

## **Juul Labs Inc. (JLI) submission to the Independent review of smoke-free 2030 policies**

### **Building a responsible vaping sector to support smoke-free 2030**

#### **Introduction**

At Juul Labs, Inc. ("Juul Labs" or "JLI"), our mission is to transition the world's billion adult smokers away from combustible cigarettes, eliminate their use, and combat underage usage of our products.<sup>1</sup> We do not want any non-nicotine users, especially those who are underage, to try our products, as they exist only to help transition the world's one billion adult smokers away from combustible cigarettes.

Juul Labs strongly supports the goal of a smoke-free England by 2030, and we agree with the UK government that more should be done to narrow health disparities by systematically tackling smoking. We believe that e-cigarettes can offer adult smokers a potentially less harmful alternative to combustible cigarettes and, in so doing, reduce the death and disease associated with tobacco use.

We fully support the goals of the independent review<sup>2</sup> led by Javed Khan OBE into the policies which should be put in place to achieve the government's smoke-free 2030 ambition and address the health disparities associated with tobacco use, and we welcome the opportunity to make this submission.

To date, the UK has taken an approach that recognises the significant harm reduction potential in encouraging smokers to switch to potentially less harmful alternatives like e-cigarettes. For this approach to be sustainable, the policy landscape needs to evolve towards a more responsible framework. The opportunity for e-cigarettes to significantly contribute to tobacco harm reduction for adult smokers is undermined by the risk of underage use.

In this paper we set out our perspective on the challenges facing the sector, and detail our 6-point plan for change ahead of the Tobacco Control Plan later this year.

The UK has a unique opportunity to lead the way in responsible and evidence-based e-cigarette regulation that acknowledges the role e-cigarettes can play in helping smokers switch, but also discourages uptake by young people and non-smokers. Post-Brexit, the UK can use its regulatory freedoms to update legislation set by the EU to create a UK gold standard for e-cigarette regulation and a smoke-free Britain.

#### **The opportunity**

Smoking remains the single largest preventable cause of death in the UK, with an estimated 191,000 deaths attributed to smoking in England between 2017-19 and an estimated 448,030 smoking attributable hospital admissions between 2019-20.<sup>3</sup> These impacts are not felt equally across the

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<sup>1</sup> Juul Labs Inc. (JLI) was founded and is based in the United States. Our products are sold in countries around the world, including the United States, Canada, and the United Kingdom. JLI's mission is to transition the world's one billion adult smokers away from combustible cigarettes, eliminate their use, and combat underage use of its products. To accomplish that mission, JLI is committed to working with governments, regulators, and other stakeholders to create a responsibly regulated and adequately safeguarded vapour category. JLI supports risk-proportionate regulation for vapour and other non-combustible alternative products. Such a policy framework, at its core, applies the most stringent regulations to the riskiest products (e.g., combustible cigarettes) and encourages current adult users to switch to potentially less harmful non-combustible alternatives. A comprehensive, risk-proportionate regulatory approach can put the end of the age of cigarettes within reach.

<sup>2</sup> [OHID, Independent review of Smokefree 2030 policies](#)

<sup>3</sup> [PHE, Local tobacco control profiles for England: short statistical commentary, July 2021](#)

country; smoking attributable mortality and admission rates are highest in the most deprived areas as the latest PHE data show.<sup>4</sup> Projections by Cancer Research UK in February 2020 suggest that England is expected to miss its smoke-free 2030 target by seven years, with a potential 20-year gap in smoking rates between the least and most deprived people in England.<sup>5</sup>

Juul Labs fully supports the UK government's smoke-free 2030 ambition. But it is clear that a step change is needed if it is to succeed in eliminating smoking in England. Worryingly, studies suggest that smoking prevalence amongst over 18-34 year olds increased during the pandemic.<sup>6</sup> It is also clear that succeeding is possible. Survey data from 2018 show that over 58% of current smokers in the UK said they wanted to stop smoking.<sup>7</sup> Studies have also found that smoking cessation attempts and success rates increased substantially during the Covid-19 pandemic.<sup>8</sup> The government has strongly championed tobacco harm reduction as a complement to traditional tobacco control measures, recognising that a pragmatic approach is needed to minimise the health impact of smoking for those who do not quit.

There is growing evidence that nicotine-containing e-cigarettes are effective at switching adult smokers away from cigarettes to a potentially less harmful alternative.<sup>9</sup> The Office for Health Improvement and Disparities (OHID) states that nicotine vaping products "could play a crucial role in reducing the enormous health burden caused by cigarette smoking". The Department for Health and Social Care says that "Some of the highest success rates of those trying to quit smoking are among people using an e-cigarette... alongside local Stop Smoking services, with up to 68% successfully quitting in 2020-21".<sup>10</sup> A 2021 PHE Report also found that e-cigarettes are the most popular aid used by people attempting to quit,<sup>11</sup> while guidelines published by NICE and PHE in 2021 said people should be able to use e-cigarettes as one of several options to support smoking cessation, if they so choose.<sup>12</sup>

We believe adult smokers should first and foremost quit. Those who do not successfully quit should completely switch to potentially less harmful alternative products. Access to – and accurate information about – potentially less harmful alternatives to the combustible cigarette is critically important. Vapour products like JUUL are one such alternative.

## The challenge

Juul Labs welcomes the government's independent review of its bold ambition to make England smoke-free by 2030. Smoking causes a disproportionate burden on the most disadvantaged families and communities. Targeted interventions to reduce higher smoking rates found in deprived areas will be central to successfully levelling up public health across England.

