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Regulatory Policy Team
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31 October 2016

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

Background to the PRA

The Petrol Retailers Association (PRA) welcomes the opportunity to respond to the current consultation on changing Codes and Guidance to meet the Tobacco Products Directive in the UK.

The PRA represents over 5,500 independent petrol retailers and forecourt operators across the UK. This is more than 60% of the total number of such retail outlets. Our members range from small rural facilities to larger convenience retail outlets and motorway service areas. The PRA is an association within the Retail Motor Industry Federation (RMI).

Alongside the obvious gains for tobacco harm reduction, the electronic cigarette market is of increasing importance to retailers throughout UK. E-cigarettes are delivering one of the fastest growing categories in convenience store retailing in recent years. These products, and their accessories, will supply a vital new income stream to retailers from consumers seeking an alternative to traditional cigarettes.

PRA position on E-cigarettes and nicotine containing products

While we do not feel we have the relevant expertise to provide analysis on each of the detailed consultation questions raised in relation to the regulations we feel a response to such consultations to represent the importance of the category to the retailing sector is appropriate.

The PRA have taken the opportunity to respond to different consultations on e-cigarettes, including most recently Electronic Cigarettes and Strengthening Tobacco Control in Scotland and the Age of Sale for Nicotine Inhaling Products Consultation in England. These can be accessed in the public domain and help provide more detail to our positions.

In summary, the PRA shares the view of many public health experts that electronic cigarettes offer a promising reduced-risk alternative to traditional combustible cigarettes for adult smokers.

That said, whilst these products offer significant benefits as an alternative to conventional tobacco products, our members accept the need for these products to be effectively regulated, for example we fully supported the introduction of age restrictions and the extension of the tobacco 'proxy purchasing' offence to also cover nicotine inhaling products.

Given the recent statements of public health experts, perhaps best summarised by Professor John Britton, Director of the UK Centre for Tobacco Control Studies, who recently said: "*Electronic cigarettes offer a huge potential benefit to public health by helping smokers to shift to an alternative source of nicotine.*"¹ There is a need to encourage adult smokers to switch to these devices; undue advertising restrictions we feel would be counter-productive to this.

By not communicating the relative health benefits of e-cigarettes compared to traditional cigarettes, the opportunity to help adult smokers from quit or cut down their levels of smoking could be missed.

Of course, we accept a careful regulatory balance needs to be struck between enabling manufacturers to market their products, delivering public health gains for adult smokers and preventing youth access, however evidence in public health surveys continues to show low levels of uptake by minors even through the period of open advertising which existed before May this year. Additionally smoking rates for 11-15 year olds are now at their lowest level recorded which also demonstrates that e-cigarettes have not acted as a gateway to smoking, despite this being a common concern.²

ASH estimates that there are currently 2.8 million adults in Great Britain using electronic cigarettes (6% of the adult population). Of these, approximately 1.3 million (47%) are ex-smokers. The Smoking Toolkit Study, which provides information about smoking prevalence and behaviour in England, found that electronic cigarettes have overtaken over-the-counter (OTC) nicotine replacement therapy (NRT) as the first choice of stop smoking aid³ and are 60% more effective in helping smokers quit than NRT bought OTC or quitting unaided.⁴

1 See: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9641&mode=pdf>

2 Smoking Drinking and Drug Use survey 2014, HSCIC

3 West, R. Electronic cigarettes in England: latest trends. Smoking Toolkit Study. 8 April 2014. <http://www.smokinginengland.info/latest-statistics/> accessed 13th April 2014

4 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. Published online 20 May 2014. <http://onlinelibrary.wiley.com/doi/10.1111/add.12623/abstract>

While recognising that quitting smoking is always the best option for smokers, the NICE guidance supports the use of licensed nicotine containing products (NCPs) to help smokers not currently able to quit to cut down and as a substitute for smoking, where necessary indefinitely.⁵

Inaccurate perceptions of relative harm from electronic cigarettes is an area of concern for many, including ASH ⁶, and is the balance to be struck with any guidance produced.

PRA position on the Guidance

The PRA would therefore like to be assured that the new Code will be drafted in a manner to ensure that advertising is not unduly restricted, beyond minimum requirements in the TPD.

The PRA would also like to be assured that where there is scientific substantiation of benefits of switching to e-cigarettes and other nicotine containing products (such as that of Public Health England and the Royal College of Physicians) that such evidenced claims can be referred to throughout the supply chain, including at point of sale.

If you require any further information or clarification please contact Katy Recina email katy.recina@rmif.co.uk or telephone 0207 307 3422.

Yours sincerely

Brian Madderson
Chairman
Petrol Retailers Association

5 <https://pathways.nice.org.uk/pathways/smoking/evidence-based-stop-smoking-services-and-quitlines#path=view%3A/pathways/smoking/strategy-policy-and-commissioning-for-smoking-prevention-and-cessation.xml&content=view-node%3Anodes-general>

6 ASH Fact Sheet 33, May 2016, *Use of electronic cigarettes (vapourisers) among adults in Great Britain*

Clarification on Affiliate Links and the Tobacco Products Directive.

I am a private individual who from home in England wishes to set up an E Cigarette review website/blog.

The website content would be independent, that is I would be compiling it myself and the E Cigarette vendors/retailers would have NO control over what I write and NO say in what I write. I would also NOT be paid to write reviews.

