**CAP/BCAP consultation on the marketing of e-cigarettes**  
**Cancer Research UK Response**

**Summary**

Cancer Research UK welcomes the opportunity to respond to the CAP/BCAP consultation on the marketing of electronic cigarettes (e-cigarettes) and commends CAP and BCAP for taking a lead in developing bespoke marketing rules for e-cigarettes. Cancer Research UK believes that e-cigarettes are almost certainly much safer than conventional tobacco cigarettes and may help smokers to cut down or quit smoking. A balanced approach is needed towards e-cigarettes – one that maximises its potential to help people quit smoking, whilst minimising the risks of unintended consequences that could promote smoking. To do this we believe that the rules are needed to ensure that e-cigarettes are not marketed to non-smokers including children or contribute to a ‘re-normalisation’ of smoking amongst the general public.

We believe that proportionate and reasonable rules for the marketing of e-cigarettes should be based on two related principles: e-cigarettes must be promoted as an alternative to tobacco and that they should only be marketed to those who are smokers and/or users of nicotine containing products. Alongside this it is necessary to ensure that there are robust and clear rules to prevent these products being marketed to people under 18 and ensure that e-cigarette marketing is informative and factually accurate.

In our response we make the following recommendations:

- E-cigarette marketing communications should be responsible and not undermine current health messages on the benefits of quitting.
- E-cigarette marketing communications should not promote the use of tobacco and only show tobacco in a negative light if at all.
- E-cigarettes must be shown as an alternative to tobacco in marketing communications.
- E-cigarette products must be correctly identified as e-cigarettes and not use misleading terms.
- E-cigarette marketing communications must state whether the product contains nicotine, and if it does state that nicotine is highly addictive.
- E-cigarettes marketing communications should only be aimed at those who are current smokers and/or those who are using nicotine containing products.
- E-cigarettes communications should not be linked with activities and a location where using them is unsafe and guidance should be given on them being shown in enclosed public spaces.
- E-cigarette marketing communications should not be likely to appeal to those under 18, should not feature people who may seem under the age of 25 and should state that the product is unsuitable for under 18s.
- The media and scheduling of e-cigarette marketing communications and advertisements should be restricted to limit exposure to under-18s.
- The rules identified below as amended, are also appropriate for both e-cigarettes without nicotine, those licensed as medicines, alongside existing rules for promoting medicines, and non-licensed e-cigarettes with nicotine.
- We believe that further rules are needed to prohibit e-cigarette marketing on the basis of flavour(s).
- We also would like proposals for specific rules and guidance for e-cigarette marketing on social media.
Who we are

Every year around 330,000 people are diagnosed with cancer in the UK. Every year more than 150,000 people die from cancer. Cancer Research UK is the world’s leading cancer charity dedicated to saving lives through research. Together with our partners and supporters, Cancer Research UK’s vision is to bring forward the day when all cancers are cured. We support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2012/13 we spent £351 million on research. The charity’s pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. We receive no government funding for our research.

- 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?

We support the principle of this rule but recommend a change in the wording.

The marketing and advertising of e-cigarettes should be socially responsible. We believe that to be socially responsible e-cigarette advertisements and marketing communications should explicitly identify their products as alternatives to tobacco cigarettes. This will help prevent them being marketed in ways that appeal to non-smokers. (see response to Questions 5-7)

It is important that e-cigarette marketing communications are promoted in ways that are consistent with current health messages about smoking and tobacco. Tobacco is the single largest cause of preventable cancer in the UK. Smoking causes 1 in 4 cancer deaths\(^1\) and is associated with about 60,000 cancers a year.\(^2\) It is therefore important that health messages aimed at helping people quit smoking are not undermined. A study by Stirling University and commissioned by Cancer Research UK found that 22% of the 991 marketing communications and articles promoting e-cigarettes studied referred to quitting or cutting down.\(^3\) It is not clear whether the promotion of these products is always consistent with health messages. While it is important that e-cigarettes are seen as an alternative to tobacco, marketing communications and advertisements should not undermine the message that quitting smoking is the best option to improve health. They should also not promote dual use of both e-cigarettes and tobacco cigarettes which may undermine quit attempts.