We believe that vapour products can offer adult smokers an alternative to combustible cigarettes and potentially reduce the harm associated with smoking. But we fully recognise that e-cigarettes are not risk

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<sup>4</sup> [PHE, Local tobacco control profiles for England: Short statistical commentary, July 2021](#)

<sup>5</sup> [Cancer Research UK, Smoking prevalence projections for England, Scotland, Wales, and Northern Ireland, February 2020](#)

<sup>6</sup> [Jackson, SE, Beard, E, Angus, C, Field, M, Brown, J. Moderators of changes in smoking, drinking and quitting behaviour associated with the first COVID-19 lockdown in England. \*Addiction\*. 2022; 117: 772– 783.](#)

<sup>7</sup> [ASH, Smoking statistics, May 2021](#)

<sup>8</sup> [NPJ, Smoking cessation during Covid-19: the top to-do list, May 2021](#)

<sup>9</sup> [Hartmann-Boyce J, McRobbie H, Lindson N, Bullen C, Begh R, Theodoulou A, Notley C, Rigotti NA, Turner T, Butler AR, Fanshawe TR, Hajek P. Electronic cigarettes for smoking cessation. \*Cochrane Database of Systematic Reviews\* 2020. Issue 10. Art. No.: CD010216.](#)

<sup>10</sup> [Department of Health and Social Care, Press release: E-cigarettes could be prescribed on the NHS in world first, Oct 2021](#)

<sup>11</sup> [PHE, Vaping in England: An evidence update including vaping for smoking cessation, February 2021](#)

<sup>12</sup> [NICE, NICE and PHE publish comprehensive draft guideline to tackle the health burden of smoking, June 2021](#)

free. Those who are underage should never use vaping products. Nor should non-smoking adults be encouraged to start vaping. In the fight to reduce the harm from combustible cigarettes, we should all be clear in our message: those who don't use nicotine should never start - nicotine is addictive and can cause certain harms to health.

To deliver against the government's long-term public health goals, the regulatory and policy landscape for vaping needs to evolve towards a more responsible framework. The opportunity for e-cigarettes to significantly contribute to tobacco harm reduction for adult smokers is undermined by the risk of underage use.

Juul Labs is committed to working with governments, regulators, and other stakeholders to create a responsible vapour industry that has strong safeguards in place. Smokers that want to switch should be confident in the quality of products that they buy and the regulation that surrounds them, while non-users should be prevented from taking up vaping. We think there is work to do to achieve this goal in the UK and emerging evidence is already showing a number of potential warning signs:

- **Underage use:** Action on Smoking and Health (ASH) statistics for 2021 show that 1.2% of 11-17 year olds are regular users, with 11.2% having tried an e-cigarette.<sup>13</sup>
  - These figures are stable compared to the previous year, but things can change quickly. Industry data suggests that sales of new disposable e-cigarettes are on the rise in the UK, and there have been reports<sup>14</sup> of youth interest on social media, as well as reports from Trading Standards<sup>15</sup> of rising underage sales. It is vital that a rise in underage use is not seen here in the UK.
  - There have also been reports that national statistics can hide significant regional disparities, which could suggest a need for targeted activity.<sup>16</sup> People who are underage should not have access to nicotine-vaping products anywhere, but any councils with greater underage vaping rates will need additional support.
- **Illicit products:** At the most recent E-cigarette Summit, Kate Pike, Co-ordinator for Trading Standards North West, commented that there had been a rapid increase in reports related to e-cigarettes, mainly driven by non-compliant disposable products, with a 240% increase in reports in the first 6 months of 2021-22.<sup>17</sup>
  - This observation was supported by a recent report by the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) following an investigation across Scotland into the supply of disposables on the market from October to December 2021.<sup>18</sup> A preliminary surveillance exercise found that not a single disposable that was tested complied with existing regulations. Counterfeit devices were also a potentially significant problem. In total, visits to **721** premises over a ten-week period saw **88,839** disposable vaping devices were removed from sale and a further **3,683** were seized (for exceeding the 2ml legal limit).

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<sup>13</sup> [ASH, Use of e-cigarettes among young people in Great Britain, June 2021](#)

<sup>14</sup> [Daily Mail, The vapes as strong as 125 cigarettes: Health fears over new craze among young people for super-strength nicotine devices, September 2021](#)

<sup>15</sup> [Lancashire Post, A third of Lancashire shops caught selling vaping products to children, March 2022](#)

<sup>16</sup> [The Bureau of Investigative Journalism, Underage vaping spikes in the north of England, May 2020](#)

<sup>17</sup> [Ashtray Blog, E-cig Summit 2021 Roundup – Part 1, December 2021](#)

<sup>18</sup> [SCOTSS Product Safety and TARP Groups, Single Use Vaping Products Project 2021](#)

- **Misperceptions among adult smokers:** ASH reported that 32% of smokers believed that vaping was more or equally as harmful as smoking in 2021.<sup>19</sup> This is a **four-fold increase** since 2013.<sup>20</sup>
  - Misperceptions are often also shared by health professionals, with **1 in 3 clinicians** reporting being unsure if e-cigarettes are safe enough to recommend as a smoking cessation tool,<sup>21</sup> despite recently issued NICE guidelines stating that evidence shows “*nicotine-containing e-cigarettes can help people to stop smoking and are of similar effectiveness to other cessation options.*”<sup>22</sup>
  - Misperceptions also entrench health disparities. Smoking rates are generally higher amongst the most disadvantaged communities. Data from the Office for National Statistics show **23.4%** of adults in Blackpool South reported to be smokers in 2019 compared to **5.6%** in North East and East Hampshire.<sup>23</sup> Smoking rates among people living in social housing are double the national average, and **over four times higher** than those who own their own home with a mortgage (**28.6%** compared to **5.8%**).<sup>24</sup> Rates are also persistently high among certain groups, including routine and manual workers (**21.4%**) and adults with serious mental health issues (**40.5%**).<sup>25</sup> These groups are more likely to hold misperceptions about the relative harm caused by vaping, with smokers from lower socio-economic groups more likely to believe vaping is more or equally as harmful as smoking.<sup>26</sup>

There is a risk that these issues, if not robustly tackled today, could reduce public confidence in the use of e-cigarettes and undermine the government’s ability to use them as a tool for reducing health inequalities. To tackle these issues, and to build a mature, strongly regulated sector, we are setting out our roadmap for change. We have developed a six-point plan to enhance regulation, ensure rules are followed, and encourage responsible industry practices. We believe that this plan, coupled with a concerted effort to address misperceptions of harm, can help deliver against the government’s long-term public health goals.

