Written evidence submitted by Oliver Kershaw (ECG0059)

My Involvement

1. I own the world’s biggest e-cigarette website ‘E-Cigarette-Forum.Com’ (ECF). It and my other website ‘Vaping.Com’ have a combined 2.5 million individual visitors every month. Their millions of posts provide insight into what vapers want and the problems created by poor regulation. Since I launched ECF in 2007, it has created an intellectual history of e-cigarettes which is regularly cited by patent lawyers because many of the important innovations took place on its pages. I started smoking aged 14 but have now switched to vaping and using snus. I have also used medicinal NRTs. I work in London and am often interviewed on TV about e-cigarettes.

Executive Summary

2. The EU regulatory framework is hampering the switch from smoking to safer nicotine products because the rules stop manufacturers producing better vaping devices.

3. The MHRA’s implementation of the regulation is flawed. It produces an illusion of product quality but lacks meaningful surveillance and enforcement. Millions of UK vapers are under the false impression that they are using officially tested liquids.

The EU Regulatory Framework

4. Safety: Your Committee will rightly hear much about how to measure the relative safety of vaping. Because of this it could neglect the more pressing issue of what drives smokers to switch to reduced risk products. These factors include relative prices, user experience and consumer information. All of these are badly undermined by current regulations.

5. Pricing: Smokers are often from low income groups and reducing smoking is a key to reducing health inequality. The price sensitivity of smokers is evidenced by the 2017 ASH Survey which found that 40% of them switched to vaping “to save money” (ASH fig. 4). However the TPD pushes up prices through its ban on tanks and cartridges larger than 2ml. This constraint has resulted in higher manufacturing costs which are being passed onto consumers. Yet this regulation provides no discernible safety benefit.

6. Convenience: Liquid refill containers are limited by the TPD to 10ml. Before the TPD consumers used much larger refill bottles as they found them more convenient and it saved money. These preferences have not changed. The result is the unregulated “short-fill” market (see paragraph 11 below).

7. Environment: At a time when concern over plastic pollution in our oceans is rising, the extra packaging being needlessly created to make compliant small containers is disturbing. For instance a vaper using three 10ml bottles instead of one 30ml bottle is creating almost three times as much plastic waste.

8. Nicotine Limits: The attractiveness for smokers of switching to vaping is reduced by the EU limit on nicotine levels to 20mg/ml. By contrast in the US, the JUUL e-cigarette has a nicotine level of 50mg/ml which is 2.5 times the EU limit. This one product has taken an impressive 5% share of the highly fragmented US market in just two years. In the UK 6% of vapers are still using liquids above 20mg/ml despite them being illegal (ASH fig. 14). So the legitimate UK vaping industry could help more heavy smokers switch if the rules were changed to allow it to meet their nicotine needs.

9. Nicotine Fears: I am not aware of a single injury attributable to the nicotine content of e-cigarettes when used as designed. So the fears of nicotine poisoning that motivated the EU to set these limits have not been justified. Both smokers and vapers ‘self-titrate’ their nicotine intake. If they feel nauseous they stop inhaling long before a dangerous level is reached.
10. **Information:** The advertising ban is another indefensible obstacle to encouraging smokers to switch to vaping. This prohibition makes it a nightmare for manufacturers to communicate today’s and tomorrow’s innovations to vapers. So why should businesses bother to develop better products? The PHE Stoptober TV commercial which promoted vaping was a drop in the ocean of what is needed to encourage smokers to switch.

The MHRA’s Implementation

11. **Short Fill:** A fast-growing part of the UK market is in entirely unregulated nicotine-free liquid sold in large bottles. Consumers buy these bottles for the convenience and cost savings and then top them up with notified nicotine liquid. This is a regulatory car-crash. The decision by the MHRA to not regulate such nicotine-free liquid avoided driving this sub-category entirely underground. But consumer demand for larger refill bottles is overriding their desire to vape compliant liquid.

12. **Testing:** As the MHRA does not test liquids it is totally reliant on the scrupulousness of the vast SME market. These businesses are expected to arrange their own testing which is expensive and should be done for every flavour blend. This level of trust is naïve. I know that a number of offshore manufacturers have made expensive “EU batches” of liquids for notification, only to replace these with non-compliant “standard batches” of liquids later. I cannot tell you how much of the market this represents. Nor can the MHRA because it has no system for finding out.

13. **Enforcement:** Since the MHRA is operating blind it cannot enforce its standards. It has no idea who is breaking the rules unless some hard-pressed Trading Standards official does some testing. The MHRA is wrecking its reputation as a tough medicinal regulator by being the sleeping policeman in a Turkish bazaar. This lack of enforcement is highly concerning. Compliant manufacturers are at a commercial disadvantage compared with those who cheat. There is a trend of overseas manufacturers dumping inferior products onto our market and pushing out legitimate UK businesses. This trend does not bode well for the industry or consumers.

Policy Thoughts

14. **Humility:** The first half of this decade was dominated by the failure of top-down policymaking in London and Brussels. The 2013/14 TPD legislative process saw regulators consistently ignore both scientists and consumers. In large part it was the UK Department of Health’s insistence on medicinal approval for e-cigarettes that created the current regulatory dog’s breakfast. If these past failures produce more humble regulators, future policy could be better.

15. **Town Hall Meetings:** So as Whitehall and Brussels consider how vaping regulation should evolve they could, instead of conducting meaningless paper ‘consultation’ exercises, go and listen to smokers, vapers and industry by holding town hall meetings.

16. **Testing Notified Liquids:** Revising the TPD’s constraints will need legislation. However the implementation of the current regulations can be made more effective now. The MHRA should immediately announce a programme of tests on liquid contents and close down those producers who put cash before compliance. They are committing criminal offences under The Tobacco and Related Products Regulations 2016. Yet there is no enforcement.

17. **Testing Non-Notified Liquids:** The MHRA could also test non-notified zero nicotine liquids even though it is not technically responsible for them. By disclosing these results - as well those of notified products - it would clean up the whole market. This would build consumer confidence in vaping, which as the ASH survey shows, has continued to erode even after the introduction of the TPD regulations (ASH fig. 9).

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