

AA Response:

CAP consultation on the advertising of electronic cigarettes

1. The Advertising Association promotes the role, rights and responsibilities of advertising and its impact on individuals, the economy and society. We bring together companies that advertise, their agencies, the media and relevant trade associations to combine strengths and seek consensus on the issues that affect them.
2. We welcome the opportunity to respond to the CAP consultation on new rules and guidance on the advertising of e-cigarettes, following the Tobacco and Related Products Regulations coming into effect earlier this year.
3. We welcome the work CAP has undertaken to reflect the legal prohibitions contained in the Tobacco and Related Products Regulations (TRPR) in the Advertising Code in clear language, and support the proposed amendments to the Code set out in the consultation.
4. The EU referendum has caused uncertainty for UK businesses, and political and regulatory stability must be a key priority. The Advertising Codes derive many of their rules from EU laws which provide a basis of consumer protection and it would not make sense to repeal them. There are however longer term opportunities for the Government to conduct a “red tape review” of regulatory burdens that restrict business freedoms while failing to protect consumer interests, as long as this does not jeopardise relations with other European markets.
5. The restrictions on e-cigarette advertising resulting from the Tobacco Products Directive are a possible candidate for a red tape review. The TRPR prohibits e-cigarette advertising in local newspapers and other media that do not cross borders but allow advertising in a printed leaflet that might be distributed in the same way to the same recipients in the same area. This is an inconsistent approach to regulation and restricts the freedom of expression.
6. There also do not appear to be public health arguments to justify the advertising prohibitions in print publications. An [expert independent evidence review](#) published in August 2015 by Public Health England concluded that e-cigarettes are significantly less harmful to health than tobacco and have the potential to help smokers give up smoking. Key findings included that the current best estimate is that e-cigarettes are around 95% less harmful than smoking and that nearly half the population (44.8%) don't realise e-cigarettes are much less harmful than smoking.
7. The immediate priority following the referendum must be regulatory and political stability. There is however a longer-term opportunity to establish a domestic post-Brexit regulatory framework that ensures high levels of consumer protection without placing unnecessary burdens on business.



ACS Submission: Consultation on the advertising of electronic cigarettes

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to Committee of Advertising Practices consultation on the advertising of e-cigarettes. ACS is a trade association, representing the 50,095 convenience stores trading at the heart of the communities across the UK, which employ 390,000 people (see annex A for more details). Members include the Co-Op, One Stop, Costcutter Supermarkets, Spar UK and thousands of independent retailers.

Convenience retailers sell a range of grocery products and provide a number of services to their local communities, including Post Offices, free to use ATMs, bill payments services, and parcel collection. Collectively, tobacco and e-cigarettes make up, on average, 15.4% of sales in the convenience sector. E-cigarettes are still a new and growing product category in the convenience sector, and ACS has previously welcomed regulations, such as the introduction of a minimum age of sale, to ensure the correct management of the category.

The introduction of the EU Tobacco Products Directive will mean a number of operational changes for convenience retailers who sell tobacco and e-cigarettes. As well as ensuring they comply with the e-cigarette advertising restrictions, retailers will also have to ensure that they only sell e-cigarettes with a health warning, e-cigarettes with no more than 20mg/ml of nicotine (unless licensed as medicines), and e-cigarette refills with no more than 10ml. To aid retailers with the transition to the new regulations, ACS produced “Standardised Packaging and Tobacco Product Directive” best practice guidance, which can be found [here](#) for reference.

Convenience store retailers will predominately advertise e-cigarettes at point-of-sale in-store which is not restricted by the regulations. While we understand that point-of-sale advertising is not within the remit of the CAP code, the consultation document sets out a list of what non-broadcast media channels which are unaffected by the new regulations. We would welcome clarification in the accompanying guidance or within the CAP code that point-of-sale e-cigarette advertising is not prohibited by law to ensure there is no miscommunication to retailers regarding the changes to legislation. We would also welcome clarification where an advert is not prohibited but it is within the remit of the CAP/BCAP codes, it still has to comply with the code.

The ACS Local Shop Report 2016 suggests that 24% of convenience retailers have a store website, with 22% using Facebook, and 18% using Twitter to advertise their store and the products they sell¹. As well as e-cigarette manufacturers and e-cigarette retailers who solely sell e-cigarettes, convenience store retailers will also be affected by the changes to the e-cigarette advertising legislation and the changes being made to the CAP code. ACS is willing to work with CAP and BCAP on the drafting of their guidance on the changes in e-cigarette advertising regulations, and on how it can be best communicated to retailers to ensure compliance.

¹ ACS Local Shop Report 2016

Please see below for ACS' response to the relevant consultation questions:

- 1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.**

We agree that CAP's definition of e-cigarettes and the advertising prohibitions are consistent with the law.

- 2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine containing e-liquid? If not, please explain why.**

Prohibiting advertisements for non-nicotine and refillable products would provide simplicity to the regulations, however, we do not believe that non-nicotine products should be prohibited if they indirectly promote e-cigarettes containing nicotine, for example, using the name of the brand to describe the product. We believe not displaying the brand name of the product online could cause consumer and retailer confusion.

- 3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why.**

We agree that the list is consistent with the law.

- 5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.**

We agree that the list of prohibited marketing communications for nicotine containing e-cigarettes is consistent with the law. We would welcome clarification in CAP's accompanying guidance whether it would be the retailer stocking the magazines which includes an e-cigarette advertisement or the publication, or both, that would be making the offence.

- 6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above. Do you agree that this proposal is consistent with the law? If not, please explain why**

We agree that CAP's proposal to prohibit advertisements in information society services is consistent with the law.

- 9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.**

We agree that permitting factual claims on marketers' own websites is consistent with the law. We welcome the clarity that the Committee of Advertising Practices' guidance will provide around the definition of factual claims and promotional statements.

The ACS Local Shop Report suggests that 24% of convenience store retailers have websites for their store². While the consultation document sets out that it would be permitted for marketers' websites to display factual information about e-cigarettes, we would call for clarity for the restrictions for retailers' websites. For example, to our understanding it would be permitted for a retailer to list factual information about an e-cigarette product on a designated page about e-cigarette products, but it would not be permitted to display e-cigarette information on the retailer's website home page as the consumer may not be actively seeking e-cigarette information by visiting a retailer's website?

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

We agree that the list of types of claim are factual in nature and therefore permitted. The line between promotional and factual is challenging, and therefore, we welcome the list that CAP has drafted. However, as outlined in the consultation document, the Advertising Standards Authority (ASA) Council's decision to determine if an advert is factual or promotional is not bound by the CAP guidance. As such, types of claim listed by CAP will be determined on a case by case basis. Where a claim is listed as permitted in CAP, could in fact be prohibited by ASA.

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

We agree that the claims set out by CAP are likely to be promotional in nature and would be prohibited under the Tobacco Products Directive. However, as outlined in the consultation document, the Advertising Standards Authority Council's decision to determine if an advert is factual or promotional is not bound by the CAP guidance. As such, types of claim listed by CAP will be determined on a case by case basis. Where a claim is listed as permitted in CAP, could in fact be prohibited by ASA.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why. Please provide any examples and evidence you might have in support of your response.

In principle, social media pages for e-cigarette manufacturers may be capable of meeting the criteria as set out in section A.5.1. However, we do not believe the social media pages of e-cigarette marketers' who sell other products (not related to e-cigarettes) such as convenience retailers' would meet the criteria. Websites and social media pages hosted by e-cigarette manufacturers and retailers who solely sell e-cigarettes will typically be used by consumers to find out more information about e-cigarette products, while convenience retailers' websites and social media pages will not, as they sell other products.

Moreover, the use of hashtags on social media, means that a consumer may discover a status update/post by an e-cigarette marketer when they were not actively seeking information about e-cigarettes.

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

While we understand that point-of-sale advertising is not within the remit of the CAP code, the consultation document sets out a list of what non-broadcast media channels which are unaffected by the new regulations. We would welcome clarification in the accompanying guidance or within the CAP code that point-of-sale e-cigarette advertising is not prohibited by law to ensure there is no miscommunication to retailers regarding the changes to legislation.

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

The revised wording in Section 22 is consistent with the legislation.

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended.

The revised wording in Section 22.12 is consistent with the legislation.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine containing e-cigarettes that are not authorised as medicines?

We agree that most of the criteria listed would provide a workable framework for identifying marketing communications that are likely to indirectly promote nicotine containing e-cigarettes, however, we do not agree that the brand name or range name should be restricted when advertising non-nicotine e-cigarette products.

A number of e-cigarette manufacturers produce both nicotine containing e-cigarettes and non-nicotine containing cigarettes. As outlined in the consultation document, non-nicotine containing cigarettes would not be permitted to include their brand name if it is associated with nicotine products. To our understanding, this would mean that any non-nicotine e-cigarettes which are produced by a manufacturer who produces nicotine containing e-cigarettes would not be permitted to display the brand name online. We believe this could provide confusion for both retailers and consumers, for example, how would a consumer be able to distinguish between brands when purchasing an e-cigarette product online? As such we believe that non-nicotine products should be permitted to have their brand name displayed online as long as it is not promotional in nature (such as names which include product claims).

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

Yes, CAP should allow advertisements for e-cigarette retailers as long as they do not refer to products which cannot be advertised. E-cigarette retailers are not only retailers which solely sell e-cigarettes, but are also convenience stores. Convenience retailers should be allowed

to promote their store, and the wide range of products they offer, as long as they do not advertise an e-cigarette product which is prohibited.

For more information on this submission, please contact Julie Byers, ACS Public Affairs Executive at Julie.Byers@acs.org.uk or call 01252 515001.

CAP Consultation on the advertising of electronic cigarettes – ASH Scotland response

October 2016



Introduction

ASH Scotland is the independent Scottish charity taking action to reduce the harm and inequality caused by tobacco. Our activities include an expert information service, campaigning for political action on tobacco and health, supporting community groups to help their service users affected by tobacco use, building public support and awareness for making Scotland free from tobacco and supporting charities, enforcement agencies, the NHS and others to contribute to achieving that goal. ASH Scotland does not have any direct or indirect links to, or receive funding from, the tobacco industry.

1. Do you agree that CAP’s proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.

Yes, we agree.

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine containing e-liquid? If not, please explain why.

Yes, we agree. This provision is necessary to prevent the advertisement of nicotine-containing products through brand-sharing.

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why.

Yes, we agree.

4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

It is the intention of the regulations that the use of brand-sharing arrangements, involving the advertising of nicotine-free products as a proxy for nicotine-containing products, would not be permitted. Clear guidelines should be produced to prevent the misuse of advertising in this way.

5. CAP’s proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

Yes, we agree.

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above. Do you agree that this proposal is consistent with the law? If not, please explain why.

Yes, we agree.

7. Are there any types of media that you consider to be information society services which are not referenced above?

Communication apps, including (but not limited to) Snapchat, Whatsapp, Facebook Messenger and Telegram, could be used in a similar manner to text or email messaging and should be included in this statement.

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

No.

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

Yes, we agree, as long as the guidance note is sufficiently clear.

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

Yes, we agree. However, the restriction on promotional naming should apply to flavours as well as devices, and a guidance note on how this will be determined may be appropriate.

11. Are there any other claims / types of claims you consider are factual in nature should appear on this list?

No.

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

Yes, we agree.

13. Are there other types of generic claims that should be included in this list?

Comparative claims with cigarettes or other tobacco products.

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

No.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why. Please provide any examples and evidence you might have in support of your response.

Yes, we agree.

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

At present these media channels are not restricted, although regulations in Scotland covering these areas are expected to come into force within the next two years.

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

Yes, we support this wording.

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended.

Yes, we support this wording.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines?

Yes, they do.

20. Are there any criteria you consider should be added to the list?

No.

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

Advertising for any specialist e-cigarette retailer would be likely to have the effect of promoting the use of e-cigarettes indiscriminately. Therefore, we believe that the guidelines' restrictions should apply to these advertisements as well.

22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

We do not agree, for the reasons set out in our response to Q21.

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why

We agree.

24. Do you have information or evidence which can inform CAP and BCAP’s future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

This is a complex and controversial area of research, and as yet there are no clear answers to the question of e-cigarette efficacy as a tool for quitting smoking. A recent Cochrane Review on the subject of using e-cigarettes to stop smoking found that, while the devices did not pose a risk with two years’ use, and there was some evidence that they were useful, there is not yet enough evidence to make a clear judgement in this area. For that reason, advertising claims about using e-cigarettes to quit smoking should not be permitted.

However, we believe that there is now clear evidence that e-cigarettes are considerably less harmful than tobacco. For that reason, justifiable statements of relative risk – stating that electronic cigarette use does not present the same risks as smoking when used instead of tobacco – should, in our view, be permissible.

25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why.

Yes, we agree.

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

The most important feature of these rules is clarity for businesses, for enforcement agents and for other stakeholders.

Action on Smoking & Health (Scotland) (ASH Scotland) is a registered Scottish charity (SC010412) and a company limited by guarantee (Scottish company no 141711)



ASH Wales Cymru consultation response - Consultation on the advertising of electronic cigarettes

About ASH Wales Cymru

ASH Wales is the only public health charity in Wales whose work is exclusively dedicated to tackling the harm that tobacco causes to communities. Further information about our work can be found at <http://www.ashwales.org.uk/>

We are engaged in a wide range of activities including:

- Advocating for tobacco control public health policy
- Undertaking tobacco control research projects
- Training young people and those who work with young people to provide factual information about the health, economic and environmental effects of smoking
- Engaging young people and professionals working with young people through the ASH Wales Filter project
- Bringing health information and advice to the heart of the community

We also oversee the Wales Tobacco or Health Network (a network of over 300 individual members) and the Wales Tobacco Control Alliance (an alliance of 35 voluntary and professional bodies in Wales), providing forums for sharing knowledge and best practice.

ASH Wales has no direct or indirect links with, and is not funded by, the tobacco industry.

General observations

Whether or not the current regulatory framework surrounding electronic cigarettes (e-cigarettes) provides the right balance between permitting some

advertising to adult smokers and protecting children and non-smoking adults from promotion, which may have adverse consequences, remains to be seen and needs to be monitored. ASH Wales believes that where flexibility can be exercised in order to allow adult smokers access to marketing material such as pricing and product information, including generic information about relative risk, it should.

Consultation questions (Q) and answers (A)

Q1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.

A1. Yes

Q2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why.

A2. Yes

Q3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why.

A3. Yes

Q4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

A4. No

Q5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

A5. Yes

Q6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why.

A6. Yes

Q7. Are there any types of media that you consider to be information society services which are not referenced above?

A7. No

Q8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

A8. No

Q9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

A9. Yes

Q10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

A10. Yes

Q11. Are there any other claims / types of claims you consider are factual in nature should appear on this list?

A11. Yes

ASH Wales believes generic statements about relative risk should be allowed provided these are based on robust, substantiated, evidence. This could include statements along the lines of "electronic cigarette use is considered by Public Health England and the Royal College of Physicians to be much less harmful than smoking" and could link to the Public Health England and the RCP evidence that signifies this.

We believe such generic statements of relative risk are essential given the growing misperceptions of the relative risks of vaping and smoking. The ASH Smokefree Great Britain Survey found that between 2013 and 2016 the perception of harm from e-cigarettes has changed. The general public and smokers are increasingly failing to recognise that e-cigarettes are less harmful than smoking. In 2016 only 15% of adults correctly identified that e-cigarettes are a lot less harmful than smoking whereas 21% correctly identified they were a lot less harmful than smoking in 2013. In addition, more than three times as many people in 2016 than in 2013 think they are as harmful or more harmful than smoking.

We also asked smokers who've never tried an e-cigarette why they hadn't (respondents could choose multiple options). Concerns about potential harms were the most commonly cited reason. It is notable that a quarter of respondents were also concerned about 'substituting one addiction for another' – this could indicate some misunderstanding about the relative harm from nicotine. Those smokers who haven't yet tried an e-cigarette are also more likely to have poor understanding of the harms from nicotine than smokers who have tried e-cigarettes. Only 8% of smokers who haven't tried an e-cigarette correctly state that nicotine's contribution to the risk from smoking is none or very small, whereas 44% wrongly believe it is at least half the risk or more.

These misperceptions potentially discourage smokers who might otherwise switch to vaping from doing so, or where they have switched make it more likely that they continue dual use; and may make it more likely that vapers who have quit using e-cigarettes revert back to smoking.

Q12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

A12. Yes

Q13. Are there other types of generic claims that should be included in this list?

A13. No

Q14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

A14. No

Q15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

A15. Yes

Q16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

A16. Yes

Q17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

A17. No.

The second sentence of the last paragraph of section 22 is unclear and we do not understand what is meant by it. In particular the MHRA is both the agency responsible for medicines licensing and for overseeing regulation of e-cigarettes under the EU Tobacco Products Directive. In this sentence the distinction is not completely clear as it refers to products "which are authorised by the MHRA". In addition there is a typo in the third line which says "sections" plural when it should be 'section' singular. We believe it would be clearer to change this to read "Rule 22 applies to both electronic cigarettes which come under the EU Tobacco Products Directive and those authorised as medicines, except where there is a carve out for medicines in rules 22.5 and 22.12."

Q18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended.

A18. No.

In the second bullet 'Online media and some other forms of electronic media' the meaning of 'some other forms of electronic media' is unclear - what these other forms of media are needs to be specified.

Q19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines?

A19. Yes.

Q20. Are there any criteria you consider should be added to the list?

A20. No.

Q21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

A21. Yes.

Q22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

A22. Yes.

Q23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why.

A23. Yes.

Q24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

A24. See above answer to Q11. In order to address the serious misperceptions about relative risk we believe that it is essential that generic statements about the relative risk can be made. If these were considered to be "substantiated health claims" then we would consider that this should be allowed by CAP and BCAP. The sort of claim that should be allowed, as stated above in answer to Q11, should be along the following lines, that "electronic cigarette use is considered by Public Health England and the Royal College of Physicians to be much less harmful than smoking" and should link to Public Health England and the RCP statements to this effect. This would require also the words "health or" to be removed from Rule 33.5.

Q25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why.

A25. Yes.

Q26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

A26. Yes

There are two types of concern raised about e-cigarette advertising. On the one hand there is a concern that restricting it will impede uptake by smokers. However, awareness of e-cigarettes is widespread among adults. The ASH Smokefree GB Survey 2016 survey (carried out in March prior to implementation of the Directive) found that 96% of smokers and 93% of the general population had heard of e-cigarettes. Knowledge of e-cigarettes grew rapidly at a time when advertising of these products was not widespread.

On the other hand concerns have also been raised about e-cigarette advertising encouraging youth smoking uptake and use by adult never smokers and this is one of the reasons why some forms of e-cigarette advertising were prohibited in the EU Tobacco Products Directive.

The most recent Health Behaviour in School-aged Children (HBSC) study undertaken in Wales in 2013/14 found 4% of 11 to 15 year olds smoked at least once a week, which represents a fall from the 6% figure observed for 11 to 15 year olds in 2009/10. For 15/16 year olds specifically, 8% of boys and 9% of girls were reported to smoke at least once a week in 2013/14 compared to 9% of boys and 14% of girls in 2009/10. Hence, since 2010, the year e-cigarette sales first really began to take off, smoking prevalence among young people in Wales has declined.

Each year ASH Wales undertakes a survey aiming to ascertain information on the use of e-cigarettes among young people in Wales. All surveys to date have shown regular e-cigarette use among 11 to 18 year olds in Wales to be confined to smokers and ex-smokers, with regular use of e-cigarettes among never smokers very rare. Furthermore, a recent report carried out for Cancer Research UK which reviewed the evidence of the impact of e-cigarette advertising on children found research showed low brand awareness in the UK, and that susceptibility to tobacco smoking appeared to be no different for children who had been exposed to e-cigarette advertising than those who hadn't.

With respect to adults, the majority of existing research shows that use of the e-cigarettes is confined to current and ex-smokers, with use amongst never smokers negligible. This situation has not changed since 2012.

ASH response: Consultation on the advertising of electronic cigarettes

CAP and BCAP's proposals for changes to their Codes and guidance in response to the Tobacco Products Directive taking effect in the UK

Issue date: 29/09/2016

Closing date: 31/10/2016

Introduction

ASH is a public health charity set up by the Royal College of Physicians in 1971 to advocate for policy measures to reduce the harm caused by tobacco. ASH receives funding for its full programme of work from the British Heart Foundation and Cancer Research UK. It has also received project funding from the Department of Health to support tobacco control. ASH does not have any direct or indirect links to, or receive funding from, the tobacco industry.

Whether or not the current regulatory framework provides the right balance between permitting some advertising to adult smokers and protecting children and non-smoking adults from promotion, which may have adverse consequences, remains to be seen and needs to be monitored. ASH believes that where flexibility can be exercised in order to allow adult smokers access to marketing material such as pricing and product information, including generic information about relative risk, it should.

Answers to Questions

Part A: CAP's proposal to approximate the advertising prohibitions in the Tobacco and Related Products Regulations 2016 in the CAP Code

A.2 Products for which advertisements are prohibited

In media subject to the regulations:

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why. YES

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why. YES

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why. YES

4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited? YES

A.3 Prohibition on advertising in newspapers and magazines

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why. YES

A.4. Prohibition on advertising in online media and some other electronic media

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why. YES

7. Are there any types of media that you consider to be information society services which are not referenced above? NO

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service? NO

A.5. Prohibition on promotional claims on retailers' websites

CAP considers that the following types of claims are likely to be factual in nature and therefore, all other things being equal, permitted under the Code:

- the names of products (so long as the names are not promotional in nature, for example names which include product claims)
- descriptions of product components including, where applicable, the opening and refill mechanism
- price statements (however, see "promotional marketing" below)
- instructions as to how products can be used
- product ingredients
- flavours
- nicotine content

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why. YES

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why. YES

11. Are there any other claims / types of claims you consider are factual in nature should appear on this list? YES

Generic statements about relative risk should be allowed, along the lines that "*electronic cigarette use is considered by Public Health England and the Royal College of Physicians to*

be much less harmful than smoking” and should link to Public Health England¹ and the RCP² statements to this effect.

We believe such generic statements of relative risk are essential given the growing misperceptions of the relative risks of vaping and smoking. The ASH Smokefree Great Britain Survey³ found that between 2013 and 2016 the perception of harm from electronic cigarettes has changed. The general public and smokers are increasingly failing to recognise that electronic cigarettes are less harmful than smoking. In 2016 only 15% of adults correctly identified that electronic cigarettes are a lot less harmful than smoking whereas 21% correctly identified they were a lot less harmful than smoking in 2013. In addition, more than three times as many people in 2016 than in 2013 think they are as harmful or more harmful than smoking.

We also asked smokers who've never tried an e-cigarette why they hadn't (respondents could choose multiple options). Concerns about potential harms was the most commonly cited reason. It is notable that a quarter of respondents were also concerned about “substituting one addiction for another” – this could indicate some misunderstanding about the relative harm from nicotine. Those smokers who haven't yet tried an electronic cigarette are also more likely to have poor understanding of the harms from nicotine than smokers who have tried electronic cigarettes. Only 8% of smokers who haven't tried an electronic cigarette correctly state that nicotine's contribution to the risk from smoking is none or very small, whereas 44% wrongly believe it is at least half the risk or more.

These misperceptions potentially discourage smokers who might otherwise switch to vaping from doing so, or where they have switched make it more likely that they continue dual use; and may make it more likely that vapers who have quit using electronic cigarettes revert back to smoking.

CAP considers that the following types of claims and activities are likely to be promotional in nature and therefore prohibited:

- **descriptive language that goes beyond objective, factual claims, for example the use of adjectives**
- **promotional marketing, as defined in Section 8 of the CAP Code. Promotional marketing can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A non-exhaustive list of sales promotions includes: "two for the price of one" offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws.**
- **significant imagery that is not related to the product.**
- **comparative claims with other e-cigarette products or the general market.**

Once finalised, CAP intends to set out these lists in a guidance note accompanying the Code rule prohibiting advertisements in online media.

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why. YES

13. Are there other types of generic claims that should be included in this list? NO

¹ Public Health England. E-cigarettes: an evidence update. [PHE publications gateway: 2015260](#). 28 August 2015.

² RCP. [Nicotine without smoke: Tobacco harm reduction](#). London. RCP 2016.

³ ASH. Use of electronic cigarettes (vapourisers) among adults in Great Britain. London. May 2016.

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional? NO

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

YES ASH recommends that CAP should take the position that sharing is not a function of the business - provided that it does nothing to encourage sharing (for example by urging people to "Like and share this message" in order to receive some kind of incentive). The content of social media should be informational and not promotional, but if it pops up in the timeline of someone who has not sought it out, that is a function of the public response, and not of the business itself. This would avoid the need for overly restrictive 'privacy options'.

A.6. Non-broadcast media channels not subject to TRPR

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why. YES

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended. NO

Answer: The second sentence of the last paragraph of section 22 is unclear and we do not understand what is meant by it. In particular the MHRA is both the agency responsible for medicines licensing and for overseeing regulation of electronic cigarettes under the EU Tobacco Products Directive. In this sentence the distinction is not completely clear as it refers to products "which are authorised by the MHRA". In addition there is a typo in the third line which says "sections" plural when it should be 'section' singular. We believe it would be clearer to change this to read "*Rule 22 applies to both electronic cigarettes which come under the EU Tobacco Products Directive and those authorised as medicines, except where there is a carve out for medicines in rules 22.5 and 22.12.*"

A.7 Proposed changes to the CAP Code

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended. NO

Answer: In the second bullet 'Online media and some other forms of electronic media' the meaning of 'some other forms of electronic media' is unclear – what these other forms of media are needs to be specified.

Part B: Other issues relevant to both the CAP and BCAP Codes

B.1 Preventing indirect promotion of nicotine-containing e-cigarettes

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines? YES

20. Are there any criteria you consider should be added to the list? NO

In media subject to the Regulations:

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised? YES

22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why. YES

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why. YES

B.2. Ongoing suitability of current CAP and BCAP content, placement and scheduling rules

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

See above answer to Q11. In order to address the serious misperceptions about relative risk we believe that it is essential that generic statements about the relative risk can be made. If these were considered to be "substantiated health claims" then we would consider that this should be allowed by CAP and BCAP. The sort of claim that should be allowed, as stated above in answer to Q11, should be along the following lines, that "*electronic cigarette use is considered by Public Health England and the Royal College of Physicians to be much less harmful than smoking*" and should link to Public Health England¹ and the RCP² statements to this effect. This would require also the words "health or" to be removed from Rule 33.5.

25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why. YES

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements? YES

There are two types of concern raised about electronic cigarette advertising. On the one hand there is a concern that restricting it will impede uptake by smokers. However, awareness of electronic cigarettes is widespread among adults. The ASH Smokefree GB Survey 2016 survey (carried out in March prior to implementation of the Directive) found that 96% of smokers and 93% of the general population had heard of electronic cigarettes. Knowledge of electronic cigarettes grew rapidly at a time when advertising of these products was not widespread.

On the other hand concerns have also been raised about electronic cigarette advertising encouraging youth smoking uptake and use by adult never smokers and this is one of the reasons why some forms of electronic cigarette advertising were prohibited in the EU Tobacco Products Directive.

The most recent Smoking Drinking and Drug Use survey, of attitudes and behaviour towards smoking among young people aged 11-15 in England, found the lowest recorded smoking rates among children since records began in 1982. It's worth noting that rates have continued to fall since e-cigarette sales first really began to take off in 2010. In 2010 5% of 11-15 year olds were regular smokers falling to 3% in 2014 and in 2010 27% had ever tried smoking, falling to 18% in 2014.

Therefore it doesn't look like e-cig advertising in advance of the introduction of the interim content rules by CAP and BCAP in November 2014 had an impact on the number of children trying smoking, or becoming regular smokers.

ASH has carried out research annually into attitudes and behaviour with respect to electronic cigarettes and is continuing to monitor these subsequent to the implementation of the advertising restrictions imposed by the EU Tobacco Products Directive.

Regular use (once a month or more) among children was rare and largely among those who currently or have previously smoked. 2% of respondents said they used electronic cigarettes once a month or more, including 1% who used them weekly. These figures are similar to 2015.⁴

Furthermore, a recent report carried out for Cancer Research UK⁵ which reviewed the evidence of the impact of electronic cigarette advertising on children found research showed low brand awareness in the UK, and that susceptibility to tobacco smoking appeared to be no different for children who had been exposed to electronic cigarette advertising than those who hadn't.

With respect to adults, use of the electronic cigarettes is confined to current and ex-smokers and use amongst never smokers remains negligible and has not changed since 2012.³

⁴ ASH. Use of electronic cigarettes (vapourisers) among children in Great Britain. London. October 2016.

⁵ Bauld L. Angus K. de Andrade M. Ford A. Electronic Cigarette Marketing: Current Research and Policy. Commissioned by Cancer Research UK. October 2016.



Comments on the Consultation on new rules and guidance on the advertising of e-cigarettes

British American Tobacco UK (“**BAT UK**”) welcomes the opportunity to respond to the Committee on Advertising Practice (“**CAP**”) and the Broadcast Committee of Advertising Practice (“**BCAP**”) consultation on their revised Codes and guidelines for the advertising and marketing of e-cigarettes (the “**Consultation**”).

BAT UK is one of the leading distributors of tobacco and vapour products in the UK. Our vaping products are sold under the brand name “*Vype*”, and are sold through a number of channels, including online and in “traditional retail”. BAT UK is proud of the growth and development of the Vype portfolio over the last few years, and is committed to marketing and advertising its products responsibly.

Whilst we acknowledge the significant work that various Government agencies have already undertaken to clarify the Government’s approach to regulating the advertisement of e-cigarettes,¹ and fully support the approach of CAP and BCAP in this Consultation (which appears to be to test the scope of the existing regulation and not to impose more onerous regulations on the industry), we believe that there is scope and need for further clarity in this area.

As many public health bodies and non-governmental organisations (“**NGOs**”) have recognised, e-cigarettes may have a significant role as part of a public health strategy.² There is growing consensus among scientists and public health professionals that e-cigarettes are likely to be much less hazardous than conventional cigarettes,³ and research indicates that they have great potential to improve public health by helping people cut down or quit smoking by choosing

¹ <https://www.gov.uk/government/publications/proposals-for-uk-law-on-the-advertising-of-e-cigarettes/publishing-20-may-not-yet-complete>

² This was also noted by the Public Health Minister, Nicola Blackwood MP, who has stated that “[w]e have seen considerable take-up of e-cigarettes in the UK, and we know that almost half of the 2.8 million current users are no longer smoking tobacco. **We need to continue to embrace developments that have the potential to reduce the burden of disease caused by tobacco use.**” (emphasis added) <https://hansard.parliament.uk/lords/2016-07-04/debates/16070434000128/TobaccoAndRelatedProductsRegulations2016>

³ See, for example, Nicotine without smoke: tobacco harm reduction. Royal College of Physicians, April 2015

potentially less risky alternatives.⁴ Indeed, a study published in September 2016 by researchers from University College London and Cancer Research UK estimated that “*e-cigarettes may have contributed about 18000 additional long term ex-smokers in 2015*”.⁵ Whilst some people have voiced concerns about the potential “gateway” effect of e-cigarettes, there is currently no credible evidence to suggest that e-cigarettes “renormalise” smoking, or act as a “gateway” into smoking or sustained tobacco use. On the contrary, studies suggest that e-cigarette use among never smokers is very low, and that e-cigarette use is far more prevalent among existing and former smokers.⁶

The potential role of e-cigarettes as part of a public health strategy, together with their relatively novel status in the market, means that it is vital that they are distinguished from conventional cigarettes as a product category both in regulation and public perception, and that consumers are able to access objective and factual information about the products. This has been recognised by NGOs including ASH, which have found that “[o]f particular concern is the worsening understanding among smokers... Research has shown that perceptions of harm may be inhibiting some smokers’ use of electronic cigarettes”.⁷

Whilst the revised Tobacco Products Directive (2014/40/EU) (“**TPD2**”) essentially establishes an EU level framework for e-cigarette advertising (which has been transposed into UK law by the Tobacco and Related Products Regulations 2016 (the “**TRPR**”)), the UK Government has made it clear that post-Brexit it will not necessarily be restricted by such rules.⁸ In light of the impending Brexit, we would urge CAP and BCAP to have regard to the treatment of e-cigarettes. In the United States (the “**US**”), as an example of a less restrictive advertising regime, which presents an approach that is cognisant of the potential public health benefits of e-cigarettes. In the US, the Food and Drug Administration (“**FDA**”) Deeming Regulations (the “**Deeming Regulations**”),

⁴ See, for example, Etter JF and Bullen C. A longitudinal study of electronic cigarette users. Jean Francois Etter and Chris Bullen, Addictive Behaviours, February 2014.

⁵ Beard et al., (2016) Association between electronic cigarette use and changes in quit attempts, success of quit attempts, use of smoking cessation pharmacotherapy, and use of stop smoking services in England: time series analysis of population trends; See also Etter JF and Bullen C. A longitudinal study of electronic cigarette users. Jean Francois Etter and Chris Bullen, Addictive Behaviours, February 2014.

⁶ See, for example, Use of Electronic Cigarettes among adults in Great Britain. April 2014. http://www.ash.org.uk/files/documents/ASH_891.pdf; Gmel G et al. Use of electronic cigarettes among young Swiss men . J Epidemiol Community Health (2013); and Pearson JL et al. e-Cigarette awareness, use, and harm perceptions in US adults. (Am J Public Health 2012)

⁷ ASH fact sheet April 2014, Use of Electronic Cigarettes by adults in Great Britain. http://www.ash.org.uk/files/documents/ASH_891.pdf (accessed on 4th June 2014)

⁸ Insofar as public health authorities seek to migrate consumers from combustible cigarettes to e-cigarettes, and insofar as the Government believes that advertising can drive demand of products like e-cigarettes, the Government should allow advertising in the manner contemplated in the Deeming Regulations.

which regulate e-cigarettes at a federal level,⁹ prescribe a flexible advertising regime for e-cigarettes.

The Deeming Regulations currently permit advertisements on, for example: "*promotional materials (point-of-sale or non-point-of-sale), billboards, posters, placards, published journals, newspapers, magazines, other periodicals, catalogues, leaflets, brochures, direct mail, shelf-talkers, display racks, Internet Web pages, television, electronic mail correspondence, and also include those communicated via mobile telephone, smartphone, microblog, social media Web site, or other communication tool; Web sites, applications, or other programs that allow for the sharing of audio, video, or photography files; video and audio promotions ...*"¹⁰ The FDA has noted that it "will consider the health effects of all products before determining whether to issue additional regulations".¹¹

We would encourage CAP and BCAP to bear these considerations in mind when drafting their Codes and guidance documents. Given the potential public health benefits of the product category, we would urge CAP to adopt a flexible interpretation of the legislation to the extent that there is scope to do so.

Key issues to be addressed

CAP should interpret the TRPR in a way that promotes rather than stifles growth of the product category

We believe that proportionate marketing freedoms are essential to enable the e-cigarette category to reach its likely potential in terms of public health benefits. As outlined above, it is vital that e-cigarettes are recognised and regulated as a product category distinct from conventional cigarettes both in regulation and public perception given the importance of harm reduction policy. E-cigarettes are not "tobacco products" and should not be regulated as such.¹²

It is therefore crucial that the TRPR is interpreted in such a way that does not stifle the growth of the category, and enables its potential role as part of a public health strategy to be realised.

We have set out in the body of our submission, details of the ways in which we believe the provisions of the TRPR should be interpreted in the CAP and BCAP Codes and guidelines, but in

⁹ The Deeming Regulations have been in effect since 8 August 2016. Note that e-cigarettes are also regulated at a State level.

¹⁰ Deeming Regulation, 81 FR at 29062, see also 29064. Note that any such advertisements are permitted subject to various requirements under the Deeming Regulations.

¹¹ Deeming Regulation, 81 FR at 29042.

¹² *Ibid*

summary this includes adopting a flexible approach and interpretation of the legislation that allows the maximum scope for the growth of the product category. This will be undermined if vaping is restricted to the same extent as smoking.¹³

We have also indicated areas where we believe CAP and BCAP should provide further clarity, including on:

- What will be deemed to be direct or indirect promotion; and
- What will constitute a “factual claim.”

These are areas that present marketers with difficulties on a daily basis and, as such, any further clarification from CAP and BCAP would be very well received.

BAT UK response to the consultation questions

1) Do you agree that CAP’s proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine/medical device is consistent with the law? If not, please explain why.

Yes. We agree that CAP’s proposal is consistent with the TRPR. As discussed below, it is essential that the CAP and BCAP Code and guidelines provide further clarity on what will be considered to have a direct or indirect promotional effect. CAP and BCAP should adopt a flexible approach in this regard. As indicated above, it is important to adopt an interpretation of the legislation that allows the maximum scope for the growth of the category. This will be undermined if vaping is restricted to the same extent as smoking.¹⁴ E-cigarettes are not “tobacco products” and should not be regulated as such.

2) Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why.

¹³ ASH fact sheet April 2014, Use of Electronic Cigarettes by adults in Great Britain.
http://www.ash.org.uk/files/documents/ASH_891.pdf

¹⁴ ASH fact sheet April 2014, Use of Electronic Cigarettes by adults in Great Britain.
http://www.ash.org.uk/files/documents/ASH_891.pdf

Yes. To the extent that a product does not meet the definition of an “electronic cigarette” under the TRPR it should not be subject to the prohibition.

3) Do you agree that advertisements for products in the list above would be lawful under TRPR and that CAP therefore does not need to prohibit them? If not, please explain why.

Yes. Advertisements for products in the list above would be lawful under the TRPR.

4) Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

No (see our response to no. 2 above).

5) CAP’s proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

Whilst CAP’s proposal is technically consistent with the TRPR as drafted,¹⁵ we would like to remind CAP of our introductory comments to this submission, regarding the impact of Brexit, and the potential opportunity for the UK Government to deviate from EU legislation.¹⁶ In light of the impending Brexit, we would urge CAP and BCAP to have regard to the Deeming Regulations in the US as an example of a less restrictive advertising regime, which presents an approach that is cognisant of the potential public health benefits of e-cigarettes (see our comments on page 2 of this submission, and our response to no. 26 below).

6) CAP’s proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on “advertisements in online media and some other forms of electronic media”. This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above. Do you agree that this proposal is consistent with the law? If not, please explain why.

¹⁵ Note that the TRPR additionally exempts marketing communications in newspapers, magazines and periodicals which are printed and published in third countries and which are not principally intended for the Union market.

