

Broadcast Complaint Handling Procedures



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Introduction

1. This document outlines the procedures followed by the ASA when handling complaints (including ASA Challenges) about ads in Broadcast media.

BCAP is contracted by Ofcom, to write and enforce the Code. Exercising powers contracted to us by Ofcom, the ASA rules under the Code.

Our remit

2. We are responsible for regulating all broadcast advertising carried by Ofcom-licensed TV and radio services. That includes traditional spot advertising, teleshopping output and broadcast advertising made available on interactive TV and TV text services. We also regulate the scheduling of TV and radio advertisements to ensure that audiences are adequately protected from harmful or offensive material. Where relevant to the particular broadcast media, Ofcom remains responsible for the rules governing:

- the insertion of advertising breaks;
- the amount of advertising permitted on TV;
- sponsorship;
- political advertising on TV and radio; and
- participation TV advertising.

A Memorandum of Understanding with Ofcom explains in more detail the breakdown of responsibility between us and Ofcom (see www.ofcom.org.uk for further details). Ofcom will pass to us any complaints it receives that fall under our remit; it will not normally consider those complaints even when specifically asked to by the complainant.

If a complaint falls within Ofcom's remit we will let you know how to raise the matter with them.

Clearing ads

3. Broadcasters must have adequate procedures in place to ensure ads carried by them comply with the Code. The clearance centres are contracted by many licensees (including most major channels and stations) to provide television and radio advertisement clearance respectively. Except for sensitive product category advertising, which must be centrally cleared by Radiocentre, advertising carried by local radio stations is generally cleared by broadcasters in-house.

4. The ASA Executive and Copy Advice team liaise with the clearance centres and, where appropriate, other broadcasters' representatives to ensure consistency in regulation across media, where common advertising rules/interpretations, characteristics and contexts make such consistency appropriate.

ASA's primary point of contact

5. Broadcasters are obliged under their licences to adhere to the provisions of the Code. In practice our primary point of contact is usually the clearance centre. Indeed, Clearcast very

often responds on behalf of the broadcasters and is the conduit for the advertiser's and/or agency's responses to complaints about television ads it has cleared. In addition, it keeps the broadcasters, advertisers and agencies informed of the progress of any investigation. In all cases, we will copy important correspondence to the advertisers and will ask advertisers to ensure that any comments they wish to make are first routed through the clearance centres.

Receipt of complaints

6. There is no charge to the complainant.

Complainants need to send us details of the ad they're complaining about including: the name of the channel or station, the date and approximate time the ad was broadcast and the name of the programme they were watching/listening to at the time.

If we can't find it using the details provided, we may not be able to take action.

7. To manage the risk of actual or perceived conflicts of interests, the ASA will not accept complaints submitted by:

- its employees, when acting in a personal capacity;
- the Independent Reviewer of ASA Council Rulings;
- the Chair and Directors of (B)Asbof;
- the Chair and Members of the ASA Council;
- the Chair of the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) and the Chairs of their sub-committees and panels;
- members of the CAP & BCAP Advertising Advisory Committee; the CAP & BCAP Industry Advisory Panel; the CAP Promotional Marketing and Direct Response Panel; or, the CAP Online Publications Media Panel when acting in a personal capacity;
- representatives of CAP or BCAP member organisations, when acting in a personal capacity.

Representatives of member organisations of CAP and BCAP and their panels may submit complaints on behalf of their organisations subject to meeting the other requirements in these procedures.

8. We may stop accepting complaints from people who send us large numbers of repeated, trivial, vexatious or unreasonable complaints. This is because it can affect our ability to regulate effectively and serve all our customers and stakeholders.

If we decide to place a restriction, we will do so fairly and proportionately. We will also tell the person before the restriction is applied.

We do not tolerate abusive behaviour towards ASA staff under any circumstances. If this happens, we may stop accepting further complaints, withdraw from an ongoing complaint, and/or report the behaviour to the police or another appropriate authority.

Timely complaints and points of complaint

9. Broadcasters are obliged under their licences to keep recordings for specified periods. Those periods are: 42 days after the relevant radio transmission; 60 days after the relevant satellite and cable television transmission; and 90 days after the relevant terrestrial television transmission. Complaints must be made well within those periods; ideally, as soon as possible after transmission.

Complainants should focus on making no more than three points of complaint about an ad or campaign. If a complaint is very long, we may ask the person complaining to focus on the most important points. We may also ask them to explain unclear points or provide more evidence before we decide whether to take action.

