

## REGULATING THE FUTURE OF VAPING

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Ten metres from the Demos front door on Whitehall is a shop that bills itself as 'American Candy Co.' It is wall to wall bright colours and neon lights and it's stocked to the gills with sugary confections made famous around the world by American TV shows. Sickly sweet flavouring permeates the air as you walk past. And yet it is not the price of the Twinkies that horrifies me. It's the northern wall, by the entrance.

At a glance you'd think the display is another few rows of sweets, but it's not. It's vapes, packaged up to look like childrens' favourite candy and flavoured to match. And though this retailer may have taken it to extremes, you see the same pattern in corner stores across the country: vapes set out on the counter next to the bubble gum. It's as if retailers have been seized by a collective delusion that a nicotine product designed to help smokers switch away from cigarettes belongs in the same product category as Pez dispensers.

We seem to be a million miles from where we were just over a decade ago, when the policy debate about what were then mostly called "e-cigarettes" first crossed my desk in Downing Street. It was a note from the newly established Behavioural Insights Team, which I had helped to establish, and it told of a great new hope for helping people to stop smoking. Smoking is one of the worst things people

can do for their health - the number one cause of preventable ill health and premature death in the UK.<sup>1</sup> Efforts to reduce it are an essential component of any decent public health strategy. Back in 2011 there was strong emerging evidence that vaping was substantially less harmful than smoking, and could really help smokers to switch. But some in the anti-smoking community wanted to regulate it so strictly that it would never have emerged as a consumer product. The UK became a leader on vaping because we didn't let that happen: we followed the evidence from public health experts, adapting tax and regulation to incentivise innovation at the company level, and switching at the individual level. A huge number of smokers - probably numbering in the millions, according to Action on Smoking and Health (ASH) research<sup>2</sup> - quit cigarettes by switching to alternatives in the years that followed.

**“ That's the challenge before us: we need to make it easier to quit, easier to stay away from smoking, and harder to start.**

1 Public Health England. Local tobacco control profiles. Public Health England, 2021. Available at <https://www.gov.uk/government/statistics/local-tobacco-control-profiles-for-england-july-2021/local-tobacco-control-profiles-for-england-short-statistical-commentary-july-2021>

2 Action on Smoking and Health (ASH). Use of e-cigarettes (vapes) among adults in Great Britain. ASH, 2021. Available at <https://ash.org.uk/wp-content/uploads/2021/06/Use-of-e-cigarettes-vapes-among-adults-in-Great-Britain-2021.pdf>

But we've ended up in a new trap. Instead of leading the way on regulation as we did, we're getting into a mess. Those candy-coloured, sugary-sweet boxes are a problem for two reasons. They irresponsibly attract children, potentially luring under-18s into vaping. They also subtly undermine the public health message that vaping is less harmful than smoking, because they look and feel like a dangerous indulgence. How can you persuade a smoker looking to improve their health that they should try out a product that's sold as if it's a Twinkie? There's an important balance to be struck. The consumer appeal of vaping is important if it helps people quit, but we need to be careful about sending the right messages with packaging, flavouring and marketing.

In 2019, the Government set out a laudable ambition of a smoke-free<sup>3</sup> United Kingdom by 2030. Last year, the Royal College of Physicians published their analysis that suggests - unless we do something radically different - we will not get to smoke-free status until 2050 at the earliest. As they say: "the odds of quitting would need to increase fivefold in females and sixfold in males ... for the ... target to be achieved by 2030."<sup>4</sup>

That's the challenge before us: we need to make it harder to start smoking, easier to quit, and easier to stay away from smoking once you have quit. So Demos is launching a programme of work to identify the policy changes that will help. I believe the UK can provide global leadership on this vital journey away from cigarettes and tobacco, if we get this right. We could be one of the first countries to get close to eliminating tobacco smoking and by doing so, we could massively reduce the unacceptable disparities in health between our richer and poorer citizens. And we can keep our children safe as we do it. But all those goals require us to get much smarter when it comes to regulating vaping.

## LEVELLING UP HEALTH

First, we need to remind ourselves how vitally important it is that we reduce - drastically - smoking in the United Kingdom, especially if we are to meet the Government's stated aim of reducing the unfair disparities in health and life expectancy between rich and poor.

