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The All-Party Parliamentary Group for Vaping

# Vaping in workplaces and public places

November 2018



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### Disclaimer

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**Chairman of the APPG for Vaping**

## Introduction

As an introduction to this topic, it is important to highlight that vaping is not smoking, nor are vapers the same as smokers. Vaping has its own behavioural characteristics and crucially, it is not subject to legislation prohibiting smoking indoors or in certain locations. Public Health England has also published clear guidance that vaping and smoking must be considered separately.

Yet, despite there being no legal imperative and guidance existing to the contrary, time and again I see notices or hear announcements in train stations, airports, pubs and restaurants stating that the use of cigarettes and e-cigarettes are prohibited in those areas. Vaping is also routinely banned in workplaces, inside and outside, outside hospitals and near public buildings and vapers (over 96% of whom are ex-smokers or smokers trying to quit)<sup>1</sup> are forced to use smoking shelters or smoking areas to vape.

It was this background that led the Group to conduct an inquiry, taking evidence from interested parties and reviewing vaping policies in workplaces, public locations and Parliament itself. We were keen to explore why vaping is simply treated like smoking, what effect is caused to vapers forced to use smoking shelters and if this type of conflation of smoking and vaping put smokers off switching.

One of the main issues we encountered was a perception that passive vaping or second-hand vaping is harmful to non-vapers in the vicinity. There is no evidence that this is the case and we have set out the evidence available in this area later in the report. I was pleased to note that the recent Science and Technology Committee Report into E-Cigarettes also supported this conclusion. However, there remains a perception amongst the public that passive vaping is as harmful as passive smoking and it is crucial for guidance in this area. Indeed, public vaping bans probably perpetuate this perception; after all why ban it if it is relatively harmless.

There was also a sense in the evidence we gathered that many employers and public places simply had not considered vaping and vapers as a separate category to smoking or had not considered vaping at all. There was a clear lack of understanding about vaping behaviour; for example knowing that vapers use their devices in frequent small doses throughout the day rather than a single significant dose from a cigarette.

Indeed, this lack of understanding was very evident in Parliament itself, a place many will look to for an example. There are only two designated vaping locations, and despite being a Member for 8 years, I still have no idea where either of these locations are.

To me these policies on vaping are hugely important; why would someone give up smoking if they are forced to stand outside in the rain to vape anyway? How much harder must it be to give up smoking when you have to be around smokers to vape? And crucially, what message is it sending to potential vapers when vaping is treated in the same way as smoking?

The Group is not advocating that vaping should be allowed everywhere; clearly there are times and locations when this would not be appropriate or fair to non-vapers, and of course discretion and consideration will always be important. Whilst there needs to be a balance that does not ignore the rights of non-smokers or non-vapers, it is clear to this Group that we need proper workplace and public place policies, combined with educating employers on the benefits of vaping for their staff, the type of workplace policy they need and why vaping should be treated differently to smoking. We have made recommendations in this report for each of these goals.

The government's health ambition is clear and welcome: to reduce smoking rates to below 12%. This will not be achieved however without common sense policy and practice.

# Recommendations

## **1 Employers should have a specific workplace vaping policy that balances the needs of current vapers or smokers looking to switch to vaping with those of non-vapers. The policy should:**

- a. Be separate to the workplace smoking policy;
- b. Make provision for designated indoor vaping areas that are easily accessible by employees.
- c. Permit vaping in all outside areas unless there is a legitimate safety or professional reason prohibiting vaping in some areas.
- d. Include guidelines for the reasonable vaping etiquette expected from vapers.

A sample workplace vaping policy is included in Appendix 1 but employers are encouraged to discuss the workplace vaping policy with employees, both vapers and non-vapers, before implementing a policy.

## **2 Public places should have specific vaping policies that are separate to smoking regulations and which:**

- a. Permits vaping indoors or designates a specific indoor location in which vaping is permitted.
- b. Permits vaping in all outdoor areas unless there is a specific safety reason for prohibiting vaping in a certain location.

