

The ASA's Update on the Process Review

**More effective, efficient, cost-effective and
in tune with our stakeholders**

6 December 2010

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1. Introduction

This paper, *The ASA's Update on the Process Review (Update)*, provides a progress update on how we are responding to the recommendations in Berkshire Consultancy Ltd's *Process Review Final Report (Berkshire's Report)* of 31 March 2010.

[The ASA's Preliminary Response to the Process Review \(Preliminary Response\)](#), was published on 24 June 2010 and included important background information that is not included in this paper.

1.1 Our commitment

The Process Review is about getting better at what we do. Being more effective, efficient, cost-effective and in tune with our stakeholders. It is not just about saving money, although it has identified real savings that, together with the notional savings, are already greater than the cost of the consultancy that triggered the review.

This update shows our continued progress. The recommendations we are taking forward will benefit consumers by helping to make our operations more efficient, more focused on priorities and more effective at resolving investigations quickly.

They will also benefit advertisers and other stakeholders by increasing their awareness of our operations and how we apply the Advertising Codes, enhancing two-way communication, closing cases more speedily and, ultimately, helping to improve the already high level of compliance with the advertising rules.

In the New Year, we will publish a third paper, a *Supplement to the Update (Supplement)*, containing further targets. We will publish *The ASA's Final Response to the Process Review* in 2011. It will outline in full the changes we are introducing, which we expect to have a lasting effect on our work.

1.2 Exec Summary

1.2.1 Process changes already adopted / completed

- Proportion of investigated cases resolved informally increased
- Communication with Trading Standards improved
- Advertiser Updates introduced
- Mail Order and Database Practice cases resolved earlier in process
- Copy Advice on cases subject to investigation provided
- Clearcast experts consulted on complaint grounds early in investigation; ASA instructs own expert only if doubts remain
- More targeted monitoring underway

1.2.2 Activities underway / ideas under review

- Faster investigations by redefining Complex Investigations, 'timetabling to conclusion', setting key stage 'standards' and tighter deadlines
- Competitor complainants to provide proof that they've tried to resolve their concern directly with the advertiser in the first instance
- Establishment of a 'common pool' of cosmetics experts with Clearcast and RACC
- Regular scheduled meetings with TSOs and other regulatory partners to discuss common positions on advertising-related business practices
- Industry Engagement Programme to increase collective ownership of self-regulatory system

- Charging for fast-track, four hour turnaround Copy Advice
- Reduction of ASA Council from 15 to 13 whilst maintaining its Independent and Advertising member balance

1.2.3 Ideas rejected

- Charging for competitor complaints or an expedited competitor complaints process
- Removal of 'broadcast' and 'non-broadcast' classification
- Introduction of full disclosure in formal investigations
- Changes to the Independent Review process

2. Update on the ASA's response

2.1 Investigations

- Develop firm criteria outlining the circumstances in which an informal resolution can be delivered.
- Focus on educating advertisers and increasing the number of informal resolutions.
- Choose the appropriate communication medium – would a telephone call be more collaborative and productive than e-mail?
- Implement submission limits.
- Measure and report the 'waiting time' of cases, and actively manage the progress of cases, regardless of which party is holding up the process.
- Introduce 'timetabling to conclusion'.
- Consider introducing charging for competitor complaints (perhaps with sliding scale of fees coupled with a fast-track process).

2.1.1 Informal resolution

- We have revised our criteria for resolving cases informally. See paragraph 19 of the [Non-broadcast Complaint Handling Procedures](#) and paragraph 24 of the [Broadcast Complaint Handling Procedures](#) for our up-to-date criteria.
- We have:
 - ensured that staff are trained on the revised criteria;
 - updated our Complaint Handling Procedures (see above) and
 - promoted the benefits of Informal investigations, and the revised criteria, to stakeholders.
- We have targeted a 5-10 percentage point increase in the proportion of both total investigations and broadcast investigations that are (legitimately) resolved informally.
- Our current performance against that target, measured from 1 June - 29 October 2010, shows a 4.92 percentage point increase compared to the same period last year (from 69.2% to 74.12% of total investigations). We will assess the full 12 month performance on 1 June 2011 and report on that in our Final Response.
- Our current performance against that target for Broadcast Informals, again measured from 1 June - 29 October 2010, shows a 16.17 percentage point increase compared to the same period last year (from 34.14% to 50.31% of broadcast investigations). We will assess the full 12 month performance on 1 June 2011 and report on that in our Final Response.
- Based on case levels, performance and expenditure in the 12 months leading up to October 2010, if we are able to increase the proportion of investigated cases resolved Informally by 7.5 percentage points without compromising our average day turnaround performance for Informal and Formal Investigations, we will free up 'case days' with a notional efficiency value of £133,345.69 per year.

