Promoting cannabis: current rules & regulations

Cannabis Industry Council

About the author

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Summary

Prescription cannabis medicines

Businesses can advertise any licensed over-the-counter (OTC) medicine to the general public. However, cannabis medicines are all Prescription Only Medicines (POM), controlled substances and therefore cannot be advertised to consumers in the UK. This includes both licensed and unlicensed Cannabis-based products for medicinal use (CBPMs).

Licensed CBPMs can be advertised to doctors and healthcare professionals according to the rules of the Medicines and Healthcare products Regulatory Agency (MHRA) Blue Guide*, which are translated into the Association of the British Pharmaceutical Industry (ABPI) Code of Practice for prescription-only medicines. Unlicensed CBPMs cannot be advertised, even to prescribing doctors (information can though be provided in response to unsolicited requests).

Non-promotional material may be provided to the public in certain circumstances, but must be factual and balanced, and must not encourage members of the public to ask their health professional to prescribe a specific prescription only medicine.

Medical cannabis clinics can promote their services but have to walk an extremely fine line between advertising the services they offer and to who (allowed), and promoting medicinal cannabis products (disallowed). We recommend seeking professional advice to ensure compliance with the MHRA Blue Guide.

*https://www.gov.uk/government/publications/blue-guide-advertising-and-promoting-medicines

Consumer CBD products

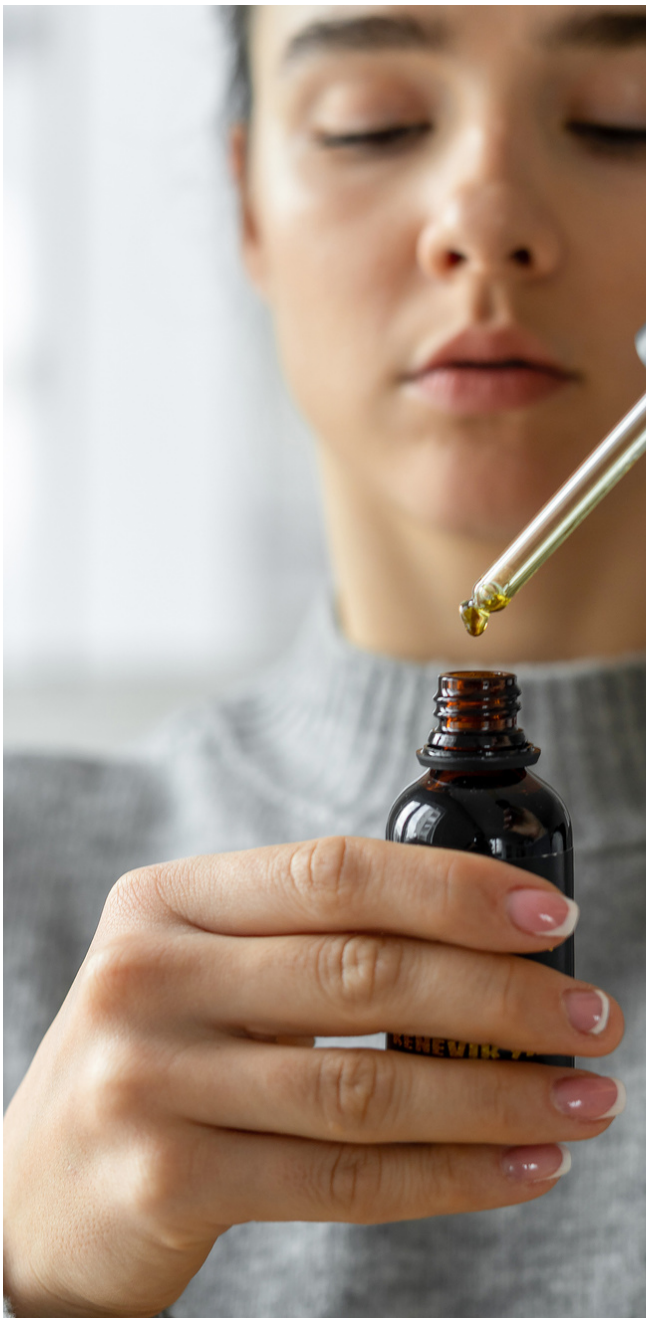
Consumer CBD products (such as food products, food supplements, cosmetic skincare products and vaping products) are not licensed medicines and therefore cannot make medicinal claims in their marketing.

While consumer CBD products vary in their product classification according to mode of delivery, marketing claims that can and cannot be claimed are determined both by Advertising Standards Agency (ASA) / the Committee on Advertising Practice (CAP) rules, and ultimately by MHRA rules on advertising medicines.

MHRA does allow consumer products to claim they can "maintain" a healthy lifestyle, without deeming this to be in breach of their rules. However, CAP rules for food products effectively preclude this – they state that only health claims listed as authorised in the Great Britain Nutrition and Health Claims Register* can be made, and the register currently doesn't contain any allowed health claims for consumer CBD.

Secondary medicinal claims may be made for cosmetic products if they are backed by evidence, but such claims must be limited to any preventative action of the product (they may not include claims to treat disease). The overall impression of the advertisement must be that the primary purpose of the product is cosmetic.

Public relations activity is not captured by ASA rules; however, MHRA may consider product medical claims in editorial content as evidence that a product is breaching their rules.