¹⁶ We note that the inflexibility of the EU legislation and its dominance on the UK legislative system was cited as one of the key reasons in support of Brexit. By way of example, the EU provisions under TPD2 were considered unduly restrictive www.bbc.co.uk/news/uk-politics-eu-referendum-36094520

Whilst we agree that this proposed approach is technically consistent with the law, we would encourage CAP to note the following:

- For the purpose of the TRPR an “electronic cigarette advertisement” is defined as an advertisement which has (a) the aim of promoting an electronic cigarette or refill container; or (b) the direct or indirect effect of promoting one.
- CAP should distinguish in its Codes and guidance between material that will be deemed to have a direct or indirect promotional effect (and thus falls within the definition of an “electronic cigarette advertisement” for the purpose of the TRPR), and the provision of factual information. Factual claims by reasonable definition should include claims conveying information that is descriptive, objective and supported by robust evidence and data (as appropriate). As we set out in our submission below, given the potential role of e-cigarettes as part of a public health strategy, it is in the best interests of consumers to have access to information about e-cigarette products and the product category (see our response to no. 15 below).
- CAP should consider allowing any factual information that is permissible on company websites and certain channels of social media on other “information society services”. Emails and text messages should be treated similarly to company websites and certain channels of social media, provided they are sent in response to specific requests from consumers, e.g. consumers signing up to mailing lists or providing contact details so that they can be informed of product developments (see our response to no. 8 below).
- The current definition of “information society services” is ambiguous (see **A.4.1**). CAP should set out further examples of channels that will be deemed to be “information society services” so that marketers have certainty regarding the bounds within which they may operate.

7) Are there any types of media that you consider to be information society services which are not referenced above?

No.

8) Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

Whilst we agree that the types of online media referred to in **A.4.1** of the Consultation appear to fall within the definition of an information society service, we believe that the TRPR allows for factual claims in emails and text messages, provided they adhere to the same criteria as factual claims on marketers' websites (see **A.5.2** of the Consultation and our response to no. 9 below), namely:

- They are only sent in situations where consumers have specifically requested information (e.g. where consumers have signed up to a mailing list or given marketers their contact details in order to be informed of product-specific information); and
- Contain factual rather than promotional information (i.e. information including product names and characteristics, price statements, instructions as to product use etc.).

As discussed below (see our response to no. 9), the TRPR only prohibits the inclusion of an “*electronic cigarette advertisement*” in an information society service provided to a recipient in the UK. This is defined as an advertisement with (a) the aim of promoting an electronic cigarette or refill container; or (b) the direct or indirect effect of promoting one. Accordingly, any information provided in emails and text messages that is strictly factual in nature and authoritatively substantiated, should be permissible under the TRPR. This should be reflected in the CAP guidelines.

As set out above, studies have indicated that e-cigarette use is mainly confined to current and former smokers and, moreover, many health professionals agree that products such as e-cigarettes have great potential to improve public health by helping people cut down or quit smoking by choosing potentially less risky alternatives.¹⁷ Accordingly, regulators should ensure that consumers are able to access information about specific products and the product category.

9) Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

¹⁷ Beard et al., (2016) Association between electronic cigarette use and changes in quit attempts, success of quit attempts, use of smoking cessation pharmacotherapy, and use of stop smoking services in England: time series analysis of population trends; See also Etter JF and Bullen C. A longitudinal study of electronic cigarette users. Jean Francois Etter and Chris Bullen, Addictive Behaviours, February 2014.

Yes. The TRPR defines an “electronic cigarette advertisement” as an advertisement with (a) the aim of promoting an electronic cigarette or refill container; or (b) the direct or indirect effect of promoting one.

As recognised by the Consultation (see A.5.2 of the Consultation), factual statements, which pertain to the nature and characteristics of a product or product category, can be distinguished from promotional statements.

As discussed above, the CAP guidelines should clarify what will be considered to have a direct or indirect effect of promotion, and what will be considered to be a “factual claim”. These are areas that present marketers with difficulties on a daily basis and, as such, any further clarification from CAP and BCAP would be very well received.

10) Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

Yes. The claims set out on page 14 are clearly factual in nature and should therefore be permitted.

11) Are there any other claims / types of claims you consider are factual in nature should appear on this list?

The following claims should also be included on the list:

- **Technological developments, new product features, and performance features**
Marketers should be able to set out information regarding technological developments, new product features, and performance features, provided that this information is descriptive and factual in nature.
- **Comparative claims with intra-brand e-cigarette products, competitor products, and tobacco products**

To the extent that comparative claims with other products are factual in nature (and are supported by robust evidence to the extent appropriate), these should also be permitted. The function of such claims include: (1) enabling consumers to distinguish different types of product from one another; and (2) enabling consumers to understand the significance of technological developments, and how a new product feature or technological development impacts or changes a product’s performance.

In both of these scenarios, the purpose of such a claim would be to enable consumers to understand the nature of the different products on the market and how these differ from one another; and consequently to choose a product that is best suited to them and their needs. As such, these claims should be seen as actual rather than promotional information, and should be permitted under the regulations (see our response to no. 12 below). By way of example, "factual" claims to consumers characterising e-cigarette emissions without comparison to emissions of other nicotine and tobacco products would be meaningless to consumers, which illustrates that scientifically accurate comparative claims may have a proper role in comprising factual claims to consumers. Furthermore, the sector continues to develop new types of e-cigarettes and basic operational attributes of specific types of e-cigarettes can lead to differing emissions profiles of such products. CAP should consider whether information objectively comparing such differing attributes and emissions profiles should be deemed "factual."

- **Other information**

By way of example, we believe that the following categories of "factual" information would be permissible under the TRPR:

- **Customer Testimonials/Review Forms**
- **Free Shipping**
- **Subscription Selling**
- **Links to public reports (e.g. to a review of the evidence on e-cigarettes published by Public Health England)**

We believe that this information is "factual" in nature (see our response to no. 14 below).

12) Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

- **Descriptive language that goes beyond objective, factual claims, for example the use of adjectives**

An outright ban of the "*use of adjectives*" would be highly excessive and disproportionate. Examples of situations where adjectives should be permissible include: as a means of differentiating products e.g. if a business produced two strengths of menthol flavouring; and as a means of accurately describing a product's

attributes e.g. a product's flavouring or the attributes of an e-cigarette device, which may include information essential to proper use. Inclusion of such information is important as it will enable consumers to make informed decisions with regard to product choices.

- **Promotional marketing, as defined in Section 8 of the CAP Code. Promotional marketing can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A non-exhaustive list of sales promotions include: “two for the price of one” offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws.**

Whilst we agree that some of these promotions should be prohibited, for example, “*text-to-wins, instant-wins, competitions and prize draws*”, we believe that offers such as, “two for the price of one” offers, and money-off offers, provided that they are limited to existing age-verified consumers, should not be prohibited. Research demonstrates that users of e-cigarettes are largely confined to current or ex-smokers.¹⁸ As set out above, many health professionals agree that products such as e-cigarettes have great potential to improve public health by helping people cut down or quit smoking by choosing potentially less risky alternatives.¹⁹ As such, their use within such a context should be encouraged.

- **Significant imagery that is not related to the product**

We agree that the inclusion of “significant imagery” to the extent that it is entirely unrelated to the product may be promotional, but this will depend on the particular image and the context.

- **Comparative claims with other e-cigarette products or the general market**

We do not believe that there should be an outright ban on comparative claims with other e-cigarette products or the general market. The function of comparative claims with other e-cigarette products or the general market include: (1) enabling

¹⁸ Use of Electronic Cigarettes among adults in Great Britain. April 2014.
http://www.ash.org.uk/files/documents/ASH_891.pdf

¹⁹ See, for example, Beard et al., (2016) Association between electronic cigarette use and changes in quit attempts, success of quit attempts, use of smoking cessation pharmacotherapy, and use of stop smoking services in England: time series analysis of population trends; and Etter JF and Bullen C. A longitudinal study of electronic cigarette users. Jean Francois Etter and Chris Bullen, Addictive Behaviours, February 2014. <http://www.sciencedirect.com/science/article/pii/S0306460313003304> and <http://scienceblog.cancerresearchuk.org/2016/10/05/stoptober-2016-could-e-cigarettes-help-stop-smoking-services-beat-addiction/>

consumers to distinguish different types of e-cigarette from one another and make informed decisions with regard to product choice; and (2) enabling consumers to understand the significance of technological developments, and how a new product feature or technological development impacts or changes a product's performance. As such they should be seen as a factual rather than a promotional activity, and should be permitted under the regulations (see our response to no. 11 above). As stated above, this is particularly important given the novel status of e-cigarettes, which means that consumers are still learning about the product; and the fact that e-cigarettes are still evolving as a product category, which means that different devices may use different technologies, the functions and effects of which may not be apparent to consumers.

13) Are there other types of generic claims that should be included in this list?

No.

14) Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

"Factual" claims by reasonable definition should include claims conveying information that is descriptive, objective and supported by robust evidence and data. One comment we would add to inform CAP's consideration of whether a claim is factual or promotional is to propose further analysis of CAP's broad assertion that prohibited "promotional" claims include without apparent limitation "comparative claims with other e-cigarette products or the general market." (Consultation, page 14). We would propose considering whether objective, "factual" information can be properly provided regarding e-cigarettes' attributes in comparison with the "general market" in addition to "other e-cigarette products" referred to in the Consultation (see our response to no. 12 above).

For example, just as CAP states that e-cigarette product information such as "product ingredients", and "nicotine content" are properly regarded as permitted "factual" information (Consultation, page 14), a natural inference may arise that information describing general levels of e-cigarette emissions measured under robust standards may be similarly factual.

It should be recognised that the large reductions in number and amount of e-cigarette emission components in relation to conventional cigarette emissions is a primary basis upon which various UK health authorities have concluded that "the health risks posed by e-cigarettes are relatively small by comparison" to cigarette smoking. (Consultation, page 23 quoting E-cigarettes: a developing public health consensus, Public Health England (2016).) For example, the Royal College of Physicians has noted that e-cigarettes deliver satisfactory amounts of nicotine to consumers "in the absence of the vast majority of the harmful constituents of tobacco smoke (or at least at negligible levels)". Consumers should be entitled to receive such information with the relevant disclaimers.

Moreover, "factual" claims to consumers characterising e-cigarette emissions without comparison to emissions of other products would be meaningless to consumers, which illustrates that scientifically accurate comparative claims may have a proper role in comprising factual claims to consumers. Furthermore, the sector continues to develop new types of e-cigarettes while basic operational attributes of specific types of e-cigarettes can lead to differing emissions profiles of such products. CAP should consider whether information objectively comparing such differing attributes and emissions profiles should be deemed "factual." Any such comparative emission information would have to be scientifically substantiated under authoritative technical standards and also communicated to consumers in a manner that conveys the relevant information in a useful, comprehensible manner.

Thus, it should be considered that claims providing accurate and scientifically valid comparisons between objective attributes of e-cigarettes in comparison to such attributes of other products may properly be deemed allowable "factual" claims. We would suggest that CAP consider whether such objective information should be recognised as permissible "factual" claims within the ambit of the Consultation.

15) Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why. Please provide any examples and evidence you might have in support of your response.

Section A.5.1 sets out that CAP considers that the law does not prevent the provision of information by a retailer in media subject to the Regulations when the following criteria are met:

- The consumer has specifically requested information; and

- The information with which the consumer is then presented is factual and not promotional.

Social media pages, including Facebook and Twitter, are also capable of meeting these criteria:

(1) The consumer has specifically requested information

As acknowledged by the Consultation, social media platforms operate varying degrees of privacy options for business pages, and such settings could be used to significantly restrict the distribution of content so that it can only be accessed by those actively seeking it (indeed, given the advertising restrictions for e-cigarettes, including “click through ads” etc., consumers will only be able to find these pages if they specifically search for them).

For example, it is possible to take the following steps with regard to a Facebook page:

- Use of age restrictions to limit the audience of pages on Facebook, so that only people who meet the minimum age will see the page.
- Use of “audience selector” tool to choose who can see posts e.g. it is possible to limit posts to people that have chosen to follow the Facebook page.

Similarly on Twitter it is possible to apply the following safeguards:

- Age screening to determine whether followers meet minimum age requirements.
- Only publishing “Protected Tweets” which are only visible to the brand’s followers.

The application of such restrictions will ensure that only those who have searched for them, and are within the requisite age limits, are able to request this information.

(2) The information with which the consumer is then presented is factual and not promotional

It will be possible to limit this information to the same scope or similar scope to that included on the company website, and to information specifically requested by consumers.

16) Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

Yes.

17) Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

Yes.

18) Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended.

We would propose the following amendment to rule 22.12 in light of our earlier submissions (see our response to no. 8, no. 14 and no.15): *“Factual claims about products are permitted on marketers’ own websites, **emails, text messages** and, in certain circumstances, in other non-paid-for space online under the marketer’s control. Please refer to the guidance note.”*
(additional text in bold)

19) Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines?

- **A brand or range name under which a nicotine e-cigarette is sold. That name could be featured on non-nicotine products or other products but is strongly associated with a nicotine product**

Yes. See our response to no. 2 above.

- **An identifiable nicotine e-cigarette**

Yes.

- **A direct response mechanic relating to a nicotine e-cigarette**

We would appreciate further clarity regarding what is meant by a “direct response mechanic”.

- **A strapline, celebrity, licensed character or branding which is synonymous with a nicotine product**

Yes.

20) Are there any criteria you consider should be added to the list?

No.

21) Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

Yes. This should also apply to online retailers. As discussed above, many health professionals agree that products such as e-cigarettes have great potential to improve public health by helping people cut down or quit smoking by choosing potentially less risky alternatives.²⁰ Accordingly, regulators should give the product category the tools it needs to enable it to compete effectively with tobacco retailers. One way of doing so is by interpreting the legislation in such a way so as to allow e-cigarette retailers some scope for advertising their products.

22) Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

Yes. This should also apply to online retailers.

23) Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why.

Yes. This should also apply to online retailers.

24) Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

Yes. In summary, a broad array of interested public health authorities has opined that e-cigarettes pose substantially reduced risks to health as compared to conventional cigarettes. They have also concluded that the substitution of e-cigarettes for conventional cigarettes can be an important component of a harm reduction agenda. In order to realise these potential public health benefits, consumers must have access to accurate, substantiated information regarding these issues. Allowing substantiated claims regarding the potentially reduced risks of e-cigarettes will increase consumer information and potentially advance the harm reduction agenda. Any such substantiated claims should be supported by product-specific data (i.e. it should not be sufficient for marketers to substantiate claims by reference to publicly available and non-product specific sources). Allowing substantiated claims will

²⁰ Beard et al., (2016) Association between electronic cigarette use and changes in quit attempts, success of quit attempts, use of smoking cessation pharmacotherapy, and use of stop smoking services in England: time series analysis of population trends; See also Etter JF and Bullen C. A longitudinal study of electronic cigarette users. Jean Francois Etter and Chris Bullen, Addictive Behaviours, February 2014.

encourage companies to invest in research and development (“**R&D**”), which will further our understanding of the product category, and how it compares to smoking conventional tobacco products.

Recent reports from the Royal College of Physicians (RCP) and Public Health England (“**PHE**”), amongst others, suggests that appropriately-regulated e-cigarettes, incorporating restrictions on youth access and mandating quality standards, may yield substantial public health benefits over and above existing tobacco control measures.

In August 2016, for example, the RCP released a comprehensive analysis of nicotine and e-cigarettes in its report "Nicotine without smoke: Tobacco harm reduction".²¹ The RCP recommended that "in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK".²²

Also in August 2016, the UK Parliamentary Office of Science and Technology published a briefing for British Members of Parliament,²³ whose major conclusions included the following:

- a growing body of evidence shows that e-cigarettes are much less harmful than tobacco;
- there is evidence showing that e-cigarettes can help smokers quit tobacco; and,
- current evidence also suggests that e-cigarettes do not encourage tobacco smoking among non-smokers or children.

In July 2016, the potential use of e-cigarettes in a public health strategy was recognised in a guidance document on the use of e-cigarettes in public places and workplaces published by PHE. Its authors stated their belief that "e-cigarettes have the potential to make a significant contribution to its achievement. Realising this potential depends on fostering an environment in which e-cigarettes can provide a route out of smoking for England's eight million smokers, without providing a route into smoking for children or non-smokers".²⁴ It is

²¹ Royal College of Physicians. Nicotine without smoke: Tobacco harm reduction. London: RCP, 2016.

²² Id. at 190.

²³ POST - Parliamentary Office of Science and Technology, Electronic Cigarettes, 9 Aug 2016 (available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/POST-PN-0533>).

²⁴ Public Health England (2016), Use of e-cigarettes in public places and workplaces – Advice to inform evidence-based policy making, at 4 (available at <https://www.gov.uk/government/publications/use-of-e-cigarettes-in-public-places-and-workplaces>).

clear that provision of accurate, substantiated information to consumers is an absolute necessity to foster such an environment.

Earlier, in 2015, PHE published a number of independent reviews and positions on e-cigarettes supporting a balanced approach to all aspects of e-cigarette regulation. Of note, PHE concluded that: "Best estimates show e-cigarettes are 95% less harmful to your health than normal cigarettes, and when supported by a smoking cessation service, help most smokers to quit tobacco altogether."²⁵

Indeed, a large number of international public health researchers and specialists in the areas of tobacco control, nicotine science and public health policy have recognised that e-cigarettes may contribute to smoking cessation and reduction. For smokers who do not want to give up nicotine and the sensorial experience and rituals involved in smoking, substitution may result in health benefits similar to those realised through cutting down on smoking. Further, such users may quit smoking and thereby realise substantial prospective health benefits.

For example, as the RCP notes, unlike most forms of nicotine replacement therapy, e-cigarettes "retain several important features of smoking other than nicotine delivery, including similar hand-to-mouth movements, behavioural rituals, an inhaled sensory stimulus and a range of flavours [and] [t]hese characteristics make e-cigarettes attractive to a wide range of smokers..."²⁶

According to an ASH UK estimate, for example, there are currently an estimated 2.8 million adult e-cigarette users in Great Britain, 47% of whom are ex-smokers and 51% of whom use e-cigarettes alongside tobacco. In the period 2010-2014, the number of current smokers also using e-cigarettes increased but since 2014 this has slowed or even plateaued. Meanwhile, the proportion of ex-smokers using e-cigarettes rose from 4.5% in 2014 to 6.7% in 2015 to 8.4% in 2016. Among smokers who use e-cigarettes, the top 2 reasons for e-cigarette use are "to help me reduce the amount of tobacco I smoke, but not stop completely" (41%) and "to help me stop smoking entirely" (35%). According to a YouGov survey, the most commonly reported reason for using e-cigarettes is "to help me stop smoking tobacco entirely".²⁷

²⁵ McNeill A., P. Hajek et al, E-cigarettes – an evidence update: A report commissioned by Public Health England, Public Health England, August 2015, at 1.

²⁶ Royal College of Physicians. Nicotine without smoke: Tobacco Harm Reduction. London RCP, 2016, at 70.

²⁷ ASH UK Fact Sheet May 2016 'Use of electronic cigarettes (vapourisers) among adults in Great Britain.

Research by West and Brown from the University College London found that in England in 2015, "more quit attempts involved use of an e-cigarette than licensed [Nicotine Replacement Therapy]".²⁸ A cross-sectional population study in England by Brown et al also found that "among smokers trying to stop without any professional support, those who use e-cigarettes are more likely to report abstinence than those who use a licensed NRT product bought over-the-counter or no aid to cessation".²⁹

Thus, many health professionals agree that products such as e-cigarettes have great potential to improve public health by helping people cut down or quit smoking by choosing potentially less risky alternatives.

Overly restrictive prohibitions on methods for providing relevant information to consumers regarding e-cigarettes' role in harm reduction is counterproductive, as it will prevent smokers becoming aware of and accessing e-cigarettes as an alternative to conventional cigarettes.

Furthermore, evidence indicates that many smokers continue to be unaware of the potentially reduced risk of e-cigarettes as compared with traditional smoking, with many believing that each results in a similar degree of harm. For example, a recent PHE report concluded that a sizeable minority of people inaccurately considered e-cigarettes to be more harmful than tobacco products, to be just as harmful as tobacco products, or were unsure about their relative safety.³⁰ This shows the need to ensure consumers are given accurate information as to correct usage of the e-cigarettes and the potential benefits of switching from smoking to vaping products, which would be facilitated through permission of substantiated health claims.

Many professionals in public health and in industry have contributed to a range of studies and expert opinion that can robustly substantiate health claims that convey essential information to consumers regarding e-cigarettes.

²⁸ Smoking in England, STS120722 09/03/2016 'Electronic cigarette use for quitting Smoking in England: 2015', at slide no. 11 (available at: <http://www.smokinginengland.info/latest-statistics/>).

²⁹ Brown J, Beard E, Kotz D, Michie S, West R. Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study. *Addiction*. 2014 Sep 1;109(9):1531-40.

³⁰ McNeill A., P. Hajek et al, E-cigarettes – an evidence update: A report commissioned by Public Health England, Public Health England, August 2015, at 57.

The above is a summary of evidence that we submit should inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes.

25) Should BCAP remove rule 33.7 for the reasons given above? If not, please explain why.

Yes.

26) Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

Subject to the changes raised in this submission being implemented, we think that the CAP and BCAP Code and guidelines are fair. We fully support the approach that CAP and BCAP have taken in the Consultation, which appears to have the aim of testing the scope of the existing regulation rather than imposing more onerous regulations on the industry.

As discussed above, the UK Government has made it clear that post-Brexit it will not necessarily be restricted by EU legislation. In light of the impending Brexit, we would urge CAP and BCAP to have regard to the treatment of e-cigarettes in the US, as an example of a less restrictive advertising regime, which presents an approach that is cognisant of the potential public health benefits of e-cigarettes.

We note, in particular, the CAP and BCAP Codes' e-cigarette rules set forth at Annexes A and B. When considering the ongoing suitability of these rules, CAP and BCAP could consider the regulatory regime for e-cigarette advertising that has emerged in the United States, as part of the US FDA's regulatory oversight of e-cigarettes.

E-cigarettes became subject to FDA regulation as of August 2016, when the FDA's Deeming Regulations went into effect.³¹ Before that, specific e-cigarette regulation was not in effect at

³¹ See "Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products," 81 Federal Register 28974 (published 10 May 2016, effective 8 August 2016). In addition to e-cigarettes, other products made subject to FDA authority via the Deeming Regulation include cigars, pipe tobacco, cigar tobacco, pipes, hookah, and dissolvable nicotine products, among others.

the federal level in the area of advertising and promotion, such that e-cigarette advertising, like that of any product sold in the US, was generally subject to laws that prohibit false or misleading promotional claims.

E-cigarettes are not completely devoid of risk, and the Deeming Regulations noted, for example, that "*nicotine use in any form is of particular concern for youth and pregnant women.*"³² To that end, FDA imposed certain restrictions on e-cigarette advertising, especially with regard to preventing access by underage consumers, which restrictions include prohibiting sales to persons under age 18³³, banning the distribution of free product samples³⁴, and prohibiting sales via vending machines, except in adult-only facilities³⁵. FDA also required that advertising for e-cigarettes reflect the following health warning: "*WARNING: This product contains nicotine. Nicotine is an addictive chemical*", which will be required on e-cigarette packaging and advertising as of May 2018³⁶.

The FDA did not, however, take the step of banning e-cigarette advertising and promotion, nor did it extend, via the Deeming Regulations, all of the promotional restrictions that were put in place for conventional cigarettes and smokeless tobacco products since 2009 (when FDA took jurisdiction over these products, in addition to cigarette and roll-your-own tobacco, pursuant to other federal law).³⁷ This was because the FDA recognized that (i) e-cigarettes potentially present less health risks than conventional cigarettes given their lower levels of reported toxicant exposure as compared to cigarettes, and (ii) e-cigarettes have a potentially lower risk profile across the toxicant exposure and model risk continuums.

Indeed, the FDA expressly "*agree[d] that a continuum of nicotine-delivering products does exist as demonstrated by the lower levels of toxicants in ENDS in comparison to cigarettes, and may warrant different requirements for products at different ends of this continuum.*"³⁸ As the agency noted, there is evidence which suggests that e-cigarettes "*may potentially promote*

³² FDA Deeming Regulation, 81 FR at 29011.

³³ 21 CFR § 1140.14(b)(1).

³⁴ 21 CFR §§ 1140.1(a), 1140.16(d)(1)).

³⁵ 21 CFR § 1140.14(b)(3).

³⁶ 21 CFR § 1143.3(a)(1), (b).

³⁷ For example, while minimum age, free sample and vending machine sale restrictions apply to e-cigarettes, the "restrictions on self-service displays, sale and distribution of nontobacco items, and sponsorship of events [applicable to cigarettes/smokeless tobacco] will not apply to ENDS at this time." FDA Deeming Regulation, 81 FR at 29042.

³⁸ FDA Deeming Regulation, 81 FR at 29027 (see also *id.* at 29050 ("FDA recognizes the existence of a continuum of nicotine-delivering products and will continue to consider this continuum in regulating future tobacco products."; and 29030 ("FDA recognizes that completely switching from combusted cigarettes to ENDS may reduce the risk of tobacco-related disease for individuals currently using combusted tobacco products, given the products' comparative placements on the continuum of nicotine-delivering products.")).

*transition away from combusted tobacco use among some current users and it is possible that there could be a public health benefit."*³⁹

Accordingly, given the harm reduction potential that e-cigarettes present, the FDA did not use the Deeming Regulations to curtail advertising channels for e-cigarettes. Thus, and as noted above, e-cigarette advertisements can appear in print, point-of-sale, as well as in a range of other visual and audio media, including television, internet and radio promotions. While FDA reserves the authority to issue additional regulations in respect of e-cigarette advertising, it has indicated that it will not do so until it is able to assess the effects of such products in the US. We submit that this measured approach to e-cigarette advertising should also be considered by CAP and BCAP.⁴⁰

³⁹ FDA Deeming Regulation, 81 FR at 29011.

⁴⁰ We note that the FDA e-cigarette advertising regime noted in the response to Question 26 applies to what the Consultation refers to as unlicensed e-cigarettes. To the extent that an e-cigarette is marketed for therapeutic purposes (for example, marketed as a product to aid smoking cessation), it will be regulated as a drug and/or medical device by the FDA, and subject to the FDA's separate rules regarding those products.

Berkshire West Tobacco Control Alliance Teams response to the consultation document regarding electronic cigarettes advertising.

Team providing responses:

Caroline Stevenson: Tobacco Control Alliance Coordinator Berkshire West
Peter Northey: Trading Standards West Berkshire and Wokingham District Councils
Ian Savill: Trading Standards Reading Borough Council
Suzie West: Public Health Reading
Carol-Anne Bidwell: Public Health Wokingham
Ian Taylor: Royal Berkshire Fire and Rescue
Ros Gate:r Environmental Health West Berkshire and Wokingham.
Saleen Ahmed Khan: Solutions For Health

Answers to Questions

Part A: CAP's proposal to approximate the advertising prohibitions in the Tobacco and Related Products Regulations 2016 in the CAP Code A.2

Products for which advertisements are prohibited in media subject to the Regulations:

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why. YES
2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why. YES although we feel this is probably unenforceable
3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why. YES
4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited? YES

A.3 Prohibition on advertising in newspapers and magazines

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why. YES

A.4. Prohibition on advertising in online media and some other electronic media

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why. YES

7. Are there any types of media that you consider to be information society services which are not referenced above? YES TWITTER FEEDS/INSTAGRAM ??

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service? NO

A.5. Prohibition on promotional claims on retailers' websites

CAP considers that the following types of claims are likely to be factual in nature and therefore, all other things being equal, permitted under the Code:

- the names of products (so long as the names are not promotional in nature, for example names which include product claims)
- descriptions of product components including, where applicable, the opening and refill mechanism
- price statements (however, see “promotional marketing” below)
- instructions as to how products can be used
- product ingredients
- flavours
- nicotine content

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why. YES

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why. YES

11. Are there any other claims / types of claims you consider are factual in nature that should appear on this list? NO

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why. YES

13. Are there other types of generic claims that should be included in this list? NO

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional? NO

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

NO The way information is currently supplied across the internet provides the media supplies with little control of how this is displayed to the receiver for eg cookies could enable third party advertising to appear on social media pages/ screen of the viewer,

it pops up in the timeline of someone who has not sought it out, that is a function of the public response, and not of the business itself. This would avoid the need for overly restrictive 'privacy options'

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why. YES

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended. NO

Answer: We agree with the ASH response; The second sentence of the last paragraph of section 22 is unclear and we do not understand what is meant by it. In particular the MHRA is both the agency responsible for medicines licensing and for overseeing regulation of electronic cigarettes under the EU Tobacco Products Directive. In this sentence the distinction is not completely clear as it refers to products "which are authorised by the MHRA". In addition there is a typo in the third line which says "sections" plural when it should be 'section' singular. We believe it would be clearer to change this to read "Rule 22 applies to both electronic cigarettes which come under the EU Tobacco Products Directive and those authorised as medicines, except where there is a carve out for medicines in rules 22.5 and 22.12."

A.7 Proposed changes to the CAP Code

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended. NO "online media and other forms of electronic media" needs clearer definition

Part B: Other issues relevant to both the CAP and BCAP Codes

B.1 Preventing indirect promotion of nicotine-containing e-cigarettes

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines? YES

20. Are there any criteria you consider should be added to the list? NO

In media subject to the Regulations:

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised? YES

22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why. NO

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why. NO- KEEP 10.2

B.2. Ongoing suitability of current CAP and BCAP content, placement and

scheduling rules

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

In order to address the serious misperceptions about relative risk we believe that it is essential that generic statements about the relative risk can be made. If these were considered to be "substantiated health claims" then we would consider that this should be allowed by CAP and BCAP. The sort of claim that should be allowed, as stated above in answer to Q11, should be along the following lines, that "electronic cigarette use is considered by Public Health England and the Royal College of Physicians to be much less harmful than smoking" and should link to Public Health England and the RCP statements to this effect. This would require also the words "health or" to be removed from Rule 33.5.

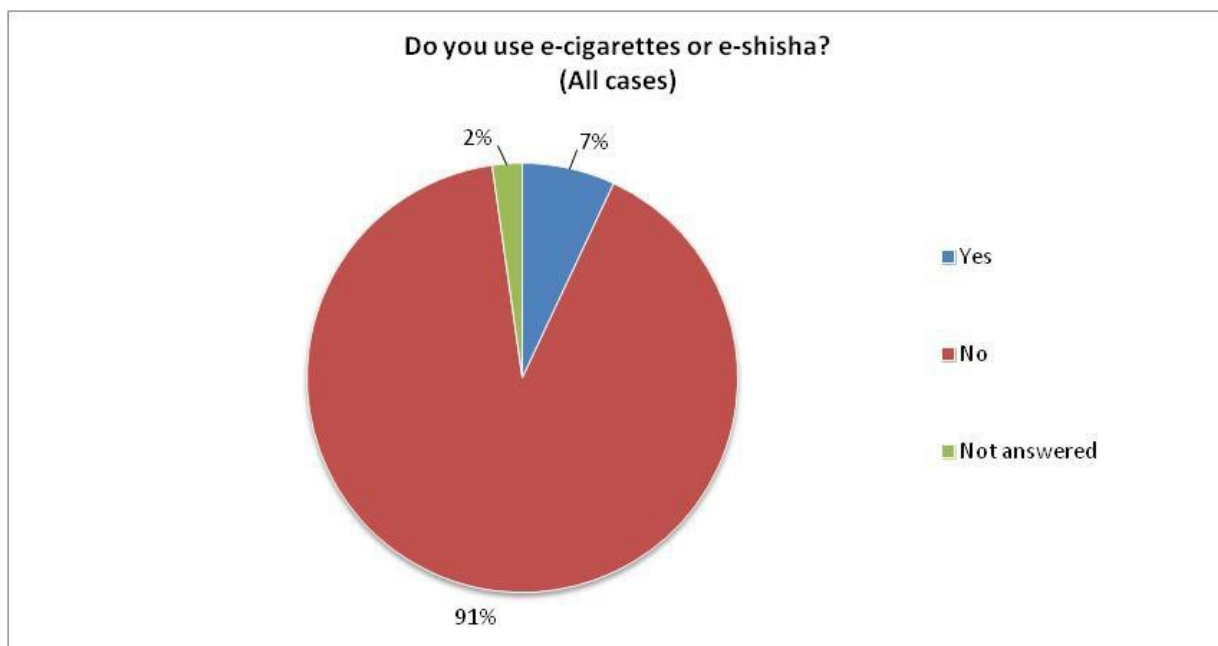
25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why.
YES

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements? YES

1. Main concern-restricting advertising of e cigarettes will impede use by smokers aiming to reduce or stop a tobacco smoking habit.
2. This needs to be tempered with concerns about electronic cigarette advertising encouraging youth smoking uptake and use by adult never smokers and this is one of the reasons why some forms of electronic cigarette advertising were prohibited in the EU Tobacco Products Directive.

The most recent Smoking Drinking and Drug Use survey, of attitudes and behaviour towards smoking among young people aged 11-15 in England, found the lowest recorded smoking rates among children since records began in 1982. It's worth noting that rates have continued to fall since e-cigarette sales first really began to take off in 2010. In 2010 5% of 11-15 year olds were regular smokers falling to 3% in 2014 and in 2010 27% had ever tried smoking, falling to 18% in 2014.

Our alliance group carries out annually surveys into attitudes and behaviour with respect to smoking, drinking alcohol and electronic cigarettes and is continuing to monitor . We are finding very low numbers of young people using e cigarettes in Berkshire West ;



Regular use (once a month or more) among children was rare in 2015 7% and 2014 5% and largely among those who currently or have previously smoked.

Furthermore, a recent report carried out for Cancer Research UK¹ which reviewed the evidence of the impact of electronic cigarette advertising on children found research showed low brand awareness in the UK, and that susceptibility to tobacco smoking appeared to be no different for children who had been exposed to electronic cigarette advertising than those who hadn't.

CAP/BCAP consultation of e-cigarette advertising

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

24 October 2016

Dear Sir/Madam

Consultation on changes to the regulation of e-cigarette advertising

The BMA (British Medical Association) is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. On average our membership this year has been around 170,000. The Association welcomes the opportunity to respond to the joint CAP/BCAP consultation on new rules and guidance on the advertising of e-cigarettes. The BMA supports the regulations on the advertising of e-cigarettes contained within the TPD (Tobacco Products Directive), and we broadly welcome the proposed changes to the CAP/BCAP codes and guidance to reflect these regulations. In general, we believe that rules on the marketing and promotion of e-cigarettes should ensure that they do not:

- appeal to children / young people and non-smokers
- make or imply any claims of effectiveness as a smoking cessation aid, unless the product has obtained a medicines license from the MHRA
- include any misleading information that implies a health benefit of e-cigarettes
- promote the re-normalisation of conventional tobacco cigarette smoking.

Our response to some of the specific questions set out in the consultation document are as follows.

Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why.

We agree that regulations - as intended - should apply to any products that can be refilled with nicotine containing e-liquid.

In media subject to the Regulations:

Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

It is unclear how advertising the existence of retailers without referring to the actual products they sell would work practically. We would be concerned if rules to allow such advertisements were to undermine the intention of legislation to restrict the marketing/promotion of e-cigarettes, especially in respect to their appeal to children/young people and non-smokers.



Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

As highlighted above, it is not clear how allowing e-cigarette retailers to advertise their services would be compatible with regulations restricting the advertising of the products they sell. We would be concerned if rules to allow such advertisements were to undermine the intention of the new regulations, to restrict the marketing and promotion of e-cigarettes.

Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

The BMA recognises the potential for e-cigarettes to reduce harm associated with tobacco. The current regulatory system allows substantiated health claims to be made through medical licensing. It is the responsibility of the MHRA (Medicines and Healthcare products Regulatory Agency) to determine which products should be medically licenced on the basis of the evidence of their safety, quality and efficacy. We would be concerned about health claims being made for any products where there is insufficient evidence of their safety and efficacy for smoking cessation.

I hope that you find our submission to the consultation useful – please do not hesitate to contact us for more information if required. We look forward to hearing the outcomes of your consultation.

Yours faithfully,

A handwritten signature in black ink that reads "Raj Jethwa". The signature is written in a cursive style with a horizontal line underneath the name.

Raj Jethwa
Acting policy director

Response to Consultation on Advertising of Electronic Cigarettes

On behalf of Boots UK Ltd

Q1. Yes

Q2. Yes

Q3. Yes

Q4. No

Q5. Yes

Q6. Yes

Q7. No

Q8. Disagree that a sales promotion held on a retail website which transacts only in the United Kingdom should be considered an information society service for the purpose of prohibiting “advertisements”. The product page where factual information about a particular product including price and the means to add to basket or proceed to an online checkout should be treated the same as a virtual shop shelf, and as such the opportunity for an online retailer to permit a save promotion with “was/ now” pricing, or a multi-buy offer such as “3 for 2” should be permitted online just as they would be legally acceptable in a bricks and mortar shop. Customers should not be discriminated against due to their shopping preferences, and there should be no commercial disadvantage between online and physical presence retailers.

Q9. Yes

Q10. Yes

Q11. Mandatory warning and hazard statements should be included as factual information.

Q12. As per the answer for question 8, price reductions or multi-buy offers contained on websites which are transactional in the UK only should be permitted. If they are permitted then “save £X, Was £Y, Now £Z” or “3 for 2. Buy 3 and the cheapest item is free” could still be considered as factual statements.

Q13. No

Q14. A “promotional” statement such as the examples given in the response to question 12 can be factual as well. Descriptive language and subjective claims would clearly be advertising and therefore prohibited under the Tobacco and Related Products Regulations 2016. Similarly competitions and prize draw activity would be have the effect of promoting electronic cigarettes and as such prohibited. Pricing reductions and multi-buy activities are permitted in bricks and mortar stores and as such to avoid anti-competitiveness the same should apply to online retailers. Such activity should be confined only to the web page where

the transactional decision to purchase is made and the ability to add to basket/ proceed to checkout is present.

Q15. Yes

Q16. Yes

Q17. Yes

Q18. Yes

Q19. Yes

Q.20 No

Q21. If the whole or majority of the advertiser's business is in relation to electronic cigarettes, or the retailer in question's name is synonymous with electronic cigarettes then such advertising would by association have the effect of promoting electronic cigarettes. An advertiser who produces or retails many other products or services and where electronic cigarettes are a small part of the advertiser's business must be permitted to advertise generally so long as there is no reference or association with electronic cigarettes.

Q22. Yes, see response to Question 21 above

Q23. Yes

Q24. In such media where electronic cigarettes may be advertised, then consideration should be had in relation to advertisers being permitted to include factual information such as published statements where appropriate from public health bodies and the medical profession, as long as it is clear where such information is from and that it may apply to electronic cigarettes in general and not a specific product or brand.

Q25. Yes

Q26. No

Blackpool Council Consultation response: Consultation on the advertising of electronic cigarettes

CAP and BCAP's proposals for changes to their Codes and guidance in response to the Tobacco Products Directive taking effect in the UK

Issue date: 29/09/2016

Closing date: 31/10/2016

How to respond

CAP invites written comments and supporting information / evidence on the proposals contained in this document by 5pm on Monday 31 October.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing. Please send responses to e-cigarettes@cap.org.uk

The WHO Framework Convention on Tobacco Control

Consistent with the guidance given in relation to implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control, consultation respondents who are tobacco companies, their partners or subsidiaries should indicate that clearly in their response. In their evaluation documents CAP and BCAP will indicate where a response has originated from such an organisation.

Answers to Questions

Part A: CAP's proposal to approximate the advertising prohibitions in the Tobacco and Related Products Regulations 2016 in the CAP Code

A.2 Products for which advertisements are prohibited

In media subject to the regulations:

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.

