

Dear Sir/Madam

This letter has been signed by a coalition of electronic cigarette businesses operating in the UK, all of whom are committed to driving up standards in the electronic cigarette industry, including ensuring a responsible approach to advertising and marketing. We believe this is an essential component of an appropriate and proportional regulatory framework for electronic cigarettes: one which can both address the concerns of governments and public health regulators and make a significant step towards realising the potential public health benefits offered by electronic cigarette products, which are regarded by many scientific and academic experts as a safer alternative to traditional combustible tobacco products (including cigarettes).

We welcome CAP / BCAP's consultation and draft rules on advertising and marketing and applaud the attempt to strike a balance between preventing irresponsible marketing aimed at children, non-smokers and former smokers, and the moral requirement for society to allow existing adult smokers, who are seeking less hazardous alternatives to their cigarettes, to find out about products that may offer them a reduced risk.

CAP / BCAP's draft rules mirror very closely the industry's view on the principles that should be applied to all advertising of e-cigarettes (and indeed which are set out in a voluntary code currently being formulated by the UK's major players).

As representatives of the industry in UK we believe that e-cigarettes should be marketed responsibly and by this we mean:

- Marketing communications should only be directed at adults*
- Marketing communications should only be directed at existing smokers or existing users of other nicotine products*
- Nothing in marketing communications should be aimed at promoting the use of combustion tobacco products.*

We look forward to working with CAP / BCAP to ensure a responsible approach in the UK marketplace to marketing and advertising for electronic cigarettes.

Yours faithfully,

Jacqueline Burrows, Director Corporate Affairs
For and on behalf of XL Distributors (Gamucci)

James Rich, Director
**For and on behalf of
Jasper & Jasper**

Christian Mulcahy, Business Development Director
**For and on behalf of
Multicig**

Simon Cleverly, Legal & Public Affairs Director
**For and on behalf of
Nicoventures**

David Graham, Senior Vice President International Regulatory Affairs
**For and on behalf of
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Patricia Kovacevic, Director Regulatory Affairs & Associate General Counsel
For and on behalf of
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Art Devlin, Director 10 Motives
For and on behalf of
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Michael Clapper, Executive Chairman
For and on behalf of
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Lynne White, Head of Retail Distribution
For and on behalf of
Must Have Limited VIP Electronic Cigarettes

Charles Hamshaw-Thomas, Legal & Corporate Affairs Director
For and on behalf of
Zandera/E-Lites

CAP and BCAP Consultation on the Marketing of E-Cigarettes

15 April 2014

About Action on Smoking and Health

This response to the CAP and BCAP consultation document is submitted on behalf of Action on Smoking and Health (ASH). ASH is a health charity working towards the elimination of harm caused by tobacco. ASH receives core funding from the British Heart Foundation and Cancer Research UK and project funding for work to support implementation of the Tobacco Control Plan for England from the Department of Health. ASH Chief Executive Deborah Arnott has served on the MHRA Expert Advisory Group on nicotine regulation, and was a member of the NICE PDG on tobacco harm reduction which published guidance in June 2013.

Relevant Facts

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

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

ASH estimated that in March 2014 there were 2.1 million current users of electronic cigarettes in the UK, a tripling of the number of users since 2012. This number is almost entirely made of current and ex-smokers; with perhaps as many as 700,000 people having fully replaced smoking with e-cigarette use.³ There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking.³ However, this could change particularly if advertising and promotion of electronic cigarettes glamourises the use of these products and promotes their use to young people.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely in about mid-2016), unless they

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

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

³ Use of e-cigarettes in Great Britain. ASH. London. April 2014.

are authorised as medicinal products. This means that no TV, radio, electronic or print advertising will be allowed. The advertising permitted will essentially be limited to advertising which only has domestic reach such as billboard, bus and point of sale. The UK Medicines and Healthcare Products Regulatory Agency (MHRA) has said that it: “continues to encourage companies to voluntarily submit medicines licence applications for electronic cigarettes and other nicotine containing products as medicines”.⁴

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

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

General Principles

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

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

Answers to Consultation Questions

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

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

⁵ MHRA. The Blue Guide: Advertising and Promotion of Medicines in the UK. Third Edition. August 2012. <http://www.mhra.gov.uk/home/groups/pl-a/documents/publication/con2022589.pdf> accessed 11th April 2014

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

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

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

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

Revise rule 1 to read (revisions in bold):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Our suggestion for revised wording for rule 4 is:

Rule 4: “Marketing communications / advertisements for ***electronic cigarettes should describe them as vapourisers and not use the word e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes.***”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See links below for the ads in question:

<http://www.youtube.com/watch?v=NKbfXT2MOJI&feature=youtu.be>

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

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

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

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.⁶ The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.⁷

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

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

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

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective.⁸ We would prefer a revised set of rules, on the principles set out above, which inter alia require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

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

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

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

⁶ Robinson S & Bugler C. [Smoking and drinking among adults](#), 2008. General Lifestyle Survey 2008. ONS, 2010.

⁷ [Opinions and Lifestyle Survey, Smoking habits amongst adults, 2012](#). ONS, Sept. 2013

⁸ American Legacy Foundation, Getting to the Truth: Assessing Youths' Reactions to the truthsm and 'Think. Don't Smoke' Tobacco Countermarketing Campaigns, First Look Report 9, June 2002. Sly, D & Heald, G, Florida Antitobacco Media Evaluation (FAME) Follow-up Report, February 2001. Teenage Research Unlimited, "Counter-Tobacco Advertising Exploratory," Summary Report, January-March 1999.

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

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

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

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

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

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

Additional Questions

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

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

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

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

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

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

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

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

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

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

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

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

ASH Scotland response to the CAP/BCAP consultation on the marketing of e-cigarettes

April 2014

General Principles

We welcome the opportunity to contribute to the CAP/BCAP consultation on the marketing of e-cigarettes. This is an important issue, as while we recognise that e-cigarettes have important potential to reduce the harms from smoking in Scotland and the UK, there are also important risks around the 're-normalisation' of smoking and uptake by young people that must be considered and dealt with. We are in agreement with the University of Edinburgh Tobacco Control Research Group and many of the points they raise in their consultation submission on this matter.

We are also largely in agreement with the general principles set out by ASH in their own submission to the consultation, and restate them below with our own emphasis/additions in **bold text**.

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

ASH Scotland also believes it is important that the CAP/BCAP rules on these products remain open to rapid revision in light of accumulating evidence surrounding the products themselves, or the impact of their marketing on people under 18.

Response to Consultation Questions

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

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

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

We agree that the rule should require marketing communication/advertisements for e-cigarettes to be socially responsible. For the effective functioning of this rule, it is important to be clear what 'social responsibility' entails in this context.

We believe this should include:

1. An explicit requirement for all advertising and promotion to present e-cigarettes as alternatives to tobacco cigarettes intended for existing current tobacco cigarette smokers (see response to Rule 3)
2. Prohibition of any feature of communications/advertisements that would suggest to a reasonable person that using e-cigarettes has positive qualities as a 'lifestyle choice' other than as an alternative to tobacco cigarettes for existing smokers. This is important for descriptions of perceived user effects that exist largely as a consequence of nicotine dependence (e.g. terms like 'satisfying' should not be permitted)
3. Prohibition on any feature of the communication/advertisement that undermines the message that quitting smoking is the best option to improve health, or promotes the use of e-cigarettes alongside continuing use of tobacco cigarettes ('dual use').

