

## 5. General rules

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

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

Response: Yes, GSK agrees 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?

Response: GSK can foresee the situation where healthcare professionals could be used by advertisers to endorse e-cigarettes (where the e-cigarette is not authorised by the MHRA as a medicine). As e-cigarettes are a relatively new product category which simulates and hence stimulates smoking behaviour and could lead to further experimentation with other nicotine containing products, such endorsements may not be socially responsible, however this is subjective, and may not be considered to fall under Rule 1. GSK therefore seeks the addition of a rule that specifically prohibits health professionals from endorsing e-cigarettes.

A similar situation could arise with the use of celebrities, where they could also glamorise the use of e-cigarettes (as has been highlighted recently in the US following the Golden Globes media coverage). GSK therefore seeks the addition of a rule that specifically prohibits celebrities from endorsing e-cigarettes.

E-cigarettes which are available as medicines would not be able to use celebrity or healthcare professional endorsements in accordance with the current CAP and BCAP rules, and therefore without specific prohibition, the situation could give rise to celebrities and healthcare professionals being used to give disproportionate and misleading credibility to e-cigarettes that are not medicines. We therefore propose rules that prohibit celebrities or healthcare professionals from endorsing e-cigarettes similar to those for medicines:

Proposed rules:

*Healthcare professional endorsements:*

*These are not acceptable in advertisements for e-cigarettes:*

- *presentations, by doctors, dentists, veterinary surgeons, pharmaceutical chemists, nurses, midwives and the like that imply professional advice or recommendation in relation to e-cigarettes;*
- *statements that imply professional advice or recommendation by people who are presented, whether directly or by implication, as being qualified to give that advice or recommendation in relation to e-cigarettes*
- *references to approval of, or preference for, any relevant product or their use by the professions covered by these rules*

*Celebrities:*

*No advertisement for an e-cigarette may include a recommendation by a person well-known in public life, sport, entertainment or similar or be presented by such a person. That includes persons corporate as well as singular and would prohibit, for example, recommendations by medical charities, patient groups and health or sport organisations.*

**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.

Response: GSK agrees with the inclusion of this rule but is concerned that it is too broad so as not to protect **the young or non smokers**. We do not consider it appropriate to show visuals of e-cigarettes being used in marketing or advertising as this would indirectly show smoking in a positive light, as e-cigarettes simulate and hence can stimulate smoking behaviour. Executions showing e-cigarettes being used would therefore act as a powerful reminder of smoking and from pleasure gained from smoking, due to the likeness of using an e-cigarette and smoking a cigarette.

Given concerns about the fact that: e-cigarettes contain nicotine, their efficacy and safety, their potential to renormalize smoking and the possibility that they may act as a gateway to nicotine or tobacco for **the young or non smokers** (whether non or former users of nicotine) and their potential for addiction and their relationship with smoking, as acknowledged by CAP/BCAP in their consultation, it is critical that any advertising or marketing of e-cigarettes is targeted only at current smokers (not the young or non smokers).

Given that 'smokers' will already understand how e-cigarettes are used (ie by placing the item in the mouth), it is unnecessary for marketing or advertising to show e-cigarettes being used (ie being held and placed in the mouth). The only purpose for showing use of the e-cigarette would be to communicate to non smokers (including the young) which is at odds with the concerns expressed above. For this reason, we strongly oppose permitting advertisers to show any visuals of e-cigarettes in use, unless such imagery is used to convey an anti-smoking message and in accordance with a marketing authorisation from the MHRA.

It follows also, that e-cigarettes should not be shown in a positive light that is appealing to non smokers (including the young). Again, as the marketing or advertising should be targeting only current smokers, the purpose of an e-cigarette will already be well understood. Therefore, any messages conveying a 'positive experience' from use of an e-cigarette is in danger of encouraging non smokers (including the young) to try or use e-cigarettes, with the risk that they become regular users of nicotine containing products and regular tobacco containing cigarettes.

In summary, we do not oppose images of e-cigarette products being shown in marketing or advertising. However, we do oppose any visuals of the products being used and further oppose any visuals that promote a positive experience from using e-cigarettes that may be appealing to non smokers. These restrictions would allow BCAP/CAP to preserve the careful balance of public considerations between allowing e-cigarettes to be marketed or advertised on the one hand and managing the messages that can be conveyed to limit the societal risks identified above (ie allowing e-cigarettes to be appealing to non smokers, encouraging non smokers to use e-cigarettes and indirectly promoting smoking or use of tobacco products).