YES

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why. YES

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why. YES

A.3 Prohibition on advertising in newspapers and magazines

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not

targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why. YES

A.4. Prohibition on advertising in online media and some other electronic media

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why. YES

7. Are there any types of media that you consider to be information society services which are not referenced above? NO

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service? NO

A.5. Prohibition on promotional claims on retailers' websites

CAP considers that the following types of claims are likely to be factual in nature and therefore, all other things being equal, permitted under the Code:

- the names of products (so long as the names are not promotional in nature, for example names which include product claims)
- descriptions of product components including, where applicable, the opening and refill mechanism
- price statements (however, see "promotional marketing" below)
- instructions as to how products can be used
- product ingredients
- flavours
- nicotine content

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why. YES

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why. YES

11. Are there any other claims / types of claims you consider are factual in nature should appear on this list? No

CAP considers that the following types of claims and activities are likely to be promotional in nature and therefore prohibited:

- descriptive language that goes beyond objective, factual claims, for example the use of adjectives
- promotional marketing, as defined in Section 8 of the CAP Code. Promotional marketing can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A

non-exhaustive list of sales promotions includes: "two for the price of one" offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws.

- significant imagery that is not related to the product.
- comparative claims with other e-cigarette products or the general market.

Once finalised, CAP intends to set out these lists in a guidance note accompanying the Code rule prohibiting advertisements in online media.

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why. YES

13. Are there other types of generic claims that should be included in this list? NO

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional? NO

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why. YES

A.6. Non-broadcast media channels not subject to TRPR

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why. YES

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended. NO

Answer: The second sentence of the last paragraph of section 22 is unclear and we do not understand what is meant by it. In particular the MHRA is both the agency responsible for medicines licensing and for overseeing regulation of electronic cigarettes under the EU Tobacco Products Directive. In this sentence the distinction is not completely clear as it refers to products "which are authorised by the MHRA". We believe it would be clearer to change this to read "Rule 22 applies to both electronic cigarettes which come under the EU Tobacco Products Directive and those authorised as medicines, except where there is a carve out for medicines in rules 22.5 and 22.12."

A.7 Proposed changes to the CAP Code

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended. NO

Answer: In the second bullet 'Online media and some other forms of electronic media' the meaning of 'some other forms of electronic media' is unclear – what these other forms of media are needs to be specified.

Part B: Other issues relevant to both the CAP and BCAP Codes

B.1 Preventing indirect promotion of nicotine-containing e-cigarettes

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines? YES

20. Are there any criteria you consider should be added to the list? NO

In media subject to the Regulations:

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised? No

22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why. No

Although this proposal does not allow retailers to refer to individual products prohibited by rule 10.1.11 it still allows retailers to refer audiences to places where they could buy them. A key concern is the number of children and young people who have never smoked tobacco who are being introduced to a product which still has uncertainty surrounding long-term safety¹, through this form of advertising.

This proposal from BCAP does not protect children and young people from exposure to e-cigarettes advertising. Once a young person reaches the retailers website they will be exposed to the products on offer. Whilst e-cigarette companies continue to offer 'youth enticing' flavours and designs of e-cigarettes (for example 'bubble gum' flavour) which are not prohibited and can continue to be promoted on the retailers website, it is not acceptable that BCAP allows e-cigarette retailers to advertise their services on TV or radio.

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why. No

As above, 23.

B.2. Ongoing suitability of current CAP and BCAP content, placement and scheduling rules

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

Yes

Blackpool Council supports the view of The World Health Organization (WHO) who has recommended that "Until such time as a given electronic nicotine delivery system is deemed safe and effective and of acceptable quality by a competent national regulatory body, consumers should be strongly advised not to use any of these products, including electronic cigarettes."

Whilst it is acknowledged that e-cigarettes are highly likely to be less harmful than smoking, they are not harm-free. There will not be a full picture of their safety until they have been thoroughly assessed. The WHO and other researchers are concerned about the safety of the chemical combinations used across the variety of products available. These chemical combinations have not been evaluated for

¹ Lerner, C.A., Sundar, I.K., & Watson, R.M (2015) Environmental health hazards of e-cigarettes and their components: oxidants and copper in e-cigarette aerosols. Environ Pollut, 198, 100-107.

either short-term or long-term safety; and manufacturers have not fully disclosed the chemicals used.²

Therefore, Blackpool Council asks CAP and BCAP not to allow for health claims to be made for unlicensed e-cigarettes until such time as a given e-cigarette is deemed safe and effective.

25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why. YES

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements? YES

There are concerns about electronic cigarette advertising encouraging youth e-cigarette uptake and this is one of the reasons why some forms of electronic cigarette advertising were prohibited in the EU Tobacco Products Directive.

The recent 'What About YOUth' survey 2014³ found Blackpool to have the highest proportion of young people who have ever tried e-cigarettes:- 33.9% compared to 18.4% nationally. Data from the Health Related Behaviours Survey⁴ demonstrates similar levels of e-cigarette use amongst 12-15 year olds in Blackpool, with 36% of young people reporting ever using an e-cigarette and 7% using often (more than one a week). Local data highlights that e-cigarette use is prevalent in young people who have never smoked tobacco. Nearly three-quarters (72.6%) of young people surveyed who had tried e-cigarettes were non-smokers⁵

Therefore there is some local evidence that e-cigarette advertising in advance of the introduction of the interim content rules by CAP and BCAP in November 2014 did have an impact on the number of children and young people becoming regular e-cigarette users.



Dr Arif Rajpura
Director of Public Health
Blackpool Council

² World Health Organization (WHO) (2014). Electronic nicotine delivery systems
http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10Rev1-en.pdf?ua=1

Avdalovic MV, Murin S. Electronic cigarettes: no such thing as a free lunch...Or puff. Chest 2012 Jun;141(6):1371-2 [Abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/22670013>].

World Health Organization Study Group on Tobacco Product Regulation. Report on the scientific basis of tobacco product regulation: third report of a WHO study group. Geneva, Switzerland: WHO; 2009. Report No.: WHO Technical Report Series 955.

³ Health & Social Care Information centre, 2015.

⁴ Schools Health Education Unit (SHEU), 2015.

⁵ Schools Health Education Unit (SHEU), 2015.

Consultation on the advertising of electronic cigarettes

Committee of Advertising Practice (CAP) and
Broadcast Committee of Advertising (BCAP)

Chartered Trading Standards Institute response

31st October 2016

About The Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website (www.businesscompanion.info).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme (www.tradingstandards.uk/advice/ConsumerCodes.cfm).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 46% in their budgets since 2010 and staff numbers have fallen by 53% in the same period.

This response has been composed by CTSI Lead Officer for **Lead Officer for Health – Jane MacGregor and Members of the National Tobacco Focus Group**. Should you have any queries or wish to discuss the response please do not hesitate to contact **LO Health** at tobaccocontrol@tsi.org.uk.

Chartered Trading Standards Institute
1 Sylvan Court, Sylvan Way
Southfields Business Park
Basildon, Essex, SS15 6TH
Tel: 01268 582200
www.tradingstandards.uk

Introduction

CTSI welcome the opportunity to respond to this consultation. Trading standards are responsible for compliance monitoring of the Tobacco and Related Products Regulations 2015 and are thus closely involved in the electronic cigarette market place. Whilst supportive of business, we recognise that this is a developing area and thus clear guidance is required to ensure that businesses comply with the new requirements.

Executive Summary

- CTSI is broadly supportive of the approach taken by CAP and BCAP to the advertising of electronic cigarettes
- We note that it is intended to produce guidance to accompany several of the principle points; it is critical that this is reviewed regularly to keep pace with the changes in this market

Response to Consultation Questions

In media subject to the regulations:

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.

A Q1: Yes

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine containing e-liquid? If not, please explain why.

A Q2: Yes

In media subject to the Regulations:

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why.

4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

A Q3: Yes, however, CTSI has concerns about the ease with which it is possible for a consumer to distinguish between non-nicotine products and those that do contain nicotine and are therefore prohibited.

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

A Q5: Yes, however CTSI would welcome some further clarification of what constitutes a magazine v a periodical and, also, whether a catalogue produced for a consumer is also deemed to be a magazine?

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of

electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above. Do you agree that this proposal is consistent with the law? If not, please explain why.

7. Are there any types of media that you consider to be information society services which are not referenced above?

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

A Q6: CTSI agrees that the proposal is consistent with the law. We would urge that any guidance is regularly reviewed and updated in light of changes in media usage (trends). Is it possible to provide reference in the guidance note to the position of sites such as E Bay, Face Book?

A Q7 & Q8: CTSI has insufficient expert knowledge in this field to comment further.

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

A Q9: Yes

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

11. Are there any other claims / types of claims you consider are factual in nature should appear on this list?

A Q10 & 11: Yes, CTSI agrees that the points listed are factual in nature. We would add that there are other factual matters that are required to be provided by virtue of consumer protection legislation for example name of manufacturer or importer, safety instructions, hazard labelling

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

13. Are there other types of generic claims that should be included in this list?

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

A Q 12: Yes

A Q13: CTSI suggest that generic claims such as "safer than", "less harmful than" may require special consideration. CTSI acknowledges the position of PHE in this regard however, without context such claims could be considered to be promotional.

A Q14: CTSI recommend that the guidance is reviewed regularly and updated in light of new research, legal decisions and changes in the market.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1.above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

A Q 15: CTSI has insufficient expert knowledge in this field to comment further.

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

A Q16: Yes however a clear definition of what constitutes a leaflet would be helpful.

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

A Q17: The second sentence of the last paragraph of section 22 is unclear and we do not understand what is meant by it. In addition there is a typo in the third line which says "sections" plural when it should be 'section' singular. We suggest that there is potential confusion created by the inconsistent use of unauthorised and unlicensed. The MHRA license products they do not authorise them.

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended.

A Q18: The quality of the guidance note will be critical, for example, the second bullet 'Online media and some other forms of electronic media' the meaning of 'some other forms of electronic media' is unclear – what these other forms of media are needs to be specified.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine containing e-cigarettes that are not authorised as medicines?

A Q19: CTSI is unclear what is meant by "a direct response mechanic relating to a nicotine E cigarette" this may therefore require further explanation.

20. Are there any criteria you consider should be added to the list?

A Q20: Not that we are aware of at this point.

In media subject to the Regulations:

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

A Q21: In principle CTSI is supportive of the need for businesses to advertise, however in practice we believe that this will be difficult if not impossible to achieve.

22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why.

A Q23: No, see above. CTSI is concerned that retailers will take advantage of use of other methods to indirectly promote their products through use of colour, imagery,

and name. All aspects that the tobacco industry has used over many years to promote / advertise their products.

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

A Q24: No

25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why.

A Q25: Yes

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

A Q26: Regular review of guidance issued in light of research, legal decisions and changes to the market.

Chartered Trading Standards Institute 31 October 2016

31 October 2016

To whom it may concern

Dear Sir/Madam

Consultation on the advertising of electronic cigarettes: CAP and BCAP's proposals for changes to their Codes and guidance in response to the Tobacco Products Directive taking effect in the UK

I am responding in my capacity of Interim Director of Public Health, County Durham. Durham County Council (DCC) serves a population of approximately 517,773 and is committed to reducing the health harms caused by tobacco and reducing smoking prevalence, which includes reducing the uptake of smoking amongst children and young people.

DCC have an ambition that by 2030 smoking prevalence in County Durham is reduced to 5% and amongst Routine and Manual Groups reduce smoking prevalence to 10%. This ambition is driven by a vision to make children the future focus for protection and the statement below is the commitment to this:-

"The tobacco-free generation is a vision well worth striving for – that a child born now in any part of County Durham will reach adulthood breathing smokefree air, being free from tobacco addiction and living in a community where to smoke is unusual. We owe it to our children to make this happen"

This ambition and vision is shared via our local tobacco alliance, which is also part of a North East network of alliances.

DCC is also the lead commissioner of Fresh (the regional comprehensive tobacco control programme) on behalf of the 12 North East local authorities. The commissioning of the regional Fresh programme demonstrates our, and the North East's commitment to implementing evidence based tobacco control that will impact on the health and wellbeing of our communities.

I warmly welcome the opportunity to respond to this consultation and I am grateful to Fresh and ASH for their support in developing this response.

Children and Adults Services

Durham County Council, County Hall, Durham DH1 5UJ
Main Telephone 03000 260 000 Textphone 0191 383 3802 Text 07786 02 69 56

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine/medical device is consistent with the law? If not, please explain why.

Yes.

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why.

Yes.

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not, please explain why.

Yes.

4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

Yes.

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

Yes.

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media." This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why.

Yes.

7. Are there any types of media that you consider to be information society services which are not referenced above?

No.

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

No.

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

I agree that factual claims on marketers' own websites need to be protected and would argue that this protection needs to go beyond websites to include other forms of permitted advertising. Satisfactory peer reviewed evidence around the safer nature of electronic cigarettes has increased considerably since the CAP code was drafted, outlining the potential health benefits of smokers switching. Three examples are:

- The Royal College of Physicians report in May 2016 '*Nicotine without smoke: tobacco harm reduction*'¹ recommended that "in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK." The report also recommends that regulation of e-cigarettes should be proportionate and should not be allowed significantly to inhibit the development and use of harm-reduction products.
- Data from English Stop Smoking Services shows that electronic cigarettes, when used alone or in combination with other stop smoking products, achieve short-term abstinence rates that are comparable to the most effective products (i.e. Varenicline) and consistently higher than success rates achieved by clients using traditional Nicotine Replacement Therapy (NRT). Data from our own stop smoking service in County Durham, has also shown this to be the case.
- An expert review of the evidence in 2015 by Public Health England² concluded that e-cigarettes are around 95% safer than smoked tobacco and they can help smokers to quit.

One of the problems in not allowing factual claims in adverts promoting electronic cigarettes is that smokers take information from a variety of sources including sensationalist newspaper reports where headlines do not match the findings of reports.

An example of a factual statement we would approve of would be "does not contain tar."

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

I believe the above type of claim should be protected on both websites and other marketing activities that are still permitted. This would also have the added advantage of ensuring electronic cigarettes are able to be marketed more effectively at existing smokers, with messages that smokers thinking about quitting and worried about the risks of tobacco may find more appealing. Adverts for electronic cigarettes have been banned on the grounds of appearing to glamorise the smoking of tobacco products or encouraging non-smokers to take up e-

¹ <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

² <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>

cigarettes. Factual claims would give companies and/ or trade bodies another avenue to avoid these lifestyle routes and gain a market advantage over a product that kills 1 in 2 lifelong users (tobacco). It is noted some of the language about the harm of tobacco on some electronic cigarette websites is similar to that used within tobacco control about the harm of smoking and harmful chemicals in tobacco.

11. Are there any other claims / types of claims you consider are factual in nature and should appear on this list?

As well as factual claims that can be substantiated, I believe there is also a case to explore a system in which quotes from respected peer-reviewed journals or reports from respected medical and public health organisations can be used to promote electronic cigarettes *so long as it is clear the quote applies to the class of product, and not the one being advertised*. I am aware that estimates such as "95% safer" (PHE) may not apply to all products – so it may be that this type of advert is more suitable for a trade association rather than individual companies. If electronic cigarette companies believe perception of harms is deterring take up among smokers, there is much to be gained from working together to address this.

It may also be necessary to impose a condition that the use of quotes must be with written permission of the organisation.

12. Do you agree that the above types of claims [in the consultation document] are likely to be promotional in nature and should be prohibited? If not, please explain why.

Yes.

13. Are there any other types of generic claims that should be included in this list?

No.

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

No.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

Yes. I recommend that CAP should take the position that 'sharing' an item on social media is not a function of the business but is instead a function of how people respond to a particular item. We would add that the content of the social media item should be informational and not promotional and therefore should not encourage sharing.

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

Yes.

17. Do you support the revised wording in Section 22? If not, please explain why and how you think it should be amended.

No. I believe it would be clearer to change the wording to read “Rule 22 applies to both electronic cigarettes which come under the EU Tobacco Products Directive and those authorised as medicines, except where there is a carve out for medicines in rules 22.5 and 22.12.”

18. Do you support the proposed wording of the, newly created, rule 22.12? If not, please explain why and how you think it should be amended.

No. The heading ‘Online media and some other forms of electronic media’ needs to be expanded to make it clear what ‘other forms of media’ are included.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines?

Yes.

20. Are there any criteria you consider should be added to the list?

No.

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

Yes.

22. Do you agree with BCAP’s proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

Yes.

23. Do you agree with BCAP’s proposed additional text for rule 10.1.11? If not, please explain why.

Yes.

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

See answer to Question 11 above. In order to address the serious misperceptions about relative risk we believe it is essential that generic statements about the relative risk can be made. If there were considered to be 'substantiated health claims' then we would consider that this should be allowed by CAP and BCAP. The sort of claim that should be allowed should be along the lines that "electronic cigarette use is considered by Public Health England and the Royal College of Physicians to be much less harmful than smoking" and should link to the relevant statements. We note that this would require the removal of the words 'health or' from Rule 33.5.

25. Should BCAP remove rule 33.8 for the reasons given above? If not please explain why.

Yes.

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

There are two primary types of concerns raised about electronic advertising and these are summarised briefly here:

- The concern that restricting it will adversely affect uptake by smokers. However, awareness of electronic cigarettes is widespread among adults – the vast majority of the public, smokers and non-smokers, have heard of electronic cigarettes and knowledge of them grew at a time when advertising was not widespread.
- The concern that electronic cigarette advertising encourages youth smoking and use by adults who have never smoked. However, the most recent 'Smoking, Drinking and Drug Use' survey records the lowest smoking rates among children since records began in 1982.

Yours faithfully



Gill O'Neill
Interim Director of Public Health, County Durham



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Preamble

While we recognise that many of the key issues are outside of the scope of this consultation, as they are matters of legislative fact, rather than interpretation, we feel that these issues are extremely relevant and merit discussion.

The Directive enacted through the TRPR requires that a cigarette-style warning must be carried by vaping products, but this mandatory warning is itself not factual. In the case of hardware for use with nicotine containing liquids, it must carry a warning that it contains nicotine, even if it is empty when supplied. This is not a useful starting point.

Additionally, certain factual and accurate statements are prohibited. For example, although the estimates of the size of the residual risk vary, there is almost complete consensus that vaping is less hazardous than smoking. Using relative risk in promotional materials allows the products to be accurately targeted at the most relevant consumers i.e. those who already smoke, while having little appeal to those who do not. As such, the use of relative risk would seem the ideal marketing tool, yet the use of it is explicitly prohibited. Promotion of vaping products as having "health or lifestyle benefits" is also explicitly prohibited by the TRPR. Electronic cigarettes and vaping products cannot be promoted as a safer alternative to smoking, nor as a beneficial lifestyle change for smokers, both of which are truthful statements. It is, in fact, unclear what purpose it can be stated that these products serve.

The general prohibition on advertising itself does more to reinforce the common, but dangerously mistaken, view that the use of electronic cigarettes and vaping products is very nearly as dangerous as smoking than it does to promote the use of the products in a way that enhances public health. This seems like a nonsensical and potentially dangerous prohibition.

It has been 'clarified' that this will not prevent public bodies promoting vaping for exactly these purposes¹. It is unclear why it is considered acceptable, non-

¹"Similarly a public health campaign about relative risks of e-cigarettes verses tobacco products by Public Health England or local stop smoking services are not advertisements made in the course of a business and therefore not covered by these restrictions" from the Department of Health guidance available at

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discriminatory, and proportionate for public money to be spent promoting the use of electronic cigarettes as a safer alternative to smoking, while potentially prosecuting businesses who make similar statements.

Given the potential for vaping products to further reduce the burden of disease caused by smoking, these restrictions do not seem appropriate for the protection of population health. It is vitally important to recognise the significance of the recent announcement of the updated smoking prevalence rates for the UK- particularly since experts such as Professor John Britton² and others³ have credited vaping products for the UK's having achieved a new low rate of 16.9%⁴.

Consultation response

In media subject to the regulations:

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.

CAP's interpretation is in line with the law. However, the public health challenges that may arise are the result of the wording contained in the legislation, rather than the CAP interpretation of it.

2. Do you agree that the prohibition should apply to advertisements for non nicotine and refillable products which can be refilled with nicotine containing e-liquid? If not, please explain why.

Since the definition used is "can" be used to consume nicotine containing vapour, this extends the scope of this prohibition beyond merely applying to hardware that is intended for use with nicotine containing products. Since any device that has (or can be fitted with) a mouthpiece, and is intended to be used with a glycol based fog mixture, can be refilled with a nicotine containing solution, many unintended products would be captured. For example, standard fog machines can, with trivial modifications, be used for consuming nicotine containing vapour:

<https://www.gov.uk/government/publications/proposals-for-uk-law-on-the-advertising-of-e-cigarettes/publishing-20-may-not-yet-complete#guidance-and-interpretation>

2 <http://www.bmj.com/content/354/bmj.i4819>

3 <http://www.bmj.com/content/354/bmj.i4645>

4 <https://www.gov.uk/government/news/quitting-smoking-sweeps-the-nation-as-stoptober-returns>



While this is not common practise, it is the case that all fog machines “can” be used to generate nicotine containing vapour, and some have been sought out for this purpose⁶.

The use of “can” rather than something more permissive and practical such as “is intended for” would also seem to place an unfair restriction on certain vendors. If, for example, a vendor supplies only nicotine-free liquids with a small selection of refillable hardware, in theory, they are outside of the scope of the TRPR and the restrictions associated with it. However, they are still prohibited from advertising their hardware, even though the intended use would be with nicotine-free products. It is also not clear if this nicotine-compatible hardware would be considered as being indirectly promoted through promotion of the nicotine-free liquids, if all are under the same brand name.

This also leaves much ambiguity around “any component of that product” for vaping products. For example, a mouthpiece cannot contain nicotine, but is an essential part of a device defined as being possible to use for “consumption of nicotine-containing vapour via a mouth piece”. Similarly, a significant number of vapers use rebuildable devices, and essential for these is heating element wire. This comes in a variety of forms and alloys, from nichrome and kanthal, to stainless steel and titanium. Potentially, therefore, this prohibits the advertising of any heating element wire which “can” be used in a vaping device of some sort. This seems rather beyond the intent of the legislation, despite the rather poor wording, and it would not seem useful for CAP to include such a broad scope of prohibition.

3. Do you agree that advertisements for products in the list above would be lawful under TRPR and that CAP therefore does not need to prohibit them? If not please explain why.

We would agree that these products would be exempt, but would, as indicated above, welcome some clarity on products which, while not intended for use with nicotine

⁵From <https://youtu.be/ItORJmByj2U?t=9m9s> Although this is a very much satirical video, this is not the only example of such use.

⁶For example, the 'Wizard Stick' <https://www.e-cigarette-forum.com/forum/threads/the-wizard-stick.16362/>

containing liquids, 'can' be used with them.

4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

As indicated in the preamble, we do not feel that this level of prohibition is justified for electronic cigarettes/vaping products, regardless of their nicotine content. If the intent of the TRPR is to reduce the impact of smoking-related death and disease, then accurate and responsible promotion of vaping products should be encouraged, not prohibited, particularly in light of the recent data showing that vaping products have already assisted in driving *down* the UK's smoking prevalence.

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

CAP's proposal contains a slight linguistic change from that used in the TRPR: the legislation exempts publications "intended exclusively" for trade audiences, while CAP uses "targeted exclusively". While it is not immediately obvious why this change would be problematic, the change from a prohibition of intent to one of marketing/promotion/content seems unhelpful and has the potential to cause future problems.

While a prohibition on advertising in untargeted publications could, perhaps, be considered appropriate, it is unclear why there is a prohibition on consumer-targeted magazines. It seems unlikely that people would purchase a magazine about products unless they already had a significant level of interest in them.

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above. Do you agree that this proposal is consistent with the law? If not, please explain why.

Given the very fine, if not illusory, line between providing factual information, and promotion, it is unclear how any business can operate online without considerable fear of regulatory intervention.

While we realise that this is a result of the wording of the legislation, it is also not clear why a suitably targeted email advert (such as to existing customers of a website) should be prohibited when an equivalent physical mailshot would be acceptable, especially given the relative environmental costs of these approaches.

**9. Do you agree that the law allows for factual claims on marketers' own websites?
If not, please explain why.**

We would agree with this interpretation, however it is worth noting that this only allows (for no adequately justified reason) certain factual claims, while others, such as accurate and evidence-based statements about relative risk, are prohibited.

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

We would agree, however there are some factual statements which do not seem likely to escape classification as promotional. For example, it would be permissible for a website to have a 15% sale, and reflect this in the product pricing, however, marking products as being discounted by 15% would seem to be prohibited as promotional. Having price promotions that consumers cannot be informed of does not seem helpful to either the consumers or the vendors.

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

While we would agree that these are promotional statements, and under the terms of the legislation are required to be prohibited, we cannot agree that they should.

Furthermore, although 'flavours' are considered to be a matter of fact, we are unable to conceive of a way in which a flavour can be described without any such description becoming promotional. This would seem to be an effective prohibition on non-descriptive flavour names. Consider a product sold by one of our members - Amber Blend. The name is suggestive of a tobacco flavour, but this is not explicit, and it is unlikely that someone seeking a tobacco flavour would purchase it hoping it would meet their needs. The current description is "Our Amber Blend e-liquid is a big hit among tobacco e-juice fans, it's a light, sweet Virginian flavour.". However, "a big hit" would clearly be considered promotional, and removing the adjectives from the line "it's a light, sweet Virginian flavour" yields "it's a flavour". The overall effect of bowdlerising this description is therefore:

"Our Amber Blend e-liquid, it's a flavour"

This does not seem likely to help consumers pick a suitable product.

Indeed, since in this context the use of 'like' would be as an adjective, it is impossible to say that an apple e-liquid "tastes like apples", nor would it possible to describe it as "apple flavoured". On the other hand, unless it was flavoured with a natural extract from apples, it would not be possible to describe a flavour as "tasting of apples", since this would not be factual.

Given that taste is very much a subjective sense, providing useful descriptions of flavours would seem important to help with customer satisfaction, not only from a

business perspective, but also in terms of helping consumers avoid reverting to smoking. However, writing an adjective-free, factual, non-promotional, description of a flavour would seem to be a broadly impossible task.

13. Are there other types of generic claims that should be included in this list?

Given that the list already precludes the possibility of describing any non-material object or attribute, it would seem more likely to benefit from reduction than further extension.

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

While the limitation to factual statements can be applied to physical objects, since taste is subjective, it is arguable that any description of flavour cannot be entirely factual. It is certainly not possible to give a meaningful description of a flavour without the use of adjectives, regardless of if this is considered to be promotional or not. Unless the intent is to prevent the sale online of a variety of products with non-descriptive flavour names, this section would seem to need revision and significant clarification.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why. Please provide any examples and evidence you might have in support of your response.

We would agree with this interpretation, however the same broad principles would apply to media other than web pages. Protected Tweets for example are only visible to followers of users who have explicitly opted to view those tweets. This would seem very much within the opt-in approach to the provision of information. Admittedly, this makes the medium largely useless as a marketing tool, but this is the intended purpose of the legislation. It is also not clear why 'like'ing or 'sharing' of social media posts would be problematic - this is the choice of the consumer, and unless an incentive is offered should not be considered promotion any more than a face to face conversation between two people would be.

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

We do agree with this interpretation.

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

Our understanding is that although the TRPR provides instructions on packaging and labelling, this does not abrogate the requirements of CLP. On the basis of this, it would seem useful to leave this reference in place. Otherwise, the wording appears to be useful and fit for purpose. Indeed, the definition of electronic cigarette is more useful than that used in the legislation.

18. Do you support the proposed wording of the, newly created, rule 22.12? If not please explain why and how you think it should be amended.

Rule 22.12 appears to be consistent with the requirements created by the TRPR. However, given the nature of these requirements, we are unable to support them. The existing rules (22.1 to 22.11) provide a framework that is achievable and offers considerable benefit to population health, so our preferred outcome would be the deletion of rule 22.12.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine containing e-cigarettes that are not authorised as medicines?

This seems broadly compatible with the legislative restrictions, however there are some potential issues discussed in response to question 21.

20. Are there any criteria you consider should be added to the list?

No.

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

We would wholeheartedly support this. Face to face service has considerable advantages for allowing users to find devices and flavours that suit them. Enabling retailers to advertise their existence will, at least, allow people to find a local source of information and products in what is otherwise a desert of promotion. Given the relative abundance of ecigs and the product they compete with, this is of considerable value, since everyone knows where they can buy cigarettes, but vaping products are less easily found.

However, this seems slightly incompatible with the criteria for indirect promotion.

Consider a hypothetical e-cig retailer, 'Ecitavapes'. It has a standard range of products, with nicotine containing products and hardware sold under the Ecitavapes brand, and a separate range of nicotine free products sold as Ecitavapes Zero. Ecitavapes can advertise as a supplier of vaping products (which will lead to a presumption that they trade in nicotine containing products). However, since the promotion of Ecitavapes Zero would lead to the indirect promotion of Ecitavapes, these products could not be specifically advertised. It seems rather counterintuitive to make it easier for a brand to promote itself as a provider of unspecified products than for nicotine free ones.

22. Do you agree with BCAP's proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

As indicated above, places where cigarettes can be bought are many and varied but outlets for vaping products, particularly those where expert advice can be offered, are much rarer, and there is considerable benefit from assisting and encouraging people to find them.

However, the definitions used in the CAP and BCAP codes are different. Section 22 of the CAP codes defines an ecig in the context of being "a product that is intended...", while the BCAP code uses the potentially more problematic "a product that can be used...". It would seem wise to align these, preferably on the more valid and less overly broad "intended" definition.

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why.

Yes.

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

While we endeavour to keep up to date with the literature on this subject, as CAP have identified, there is a general consensus on the relative risks of these products, and it would seem more appropriate for CAP to seek advice from public bodies, rather than the industry, on this point.

25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why.

The removal of 33.7 would seem to be justified, since the products it relates to cannot be advertised. However, it would seem useful to include a reverse requirement - nicotine-free vaping products that are advertised must state that they do not contain

nicotine. This would avoid any potential for advertised products to indirectly promote nicotine use, as well as preventing smokers seeking an alternative nicotine source from being misled or confused.

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

As iterated in the preamble, we do not feel that the legislation in this area provides for the promotion of electronic cigarettes and vaping products in a way that maximises their potential for improving population health. We recognise that this is largely beyond the remit of the ASA, and the rules reflect the limitations of the legislation. We would hope to see a return to the more proportionate and sensible rules originally derived by the ASA, in the event that the promotion of electronic cigarettes and vaping products is once again permitted if, as should be the case, the TRPR are revised following the decision to leave the European Union. The revised EU Tobacco Products directive is not a practical, proportionate or appropriate regulatory framework, and this can only be reflected in legislation and codes derived from its requirements.



ELECTRONIC CIGARETTE MARKETING: CURRENT RESEARCH AND POLICY

A report by Linda Bauld, Kathryn Angus,
Marisa de Andrade and Allison Ford

Commissioned by Cancer Research UK
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EXECUTIVE SUMMARY

This report outlines results from three separate but connected pieces of research. First, a review of the current e-cigarette market drawing on available data from market analysis, the trade press and other published sources. Secondly, a systematic rapid review of the e-cigarette marketing literature published in peer reviewed journals between 2011 and 2016, updating our previous work in this area. Finally, a description of the past and current regulatory framework for e-cigarette marketing in the UK, drawing on semi-structured interviews with key professionals working in the field and relevant documentary sources.

The E-Cigarette Market

The e-cigarette market in the UK and globally is in a constant state of change creating a complex situation that is quickly out of date. Available information on the market from a range of different sources – including from researchers, charities, advocates, trade associations, analysts, journalists, health bodies and industry professionals from the tobacco and independent sectors – is variable and often contradictory in nature. Given the ways in which current data are presented, there appears to be confusion over whether the tobacco industry (TI) or independent sector has a greater market share.

The availability and appeal of first-generation e-cigarettes (cig-a-likes as they look like tobacco cigarettes or closed systems) initially drove the market, which then expanded towards second-generation products (usually larger than cig-a-likes and resembling fountain pens). Third-generation products – also known as vapours, tanks and mods (VTMs), personalised alternatives with novel flavours or open systems available from vape shops – enhanced vaping capacities and designs arrived towards the end of 2013. This part of the market is larger and growing at a much faster rate. The TI reportedly owns the leading e-cigarette brands, but currently has almost no foothold in the vape shop share of the market, where many second and third generation products are sold. Indeed, the majority of e-cigarette users (around 66%) in the UK are currently using tanks.

E-cigarettes were the fastest growing product category in British supermarkets in 2014. Tobacconists or e-cigarette shops were amongst those opening most branches during 2015 in town centres. Across the majority of e-cigarette brands, London and its surrounding areas and northern England (particularly the northwest) are a focus for brand distribution in the UK. The five most saturated regions in the UK for retail distribution outside vape stores are London, northeast England, southeast Wales, northwest England and the West Midlands. The East of England, Northern Ireland and Scotland do not have such a significant presence of stores – although one of the top five largest retailer chains, E cig Wizard is currently focusing on the East of England. British American Tobacco's (BAT) e-cigarette Vype is sold in Lloyds Pharmacy stores and Puritane, owned by Imperial Tobacco's subsidiary Fotem Ventures, is exclusively available at Boots.

Tobacco industry efforts to build a market for reduced-risk products show evidence of a recent focus on vapour devices that are not e-cigarettes, but rather primarily other product categories and diversification. For example, heat-not-burn that uses tobacco heated at high temperatures (but not burnt) instead of e-liquid.

Only one product has been granted a medicinal license by the UK's Medicines and Healthcare Products Regulatory Agency (MHRA) following standard procedures. E-Voke, produced by BAT's subsidiary Nicoventures, is an e-cigarette which has been produced following another licensed device, Voke, produced by the same company which is an inhaler which contains no electronics, heat or combustion. Medicinal licenses for Voke and e-Voke allows them to be marketed as smoking cessation aids, to

make health claims and to be prescribed by health professionals as well as sold over the counter in pharmacies. However, importantly neither Voke nor E-Voke is yet available on the UK market.

The introduction of the EU Tobacco Products Directive will introduce substantive changes that will both affect the e-cigarette market overall but also limit marketing opportunities.

The less restrictive packaging environment for vaping products lets e-cigarette manufacturers make a statement and use packaging to express their brand and product differentiation. There are recent signs that the price of e-cigarettes and vapour products has declined both online and offline. While in supermarkets and convenience stores prices have been falling, two offline channels, the pharmacy and petrol/travel retail sectors (primarily convenience stores within petrol stations) are relatively expensive, with prices static or even increasing. The prices of tank products appear to be more standardised across websites, suggesting more stable demand. According to some analysts, the decline in e-cigarette pricing is at least partly due to the expanding vapour category and development of vapours, tanks, mods and refills that are generally retail cheaper.

The e-cigarette market currently represents less than 1 per cent of the tobacco market. However, it is growing year on year and at least one market analysis suggests that annual sales of e-cigarettes could outstrip tobacco by 2024.

Rapid Review of Published Research

The purpose of the rapid review was to identify peer-reviewed research on e-cigarette marketing and to summarise the studies' findings on: the nature and extent of e-cigarette marketing; and any actual or perceived effects of e-cigarette marketing on children and adults.

Six academic literature databases were searched using permutations of e-cigarette, e-shisha, vaping, marketing, advertising, promotion, social media and sponsorship as search terms on March 31st, 2016. To be included in the rapid review, studies had to: be published between January 2011 and March 2016; be an empirical study published in a peer-reviewed journal; and use quantitative measures to examine a marketing element of e-cigarettes, i.e. advertising and promotion channels, pricing or availability from commercial sources. Journal articles that were editorials, commentaries, policy or legal analyses, and reviews were excluded. The data were extracted from all the included studies and the findings reported in a narrative synthesis, arranged by the types of marketing, and then, for the studies with people as subjects, by the outcomes measured.

The rapid review included a total of 73 peer-reviewed studies on e-cigarettes and marketing published in 75 papers between 2011 and the end of March 2016. The findings were split into three main categories: studies of the nature of e-cigarette marketing, studies on the effects of e-cigarette marketing on children (≤ 18 years) and studies on the effects of e-cigarette marketing on adults. Where relevant, the review focused on findings most relevant to the UK.

Studies of the nature of e-cigarette marketing

43 studies (published in 42 papers) looked at the nature and/or extent of an element of e-cigarette marketing. All were observational studies and most were conducted in the USA ($n=32$); four studies came from the UK, two from Canada and one each from China, South Korea and Switzerland; and one study covered 45 countries, another covered two (Canada and the USA). Overall, there was a considerable amount of data on the type, location, frequency and content of e-cigarette marketing. Some data on advertising spend and price of products were given. Few of the studies were conducted

in the UK, however other studies focused on marketing channels that could be accessed from the UK (eg. via social media).

Thirteen studies examined the nature of e-cigarette marketing via social media channels, YouTube and Twitter. They were used by manufacturers, retailers and vapers to promote e-cigarettes. It was difficult to distinguish between paid, unpaid and user-generated promotional content.

Five studies looked at marketing content across a range of other channels, including: print, TV and other broadcast media; through vaping conventions; and online through banner and video adverts. The types of marketing were diverse during the time-periods studied and different channels of marketing were intended to target different audiences.

Four studies from the USA examined e-cigarettes advertising spend; the trend data showed that the advertising spend increased during the time period each study covered. Four studies covered the pricing of e-cigarettes, with one multi-country study finding that that tobacco products were cheaper than e-cigarettes in most countries, except the UK, where e-cigarettes were cheaper overall.

Eight varied studies analysed e-cigarettes online retail marketing; some looked at the content of promotions for retail sales online, while others looked at the range of products for sale and how sales were promoted. Some findings had less UK relevance now, where the CAP code and the TPD prohibit messages like effectiveness for smoking cessation or other health claims. Other findings highlighted promotional approaches such as using messaging that appealed to social status, social activities, romance or celebrity endorsement.

Twelve studies, including two from the UK, surveyed e-cigarette marketing in shops. Overall, the prevalence of retail outlets and the extent of displays in shops increased over the studies' time-periods. The promotion of e-cigarettes at point-of-sale was prevalent in a range of types of retailers and many of the tobacco retailers also sold e-cigarettes. A Scottish study found that 77% of the tobacco retailers audited in the study stocked at least one brand of e-cigarettes.

Studies of the effects of e-cigarette marketing

Thirty studies (published in 33 papers) had human participants (21 with adults, 8 with children and 1 with both adults and children). Most of the studies had observational designs, however nine of the studies with adults and children used an experimental design.

Studies of the effects of e-cigarette marketing on children

Nine studies examined perceived or actual effects of e-cigarette marketing on children (11-18 years). Six studies were from the USA, two studies were from the UK and one from Finland. There was a greater focus on recall of e-cigarette advertising in the studies, with less data on recall of other promotional channels, brand awareness and procurement of e-cigarettes.

Overall, the studies showed that this age group were aware of e-cigarette advertising via multiple channels: TV, posters, billboards, internet, newspapers, magazines and shops. Awareness of e-cigarette advertising was generally higher in the studies from the USA than elsewhere. For example, in a large representative survey from the USA in 2014, 66.4% middle school, 70.9% high school students could recall e-cigarette advertising or promotion; and a time series analysis showed that 12-17 year-olds' exposure increased by 250% between 2011 and 2013 in the USA. However, in Finland in 2013, e-cigarette advertising recall was just 10.5%.

