

UK Vaping Industry Association

Submission to the E-Cigarette Advertising Consultation

October 2017

Summary

The UKVIA welcomes the proposal to change the Code of Advertising Practice and the Broadcasting Code of Advertising Practice. Vaping could be the biggest public health prize of the 21st century and it is essential that public health authorities, charities, the industry and non-governmental organisations are able to share factual information with consumers about this potentially life changing alternative to smoking.

About the UKVIA

The UKVIA represents, supports and promotes the fastest growing consumer goods sector in the UK. It is a partnership of the leading producers, distributors and vendors of vaping products. Its vision is to create a world where the evidence about the life changing public health benefits of vaping products is fully understood and their positive impact is maximised. The UKVIA supports sensible, evidence based vaping regulation that protects consumers and ensures the highest levels of product quality so that consumers, the government, regulators and the public health community have absolute confidence in the industry and smokers are encouraged to make the switch to vaping

Responses to the specific questions posed by the Consultation

Questions 1 and 2

Do you agree with CAP and BCAP's proposal to remove the prohibition on health claims from unlicensed nicotine-containing e-cigarettes?

Do you agree with CAP and BCAP's proposed changes to the wording of the rules?

The UKVIA supports the proposed changes to CAP 22.5 and BCAP 33.5 to remove the restrictions on including health claims within advertising for e-cigarettes.

The current restrictions are out of date and do not accurately reflect the public health potential of vaping. A strong consensus has developed between leading and respected health organisations that vaping is considerably less harmful than smoking, and that it could represent one of the biggest opportunities for public health in the 21st century. The quantity and quality of evidence supporting the public health potential of vaping has been increasing dramatically in the last few years and particularly in 2017:

- In September 2015, thirteen organisations, including Public Health England (PHE) and Cancer Research UK signed a joint statement on vaping.¹ This statement advocated the public health opportunity presented by smokers switching to vaping products, reporting that e-cigarettes are at least “95% less harmful to your health than cigarettes”. This statement was ratified again in July 2016.²

¹ E-Cigarettes: an emerging public health consensus, 15 September 2015, www.gov.uk/government/news/e-cigarettes-an-emerging-public-health-consensus

² E-Cigarettes: an emerging public health consensus, July 2016, www.gov.uk/government/uploads/system/uploads/attachment_data/file/534708/E-cigarettes_joint_consensus_statement_2016.pdf

- In April 2016 the Royal College of Physicians published a report titled: *Nicotine without smoke: Tobacco harm reduction*. In that report they found that “the hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.”³
- In April 2017 the Royal Society for Public Health called for all local stop smoking services to become “e-cigarette friendly.”⁴
- In 2017, Cancer Research UK released the findings of one of the first long-term clinical studies of the effects of e-cigarettes on people who had switched from smoking to vaping, or vaped whilst still smoking.⁵ This research found that levels of cancer-causing chemicals and other toxins were substantially reduced in those who had completely switched to e-cigarettes compared to tobacco cigarette smokers and were comparable to the levels found in long-term users of nicotine replacement therapy products.
- The Department of Health acknowledged the public health potential of vaping in its Tobacco Control Plan, published in May 2017. The Plan contained a commitment that PHE would include messages about the relative safety of vaping products in their quit smoking campaigns. These messages have been highly visible in the Stoptober campaign 2017, and have been accompanied by many local authorities promoting vaping as an effective part of smoking cessation for the first time.
- In October 2017, the British Psychological Society called for e-cigarettes to be promoted as a method of stopping smoking in its behaviour change report.⁶

However, despite the strength of this public health consensus, the UKVIA is concerned that the public are receiving mixed and confusing messages from the media, regulators and government on the potential benefits and risks of vaping:

- This has led to a situation where there is a strong consensus that vaping is considerably less harmful than smoking among public health professionals, but an increasingly negative perception of vaping by consumers.
- In the UK, public perceptions around vaping products continue to be dictated by misleading claims. In 2017, Action on Smoking and Health (ASH) found that perceptions of vaping products among UK smokers are getting worse - only 20% agreed that vaping products are “a lot less harmful” than smoking, compared to 31% in 2015. In addition, the proportion of UK adults who believe that vaping products are “as harmful”, or “more harmful” than smoking nearly quadrupled from 7% in 2013 to 26% in 2017. Furthermore, the number of vapers in the UK increased by just 4% from 2016 to 2017, compared to 86% in 2013, 62% in 2014, and 24% in 2015.⁷
- This increasingly negative perception is in large part fuelled by the media headlines that often surround vaping products. In particular, alarmist headlines are often generated based on pieces of research with dubious credentials and a lack of scientific rigour. The UKVIA has noted that such pieces often exaggerate small or potential risks, cite poor quality data, use data based on animals or use short term data that does not compare vaping with smoking.⁸