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

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

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

We agree with the general principle behind this rule, but believe it needs to be strengthened. While there is already a statutory prohibition on tobacco 'brand-stretching' activities in the UK, the possibility remains that e-cigarettes which resemble tobacco cigarettes could be used to implicitly or explicitly promote tobacco cigarette smoking. As an increasing number of e-cigarette companies are owned by tobacco companies (who have obvious commercial interests in the promotion of imagery that has the result of increasing interest in, maintaining the use of or encouraging the uptake of, tobacco smoking), this is an issue of great concern.

Because of this, we believe this rule should be strengthened to include a prohibition of any features of design, colour, imagery, or style that could reasonably be expected to confuse viewers between e-cigarettes and tobacco cigarettes or could reasonably be viewed as promotion of 'smoking' behaviour. Tobacco products should not be presented, unless their presentation is in an unambiguously negative light.

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

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

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

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

We agree with the proposed wording of this rule and the proposed definition of health claims for the purposes of this rule. Most experts view e-cigarettes as likely to be less hazardous than tobacco cigarette smoking, therefore moving existing tobacco smokers who are unable or unwilling to quit to e-cigarettes is likely to be beneficial to public health. However, because of the novelty of e-cigarettes and the current uncertainty over their long-term impact, or the level of appeal they are likely to have amongst young people, we believe a precautionary approach to advertising and promotion activities is prudent. Hence we believe that this rule (see also our comments on Rule 1) should **require** not just permit e-cigarette advertisements and communications to present e-cigarettes as an alternative to tobacco cigarettes **for current tobacco cigarette smokers only**. As evidence on e-cigarettes develops, it may be the case that this rule could be revised to permit certain forms of health claims (e.g. that e-cigarettes are less harmful than smoking tobacco cigarettes) if the claim was supported by robust scientific evidence, while maintaining the prohibition on therapeutic claims that may only be permitted if the product is regulated through the MHRA.

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

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

We agree with the inclusion and wording of this rule.

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

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

We agree with the inclusion and wording of this rule, and the requirement to be clear about whether the product contains nicotine or not. We believe e-cigarettes that do not contain nicotine should still be subject to the same rules as e-cigarettes containing nicotine, see our response to Question 23/24 below. Where e-cigarettes contain nicotine, there should be a requirement to state that nicotine is addictive. As mentioned in the introduction, ASH Scotland believes it is important to keep *all* rules open to rapid revision in the case that accumulating evidence on e-cigarettes requires modification of the information provided to consumers.

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

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

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

We agree with the inclusion and wording of this rule, with the strengthening amendment to prohibit any encouragement to try e-cigarettes amongst non-smokers/non-nicotine users **either explicitly or implicitly**.

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

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

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

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

We agree with the inclusion and wording of this rule.

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

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

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

We agree with the inclusion of this rule. ASH Scotland would add that communications and advertisements should also be prohibited from stating or implying that the use of e-cigarettes is permitted in all indoor public places (e.g. through use the statement that they can be 'used

anywhere'). In reality some premises have policies to restrict e-cigarette use in order to more easily manage enforcement of the ban on smoking tobacco cigarettes in indoor public places. It would be undesirable for these policies to be undermined through marketing messages.

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

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

We agree with the inclusion and wording of this rule. As described in Rule 3, we believe a cautious approach is wise when approaching the marketing of e-cigarettes, so we support as many safeguards as is reasonably possible to prevent marketing communications for e-cigarettes to existing adult smokers from appealing to people under 18 through the images, messages, or behaviour portrayed in advertising.

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

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

We agree with the inclusion and wording of this rule. Given the need to ensure e-cigarette advertising does not appeal to young people and to have parity with the equivalent rules for alcohol advertising, a threshold of 25 is appropriate.

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

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

We agree with the consultation document that the evidence on the positive impact of this kind of warning on e-cigarette advertisement and marketing communications is not clear, with potential risks of actually increasing interest in the products among young people. Therefore we do not consider this rule necessary to include, unless there is convincing evidence of a positive benefit. It would be preferable to instead modify the rules in the way we have already suggested: by placing a requirement on advertising and marketing communications to only target existing tobacco cigarette smokers, and only present e-cigarettes as alternatives to continued tobacco smoking.

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

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

We agree with the principle behind this rule. However, some high impact commercial communications may meet the 'under 25%' threshold, but still expose many young people to e-cigarette marketing due to their high overall popularity. Hence we ask CAP/BCAP to consider the total impact upon people under 18, as well as relative thresholds, when attempting to minimise the impact of e-cigarette marketing on under 18s.

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

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

We agree with the principle behind this rule. However, as in our response to Question 20 above, we note that although some events that attract high viewership (e.g. prime time programming or sporting events) may not be 'directed at or likely to appeal' particularly to under 18s, they nevertheless are viewed by large numbers of under 18s. We ask BCAP to consider this 'total impact' in its rules in addition to the existing scheduling restrictions.

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

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

Given the novelty of the e-cigarette market, the fact the marketing approaches for these products are still evolving, and the need to carefully balance the benefits of these products to existing smokers with the risks of uptake among non-smokers, we believe that it is appropriate to **require all advertisements for e-cigarettes in all channels and mediums (broadcast and non-broadcast) to be centrally cleared**. This situation could change at a later time, as scientific evidence on e-cigarettes accumulates.

Additional Questions

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

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

These new rules should apply to e-cigarette that do not contain nicotine. Because it is possible for non-nicotine containing e-cigarettes to look the same as nicotine containing e-cigarettes, and some types of e-cigarettes have user-replaceable parts and a choice of nicotine or non-nicotine fluid, exempting non-nicotine e-cigarette from these rules could cause a great deal of confusion

and potentially creates loopholes for 'cigarette like' non-nicotine e-cigarettes to be used to implicitly promote the smoking of tobacco cigarettes.

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

The same rules should apply to all e-cigarettes regardless of whether they are licensed medicines or not, with the addition that licensed products may make claims to treat or prevent disease in line with the indication for which they have been licensed.

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

We agree with the proposed definition of e-cigarettes, with the addition of including non-nicotine containing e-cigarettes also.

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

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

As stated previously, we consider it very important that these rules remain open to rapid revision as the scientific evidence on e-cigarettes (the products themselves and the impact of their marketing) accumulates.

Given the popularity of social media with young people, we believe that the CAP/BCAP rules would benefit from specific mention of how commercial communications on social media intended to promote e-cigarette will be handled.

See 'general principles' at the start of this document. We would also recommend, in line with the World Health Organisation's Framework Convention on Tobacco Control Article 5.3¹ on the protection of public health policies from the vested interest of the tobacco industry, that future consultations on matters pertaining tobacco control require respondents to explicitly disclose any associations they have with those involved in the manufacture or sale of tobacco products.

