

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

The ASA's Preliminary Response to the Process Review

24 June 2010



Background to the ASA Process Review

As the UK's independent regulator of advertising across all media, our role at the Advertising Standards Authority (ASA) is to uphold standards on behalf of consumers, business and society. We do that by applying the Advertising Codes, written by the Committee of Advertising Practice (CAP), in a way that strikes the right balance between protecting consumers and allowing advertisers the freedom to advertise responsibly. In our work, we are guided by the Better Regulation Executive's principles of transparent, accountable, proportionate, consistent and targeted regulation.

The ASA / CAP system provides all the key elements needed to regulate advertising effectively, including code policy development, training and guidance, monitoring and compliance, pre-publication advice, complaints and investigations.

The ASA has been the 'one-stop shop' for ads across all media since 2004, when Ofcom contracted-out day-to-day responsibility for TV and radio advertising to the self-regulatory system. The one-stop shop has been successful, with high compliance rates with the rules and good levels of customer satisfaction with the way we perform our regulatory duties.

As we look ahead, we want to keep pace with the changing media landscape, particularly as we prepare to take on an extension of our online remit to cover marketing communications on websites and in social media. We also want to be well-placed to continue to respond proactively to societal concerns, emerging trends and technological developments.

Against this background, the Process Review has been designed to give us the chance to take a step back and have a good look at how we do things, with a view to becoming even more effective, efficient, cost-effective and in tune with our stakeholders.

1. The scope of the review

In October 2009, Berkshire Consultancy Ltd (Berkshire), an independent management consultancy, was contracted to undertake a review of our core processes, particularly those relating to the:

- handling and investigation of complaints from the public and competitors;
- proactive monitoring of advertisements;
- enforcement of ASA decisions to ensure compliance and,
- provision of pre-publication advice and guidance by the CAP Copy Advice team.

2. Berkshire's final recommendations

The independent recommendations made by Berkshire have been grouped under five headings:

- Investigations;
- Consistency;
- Stakeholder relations;
- Management approach and systems and,
- Processes and internal ways of working.

Investigations

- Develop firm criteria outlining the circumstances in which an informal resolution [i.e. typically relating to a 'minor and clear cut' case that can be closed when the advertiser agrees to amend the ad] can be achieved.

- Focus on educating advertisers about how the ASA works and increasing the number of informal resolutions.
- Implement 'submission limits' [i.e. limits on the length of submissions from interested parties to encourage succinctness and discourage repetition].
- Measure and report the 'waiting time' of cases [i.e. wasted time, often when important responses are delayed], and actively manage the progress of cases, regardless of which party is holding up the process.
- Introduce 'timetabling to conclusion' [i.e. at an early stage in investigations, agreeing with interested parties stretching time deadlines for the various stages of the case].
- Consider introducing charging for competitor complaints (perhaps with a sliding scale of fees coupled with a fast-track process).

Consistency

- Improve collaboration with Clearcast to develop a more common interpretation of the TV Code which in turn will build further trust in the overall self-regulatory system.
- Introduce a common pool of experts with Clearcast [i.e. the ASA and Clearcast use experts from the same pool] and make that pool more transparent to advertisers.
- Facilitate collaboration with Trading Standards Officers, to reduce inconsistencies.

Stakeholder relations

- Communicate to the advertiser the number of complaints that the ASA rejects on the grounds that they do not raise a potential breach of the Advertising Codes.
- 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 and
 - the route a complaint takes and the level of objectivity applied.
- Take a more collaborative approach with key industry stakeholders to increase the collective ownership of this self-regulatory environment.

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', the principles of line management, a 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.

Processes and internal ways of working

- Resolve more ‘not investigated’, ‘non-remit’, mail order complaints and undertake more 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.

