in place to ensure under 18s are not encouraged to support e-cigarette brands in this way.

The sponsorship of domestic entertainment and sporting events is another area of concern. This form of advertising will be prohibited for events which have cross border implications when the Tobacco Products Directive is implemented by the UK Government in the next two years.

Rules on the sponsorship of domestic events by e-cigarettes companies in the UK should be considered by the relevant regulatory authority to ensure that under 18s are not encouraged to start using them.



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

## Response of Wales Heads of Trading Standards

### Introduction

Wales Heads of Trading Standards (WHOTS) was formed in response to the demand for continuous improvement in Trading Standards Services in Wales. Improvement is achieved by working with others to promote the work of Trading Standards practitioners to enhance the level of consumer protection in Wales.

WHOTS is a Heads of Service Group under the umbrella of the Directors of Public Protection Wales (DPPW). DPPW represents Local Authority regulatory services that directly affect the health and well-being of communities in Wales.

The WHOTS vision is of *'A Wales where consumers are confident and protected and honest businesses can prosper in a fair, safe, market place'*, and its objectives are as follows:-

- WHOTS promotes inter-authority working and co-ordination to achieve continuous improvement
- WHOTS responds and contributes to the developing consumer agenda of the Government, Welsh Assembly Government and the Welsh Local Government Association
- WHOTS supports the personal and professional development of Trading Standards personnel
- WHOTS works in partnership to encourage fair and consistent enforcement and service provision
- WHOTS works together with others to promote the safety, the health and the economic well-being of communities.

WHOTS welcomes the opportunity to contribute to the consultation on proposed new rules for the marketing of electronic cigarettes. This is a rapidly evolving and complex marketplace in which Trading Standards Services continue to provide advice and to deal with concerns, most notably around product safety, labelling, the accuracy of claims and access by youngsters. Our response is set out overleaf.

## **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?*

WHOTS agrees with the inclusion of this rule but believe there should be clarification on what is meant by the term 'socially responsible'. There is a danger that as presently worded, the rule will be open to varying and subjective interpretation. In particular, it should be made clear that e-cigarettes and similar products are suitable as an alternative for existing tobacco smokers and should not be marketed at non-smokers for whom they could act as a gateway to tobacco use. Recognising the product safety concerns of Trading Standards Services, socially responsible marketing communications / advertisements would need to highlight safe use through adherence to product instructions, particularly in respect of keeping nicotine refills out of the reach of children, and use of mains electricity to recharge the product.

### **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 the 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?*

WHOTS believes that this rule needs to be strengthened to prevent exploitation of the e-cigarette (and similar device) market to promote overtly or subliminally, the branding of tobacco products (through associated colours, logos, etc.). The Brand Sharing Regulations need to be complied with, and there is a danger that without improvement, this rule could result in the benefits brought by the bans on both tobacco advertising and retail display being undermined.

### **Rule 3: Marketing communications/advertisements must not contain health or medicinal claims [the product is licensed for these 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 suggestions you may have for improvement.*

WHOTS agrees with this proposal but would like to see marketing communications / advertisements having to state that e-cigarettes (and similar devices) are alternatives to tobacco, rather than this being optional, in line with the comments above that they should not be marketed at non-users of tobacco.

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

*Question 8: 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.*

WHOTS agrees that marketing communications / advertisements must make clear the nature of the product being marketed. While mindful of the broad definition of 'electronic cigarette', this rule would benefit from recognition of the fast evolving market for devices delivering nicotine 'hits'. As currently worded, the rule could be open to a very narrow interpretation.

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

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

Yes, WHOTS believes that it is important that this information is clearly set out.

#### **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.*

Again WHOTS agrees with this proposal, but it would be strengthened by making it clear that it applies to electronic cigarettes and similar nicotine delivery devices. As

previously highlighted, it is crucial that marketing is not aimed at non-smokers or non-nicotine users, and extension of the rule to prohibit implicit as well as explicit encouragement of these groups would be helpful.