³ Tobacco Advisory Group of the Royal College of Physicians. *Nicotine without smoke: tobacco harm reduction*. Royal College of Physicians, 2016 www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0

⁴ Royal Society for Public Health, *E-Cigarettes Position Paper*, April 2017

⁵ www.cancerresearchuk.org/about-us/cancer-news/press-release/2017-02-06-e-cigarettes-safer-than-smoking-says-long-term-study

⁶ The British Psychological Society, *Changing Behaviour: Electronic Cigarettes*, October 2017, <https://beta.bps.org.uk/sites/beta.bps.org.uk/files/Policy%20-%20Files/Changing%20behaviour%20-%20electronic%20cigarettes.pdf>

⁷ ASH factsheet: *Use of electronic cigarettes (vapourisers) among adults in Great Britain*, May 2017 <http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/>

⁸ For example, see the study published in the *New England Journal of Medicine* in January 2015, Jensen et al *Hidden Formaldehyde in E-cigarette Aerosols*, which used unrealistic scientific procedures to find a high level of a carcinogen in e-cigarette vapour. This led to media headlines suggesting vaping has a higher cancer risk than smoking and damaged

The current CAP and BCAP prevent the industry taking steps to use advertising to correct this negative perception, therefore ensuring that consumers fail to receive accurate, credible information about the relative safety of vaping versus smoking. This risks deterring smokers who could significantly benefit from a switch to vaping. **If the Government and public health authorities believe vaping is manifestly less harmful than smoking, then the industry must be allowed to inform consumers of the potential of vaping as an alternative to smoking. Only by building confidence in the public health credentials of vaping, will it be possible to convince every smoker that switching to e-cigarettes could positively change their lives, and support the Government in achieving its smoking reduction targets by 2022.**⁹

Questions 3 and 4

Do you agree with CAP's proposal to add qualifying text to the introductory text of the e-cigarette section of its Code as set out above?

Do you agree with the wording proposed?

The UKVIA supports the addition of text to the e-cigarette section of CAP and the proposed wording to remove the restrictions on including health claims within advertising for e-cigarettes to counter smoking. E-cigarettes have a significant role to play in encouraging smokers to give up smoking and it is crucial that public health authorities, charities, the industry and non-governmental organisations are able to advertise vaping as a less harmful alternative to cigarettes:

- ONS statistics show that there are an estimated 7.6 million smokers in the UK. This presents a huge potential opportunity to convince smokers to switch to vaping products, improve public health and save billions of pounds for the NHS.¹⁰
- ASH has found that, of the nearly 3m vapers in the UK, over half have given up smoking entirely, and that 97% of vapers are either smokers or ex-smokers.¹¹
- The value of the health gains associated with a single successful quit attempt is £74,000 according to the MHRA.¹² Therefore, the ASH figures suggest that vaping has already saved the UK in the region of £111billion and could save more.¹³
- Research from the US, published in the British Medical Journal, has found that the use of e-cigarettes among US adults is linked to a significant increase in the numbers of people quitting smoking. The study demonstrated that vapers were more likely to attempt to stop smoking (60%), than non-vapers (40%).¹⁴

consumer trust in vaping. Subsequent testing confirmed the flaws in this research but could not reverse the damage to consumer protection (see <http://dx.doi.org/10.1136/tobaccocontrol-2017-053808>).

⁹ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017,

<https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>

¹⁰ Office of National Statistics, Adult Smoking Habits in the UK: 2016,

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2016>

¹¹ ASH factsheet: Use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2017

<http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/>

¹² All-Party Parliamentary Group on Smoking and Health, Burning Injustice Reducing tobacco-driven harm and inequality - Recommendations to the Government, local authorities and the NHS, page 8

¹³ Of the 2.8 million adults using vaping products, 1.5 million are ex-smokers. See ASH Fact Sheet on the use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2017, <http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/> 1.5 million vapers who are ex-smokers multiplied by the quit smoking saving of £74,000 = £111billion.