If the ASA decides to formally investigate an ad where the complainant has made more than three points of complaint, we will choose the three points we consider most important to investigate.

We may also add ASA challenges to the complaint if we think something additional needs to be investigated.

We can close a complaint or investigation at any time if the complainant doesn't respond in time, for example, if they don't reply to requests for more information.

Acknowledging complaints

10. We aim to give every complaint a reference number automatically when it's submitted through our online form. If a complaint is made by letter or phone, we'll give a reference number once it has been logged on our system.

Anonymity and identity

11. We will not normally reveal the identity of members of the public who make complaints without their permission. The only exceptions are:

- if they have a public profile related to the complaint, or
- if we are required to do so by a court or legal authority.

In some cases, we may ask complainants to confirm in writing that they don't have a competitor or other personal interest in making the complaint.

We will name complainants if they are:

- businesses competing with the advertiser,
- organisations with a clear interest in the outcome (such as consumer groups, trade bodies, or campaign groups), or
- individuals with a public profile relevant to the complaint.

If a complainant has specialist knowledge or a job related to the complaint, we may mention their expertise or profession, but not their identity.

This paragraph is subject to the ASA privacy notice (available at:

<https://www.asa.org.uk/general/privacy-policy.html>) and paragraph 16 below.

Simultaneous legal action

12. We will not normally investigate complaints if the point at issue is the subject of simultaneous legal action.

Confidentiality

13. If we are given genuinely confidential information, we'll keep it private unless legislation, the Courts or officials acting within their statutory powers require its disclosure or unless the party supplying it consents to us releasing it.

We may share confidential information with external experts, who must also keep it private. We'll tell the party who supplied the information before we do this. Advertisers will be told who the expert is and see their report. Complainants can ask for a summary and the expert's name.

Everyone involved in a case (including agencies) must keep all non-public information and correspondence confidential. The principle of confidentiality that attaches to the identity of public complainants, our draft recommendations and the correspondence that takes place about them has previously been upheld by a Judgment of the High Court.

Complaints, draft recommendations, and related discussions are confidential. Final rulings must not be shared publicly until we publish them. Once a complaint has been made or an investigation starts, no one should do anything that could interfere with a fair decision or misuse the process. If those rules aren't followed, we may ignore further input from that party or take other action.

For further details on how we handle personal data, see the ASA privacy:

<https://www.asa.org.uk/general/privacy-policy.html>.

Disclosure of complainant's evidence

14. To give advertisers a fair chance to respond to a complaint about their ad, we may need to share some or all of the evidence provided by the complainant.

If a complainant wants the ASA to use their evidence, they must agree to the relevant parts being shared with the advertiser.

If a complainant does not give consent when asked, the ASA Executive will disregard that evidence, and the ASA Council will not consider it when making its decision.

ASA- and BCAP-initiated investigations

15. We initiate our own investigations into potential Code breaches by raising ASA challenges. The procedures in a complaint-led investigation and an ASA-initiated investigation are broadly the same. Similarly, while undertaking monitoring, BCAP might raise issues with advertisers about potential Code breaches.

Competitor complaints

16. Under these Procedures, a “competitor” is someone that, in our view, has a competitive interest in the outcome of the complaint.

In all circumstances we will require the competitor complainant to be named.

In general, competitors who wish to make a complaint will need to follow these Inter-Party Resolution steps:

- a. A competitor should contact the advertiser in writing in a way that ensures the communication is received quickly. The complaint should clearly explain the claim being challenged, where it appeared, and the facts supporting the complaint.
- b. The complaint should, ordinarily, be signed or authorised by a suitably authorised senior employee of the competitor complainant (e.g. CEO, Legal, Marketing or Regulatory Director), who takes responsibility for the accuracy of its content, and should be addressed to a senior employee or other appropriate contact at the advertiser.
- c. If the complaint is about an online ad, the complainant should obtain the URL/s and a screenshot of the page or pages that relate to the complaint or otherwise secure a cached copy of the website.
- d. The complainant should allow five working days for a substantive response. If, at the end of that period, the advertiser has not opened a substantive dialogue or an agreement cannot be reached, the complainant may submit a complaint to us.
- e. When submitting the complaint to the ASA, a copy of the letter setting out the complaint should be submitted, with a copy of the complete response (if any) from the advertiser.