¹ WHO, November 2008. Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Available from: http://www.who.int/fctc/guidelines/article_5_3.pdf

ASH WALES' RESPONSE TO THE CAP/BCAP CONSULTATION ON THE MARKETING AND ADVERTISING OF ELECTRONIC CIGARETTES

About ASH Wales:

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

General Principles:

ASH Wales agrees with the general principles formulated by ASH in their submission and reiterate those here. We also share ASH England's concern that in this rapidly evolving market other novel nicotine containing products are likely to emerge. We therefore recommend that these rules cover all non-tobacco nicotine containing products, not just those that describe themselves as electronic cigarettes, in order to ensure consistency when dealing with products containing this highly addictive substance. We therefore recommend that all rules should be amended to read "electronic cigarettes and other nicotine containing products" throughout. We also recommend that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

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

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

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

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

Response:

We agree with the principle that marketing communications and advertisements for electronic cigarettes should be socially responsible. However, we have some concerns about ambiguity in the interpretation of the phrase 'socially responsible' and therefore recommend some key conditions that should be met if a communication or advertisement is to be deemed socially responsible:

- electronic cigarettes should not be presented in a manner that suggests they are suitable for people who do not currently use electronic cigarettes;
- no use of wording that suggests the use of electronic cigarettes (or other nicotine containing products) has positive qualities or reinforces the idea that the product has positive qualities among consumers. This is due to the addictive nature of the product, and also the fact that we currently have no evidence on the long-term consequences of electronic cigarette use;
- electronic cigarettes should not be presented in scenes of a sexually suggestive nature as this may attract the attention of a younger (teenage) audience to the product, even if broadcast after the watershed;
- communications and advertisements should contain a prominent reference to the toxicity of nicotine and the need to store and use electronic cigarettes and refill containers safely and away from children and pets.

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

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

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

Response: We agree with the proposed rule as a starting point. According to a survey conducted by ASH in 2013, 91% of smokers and 71% of non-smokers had already heard of electronic cigarettes. Therefore advertising is not required to raise awareness of the existence of the product, but rather to promote individual brands to smokers¹.

We therefore believe that the proposed rule needs to be strengthened to include a general prohibition on any design, colour, imagery, logo or styles that could create an association, or confusion, with any existing tobacco products. This would be in line with the CAP Code for tobacco products as set out in 10.3 and 10.4. The need for this prohibition is clear as some electronic cigarette brands are owned by – and will be promoted by – tobacco manufacturers. It is therefore important that the advertising of these brands cannot be used as an implicit means for promoting the brand identity of tobacco products or smoking behaviour.

1

Use of e-cigarettes in Great Britain among adults and young people (2013). ASH. London. May 2013. http://www.ash.org.uk/files/documents/ASH_891.pdf accessed 16th April 2014.

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

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

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

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

Response: ASH Wales agrees with the proposed wording of this rule, including the section on MHRA licensing. Electronic cigarette advertising must not make health or medicinal claims unless the product has been explicitly licensed as such by the MHRA. The definitions of health and medicinal claims are appropriate in this context.

We would, however, recommend that electronic cigarettes should be required to present themselves as an alternative to tobacco products, rather than simply being allowed to do so. Such a requirement would ensure consistency with the principle that electronic cigarette marketing should be directed at existing users of tobacco, not at non-users.

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

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

Response: We agree that it is important that all advertising makes clear the nature of the product as an electronic cigarette in order to minimise any ambiguity or confusion in light of the prohibitions placed on the marketing of tobacco products. We therefore recommend that the descriptor 'electronic cigarette' is used in preference to 'e-cigarette', as we have done throughout this consultation response. In addition, terminology or descriptors that may cause confusion, such as 'smoked' or 'smoking' should also be covered by the rule. We reiterate the point raised in our response to Rule 2 that there should be no association created between electronic cigarettes and tobacco brands, logos, colours, designs etc.

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

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

Response: Agreed. In view of the fact that nicotine is addictive, and is also toxic in certain circumstances, it is important that this information is made clear to the public.

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

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

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

Response: We share the Committees' concern that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine. However, we would argue, as in the response to Rule 3, that all marketing communications for electronic cigarettes should target existing tobacco and electronic cigarette users explicitly. Implicit promotion to intended target groups is an important and well understood phenomenon in advertising and marketing. We would therefore want to see Rules 3 and 6 both worded in such a way as to make it as difficult as possible for any electronic cigarette manufacturer to target those who do not currently use tobacco.

Any non-tobacco user who graduated to tobacco use via electronic cigarettes, even if these numbers are small, would be exposed to significant health risks. It is particularly important that advertising for this particular product, which may be attractive to young people, is explicitly targeted at existing tobacco or nicotine users in order to minimise ambiguity about the nature of the product given the addictive nature of nicotine. We reiterate the point raised above that no association between electronic cigarette products and tobacco brands should be created in the imagery and design used.

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

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

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

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

Response: We agree with this rule but would argue that it should be revised in order to contain other novel nicotine containing products.

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

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

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

Response: We agree with the inclusion and wording of this rule.

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

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

Response: We agree with the first sentence of this Rule. However, the other two sentences of this rule may actually prevent the development of socially responsible advertising that explicitly targets tobacco users.

Two examples of electronic cigarette advertising demonstrate this concern: a recent advert based around the development of a lifelong friendship where an adult gives another adult an electronic cigarette as a way of expressing concern for his wellbeing. This advert would not be permissible under this rule as worded as it shows the two adults as boys growing up together. Equally, the contentious 'dancing baby' advertisement, whilst potentially attracting the attention of younger audience members because of its light-heartedness, nevertheless contains the underlying message that smokers miss out on the important things in life. This is a responsible message that young people may pick up from the advertising. Admittedly this is a difficult balance to strike, but we would suggest that if the proposed amendments to Rules 3 and 6 were accepted, the first sentence in this Rule should be sufficient in this respect.

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

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

We agree with the inclusion and wording of this rule. Although electronic cigarettes will be legal for 18 and overs to purchase, there is a risk that if people under the age of 25 are shown using the product, this may reinforce positive associations about the product in the minds of young people.

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

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

Response: We recognise that placing an "18+" message on products may not always produce the desired effect among children and young people. However, if regulations making the products only legal to sell to those aged 18 and over are approved, this will have to be reflected in the advertising requirements. However, revising the rules in the ways suggested under Rules 3 and 6 would require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

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

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

Response: We agree with the inclusion and wording of this rule. It could be made more specific by adding the phrase 'or location' after the word 'context'.

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

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

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

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

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

Response: We believe that all electronic cigarettes should be centrally cleared prior to publication or transmission, not just those for the radio, given the addictive nature of nicotine-containing products.

Additional Questions

E-cigarettes which do not contain nicotine

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

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

Response: E-cigarettes that do not contain nicotine are a difficult issue. However the fact that they are marketed under the category of e-cigarettes (or e-hookah or e-shisha) means that the new rules should also apply. Otherwise the products will cause confusion.

E-cigarettes which are licensed as medicines

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

Response: The same rules should apply to electronic cigarettes that are licensed as medicines with the exception that licensed products should be able to include specific health claims where such claims are well supported by the scientific evidence.