¹⁴ E-cigarette use and associated changes in population smoking cessation: evidence from US current population surveys, BMJ 2017;358:j3262, <http://www.bmj.com/content/358/bmj.j3262>

The UKVIA welcomes the move by PHE to include vaping as an alternative to smoking within their 2017 Stoptober campaign.¹⁵ This is a significant step forward for communicating vaping as a viable alternative to smoking. However, it is essential that all parts of the industry are able to actively advertise the public health potential of e-cigarettes versus smoking, to convince more smokers to make the life changing decision to switch to vaping.

Question 5

Do you have any other information or evidence that you think might be relevant to CAP's consideration of its regulation of public health advertisements which refer to e-cigarettes?

Notwithstanding the support for the proposed CAP and BCAP changes discussed above, the UKVIA considers the advertising rules around e-cigarettes to be confusing and disproportionate to their public health potential. The UKVIA supports sensible, evidence based regulations. Indeed, the UKVIA considers that only products that are in full compliance with current regulations, and are notified with the MHRA, should be able to use health related messages in their advertising or communications. The 95% less harmful statement by Public Health England is based on high quality vaping products that have been through rigorous testing,¹⁶ and indeed the latest product developments have resulted in even further design and safety advances. It is necessary to guard against a situation where manufacturers of vaping products, who do not meet these high standards, are able to make health statements.

However, in return, the UKVIA believes that the regulatory regime must take the public health potential of vaping into account and clearly set vaping apart from tobacco products. Article 20 of the Tobacco Products Directive (TPD) has created a huge amount of confusion around advertising vaping products; it prohibits most, but not all, vaping products being advertised or promoted on television, radio, internet adverts and printed publications including newspapers and magazines, akin to tobacco restrictions. These restrictions severely curtail the ability of the industry to communicate the public health potential of vaping to smokers and existing vapers, and create a confusing climate for both consumers and the industry.

This consultation on removing some of the non-TPD advertising restrictions is welcome, as is the active promotion of e-cigarettes in Public Health England's Stoptober campaign. However, these changes alone are not enough and still do not correct a confusing and illogical regulatory regime. For example, as the consultation document acknowledges, despite the changes to BCAP it will still not be possible for the public health potential of vaping to be broadcast to consumers on TV and radio, yet confusingly adverts on the side of buses or in cinemas would be permitted.

A further regulatory inconsistency exists around e-cigarette liquids that do not contain nicotine; these liquids fall outside the advertising restrictions created by Article 20 of the TPD, despite some being specifically sold to be mixed with nicotine containing liquids. Moreover, in the UK these liquids are not necessarily subject to the same chemical tests that nicotine containing liquids are.¹⁷ The UKVIA is concerned that such e-liquids may contain untested levels of chemicals, or undesirable chemicals, which would not be allowed in nicotine containing e-liquids. Indeed these liquids could in theory contain anything, yet, inexplicably, could be advertised to consumers far more than nicotine containing liquids. This is the illogical and potentially dangerous result of the current regulatory regime, created without industry involvement or input.

¹⁵ See https://www.nhs.uk/oneyou/stoptober/home?gclid=CjwKCAjwxo3OBRBpEiwAS7X62TMrdcX8YnoOh3G-4NQW_YzpdvFHulaxADGfGEqBQvwPtuzIHZ15nxC4kAQAvD_BwE#gfzVVQTSxrB2soZu.97

¹⁶ E-Cigarettes: an emerging public health consensus, 15 September 2015, www.gov.uk/government/news/e-cigarettes-an-emerging-public-health-consensus

¹⁷ Although, it is worth noting that the same chemical tests are imposed on non-nicotine containing liquids in other EU countries, for example France and the Netherlands.

It is of paramount importance that the inconsistent picture created by Article 20 of the TPD is reviewed and reconciled with vaping's public health potential. **The Government's 2017 Tobacco Control Plan promised a review of Article 20 to identify areas for sensible deregulation. It is important that this review specifically considers the advertising regulations and is carried out urgently, with industry involvement.**