*https://www.gov.uk/government/publications/great-britain-nutrition-and-health-claims-nhc-register

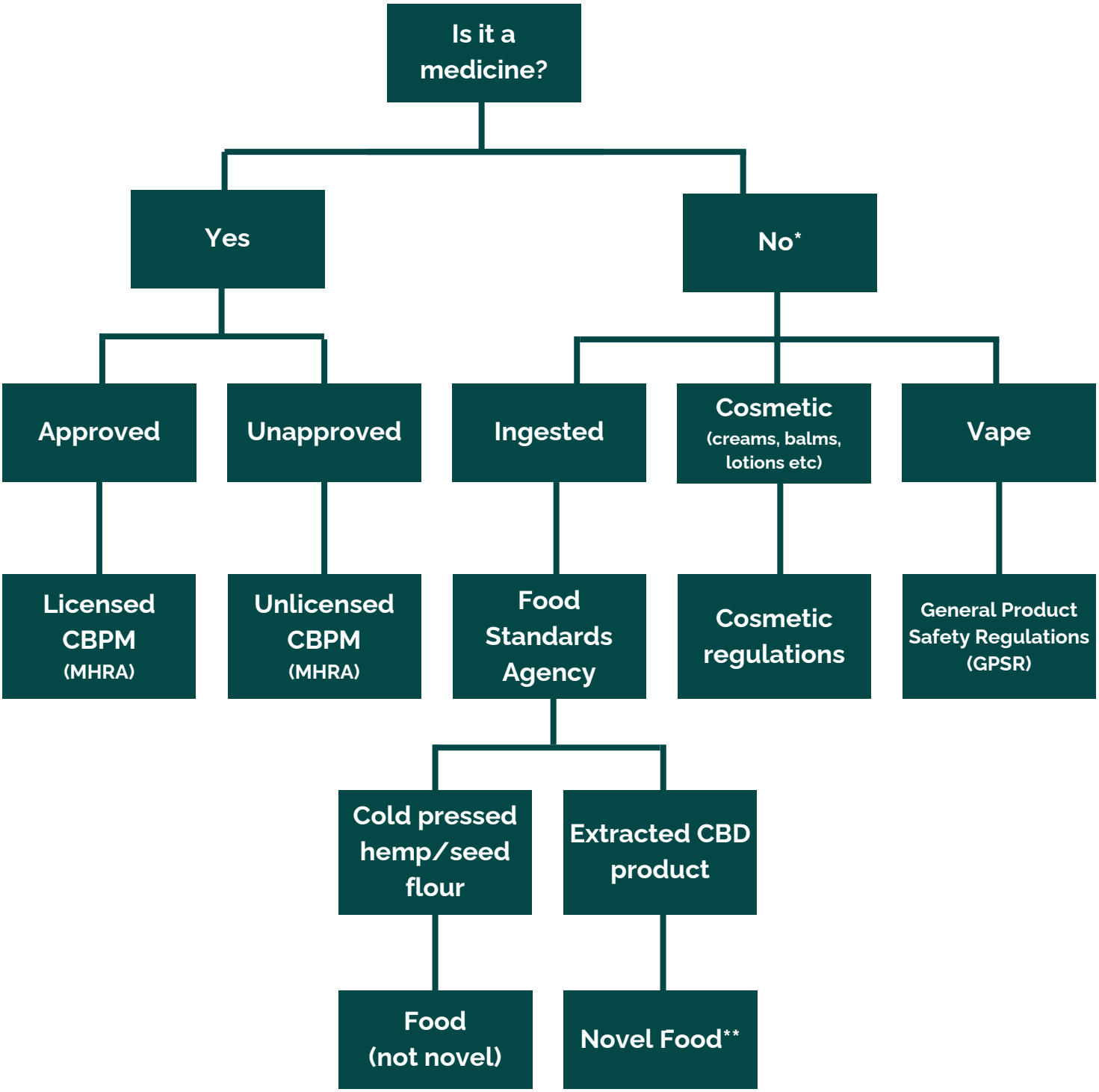
Introduction

The rules around what promotional claims are allowable for prescription cannabis medicines and consumer CBD products are complex.

What constitutes consumer advertising (for medicinal products) and medicinal advertising (for consumer CBD products) is important - there is a need to understand the definitions used, the scope of the rules, and where professional advice should be sought.

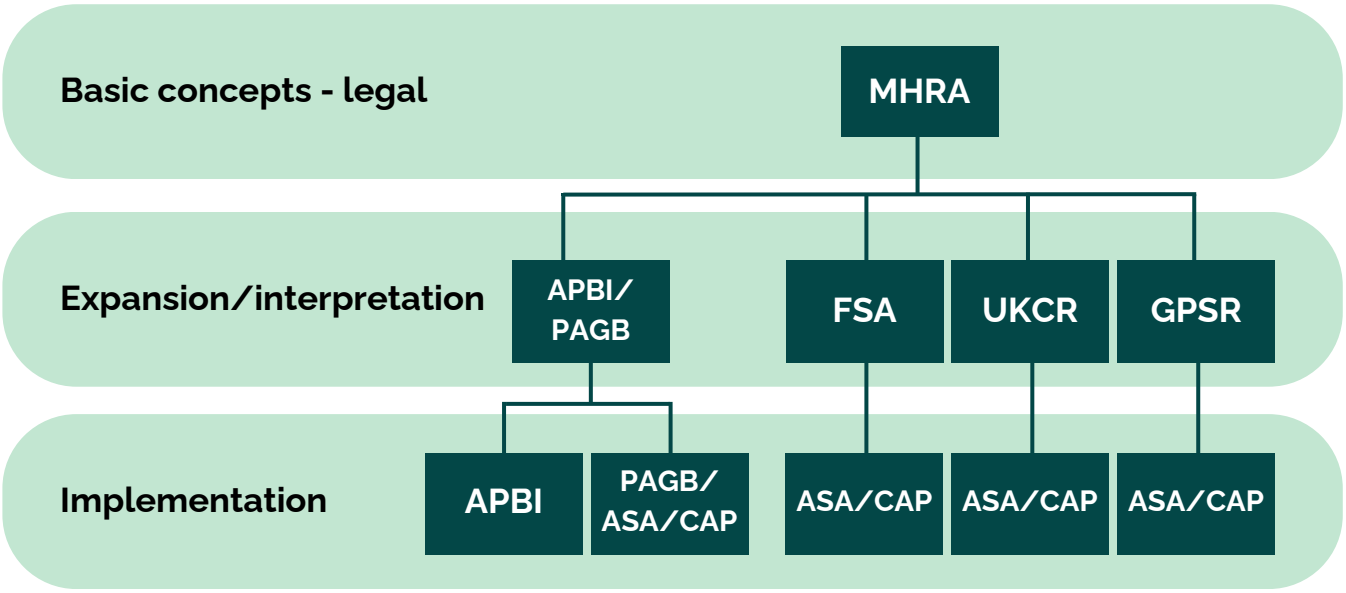
There are risks to individual companies and the broader industry if claims are made that are in breach of marketing rules. The purpose of this document is to summarise and clarify those rules for CIC members, as far as reasonably possible.