We suggest a wording change to the rule as follows:

**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 provided that the marketing communications / advertisements is obviously directly targeted to smokers only, does not depict a person using an e-cigarette (ie in hand and/or applied to the mouth) and the product is not shown in a positive light that may be appealing to non smokers.**

**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: As per the response to Question 3, we are concerned about the use of e-cigarettes being shown, due to the close visual association between smoking a cigarette and using an e-cigarette. Images of persons using an e-cigarette and a person smoking a tobacco product are virtually synonymous. Showing visuals of someone

deriving pleasure from or looking 'cool' using an e-cigarette implies that smoking is also enjoyable and cool. We propose a change to the wording of Rule 2, as above.

**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.

Response: Yes. While we agree there is a role for e-cigarettes as an alternative to tobacco, it is not appropriate for health claims to be made for nicotine containing products that do not have a marketing authorisation from the MHRA. Prohibited health claims would include claims like 'e-cigarettes are a healthy alternative to tobacco containing cigarettes' and 'a safer alternative to tobacco containing cigarettes'.

Furthermore, according to the wording of Rule 3, we would expect that claims such as 'Try an alternative nicotine product' would not be allowed on their own as it must be clear that an e-cigarette is an alternative to tobacco (and not an alternative to nicotine replacement products that have a marketing authorisation from the MHRA).

**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.

Response: Yes.

**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.

Response: Yes. While we agree there is a role for e-cigarettes as an alternative to tobacco, it is not appropriate for medicinal claims to be made for nicotine replacement products that do not have a marketing authorisation from the MHRA.

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

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

Response: GSK agrees with the inclusion and wording of this rule.

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

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

Response: GSK agrees with the inclusion and wording of this rule. It is important for non smokers, ex-smokers and smokers to know whether an e-cigarette contains nicotine.

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

Response: GSK agrees with the inclusion and wording of this rule. We would expect that visuals showing people deriving pleasure from or looking 'cool' or glamorous using e-cigarettes to be prohibited under this rule as explained above.

**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: GSK considers that this rule is proportionate. We would not consider the marketing of e-cigarettes to non-users of nicotine acceptable due to the societal connection between e-cigarettes and smoking and the concerns identified above.

### **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.

Response: GSK agrees with this proposal.

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

Response: GSK agrees with this proposal, however GSK agrees with CAP and BCAP that there could be responsible advertising executions which feature e-cigarettes in environments where alcohol is consumed.

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

Response: GSK agrees with this proposal, however GSK agrees with CAP and BCAP that there could be responsible advertising executions which feature e-cigarettes in a gambling environment.

### **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.

Response: GSK agrees with the inclusion of this rule. However GSK believes that advertisements should not be set in environments where you would not normally expect people to see someone smoking a cigarette, or where it is prohibited by law for example in an office environment, and therefore propose an amendment to the rule as follows:

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

**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: GSK does not foresee any other situations other than driving that warrant specific wording in this rule. Other situations like cycling would not be obviously used in advertising executions, and would be covered by the overall wording of the rule. GSK believes that advertisements should not be set in environments where using them is prohibited or where you would not expect people to see someone smoking a cigarette.

**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.

Response: GSK agrees to the inclusion of a rule stating that marketing communications / advertisements should not appeal to people under 18, however as GSK do not agree with showing people using e-cigarettes (see response to Questions 3 and 4), GSK proposes the deletion of 'shown using e cigarettes' in this rule as follows:

*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.*

**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.

Response: GSK agrees to the inclusion of this rule. However, we disagree with permitting people under 25 being shown in an incidental role apart from when shown as part of an anti-smoking message. The appearance of people under 25 conflicts with the principle in Rule 9 that advertisements should not feature or portray characters who are likely to appeal particularly to people under 18. This is because people under the age of 25 are likely to appeal to people under the age of 18, whether or not they are using the product. Engagement of people under 25 in an advertisement would sufficiently invoke the interest of those under 18 in e-cigarettes (including their appeal to people under 25), regardless of their role in the advertisement.

