



## Broadcast Complaint Handling Procedures

### Introduction

1. This document outlines the procedures to be followed by the ASA<sup>1</sup> when handling complaints about advertising in both radio and television services<sup>2</sup>. It was first published on 1 November 2004 and most recently revised in September 2010.

2. It deals only with complaint handling up to the point where a statutory sanction might be appropriate, when the case would be referred to Ofcom (the communications regulator with 'backstop' powers). Ofcom publishes its own guidelines about statutory sanctions (Outline Procedures for Sanctions in Content Cases i.e. sanctions as prescribed under the Communications Act 2003 and the Broadcasting Acts 1990 and 1996 as amended). See [www.ofcom.org.uk](http://www.ofcom.org.uk) for further details.

### *The Code*

3. CAP<sup>3</sup> inherited from Ofcom its broadcast Advertising Codes (the old Codes), which Ofcom in turn inherited from the Independent Television Commission and the Radio Authority. The old Codes were reviewed and combined into a single BCAP Code (the Code), which was published in March 2010. The ASA will apply the old Codes to broadcast ads transmitted up to and including 31 August 2010; it will apply the new Code to ads transmitted on or after 1 September 2010<sup>4</sup>.

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<sup>1</sup>The Advertising Standards Authority (Broadcast) Ltd is the legal entity that, exercising powers contracted out to it by Ofcom, resolves all broadcast advertising complaints. For simplicity's sake, and to reflect the fact that the ASA operates a 'one-stop shop', the term 'ASA' is predominantly used throughout this guidance.

<sup>2</sup> These procedures apply only to advertisements carried by television and radio services licensed by Ofcom.

<sup>3</sup>The Committee of Advertising Practice (Broadcast), legally known as the Broadcast Committee of Advertising Practice Ltd (BCAP), is contracted by the communications regulator Ofcom to write and enforce the old Codes/BCAP Code. For simplicity's sake, the term CAP is predominantly used throughout this guidance.

<sup>4</sup> The Advertising Codes relevant to ads published up to and including 31 August 2010 were the CAP (Broadcast) Television Advertising Standards Code, the CAP (Broadcast) Rules on the Amount and Scheduling of TV Advertisements, the CAP (Broadcast) Code for TV Text Services and the CAP (Broadcast) Radio Advertising Standards Code. For ads appearing on or after 1 September 2010, the BCAP Code applies. For simplicity's sake, the term 'Code' is predominantly used throughout this guidance.

*Licensee obligations*

4. As Ofcom's licensees, broadcasters are obliged under their licences to adhere to the provisions of the Code and ASA adjudications.

*Clearing commercials*

5. Broadcasters must have adequate procedures in place to ensure advertisements carried by them comply with the Code. Clearcast and the Radio Advertising Clearance Centre (RACC) (the clearance centres) are contracted by many licensees (including most major channels and stations) to provide television and radio advertisement clearance respectively. Except for sensitive product category advertising that must be centrally cleared by the RACC, advertising carried by local radio stations is generally cleared by broadcasters in-house. The ASA, the CAP Code Policy team and the CAP Copy Advice team (which advises on non-broadcast marketing communications) liaise with the clearance centres and, where appropriate, other broadcasters' representatives to ensure consistency in regulation across media, where common advertising rules/interpretations, characteristics and contexts make such consistency appropriate.

*The ASA's remit*

6. The ASA is responsible for regulating all broadcast advertising carried by Ofcom licensed TV and radio services. That includes traditional spot advertising, teleshopping output and broadcast advertising made available on interactive TV and TV text services. The ASA also regulates the scheduling of TV and radio advertisements to ensure that audiences are adequately protected from harmful or offensive material. The ASA might, for example, require a TV advertisement to be scheduled after 9pm. Where relevant to the particular broadcast media, Ofcom remains responsible for the rules governing:

- the insertion of advertising breaks
- the amount of advertising permitted on TV
- sponsorship
- political advertising on TV and radio and
- participation TV advertising.

A Memorandum of Understanding with Ofcom explains in more detail the breakdown of responsibility between the ASA and Ofcom (see [www.ofcom.org.uk](http://www.ofcom.org.uk) for further details). Ofcom will pass to the ASA any complaints it receives that fall under the ASA's remit; it will not normally consider those complaints even when specifically asked to by the complainant.

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*ASA's primary point of contact*

7. Broadcasters are obliged under their licences to adhere to the provisions of the Code. In practice the ASA's primary point of contact is usually the clearance centre. Indeed, Clearcast very often responds on behalf of the broadcasters and is the conduit for the advertiser's and/or agency's responses to complaints about television ads it has cleared. In addition it keeps the broadcasters, advertisers and agencies informed of the progress of any investigation. In all cases, the ASA will copy important correspondence to the advertisers and it asks advertisers to ensure that any comments they wish to make are first routed through the clearance centres<sup>5</sup>.