The pandemic transformed the nation's understanding of how unequal our country is in terms of our health. Through campaigns and

discussions about food, access to green space, and health inequalities, it became clearer than ever that inequality has vast, far-reaching consequences. Research agency Opinium reported that 39% believe that inequality is worse in Britain than they realised pre-pandemic.<sup>5</sup> And they want this to change.

This provides us with an opportunity, as Demos argued in a report last year - Build Back Stronger - to build widespread public support for change.

There is huge enthusiasm in Parliament as well as among the voters, and that's reflected in the new focus of the Government on health disparities as part of its Levelling Up agenda. However, if we want to level up health, we need lots more people to stop smoking.

That's because lower socio-economic groups are far more likely to smoke. ONS research suggests nearly a quarter of those on incomes less than £10,000 are current smokers, in comparison with only 11% of those on incomes over £40,000. People who are unemployed are almost twice as likely to smoke as those in work. Smoking prevalence among adults with a serious mental illness is over two and a half times the national average. This translates into massive differences in the harm caused. In fact smoking accounts for about half the total gap between rich and poor when it comes to health outcomes. And of course - smoking is expensive. The Royal College of Physicians estimates that tobacco spending pushes a million people over the line into poverty.<sup>6</sup>

<sup>3</sup> This is usually defined as smoking prevalence of less than 5%

<sup>4</sup> Tobacco Advisory Group. Smoking and health 2021: A coming of age for tobacco control?. Royal College of Physicians, April 2021. Available at <https://www.rcplondon.ac.uk/projects/outputs/smoking-and-health-2021-coming-age-tobacco-control>

<sup>5</sup> Compassion in Politics. Over one in three adults admit inequality in Britain is worse than they thought pre-Covid, 2020. Available at <https://www.compassioninpolitics.com/inequalityworse>

<sup>6</sup> Tobacco Advisory Group. Smoking and health 2021: A coming of age for tobacco control?. Royal College of Physicians, 2021. Available at: <https://www.rcplondon.ac.uk/projects/outputs/smoking-and-health-2021-coming-age-tobacco-control>

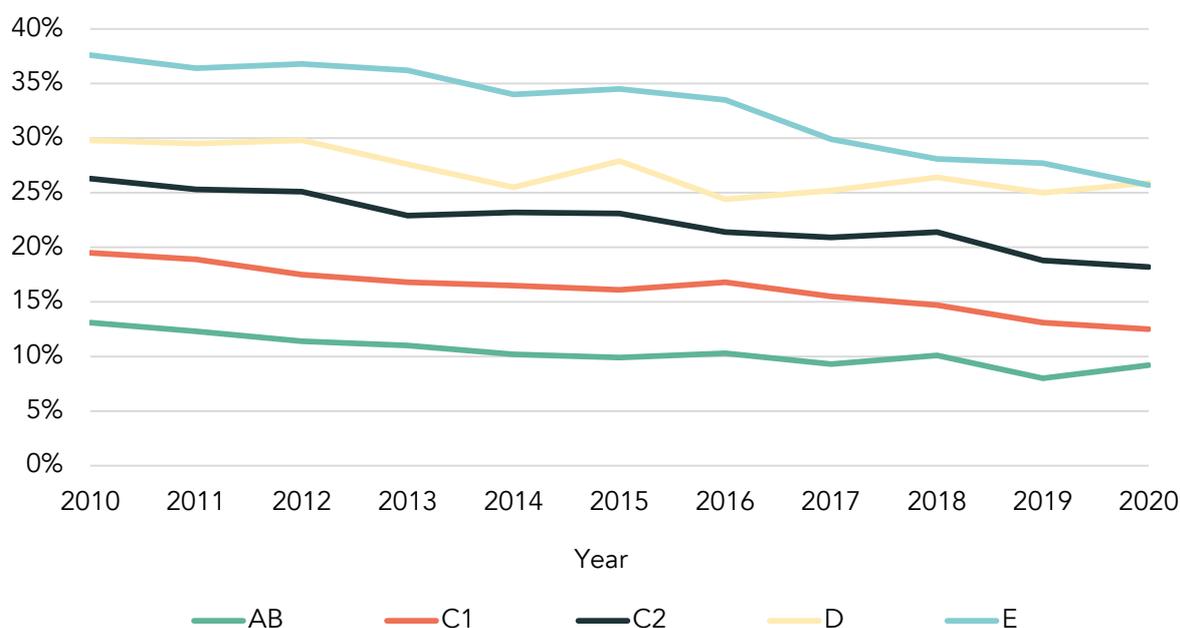
**FIGURE 1****SMOKING PREVALENCE BY SOCIO-ECONOMIC STATUS AMONG ALL ADULTS, ENGLAND 2010 TO 2020**<sup>7</sup>