We understand that, in rare cases, a competitor making a complaint may have a good reason not to contact the advertiser first. In those situations, we may decide to skip the usual step of asking both parties to resolve the issue themselves, especially if the complaint suggests a serious breach of the Code. We may also skip this step if there are other good reasons to think that resolving the issue between the parties would not be appropriate or would be unlikely to lead to a satisfactory outcome.

Assessment of complaints

Sourcing an ad

17. If necessary, we will require the broadcaster to provide us with a copy of the ad. However, we will not necessarily request a written response from the broadcaster at that stage. Broadcasters should normally deliver copies of the material in question within five working days of a request being made. All requested copies of long-form advertisements (e.g. teleshopping) should include an embedded timecode.

'Outside remit' cases

18. We cannot process complaints about material that is outside the scope of the Code. If we can refer a complaint directly to a more appropriate body, we will do that or provide the complainant with information on their alternative routes of complaint.

Turnaround target for 'Outside remit' cases

19. Our turnaround target for 'Outside remit' cases is ten working days from the receipt of the complaint to the day on which we close the case.

'No additional investigation' cases

20. We do not investigate complaints about ads that do not appear to breach the Code or where further action is not proportionate. We keep a record of those complaints and feed them into our formal intelligence gathering process.

On receipt of a complaint online we provide an automated reference number to the complainant but to manage our resources effectively we do not usually communicate further with complainants whose complaint is subsequently closed as a 'No additional investigation' case.

Turnaround targets for 'No additional investigation' cases

21. Our turnaround target for 'No additional investigation' cases is 15 working days from the receipt of the complaint to the day on which we close the case.

'No additional investigation after Council decision' cases

22. We may decide that an ad is unlikely to breach the Code or that further action is not proportionate but that the nature of the case warrants asking the ASA Council to make that decision.

If the ASA Council agrees with the recommendation that there is no case to answer, we will write to the advertiser, clearance centre and complainant and any other third party with a significant interest in the outcome of the complaint to let them know the decision.

If they do not agree with the recommendation and think there is a case to answer, they can direct us to investigate the complaint further.

In some cases, we may use this process to obtain the ASA Council's view on matters of remit rather than the particulars of the case. A decision that an ad is in remit might then lead to further assessment to determine the appropriate course of action.

Turnaround target for 'No additional investigation after Council decision' cases

23. Our turnaround target for 'No additional investigation after Council decision' cases is 20 working days from the receipt of the complaint to notification of the decision.

Assessment under our prioritisation principles

24. If an ad appears to have breached the Code, we will:

- consider what harm or detriment has occurred or might occur;
- balance the risk of taking action versus inaction;
- consider the likely impact of our intervention; and
- consider what resource would be proportionate to the problem to be tackled.

Assessment under those Prioritisation Principles is subject to re-evaluation throughout the life of a complaint.

‘Advice Notice’ cases

25. If we decide that it is not proportionate to address a possible breach of the Code as an investigated case, we will write an Advice Notice to the advertiser and clearance centre, where appropriate, explaining the issues and providing advice and guidance on how to comply with the Codes. We will not seek an assurance of compliance. We will also write to the complainant to explain the action we have taken.

Turnaround target for ‘Advice Notice’ cases

26. Our turnaround target for ‘Advice Notice’ cases is 25 working days from the receipt of the complaint to notification of the decision.

‘Informal investigation’ cases

27. Investigated complaints begin as either Informal investigations or Formal investigations. We prefer to work by persuasion and consensus and therefore an Informal investigation is considered more appropriate in many cases.

When resolving cases informally we will request an assurance from the advertiser and clearance centre, where appropriate, that the ad will be suitably amended or withdrawn and on receipt of that assurance, we will close the case.

The names of those advertisers that have agreed to amend or withdraw advertising after the conclusion of an informal investigation are given to the ASA Council and published on our website.

In the event of a media enquiry, we will give a brief description of the ad, the nature of the complaint and confirmation that the advertiser agreed to amend or withdraw the ad after being contacted by the ASA.

Informal investigations will be taken into account by the Compliance team when assessing a company’s overall compliance record.

28. Reasons for offering/agreeing an informal resolution may include, but are not limited to, if:

- an apparent breach has been remedied by an advertiser taking relevant action after being contacted by us;

- the number and/or seriousness of the complaints does not provide good reason to investigate the case formally;
- there is no obvious pattern of unwillingness or inability of the advertiser to comply with the Code; and/or
- there is no pressing need to investigate formally to, for example, establish a policy on the issue or to form a view of a particular advertiser's compliance to help inform CAP Copy Advice's or Compliance's work.