3. The ASA’s interim response to the final recommendations

Overview

- The ASA is the best known media regulator¹ and our regular customer satisfaction and attitude and awareness research demonstrates that our stakeholders have a generally favourable impression of our work.
- Berkshire’s Final Report stated that “the [ASA’s] processes themselves are commonly understood [by ASA staff] and are effective. In our experience, it is rare for the individuals in an organisation to have such an aligned view of how processes work and how each role fits into the whole. There are no major process changes that would make the organisation more efficient – as the current state is streamlined and well understood. There are, however, a number of changes that will improve the effectiveness of the organisation ... The working environment is relatively informal, with a focus on accuracy and case resolution. The staff are educated and committed. They take pride in their work, the ASA as a whole and the fact that virtually all the quarterly KPIs are consistently met. There are, however, opportunities to create a more dynamic, motivated organisation.”
- The ASA is committed to getting better. To being more effective, efficient, cost-effective and in tune with its stakeholders. To implementing the changes that will improve the effectiveness of the organisation. To taking opportunities to create a more dynamic, motivated organisation.
- The summary below shows that the ASA has made substantial progress in responding to Berkshire’s recommendations in all five areas. Although there are no major process adjustments we can make to deliver immediate benefits, many of the proposed changes, when implemented, will have a significant impact on the culture and practices of the ASA. The decisions taken over the ensuing months will have ramifications over the next few years.
- The recommendations that we take forward, now and in due course, will benefit consumers and the general public by helping to make our operations more efficient, more focused on priorities and more effective at resolving investigations quickly.
- The changes we make will also benefit advertisers by increasing their awareness of our operations and how we apply the Advertising Codes, enhancing two-way communication,

¹ Ipsos MORI research commissioned by the Press Complaints Commission, March 2008.

speeding up the investigations process and, ultimately, helping to improve the already high level of compliance with the rules.

Investigations

In order to improve the efficiency and effectiveness of our Investigations function, we will:

- ensure that we are consistent in the criteria we follow when resolving cases informally - a method of resolving cases proportionately that the ASA's customer satisfaction research shows is popular with complainants and advertisers alike;
- target a meaningful and measurable increase in the proportion of cases that can legitimately be resolved informally to effect quicker resolution of issues for the benefit of all parties;
- work towards completing formal investigations quicker, for example, by reducing 'lost time', introducing submission limits and 'timetabling to conclusion' and
- establish a Competitor Charging Working Group to model competitor charging options, in consultation with advertisers through ISBA.

Consistency

In order to enhance the consistency of decisions on the application of the Advertising Codes and other advertising related matters, we will:

- continue to focus on improving consistency between the pre-clearance advice provided by Clearcast and ASA adjudications, with a view to reducing the number of 'overturns' (i.e. the number of cases where the ASA upholds against an ad that has been cleared by Clearcast);
- work towards establishing a common pool of experts to be used by Clearcast, the ASA / CAP and the RACC (initially as a pilot in the cosmetics and, perhaps, the food sectors) and
- work more closely with Trading Standards Officers with a view to improving consistency between the decisions and advice provided by each party (the ASA and TSOs) on the same advertising-related business practices.

Stakeholder relations

In order to enhance our engagement with our stakeholders, we will:

- beginning the w/c 24 May 2010, provide the top 100 advertisers with an Advertiser Update, explaining how many complaints and cases, and of which types, their advertising has attracted in 2009;
- explore adopting a 'stakeholder management' approach to top advertisers, consumer groups / panels and other regulators to develop better contacts and relations and
- improve the collective ownership of the self- and co-regulatory system through an Industry Engagement Programme.

Management approach and systems

In order to improve the efficiency and collective quality of output of our teams, we will:

- ensure there is a common understanding of the purpose of the ASA and CAP;
- identify how more structured team meetings might help teams to become more adept at driving improvement by identifying short-term goals (to complement the ASA's wider objectives) and meeting them;
- focus on reducing the amount of supervisory work undertaken by many ASA managers, without undermining quality and thereby exposing the ASA to reputational damage. That will free-up manager time to focus on managing more staff, setting common expectations of

'standards', e.g. the typical time taken on a key task, developing the capabilities of staff and contributing to better stakeholder relations and

- with those efficiencies in mind, the ASA has revised its forecast of the resourcing it will need to handle the additional work generated by the likely extended digital remit. It anticipates needing no additional managers; new executives will be added to existing teams. That commitment promises to deliver a substantial relative annual saving, but it will slow the rate at which managers can adopt the new management approach as they will be recruiting, training, managing and developing additional staff.

Processes and internal ways of working

In order to streamline our processes further, we will:

- empower Complaints Reception staff to close, on the basis of 2009 figures, 800 more cases a year and undertake necessary preliminary work on a further 6,000 cases, work that previously would have been undertaken by the Complaints teams;
- consider introducing technological enhancements to our systems to deliver efficiencies, subject to budget;
- examine whether some of the routine monitoring of ads is delivering the best value for our objective of assessing compliance and
- explore data from the time sheet exercise² to identify appropriate targets for 'time invested' for key stages of investigating and resolving cases.

