Written evidence submitted by
Johnson & Johnson Ltd (“Johnson & Johnson”) (ECG0112)

Johnson & Johnson would like to thank the clerks of the Science and Technology Committee of the House of Commons for making it aware of the submission of the UK Vaping Industry Association (UKVIA) on 2 May 2018 referencing the company and also the committee for allowing us this opportunity to respond to that submission.

The 2017 CAP/BCAP rules on the advertising of e-cigarettes were put in place to reflect changes in national law which in turn reflected the requirements of the revised European Union Tobacco Products Directive. Regarding the 2 May 2018 submission from the UKVIA to the committee, the fundamental issue is about whether or not the UKVIA VApril campaign of April 2018 is in breach of these rules. Johnson & Johnson Ltd believes that this campaign clearly breaches the CAP code for e-cigarette advertising. As its argumentation and justification in this regard is clearly outlined in a letter submitted to the UKVIA and which the UKVIA elected to share with the committee, Johnson & Johnson will not repeat that information here, rather we refer the committee to that letter.

When a commercial organization believes there has been a breach of CAP/BCAP codes it is expected that they initially seek to address the issue directly with the organization they believe to be in breach of the code. Due to Johnson & Johnson’s contention that a breach of the CAP Code has taken place, we wrote to the UKVIA directly on 28 March 2018. You are aware of their response back to us which was also submitted to the committee. As it was not satisfied with the outcome of this inter-organization dialogue, Johnson & Johnson has referred this case to the Advertising Standards Authority (ASA) as the independent regulatory authority responsible for applying the CAP advertising codes. At this time the case remains under review and the ASA is yet to announce a ruling, a process that we hope the UKVIA is not trying to unduly influence by raising this topic in a select committee inquiry in this way.

The UKVIA submission clearly implies there is something concerning about Johnson & Johnson raising a complaint with their organization, and subsequently with the ASA, based only upon a “financial interest” and that they are being treated unusually. We would like to address several points in relation to this:

- Firstly, cases of complaint regarding the CAP/BCAP Advertising Codes come from a wide range of sources with varied interests and it is common for commercial organizations to raise complaints where they feel it is justified to do so. When considering the last 50 rulings published on the ASA website, sixty percent of those rulings in cases where complainants are identified include at least one complainant with a commercial interest i.e. competitor challenging competitor. Commercial interest is a perfectly legitimate, legal and justifiable basis upon which to raise a complaint to the ASA, as indicated by the fact there is a recognized process by which to make such complaints.

- Secondly, Johnson & Johnson does not deny or wish to hide that fact that it has a commercial interest in the licensed nicotine replacement therapy (NRT) market. However, that interest is not relevant to the question of whether a breach of the code has taken place. Fundamentally the complaint registered by Johnson & Johnson relates to maintaining a level playing field and in ensuring that relevant UK codes and regulations are followed. Nicorette was the first smoking cessation treatment invented and has been available as a licensed NRT in an increasing number of countries around the world for 40 years. Throughout that time, we have also supported and delivered a wide range of programmes and projects to support tobacco control and smoking cessation more broadly. Johnson & Johnson is proud, we believe justifiably, of the fact that whilst manufacturing and marketing Nicorette we have
helped millions of smokers around the world on their journey to being tobacco and nicotine free.

- Thirdly, the UKVIA itself is not charity or an independent public health organization. As a trade association representing the vaping industry it clearly has commercial interests of its own as well as those of its members. It therefore appears contradictory for them to be implying that commercial interests are not legitimate on the one hand whilst engaging in this select committee process themselves. Their commercial interests are clearly demonstrated by the following statements from the UKVIA website:
  - A key priority of the organization is listed as “Promotion” with the descriptor “Championing the growth and opportunities of our industry”
  - UKVIA states “The UKVIA is run by members for members and represents the complete vaping supply chain. Our founding members below form our advisory board.” Amongst the founding members list are three of the largest trans-national tobacco companies in the world.
  - When describing why to join the association the UKVIA website states “The UK Vaping Industry Association (UKVIA) is dedicated to the continued growth and the expansion of the vape industry and champions the use of vape products. We promote and represent the interests of the entire industry.” Their primary focus is clearly on their commercial membership and their businesses.

The commercial interests of the UKVIA are also fundamental to the complaint that Johnson & Johnson has raised regarding what it believes to be a breach of the CAP code on the advertising of e-cigarettes. VApril was not an independent public health campaign, rather it was a commercial campaign seeking to grow the market for e-cigarettes and was funded by an association that is itself funded by the vaping and tobacco industry. This is demonstrated by, for example, the following website belonging to Jaq Vapour which is a UKVIA member:

https://www.jacvapour.com/vapril

The language on this webpage clearly demonstrates a link is being drawn between the VApril campaign and the selling of e-cigarettes by Jaq Vapour and thus it is evidence of the commercial nature and intent of the campaign.

