

ASA response to Dame Janet Paraskeva's independent audit of the ASA's performance against its Commitment to Good Regulation



Contents

Executive summary	3
Introduction	3
Summary of ASA response to Dame Janet’s audit recommendations	4
1. Process improvement	4
2. Sharing information within ASA/CAP	5
3. Engaging more effectively with business compliance managers	5
4. Sharing information outside ASA/CAP	6
Next steps	6
Appendix – Details of ASA response to the 30 audit recommendations	7
Contact us	13

Executive summary

Following the publication of Dame Janet Paraskeva's audit in April 2017, the ASA has now considered 29 of the 30 recommendations that she made. We agree with 28 recommendations and have already acted or will act on them. We disagree with one recommendation. We plan to start work on the one remaining recommendation in autumn of this year. We have also used the opportunity afforded by the audit to consider what else we can do to deliver on our *Commitment to Good Regulation*.

Introduction and context

The ASA is committed to delivering high standards in its work, to continuous improvement in its approach to regulation, to listening to others and to challenging itself to evolve so it retains the confidence of those we regulate.

In autumn 2016 the ASA commissioned Dame Janet Paraskeva to conduct an independent audit of our *Commitment to Good Regulation*, first published in 2014, and our performance against it.

Dame Janet spent six months thoroughly investigating our performance against five of the key areas set out in our *Commitment to Good Regulation*. Her [audit](#) involved a detailed review of how we are delivering against it, looking at our processes, policies, ways of working and talking to people at all levels in the organisation. Dame Janet also met a wide range of industry stakeholders and listened to their views.

Following her thorough review, we're pleased that she concluded that the ASA is meeting the regulatory commitments we have set out in our *Commitment to Good Regulation*, and her confirmation that in her opinion those commitments in the main either meet or exceed the requirements of the statutory Regulators' Code, on which they are modelled.

Dame Janet's findings confirmed that the ASA is a "successful regulator" which is "fit for purpose", is "a modern online regulator with efficient systems" and has an Independent Review process that "works efficiently". We were pleased to note that she found that the ASA has the support of advertisers in general but has in place appropriate systems and protocols that demonstrate independence from that same industry.

Nevertheless, as a confident regulator that is unafraid to seek and act on feedback, we recognise we can always improve. We've therefore welcomed the opportunity to carefully consider and, where appropriate, respond to the 30 recommendations that Dame Janet made. We are now ready to share this work and are pleased to present our formal response to 29 of the 30 recommendations she made.

Summary of our responses to Dame Janet's audit recommendations

We've included at the appendix to this document a complete list of the recommendations made in Dame Janet's audit, together with details of our response and, where possible, links to documents, webpages or other resources to which our commentary relates.

In responding to the recommendations it became apparent to us that they can be categorised into four key themes:

- *Process improvement*
- *Sharing information within ASA/CAP*
- *Engaging more effectively with business compliance managers*
- *Sharing information outside ASA/CAP*

We take this opportunity to comment in general terms under each of these headings to draw out some of the key recommendations and the thinking behind our responses to them.

1. Process improvement

Some of the most important process changes recommended by Dame Janet relate to how the Independent Review process operates. We're pleased to say that we've implemented changes to respond to them. The Independent Reviewer no longer asks the Assessors (the Chairs of the ASA and Asbof) for permission to proceed with his recommended course of action on a review case. As it happens, there had never been an occasion on which the Assessors had refused to agree to what was being proposed by the Independent Reviewer, but we accept that the role of the Assessors risked giving an impression that his discretion was unduly fettered and for that reason we agreed it was right to abolish the role of the Assessors. We've also updated the grounds for Independent Review and the Independent Reviewer now leaves Council meetings after his section has ended.