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<sup>19</sup> [ASH, Use of e-cigarettes among young people in Great Britain, June 2021](#)

<sup>20</sup> [PHE, Vaping in England: An evidence update including vaping for smoking cessation, February 2021](#)

<sup>21</sup> [Cancer Research UK, E-cigarettes and primary care: A cross-sectional survey of nurses and GPs across the UK, October 2019](#)

<sup>22</sup> [NICE, Tobacco: Preventing uptake, promoting quitting and treating dependence, November 2021](#)

<sup>23</sup> [ONS, Adult smoking habits in the UK: 2019, July 2020](#)

<sup>24</sup> [ASH, Up in Smoke – How tobacco drives economic and health inequalities dashboard, 2022](#)

<sup>25</sup> [ASH, Up in Smoke – How tobacco drives economic and health inequalities dashboard, 2022](#)

<sup>26</sup> [PHE, Vaping in England: An evidence update including vaping for smoking cessation, February 2021](#)

# Juul Labs' 6-Point Plan for Change from Market Notification to Enforcement



## 1. Setting higher standards for products

- Consumers should be able to trust that products meet the letter and the spirit of UK regulatory requirements.
- MHRA should undertake more stringent pre-market review of products, including a detailed scientific review of every notification. This should be accompanied by updated guidance on the information required from manufacturers.
- MHRA should be setting stretching targets, and its increased activity should be funded by higher industry notification fees.



## 2. Responsible marketing and packaging

- Regulation should be put in place to prevent manufacturers from naming and packaging their products in a way that could appeal to people who are underage.
- Additional marketing loopholes should be closed, including the introduction of a ban on brand-sharing and on free distribution of e-cigarettes to under-18s.



## 3. Tackling underage appeal of vaping online

- Social media companies should do more to tackle vaping content created by users that appeals to young people or promotes other irresponsible behaviour. E-cigarettes should never be promoted by influencers.
- The government should use the Online Advertising Programme to clarify guidance and drive better enforcement of existing rules around paid-for online advertising. The Online Safety Bill offers an opportunity to make sure social media companies are protecting those who are underage from exposure to harmful user-generated vaping content, backed by robust enforcement from Ofcom.



## 4. Creating safer retail environments

- No one underage should be able to buy e-cigarettes. Age verification is essential: a mandatory Challenge 25 scheme should be introduced for high street shops, complemented by mandatory age verification processes for online retailers.
- No adult consumer should be misled into buying an illicit product. Import checks should also be introduced on products, and regulatory agencies should improve sharing of market intelligence. Retailers should be given information to help them spot illicit products and share information with the authorities



## 5. Effective enforcement and tougher penalties

- Trading Standards are on the front line of efforts to tackle underage sales and the trade in illicit goods. Its central budget should be increased by £2 million annually for public funding targeted at e-cigarettes.
- A mandatory system of registration should be introduced for retailers to underpin efforts on age verification and illicit products.
- There should be tougher penalties for failures to comply with regulation during the production, marketing and retailing



## 6. Addressing harm misperceptions

- False perceptions must be tackled head on if more adult smokers, particularly in disadvantaged communities, are to switch to potentially less harmful alternatives.
- The government should ensure smokers have access to accurate, scientific, evidence-based information, building on best-practice international examples.
- The Tobacco Control Plan should include specific, ambitious targets for reducing harm misperceptions, with a particular focus on disadvantaged communities. OHID should continue PHE's annual evidence updates on e-cigarettes.

## Juul Labs' Plan for Change from Market Notification to Enforcement

Our six-point plan that we offer for consideration tackles the public policy areas we believe help cultivate a responsible marketplace that promotes adult smokers transitioning away from combustible cigarettes while preventing underage use. Only appropriate marketing channels should be used to raise awareness of e-cigarettes among adult smokers, and it is vital that those who are underage are not exposed to any advertising, online, or social media content which could encourage vaping uptake. Products should be of high quality and conform with regulatory requirements and industry best practice and standards.

Whilst some retailers have introduced leading best practice measures, we believe more should be done to encourage all retailers to act responsibly and ensure safer retail environments for their customers as well as staff, with proportionate penalties in place where necessary. This will help to ensure a standardised approach and awareness around the buying and selling of e-cigarettes in the UK.

Ultimately, Juul Labs believes that responsibility needs to be ingrained into each step of the product journey. The UK government has taken a global lead in recognising the role that e-cigarettes can play in addressing health disparities and eliminating smoking for good. But the government cannot deliver this on its own. It will require responsible partners at every level of the policy landscape to help reach a smoke-free future in the UK – from the manufacturers and producers within industry including Juul Labs, to regulatory and enforcement agencies, down to the shopkeepers and newsagents who can ensure that British adult smokers up and down the country make informed decisions about their health and switch to potentially less harmful alternatives.