Figure 1: McNeill A, Brose LS, Calder R, Simonavicius, E., Bauld L, Robson D. Vaping in England: an evidence update including vaping for smoking cessation, February 2021: a report commissioned by Public Health England [Internet]. London; 2021. Available from: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962221/Vaping\\_in\\_England\\_evidence\\_update\\_February\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf)

too large. Only by kick-starting our efforts towards a smoke-free society will we have any chance of resolving health inequality.

## VAPE-TO-QUIT

There are many ways for a smoker to quit, but the evidence that vaping helps is even clearer now than when I first looked at it in 2011. People who try to quit with willpower alone are far more likely to fail than those who get help, and vaping appears to be one of the most effective forms of help, partly because of its consumer appeal and availability.

In 2021 Public Health England (now the Office for Health Improvement and Disparities) published an updated evidence review, which explained that vaping is now the most popular aid used to quit smoking, used by more than 27% of people who

made a quit attempt. They estimate that in 2017, “over 50,000 smokers stopped smoking with a vaping product who would otherwise have carried on smoking.”<sup>8</sup>

Of course, vaping is not the only route. Clinical guidance from NICE - the National Institute for Health and Care Excellence - includes advice to medical practitioners about how best to support people to stop smoking. It sets out guidance on the information practitioners should share about e-cigarettes with anyone interested in using them to stop smoking, alongside guidance about when and how to offer prescription medication and licensed nicotine replacement therapy. All three are positively associated with successfully quitting smoking. It’s vitally important that smokers have access to a wide choice of cessation aids that meet their needs. But as PHE states: “vaping products may reach more

<sup>7</sup> Age 18+. Unweighted bases: 2010=24,268; 2011=21,299; 2012=20,832; 2013=21,658; 2014=19,773; 2015=19,642; 2016=20,063; 2017=20,036; 2018=20,402; 2019=20,380; 2020 (to October) =15,294. Smoking prevalence included current smokers who smoked daily or smoked, but less than daily. Social grade definitions (44): A = High managerial, administrative or professional; B = Intermediate managerial, administrative or professional; C1 = Supervisory, clerical and junior managerial, administrative or professional; C2 = Skilled manual workers; D = Semi and unskilled manual workers; E = State pensioners, casual or lowest grade workers, unemployed with state benefits only. 2020 data available from January to October. The full year’s data was used for all other years.

<sup>8</sup> McNeill, A et al. Vaping in England: an evidence update including vaping for smoking cessation, February 2021: A report commissioned by Public Health England. Public Health England, 2021. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962221/Vaping\\_in\\_England\\_evidence\\_update\\_February\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf)

people who smoke and so have more impact than NRT and varenicline.”

Data from Stop Smoking services in England couldn't be clearer about the value of vaping as part of the offer to smokers. To quote the PHE evidence review:

- Between April 2019 and March 2020, 221,678 quit dates were set with a stop smoking service and 114,153 (51%) of these led to self-reported quits 4 weeks after the quit date.
- A vaping product was used in 5.2% of quit attempts. This was either using the vaping product alone, at the same time, or following use of a licensed medication.
- Consistent with findings in our previous reports, the highest quit rates (74%) were seen when the quit attempt involved people using a licensed medicine and a vaping product one after another.
- Quit rates were similar for people using a vaping product and licensed medication at the same time (60.0%), a vaping product alone (59.7%) and varenicline alone (59.4%).
- Quit rates involving a vaping product were higher than any other method in every region in England. These ranged from 49% in the South West to 78% in Yorkshire and the Humber.<sup>9</sup>

The problem is that we're just not helping enough people to make the change. We need to drastically accelerate our efforts.

## **SMOKING MYTHS**

One of the greatest barriers stopping smokers from switching to alternative nicotine products is a widespread belief that nicotine is the most harmful part of a cigarette. Four in ten smokers and ex-smokers believe this.