We recognise that the Independent Review process has been one of the issues that generated most interest in the lead up to this audit. We were therefore pleased to see that Dame Janet concluded that it was a process that is efficient and working well. One of the recommendations nevertheless suggested that we review good practice in other jurisdictions and with other regulators to identify any opportunities to further develop the role and work of the Independent Reviewer. We've agreed that this is an exercise we should carry out but we have postponed work on this recommendation whilst we process the other 29. We will start work on this, the final recommendation, in autumn of this year and will report back our findings and implement any changes from that review in spring 2018.

We've responded to a number of suggestions that we improve, innovate or update a number of our internal process documents to help guide staff in complaint handling. We've also made changes to ensure that a party to a case understands when we are seeking an informal view from a third party organisation or expert; we will now explain who they are and report back to the parties on what they tell us, as we already do with formal expert advice.

The Council decision making process was another area of particular interest to Dame Janet and she made two key process recommendations in this area. We've agreed to one of them by introducing a new set of internal guidelines that governs how the ASA Chairman manages casework decisions following comments received from Council members on the weekly Council Online portal.

On the other hand we didn't agree with her recommendation that we hold cases over for a further vote or discussion where the voting margin is tight and where fewer than 10 members have commented. Such a change would result in decisions that have been arrived at by a quorate Council not standing until and unless confirmed at a further vote or discussion. Moreover, given that the circumstances that Dame Janet describes occur only once or twice a year, we've concluded that such a change would be a disproportionate response that would achieve little or nothing. This is the only recommendation out of 30 that we've disagreed with.

2. Sharing information within ASA/CAP

There were a number of relatively minor and simple to implement recommendations relating to changes and improvements to the flow of information internally within our organisation. For instance, we've refreshed and re-launched guides for executives on what high quality decision making, complaint handling and customer service looks like. We've embedded various internal processes in our induction materials for new staff so they have a better understanding earlier of key processes and we've tweaked our systems so we can better record the number of service complaints we receive about the ASA.

In responding to some recommendations about the CAP industry panels it also occurred to us that it would be very useful for those panels to have an opportunity once or twice a year to engage on issues of mutual interest with the ASA Council. This is a change we will make that goes further than the recommendations suggested in Dame Janet's report.

3. Engaging more effectively with business compliance managers

The ASA already has an extensive stakeholder engagement programme and we engage with industry, civil society, government and consumers on a routine basis. We have deep and mature relationships with many advertisers and the trade and representative bodies that represent them. We understand the importance of engagement as a means of securing positive regulatory outcomes. We recognise however that engagement with business compliance representatives is not always where we would like it to be. We have found that whilst we sometimes have good relationships at the senior management and marketing department levels of organisations, that same positive engagement is not always being replicated at the compliance team level. This insight and feedback came through clearly in the experience of Dame Janet as she met various business compliance representatives and in her audit recommendations. Indeed, this is one of the reasons we commissioned the audit.

We want to address this challenge and we therefore welcome Dame Janet's recommendations that touch on engagement. Some of our responses include the following: We've conducted a review of our stakeholder engagement programme to ensure we invite key stakeholders who we may have missed from the programme or who may not have

wanted to join it when they've been asked to join in previous years. We're going to invite key business compliance representatives to one or two of our regular senior stakeholder engagement lunches a year. These are a great opportunity for key stakeholders to meet the ASA Chairman and his senior team, to build mutual understanding and to share insights and experience. We'll also be happy to consider requests from business compliance representatives to come and observe our Council meetings, subject to space availability and issues of confidentiality, and to have an opportunity to meet and engage with our staff and Council members.

We're pleased to have been able to respond positively to all of Dame Janet's recommendations on the topic of engagement but we also see an opportunity to go further. In the autumn we will be exploring with BEIS, and the Business Reference Panel, the prospect of establishing an annual or bi-annual meeting between the ASA and key business compliance representatives who sit on that panel. We envisage this as a forum for the sharing of priorities, news and issues of concern and mutual interest and a good opportunity to deepen relationships and mutual understanding.