Johnson & Johnson would also like to address statements made by the UKVIA in its submission claiming that it “runs an advertising campaign discouraging smokers from vaping”. This statement is both misleading and incorrect, Johnson & Johnson is not running any such campaign. This same point is made with more detail in the letter that the UKVIA sent to Johnson & Johnson in reply to our initial complaint letter to them, the same letter they have shared with the committee. Once more this is done in a way that mischaracterizes the situation and as such we wish to clarify it.

- For a limited period in early 2014, Johnson & Johnson ran a campaign called “Don’t Vape, Quit for Good”; the campaign has not been repeated since that time. At that time information was available suggesting many people who vaped were continuing to smoke cigarettes as dual users. As there is no safe level of smoking, this brief campaign was targeted at smokers wishing to quit and communicating that they should use a licensed NRT product like Nicorette for smoking cessation rather than vaping. Then, as now, there were no vaping products available in the UK that were licensed for smoking cessation. The campaign was focussed on a call to action for smokers wishing to quit. It is a matter of
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public record that the MHRA received a complaint about this campaign. Johnson & Johnson would like to highlight that following a review, the MHRA stated the below on its website:

“An individual complained to MHRA about an advert for Nicorette QuickMist (nicotine) produced by Johnson & Johnson Ltd for consumers, which appeared on a Northern Line tube train in July 2014.

The complainant had concerns that the headline “Don’t Vape. Quit for Good.” was inappropriate, misleading and potentially harmful. The complainant alleged that the advertiser had no evidence for promoting its product as an alternative to vaping (using an electronic cigarette) or providing negative messages to consumers about vaping.

MHRA did not uphold the complaint and considered that the advert was designed to encourage current smokers to quit with an authorised medicine rather than choosing to vape. MHRA found that the claim ‘quit for good’ was consistent with the product’s licensed indication for use as an aid to stop smoking.

No electronic cigarette product is currently available as a medicine for use as an aid to stop smoking.”

To clarify any other potential misconceptions that may arise, Johnson & Johnson has never sought to block e-cigarettes or any other non-tobacco nicotine product from the market. We believe smokers should have access to a wide range of safe and effective products to support them on their journey to a life free from tobacco and nicotine. With that in mind what we have done consistently in the UK and around the world is engage actively in debate on the way that all non-tobacco nicotine products, including e-cigarettes, should be regulated. Our basic position remains as follows:

- Johnson & Johnson would like to see all non-tobacco nicotine products subject to a medicinal regulatory framework and calls for all such products to be regulated and licensed as medicinal by both function and presentation on a level playing field by competent medicinal regulatory authorities.
- We believe that the best way to protect consumers and public health effectively is by ensuring all non-tobacco nicotine products meet appropriate levels of safety, efficacy and quality and are marketed in a way that promotes and advances consumer and public health whilst minimizing the risk of use by non-smokers, particularly young people.
- We also believe that it is the responsibility of governments and competent medicinal regulatory authorities to ensure one standard of regulation is applied equally to all forms of non-tobacco nicotine and in so doing prevent the risk of a “two tiered” market developing to the detriment of consumers and public health.

We acknowledge that this position is not reflected in regulation all parts of the world, including the European Union following the revision of the EU Tobacco Products Directive. This is at least in part due to activity of the vaping industry which has lobbied forcefully against e-cigarettes being categorized and regulated under medicinal regulatory frameworks. One justification frequently cited during such lobbying activity has been that e-cigarettes should not be treated as smoking cessation medicines because they are not promoted by their manufacturers as quitting aids, i.e. that they do not meet the criteria of medicinal by presentation. In its written response to Johnson & Johnson, and supplied by them to the committee, the UKVIA states that “The VApril website includes references to e-cigarettes as a class of products and does not include reference to a particular
product or recommend the use of a particular brand or type of e-cigarette as a smoking cessation tool.” The implication of this statement is that the UKVIA are recommending e-cigarettes as a smoking cessation tool at a broader and non-brand specific level; and it is clear from the VApril website that this was the aim of the campaign. It appears deeply contradictory that having successfully lobbied against medicinal regulation on the basis that e-cigarettes are not presented as a cessation aid, the vaping industry now wishes to avail itself of the benefits of advertising rules applied to licensed medicinal products.

We are disappointed that the UKVIA has used the parliamentary privilege afforded to it by this select committee inquiry to share information about an ongoing complaint that the ASA is still to rule on. We are equally disappointed in the way some of the comments in the UKVIA submission mischaracterize the situation surrounding that complaint and are in our view misleading about Johnson & Johnson. It is unclear exactly what benefit disclosing information to the committee right now on an unresolved ASA complaint offers to the UKVIA and its members; we hope it is not intended to unduly influence due process or the outcome of that complaint procedure whilst underway.

May 2018