But the public health evidence could not be clearer: while nicotine is the addictive component of tobacco, it is not a carcinogen. Lung cancer, heart disease and COPD are the leading causes of premature death among smokers, and it is the tar and smoke produced by burning tobacco that increase the chances of developing these illnesses.

On top of this misunderstanding about tobacco, there appear to be substantial myths about vaping, too, in the public imagination. 38% of people now believe vaping is as harmful as smoking, and 15% believe it is more harmful. Worse still, those myths are more widespread among low-income and minority ethnic groups.

<sup>9</sup> McNeill, A et al. Vaping in England: an evidence update including vaping for smoking cessation, February 2021. 2021.

**TABLE 1**

HARM PERCEPTIONS ABOUT VAPING AMONG CURRENT SMOKERS BY AGE, GENDER, REGION, SOCIAL GRADE AND ETHNICITY, ENGLAND 2020  
(STS, WEIGHTED PERCENTAGE, UNWEIGHTED N)<sup>10</sup>

	<b>MORE HARMFUL THAN REGULAR CIGARETTES % (N)</b>	<b>EQUALLY HARMFUL % (N)</b>	<b>LESS HARMFUL THAN REGULAR CIGARETTES % (N)</b>	<b>DON'T KNOW % (N)</b>
<b>TOTAL</b>	14.8 (320)	38.0 (828)	29.3 (681)	18.0 (129)
<b>AGE</b>				
18 to 24	13.1 (48)	46.4 (164)	30.8 (114)	9.7 (35)
25 to 34	18.9 (88)	40.0 (196)	27.7 (138)	13.5 (65)
35 to 44	17.0 (54)	36.8 (134)	27.7 (103)	18.4 (64)
45 to 54	12.0 (46)	37.3 (121)	33.3 (118)	17.4 (65)
55 to 64	10.9 (41)	33.0 (109)	33.5 (122)	22.7 (79)
65+	12.1 (43)	29.2 (104)	23.6 (86)	35.2 (129)
<b>GENDER</b>				
Male	14.2 (153)	33.7 (362)	33.5 (396)	18.7 (225)
Female	15.6 (167)	43.0 (464)	24.6 (283)	16.8 (207)
<b>REGION</b>				
North	16.7 (105)	35.8 (224)	29.4 (199)	18.1 (127)
Midlands	13.3 (52)	37.9 (149)	29.5 (122)	19.4 (83)
South	14.2 (163)	39.2 (455)	29.2 (360)	17.3 (228)
<b>SOCIAL GRADE</b>				
ABC1	10.3 (107)	32.9 (324)	38.1 (385)	18.6 (202)
CD2E	17.4 (203)	41.2 (486)	24.1 (278)	17.3 (222)
<b>ETHNICITY</b>				
White	14.6 (138)	41.1 (370)	29.2 (288)	15.1 (162)
Black and Minority Ethnic groups	23.1 (21)	41.5 (47)	17.0 (18)	18.5 (16)

Figure 1: McNeill A, Brose LS, Calder R, Simonavicius, E., Bauld L, Robson D. Vaping in England: an evidence update including vaping for smoking cessation, February 2021: a report commissioned by Public Health England [Internet]. London; 2021. Available from: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962221/Vaping\\_in\\_England\\_evidence\\_update\\_February\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf)

<sup>10</sup> Age 18+. Unweighted base for age, gender, region = 2,267; Social grade = 2,207; Ethnicity = 1,065. Ten people defined their gender in another way. Current smokers included people who said that they smoked daily or that they smoked, but less than daily. STS data available from January to October 2020.

We are going to need to counteract both of these narratives if we are to get people to switch away from smoking towards less harmful alternatives. I believe a successful approach is likely to start with public health information campaigns. But we also need a new approach to regulation and enforcement so smokers can be confident in the quality of products they buy.

A recent study by retail researchers ShopMate, published in Retail News, identified that one of the 'top 10' vaping products sold in November last year was a product that does not meet UK regulatory standards, and is therefore illegal to sell.<sup>11</sup> When Scottish Trading Standards identified concerns over single-use vaping products in 2021, they launched an enforcement programme that took 90,000 products off the market, nearly all of which were imported.<sup>12</sup> These are worrying indications of the gaps in our enforcement. Retailers don't have all the information they need to make judgements about product integrity; producers and wholesalers seem to be bringing some illegal products into the UK market and putting them into the supply chain.