As GSK disagrees to showing use of e-cigarettes and the depiction of those under or seemingly under 25 in the advertising, GSK proposes amending the wording as follows:

*Rule 10: People ~~shown using e-cigarettes or playing a significant role in the advertising or marketing communication~~ must neither be, nor seem to be, under 25. People under 25 may **only** be shown in an incidental role ~~but must be obviously not using e-cigarettes~~ **if part of an anti-smoking message.***

**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.

Response: GSK does not agree with this rule and does not consider it necessary. Stating under 18s should not use a product, could have the opposite effect and encourage them to use it.

The rule could also undermine the important public health message of using nicotine replacement therapy to stop smoking. As licensed nicotine replacement products can currently be used by children from 12 years as stop smoking aids, and presumably this would also be the case for e-cigarettes that have a licence from the MHRA, stating that e-cigarettes are not suitable for under 18s could cause confusion, and consequently discourage the use of stop smoking aids such as e-cigarettes which have a marketing authorisation from the MHRA by adolescents.

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

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

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

Response: GSK agrees with the inclusion of this rule, however, GSK wishes to see the figure of '25%' reduced to '10%'. We appreciate the figure (25%) is based on the equivalent rule for alcohol.

GSK is keen that the rule is applied to digital media, as under 18s have extensive access to this media. One concern is advertising on social media sites such as **Twitter**. It is possible that under 18s would see advertising on **Twitter such as Promoted Trends or Tweets** even if advertising was targeted at over 18s. GSK seeks additional restrictions on digital media, and amending 25% to 10% may be a way to do this.

There are also certain advertising media where it is not possible to restrict the audience. We understand that it is not possible to put a restriction on transport media including trains, tubes, buses and bus shelters. This media also over-indexes on the proportion of under 18s that would see advertising. GSK seeks additional restrictions on this media and other media where it is not possible to restrict the audience, for example a prohibition of advertising, unless the product has a marketing authorisation from the MHRA. GSK proposes the following amendments to Rule 12:

Rule 12: *Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than ~~25~~**10**% of its audience is under 18 years of age or where it is not possible to restrict the audience such as public transport media except where the product has a marketing authorisation from the MHRA.*

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

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

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

...

#### 32.2.7 electronic cigarettes

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

Response: GSK agrees to this being included for e-cigarettes that do not have a marketing authorisation from the MHRA, therefore we propose the following amendment:

32.2.7 electronic cigarettes **that do not have a marketing authorisation from the MHRA**

## 10. 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.

Response: GSK agrees to all radio advertising for e-cigarettes being centrally cleared.

## 11. Additional questions

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

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

Response: GSK considers that the new rules should apply to e-cigarettes that do not contain nicotine, due the societal connection between e-cigarettes and smoking as discussed above.

**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: GSK considers that the proposed rules are adequate. GSK agrees with the proposal in Rule 5 to make it clear whether e-cigarettes do or do not contain nicotine.

### 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?

Response: GSK believes that the above rules should apply for e-cigarettes licensed as medicines (as well as those that would apply to medicines in the 'Treatments' section of the code), apart from the proposed restriction on health and medicinal claims, the additional restrictions in marketing communications proposed in the response to Question 20, and the amendment to the scheduling restrictions proposed in the response to Question 21.

GSK also believes that showing use of e-cigarettes may be appropriate in advertising for medicinal products where it was clear e-cigarettes could be used as a stop smoking aid or to reduce smoking.

---

### 11.3 Definition of electronic cigarette

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

Response: Yes.

### 11.4 Further comments

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

Response: Please refer to the response to Question 2 where additional rules regarding healthcare professional and celebrity endorsements are proposed.

In addition we believe that sampling of all e-cigarettes should be prohibited, as this could encourage non nicotine users to try these products. While the advertising codes themselves may not be able to prohibit the actual sampling activity, we seek a rule that prohibits any marketing communications/advertisements relating to sampling.

**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: No.



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

25<sup>th</sup> April 2014

## Hartlepool Smokefree Alliance

This response to the CAP and BCAP consultation document is submitted on behalf of the Hartlepool Smokefree Alliance. We are one of 12 localities in the North East, guided by Fresh NE, to tackle tobacco issues at a local level through implementing a comprehensive package of measures covering eight key strands of activity. These strands are designed to support three key objectives of motivating and supporting smokers to quit, protecting from secondhand and other tobacco related harm and to prevent the uptake of smoking.