## **3 The Parliamentary Estate must lead the way and act as an example to other workplaces and public places by becoming vape friendly. The current arrangements do not adequately cater for the needs of vapers; the designated vaping areas are outside and unknown to most members of staff.**

The Group has created a new vaping policy for the Parliamentary Estate to be inserted into the staff handbook and will be taking this recommendation forward with the relevant Parliamentary authorities (Appendix 2).

## **4 Public Health England (PHE) should expand its vaping awareness programme to correct some of the public misconceptions around vaping and so-called 'passive vaping'.**

There is no evidence that second hand vapour causes any harm to bystanders. PHE should work to educate employers, trade unions, public sector employers, trade associations and the owners of pubs and bars on accurate, evidence-based vaping policy, and of the public health potential if smokers switch to vaping.

## **5 Vapers should vape in a responsible way.**

In recognition of the concerns often expressed by non-vapers, and in understanding that some members of the public find the smell of vapour unpleasant even if the effect is not harmful, we recommend that all workplace and public place vaping policy also includes a requirement that vapers adhere to a charter or set of rules permitting only responsible vaping. Examples of this are included within the suggested policy for the Parliamentary Estate (Appendix 1) and sample workplace policy (Appendix 2).



## Background

The Group has taken evidence from several stakeholders from the public health community, the vaping industry, consumer representatives and employers across two separate evidence sessions. The evidence and points raised are dealt with in turn below.

### Existing vaping policies

Vaping is exempt from smoke free legislation including bans on smoking within workplaces and public places. Public policies and workplace policies are therefore left for individual workplaces to determine.

In July 2016, Public Health England published a new framework advice for businesses and employers concerning the use of vaping products<sup>2</sup>. Although the guidance acknowledges that different approaches will be appropriate in different places, it says that “policies should make clear the distinction between vaping and smoking.” In July 2017, the government’s Tobacco Control Plan reminded employers that the use of vaping products should not routinely be included in an organisation’s smoke free policy<sup>3</sup>.

Despite this guidance, the Group has established that vaping is routinely restricted or banned/restricted in public places and workplaces throughout the UK. Vaping is also routinely included within smoke-free policy rather than being subject to specific, evidence-based regulation. For example, Martin Cullip, a trustee of the New Nicotine Alliance and a business owner, gave evidence to the Group highlighting that in 2014 Transport for London banned vaping across all modes of transport, in all stations and other premises<sup>4</sup> and extended this ban to taxis or private hire vehicles<sup>5</sup>. This approach is also mirrored by other transport operators on trains but also in all stations including Southern Rail,<sup>6</sup> London North Eastern Railway<sup>7</sup> and Northern Trains<sup>8</sup>.

In addition to the imposition of bans on vaping by transport operators, it is striking that vaping is only dealt with by all the operators as part of smoke-free regulations. For example,

London North Eastern Railway reference vaping under the heading “smoking” and state “Smoking, including e-cigarettes, is not permitted”.<sup>9</sup> This contradicts the guidance from Public Health England and suggests that there has not been any consideration of the evidence around vaping or of available guidance in this area.

The Group found a similar position when considering other sectors. Vaping is banned as part of smoking policies at all Premier League football grounds<sup>10</sup> and at the Wimbledon tennis tournament.<sup>11</sup> Andrew Allison of the Freedom Association highlighted to the Group that his research into the vaping policies of UK councils found that almost 90% of councils make no distinction between vaping and smoking on council property.<sup>12</sup> This is also reflected in confusing advice given to employers; guidance from ACAS on the use of vaping products at work suggests that a policy on vaping can simply be added into existing smoking policy.<sup>13</sup>