And on top of that, many vaping products are sold outside of physical retail premises, where it is even harder to enforce trading standards. This includes online sales; market stalls; and peer-to-peer selling in parks, public spaces and even outside schools and colleges.

We'll be exploring how well regulation is working, and setting out recommendations for a new approach in this programme of work over the coming months.

## CHILDREN AND NON-SMOKERS

It's essential in this debate that we don't get confused about the nature of vaping. Vaping is not something we should describe as 'safe'. Experts believe it is substantially less harmful than smoking, and a useful aid to helping people quit. But that doesn't mean it's safe for children, or that anyone who doesn't smoke should take up vaping. The public health evidence and advice have been clear on this. But there is a huge gap between what the evidence says and the approach we take to both regulation and enforcement.

I started this paper in the Westminster sweet shop that treats vaping as if it were candy.

But the error of judgement didn't start on the premises of the retailers: it's there in the branding, flavouring and packaging decisions made by far too many producers. Bright colours. Cartoon characters. Flavours that emulate the sweets my pre-teen children love. All seem designed to lure in younger audiences to vaping. And these products are becoming increasingly visible on platforms with huge volumes of under-age users, like TikTok. It's a platform with huge youth appeal, and plenty of research suggests it's widely used by children under 13, its official minimum age limit. Is it any wonder that - according to ASH research - more than 10% of 11-18 year olds have tried vaping? While only about 1% are vaping once a week or more, with another 2% vaping less frequently, this is still too many, and we must not be complacent.<sup>13</sup>

Of course, it remains illegal to sell vaping products to under-18s, but are we confident that retail premises are enforcing those rules? When they're displayed on the counter next to the Chupa Chups, can you be sure every employee in shops is as conscious of the law as they are of the law on alcohol or tobacco sales? Understaffed, overstretched trading standards bodies need help if they're to have a chance of establishing this as a norm in all bricks and mortar stores.

Finally, there are sales outside of shops, and these likely offer the most leakage to underage consumers. There are three channels we want to explore in the course of our work: online sales, markets, and peer-to-peer selling, all of which we think put children at risk not just from vaping, but from sub-standard or counterfeit products that could cause even more harm to developing bodies.

## REGULATING THE FUTURE

These are not easy challenges to resolve, which is why I'm so interested in exploring them, through the prism of this issue. If we ask how we should evolve the regulatory regime for vaping, the process forces us to ask some fundamental questions about a number of structural factors facing governments in the 21st century.

How do we regulate products or services that can cause harm? A relevant question for the debate about alcohol, gambling, food ingredients (like salt, fat, sugar and nitrates) and even personal credit markets.

11 Retail News. Illegal vape product among 'top 10'. Retail News, 2022. Available at: [https://issuu.com/newtradepublishing/docs/rn\\_18\\_february\\_2022\\_fhghfjghgkjjvjsfsg?fr=sZDNmMDg5MjI3NQ&utm\\_campaign=RN%20Digital%20Issue&utm\\_medium=email&\\_hsmi=204353390&\\_hsenc=p2ANqtz-9tX7U0WZrQhABL6R7Q-aS2cP\\_C-N1z2\\_xPyET60SoOljP-A4fJH15c8eywRdF\\_wJA55bHIV0QNOEg3\\_CIYMgzU-ONIMg&utm\\_content=204353390&utm\\_source=hs\\_email](https://issuu.com/newtradepublishing/docs/rn_18_february_2022_fhghfjghgkjjvjsfsg?fr=sZDNmMDg5MjI3NQ&utm_campaign=RN%20Digital%20Issue&utm_medium=email&_hsmi=204353390&_hsenc=p2ANqtz-9tX7U0WZrQhABL6R7Q-aS2cP_C-N1z2_xPyET60SoOljP-A4fJH15c8eywRdF_wJA55bHIV0QNOEg3_CIYMgzU-ONIMg&utm_content=204353390&utm_source=hs_email)

12 Francis, D. SCOTSS Product Safety and TARP Groups – Single Use Vaping Products Project 2021. SCOTSS Trading Standards, 2022. Available at: <https://www.scotss.org/press/vapeproject2022.pdf>

13 Action on Smoking and Health (ASH). Use of e-cigarettes among young people in Great Britain. ASH, 2021. Available at <https://ash.org.uk/wp-content/uploads/2021/07/Use-of-e-cigarettes-among-young-people-in-Great-Britain-2021.pdf>

How do we regulate adult products and services sold over the internet, an environment where age verification is often difficult, expensive or both? Age checks for product sales have largely been delegated to delivery services whose - largely self-employed - drivers work at such pace and margins they're often incapable of doing it properly. It's a question that's been raised about knives, alcohol, chemicals and more.