2.1.2 Faster Formals

- We have analysed elapsed time in 10% of the cases we formally investigated in 2009 to determine who had responsibility for the case during its life cycle, for how long and how we

might reduce 'waiting' time. For the avoidance of doubt, the purpose of the analysis is to improve our already effective performance: 94% of the cases sampled were completed within our existing targets.

- The results of this 'Waiting time' analysis show that the ball was in the court of our executives / managers for an average of 69 calendar days per case. That includes an average of 15 days when cases were being assessed for their suitability for investigation. The ball was in the court of our investigating executives/managers for an average of 54 days. It was in the advertisers' court for 24 days. The analysis has provided useful data on the average elapsed days, and range of elapsed days, at various key stages. It has also identified that the average length of advertiser submissions - excluding attachments / studies is four sides of A4 (with a range of 0 to 26 sides of A4). 11% of the cases had attachments / studies, ranging from one Excel sheet to 170 sides of A4.
- We are working on reducing 'waiting' time by:
 - setting internal standards for completing key stages of investigations,
 - setting and enforcing more challenging deadlines for external parties and
 - continuing our use of 'timetabling to conclusion'. 'Timetabling to conclusion' involves ensuring that all interested parties are clear early on in appropriate investigations of the deadlines and the ASA's intention to stick to them.

We are currently working on what target we should work towards. As a guide, and based on case levels, performance and expenditure in the 12 months leading up to October 2010, if we were able to complete Formal Investigations in 5% fewer days on average, we would free up 'case days' with a notional efficiency value of £47,648.02 per year.

- We are also considering adopting stricter criteria for Complex Investigations with a view to increasing significantly the proportion of investigated cases that attract the much more demanding Standard Investigations' turnaround target (85 working days rather than 140 working days). We are currently working on what proportional increase target we should work towards. As a guide, and based on case levels, performance and expenditure in the 12 months leading up to October 2010, if we increased the proportion of Standard Investigations from the current 55% to 65% of the total Formal Investigations (i.e. a 10 percentage point increase) without compromising our average day turnaround performance for Standard and Complex Investigations, we would free up 'case days' with a notional efficiency value of £45,337 per year.
- We will reserve the right to apply submission limits and restrict further rounds of correspondence in exceptional circumstances, for example if interested parties are submitting unjustifiably lengthy correspondence or repeating the same arguments. The limits/restrictions will depend on the nature of the issue and the stage of the investigation, and will not have the affect of restricting unreasonably the interested parties' opportunity to defend its ad or argue its complaint.
- We will not accept references to studies in support of performance claims; advertisers must submit the studies in full, highlighting relevant sections and explaining why they are relevant to the issue in hand.
- We will provide more targets in our *Supplement*. Given the number of recommendations that we would like to begin implementing from the New Year, and the need to ensure that our staff have time to prepare for those changes, we expect to adopt a phased approach to our target setting.

2.1.3 Competitor charging

- Our preliminary work on competitor charging revealed that Section 28(2)(a) of the Communications Act prohibits Ofcom from charging for services it is under a duty to provide. We have sought legal advice and believe that that prohibition extends to us; it would be unlawful for us to charge for investigating competitor complaints about broadcast advertising.
- We considered introducing a charge for complaints about non-broadcast advertising, but that would run counter to our drive towards a media neutral regulatory approach.
- We also considered introducing a charge for an expedited competitor complaint handling process, for example involving tighter response deadlines and fewer opportunities to argue the case, with those who chose not to pay receiving a normal service. However, we could not see how an expedited service would be practical. Competitor complainants might be willing to pay for an expedited service, but most advertisers would, in our view, opt for the normal service. If we forced an advertiser to follow an expedited service simply because its competitor was prepared to pay, we believe we would be subject to threatened legal action on the grounds of unfair process. And even if we successfully defended ourselves, that would not be a good way of engendering the sense of common understanding of, and commitment to, the investigation process that we desire.
- Instead, we are considering other ways of reducing the number and nature of ‘tit-for-tat’ complaints. We have conducted a ‘Competitor complaints’ analysis of formal investigations, including those involving competitors, from 2007-2009. The average days elapsed for Standard Investigations following public complaint was 65. That increased to 92 for Complex Investigations following public complaint. The figure for Complex Investigations following non-public complaint (i.e. from a competitor or another non-public party, such as a single issue pressure group) was 104. Finally, the figure for Complex Investigations following complaint from selected competitors was 107.
- Although responsible for only a minority of cases, competitors complaints are common in some sectors and, as the figures above show, do typically take longer than most other types of cases. We expect that our recommendations to speed up formal investigations (see above) will help us to resolve cases faster, but we are also considering insisting that competitor complainants provide documentary evidence that they have made a genuine attempt to resolve their concerns direct with the advertiser before we will agree to investigate. Our Complaint Handling Procedures require non-public complainants (e.g. competitors) to endeavour to resolve their differences, wherever possible, direct with the marketer or through their trade or professional organisation. We were interested to note from our ‘Waiting time’ analysis that only one of the 19 competitors involved in that analysis appeared to have done that.
- We will report progress in our *Supplement*.