Only one study, from the UK, measured e-cigarette brand awareness. It found that 84% of 11-16 year olds in the UK could not name (unprompted) an e-cigarette brand when asked. In four studies, young e-cigarettes users recounted commercial sources when asked to recall where they purchased or procured e-cigarettes; three in the USA and one in Finland. Commercial sources were less frequent than informal sources; across the studies the most common source of access was friends (35.9%-79.9% between four studies). All the studies were conducted when age of sale restrictions were not yet in place or had been very recently introduced.

Two of the studies with children used an experimental design to assess any effects of e-cigarettes marketing. The first, with 11-16 year-old never smokers and never vapers in England, found that those exposed to e-cigarette adverts with flavoured e-liquids (vs. unflavoured or no adverts) viewed the adverts as more appealing and reported more interest in trying the product. However, there was no difference in susceptibility to smoke tobacco between the groups. The second study, with 13-17 year-old never users in the USA, found that viewing e-cigarette adverts increased the appeal of products and increased reported intention to try an e-cigarette. The attitudes towards e-cigarettes were significantly more positive among those that viewed adverts vs. the control group; e.g. 'enjoyable', 'healthy', 'safe', 'fun', 'smart', 'cool', 'attractive'. However, as in the UK study, viewing the e-cigarette adverts did not affect perceptions of the harmfulness of tobacco cigarettes or attitudes towards using tobacco cigarettes.

Studies of the effects of e-cigarette marketing on adults

No studies on the effects of e-cigarette marketing on UK adults were identified. Of the twenty-two studies we did find, the majority were from the USA. Most of the studies were cross-sectional, measuring adults' recollection of the type or 'channel' of e-cigarette advertising to provide a 'snapshot' of data from a single time point.

Among the different adult populations studied, i.e. young adults, ever e-cigarette users, former and current smokers, all were aware of e-cig advertising, including from multiple sources. Awareness levels were generally higher among adults than in the studies with children. Awareness of e-cigarette advertising was higher in US studies than in studies from the Netherlands and New Zealand. Vapers and tobacco smokers more likely to report exposure to and awareness of e-cigarette advertising. Very few studies measured adults' recall of e-cigarette marketing via other promotional channels. Only one study measured commercial advertising awareness amongst healthcare professionals, finding that it was the third most reported source of awareness of e-cigarettes, after patients and news stories.

Receptivity to e-cigarette adverts was not particularly high. In this studies measuring this outcome, adult respondents more likely to rate e-cigarette adverts negatively compared with other adverts on measures such as: 'liked them', 'found them funny', 'found them sexy'. Adults smokers and e-cigarette ever-users more likely to be receptive than those who were not.

Seven studies, all from the USA, used an experimental study design with adult subjects. Overall, these studies showed the impact of e-cigarette advertising, such as ad exposure and receptivity, on variables such as intention and desire to use an e-cigarette and urge to smoke a tobacco cigarette. In several studies e-cigarette advertising was associated with intention or desire to use an e-cigarette among populations of young adults. Findings supported some of those from the cross-sectional studies such as current e-cigarette users being more receptive to adverts for branded e-cigarettes. One study found that e-cigarette advertising exposure increased interest to try an e-cigarette in two-thirds of smokers who had never tried an e-cigarette, suggesting a positive role for advertising. Also another study found that e-cigarette advertising exposure did not change smokers' existing desire to quit smoking.

Regulatory framework for e-cigarette marketing

This section of the report draws on stakeholder interviews and documentary review to capture the regulatory framework for e-cigarette marketing.

Between 2007, when e-cigarettes were introduced to the UK market, and 2014, by which time the market had grown rapidly accompanied by an increase in e-cigarette advertisements, existing Committee for Advertising Practice (CAP) / Broadcast Committee for Advertising Practice (BCAP) frameworks were presenting regulatory challenges. This resulted in a CAP/BCAP consultation in 2014 which informed new rules on e-cigarette advertising. Intended to be an interim measure until the TPD came into effect in May 2016, the new CAP/BCAP code, introduced in November 2014, provided specific protections, particularly for children and non-smokers and allowed e-cigarettes to be shown in use on TV. In practice, it was generally thought that the new code, particularly in relation to TV advertising was working well, with relatively few complaints submitted to the Advertising Standards Authority, although some stakeholders from the tobacco control community believed the code did not go far enough to control advertising.

In May 2016, new rules for e-cigarette advertising came into force via Article 20(5) of the EU Tobacco Products Directive, prohibiting cross-border advertising of nicotine-containing unlicensed e-cigarette products, including TV, radio, online (though with scope for retailers to retain websites making limited claims), newspapers, magazines and sponsorship. The Tobacco and Related Products Regulations (TRPRs) 2016, set out how the TPD applies in the UK. Associated guidance on the provisions has been developed by the Department of Health who, in their interpretation of the TPD, aimed to strike a balance between the need to allow current smokers to receive information on e-cigarettes to encourage them to quit and the need to protect never smokers, particularly children, from the effects of advertising. To ensure the TRPRs are reflected adequately in the CAP and BCAP codes, CAP and BCAP have recently launched a consultation (September 2016) in order to provide further detailed guidance on the new rules.

Stakeholders interviewed for the study raised future issues related to e-cigarette marketing following the introduction of the new rules contained within the TPD. These included issues around being able to make health claims in marketing e-cigarette products, future marketing of non-nicotine containing products, the division between information and promotion, and the potential diversion of resources to non-restricted media such as billboards and leaflets, and point-of-sale displays. Although legal challenges to the TPD, both in the UK and EU courts, have been overturned, including a 'fatal' motion in the House of Lords, the result of the EU Referendum in the UK may pose future implications for the provisions of the TPD. It is also likely that Scotland will impose additional domestic advertising restrictions, through legislation passed last year and regulations that will be developed in 2017. No other UK nations are currently planning additional marketing restrictions beyond the TPD. Examining the impact of this new policy framework via the TPD and any other legislation is a priority for research. Will these current and planned marketing restrictions protect never smoking children from regularly using e-cigarettes? Will they restrict communication about the products to adult smokers who could benefit from switching from smoking to vaping? Ongoing surveillance and future studies should shed light on these important questions.

1 INTRODUCTION

Electronic cigarettes (e-cigarettes) are now widely used in the UK and a number of other countries, primarily as a product to cut down or stop smoking. The World Health Organization recently estimated that half the world's population lives in countries where e-cigarettes are available. Growth in the range and type of devices has been significant (Zhu et al. 2014), but new regulation in Europe and elsewhere may change this. E-cigarette marketing has been the focus of a number of recent studies, and concerns have been raised about the impact of this marketing on young people, including in the UK. Our research team have completed two recent reports examining this issue, first for Cancer Research UK in 2013 (de Andrade et al. 2013a,b) and subsequently Public Health England in 2014 (Bauld et al. 2014). This study updates this previous work and provides an overview of current issues related to the e-cigarette market and e-cigarette marketing.

The study aims to:

- Assess the extent and nature of the e-cigarette market in the UK in 2015 and describe potential future trends.
- Outline findings from a rapid review of the peer-reviewed literature on e-cigarette marketing.
- Describe the current regulatory framework for e-cigarette marketing in the UK and outline how this is likely to change with national and EU regulation of marketing.
- Discuss the implications of findings for future research and policy.

2 METHODS

This is a rapid scoping report with three main elements. A range of data collection methods was used to conduct the research. Here we describe the approach taken in to collect and analyse data related to each part of the report.

2.1 E-Cigarette Market Data

This section of the report describes the current e-cigarette market in the UK and outlines how this has been developing and changing in recent years. While the UK is the primary focus, given the global nature of the market, references and in some cases comparisons, are also made to the wider international market (particularly in Europe and the USA).

The primary aim of this section is not to provide a critical analysis of the current situation but rather to highlight the range of information available in the public domain and to use this information to create an overall picture of the market – both in terms of tobacco industry (TI) and non-tobacco industry (non-TI) movement and progression.

2.1.1 Identifying Sources

The search involved: (1) customised Google searches for media articles, discussions and reports and (2) targeted known websites of relevant organisations and bodies including industry monitoring sites and TI and non-TI reports and websites. Key word searches were used to target specific facts and figures linked to the subject area. These were initially very broad, however the documents retrieved then helped to identify secondary search terms. Table 1 summarises the range of terms. These were used in various combinations across the five fields, in order to identify relevant resources.

Table 1: Study Search Terms

<p>Industry: tobacco; e-cigarette; e-cig; electronic cigarettes; independent(s) industry/companies/manufacturers; tobacco harm reduction</p> <p>Product: first-generation products; cig-a-likes; second-generation products; tanks; vapours/vapors, mods and personal vapourisers/vaporizers; electronic nicotine delivery systems (ENDS); vaping products; vaping devices</p> <p>Activity: vaping, vape, smoking, smoke</p> <p>Medium: internet, web, online, offline, retail outlets, pharmacy, convenience stores</p> <p>Approach/details: sales, marketing, pricing, promotion, products, brands</p> <p>Resource: statistics, reports, media, discussions, commentaries, blogs</p>
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An iterative approach was adopted in order to allow for a constant process of information gathering and refinement. Where possible, any literature was first screened by reading the executive summaries or contents to assess relevance. The full text or website was then explored. Any information obtained was briefly summarised and analysed to aid and guide the following searches. To further enhance opportunities for data collection, manual searches of the full reference lists and/or media links were also conducted. This continued until a coherent picture of the current e-cigarette market could be established.

The iterative process of searching, analysing and refining resulted in a total of 152 documents, media articles, reports, commentaries and websites being considered for the purposes of this analysis across the years 2013 to 2016. Due to the extremely fast-paced nature of the changing market, the time-

span for inclusion of the resources was kept deliberately recent, to ensure up-to-date information. Where resources provided helpful contextual details about the history and development of organisations these were also included for reference. Additionally, two market research reports from ECigIntelligence and Technavio.com (Global E-Cigarette Market 2016-2020) were analysed.

2.1.2 Limitations

There are a number of difficulties inherent in a study of this nature. First, information and data is gathered from a range of different sources including public health researchers, charities, advocates, trade associations, analysts, journalists, health bodies and industry professionals from the tobacco and independent sectors with various perspectives and/or objectives. As such, wherever possible a number of sources have been identified in order to present a range of statistics and information across the field.

Second, available data is extremely variable and is often contradictory in nature. The market does not offer a transparent and clearly evidenced process of recording information. At best, this means that the evidence should be viewed cautiously and across the different perspectives.

Third, the e-cigarette market is in a constant state of change – thus creating a very complex situation that is quickly out of date. To provide a current ‘snapshot’ of this market is not possible without detailing, to some degree, what has happened to lead it to its current situation. For this reason, the report provides background information about the ways in which companies have formed, expanded and moved across the industry and illustrates some of the reported ongoing and future problems it is likely to face.

Fourth, given the ways in which data is presented, it is difficult to divide the market by tobacco industry (TI) and non-tobacco industry (non-TI). Many overlaps occur within the e-cigarette market and resources, including analytical reports and media articles, report their findings across the two industries. Therefore, whilst every attempt is made throughout the report to highlight whether information relates to TI or non-TI companies, separate sections are not provided.

Finally, the terminology pertaining to e-cigarettes is inconsistent across a variety of sources. In some instances, the e-cigarette market is referred to as the ‘vapour market’ and split into ‘e-cigarettes’ and ‘vapours, tanks, mods (VTMs) and personal vapourisers’. In others, ‘e-cigarettes’ is used as a homogenous term to describe the fragmented market comprised of first-generation e-cigarettes (also referred to as cig-a-likes or disposables), second-generation e-cigarettes (also called rechargeables) and third-generation e-cigarettes (also known as VTMs, personal vaporisers, modular units or open systems). This creates reported discrepancies on whether the tobacco industry owns the majority of the market or the independent sector dominates. We discuss this in more detail in Section 3.1 of this report.

2.2 Rapid Review

The rapid review element of this report describes findings from a review of the literature on e-cigarette marketing. To identify studies, a selection of relevant terms (including permutations of e-cigarette, e-shisha, vaping, marketing, advertising, promotion, social media, sponsorship) were used to search six literature databases: the business and marketing databases Business Source and WARC (World Advertising Research Center); the medical and public health databases Medline and CINAHL (Cumulative Index to Nursing and Allied Health Literature); a social sciences database Social Sciences

Citation Index; and the humanities database Arts & Humanities Citation Index. Searches were run on March 31st, 2016 and covered the period from January 2011 to that date. The start date for the searches was chosen to update our previous reviews on this topic. After duplicate results were removed, 334 papers were screened against the following criteria, of which 73 studies published in 75 papers have been included in our review:

- include empirical studies published in a peer-reviewed journal since 2011
- include studies that use quantitative measures to examine a marketing element of e-cigarettes, including their advertising and promotion and the channels used, how they are priced, and their availability from commercial sources
- exclude editorials, commentaries, policy and legal analyses, and reviews published in academic journals.

A large body of peer-reviewed empirical research has been published on the design of e-cigarettes, examining elements such as flavourings, nicotine levels, the product's physical components and attributes, and packaging/labelling. Product design and composition is a key element of a manufacturer's (or retailer's) marketing strategy, however this element was beyond the scope and resources of this review.

Data were extracted from the studies identified for rapid review using a proforma with nine headings (see Appendix 1). The data extraction procedure was shared out amongst our research team and some members of the European Respiratory Society. This rapid review did not conduct individual quality assessments for each study, however the strengths and limitations of the evidence base are discussed. This report presents a narrative synthesis of the findings from the identified studies, focusing on studies that examine the extent and nature of e-cigarette marketing first, then the studies with human populations.

2.2.1 Limitations

The rapid review differs from a full systematic review in its methods. A very short timeline (three months) was available for the review and the preparation of the report hence the decision to conduct a rapid review rather than a fuller systematic review. Limitations include the following: the searches for studies were conducted systematically however results were screened for inclusion by only one researcher. Studies were not individually assessed for quality and bias using a standard checklist. Data extraction was not checked by a second reviewer, although during narrative synthesis it was inevitable the full text papers were examined alongside the data extraction sheets. The rapid review could not cover all elements of the marketing mix. Some studies that measured awareness of social media platforms used in e-cigarettes marketing were excluded as we could not distinguish commercial from non-commercial or user-generated content by the outcome measures used.

2.3 Regulation of E-cigarette Marketing

This element of the report drew on interviews with key stakeholders in government, related organisations with a remit relevant to e-cigarette marketing, and the tobacco control community. Using purposive sampling, ten interviews were conducted with individuals who have knowledge and insight into e-cigarette marketing regulation within the broader context of tobacco control. Participants were selected to represent a range of organisations and perspectives, and included representatives from: the Committees of Advertising Practice (CAP); the Medicines and Healthcare Products Regulatory Agency (MHRA); Department of Health (England) (DH); Public Health England

(PHE); Department of Health (Ireland); Action on Smoking and Health (ASH); ASH Scotland; ASH Wales; Cancer Focus Northern Ireland (who host ASH Northern Ireland); and the Smoke Free Partnership, based in Brussels. A semi-structured topic guide was developed to manage data collection and an abbreviated version shared with participants in advance. The content of the guide was adapted to reflect differing stakeholder roles and perspectives, and focused on issues such as observed trends in e-cigarette marketing in the UK, previous and current regulations, organisational responsibilities with respect to these regulations, the EU Tobacco Products Directive (TPD) and the implementation of additional measures beyond those required by the TPD.

Nine interviews were conducted by telephone; one interview was conducted face-to-face. Data were collected in April and May 2016 and interviews lasted between 20 and 40 minutes. The majority were recorded as digital voice-files and fully transcribed for thematic analysis. Using a deductive and inductive approach, a coding framework was developed from emerging themes. The coded themes were then used as the categories for analysis, which were interpreted and discussed among the research team. This section was complemented by the analysis of relevant policy documents relating to the CAP/BCAP rules and the TPD and the accompanying UK regulations.

Ethical approval and governance for the interview element of the study was provided by the School of Health Sciences Research Ethics Committee at the University of Stirling. Informed consent to participate was facilitated using information sheets and signed consent forms. Governance arrangements required that the anonymity of study participants was protected as part of the reporting process and that direct quotations from participants would not be used.

3 RESULTS

3.1 The E-Cigarette Market

E-cigarettes have overtaken nicotine replacement therapy (NRT) as the primary aid used in attempts to quit smoking in the UK: an estimated 2.8 million people currently use e-cigarettes in the UK compared to 700,000 in 2012, almost all of whom are or have been smokers, and one third of whom no longer smoke (Action on Smoking and Health 2016, Technavio 2016). Nielsen's January 2016 statistics suggest that sales of e-cigarettes have increased by 22.2% on volume, up 31.9% in the past year (O'Donnell 2016).

The fragmented global e-cigarette market is valued at \$11.92 billion with a growth rate of 30.59% in 2016. According to Technavio (2016), market size will reach \$26 billion by 2020. North America has been the market leader since 2013. In 2015, its share was 40.92% followed by the UK and other countries in Western Europe where the market recorded revenues valued at \$2.71 billion.

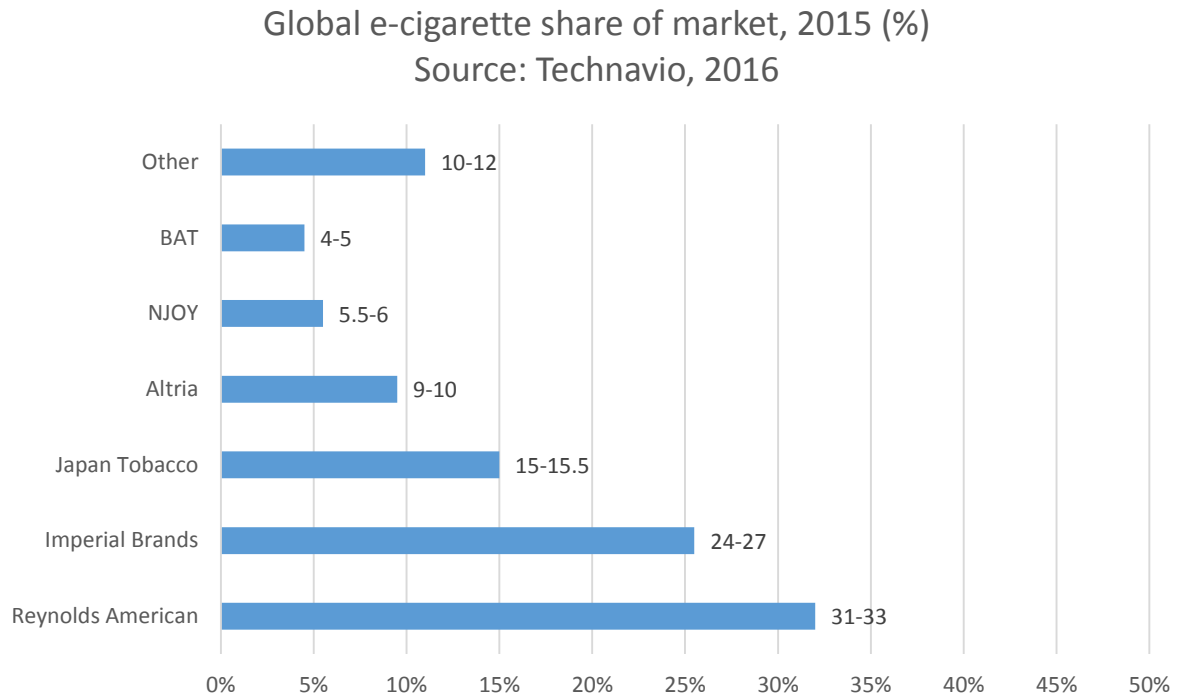
According to the ECigIntelligence Report (2015c), the UK e-cigarette market in 2015 was estimated to be £445 million, with the industry consensus that the market will continue to grow and mature. The ECigIntelligence model forecasts the 2017 UK market to be around £510 million, a projected growth rate of 15%.

Elsewhere, rapid growth in the e-cigarette market is predicted to continue over the next few years. Euromonitor suggest that the global market is still growing at a very fast pace and predict that vaping products could reach \$50 billion by 2030. Globally, sales of vaping devices grew by 59% to a record \$6.1 billion and in the world's largest market, the US, sales doubled to a total of \$2.8 billion. The UK became the second largest market for electronic cigarettes, followed by Italy, Poland and France (Vape Ranks 2015). Whilst, according to BIS Research (2016), the global e-cigarette industry will experience compound annual growth of more than 22% between 2015 and 2025, with e-cigarettes reaching a market value of \$50 billion by 2025.

Wells Fargo (2016) estimates that the US vapour market will reach \$4.1 billion by the end of 2016 in the US. This market is separated into e-cigarettes (worth \$1.6 billion) made up of convenience stores, food, drug and mass retail channels (\$700 million), online (\$500 million) and other (\$400 million) channels; and vapours, tanks, mods and personal vapourisers worth \$2.5 billion comprised of vape shops (\$1.4 billion), online and other retail channels (\$600 million); and convenience-stores, food, drug and mass retail channels (\$500 million).

Natasha Kendall, tobacco analyst at Nielsen, says: "[E-cigarettes are] probably the future, but at the moment they represent less than 1 per cent of the tobacco market" (McClean 2016). Nevertheless, Bloomberg and Wells Fargo expect annual sales of e-cigarettes to outstrip tobacco by 2024 (O'Donnell 2016).

Figure 1: Global market, 2015



(Source: adapted from Technavio, 2016)

3.1.1 Tobacco Industry Involvement

The major tobacco industry companies have taken different approaches to entering the electronic cigarette market with some opting to make big acquisitions and others looking to develop their own products (Kendell 2014). This programme of investment has seen transnational tobacco companies all committed to major initiatives in the e-cigarette industry (Royal College of Physicians 2016). This includes British American Tobacco (BAT), Imperial Brands, the Altria Group, Reynolds American and Japan Tobacco International.

The acquisition of the e-cigarette brand Blu by the third largest cigarette manufacturer in the US, Lorillard, for \$135 million, marked the tobacco industry's first major foray into the e-cigarette market in April 2012. In 2013, it became the market leader in the US securing 40% of the market (Technavio 2016). Lorillard then entered the UK market by taking over Skycig, a leading premium brand of electronic cigarettes in Britain, for \$48.5 million. In line with its American brand, from May 2014, Skycig became Blu ecigs.

When Reynolds American acquired Lorillard for an estimated \$27.4 billion on July 15 2014, its Blu line was sold to Imperial to avoid antitrust concerns that allowing Reynolds to own both Vuse and Blu would give it an unfair advantage in the market (TobaccoTactics 2016). Imperial therefore added to its previous acquisition – the e-cigarette unit of Dragonite International. R.J. Reynolds Vapor Company markets e-cigarettes manufactured by R.J. Reynolds Tobacco Company under the Vuse brand name – presently the leading selling brand globally available in over 100,000 shops (Technavio 2016). R.J. Reynolds has also developed Revo (Tobaccotactics 2016).

In December 2012, BAT became the first leading tobacco company to buy a British e-cigarette manufacturer through its purchase of the start-up, CN Creative, the maker of Intellicig (de Andrade et al. 2013a). This complemented BAT's earlier formation of what was billed as a stand-alone start-up company, Nicoventures, to 'focus exclusively on the development and commercialisation of innovative regulatory approved nicotine products' (British American Tobacco 2011). In August 2013, BAT launched the Vype – an e-cigarette developed by CN Creative. The company continues to invest in reduced harm products and in November 2015 the company acquired CHIC Group, a Polish vapour product manufacturer selling under the brand name Volish (Technavio 2016).

Altria and Philip Morris International (PMI) teamed up in December 2013 to market electronic cigarettes and other 'reduced risk' tobacco products. This followed Altria's acquisition of e-cigarette company Green Smoke in April 2014. Shortly after, in June 2014, PMI acquired UK-based Nicocigs, the owner of the Nicolites brand, with the aim of providing the company with a faster and broader entry into the UK market for their other e-cigarette products. Altria and PMI also manage vapour brands including Mark Ten and the heat-not-burn product iQOS, which looks like a second generation vapouriser but uses tobacco heated at high temperatures (but not burnt) instead of e-liquid (Royal College of Physicians 2016, TobaccoTactics 2016) and is therefore not an e-cigarette. Imperial Tobacco launched Puritane through its Fontem Ventures subsidiary and, in July 2014, obtained the Blu brand that was sold as part of Reynolds' takeover of Lorillard (Tobaccotactics 2016).

Japan Tobacco International (JTI) purchased E-Lites in June 2014 from previous owner Zandera. The company also took a minority share in the startup, Ploom in 2011, signing an agreement to commercialise its nicotine 'vaporisers' outside the USA. The Ploom is a loose-leaf vapouriser that heats small pods of tobacco, unlike most e-cigarettes that use liquid mixtures of nicotine and synthetic materials. In February 2015, JTI acquired the patents and trademarks from Ploom Inc. With this acquisition the company can develop new products and sell Ploom in more markets (Tobaccotactics 2016). In April the same year JTI announced that it had entered into an agreement to acquire Logic Technology Development LLC ("Logic"), one of the leading US e-cigarette brands. The brand sells a full range of rechargeable, ready-to-use and disposable e-cigarettes (JTI website 2015).

According to data compiled by Nielsen for *The Grocer*, (w/e 2 January 2016), the top e-cigarette brands are owned by tobacco companies (Ten Motives, Nicolites, Blu, E-Lites, Vivid) (O'Donnell 2016). According to Technavio (2016), Vuse secured more than 38% market share in 2015, followed by Blu owned by Imperial Brands then Japan Tobacco's brand Logic.

3.1.2 Non Tobacco Industry

Several e-cigarette start-ups and independent suppliers – an estimated 250 in 2014 – emerged when the product first launched in the UK (Bauld et al. 2014). In the US, an average of 10.5 e-cigarette brands and 242 flavours were introduced per month between August 2012 and January 2014 (Technavio 2016).

With a 48% market share, NJOY was the unrivalled market leader (a company independent of the tobacco industry) in 2012. By 2015, this figure declined to almost 5%. NJOY was aided by \$70 million worth of investments from Brookside Capital and Morgan Stanley amongst others in 2014. The year before that, it received \$75 million from Homewood Capital for research and development, marketing and clinical trials (Technavio 2016). In September 2016, NJOY filed for bankruptcy (Tobacco Reporter 2016).

The Electronic Cigarettes International Group currently offers a full range of products, from disposable and rechargeable cig-a-like analogs, to advanced vaping products, and specialty items. In 2014, the company acquired a succession of other companies, starting in January with Vapestick and the following month, US-based Fin electronic cigarette. Later in the same year they also acquired Must Have, which includes the brand VIP Electronic cigarette (Technavio 2016).

Other smaller independent companies, which include Ballantyne Brands, Nikotek, Vapor and VMR Products, are also operating in the competitive environment (Technavio 2016). The China-based seller, Joyetech, and other manufacturers have introduced nicotine-free e-cigarettes that are independent of the tobacco industry (Technavio 2016).




A large number of vape shops have since opened in the UK and globally offering second and third generation e-cigarettes, which allow consumers to modify their products (see Sections 3.1.3 Products and 3.1.4 Place below). New government regulations, for example those introduced in the US and EU member states, may lead to the closure of smaller, independent e-cigarette companies that may not be able to meet regulatory approval costs (Technavio 2016).

3.1.3 Products

Over 90% of e-cigarette products sold globally are made in China, which is home to almost 1,000 manufacturers. Products are sold by over 500 e-cigarette sellers under varied brand names (Technavio 2016). The emergence of e-cigarettes has revolutionised the choice of nicotine products available to smokers (Britton et al. 2016). Early investments were weighted heavily towards first-generation, disposable cig-a-likes, which mimic tobacco cigarettes more closely, but tend to deliver lower doses of nicotine than later-generation devices (Royal College of Physicians 2016). However, these devices are being displaced in the UK by the rapid expansion of tank systems and of e-liquids. This shift is also strongly evident in other leading western European markets.

The availability and appeal of first-generation e-cigarettes initially drove the market, which then expanded towards second-generation products (see below). VTMs and personalised alternatives with novel flavours, enhanced vaping capacities and designs arrived towards the end of 2013. According to Technavio (2016), VTMs account for 30-35% of the global market.

Table 2: Terms used for products

First-generation products	Also referred to as cig-a-likes as they look like tobacco cigarettes. Also referred to as disposables or closed systems.	
Second-generation products	Usually larger than cig-a-likes and look like fountain pens. Also called rechargables.	
Third-generation products	Also known as vapours, tanks, and mods (VTMs), personal vapourisers, advanced personal vapourisers (APVs), modular units or open systems.	

In general, tobacco industry efforts to build a market for reduced-risk products show evidence of a recent focus on vapour devices that are not e-cigarettes but rather primarily other product categories. For example, in July 2015 PMI announced it would be extending its international strategic collaboration with Altria in vaping products (Royal College of Physicians 2016). It is also investing in the heat-not-burn product, iQOS. Recent developments also suggest diversification. For example, BAT has continued to develop the Vype range, launching the products Vype eStick, Vype ePen, and the Vype eTank, along with a range of eLiquid flavours. BAT also has an inhaled nicotine device called Voke and in 2015 launched the new hybrid Tobacco Heating Product, glo iFuse. The blu™ product range is also expanding via its e-liquid portfolio and there are investments in heat-not-burn technology (TobaccoTactics 2016). In addition, RJ Reynolds has developed Vuse and Revo, whereas Imperial Tobacco launched Puritane (TobaccoTactics 2016).

Market analysts agree that there has been a significant shift to tank products. Some sources say tanks now make up a quarter of e-cigarette sales, fewer than one in 10 purchases were tanks a year ago (O'Donnell, 2016). According to ECigIntelligence (2015c), usage of tanks is now at 68% of the vaping population. In 2014 around 20% of users said tanks were their first purchase. In 2015 it was around 30%. Ex-smokers are also more likely to use a tank device. ASH (2015) state that the majority (around

66%) of e-cigarette users in the UK are currently using tanks. This is a significant swing from the previous year (41%). In 2015 around 30% of the sample said that tanks were their first purchase.

Due to some user problems with tanks and cig-a-likes, offline brands are trying to address the issues. For example, 10 Motives provides pre-filled clearomisers for the tank system (Cirro range); Philip Morris' Vivid vapour sells 'capsules' containing e-liquid and requiring purchase of a Vivid vapour atomiser; and BAT's Vype ePen sells pre-filled caps to fit onto their own battery (ECigIntelligence Report 2015c).

Amongst companies independent of the tobacco industry there is a multiplicity of second- and third-generation products. For example, V2 are a successful privately owned e-cigarette business with a strong online presence in the US, UK and Europe. The brand provides an extensive variety of e-cigarette products including the more advanced e-go/pen-like models alongside an exclusive women's range called *Vapor Couture*. There is also the *International Vaporgroup*, who owns the brands, Vaporfi (formerly Vaporzone), South Beach and Eversmoke. They sell a mix of brands focusing on both the cig-a-like products and also the e-go/pen-like products which are becoming the more preferred option for the more advanced vapers. The other large publicly listed e-cigarette stock independent of the tobacco industry is *Vaporcorp*, who own the brands Smoke 51, VaporX, Alternacig and Krave (Kendell 2014).

There is also evidence of increasing innovation in product design technology. Vapestick has created a retrostyle computer game named Electronic cigarette wars (Royal College of Physicians 2016) and the Jupiter IO 3: 3G Cellular Vaping Phone by Vaporcade offers the first e-cigarette phone. This evidence of merged-technology is a 3G-ready phone (Parsons 2016). Other innovations include Reynolds American's Vuse FOB power product that connects to mobiles through Bluetooth (Technavio 2016).

Table 3: Examples of available products across companies

Company	Available Products
British American Tobacco (BAT)	Vype; e-Voke; glo iFuse; Ten Motives; cartridge refills; e-liquids; accessories (batteries, atomizers, USB chargers, and filters)
Imperial Tobacco	Jai; Puritane; Blu; Blu Pro Kit; Cartridge refills; accessories (batteries, atomizers, USB chargers and filters)
Philip Morris International and Altria	MarkTen e-vapour; Green smoke e-vapour; cartridge refills; e-liquids; accessories (batteries, atomizers, USB chargers and filters)
RJ Reynolds,	Vuse system digital vapour cigarette; Vuse solo e-cigarettes, vuse FOB; Vuse connect e-cigarettes; vuse e-liquid; cartridge refills; accessories (batteries, atomizers, USB chargers and filters)
Japan Tobacco International (JTI)	Ploom e-cigarettes; E-Lites e-cigarettes; Logic e-cigarettes; Cartridge refills; accessories (batteries, atomizers, USB chargers and filters)
NJOY Inc	NJOY King e-cigarettes; NJOY daily e-cigarettes; NJOY Recharge e-cigarettes; NJOY VTMs; Cartridge refills; accessories (batteries, atomizers, USB chargers & filters)

(Source: Adapted from Technavio 2016)

3.1.4 Place

This section summarises the places where products are commonly made available to consumers.

3.1.4.1 Offline sales

According to Nielsen, during 2014 e-cigarettes were the fastest growing product category in British supermarkets and tobacconists/vape shops were amongst those opening most branches during 2015 (in town centres). Of the seven big offline brands studied, (Blu, E-Lites, 10 Motives, OK, Vapouriz, Gamucci and NJOY), Blu, E-Lites and 10 Motives have a large percentage of the total distribution points amongst mainstream retail outlets (the national supermarket chains, convenience stores, petrol stations and motorway service stations) (ECigIntelligence Report 2015b).

UK supermarkets make up the large majority of sales in 2015, followed by convenience stores. People buying their first e-cigarette in the last year are much more likely to go to a traditional retail/vape shop than three years ago when they would go straight to the internet. The traditional retail channel is becoming increasingly popular for first e-cigarette device purchases but is unable to attract users to make subsequent purchases. Instead, users are opting for more advanced devices or information not available in traditional stores and so go to specialised vape stores or online (ECigIntelligence Report 2015c).

Across the majority of brands, London and its surrounding areas and northern England (particularly the northwest) are a focus for brand distribution. The five most saturated regions in the UK for retail distribution outside vape stores are London, northeast England, southeast Wales, northwest England and the West Midlands. This is based on analysis of points of sale per one million inhabitants and points of sale per 300sqkm (ECigIntelligence Report 2015b). In contrast, the East of England, Northern Ireland and Scotland do not have such a significant presence of stores – although one of the top five largest retailer chains, EcigWizard is currently focusing on the East of England (ECigIntelligence Report 2015d).

However, brands also appear to have varying degrees of strength of focus across the UK – for example, 31% of NJOY's distribution is into greater London (ECigIntelligence Report 2015b). NJOY has 86% of its distribution points with two retailers (59% with Tesco and 27% with Sainsbury's). NJOY also stocks through Costcutter, SPAR and Londis but in lower numbers (ECigIntelligence Report 2015b).

According to Technavio (2016), some independent manufacturers are partnering with global distributors to access retailers. NJOY's partnership with Circle K, for example, allows its product to be sold in 30,000 US shops. V2 Cigs partnered with National Tobacco in 2013 to reach approximately 150,000 US retailers. Elsewhere, the US seller Gilla sells its products in South America through an agreement with an unidentified distributor.

ECigIntelligence (2015b) analysed data on the locations of 1062 vape stores in the UK (dedicated solely to vaping – not including tobacconists or other non-specialist stores) by splitting the country into 12 regions: Northeast, Northwest, Yorkshire and the Humber, East Midlands, West Midlands, East, South East, South West, London, Scotland, Northern Ireland, and Wales. The northwest region scored the highest on the following metrics: absolute number of vape shops, vape shops per capita and vape shops per square kilometre. The findings suggest that the West Midlands also scored higher than average on the same metrics. Yorkshire and the Humber and the Southwest scored high on the absolute number of stores and vape stores per capita. However, both had a relatively low score for the number of vape stores per square kilometre, which could be attributed to their relatively rural area structure. The London region has the highest density of vape stores per square kilometre.

However, the highly populated capital has low values for the number of stores per capita relative to the other regions.

Comparing France, the UK and the US shows that France has less variance in vape stores between its regions, which indicate a more developed market on this measure. The UK and US are more similar in that they have a large variance between different regions and could be considered to have relatively underdeveloped markets in comparison (ECigIntelligence Report 2015d).

3.1.4.2 Online sales

A significant portion of e-cigarette business is conducted on the internet. The market is active as it is currently relatively easy for independent companies to set up a new e-cigarette company online with small financial investment and no large advertising budget is required to achieve a web presence. In addition, most existing e-cigarette companies have their own websites and most also sell e-cigarettes over the internet (Zhu et al. 2014).

Overall, no e-cigarette brand has more than 42% of sales through any one distribution channel, with all benefitting from a varied retail approach (ECigIntelligence Report 2015b). The majority of single-brand websites (54% of the websites are single-brand) are selling tanks and cig-a-like products, with 44% of multi-brand websites selling cig-a-like products (ECigIntelligence Report 2015c). In addition, the majority of websites that focus on selling multiple categories of products from different brands are also offering products from their own labels, such as own-label starter kits. According to the ECigIntelligence Report (2015c), this signals an attempt at differentiation from competition.

3.1.4.3 Pharmacy sales

In the UK, as of February 2014, BAT announced its Vype e-cigarettes would be sold nationwide in 1,500 Lloyds Pharmacy stores. In the same month, Boots, the high street chemist, began selling the Puritane brand from Imperial Tobacco subsidiary Fontem Ventures. Puritane is exclusively available to Boots from Fontem.

Only one product has been granted a medicinal license by the UK's Medicines and Healthcare Products Regulatory Agency (MHRA) following standard procedures. E-Voke, produced by BAT's subsidiary Nicoventures, is an e-cigarette which has been produced following another licensed device, Voke, produced by the same company which is an inhaler which contains no electronics, heat or combustion. The medicinal licenses for Voke and e-Voke allows them to be marketed as smoking cessation aids, to make health claims and to be prescribed by health professionals as well as sold over the counter in pharmacies (Royal College of Physicians 2016). However, neither Voke nor E-Voke is yet available on the UK market.

3.1.5 Promotion

Major tobacco companies have benefited from large budgets for advertising and marketing their products (Kendell 2014). During 2013, around £8.4 million was spent in the UK promoting five leading brands of the time: the independently owned, NJOY King, Gamucci and the tobacco industry-owned E-Lites, SkyCig and Vype. Promotions took place across press, television, radio, the internet and outdoor media. In 2014, this figure was reached by Vype's and SkyCig's campaigns alone before marketing budgets of independent competitors were taken into account (Chapman 2014). BAT's

television advertising for Vype was part of a £3.6 million marketing campaign and Skycig invested in a £20 million marketing campaign (Bauld et al. 2014). A similar surge in marketing spending has occurred in the US across television, print, radio and the internet.

Indeed in 2015, Technavio (2016) reports that \$88-90 million dollars was spent in the US on print media, followed by 30-32 million on TV and up to a further 12 million between B2B and outdoor holographic advertising, radio and digital display (Technavio 2016). This extensive array of marketing, sponsorship and promotional efforts has contributed to the rapid growth of the e-cigarette market and, according to the Royal College of Physicians (2016) reflects the increased resources available following the wave of investments in e-cigarettes by the tobacco industry.