4. Sharing information outside ASA/CAP

This category covers nearly half of the audit recommendations and includes a wide range of ideas. We're pleased to have been able to agree to make changes to respond to all of them. Delivering greater transparency through sharing more information is reflected in our agreement, from 2018, to publish our annual reviews of the previous year's Independent Review cases and our consistency with Clearcast/Radiocentre pre-clearance decisions.

We've taken steps to make some information easier to find on our website, such as our Complaint Handling Procedures and information on the roles of some of our senior staff. We've commissioned a new "lifecycle of a complaint" video which will help viewers understand the way we operate in an easy to access format. We've also improved the information available about the CAP industry panels.

From 2018, we will ensure that our annual "Advertiser Update" letters, which provides information about complaint and case numbers and outcomes from the previous 12 months to 100 of the biggest advertisers and other key stakeholders, is also directed to the business compliance departments as well as the marketing teams.

Finally, we've updated our *Commitment to Good Regulation* document itself and will ensure this is reviewed annually to ensure it remains accurate, covering developments in our regulatory practice. We also see this annual exercise as a good opportunity to conduct an on-going internal review of how we are meeting those commitments, addressing any gaps or issues that emerge over time. This is another example of where the ASA has developed a useful recommendation and taken the ambition of that recommendation further than originally envisaged by Dame Janet.

Next steps

This report concludes our work on 29 of the recommendations. Work on the review of good practice in other Independent Review processes will get underway in the autumn of 2017 and we will implement any findings from that review following our conclusions and report on that work in spring 2018.

Appendix – Details of ASA response to the 30 audit recommendations

No.	Theme	Recommendation	Our response	Agreed/ Not agreed
1	Engagement	<i>The ASA should seek to be represented on the Primary Authority Supermarkets Group</i>	The ASA has secured representation on the group and has appointed a representative to attend each meeting	Agreed
2	Engagement	<i>The membership of the Stakeholder engagement programme should be reviewed and possibly extended to include a wider range of advertisers and business contacts, and consideration given to more regular communication to all through a newsletter</i>	We've reviewed our stakeholder engagement programme and have put in place a mechanism to annually review the stakeholders we engage with, with the aim of extending invitations to stakeholders where we think there is a purpose in doing so. In the meantime, any stakeholder who wishes to engage with us in this way is encouraged to contact us. See here for further information	Agreed
3	Engagement	<i>The Chair and CEO take steps to open attendance at their informal meetings to business compliance representatives</i>	We welcome the idea to increase opportunities for engagement with business compliance representatives. We will invite business compliance representatives to two senior stakeholder engagement lunches a year, which are key opportunities to engage with the Chairman and CEO of the ASA	Agreed
4	Engagement	<i>The ASA should consider regularly inviting business compliance representatives to observe Council proceedings in which they are not involved</i>	Business compliance representatives who wish to observe a Council meeting are welcome to contact us and we will aim to accommodate those requests. We will also seek to invite business compliance representatives to one or two Council meetings a year as part of our objective of improving generally improving levels of	Agreed