Therefore we recommend the following change to the wording of Rule 1:

“Marketing communications and advertising for e-cigarettes must be socially responsible and should not undermine current health messages on the health imperative of quitting.”

- 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?

We support the inclusion of this rule but recommend a change to the wording.

It is very important that e-cigarettes are not used to promote the use of tobacco products or show tobacco products. This rule should complement the existing rules on the marketing of tobacco product in the CAP and BCAP codes. We believe the scope of the rule could be more clearly defined to include the design, colour, imagery, logo style that might be associated with a tobacco product. This will ensure that it more closely aligned to the current rules captured in BCAP rules 10.3 and 10.4 and CAP rule 21.1.

To provide further clarity we also believe it would be to better to ban any reference to tobacco use (including “smoking”) except that which is unambiguously negative. We believe that this would reduce the risk of unintentionally promoting tobacco. The application of this rule should also prohibit wording that suggests that consumption of e-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.

Therefore we recommend the following change to the wording of Rule 2:

“Marketing communications / advertisements must contain nothing which promotes any design, colour, imagery, logo style that might be associated 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 except in an unambiguously negative 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 support the principle of this rule but recommend a change to the wording.

We believe that e-cigarettes should be promoted explicitly as an alternative to tobacco products. We note the leading reason smokers report having used e-cigarettes is to “help me reduce the amount of tobacco I smoke, but not stop completely” (31%) followed by help in a quit attempt (30%); and “to help me keep off tobacco” (29%). It is therefore consistent with smokers’ perceptions that all e-cigarettes are promoted as an alternative to tobacco. This approach would
help ensure that marketing communications and advertisements are not appealing to non-smokers and non-nicotine users.

We agree that e-cigarette advertisements and marketing communications should not contain a health or medicinal claim unless the product is licensed by the MHRA. This would help provide greater clarity for consumers as to which products are shown to actually help promote quitting. We also agree with the proposed definition of health claims drawn from the EU Directive for nutritional and health claims (EC) No 1924/2006.

We recommend the following change to the wording of Rule 3: “E-cigarettes may—however must be presented as an alternative to tobacco. Marketing communications / advertisements must not contain health or medicinal claims unless the product is licensed for those purposes by 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 may have for improvement.**

We support the rule but recommend a change to the wording.

Given the relative novelty of these products, it is important that e-cigarette advertisements and marketing communications clearly differentiate their product from tobacco cigarettes. We therefore support the requirement that the marketing of the products makes it clear that the product is an e-cigarette. We also believe that both the terms ‘e-cigarette’ and ‘electronic cigarette’ are appropriate, although we note that the latter term is one that has been used in both the EU Tobacco Products Directive and by the MHRA. It is also important that a single term is used for all products that fall under the definition of e-cigarette. We do not believe that any other terms should be used to describe e-cigarettes. Alternative names for e-cigarettes could cause confusion and mislead consumers to believe that they are free of nicotine or have lower levels of nicotine. Examples include: ‘e-shisha’, ‘shisha pens’, ‘e-hookas’, ‘vaping pens’.

We also believe that it is necessary to prohibit the use of descriptors that could be reasonably associated with tobacco cigarettes such as the term ‘smoking’. However, we accept that there is a potential tension between calling these products ‘e-cigarettes’ and prohibiting the term ‘smoking’.

Therefore we recommend the following change to the wording of Rule 4: “Marketing communications / advertisements must make clear that the product is an e-cigarette and not use any other terms to identify the product. They should also not use any descriptor that might reasonably be associated with tobacco products such as smoking to describe use of the product.”

- 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.**

We support this rule but recommend a change to the wording.
Given that nicotine is very addictive, it is important that e-cigarettes state whether they contain nicotine. In addition, we believe that all advertisements and marketing communications must state that nicotine is highly addictive. Such an approach would be in line with the EU Tobacco Products Directive which will require all e-cigarettes to show the nicotine content and a warning of the addictiveness of nicotine on the product label.

Therefore we recommend the following change to the wording of Rule 5:

“Marketing communications / advertisements must state clearly if the product contains nicotine or if it does not. They should clearly state that nicotine is highly addictive if the product contains nicotine. 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.

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.