2.2 Consistency

- Improve collaboration with Clearcast, to develop a more common interpretation of the BCAP Code which in turn will build further trust in the overall self-regulatory system.
- Introduce a common pool of experts with Clearcast and make that pool more transparent to advertisers.
- Facilitate collaboration with TSOs to reduce inconsistencies.

2.2.1 Improving consistency with Clearcast

- We and Clearcast continue to focus on the number of ‘overturns’ (i.e. the number of cases where we ‘uphold’, or ‘uphold in part’, against an ad that was cleared by Clearcast), with particular emphasis on those in the area of ‘misleading impression’, at our routine quarterly meetings (which also involve the RACC). We are monitoring ‘overturns’, as well as Informals, identifying and responding to emerging problems.
- Our recent snapshot survey of adjudications against TV ads shows us that, from 1 January - 22 September 2010, we formally adjudicated on 111 TV ads (compared to 173 in the same period last year). Of those, 92 involved Clearcast (compared to 144), 54 were ‘upheld’ (compared to 60) and 38 ‘not upheld’ (compared to 84). In that period, we completed 65 Informals (compared to 49).
- So at the nine month mark, the number of ‘overturns’ appears to have decreased by 10% and the number of Informals appears to have increased by 33%. Please note: those are not confirmed figures and are obviously subject to change by the year end.

2.2.2 Common pool of experts

- We already provide Clearcast, and its experts, with an opportunity to respond to the grounds to any complaint before we consult our own expert; if we are satisfied with Clearcast’s or its expert’s response, we do not need to go to the time and expense of consulting our own expert.
- But we are going further in the cosmetics area, the source of a disproportionate number of ‘battles of the experts’. We, Clearcast and the RACC are establishing a common pool of experts. We have identified five experts who will form that pool. An ‘experts’ meeting took place on 26 Nov ’10 and made real progress discussing: expert selection criteria; guidance for the development and support of claims in cosmetics’ advertising; the approach to assessing evidence for claims; areas of concern, e.g. over the level of evidence required for certain types of claim; and how the pool might work operationally.
- We will report progress in our *Supplement*.

2.2.3 Improving consistency with Trading Standards Officers (TSOs)

- We are collating the views of the Office of Fair Trading (OFT), Trading Standards Institute (TSI), Local Better Regulation Office (LBRO) and Local Government Regulation (LGR) on the perceptions and realities of consistency issues under the Consumer Protection from Unfair Trading Regulations (CPRs). In addition, we have requested examples of inconsistencies from ISBA, the British Retail Consortium, the CBI, the Federation of Small Businesses, Clearcast and the RACC. We have so far received very few examples.
- However, we are keen to promote better the value we attach to consistency with TSOs and are considering various ways of doing that. In addition, we are exploring the benefit of establishing a regular meeting with the OFT, TSI, etc to which relevant cases could be brought for discussion about consistency.
- We will report again in our *Final Response*.

2.3 Stakeholder relations

- | |
|---|
| <ul style="list-style-type: none">• Clearer referencing on e-mail correspondence.• Communicate to advertisers the number of rejected complaints that the ASA receives. |
|---|

- Dispel the ‘myths’ held by some stakeholders through improved communication and understanding of the following:
 - The make-up and procedures of the Council
 - The relationship between the Executive and the Council
 - The route a complaint takes and the level of objectivity applied.
- Take a more collaborative approach with key stakeholders to increase the collective ownership of this self-regulatory environment.

2.3.1 Advertiser Updates

- In May 2010, we provided the top 100 advertisers (by ad spend) with an Advertiser Update, explaining how many complaints and cases, and of which types, their advertising had attracted in 2009. That exercise provides important perspective, documenting the large number of complaints and cases that we do not investigate (and about which advertisers would otherwise be unaware), as well as the invariably much smaller number that we do. We will repeat that on an annual basis, coinciding with the publication of our Annual Report.

