

Non-broadcast Complaint Handling Procedures

Introduction

1. The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and helps to enforce the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the Code). The Advertising Standards Authority (ASA) rules under the Code.
2. This document outlines the procedures to be followed by the ASA when handling complaints about advertising, sales promotions and direct marketing (collectively “ads”) in non-broadcast media.

Receipt of complaints

3. Complainants must send us the ad to which their complaint refers (for complaints about on-line ads, the complainant should obtain a screen shot of the page or pages that relate to the complaint or otherwise secure a cached copy of the website) or a note of where and when it appeared. If we do not receive a copy of the ad itself and are unable to locate a copy from the information provided, or if the content of the ad has changed since the complainant saw it, we might not be able to act.
4. There is no charge to the complainant.
5. Repetitive or excessive complainants can adversely impact our ability to effectively serve all of our customers and stakeholders. If appropriate we may stop accepting complaints from such complainants. Any such restriction will be applied proportionately and will be time limited. We will communicate with affected complainants before a restriction is applied. Abusive behaviour towards our staff will not be tolerated under any circumstances and may result in us refusing to accept further complaints and/or referring such behaviour to the police or other appropriate authority.

Competitor complaints

6. In general, competitors who wish to make a complaint will need to follow these Inter-Party Resolution steps:
 1. A competitor should raise their concerns with the advertiser, ideally by registered post, or by another means of communication which will guarantee swift receipt. The complaint must provide an appropriate degree of detail in relation to the claim and medium in which it appeared, together with the factual basis for the complaint.
 2. 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 of the advertiser.

3. If the complaint is about an on-line ad, the competitor who complains should obtain a screen shot of the page or pages that relate to the complaint or otherwise secure a cached copy of the website.

4. The competitor complainant should allow five working days for a substantive response. If, at the end of this period, the advertiser has not opened a substantive dialogue or the parties cannot reach an agreement, the complainant may then submit a complaint to us.

5. When submitting the complaint to the ASA, a copy of the registered letter setting out the concerns should be submitted, with a copy of the complete response (if any) from the advertiser.

We accept that there may be rare occasions when a competitor complainant will have a good reason not to correspond with an advertiser. In those cases we will retain the discretion to bypass this procedure, if we believe the complainant raises a potentially serious breach of the Code, or if there are other good reasons to believe that inter-party resolution of the complaint is not appropriate.

Disclosure of complainant's evidence

7. To ensure that advertisers have the opportunity to respond to the case being made against their marketing, complainants who provide evidence in support of their complaints and wish the ASA to rely on all or part of it must agree to it being shared with the advertiser. If complainants are not willing to give consent to this if and when it is requested, the ASA Council will not take this information into account when making a ruling. If consent is given, we will make an assessment during the investigation of what information is relevant and needs to be passed on.

Timely complaints and points of complaint

8. Complaints must be made within three months of the ad's appearance, although in exceptional circumstances complaints about older ads will be considered. Complaints should focus on no more than three of what the complainant considers to be the most important issues. If more than three points of complaint are received about an ad or campaign and the ASA decide to formally investigate, that investigation will in most cases focus on the three most important issues only, although in exceptional circumstances we may investigate more than three points.

Acknowledging complaints

9. We will acknowledge each complaint we accept and will give it a reference number. We will respond to complainants (except petitions), even if the complaint does not fall within our remit. We are committed to acknowledging complaints within five days of receiving them. The exception to the above procedure is when we have received a very high volume of complaints about an ad and are already investigating. In those circumstances we will post a notice on our website advising people that we are already investigating and that, should they lodge a complaint with us, we will not respond personally to them. Complaints that are lodged, however, will provide us with an opportunity to continue to monitor public response

to an ad and people will be able to read the decision in full on our website at a later date.

Anonymity and identity disclosure

10. We will not disclose the identity of individual members of the public who complain (public complainants) without their permission, unless compelled to do so by the Courts or officials acting within their statutory powers. In some circumstances public complainants might be asked for a formal, written assurance that they have no commercial or other interest in registering their complaints. Non-public complainants, for example groups with an obvious interest in the outcome of the complaint (such as consumer bodies and campaigning groups), are required to: provide good grounds for their complaint, agree to the disclosure of their identity and confirm that they are not engaged in simultaneous legal action on the point at issue. Competitors must also agree to the disclosure of their identity, confirm that they are not engaged in simultaneous legal action on the point at issue and follow the Inter-Party Resolution steps at paragraph 6 before we will investigate their complaint further.