Although we have the discretion to resolve cases informally at any stage of the complaint process and we may do so whenever it appears to us reasonable and proportionate, Formal investigations that are well advanced are likely to be informally resolved only in exceptional circumstances.

Turnaround target for 'Informal investigation' cases

29. Our turnaround target for 'Informal investigations' is 35 working days from the receipt of the complaint to notification of the decision.

'Formal investigation' cases

30. A Formal investigation differs from an Informal investigation in that the outcome of the case is determined by the ASA Council and a ruling is published on our website for a period of five years.

Turnaround target for 'Formal investigation' cases

31. Formal investigations are generally categorised by the issues that they raise. 'Standard Harm & Offence' cases have a target of 60 working days. 'Complex Harm & Offence' cases and all other cases, including misleadingness, have a target of 115 working days.

Process of Formal investigation

Suspension of advertising pending Formal investigation

32. In exceptional circumstances, in particular where public harm is likely to result from the continued appearance of an ad, we may direct a broadcaster (or broadcasters), via the clearance centres (if either cleared the ad), to suspend an ad immediately pending a ruling by the ASA Council. In such circumstances we will apply our fast-track process. Our Chair (or in their absence the Senior Independent Council member), in consultation with the Chief Executive (or other member of the Senior Management team), one independent Council member and one industry Council member must have agreed to the request for suspension.

Informal preliminary view from the ASA Council

33. We may seek an informal preliminary view from the ASA Council to help guide the direction of the investigation, for example in relation to the likely interpretation of an ad. Such a view will not be binding on the ASA Council when it comes to make its ruling.

Advertising parties' response to the complaint

34. We will send a summary of the complaint to the clearance centre/broadcaster copying

the advertiser (and other relevant parties where appropriate) and requesting a written response. Those responses must provide all the information required to respond to the complaint and support the challenged advertising claims. Beyond that stage, the ASA Executive will ordinarily only accept further submissions of information or evidence if it considers that the relevance of those additional submissions could not have been reasonably foreseen at an earlier stage.

Where appropriate, and to help the advertiser and clearance centre address the relevant issues, we may give a provisional view in our initial correspondence on whether the complaint is likely to be upheld or not and why, based on the information in our possession. Any recommendation we subsequently present to the ASA Council will be based on our view after taking into account the responses from the advertiser and clearance centre.

We will explain in our correspondence which Code rule/s are relevant. We will also give a deadline by which the advertiser and clearance centre should respond.

In 'Standard Harm & Offence' cases we allow five working days for response. In all other cases, including Complex Harm and Offence cases we require a response in seven working days.

In complicated investigations or in other exceptional circumstances, we may agree to an advertiser and clearance centre having more time to respond. The grounds for an extension request should be set out in writing. An extension is unlikely to be granted for longer than five working days and repeated requests for extensions are likely to be refused.

35. The Code requires advertisers to hold documentary evidence to substantiate all claims that are capable of objective substantiation. The ASA may ask to see such evidence during an investigation.

All evidence submitted by advertisers and clearance centres must be in English or translated, at the advertiser's expense, into English by a credible translation service.

Where reference is made to research documents their relevance must be explained and full copies of those documents must be provided with the relevant sections highlighted. Abstracts of full studies will not usually be considered sufficient to substantiate claims.

Additional parties to the complaint who we routinely request input from

32. For Harm & Offence cases we send a summary of the complaint to the media in which the ad appeared, and to other relevant parties, who might be invited to provide input, where appropriate. In all cases the broadcaster will receive the draft recommendation and final ruling.

The draft recommendation

33. We consider the responses from the advertiser and clearance centre and any supporting documentation and prepare a draft recommendation. The draft recommendation consists of a summary of the ad, the issue/s being investigated, the relevant Code rules, a summary of the relevant arguments from those who responded to the complaint, a draft recommendation to 'uphold', 'uphold in part' or 'not uphold' the complaint, the rationale for

that recommendation and the action required to remedy the problem, if any.

Responses to the draft recommendation

34. We send the draft recommendation to the advertiser, clearance centre and the primary complainant for comments on the draft recommendation. We also send the draft recommendation to any third parties named in it who have a substantive interest in the outcome.

The parties should normally respond within five working days and should not repeat arguments already put to us or present new substantiation or arguments unless the relevance of those could not reasonably have been foreseen at an earlier stage.

The ASA Council might disagree with our recommendation, so those wishing to defend the ad fully must do so by this stage, even if the draft recommendation put to them is to 'not uphold' the complaint.