Definition of 'electronic cigarette'

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

Response: We agree with the proposed definition of e-cigarettes as it is taken directly from the wording of the relevant EU Directive.

Further Comments

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

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

Response: Our principle concern with the rules as currently drafted is that they make no explicit reference to social media channels or apps (particularly games) which download on-line advertising if a player's device is on-line. Electronic cigarette products have been promoted through these channels and we believe that this is a major challenge that needs to be addressed.



Association of Directors of Public Health (UK)

Association of Directors of Public Health – Submission to the CAP and BCAP consultation on the Marketing of E-Cigarettes

The Association of Directors of Public Health (ADPH) is the representative body for Directors of Public Health (DsPH) in the UK. It seeks to improve and protect the health of the population through DPH development, sharing good practice, and policy and advocacy programmes. www.adph.org.uk

Directors of Public Health (DsPH) are the frontline leaders of public health working across health improvement, health protection, and health care service planning and commissioning.

ADPH has a strong track record of collaboration with other stakeholders in public health, including those working within the NHS, local authorities, government and other sectors.

ADPH has previously submitted detailed responses to a range of consultation exercises related to tobacco control measures – consistently calling for government to implement evidence-based national action to:

- reduce the harm and health inequalities caused by tobacco – particularly in the most deprived communities;
- reduce the burden of premature death and disability caused by tobacco;
- protect the future health of children in the UK (in light of the 200,000-plus children in the UK who take up smoking each year).

ADPH is a member of the Smokefree Action Coalition – a group of more than 190 organisations - committed to promoting public health and reducing the harm caused by tobacco. <http://www.smokefreeaction.org.uk/>

Electronic Cigarettes

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

1. Electronic cigarettes are not cigarettes in any meaningful sense, they are nicotine delivery systems that do not contain tobacco, where the nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in kind to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.¹
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.^{2 3}

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

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

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

4. Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

In 2013, ASH estimated there were 1.3 million current users of electronic cigarettes in the UK, and the number has continued to grow since then. This number is almost entirely made of current and ex-smokers; with perhaps as many as 400,000 people having fully replaced smoking with e-cigarette use.³ There is little evidence to suggest that anything more than a negligible number of never smokers regularly use the product. Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking.³ However, this could change particularly if advertising and promotion of electronic cigarettes glamourises the use of these products and promotes their use to young people.

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

Overview - Principles and Concerns

ADPH is particularly concerned that marketing and widespread use of electronic cigarettes will undermine the successful efforts which have been made to de-normalise smoking behaviour.

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

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

ADPH supports the recommendation from ASH that a revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

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

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

Response to the Consultation Questions

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

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

See composite response to question 1 and 2 below.

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

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

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

- Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.

We suggest that Rule 1 be revised to the following: *“Marketing communications/advertisements for **electronic cigarettes and other nicotine containing products** must be socially responsible.”*

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

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

ADPH would like to see the rule strengthened. See response to question 4.

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

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

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

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

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

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

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

See composite response to questions 5-7 below.

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

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

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

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

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

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

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

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

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

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

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

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

See composite response below to question 10 and 11

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

ADPH agree with the inclusion of this rule, with the following proposed amendment as detailed below.

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

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

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

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

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

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

See composite response below to questions 12, 13 and 14.

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

ADPH agree with the inclusion of this rule - but revised to include other nicotine containing products. We suggest the following wording for Rule 7: “Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with gambling, alcohol or illicit drugs.”

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

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

Please see composite response below to question 15 and 16.

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

We agree with the inclusion of this rule but with the following revisions: “**Rule 8:** Marketing communications / advertisements must not link **electronic cigarettes or other nicotine containing products** with activities or locations in which using them would be unsafe or unwise; such as driving.”

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

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

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

To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message ‘Friends don’t let friends smoke’ (<http://www.youtube.com/watch?v=NKbfXT2M0JI&feature=youtu.be>).

This advertisement conformed to the general principles we set out, however strict application of rule 9 as it stands would have prevented it being shown as it included two friends behaving in a juvenile manner. This was part of a narrative about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes.

Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children (<http://www.youtube.com/watch?v=lrSavppUj1k>). This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to smokers that smoking cuts you out of family life.

We therefore believe rule 9 should be revised with the final two sentences removed.

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

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

ADPH supports the age of sale restriction on sales of electronic cigarettes of 18. However we agree with Rule 10 and the proposed 25 year age restriction within marketing material.

This is consistent with the rules on alcohol marketing and will be a safeguard against glamourising smoking-like behaviour to under 18s.

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

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

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

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

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

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

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

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

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

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

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

Electronic cigarettes have been around for less than ten years and the market is still evolving. Advertising of these products is a relatively new phenomenon. Therefore we think that all broadcast electronic cigarette advertisements, both radio and TV, should require central clearance prior to publication/transmission.

In addition advertisers should be recommended to submit non-broadcast advertisements, both print and electronic, to CAP for copy clearance before publication.

Additional Questions

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

See response at question 24 below.

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

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

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

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

26. Do you agree with the proposed definition of electronic cigarettes? If not please explain why.

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

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

Please refer to the section 'Overview - Principles and Concerns' on pages 2 and 3.

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

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

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

**Association of Directors of Public Health
April 2014**

CAP and BCAP Consultation on the Marketing of E-Cigarettes

28 April 2014

About Action on Smoking and Health

This response to the CAP and BCAP consultation document is submitted on behalf of the Association of Respiratory Nurse Specialists (ARNS). ARNS represents over a thousand specialist nurses who have a vast amount of experience including smoking related issues. We provide specialist input to consultations and policy making at a national and international level.

General Principles

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

1. Regulation of un-licenced electronic cigarettes and other nicotine containing products should be consistent with that for licenced products. For example, celebrity endorsement and free samples are not allowed for licenced nicotine containing products and should not be allowed for electronic cigarettes either.¹
2. Electronic cigarettes and other nicotine containing products preferably should not be advertised or promoted

Answers to Consultation Questions

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

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

Socially responsible is debatable and open to interpretation. We feel the same rules should be as for tobacco until regulated.