Some of the articles on the website would have a button saying for example "Visit Website" which would take the reader to the E Cigarette vendor website if they wished for more information or to purchase. The button would act as an affiliate link so if the reader did purchase I might receive a small commission.

I understand from the new regulations at <https://www.gov.uk/government/publications/proposals-for-uk-law-on-the-advertising-of-e-cigarettes/publishing-20-may-not-yet-complete> that blogs/tweets/independently compiled, non paid for reviews ARE PERMITTED. As previously stated the blog/website would be wholly independently compiled by me and the reviews would be non-paid for, that is I would not receive payment for writing reviews.

When speaking to CAP earlier in the year they stated the majority of the website would be outside of the remit of the Code so the Tobacco Products Directive would not apply.

However it was stated the affiliate link *might* be considered advertising by the ASA as I might receive payment and it was therefore *unclear* if this would be problematic under the code.

So the question is as I might receive payment if the consumer clicks through to the e-cigarette company's website from my review, is the affiliate link likely to be considered advertising? That is would the affiliate link be considered to promote a nicotine e-cigarette product?

My view is that the affiliate link doesn't advertise it just provides a link to the company's website if the consumer requires more info or wishes to purchase. For example my webpage could be an independent factual review of Apollo E-Cigs written by myself and at the bottom of the webpage would be an orange button with white text just saying "visit website" which would take the reader to the Apollo website if they wanted further info or to purchase. It wouldn't be "advertising as such", just a plain button saying "visit website". The button acts as an affiliate link. We know that the directive says "blogs/tweets/independently compiled, non paid for reviews are permitted", so by definition the website should be fine and also the affiliate link I would hope.

This is what I'd like clarification on please, i.e. can you please confirm that it is ok to build and operate the website as described above and I would not fall foul of the legislation in the new Tobacco Products Directive?

There are a lot of similar E Cig review websites currently operating on the internet and it seems affiliate links are an important grey area needing clarification as CAP initially said in June 2016 they were unsure as to how affiliate links on independent review sites might be affected by the Tobacco Products Directive.

Thank you.

Consultation Response – Committee on Advertising Practice

To – e-cigarettes@cap.org.uk

From – Public Health, St Helens

Subject – Consultation Response

Date – 31/10/2016

1. Yes
2. Yes
3. Yes
4. No
5. Yes
6. Yes
7. No
8. No
9. Yes
10. Yes
11. No
12. Yes
13. No
14. No
15. Yes
16. Yes
17. Yes
18. Yes
19. Yes
20. No
21. No
22. Yes
23. Yes
24. No
25. Yes
26. No

Radiocentre Ltd represents over 300 licensed commercial radio stations in the UK, generating over £750m in revenues each year. It's clearance department pre-vets in excess of 30,000 radio scripts each year.

This is Radiocentre Clearance's response to the joint CAP and BCAP "Consultation on the advertising of electronic cigarettes". We have commented on those questions that relate to broadcast/radio, specifically part B of the consultation.

Question 18:

We welcome a B/CAP guidance note to help interpret the prohibition on indirect promotion. We believe the four criteria given provide the basis of a workable framework. See also under question 19 below.

Question 19:

We highlight the following prospective radio ad campaigns and ask that their acceptability or non-acceptability are clarified in the guidance note mentioned under question 18 above:

- An ad for an acceptable non-nicotine product that directs people to the advertiser's shop where a significant proportion of the stock is nicotine containing e-liquids;
- An ad for an acceptable non-nicotine product that directs people to a website where a significant proportion of the stock is nicotine containing e-liquids, especially a website that complied with the proposed guidance on factual/promotional claims (as set out in question 9);
- An ad for a shop/website with a non-contentious name and with no references to any specific product (e.g. Cloudline);
- An ad for a shop/website which has a name that references e-cigs or vaping (e.g. Evape Cloudline, King Vape, Vapeinator) with no references to any specific product. We understand that tobacconists would be able to advertise their store (but not their products) in non-broadcast media. Given that the three examples mentioned are advertising by a non-tobacco retailer, we would argue that they could also be accepted on broadcast media.

Question 21:

Yes, BCAP should amend rule 10.1.11 accordingly, subject to further help in practical interpretation in the guidance note.

Question 22:

We are regularly approached by radio advertisers wishing to claim "less harmful than traditional cigarettes" and "a healthier alternative to smoking"; we query the acceptability of these alleged health claims under the new regulatory regime.

Question 23:

Yes, BCAP should remove rule 33.7 for the reasons given.

Question 24:

We have no other comments.

For Radiocentre Clearance



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From The Registrar
Dr Andrew Goddard FRCP
andrew.goddard@rcplondon.ac.uk
[.uk](http://www.rcplondon.ac.uk)

27 October 2016

Dear Sir or Madam

Re: New rules and guidance on the advertising of e-cigarettes

The Royal College of Physicians (RCP) plays a leading role in the delivery of high quality patient care by setting standards of medical practice and promoting clinical excellence. We provide physicians in the United Kingdom and overseas with education, training and support throughout their careers. As an independent body representing over 33,000 Fellows and Members worldwide, we advise and work with government, the public, patients and other professions to improve health and healthcare.

The RCP is grateful for the opportunity to respond to the above consultation. We have liaised with our Tobacco Advisory Group and would like to make the following comments.