Fast Track investigations

35. We might, where circumstances warrant, depart from the standard processes and deadlines described in these procedures and impose shorter response deadlines or send a full draft recommendation including our view on the issue being investigated in the initial communication.

Additional submission to Council

36. The draft recommendation forms the main part (together with, for example, the ad and any relevant guidance) of the information provided to the ASA Council.

In exceptional circumstances, and at our discretion, those named in the report as responsible for answering the complaint may supply a summary of their arguments to be read by the ASA Council. That submission must not introduce any new information and will typically be limited to 1,000 words. Submissions of greater length may not be considered.

The Industry Advisory Panel

37. In exceptional circumstances the Industry Advisory Panel (IAP) can be asked to give an industry view on a recommendation before we give it to the ASA Council, either at our request or at the request of any party to the complaint.

The ASA Council will take account of the advice given by the IAP, but it is non-binding and the ASA Council makes the final decision. The Chair of the IAP can reject requests and will do so if it appears that the panel is being used to hamper the effective running of the self-regulatory system.

ASA Council's ruling

38. We send our recommendation and any relevant supporting information to the ASA Council to review.

There is no provision to hold oral hearings as part of their decision-making process.

The ASA Council may agree with the recommendation, make a different decision, or ask for further investigation.

39. If minor changes are needed after the ASA Council has considered the case but before any ruling is published (for example to correct factual inaccuracies or presentational or typographical errors that are not material to the outcome of the case), we might make those changes without re-presenting the case to the advertiser, complainant or the ASA Council.

If more significant but not substantial changes are necessary, we will re-present the case to the ASA Council only.

If substantial changes are necessary, we might represent the case to the advertiser, the complainant (if necessary) and then the ASA Council. It will be for us to decide on the significance of changes.

Closing a 'Formal investigation' case

40. We will send a letter of notification to the advertiser, clearance centre, complainant(s) and any other third parties to the complaint who have a substantive interest in the outcome. That letter will inform them of the ASA Council's ruling. The letter will also include the date on which the ruling will be published on our website and an instruction to keep the details confidential from public dissemination until that date.

We reserve the right to notify complainants of the outcome of the ruling only on the publication date if we have grounds to consider that the ruling may not otherwise be kept confidential from public dissemination.

Remedial action

41. If we rule that the ad has breached the Code, we will send the advertiser and clearance centre a pro-forma notice of compliance which requests their assurance that they will take the necessary remedial action (for example to change the ad prior to future transmission, to restrict transmission as directed or to cease broadcasting the ad altogether).

Ofcom sanctions

42. If we conclude that a further sanction might be warranted we will inform the broadcaster, and where relevant the clearance centre, that we will refer the matter to Ofcom. Following referral, the procedures in Ofcom's Outline Procedures for Sanctions in Content Cases will apply. Ofcom can impose several sanctions if it feels the conditions of its broadcast licences, the Code or the terms of ASA rulings have been seriously, deliberately, repeatedly or recklessly breached. It can direct a broadcaster not to repeat material, direct a broadcaster to publish a correction or summary of a decision or ruling, fine a broadcaster and, with the exception of Channel 4 and S4C, revoke a licence.

Publishing rulings

43. We usually publish rulings on our website within 14 calendar days of the ASA Council's decision, and they remain on the website for five years.

BCAP may continue to refer to rulings in its guidance for as long as they are useful for educational purposes.

Accredited journalists are given access to rulings in advance of publication, under strict embargo, from the Monday before publication. If those journalists contact the people involved in the complaint, those parties can discuss the ruling with them.

Minor changes to a ruling after publication

44. If insubstantial changes to the ruling are needed after it has been published, for example to correct factual or typographical errors that are not material to the outcome of the case, the Chair of the ASA may authorise appropriate corrective action any time after publication.

It will be for the Chair to decide on the significance of changes and whether it is appropriate for them to exercise their discretion under this provision. Upon correction we will notify the parties of the changes made.

Suspension of publication of rulings pending Independent Review

45. During the Independent Review process the original ruling (and any subsequent remedial action or sanctions) will normally stand, given the public interest in prompt publication of ASA rulings.

Where the advertiser or complainant has indicated they intend to or have already requested an Independent Review, we might in exceptional circumstances agree to suspend a ruling before publication.

To be considered, any request for us to suspend a ruling before publication must be received by our Chief Executive no later than 12pm on the Thursday that immediately precedes the notified publication date. That request must be in writing and identify succinctly an issue or issues that are exceptional, such that they justify suspending publication of the ruling pending Independent Review.