Simultaneous legal action

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

Confidentiality

12. We will, on request, treat in confidence any genuinely private or secret material supplied unless legislation, the Courts or officials acting within their statutory powers compel its disclosure. We might send confidential evidence to external consultants, who are obliged to not disclose it to anyone else. We will inform the evidence provider before doing so. The name of any external consultant and their report will be given to advertisers. The name of the consultant will also be given to complainants, on request.

The parties (advertisers, complainants, agencies, publishers and other parties contacted during an investigation) should keep confidential all material submitted and correspondence entered into in relation to the case that is not already in the public domain. 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. The parties must therefore treat that material as confidential. Our rulings should also be treated as confidential until they are published on our website.

Once a complaint has been made or an investigation begun, no party should take steps which could risk compromising us reaching a fair decision on the matter or otherwise constitute, in our opinion, an abuse of process.

Failure to follow these requirements may result in us refusing to consider the party's further comments on the investigation.

ASA- and CAP-initiated investigations



13. We might ourselves initiate an investigation into what we believe are potential Code breaches on the back of complaints we receive. The procedures in a complaint-led investigation and an ASA-initiated investigation are broadly the same. Similarly, in the course of undertaking monitoring, CAP might raise with advertisers issues about apparent Code breaches.

Assessment of complaints

14. An initial assessment of the complaint is made after the complaint has been logged.

Video on demand

15. 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 as a result of the user selecting a programme to view are regulated by statute and are assessed under rules laid out in Appendix II 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.

Suspension pending investigation

16. In exceptional circumstances, for example where public harm is likely to result from the continued appearance of an ad, we will direct the advertiser to amend or withdraw an ad pending investigation and ruling by the Non-broadcast Council (henceforth Council) at a later date. Our Chairman (or in his absence the senior independent Council member), in consultation with the Chief Executive (or senior manager), one independent and one industry Council member, must have agreed to such a direction.

'Outside remit' cases

17. We cannot process complaints about material that is outside the scope of the Code. We close those cases by writing to the complainant explaining that we cannot take forward their complaint.

Turnaround target for 'Outside remit' cases

18. Our turnaround target for 'Outside remit' cases is ten working days from the receipt of the complaint to notification of the decision.

'No additional investigation' cases

19. We do not refer for further investigation cases that we believe relate to ads that clearly do not breach the Code. We close those cases directly by writing to the complainant explaining that there has been no breach of the Code.

Turnaround targets for 'no additional investigation' cases

20. Our turnaround target for 'no additional investigation' cases is 15 working days from the receipt of the complaint to notification of the decision.

'No additional investigation after Council decision' cases

21. We may decide that an ad does not appear to breach the Code but that the nature of the case warrants asking the Council to decide if an investigation should be conducted. This will most likely be done when the case involves subjective, interpretative issues. If the Council thinks there is a case to answer, then the complaint will go forward for investigation (see below). If the Council thinks that there is no case to answer, we will write to the complainant and the advertiser to let them know the decision.

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

22. 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

23. If it appears that an ad may 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 these Prioritisation Principles is subject to re-evaluation throughout the life of a complaint.

Advice Notice

24. If we decide that a possible breach of the Code should be dealt with without an investigation being launched, we will write to the advertiser explaining the issues and providing advice and guidance on how to comply with the Codes. We will not seek an assurance of compliance or contact the advertiser again regarding the matter. We will also write to the complainant to explain the action we have taken.

25. Our turnaround target for 'Advice Notices' is 25 working days from the receipt of the complaint to notification of the decision.

Informal investigations

26. Investigated complaints begin as either 'informal investigations' or 'formal investigations'. We prefer to work by persuasion and consensus and we have the discretion to resolve cases informally at any stage of the complaint process; we may do so whenever it appears reasonable and proportionate. When resolving cases informally we will, if

necessary, request an assurance from the appropriate advertiser that the ad will be suitably amended or withdrawn and on receipt of that will close the case without producing a formal recommendation for Council. We will promptly notify Council of those cases that have been resolved informally and will publish on our website the names of those advertisers that have agreed to amend or withdraw advertising without the need for a formal investigation. Informally resolved investigations will be taken into account by the Compliance team when assessing a company's overall compliance record, but our website will not publicise those cases as being breaches of the Code.