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

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

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement. **No – as per above**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See links below for the ads in question:

<http://www.youtube.com/watch?v=NKbfXT2MOJI&feature=youtu.be>

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

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

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

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.² The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.³

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

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

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

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

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

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

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

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

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

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

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

Additional Questions

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

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

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

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

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

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

Consultation on marketing of e-cigarettes –response from Boots UK

1. Agree, although we feel that specific inclusion on the current CAP social responsibility guidance on what is and is not considered by CAP/ BCAP to be socially responsible in respect of e-cigarettes may be appropriate.
2. No comment to make
3. Agree
4. No comment to make
5. Agree
6. We do not feel it appropriate to use a definition lifted from legislation relating to food for defining health benefits for e-cigarettes. We feel that it should be for the MHRA to determine the definition on a similar basis to any such definitions for medical devices and medicines
7. Agree, unless the product advertised is a licensed medicine, when any claims should be permitted which are compatible with its marketing authorisation and product licence
8. Agree
9. We feel that this may be confusing if advertising a range of products which contain nicotine, of varying strengths, and nicotine free products and may require lengthy wording to clarify this in advertising. In addition, we feel that “contains nicotine” may create confusion or association with licensed nicotine replacement products on the basis that “contains nicotine” is part of the standard advertising wording for such products as regulated by the MHRA.
We would also raise the question on the point relating to “not intending to limit advertisers from describing other product ingredients” – does this also cover referencing ingredients **not** in the advertised product, e.g. tobacco?
10. Agree.
11. Agree that rule is proportionate
12. Agree
13. Agree
14. Agree
15. Agree
16. Agree, though would question whether this would be covered by the requirements for social responsibility.
17. Agree
18. Agree
19. It is noted that legislation is being introduced to prohibit the sale of e-cigarettes to under 18’s. Until the legislation takes effect then it may be considered misleading and false to state that e-cigarettes are for over 18’s only.
Once the age restriction legislation has taken effect, whilst we would not object to any such requirement we would question whether it should be mandatory. A responsible advertiser would make this clear in marketing communications if appropriate, and legally the products could not be supplied to under 18’s anyway. The requirement would impact on timings for radio and TV advertising.

20. Agree, however we would have possible concerns over the element regarding no medium should be used if more than 25% of audience is under 18 years of age and how this can be policed with regards to social media marketing communications.
21. Agree
22. Agree
23. As the CAP code requires marketing communications to not be misleading and also to be socially responsible, there is an argument to say that e-cigarettes which do not contain nicotine would be caught principally by these requirements, particularly if the definition proposed in the consultation under 11.3 is adopted, as the definition specifically refers to nicotine containing vapour. Therefore, under this definition, a nicotine free e-cigarette cannot be an e-cigarette.
24. Notwithstanding the response to Q. 23, this suggests that there may be additional rules and requirements for the products which do not contain nicotine over those that do. Accepting that nicotine is essentially a harmful product, it seems contradictory to consider imposing greater requirements on a nicotine free e-cigarette.
25. We would argue that marketing communications for e-cigarettes which are licensed medicines (and marketing which misleadingly makes false medicinal claims) should be the sole remit of the MHRA to regulate.
26. Agree in part, though it creates uncertainty over the status of nicotine free e-cigarettes and also needs to clarify whether licensed nicotine replacement products are included or not. Under the proposed definition in 11.3, some inhalators which are licensed nicotine replacement products would meet the technical definition.
27. As and when e-cigarettes which are licensed medicines become available, clear distinction between marketing communications for unlicensed and licensed products need to be made and therefore clarity must be provided by both CAP/ ASA and the MHRA and CAP must take into account future developments and medicines advertising requirements when drafting any specific e-cigarette rules or guidance. This would be especially relevant when a marketer is responsible for (either manufacturing or retailing) both licensed and unlicensed products in order to provide clarity to the marketer and avoid consumers being misled. The ASA/ CAP view must be consistent.
28. No further comments.



British Heart Foundation response: CAP and BCAP consultation on the marketing of e-cigarettes

About the British Heart Foundation

The British Heart Foundation (BHF) is the nation's leading heart charity. We are working to achieve our vision of a world in which people do not die prematurely or suffer from cardiovascular disease (CVD). In the fight against CVD we fund ground breaking medical research, provide support and care to people living with heart disease and advocate for change.

We are actively involved in tobacco control issues because of the strong association between smoked tobacco and ill-health including coronary heart disease (CHD) – the UK's single biggest killer. Smoking is a major risk factor for CHD, and smokers are almost twice as likely to have a fatal heart attack as non-smokers.

We are a founding member of the Smokefree Action Coalition – a group of 180 organisations that are committed to reducing the harm caused by tobacco. We also part fund Action on Smoking and Health (ASH), the campaigning public health charity committed to eliminating the harm caused by tobacco.

About this response

The BHF's response is broadly supportive of the consultation response submitted by ASH. The areas in which we support ASH's recommendations are referenced in each point below.

General points

In addition to the comments made in response to each rule set out in the consultation, we believe that the revised Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) rules on the marketing of e-cigarettes should take the following principles into account:

- The BHF recognises that e-cigarettes are likely to be significantly less harmful than smoked tobacco. They are therefore much closer in kind to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
- We would therefore like to see the medicinal regulation of e-cigarettes to ensure the safety, quality and efficacy of e-cigarettes and to ensure they are regulated and marketed according to how they are being increasingly used – as a cessation aid.
- Research carried out for ASH also suggests that there is no current compelling evidence to suggest that young people are using electronic cigarettes as a “gateway” to smoking at present. However, this could change particularly if advertising and promotion of electronic cigarettes glamorizes the use of these products and promotes their use to young people. The rules must be vigilant in preventing this.
- To ensure the effectiveness of the rules, we recommend continued monitoring of e-cigarette marketing to ensure that it does not interfere with existing quit messages, or encourage non-smokers or children to start using e-cigarettes.

- We are also aware that this is an evolving market, with a growing range of products and brand names. The rules should therefore account for electronic cigarettes and “*other nicotine containing products*” to ensure absolute clarity of what is included.
- We support a ban on sale of e-cigarettes to under 18s. It follows that electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.
- In addition to the points raised in this consultation, we are concerned about the possible impact the rising popularity of electronic cigarettes could have on the progress that has been made to denormalise smoking through the smoking ban and restrictions on tobacco advertising. This issue requires further research.

Detailed response

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

- We agree with the principle that electronic cigarette advertising and promotion should be socially responsible. However, we agree with ASH’s suggested re-wording to make the rule tighter and to include “other nicotine containing products” to account for new products that are launched as this market develops.
- Revise rule 1 to read (revisions in bold):

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

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

- We believe this rule should be strengthened to include the general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour.
- We support the revision set-out in ASH’s consultation response (revisions in bold):

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

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

- We believe that this rule needs to be strengthened so that e-cigarettes are **required** to be presented as an alternative to tobacco. All advertising and promotion of electronic

cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine.

- We support the revision set-out in ASH's consultation response (revisions in bold):

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

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

- We are concerned about the potential for marketing of e-cigarettes to be confused or strongly associated with tobacco products through the use of descriptors such as "smoked", or the use of imagery or scenarios that could be associated with smoking.
- At the moment, we do not advocate the banning of the description 'e-cigarette' on the basis of practicality. However, we do believe rule 4 could be strengthened to give further guidance on the purpose of electronic cigarettes. Our suggested revision would read:

Rule 4: *Marketing communications / advertisements of electronic cigarettes **and other nicotine containing products must make clear that the product is an alternative to tobacco and ensure there can be no confusion with cigarettes or tobacco products.***

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

- We agree with the wording of this rule, however would recommend that addition of nicotine being an addictive substance
- The rule would therefore read:
- **Rule 5:** *Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not] **and that nicotine is an addictive substance.** They may include factual information about other product ingredients.*

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

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

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

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

- We agree with the wording of Rule 7 on the proviso that it is extended to include “other nicotine containing products” to account for the evolution of this market as set out in the general principles.

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

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

- As above, we support ASH in agreeing with the inclusion of this rule revised as follows:

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

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

- We agree with this rule. As set out in the ‘general principles’, we believe that electronic cigarettes and other nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people.