In considering the request for suspension of a ruling pending Independent Review, the Chief Executive (or another senior manager if they are unavailable) will consider whether in their view one or more of the grounds at paragraph 50 is on the face of it made out, and whether deficiencies identified in the suspension request mean that the ASA Council would be very likely to have reached a materially different decision.

If we decide to suspend publishing a ruling, that does not affect the Independent Review process or its outcome. If the ruling is suspended, we will tell the person who asked for it. We will also contact the other parties involved to explain the situation and ask them to keep both the ruling and the status of the investigation confidential until the final decision is published.

ASA-initiated corrective action of substantial flaws

46. In exceptional circumstances (for example, where we identify a substantial flaw in the ASA Council's ruling or the process by which that ruling was made) and at any time

following publication of a ruling our Chief Executive may, with the Chair's approval, take appropriate action to correct the flaw.

They may suspend publication of the ruling if it meets the test set out at paragraph 50 of these procedures and, in all circumstances, they will ask the Independent Reviewer to review the decision in line with these procedures.

Requests for an Independent Review of an ASA ruling

47. The Independent Reviewer will consider requests for a review of the ASA Council decisions.

Terms of reference

48. Requests for a review should contain a full statement of the grounds for review in a single written document. The Independent Reviewer should not be required to cross-refer to previous correspondence with the ASA or other parties, or to other material that contain significant information.

The request for review should be addressed to the Independent Reviewer of the ASA Council Rulings, 12 Henrietta Street, London WC2E 8LH, email: indrev@asbof.co.uk. Request must be made within 21 days of the date on our letter notifying the parties' of the ASA Council's decision. This time limit applies whether the decision followed a formal investigation with a ruling, or was an ASA Council decision that no further investigation was needed.

In exceptional circumstances, the Independent Reviewer may allow more time if they think it is fair and reasonable to do so.

49. We only accept requests from the complainant or the advertiser (the 'parties to the review'). Those from the advertiser or from a non-public complainant should be signed by the Chair, Chief Executive or equivalent office holder; requests made only by their solicitor or agency will not be accepted. All dealings with the Independent Reviewer must be in writing. No oral hearings or meetings with the Independent Reviewer will be granted.

Grounds for a review

50. There are three grounds on which a request can be made:

- if additional relevant evidence becomes available which could not reasonably have been shared during the investigation. New evidence that could have been shared during the investigation or which post-dates the conclusion of a case will not be accepted;

and/or

- where it is alleged that there is a substantial flaw in the ASA Council's ruling/decision;

and/or

- where it is alleged that there is a substantial flaw in the process that led to the ruling/decision being made.

In considering requests against these grounds, if it appears to the Independent Reviewer to be highly likely that the outcome for the applicant would not be substantially different on correction of the substantial flaw or on consideration of additional relevant evidence, they may at their discretion (notwithstanding that one or more of the three grounds above is met) decline the request for review. Whether there are any significant factual inaccuracies in the ruling that require correction is a matter that the independent reviewer may take into account.

Simultaneous legal proceedings

51. No review will proceed if the point at issue is the subject of simultaneous legal action between anyone directly involved. Requests for a review should make plain that no such action is underway.

Non-binding response from the Chief Executive and Senior Management team

52. Before deciding whether a request for review merits asking the ASA Council to reconsider its ruling, the Independent Reviewer will request, in the case of a ruling following a formal investigation, a response from our Chief Executive on the merits of the review request. The Independent Reviewer will have regard to that response but is not bound by it.

In cases where the request is for a review of an ASA Council decision that a complaint requires no additional investigation the Independent Reviewer will request a response from a senior manager on the merits of the request for review. The Independent Reviewer will have regard to that response but is not bound by it.