Additional promotion activities across the industry include venue and sports sponsorship deals – example, links with football – Nicolites partnering with Birmingham City Football Club and E-Lites distribution deals and designated vaping areas in football stadiums. Furthermore, the O2 signed a multi-year partnership deal with E-Lites, allowing guests to use and buy the products in and around the arena (Royal College of Physicians 2016, TobaccoTactics 2016).

In early 2016 Blu launched its first global brand campaign since appointing the agency, The Corner, to its advertising account in 2016. The range of ads feature five characters – a motorcyclist, a comedian, a drag queen, a model and a pilot – who represent independent spirits carving their own path in life. The ‘Just you & Blu’ campaign consists of 90-, 60- and 30-second films for TV, cinema and online, as well as black and white outdoor and print ads (Oakes 2016). The campaign was launched ahead of the new advertising restrictions in May 2016 and aims to avoid the clichés that have historically defined early e-cigarette marketing: highlighting that it’s not about battery life, or flavour ranges, or gadgetry, but ‘...real people enjoying a real moment with blu’ (John Wardley, chief marketing officer for Fontem Ventures). This differs from BAT’s Vype advertising campaign which featured a claim of 37 scientists working on its e-liquids (O’Donnell 2016).

Resources suggest that independent e-cigarette companies “...distance their products from tobacco” by using techniques such as aesthetic appeal, including attractiveness, coolness, colours and innovative packaging and flavour variations. In addition, the internet and social media tools are used to display attractive price promotions, competitions and group discount vouchers; there are celebrity endorsements and celebrity-inspired styling; and sports sponsorship (TobaccoTactics 2016).

As we set out later in this report, in Section 3.3, the introduction of the EU Tobacco Products Directive will introduce substantive changes that will both affect the e-cigarette market overall but also limit marketing opportunities. All broadcast or cross border marketing are prohibited in the UK and other EU member states from May 2016. This means that advertising and promotion of e-cigarettes are no longer allowed across TV, radio, print (except for trade publications), and online display. Campaigns like that of Blu, will therefore have to respond to these changes (Gwynn 2016).

3.1.6 Packaging

E-cigarette producers see the value in allowing potential consumers to have a direct view of their products within the package and suggest that the market is still maturing so customers are educating themselves on what products are and which brand they should choose. Many of the leading e-cigarette marketers are using visual or high-visibility eye-catching packaging, including high-quality plastic folding cartons which enable them to be attractive whilst as informative as possible (Connolly 2016). The transparent front also works as a window to view more product details on the inside. This

form of design has been used for products from vapourisers and vaping starter kits to replacement e-liquid cartridges.

For experienced e-cigarette users, transparent packaging plays a less prominent role. Fontem Ventures (a subsidiary of Imperial Brands), for example, uses paperboard cartons to package its blu PLUS+ Tanks. The tank cartons are decorated with contemporary, upscale graphics and colour coding to help shoppers quickly locate their preferred e-liquid flavor. These approaches make it easy to shop the product family (Connolly 2016). Packaging innovations also include ‘smart packs’ produced by blu™ e-cigarettes that vibrate and flash a blue light when within 50 feet of other users, and which can transmit to Facebook, Twitter and MySpace profiles (Royal College of Physicians 2016).

In general, the less restrictive packaging environment for vaping products lets e-cigarette manufacturers make a statement and use packaging to express their brand and product differentiation. This includes embossing and high-gloss varnish to create visual and tactile feelings of indulgence (Connolly 2016).

3.1.6.1 Legislation and Packaging

Currently the Advertising Standards Authority (ASA) has the authority to ask an advertiser to modify or remove an offending advertisement. In the past they have enforced the rules to ensure that the public are not misled about false health claims or that products are not glamorised. We explore this issue in more detail in Section 3.3 of the report.

As outlined above, the EU’s Tobacco Products Directive (TPD) is introducing changes into the e-cigarette market with a series of requirements that have been transposed into UK law through the Tobacco and Related Products Regulations (TRPRs). This includes specific requirements on packaging. The TRPR requires packaging to be child-resistant and tamper-evident; protected against breakage and leakage; and must have a mechanism for ensuring re-filling without leakage. E-cigarette products were previously only required to comply with general labelling and information requirements but under new legislation they must include a list of all ingredients by ordered weight; indication of nicotine content and delivery per dose; batch number; and recommendation to keep out of the reach of children. Each unit must also include a leaflet with instructions about use and storage, recommendation that young people and smokers do not use it, possible adverse effects and warnings for specific risk groups, addictiveness and toxicity, contact details of the producer and contact person within the EEA (ECigIntelligence Report 2015a, ASH 2016).

3.1.7 Price

There are recent signs that the price of e-cigarettes and vapour products has recently declined both online and offline (ECigIntelligence Report 2015d). In the year ending 29th March 2015, the price of one e-cigarette ‘unit’ (not distinguished by supplier brand or product type) was down by almost 6% (ECigIntelligence Report 2015d).

3.1.7.1 Offline pricing

While in supermarkets and convenience stores prices have been falling, two offline channels, the pharmacy and petrol/travel retail sectors (primarily convenience stores within petrol stations) are relatively expensive, with prices static or even increasing. Across these four channels in the UK, IRI

claim that in May 2015 the sales for e-cigarettes were £133.1million, with growth from the same period the year before at 19.7% (ECigIntelligence Report 2015d).

There are moderate to low price variations among the seven UK regions. Northwest England has a high number of vape stores. This is reflected in the pricing – the region has the lowest price for tank starter kits. In Northern Ireland, Scotland and the East of England the opposite is true: high prices reflect low numbers of stores (ECigIntelligence Report 2015d).

3.1.7.2 Online pricing

According to Alexa, across the top 50 websites serving the UK, the online prices of the cheapest e-cigarette products in the UK (although not all consumers will be buying the cheapest) have been falling since 2014 across the following product types: cig-a-like starter kit; cartridges; disposables; tank starter kit; clearomiser; and e-liquid bottles. This could be attributable to increased competition (ECigIntelligence Report 2015d).

Between 2014 and 2015 online prices declined considerably. Many online stores offer discount prices, especially in the cig-a-like category. In general, the pricing of cig-a-like products (kits, cartridges and disposables) fluctuates significantly from one website to another (more so than tank starter kits).

Prices online are generally cheaper than they are in offline vape stores, especially for tank starter kits. The prices of tank products (tank kits, clearomisers and e-liquid) appear to be more standardised across websites, suggesting more stable demand. According to some analysts, the decline in e-cigarette pricing is at least partly due to the expanding vapour category and development of vapours, tanks, mods and refills that are generally retail cheaper (Convenience Store Decisions 2016). Taxes introduced to e-cigarette products would likely drive prices up in future, although to date few countries are taxing e-cigarettes like tobacco (for example, Italy has recently raised taxes on e-cigarettes) (Technavio 2016).

3.1.8 Summary

If analysts' predictions are accurate, the vapour market will continue to expand globally in the coming years. Products, pricing, promotion and availability are likely to vary depending on the regulatory environment, acceptability and appeal of the products to users and public health, and industry investments particularly from the major players.

3.2 E-Cigarettes and Marketing: A Rapid Review of Published Research

This section outlines the findings from a rapid review of peer-reviewed empirical studies that have examined the nature of e-cigarette marketing and any perceived or actual effects of marketing on youth and adults.

This review builds on two previous reports by our team, as set out in the introduction in Section 1, and examines studies conducted in recent years, between January 2011 and March 2016. The review is organised under the following headings:

- Overview of published studies
- The nature of e-cigarette marketing
- The effects of e-cigarette marketing on children
- The effects of e-cigarette marketing on adults
- Studies with healthcare professionals.

3.2.1 Overview of Published Studies

This rapid review of peer-reviewed research on e-cigarettes and marketing published between 2011 and the end of March 2016 includes a total of 73 studies published in 75 papers. Most of the studies were published as English language journals articles, except one French-language journal article and one published conference abstract. Thirty studies (published in 33 papers) had human participants (21 with adults, 8 with children and 1 with both adults and children). The other 43 studies (published in 42 papers) looked at the nature and/or extent of an element of e-cigarette marketing. Six of the studies were from the UK and another three were from Europe (one each from Finland, the Netherlands and Switzerland) with the vast majority of the rest being from the USA. Most of the studies were observational designs but nine of the studies with adults and children used an experimental design.

3.2.2 The Nature of E-Cigarette Marketing

A range of peer-reviewed studies investigating the nature and extent of e-cigarette marketing were identified for this review. The findings are presented in five categories:

- social media channels for advertising and promotion of e-cigarettes
- other marketing/media channels for advertising and promotion of e-cigarettes
- e-cigarette pricing and ad spend studies
- online e-cigarettes retail marketing
- e-cigarettes in physical stores

The detail provided on each study is brief, but a more in depth summary is included for the four UK studies we identified (Cranwell et al. 2015, Hsu et al. 2013, Eadie et al. 2015, de Andrade et al. 2013b).

3.2.2.1 Social Media Channels

Thirteen studies were identified that met our inclusion criteria of peer-reviewed empirical studies that have examined the nature of e-cigarette marketing using a social media channel. Only studies that

indicated a commercial source for the social media content, rather than user-generated content, were included.

The content of much of the data analysed in these studies was often transnational or the country the data were from was unspecified. Categorising the studies by country of the lead institution or funder, nine were conducted in the USA (Hua et al. 2013, Huang et al. 2014a, Chu et al. 2015, Cole-Lewis et al. 2015, Kim et al. 2015a, Romito et al. 2015, Basch et al. 2016, Dai & Hao 2016, Huang et al. 2016), and one each in China (Luo et al. 2014), South Korea (Paek et al. 2014), the UK (Cranwell et al. 2015) and Canada (van der Tempel et al. 2016). Data were collected between 2007 and 2015. All the studies were cross-sectional, and two captured data from multiple years, one from 2007 to 2011 and the other from 2008 to 2013. Only the latter reported any time trends for the data. Seven studies were content analyses of YouTube videos and six studies were content analyse of messages sent via Twitter. Another study (de Andrade et al. 2013b, included in Section 3.2.2.2) also described collecting data from five social networking sites (Facebook, Twitter, Tumblr, YouTube and Pinterest) used by seven leading e-cigarette brands. However, the social media findings were not reported separately.

The seven YouTube content analyses either looked at a sample of videos containing e-cigarettes, or one looked at music videos only, another videos on e-cigarette safety and risk, and one compared e-cigarette with cigarette videos. The sample sizes for analysis varied from 63 videos of ≤ 4 minutes sampled from a 3-month period, to 28,089 videos from a 12-month period. Typical measures to collect data for the analyses of YouTube videos, included classification of the videos as advertising or not, uploaded by an e-cigarette manufacturer, whether they featured brand names, free trials, sponsorship, celebrity e-cigarette users, and the capture of message appeals or claims.

The UK study (Cranwell et al. 2015) was a content analysis of 110 UK chart music videos collected from YouTube between November 2013 and January 2014. The researchers analysed the music videos for brand appearances, including those by e-cigarette brands, as well as e-cigarette use and implied use. From analysing 110 videos by 10-second intervals, this cross-sectional study found that e-cigarettes were used in 2 music videos (2% of all videos) at 9 intervals, and implied use in 2 music videos (2%) at 10 intervals. E-cigarette branding was in one video (1%) at 2 intervals, the authors noting that packs of *E-Lites* e-cigarettes were held by dancers whilst also using them in “Hard Out There” by Lily Allen.

Another YouTube study was conducted by Hua and colleagues (2013). Although carried out by researchers in the USA, the video-sharing website is accessible in the UK. In over half of a sample of YouTube videos (randomly selected for a study of puff and exhalation durations by e-cigarette users around 2010), the videos were recorded as advertising (53%). The classification was used for videos with users who clearly disclosed that they sold e-cigarettes, received remuneration from an e-cigarettes company or if a coupon link to a company website was provided. Similarly, Romito et al. (2015) recorded 33% (21 of 63) of a sample of top 20 search results for e-cigarette videos under 4 minutes long in 2013, as advertisements, rather than instructional/how-to's, product reviews, public health/educational, news stories, entertainment, or personal testimonials. Another content analysis of 365 YouTube videos uploaded between 2007 and 2011, assessed 85.2% as sponsored by e-cigarette companies, people who advertise for e-cigarette companies, or their websites (Paek et al. 2014). Most of the videos were evaluated as user-generated videos (79.2%) and only 8.8% as formal adverts. Finally, the study that used the largest data set to examine the extent and nature of e-cigarette videos posted to YouTube, collected and analysed one year's worth of posted videos (28,089 unique videos) and associated metadata in 2012-13 (Huang et al. 2016). The study analysed account activity for e-cigarette brands' official accounts but did not categorise other videos by user-generated or commercial source. The data showed that although the number of videos posted by the brands' accounts up to June 2013 was low (eg. *blu* 32 videos, *Nicotek* 30 videos and *Finiti* 13 videos), combined views totalled nearly half a million.

Despite most of the Twitter content analyses being conducted predominantly by researchers in North America, as for YouTube, the online social media site is accessible in the UK. Five of the studies analysed general messages sent via Twitter and one analysed used 3-months' worth of Twitter data for the brand *blu*. One study analysed the content of 481 e-cigarette tweets (a posting on Twitter), the smallest data set; the largest data set was 1,669,123 tweets collected for analysis. Similar to the YouTube data, typical study measures for the Twitter data captured the source of the messages, brands, and promotional content such as trials and free samples, and advertising. The following example content analyses studies illustrate the extent and nature of e-cigarette marketing via Twitter; although each study had slight variations in its definitions of commercial or advertising tweets (not reported in detail below).

In an early sample of 73,672 tweets, collected in May to June 2012, 89.6% were classified as commercial (Huang et al. 2014a). Compared with the non-commercial tweets, commercial tweets were more likely to include links to websites (94% vs 11%, $p < 0.001$) and to be retweets (19% vs 17%, $p < 0.001$). A much larger sample of 1,669,123 tweets from 2008 to 2013, coded 93.43% as advertising e-cigarettes (ie. they mentioned brands, websites, or a promotional offer) (Kim et al. 2015a). The advertising tweets were retweeted more often than the non-advertising (28.7% vs 11.60%). The analysis found that most industry-related users came from a small grouping of highly active Twitter users (one major e-cigarette vendor generated up to 63% of tweets to over 100,000 followers). The study with most recent Twitter data reviewed here, collected 757,167 tweets from July to October 2015 (Dai & Hao 2016). This analysis of more recent tweets found a different ratio for commercial tweets versus non-commercial tweets (35.4% vs 48.0%, respectively) but commercial tweets had the largest potential reach (ie. a higher total number of followers per tweet). Dai and Hao (2016) note the change in volume of e-cigarette tweets over time, observing the 1208 e-cigarette tweets per day from the 2012 study (Huang et al. 2014a) compared to 9014 e-cigarette tweets per day of their own (the latter included non-commercial e-cigarette tweets).

Finally, some of the content analyses looked at the Twitter account user data. An analysis of the Twitter users' description or profile, rather than the content of the messages, reported that of 10,128 tweets collected between 2013 and 2014, 7.77% were tweets from retailers and 1.97% were tweets from companies that manufacture e-cigarettes/tobacco companies (Cole-Lewis et al. 2015). The majority of the analysed tweets were attributed to users classified as an 'everyday person' or from the e-cigarette community movement. One year later, an analysis of 300 e-cigarette tweets mentioning smoking cessation from January to December 2014, classified 45% as explicitly linked to e-cigarette or marketing companies, 10% to be from fake accounts and 4% from personal accounts with industry ties (van der Tempel et al. 2016).

3.2.2.2 Other Content Analyses of E-cigarette Marketing Channels

Five further content analysis studies were identified that met our inclusion criteria.

One examined data from the UK (de Andrade et al. 2013b), two used data from the USA (Richardson et al. 2014, Banerjee et al. 2015), and one analysed data from the USA and Canada (Richardson et al. 2015). One used international data collected online (Williams 2015a). Data were collected between 2012 and 2015, with 2012-13 the most frequently analysed time-period.

All the studies used a cross-sectional design. Each analysis looked at a different channel of e-cigarette marketing but all typically examined the structures and content of the channel and identified the themes used. The first study described below examined marketing to both consumers and

stakeholders in the UK via a range of channels; the next study looked at consumer marketing via conventions; and the final group of studies looked at traditional consumer advertising.

The analysis study from the UK (funded by Cancer Research UK and co-authored by some of this report's authors), examined the content and themes of e-cigarette marketing in a sample of UK national and local newspapers, trade press, tobacco industry journals, and television advertising between May 2012 and June 2013, plus data from five social networking sites (Facebook, Twitter, Tumblr, YouTube and Pinterest) used by seven leading e-cigarette brands over 40 days (de Andrade et al. 2013b). The study analysed the range of media and/or marketing channels used by e-cigarette manufacturers and retailers in the data-set, and looked at the range of promotional themes. This study found e-cigarette marketing strategies for two distinct groups: to general public consumers (including smokers) and to stakeholders, including retailers, policymakers and public health bodies. The strategy targeting the former used television advertising, sports and cultural sponsorship, celebrity endorsement, social networking, online advertising, point of sale displays, pricing strategies, and product innovation; the marketing strategies for the latter also included public relations activities and lobbying.

The analysis by Williams 2015a used data identified from online searches for information about past and upcoming consumer vaping conventions from around the world. Vaping conventions are aimed at users (to try products, share information and build links) and at e-cigarette manufactures and retailers (as an opportunity to promote and sell e-cigarettes directly to consumers and build a customer-base). Information for n=90 conventions was analysed by location, the number of sponsors/vendors, admissions cost, promotions and conference events. Thirty-four vape convention organizations were from the USA (82.9%), the other seven from Belgium, Canada, China, France, Germany, South Africa and the UK.

Of the three remaining content analyses, all were from the North America. One used commercial data (Kantar Media Intelligence) to look at both the physical composition and thematic content of USA print magazine adverts for cigarettes, cigars, e-cigarettes, moist snuff, and snus (Banerjee et al. 2015). Most of the e-cigarette magazine adverts were full page adverts (89%) and used 6 or more colours (85%). All the e-cigarette magazine adverts included an image of the product and clearly labelled the brand name. In terms of themes in the adverts, 89% of e-cigarette magazine adverts used comparative reasons to buy, 85% used conventional reasons to buy and 56% used the persuasive theme of masculine or feminine sex role model endorsement. A second study analysed a broader range of advertising channels via Competitrack and Mintel commercial data (including network, cable, spot and syndicated TV, trade magazines, newspapers, online, radio, outdoor, cinema, and opt-in e-mail advertising) for n=271 non-combustible tobacco products, including 27 e-cigarettes adverts in 2012 (Richardson et al. 2014). Content analysis of the print adverts only, found that magazines targeting mainly White males were selected by brand owners, but *blu* also advertised in magazines targeted to predominantly White females. The adverts featured White males and females more often than those of other races, and the thematic content analysis found similar themes to Banerjee et al. (2015). A later study by Richardson et al. (2015), used 2012-13 online e-cigarette banner and video adverts data from Canada and the USA to run an analysis of themes and characteristics of the adverts. E-cigarette adverts were found on 46 of the 250 websites monitored by Competitrack and were most often placed on music or entertainment websites (39.1%) or news websites (17.4%). Thematic analysis of the 24 unique advertisements for various brands of e-cigarettes found that most featured harm reduction (37.5%), use as a cessation aid (20.8%), being more environmentally friendly than cigarettes (54.2%) or being an alternative to cigarettes when someone cannot smoke (33.3%).

3.2.2.3 E-cigarette Pricing and Ad Spend

Eight studies were identified that examined pricing for e-cigarettes or advertising spend for e-cigarettes.

Data were collected between 2008 and 2014 and all eight studies were reported in peer-reviewed journal articles. Seven of the studies used data from the USA (Huang et al. 2014b, Kim et al. 2014, Kornfield et al. 2015, Cantrell et al. 2016, Giovenco et al. 2015, Banerjee et al. 2015, Loomis et al. 2016) and one was a multi-country (n=45) study, that included the UK (Liber et al. 2016).

Four of the studies examined the pricing of e-cigarettes. The first compared the price of e-cigarettes against cigarettes (combustible) in 45 countries using Euromonitor commercial data to run two-tailed comparison tests (Liber et al. 2016). The main finding of the study was that comparable units of tobacco cigarettes were cheaper than disposable and rechargeable e-cigarettes in most countries in the sample, both within the high-income countries group and within low-income and middle-income country groupings. However, the Euromonitor data demonstrated that the price positioning by the manufacturers and retailers of e-cigarettes in the UK reversed that trend. The UK was the only country in the sample of 45 where the median price of a disposable e-cigarette and the minimum price of a rechargeable cigarette in 2014, was lower than the weighted average price of a pack of regular tobacco cigarettes. Three other studies included in the review looked at the pricing of e-cigarettes, however the results of these are less relevant to the UK context. One, a modelling study used Nielsen USA data from 2009-12 examined average e-cigarette and cigarette prices and sales volume in particular markets, quarter-annuals and store types. The other two also used 2012-13 USA sales scanner data from commercial companies (Nielsen and Information Resources, Inc.) in time series analyses of pricing for e-cigarette starter kits and disposable e-cigarettes, and sales by brands, flavours and store-types. (See also Cuomo et al. 2015 in Section 3.2.2.4 a content analysis of online stores that also collected pricing data.)

Four studies analysed advertising spend for e-cigarettes in the USA across broadcast media, print media and online. Three time-series studies used data from commercial companies (Nielsen, Kantar Media and Competitrack). The earliest of the time-series studies analysed over one hundred e-cigarette brands for 2 years (Kim et al. 2014), between 2011 and 2012. The data showed that e-cigarette advertising expenditure had tripled over the time period from \$6.4 million to \$18.3 million, with spending concentrated in television and magazines rather than in newspapers and online. Following that, another time-series study examined the data from a longer time-period (Kornfield et al. 2015), between 2008 and 2013. The data demonstrated a rapid increase in e-cigarette promotional expenditures; the first two quarters of 2013 representing more than twice the expenditure for the previous year. The third looked at the spending and targeted media for two e-cigarette brands, *blu* and *MarkTen*, over the year 2014 (Cantrell et al. 2016) when the former was acquired by Imperial Tobacco and the latter was launched by cigarette manufacturer Altria. *MarkTen* had the highest total advertising expenditure of over \$35 million after increasing spend throughout the year, and *blu* was second highest at \$30 million, after demonstrating a fluctuating advertising spend over 2014. The fourth study to analyse advertising spend for e-cigarettes (Banerjee et al. 2015), concentrated on industry spending on print magazine adverts in the USA (using Kantar Media Intelligence data). The study reported that between August 2012 and August 2013, almost \$40m dollars was spent on e-cigarette magazine adverts in the USA, with three-quarters spent by the brand *blu*. Spending on cigarette magazine adverts was more than double (\$90m) that of e-cigarettes the same year. The same study also conducted a content and thematic analysis of the adverts (see Section 3.2.2.2, Banerjee et al. 2015).

3.2.2.4 E-cigarettes Marketing Online Retail

Eight studies were identified that examined the nature of e-cigarette marketing in online stores.

The content of much of the data analysed in these studies was often trans-national, however categorising the studies by country of the lead institution or funder, six were conducted in the USA (Cobb et al. 2015, Grana & Ling 2014, Zhu et al. 2014, Cuomo et al. 2015, Mackey et al. 2015 and Williams et al. 2015b), one each in Canada (Hammond et al. 2015) and Switzerland (Canevascini et al. 2015). In four of the USA studies that ran content analyses of retail websites whose main purpose to sell e-cigarettes, most of the included vendors were based in the USA but vendors from (or with links to) the UK, India, Australia, China, Hong Kong, Canada and Germany were also analysed. Data for the eight studies were collected between 2012 and 2015 and all were published in peer-reviewed journal articles.

All the studies used an observational design and were cross-sectional data captures. One study emailed a 3-item survey to Canadian online e-cigarette retailers and manufacturers, another conducted underage test purchases of e-cigarettes from online stores, a third ran a forensic analysis to examine online affiliate-based networks that stemmed from a single spam e-cigarette text message, email and e-cigarette banner ads. The other five studies were content analyses of online e-cigarettes stores. Dependent on the aim of the study, typical measures used by the studies to describe the nature of e-cigarettes marketing by the stores included: promotional messages (eg. benefits, quality, advice), sales promotion strategies, range of products for sale, age verification procedures, logos and marketing characteristics. Two of the studies were part of larger studies that ran complementary audits of physical (“bricks-and-mortar”) stores selling e-cigarettes (see Section 3.2.2.5).

One content analysis study of e-cigarette retail websites recorded marketing claims, website descriptors and e-cigarettes product descriptors from 59 websites in 2012 (Grana & Ling 2014). Most of the websites were in the USA (n=46), 11 were based in the UK, plus one each in India and Australia; however the findings were not reported by country. Regarding marketing themes, 95% of the websites made explicit or implicit health-related claims and 64% specifying a smoking cessation-related claim and one fifth featured doctors (22%). Three-quarters stated that e-cigarettes did not produce second-hand smoke (76%) and most compared them with cigarettes as being cleaner (95%) and cheaper (93%). Regarding advertising appeals, 73% of websites included images or claims of modernity, others included increased social status (44%), enhanced social activity (32%), romance (31%), and use by celebrities (22%).

The other data from a European country came from a cross-sectional audit of e-cigarette marketing and promotions data from 20 websites selling e-cigarettes, 19 with a Swiss domain name in 2014 (Canevascini et al. 2015). Seven of the sites offered nicotine e-liquids for sale, which was legal provided that the company headquarters were not based in Switzerland. The content of sales messages included the benefits of electronic cigarettes compared to conventional cigarettes (15 websites), the quality of the products and reference to studies or expert advice on electronic cigarettes (both 4 websites). Some of the websites, the total unreported, used logos or references associated with tobacco brands to promote their e-cigarette products.

3.2.2.5 E-cigarette Marketing in Shops

12 studies were identified on e-cigarette marketing in shops. Two studies were published in one paper (Rose et al. 2014) and one study was published in French (Canevascini et al. 2015).

Two studies collected data in the UK, one in London, England (Hsu et al. 2013) and one in four communities in Scotland (Eadie et al. 2015). One study collected data from Lausanne city-centre in Switzerland (Canevascini et al. 2015), and one from Vancouver, Toronto, Montreal and Halifax in Canada (Hammond et al. 2015). The other seven studies were from the USA, two with national samples (Rose et al. 2014 study 1, Rose et al. 2014 study 2), and one each in Los Angeles, California (Sussman et al. 2014), North Carolina and Virginia (Wagoner et al. 2014), seven counties in Ohio (Roberts et al. 2015), Madison and Clark Counties, Kentucky (Hahn et al. 2015), Central Harlem, NYC (Ganz et al. 2015) and Atlanta, Georgia (Dube et al. 2015). Data were collected between 2012 and 2014 and all eight studies were reported in peer-reviewed journal articles.

Eleven of the studies were field observations, where researchers visited samples of stores and completed an audit or checklist from viewing the exterior, interior or both of the stores. Some audits also took photographs and there was variation in whether the observations were covert or unconcealed. Two of these field observation studies ran a parallel audit with online e-cigarette stores (see Section 3.2.2.4). Nine of the eleven studies were cross-sectional with data collected during a single time period. One field observation study, from the UK, used a longitudinal design and collected baseline data in Spring 2013 and follow-up data 12 months later. Similarly, another, from the USA, took repeated cross-sectional data in Spring 2012 and 2013. The target sample of most of these studies were defined as tobacco retailers, or alcohol and tobacco retailers. One study used a sample of e-cigarette and e-hookah retailers near college campuses. The twelfth study was a cross-sectional analysis of 12-months' online reviews of "bricks-and-mortar" vape stores (from the Yelp business review website). Most of the measures collected in the studies related to the presence of different point-of-sale advertising and promotion, and to the availability of e-cigarette products.

In terms of the UK studies, Hsu et al.'s (2013) cross-sectional study involved researchers completing an audit tool for $n=108$ stores selling tobacco products and alcoholic beverages in London, between June and July 2013. Data were collected on whether stores sold e-cigarettes, and whether advertising and point-of-sale displays were visible in the stores. Fifty-seven percent of the stores visited over the 3 weeks sold e-cigarettes ($n=62$); 53 of the 96 small stores (55%) and 9 of the 12 large stores (75%). There was no significant difference in availability between small stores ($<280\text{m}^2$) and large stores ($\geq 280\text{m}^2$, $p=0.115$). Interior and exterior advertisements for e-cigarettes were recorded in stores (in 2% and 15% respectively), all in smaller stores. Half of the 62 stores that sold e-cigarettes had a point-of-sale movable display (50%), with all but one of these being in small stores.

A longitudinal study from the UK took place in four contrasting communities in Scotland (Eadie et al. 2015). Baseline measures were taken during a 3-month period in 2013 and follow-up measures in 2014. A discreet audit, including a token purchase, was conducted in 96 stores licensed to sell tobacco, comprising supermarkets, CTNs (confectioners-tobacconists-newsagents), grocery/convenience stores, petrol stations/garage forecourts, off-licences and fast food/take-away outlets. The audit collected data on the presence of e-cigarette availability in the tobacco retail outlets and any advertising and promotion. Interviews with retailers and a collection of marketing materials and photographs were also part of the study. The study found that the number of tobacco retail outlets with purpose-designed display units for e-cigarettes increased from 21% ($n=20$) to 49% ($n=47$) over the two waves (w) ($p<0.001$). At both stages, free-stand towers were the most popular type of display design ($w1$ 7%, $w2$ 30%), compared to trays ($w1$ 1%, $w2$ 20%), hangers ($w1$ 5%, $w2$ 3%) and other/unspecified ($w1$ 7%, $w2$ 2%). Display units for *E-Lites* (9%) and *Nicolites* (8%) were the most common at wave 1, with four other brands achieving similar prominence by wave 2: *SkyCig* (15%), *OK* (11%), *10 Motives* (18%) and *Njoy* (13%). The mean number of brands displayed, per outlet, increased from 0.21 at wave 1 to 1.5 at wave 2 ($p<0.001$). The number of tobacco retail outlets with any e-cigarette external ads on the shop fascia remained constant at 10 (10%) at both waves, although the range of different brands advertised externally extended from 3 at wave 1 to 9 at wave 2.

Some data were only collected at wave 2 of the study (Eadie et al. 2015). In 2014, 77% (n=74) tobacco retailers stocked at least one e-cigarette brand, with a mean of 1.5 (± 1.31) brands stocked per store across the sample. The maximum number of brands stocked by any one store was 6 and a total of 31 separate brands were observed across the sample. Fifteen percent (n=14) shops carried at least one item of in-store promotional material for e-cigarettes; including change mats (6%), in-store posters (5%), leaflets (3%) and dangler ads (2%). 36% of the outlets (n=35) positioned e-cigarettes immediately adjacent to at least one product of potential interest to children and young people, the most frequently observed being confectionery (n=20, 21%), collectible cards (n=10, 10%), and mints and gum (n=9, 9%). Promotional material for e-cigarettes was only observed in off-licences, grocers/convenience stores and CTNs, with no promotional materials observed in super-markets, petrol stations or fast food outlets. While all supermarkets stocked e-cigarettes, none of the fast food outlets stocked them.

Of the other studies conducted outwith the UK, the cross-sectional study by Canevascini and colleagues (2015) was the only other in a European country. Researchers audited e-cigarette marketing and promotions data, also in 2014, from the interiors and exteriors of retail stores in Lausanne city-centre in Switzerland. Most of the recorded e-cigarette advertising was posters, displays or stickers, located either inside or outside 37.5% (18 of 48) of the retail outlets, predominantly in kiosks and outlets specialising in e-cigarettes, with very little recorded at pharmacies. 60% of the audited kiosks positioned electronic cigarettes near confectionary. In general, the kiosks (n=20) "often" positioned e-cigarettes for sale alongside regular cigarettes and the pharmacies (n=18) presented e-cigarettes alongside pharmaceutical products. During the study period, the marketing of electronic cigarettes with nicotine was banned in Switzerland, and those without nicotine had the legal status of 'standard products' and were subject to the law on foodstuffs. It was unclear from the paper whether the observed marketing pertained to e-cigarettes without nicotine only.

One other study of e-cigarette marketing in shops used follow-up measures. Wagoner and colleagues' (2014) repeated measures study visited North Carolina and Virginia tobacco retailers in Spring 2012 and Spring 2013, but restricted it to those surrounding 11 college campuses. The audit found a significant increase in the number of retailers that sold at least one brand between the two time points, and the presence of interior and exterior advertising also significantly increased, but there was no significant increase in price promotions. The remaining studies from the USA were cross-sectional/snapshots so less relevant to this report.

3.2.2.6 Summary

In this section we outlined findings from studies that examined the nature of e-cigarette marketing, rather than how individuals respond to this marketing. We found that there is a considerable recent literature on the type, location, frequency and content of e-cigarette marketing and some data on spending on advertising and the price of products. Relatively few studies, just four, were conducted in the UK but a number of studies focused on marketing that can be accessed from the UK, such as YouTube videos or social media sites.

In relation to *social media*, seven studies focused on examining the content of YouTube videos. A UK study of YouTube focused on 110 UK chart music videos from 2013 to 2014. Relatively little e-cigarette branding or e-cigarette use (or implied use) was found. E-cigarette branding was only seen in one of the 110 videos, actual use in two, and implied use in two.

When looking at YouTube videos more broadly, however (not just music videos), e-cigarette content was prevalent and in one study over half of available videos with e-cigarette content were classified

as advertising. However on closer inspection in one study of 365 videos with e-cigarette content between 2007 and 2011, only 8.8% were formal adverts with the majority assessed as having promotional content that was user generated.

There were a number of studies of Twitter exchanges about e-cigarettes and overall, they show that e-cigarette content is available on Twitter and that a lot of the tweets are commercial and promotional in nature – one study estimated around 86% of tweets about e-cigarettes were commercial in nature, while a more recent study found 48% were commercial and 35% non-commercial tweets. However, a study looking at Twitter accounts (rather than individual tweets) found that just 7.7% of tweets were from retailers and 1.97% from manufacturers, with the remainder from individual users or vaping community/advocacy sites and groups.

Beyond social media, five further studies looked at the content of marketing: across a range of channels (from print media, TV, social media); through consumer vaping conventions; in magazines and other print and broadcast media in the USA; and online through banner and video adverts in Canada and the USA. These studies are very difficult to summarise together given the wide range of content they examined. Overall they found a wide variety of different types of marketing at the time they were conducted and that, unsurprisingly, different types of marketing targeted different audiences. Some types of marketing covered in these articles are now prohibited in the UK as we describe in the final Section (3.3) of this report – making this historical literature less relevant than if all marketing channels and options continued to exist.

On *ad spend and pricing*, four studies looked at the price of e-cigarettes (pricing is part of the marketing ‘mix’ and can be a marketing tool) and four examined advertising spend. Three of the pricing studies looked within the e-cigarette sector at different prices but one compared these across countries in Europe with tobacco cigarettes. This included 2014 data and found that tobacco was cheaper than disposable and rechargeable e-cigarettes in most countries in Europe except the UK where e-cigarettes had the price advantage. The ad spend studies were all from the USA, but two included trend data and found that spending on e-cigarette advertising grew between the years that were compared (2011-2012 in one study and 2008-2013 in the other).

For *e-cigarette retail (sales) marketing online*, eight varied studies from the USA, Canada and Switzerland were identified. Some looked at the content of promotions for retail sales online, while others looked at the range of products for sale and how sales were promoted. The studies of promotional messages are not terribly relevant to the UK where the CAP code and now the TPD (see later in this report) prohibit particular messages like effectiveness for smoking cessation or other health claims. In terms of broader marketing, approaches were used which are similar to some other categories of consumer products like using messaging that appeals to social status, social activities, romance or celebrity endorsement. One Swiss study found that e-cigarette online retail websites with Swiss domain names did link e-cigarettes to tobacco brands, but as we outline later in this report this type of promotion is now banned in Europe.

For *e-cigarette marketing in shops*, twelve studies were identified including two in the UK. The key messages here from both the UK and non UK studies were that in those studies that collected data over two years (2012 and 2013 in a US study, and 2013 and 2014 in a UK study in Scotland) found that the prevalence (number of retail outlets) and nature (extent of displays in shops) increased between the two time points. Also that e-cigarette point of sale displays were positioned near products that children could be interested in (ie. sweets, gum). Also both UK studies looked at whether retailers that sold tobacco also sold e-cigarettes and found that many did (49% of tobacco retailers included in the Scottish study in 2014). The overall picture from the retail marketing studies was that e-cigarette promotion at the point of sale is prevalent in a range of types of retailers including in the UK.

3.2.3. The Effects of E-Cigarette Marketing on Children

Nine studies were identified that examined any perceived or actual effects of e-cigarette marketing on children (≤ 18 years).

Two of these studies were conducted in the UK (Ford et al. 2015, Vasiljevic et al. 2016), one in Finland (Kinnunen et al. 2014) and six in the USA (Anand et al. 2015, Duke et al. 2014, Farrelly et al. 2015/Duke et al. 2015, Singh et al. 2016, Krishnan-Sarin et al. 2015, Bar et al. 2015). Data were collected between 2012 and 2014 and eight studies were reported in peer-reviewed journal articles (one in two separate papers Farrelly et al. 2015 and Duke et al. 2015), the ninth in a conference abstract published in a peer-reviewed journal. Seven studies were observational designs: six used a cross-sectional design (3 classroom surveys, 1 online/internet panel survey, 1 postal survey and 1 in-home survey) and one was a time-series analysis. Two studies used an experimental design.

None of the nine included studies surveyed any children under the age of 11 years, and seven studies only restricted their samples by age and no other traits. The two experimental studies looked at teenage populations with specific e-cigarette attributes; one tested only individuals who had never used an e-cigarette (Farrelly et al. 2015/Duke et al. 2015) and the other only tested individuals who had neither smoked nor ever used an e-cigarette (Vasiljevic et al. 2016). The findings of the studies are presented by their measures of e-cigarette marketing:

- Recall by advertising channels
- Overall exposure to TV advertising
- Recall by other promotional channels
- Where e-cigarettes were purchased or procured
- Brand awareness

Finally we describe findings from the experimental studies with young people on e-cigarette marketing. This is followed by a summary of the child studies.

3.2.3.1 Recall of advertising channels for e-cigarettes

Six cross sectional surveys measured the channels of e-cigarettes marketing that children could recall in the UK, Finland and the USA.

A study with $n=1,205$ 11-16 year olds across the UK in 2014 (funded by Cancer Research UK and co-authored by some of this report's authors), found that 40% were aware of e-cigarette adverts on television, 32% were aware adverts on posters or billboards, 24% reported seeing adverts in newspapers or magazines and 10% had heard e-cigarette adverts on the radio (Ford et al. 2015).

A postal questionnaire with $n=3,535$ 12, 14, 16 and 18 year-olds in Finland in 2013 found that 10.5% had seen an e-cigarette advertisement in Finland during the previous month (Kinnunen et al. 2014). Finland had already implemented an advertising ban (direct and indirect marketing) with only point of sale marketing allowed. When asked where, 21.8% (of the $n=335$ who had seen an advert) had seen them on Facebook, 41.4% on other internet pages; 14.7% in shops; 7.4% in magazines or on television; 4.9% in the street and 7.1% elsewhere. Two logistic regression models were presented. The first model adjusting for age and sex found that e-cigarette experimentation ('tried once or twice') was positively associated with exposure to any form of e-cigarette advertisement in the past month (OR 1.54 95% CI 1.19-1.99). The second model (which adjusted for all variables, ie. including a range of tobacco

variables like smoking status, parental smoking status, positive attitudes towards tobacco), found exposure to e-cigarette advertising was not associated with e-cigarette experimentation.