Applicable regulatory framework



* Controlled (non-CBD) cannabinoid levels must be <1mg per container. Cannabis flower and leaves are classified as Class B drugs and their sale is prohibited, even if THC is <2% and from EU approved origin.
** The novel food status of CBD extracts was confirmed in January 2019. Exemptions are CBD foods where the CBD is derived from cold pressed hemp seed oil or flour.

Regulatory hierarchy



Key:

- MHRA - Medicines and Healthcare products Regulatory Agency
- ABPI - Association of the British Pharmaceutical Industry; trade body for prescription-only medicines; self-regulatory process for advertising.
- PAGB - Pharmaceutical Association of GB; trade body for non-prescription medicines; self-regulatory process for advertising to HCPs; pre-approval required for consumer advertising (with ASA / CAP).
- Note: ABPI and PAGB rules apply to their members, but the guidance is also helpful to others.
- FSA - Food Standards Agency
- UKCR - UK Cosmetic Regulations
- GPSR - General Product Safety Regulations
- ASA - Advertising Standards Agency
- CAP - Committee on Advertising Practice

Advertising of Prescription Cannabis Medicines

Businesses can advertise any over-the-counter medicine, including General Sales List (GSL), and Pharmacy only (P) medicines, to the general public. However, all cannabis medicines are Prescription Only Medicines (POM), which cannot be promoted to the general public.

CBPM advertising framework

Licensed CBPMs	Unlicensed CBPMs
• Prescription-only medicines • Advertising rules fall under MHRA Blue Guide / ABPI Code of Practice • Advertising to Healthcare Professionals* ✅ • Advertising to consumers ❌ *According to Blue Guide / ABPI rules	• Prescription-only medicines • Advertising to Healthcare Professionals* ❌ • Advertising to consumers ❌ *Limited to providing factual responses to requests for information on CBPMs or the range of such products that they may be able to supply.

What constitutes consumer advertising?

The MHRA Blue guide prohibits the issue of any advertisement wholly or mainly directed to the general public which is likely to lead to the use of a prescription only medicine. Communications to the public may encourage consumers to seek treatment; however, they must not promote the use of a specific prescription only medicine.

The ABPI Code of Practice defines "Promotion" (ie advertising) broadly, as follows:

"...any activity undertaken by a pharmaceutical company (ie the license holder) or with its authority, which promotes the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines".

Non-promotional material may be provided to the public in certain circumstances, e.g. in response to a direct enquiry from an individual, including enquiries from journalists; or by dissemination of such information via press conferences, press announcements, television and radio reports, public relations activities etc.

Any such information that is made available to the public either directly or indirectly must be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product.

Statements must not be made for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine.

It is recommended that anyone wishing to communicate directly with the public regarding CBPMs takes professional advice to ensure compliance with the rules.

Licensed CBPMs

Sativex oromucosal spray (CBD + THC) is indicated for symptom improvement in adult patients with moderate to severe spasticity due to multiple sclerosis (MS) who have not responded adequately to medication.

Epidyolex 100mg/ml oral solution (CBD) is indicated for use as adjunctive therapy of seizures associated with Lennox-Gastaut syndrome (LGS) or Dravet syndrome (DS), in conjunction with clobazam; also for adjunctive therapy of seizures associated with tuberous sclerosis complex (TSC).

These products, future generic versions of the same, and future licensed CBPMs may be advertised to prescribing healthcare professionals in accordance with the rules in the MHRA Blue Guide* and the ABPI Code of Practice**. These guidelines also cover activities such as sampling and any payment to healthcare professionals.

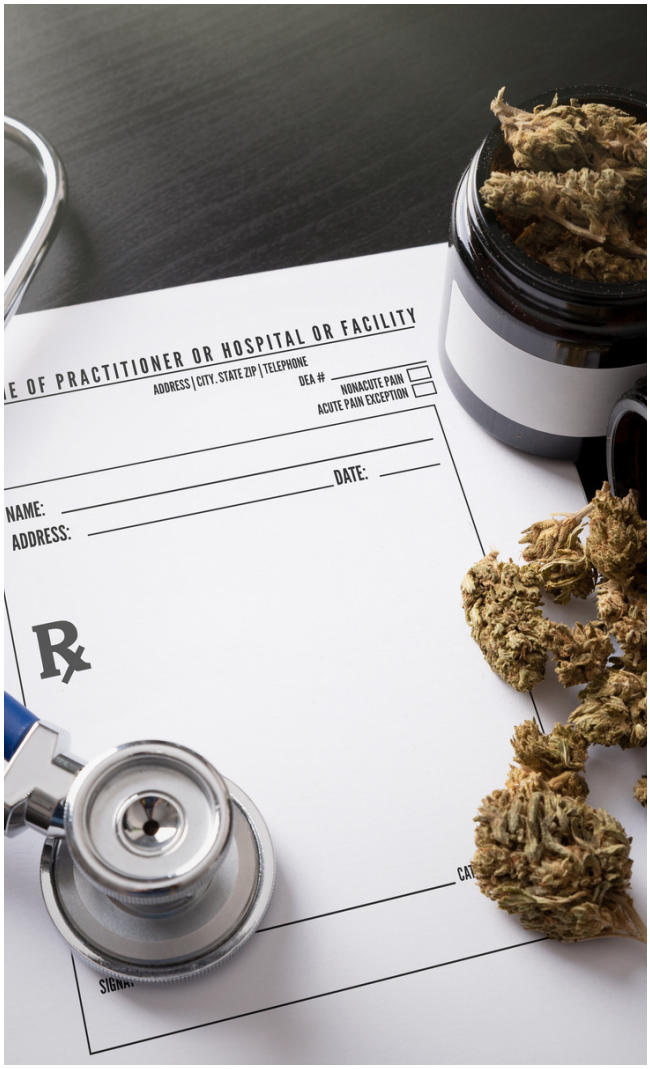
Companies are also required to have appropriate policies and Standard Operating Procedures (SOPs) in place to ensure compliance and to document activities. Moreover, the ABPI requires each company to appoint a senior employee to be responsible for ensuring that the company meets the requirements of the Code (Responsible Person).