We support the principle of the rule but recommend a change to the wording.

There is a consensus that e-cigarettes are almost certainly much safer than smoking tobacco cigarettes, however, the full health implications of e-cigarette use are currently unknown. The level of toxicants found in e-cigarette vapour is generally substantially lower than that found in conventional cigarette smoke. However, the health implications of long-term exposure to nicotine and propylene glycol, the main chemicals in e-cigarette vapour, and other chemicals in e-cigarette vapour are also not fully understood. Given these facts we believe that it would be irresponsible to promote these products to non-smokers or non-nicotine users. Therefore we fully support the principle of this rule.

However we believe that the rule could go further whilst remaining proportionate. In the consultation it is suggested that the rule would prohibit marketing communications that would explicitly encourage non-smokers and non-nicotine users to use e-cigarettes. This would give scope for tactics to implicitly promote e-cigarettes to a wider audience beyond smokers and users of nicotine containing products. The study by Stirling University commissioned by Cancer Research UK on the marketing of e-cigarettes showed that one of the strategies used by independent e-cigarette manufacturers was to make e-cigarettes a lifestyle ‘must have’ accessory. The authors argued that this would make it appealing to non-smokers. Therefore we would consider it reasonable to require all advertisements and marketing communications to be aimed at smokers and/or those who are users of nicotine containing products.

Therefore we recommend the following change to the wording of Rule 6:

“Marketing communications / advertisements must be aimed at those who currently smoke tobacco or use nicotine containing products. They must not explicitly or implicitly encourage 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.

We support the principle of this rule.

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

Cancer Research UK supports tough restrictions on the advertising and promotion of alcohol products. We note that alcohol is a major cause of cancer in the UK and is associated with 12,500 cancers a year in the UK. While we do not think use of alcohol in promoting e-cigarettes is necessary or advisable, we do not believe there is a strong justification to prohibit the appearance of alcohol in a promotion for e-cigarettes, so long as the other CAP/BCAP rules for marketing alcohol and for marketing e-cigarettes (as amended here) are fully adhered to.

However, we would be concerned if the promotion of e-cigarettes was used in the context of a pub, bar or restaurant or any context which falls under the smokefree legislation banning the use of tobacco cigarettes in enclosed public spaces. Although there is no legal ban on the use of e-cigarettes in enclosed public spaces, we would be concerned that the promotion involving the use of e-cigarettes in an enclosed public space could mislead the public. (See response to questions 15 and 16)

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

We support the principle 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 may 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 support the principle of this rule but believe that further guidance could be given on the issue of the use of e-cigarettes in enclosed public spaces and workplaces.

We agree that e-cigarette marketing communications and advertisements should not be linked with activities or locations in which using them would be unsafe or unwise.

E-cigarette use also should not be shown in the presence of people who could be reasonably considered to be under 18.

We also believe that CAP and BCAP should provide guidance to ensure that marketing communications do not imply that e-cigarette use is permitted in all enclosed public spaces when such rules vary between premises. We note that the ASA has already ruled against advertisements
which have promoted messages that mislead people on the use of e-cigarettes in enclosed public spaces. However, it is a subject often referred to in e-cigarette marketing communications.

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

We support the principle of this rule and its wording.

It will be illegal for those under the age of 18 to purchase nicotine products including e-cigarettes under the Children and Families Act 2014. We believe that it is important to ensure that e-cigarettes marketing communications do not appeal to young people who are under 18, particularly those who do not use tobacco cigarettes and may not otherwise become addicted to nicotine.

We therefore fully support the inclusion of a rule to prevent marketing communications and advertisements from appealing to people under 18 and agree that they should not reflect or be associated with youth culture or portray characters that would appeal to people under 18. We are also pleased that this rule will prohibit the use of adolescent and juvenile behavior from e-cigarette marketing.

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

We support the inclusion of the rule and its wording.

