

# Non-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 non-broadcast media.

## Receipt of complaints

2. There is no charge to the complainant.

Complainants need to send us the ad they're complaining about. For online ads, they should include the web link (URL) and a screenshot of the relevant page or pages, or save a copy of the website. They should also tell us where and when they saw the ad.

If we don't receive the ad itself (and, for online ads, any linked pages), and we can't find it using the details provided, or if the ad has changed since it was seen, we may not be able to take action.

3. 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.

4. 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

5. Complaints must usually be made within three months of the ad's last appearance; in

exceptional circumstances complaints about older ads will be considered.

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**

6. 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**

7. 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 12 below.

## **Simultaneous legal action**

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

## **Confidentiality**

9. 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 and publishers) 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**

10. 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 CAP-initiated investigations**

11. 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, CAP might raise issues with advertisers about potential Code breaches.

## **Competitor complaints**

12. 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

### On-demand programme services

13. We consider complaints about ads that appear on an Ofcom-notified on-demand programme service (ODPS). Ads that can be viewed by a user of the service because of the user selecting a programme to view are regulated by statute and are assessed under rules laid out in Appendix 2 of the Code as well as under the other relevant Code rules. Ads that appear on on-demand services that are not Ofcom-notified are assessed under the other relevant Code rules only.

### 'Outside remit' cases

14. We cannot process complaints about material that is outside the scope of the Code, as set out in the Scope of the Code section in 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

15. 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

16. 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.

We also do not refer for further investigation complaints that raise clear-cut breaches of the Code but which, in our view, should instead be referred to our Compliance team for action.

### **Turnaround targets for 'No additional investigation' cases**

17. 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**

18. 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 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**

19. 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**

20. 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**

21. 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 explaining the issues and provide 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**

22. 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**

23. 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 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.

24. 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**

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

## **'Formal investigation' cases**

26. 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**

27. 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**

28. In exceptional circumstances, in particular where public harm is likely to result from the continued appearance of an ad, we may direct the advertiser to amend or withdraw an ad 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**

29. 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.

### **Advertiser's response to the complaint**

30. We will send a summary of the complaint to the advertiser and request a written response. That response 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 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 advertiser's response.

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

In 'Standard Harm & Offence' cases we allow five working days for response. In all other

cases, including 'Complex Harm & Offence' cases we require a response in seven working days.

In complicated investigations or in other exceptional circumstances, we may agree to an advertiser 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.

31. 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 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 publisher will receive the draft recommendation and final ruling.

For complaints about ads that appear in ODPS media, the relevant media service provider will be our primary point of contact for those aspects of the complaint that are being assessed under the rules laid out in Appendix 2 of the Code.

### **The draft recommendation**

33. We consider the advertiser's response and 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 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 CAP panels**

37. The CAP panels are the Industry Advisory Panel, the Promotional Marketing and Direct Response Panel and the Online Publications Media Panel. In exceptional circumstances, the relevant panel 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 a panel, but it is non-binding and the ASA Council makes the final decision. The chair of the relevant panel 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 re-present 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, 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 advertisers a pro-forma notice of compliance which requests their assurance that they will take the necessary remedial action (for example to amend or withdraw the ad).

## **Publishing rulings**

42. 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.

CAP 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**

43. 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**

44. 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, complainant or (where appropriate) ODPS provider 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 49 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**

45. 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 49 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**

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

### **Terms of reference**

47. 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](mailto: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.

48. We only accept requests from the complainant, the advertiser, or the ODPS provider (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**

49. 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**

50. 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**

51. 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**

52. 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

53. 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;

54. 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

55. 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

56. 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.

57. 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.

58. 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.

59. 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](http://www.asa.org.uk)

## ASA service complaints procedure

60. 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 Copy Advice team

61. The Copy Advice team gives bespoke advice to advertisers, their agencies, the media, and other practitioners on the likely conformity of non-broadcast ads with the Code before they are published or distributed. It also checks ads produced by advertisers subject to mandatory pre-vetting (for example, those subject to the poster pre-vetting sanction).

Advice is not binding either on enquirers or the ASA. Favourable prepublication advice does not automatically protect advertisers from complaints being investigated and upheld by us. It is, however, the best guide to what is likely to comply with the Code. For more information see: <https://www.asa.org.uk/advice-and-resources/bespoke-copy-advice/copy-advice-information.html>.

If you would like to request bespoke advice, you can do so at: <https://www.asa.org.uk/advice-and-resources/bespoke-copy-advice.html>.

The team liaises with Clearcast, Radiocentre and, where appropriate, other broadcasters' representatives to ensure consistency across media, where common advertising rules/interpretations, characteristics and contexts make such consistency appropriate.

A comprehensive resource library of advice on the Codes, with over 500 online entries alongside formal CAP Guidance and more, can be accessed at <https://www.asa.org.uk/advice-and-resources/resource-library.html>.

For relevant and topical updates and newsletters, sign up for CAP updates here: <https://www.asa.org.uk/newsletter.html> and follow CAP on LinkedIn (Committee of Advertising Practice).

## 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 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 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 & 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 and 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)** - 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 the Code.

**Regulatory Funding Company** - is 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.

## Contact us

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