It is recommended that anyone considering advertising licensed CBPMs to healthcare professionals involved in their prescription and / or supply take professional advice to ensure compliance with the law and the guidelines.

Unlicensed CBPMs

The rescheduling of cannabis in 2018 under the Misuse of Drugs legislation enabled unlicensed cannabis-based products for medicinal use in humans (CBPMs) to be prescribed, under certain circumstances, by doctors on the GMC specialist register.

The rules state that a manufacturer, importer or wholesaler of CBPMs must not "advertise" that they work with such products at all, even when advertising the general services they provide – even to doctors on the specialist register. They are limited to providing factual responses to requests for information on CBPMs or the range of such products that they may be able to supply.



*https://www.gov.uk/government/publications/blue-guide-advertising-and-promoting-medicines
**https://www.abpi.org.uk/reputation/abpi-2021-code-of-practice/

Prescription cannabis clinics and pharmacies

Appendix 6 of the MHRA Blue Guide provides guidance for clinics and pharmacies / dispensaries. Clinics and pharmacies are well advised to read this section and take the appropriate legal advice.

The general guidance in Appendix 6 states:

"Services such as online clinics, cosmetic treatment providers or pharmacies may promote the service they provide (e.g. medical consultation for individuals with erectile dysfunction or treatments for lines and wrinkles). They may make information available on a certain condition and its management, which may include a balanced overview of the range of therapeutic options.

"Such material should not draw attention to specific prescription only medicines (POMs) since this is likely to breach the Regulations by encouraging individuals to request a particular treatment and this may result in the prescription and use of a POM.

"The appropriate management for a condition in an individual patient is for the prescriber and patient jointly to consider and this may include a number of medical factors as well as a range of therapeutic options. Prescribers have a responsibility to provide information about the products they prescribe."

This appendix goes on to say, under 'product claims':

"Unlicensed medicines should not be mentioned, to comply with regulation 279 of the Regulations which prohibits advertising of medicines for which no marketing authorisation or registration is in force. Treatments that involve the use of unlicensed medicines may not be described as 'clinically proven' or similar."

Therefore, clinics must walk a very fine line between advertising the services they provide (allowed) and making any claims, directly or by implication, about medical cannabis products they prescribe (disallowed).

Websites offering prescription dispensing services

Appendix 6 of the MHRA Blue Book notes:

"Where a website dispensing service is aimed specifically at patients who already have a prescription, provided no product claims are made beyond a simple disease category, the MHRA would not object to a list of products and dispensing prices."

Advertising of Consumer CBD Products

As consumer products, CBD can be marketed directly to consumers. But because they are not licensed as medicines, they must not make medicinal claims to present themselves as such.

Medicinal claims

As noted, medicinal advertising claims to consumers can only be made about licensed medicines not requiring a prescription - which does not include consumer CBD products.

The claims companies make about their products can directly impact the regulatory status of that product. If a company presents their product as a medicine by making medicinal claims and this comes to the attention of MHRA, they will be required to withdraw that advertising.

If companies persist in making such claims, ultimately they risk the MHRA determining that they are presenting themselves as medicinal products, and requiring their removal from the market.

In 2018, there were a number of consumer CBD products that the MHRA took action against, based on the claims that were made about them.*

* https://hbw.citeline.com/RS149385/UK-Cracks-Down-On-Unauthorized-CBD

How MHRA determines whether or not a product is a medicine

The rules around medicinal claims are fundamentally rooted in how MHRA determines what is and isn't a medicine. Therefore, it is important to understand how MHRA makes that determination.

The MHRA definition of a medicinal product has two 'limbs' - presentational, and functional. Falling under either limb is sufficient for the MHRA to take action due to a breach of their rules. MHRA specifically defines a "medicinal product" as follows:

- First (presentational) limb: "Any substance or combination of substances presented as having properties for treating or preventing disease in human beings."
- Second (functional) limb: "Any substance or combination of substances which may be used in, or administered to, human beings, either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis."

The first limb - presentation

The first limb of the definition is concerned with the presentation of the product and is what underpins the rules on medicinal advertising and claims. In assessing whether a product is "presented as having properties for treating or preventing disease", the MHRA considers, in context, any claims (implicit as well as explicit) which are made for it, and the characteristics of its presentation as a whole.

The MHRA considers the following factors:

- all claims made for the product, both explicit and implicit (e.g. product names), including any made on websites, linked helplines, testimonials or in linked publications.
- the context in which the claims are made, and the overall presentation
- how a product appears to the public, or to those to whom it is promoted
- the labelling and packaging/package inserts, including any graphics
- the promotional literature, including testimonials and any literature issued by the person placing the product on the market or on their behalf
- the content of advertisements, including those appearing in "advertorials", on television, other media and the Internet
- the product form, (capsule, tablet, injection etc.) and the way it is to be used
- any particular target of the marketing information/advertising material, for example, population groups with, or particularly vulnerable to, specific diseases or adverse conditions.