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

- We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. We therefore agree with the wording of this rule.
- The use of the age of 25 is in conformity with rules on alcohol advertising. While we recognise that use of electronic cigarettes as an alternative to smoking is less harmful than heavy alcohol consumption, we would still advocate the use of actors aged 25 and above to ensure there is no doubt about the age restrictions on the use of electronic cigarettes.

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

- We believe that the rules that ensure nicotine containing products should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people are appropriate without this addition.
- We believe that further research on the effectiveness of this measure in relation to electronic cigarettes is needed before making this a rule.

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

- We support ASH's amendment to the wording of this rule:

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

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

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

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

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

Additional questions

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

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

- We believe that the rules should apply to e-cigarettes that do not contain nicotine. As stated in rule 5, marketing of e-cigarettes that do contain nicotine must state this in all marketing / communications and advertising.

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

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

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

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

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

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

- There is no reference to use of social media in the rules as currently drafted. Additional rules need to be inserted to ensure that the same standards and principles apply in all forms of marketing and advertising.
- This is a rapidly evolving area and these rules need to be regularly revised in the light of emerging evidence.

Contact

- This consultation has been submitted by the British Heart Foundation on 28 April 2014

CAP and BCAP Consultation on the Marketing of Electronic Cigarettes

About the British Lung Foundation

This response to the CAP and BCAP consultation document is submitted on behalf of the British Lung Foundation (BLF). One person in five in the UK is affected by lung disease with millions more at risk. The British Lung Foundation (BLF) is the UK's lung charity and we are here for every one of them, whatever their condition. Lung disease can be frightening and debilitating. We offer hope and support at every step so that no one has to face it alone. We promote greater understanding of lung disease and we campaign for positive change in the nation's lung health. We fund vital research, so that new treatments and cures can help save lives.

We work closely with Action on Smoking and Health on tobacco control issues and have drawn heavily on their response to this consultation.

Relevant Facts

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

1. Electronic cigarettes are not cigarettes in any meaningful sense - they are nicotine delivery systems that do not contain tobacco. The nicotine is delivered orally to the user in the form of vapour rather than in the form of smoke. They are therefore much closer in kind to other non-tobacco licensed nicotine products, such as sprays, patches and gum, than they are to cigarettes.
2. Nicotine is an addictive drug that can be toxic in relatively low doses. However, by far the greatest harm caused by cigarettes results from other toxic ingredients of cigarette smoke.¹
3. Electronic cigarettes are therefore significantly less harmful than smoked tobacco, and are currently primarily used by smokers as an aid to cutting down on cigarette use or quitting smoking altogether.^{2,3}
4. Nonetheless, electronic cigarettes are not harmless. Analysis of two different brands of electronic cigarettes has revealed that a number of carcinogens and toxic chemicals are present in the products.⁴ Furthermore, the advertising and promotion of products containing an addictive substance nicotine should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.
5. The BLF therefore considers that electronic cigarettes should only be promoted to existing smokers as an aid to quitting.

It is estimated that in 2013 there were 1.3 million current users of electronic cigarettes in the UK.⁵ This number was almost entirely made up of current and ex-smokers; with perhaps as many as 400,000 people having fully replaced smoking with e-cigarette use.⁶ There is a concern that electronic cigarettes may be promoted to non-smokers and under-18s. Due to nicotine being a highly addictive substance, the promotion of electronic cigarettes to these groups may subsequently increase smoking rates and 're-normalise' the act of smoking. As the popularity of these products continues to grow, every effort must be made to ensure that electronic cigarettes are not marketed or promoted to children.

Under the EU Tobacco Products Directive cross-border advertising of electronic cigarettes will be unlawful after the Directive comes into effect (likely around mid-2016), unless they are authorised as medicinal products. This means that no TV, radio, electronic or print advertising will be allowed. The advertising permitted will essentially be limited to advertising which only has domestic reach such as billboard, bus and point of sale. The UK Medicines and Healthcare Products Regulatory Agency (MHRA) has said that it: “continues to encourage companies to voluntarily submit medicines licence applications for electronic cigarettes and other nicotine containing products as medicines”.⁷

General Principles

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

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

Answers to Consultation Questions

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

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

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

We agree with the principle that electronic cigarette advertising and promotion should be socially responsible. This rule could be strengthened to reflect:

1. Explicit reference to the fact that electronic cigarettes and other nicotine containing products are an alternative to tobacco, and that any promotion of these products should only be aimed at people who currently consume tobacco.

2. There have been several reports of poisoning from children drinking the concentrated nicotine fluid. Advertising should contain reference to the need to store and use electronic cigarettes, refill containers, chargers and other nicotine containing products safely and away from children.
3. The same rules should apply to electronic cigarettes which do not contain nicotine, as there is a real danger of re-normalising smoking behaviour. Products which look like cigarettes and do not contain nicotine should therefore be subject to the same rules as other nicotine-containing electronic cigarettes.

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

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

We agree with the wording of Rule 2, but believe that it could be strengthened. Some brands of electronic cigarettes have already imitated the colours and fonts of existing brands of cigarettes. There is therefore a danger that the branding of electronic cigarettes is used to promote brands of tobacco, which are subject to much more stringent advertising laws. This would especially be an issue if regulations that would introduce standardised packaging for tobacco products are implemented in the UK in the near future; electronic cigarettes could become a vehicle for renewed cigarette advertising.

We recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4.

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

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

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

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

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

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

The rule may need to be strengthened so that all advertising and promotion of electronic cigarettes and other nicotine containing products should be directed at existing tobacco users and not at potential new users of nicotine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We agree with the inclusion of this rule revised to include other nicotine containing products. Suggested revision to Rule 7: “Marketing communications / advertisements must not link electronic cigarettes **or other nicotine containing products** with gambling, alcohol or illicit drugs.”

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

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

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

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

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

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

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

Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children. This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to

smokers that smoking cuts you out of family life. We therefore believe rule 9 should be revised and the second two sentences removed.

The advertisements referred to in the preceding paragraphs can be found here:

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

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

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

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

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and over 80% by the age of 20.⁸ The highest rates of smoking are amongst young people in their early twenties and by the age of 25 over 40% of young people have been, and nearly one in four still are, regular smokers.⁹

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

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

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

Placing an "18+ message" on products may not always produce the desired effect on children and young people. Indeed there is good evidence that tobacco industry youth prevention media campaigns that position smoking as an adult habit are not effective.¹⁰ We would prefer a revised set of rules, on the principles set out above, which require that electronic cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

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

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

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

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

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

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

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

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

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

Additional Questions

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

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

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

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

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

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

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

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

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

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

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

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

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Committee of Advertising Practice
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Board of Science

28 April 2014

Dear Sir/Madam

Consultation on the marketing of e-cigarettes

The British Medical Association (BMA) is a voluntary professional association and an independent trade union which represents doctors and medical students from all branches of medicine throughout the UK. With a membership of over 153,000 we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality health care.