### **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 agree 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.*

WHOTS agrees that all three strands should be included in the rule and this is entirely in line with the Trading Standards role in the protection of children from harm. Again the proposed rule would be strengthened and to some extent future-proofed by making it clear that it applies to other similar nicotine delivery devices as well as to electronic cigarettes.

### **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 the 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?*

WHOTS agrees with this approach.

In addition to mentioning driving as an example to illustrate how this rule would apply, reference should also be made to the voluntary bans on the use of electronic cigarette (and similar devices) introduced at locations such as licensed premises, and some work places. It is also worth mentioning that Welsh Government is currently consulting on its Public Health Bill which includes the proposal to ban the use of electronic cigarettes in enclosed and substantially enclosed public places (including places of work) in Wales. In other words the use of electronic cigarettes would be banned in all the same places that smoking is prohibited. See the consultation document at

<http://wales.gov.uk/consultations/healthsocialcare/white-paper/?lang=en>

**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 the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.*

WHOTS fully supports this proposal

**Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seen 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.*

WHOTS fully supports the inclusion and wording of this rule. While the proposed age restriction on electronic cigarettes and similar devices would prohibit sales to the under 18s, restricting their use in marketing to the over 25s is entirely in line with the industry 'Challenge 25' initiative to limit the possibility of underage sales.

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

*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.*

WHOTS agrees with this proposal. At the moment (especially until age-restrictive legislation appears) there appears to be significant uncertainty in the minds of retailers / parents / users of these products as to whether there is any age-restriction imposed upon them, or whether they are suitable for young people at all. Any such a statement in advertising material is vital, to reinforce the fact that these are not suitable for under 18s, both as an addictive product in their own right, and as a possible gateway to traditional smoking materials.

**Rule 12: Marketing communications must not be direct 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.*

WHOTS supports this proposal which could be further strengthened by including reference to the location as well as the context in which marketing communications appear.

### **Rule 13: [Amendment to existing BCAP rule to include electronic cigarettes under rule 32.2 of its Code]**

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

Yes, WHOTS agrees that electronic cigarettes (and similar devices) be included in the list.

### **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, WHOTS supports the proposal that all advertisements for electronic cigarettes (and similar devices) would be subject to central clearance.

#### *Additional Questions*

### **E-cigarettes which do not contain nicotine**

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

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

Given the fast expanding range of electronic cigarettes and similar devices available on the market, it is felt that the same rules should apply across the board. Such consistency would avoid the possibility of confusion over which rules apply to which products and the danger that some could 'slip through the net'.

## **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?*

As above, it is felt that the same rules should apply to licensed products with the difference that such marketing communications / advertisements would be able to include substantiated health claims.

## **Definition of 'electronic cigarette'**

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

Yes, WHOTS agrees with the proposed definition of an electronic cigarette. However, in the interests of clarity and consistency, it should be made clear throughout the new rules (and not just in the definition section) that they apply to a range of products similar to products and not simply electronic cigarettes *per se*.

## **Further Comments**

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

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

WHOTS has no further suggestions or comments, other than to reiterate that fact that with this particular market evolving so rapidly, the proposals will need to be reviewed regularly to ensure that they remain current, relevant and effective, and appropriate changes made to address the gaps so identified.

**24.4.2014**

## Consultation on the marketing of e-cigarettes

This response to the consultation is on behalf of West Sussex County Council. The council is responsible for a number of public services in the county including public health.

### General rules

#### **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.

Disagree with wording – suggested wording (changes highlighted):-

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

The driving ethical principle of tobacco control is that of fairness. A fairness for children and young people to grow up in an environment where smoking is not seen as the norm, for smokers to get help to quit (as the majority wish to do) and for people to live and work without being exposed to the hazards of second hand smoke. This was taken from:-

[http://www.haringey.gov.uk/dh\\_excellence\\_in\\_tobacco\\_control\\_1\\_.pdf](http://www.haringey.gov.uk/dh_excellence_in_tobacco_control_1_.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?