A product which claims to treat or prevent disease falls within the first limb of the definition of a medicinal product for the purposes of marketing. The definition of "disease" is broad and includes "any injury, ailment or adverse condition, whether of body or mind".

The second limb - functional

The second limb is concerned with the function and intended use of the product, i.e. whether the product "may be administered... with a view to" achieving a medicinal purpose. This includes the body of scientific evidence regarding the physiological effect of a product.

A product must be intended for, or be capable of performing, a medicinal function before it can be marketed as such.

For example, toothpastes intended to be used to relieve the pain of sensitive teeth will be either medicinal products or medical devices depending on their mode of action. However, regular or whitening toothpastes remain as cosmetics.

What constitutes a medicinal claim?

As previously noted, medicinal claims to consumers can only be made for licensed medicines that are available without a prescription. A non-medicinal product which claims to treat or prevent disease would be caught by the first limb of the definition of a medicinal product, therefore such claims are prohibited.

Furthermore, MHRA's position is that claims to "protect" or "avoid" may be perceived by consumers as having much the same meaning as "prevent". Saying that a product "may help with" an adverse medical condition implies to the averagely well-informed consumer that the product is a treatment.

Depending on the context - stress, anxiety and nervous tension can be adverse conditions of the mind and claims to cope with or manage those conditions can be regarded as claims to treat or prevent disease.

ASA / CAP guidance* states:
"A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings and, where relevant, animals."

MHRA considers the following examples to be medicinal claims:

- references to all medical conditions, major to minor, eg colds, headaches, cuts and bruises, smoking addiction, obesity, arthritis, depression, stress, childhood disorders and serious diseases.
- references to a condition of the mind, such as depression, addictions, or ADHD.
- references to treatment or alleviation of adverse conditions, including: decongests, relieves pain, reduces inflammation, calms, stops itching, cures insomnia, reduces blood pressure, or reduces sugar levels.
- References to the symptoms of a disease such as pain, inflammation etc.

Additionally, forms of marketing that MHRA may interpret as presenting the product as a medicine include:

- Comparison with licensed medicines
- References to interferences with the normal operation of a physiological function
- Product names that refer to adverse medical conditions

*https://www.asa.org.uk/advice-online/healthcare-medicinal-claims.html

- References to medical / clinical research and testing
- References to the health risks of not taking a particular product
- Editorial medicinal claims on company-owned media
- Recommendations by doctors / healthcare professionals
- Testimonials that include / imply medicinal claims (including on product or retailer websites)
- Graphics that imply medicinal usage
- References to or reproduction of "generic' information
- Juxtaposing with any examples of the above
- Inclusion of details in an "Ailments" section

Clearly, the more egregious the use of these elements, the more likely that MHRA would determine a product to be presenting itself as medicinal and to take action.

References to the endocannabinoid system

Claims which imply that THC or CBD can modify, stimulate or enhance the endocannabinoid system (or similar) may in context, be regarded to be medicinal claims.

Advertisements referring to the presence of the endocannabinoid system have been approved and aired*, although these did not mention THC or CBD.

Use of disclaimers

This somewhat depends on the prominence (primarily size and location) of the disclaimer in the material in question. The Advertising Standards Agency (ASA) position on this is as follows:

"Since the ASA assesses ads in their entirety, the inclusion of a disclaimer isn't necessarily enough to prevent an ad from breaching the Code if the rest of the ad gives consumers a misleading impression."

Words and phrases that may imply medicinal use (depending on context):

Alleviates
Avoids
Boosts
Calms
Can benefit those who suffer from...
Clears
Clinical trial evidence...
Clinically proven
Combats
Controls
Counteracts
Fights
Help maintain a normal mood balance
Helps / help with / is said to help with...
Medical research
Prevents / preventing
Protects against
Relieves
Remedies
Removes
Repairs
Restores
Stimulates the nervous system
Stops craving for...
Traditionally used for...
Treats

*https://www.prnewswire.co.uk/news-releases/uk-s-first-educational-cannabis-advertising-campaign-801514814.html

Types of advertising in scope

The MHRA defines* the following as types of advertising in scope:

- paid-for adverts in newspapers, magazines, billboards, flyers, etc
- promotional information about a medicine on a company website
- posts or text in social media such as Facebook or X (Twitter)
- verbal promotion by medical sales representatives
- Internet advertising

Information on the internet about a product and its uses is not excluded from the definition of the term 'advertisement'.

Where a product is sold on or has links to a website which states or presents that product as a medicine, the website will be used by the MHRA as evidence in the determination process. Similarly, where a customer is directed from a website selling a product, to another website for more information about the substances contained in a product and their uses, this may also be used by the MHRA as evidence in the determination process.

Supply chain businesses having product reviews on their website that reference medical conditions would be considered to be a medicinal claim. The use of disclaimers arguably somewhat mitigates this, but legal advice should be sought (see section on disclaimers above).

Communications out of scope

Public relations is not considered a form of advertising, and therefore is less clear in terms of what can and cannot be said – ASA rules** state that:

"press releases are generally targeted at journalists with the hopes of them creating a piece of editorial content rather than at consumers with the intention of making a sale. As such, they are excluded from the Scope of the Code provided that they are being used as one would expect a press release to be used, e.g. sent directly to journalists or placed in an appropriate online context, such as a 'Press' section of a website."

When third parties are discussing science more generally (rather than specific products), this may be a legitimate opportunity for industry to educate the public. Content should be factual and balanced.

Can advertisers make health maintenance claims?

Food products

The MHRA view is that claims to "maintain" or "help to maintain", "dietary maintenance", or "support" health or a healthy lifestyle, can be approved under food law, and would not normally regard such claims to be medicinal.

Nor, if such claims are clearly made in relation to healthy bodily functions or organs, is the MHRA likely to consider them as presenting the product for treating disease.