The Group also received evidence from Jim Cathcart of the British Beer and Pub Association. Mr Cathcart highlighted that there is no industry wide guidance on vaping in pubs, although he accepted that this is a location in which many vapers would want to vape. He observed that some members of his Association choose to ban vaping, while others have more liberal policy but did not possess specific data on this topic. Anecdotally, Martin Cullip of the New Nicotine Alliance observed that the majority of pubs in his experience do not allow vaping inside. It was also observed that Wetherspoons bans vaping in all its pubs and has been vocal in advocating this ban.<sup>14</sup>

The rationale used for banning vaping in the manner set out above seems to be a combination of the following:

1. to protect non-vapers from a perceived risk from second-hand vapour;
2. to prevent non-vapers being annoyed by the smell of vaping;

3. because it is difficult to distinguish between vapour and smoke;
4. to avoid non-smokers being attracted to vaping.

The issue of second-hand vapour is dealt with in detail below, but it is apparent to the Group that these objections to vaping stem from a lack of knowledge or understanding about vaping and its potential risks or benefits. This was particularly apparent in the evidence given to the Group by Robert Baughan, a representative of the TUC and UNISON, who highlighted each of the concerns above but was particularly concerned that vaping would encourage non-smokers to vape or would cause harm through passive exposure to vapour. Mr Baughan was clear that he considered a workplace ban to be a proportionate action by an employer. This echoes previous comments by the TUC who have urged unions to ensure that vaping is subject to the same or similar restrictions as smoking in the workplace.<sup>15</sup>

There is no evidence that vaping encourages non-smokers to take up the habit; indeed over 96% of vapers are smokers or ex-smokers.<sup>16</sup> It is also difficult to accept that vaping can easily be confused for smoking in either appearance or smell and a better understanding of the products on the market by relevant bodies or employers would assist in this area. The vaping market has moved on from the early days of 'cigalikes' (vaping devices designed to look like cigarettes). The Group were shown a range of devices, and it is clear from current devices that there is little room for confusion with cigarettes either in terms of appearance or odour.

The Group acknowledges that non-vapers may dislike the smell of certain types of vapour. Dan Marchant of the UK Vaping Industry Association pointed to other behaviours that often generate a similar reaction such as strong-smelling food or perfume and suggested that these issues are regularly dealt with by a common sense approach in society. The Science and Technology Select Committee Report notes that: *"a liberalisation of the restrictions on e-cigarettes, which provide a popular route for people to stop smoking would result in non-vapers having to accommodate vapers for a relatively short period of time"*.<sup>17</sup> Andrew Allison of the Freedom Association suggested the application of a principle of tolerable harm; a non-vaper may not like the smell of vapour when they encounter it but this is much more tolerable than the harm caused by requiring vapers to share space with smokers.

The evidence presented to the Group clearly demonstrates that there is a general lack of understanding around the risks presented by vaping and a clear need for PHE's guidance in this area to be disseminated more widely. This should address many of the concerns discussed above. The Group has also considered (and sets out below) how a code of conduct for vapers, requiring responsible vaping could also alleviate concerns in this area.

## The importance of vaping policies

Dr Lynne Dawkins, from the Centre for Addictive Behaviours Research at London South Bank University, pointed the Group to her research for the British Psychological Society on the use of vaping for smoking cessation in which she highlights that for a switch to vaping to be successful there must be motivation, opportunity and capability for the smoker<sup>18</sup>. She suggested

that many smokers have the motivation and sometimes the capability to quit, but opportunities are often restricted and this is something that can be easily addressed and an area that must be focused on. The different implications are set out below.