#### **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.

Disagree with wording – suggested wording (changes highlighted):-

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 also intended to prevent cigarette-like products being shown.**

Rule should include a ban on visuals of e-cigarettes as well as the use of e-cigarettes on advertisements. The reason for this is that vaping is similar to smoking in the hand-to-mouth action and in the look of the product. Several websites selling e-cigarettes describe it as a gadget that looks and feels like a real cigarette. This will promote the use of tobacco products. In the event that this ban does not go ahead, there should be a ban on e-cigarettes that resemble a cigarette as viewers might confuse it with a real cigarette.

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?

Yes, however this suggestion would only apply in the instance that visual display and use of e-cigarettes is not banned. The suggestion would be to advertise e-cigarettes that do not resemble a cigarette. E-cigarettes generally take on two forms – one that looks like a cigarette and the other, looks more like a pen. This would permit e-cigarettes to still be advertised while preventing the direct promotion of tobacco products.

**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.

Agree

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.

Agree

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.

Agree

**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.

Agree

**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.

Agree

**Prohibited approaches**

**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.

Agree

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.

All marketing to be explicitly addressed only to existing nicotine users as the main users of e-cigarettes are current smokers and ex-smokers. This is based on a survey carried out by Ash (Action on Smoking and Health) in 2013 which found that 3% of ex-smokers and 11% of current smokers using it. Use among non-smokers is less than 1%. Therefore, the rule should explicitly say that marketing is targeted at existing nicotine users.

[http://www.ash.org.uk/files/documents/ASH\\_891.pdf](http://www.ash.org.uk/files/documents/ASH_891.pdf)

**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.

Agree

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

Yes, alcohol should be included in this rule. Smoking is associated with other risky behaviour such as alcohol drinking, use of illicit drugs and gambling. This is particularly so among youths as they start to experiment at this age. Please see the link below:-

[http://www.who.int/tobacco/research/youth/health\\_effects/en/](http://www.who.int/tobacco/research/youth/health_effects/en/)

Smoking and alcohol habits generally are common practices done together as smokers tend to consume more tobacco when they drink. There are also people who tend to smoke only when they drink and general in a social context; they tend to be referred as social smokers. Advertising link e-cigarettes with alcohol may encourage them to continue with this practice or remind them of it.

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

Agree, reasoning as above (Question 13)

**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.**

Questions 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.

Agree

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?

Workplaces – there is an increasing number of workplaces that are banning the use of e-cigarettes within the compounds of the workplace. These guidelines have been provided by HR due to the safety concerns with using e-cigarettes indoors. The main concern being that is e-cigarettes are a fire hazard.

A second situation that will be harmful to link e-cigarettes is in any situation where children or young people are involved. It would be unwise to advertise e-cigarettes in that situation as it may encourage them to use the product even if there is a ban for under-18s.

### **Protection of children and young persons: general**

**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.

Agree

**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 may have for improvement.

Agree

**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 suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

Rule is not necessary. As pointed out in the consultation document, research into warning messages for gambling and alcohol found that these messages were not effective in achieving the aims set out. In addition, the risk of a "boomerang effect" is likely considering this effect was found for tobacco.

### **Protection of children and young persons: targeting (CAP Code only)**

#### **CAP-specific rules**

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.

Agree

### **Protection of children and young persons: scheduling (BCAP Code only)**

#### **BCAP-specific rules**

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

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

Agree

## Radio central copy clearance (BCAP Code only)

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.

Agree

### Additional questions

#### 11.1 E-cigarettes which do not contain nicotine

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

New rules should apply to e-cigarettes that do not contain nicotine. People should be aware if the product advertised contains nicotine as well as aware that it is possible to get nicotine-free e-cigarettes.

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

#### 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?

Disagree with rule. While legislation permits authorised medicines or medical devices to make medicinal claims, these claims are based on compelling evidence. Based on current evidence, there is insufficient evidence that e-cigarettes are effective in quitting or cutting down smoking. Therefore, by allowing medicinal claims for e-cigarettes licenced as medicines, this would be a misleading claim that does not represent the current status of its effectiveness. E-cigarettes licenced as medicines should therefore not be allowed to make medicinal claims until sufficient and compelling evidence is available to support the claims made.