2.3.2 ‘Stakeholder management’ approach

- We will explore adopting more of a ‘Stakeholder management’ approach to top advertisers, developing better contacts and relations with them and providing earlier warning of developing issues to improve understanding of the system and maximise our chances of resolving cases informally. Nominated contacts will not, however, handle all cases relating to the advertisers concerned and those advertisers will be expected to liaise with the executives handling their cases in the usual manner.
- We will also explore applying that approach to other key stakeholders, for example consumer groups/panels, other regulators, etc, again to develop better contacts and relations with them.
- The success of this activity relies, among other things, on freeing-up manager time to deploy on ‘stakeholder management’, a matter that is dealt with below.
- We will report again in our *Final Response*.

2.3.3 Collective ownership

- We are taking a collaborative approach with key industry stakeholders to increase the collective ownership of the self-regulatory environment, particularly in the context of the preparations for the launch of the digital remit extension and the associated ASA ad campaign.
- Our Industry Engagement Programme is underway. We will explain:
 - the number and nature of complaints received by the ASA;
 - our complaint handling process and the level of objectivity applied;
 - our focus on resolving cases proportionately (i.e. informally) where appropriate;
 - the relationship between the Executive and Council and
 - the make-up and procedures of Council.

The programme will, among other things, create new content on the ASA and CAP websites to address the above points and launch a regular ASA Update for advertisers.

- We will report again in our *Final Response*.

2.4 Management approach and systems

- Clarify the vision, direction and purpose of the ASA that enables individuals to be aligned in their day-to-day work.
- Gain alignment across the management team regarding 'what good looks like', principles of line management, common vision of success for the ASA and how the team will work as a unit with common goals and expectations.
- Be more overt in the identification of high performance in the areas of quality, thoroughness and relationship management. Make sure that these aspects of individuals' roles are documented and rewarded as much as throughput.
- Implement a regular, structured meeting for each team with clear agendas, decision making and team performance objectives to drive collaboration and a sense of team.
- Set and reinforce a common expectation of staff performance in relation to complexity, skills and throughput.
- Expand the role of all managers to include building external relationships, educating advertisers, aligning executive competencies and increasing capability in team.
- Implement spot checking of work and, where quality is an issue, instigate further checks whilst addressing individual capability gaps over the longer term.

2.4.1 Clarity of purpose

- We have revised our Mission. It now states: "Ensuring that advertising in all media is legal, decent, honest and truthful, to the benefit of consumers, business and society".

2.4.2 Tighter structure

- We are in the process of introducing more structured team meetings to:
 - help bring about a better mutual understanding of the purpose of the ASA;
 - help teams to become more adept at driving improvement by identifying short-term goals and meeting them and
 - help teams achieve greater consistency of approach.
- We will report again in our *Final Response*.

2.4.3 Less supervision, more empowerment

- We are focusing on identifying how to reduce the amount of supervisory work many of our managers undertake, without undermining quality and thereby exposing the ASA to reputational damage.
- We have already identified areas where training, guidance and revised procedures will improve standards and reduce the need for managers to supervise. We have identified some levels of checking that have been removed, updating our internal procedures accordingly. Executives are being given more responsibility earlier in their careers and will continue to be encouraged to present to, and liaise directly with, the ASA Council on their cases, rather than the managers doing so on their behalf. Probation guidelines have been tightened up and clarified to give staff a clearer definition of what success looks like and to tackle any underperformance or training needs early.
- We will focus on identifying how to provide managers and executives with better tools for defining 'standards' of performance that take appropriate account of differing workloads, for

example the typical time taken on a key task. The data from the 'Time-sheet' exercise may provide valuable information in that respect.

- Appropriate 'Standards' of performance should:
 - provide for common expectations between executives and managers of what constitutes the correct 'standard' for a given key task;
 - allow managers to measure and reward high performance more easily and
 - allow managers to address underperformance, for example by providing support and training to the staff concerned.
- We will focus on identifying how best to use freed-up manager time to adopt more of a 'stakeholder management' approach to top advertisers, consumer bodies, other regulators, etc (see above).
- We continue to expect significant benefits in the mid to long-term as a result of those changes, but they involve significant changes to the culture of the ASA, which will take time to implement and embed.
- In the short-term, we have forecasted to do without the two managers, one in Complaints and one in Investigations, we identified in early 2009 we would need to manage the new executives needed to cover the anticipated substantial increase in work resulting from the imminent digital remit extension.
- That commitment, which will deliver a notional saving of over £100,000 a year, taking into account direct and indirect staff costs, will slow the rate at which we can adopt the new management approach, because each existing manager will need to manage approximately one extra direct report, who will need recruiting, training, managing and developing.
- We will report again in our *Final Response*.