			engagement	
5	Engagement	<i>Explore the possibility of extending support for informal settlement in inter-party complaints. The ASA might consider offering mediation to help settle cases without the need to resort to a formal investigation</i>	Inter-party resolution has proven its worth over the years and we support efforts to increase its value to advertisers. We confirm that we are fully supportive of parties who agree to refer a complaint to mediation as an alternative to submitting a complaint to the ASA	Agreed
6	Sharing information outside ASA/CAP	<i>While descriptions are published in the Code section on the ASA website under the heading 'how the system works' the ASA should go further in helping business compliance representatives to understand the role of the Industry Panels</i>	We have arranged for a CAP Insight article to be published annually which will help explain the role of the Panels. We have also taken the opportunity to update our website , internal procedures and other literature to give clearer explanation about the Panel and their work	Agreed
7	Sharing information outside ASA/CAP	<i>Make written guidance and advice more readily available about the Industry Advisory Panel and Promotional Marketing and Direct Response Panel</i>	See our response to recommendation six	Agreed
8	Sharing information outside ASA/CAP	<i>Consider with Clearcast and Radiocentre whether the annual TV and Radio ad analysis report can be published</i>	We are pleased to confirm that our Consistency with Clearcast/Radiocentre report will be published on the ASA, Clearcast and Radiocentre websites from 2018	Agreed
9	Sharing information outside ASA/CAP	<i>The ASA should consider how to make published complaints handling procedures more visible and accessible, for example to draw better attention to the 1000-word submission process</i>	Our complaint handling procedures are now highly accessible on the "make a complaint" page of the new website with identifying text drawing immediate attention to them. Our leaflet "Complaint about your ad" which is shared with advertisers makes the process clear and we have a "lifecycle of a complaint" timeline on our website which helps explain the process	Agreed

			See: how-we-handle-complaints	
10	Sharing information outside ASA/CAP	<i>Consider how to make data on complaints more likely to reach business compliance representatives as well as advertising and marketing directors</i>	We will update the annual "Advertiser Update" letters we send to over 100 key advertisers from 2018 to ensure that we are recommending that the data the letter contains is shared with relevant business compliance parties internally in an organisation	Agreed
11	Sharing information outside ASA/CAP	<i>Parties to a complaint should be informed if a case is presented online but is held over for a vote online for an alternative outcome or if it is held over for a Council discussion</i>	We have made two changes to our investigation procedures. 1) We will always now notify a party when a case is referred to Council for a decision. 2) We will always notify the parties when a case is held over from an online presentation of the case to a Council discussion	Agreed
12	Sharing information outside ASA/CAP	<i>ASA should publish its annual review of independent reviews</i>	We will publish on the ASA website our annual review of Independent reviews from 2018	Agreed
13	Sharing information outside ASA/CAP	<i>As much process and background information as possible should be shared with the advertiser and the complainant so that all can see 'fair play'</i>	We have made a number of changes to our published materials, including our standard letter templates to help the parties more easily understand our processes and to clarify the information they are entitled to see in an investigation	Agreed
14	Sharing information outside ASA/CAP	<i>The dual roles of some members of the executive and the roles of the representatives of CAP and BCAP at Council to be made more explicit on the website</i>	We have updated the biographies of staff members to explain where individuals play a role in the corporate and/or regulatory governance of both the ASA and CAP. We have also produced a "complaints lifecycle" video which references CAP representation at Council. This was in production at the time of writing and will be made	Agreed

			available on our website	
15	Sharing information outside ASA/CAP	<i>The ASA should publish its strategic risk register</i>	The strategic risks faced by ASA are set out in the Report of the Council contained within the Annual Report and Financial Statements that are filed at Companies House each year. We will place these in an accessible place on our website	Agreed
16	Sharing information outside ASA/CAP	<i>The ASA should publicise that as a modern regulator it conducts most of its business online and escalates only a minority of cases to a face-to-face Council meeting, for example where there is sufficient gravity or there are wider ramifications</i>	We have produced our "complaints lifecycle" video which will explain the approach we take and will be accessible on our website	Agreed
17	Sharing information outside ASA/CAP	<i>The Council and the executive should review and update the Commitment to Good Regulation document regularly</i>	We will review the <i>Commitment to Good Regulation</i> document annually to ensure it is accurate and up to date and have updated it here Commitment to Good Regulation . We will also use this annual exercise to conduct a review of any other gaps that we can see may need to be addressed or opportunities to be grasped which would further enhance effective regulation	Agreed
18	Sharing information outside ASA/CAP	<i>Advertisers should always be told when an expert opinion is being sought about their advert, from whom and shown what is said</i>	We have updated our internal guidance documents to ensure that the concept of "expert opinion" is not defined too narrowly and our executives will always confirm when an informal opinion is being sought, in line with our practice for when we seek more formal expert advice	Agreed
19	Sharing information outside ASA/CAP	<i>Industry should be informed more broadly of the projects and research studies underway in the ASA and given a chance to contribute. Studies targeting</i>	We already publish news stories, articles and conduct media work to talk about our research and projects. We already cascade this information	Agreed