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

The RCP would support generic statements that explain the likely magnitude of the risk of electronic cigarette use relative to those of smoking, and possibly also of non-use. So, statements like: 'Although not free from risk, electronic cigarettes are likely to be much less harmful to health than tobacco cigarettes' would communicate to smokers that relative to smoking, vaping is much less dangerous.

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?

The RCP report *Nicotine without smoke* presents comprehensive evidence that electronic cigarettes are likely to be substantially less harmful than tobacco, and that all smokers who cannot be persuaded to quit smoking should be encouraged to switch to electronic cigarettes.

We would also like to highlight our report, *Nicotine without smoke: Tobacco harm reduction* which can be found at www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction



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Yours faithfully

A handwritten signature in black ink, appearing to be 'A. Goddard', written over a faint horizontal line.

Dr Andrew Goddard
Registrar

The Royal College of Radiologists
Response to:
Consultation on the advertising of electronic cigarettes

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.*

The advertisements would be lawful but they should be prohibited as smoking behaviour should not be normalised in any way.

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

Any device whether nicotine containing or not that normalises a smoking type behaviour should be banned given the risks to health of smoking. This is the same argument that removed sweetie cigarettes from public consumption)

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.

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

Yes but signposting of this content should imply anything other than factual claims

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 but would like them to be in the same way cigarettes are given the addictive nature of the nicotine product. As such would welcome them not close to schools, not in features less than 18 at cinemas etc.

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

Yes

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.

Yes

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, mentioning retailer's names when they are unknown indirectly promotes their product.

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, these products can contain highly addictive substances and normalise smoking behaviours. They should not be allowed on TV where mass audience exposure can occur.

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

No, please see above.

B.2. On going 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?

No, these manufacturers have chosen not to go down the licensed medicine route so there is no evidence for their health claims.

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

No, nicotine is highly addictive and thus needs to remain highlighted as a major component so there is no confusion in the minds of the public.

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

N/A



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 SmokeFree County Durham Tobacco Alliance

Background

I am responding in capacity of the Chair of Smokefree County Durham Tobacco Control Alliance. The tobacco alliance brings together partners from across the county to work together to implement action locally. We are 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. We 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”

We have a five year tobacco control action plan (2013 – 2017) that is supported and delivered by partners across the county. The tobacco alliance of County Durham is also part of a North East network facilitated by Fresh - Smokefree North East.

The alliance warmly welcomes the opportunity to respond to this consultation and we are grateful to Fresh and ASH for their support in developing 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). 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."

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>

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 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 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.



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31 October 2016

Consultation on the Advertising of Electronic Cigarettes

Smoke Free Newcastle welcomes the opportunity to respond to the 'Consultation on the advertising of electronic cigarettes'. Please find attached at the end of this letter our response to the questions raised in the consultation.

Councillor Jane Streater
Chair of Smoke Free Newcastle
Cabinet Member for Public Health and Housing
Newcastle City Council

Contact Details for Correspondence

Cllr Jane Streater
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General comments

1. Smoke Free Newcastle is a multi-disciplinary and multi-agency alliance, coordinated and Chaired by Newcastle City Council, which oversees tobacco control across the city. Our vision is that adult smoking prevalence in the city will be 5% or lower by 2030. However rates remain substantially higher than the England average currently (see <http://www.tobaccoprofiles.info/>), highest among those from the most disadvantaged communities, routine and manual workers, the unemployed, carers and pregnant women. This emphasises the need for us to continue to invest in a comprehensive

programme of tobacco control to support smokers to quit, prevent young people from starting to smoke and to protect people from tobacco related harm. Smoke Free Newcastle believe that electronic cigarettes and devices can play a significant role in helping us achieve these aims through harm minimisation and in assisting people to quit.

2. Smoke Free Newcastle is one of the key partners of Fresh; Smoke Free North East, the UK's first dedicated tobacco control office. Additionally Smoke Free Newcastle is a member of the Smokefree Action Coalition, which is an alliance of over 250 organisations involved in action to address smoking. Smoke Free Newcastle is not in any way linked to the tobacco industry.
3. Smoke Free Newcastle are grateful to ASH and Fresh for their support in developing this response.

Answers to Specific Questions: Consultation on the advertising of electronic cigarettes – Responses

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.

No

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.

Smoke Free Newcastle 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 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 should appear on this list?

Yes

1 RCP. [Nicotine without smoke: Tobacco harm reduction](https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0). London. RCP 2016
<https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

2 Public Health England. E-cigarettes: an evidence update. [PHE publications gateway: 2015260](https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review). 28 August 2015. <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>

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.

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

Yes

Smoke Free Newcastle 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.

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

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."

A.7 Proposed changes to the CAP Code

17 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.

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

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

18 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

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

No

In media subject to the Regulations:

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

Yes

21 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

22 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

23 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 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, should be along the following lines, that "electronic cigarette use is considered by Public Health England (see ref 1) and the Royal College of Physicians (see ref 2) 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.

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

Yes

25 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 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.

Locally Newcastle City Council undertake a bi-annual survey of the health related behaviour of children and young people aged 8-15 years in the city³. Since the first survey in 2011, smoking rates among the young people surveyed have shown a significant decline. In

³ Newcastle City Council. Young People in Newcastle Secondary Schools 2015. Newcastle City Council and SHEU.