2.5 Processes and internal ways of working

- Resolve more 'not investigated', 'non-remit' complaints, Mail Order and simple responses at Complaints Reception stage.
- Build an effective interface between TracFusion and CRM [the ASA's case management and customer relationship management systems].
- Introduce an electronic standard Copy Advice request form online.
- Stop routine monitoring that has not been shown to provide value.
- Consider using a target of total time invested by case type and complexity to encompass all activities involved in managing a case to conclusion.

2.5.1 Process tweaks

- We have introduced an 'ASA Chairman's prerogative' to overrule, where appropriate, requests from a single Council member that a case should be formally investigated (when other members have accepted that it should be closed without investigation). We are targeting 75% fewer cases investigated as a result of only one comment.
- We are reducing the number of political ads that the ASA presents to Council with the recommendation that they be closed down as 'outside remit'.

- We have standardised, where appropriate, the language used in our adjudications (i.e. relating to references to the Codes' rules).
- We are removing some of the perceived and actual barriers to working more flexibly with Clearcast, for example when seeking to resolve cases informally at the earliest stages (i.e. before cases have been allocated for investigation) and when discussing ads amended following adjudication.
- We will soon begin work on whether and how we should refine our processes so we can deal more efficiently with multiple complaints about an ad or campaign, for example following an orchestrated Twitter campaign.

2.5.2 Closing cases early

- From 1 September 2010, our Complaints Reception staff took on additional tasks previously undertaken by Complaints Executives. Those include:
 - establishing the advertiser in 'unknown' cases;
 - handling all Mail Order and Database cases and
 - obtaining all ads retrievable from, for example, media monitoring systems.
 Our target is that Complaints Reception will close c800 more cases than previously and undertake necessary preliminary work on a further c6,000 cases, whilst ensuring it continues to load all complaints within 24 hours with no backlogs.
- That reduction of work in the Complaints teams will, of course, help to free-up time to devote to, for example, working under less supervision, but it is important to note that it will be the cases that require the least amount of invested time, and that are the quickest to resolve in elapsed time, that will be taken on by Complaints Reception.
- We will report again in our *Final Response*.

2.5.3 Technological enhancements

- We are budgeting in 2011 for the production of a Copy Advice 'online enquiry form', which we expect to go live in early Q2 2011. That technological enhancement will also allow us to charge online for premium four-hour turnaround (see below). We have not budgeted for a CRM/TracFusion interface at this stage.
- We will report again in our *Final Response*.

2.5.4 Routine monitoring

- From 1 November 2010, and following analysis of data from our 'Time-sheet' exercise, we adopted a more targeted form of monitoring.
- Post-Investigation Compliance, Sensitive Sector Compliance Surveys and other sector/market/thematic Compliance Surveys remain key activities; they are unaffected by the changes.
- However, monitoring will now be better targeted at the known problem areas, with a significant sample of media monitored regularly. Our target is to increase our monitoring efficiency quotient from the current 1.27 (the percentage of cases handled by the Compliance teams that result from monitoring (38%) divided by the percentage of the Compliance teams' time devoted to monitoring tasks (30%)) to 1.50, with no statistically significant rise in 'problem ads' in the media affected (as revealed by complaints).

- We will also make full use of the 'alert' functionality provided by our media monitoring supplier to track the advertising of repeat offenders and to pick up on recurring misleading claims.
- We will report again in our *Final Response*.

2.5.5 'Time invested' target

- The 'Time-sheet' exercise contains data that will help us identify appropriate 'time invested' targets for key stages of cases, for example drafting recommendations or analysing responses from interested parties.
- We will report again in our *Final Response*.

3. Other ideas

This section addresses some of the ideas the ASA had, or received from various stakeholders, that are not covered either above or, in the main part, in *Berkshire's Report*.

3.1 Structure of Council

- Review the structure of Council with a view to having identical membership of the non-broadcast and broadcast variants and, therefore, three fewer members.
- We are in the process of reducing the number of Council members from 15 to 13.
- From April 2011, 11 of the 12 members of each Council will sit on both Councils, with only the 'Advertising' members with non-broadcast and broadcast media backgrounds sitting only on the Council relevant to their background.
- Each Council will continue to contain the current one third 'Advertising' and two thirds 'Independent' members and the current mix of two 'Advertising' members with a client background, one with an agency background and one with a media background.
- The annual savings from April 2011 will be around £34,000 per year and the administration of Council will become simpler.