### 1. Setting higher standards for products.

The important role that e-cigarettes can play in advancing tobacco harm reduction and helping the UK reach its smoke-free 2030 goal is threatened by the presence of low-quality products that do not reflect best practice, and even illegal products that do not comply with existing product regulations. **Consumers must be able to trust that the products they buy are compliant with requirements set by the government, and that the contents of the product reflect the labelling.**

Introducing a product to the UK market is currently a light-touch notification process, drawn from the Tobacco and Related Products Regulations 2016 (TRPR)<sup>27</sup>. However, e-cigarettes contain nicotine, which is addictive, and other potentially harmful chemicals for inhalation. We believe that greater scrutiny is required to ensure confidence in e-cigarettes sold in the UK, and ultimately the safety of UK consumers - in other words a shift from a purely *notification* regime, towards one with greater pre-market review of the products.

This will require **updated guidance** from MHRA about what information manufacturers submit with notifications, as well as **greater resources** for MHRA to scrutinise notified products, including through scientific assessments and the ability to conduct **audits on product samples** with MHRA conducting its own scientific testing.

The UK has recognised that vaping can play an important role in harm reduction. **The MHRA should continue to be a well equipped regulator of e-cigarette products: its management should be able**

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<sup>27</sup> [The Tobacco and Related Products Regulations 2016 No. 507](#)

**to set stretching targets in relation to the category and its increased activity should be funded by higher industry notification fees.**

We are in the process of developing evidence-based proposals that we believe can help the UK government and MHRA to build world-leading capability and performance in the evaluation of e-cigarettes and would be pleased to share additional information in due course. In summary, these proposals are focused on three areas:

### *Tightening the MHRA notification process*

- **MHRA should be given the power to develop enhanced guidance** to clearly set out the evidence expected to be included in submissions accompanying notifications, including specific directions on what constitutes sufficient chemical and toxicological testing of emissions. In the future, this guidance should draw on published and emerging UK and international standards, such as [BS EN 18633 General principles and requirements for testing for quality and nicotine levels of e-liquids \(in progress\)](#)
- MHRA must then be equipped to **undertake greater scrutiny of data submitted in notifications**. There should be increased review as well as a full scientific review of the material and data provided to ensure that products conform with both the spirit and the letter of the legal requirements set out in TRPR and MHRA guidance. MHRA should also examine the proposed packaging and naming of submitted products as part of the pre-market review process to prevent underage appeal as detailed in the next section on marketing and packaging. Notifications that **do not meet the level of evidence** set out in standards and guidance should continue to be **rejected**, with adequate measures in TRPR to deter producers from submitting low quality notifications.
- MHRA should also **carry out random tests** on product samples of a significant proportion of the product notifications it receives, checking that MHRA's own scientific testing data aligns with the data included in the notification and conforms to the requirements of TRPR.
- MHRA should be given additional resources to more **closely scrutinise updates to existing notifications** to ensure that substantial modifications are properly recorded as such and are not submitted as minor modifications or clerical corrections.

### *Funding regulation properly*

- Additional funding will be required to ensure MHRA has the capacity to enforce a more robust notification process. Juul Labs **believes the MHRA notification fee should increase substantially** to allow appropriate resources to be deployed by MHRA and in recognition of its expanded mandate. This would mean both **a more substantial upfront fee for each initial product notification** and an annual 'maintenance' fee per published product to cover the costs of enhanced scrutiny.

### *Making regulation a priority*

- Effective regulation of the e-cigarette market should be added to MHRA's organisational objectives, and it should be required **to submit a yearly report on the market to DHSC to help the Secretary of State meet existing TRPR monitoring requirements**. In addition, the **NAO should undertake a review of its progress** after 24 months.

## 2. Responsible marketing and packaging.

Juul Labs wants to see a responsibly branded sector that is focussed solely on targeting adult smokers, and is explicit that it will restrict appeal to those underage through packaging and marketing. ASH's chief executive, Deborah Arnott, has noted<sup>28</sup> that some e-cigarette branding 'is clearly attractive to children', with 'cartoon characters, garish colours and sweet names' that 'risk luring children into e-cigarette use who otherwise would never have tried them'. In 2020, the UK Chief Medical Officer, Chris Whitty, expressed concern<sup>29</sup> that e-cigarettes are being marketed towards children, stating that it should be dealt with "very, very seriously" by those in charge of regulation.

Juul Labs has an extensive set of company policies (see Annex) to ensure its brand and marketing activities are intended to appeal to adult smokers, and limit appeal to those under-age, as well as being fully compliant with regulation. But it is clear that there is not a consistent industry wide approach. Sports sponsorships are still prevalent<sup>30</sup> despite concerns that they represent a form of marketing which is aimed at young people and non-smokers. **The government should act now to embed a sector-wide approach that tackles underage use and prevents those who are underage from being exposed to irresponsible messages.** Annex A sets out what Juul Labs is doing to minimise the appeal of its products to young people.

We have identified a range of potential interventions for the government to consider:

*Introduce regulations on responsible product branding, including flavour naming*

- Packaging and flavour-naming that appeals to those who are underage should be banned. This should be done through the TRPR, which should **exclude specific packaging design and naming elements**, including but not limited to cartoon, fantasy and fictional characters; sports references; colourful exaggerated graphics; confectionary, alcoholic drinks, energy drinks, and soft drinks; and imitating other brands (eg Coca-Cola, Red Bull, Nespresso).
- Lessons could also be drawn from advertising, where the ASA already applies a **"social responsibility" rule** to marketing communications in CAP Code Rule 22<sup>31</sup>, which requires that e-cigarette marketing "must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture". The MHRA could potentially apply a similar test as a backstop to the more specific prohibitions above.
- These **packaging and naming requirements should be included within the standard MHRA notification process**, with MHRA reviewing designs before a product is introduced to the market. Currently there is no obligation to include packaging designs as part of notifications to MHRA. This would complement the existing requirements to drive up standards and ensure compliance with the rules so that products sold in the UK are responsibly presented to consumers.