#### 11.3 Definition of electronic cigarettes

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

Agree but definition should include (changes highlighted):-

“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 **and non 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.”

#### 11.4 Further comments

**Question 27: Are there any other rule 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, additions to rule 7

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

The wording of the rule should include that e-cigarettes advertisements should not be sexually suggestive. The recent VIP advert received a large number of complaints by viewers regarding the content and message sent out. The marketing tactics used by the tobacco industry has historically used seductive images to sell tobacco. These tactics should not be allowed for e-cigarette advertisements as it draws similarities to tobacco advertisement.

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

It is also important to remember that unlike other smoking quit aids, e-cigarettes are promoted in the same way that cigarettes were before tobacco marketing was banned. It gives rise to fears that these promotions may serve to make smoking once again appear to be normative and desirable behaviour. Therefore, while advertising of products should be allowed, there must be caution in what is allowed in these adverts so that they do not send out the wrong message

The second point we would like to raise is regarding product placement of e-cigarettes in shows. Although this is outside the remit of this consultation, we would draw attention to the likelihood of tobacco companies using the visual display of e-cigarettes in shows as a form of advertisement. We would urge the committees to consider this issue and start putting in place rules limiting/preventing product placement of e-cigarettes.

To whom it may concern

Please find attached the response that ASH has produced to the consultation on marketing and promoting electronic –cigarettes

The Wiltshire Public Health, Stop Smoking Service agrees with the suggestions and statements made by ASH and fully supports their response.

Please include this submission as our own organisation's response to this consultation.

Thank you

Kind regards

Stop Smoking Specialist Advisor  
Wiltshire Public Health  
Wiltshire Council | County Hall | Trowbridge | Wiltshire | BA14 8JN  
[www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

Please find below our response to the consultation. And attached is the current draft of the UK E-Cigarette Industry's Advertising & Marketing Principles referenced in our responses which I have forwarded to you earlier and is under discussion amongst the UK's major e-cigarette companies.

Please let me know if you have any questions and/or would like any further information.

With thanks and kind regards

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

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

- **We agree with the inclusion and wording of this rule.**

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?

- **It looks like all advertising approaches are covered by the rules.**

**Please note the rules are very closely aligned to the UK E-Cigarette Industry's current Advertising & Marketing Principles which are still in draft form (attached) but are being circulated for endorsement and adoption (as an interim measure pending implementation of the CAP and BCAP Rules at the end of this consultation process). The objectives of the Industry's Principles are to ensure all communications by the industry are responsible, are targeted only at existing adult smokers and enabling them to find out about products that are a safer alternative to cigarettes**

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

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

- **We agree with the inclusion and wording of this rule. Further, we agree with CAP / BCAP's accompanying commentary that there is a balance to be struck between the potential indirect promotion of tobacco products via advertising for e-cigarettes and the moral duty of advertisers and regulators to allow smokers to find out about a less harmful alternative to tobacco. Hence, we agree with the proposed approach that would permit visuals of e-cigarettes products, including e-cigarettes in use, provided that it is made clear (in line with Rule 4) that the product shown is an e-cigarette and not a tobacco cigarette. We would also advocate that wherever possible a link be provided to an agreed source of public information that would identify the health risks of smoking and the comparable risks of using e-cigarettes.**

*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.*

- As above, we would advocate that wherever possible a link be provided to an agreed source of public information that would identify the health risks of smoking and the comparable risks of using e-cigarettes. The 'drinkaware' programme [www.drinkaware.co.uk](http://www.drinkaware.co.uk), providing public information about alcohol, the facts and an understanding of its' effects, serves as a useful precedent and we have already taken steps to have a similar platform for e-cigarettes and vaping and have reserved the appropriate url.