The review process

53. If the Independent Reviewer decides that a No additional investigation outcome or a ruling made by the ASA Council does not merit reconsideration by the ASA Council because the request does not meet any of the three grounds set out above, the Independent Reviewer will inform the person making the request accordingly and close the file on the case; or

54. If the Independent Reviewer decides that a No additional investigation outcome made by the ASA Council merits further consideration they will recommend that we conduct a Formal investigation and / or other work on the case and will advise the parties to the review of the outcome;

55. If the Independent Reviewer decides that a ruling contains minor factual errors that are capable of rectification without further investigation or referral to the ASA Council they will have those changes implemented and inform the parties to the review of the changes made; or

56. If the Independent Reviewer decides that a ruling (in whole or in part) merits reconsideration by the ASA Council but does not require further investigation by the ASA Executive, they will themselves undertake appropriate steps to bring the case back to the ASA Council. The Independent Reviewer will inform the other party to the case and invite their comments on the submission made by the party requesting the review as well as those of any relevant third parties to the case. At the end of those steps, the Independent Reviewer will make a recommendation to the ASA Council; or

57. If the Independent Reviewer decides that a ruling should be considered again by the ASA Council and thinks the ASA Executive should reopen the investigation, they will tell the parties to the case what matters are to be re-investigated and they will oversee the ASA Executive in its re-investigation.

Once the ASA Executive concludes the re-investigation and makes a further recommendation to the ASA Council, the Independent Reviewer will tell the ASA Council whether they think all the relevant issues have properly been considered.

58. If a review request results in the Independent Reviewer or ASA Executive inviting the ASA Council to reconsider its ruling, the ASA Council will consider the recommendation but is not obliged to accept it. The ASA Council's decision on reviewed cases is final.

59. In all cases the Independent Reviewer will inform the parties to the review of the outcome of their work. All rulings that are reversed or amended following a review are re-published and will remain on the ASA website for five years.

Brief details of the nature of any reversal or amendment to a ruling following the conclusion of an Independent Review will be prominently displayed in the "Background" section of the re-published ruling.

60. The Independent Reviewer's activities are reported in the ASA Annual Report and further details on their work can be found on the ASA website at www.asa.org.uk

ASA service complaints Procedure

61. The Independent Reviewer does not consider complaints about 'Outside remit', 'No additional investigation', 'Advice Notice', 'Informal investigation' or 'Formal investigation' case outcomes that are not decisions of the ASA Council. Nor do they consider complaints about the enforcement of rulings or complaints about the performance or effectiveness of the ASA more generally.

Such concerns should instead be addressed through the ASA's service complaints procedure <https://www.asa.org.uk/about-asa-and-cap/about-regulation/complaints-about-the-asa.html>.

The Press Office

62. Our press office is regularly contacted by journalists asking whether we have received complaints, typically in relation to high profile campaigns. We operate a transparent press office and will confirm in response to enquiries:

- how many complaints we have received;
- where we believe the ad appeared (TV, online etc.);
- the nature of the complaints (misleading, offensive etc.);
- what stage the case is at (complaints received, under initial assessment, referred for investigation etc.).

We will not confirm to the media that a complaint has been referred for investigation until the advertiser has been informed. Once we have confirmed we are investigating, we will not provide further comment on the case until the ruling is published on our website.

If a complaint has been informally resolved, the press office will in response to enquiries regarding the complaint disclose:

- the ad and the nature of the complaint we received about it; and
- that we approached the advertiser about the issue that had been raised and they agreed to change or withdraw the ad.

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Glossary of main terms

Ad – a marketing communication, as defined by the relevant Code, which is the subject of the Complaint.

Advice Notice – a case type where a minor breach or potential breach of the Code has been identified and that we consider can be resolved through giving advice rather than launching an investigation.

Advertiser – the party responsible for the Ad.

Advertising Advisory Committee (AAC) - is the independent consumer panel providing a consumer perspective on the policy work of CAP and BCAP, such as the drafting and interpretation of the Code.

Advertising Standards Authority (ASA) - the UK's independent advertising regulator that enforces the Code.

ASA Challenge – an issue brought by the ASA against an ad on our own initiative. These generally arise from our own proactive intelligence or concern a potential Code breach not

raised by a Complainant.

ASA Council - the jury that decides whether ads have breached the Code. The jury is made up of 12 members, of which two-thirds do not have an advertising industry background.

ASA Executive – employees of the ASA who are responsible for the processing of complaints under the Non-broadcast and Broadcast and Broadcast Complaint Handling Procedures.

(B)Asbof – (Broadcast) Advertising Standards Board of Finance – the independent UK body that collects a voluntary levy on advertising expenditure to finance the ASA, ensuring the ASA remains operationally independent from the industry it regulates.

Broadcast Committee of Advertising Practice (BCAP) - the self-regulatory body that creates, revises and helps to enforce the Code in broadcast media.

the Clearance centre(s) – Clearcast and Radiocentre.

Clearcast - the body that pre-approves television ads to ensure they comply with the Code.

the Code(s) - the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing and/or the UK Code of Broadcast Advertising.