How do we regulate online advertising, across multiple, complex platforms, where enforcement is so often reliant on platforms' own, failing, systems? And how do we navigate product promotion by users who fall outside advertising rules, but may nevertheless be causing harm? The self-regulatory approach of the Advertising Standards Authority doesn't reach into the teens promoting gambling, vaping, or crypto investing on their social media accounts - those are questions that need to be addressed by our approach to broader online harms.

**“ ...we must rekindle our ambition when it comes to smoking cessation, and make Britain a world leader in lung and heart health too.**

And then there's the question of quality when it comes to what's being sold in those under-regulated online retail environments. Upcoming Demos work looks at the selling of investment scams online, but this is just the tip of the iceberg when it comes to unregulated and potentially illegal retailing over the internet, promoted through an ever-changing network of ads and referral links. Dangerous diet pills, fake covid tests and non-existent pets jostle for pixel space with multi-level-marketing pyramid schemes and dodgy vaping products that don't meet the UK's standards.

So how do we enforce advertising standards, age restrictions and regulatory quality standards in internet sales? Can we use the debate about vaping to develop better approaches to online retailing as a whole?

Bricks and mortar retail isn't quick and simple to deal with, either. It's one thing to write rules, but quite another to enforce them. One of the fascinating features of vaping is the way the sector has developed so quickly, with so many kinds of products, and so many brands. Much of that diversity is welcome, and innovation is a vital component of a successful economy, but it's also clear retailers are struggling to keep up, in terms of understanding what they can and cannot sell. How do we regulate

fast moving product categories? How do we support the learning journeys for frontline enforcement and frontline shop workers? What does a modern, effective trading standards regime look like? When and how can local authorities deal with informal sales which may breach regulations but fall below de minimis levels for enforcement?

This isn't a dilemma only in the vaping sector but in many; the Food Standards Agency for example, is exploring the risks of the informal local food sector, where individuals sell cooked food in their community.

And finally: I want to use this programme of work to ask how we build public support for harm reduction strategies that - to some - look like accepting defeat. Purists who want a nicotine-free - rather than a smoke-free - future may be relatively few and far between. But when it comes to public health approaches to drugs, gang violence, or sexually transmitted diseases, advocates for 'harm reduction' are often accused of supporting the continuation of harmful behaviours. Can we use our journey away from tobacco to build better public understanding of what the 'harm reduction' approach can achieve?

Regulation and enforcement are never easy. But there is a huge opportunity here for the UK to be a regulatory pioneer. We are by no means the only country grappling with the questions I've set out above.

The Government has explicitly committed itself - post-Brexit - to global leadership on the regulation, in particular, of novel and evolving sectors. Vaping is the perfect test case for that. A decade ago, we did lead the world on this issue. We can continue to do so. We must identify how to regulate fairly and effectively to keep children and non-smokers away from vaping. We must work out what branding, packaging and advertising systems are appropriate for this product category, and how we might move towards enforcing them. But most importantly of all: we must rekindle our ambition when it comes to smoking cessation, and make Britain a world leader in lung and heart health too.

## **OUR PROGRAMME OF WORK**

Our programme of work, with the support of Juul Labs Inc, is designed to convene policy makers and inform the debate with new research. We will explore the way regulation and enforcement are working in practice. We'll explore the attitudes of adult smokers, and the public at large, to the idea of switching, and the role government should take. Our CASM team, a leading research centre on the online world, will be looking at how vaping is evolving online, in particular on social media. We will explore the narratives being

used that may be drawing young people towards vaping, and where there are regulatory gaps in the online retail environment.

As well as conducting our research, we will be convening a series of roundtable discussions and policy workshops to bring public health experts, retailers, trading standards officers, regulatory insiders and more together to help design a new regime for the future of vaping. If you're interested in being part of the conversation, we'd love to hear from you.

## **ACKNOWLEDGEMENTS**

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