		<i>wider generic issues would be of significant interest to the advertising world</i>	to industry via the industry panels and we proactively contact sectors who are likely to have an interest in a topic. However, we see an opportunity to further cascade information via the enhancements we are making to engagement as described in other responses to recommendations and will endeavour to continue to engage others in our work on project and research	
20	Sharing information within ASA/CAP	<i>Embed awareness of the Internal Complaints Procedure in staff induction and training plans</i>	This recommendation also concerns our "Unacceptable contact policy" as well as Internal complaints policy. Both policies will be explained to staff on induction. We will re-name our internal complaints policy to "Service Complaints Policy"	Agreed
21	Sharing information within ASA/CAP	<i>Draft updated internal guidance on NAICD decisions and how to settle informally and make more visible to assist executives</i>	Internal guidance on informal and NAICD cases has been updated	Agreed
22	Sharing information within ASA/CAP	<i>The 'what good looks like' guidance should be checked for accessibility and promoted more thoroughly to ASA staff</i>	We have re-vamped our quality guidance for executives otherwise known as the "what good looks like" guidance for our complaint handling teams and have set objectives in the teams for delivery against identified quality priorities	Agreed
23	Sharing information within ASA/CAP	<i>Record numbers and outcomes of complaints received under the ASA's Internal Complaints Procedure</i>	We will embed training to ensure that when the Internal Complaints Procedure (now re-named Service Complaints Procedure) is engaged staff record that on the database and the hub. Including outcomes. We can then conduct an annual review of service complaints	Agreed
24	Process improvement	<i>Clarification is needed about the way in which the difference sources of expertise are</i>	We have produced updated internal guidance on how to go about consulting third parties in	Agreed

		<i>consulted and when</i>	investigations	
25	Process improvement	<i>The IR should be present only for those parts of the meeting that concern his reviews</i>	The Independent Reviewer now leaves the ASA Council meeting after his cases are complete	Agreed
26	Process improvement	<i>Clarify that it is a three part, not two part test for accepting cases under the Independent Review process, namely: (1) 'additional relevant evidence' alongside (2) 'substantial flaw in process'; and (3) 'substantial flaw in the Council's ruling'</i>	The published procedures and website have been amended and republished See (at paragraph 52): Complaint handling procedure	Agreed
27	Process improvement	<i>Establish clear protocols to safeguard the independence of the Chair in relation to accepting cases for Council discussion</i>	The Chairman has drafted a process. This has been circulated with Council and placed on Council online	Agreed
28	Process improvement	<i>A change to the voting quorum should be considered to address narrow voting margins where the number of council members involved is few</i>	Holding cases over in this way would result in decisions that have been arrived at by a quorate Council not standing until and unless confirmed at a further vote or discussion. The issue arises only once or twice a year at the most. On that basis we do not see that there is an imperative to change	Not agreed
29	Process improvement	<i>The ASA should conduct a review of good practice in independent review and appeal processes in other UK regulators and in advertising regulators in other countries and consider improvements it might make</i>	We will start work on this in the autumn of 2017, aiming to report on our findings in spring 2018	Not yet reviewed
30	Process improvement	<i>The Chairs of the ASA and ASBOF should no longer act as Assessors to the Independent Reviewer</i>	The Assessors' role has been deleted from the Independent Review process	Agreed


Contact us

Advertising Standards Authority
Mid City Place, 71 High Holborn
London WC1V 6QT

Telephone: 020 7492 2222

Textphone: 020 7242 8159

www.asa.org.uk

 Follow us: @ASA_UK