The North East historically had the highest smoking rates in England with consequent impact on health inequalities. Hartlepool is an area of disadvantage with high smoking prevalence, particularly among routine and manual occupations

Through concerted efforts to reduce smoking the North East has achieved the biggest decline in adult smoking rates, with a fall from 29% in 2005 to 21% in 2011. Hartlepool had reduced prevalence to 23.5% until the latest survey revealed a sudden rise to 28.2% which we hope is a blip and not an upward trend.

## Relevant Facts

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

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

Latest estimates by Action on Smoking and Health (ASH) indicated that in 2013 there were 1.3 million current users of electronic cigarettes in the UK, and the number has continued to grow since then. This number is almost entirely made of current and ex-smokers; with perhaps as many as 400,000 people having fully replaced smoking with e-cigarette use.<sup>3</sup> In the North East, latest YouGov survey data suggests that around 13% of adults have tried e-

---

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

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

<sup>3</sup> Use of e-cigarettes in Great Britain among adults and young people (2013). ASH. London. May 2013. [http://www.ash.org.uk/files/documents/ASH\\_891.pdf](http://www.ash.org.uk/files/documents/ASH_891.pdf) accessed 2nd April 2014.

cigarettes. There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking.<sup>3</sup> However, this could change particularly if advertising and promotion of electronic cigarettes glamourises the use of these products and promotes their use to young people.

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

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

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

## **General Principles**

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

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

---

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

6. Electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.
7. It should be stressed that electronic cigarettes contain nicotine and nicotine is an extremely addictive substance.

## Answers to Consultation Questions

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

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

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

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

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

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

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

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

Suggested revised wording to rule 2 in bold

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Our suggestion for revised wording for rule 4 is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See links below for the ads in question:

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

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

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

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

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.<sup>5</sup> The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.<sup>6</sup>

---

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

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

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

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

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

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

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

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

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

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

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

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

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

---

<sup>7</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 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.**

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

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

### **Additional Questions**

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for the opportunity to respond to this consultation exercise.

HSE wish to draw your attention to one aspect of advertising regulation that currently applies to electronic cigarettes and similar products and which does not appear in your consultation document.

As electronic cigarettes are placed on the market and, in many cases, contain chemicals, they are subject to the existing chemical classification, labelling and packaging legislation.

Put simply, these laws require suppliers to classify their chemicals before placing them on the market; classification means identifying any intrinsic hazards. It should be noted that the classification of chemicals is a complex technical process. It may not be possible for a non-specialist to understand the requirements sufficiently to ensure compliance. Where this is the case suppliers should seek relevant expertise (suppliers include manufacturers, importers and downstream users).

Where there are hazardous properties, details of the hazard, together with warning symbols and phrases, and instructions for safe use, must appear on the packaging via hazard labelling. The classification criteria and the wording and symbols used for classification and labelling are agreed internationally, and can be enforced.

For some particularly hazardous chemical substances a mandatory 'harmonised' classification is established. Harmonised classifications are legally binding and must be used by suppliers when they classify mixtures containing such substances.

Nicotine, for example, has a harmonised classification which should be applied throughout the European Union.

The harmonised classification for the substance nicotine is as follows:

Chemical (Hazard Information and Packaging for Supply) Regulations 2009 (known as CHIP)

- Very Toxic (T+); Risk phrase R27 - Very toxic in contact with the skin
- Toxic (T): Risk Phrase R25 - Toxic if swallowed
- Harmful (N): Risk phrase R51/53 - Toxic to aquatic organisms, may cause long-term adverse effects in the aquatic environment

EU Regulation No 1272/2008 on the classification, labelling and packaging of substances and mixtures (known as CLP)

- Acute Toxicity Category 1: Hazard statement (H310) - Fatal in contact with the skin
- Acute Toxicity Category 3\*: Hazard statement (H301) - Toxic if swallowed
- Acute Chronic 2: Hazard statement (H411) - Toxic to aquatic life with long lasting effects

The classification of a mixture containing nicotine will depend on the concentrations involved and the other components involved.

