



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=NKbfXT2M0Jl&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
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