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

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

- **We agree with the proposal to prohibit health claims for e-cigarettes that have not been appropriately authorised as a medicine or medical device by the MHRA provided that statements that e-cigarettes are safer than cigarettes are not to be interpreted as health claims.**

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

- **We would propose that a health claim be defined as 'any claim that a product can be used to quit smoking or provide a form of nicotine replacement therapy'. As above we believe it's very important that statements that e-cigarettes are safer than cigarettes are not to be interpreted as health claims.**

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 proposal to prohibit medicinal claims for e-cigarettes that do not have authorisation from the MHRA to make such claims provided those claims are defined as set out above.**

*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 agree with inclusion and wording of this rule. Some of our members' TV advertisements have already been subject to ASA judgements. We accept that there is a requirement for clarity given public and official concern about the indirect promotion of tobacco. As above, we would advocate that all advertisements of e-cigarette products provide a link to an agreed source of public information that would identify the health risks of smoking and the comparable risks of using e-cigarettes.**

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

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

- **While we agree with the inclusion and wording of this rule we would advocate that all marketing communications/advertisements of e-cigarette products provide a link to an agreed source of public information regarding all the products contained in e-cigarettes.**

#### Prohibited Approaches

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

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

- **We agree with the inclusion and wording of this rule. Our products are designed, manufactured and marketed for smokers looking for a safer alternative to cigarettes. We are gratified that CAP / BCAP recognise that there is presently little evidence of the use of e-cigarettes in never- smokers. The facts show very clearly that e-cigarettes are a gateway out of smoking for smokers who wish to reduce their dependency on tobacco.**

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 consider it proportionate. While we would also support a requirement that all marketing be explicitly addressed only to existing nicotine users, we believe this should be expressed in a way which accommodates the requirement that all marketing be explicitly addresses only to ‘those who smoke and are seeking an alternative to reduce or stop their tobacco consumption’.**

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 agree with the proposal. The same prohibition appears in the UK E-Cigarette Industry’s Advertising & Marketing Principles referenced above in answer to Question 2. Alcohol and Rule 3 ie use of word directly eg preventing use of adverts in and around bars**

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

- **We think alcohol should be included but only if it is a direct link and would not preclude portraying the use of e-cigarettes in and around bars or other social situations where the use of an e-cigarette could be reasonably expected.**

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

- **Yes, the UK E-Cigarette Industry's Advertising & Marketing Principles, referenced above in answer to Question 2, also prohibits any link 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 may have for improvement.*

- **Yes, the UK E-Cigarette Industry's Advertising & Marketing Principles referenced above in answer to Question 2 also prohibits any link with places where the use of e-cigarettes is, or is likely to be, prohibited.**

*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?*

- **None come immediately to mind. It is important to remember that bans on using cigarettes in public places are based on the recognised harm to public health caused by 'passive smoke'. There is no scientific evidence that the exhalate vapour of e-cigarettes causes harm to public health and correspondingly we believe it's important that any restrictions on advertising & marketing of e-cigarettes, and their use in public places, is determined by the scientific evidence as and when it is available and has been accepted as the basis for such bans on use in public places comparable to smoking.**

Protection of children and young persons: general

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

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

- **'Youth culture' is an extremely broad concept. Correspondingly we believe it should be defined by reference to the parameters set out in the proposed Rule 10 below; perhaps "... being associated with activities or situations in which people under 25 are the predominant participants or audience ...".**

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

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

- **Yes, we agree.**

*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.*

- **Yes, we do. We welcomed the UK Government's announcement that it will legislate to prohibit the sale of e-cigarettes to under-18s. It is something we have been advocating for a long time. We believe all advertising & marketing should make clear that e-cigarettes are adult products.**

Protection of children and young persons: targeting (CAP Code only)

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

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

- **Yes, we agree with the inclusion and wording of this rule.**

Protection of children and young persons: scheduling (BCAP Code only)

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

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

- **Yes. All scheduling restrictions should be based on BCAP's Advertising Guidance Note on Audience Indexing.**

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? If you disagree, please explain why*

- **Yes, it is what currently happens with the RACC and we would support its' continuation.**

Director of Legal & Corporate Affairs