*https://www.gov.uk/guidance/advertise-your-medicines
**https://www.asa.org.uk/advice-online/remit-press-releases-and-pr.html

In general, the MHRA is only likely to consider "health maintenance" claims as medicinal if they suggest or imply that a product may prevent disease or, where targeted on a vulnerable section of the population, may restore, or help to restore, a specific bodily function or organ to a normal healthy state.

However, while in principle health maintenance claims can be made, Rule 15.1.1* of the CAP code states that for food products:

"Only health claims listed as authorised in the applicable register, or claims that would have the same meaning to the consumer, may be used in marketing communications."

A "health claim" is defined as "any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health."

The "applicable register" post-Brexit is the Great Britain Nutrition and Health Claims Register** which doesn't contain any claims for CBD. This effectively precludes any health claim for a CBD product licenced as a novel food.

Cosmetic products

Secondary preventative claims may be made for cosmetic products if they are backed by evidence. These secondary medicinal claims are limited to any preventative action of the product and may not include claims to treat disease. A secondary claim means that the primary purpose of the product must be cosmetic - the overall impression of the advertisement must not give the impression that the primary purpose is preventative.

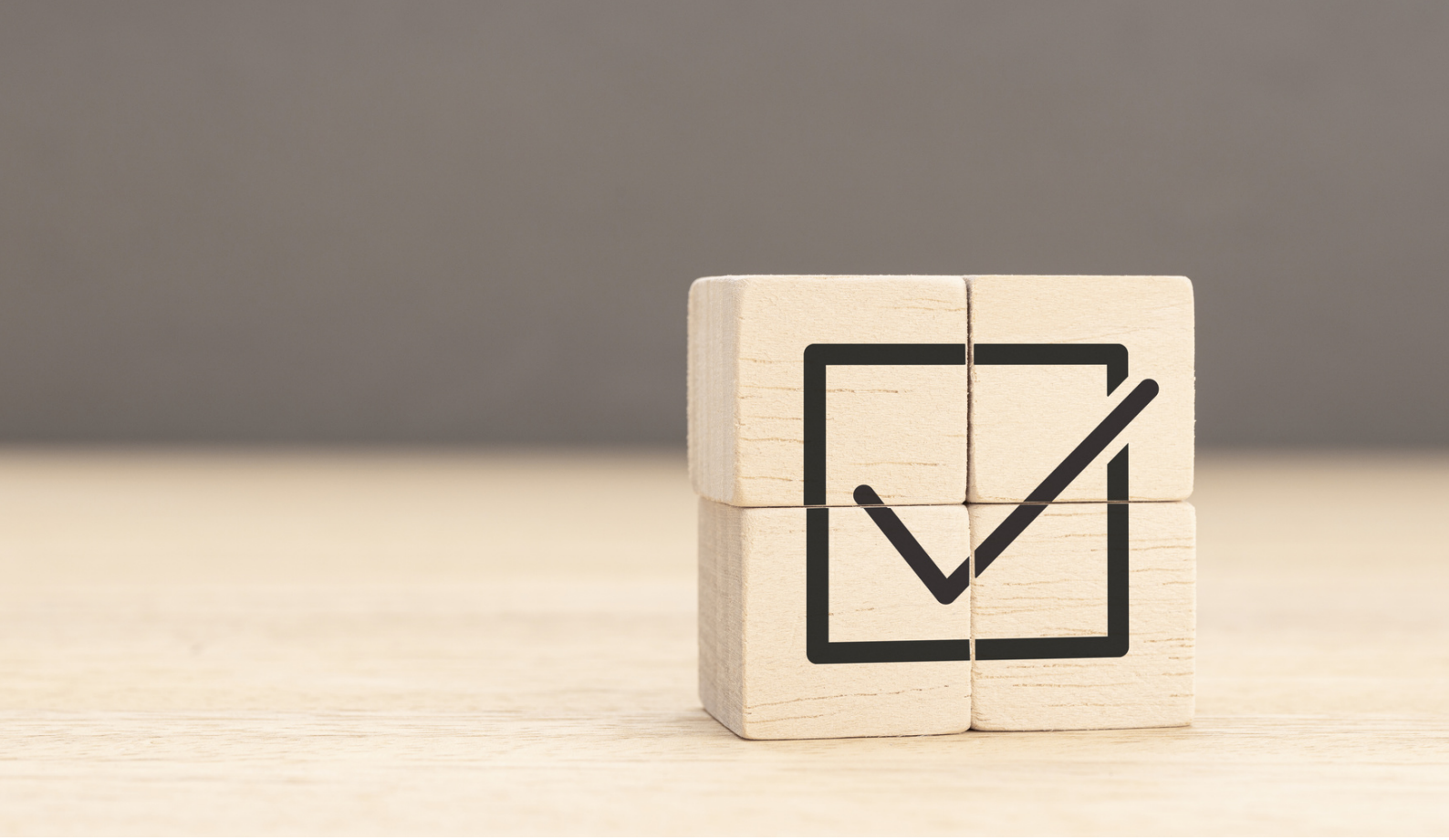
The Cosmetic, Toiletry and Perfumery Association (CPTA) guidance for the promotion of cosmetic products states:

"The Fifth Recital to EU Directive 76/768, the Cosmetic Directive, foresees cosmetic products having a secondary preventative (but not curative) purpose. In deciding whether a product is:

- **a cosmetic with a secondary preventative cause or**
- **a medicinal product, subject to licensing**

account will be taken of the main purpose of the product, the claims made for it, the composition of the product and the purpose for which it is likely to be used by the consumer."