**Receipt of complaints**

8. The details of the complaint will be logged by the ASA Complaints Reception team.

9. If a complainant can satisfy the ASA that there is an issue for the advertising parties to answer, and assuming there is no other legitimate reason not to investigate (for example see paragraph 13), the ASA will process the complaint. There is no charge to the complainant.

*Timely complaints*

10. Broadcasters are obliged under their licenses to keep recordings for specified periods. Those periods are: 42 days after the relevant radio transmission; 60 days after the relevant satellite and cable television transmission; and 90 days after the relevant terrestrial television transmission. Complaints must be made well within those periods; ideally, as soon as possible after transmission.

*Acknowledging complaints*

11. The ASA will acknowledge each complaint and give it a reference number. It will respond to all complainants (except petitions), even if the complaint does

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<sup>5</sup> Henceforth the broadcasters, Clearcast, the RACC, advertisers and agencies responsible for airing, clearing, commissioning and creating commercials will be referred to as the 'advertising parties'. For simplicity's sake the term 'advertising parties' will be used when correspondence might, for example, be primarily with Clearcast or the broadcaster.

not fall within the ASA's remit. The ASA is committed to acknowledging complaints within five days of receiving them.

*Anonymity and identity disclosure*

12. The ASA will not disclose the identity of individual members of the public who complain (public complainants) without their permission. 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 competitor complainants and groups with an obvious interest in the outcome of the complaint (such as consumer bodies and pressure groups), are required to: provide good grounds for their complaint; agree to the disclosure of their identity; endeavour to resolve their differences, wherever possible, direct with the advertising parties or through their trade or professional organization; and confirm that they are not engaged in simultaneous legal action on the point at issue.

*Simultaneous legal action*

13. The ASA will not normally pursue complaints if the point at issue is the subject of simultaneous legal action.

*Confidentiality*

14. The ASA 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. The ASA might send confidential evidence to external consultants, who are obliged not to disclose it to anyone else. The ASA will on request make available to complainants and advertising parties the names of relevant external consultants. Copies of draft recommendations (see paragraph 30) are sent to advertising parties and complainants, who should treat the recommendations as confidential until the date that the adjudication is published. The ASA's published adjudications are publicly available and the ASA might circulate them to the media.

*ASA- and CAP-initiated investigations*

15. The ASA might itself initiate an investigation into what it believes are potential Code breaches on the back of complaints it receives. 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 issues about apparent Code breaches.

## Assessment of complaints

16. An initial assessment of the complaint is made by the ASA Complaints Team after the complaint has been logged.

### *Sourcing an advertisement*

17. If necessary, the team will require the broadcaster to provide it with a copy of the ad. However it will not necessarily request a written response from the broadcaster at that stage. Broadcasters should normally deliver copies of the material in question within five working days of a request being made. All requested copies of long-form advertisements (e.g. teleshopping) should include an embedded timecode.

### *Suspension pending investigation*

18. In exceptional circumstances, for example where public harm is likely to result from the continued transmission of an ad, the ASA will direct a broadcaster (or broadcasters), via the clearance centres if either cleared the ad, to suspend an ad immediately pending investigation and adjudication by the Broadcast Council (henceforth Council) at a later date. The ASA will make such a direction only when it believes there is prima facie evidence of a serious breach of the Code. The ASA 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.

### *'No investigation' cases*

19. The Complaints team does not submit to Council cases that it believes involve frivolous complaints or those that relate to ads that clearly do not breach the Code. The team closes those cases directly by writing to the complainant explaining that there has been no breach of the Code.

### *Turnaround targets for 'no investigation' cases*

20. The ASA's turnaround target for straightforward 'no investigation' cases is five working days from the receipt of the complaint to notification of the decision and 10 working days where preliminary work is required.

### *'No investigation after Council decision' cases*

21. After assessing both the complaint and the marketing communication against the Code, the Executive may ask the Council to decide whether it would like an investigation to be conducted. If the Council thinks there is a case to answer, then the case will go forward for formal investigation (see below). If the Council thinks that there is no case to answer, the complaint will not be pursued.

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

22. The ASA's turnaround target for 'no investigation after Council decision' cases is 25 working days from the receipt of the complaint to notification of the decision.

*Named Investigations Executive and keeping complainants informed*

23. If a case is passed to the Investigations team, a named Investigations Executive will be in charge of the case and will act as the point of contact with complainants and advertising parties. In exceptional circumstances, for instance where there are a large number of complaints, a generic e-mail address will be given rather than the name and contact details of an Investigations Executive. Complainants will be kept informed of progress with the handling of their complaint at regular intervals. In high profile cases or cases where there is a high volume of complaints, the ASA may use its website to keep complainants informed. If it elects to do so it will inform complainants.