27. 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 particular issue or to form a view of a particular advertiser's compliance to help inform CAP Copy Advice's or Compliance's work.

Turnaround target for 'informal investigations'

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

Formal investigations

29. Unlike an informal investigation, this type of case will be ruled on by the ASA Council and a report will be published on our website. Formal investigations are generally categorised by the issues that they raise: those relating to issues of harm and offence; and everything else, including misleading advertising. Investigations concerning harm and offence have a target of 60 working days from the receipt of the complaint to notification of the decision. For all other cases, the target is 115 days.

Fast Track investigations

30. We might, where circumstances warrant, depart from the standard processes and deadlines described below and impose shorter response deadlines, forward the summary of the complaint and the draft recommendation to those required to respond to the complaint at the same time (forgoing the process described in paragraph 31) or forward recommendations direct to Council (forgoing the processes described in paragraphs 31 and 35).

Process of investigation

Advertiser's response to the complaint

31. The Investigations Executive will send a summary of the complaint to the advertiser and request a written response. We will explain in our correspondence which part of the Code is thought relevant and might also raise issues beyond those raised by the complainant (see paragraph 13). Advertisers should normally respond to us within five working days (for cases that involve harm and offence and/or social responsibility issues) or seven working days (for all other cases), however more time might be allowed for complicated investigations or in other exceptional circumstances. The grounds for an extension request should be set out in writing. An extension is unlikely to be for longer than five working days and repeated requests for extensions are likely to be refused.

32. The Code requires advertisers to produce documentary evidence to substantiate all claims that are capable of objective substantiation. All evidence submitted by advertisers must be in English. Where reference is made to research documents, the relevant sections must be highlighted. It is not acceptable to reference weblinks to research without explaining the relevance of each to the claim under investigation. Abstracts of full studies will not usually be considered acceptable evidence to substantiate claims.

Other parties to the complaint

33. The Investigations Executive will also send a summary of the complaint to the media (including electronic media) that published the ad, and to other relevant parties, who might be invited to provide input, where appropriate. For complaints that involve harm and offence and/or social responsibility issues, the publisher will be asked to provide a written response to the complaint and thereafter will have the same opportunities as the advertiser to respond to the draft recommendation. For all other complaints the publisher will receive the complaint summary for information only and will be notified of the outcome of the complaint.

For complaints about ads that appear on Ofcom-notified services, 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 II of the Code.

The draft recommendation

34. On receipt of the response and any further written comments or clarification, the Investigations Executive will analyse the case and prepare a draft recommendation. The draft recommendation consists of a summary of the ad, the issue of concern to the complainant/ASA, the relevant Code rules, a summary of the arguments from those who responded to the complaint in defence of the ad which we deem relevant to the issue, a draft verdict to 'uphold', 'uphold in part' or 'not uphold' the complaint, the rationale for that verdict and the action, if any, required to remedy the problem.

Responses to the draft recommendation

35. The Investigations Executive will then send the draft recommendation to those named

in the report, to other relevant parties if appropriate, and to the complainant¹ for any comments on the factual accuracy of the draft recommendation. The parties should normally respond within five working days and should not repeat arguments already put to us or try to present new substantiation or lines of defence. Council might disagree with our recommendation, so those wishing to defend the ad fully should have done so by this stage even if the draft recommendation put to the parties and our proposed recommendation to the Council is to 'not uphold' a complaint.

Additional submission to Council

36. The recommendation will form the main part (together with, for example, the ad and any relevant guidance) of the information provided to Council. In exceptional circumstances, and at our sole discretion, those that responded to the complaint and are named in the report may be allowed to provide a submission to be placed directly before the Council. Such a submission shall not introduce any information not previously provided in the course of investigation and will typically be limited to 1,000 words. Submissions of greater length may not be considered.