### Vapers sharing smoking areas

Although PHE guidance is clear that it is not acceptable to require vapers to share the same outdoor space as smokers,<sup>19</sup> the reality of the vaping policies discussed above is that most vapers are only able to vape in designated smoking shelters or areas. This presents a number of problems:

1. **Difficulties stopping smoking.** Given that 96%<sup>20</sup> of vapers are either current or ex-smokers, consistent exposure to smoke risks encouraging vapers to return to smoking or to abandon quit attempts, not to mention the ongoing exposure to second-hand smoke. As John Dunne of the UK Vaping Industry Association memorably suggested to the Group (and to the Science and Technology Committee<sup>21</sup>), this is akin to *"putting an alcoholic in the bar: it does not make sense"*.
2. **Damaging the perception of vaping.** There was clear concern expressed to the Group and discussed amongst Members that by imposing a vaping ban, you reinforce the perception that vaping is as harmful to health as smoking. The government, PHE and other public health authorities in the UK are clear that vaping is at least 95% less harmful than smoking,<sup>22</sup> but the number of smokers who understand this evidence has decreased over recent years.<sup>23</sup> It is important that vaping policies do not reinforce this notion by applying smoke-free policies to vaping.
3. **Removing the incentive to vape.** Dr Lynne Dawkins suggested to the Group that to encourage smokers to make the switch to vaping, the aim of vaping and smoking policies must be to make smoking more difficult and vaping easier. If vaping is only permitted in outside difficult to access locations or in smoking areas, there is much less incentive to switch away from smoking. Martin Cullip of the New Nicotine Alliance said that many smokers take the view that, if they have to stand in a smoking shelter anyway, they may as well to have a cigarette rather than vape. This appears to the Group to contradict the UK's public health aims.

### Understanding vaping behaviour

As is stated throughout this report, it is important to treat vaping as separate to smoking. This means understanding the different evidence concerning the risks and benefits of vaping, but also requires consideration of the different behavioural characteristics of vaping.

The Group received evidence from a number of different witnesses concerning the type of intake behaviour that is typical for a vaper. Dr Lynne Dawkins pointed the Group to her research into this area that demonstrates a difference between the nicotine obtained from a cigarette compared with vaping.<sup>24</sup> She stated that the nicotine release from each vape is much smaller than for a cigarette, meaning it takes more puffs, more often to obtain a sufficient intake of nicotine. Dan Marchant of the UK Vaping Industry Association characterised



Much of the hostility towards vaping emanates from 'cloud-chasing'; the practice of generating huge clouds of vapour from high-powered devices. This style of vaping applies to a minority of vapers.

vapers as needing to vape "little and often" to maintain the necessary nicotine levels. Similarly, Martin Cullip described vapers as being "grazers" whereas smokers are "bingers". This characterisation of vaping behaviour also echoed the experience of several Members.

It was concerning that this common feature of vaping is not widely understood, with the general view being that a quick episode of vaping similar to the length of a cigarette break is sufficient to sustain a vaper's nicotine levels. Robert Baughan of the TUC reinforced this view by suggesting that vaping could take place on a cigarette break without any problem to the vaper concerned.

There is therefore a need for education and guidance from PHE in this area to ensure a wider understanding and appreciation for vaping behaviour. There is also a need for vaping policy that appreciates the need for regular vaping and indeed provides the opportunity for this by permitting vaping in convenient and easy to access locations that are not simply outside or in smoking shelters. In addition to assisting vapers and smokers wishing to switch to vaping, research from the British Heart Foundation suggests that by reducing the number of smoking breaks taken by employees, businesses can save around £1,800 per year for each employee.<sup>25</sup>

## Responsible vaping

The Group recognises that there is an element of hostility towards vaping amongst non-smokers and that there is a need to seek a balance between the rights of vapers and non-vapers. The evidence sessions on this topic have concentrated on striking that balance by encouraging evidence-based, rational vaping policy alongside the development of a 'reasonable vaping' principle.

Dan Marchant of the UK Vaping Industry Association suggested that much of the hostility towards vaping emanates from so-called 'cloud-chasing'; the practice of generating huge clouds of vapour from high-powered devices. This concept is often reflected in the images attached to news articles of vaping

which almost always feature a large cloud of vapour. Dan Marchant stated that this style of vaping applies to a minority of vapers. He also explained that vaping devices come in a variety of different styles; many of the newest style of devices do not create large clouds or can be adjusted to turn up or down the vapour. Jessica Harding of the New Nicotine Alliance suggested that members of the public probably do not notice a large proportion of vaping taking place around them. Andrew Allison of the Freedom Association pointed out that it is also possible to use vaping liquid with little or no odour.