The laws covering chemical classification, labelling and packaging are in transition. CHIP will apply to all chemical mixtures until 1 June 2015. CHIP will be repealed from that date when the directly acting EU CLP Regulation takes full legal effect. From 1 June 2015, suppliers placing a chemical mixture on the market (such as electronic cigarettes) must comply with this EU Regulation.

These laws apply to consumer products, as well as to those supplied for industrial and professional use. However, CHIP and CLP do not apply to: medicines, medical devices, cosmetics, veterinary medicinal products, waste, food or feeding stuff where specific legislation otherwise applies. The Medicines and Healthcare Products Regulatory Agency (MHRA) has announced its intention to regulate nicotine-containing products, including electronic cigarettes, as medicines.

So unless or until more specific requirements for electronic cigarettes enter into force, e.g. those planned by the MHRA, those responsible for placing electronic cigarettes on the market must comply with either CHIP or CLP.

### **Advertising provisions**

Both CHIP and CLP include provisions on advertising of a chemical/chemical product where a hazardous property has been identified (regulation 5A in CHIP as amended, and Article 48 of CLP). We would suggest these provisions do not generally apply to broadcast advertising however the area of telesales may be more complicated and the Broadcast Committee of Advertising Practice may have a view on this.

#### CHIP - regulation 5(A)

" *Advertisements for dangerous preparations*

5A. (1) *Subject to paragraph (2), a person who supplies a dangerous preparation shall not advertise that preparation, or arrange for the production of any such advertisement, unless mention is made in the advertisement of the type of hazard indicated on the label.*

(2) *Paragraph (1) shall apply only in respect of a dangerous preparation where the advertisement enables a person, otherwise than in the course of a business, to conclude a contract to purchase the dangerous preparation before that person has seen the label relating to the dangerous preparation.*

(3) *In this regulation, "supply" has the same meaning as it has in section 46 of the Consumer Protection Act 1987."*

4. *After regulation 14(1) insert—*

*"(1A) The maximum penalty for an offence under this regulation is—*

*(a) on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; and*

*(b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine or both."*

#### CLP - Article 48

" *Advertisement*

1. *Any advertisement for a substance classified as hazardous shall mention the hazard classes or hazard categories concerned.*

2. *Any advertisement for a mixture classified as hazardous or covered by Article 25(6) which allows a member of the general public to conclude a contract for purchase without first having sight of the label shall mention the type or types of hazard indicated on the label.*

*The first subparagraph shall be without prejudice to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts."*

In both cases, if a member of the public can purchase a dangerous (CHIP) or hazardous (CLP) chemical without having first sight of the label, then the advertisement must mention the type of hazards indicated on the label. Those responsible for placing electronic cigarettes on the market will need to consider carefully whether or not they have duties under the legislation described above and, if they do, ensure that they comply with the relevant advertising provisions. The appropriate classification, labelling and packaging of electronic cigarettes is the responsibility of the supplier and will depend on the chemicals present after classification has been done.

As is noted in the Consultation Document, the regulation of electronic cigarettes may be subject to change. If this is ultimately decided and more specific regulations are implemented, then CLP/CHIP will no longer apply. This is already the case if a supplier of an electronic cigarette chooses to licence the electronic cigarette as a medicinal device or cessation aid.

We are happy to advise further if this would be helpful.

International Chemicals Unit

Health and Safety Executive

GSW, Rose Court

2 Southwark Bridge

London SE1 9HS

UNITED KINGDOM

# Consultation on the marketing of e-cigarettes

CAP and BCAP proposals for new rules

Submission by Heart of Mersey  
22 April 2014



# About Heart of Mersey

Heart of Mersey is a heart health charity based in Liverpool. It is England's largest regional cardiovascular (heart disease and stroke) disease prevention programme, which became a registered charity in 2005.

Heart of Mersey is a part of the Health Equalities Group health and wellbeing alliance. We believe that health inequalities that are preventable by reasonable measures are unfair and that putting them right is a matter of social justice. We do this through research, lobbying and the delivery of practical health and wellbeing projects to promote health and wellbeing.