2015, for the first time, the survey asked students aged 12/13 years and 14/15 years, about their e-cigarette use. 33% of pupils responded that they have smoked an electronic cigarette/vaporiser and 2% responded that they use electronic cigarettes/vaporisers 'regularly' (at least once a week). Pupils who have tried e-cigarettes/vaporisers were eight times more likely to state they have tried smoking tobacco (58.8% v 7.0%) and sixteen times more likely to state they smoke tobacco occasionally or regularly (22.4% v 1.4%). Most regular users of e-cigarettes are also regular smokers, using them as an aid to quit smoking or reduce harm from tobacco.

Smoke Free Northumberland Alliance's Response: Consultation on the advertising of electronic cigarettes

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? NO

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

Non-trade memory/data/USB devices given as freebies at conferences/public events that have the potential to store adverts.

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.

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

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. YES

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: Clarify what is meant by 'some other forms of electronic media'.

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? NO

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? NO

Dear Sir/Madam,

I am the creative writer at The Wave and Swansea Sound, part of the Wireless Group Plc (recently taken over by News UK). As someone who used to regularly script commercials for clients in the eCigarette business I have been affected by this legislation. I have familiarised myself with the legislation and I fail to understand why it is that we cannot run ads for eCigarette shops who just want to promote their nicotine-free products.

Hence, I am writing in response to the following question in the consultation paper:

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.

My principal problem with the legislation in question concerns the phrase "indirect promotion". This is so vague that I find it difficult to comprehend how it could ever be held up in law. For example, Asda run adverts on our stations. If we are sending customers into a major supermarket to buy pizzas or whatever products they are pushing, are we not indirectly promoting their cigarette counter? I cannot under any circumstances promote Botox treatments, but there is nothing stopping me sending customers to a beauty salon that offers Botox for a manicure. Are we not "indirectly promoting" the Botox treatments in this circumstance?

If this "indirect promotion" does not apply to any other kind of banned product, I fail to understand why it applies to eCigarettes and e-Cigarettes alone. I think the rule concerning "indirect promotion" needs to be clarified or it needs to be scrapped, because as it stands it is quite simply hypocritical.

Kind regards,



**UK Health Forum Response to Consultation on the advertising of
electronic cigarettes**

Date: 31 October 2016

Contact: Hannah Graff, Senior Policy Researcher
Phone: 020 7832 6920

About the UK Health Forum

The UK Health Forum (UKHF), a registered charity, is both a UK forum and an international centre for the prevention of non-communicable diseases (NCDs) including coronary heart disease, stroke, cancer, diabetes, chronic kidney disease and dementia through a focus on up-stream measures targeted at the four shared modifiable risk factors of poor nutrition, physical inactivity, tobacco use and alcohol misuse. UKHF undertakes policy research and advocacy to support action by government, the public sector and commercial operators. As an alliance, the UKHF is uniquely placed to develop and promote consensus-based healthy public policy and to coordinate public health advocacy.

UKHF is a member of the Smokefree Action Coalition.

Response 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.

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.

UKHF believes 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.

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

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.

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

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

YES - UKHF 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 - 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". UKHF believes 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 - 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 answer to Q11. In order to address the 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 2016 prior to implementation of the Directive) found that 96% of smokers and 93% of the general population had heard of electronic cigarettes.

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.

Furthermore, a recent report carried out for Cancer Research UK⁴ which reviewed the evidence of the impact of electronic cigarette advertising on children found 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 Bauld L. Angus K. de Andrade M. Ford A. Electronic Cigarette Marketing: Current Research and Policy. Commissioned by Cancer Research UK. October 2016.

UK Centre for Tobacco and Alcohol Studies response to the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) consultation on the advertising of electronic cigarettes

Date: 31st October 2016

About UKCTAS

The UK Centre for Tobacco and Alcohol Studies is a network of 13 UK and international universities conducting research and policy work to prevent harm from the use of tobacco and alcohol (www.ukctas.net).

Key points/general remarks

We welcome this consultation and the role of CAP/BCAP. However, we believe there could be unintended consequences if no health claims at all are permitted and provide some suggestions on this below, based on our recent research.

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 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 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.*

Yes, we agree with 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, we agree that advertisements for these products would be lawful.

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

No further suggestions.

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, we agree that this is consistent with the law.

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, we agree that this proposal is consistent with the law.

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

No further suggestions.

- 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 further suggestions.

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

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

Yes, we agree that the law allows this.

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

Yes, we agree that in principle these types of claims are factual in nature. However, given that the distinction between factual and promotional information is not one which CAP typically makes, and the potential for overlap of factual and promotional claims, we recommend this is monitored to check how the distinctions work in practice. The interpretation of what may be considered factual information rather than

promotion has been highlighted as a challenging area by those involved in implementing the TPD regulations for the UK.¹

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

We recommend that generic statements of the reduced risk of using e-cigarettes relative to tobacco smoking are considered as factual claims as per the detailed response to question 24.

- 12) *Do 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 these claims are promotional.

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

No further suggestions.

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

No further comments.

- 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 with this in principle.

A.6. Non-broadcast media channels not subject of 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, we agree these media channels are not prohibited.

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

Most of Section 22 is fine but some bits are unclear, particularly in the last paragraph of this section (2nd sentence). The MHRA is responsible for licensing medicines but also has a role in overseeing the EU Tobacco Products Directive regulation of e- cigarettes. This sentence refers to products "which are authorised by the MHRA". It may be preferable to make clear that Rule 22 refers to both e-cigarettes which fall under the EU TPD regulations and also those authorised as medicines. This could also state except where there is an exception for medicines (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*

Yes, we support the proposed wording. We suggest, however, that “online media and some other forms of electronic media” is rather vague. It would be useful to expand this bullet point to clearly set out what is captured by “other forms of electronic media”.