Committee of Advertising Practice (CAP) - the self-regulatory body that creates, revises and helps to enforce the Code in non-broadcast media.

Competitor complainant - complainants who have a competitive interest in the outcome of a complaint.

Complaint – an issue brought by a member of the public, other interested party who is named or a Competitor complainant. Also encompasses where issues brought as ASA Challenges.

Complainant – the party bringing the complaint to the ASA. These include, where relevant, Competitive complainants.

Compliance team – the function of the ASA and CAP that helps to create a level playing field for advertisers; both through ensuring the findings of upheld ASA rulings are enforced and through proactive, own-initiative work such as surveying trends across different sectors and issuing Enforcement Notices to whole sectors where widespread Code breaches have been identified.

Copy Advice team - gives non-binding confidential pre-publication advice to advertisers, their agencies, the media and other practitioners on the likely conformity of non-broadcast ads with the Code.

Draft Recommendation – the draft of the proposed decision written by the ASA Executive based on information and evidence supplied by the parties during a Formal investigation. The Draft Recommendation forms the basis for discussion with the parties to a complaint and may be subject to significant change as further information is shared.

Harm and offence case – a complaint that engages the harm and offence provisions of the Code.

Independent Reviewer of ASA Council Rulings (Independent Reviewer) – Appointed by (B)Asbof, who can review decisions of the ASA Council subject to the criteria set out in the above procedures.

Industry Advisory Panel (IAP) - brings together marketing and media practitioners, others with expert knowledge of the UK marketing industry and one ASA Council member. The IAP advises CAP and BCAP on Non-broadcast and Broadcast matters. It is composed of industry experts together with one ASA Council member.

Informal case – an investigation is launched on a potential breach of the Code but we secure from the Advertiser their agreement to amend or withdraw the ad to bring it into compliance without the need for a Ruling.

Inter-party resolution – the process by which a Competitor complainant must first raise their concerns about an ad with the Advertiser with the intent of seeking resolution before the ASA will agree to become involved.

Formal investigation case – an investigation launched on a potential breach of the Code. At the conclusion of the investigation we refer the Recommendation of the ASA Executive to the ASA Council for a binding Ruling.

Misleadingness case – a case investigated under the provisions of the Code that relate to issues other than Harm & Offence.

No additional investigation case (NAI) - a complaint that the ASA Executive closes following initial assessment because it does not breach the Code or where action is not proportionate.

No additional investigation after Council decision (NAICD) - a complaint that the ASA Executive considers does not raise a likely breach of the Code or where further action is not proportionate following initial assessment, but which is referred to the ASA Council for that decision to be made.

Ofcom – The UK's statutory communications regulator.

On-demand Programme Services (ODPS) - is a video service that allows users to watch TV-like programmes at a time of their choosing, rather than at a scheduled broadcast time.

Online Publications Media Panel (OPMP) - advises CAP on the proper distinction between editorial and advertising in online publications. It comprises the Chairs of Asbof and the Regulatory Funding Company.

Outside remit case (OR) - a complaint that is decided to be outside the remit of the Code as defined by the Scope of the Code.

Primary complainant - In multi-complainant cases where ostensibly the same complaint is made by different complainants, only the first few and/or most appropriate complainants are sent the Draft recommendation. However, all complaints are logged, fully considered and assessed and all complainants will receive the ruling on conclusion of the case.

Prioritisation Principles - principles that guide the ASA in deciding what regulatory resource it commits, or activity it undertakes, in response to the regulatory issue identified either through complaints or other forms of information e.g. research or intelligence from another regulator.

Recommendation – the proposed decision placed before the ASA Council following the conclusion of discussions of the Draft Recommendation with Advertiser, Complainant and any other parties with a significant interest in the outcome of the case.

Ruling – the binding decision of the ASA Council taken at the end of the Formal investigation process, published on the ASA website.

the Press Office – part of the ASA’s Communication team that deals with publication of Rulings and general press enquiries.

Promotional Marketing and Direct Response Panel (PMDRP) - advises CAP on promotional marketing and direct marketing matters. It is composed of industry experts together with one ASA Council member.

Radiocentre – the body that pre-approves radio advertisements to ensure they comply with Code.

Regulatory Funding Company - charged with raising a levy on the news media and magazine industries to finance the Independent Press Standards Organisation (IPSO).

Service Complaint Procedure – the procedure available for complaints about the ASA generally and in particular for case outcomes that are not in the remit of the Independent Reviewer to determine.

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