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<sup>28</sup> [The Guardian, Health experts call for action on e-cigarette packaging aimed at children, August 2021](#)

<sup>29</sup> [Evening Standard, Britain's top doctor warns politicians not to let history repeat itself by allowing e-cigarettes to be 'pushed' at young people, February 2020](#)

<sup>30</sup> E.g., [The Scotsman](#), [Insider Sport](#)

<sup>31</sup> [ASA CAP Code Rule 22](#)



*Close loopholes and promote responsible marketing*

- Introduce a ban on free distribution of e-cigarettes to under-18s through an amendment to the TRPR to ensure this is consistent with the ban of sales to under-18s. This is supported by ASH and the APPG on Smoking and Health<sup>32</sup>.
- Make brand-sharing between nicotine vapour products and other marketed commercial goods an offence (in place for tobacco): prohibit vaping products from either carrying another product's brand on a device or packaging or have the branding of a vaping product on any other products.
- Review and better enforce the regulations on sponsorship of activities, events or individuals, for example to restrict the sponsorship of sports teams. This would help limit the appeal of e-cigarettes to non-smokers and young people.

**3. Tackling underage appeal of vaping online.**

Juul Labs remains concerned about the impact of vaping content on social media which may appeal to those underage and as a company, we do not use social media for product advertising or promotional purposes (see annex A for additional details on Juul Labs' approach to preventing underage use). Research published last year found that close to two-thirds of TikTok videos with the most popular vaping-related hashtags portrayed e-cigarette use positively, and the final sample of 808 videos had been collectively viewed over 1.5 billion times.<sup>33</sup> Additionally, the Telegraph<sup>34</sup> reported recently that UK-based TikTok accounts were being used to advertise disposable nicotine vapes to minors, selling via linked Instagram and Snapchat accounts and delivering them across the country. Some of these accounts offered to repackage in discreet packaging to hide from parents. Alarming, one account appeared to be run by two teenagers.

We think that the existing tight controls around paid advertising should remain in place, but that much more needs to be done to reduce the risk of harm online – particularly given the growing evidence that compliance with advertising rules is lower in online spaces than traditional media.<sup>35</sup> **User generated content needs to be more tightly controlled by online platforms, and real change is needed to ensure that those who are underage are not exposed to age-inappropriate content. Influencer marketing should be banned outright.** Upcoming legislation should be used to address these issues and ensure that Ofcom and the ASA take on the challenge of enforcement.

We have identified a range of potential interventions for the government to consider:

*Clear rules and better enforcement of online advertising, including social media influencers*

- The government should make clear that **all online influencer marketing of vaping is strictly prohibited** in the TRPR, and this standard should be robustly enforced by the ASA. To ensure better targeting, CAP rules should clarify and enforce the point that **manufacturers and retailers' social media profiles must be limited to factual information** which can only be promoted or distributed to consumers who have opted in to receive the message they contain.

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<sup>32</sup> [ASH, Delivering a Smokefree 2030: The All Party Parliamentary Group on Smoking and Health recommendations for the Tobacco Control Plan 2021, June 2021](#)

<sup>33</sup> [Tobacco Control, Vaping on TikTok: a systematic analysis, July 2021](#)

<sup>34</sup> [The Telegraph, Experts warn of 'nicotine time-bomb' as children turn to TikTok to illegally buy vapes, February 2022](#)

<sup>35</sup> [Nicotine & Tobacco Research, E-Cigarette Advertising in the UK: A Content Analysis of Traditional and Social Media Advertising to Observe Compliance with Current Regulations, November 2021](#)

- To ensure better understanding and enforcement, **the ASA should also clarify rules and existing guidance for manufacturers and retailers social media profiles**, such as the definition of “socially responsible” and “space under marketers’ control” for social media. With social media and influencer culture having proliferated, **the ASA needs adequate enforcement capabilities, technologies and powers**.
- These issues should be addressed through the Online Advertising Programme, the recently announced review which is due to look at the framework for paid-for online advertising.

### *Addressing harmful user generated content on social media*

- Social media companies must take more action to ensure that vaping content created by their users is appropriate and that those who are underage are properly protected from content that is not appropriate to their age.
- The government should ensure that the Online Safety Bill properly tackles this issue. It is critical that platforms protect those who are underage from exposure to content that includes age restricted products, and it should be clarified and reinforced that e-cigarettes are age-restricted products.
- This should include obligations to take down depictions of underage use of e-cigarettes, content that glamorises vaping, e-cigarette content that appeals to those who are underage, as well as generally restricting access to content about e-cigarettes from those underage.
- It should also include obligations to remove content that is directly selling or marketing or otherwise facilitating access to vaping products.
- It is also vital that Ofcom takes a robust approach on this issue when it implements its Code of Practice for online platforms, once the Online Safety Bill has been passed. There should be a presumption that vaping material is harmful to those underage. While vaping content may be acceptable in limited circumstances such as news reports, opportunities to glamorise it should be curtailed.

## **4. Creating safer retail environments.**

Juul Labs believes that nobody underage should be able to buy e-cigarettes in the UK, and that no adult consumer should be misled into buying illicit products which are unregulated and potentially dangerous.

In 2021, 11.2% of under 18s had tried an e-cigarette, with 1.2% being regular users. Although these figures are stable compared to the year before, there is still much more that needs to be done. No children should ever be able to access e-cigarettes, let alone become regular users. Worryingly, there are some early warning signs that underage use may be on the increase in 2022.<sup>36</sup> At the same time, there has been a spate of reports about illicit products with illegal nicotine concentrations and other chemical deficiencies entering the UK market<sup>37</sup>. The recent investigation into the sale of single use vaping products by the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) removed nearly 90,000 products from circulation.<sup>38</sup>

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<sup>36</sup> [ASH, Use of e-cigarettes among young people in Great Britain, June 2021](#)

<sup>37</sup> E.g., [Daily Mail](#), [Liverpool Express](#), [Newcastle City Council](#), [Better Retailing](#)

<sup>38</sup> [SCOTSS Product Safety and TARP Groups – Single Use Vaping Products Project 2021](#)

These issues must be tackled now. Juul Labs believes that retailers are a key part of the solution – robust age verification at the point of sale and strong understanding of the products they sell can make a huge difference. We are calling for a step change in the way e-cigarettes are sold in this country, with a more robust policy framework and better support for retailers. There are two pillars to our proposal which we set out below. Annex A sets out what Juul Labs is doing itself to limit access to our products for under-18s.