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, we agree with the above, but suggest that “any brand imagery” should be considered alongside “branding” in the last bullet point.

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

No further criteria to add, except as in our response to 19.

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, we agree these should be allowed.

- 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, we agree with this proposal.

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

Yes, we agree with the additional text.

B.1. 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?*

We recommend that substantiated health claims should be allowed for unlicensed products to encourage smokers to switch to these products. Since 2014, increasing evidence about the relative safety of e-cigarettes

has influenced agencies such as Public Health England (PHE) and the Royal College of Physicians to take a supportive position in favour of e-cigarette use as a vehicle for quitting smoking.²⁻⁴ To some extent Health Scotland is also producing guidance along these lines, as has the Smoking in Pregnancy Challenge Group which a UKCTAS Director chairs. Allowing a generic statement of relative risk would be a helpful way to communicate the benefits of using e-cigarettes to smokers. One such statement could draw on a key finding from the PHE report, authored by UKCTAS researchers, which stated that e-cigarette use is around 95% safer than tobacco smoking.²

We want to highlight that e-cigarette advertising can be used in a positive way to influence smokers. A recent review of the evidence conducted by UKCTAS researchers for Cancer Research UK found that exposure to e-cigarette adverts influenced smokers' thoughts about quitting smoking and trying an e-cigarette.⁵ A study specifically investigating the impact of advertising message theme on smokers' interest in trying e-cigarettes found that there was greater interest for trying e-cigarettes after viewing adverts with messages about the differences between e-cigarettes and regular cigarettes. Greater interest was also triggered when the advertising message stated that e-cigarettes were healthier than tobacco cigarettes, or helpful to quit smoking.⁶ Using health claims within marketing messages can therefore promote the use of e-cigarettes among smokers, while at the same time avoiding promotion of specific manufacturers or brands.

Further, allowing health claims will likely help reduce public misperceptions on the harm of e-cigarettes. A recent survey by ASH and YouGov⁷ found that in 2016, only 15% of adults believe e-cigarettes are a lot less harmful than tobacco smoking. It will also help send a message to young never smokers that these products are for smokers and to aid quitting. Currently, prohibition of health claims contributes to a perception of confused targeting of e-cigarette products. Research has shown that young people draw on other cues, such as flavours,⁸ to form their perceptions of who these products are for. We believe that clearer messages around the health benefits of e-cigarettes will help enforce the message that e-cigarettes are for smokers who want to quit, rather than lifestyle products for young never smokers.

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

Yes, we agree rule 33.7 should be removed.

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?*

No further comments to add

References

1. Bauld L. Angus K. de Andrade M. Ford A. Electronic Cigarette Marketing: Current Research and Policy. A report to Cancer Research UK. October 2016.

http://www.cancerresearchuk.org/sites/default/files/electronic_cigarette_marketing_report_final.pdf

2. Public Health England. E-cigarettes: an evidence update. August 2015. 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. Public Health England. E-cigarettes: a developing public health consensus. July 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534708/E-cigarettes_joint_consensus_statement_2016.pdf

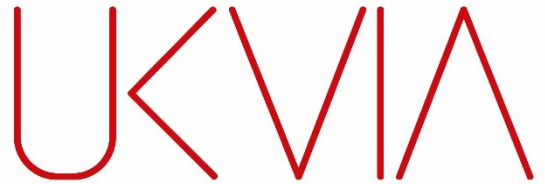
4. Royal College of Physicians. Nicotine without smoke: tobacco harm reduction. London. RCP 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

5. Kim, A.E., Lee, Y.O., Shafer, P., Nonnemaker, J. and Makarenko, O. (2015b) Adult smokers' receptivity to a television advert for electronic nicotine delivery systems. *Tobacco Control*, 24 (2), pp. 132-135. doi:10.1136/tobaccocontrol-2013-051130

6. Pepper, J.K., Emery, S.L., Ribisl, K.M., Southwell, B.G. and Brewer, N.T. (2014b) Effects of advertisements on smokers' interest in trying e-cigarettes: the roles of product comparison and visual cues. *Tobacco Control*, 23 Suppl 3, pp. iii31-6. doi:10.1136/tobaccocontrol-2014-051718

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

8. Ford, A., MacKintosh, A.M., Bauld, L., Moodie, C. and Hastings, G. (2015) Adolescents' responses to the promotion and flavouring of e-cigarettes. *International Journal of Public Health*, online Dec 9th. doi:10.1007/s00038-015-0769-5



UK Vaping Industry Association

UK VIA response to consultation on the advertising of electronic cigarettes

About UKVIA

The UK Vaping Industry Association (UKVIA) was established in September 2016 and represents the majority share of the UK vaping sector. The Association is in its early stages, and has been founded to be the leading voice for the industry. UKVIA aims to represent all responsible and ethical vaping businesses in the UK, irrespective of the size of their companies and operations. This gives us a unique insight and expertise into the UK vaping Industry. It will campaign to ensure sound, evidence-based regulation of vaping products, and that the vaping sector is understood by policy makers.

Our collective expertise can help to address the immediate challenges facing this sector, following the latest interpretation of the Tobacco Products Directive (TPD). As the UK moves towards leaving the EU the regulatory climate will inevitably have to change in the UK. This presents a great opportunity to get the regulatory framework right and to recognise that vaping is not smoking.