There was also an acceptance by the Group that there are certain locations and occasions that are not appropriate for vaping. An analogy was drawn between vaping and the use of a mobile phone; it was accepted that there are certain occasions where making a phone call would be inappropriate for example in a meeting or in the cinema. Similarly, it was acknowledged that vaping in confined spaces, near others would not always be considered appropriate. This would include for example on trains or buses at busy times. Lucy Hume of Debretts suggested that there would inevitably be an element of common sense and respect involved in judging these occasions. Robert Baughan of the TUC emphasised the need to consider the rights of non-vapers and their right to ask for vaping not to take place near to them in a workplace environment.

In order to balance the competing interests in this area, the Group have developed a code of conduct for vapers that it is suggested should be built into vaping policies. There will inevitably need to be common sense in the application of this code, however this should provide a key indicator of behaviour to vapers in return for a more liberal vaping policy. In a workplace setting, employers will also be able to rely on existing HR policies to resolve any disputes between vapers and non-vapers.

## Vaping in Parliament

As part of the Group's consideration of this area, we have reviewed the vaping policies imposed in the Palace of Westminster for staff and visitors. Parliament is somewhere, that is in a position to set an example to the rest of the country and ought to adopt the sort of evidence-based policy that is being discussed by Members. There are also many members of staff working in Parliament for whom this policy is important; statistically a large number must vape or be smokers potentially considering switching.

The Staff Handbook for the Palace of Westminster (applicable to both the House of Commons and House of Lords estates) permits vaping in two designated vaping areas and otherwise in smoking areas.<sup>26</sup> The Group had a variety of Members of both Houses in attendance during the discussions on this topic and none were aware of the location of the vaping areas. It was also considered inappropriate considering the evidence received that only two designated locations exist; both locations are outside and given the size of the Parliamentary Estate could be a significant distance away from an employee or visitors location.

It is important that Parliament can be used as an example in this area. The Group has therefore created a new suggested policy on vaping for Parliament and will be taking these recommendations forward with the relevant Committees.



## Second hand vapour: the evidence

There is currently no evidence that an exposure to second-hand vapour poses a risk to bystanders. This was supported by PHE's 2018 E-Cigarette Evidence Review and by Martin Dockrell of PHE's recent e-cigarette factsheet which concluded:

*"E-cigarette liquid is typically composed of nicotine, propylene glycol and/or glycerine, and flavourings. Unlike cigarettes, there is no side-stream vapour emitted by an e-cigarette into the atmosphere, just the exhaled aerosol. PHE's latest evidence review found that to date, there have been no identified health risks of passive vaping to bystanders".<sup>27</sup>*

The British Medical Association are also in agreement with this position. They state that: *"there is a lack of evidence that exposure to the constituents of e-cigarette vapour poses specific health risks to bystanders".<sup>28</sup>*

This issue was also considered extensively during the House of Commons Science and Technology Committee's inquiry into e-cigarettes. The issue arose on several occasions during evidence sessions. PHE reiterated its previous position set-out above but other notable comments from witnesses included:

1. Professor David Harrison from the UK Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment, who stated that: *"Everything is reduced compared with cigarette smoke, but bystander effects are something to be aware of. One would expect, however, that the dose would be commensurately less than for cigarettes".<sup>29</sup>*
2. Professor Aveyard from the Cochrane Tobacco Addiction Group who described harm from second-hand vapour as *"negligible".<sup>30</sup>*
3. Professor Ricardo Polosa's evidence was that the risks from second-hand vapour would be *"miniscule".<sup>31</sup>*