### *Getting age verification right*

- Mandatory introduction of a **'Challenge 25' policy for physical retailers** for both tobacco and vaping. Retailers have adopted this voluntarily for alcohol sales and it is mandatory in Scotland, where Juul Labs' own mystery shopper exercises have found a better rate of compliance than in other parts of the UK and would be happy to share more information with the review team.
- Introduction of **mandatory age verification processes for any online retailer**, ensuring the online world is as safe as the offline world. This should require upfront age and identity verification before a sale is made online, for example Juul Labs require a photo ID to be scanned as well as a 'selfie' photograph to confirm identity which is validated by a third party. Too many retailers rely solely on ID checks for delivery, or may not implement age verification at all. The government should provide support to make age verification easier, bringing tobacco and e-cigarette sales into efforts to enable digital age verification for age restricted products.
- Requirements for **all retailers to put in place "all reasonable precautions"** and "exercise all due diligence" to prevent underage sales of tobacco and e-cigarettes. This should include best practice guidance, for example training for staff, Challenge 25, where to responsibly place e-cigarette products to minimise underage appeal (for example, products should not be displayed immediately next to products of particular interest to those underage) and proportionate limits on sales volumes to help curb social sourcing. This policy already exists in Northern Ireland.<sup>39</sup>

### *Cracking down on illicit products*

- **Improved information for retailers** to help them check and spot illicit products. This would include best practice on checking MHRA product databases, and spotting warning signs such as nicotine strengths that are above the legal limits.
- **Introduction of checks on products at their point of entry into the UK**, as recently recommended by SCOTSS.<sup>40</sup> E-cigarettes are sold at thousands of retail establishments in the UK. Inspections by Trading Standards at their point of entry would be a more efficient and cost-effective way of keeping illicit products off the market, rather than relying on investigations carried out in retail premises.
- Faster and stronger **market intelligence sharing** by regulatory agencies about illicit products that are being found in the market, including ensuring all Trading Standards bodies are utilising available intelligence databases both for reporting and to inform new investigations. Retailers should be warned when authorities are aware that there is a problem.

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<sup>39</sup> [NI Business Info, Guidance: Age-restricted sales - Selling tobacco and nicotine inhaling products](#)

<sup>40</sup> [SCOTSS, SCOTSS Product Safety and TARP Groups – Single Use Vaping Products Project 2021, February 2022](#)

- Enhancing opportunities for cooperation. Retailers should be able to **easily report concerns about potentially illicit products** to the regulatory authorities through a well-publicised online portal and hotline.

### ***Juul Labs as a partner in tackling illicit products***

Juul Labs works with law-enforcement authorities and other stakeholders around the world to cut production, disrupt distribution, and seek cooperation from involved retailers. This work is part of a broader effort to ensure a more responsible marketplace for vapour products.

As with other illicit goods, criminal enterprises operating in China continue to be the main source of supply for black market vapour products. Over the past years, JLI has conducted numerous investigations and enforcement campaigns, including several that led to:

- 565,000+ counterfeit products seized
- 18 illicit production facilities disrupted
- 13 illicit manufacturers/distributors shut down

In our efforts to earn trust and be a responsible steward of our products, Juul Labs strongly supports enforcement against illicit products as we strive to reset the vapour category and earn a licence to operate in society.

### ***Delivering a responsible retail sector***

These changes can be taken forward relatively quickly. Regulatory changes should be included as part of the government's forthcoming Tobacco Control Plan for England, and we believe the government and the retail sector should work together with the industry on non-statutory changes without delay.

This package has the potential to significantly reduce underage sales and illicit products in the UK. But we must be guided by the evidence. If we do not see meaningful change, then we think the government will have to look at a formal licensing system for retailers of tobacco and vaping products.

Beyond underage sale and illicit product issues, we believe the retail industry can ultimately help provide the leadership needed to build a socially responsible market for e-cigarettes in the UK. For example, we think that sustainability, via recycling and safe disposal of used products, is one area where a partnership between industry and retailers could make enormous progress.

## **5. Effective enforcement and tougher penalties.**

Trading Standards are on the front line of efforts to tackle underage sales and the trade in illicit goods. Seizures have been reported across England<sup>41</sup>. Compliance testing carried out by SCOTSS in conjunction with their recent market investigation into disposables also found that these vaping devices were being actively sold to under 18s.

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<sup>41</sup> E.g., in [West Sussex](#), [Middlesbrough](#), [Walsall](#), [Stockton](#), and [Newcastle](#)

Juul Labs wants to see increased enforcement. The government's 2021 consultation<sup>42</sup> on reforming competition and consumer policy asked how Trading Standards can be better equipped to tackle criminal offences with respect to consumer law. We believe Trading Standards should be better resourced and its funding increased. Its central government budget has decreased by more than 25% since 2017/18 despite a rapid increase in people contacting trading standards about youth access to e-cigarettes. This is despite a 240% increase in reports, mostly due to non-compliant disposable vapes, in the first 6 months of 2021/22.

This is a change that the government could make right away and could make a huge difference. It is vitally important that Trading Standards maintain a focus on both high street and online sellers of illicit products. Alongside this, there should also be tougher penalties across the board for failures to comply with regulation – which will require coordination across both Trading Standards and wider local authority teams, in addition to MHRA, ACA and CAP.