UKVIA is made up of 13 founding members, of which 4 are tobacco companies, with varying shares of the vaping market both in terms of production and retail. All members have equal voting rights in the future direction of the Association.

In summary UKVIA believes:

- Vaping devices are for adults. We believe that appropriate advertising for vaping devices should be allowed as they are not a tobacco product.
- It is important, from a public health perspective, that smokers are allowed to receive information about the alternatives available to them, and responsible advertising is an essential component of this. The TPD, in its current interpretation, would ban all advertising, but by doing so, will restrict smokers' access to information which could lead to their making the switch to vaping and removing the vast majority of harms caused by their smoking.
- It is very difficult to see how an advertising ban will benefit individual smokers, their families and friends, and the population.
- Current evidence shows the vast majority of vapers are either existing or former tobacco users. There is little evidence of significant uptake by minors or non-tobacco users.
- It is important that we do not restrain a sector that is giving tobacco users a truly viable alternative. Customers are looking for choice and variety in their products, and the industry is catering for that.

- We believe that, with a stronger collective voice for the industry, we can continue to influence the UK government to do its best to implement the Tobacco Products Directive (TPD), and any future regulations, so that they are achievable, but also address the legitimate concerns about quality and safety standards.
- We also recognise that the science behind the new industry is not yet settled. We believe that the science will confirm vapour products are an innovation in the market place that provide the potential to transition millions of people in the UK away from combustible cigarette smoking.

UKVIA comments on selected questions from the CAP consultation document

Qu 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.

There should be consistency and a need to ensure that restrictions on advertisements only apply to TPD regulated products.

Qu 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

No. The use of the word "can" will inevitably create a situation where products will be included that are not meant to be. UKVIA believe a tighter definition is required here before reaching a position.

Qu 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

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

UKVIA believes that it is vitally important that the CAP should ensure that future regulations around advertising do not restrict smokers from receiving information about vaping and how, according to Public Health England, it is 95% safer than smoking.

Qu 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 this is consistent with the law as long as it doesn't apply to non-nicotine products.

Qu 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.

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

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

These questions hinge around definitions and we would wish to examine the new guidance note carefully. There are a number of factors and issues to bear in mind including:

- Ensuring that solicited emailers, where people have opted into receiving updates, are not prohibited
- The scope of online media - for example would these restrictions only apply to UK based websites.
- How social media sites, such as Facebook, are treated

In short it is important to utilise technology appropriately - Facebook for example can determine the location and age of a user which would solve many issues.

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

Yes

Qu 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.

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

Yes the code should also include factual statements related to:

- new products
- origin
- the best-selling item within a manufacturers range

The code should also be carefully drafted to ensure that customer reviews of products – that are placed online by the consumer themselves – are not regarded as promotional.

Qu 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.

The use of “adjectives” is a concerning phrase which we believe is far too broad and requires a robust definition. The guidance note accompanying the Code will need to ensure that legitimate descriptions of products – particularly around flavours – are not restrictive.

Qu 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 and as stated above we believe that Facebook in particular is a social media platform that provides the necessary controls required to ensure that content is only seen by those who should access it.

Qu 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

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

Yes

Qu 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

Qu 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 as a starting point

Qu 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

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

Yes 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?

As stated above, Public Health England have stated that vaping products are 95% safer than cigarettes. NHS Choices website provides information on how vaping can help people stop smoking

<http://www.nhs.uk/Livewell/smoking/Pages/e-cigarettes.aspx>

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?

Regulation around advertising in online media (section A4) will need to be very carefully defined – especially as this sector is rapidly evolving (the sector has moved on considerably already since the advertising guidance was originally written). UKVIA would welcome the opportunity to comment on the proposed guidance note that CAP will issue (as referenced in A5) on prohibition on advertisements in online media.

The issue of loyalty clubs is also something to be factored into the regulation of lawful advertisements – UKVIA would be delighted to provide further details around this as required.

Conclusion

We support regulation that outlaws the sale of vaping devices to under-18s, and any legislation which eradicates counterfeit products. We support Public Health England in several policy priorities, including the creation of an absolute distinction between vaping and the smoking of tobacco, and portraying vaping as a tool to help people stop smoking.

Recent evidence is already demonstrating that there is a significant amount of misinformation around vaping and its public health impact. There is evidence that shows many members of the public increasingly believe that vaping has the same health impact as smoking combustible tobacco. This highlights the missed public health opportunity by not advertising the realities of vaping products.

Furthermore, there are issues around product compatibility (i.e. certain liquid being used with certain vaporisers) that lead to poor user experience or health risks. In the

absence of legitimate advertising it would be extremely difficult to provide consumers with appropriate information on these products and how they should be used. Currently the best portal for product information for the public on vaping is through the news, which invariably focuses on negative consumer product stories.

UKVIA therefore urges the CAP to ensure a sensible approach is taken to ensure that the public is able to receive the information required around vaping products.

For further information please contact the UKVIA secretariat team at ukvia@jbp.co.uk

Response to the 'Consultation on the Advertising of Electronic Cigarettes'

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.

Not 100% no. The regulations clearly state that batteries/power units do not fall under TPD regulation and as such these should also not be covered by the advertising section of the regulations.

They seem to be a correct interpretation with regards to nicotine containing liquids and tanks/cartridges/cartomizers/refill containers.