The remaining studies that assessed recall of e-cigarette advertising channels were from the USA. Seventy percent of n=1,166 Middle School (6th-8th grade) students and 61% of n=3,164 High School (9th-12th grade) students in Connecticut in 2013 reported recently seeing some form of e-cigarette marketing (Krishnan-Sarin et al. 2015). Asked “Where have you recently seen advertisements or e-cigarettes being sold?” and “Where have you recently seen advertisements on social media for e-cigarettes?”, students reported a variety of locations: TV, gas stations, magazines, tobacco shops, mall kiosks, billboards, Facebook, Twitter, YouTube, Pinterest, Google, other. Gas stations was the most common source (38% Middle School 36%, High School) followed by TV (32% Middle School, 29% High School) and magazines (21% Middle School, 19% High School).

Rather than asking respondents to recall advertising channels, a classroom-administered questionnaire with n=2,769 High School students (grades 9-12) in North Carolina in 2013, asked respondents to recall how they found out about e-cigarettes (Anand et al. 2015). Most of the High School students were aware of e-cigarettes (77.3%), with most reporting to have heard about them from television advertisements (53.2%), followed by retail stores/gas stations (14.3%), friends (13.6%), family members (7.1%), print advertisements (4.9%), and the Internet (4.4%).

A secondary analysis of data from the large-scale 2014 NYTS relating to e-cigarette advertising channel recall, looked at a nationally representative sample of USA High and Middle school students (n=22,007) (Singh et al. 2016). Students were asked how often they saw advertisements or promotions for e-cigarettes in four ‘channels’: the internet; newspapers or magazines; convenience stores, supermarkets, or gas stations; and TV or when they go to the movies. 66.4% of Middle School students and 70.9% of High School students reported that they had seen e-cigarette advertisements or promotions from at least one of the four sources. Among Middle School students, the most frequent sources were retail stores (52.8%), the internet (35.8%), TV and movies (34.1%), and newspapers or magazines (25.0%). Among High School students exposure occurred most often in retail stores (56.3%), followed by the internet (42.9%), on TV or in movies (38.4%) and in newspapers or magazines (34.6%). Exposure was significantly higher among students in higher grades (ie. older students) for all sources (p<0.05). There were other sub-group differences for gender and race/ethnicity (p<0.05): exposure on the internet and in newspapers or magazines was reported more frequently by female students than male; and exposure in retail stores was higher among non-Hispanic whites than non-Hispanic blacks (blacks) and students of other non-Hispanic races/ethnicities; and exposure from TV and movies was higher among blacks and Hispanics than whites. For all the students questioned, more than one in five reported that they had seen e-cigarette advertisements or promotions from at least one of the four sources (22.1%), 17.2% from two sources, 14.1% from three sources, and 15.4% from all four sources.

The most recent findings were from an online panel survey with 200 9th and 12th grade students in 2014 (Bar et al. 2015). The authors reported that 59.5% of the students reported seeing advertisements at liquor stores and 55.4% at gas stations. A separate question about advertisements for e-cigarettes on the internet found that 21.6% had seen them on Instagram, 18.9% on YouTube, 18.9% on Google ads and 13.5% on Facebook.

3.2.3.2 Overall exposure to TV advertising

Duke et al. (2014) examined time series data (Nielsen Monitor-Plus) for commercial advertising reach over the time period of January 2011 to September 2013 to assess the extent to which youth aged 12

to 17 years in the USA were exposed to e-cigarette television advertisements. The data were TRPs (target rating points), a commercial measurement for advertising to a specified audience calculated as a function of reach (the proportion of people exposed to an advertisement) and frequency (the number of times an advertisement is potentially viewed).

Duke et al. (2014) reported that exposure to television e-cigarette advertisements increased for 12-17 year-olds by 256.0% from January 2011 to September 2013. Regarding television media types, 75.5% of all USA e-cigarette advertising exposure to youth occurred on cable networks; 11.9% was on network television; 12.1% was spot (local) television advertising; and 0.5% was on syndicated television. E-cigarette advertisements appeared on programs that were among the 100 highest-rated youth programs for the 2012-2013 viewing season. The majority of exposure was by one e-cigarette brand (*blu eCigs*), which accounted for 81.7% of all nationally aired TRPs directed at 12-17 year-olds in the first three-quarters of 2013. The next leading brands (*FIN* and *Starfire*) accounted for 7.1% and 6.2% respectively of exposure to this age-group. *NJOY* and Other brands accounted for 2.7% and 2.3% of exposure. In contrast to the high levels of national advertisements by one major brand, there was a greater variety of brands at local level (spot) e-cigarette television advertising. Nineteen companies aired advertisements locally over the study period.

3.2.3.3 Recall of other promotional channels for e-cigarettes

There was a modest amount of data on recall of marketing via other promotional channels measured in the included studies. This covered awareness of e-cigarette sponsorship, promotion by public figures, price promotions and point of sale. Ford et al's (2015) study measuring 11-16 year old's recall of e-cigarettes promotional channels in the UK, reported that 4% recalled having seen sports or games sponsored by an e-cigarettes company or brand and 15% of the sample could recall seeing pictures of actors or public figures using or promoting e-cigarettes. A higher proportion was reported by a similar age group (9th and 12th grade pupils), the same year, in a national US survey: 44.6% reported seeing a celebrity using an e-cigarette in a movie or on TV (Bar et al. 2015). Ford and colleagues' study was the only one in our sample to measure recall of price promotions (rather than promotions more generally): in 2014, one fifth (20%) of the teenage sample from across the UK recalled seeing special price offers for e-cigarettes (Ford et al. 2015). The UK study also found that the most common marketing channel for e-cigarettes that 11-16 year olds could recall was 'e-cigarettes being displayed in shops'. Shop displays were recalled by 73% of the sample. Most of the children surveyed (82%) were aware of at least one type of e-cigarette promotion, with an average of 2.47 channels mentioned (SD=1.93).

3.2.3.4 Recall where e-cigarettes were purchased or procured

Where surveys asked self-reporting e-cigarettes ever users to recall where they purchased or procured e-cigarettes, those that recounted commercial sources are reported here; three USA studies and one from Finland.

A classroom-administered questionnaire in 2013 in North Carolina with n=2,769 High School students (grades 9-12) (Anand et al. 2015) identified two commercial sources reported as accessible for e-cigarettes by high school students – tobacco stores (23.5%) and gas stations (17.2%) – although e-cigarettes were reported to be most accessible from friends (35.9%). Reporting is unclear, but it is presumed that ever e-cigarette users (15.2%, including 7.4% past-30 days users) were asked this question.

A small online panel study in 2014, asked where 9th and 12th grade High School e-cigarette ever-users got these items the last time they used them (n=200). 41.7% purchased them from a smoke shop and

43.8% reported getting them from a friend (Bar et al. 2015). The study authors stated that these were preliminary results and the number or percentage of the sample who declared having tried an e-cigarette was not reported.

Krishnan-Sarin et al. (2015) used a classroom survey to assess e-cigarette sources of access amongst middle (n=1,166) and high school students (n=3,164) in Connecticut, in 2013. n=41 Middle School and n=912 High School ever users of e-cigarettes responded to the question asking where they 'usually get e-cigarettes'. Among the small sample of Middle School students, most answered friend (39%) parent or adult (17%), followed by commercial sources, given as gas station (12%), online (5%), tobacco shop (7%) and mall kiosk (2%). Among the larger High School sample, most usually got their e-cigarettes from a friend (47%) followed by commercial sources including tobacco shop (14%), gas station (13%), online (4%), mall kiosk (3%), then parent or adult (6%). (Twelve percent of Middle School and 4% of High School answered 'Other' sources.)

In Finland, in 2013, a postal questionnaire completed by n=3,535 12, 14, 16 and 18 year-olds established sources of e-cigarettes via an open-ended question: 'If you have used electronic cigarettes, where did you get them?' (Kinnunen et al. 2014). The 29 different responses from n=517 e-cigarette ever users were categorised into six sources. Most reported friends as a source (79.9%), but some commercial sources were also reported: the internet 7.2%, family 5.0%, abroad 3.3%, shop 1.7% or another place 4.1%.

3.2.3.5 E-cigarette brand awareness/recognition

One study (the Cancer Research UK funded Youth Tobacco Policy Survey), sampling a random selection of households from a range of geographic areas and socio-demographic backgrounds from the UK in 2014, measured 11-16 year-olds' e-cigarette brand awareness using a face-to-face in-home questionnaire (Ford et al. 2015). Initially, brand recall was assessed by asking participants to name brands of e-cigarettes that they had heard of. Secondly, brand identification was assessed by showing a visual prompt with images of three brands of e-cigarettes (*Nicolites*, *Blu* and *E-lites*) with the brand name masked and asking them to name each brand. Thirdly, brand recognition was assessed by showing a visual of the same three brands of e-cigarettes, but with the brand name unmasked, and asking if they had seen each before (Yes/No/Not sure). Brand awareness amongst 11-16 year-olds in this survey was low; most (84%, n=1004) were unable to recall (unaided) any e-cigarette brands. Sixteen percent (n=189) were able to name one brand of e-cigarettes, while less than 1% (n=9) could name two. The brands with the highest recall were *E-lites* (8%, n=100), *Nicolites* (2%, n=22) and *blu* (2%, n=27). When shown images of packs with the brand name masked, only 1% (n=7) correctly identified *Nicolites*, fewer than 1% (n=1) identified *E-lites* while none identified *blu*. When shown images of the packs with the brand name visible, one-third recognised *Nicolites* (33%, n=399) and *E-lites* (31%, n=375), while 17% (n= 210) recognised *blu*.

3.2.3.6 Experimental studies with adolescents examining e-cigarette marketing

Two studies with an experimental design aimed to look at the impact of e-cigarette advertising on under 18-year-olds', who had never used e-cigarettes, attitudes and intentions towards them. The first paper and pencil experiment was run in two schools in England with 11-16 year olds in 2015 (est. date) (Vasiljevic et al. 2016), the second experiment was run online with a USA internet panel of 13-17 year olds in 2014 (Farrelly et al. 2015/Duke et al. 2015).

Using a between-subjects design, Vasiljevic and colleagues (2016) exposed n=471 participants self-reporting as never having smoked or used e-cigarettes to one of three conditions: flavoured

(participants were shown a booklet containing 12 images of adverts for candy-like flavoured e-cigarettes), non-flavoured (booklet contained 12 images of adverts for non-flavoured e-cigarettes, and control (booklet contained no adverts). Those who saw the flavoured e-cigarette adverts rated the adverts (not the product) as significantly more appealing, and expressed greater interest in buying and trying the advertised e-cigarette, compared with those who saw the non-flavoured e-cigarette adverts ($p \leq 0.005$). Across the three experimental groups, appeal of using e-cigarettes (assessing their attractiveness, 'coolness' and whether boring or fun) and appeal of trying tobacco smoking were similarly low, while perceived harm of smoking tobacco cigarettes were similarly high (all p values > 0.376). Finally, logistic regression analyses contrasting the effects of the three conditions on susceptibility to tobacco smoking (eg. accepting and smoking a cigarette from a friend, or imagining their future 18-year-old-selves to be a smoker) yielded no significant results (all p values > 0.441).

The findings from the second experimental study were reported in two papers (Farrelly et al. 2015/Duke et al. 2015). Also a between-subjects design, $n=3,665$ participants self-reporting as never having used e-cigarettes were exposed to one of two conditions. The cue condition group viewed and rated four e-cigarette adverts, then completed the questionnaire. The control condition group completed the questionnaire first, then viewed and rated the same four adverts. The adverts had aired on US television in 2013 and 2014 and previously received high youth ratings on likability and perceived effectiveness. Attitudes towards using e-cigarettes were significantly more positive ('enjoyable', 'healthy', 'safe', 'fun', 'smart', 'cool', 'attractive') amongst the group who viewed the e-cigarettes adverts before answering, than amongst the control group ($p < 0.001$). This group was also less likely to rate e-cigarettes as harmful or very harmful than the control group ($OR=0.84$, $p=0.009$). There was no significant difference in attitudes towards using tobacco cigarettes or in how they rated the harmfulness of tobacco cigarettes between the two groups. Adolescents in the cue condition group reported a greater likelihood of trying an e-cigarette soon ($OR 1.45$, $p < 0.01$), trying an e-cigarette anytime during the next year ($OR 1.43$, $p < 0.01$), and using an e-cigarette if one of their best friends offered one ($OR 1.29$, $p < 0.05$). Those in the cue condition group were also significantly more likely than the control group to agree with statements corresponding to the adverts' prominent marketing messages, such as that e-cigarettes can be used in places where smoking is not allowed ($OR=1.71$, $p < 0.001$); that people can use e-cigarettes without affecting those around them ($OR=1.83$, $p < 0.001$); that using e-cigarettes is a good way to express your independence ($OR=1.90$, $p < 0.001$); that e-cigarettes are a safer alternative to regular cigarettes ($OR=1.19$, $p < 0.01$) and are less toxic than ordinary cigarettes ($OR=1.16$, $p < 0.03$) (Farrelly et al. 2015). Additionally, amongst the cue condition group, intention to use e-cigarettes was more than twice as high among youth with higher perceived ad effectiveness scores (worth remembering, attention grabbing, powerful, informative, meaningful, convincing) compared with those with lower scores (Duke et al. 2015).

3.2.3.7 Summary

This section outlined findings from nine studies that examined how children (11-18 years) respond to e-cigarette marketing. Most of the studies were conducted in the USA. Only two studies were conducted in the UK. Within the literature there was considerable focus on children's recall of advertising and a smaller amount of data on recall of other promotional channels, where children procured e-cigarettes and e-cigarette brand awareness. Seven studies were observational designs. Two experimental studies provided data on the impact of e-cigarette advertising on children's attitudes.

All the studies examining recall were cross-sectional designs. Often e-cigarette marketing recall was not the focus of the studies, with recall captured by only one or two survey items. In relation to *advertising channel recall* the studies show that this age group are aware of e-cigarette advertising

and via multiple channels, including: on TV, posters, billboards and the internet, and in newspapers, magazines and shops. Awareness of advertising appears to be generally higher in the USA than that reported in a UK study. Indeed, a time series analysis conducted in the USA, showed 12-17 year olds exposure to e-cigarette TV advertisements increased by 250% between 2011 and 2013. Few studies analysed data by subsamples or explored variables for correlations. Exceptions are a study conducted in Finland that found some age, gender and race differences in ad recall, and a US study which found e-cigarette ad exposure was not associated with e-cigarette experimentation.

Beyond advertising, few studies explored recall of a more extensive range of promotional channels. Similarly, only one study explored e-cigarette brand awareness. In a UK study, a large proportion (73%) of the sample recalled shop displays of e-cigarettes. One fifth could recall price promotions while only a small number (4%) could recall seeing sports or games sponsorship. In the same study, e-cigarette brand awareness among 11-16 year olds was found to be very low, with most respondents (84%) unable to recall (unaided) any e-cigarette brands. Only one study from the USA explored a further promotional channel 'seeing a celebrity using an e-cigarette in a movie or on TV'. Again the study reported a higher level of awareness among children than a similar measure in the UK study 'pictures of actors or public figures using an e-cigarette' (44.6% compared with 15%).

For *where e-cigarettes were purchased or procured*, four studies asked self-reporting ever e-cigarette users where they obtained e-cigarettes. Three studies from the USA and one from Finland recounted commercial sources of access, the most common of which were tobacco shops and gas stations; the extent to which children reported purchasing e-cigarettes online was low (4-7%). By far the most popular way to obtain e-cigarettes was through a friend (35-47% in the US studies).

Two *experimental studies* were identified, including one conducted in the UK which focused on the impact of flavoured e-cigarette advertisements on appeal. Those who were exposed to flavoured, compared with non-flavoured, e-cigarette adverts rated the adverts as significantly more appealing. However, this finding appears to be related to content of the adverts rather than the appeal of e-cigarettes. There was no difference in the appeal of using e-cigarettes between the experimental groups and no association was found between advert condition and susceptibility to tobacco smoking. The second experimental study from the USA examined the impact of e-cigarette ad exposure on teenagers' attitudes towards e-cigarettes and tobacco cigarettes. Those exposed to adverts before filling in a questionnaire reported significantly more positive attitudes, and greater likelihood of trying e-cigarettes than those who filled in the questionnaire first. However, there was no significant difference in attitudes towards using tobacco cigarettes.

3.2.4 The Effects of E-Cigarette Marketing on Adults

Twenty-two studies were identified that used a sample of adults (≥ 18 years). Four of these also included adolescents from age $\geq 15/\geq 16$ years.

None of the studies were conducted in the UK, 2 were conducted in Canada (Czoli et al. 2014, Shiplo et al. 2015), 2 in New Zealand (Li et al. 2014/Li et al. 2015a, Li et al. 2015b), 1 in the Netherlands (Nagelhout et al. 2016) and 17 in the USA (Baumann et al. 2015, Duke et al. 2014, Kim et al. 2015b, King et al. 2016, Maloney & Cappella 2015, Pepper et al. 2014a, Pepper et al. 2014b, Pepper et al. 2014c, Pepper et al. 2014d, Piñeiro et al. 2016, Pokhrel et al. 2015, Sanders-Jackson et al. 2015, Smith et al. 2015, Tan et al. 2015a,b, Trumbo & Kim 2015, Villanti et al. 2015, Wackowski et al. 2015). Data were collected between 2012 and 2014 and all 22 studies were reported in peer-reviewed journal articles (two studies in two separate papers: Li et al. 2014 and Li et al. 2015a, and Tan et al. 2015a and Tan et al. 2015b). Fifteen studies were observational designs: 13 used a cross-sectional design (10

online/internet panel survey, 1 telephone panel survey and 2 in-home survey); 1 was a longitudinal design (via an online/internet panel); and 1 was a time-series analysis. Seven studies used an experimental design. *We summarise these all here with the caveat that as there are no UK studies, some elements of this literature will not be directly relevant to the UK.*

The findings from observational studies are reported first in this section, organised by their e-cigarette marketing measures:

- Recall of advertising channels
- Overall exposure to TV advertising
- Recall of other promotional channels
- Receptivity to e-cigarette advertising and promotions
- Recall of e-cigarette brands

Finally we describe findings from the experimental studies on e-cigarette marketing. This is followed by a summary of the adult studies.

3.2.4.1 Recall of advertising channels for e-cigarettes

Eight observational studies assessed adult recall of advertising channels for e-cigarettes. The studies asked where participants had seen e-cigarettes advertised; six included a frequency measure, asking how often they had seen adverts. The studies included five online surveys from the USA, one online survey from Canada, one telephone survey from New Zealand and one longitudinal study from the Netherlands. The studies are organised here by their target adult populations: young adults (defined by ages ranging from 16-40 years), adult smokers and more general adult populations.

Young adults' recall of advertising channels for e-cigarettes

Three cross-sectional online panel surveys with young adults assessed recall: one from Canada and two from the USA which also assessed frequency.

An internet panel with a Canadian sample of 16-30 year-olds (n=1,188), asked respondents in July 2012 whether they had ever seen e-cigarettes advertised or for sale (one question) (Czoli et al. 2014). (The online survey provided a picture of an e-cigarette.) Over two-fifths (43.4%) of respondents reported having seen e-cigarettes advertised or for sale at one or more of the following locations: on the internet (24.3%); in Canada at a regular store, such as a corner store or gas station (23.1%); outside of Canada (9.5%); or elsewhere (8.6%).

Pokhrel et al. (2015) asked a sample of 18-40 year-old undergraduates (n=307) from community colleges in Hawaii in September and October 2013 to recall how often they had seen e-cigarette adverts across each of the following marketing channels: newspapers, magazines, the internet, television, billboards, sporting or cultural events, convenience stores, gas stations, grocery stores, and malls on a 4-point scale ranging from never to often, plus an open-ended "other" option. Fifty-eight percent of participants reported having seen e-cigarette ads "sometimes" or "often" on TV, 59% on the Internet, 71% in malls, 44% in magazines, 28% in newspapers, 41% in gas stations, and 47% in convenient stores. Approximately 90% of participants reported being exposed to some form of e-cigarette marketing "sometimes" or "often". Those who self-reported having ever used an e-cigarette, were more likely to report higher exposure to e-cigarette marketing than those who never used an e-cigarette (mean score 23.7 SD±7.0 vs 21.4 SD±7.1, p<0.01).

In March 2014, a nationally representative sample of 18-34 year-olds in the USA, were asked how often they had seen adverts for e-cigarettes in the past 30 days in four locations (convenience store, liquor store, or gas station; when using social media such as Facebook, Twitter or YouTube; while watching television or cable shows; and when reading newspapers or magazines), and gave them four possible responses ranging from never to five or more times (Sanders-Jackson et al. 2015). Using a median split, the sample was split into those reporting higher and lower marketing exposure. Respondents' knowledge about constituents, and regulation, of e-cigarette products was also tested with two statements for each requiring a true, false or 'don't know' response. Those with higher marketing exposure were less likely to answer 'don't know' to items testing their knowledge on constituents and regulation ($p < 0.001$) than those with lower marketing exposure. Those reporting a higher level of exposure to e-cigarette marketing were, however, also more likely to respond incorrectly to the true statement "Some e-cigarettes contain nicotine" (RRR=1.12, $p = 0.031$) than those with a lower marketing exposure.

Adult smokers' and former smokers' recall of advertising channels for e-cigarettes

Three surveys with adult smokers (and some former smokers) asked them to recall where, and how often, they had seen e-cigarettes advertised. The first survey, from the Netherlands, repeated the survey measures 1 year later.

An online longitudinal panel survey by Nagelhout et al. (2016) in the Netherlands measured adult (≥ 16 years) current smokers' recall of seeing e-cigarette advertising over the previous 6 months in three sources, with baseline data collected in May and June 2013 and follow-up data in May and June 2014 ($n = 1198$ respondents completed both surveys). Noticing e-cigarette advertisements in the previous 6 months increased significantly from 13.3% in 2013 to 36.0% in 2014 ($p < 0.001$). Regarding specific advertising channels, recall of noticing e-cigarette advertising in the previous 6 months increased significantly from 2013 to 2014 on television from 6.6% to 27.4%, on radio from 1.4% to 4.0% and in print from 8.2% to 16.7% ($p < 0.001$). In a series of regression analyses, no association was found between noticing e-cigarette advertisements and starting ever use (OR=0.86, $p = 0.332$) or current use (OR=0.85, $p = 0.458$) of e-cigarettes between baseline and follow-up. Noticing e-cigarette advertisements was associated with more disapproval of smoking (Beta=0.05, $p = 0.019$) and with quit attempts (OR=1.37, $p = 0.038$), but not after adjustment to the multivariate model; when there was no association between noticing e-cigarette advertisements and quit success (OR=0.92, $p = 0.807$).

In a telephone panel survey from New Zealand, conducted between August and December 2013, 48.9% of current smokers and recent quitters ($n = 267$) reported seeing advertising for e-cigarettes within the previous fortnight (Li et al. 2014/Li et al. 2015a). Among those who reported seeing an advert ($n = 128$), television was the most frequent advertising channel (78%), followed by radio (13%), the internet (8%), in-store advertising (6%) and in newspapers (2%). Examining the responses by quitting behaviour, the researchers found that 39.3% of daily smokers (non-attempters), 55.0% of daily smokers (recent quit attempters) and 51.7% ex-smokers (serious quitters) reported seeing advertising of e-cigarettes in the previous two weeks. The adjusted model (adjusted odds ratio) comparing responses, showed that overall exposure to e-cigarette advertising did not differ by smoking and recent quit attempt status, ever-use of e-cigarettes or any sociodemographic variables that were included in the model. Further analysis of the data from those who had never used an e-cigarette ($n = 172$) on their susceptibility to e-cigarette use, found that 43.8% of never e-cigarette users in the sample self-reported that they had 'past two-week exposure to e-cigarette advertising', however the exposure to advertising variable did not predict susceptibility to e-cigarettes for never users in the adjusted model (Li et al. 2015a).

Baumann et al's survey looked at a specific hospitalised population of adult (19-80 years) current smokers in Alabama, USA in relation to their exposure to e-cigarette advertising over the previous 6 months (Baumann et al. 2015). Data were collected face-to-face over the period December 2012 to September 2013 and results were reported by race (Black or White hospitalised smokers). Over the 9-month study period, Whites reported 56% higher exposure to e-cigarette advertising than Blacks (mean=25 vs. 8 in the first month to mean=79 vs. 45 in the final month, respectively; $p<0.0001$). Adjusting for demographic variables and smoking behaviours, Whites patients' exposure to e-cigarette adverts was 33% higher, on average, than Blacks' exposure ($p<0.0001$). White and Black patients reported seeing e-cigarette adverts in different settings: radio/television and stores were the largest source of e-cigarette ad exposure for both groups; more White patients than Black patients reported encountering advertisements in stores (40% vs. 34%, $p=0.03$) and on the internet (13% vs. 6%, $p=.0005$); and a higher proportion of Black patients than White patients reported exposure to radio or television adverts (73% vs. 67%, $p=0.03$); exposure to adverts in newspapers or magazines did not differ between the racial groups ($p=0.65$). There was a rising trend during the 9-month study period for the number of reported e-cigarette advertisement exposures for the previous 6 months with an average 14% increase each month of the 9-month period ($p<0.0001$); the increasing rate was significantly greater for White patients compared to Black patients ($p<0.001$). The association with self-reported e-cigarette ever use was significantly related to advertisement exposure for Black patients ($p=0.006$) but not for White patients ($p=0.061$) after controlling for demographic and smoking behaviour variables. An increase of self-reported exposure to 10 e-cigarette advertisements resulted in a 6% increase in the likelihood of having ever used an e-cigarette.

Other adult populations' recall of advertising and promotional channels for e-cigarettes

Two further online surveys assessed e-cigarette ad recall among adult populations. Both were conducted in the USA. The first study used a target population of adults who had heard of e-cigarettes, while the second study did not target any specific traits or behaviours.

In 2013, from October to December, Tan et al. surveyed $n=1449$ adults who had heard of e-cigarettes in an online panel survey in the USA in relation to any associations between self-reported exposure to e-cigarette advertising and perceived harms of second-hand vapour from other people's e-cigarettes (Tan et al. 2015a, b). The survey measured the frequency of respondents' exposure to adverts promoting e-cigarettes from three sources in the previous 30 days and how positive, neutral or negative the respondents perceived the advert information to be. Mean frequency of exposure to advertising (in convenience stores, liquor stores or gas stations; television, radio, or newspapers and magazines; or social media such as Facebook, Twitter or YouTube) was 1.6 ($SD\pm 0.6$) on a 4-point scale ranging from never (1) to five times or more (4) in the past 30 days.

Significant correlates of higher frequency of exposure to e-cigarette advertising included being a current smoker versus being a non-smoker and having observed others vaping. The majority of respondents perceived the information in the e-cigarettes advertising to be positive (47.5%), fewer perceived it as a mixture of positive and negative (22.2%), and 3.2% as negative. 72.9% ($n=1056$) reported exposure to at least one form of e-cigarette advertising from the three sources in the past 30 days. Multiple regression analysis found that frequency of e-cigarette advertising exposure was not associated with lower perceived harmfulness of second-hand vapour from others' e-cigarettes to one's health nor associated with lower perceived comparative harm of second-hand vapour versus second-hand cigarette smoke. Perceived negative valence of e-cigarette advertising exposure versus no exposure was associated with higher perceived harm across all three outcomes: harmfulness of second-hand vapour to one's health, concern about the health impact of breathing second-hand vapour and the comparative harm of second-hand vapour versus second-hand cigarette smoke.

In the second survey with n=17,522 adults, those who had heard about e-cigarettes were asked their source of awareness (Pepper et al. 2014a). (Prior to questionnaire items about e-cigarettes, the online survey had displayed images of e-cigarettes and listed typical brands.) Eighty-six percent of respondents had heard of e-cigarettes prior to the survey (94.9% of current smokers, 90.1% of former smokers and 80.6% of never smokers). From a list of provided sources of awareness, most answered another person (34% of never smokers, 39% of former smokers, 48% of current smokers), followed by seeing them for sale in stores including gas stations (22% of never smokers, 27% of former smokers, 47% of current smokers). The next most common response was an advert on TV (31% of never smokers, 35% of former smokers, 40% of current smokers) followed by online (12% of never smokers, 12% of former smokers, 28% of current smokers). (Those that responded 'online' were also asked where online, with the options of Twitter, an ad or user on Facebook, an ad or user on YouTube, an ad on some other Web site, a Web site that sells e-cigarettes, and an online news source, however the data were not reported.) Around 12-16% were aware of e-cigarettes due to an ad in a newspaper or magazine.

3.2.4.2 Overall exposure to TV advertising

A study from the USA examined time series data (Nielsen Monitor-Plus) for commercial advertising reach over the time period of January 2011 to September 2013 to assess the extent to which young adults aged 18 to 24 years had been exposed to e-cigarette television advertisements (Duke et al. 2014). Exposure to television e-cigarette advertisements increased for 18-24 year-olds by 321.0% from January 2011 to September 2013. Regarding television media types, 75.0% of all USA e-cigarette advertising exposure to youth occurred on cable networks; 13.2% was on network television; 11.3% was spot television advertising; and 0.5% was on syndicated television within the studied time period. The majority of exposure of advertisements was by one e-cigarette brand (*blu*), which accounted for 80.4% of all nationally aired TRPs directed at 18-24 year-olds in the first three-quarters of 2013. The next leading brands (*Starfire* and *FIN*) accounted for 7.8% and 6.7% respectively of exposure to this age-group and *NJOY* and 'other' brands accounted for 3.0% and 2.1% of exposure. A graph representation in the article also showed the quarterly trends of exposure to e-cigarette advertising for 35-54 year-olds and ≥55 year-olds (Duke et al. 2014, p.4). Exposure to e-cigarette television advertisements was consistently higher for the two older age groups. Exposure to those aged 55 years and over was almost double the exposure for 18-34 year-olds in the earlier and latter quarters of the time period.

3.2.4.3 Recall of other promotional channels for e-cigarettes

Three cross-sectional observational studies explored recall of other promotional channels for e-cigarettes with adult samples. All were online panel surveys in the USA. One was conducted with current smokers (Wackowski et al. 2015); two with adults who had tried e-cigarettes (Piñeiro et al. 2016, Pepper et al. 2014d).

Current smokers (smoke some days or every day) were asked in April 2014 whether they had ever heard of e-cigarettes prior to participating in the survey, and if they had ever heard about or seen them from a list of sources (Wackowski et al. 2015). Data were collected from 519 respondents, amongst whom 94% had heard of e-cigarettes. The reported sources of awareness were seeing e-cigarettes in a store (86.4%), seeing someone using them in person (83.0%), hearing about them from a friend, family member or co-worker (73.0%), seeing adverts in print or online (71.5%), seeing or hearing about them from adverts on television or radio (68.0%), or from the news (60.9%) or they saw e-cigarettes at an event (17.7%). With regards to common marketing channels (advertising, visibility

at events and available for sale in stores), some significant interactions by demographic, cigarette smoking and e-cigarette use characteristics were identified. Seeing or hearing of e-cigarettes in a store or at an event, was more common among the younger (18-44 years) than older (≤ 45 years) age groups. Smokers who reported that they had made a quit attempt in the past year were more likely than those who had not to have seen e-cigarettes in a store (92.8% versus 82.4% respectively, $p < 0.01$); and those who intended to quit smoking within the next 6 months were more likely than those who did not to have seen or heard of e-cigarettes at an event (24.2% versus 11.1%, $p < 0.01$), via television or radio adverts (74.1% versus 61.6%, $p < 0.05$) or in a store (90.9% versus 83.5%, $p < 0.05$). A majority of respondents (59.9%) believed that using e-cigarettes was less harmful compared to smoking regular cigarettes. When asked why they had responded this way, among other tangible sources of information, 44.2% [36.9–51.5] indicated this idea had come from e-cigarette adverts.

Piñeiro et al. (2016) is the only study with an adult sample in this review to report marketing outcomes by gender. Data were collected between August and November 2013 from $n=1815$ adults with a history of daily smoking, who had smoked tobacco cigarettes for at least one year and who had used e-cigarettes in the previous month. 66.8% ($n=1212$) of respondents were male and 33.2% ($n=603$) were female. When this group of e-cigarette users were asked where they got their information about e-cigarettes from, women e-cigarette users were more likely than men to report getting information about e-cigarettes from friends or family (36.7% vs. 27.2% respectively; $\chi^2=16.91$ $p < 0.001$), television or media adverts (5.1% vs. 2.2%, $\chi^2=11.05$ $p=0.001$), and gas stations or cigarette stores (4.8% vs. 1.7%, $\chi^2=15.30$ $p=0.001$), whereas men were more likely to report getting information about e-cigarettes online than women (93.0% vs. 85.1%, respectively; $\chi^2=28.93$ $p=0.001$). For the whole sample, advertising (3.2%) and stores (2.7%) were the least reported source of information about e-cigarettes. In terms of e-cigarettes availability from commercial sources, when this group of e-cigarette users were asked where they bought their e-cigarette supplies, women e-cigarettes users were more likely than men to report purchasing them from gas stations or cigarettes stores (9.1% vs. 4.1%, respectively; $\chi^2=18.44$ $p=0.001$) and men using e-cigarettes more likely than women to report buying them online (88.6% vs. 75.8%, respectively; $\chi^2=18.44$ $p=0.001$).

The third survey collected data in March 2013 from $n=3878$ adults who had ever used an e-cigarette (even one puff) (Pepper et al. 2014d). Prior to questionnaire items about e-cigarettes, the online survey had displayed images of e-cigarettes and listed typical brands. The survey requested respondents' reasons for trying e-cigarettes, asking them to tick all the answers that applied from a list including appealing advertising. The most common reasons given were: I was curious about e-cigarettes (53%), a friend or family member used, gave, or offered an e-cigarette (34%), e-cigarettes can help me quit or cut back on smoking regular cigarettes (30%). The reason selected the least often was the advertising for e-cigarettes appeals to me (6%); one third (34%) of those who selected this reason had discontinued e-cigarette use. From the open-ended responses, 21 participants (0.4%) noted that they started using e-cigarettes because of price promotions or free samples.

3.2.4.4 Receptivity to e-cigarettes advertising and promotions

One online survey with $n=307$ 18-40 year old undergraduate college students in Hawaii examined young adults' receptivity to e-cigarettes advertising and promotions (Pokhrel et al. 2015).

Receptivity to advertising was assessed by measuring respondents 'liking' for e-cigarettes adverts they had seen, using 5 scaled items relating to appeal. Among the whole sample, the most popular responses were negative. 23.8% liked e-cigarette ads or commercials relative to other ads or commercials, however, 41.2% reported that they liked e-cigarettes ads/commercials the least. 21.5% found e-cigarette ads or commercials funny, while 45.9% reported that they never found them funny.

10% found e-cigarette ads or commercials sexy, while 65.9% reported that they never found them sexy. 78.0% of respondents never wished they were like the people in the e-cigarette ads/commercials and 87.7% responded that they tended not to pay attention to e-cigarette ads/commercials. Those who self-reported having ever used an e-cigarette (lifetime use) were more likely to like e-cigarette advertising than those who never used in e-cigarette (mean score 8.7 SD±2.6 vs 7.4 SD±2.8 $p<0.001$).

Receptivity to e-cigarette promotions was assessed by asking the respondents whether they would wear or use an item that has the name of an e-cigarette product on it and if they could recall ever buying or receiving for free any product which promoted an e-cigarette brand or was distributed by an e-cigarette company. Summed scores provided a measure of receptivity to e-cigarette promotions. Lifetime e-cigarette users (ever used an e-cigarette) were more receptive to e-cigarette promotions than lifetime e-cigarette non-users (mean score 3.4 SD±0.7 vs. 3.2 SD±0.4, $p<0.001$). The researchers used structural equation modelling to test whether exposure and receptivity to e-cigarette marketing would be associated with perceptions that e-cigarettes are less harmful than cigarettes. Marketing receptivity was found to have a significant effect on low e-cigarette harm perceptions (ie. respondents' scale of agreement with 14 statements on whether e-cigarettes reduce harm, improve health and reduce addiction), such that higher marketing receptivity was associated with perceptions that e-cigarettes are less harmful ($p<0.001$). However, it is worth noting that harm perceptions were assessed through general statements (ie. 'E-cigarettes improve breathing and reduce coughing') rather than direct comparisons with perceptions of harm from combustible tobacco.

3.2.4.5 Recall of e-cigarette brands

Two studies examined recall of e-cigarette brands; both were cross-sectional surveys which included younger adults in their samples from age $\geq 15/\geq 16$ years. The first study was an on-line panel survey from Canada (Shiplo et al. 2015). The second was an in-home face-to-face survey from New Zealand (Li et al. 2015b).

Shiplo and colleagues' online survey in October 2013 asked respondents who had ever tried or currently use e-cigarettes (used in the last 30 days) in Canada to recall the e-cigarette brands they had used (Shiplo et al. 2015). Results were reported for sub-samples of 16-24 year old non-smokers ($n=311$) and smokers, ($n=323$), and ≥ 25 year old smokers ($n=461$). Among all ages of ever e-cigarette users, the most common brands reported were VaPUR, Blu and other. Among those reporting to be current e-cigarette users, 47.4% ($n=27$) of 16-24 and 52.2% ($n=24$) of ≥ 25 year-old smokers reported having a usual e-cigarette brand, with similar brand frequencies as ever e-cigarette users. None of the 16-24 year old non-smokers (smoked <100 cigarettes in their lifetime and none in the previous 30 days) reported having a usual e-cigarette brand. 3.2% ($n=10$) of 16-24 year-old non-smokers and 13.6% ($n=44$) of 16-24 year-old smokers did not know the brand of e-cigarettes they used. 7.2% ($n=33$) of ≥ 25 year-old smokers did not know the brand of e-cigarettes they used.

In 2014, Li and colleagues interviewed a sample of $n=2594$ adults (≥ 15 years) residing in permanent, private dwellings in New Zealand about which e-cigarette brands they had ever or currently used (Li et al. 2015b). Multiple responses were allowed, chosen from a list of 15 brands, plus 'other' and 'don't know'. Among all ever-users (ever tried an electronic cigarette, $n=355$), over half (57.8%) could not name the e-cigarette brand(s) that they had ever tried; 17.8% of current users of e-cigarettes (using an e-cigarette 'at least once a day', 'at least once a week', or 'at least once a month', $n=31$) could not name their current brand.

3.2.4.6 Experimental Studies with Adults

Seven studies, all conducted in the USA, used an experimental design. Three examined e-cigarette marketing with younger adult samples ranging from 18-36 years (Trumbo & Kim 2015, Villanti et al. 2015, King et al. 2016), three with current smokers (≥ 18 years) (Kim et al. 2015b, Maloney & Cappella 2015, Pepper et al. 2014b), and one with a general adult population sample without specific traits or behaviours (Smith et al. 2015). Six of the studies were administered via an online survey and one in a laboratory setting. Additionally, one was a randomised control trial, the only one identified for this review (Villanti et al. 2015). A brief description of each study is outlined below, organised by the target population.