The Committee's report concluded that "second hand vapour does not cause harm" but noted that researchers have struggled to produce specific measurements of the risks in this area because the size of potentially harmful elements are so negligible.<sup>32</sup> There is however some existing research into this topic; for example a 2013 study examined the potential exposure to toxicants from second-hand vapour indoors and concluded there were no harmful effects.<sup>33</sup> Two further studies in 2015 concluded that vaping inside does not produce harmful chemicals at quantifiable levels.<sup>34</sup> Additional research was examined by a group of fifty three leading public health policy experts in a letter to the World Health Organisation. The letter concludes:

*"It is inappropriate to apply legislation designed to protect bystanders or workers from tobacco smoke to vapour products. There is no evidence at present of material risk to health from vapour emitted from e-cigarettes".<sup>35</sup>*

# APPENDIX 1

## Sample workplace vaping policy

### Vapers

**Vapers should act as responsible vapers at all times. This means:**

1. Vapers should vape considerately and be mindful of the concerns of colleagues and the general public.
2. Vaping should not normally take place in confined spaces in the workplace without the permission of other occupants.
3. Vapers should respect the wishes of colleagues who do not wish vaping to take place around them or who dislike certain stronger smelling flavours of vapour.
4. Vapers should be considerate when exhaling vapour including avoiding exhaling large clouds of vapour in a work environment or exhaling vapour directly towards another person.
5. Vapers must ensure that all vaping paraphernalia is securely stored and is inaccessible to those under the age of 18.

### Employers

**In return for vapers acting as responsible vapers, an employer agrees that vaping is permitted in:**

1. All outside locations including terraces, courtyards and gardens.
2. All leisure areas including restaurants, lounges and cafeterias with the reasonable permission of colleagues.
3. All individually occupied workspaces and offices.
4. Either in:
  - a. All other offices and workspaces with the reasonable permission of other colleagues; or
  - b. A designated indoor location or multiple locations within the workplace, which must be reasonably close to a vaper's desk or working location.
5. In company vehicles, with the permission of other occupants and providing no person under the age of 18 is present.

**Notwithstanding the above, vaping is not permitted:**

1. During client or staff meetings.
2. Whilst operating machinery or other equipment or when vaping would otherwise unduly distract an employee from performing their required role.

# APPENDIX 2

## Parliamentary Estate vaping policy

Replace Paragraph 4.18 and 4.19 with the following new text:

### E-cigarettes

- 4.18. The use of electronic cigarettes (e-cigarettes), also known as vaping devices, is permitted in the following areas of the Parliamentary Estate:
- All outside locations including terraces, courtyards and gardens.
  - All MP, peer and staff offices.
  - On the Commons estate and with the reasonable permission of colleagues or bystanders:
    - » The Terrace Cafeteria.
    - » Strangers Bar.
    - » The Woolsack Bar.
    - » The atrium of Portcullis House including the Debate and Adjournment restaurants.
  - On the Lords estate:
    - » The Lords Bar and River Restaurant.
    - » The Peers' Guest Room.
    - » The House of Lords Library.
- 4.19. E-cigarettes may not be used in any other part of the Parliamentary estate. Using e-cigarettes in a non-permitted area (on either the Commons or Lords estate) could lead to disciplinary action.
- 4.20. Exercising the right to use e-cigarettes in the locations listed above must be done responsibly and take account of the following:
- Vapers should be considerate and be mindful of the concerns of others on the Parliamentary Estate.
  - Vapers should ask the permission of other occupants before vaping in an office.
  - Vapers must respect the wishes of colleagues or others who do not wish vaping to take place around them or find certain vaping flavours stronger smelling.
  - Vapers should be considerate when exhaling vapour including avoiding exhaling large clouds of vapour in a work environment or exhaling vapour directly towards another person.
  - Vapers should ensure that the areas in which they are vaping are well ventilated where possible.



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## **APPG sessions**

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