It is important that e-cigarette marketing communications and advertisements do not appeal to young people. We believe that this rule is needed to help prevent e-cigarette advertisements being attractive to young people. Given the potential risk for people under the age of 18 to identify with those who appear to be 18 and 25 years old, it is reasonable to prohibit people who are or seem to be under the age of 25 being shown in a significant role in e-cigarette marketing communications or advertisements. The rule also offers less room for error and abuse. The rule avoids ambiguity as people shown in marketing communications or advertisements could not be mistaken for people under the age of 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 state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP’s consideration of this rule.*
We believe on balance that it is sensible to state that the products are not suitable for under-18s. We believe that this clarity can be helpful due to the relative novelty of the product and may help improve awareness that the products are unsuitable for under-18s.

- **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 may have for improvement.

We agree with the principle that e-cigarettes should not be directed at people under 18 given both the risk of addiction to nicotine and the fact that it will be illegal to sell such products to those under 18.

However we do not believe that this rule goes far enough in protecting under-18s from exposure to marketing communications for e-cigarettes. Popular films aimed at adults may still attract a large audience of under-18s even if this represents a small proportion of the total audience. For example, Skyfall as an adult orientated film was allowed to show alcohol advertisements. While the viewership of under-18s was only 12% the film reached almost one fifth of the total UK population. Therefore a 10% threshold would be better and help direct marketing communications to audiences that are overwhelming over 18 and reduce children and young people’s exposure to e-cigarette promotions.

- **Rule 13:** [Amendment to existing BCAP ruling]

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

We support the inclusion of e-cigarettes being included in this list of scheduling restrictions. We believe that this will help prevent e-cigarettes being marketed to young people.

However we note that that these scheduling restrictions are likely to be insufficient to reduce children’s exposure to e-cigarette advertisements. Prime time early evening programming and sporting events are likely to draw a wide audience. Although not principally directed at under-18s they are likely to attract a large audience of them. This issue was highlighted by Ofcom as a potential reason for why children had viewed more alcohol advertisements in 2011 compared with 2007. We would therefore like to see proposals to restrict the scheduling of e-cigarettes further to prevent children being exposed to e-cigarette advertisements.

- **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.

We support the requirement that all radio broadcasters must ensure Radio Central Copy Clearance for e-cigarette advertisements.

**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? 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.

We believe that all the new marketing rules should apply to e-cigarettes that do not contain nicotine given that these products may be particularly attractive to young people and is easily confused with e-cigarettes containing nicotine. We believe that the proposed rules, with the suggested amendments, would be suitable for e-cigarettes not containing nicotine. This will ensure that there is a consistent approach to marketing of all categories of e-cigarettes. We do not believe that any further rules are needed for these products.

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 believe that the marketing of e-cigarettes regulated as medicines should fall under the rules for marketing and advertising of medicines under the CAP and BCAP codes as well as the proposed rules for e-cigarettes with the amendments suggested above (with the exception of rule 3). We believe that this will help to ensure that there is a consistent approach to the marketing of all categories of e-cigarettes.

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

We support the proposed definition of e-cigarettes which is consistent with the definition in the EU Tobacco Products Directive.

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.

We do believe that e-cigarettes should not be allowed to be marketed on the basis of their flavour(s). We are concerned that such promotions could be attractive to non-smokers and non-nicotine users, particularly children. We believe that a further rule should be developed to prohibit e-cigarette marketing communications and advertisements on the basis of their flavour.

We note that the evidence base for the impact of the advertising and marketing of e-cigarettes is currently limited. We therefore advise that CAP and BCAP provide sufficient flexibility to ensure that its rules can be updated quickly if further evidence shows that changes to its rules are needed to protect public health.

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?

We note the absence of any specific recommendations for the promotions of e-cigarettes through social media. We recognise that CAP rules are applicable to online marketing communications, but believe that specific rules and guidance are needed given the unique nature of social media and its appeal among those under 18. The application of these rules on social media is particularly important given the evidence showing large and widespread promotional activity of e-cigarettes on
We would welcome proposals for the regulation of marketing of e-cigarettes through social media.

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2 Parkin DM. Tobacco-attributable cancer burden in the UK in 2010. BJC 2011; 105:S6-S13
7 [http://www.cinemaadvertisingassociation.co.uk/cca_alcohol.pdf](http://www.cinemaadvertisingassociation.co.uk/cca_alcohol.pdf)
8 Ofcom (2013) Children’s and young people’s exposure to alcohol advertising 2007-2011