The CAP Panels

37. The CAP Promotional Marketing and Direct Response Panel and the CAP Industry Advisory Panel are each composed of industry experts together with one ASA Council member, while the Online Publications Media Panel comprises the Chairmen of Asbof² and the Regulatory Funding Company³. In exceptional circumstances the Panels can be asked to give an industry view on a recommendation before we give it to Council, either at our request or at the request of any party to the complaint; the Council will take account of the Panels' advice but it is non-binding in nature and the decision of Council is final. The Panel Chairmen can reject requests and will do so if it appears that the Panels are being used to hamper the effective running of the self-regulatory system.

Council's ruling

38. The Investigations Executive will present the recommendation to Council. No provision is made for oral hearings. Council might agree with the recommendation, decide differently or suggest that further investigation is necessary.

39. If minor changes to the ruling are needed after Council has deliberated, for example to explain better the rationale for the decision, the Investigations Executive might make those changes without re-presenting the case to the advertiser or Council. If more significant but not substantial changes are necessary, the Investigations Executive might re-present the case to Council only. If substantial changes are necessary the Investigations Executive

¹ In multi-complainant cases where ostensibly the same complaint is made by different complainants, only the first few and/or principal complainants are sent the draft recommendation. However, all complaints are logged, fully considered and assessed.

² Asbof (the Advertising Standards Board of Finance) is responsible for funding the system through a levy on non-broadcast advertising.

³ The Regulatory Funding Company is charged with raising a levy on the news media and magazine industries to finance the Independent Press Standards Organisation (IPSO).

might represent the case to the advertiser, the complainant (if necessary) and then Council. It will be for us to decide on the significance of changes; we will normally re-present the case to the advertiser only if Council has introduced an important argument or point of view to which they have not yet had a reasonable opportunity to respond.

Closing the case

40. The Investigations Executive will send a letter of notification to the advertiser, complainants (except those who complained about an ad already under investigation as explained in paragraph 9) and any other parties to the complaint. That letter will inform them of Council's ruling. If Council has not adopted our recommendation, the letter will explain that and give reasons. The letter will also include a date for publication of the ruling on our website and an instruction to keep the details confidential until that date.

Remedial action

41. If we rule that a breach has occurred, the letter of notification to the advertiser will inform them of the necessary remedial action (for example to amend or withdraw the ad).

Publishing rulings

42. We will normally publish rulings on our website (www.asa.org.uk) within 14 calendar days of Council's decision, and they will remain on the website for a period of five years.

43. During the Independent Review process (see paragraphs 46 – 59 below), the original ruling (and any subsequent remedial action or sanctions) will normally stand. Where the advertiser or complainant has indicated they intend to or have already requested an Independent Review, we might agree to suspend a ruling before publication. To be considered, any request for us to suspend a ruling before publication must have been received by our Chief Executive no later than 10am on the Friday that immediately precedes the notified publication date and identify an issue or issues that are exceptional, such that they justify suspending the ruling from publication pending Independent Review. In such circumstances the Investigations Executive will write to the complainant(s) and the advertiser to explain the postponement and ask them to keep confidential the ruling and the status of the investigation until the final ruling, in whatever form, is confirmed.

Minor changes to a ruling after publication

44. If insubstantial changes to the ruling are needed after it has been published, for example to correct minor factual, presentational or typographical errors, the Chairman may take appropriate corrective action at any time after publication. It will be for the Chairman to decide on the significance of changes and whether it is appropriate for him to exercise his discretion under this provision. Upon correction we will notify the parties of the changes made. Such changes will only be made if the Independent Review process has not otherwise been invoked (i.e. because a review has not been sought by the complainant, advertiser or ASA).

Substantial flaw

45. In exceptional circumstances, for example, where we identify a substantial flaw in Council's ruling or the process by which that ruling was made and at any time following publication of the ruling, our Chief Executive may, with the Chairman'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 43 of these procedures and in all circumstances they will ask the Independent Reviewer to review the decision. Such a request will only be made if the Independent Review process has not otherwise been invoked (i.e. because neither the complainant nor advertiser has sought a review).

Requests for an Independent Review of an ASA ruling

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

Terms of reference

47. Requests for a review should, in a self-contained format, contain in writing a full statement of the grounds for review in a single document and should not require the Independent Reviewer to cross-refer to previous correspondence with the ASA or other parties in setting out the grounds for review. The request for review should be addressed to the Independent Reviewer of the Rulings of the ASA Council, 7th Floor North, Artillery House, 11-19 Artillery Row, London SW1P 1RT (fax: 020 7580 7057, e-mail: indrev@asbof.co.uk). The request must be sent within 21 calendar days of the date on our letter of notification of the formal ruling or the Council decision that a complaint requires no additional investigation. The Independent Reviewer might waive the 21-day time limit if they judge it fair and reasonable to do so in exceptional circumstances.