The Association welcomes the opportunity to respond to the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) consultation on the marketing of e-cigarettes. While we recognise the potential for these products to reduce the harm associated with tobacco use, the evidence for any public health benefit is not yet well established, and there is a lack of robust research and evidence in this area. Despite this, the availability and promotion of e-cigarettes is proliferating. We are concerned that this may have an adverse impact, reinforcing conventional cigarette smoking habits, as well as indirectly promoting tobacco smoking and increasing the likelihood of young people starting to smoke.^{1,2,3} We therefore believe that a strong regulatory framework is required to ensure that e-cigarettes are only marketed to smokers, to encourage them to cut down and quit smoking conventional tobacco cigarettes.

Emerging evidence suggests that e-cigarettes are used by current smokers and recent ex-smokers primarily for the purposes of cutting down and quitting smoking conventional tobacco cigarettes. The majority (>80%) of e-cigarette users are current smokers.⁴ Among adults, approximately 11-16 per cent of current smokers, three per cent of ex-smokers, and less than one per cent of non-smokers use the product in England.^{4,5} Despite not being licensed as a nicotine replacement therapy (NRT), surveys have found that e-cigarettes are now the most common nicotine-containing product (NCP) used for quit attempts by smokers.⁴ The most common reasons for use of e-cigarettes by current smokers are to reduce consumption of tobacco (31%), or attempt to quit smoking (30%). For ex-smokers, the most common reason for use was to help quit (48%), while others use them to prevent relapse to smoking (32%).⁵

There is insufficient evidence demonstrating that e-cigarettes are effective in helping smokers cut down and quit, or preventing relapse. Some small peer-reviewed studies have found that e-cigarettes may be effective in decreasing cigarette consumption over a six to twelve month period in smokers,^{6,7,8} and have comparable effectiveness as licensed NRT in helping smokers to quit (less than ten per cent of smokers attempting to quit achieve abstinence after 12 months using NRT or e-cigarettes).⁸

The BMA supports the UK Government decision that the Medicines and Healthcare Products Regulatory Agency (MHRA) should regulate e-cigarettes as a medicinal product. This best reflects the products actual and intended use, and would bring the regulation of e-cigarettes in line with other available nicotine replacement therapy (NRT) products, ensuring their effectiveness, quality, and safety. The Association also recognises that e-cigarettes will be regulated under the European Union Tobacco Products Directive (TPD).

As the MHRA regulation and TPD legislation are not expected to come into force until 2016, the BMA welcomes the CAP and BCAP proposals for new rules for the advertising of e-cigarettes, and believes they should be in line with the following principles.

1. *The marketing of e-cigarettes should not appeal to children.*

A central goal of tobacco control policy is to prevent individuals from starting to use tobacco, in particular children and young people. The BMA believes that new products – tobacco or otherwise – should not undermine this important aim. The BMA agrees with rules 9-12 proposed in the CAP and BCAP consultation relating to the protection of children and young people.

The Children and Families Act 2014 includes provisions for the Secretary of State to prohibit the sale of e-cigarettes to children under-18 years of age. Until such time that these age restrictions are implemented, we believe that the advertising and marketing of e-cigarettes should reflect that these products are not intended for use by children.

E-cigarettes have the potential to attract young people to tobacco smoking. It is essential that the marketing of e-cigarettes in no way appeals to children and is not easily accessed by children. BMA members have expressed concern over the e-cigarette marketing methods used across a range of advertising mediums and locations that are likely to appeal to young people and non-smokers. These include TV and radio adverts, on billboards near schools, university freshers fairs, and the marketing of flavoured e-cigarettes.⁹

Surveys have found that awareness of e-cigarettes among children is high (66% among 11-18 year olds, and 83% among 16-18 year olds).⁵ While the use of e-cigarettes among 11-18 year olds is low in the UK, research has found that two per cent use them monthly or weekly, and 7 per cent have tried e-cigarettes at least once.⁵ Research from the United States found that e-cigarette use is increasing among adolescents and that they may act as a gateway product to conventional smoking.¹⁰ Adolescents using e-cigarettes are more likely to use conventional cigarettes and less likely to intend to quit smoking.¹⁰

2. *Marketing of e-cigarettes should not make or imply any claims of effectiveness as a smoking cessation aid, unless the product has obtained a medicines licence from the MHRA.*

The regulations for the marketing of e-cigarettes should reflect that there is insufficient peer reviewed evidence demonstrating their effectiveness as a quitting aid or in reducing tobacco consumption.¹¹ Manufacturers of e-cigarettes are eligible to apply for a medicines licence from the MHRA for their products, upon demonstrating their safety, quality and efficacy. Licensed e-cigarettes should be free to make specific health claims about e-cigarettes and their effectiveness in helping smokers to cut down and quit smoking conventional cigarettes. The BMA expects that the forthcoming MHRA regulations would include additional guidelines on the marketing of e-cigarettes as medicinal products.

The marketing communications of all unlicensed e-cigarettes should not imply that the products can be used for smoking cessation.

3. *Marketing of e-cigarettes should not include any misleading information that implies a health benefit of e-cigarettes.*

The marketing of e-cigarettes not licensed as medicines should not imply any general health benefits, or use misleading language such as 'safe', 'healthier', or 'harmless'. Analysis of the growing market for e-cigarette suggests that these approaches are being used in marketing and advertising, as well as public relations communications.^{1,2,12} The BMA notes that in the UK, the Advertising Standards Authority has recently ruled that certain e-cigarette advertisements were considered misleading and made unsubstantiated claims relating to health.^{1,13}

The BMA agrees that the marketing of e-cigarettes as an 'alternative to tobacco' does not directly imply a health or medicinal claim.

4. *Marketing of e-cigarettes should not promote the re-normalisation of conventional tobacco cigarette smoking.*

There is concern that e-cigarettes may undermine smoking prevention and cessation, and their use may reinforce the normalcy of tobacco smoking behaviours.^{11,14} Of particular concern is how some e-cigarettes closely resemble conventional tobacco cigarettes, in terms of visual appearance, product design and packaging, nomenclature, how they are used, as well as product marketing features that are potentially highly attractive to children and young people.^{15,2,9} Their similarity to conventional cigarettes has the potential to create confusion about smokefree legislation, risks the public mistaking e-cigarette marketing for tobacco marketing, and may indirectly promote tobacco smoking.

The marketing of e-cigarettes should not promote the use of e-cigarettes as a means of circumventing laws and policies for smokefree workplaces and public spaces. Although the majority of users state that they use e-cigarettes mainly to reduce tobacco consumption or quit smoking conventional cigarettes, a significant proportion (15%) report that their primary purpose for using e-cigarettes is to circumvent the current smokefree legislation in the UK which prohibits smoking in enclosed public places.^{1,5,9,15} This dual use of e-cigarettes implicitly promotes tobacco smoking.^{1,16} The marketing of e-cigarettes should not encourage dual use because this directly undermines the goals of tobacco control policy. The pricing of e-cigarettes should also not be used as a marketing tool to promote dual use or appeal to non-smokers and young people.