Experimental studies with young adults

Trumbo and Kim (2015) exposed $n=296$ undergraduates from a public university to 3 e-cigarettes video adverts (brands *blu*, *NJOY* and *Mistic*) in an online survey in 2013. Participants rated each brand and advert on appeal (how enjoyable, likeable and appealing they were). The ad for *blu* was significantly more appealing to the undergraduate group than the adverts for *NJOY* and *Mistic* ($p<0.01$). In a regression analysis, appeal of e-cigarette advertising videos was independently positively associated with intention to use an e-cigarette in the near future ($p=0.001$). Furthermore, the appeal of e-cigarette advertising videos was not controlled by the addition of tobacco or e-cigarette ever use variables in the analysis, remaining positively associated with intention to use an e-cigarette ($p=0.004$).

In a randomised control trial, measures of curiosity about e-cigarettes, likelihood of e-cigarette use and e-cigarette trial among never-users were collected at two time points (January and June 2013) via an online panel survey (Villanti et al. 2015). One group of 18-34 year olds was exposed to four images of e-cigarette advertising (brands *blu*, *Fin*, *NJOY*, *White Cloud*) ($n=1583$); the control group was not exposed ($n=1613$). At the first wave, e-cigarette never users in the exposed group were significantly more likely to report curiosity to try an e-cigarette, or that they would try an e-cigarette if offered by a friend, compared to those in the unexposed group. The percentage of young adults who had never used an e-cigarette, but reported that they would try an e-cigarette soon did not vary significantly. At the 6-month follow-up, the proportion of e-cigarette never users in the exposed group who reported having tried an e-cigarette since, did not vary significantly from those in the control group. However, ad exposure was significantly associated with e-cigarette trial at 6-month follow-up among never users of both e-cigarettes and cigarettes at baseline (3.6% exposure group vs. 1.2% control group; AOR=2.85; 95% CI=1.07, 7.61). There was no association between ad exposure and self-reported ever or current cigarette use among young adults who had never used e-cigarettes.

In a laboratory experiment in 2014, set up to resemble a living room, participants viewed e-cigarette video adverts on a computer screen (King et al. 2016). In order to explore ad imagery, overt branding and product names were omitted to reduce potential bias to specific brands. The sample comprised 18-36 year old self-reporting smokers (5-20 cigarettes per day) who were not currently attempting to quit. One group ($n=38$) viewed the e-cigarette videos; the control group ($n=40$) viewed adverts for bottled water. E-cigarettes ad exposure increased ratings of desire to use an e-cigarette ($p<0.001$) and bottled water ad exposure increased ratings of desire to drink water ($p=0.029$). Exposure to the e-cigarettes adverts, relative to the water adverts, increased the reported urge for a regular cigarette ($p<0.001$), as well as increased ratings of desire to smoke a cigarette of the participants' preferred brand ($p<0.023$).

Experimental studies with adult smokers (≥ 18 years)

In January 2013, $n=519$ current tobacco smokers' receptivity to a *blu e-Cigs* television advert and their thoughts about smoking and quitting, their urge to smoke and likeliness to try e-cigarettes after viewing the advert, was examined in an online panel survey (Kim et al. 2015b). The authors compared findings between those who had prior experience of using e-cigarettes and those who had never used them. Those who had tried e-cigarettes were significantly more receptive to the *blu e-Cig* advert than non-users ($p<0.05$); although non-users were fairly receptive to the advert. Viewing the e-cigarette advert prompted thoughts about smoking cigarettes (a little, somewhat, very or a lot) in 75.8% of the sample, a mean=42.1 (SD \pm 1.9) urge to smoke (on a scale of 0 'no urge' to 100 'strongest urge I have ever experienced') and prompted thoughts about quitting smoking (a little, somewhat, very or a lot) among 74.6% the sample, with no significant differences between e-cigarettes users and non-users. Amongst the smokers who were not currently using e-cigarettes, 66.0% reported that they were somewhat or very likely to try e-cigarettes after viewing the *blu e-Cig* advert.

Later that year, a between-subjects study design explored whether exposure to e-cigarette adverts with visual vaping cues increased urges to smoke tobacco cigarettes compared to exposure to e-cigarette adverts without visual vaping cues, and no exposure to adverts (Maloney & Cappella 2015). The $n=884$ sample, comprising daily, intermittent and former smokers, were exposed to one of three conditions via an online panel survey: the cue condition group viewed e-cigarette adverts with visual depictions of vaping cues; the no-cue condition group viewed the same ads but with only words rather than visual vaping cues displayed; and a no-ad control group. For daily smokers, the main effect of the e-cigarette adverts cue condition on urge to smoke a tobacco cigarette was significant ($p<0.001$); their post-test urge to smoke a tobacco cigarette was also significantly higher than daily smokers in the no-cue ($p<0.001$) and in the no-ad conditions ($p=0.001$). There were no significant main effects on urge to smoke among intermittent smokers or former smokers between exposure conditions. The experiment also assessed whether exposure to vaping cues decrease smokers' and former smokers' (a) self-efficacy to quit/continue abstaining from smoking tobacco cigarettes, (b) attitudes toward quitting smoking/smoking abstinence, and (c) behavioural intentions to quit/continue abstaining from smoking. Among daily and intermittent smokers, there were no significant main effects across the three conditions for the three measures. Among former smokers, there were no significant main effects across the three conditions for post-test self-efficacy to continue abstaining from smoking tobacco cigarettes or for attitudes toward abstaining from smoking tobacco cigarettes.

Another study focused on the impact of ad message themes and visual cues on smokers' interest in trying e-cigarettes (Pepper et al. 2014b). In a between-subjects factorial design, $n=3,253$ adult current smokers who had never tried an e-cigarette were randomly assigned to view one of nine stills for a mock e-cigarette brand. The stills varied by image (a person using an e-cigarette, a rechargeable kit, no cigarette) and headline message comparing e-cigarettes with regular cigarettes (highlighting a difference, a similarity, or neither, between the products). Respondents were asked "How much does seeing this ad make you want to try e-cigarettes?" There was higher interest for trying e-cigarettes after viewing adverts with messages about the differences between e-cigarettes and regular cigarettes and images that showed a person using an e-cigarette. Adverts with the headline "Better than a cigarette" and an image showing a person using an e-cigarette created significantly more interest in trying e-cigarettes than the control ($p<0.05$). Greater interest was triggered in trying e-cigarettes when ad message stated that e-cigarettes were healthier than cigarettes, less expensive than cigarettes, or helpful to quit smoking ($p<0.05$) compared with the control message.

Experimental study with adults from the general population

Using a general adult population sample, Smith et al. (2015) compared images of magazine adverts for the e-cigarette brand *blu* with a matching set of adverts for the snus brand *Camel*, with n=600 participants screened from an online panel survey. Amongst respondents exposed to e-cigarette adverts, advert receptivity, interest in trying e-cigarettes and favourable product attitudes, were significantly higher for current smokers than non-smokers ($p < 0.001$). In the snus condition, equivalent (although weaker) relationships existed. When asked which product they would choose for a free sample from a choice of e-cigarette, tin of smokeless tobacco, pack of cigarettes or 'please do not send me any of these', those in the e-cigarette condition were significantly more likely to choose an e-cigarette (39%) compared to those exposed to the snus condition ($p = 0.014$). Within both conditions, current smokers were significantly more likely to choose an e-cigarette than non-smokers ($p < 0.001$).

3.2.4.7 Summary

This section outlined findings from 22 studies that examined how adults respond to e-cigarette marketing. None of the adult studies were conducted in the UK, with the vast majority from the USA. Fifteen studies were observational designs, including one longitudinal study; seven studies were experimental designs.

As with the child observational studies (Section 3.2.3), the greatest proportion of studies measured *advertising channel recall*; five from the USA and one each from the Netherlands, Canada and New Zealand. Most of the studies also assessed frequency of exposure in addition to advertising awareness. The studies targeted different adult populations, including young adults, former and current smokers and ever e-cigarette users, and show that all populations were aware of e-cigarette advertising from a wide variety of sources. In studies from the USA, advertising exposure was found to be associated with ever e-cigarette use and also current smoking. There were some mixed results on how advertising exposure related to consumer knowledge. One study found that participants reporting a higher level of exposure were less likely to answer 'don't know' to items testing knowledge on e-cigarette constituents and regulation, yet more likely to report incorrectly to statements on nicotine. Another study found that frequency of exposure was not associated with lower perceived harmfulness of second-hand vapour or lower perceived comparative harm of second-hand vapour versus second-hand cigarette smoke. Exploring advertising exposure among current and former smokers in New Zealand, one study found that exposure did not differ by smoking, recent quit attempts, or ever use of e-cigarettes. In the same study, exposure was not associated with susceptibility to use e-cigarettes for never users. One longitudinal study from the Netherlands found no association between current smokers noticing e-cigarette adverts and starting ever use of e-cigarettes at one year follow up. However, noticing adverts was associated with greater disapproval of smoking and quit attempts, although not quit success.

Two studies suggest that adult *exposure to e-cigarettes advertising* increased in the review period. A time series analysis from the USA found that between 2011 and 2013, young adults' (18-24 year olds) exposure to TV e-cigarette advertising increased by over 300%, with the vast majority of exposure by one e-cigarette brand. Further, exposure for older age groups was consistently higher than that for younger adults, with almost double the level of exposure for those aged 55 years and over. Although not strictly measuring exposure, the longitudinal study conducted in the Netherlands found a significant increase in current smokers noticing e-cigarette adverts between 2013 and 2014.

Three studies, all from the USA, examined *recall of other promotional channels*. In general, however, these are small inclusions of other promotional avenues, rather than the focus of the study. In one study a tiny proportion of the sample reported that they started using e-cigarettes because of free

samples or price promotions. Another study highlighted that men and women obtain e-cigarette information from different promotional sources, although compared to other sources of information such as family and friends, promotional sources were the least reported sources. Regarding recall of other promotional channels, one study reported some positive findings regarding quitting, with those having made a recent quit attempt more likely to recall having seen e-cigarettes in stores, and those intending to quit in the next six months more likely to recall having seen e-cigarettes at events, than those who had not.

Few studies examined *receptivity to advertising and promotions* and *brand recall*. In the USA, young adults' receptivity to e-cigarette advertising was examined in one study by exploring ad appeal. Overall, responses to e-cigarette adverts were negative compared to other adverts. However, those that had ever used an e-cigarette were more likely than those who had not, to like e-cigarette advertising. Similarly, ever users were more likely than never users to be receptive to e-cigarette promotions. Only two studies explored e-cigarette brand recall. In a New Zealand study only around half of e-cigarettes users could report having a usual brand. In Canada, more than half of ever users could not name a brand that they had tried.

Seven *experimental studies*, all conducted in the USA were identified. Overall, these studies show the impact of e-cigarette advertising, such as ad exposure and receptivity, on variables such as intention and desire to use an e-cigarette and urge to smoke a tobacco cigarette. In several studies e-cigarette advertising was associated with intention or desire to use an e-cigarette among populations of young adults. In one study with young adult smokers, e-cigarette advert exposure was associated with increased desire to smoke a tobacco cigarette. Highlighting the impact of advertising images on current and former adult smokers, in one study visual vaping cues were found to increase the urge to smoke a tobacco cigarette among daily smokers, but not intermittent or former smokers. In another study advertising message was found to be important in generating interest in trying e-cigarettes among smokers who had never tried an e-cigarette. Only one randomised control trial was identified for the review. This showed that among never e-cigarette users, ad exposure was associated with curiosity to try an e-cigarette, and at six month follow-up, ad exposure was associated with e-cigarette trial (but not ever cigarette use) among never users of both e-cigarettes and cigarettes at baseline. However it should be noted that at six month follow-up, never smokers in the ad exposure group reporting to have tried an e-cigarette did not differ from the control group.

3.2.5 Studies with Healthcare Professionals

One observational study that measured source of awareness of e-cigarettes (including from commercial advertising) was conducted with paediatric healthcare professionals rather than a population of potential users (Pepper et al. 2014c). In April 2013, Pepper and colleagues surveyed online n=615 physicians and nurse practitioners who provide preventive care to preteens and adolescents ages 11–17 years in Minnesota, USA. (Prior to questionnaire items about e-cigarettes, the online survey had displayed images of e-cigarettes and listed typical brands.) Among healthcare providers who provide preventive care to teenagers, who were aware of e-cigarettes (n=516), the most frequently reported sources of information from a given list of nine potential sources were: patients (62%), news stories (39%), and advertisements (37%). More than 20% had seen them for sale. A substantial minority of respondents reported having heard of e-cigarettes through professional sources (including journal articles and newsletters) (24%) and colleagues (11%).

3.3 Regulatory framework for e-cigarette marketing

This section of the report outlines findings from interviews and documentary review intended to capture the current and future regulatory framework for e-cigarette marketing in the United Kingdom. It begins with a background section that describes developments up to 2014, followed by findings related to:

- Early e-cigarette marketing
- CAP/BCAP and MHRA roles
- CAP consultation and code
- Views on previous code
- Tobacco Products Directive
- E-cigarette marketing post TPD
- Additional national regulations
- Summary

3.3.1 Early E-Cigarette Marketing

E-cigarettes first began to appear on the UK market in 2007 accompanied by minimal levels of promotion. Marketing was typically characterised by a modest amount of local press advertising and the companies involved tended to be small, independent e-cigarette importers or manufacturers. By 2010 the market was beginning to grow rapidly, illustrated by an increase in the number of people using e-cigarettes and also e-cigarette companies, who were beginning to promote products more widely, and with more concerted advertising campaigns. A noticeable increase in e-cigarette advertisements in non-broadcast media, particularly newspapers, depicting cigarette-like products began to raise concerns from members of the public and the tobacco control community. Broadcast ads, although permitted, could not show e-cigarette products, however, questions were still raised in some quarters about the potential appeal of some of their content to children.

At that time there were no e-cigarette specific rules for advertising in non-broadcast or broadcast media. Instead, the rules governing the advertising of e-cigarettes were a complex mix of general consumer product and tobacco advertising rules. For tobacco, all forms of advertising were (and still are) banned under the Tobacco Advertising Directive. For non-broadcast media, e-cigarettes were subject to existing, general rules under the Committee for Advertising Practice (CAP) and Broadcast Committee for Advertising Practice (BCAP) codes which protect from misleading, harmful, offensive or otherwise socially irresponsible advertising. Rules concerning e-cigarette advertising in broadcast media were captured by existing, broadly written prohibitions in the tobacco section of the CAP/BCAP code which is based on the Tobacco Advertising Directive. Intended to prevent the indirect promotion of tobacco products, this limits advertising for products with similar characteristics to tobacco. As the advertising emerging at that time was largely for first generation 'cig-a-like' e-cigarette products, this resulted in a de facto ban on TV e-cigarette advertising showing e-cigarette products.

Using existing CAP/BCAP frameworks for e-cigarette advertising therefore presented regulatory challenges. As promotion grew, it became apparent that attempts to fit existing rules around these new products were not ideal. Complaints from members of the public, alongside enquires from e-cigarette marketers looking for product-specific guidance, meant that the lack of specific rules concerning the advertising of e-cigarettes had become a policy issue for CAP/BCAP by 2013. It was decided that new e-cigarette rules were required to protect consumers and provide clarity to the e-cigarette industry about what they could and could not do with regards to advertising. A CAP/BCAP consultation in 2014 informed new rules for e-cigarette advertising which provided a variety of specific

protections, particularly for children and non-smokers. Crucially these new rules allowed e-cigarettes to be shown in use on TV provided that it was clear that they were not tobacco products. The new rules were intended to be interim measures while the requirements of the revised EU Tobacco Products Directive were being finalised.

3.3.2 CAP/BCAP and MHRA Roles

CAP and BCAP have responsibility for writing the advertising rules for non-broadcast and broadcast media respectively. They share a policy and advice team, and a compliance team. However, enforcement of the rules across the UK rests with the Advertising Standards Authority (ASA). The ASA is a separate organisation with authority to take forward and enforce the rules of the CAP and BCAP codes independently from CAP/BCAP. E-cigarettes that are sold as consumer products (currently all of the UK market) are subject to CAP/BCAP rules.

The Medicines and Healthcare products Regulatory Agency (MHRA) is the statutory authority for the regulations around advertising medicines which has a well-established regulatory framework. E-cigarettes which have been granted a medicinal license are subject to the MHRA advertising rules, in addition to the CAP/BCAP rules. The MHRA has no involvement in the advertising of unlicensed, consumer e-cigarette products.

Advertising regulations for medicines have a number of quality standards. Manufacturers are required to comply with standards for describing product characteristics which includes prescribing information. They must also present the product objectively in any advertising, provide information on actual use and not seek to mislead consumers or advertise to children. Celebrity or health professional endorsement is also not permitted. Medicines advertising does not permit direct comparisons of named products, although product characteristics can be referenced.

The MHRA has powers to investigate complaints about the advertising of licensed medicines. In most cases this involves engagement with the company in question, a response from the company and an agreement being reached which can involve the manufacturer issuing a correction. The outcome is then published on the MHRA website. In exceptional cases further action can be taken as breaching medicines advertising rules can be a criminal offense. The ASA can also investigate complaints about the advertising of licensed medicines as both the CAP and BCAP code reflect the advertising requirements of the Human Medicines Regulations.

As we outlined in Section 1 of this report, only one e-cigarette has gained a medicinal license in the UK (or indeed any other country). This product is called e-Voke and is manufactured by a subsidiary of British American Tobacco. However, e-Voke is not yet available on the UK market so cannot be prescribed or sold over the counter. If and when it becomes available, marketing of the product will be subject to MHRA rules on the advertising of medicines, and CAP/BCAP rules on the advertising of e-cigarettes, as would any other future e-cigarette or nicotine vapouriser that gained a medicines license.

3.3.3 CAP/BCAP Consultation and Code

As we outline above, up until 2014 practice and standards for e-cigarette advertising were guided by general consumer product and tobacco advertising rules. In this section of the report we describe how this changed following a consultation carried out by CAP/BCAP which established a new framework (or code) that applied until May 2016 when it was superseded by new regulations based on the EU Tobacco Products Directive.

CAP/BCAP launched a UK wide consultation on new advertising rules for e-cigarettes in February 2014. The proposals that were consulted on included (CAP 2014):

- specific rules designed to offer particular protection to the young, the vulnerable and to non- and former-users of nicotine. This includes rules prohibiting e-cigarette ads from appealing to under 18s or showing anyone under 25 using an e-cigarette
- rules that specifically address concerns about the indirect promotion of tobacco products via advertising of e-cigarettes
- proposals to prohibit health or medicinal claims for e-cigarettes unless the product is licensed for those purposes
- a requirement for advertisers to make clear that the product being advertised is an e-cigarette and whether or not it contains nicotine

Stakeholders responded to the consultation and in all 110 responses were received. These varied in their content with a small number of responses calling for all forms of advertising to be removed. However, most feedback recognised the need for some forms of promotion but that this needed to be responsible. Responses to the consultation are still available on the CAP website. The suggestions outlined in the consultation were upheld and some additions made, specifically regarding cross-promotion, the need to have no individuals under the age of 25 appearing in advertisements and regulations around scheduling to avoid children's programmes.

Following the consultation, Section 22 of the CAP Code and Section 33 of the BCAP Code were developed to cover electronic cigarette advertising (CAP, 2015). The rules were based on seven principles:

- Ensure your ads are socially responsible
- Don't target or feature children, or include content which is likely to appeal particularly to children
- Don't confuse e-cigarettes with tobacco products
- Don't make health or safety claims
- Don't make smoking cessation claims
- Ensure you don't mislead about product ingredients
- Don't mislead about where products may be used

The new rules applied from November 10th 2014. CAP and BCAP committed to conducting an internal review of how these rules had been interpreted and applied and this was carried out one year later towards the end of 2015. A report from this review is not currently publicly available.

Complaints were submitted to the ASA regarding particular e-cigarette ads both prior to and following the introduction of the 2014 code. According to CAP, these were not significant in number. The ASA receives around 35,000 complaints a year about all advertising, and relatively few (around 700-800, with around half of these focusing on one particular advert) were received about e-cigarette adverts in the 12 months following the introduction of the new rules. The ASA has an approach to

enforcement following complaints which is the responsibility of their investigation teams. In most cases companies who breach the code are unaware of it or poorly informed, and information exchange and advice can resolve the situation. However, the ASA has formally investigated at least 14 cases of e-cigarette advertising in the UK and rulings on each of these have been published on the ASA website.

3.3.4 Views on Previous Code

Participants from the tobacco control community said that they welcomed some product specific advertising restrictions on e-cigarettes that were introduced by CAP and BCAP. However, there were mixed views on the 2014 code. Some said that they thought it appropriate to have rules which were not as strict as those for tobacco as they did not want smokers to receive a message that vaping was similar to smoking. Others said that the CAP/BCAP rules did not go far enough to control advertising. One participant expressed concern over billboards and poster advertising: they said that the introduction of the rules had resulted in little change to the style of advertising, with imagery glamorising vaping.

Participants had fewer concerns over TV advertising under the code. While all participants said that the potential impact of TV advertising to young people and non-smokers was an issue, it was felt that TV advertising under the rules had achieved the right balance between not promoting e-cigarettes to young people/non-smokers and making adult smokers aware of e-cigarettes as an alternative to smoking. One participant noted that under the framework, advertising tended to have a stylish adult-oriented theme, rather than the youth-oriented advertising the same companies were perceived to be airing in the USA or elsewhere.

There were mixed views over the enforcement of the rules. Several participants highlighted that some provocative TV advertisements had been banned when the rules were first imposed. This indicated adequate enforcement. However, there was also some understanding amongst participants that the fact that an advert was released which then generated complaints could result in an indirect form of publicity for the product given the controversy complaints could generate. This could inadvertently draw attention to the particular brand in question or the issue of e-cigarette advertising in general. However, there was consensus amongst participants that the ASA appeared to have acted swiftly to deal with complaints and that television adverts that were perceived as inappropriate had largely been removed following ASA intervention under the previous code.

The prevailing viewpoint for the CAP/BCAP framework was that e-cigarette advertising required consistent monitoring to ensure messages focused on e-cigarettes as an alternative product for smokers, rather than something that was attractive for recreational use among non-smokers. There was some scepticism over whether e-cigarette marketers had simply been treading carefully until the new TPD regulations were in force and there was doubt over underlying motives behind e-cigarette marketing, particularly where tobacco companies were involved.

3.3.5 Tobacco Products Directive

On May 20th 2016 new rules concerning e-cigarette advertising, set out in Article 20(5) of the Tobacco Products Directive (2014/14/EU), became applicable to EU member states. Although less restrictive than the rules for tobacco advertising, the TPD prohibits the advertising of nicotine-containing, unlicensed e-cigarettes in media with cross-border impact, including TV, radio, online (although with scope for retailers to retain websites making limited claims), newspapers, magazines and cross-border sponsorship. Specifically the TPD states:

Member States shall ensure that:

- (a) commercial communications in information society services, in the press and other printed publications, with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers are prohibited, except for publications that are intended exclusively for professionals in the trade of electronic cigarettes or refill containers and for publications which are printed and published in third countries, where those publications are not principally intended for the Union market
- (b) commercial communications on the radio, with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers, are prohibited
- (c) any form of public or private contribution to radio programmes with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers is prohibited
- (d) any form of public or private contribution to any event, activity or individual person with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers and involving or taking place in several Member States or otherwise having cross-border effects is prohibited
- (e) audiovisual commercial communications to which Directive 2010/13/EU of the European Parliament and of the Council applies, are prohibited for electronic cigarettes and refill containers

In the UK, responsibility for interpreting the TPD requirements, and the advertising of non-licensed e-cigarette products, rests with the Department of Health (DH). How the TPD is applied at a UK-wide level has been set out in The Tobacco and Related Products Regulations (TRPRs) 2016, which came into force on May 20th 2016. In its application of the TPD and the framework for enforcing the new advertising regulations, the DH has aimed to strike a balance between the perceived benefits of current smokers receiving information about e-cigarettes to encourage them to switch, and the need to protect never smokers, particularly children, from viewing the products as appealing. Associated guidance on the advertising provisions of the TRPRs has been developed by DH. Table 4 below illustrates the DH's interpretation of the requirements.

Table 4: Summary of requirements

Media type	Legislative position	Implementing measure
Broadcast TV advertising and sponsorship	Prohibited	Implemented through the BCAP Code and Broadcast Code
Broadcast TV product placement	Prohibited	Communications Act 2003 as amended by the Tobacco and Related Products Regulations 2016
Radio advertising and sponsorship	Prohibited	Implemented through BCAP Code and the Broadcast Code
On-demand television advertising, sponsorship and product placement	Prohibited	Communications Act 2003 as amended by the Tobacco and Related Products Regulations 2016
Newspapers, magazines and periodicals – except trade publications and third country publications	Prohibited	Tobacco and Related Products Regulations 2016
Internet display advertising, email and text message advertising - except trade publications and third country publications	Prohibited	Tobacco and Related Products Regulations 2016
Sponsorship of activity/individuals involving or taking place in several Member States or otherwise having cross-border effects	Prohibited	Tobacco and Related Product Regulations 2016
Company's own websites, and other non-paid-for online space under their control	No advertising or promotion but factual information about products, factual 'how to' videos permitted	Tobacco and Related Product Regulations 2016
Retailer sites	No advertising or promotion but factual information about products, factual 'how to' videos and sales lists permitted	Tobacco and Related Product Regulations 2016
Blogs/tweets/independently compiled, non paid for reviews	Permitted	
E-cigarette trade press and trade to trade communication	Permitted	
Cinema, fax, outdoor posters, posters on sides of buses (not travelling outside of the UK), leaflets, and direct hard copy mail	Permitted	

Source: Department of Health (2016)

In the first instance it is anticipated that the ASA will deal with infringements of the regulations. However, legal enforcement of the regulations is the responsibility of local Trading Standards teams. The Department of Health has written to Trading Standards across the UK to alert them to the new legislation and requirements around enforcement. In the first year of implementation, it is anticipated that the ASA's approach should be supportive of manufacturers who may not realise they are not following existing regulations, although appropriate action will be taken if required. In particular, repeat offenders and those referred by the ASA are likely to be dealt with by Trading Standards.

As the law surrounding e-cigarette advertising has now changed, one next step is to put the new requirements into further detailed guidance within the CAP/BCAP codes. A CAP consultation titled **"Consultation on the advertising of electronic cigarettes: CAP and BCAP's proposals for changes to**

their Codes and guidance in response to the European Tobacco Products Directive taking effect in the UK” was launched on September 29th 2016 and will be open until October 31st 2016 This will ensure the TRPRs are reflected adequately in the codes. For advertising in permitted media, such as billboards, posters, leaflets and on buses, the existing CAP rules still apply.

3.3.6 E-cigarette Marketing Post-TPD

Interviewees were asked to provide their perspective on potential issues related to e-cigarette marketing following the introduction of the new rules contained within the TPD. Interviewees gave a number of examples of issues that may arise. These included: challenges to the TPD; health claims made by manufacturers; non-nicotine containing products; the difference between promotion and information; and the potential diversion of resources to non-restricted media. These are outlined below.

3.3.6.1 Challenges to the TPD

At the time of the interviews, the UK’s referendum on membership of the European Union had not been held. Discussion of challenges to the Tobacco Products Directive thus centred around recent and imminent efforts to challenge the new law. Legal challenges to the TPD had taken place in UK and EU courts, brought forward by the tobacco industry and also one independent e-cigarette manufacturer, Totally Wicked. These had been ongoing for many months, but were overturned, notably by the European Court of Justice on May 4th 2016. In the UK, a subsequent challenge was posed by the tabling of a ‘fatal’ motion in the House of Lords which could have resulted in a debate and possible legislative changes that would have resulted in the TPD not being implemented. However, this ‘fatal’ motion brought by Lord Callanan, which focused on Article 20 of the TPD (the e-cigarette provisions) was modified to one of ‘regret’ due to pressure from opposition parties. The debate in the Lords therefore focused on the potential unintended consequences of Article 20 but did not result in any changes to the legislation.

Although not addressed by interviewees, it is worth noting that the result of the EU Referendum in the UK, which resulted in a majority of the public supporting leaving the European Union, could have future implications for the provisions of the Tobacco Products Directive including those that focus on e-cigarettes. This is unlikely to happen quickly given the timeline for negotiations regarding the UK’s departure which will take two years or more. However, this may become an issue beyond that phase and mean that current marketing restrictions are challenged or overturned. This is an issue for future research.

3.3.6.2 Health claims

Current regulations on e-cigarette marketing state that health claims can only be made for medicinally licensed e-cigarette products, with non-licensed products prohibited from health claims. It was noted by some participants that due to growing evidence on the potential benefits of e-cigarettes, including for example, the message contained within a Public Health England report that e-cigarettes are around 95% less harmful to health than smoking (McNeill et al. 2015), marketers may want to make claims that unlicensed products are safer than smoking. A challenging issue may therefore arise surrounding the use of general statements, such as the one within the PHE report, in place of product-specific claims. It was highlighted by those closely involved in the implementation of regulations that some

careful thought would be needed to manage this. CAP and BCAP's current consultation will seek views on the issue of health claims.

3.3.6.3 Non-nicotine containing products

The TPD applies only to advertising for nicotine containing e-cigarettes or refill cartridges. While non-nicotine containing products are not specifically subject to the new rules, the rules also state that advertising is prohibited that *indirectly* promotes nicotine-containing products. Many participants noted uncertainty about what this will mean in practice and whether there is the potential that a non-nicotine product could be advertised under the same brand name as a nicotine-containing product prohibited from advertising. This type of brandsharing could have unintended consequences and at the time of writing, the key agencies involved in TPD implementation were unclear how this may develop. Concern was also raised by some interviewees that non-nicotine containing products could be used by young non-smokers and allowing these products to be advertised may increase their appeal to this group, although this is an issue for future research.

3.3.6.4 Promotion vs information

The TPD prohibits the advertising and promotion of e-cigarettes on companies' own websites and retailer sites, but not the provision of factual information about products. It is determined within the TRPRs that information not sought directly from a consumer is likely to be promotion, but that a consumer who actively seeks out a business's webpage is requesting information. In this context the Department of Health has offered guidance on the interpretation of what may be considered information rather than promotion. However, those involved in implementing the regulations highlighted that this would need monitoring to ensure informational messages were not crossing over to promotion. The current (2016) CAP and BCAP consultation will also pay attention to this issue.

3.3.6.5 Diversion of resources to non-restricted media

While the TPD restricts the types of advertising with arguably the greatest reach, it also allows e-cigarette companies to continue to communicate with consumers about their products, including for example, online information, and through billboards, posters and leaflets. Many participants said that they expected an increasing focus on advertising in non-restricted media, such as billboard and bus advertising. Here comparisons were drawn with tobacco advertising, where billboards became a creative and impactful advertising vehicle in the face of TV advertising bans. Some participants also raised concerns about the likelihood of future investment in more extensive or appealing point-of-sale displays, for which CAP rules do not apply, and whether this could increase appeal to never smokers including young people. Others, however, emphasised the importance of smokers being able to see and obtain information about products at the point of sale in order to help more smokers to move away from tobacco.

3.3.7 Additional National Regulations

Within the UK some variation on e-cigarette regulation is permitted under devolution. In addition to the implementation of the TPD, which is UK-wide, individual countries may choose to implement additional domestic advertising restrictions or further restrictions, for example, with regards to the sale of e-cigarettes or use of e-cigarettes in enclosed spaces. Current proposals for additional regulations in the UK, and also Ireland, are outlined below.

3.3.7.1 Domestic advertising restrictions

The Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act was passed by the Scottish Parliament in March 2016. The Act makes provision for Scotland to prohibit or restrict domestic forms of advertising beyond the scope of the TPD. This includes advertising via billboards, leafleting, brand sharing, free distribution, nominal pricing and domestic advertising events. The Act relates to all consumer nicotine vapour products (NVPs) and related products, such as refills, liquids and chargers, *whether they contain nicotine or not*. Although the legislation has been passed, in order for it to be implemented, further detailed regulations are required. At the time of writing, the Scottish Government were planning to hold a formal consultation on the regulations in spring/summer 2017, with regulations in place by April 2018 at the latest. It is anticipated that the Scottish Government will consult with CAP (as with other stakeholders) and it is notable that CAP now have an office based in Scotland. Even with these additional changes in Scotland, advertising legislation for products licensed as medicines will continue to come under the MHRA framework. There are no current proposals to restrict domestic advertising in other countries of the UK.

3.3.7.2 Other restrictions

The Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act also makes provisions for a number of further restrictions on the sale of e-cigarettes. This includes: a minimum purchase age of 18 (as exists in England); the power to prohibit their sale from vending machines; making it an offence to purchase an e-cigarette on behalf of someone under 18 ('proxy purchasing'); a requirement for e-cigarette retailers to register on the tobacco and nicotine vapour product retailer register; and a requirement that registered retailers should operate an age verification policy.

The Health (Miscellaneous Provisions) Act (Northern Ireland), passed by the Northern Ireland Assembly in March 2016, makes provisions for regulations prohibiting the sale of nicotine products to under 18s, prohibiting the sale of e-cigarettes from vending machines, and to create an offence for proxy purchasing. It also makes provisions for banning the use of e-cigarettes in enclosed vehicles when children are present, although regulations will be required to implement this.

The Public Health (Wales) Bill was rejected by Welsh Assembly Members in March 2016. The Bill proposed restricting the use of e-cigarettes in enclosed public places, although it did not include any additional marketing restrictions beyond the TPD. There was some speculation that the e-cigarette elements of the defeated Bill could be brought forward by the new Welsh Government that was elected in May 2016. However, Plaid Cymru, the nationalist party in Wales, made it clear that they would only support the nomination of the proposed Labour first minister for the Assembly if e-cigarette regulations were *not* included in a future Public Health Bill. It therefore appears extremely unlikely that there will be further regulations on e-cigarettes in Wales, beyond UK and TPD rules, in the near future.

In the Republic of Ireland, The Advertising Standards Authority for Ireland (ASAI) introduced rules for e-cigarette advertising on March 1st 2016 within the *Code of Standards for Advertising and Marketing Communications in Ireland*. The code, broadly similar to the existing CAP code in the UK, applies to e-cigarettes sold as consumer products and those which are authorised by the Health Products Regulatory Authority (HPRA), although only products authorised by the HPRA may make health or medicinal claims. To date no products have been registered as medicine products in Ireland.

The EU (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 transposing the Tobacco Products Directive have been signed into Irish law by the Minister for Health,

and came into effect on 20th May 2016. There are no proposals to further regulate domestic advertising in Ireland, although the Department of Health is proposing additional rules on the sale of e-cigarettes, including the introduction of a licensing system for e-cigarette retailers and prohibition of sales of e-cigarettes to, and by, under 18s.

3.3.8 Summary

Prior to the introduction of the TPD, the rules concerning e-cigarette advertising were set out in the CAP/BCAP code. Stakeholders had mixed views on the effectiveness and enforcement of the rules, for example, some felt that the rules did not go far enough to adequately control e-cigarette advertising while others felt that that less strict rules than those for tobacco were entirely appropriate given the considerable potential for e-cigarettes to benefit smokers. Generally, however, it was agreed that oversight on TV advertising under the code was working well. On May 20th 2016 new rules for e-cigarette advertising were introduced through Article 20 of the TPD, prohibiting advertising with cross-border impact, including TV, radio, print and sponsorship. UK-wide, the Department of Health has interpreted the TPD requirements within the Tobacco and Related Products Regulations 2016. However, some countries within the UK are proposing additional regulations. Scotland has passed legislation to place further restrictions on domestic advertising and there are plans in Scotland and Northern Ireland to impose additional restrictions on the sale of e-cigarettes.

4 CONCLUSIONS

This report includes findings from three different types of research. First, documentary analysis of print and online sources of data regarding the e-cigarette market in the UK. Second, a rapid review of the peer-reviewed international literature on e-cigarette marketing building on our previous work on this topic. Finally, an interview study, supplemented by a review of policy documents that describes previous and current e-cigarette marketing regulation in the UK. In this conclusion we summarise key findings from each element of the report and conclude with a brief discussion of research gaps and future research priorities on e-cigarette marketing.

4.1 The E-cigarette Market

Quantifying the size and scale of the UK's e-cigarette market is challenging but our description provides an overview of what is currently known here and in other major markets such as the USA. We found that terminology and data pertaining to e-cigarettes is inconsistent across a variety of sources. In some instances, the e-cigarette market is referred to as the 'vapour market' and split into 'e-cigarettes' and 'vapours, tanks, mods (VTMs) and personal vapourisers'. In others, 'e-cigarettes' is used as a homogenous term to describe the fragmented market comprised of first-generation e-cigarettes (also referred to as cig-a-likes and including disposable devices), second-generation e-cigarettes (fountain pen like, rechargeable and refillable) and third-generation e-cigarettes (also known as VTMs, personal vaporisers, modular units or open systems). This creates reported discrepancies on whether the tobacco industry (TI) owns the majority of the market or the independent sector dominates.

What is clear is that the global vapour market is valued at \$11.92 billion. At present, this represents less than one percent of the tobacco market. The industry consensus is that the market will continue to grow and mature, reaching a projected market value of \$50 billion by 2025/2030. Some analysts have suggested that annual sales of e-cigarettes could exceed those of tobacco by 2024. In the UK, the e-cigarette market in 2015 was estimated to be worth £445 million and is expected to grow by 15% to £510 million in 2017.

This market is separated into e-cigarettes (currently worth \$1.6 billion in the US) made up of convenience stores, food, drug and mass retail channels (\$700 million), online (\$500 million) and other (\$400 million) channels; VTMs and personal vapourisers (currently worth \$2.5 billion in the US) comprised of vape shops (\$1.4 billion), online and other retail channels (\$600 million); and convenience-stores, food, drug and mass retail channels (\$500 million).

The tobacco industry currently owns most of the leading e-cigarette brands, including in the UK. However, non-tobacco industry owned VTMs and personal vapourisers make up a large and increasing share of the vapour market.

Early investments were weighted heavily towards first-generation, disposable cig-a-likes, which mimic tobacco cigarettes more closely. However, these devices are being displaced in the UK by the rapid expansion of tank systems and of e-liquids. The majority (around 66%) of e-cigarette users in the UK are currently using tanks. This shift is also strongly evident in other leading western European markets.

Traditional retail channels such as supermarkets and high street shops are popular for first e-cigarette device purchases, but currently unable to attract some users to make subsequent purchases. Instead, users are opting for more advanced devices or information not available in traditional stores so go to specialised vape stores or purchase their devices online. Prices online for vapour products are

generally cheaper than they are in offline vape stores, especially for tank starter kits. The prices of tank products appear to be more standardised across websites, suggesting more stable demand.

According to some analysts, the decline in e-cigarette pricing is at least partly due to the expanding vapour category and development of VTMs and refills. Users are interested in products that are cheaper than tobacco cigarettes and there is little doubt that some types of e-cigarettes – particularly refillable devices – offer a more affordable option than taxed tobacco products in the UK.