### *Strong support and robust enforcement*

- Currently, authorities can decide how much of their block grant to use for Trading Standards. We believe **Trading Standards' central budget (currently £15.5 million) should be increased by at least £2 million**, with that funding ring-fenced for local authorities specifically to cover age of sale and illicit product checks on e-cigarette retailers.
- To further underpin efforts on age verification and illicit products, we want to see the introduction of a **mandatory system of registration for vaping retailers**, as currently exists in Scotland. This would create a database to support the provision of information on the law and guidance on best practice to all retailers. It would be a lighter touch version of the track and trace system being implemented for tobacco. The registry would also be useful in the regular promotion of compliance, allowing authorities to encourage behaviour change by reminding retailers of their obligations and the consequences of non-compliance. Nudges such as a warning like '*Trading Standards are operating in your local area*' could be a low-cost way of driving compliance. The registry would also provide valuable information to enforcement agencies. It would get illicit product warnings into the market fast. It would also enable them to target enforcement activity: resources could be focused on retailers with poor or limited track records of compliance.

### *Tougher penalties*

- We also believe that there needs to be more robust enforcement of legal requirements. This should be across production, marketing and retailing of e-cigarettes, as well as specific regulations aimed at consumers.
  - **Production** - Producers should be informed that MHRA will spot-check notifications and be reminded of the penalties for false or misleading claims at the point of notification.
  - **Marketing** - Greater transparency is needed in cases where producers, retailers and individuals break advertising guidelines with public annual reporting of non-compliant actions.
  - **Retail** - Trading Standards and local authorities need to have higher dedicated funding for tackling retail issues, and there should be harsher penalties for non-compliance. To empower

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<sup>42</sup> [Department for Business, Energy & Industrial Strategy, Reforming competition and consumer policy, July 2021](#)

retailers to adopt Challenge 25 consistently, we would also like to see tougher penalties for members of the public that abuse staff when asked for ID.

- **Consumers** - To further address social sourcing, we think that Northern Ireland's recently introduced penalties for an adult buying, or attempting to buy, tobacco products or nicotine inhaling products on behalf of a person under the age of 18 should be replicated in other parts of the UK. This would mean a fixed penalty notice of £250, or a maximum fine of £5,000 if prosecuted and convicted by a court.

## 6. Addressing harm misperceptions

The six-point plan presented in this submission outlines important measures that could help increase the responsibility of the sector. But in order for these to be as effective as possible, we believe false perceptions around the relative harm of tobacco and e-cigarettes must be tackled head on if more adult smokers, particularly those in disadvantaged communities, are to switch to potentially less harmful alternatives. Targeted action addressing harm misperceptions may be needed in disadvantaged areas and communities, where they serve to exacerbate the negative public health impacts of significantly higher smoking rates.

The Royal College of General Practitioners (RCGP) has stated that 'advising smokers on the relative risks of nicotine-containing products compared to smoked tobacco is an integral part of supporting them to quit'<sup>43</sup>. PHE has also said that smokers are three times as likely to stop smoking successfully if they combine stop smoking aids with expert support from local stop smoking services, health practitioners and other trusted voices.<sup>44</sup>

Data shows that harm misperceptions around the e-cigarette category are common. In 2021, **32%** of smokers reported that vaping was more or equally as harmful as smoking.<sup>45</sup> **While a successful campaign should aim to provide more information to all adult smokers, it should particularly target disadvantaged communities who both have higher-than-average smoking rates and are more likely to hold harm misperceptions, as well as allaying the concerns of the clinicians and public health professionals who care for them in the community.** This work should build on the important lessons learned during the UK's Covid-19 vaccine rollout on effectively engaging with disadvantaged communities and vulnerable groups using culturally sensitive information and trusted voices.

We have identified a range of potential interventions for the government to consider:

### *Ensuring quality information is disseminated widely*

- The Office for Health Improvement and Disparities (OHID) could **launch a 'Vaping Facts' website**, like that set up last year by the New Zealand Ministry of Health,<sup>46</sup> to provide accurate, scientific evidence-based and up-to-date information on the e-cigarette category.
- OHID should also commission and fund a **new nation-wide, targeted media campaign aimed at adult smokers** as recommended by the Royal College of Physicians (RCP) – which argues it would be an 'effective and relatively inexpensive' way to redress false perceptions and 'provide balanced

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<sup>43</sup> [RCGP, RCGP position statement on e-cigarettes, June 2019](#)

<sup>44</sup> [PHE Guidance, Health matters: Stopping smoking – what works? December 2019](#)

<sup>45</sup> [ASH, Use of e-cigarettes among adults in Great Britain, June 2021](#)

<sup>46</sup> <https://vapingfacts.health.nz>

information'.<sup>47</sup> A recent vaping information campaign developed by the New Zealand Health Ministry offers a good example<sup>48</sup>.

- To specifically target information at adult smokers, the government could **take steps to allow physical and online retailers to provide switching messaging at the point of sale** of cigarettes. For example New Zealand allows retailers to have signage saying "If you smoke, switching completely to vaping is a much less harmful option". Cigarette packs and tobacco pouches could also be used to deliver targeted messaging, through inserts or onserts, and mandated through an update to the Standardised Packaging of Tobacco (SPoT) regulations.
- NICE should commit to a **regular (annual or two-yearly) review of its guidelines** on e-cigarettes, and work with the National Centre for Smoking Cessation and Training to ensure that local stop smoking services, GPs and other health practitioners are aware of the latest guidance on using e-cigarettes and other less harmful alternatives as smoking cessation aids. This should include clear instructions from NHS England to Clinical Commissioning Groups to proactively notify clinicians of updated e-cigarette guidance.