Reducing tobacco use is key to reducing health inequalities. We provide a number of services to tackle tobacco including:

- Advocacy and campaigning
- Training for health and social care staff including brief interventions
- Multicomponent interventions including *Today I Can* and *Breathe Free – Feel Good*
- Research and evaluation
- Smokefree policies and guidance
- Award-winning, settings-based, approaches to tobacco control including smokefree play areas and Smokefree Squads

Heart of Mersey's Chief Executive is Robin Ireland has worked at national and international level including as a Guidance Developer in the NICE CVD prevention guidance issued in 2010 and is currently a member of a NICE Public Health Advisory Committee on preventing dementia, disability and frailty.

---

Heart of Mersey  
Health Equalities Group  
2nd floor  
151 Dale Street  
Liverpool  
L2 2JH

Telephone: 0151 237 2686  
Email: [info@hegroup.org.uk](mailto:info@hegroup.org.uk)  
Website: [www.hegroup.org.uk](http://www.hegroup.org.uk)  
Twitter: @HealthEqualGrp

# Electronic cigarettes

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

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

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

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

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

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

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

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

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

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



# Our response

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

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

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

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

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

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

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

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

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

---

<sup>1</sup> Scollo MM and Winstanley MH (2012) Tobacco in Australia: Facts and issues. Available from [www.TobaccoInAustralia.org.au](http://www.TobaccoInAustralia.org.au)

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

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

E-cigarette brands are or will be produced and promoted by tobacco manufacturers. Therefore it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heart of Mersey agrees with this rule.

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

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

Heart of Mersey agrees with this rule.

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

---

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

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

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

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

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

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

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

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

Heart of Mersey agrees with this rule.

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

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

Heart of Mersey agrees with this rule.

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

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

Heart of Mersey agrees with this rule.

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

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

Heart of Mersey agrees with this rule.

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

### **Additional questions**

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

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

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

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

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

## E-cigarettes which are licensed as medicines

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

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

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

## Definition of electronic cigarette

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

That definition is as follows:

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

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

Heart of Mersey agrees with the definition.

## Further comments

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

Heart of Mersey believes that advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children. This information could be

included within our recommendation to strengthen Rule 5 and placed alongside the 'E-cigarettes contain nicotine, which is highly addictive' amendment.

Please see recent news reports:

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

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

Heart of Mersey believes that the proposed rules must apply to social media advertising.

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



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

28 April 2014

## About Action on Smoking and Health

This response to the CAP and BCAP consultation document is submitted on behalf Hertfordshire Tobacco Control Strategy Group and Hertfordshire Public Health Service. We have agreed and discussed ASH's response to this consultation and amended where our views have differed.

ASH estimated that in March 2014 there were 2.1 million current users of electronic cigarettes in the UK, a tripling of the number of users since 2012. This number is almost entirely made of current and ex-smokers; with perhaps as many as 700,000 people having fully replaced smoking with e-cigarette use. **Error! Bookmark not defined.** There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a "gateway" to smoking. **Error! Bookmark not defined.** However, this could change particularly if advertising and promotion of electronic cigarettes glamorises the use of these products and promotes their use to young people.

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

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

## Answers to Consultation Questions

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

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

---

<sup>1</sup> MHRA. The Blue Guide: Advertising and Promotion of Medicines in the UK. Third Edition. August 2012. <http://www.mhra.gov.uk/home/groups/pl-a/documents/publication/con2022589.pdf> accessed 11th April 2014

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

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

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

Revise rule 1 to read (revisions in bold):

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

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

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

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

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

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

Advertising must contain reference for the need to follow instructions given with the product in terms of use and storage of e-cigarettes, refill containers, chargers and other nicotine containing products. Reference should also be made to the requirement to keep the products out of the reach of children and pets.

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

This should be strengthened to ensure that the requirements of the Tobacco Brand-sharing Regulations are complied with. There is, we believe, the potential for the advertising of products to promote existing tobacco products by virtue of the use of certain design, colour, imagery, logos or styles that creating an association with or confusion with an existing tobacco product.