3.2 Review the Independent Review process

- Reconsider whether 'substantial flaw of adjudication or process' is an unreasonable test to expect advertisers and complainants to meet.
- Set-up the Independent Reviewer with remote access to TracFusion so he can access the e-file, removing the need to create a hard-copy file at considerable expense.
- *Berkshire's Report* stated that the only realistic alternative to the current system would be an independent appeal panel that would create an additional layer of decision-making and increase costs with little guarantee of increased effectiveness.
- We agree with that conclusion and have no plans to change the Independent Review process.
- We are still considering whether we should provide the Independent Reviewer with access to TracFusion, but will have to continue to create hard-copy files even if we do.

3.3 Deter 'outside remit' / frivolous complaints

- Make it less easy for people to complain 'on a whim', e.g. by making those who use our Online Complaints Form register first.
- We will look at additional changes that could be made to the Online Complaints Form in 2011, and have budgeted for that accordingly. We will not, however, put unreasonable barriers in the way of complainants, for example by insisting they register first before submitting their complaints. And we reserve the right not to handle complaints in exceptional circumstances, for example those made by a vexatious complainant.
- We will report again in our *Final Response*.

3.4 The test for 'misleading'

- Be clearer and more transparent on key issues like:
 - the need for ads to be likely to mislead; the fact that they could mislead is not enough
 - the test we apply: is it 'balance of probabilities' or 'beyond reasonable doubt'. If the former, as seems most sensible with the caveat that it might depend on the claim, does the language we use in our adjudications reflect that? Ought we to be saying, for example, that advertisers "have not conclusively proved" a claim?
- Our decisions on misleading cases will, where appropriate, reflect the CPRs and appropriate case law. We are acutely aware that neither the Codes nor our interpretation of the Codes can be more lenient or stricter than the CPRs, which implement a maximum harmonisation Directive.
- In that context, we have emphasised to staff that ads must be likely to mislead; it is not enough that there is, say, an 'outside chance' of them misleading.

3.5 ASA challenges

- Cut back the number of occasions where the ASA Executive adds its own challenges to those raised by complainants.
- We will add our own challenges only in exceptional circumstances, for example if there appears to be a significant breach that cannot be resolved informally.
- We have communicated that to our staff and the number of ASA challenges has reduced significantly.

3.6 Communication channels

- Reconsider the communication channels we use routinely; must we continue to send certain key correspondence by hard-copy as well as e-mail when we know the preferred means of communication is e-mail? Might there be postage savings by removing that obligation?
- Our policy is to use the communication channel most appropriate to the case. Only when sending notifications of complaint, draft recommendations and final adjudications to interested parties are letters (also) sent. We believe that strikes the right balance between efficiency and formality.
- We will encourage our staff to make more frequent use of the telephone, followed-up where necessary with written confirmation, with a view to helping to complete cases more quickly and improve relations with stakeholders.

3.7 Disclosure

- Reconsider our 'disclosure' policy, particularly for cases involving non-public complainants. Might time-wasting snags be avoided were we routinely to disclose non-public complaints and subsequent communications, suitably redacted, to advertisers?
- From time-to-time, we disclose the detail of such communications, suitably redacted, to opposing parties. And that is the method followed successfully by the Independent Review when he independently reviews cases.
- We will continue to do that where appropriate, but we have no plans at this stage to introduce full disclosure in all investigations.

3.8 Media classification

- Simplify the classification of cases, e.g. by removing the distinction between Non-broadcast and Broadcast cases.
- We might benefit from very small efficiencies by making such a change, for example in terms of reducing the number of case-types, etc. But it would not deliver significant benefits, not least because there are different procedures for dealing with broadcast cases, where main points of contact are Clearcast and the RACC, and we need to report on broadcast cases as part of our contractual arrangement with Ofcom.
- We have no plans at this stage to remove the distinction.

3.9 Cause-related marketing and planning process ads

- Adopt a narrower remit over non-commercial advertising, e.g. campaigning ads against local planning applications.
- We believe there is a public and societal interest in us applying the CAP Code to those cases. But that must be weighed up against the fact that we also believe that we invest a disproportionate amount of time in those cases. Unfortunately, the 'Time-sheet' exercise did not produce sufficient data to identify, even on an approximate basis, how much additional time. CAP is best placed to take the matter forward.

3.10 Executive 'overturns'

- Provide data on the number of occasions that the ASA Council goes against the Executive.
- We intend to look into this, but we have not yet scheduled that work.

3.11 Copy Advice on ads subject to investigation

- Provide Copy Advice on issues that are subject to ongoing ASA investigation.
- Copy Advice will provide advice on issues that are subject to ongoing investigation by us. For obvious reasons, that advice may have to be cautious and might amount to removing or amending the claim pending the investigation's outcome.