### **Informal investigations**

24. The Complaints and Investigations teams have the discretion to resolve cases informally at any stage of the complaint process. Reasons for offering/agreeing an informal resolution include but are not limited to if the teams consider an apparent breach:

- is minor and clear cut
- is unlikely to be of interest, in terms of indicating where the ASA draws the line, to other advertisers
- can otherwise be resolved between the parties promptly and with a view to quickly amending or withdrawing the marketing communication or
- has been remedied by an advertiser taking immediate and relevant action before or immediately after being contacted by the ASA.

The above includes most mail order and database cases, where investigation results in, for example, goods being supplied or personal details being removed

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from a direct marketing database. It also includes many cases related to the non-availability of goods or services that have been advertised.

The decision to resolve cases informally is likely to be taken only if:

- the number and/or seriousness of the complaints does not provide good reason to investigate the case formally
- there is complete co-operation on the part of the advertiser
- there is no obvious pattern of unwillingness or inability to comply with the Code
- the ASA has not incurred a significant expense through instructing an expert or seeking a legal opinion
- there is no pressing need to investigate formally to for e.g. establish a policy on the particular issue or to form a view of a particular marketer's compliance to help inform CAP Copy Advice's or Compliance's work
- the advertiser has a good record of honoring previous assurances or
- the advertiser has fewer than four informal resolutions in the preceding six months (in exceptional circumstances, taking into account the advertiser's business, this number may be higher).

25. When resolving cases informally the team will, if necessary, request an assurance from the appropriate advertising party 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. It will promptly notify Council of those cases that have been resolved informally and will publish the names of the advertising parties concerned on the ASA website. The website will not identify those cases as breaches.

*Turnaround target for 'informal investigations'*

26. The ASA's turnaround target for 'informal investigations' is 35 working days from the receipt of the complaint to notification of the decision.

### **Standard investigations**

27. The Investigations team conducts a full investigation into standard investigation cases. Reasons for formally investigating a complaint include but are not limited to if the teams consider an apparent breach:

- is not minor and clear cut
- is likely to be of interest, in terms of indicating where the ASA draws the line, to other advertisers

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- cannot otherwise be resolved between the parties promptly and with a view to quickly amending or withdrawing the ad or
- has not been remedied by an advertiser.

*Advertising parties' response to the complaint*

28. The Investigations Executive will send a summary of the complaint (normally without disclosing the complainant's identity) to the clearance centre/broadcaster copying the advertiser and requesting a written response. The Executive will explain in their correspondence which part of the Code is thought relevant and might also raise issues beyond those raised by the complainant (see paragraph 15). The clearance centre should respond to the ASA within seven working days, 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.

29. The Code requires advertising parties to produce documentary evidence to substantiate all claims that are capable of objective substantiation. All evidence submitted by marketers must be in English. Where reference is made to research documents, the relevant sections must be highlighted to the Executive. It is not acceptable to reference weblinks to research without explaining the relevance of each to the claim under investigation.

*The draft recommendation*

30. 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 advertising parties' arguments in defence of the ad, a draft assessment to uphold, uphold in part or not uphold the complaint and the rationale for that assessment and the action, if any, required to remedy the problem.



*Advertising parties' response to the draft recommendation*

31. The Investigations Executive will then send the draft recommendation to the advertising parties and complainant<sup>6</sup> for any comments on the factual accuracy of the recommendation. Advertising parties should normally respond within seven working days and should confine their comments to the factual accuracy of the draft recommendation; they should not normally repeat arguments already put to the ASA or try to present new substantiation or lines of defence. The recommendation will form the main part (together with, for example, a copy of the ad and any guidelines that might be relevant) of the submission to Council. Council might disagree with the ASA Executive's recommendation, so advertising parties wishing to defend the ad fully should have done so by this stage even if the draft recommendation is not to uphold the complaint. The draft is just that: a draft. The final decision may be different. For that reason the draft recommendation must be kept confidential.

*Council's adjudication*

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

33. If minor changes to the adjudication 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 advertising parties or Council. If more significant but not substantial changes are necessary, the Investigation Executive might re-present the case to Council only. If substantial changes are necessary the Investigations Executive might re-present the case to the advertising parties, the complainant (if necessary) and then Council. It will be for the ASA to decide on the significance of changes; it will normally re-present the case to advertising parties 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*

34. The Investigations Executive will send a letter of notification to the advertising parties and all complainants. That letter will inform them of

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<sup>6</sup> In multi-complaint 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 and all complainants are sent the final adjudication.