48. Requests may come only from the complainant or the advertiser (the 'parties to the review'). Those from the advertiser or from the non-public complainant should be signed by the Chairman, 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 such a request can be made:

- if additional relevant evidence becomes available which could not reasonably have been shared during the course of the investigation

and/or

- where it is alleged that there is a substantial flaw in Council's ruling

and/or

- where it is alleged that there is a substantial flaw in the process by which that ruling was made.

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.

The Chief Executive and the Head of Casework

51. Before deciding whether or not a request for a review merits inviting Council to reconsider its ruling, the Independent Reviewer will request, in the case of a ruling following an investigated case, a formal response from our Chief Executive on the merits of the request for review. 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 a Council decision that a complaint requires no additional investigation, the Independent Reviewer will request and then consider the formal response of the Head of Casework 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 ruling does not merit reconsideration by the Council because the request does not meet any of the three grounds set out above, he will inform the person making the request accordingly and close the file on the case; or

53. If he decides that a ruling contains minor factual errors that are capable of rectification without further referral to the Council by way of further investigation or referral and reconsideration he will have those changes implemented; or

54. If he decides that a ruling (in whole or in part) merits reconsideration by the Council he will undertake, either independently or with assistance from us or any other source of help or advice, such further investigation as they think appropriate. He will also inform the other party to the case and invite that other party's comments on the submission made by the party requesting the review. At the end of their investigation, the Independent Reviewer will make a recommendation to the ASA Council; or

55. If he decides that a Council decision that a complaint which has been closed on the basis that it requires no additional investigation merits reconsideration by Council, he will recommend to Council that it asks us to conduct a formal investigation of the complaint and will then close his file on the case; or

56. If he decides that a ruling (in whole or in part) merits reconsideration by the Council and they believe that it would be desirable for us to re-open our investigation, the Independent Reviewer will notify all parties to the review of that decision and they will invite the other party's comments on the submission made by the party requesting the review. When we make our recommendation to the Council at the conclusion of the re-opened investigation, the Independent Reviewer will advise the Council whether he considers all the relevant issues raised in the review request have been satisfactorily considered by the ASA on re-investigation.

57. If a request for a review results in the Independent Reviewer inviting Council to reconsider its ruling, the Council must consider the Independent Reviewer's

recommendation but is not obliged to accept it; the Council's ruling 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. A list of all review outcomes in the previous 12 months is published on www.asa.org.uk. All rulings that are reversed or amended following a review are re-published and will remain on the ASA website for five years.

59. The Independent Reviewer contributes a report of their activities to our Annual Report.

The CAP Copy Advice team

60. The Copy Advice team gives advice to advertisers, their agencies, the media and other practitioners on the likely conformity of 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). Copy Advice is fast, free and confidential from competitors. Bespoke advice is provided by the specialist team of advisers who deal with the vast majority of written enquiries within 24 hours, although lengthy submissions can take longer, especially those that include detailed evidence that needs to be reviewed by external expert consultants. Advice is not binding either on enquirers or on us. Favourable pre-publication 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. If you would like to request free, bespoke advice, you can do so at <http://www.cap.org.uk/Advice-Training-on-the-rules/Bespoke-Copy-Advice.aspx>.

The team liaises with Clearcast, the Radio Advertising Clearance Centre 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 database of advice on the Code, with over 400 entries, can be accessed at <http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database.aspx>.

For relevant and topical updates and newsletters, sign up for CAP updates here: www.cap.org.uk/Account/Register.aspx and follow CAP on Twitter [@CAP_UK](https://twitter.com/CAP_UK).

The Copy Advice team also offer two services for a fee: an express four hour service and a complete website audit. More details can be found at <http://www.cap.org.uk/Advice-Training-on-the-rules/Bespoke-Copy-Advice.aspx> and <http://www.cap.org.uk/Advice-Training-on-the-rules/Website-audit.aspx>.

The Communications Team

61. 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 the ad appeared (TV, regional press 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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