3.12 Charge for premium Copy Advice service

- Copy Advice to charge for rapid turnaround.
- Copy Advice will, from the end of Q1/beginning of Q2 2011, apply a premium charge for rapid turnaround of enquiries from advertisers and agencies. The four hour turnaround will mean that queries submitted before 2pm would be turned-around that same day.
- The purpose is to regulate the flow of potentially disruptive and time-consuming last minute requests, reducing substantially the number of such requests. That will help advisors to manage their time and to concentrate on other service areas more efficiently.
- The charge will be £200 + VAT per enquiry, with a 15% discount for upfront online payment. We estimate that such requests could reduce to around 50 per year, which would generate £10,000 (excluding discounts).
- We will report again in our *Final Response*.

4. Summary of savings

- 'Savings' are actual savings that have been or will be realised;
- 'Notional savings' relate to costs that would otherwise have been incurred;
- 'Notional efficiency value' is a metric that attributes a £ value to changes, allowing them to be compared. It is primarily a relative measure and so should not be confused with absolute 'Savings' and 'Notional savings'. It is derived by working out the cost per 'case day', a 'case day' being one day of elapsed time for one case, and then applying that to the number of 'case days' freed-up by a change and
- 'Income' is direct income from a charge for our added-value services.

4.1 Savings

Reduction in the number of Council members from 15 to 13 = £34,000 per year from 1 April 2011.

4.2 Notional savings

No managers to be recruited for the digital remit extension work (two were budgeted for, prior to the Process Review) = £100,000 per year from Q1 2011.

4.3 Notional efficiency value

5-10 percentage point increase in proportion of investigations closed informally = £133,345.69 per year from 1 June 2010.

4.4 Income

Charge for premium Copy Advice service = £10,000 in year 1 from 1 April 2011.

5. ASA response scorecard

The table below summarises the activities completed/underway, under consideration/in development, planned for but not yet started and rejected. The table uses terms explained fully either in the *Preliminary Response* or in this paper.

* Progress colour key: green = completed/underway; orange = under consideration/in development; red = not started; black = rejected.

Theme	Activity	Outcome	Progress*
Investigations: Informal investigations (Informals)	Increase Informals, in line with updated criteria.	5-10 percentage point increase in proportion of investigations closed informally.	Increase for 1 June – 29 October 2010 = 4.92 % points.
	Update Complaint Handling Procedures.		
	Promote benefits of Informals, e.g. in context of digital remit extension		
Consistency: with Clearcast	Use regular meetings to identify areas of concern (e.g. related to misleading impression).	Meaningful reduction in number of 'overturns'.	Early snapshot: 1 January – 22 September 2010, 10% reduction in 'overturns' and 33% increase in Broadcast Informals.
	Increase proportion of Broadcast Informals.	5-10 percentage point increase in proportion of broadcast investigations closed informally.	Increase for 1 June – 29 October 2010 = 16.17 % points.
Consistency: Pool of experts	Establish common pool of cosmetics' experts.	Common pool established and working effectively. Significantly fewer 'battles of the experts'.	In development.
	Examine remaining differences between ASA's and Clearcast's experts.	No remaining areas of difference.	Experts' meeting scheduled for end Nov '10.
Consistency: with TSOs	Improve communication with TSOs through closer liaison with LBRO, TSI, LGR, OFT, etc.	Better liaison leading to greater consistency.	Collating views.
Stakeholder relations: Various	Introduce Advertiser Updates.	Advertisers to benefit from a wider perspective of the ASA's complaint-handling role.	Introduced in May 2010.
	Launch Industry Engagement Programme, including new content on the ASA website and new ASA Update e-mail.	Increase collective ownership of self-regulatory system.	Underway.
Management approach: Various	Change processes to reduce some checking.	More empowered executives; managers' time freed-up.	No additional managers recruited for digital remit extension work (two were budgeted for, before the Process Review).
	Give executives more responsibility earlier and encourage them to present/liase direct with the ASA Council.		
	Tighten up probation guidelines.		
	Provide guidance for Complaints Executives on writing NICD recommendations to Council.	Managers to make changes to 50% fewer recommendations.	Guidance drafted and soon to be circulated.
	Redefine ASA's mission to: "ensure that ads in all media are legal, decent, honest and truthful to the benefit of consumers, business and society."	Clearer understanding of purpose of ASA.	Done.
	Introduce more structured team meetings.	Support continuous improvement and consistency of approach.	Underway.
Processes: Various	Complaints Reception staff to take over from Complaints Executives all Mail Order and Database cases, the role of establishing advertisers in 'unknown' cases and the sourcing of all ads retrievable from media monitoring systems.	80% of Mail Order and Database cases (c800) to be completed within target. Complete preliminary work on c6,000 cases. Complaints Reception to continue to load all cases within 24 hours.	Responsibility transferred on 1 September 2010.
	Introduce more targeted monitoring.	Increase efficiency quotient from 1.27 to 1.50, with no significant increase in relevant Problem Ads referred to Compliance by Complaints.	Trial began on 1 November 2010.
	Compliance team to make use of 'alert'	Improve compliance.	Underway.