While e-cigarettes may be marketed as an 'alternative to tobacco', they should not be glamourised or portrayed as a positive or attractive lifestyle choice. This includes celebrity endorsement, and sponsorship of sports and sporting events, as these approaches are likely to appeal to young people and non smokers.^{1,14} The BMA agrees that e-cigarettes should not be linked to alcohol, illicit drugs or gambling.

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

Yours faithfully

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Response to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation on the marketing of electronic cigarettes (e-cigarettes)

This response to the CAP and BCAP consultation document is submitted on behalf of Broxtowe Borough Council, an active member of the Nottinghamshire Strategic Tobacco Control Alliance Group (STAG) and working towards a Smoke Free Nottinghamshire..

Key messages;

- An e-cigarette, or electronic cigarette, is designed as a substitute for tobacco smoking. Some look and feel like conventional cigarettes; however others devices bear less of a resemblance. More and more people are using e-cigarettes
- There are many different manufacturers and types of e-cigarette available
- The long term health effects are unknown
- Some contain nicotine and some don't
- There is a lack of specific regulation at the moment
- Using electronic cigarettes is much less dangerous than smoking, and a significant proportion of current consumers (Survey of smokers' YouGov 2010. Total sample size 1380 UK adult smokers) use them in an attempt to quit but current evidence does not suggest that they are effective in supporting this over and above more traditional NRT. The British Medical Association (BMA) advises that "...while e-cigarettes are unregulated and their safety cannot be assured, they are likely to be a lower risk than continuing to smoke." (BMA calls for stronger regulation of e-cigarettes: A briefing from the Board of Science and the Occupational Medicine Committee, March 2012) **However, as yet there has been no research to assess the long term health effects of using electronic cigarettes.**
- Nonetheless, advertising and promotion of products containing an addictive drug should always be subject to close supervision by regulatory authorities, since addiction undermines the principle of informed consent by adult consumers.

Any product which normalises smoking/inhalation of material needs to be carefully advertised.

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

General Principles

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

1. Electronic cigarettes should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
2. As far as possible, electronic cigarettes should be advertised as an alternative to smoking cigarettes or other tobacco products.
3. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
4. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people
5. Electronic cigarette advertising should always include a clear warning that they contain nicotine, an addictive drug, and a toxic substance that should be stored and consumed safely and away from children.
6. Where e-cigarette products do have a medicines licence, they should be advertised and marketed in a way that is appropriate for medical and healthcare products, which may include specific claims of health benefits (e.g. that they may help in quitting smoking), where these are well supported by scientific evidence.

Answers to Consultation Questions

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

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

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

We agree with the principle that e-cigarette advertising and promotion should be socially responsible. For example;

- Electronic cigarettes are an alternative to tobacco, and that they are therefore not suitable for use by people who do not currently use tobacco products.
- A prohibition on wording that suggests that consumption of electronic cigarettes has positive qualities that may be mistakenly perceived to exist by consumers, as a consequence of the addictive nature of the product. An example would be the use of the word “satisfying”, which was frequently used in relation to cigarettes in the era of widespread tobacco advertising. Any “satisfaction” for consumers is likely to be largely a consequence of relief from nicotine withdrawal symptoms.
- All advertising should contain a prominent reference to the toxicity of nicotine and the need to store and use e-cigarettes and refill containers safely and away from children.

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

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

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

We agree with the proposed rule as a starting point but believe it needs to be strengthened. We would recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4.

This is needed since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products.

See below for suggested additional wording to rule 2 in bold and italics.

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

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

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

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

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

We agree with the proposed wording (including square brackets) of this rule, except that we would recommend a requirement to present electronic cigarettes as an

alternative to tobacco. This is in line with rule 1 as advertising and promotion should be directed at existing tobacco users and not at potential new users of nicotine.

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

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

We agree with the inclusion this rule. However, the suggestion for revised wording is: "Marketing communications / advertisements must make clear that the product is an electronic cigarette **and should not use any descriptor that might reasonably be expected to create confusion with cigarettes.**"

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

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

We agree with the inclusion and wording of this rule, including the words in square brackets.

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

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

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

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

We welcome the statement that the Committees "are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine". However, our support for rule 6 depends on acceptance of our modified rule 3 and 1 above **that, all electronic cigarettes should be required to be advertised and promoted as an alternative to tobacco.**

We would suggest wording around explicitly and implicitly as promotion to intended target groups of consumers is of course an important and well understood part of advertising and marketing, and we therefore wish the rules, taken together, to be so worded as to make it as difficult as possible for any e-cigarette manufacturer to target those who do not currently use tobacco.

Wording to read;

Marketing communications / advertisements must not encourage either explicitly or implicitly, non-smokers or non-nicotine users to use e-cigarettes.

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

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

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

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

We consider that two principles should be applied in a revised wording of this rule. First: no advertisements or communications should present electronic cigarettes in such a way as to glamorise and hence promote their use to non-tobacco users. Secondly: presenting a connection with alcohol would be acceptable if and only if this is done in a way that helps to promote the electronic cigarette to existing tobacco users. An example might be an advertisement set in a private social occasion such as a party or dinner, where a tobacco user opts to use an electronic cigarette as an alternative to tobacco use. One reason why this would be a useful (“socially responsible”) revision is that social drinking is well associated with failed attempts to cut down on or quit smoking.

We of course agree that electronic cigarettes should not be associated with illegal drugs. We also agree that they should not be associated with gambling.

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

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

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

We agree with the inclusion and wording of this rule.

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

or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

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

We support the first sentence of this rule. However, we believe a balance needs to be struck between prohibiting advertising that might promote use of electronic cigarettes to young people and non-smokers and ensuring that advertising which effectively encourages the uptake of such products by smokers is allowed. To give a concrete example an advertisement which recently ran on British TV was very clearly directed at smokers with an important message 'Friends don't let friends smoke'. This advertisement conformed to the general principles set out, however strict application of rule 9 as it stands would have prevented it being shown as it included two friends behaving in a juvenile manner. This was part of a narrative about them growing up, getting married and one persuading the other to swap cigarettes for electronic cigarettes. Another example is an advertisement featuring a dancing baby which was banned by the ASA because it might be appealing to children. This was despite the fact the ad conformed to all the general principles which we set out above and had a very strong message to smokers that smoking cuts you out of family life. We therefore believe rule 9 should be revised and the second two sentences removed.

See links below for the ads in question:

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

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

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

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

We support the age of sale restriction on sales of electronic cigarettes of 18 and believe that the rules should be consistent with this. Current data shows that two thirds of smokers became addicted to cigarettes under the age of 18 and that the highest rates of smoking are amongst young people in their early twenties.

We would electronic cigarettes being promoted to all smokers who are over 18 in age as an alternative to smoking instead of 25.

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

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

This links with general principles and 9 which require that e-cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

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

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

We agree with the inclusion and wording of this rule.

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

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

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

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

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

All electronic cigarette advertisements should be centrally cleared prior to publication/transmission.

Additional Questions

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

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

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

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

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

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

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

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

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

There is no reference to use of social media in the rules as currently drafted. Social media is a rapidly growing medium which has been used to promote electronic cigarette use and ASH believes this is a major challenge which needs to be considered by CAP.

There is no reference to sport sponsorship, should this be considered as part of this consultation.

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