



## CAP / BCAP Consultation on the advertising of e-cigarettes - NNA response

NNA is a consumer led national charity which aims to improve public health and reduce the toll of disease from smoking by improving understanding of reduced risk products such as e-cigarettes. In accordance with article 5.3 of FCTC we confirm that we are completely independent from any nicotine industry including the tobacco, pharmaceutical and vapour industries.

We note and understand B/CAP's instruction concerning the fact that this consultation cannot invite views on the regulations as made, and so limit our comments to an expression of frustration that the restrictions on advertising undermine what should be a key health objective - to reduce the harms caused by smoking by promoting reduced harm products.

Responses to questions:

1. In general we agree that CAPs proposal is consistent with the law, however we would restrict 'components' only to those which are specific to e-cigarettes. Some components, such as batteries, wicking material and wire, have a wide variety of other uses which are unrelated to e-cigarettes.
2. No, but we agree that this would be the correct interpretation of the regulations (see also 26).
3. We agree
4. No
5. We agree
6. We agree
7. No
8. No
9. We agree that the law allows for factual claims on a marketer's own website. We disagree that the prohibition on online ads prevents the advertiser from incentivising the consumer to access its website by means of click through ads. CAP has stated, correctly in our view, that the prohibitions do not extend to advertisements for e-cigarette retailers so long as they do not promote an actual product which cannot lawfully be advertised. Many independent e-cigarette businesses both manufacture and retail their own products. The exemption for retailers should include manufacturers, provided that the manufacturers name does not have the indirect effect of promoting a specific product. There appears to be no reason why an advert for a retailer or manufacturer could not contain a click through link to their website.
10. We agree
11. The ratio of diluents (normally propylene glycol and vegetable glycerine) is essential information required by consumers to inform choice in terms of personal preference, compatibility with devices and for those who may have particular sensitivities. In addition, general statements about the relative risk of vaping compared with smoking should be allowed, together with direct quotes from Public Health England or the Royal College of Physicians (see 24).
12. Not entirely. It is almost impossible to describe anything without using adjectives and this is particularly the case when trying to describe something as complex as the flavour of e-liquid. The online market is extremely important to both businesses and consumers, but there is no opportunity to try before you buy. For that reason detailed descriptions not unlike those seen for wine or scotch whisky are common and valued by consumers. Any code or guidance should allow adjectives but might perhaps advise against the use of superlatives.
13. No
14. No
15. We agree that social media pages might, in principle, be capable of meeting the criteria set out for websites. We disagree that this might or should be subject to the operation of privacy options. The entire point of social media is to distribute information which will be of interest to the reader. Users are able to tailor this content by following accounts of interest. Some of these accounts may be businesses, or individuals with similar interests. It is unusual therefore, to see content that isn't of interest to the reader, or their social circle. As far as we are aware, it is not possible to prevent the distribution of social media pages unless they are set to private, in which case they cannot be found via a search or viewed by anyone other than followers or subscribers. They would be completely invisible to anyone else searching for the information, for example a smoker looking to switch to e-

cigarettes. A great number of smaller independent businesses have built their entire marketing strategy around social media because it is cheap and targeted to people who are interested, and so allows them to have a presence and compete. Consumers also rely very heavily on social media to find information about new products on the market and value the services offered by the small and medium sized businesses. The redistribution (sharing) of social media pages should be considered to have been sought out by consumers via their choice of accounts to follow. We believe therefore that factual content in social media pages should not fall within the scope of the regulations.

16. We agree
17. Yes
18. Yes
19. Yes
20. No
21. Yes, and manufacturers should be allowed to do the same provided that neither the business name nor the advert refer to a specific product which cannot be advertised.
22. We agree with the proposal to allow e-cigarette retailers to advertise their services on TV and radio and this should include manufacturers.
23. Yes, and this should include manufacturers.
24. The justification for allowing substantiated health claims is well documented in this consultation paper. PHE have stated that vaping is 95% safer than smoking, and this was supported by the Report from the Royal College of Physicians which concluded that: "Although it is not possible to precisely quantify the long term health risks associated with e-cigarettes, the available data suggest that they are unlikely to exceed 5% of those associated with smoked tobacco products, and may well be substantially lower than this figure".  
[\[https://www.rcplondon.ac.uk/file/3563/download?token=uVOROTwz\]](https://www.rcplondon.ac.uk/file/3563/download?token=uVOROTwz) This very important message however, is not getting through to the public, not least because the e-cigarette industry is not permitted to make this substantiated health claim. This is a nonsense and is harming the health of smokers who might otherwise switch to the very much safer product. We do not consider the comparison with the medicines regime as valid reason to withhold this vital information from consumers. From our dealings with Public Health England it has become clear that they recognise the harm that the public misperception of the relative risk of vaping compared with smoking creates, and might support allowing substantiated health claims in both adverts and factual content. We suggest therefore, that since the claim that vaping is at least 95% safer than smoking is substantiated by both the PHE and RCP reports, retailers and manufacturers be allowed to make that claim in adverts and factual content which do not refer directly or indirectly to a specific product. In that way the general claim can be made, but not for specific products unless they are able to substantiate the claim for that product. Direct quotes from PHE and RCP reports should be allowed under similar terms.
25. Yes
26. One of the most damaging aspects of the regulations on advertising of vapour products is the inclusion in the definition of anything which "can" be used to inhale nicotine, which captures refillable tank systems (ref question 2), which have been found to be the system more likely to help people to stop smoking [<http://ntr.oxfordjournals.org/content/early/2015/06/04/ntr.ntv078.full>]. Once smokers switch to vaping it is the huge variety and ability to personalise devices which keeps many from relapsing to smoking. It is difficult to imagine how consumers will remain informed about these products without the marketing efforts of the companies that manufacture and sell them, or to see any incentive for the companies to invest in the improvement and innovation of their products if they cannot market them to potential customers. Whilst we appreciate the fact that the regulations do appear to capture refillable tanks on the basis that they 'can' be used to inhale nicotine containing vapour, we would wish to see an exemption for those which are marketed as being for use with non-nicotine containing liquids only.