*https://www.asa.org.uk/type/non_broadcast/code_section/15.html
**https://www.gov.uk/government/publications/great-britain-nutrition-and-health-claims-nhc-register



Assessment of marketing activities

Prescription cannabis medicines

Clearly disallowed	Seek professional advice	Clearly allowed
• Consumer advertising of prescription only medicinal products (including licensed CBPMs) • Any advertising of non-licensed CBPMs	• Press releases (outside the scope of ASA rules)	• Advertising of licensed CBPMs to Health Care Practitioners (HCPs) – according to MHRA Blue Guide / ABPI rules

Consumer CBD products

Clearly disallowed	Seek professional advice	Clearly allowed
• Product claims referencing any medical condition (physical or mental), treatment or symptoms of a medical condition – on packaging, in advertising, or in editorial. • Product names that reference any medical condition. • Product claims referencing an effect on the normal operation of physiological function (e.g. an effect on the endocannabinoid system). • Product claims referencing clinical trials. • Product claims referencing doctors or other healthcare professionals. • Testimonials or product reviews referencing any of the above (on manufacturer or retailer website, message board, etc). • Generic active ingredient (CBD) medical claims on manufacturer-owned media. • Incentivisation / sponsorship of influencer social media posts containing medical claims. • Health maintenance claims for food products.	• Press releases (outside the scope of ASA rules) – although product medical claims in editorial may be used by MHRA as evidence that the product should be effectively classed as a medicine. • Trade body reference to generic CBD medical claims. • Use of disclaimers (e.g. product reviews on retailer sites)	• Manufacturer reference to presence of CBD (without any health claims) • Health maintenance claims for non-food products • Non-medicinal product claims • Competitions and prize draws (age controls needed)

General

Seek professional advice	Clearly allowed
• Opinion columns in the press • Public speaking at events, podcasts etc. - third party speaking should not be monetised and depends on content • Highlighting of awareness days/weeks/ months (as long as no product mentions) • Generic advertising of company (but not product)	• Reference to the endocannabinoid system in the absence of any reference to product or active ingredient • Independent scientist discussion of clinical data on THC, CBD & other cannabinoids (without any industry supply chain involvement) • Independent third party social media posts • Use of company ambassadors • Trade stands at shows/ events • Corporate hospitality • Company sponsorship of events (e.g. sport)

Conclusion

MHRA rules on advertising are based around:

1. Whether a product is a medicine or is presenting itself as such; and
2. What class of medicine it is (OTC, POM, licensed or unlicensed)

Medicinal advertising claims to consumers can only be made about licensed medicines not requiring a prescription (i.e. OTC medicines) - which does not include prescription cannabis medicines or consumer CBD products.

Their definition of what constitutes consumer advertising (for medicinal products) is broad; as is their definition of medicinal advertising.

Prescription cannabis medicines

Prescription only medicines cannot be promoted to the public – promotion is defined as any activity that promotes the administration, consumption, prescription, purchase, recommendation, sale, supply or use of its medicines. Non-promotional information may be provided in specific circumstances.
There are though some nuances between the type of business in the supply chain.

For instance, there is more scope for promotional activity by clinics and pharmacies (who are offering medical services), than licensed producers. However, they must walk a very fine line between advertising the services they offer, without promoting the products they prescribe.

Consumer CBD products

Medicinal claims are broadly defined and not allowed in any product related context, including consumer testimonials / product reviews on manufacturer or distributor websites. Secondary preventative medicinal claims can be made for cosmetic products providing the overall impression of the advertisement is that the product is cosmetic. Health maintenance claims can be made for vaped products, although this is currently precluded for food products as there are currently no allowable claims for CBD included in the Great Britain Nutrition and Health Claims Register*.

One area where there may be legitimate promotional opportunities is within public relations – as press releases fall outside ASA rules.

Sanctions for breaches

ASA generally works with advertisers to ensure advertising is compliant; broadcast ads (TV and radio) are pre-cleared. ASA requires non-compliant ads to be withdrawn or amended – they can refer persistent offenders to Trading Standards.

For consumer CBD products, the MHRA is likely in first instance to require advertising of CBD products that is found to be making medicinal claims to be amended / removed. However, persistent breaches may result in MHRA taking further action, including determining that the product in question is a medicine and therefore requiring it to be withdrawn from the market until it acquires the appropriate licence(s).

For medicinal cannabis products, MHRA will initially endeavour to bring the manufacturer / service provider in line with the rules.

Ultimately, the MHRA Blue Book states the available sanctions for breaches of advertising rules for medicines can include criminal penalties, e.g. a fine or up to two years' imprisonment. Furthermore, a failure to comply with any requirement imposed by a notice served (e.g. to remove an advert) is also a criminal offence. Civil sanctions are also available under the regulations.

Outside the supply chain

Organisations outside the supply chain (such as charities, educational bodies, patient groups, and member organisations) also have greater ability to publicise their views on the medical benefits of cannabis generally, given their focus is on educational and scientific endeavours, rather than product manufacture, production, distribution, or promotion. Influencers and scientists should not be incentivised by manufacturers to promote on their behalf.

Seek advice

Businesses are encouraged to seek professional regulatory and/or legal advice before undertaking any promotional activity associated with either prescription cannabis or consumer CBD products.

*https://www.gov.uk/government/publications/great-britain-nutrition-and-health-claims-nhc-register

Appendix 1 – example from consumer CBD industry*

In February 2024, ASA ruled against a consumer CBD brand owner following several social media posts by two high-profile ex-footballers that referred to and recommended the brand.

This case helps to illustrate two points:

1. What is deemed to constitute advertising and rules around brand ambassadors;
2. What constitutes a medicinal claim

What constitutes advertising?

The complainant asserted that the two footballers were brand ambassadors; that the tweets were obviously identifiable as marketing communications and did not make clear their commercial intent.

The company claimed that the relationship with the footballers was not commercial, on the basis that there was no official contract in place, they would only receive a small amount of commission from their advertising codes and that they had not been given guidance about what to say about the brand. They also made the point that one of the footballers had used the brand in a personal capacity before becoming a brand ambassador.