Other ideas

The ASA and CAP executive will also:

- consider further the recommendation to reduce the number of ASA Council members from 15 to 12 from April 2011, when five members are due to rotate off Council. The Broadcast and Non-broadcast Councils would still each contain 12 members, but there would no longer be six members who sit on only one Council. The change would deliver considerable annual savings and the administration of Council would become simpler;
- look at additional changes to the Online Complaints Form to deter 'outside remit' or frivolous complaints without making the ASA less accessible to those with complaints of substance. Any such changes would have budgetary implications and cannot be undertaken in 2010; they will be considered as part of our annual planning process for 2011;
- be clear about the test we apply to misleading cases, namely:
 - our decisions will, where appropriate, reflect the CPRs and appropriate case law and
 - ads must be likely to mislead; it is not enough that there is, say, an 'outside chance' of them misleading.
- continue to monitor advertising and add ASA challenges (i.e. occasions where the ASA Executive adds its own challenges to those raised by complainants), but only do the latter in exceptional circumstances (e.g. if there appears to be a significant breach that cannot be resolved informally) and
- through the CAP Copy Advice team, provide advice on issues that are subject to ongoing investigation by the ASA. For obvious reasons, that advice has to be cautious and might amount to removing or amending the claim pending the investigation's outcome.

² In the early stages of the Process Review, staff in the core functions undertook a time sheet exercise for six weeks to identify how and where their time was spent in performing their daily work, such as handling complaints, investigating cases and providing Copy Advice.

4. Additional ideas put forward by respondents

This section summarises two additional ideas the ASA explored as part of the review carried out by Berkshire. However, after assessing their likely benefit and feasibility, they were not included in the final recommendations. We do not intend to consider them further.

The Independent Review process

A small number of respondents suggested a review of the Independent Review Process, for example by changing the criteria for review, setting up a separate 'appeal panel' and introducing oral hearings to mirror more closely the legal appeal system.

Berkshire concluded 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.

Cause-related marketing and planning process ads

Some stakeholders suggested that the ASA should adopt a narrower remit over non-commercial ads and not apply the CAP Code to, for example, campaigning ads against local planning applications.

We believe there is a public and societal benefit to the CAP Code being applied to those cases. They do, however, take a disproportionate amount of time and some argue that our involvement in them constitutes an unreasonable interference in advertisers' freedom of expression about issues that are, very often, matters of public debate and / or are subject to a detailed and thorough planning process.

Irrespective of those arguments, the ASA's remit is determined by the Committee of Advertising Practice (CAP). Therefore, beyond assessing and reporting on the time spent on such cases, this is a matter for the industry and, particularly, CAP.

5. Implementation

The ASA senior management team has established a Project Team, led by Guy Parker, Chief Executive, and consisting of nine other members of staff at various levels. So far, ten working groups have also been established, again involving members of staff at various levels. The working groups are conducting research, setting out options and determining recommendations to implement, with associated outcomes. The implementation and the measurement of the outcomes will be undertaken by the relevant functions, e.g. Complaints, Investigations, Compliance and Copy Advice.

6. Organisations that were invited to respond to the Process Review

The start of the ASA Process Review was announced publicly to allow all interested parties to take part and submit their views.

In addition, Berkshire, acting on behalf of the ASA, directly invited a cross-section of organisations and individuals representing advertisers, agencies, media owners, policy makers, government departments and consumer groups to provide their views.

Berkshire also held several group interviews with members of organisations like the Incorporated Society of British Advertisers (ISBA) and the British Retail Consortium (BRC).

The following organisations and their members were directly invited to contribute:

Advertising regulatory system

Advertising Advisory Committee
ASA Council
Committee of Advertising Practice (Broadcast)
Committee of Advertising Practice (Non-broadcast)
General Media Panel
Independent Reviewer
Sales Promotion and Direct Response Panel

External organisations

Better Regulation Executive
Bond Pearce
BRC
Cameron McKenna
Central Office of Information
Citizens Advice
Consumer Focus
DBIS
DCMS
DCSF (now Department of Education)
DEFRA
Department of Health
DG Sanco
Eversheds
Family and Parenting Institute
Financial Services Authority
Food Standards Agency
Gambling Commission
Gough Square Chambers
Home Office
Information Commissioner's Office
Lewis Silkin
MHRA
National Children's Bureau
OFT
Ofcom
Osborne Clarke
PhonepayPlus
Pillsbury Winthrop Shaw Pittman LLP
Remote Gambling Association
SOLAM
Trading Standards
Which?