### **Case study: New Zealand**

New Zealand is a global leader in proportionate e-cigarette regulation that supports harm reduction. The Health Ministry has publicly endorsed e-cigarettes as playing a key role in reaching its 2025 smoke-free goal.

Its Health Ministry has set up a website called 'Vaping Facts'<sup>49</sup> to provide a trusted source of information for smokers wanting to switch to a less harmful product consumers and run alongside the new programme for youth. The website includes information on the facts of vaping, how vaping can help quit smoking, vape-free schools, and vaping vs smoking.

The New Zealand government has also developed a public education campaign to support smokers to successfully switch to vaping and stop smoking completely, reduce inequalities in smoking prevalence, and enable health practitioners, smokers and the broader community to better understand that vaping is significantly less harmful than smoking (though not risk-free, which is why it is not for non-smokers).

Its Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 aims to strike a balance between ensuring vaping products are available for smokers who want to switch to a less harmful alternative and ensuring these products aren't marketed or sold to young people. This legislation governs e-cigarette safety standards, safety messages and options for retailers to display harm reduction messages.

In 2016, 14.5% of NZ used tobacco whilst 0.9% used e-cigarettes. In 2021, the number of smokers had decreased to 9.4% whilst the number of vapers had increased to 6.2%<sup>50</sup>. The New Zealand Ministry of Health notes "While smoking rates have been declining for many years, the decrease over the last year was larger than usual."<sup>51</sup>

<sup>47</sup> [RCP, Smoking and health 2021: A coming of age for tobacco control?, April 2021](#)

<sup>48</sup> [NZ Health Ministry, Business Case for a Public Education Campaign on Vaping, June 2019](#)

<sup>49</sup> [NZ Health Ministry, Vaping Facts Website](#)

<sup>50</sup> [NZ Health Ministry, New Zealand Health Survey 2021, December 2021](#)

<sup>51</sup> [NZ Health Ministry, New Zealand Health Survey 2021, December 2021](#)

## *Specific action to address health disparities*

- The upcoming Tobacco Control Plan for England should **include ambitious targets for reducing harm misperceptions**, as part of the government's focus on addressing regional health disparities and levelling up.
- OHID should **continue the annual evidence updates<sup>52</sup> on e-cigarettes**, previously conducted by PHE, and consider **increasing investment in research programmes** on the safety, efficacy, and health impacts of e-cigarettes as recommended by the RCP.
- OHID should also **commission new research into what the barriers and drivers are for clinicians recommending e-cigarettes** to adult smokers. Consideration should be given to clinicians working in disadvantaged communities or with vulnerable groups, like those with complex mental health needs.
- The government should work with NHS England to ensure the NICE guidance that notified e-cigarettes are available for purchase in secondary care settings is actively followed.

## **Next steps**

Juul Labs would welcome a conversation with policymakers and other interested stakeholders about our ideas. We have partnered with the think-tank Demos to explore this further and we would be pleased to share more detailed evidence and thinking behind the policy changes that we are proposing.

We now urge both the Government and e-cigarette businesses to build a more responsible industry – together we can help seize the prize of a smoke-free 2030.

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<sup>52</sup> [PHE, Vaping in England: 2021 evidence update summary, February 2021](#)



## Annex A - Limiting access for and appeal to under-18s

For e-cigarettes to reach their full harm reduction potential, it is crucial to create a responsible marketplace that tackles youth use. Juul Labs takes a comprehensive, data-driven approach to underage use prevention focused on two pillars: limiting the appeal of and restricting access to our products for those underage.

### Appeal

Juul Labs actively advocates for responsible packaging, labelling and advertising to ensure that alternative nicotine products do not appeal to those who are underage. Action on packaging and advertising is an area where the Government has an opportunity to tighten standards. We already take steps that go beyond current regulations to limit the appeal of JUUL products and support industry-wide standards to do the same. Specifically, Juul Labs:

- Limits the ways and channels in which products are advertised to ensure that they appeal to adult smokers only;
- Requires all media partners to establish, maintain, and monitor all advertising impressions, by channel, by product, and by audience demographics, including a breakout by age-group;
- Places marketing media only where we can ensure that a minimum of 75% of the audience is over the age of 18;
- Strictly prohibits the use of labelling that resembles child-friendly foods, drinks or other products (e.g. candy, cartoons or popular children's characters);
- Doesn't use social media for product advertising or promotional purposes. Juul Labs maintains a single social media account for corporate communications use only;
- Actively monitors social media platforms for inappropriate content, including content that depicts or encourages underage use, and seeks its removal;
- Does not engage in lifestyle influencer marketing on Facebook, Instagram, or similar social media platforms; and Juul Labs contractually prohibits Juul Labs' commercial partners (e.g. retailers and distributors) from engaging in these practices;
- Uses competent and reliable data sources, methodologies, and technologies to establish, maintain, and monitor highly targeted advertising and marketing plans and media buys to ensure that adverts are targeted at those above the legal purchase age (minimum 18+).

### Access

At the absolute minimum, restricting underage access means stringent age and identity verification and enforcement of the legal minimum purchase age. Our measures to prevent underage use and restrict access include:

- Mandating all UK retail partners to comply with Juul Labs' "Challenge 25" policy, whereby any customer who looks under the age of 25 must produce ID to prove they are over the age of 18. Retailers are regularly monitored through a mystery shopper auditing programme to ensure adherence. Those that fail to comply can have their supply suspended;
- Restricting underage purchases on owned e-commerce platforms by implementing advanced age-verification technology overseen by a third party that requires a purchaser to age verify by uploading a government-issued identification and providing a "selfie" photo that is matched to the picture on the identification;
- Enforcing strict product quantity limits on online purchases to limit the potential for proxy purchasing of devices and pods that could end up used by those underage;
- Monitoring non-age-gated e-commerce platforms such as eBay for JUUL product listings and seeking their removal.