The ASA ruling found that despite the fact that there was no written contract, there was a financial agreement between the company and the two footballers; they were paid commission for sales generated from the use of their personalised promotional codes that they included in their tweets.

On this basis, these posts were considered ads for the purposes of the Code.

Furthermore, the footballers were or had been brand ambassadors and were featured within an Ambassadors section of the brand website.

They each had their own individual ambassador profile page that included personal information and imagery as well as product links for their "product of choice" that linked through to product purchase pages. ASA considered it was likely that as a brand ambassador there would be an expectation that they would be positive about the brand.

ASA ruling:

Complaint upheld. ASA stated that since they included claims that a food supplement could prevent, treat or cure disease, they concluded that they breached the Code.

*https://www.asa.org.uk/rulings/supreme-cbd-ltd-g23-1198642-supreme-cbd-ltd.html

Appendix 1 (continued)

What constitutes a medicinal claim?

The ads (tweets) made a number of claims that ASA considered would be interpreted by consumers as claims to prevent, treat and cure human disease. In particular, ASA referred to the following:

- "believe me they help you sleep so much better with less anxiety"
- "I'll buy her a box to help with her anxiety, @[Company brand name] is changing peoples [sic] lives for the better"
- "Yes mate read the comments on his pinned tweet" in reply to the question "[...] does this really work for anxiety and insomnia?"
- "a game changer for people with anxiety/ depression [...] or insomnia", "people are just telling me how well they are sleeping after taking these, helps a lot with the anxiety as does the oils" and "people are saying how these things are changing their lives".

ASA ruling:

Complaint upheld. CAP Code states that marketing communications must be obviously identifiable as such, and that in future it must be made clear their commercial intent if that was not obvious from the context.

The consequence of these findings was that the tweets should be deleted; the company and the footballers were required to ensure that future ads were clearly identifiable as marketing communications (eg identifiers such as #ad were clearly displayed); also to ensure that future ads did not state or imply that the products could prevent, treat or cure human disease.

Lessons from this case

- Any financial compensation to brand ambassadors will be result in social media posts being considered as ads for the purpose of code, regardless of whether there is a written agreement in place or not.
- Any ad must be clearly identified as such (eg by prominently using the hashtag #ad)
- Any paid brand ambassadors should be specifically instructed not to post anything that states or implies that the products could prevent, treat or cure human disease. Their post should be monitored by the company and any inadvertent breaches rectified promptly.
- The scope of what constitutes a medicinal claim is broad and includes mental as well as physical illness.

Appendix 2 – example from nicotine vaping industry

The nicotine vaping sector offers many useful parallels to the consumer CBD sector: MHRA rules state that no medical claims can be made by products that are not licensed as a medicine; many manufacturers lack the experience and resources to pursue a medicinal licence; and yet a large part of the public health community recognise the public health benefits of vaping (compared to smoking tobacco) and therefore want to encourage its use.

What constitutes advertising?

This example involves a company advertising something that appears to be in the public health interest, yet falls foul of medicinal regulations. Importantly, the finding was regarding claims made for products made available at the clinic, not the clinic service itself.

Smoking cessation is a medical claim and "quitting" is generally regarded as being equivalent to smoking cessation. To get around this, many vaping products & retailers talk about "switching" to vaping, which to date has been accepted as it makes no reference to addressing the smoker's addiction to nicotine.

All traditional Nicotine Replacement Therapy (NRT) products are licenced medicines. All vape products in the UK are regulated under the Tobacco and Related Products Directive (TRPD), which derives from the EU Tobacco Products Directive (TPD).

They have the option to be regulated as a medicine although to date, no medicinal vape products have been brought to market.

ASA recently found against a vape retailer for making medicinal claims for products offered at their Vape Clinics.

> Their website featured the headline "Make the switch today with the [Company Name] Vape Clinic".
>
> Text underneath that stated: "Book a FREE 30-minute appointment today. Quit, or your money back. Vape Clinic by [Company Name] is a dedicated, one-to-one consultation with our e-cigarette specialists. We'll guide you through various cigarette alternatives to find the perfect fit for your needs so that you can start your journey to becoming smoke free. We'll continue to offer guidance and help on your cigarette free journey and if after 4 weeks you're not happy with your cigarette alternative, you'll get your money back."
>
> Alongside that, "QUIT SMOKING OR YOUR MONEY BACK" was stated in large font.

Claims that e-cigarettes were capable of helping users to quit smoking cigarettes or reduce the amount that they smoked were considered medicinal claims for the purposes of the Code. Whilst the ASA recognised that several public health bodies had made favourable statements about the potential health benefits of e-cigarettes (compared to tobacco), medicinal claims in marketing communications for e-cigarettes remain prohibited in the absence of a MHRA licence.

ASA therefore considered that the emphasis of the ad was on quitting smoking and how that would be achieved using the e-cigarette product range offered by the company.

Appendix 2 (continued)

They also noted the use of the term “clinic” in the ad, along with the claim that individuals could “make the switch today with the [Company Name] Vape Clinic”. They acknowledged that the marketing of a vape clinic or claims stating that individuals could switch to vaping were not medicinal claims in themselves; nevertheless, because the overall impression of the ad emphasised that vaping was a means to quit smoking, rather than presenting it as an alternative to tobacco products, they considered that the claims would also be interpreted as smoking cessation claims by consumers.

ASA Ruling:

The ad must not appear again in its current form. The company was advised not to make smoking cessation claims about their e-cigarette products in the absence of a relevant MHRA licence.

About the CIC

The Cannabis Industry Council (CIC) is a leading membership organisation representing the entire UK cannabis industry. Membership is open to organisations and business which either work within or operate from the United Kingdom, the Channel Islands, and the Isle of Man.

Together, our mission is to lead the industry to success and enable it to speak with one voice – for, and by, the sector.

Learn more

A collective voice for the medical cannabis, CBD, and hemp sector across the UK.

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