If analysts' predictions are accurate, the vapour market will continue to expand globally in the coming years, even outstripping tobacco sales in a decade's time. Products, pricing, promotion and availability are likely to vary, however, depending on the regulatory environment and this is something that requires careful monitoring. Other key factors that will influence growth are the acceptability and appeal of the products to users, and industry investments, particularly from large companies.

4.2 Rapid Review of the E-cigarette Marketing Literature

The literature review element of our report focused on empirical, peer-reviewed studies published between January 2011 and March 2016 that used quantitative measures to examine the marketing of e-cigarettes. This is a substantial and growing literature and we found 73 studies published in 75 papers. The literature is dominated by studies from the USA. Only six studies were conducted in the UK and three from other parts of Europe (Finland, the Netherlands and Switzerland).

As we outline in the limitations section below (Section 4.4), the relevance of this fairly extensive literature for the current e-cigarette marketing environment in the UK is likely to be limited. The EU Tobacco Products Directive and additional incoming regulations in Scotland mean that the e-cigarette marketing environment has fundamentally changed, with all broadcast media banned, for example. However, it is possible to draw out key findings that may still apply to permitted forms of advertising and regarding any benefits and any potential hazards of marketing for smokers and non-smokers, adults and young people.

4.2.1 Nature of e-cigarette marketing

First, our review examined the nature of e-cigarette marketing including on social media, other promotion in the media, advertising spend and pricing, and marketing in retail environments.

Social media is used to promote e-cigarettes, both by manufacturers and retailers, and by vapers. We found a number of articles analysing YouTube videos and Twitter feeds. These types of studies are growing in number but do seem plagued by problems with distinguishing what is paid or unpaid for promotion by producers, and what is user-generated content. YouTube studies found limited promotion via chart music videos from 2013-2014 although this may have grown since. Other types of videos on YouTube contained e-cigarette content but study results are conflicting in describing the extent to which this is paid for advertising. One study of 265 videos between 2007 and 2011 found only 8.8% could be classified as advertising that was not user generated. E-cigarette content is prevalent on Twitter and two studies found between half and over two thirds of tweets to be commercial and promotional. Another study looking at individual Twitter accounts, however, found that the vast majority of people tweeting about e-cigarettes were users/vapers or vaping community and advocacy groups, rather than those actively selling e-cigarettes.

Few pricing studies were found but we touch on this in the future research section below. Price is a form of promotion as price can be used to market products. One EU study in 2014 found tobacco products were cheaper than e-cigarettes in most countries in Europe except in the UK where e-cigarettes were cheaper overall.

E-cigarette marketing in the retail environment has grown in recent years as a number of studies identified, including two in the UK. Some studies looked at general availability of products and those that compared this between years (in a UK study 2013 and 2014, and in the USA 2012 and 2013) found more products were available and more retailers were selling e-cigarettes. This is consistent with the growth in the market described in Section 3.1 of this report. In both these studies, in-store promotion also increased between the two years. The authors of both articles expressed concern about this – the US study focused on shops near college campuses and suggested that this type of promotion may contribute to youth use of e-cigarettes, and the UK study highlighted that e-cigarette point of sale displays were commonly located near products ‘of interest to children’ like sweets and gum.

4.2.2 Effects of marketing on children

A relatively small number of studies (nine) examined perceived and actual effects of e-cigarette marketing on children and young people under the age of 18, with two of these being from the UK.

This literature shows that in the USA and UK (and one study in Finland), children reported being aware of e-cigarette marketing. For example, in a representative survey of UK 11-16 year olds in 2014, four in ten reported seeing e-cigarette adverts on TV, one third on posters/billboards, one quarter adverts in print media and one in ten had heard e-cigarette adverts on the radio. Awareness or recall of some form of e-cigarette marketing was also high in the US studies all of which were conducted in 2013 and 2014. Exposure to e-cigarette marketing was lower in Finland in 2013 (10%) but an advertising ban had already been introduced in that EU country at the time of the study.

Some of the same studies also asked those who had tried e-cigarettes where they had obtained them. Across studies the most common source of access was friends (35.9%-79.9% between four studies), with commercial sources less frequent than informal sources. These studies were conducted during the period when age of sale restrictions were either not yet in place or very recently introduced.

One UK study looked at brand awareness and found this to be very low indeed: 84% of 11-16 year olds in a 2014 representative survey could not recall a single e-cigarette brand when asked.

Only two experimental studies with young people were identified but these are interesting as they aim to examine actual rather than perceived effects of marketing, albeit under ‘laboratory’ conditions. The study in England was with 11-16 year olds who had never smoked or vaped. Those assigned to view ads for e-cigarettes with flavoured e-liquids (vs unflavoured or no adverts) viewed these ads as more appealing and reported more interest in trying the products compared to the other groups. However, susceptibility to tobacco smoking was no different between the three groups after seeing the ads, which is reassuring given concerns that simply viewing adverts for e-cigarettes might prompt children to want to smoke tobacco. Although using a different design and focusing on different types of e-cigarette advertising from the UK study, an American experiment with young people who had never tried an e-cigarette found that viewing adverts did increase the appeal of these products and reported intention to try an e-cigarette, but viewing the ads did not affect participant’s perceptions of the harmfulness of tobacco cigarettes.

4.2.3 Effects of marketing on adults

The literature on e-cigarette marketing and adults is more extensive than that for young people, at least within the 2011-2016 period covered by this review. As noted in the results Section (3.2.4), unfortunately none were conducted in the UK and therefore relevance may be limited. That said, there are some useful discussion points to highlight, and the experimental studies included are particularly interesting.

The largest body of literature in this section were cross-sectional studies examining recall of e-cigarette advertising. Awareness was generally higher than in the studies with children and the American studies demonstrated that a larger proportion of participants reported seeing some form of e-cigarette advertising compared to studies in the Netherlands (where the prevalence of e-cigarette use is lower than in the USA or indeed the UK) and New Zealand (where the domestic sale of nicotine containing e-cigarettes is illegal).

Studies also found that the extent of e-cigarette advertising increased over time. One American study used time-series analysis to look at Nielsen data for advertising reach between 2011 and 2013, focusing on 18-24 year olds (Duke et al. 2014). The exposure of this age group to television adverts for e-cigarettes grew by just over 300% during the study period. Likewise longitudinal research from the Netherlands found that participants (all smokers aged 16+) were more likely to report seeing e-cigarette ads during the two time periods studied – from 13.3% in the spring of 2013 to 36% at the same time the following year.

Exposure to e-cigarette advertising also varies between groups and across the studies we reviewed there were strong associations with smoking and vaping status. Overall, studies found that smokers were more likely to recall seeing e-cigarette advertising than non-smokers. One study also found that those who had observed others vaping were also more likely to recall being exposed to e-cigarette advertising. Likewise those that had ever tried e-cigarettes were more likely to report higher exposure to e-cigarette advertising than those who had never tried. All of these were cross-sectional studies so it is impossible to ascertain cause and effect, but these findings may arise for a number of reasons. First, are ads more prevalent in communities where there are more smokers or vapers? This is unlikely to be the explanation as most of the data relates to broadcast media rather than, for example, billboards or point of sale. Secondly, are ads more appealing to smokers? This is undoubtedly the intention of promotion (to encourage smokers to try or switch) in which case there may be benefits to this promotion. Vapers noticing ads is perhaps unsurprising as we tend to be more interested in a range of consumer products that we are familiar with. However, it also appears that marketing may not be a main source of information for people about vaping. In studies that assessed sources of information about e-cigarettes (all from the USA), participants were more likely to report friends, family or colleagues as sources of advice or accounts than any form of marketing (TV, print, point of sale).

Receptivity to e-cigarette adverts among general samples of adults was not particularly high, at least from one study in Hawaii with 18-40 year old undergraduates (Pokhrel et al. 2015). They were shown e-cigarette ads and asked whether they: liked them; found them funny; found them sexy; or wished they were like the people in the ads. For all the measures, more respondents voted negatively (ie. for 'liking' ads overall, 23.8% liked e-cigarette ads relative to other types of ads, and 41.2% liked them least compared to other types of ads). However those that reported they had ever used an e-cigarette were more likely to rate the ads positively.

The seven experimental studies with adults provide some of the most detailed results. All were from the USA. These support some of the findings from the surveys, in that at least one study found that

current e-cigarette users were more receptive to adverts (in this case for Blu branded e-cigarettes). The same study also found that smokers who had never tried an e-cigarette could be encouraged to think about trying one after viewing ads in the lab - 66% in Kim et al.'s (2015b) study - suggesting this could provide encouragement. Importantly, another experiment (Maloney & Cappella 2015) did not find that viewing e-cigarette ads changed smoker's existing desire to quit, and Pepper and colleagues (2014b) found that ads which communicated messages that e-cigarettes are: healthier than cigarettes; less expensive than cigarettes; or helpful to quit smoking; increased smokers' interest in trying e-cigarettes. This suggests that the content of marketing is important - although current regulations in many jurisdictions prevent companies from making health claims which does restrict what can be communicated to consumers.

4.3 Regulatory Framework for E-cigarette Marketing

Section 3.3 of our report aimed to describe the development of e-cigarette marketing in the UK and the previous regulatory framework, before moving on to describe recent changes introduced following the transposition of the EU Tobacco Products Directive into UK law. What is clear is that approaches to regulating marketing changed over time as e-cigarette use increased, and occurred at least in part because of concerns about these products. Whether or not the current regulatory framework strikes the right balance between still permitting some marketing and protecting the public (particularly children) from promotion that may have adverse consequences, is the source of much debate. The current framework removes cross-border advertising (including all broadcast media) but not domestic marketing such as billboards and print media ads. Even these forms of marketing will soon be outlawed in Scotland (but not in other parts of the UK) once regulations supporting the 2015 Health (Tobacco, Nicotine etc and Care) Act of the Scottish Parliament are introduced, likely next year. As we outline above, it is important that future research evaluates the impact of these changes and any future restrictions. The UK public health community has a consensus statement which makes clear that e-cigarettes are safer than continued smoking and that they have a useful role to play in tobacco harm reduction. Whether the current marketing regulations framework is consistent with supporting more smokers to switch to less harmful nicotine-containing devices is unclear, and this needs studied. The challenge in all of this is to harness the promise of e-cigarettes and other vapour products while not promoting them to those groups (non-smokers, never smoking children who would not otherwise have smoked) for whom e-cigarette use almost certainly has no benefit.

4.4 Future Research

In reviewing the information collected for this report it becomes apparent that there are a significant number of gaps in relation to both research and policy on electronic cigarettes and other vaping devices.

The first section of this report focused on the e-cigarette market and provided an overview which contains partial information. In the time available for our study, we identified that it is very difficult to gain an accurate picture of which products, brands, and companies dominate in the UK market. E-cigarettes are a rapidly changing class of products and information becomes quickly out of date. There is a need for ongoing review and research of the dynamics of the e-cigarette market and also critical analysis of the approaches and strategies employed by different companies and actors in that market. Two authors of this report (de Andrade and Angus) are involved in a larger CRUK funded study on this topic which is due to report in 2017. We anticipate that this will update and expand on the overview we have provided here, and also suggest future research questions not only relevant to the UK but further afield.

Our rapid review of the literature had a number of limitations in that it focused just on studies between 2011 and 2016. It was also limited to quantitative research, using search terms we have employed in our previous reviews. There is a growing qualitative literature on e-cigarettes including some studies on marketing which could be examined in future reviews. We also found that many of the studies we included had questions on marketing (particularly those looking at youth and adult responses to marketing) as part of a larger survey or longitudinal study and therefore did not examine the issues in depth. Most of the data we identified was also cross-sectional in nature and therefore cannot demonstrate causality, making conclusions about the impact of marketing difficult to make. Finally in terms of limitations, there are still relatively few studies conducted on this topic in the UK and given the country specific nature of some marketing this is warranted.

The literature review also identified some clear priorities for future research. There is a need for studies on e-cigarette branding and awareness and appeal of different brands. This is not straightforward given the number of brands on the market, differences between countries and changes in brand names and ownership. However it is worth future examination. We also found no studies with children under the age of 11 that ask questions about e-cigarette marketing. We also found no UK studies on adult's responses to e-cigarette marketing, which is surprising given the volume of research on e-cigarettes that researchers based in this country are conducting. Finally, there is a clear need for better designed research, using experimental and longitudinal designs that can aim to separate cause from effect. Even in the UK where most e-cigarette marketing is now prohibited under the TPD, the forms of marketing that remain should be the focus of future research, both to identify positive effects (encouraging smokers to try vaping, for example) and any unintended consequences, particularly for never smoking young people.

The policy and regulatory changes we describe in the final section of our report also provide opportunities for future study. Importantly, the new TPD regulations impose restrictions on the advertising of e-cigarettes. This will have likely implications for the development of the e-cigarette market and future product promotion. It has been predicted that there may be an increase in advertising among non-restricted media such as billboards. There is also uncertainty over how advertisers will approach non-nicotine containing products. The potential impact of all of these things on young people and adults, non-smokers and smokers needs exploration. It is important that regulation strikes the right balance by addressing potential inappropriate promotion to non-smokers while providing smokers with the information they need to try e-cigarettes and to switch to them as an alternative to tobacco. How will regulation affect knowledge, attitudes and behaviour regarding e-cigarettes? Further, it would be useful to know the approach of other EU member states, to compare the environment in which e-cigarettes are sold and promoted in the UK to that of other countries, and investigate the implications of any differences.

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APPENDICES

Appendix 1: Rapid review data extraction headings

1. study objective(s): *for the whole study, not just marketing objectives*
2. study details/methods
 - a. study design
 - b. intervention groups
 - c. number of experiments
 - d. equipment
 - e. exposure
 - f. measurement conditions
3. target population: *include country*
4. sample size
5. measures: *all marketing measures (and any variables the marketing variables are related to in the results)*
6. outcomes
7. major conclusions *the authors' own*
8. limitations: *the authors' own; additional reviewers'*
9. funding source / author disclosures / conflicts of interest.



**Fontem Ventures: Response to the
Consultation on the advertising of
electronic cigarettes**

**CAP and BCAP's proposals for changes to
their Codes and guidance in response to the
Tobacco Products Directive taking effect in**



the UK



fontem
ventures

Introductory note



Fontem Ventures is dedicated to developing and growing a portfolio of innovative products including electronic cigarettes (“e-cigarettes”). A 100% subsidiary of Imperial Brands, we nevertheless operate at arm’s length from our parent company and are focussed on non-tobacco opportunities only. Fontem Ventures markets the e-cigarette brand blu in France, Italy, the UK and US.

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Comments

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine / medical device is consistent with the law? If not, please explain why.

Fontem Ventures agrees that this proposal and its wording are in line with the EU Tobacco Products Directive 2014/14/EU (EUTPD) as well as the legislation transposing this in the UK, the Tobacco and Related Products Regulations 2016 (TRPR).

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why.

While we believe that prohibiting the advertising of non-nicotine and refillable products which "can" be refilled with nicotine-containing e-liquid is excessively restrictive and open to misinterpretation (since technically many products not related to or intended for nicotine consumption could be used in such a way), we understand that this is the wording of the EUTPD and TRPR, and as such must be implemented by CAP/BCAP.

However, we would draw CAP's attention to the fact that the definition of e-cigarettes as products that "can" be refilled with nicotine-containing e-liquid is creating competitive inequalities between e-cigarettes and some "novel" tobacco products. This is because the EUTPD and TRPR do not include any provision defining a novel tobacco product as a product that "is intended" to or "can" be used to consume tobacco. This has created a legislative loophole: certain manufacturers of so-called "heated" tobacco products are defining the devices intended to consume tobacco "heat sticks" as non-tobacco products, since while they are primarily intended for the consumption of tobacco they do not contain tobacco per se. Some manufacturers are exploiting this loophole to engage in marketing activities explicitly banned for conventional tobacco products and for devices that "can" be used to contain nicotine-containing e-liquid.

We would therefore call on CAP and other authorities in the UK and wider afield wish to ensure that this loophole is closed by extending tobacco restrictions to all devices or products that are intended for the consumption of tobacco.

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not please explain why.

We agree with CAP's understanding that non-nicotine e-liquids and e-cigarettes, as well as products with a medicinal licence, are exempt from the provisions of the Regulations, and that advertising of these products is therefore lawful, subject to their compliance with all relevant CAP Code rules.



4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

Fontem has no further views on this topic.

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

Fontem Ventures agrees that this proposal and its wording are in line with the EUTPD as well as the UK's transposition thereof, the TRPR.

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media". This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why.

Fontem Ventures agrees that this proposal and its wording are in line with the EUTPD as well as the UK's transposition thereof, the TRPR.

7. Are there any types of media that you consider to be information society services which are not referenced above?

Fontem has no further views on this topic.

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

We would call for CAP to exempt "online sales promotions" and "prize promotions" from the scope of their outlined prohibitions. These categories are overly broad and risk preventing or hindering marketers and retailers in providing factual information about product pricing.

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

We agree that the law allows for factual claims on marketers' own websites.



10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

We agree that the types of claim listed by CAP are factual and should be permitted.

11. Are there any other claims/types of claims you consider are factual in nature and should appear on this list?

- Statements affirming packaging and/or battery safety (e.g. “child-safe”, “tamper-proof” etc.) if a product is compliant with relevant regulation, ISOs or other recognised standards;
- Environmental information such as “recyclable”;
- Statements affirming compliance with product quality standards if a product has been approved by third-party bodies or institutes (e.g. “BSI approved”);
- Statements accurately affirming the substantiated results of clinical trials and other scientific studies e.g. air quality, peer-reviewed clinical studies.

12. Do you agree that the above types of claims are likely to be promotional in nature and should be prohibited? If not please explain why.

Fontem would argue that some of CAP’s examples of promotional claims and activities demonstrate an unnecessarily and disproportionately narrow interpretation of the EU and UK legislation. .

- *“descriptive language that goes beyond objective, factual claims, for example the use of adjectives”*

We would advise against a blanket prohibition on using adjectives, as use of adjectives is necessary in providing consumers with accurate and factual information by ensuring that they can distinguish easily between products e.g. listing products as “high” or “low” nicotine.

- *“promotional marketing, as defined in Section 8 of the CAP Code. Promotional marketing can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A non-exhaustive list of sales promotions includes: “two for the price of one” offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws.”*

Alerting customers to information on pricing structures and competitions constitutes providing information and should not be prohibited. Describing a product as “two for the price of one” is a factual claim, if this accurately reflects the pricing structure in place.

- *“comparative claims with other e-cigarette products or the general market.”*

Explaining factually how products vary within the market (e.g. providing substantiated information on how products compare) constitutes providing



information and should therefore not be prohibited. Providing substantiated, comparative information regarding e-cigarettes is especially important in light of the fact that the market is so nascent, meaning that customers may have little to no experience or understanding of products.

13. Are there any other types of generic claims that should be included in this list?

We have no comment on this question.

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

Fontem would recommend that CAP define a claim as factual on the basis that it is information that enables smokers to make informed decisions about e-cigarettes. Fontem would suggest that the following criteria be applied to identify factual claims:

- Statements that describe products in a way that accurately reflects their main features;
- Statements that accurately place products within a wider (factual) context so customers can find the product best suited to their needs;
- Factual information on the price structure of products that delivers transparency and value for customers;
- Substantiated evidence from clinical trials, air quality studies and other types of scientific investigation into the functioning and effects of e-cigarettes.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

Social media pages can be controlled so as to a) limit the activity or contributions which consumers or the public are able to undertake on a platform e.g. by disabling user generated content on social pages; and b) limit who is able to access the platform in the first place, e.g. through geo-blocking or consent requirements. This means that social media activities can be tailored to present information only to consumers who have explicitly consented to or sought out their provider, meaning that they should be in principle permitted.

CAP should also consider that for reasons of security and consumer protection it is necessary that e-cigarette manufacturers and retailers operate their own named and branded social media pages on popular platforms, to ensure that false or counterfeit pages or users are not providing consumers with misleading information or even carrying out illegal activities.



16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

We agree that the named media channels are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes.

17. Do you support the revised wording in Section 22? If not please explain why and how you think it should be amended.

We agree with the revised wording.

18. Do you support the proposed wording of the newly created rule 22.12? If not please explain why and how you think it should be amended.

We agree with the revised wording.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines?

We would disagree with prohibiting the use of “a brand or range name under which a nicotine e-cigarette is sold” during the advertising of non-nicotine products. The e-cigarette category is still nascent, and manufacturers have hitherto tended to cluster nicotine-containing and non-nicotine products under the same brand names. Forcing them to create new brand names for non-nicotine products, therefore, risks seriously jeopardising brand recognition among their customers, in turn threatening to undermine customer loyalty and sales.

Fontem would as a minimum propose putting in place a transition period, to enable manufacturers and marketers to continue using established brand names while introducing new and specifically non-nicotine brand names in their marketing campaigns.

20. Are there any criteria you consider should be added to the list?

We have no further comments on the criteria.

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

We agree that advertisements for e-cigarette retailers which do not have the effect of promoting a specific e-cigarette should, all other factors being equal, be permitted.



22. Do you agree with BCAP’s proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

We agree that BCAP should permit e-cigarette retailers to advertise their services on TV and radio.

23. Do you agree with BCAP’s proposed additional text for rule 10.1.11? If not, please explain why.

We agree with the proposed additional text for rule 10.1.11.

24. Do you have information or evidence which can inform CAP and BCAP’s future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

Responsible e-cigarette manufacturers are increasingly investing in peer-reviewed studies, including but not limited to clinical studies and air quality tests, and/or in tests that compare e-cigarettes’ product characteristics (e.g. emissions) to those of tobacco products. As the category matures, there will be an increasing availability of mid- and long-term studies on e-cigarettes. Providing that any claims are substantiated, compliant with other applicable legislation, and that products are overall compliant with relevant standards such as PAS, e-cigarette manufacturers should be permitted to present the (substantiated) results of research which they have carried out.

25. Should BCAP remove rule 33.7 for the reasons given above? If not please explain why.

We agree that BCAP should remove rule 33.7 for the stated reasons.

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

Fontem Ventures welcomes the statement made in the introduction that “CAP seeks to reflect the legal prohibitions contained in the Regulations in clear language, but not to exceed those prohibitions”. However, we are disappointed that in some aspects of its proposal, CAP has applied a restrictive interpretation of the already significant restrictions governing e-cigarette advertising. We would urge CAP/BCAP to allow e-cigarette marketers to continue marketing and communicating around their products to the greatest extent possible in the context of the growing scientific evidence that e-cigarettes are significantly less harmful to users than conventional tobacco cigarettes and have significant potential in reducing tobacco consumption.

A snapshot of up-to-date science includes the following:

- The most recent 2016 Cochrane Review of existing published studies found (i) use of nicotine-containing e-cigarettes increased users’ chances of stopping



smoking; (ii) short- to mid-term (up to two years) use of e-cigarettes does not have serious side effects; and (iii) in some cases, switching to e-cigarettes leads to changes in blood and breath that are consistent with changes you would see in people who gave up smoking all together.¹

- Recent clinical trials have shown that smokers who partially or completely switch to e-cigarettes significantly reduce their exposure to harmful and potentially harmful constituents found in tobacco smoke that are reported by FDA to contribute significantly to smoking-associated disease risks.^{2,3}
- After a comprehensive review of the scientific literature, UK government agency Public Health England found e-cigarettes are around 95% less harmful than smoked tobacco⁴ – a view supported by Action on Smoking and Health UK and Cancer Research UK.⁵
- Recent figures for the UK show that nicotine-containing e-cigarettes are almost exclusively used by current or ex-smokers⁶.
- Recent studies have reported that using e-cigarettes have helped 6.1 million people across the European Union to quit smoking and another 9.2 million reduce their tobacco intake.⁷

1 J. Hartmann-Boyce et al: "[Electronic cigarettes for smoking cessation](#)", *Cochrane Database of Systematic Reviews*, Sept. 2016

2 O'Connell et al: "[Reductions in biomarkers of exposure \(BoE\) to harmful or potentially harmful constituents \(HPHCs\) following partial or complete substitution of cigarettes with electronic cigarettes in adult smokers](#)". *Toxicol Mech Methods*, 2016

3 M. Goniewicz, et al: "[Exposure to Nicotine and Selected Toxicants in Cigarette Smokers Who Switched to Electronic Cigarettes: A Longitudinal Within-Subjects Observational Study](#)", *Nicotine & Tobacco Research*, June 2016

4 A. McNeill et al on behalf of Public Health England: "[E-cigarettes: an evidence update](#)", 2015

5 <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>

6 Action on Smoking and Health, May 2016: "[Use of electronic cigarettes among adults in Great Britain](#)"

7 K. Farsalinos et al: "[Electronic cigarette use in the European Union](#)". *Addiction*, 2016.

CAP Consultation - Response from Freedom to Vape

Freedom to Vape is a non-party political campaign group under the auspices of The Freedom Association which has three main aims:

- To remove the regulations imposed on the vaping industry by the European Union's 2014 Tobacco Products Directive (TPD) (which came into force on 20 May 2016), including the ban on advertising, the maximum size of tanks, the size of e-liquid bottles, and the strength of e-liquids.
- To raise awareness of the differences between vaping and smoking combustible tobacco.
- To set-up a 'freedom to vape' scheme for businesses who welcome vapers.

We recognise that this consultation does not wish to seek views on the merits or otherwise of the EU regulations, therefore our response seeks to comment on how best to achieve an accurate public perception of the relative risks between vaping and smoking within the authority afforded to B/CAP. We would, however, register our disapproval of the restrictions on advertising imposed on the UK by this legislation. We hope that the future will see a time whereby B/CAP is empowered to be more permissive towards advertising of a product which we believe promises a significant beneficial public health opportunity.

We confirm that we are an independent organisation relying on voluntary donations and our submission does not contravene rules laid down by Article 5.3 of the WHO Framework Convention on Tobacco Control.

- 1) We agree that the proposal is consistent with the law but question the used of the term "components". Many accessories to vaping such as batteries, glass tubes etc are not solely sold for vaping purposes therefore should be excluded from the regulations.
- 2) No. We believe that - for the purposes of public health - the loosest possible interpretation should be applied to this regulation. Applying the prohibition to non-nicotine products could arguably be extended to vegetable glycerine, food flavourings and other ingredients of e-liquid which are available without restriction from pharmacies and supermarkets.
- 3) Yes, we agree
- 4) As stated in 2) above, we believe that the assumption should be that products are excluded from prohibition unless it is entirely unavoidable by the letter of the regulations.
- 5) We reluctantly agree
- 6) We reluctantly agree
- 7) We would suggest that Stop Smoking Services could be inadvertently classified as information society services if they are receptive to the use of e-cigarettes for smoking cessation purposes and advertise as such, as advised by the National Centre for Smoking Cessation and Training ¹. Consequently, it would be perverse if they were technically captured by regulations on promotion of these products, which could in some circumstances be possible. This should be made a clear exemption to the regulations.
- 8) No
- 9) We agree that the law allows for factual claims on a marketer's own website. We believe, though, that this should not prevent online

advertisements that simply promote retailers themselves. The prohibition applies solely to products and should not be applied to the promotion of vape businesses if no specific product is directly marketed. Retailers should be permitted to advertise a link to their website and we believe the regulations, as laid down, do not prohibit this.

- 10) We agree
- 11) The mix percentage of propylene glycol and vegetable glycerine (PG/VG) is a vital piece of information to provide because it determines whether that liquid is suitable for a particular e-cigarette arrangement or heating coil; this is factual and central to educated consumer choice. We would argue that informing prospective purchasers that e-cigarettes are 95% safer than lit tobacco is also a factual claim considering it has been endorsed by Public Health England ² and the Royal College of Physicians ³.
- 12) Vaping sales are predominantly conducted online where there is no opportunity to sample before purchase. A vital component of the appeal – and consequent benefits to public health – of e-cigarettes is the array of flavours which draw smokers away from the taste of tobacco to something more palatable and divorced from the smoking experience. Adjectives are a very important component for explaining the flavour to potential buyers and should not be prohibited. Additionally, comparative claims between different devices and varying battery strengths/liquid concentration/coil resistance should be permitted. For example, a smoker who is making a first foray into vaping as a quit smoking attempt should be made aware that a higher resistance coil along with higher nicotine concentration will offer a far better chance of success than low resistance/high wattage devices which better suit long-term ex-smoking vapers.
- 13) No
- 14) No
- 15) As previously stated, we believe that the loosest possible interpretation of the regulations should be applied for the benefit of public health. As such, social media channels should not be included in the definition of a website because they offer a plethora of means by which individuals can personally tailor their preferences to avoid content that they do not wish to see. Additionally, online media are central to the success of vaping and it is vital to both consumers who wish to avoid relapsing to tobacco products, and to the companies that provide vaping alternatives, that this channel of communication is left open.
- 16) We agree
- 17) Yes, although we have expressed reservations about the term “or any component of that product” in 2) above.
- 18) Yes, although we have expressed reservations about the term “Online media and some other forms of electronic media” in 15) above
- 19) Yes, although we believe that brand names should be permitted throughout a suite of products as long as it is clearly distinguishable that one is free of nicotine and another not. For example, just like Nescafe can market Gold Blend both with caffeine and decaffeinated, a smoker who has switched to a vaping product that they find appealing should be made aware that the same product is available without nicotine should they wish to make that choice. The current policy of the UK government – wrongly in our opinion – is that smokers should use e-cigarettes to switch from tobacco and then to also abstain from vaping nicotine too. It therefore

seems counterproductive that if we are to implement these unwelcome rules from the EU, we should also be installing marketing restrictions which could work in contravention to current stated UK government policy.

- 20) No
- 21) Yes
- 22) Yes. We also believe that manufacturers should be permitted
- 23) Yes. We also believe that manufacturers should be permitted
- 24) As stated above in 11), the potential benefits of vaping are widely known and endorsed by independent and UK government-funded public health organisations. It is not an unsubstantiated health claim that e-cigarettes are considered by experts to be 95% safer than lit tobacco so therefore such claims should be encouraged. Surveys have shown that the public are generally very poorly-informed as to the relative risks of smoking and vaping, responsible marketing based on evidence presented by Public Health England and the Royal College of Physicians could provide a valuable public information role.
- 25) Yes
- 26) We understand that you are restricted by the EU Tobacco Products Directive as to what can and cannot be permitted. We would, though, urge you to be as permissive as possible within the constraints you are placed under. It is important for public health and the choices of smokers who have decided to switch to an alternative nicotine delivery product that the flow of information is not unnecessarily stifled, and that innovation which can help current and future vapers continue or initiate with reduced risk products is not obstructed. It is important that the final regulations do not run counter to guidelines laid down by Public Health England and – although we hope that there will be a change in the future – do not conflict with current government policy.

¹ Electronic cigarettes: A briefing for stop smoking services – NCSCT
<http://www.ncsct.co.uk/usr/pub/Electronic%20cigarettes.%20A%20briefing%20for%20stop%20smoking%20services.pdf>

² E-cigarettes: an evidence update – Public Health England
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf

³ Nicotine without smoke: Tobacco harm reduction – Royal College of Physicians
<https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>



Consultation on the advertising of electronic cigarettes: CAP and BCAP's proposals for changes to their Codes and guidance in response to the Tobacco Products Directive taking effect in the UK.

Response from Fresh

Background

Fresh is the North East of England's comprehensive regional tobacco control programme. The programme is commissioned by all 12 local authorities in the region to deliver work across a multi-component strategy to help smokers to quit, protect people from tobacco-related harm and prevent young people from starting to smoke. Fresh was the UK's first regional tobacco control programme, set up in 2005 when the North East's smoking rates were the worst in the country with around a third of the adult population smoking. Since then, rates have fallen faster in this region than any other region in England and now stand at 18.7%.

We welcome the opportunity to respond to this consultation. Many thanks to ASH for their support in preparing this response.

1. Do you agree that CAP's proposal to prohibit advertisements which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not authorised as a medicine/medical device is consistent with the law? If not, please explain why.

Yes.

2. Do you agree that the prohibition should apply to advertisements for non-nicotine and refillable products which can be refilled with nicotine-containing e-liquid? If not, please explain why.

Yes.

3. Do you agree that advertisements for products in the list above would be lawful under TPRR and that CAP therefore does not need to prohibit them? If not, please explain why.

Yes.

4. Do you have any further views regarding the types of products for which advertising should or should not be prohibited?

Yes.

5. CAP's proposal is to prohibit marketing communications for nicotine-containing e-cigarettes, which are not authorised as medicines, in newspapers, magazines and periodicals which are not targeted exclusively to a trade audience. Do you agree that this is consistent with the law? If not, please explain why.

Yes.

6. CAP's proposal is to prohibit advertisements in information society services and to reflect this in the CAP Code as a prohibition on "advertisements in online media and some other forms of electronic media." This would be accompanied by a reference to a new guidance note which explains the legal framework and lists specific media types that are likely to be prohibited, as above.

Do you agree that this proposal is consistent with the law? If not, please explain why.

Yes.

7. Are there any types of media that you consider to be information society services which are not referenced above?

No.

8. Are there any types of online media listed above or otherwise which you think should not be categorised as an information society service?

No.

9. Do you agree that the law allows for factual claims on marketers' own websites? If not, please explain why.

We agree that factual claims on marketers' own websites need to be protected and we would argue that this protection needs to go beyond websites to include other forms of permitted advertising. Satisfactory peer reviewed evidence around the safer nature of electronic cigarettes has increased considerably since the CAP code was drafted, outlining the potential health benefits of smokers switching. Three examples are:

- The Royal College of Physicians report in May 2016 '*Nicotine without smoke: tobacco harm reduction*'¹ recommended that "in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK." The report also recommends that regulation of e-cigarettes should be proportionate and should not be allowed significantly to inhibit the development and use of harm-reduction products.
- Data from English Stop Smoking Services shows that electronic cigarettes, when used alone or in combination with other stop smoking products, achieve short-term abstinence rates that are comparable to the most effective products (i.e. Varenicline) and consistently higher than success rates achieved by clients using traditional Nicotine Replacement Therapy (NRT).
- An expert review of the evidence in 2015 by Public Health England² concluded that e-cigarettes are around 95% safer than smoked tobacco and they can help smokers to quit.

One of the problems in not allowing factual claims in adverts promoting electronic cigarettes is that smokers take information from a variety of sources including sensationalist newspaper reports where headlines do not match the findings of reports.

An example of a factual statement we would approve of would be "does not contain tar."

10. Do you agree that in principle the above types of claim are, all other things being equal, factual in nature and should therefore be permitted? If not, please explain why.

We believe the above type of claim should be protected on both websites and other marketing activities that are still permitted. This would also have the added advantage of ensuring electronic cigarettes are able to be marketed more effectively at existing smokers, with messages that smokers thinking about quitting and worried about the risks of tobacco may find more appealing. Adverts for electronic cigarettes have been banned on the grounds of appearing to glamorise the smoking of tobacco products or encouraging non-smokers to take up e-cigarettes. Factual claims would give companies and/ or trade bodies another avenue to avoid these lifestyle routes and gain a market advantage over a product that kills 1 in 2 lifelong users (tobacco). It is noted some of the language about the harm of tobacco on some electronic

1 <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

2 <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>

cigarette websites is similar to that used within tobacco control about the harm of smoking and harmful chemicals in tobacco.

11. Are there any other claims / types of claims you consider are factual in nature and should appear on this list?

As well as factual claims that can be substantiated, we believe there is also a case to explore a system in which quotes from respected peer-reviewed journals or reports from respected medical and public health organisations can be used to promote electronic cigarettes *so long as it is clear the quote applies to the class of product, and not the one being advertised*. We are aware that estimates such as "95% safer" (PHE) may not apply to all products – so it may be that this type of advert is more suitable for a trade association rather than individual companies. If electronic cigarette companies believe perception of harms is deterring take up among smokers, there is much to be gained from working together to address this.

It may also be necessary to impose a condition that the use of quotes must be with written permission of the organisation.

12. Do you agree that the above types of claims [in the consultation document] are likely to be promotional in nature and should be prohibited? If not, please explain why.

Yes.

13. Are there any other types of generic claims that should be included in this list?

No.

14. Do you have any other comments to inform CAP's consideration of whether a claim is factual or promotional?

No.

15. Do you agree that social media pages might, in principle, be capable of meeting the criteria set out for websites in the section A.5.1. above? If not, please explain why.

Please provide any examples and evidence you might have in support of your response.

Yes. We recommend that CAP should take the position that 'sharing' an item on social media is not a function of the business but is instead a function of how people

respond to a particular item. We would add that the content of the social media item should be informational and not promotional and therefore should not encourage sharing.

16. Do you agree that the media channels set out above are not prohibited by law from carrying advertisements for unlicensed, nicotine-containing e-cigarettes? If not, please explain why.

Yes.

17. Do you support the revised wording in Section 22? If not, please explain why and how you think it should be amended.

No. We believe it would be clearer to change the wording to read “Rule 22 applies to both electronic cigarettes which come under the EU Tobacco Products Directive and those authorised as medicines, except where there is a carve out for medicines in rules 22.5 and 22.12.”

18. Do you support the proposed wording of the, newly created, rule 22.12? If not, please explain why and how you think it should be amended.

No. The heading ‘Online media and some other forms of electronic media’ needs to be expanded to make it clear what ‘other forms of media’ are included.

19. Do the criteria above provide a workable framework for identifying marketing communications that are likely to indirectly promote unlicensed, nicotine-containing e-cigarettes that are not authorised as medicines?

Yes.

20. Are there any criteria you consider should be added to the list?

No.

21. Should CAP allow advertisements for e-cigarette retailers so long as those advertisements do not refer to products which cannot be advertised?

Yes.

22. Do you agree with BCAP’s proposal to allow e-cigarette retailers to advertise their services on TV and radio? If not, please explain why.

Yes.

23. Do you agree with BCAP's proposed additional text for rule 10.1.11? If not, please explain why.

Yes.

24. Do you have information or evidence which can inform CAP and BCAP's future consideration as to whether they might allow for substantiated health claims to be made for unlicensed e-cigarettes?

See our answer to Question 11 above. In order to address the serious misperceptions about relative risk we believe it is essential that generic statements about the relative risk can be made. If there were considered to be 'substantiated health claims' then we would consider that this should be allowed by CAP and BCAP. The sort of claim that should be allowed should be along the lines that "electronic cigarette use is considered by Public Health England and the Royal College of Physicians to be much less harmful than smoking" and should link to the relevant statements. We note that this would require the removal of the words 'health or' from Rule 33.5.

25. Should BCAP remove rule 33.8 for the reasons given above? If not please explain why.

Yes.

26. Do you have any other comments or evidence for CAP and BCAP in relation to the ongoing suitability of their e-cigarette rules for the regulation of lawful advertisements?

There are two primary types of concerns raised about electronic advertising and these are summarised and addressed briefly here:

- The concern that restricting it will adversely affect uptake by smokers. However, awareness of electronic cigarettes is widespread among adults – the vast majority of the public, smokers and non-smokers, have heard of electronic cigarettes and knowledge of them grew at a time when advertising was not widespread.
- The concern that electronic cigarette advertising encourages youth smoking and use by adults who have never smoked. However, the most recent 'Smoking, Drinking and Drug Use' survey records the lowest smoking rates among children since records began in 1982.

We recommend that reviews of the guidance issued take place regularly in light of research, legal decisions and changes to the market.