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.

No. Just because a product 'can' be filled with something does not mean that this is the intention and does not mean it should be penalized by advertising restrictions. For example, a water bottle 'can' be filled with whiskey, but we don't place the same restrictions on them as we do alcohol.

If a product is designed for the consumption of non-nicotine containing liquid and clearly states this on the packaging and instructions, the manufacturer should not be penalized. Provided they are not seen as promoting the product for re-use with nicotine containing liquid, then there should be no issue. If however it is used as a trick to slide around the regulations and is only being used for cross promotional purposes of a product which does contain nicotine, then this should be dealt with in the same manner as promoting nicotine containing products.

I see this very much as an area to keep an eye on, but would not want to see genuine marketing of non-nicotine products penalized if it is done responsibly and with no ulterior motive. Naturally abusing this for cross promotional activity is not allowable.

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?

Retailers/resellers – ie shops or online stores who sell a range of products manufactured by other companies, and do not have a restricted product which bares the same name – should maintain the right to advertise their store providing they do not promote any specific products.

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.

This is consistent, but again I would note that the advertising of retailers (ie a shop or online store which sells many brands but does not carry a brand under the same name as the store) is still perfectly acceptable.

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.

In a meeting between the MHRA and several leading members of the vaping industry on February 12th 2016, Beryl Keeley confirmed that 'opt-in' email newsletters would be exempt from these restrictions provided age verification had occurred (and we could verify that they were UK citizens) – because these people are specifically requesting information from a company and this right should not be restricted. She stated they must be able to opt out at any time.

This was clarified a second time when another member of the group (Taz, from Gamucci) asked for confirmation.

I believe this is fair and proportionate and a good interpretation of the guidelines. Unsolicited email marketing should not be allowed, but opted in newsletter services should be allowed to continue provided the operators ensure they follow the advice above.

In the meeting with the CAP/ASA representative on October 12th at the IBVTA offices it was explained that the reasons behind these restrictions are because online advertising is deemed to cross borders and as such must be restricted.

However, we run a .co.uk website, and we also own the .com site which runs from the USA. Due to this, it is entirely possible to restrict the .co.uk site to only visitors who have a geo-location in the UK. All other traffic can be re-directed to either the .com site, or a separate page which explains that the .co.uk site is only available to people in the UK. If this is put in to place could we see a relaxation in the laws as any promotion will no longer cross borders and can be viewed in the same way as billboard and cinema advertising.

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?

Facebook should have an exemption as it is entirely possible to restrict the people who can see your posts by age, location, and if they are a follower etc. This applies even to posts which are then shared by followers. See <https://www.facebook.com/help/352402648173466>

So it is entirely possible to ensure only people who have purposely followed your page, are over 18 and live in the UK are able to see the posts. This means that it will not be possible for the ad's to cross borders, or be seen by any member of the public who has not expressed an interest in your business already.

And in much the same way that 'CAP considers that because a consumer makes an explicit choice to visit a marketer's website' in this instance the consumer also makes an explicit choice to visit the marketer's facebook page and is consistent with the interpretation of the law.

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

Yes 100%.

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, these should all be permitted.

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

Organically generated customer reviews (provided they are genuine and not generated by the business for promotional purposes).

If the product is 'new'

'best selling' – provided this information is factual and can be backed up with figures if questioned.

Origin of the product (UK, EU, USA etc)

Permanent price drops (sometimes prices are lowered permanently – not as a short promotional drive, but as a change to the brand structure. This should be ok to show)

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.

I don't think you can ban all adjectives, there needs to be a more sensible way of deciding if it is promotional or not. An adjective is simply a describing word, and

descriptions can be factual too. Perhaps you could word it as ‘superfluous adjectives’, but I think a more robust definition is needed.

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?

I would like to bring up the notion of Loyalty Schemes at this point as it was discussed in the meeting of October 12th at the IBVTA offices.

My company run a loyalty scheme on our website. The way in which it works is thus:

A customer has to sign up as a member (age verified etc).

Once this is done they have a login for the site. If they are logged in when they make a purchase they receive points in relation to the amount of money they have spent. Just like a clubcard etc. These points have a monetary value and can be redeemed on future orders.

The points have no relation to any specific products. There are no buy 1 get 1 free style deals. We do not ever have promotions on any specific product. The points are simply a reward for shopping at our website. We are not promoting any specific brand, nicotine containing or non-nicotine containing. We do not have a brand which bares the same name as our website. We are simply promoting our website – which is allowed under the rules.

I would like to urge that properly run loyalty schemes be allowed to continue, provided that at no point there is any cross-promotion of a nicotine containing product and it remains purely as a method to retain customer loyalty and not push and specific products.

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.

As mentioned above, I believe Facebook is capable of meeting these criteria:

It is entirely possible to restrict the people who can see your posts by age, location, and if they are a follower of your page etc (which can also have age restrictions). This applies even to posts which are then shared by followers, so there is no danger of un-intended views. See <https://www.facebook.com/help/352402648173466>

So it is completely possible to ensure only people who have purposely followed your page, are over 18 and live in the UK are able to see the posts. This means that it will not be possible for the ad’s to cross borders, or be seen by any member of the public

who has not expressed an interest in your business already.

I believe Twitter may have the same functions, but I am not an expert with twitter.

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.

I do agree. But by the same merit I also believe a .co.uk website with geo-location restrictions on viewing would also fall in to this category.