	functionality on our media monitoring system to track repeat offenders and recurring misleading claims.		
	Where appropriate, ASA Chairman to overrule a request from a single Council member that a case should be formally investigated.	75% fewer cases investigated as a result of only one comment.	Done.
	No longer refer all 'outside remit' political ads to Council.	Fewer NICDs; executive and manager time freed-up.	
	Update Online Complaints Form in 2011.	Reduce 'outside remit' complaints that make it through the front door.	Included in 2011 budget.
	Standardise language in recommendations, where appropriate.	Clearer adjudications.	Done.
Other ideas: Various	Ensure staff are clear about misleading test; ensure new Codes embed that.	No justified challenges that we miss-apply the interpretational framework in the CPRs.	Done.
	Ensure staff are clear that ASA challenges should be added only in, say, cases of serious breach.	No justified challenges that we 'go fishing' for problems.	
	Ensure staff use channel most appropriate to the case, normally e-mail. Only draft recommendations and final adjudications to be also sent by post.	Faster investigations; reduced postage costs.	Underway.
	Ensure Copy Advice team provides advice on issues subject to ASA investigation.	Better service to advertisers, agencies and media.	Done.
	Produce Copy Advice 'online enquiry form'.	Less time spent loading Copy Advice enquiries; more time advising.	Included in 2011 budget and already in development.
	Charge for four-hour-turnaround for Copy Advice.	Reduce substantially the number of non-essential requests for rapid turnaround of advice, making it easier for Copy Advice to manage its workload and freeing-up time for it to improve wider CAP Services offering.	In development.
Investigations: faster Formal Investigations	Tighten criteria for Complex Investigations, increasing proportion of Standard Investigations that attract much tougher turnaround target.	Faster Investigations.	Under consideration.
	Continue 'Timetabling to conclusion'.	See above.	Phased target(s) to be determined, where appropriate.
	Introduce TracFusion warning system when 'standard' times for completing key stages of an investigation have been exceeded.		Submission limits/etc likely to be adopted in exceptional circumstance only.
	Standardise response deadlines between broadcast and non-broadcast.		
	Introduce submission limits/restricted correspondence.		
	Insist that competitor complainants provide documentary evidence that they have tried to resolve their concerns direct with the advertiser before complaining to ASA.	Reduced time spent on competitor complaints.	
Consistency: Pool of experts	Publish more information about our experts on our website.	Greater transparency.	Under consideration.
Consistency: with TSOs	Discuss relevant cases at regular meeting with a view to encouraging consistency.	Greater consistency.	Under consideration.
Other ideas: Reduce size of Council	Reduce number of Council members from 15 to 13.	Reduced costs; easier administration.	Under consideration.
Stakeholder relations: Various	Introduce 'Stakeholder Management' approach to work.	Nominated contacts improve relations.	To be considered from Q1 2011.
Management approach: 'Standards' and 'time invested' targets	Define 'standards' of performance, informed by data from the 'Time-sheet' exercise and the 'Waiting time' analysis.	High performers better rewarded; underperformance addressed more quickly.	To be considered from Q1 2011.
	Introduce 'Time invested' targets in context of above work on defining 'standards' of performance.		
Processes:	Introduce technological enhancements such	Reduced time spent saving Copy	On hold. Not

Various	as a common CRM/TracFusion interface.	Advice enquiries.	budgeted for in 2011. Not yet started.
	Provide data on the number of occasions that Council goes against the Executive.	Better understanding of consistency between Executive and Council to lead to better decision-making.	
	Refine processes for dealing with multiple complaints fuelled by, for example, an orchestrated Twitter campaign.	More efficient processing of multiple complaints.	To be considered from Q1 2011.
Investigations: Faster Formal Investigations	Charge for competitor complaints/an expedited competitor complaint process.	N/a.	
	Remove classification between broadcast and non-broadcast.		
	Introduce full disclosure in formal investigations.		
Other ideas: Various	Review Independent Review process.		
	Exempt cause-related marketing/planning ads from the CAP Code.		