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

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

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

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

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

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

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

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

The definition of an e-cigarette is difficult. The use of the term is widespread and encompasses a range of products. We believe that the use of the term “cigarette” encourages the belief that the product is smoked which it is not and any descriptor that suggests a link to traditional cigarette use is to be avoided. There is a growing use of the term ‘vapouriser’ for such products where the product is ‘vaped’. To describe the products in this way may be preferable and thus avoid any confusion with cigarettes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.<sup>2</sup> The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.<sup>3</sup>

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

---

<sup>2</sup> Robinson S & Bugler C. [Smoking and drinking among adults](#), 2008. General Lifestyle Survey 2008. ONS, 2010.

<sup>3</sup> [Opinions and Lifestyle Survey, Smoking habits amongst adults, 2012](#). ONS, Sept. 2013

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

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

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective.<sup>4</sup> We would prefer a revised set of rules, on the principles set out above, which inter alia require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

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

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

We agree with the inclusion and wording of this rule

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

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

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

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

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

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

### **Additional Questions**

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

---

<sup>4</sup> American Legacy Foundation, Getting to the Truth: Assessing Youths' Reactions to the Truth and 'Think. Don't Smoke' Tobacco Countermarketing Campaigns, First Look Report 9, June 2002. Sly, D & Heald, G, Florida Antitobacco Media Evaluation (FAME) Follow-up Report, February 2001. Teenage Research Unlimited, "Counter-Tobacco Advertising Exploratory," Summary Report, January-March 1999.

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

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

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

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

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

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

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

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

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

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

On behalf of Hertfordshire Tobacco Control Strategy Group and Hertfordshire Public Service

Good afternoon

Please find attached responses from Hull Alliance on Tobacco, our main response is that of ASH accompanied by a response from our local Hull and East Riding Stop Smoking Service.

## City Health Care Partnership CIC

### Hull and East Riding Stop Smoking Service

#### Comments/suggestions

Pg 1 'Relevant Facts' Item 3 – Should read – *'Electronic cigarettes are therefore **anticipated to be less harmful than smoked tobacco.***

Pg 2 'General Principles' Item 3 – Why is the phrase **'As far as possible'** included at the beginning of the sentence? This is un-necessary and may provide a 'get out' option for those still wishing to advertise the Electronic cigarette as a 'way around the smoking ban'.

Pg 3 Q2 Item 2 first sentence – take out the word *'consumption'* and replace with *'use of'* – *The whole of the first sentence should be re-worded as is isn't making much sense as it stands.*

I would suggest that to be advertising responsibly in respect of Electronic cigarettes being an alternative to tobacco there should be reference to potential users of 'e' cigarettes being directed into local stop smoking services to optimise their potential for a positive outcome. An example of this could be – 'You are up to 5 times more likely to quit for good with support from your local stop smoking service'. Either the national number could be included at this point or the customer directed to their GP practice for details.

Pg 3 Q2 Item 3 – Safe storage should also include 'Pets/Animals'.

Pg 4 Rule 5 – Final sentence should read – *'they should (or preferably 'must') include factual information about other product ingredients'*

Pg 5 Q 11 – I have concerns about advertising in respect of 'non-users' – anecdotal evidence supports that both 'verbal' and 'non-verbal' advertising has encouraged non-users of nicotine to try Electronic Cigarettes for recreational purposes. This has included reported episodes when members of the public who have 'never smoked' have been approached in the street and offered 'samples' to 'try it because it just has a nice taste, is available in a variety of flavours and will make you feel good'.

Pg 5 Q12,13&14 - Allowing advertising showing the use of 'e' cigarettes in places where Drinking/Gambling are taking place suggests that it is acceptable. It is a fact that the vapour emitted from 'e' cigarettes contains carcinogenic material (Ref: UKNSCC 2013) between X9 – 450 less than combustible tobacco containing products and therefore it is irresponsible to subject others to this 'vapour' in enclosed spaces. Additionally the actual contents of the 'vapour' are currently unknown on a 'product by product' basis and until regulation has taken place for the health and safety of others this practice should not be shown as 'acceptable' in the interests of socially responsible advertising.



Pg 7 Q19 – I may have missed something here but should 'Pregnant Women' not be included in this somewhere? Many pregnant women are buying 'e' cigarettes immediately they see a 'blue line' on a pregnancy testing kit and often from the same Pharmacy from which they purchased their 'kit'! It should be clear on any form of advertising that 'e' cigarettes are not suitable for use by pregnant women.