I would also say that direct mail can cross borders quite easily... So if this is acceptable then 'opt in' email newsletters where the customer's delivery and billing addresses are both in the UK should definitely be allowed. (but again NOT unsolicited emails).

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

Seems fine.

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. By saying 'Online media and *some* other forms of electronic media' it does allow scope for 'opt in' email groups to continue as an allowable means, which is the right thing to do.

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?

It's a good start point

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

Not at this stage.

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

Absolutely 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.

I do, but I am unsure how this can be done without being accused of indirectly promoting nicotine containing products and would encourage more clarity on the situation please.

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?

Yes.

NHS Website:

<https://www.nhs.uk/oneyou/stoptober/home#Qr0AO68mSR0upRi7.97>

“choose your way to **quit**” then option 4 is ‘e-cigarettes’....

If the NHS are telling this to smokers, then a retailer should be able to provide the same message. They should not be able to claim any specific product is better than another without testing, but they should be able to repeat what our health providers are telling smokers looking to quit.

<http://onlinelibrary.wiley.com/o/cochrane/clcentral/articles/984/CN-01050984/frame.html>

electronic cigarettes are also widely proven to be far more effective than traditional NRT, and it should be fine to share this information – again providing you are not promoting a specific product, just vaping in general.

Wakefield Tobacco Alliance: Consultation on the advertising of electronic cigarettes

Introduction

Smoking is the main cause of preventable death and ill-health in England. In Wakefield, smoking prevalence is higher than the regional and national averages for a number of key indicators. Reducing the prevalence of tobacco use remains one of the most important interventions in improving and protecting the public's health. The Smokefree Wakefield Tobacco Control Alliance works towards reducing smoking prevalence for a healthier tobacco free future for children and young people in the Wakefield district.

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. Wakefield Alliance 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.

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.

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.

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.

Grŵp Iechyd a Gwasanaethau Cymdeithasol
Health and Social Services Group

Cyfarwyddiaeth Polisi Iechyd
Directorate of Health Policy



Llywodraeth Cymru
Welsh Government

Regulatory Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
LONDON
WC1V 6QT

26 October 2016

Dear Sir/Madam

Welsh Government Response to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation on the advertising of electronic cigarettes

About the Welsh Government:

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

Restrictions on the age of sale and proxy purchase of e-cigarettes apply to Wales; as do the Tobacco and Related Products Regulations 2016 (TRPR).

Key Points:

Our primary concern is that non-smokers, particularly children and young people, are not encouraged to use e-cigarettes, as there is a risk it would re-normalise smoking and potentially be a gateway to tobacco. We also recognise that e-cigarettes, along with other forms of nicotine replacement therapy, may help smokers to give up tobacco, but that any long-term risks are not yet known. It is not appropriate for the Welsh Government to comment on the interpretation of the TRPR; we have therefore restricted our comments to questions 19 to 26.

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?*

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

Response: We are content with the criteria suggested at present. We assume that should any regular means of indirectly promoting unlicensed nicotine-containing products be identified, then these could be added to the list in the future.

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?*

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.*

Response: We do not agree with advertisements of e-cigarette retailers. We believe it would be difficult for any advertisement for a retailer, particularly if on TV, radio or electronic media, not to have the indirect effect of promoting unlicensed nicotine-containing e-cigarettes.

Any advertising should only make smokers aware of the opportunities to purchase e-cigarettes as an alternative to smoking. There should not be any possibility of a spill-over effect that encourages the use of e-cigarettes for non-smokers and children. Therefore we do not agree with the proposed text for 10.1.11; and believe that 10.2 should still apply.

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?*

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

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?*

Response:


We believe that the current prohibition on health claims for products not licensed as medicines should be retained.

Whilst changes in the prevalence of e-cigarette use in England have been positively associated with the success rate of quit attempts¹, a Cochrane Review² of 13 completed studies on smoking cessation, published in December 2014, found that while recognition of the potential health benefits from smokers switching to e-cigarettes can be found in expert opinion, the quality of the evidence overall is low. An update of the review in 2016³ concluded: 'There is evidence from two trials that ECs help smokers to stop smoking in the long term compared with placebo ECs. However, the small number of trials, low event rates and wide confidence intervals around the estimates mean that our confidence in the result is rated 'low' by GRADE standards.'

We are content that rule 33.7 is removed as only products which do not contain nicotine can now be legally advertised.

In line with the current code, we believe that marketing communications for e-cigarettes should always be socially responsible and should not encourage use by under-18s. Such communications should not glamorise smoking or encourage people who do not currently use electronic cigarettes to try the product. The current codes therefore continue to be suitable for the regulation of lawful advertisements.

Yours faithfully



Chris Tudor-Smith
Public Health Division
Directorate of Health Policy
Cyfarwyddiaeth Polisi Iechyd
Health & Social Services Group
Y Grŵp Iechyd a Gwasanaethau Cymdeithasol

¹ Beard et al <http://www.bmj.com/content/354/bmj.i4645>

² Electronic cigarettes for smoking cessation and reduction (Review). 2014. The Cochrane Collaboration. Published by John Wiley & Sons, Ltd. Available at: <http://www.cochrane.org/features/new-cochrane-evidence-shows-electronic-cigarettes-facilitate-smoking-cessation>

³

<http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD010216.pub3/abstract;jsessionid=82022C3A0C476E4BDEE4B877D98976F9.f03t03>