Council's decision. If Council has not adopted the ASA Executive's recommendation, the letter will explain that and give reasons. The letter will also include a date for publication of the adjudication on the ASA website and an instruction to keep the details confidential until that date.

#### *Remedial action*

35. If the ASA adjudicates that a breach has occurred but no referral to Ofcom is appropriate, the letter of notification to the advertising parties will inform them of the necessary remedial action (for example to change the ad prior to future transmission, to restrict transmission as directed or to cease broadcasting the ad altogether). This letter triggers the clearance centres to make the ad in its current form unacceptable on their system.

#### *Publishing adjudications*

36. The ASA will normally publish adjudications on the ASA website ([www.asa.org.uk](http://www.asa.org.uk)) within 14 working days of Council's decision. In exceptional circumstances, perhaps after the broadcaster or advertiser has requested a review (see paragraph 45), the ASA might agree to withdraw an adjudication before publication because the case needs more consideration, for example there might be significant doubt about the accuracy or fairness of the adjudication or about the way the investigation was carried out. In such circumstances the Investigations Executive will write to complainants and advertising parties to explain the postponement and ask them to keep confidential the adjudication and the status of the investigation until the final adjudication, in whatever form, is confirmed.

#### *'Artist separation', 'radio pre-clearance' and 'scheduling' cases*

37. Complaints about 'artist separation' issues (where an ad featuring an artist has appeared in a break in or adjacent to a programme featuring that same artist), 'radio pre-clearance' issues (where a radio ad should have been, but was not, pre-cleared by the RACC) and 'scheduling' issues (where an ad failed to observe a timing restriction) might be satisfactorily resolved without the need for a full investigation culminating in a recommendation to Council. Council is, however, promptly notified when those cases are resolved.

#### *Turnaround target for 'standard investigations'*

38. The ASA's turnaround target for 'standard investigations' is 85 working days from the receipt of the complaint to notification of the decision.

### **Complex investigations**

39. 'Complex investigations' are those that require extended investigation, for example multi-media cases (such as those relating to claims that have appeared in the same form in advertisements in both broadcast and non-broadcast media), those involving non-public complainants and those requiring specialist or technical knowledge, for which external consultants might have to be consulted. Although they follow the same process as above, they typically take longer to resolve than standard investigations.

*Turnaround target for 'complex investigations'*

40. The ASA's turnaround target for 'complex investigations' is 140 working days from the receipt of the complaint to notification of the decision, but those involving disputes between competitors might take longer.

### **Ofcom sanctions**

41. If the ASA concludes that a further sanction might be warranted it will inform the broadcaster, and where relevant the clearance centre, that it will refer the matter to Ofcom. Following referral, the procedures in Ofcom's Outline Procedures for Sanctions in Content Cases will apply. Ofcom can impose a number of sanctions if it feels the conditions of its broadcast licences, the Code or the terms of ASA adjudications have been seriously, deliberately, repeatedly or recklessly breached. It can direct a broadcaster not to repeat material, direct a broadcaster to publish a correction or summary of a decision or adjudication, fine a broadcaster and, with the exception of Channel 4 and S4C, revoke a licence.

### **Fast Track cases**

42. The ASA might, where circumstances warrant, depart from standard processes and deadlines and impose shorter response deadlines, forward the summary of the complaint and the draft recommendation to advertising parties at the same time (forgoing the process described in paragraph 29) or forward draft recommendations direct to Council (forgoing the processes described in paragraphs 29 and 31).

### **The CAP General Media Panel**

43. The CAP General Media Panel is composed of industry experts together with one ASA Council member. It guides and helps the ASA and CAP to

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produce advice for the industry and interpret the Codes (both broadcast and non- broadcast) in individual cases and on general issues. It also provides a forum to reassess recommendations and advice given by the ASA and CAP. The Panel can be asked to look at an issue by the parties to a complaint before the Council has adjudicated; the Council will take account of the Panel's opinions but the decision of the Council is final. The Panel Chairman can reject requests and will do so if it appears that the Panel is being used to hamper the effective running of the self-regulatory system.

#### **Requests for an Independent Review of an ASA adjudication**

44. The Independent Reviewer of ASA Adjudications will consider requests for a review of Council decisions against ads.

##### *Terms of reference*

45. Requests for a review should contain a full statement of the grounds for review, be in writing and addressed to the Independent Reviewer of ASA Adjudications, 5th Floor, 21 Berners Street, London, W1T 3LP (fax: 020 7580 7057, e-mail: [indrev@asbof.co.uk](mailto:indrev@asbof.co.uk)). They should be sent within 21 calendar days of the date on the ASA's letter of notification of the formal adjudication or the Council decision that a complaint requires no investigation. The Independent Reviewer might waive the 21-day time limit if he judges it fair and reasonable to do so.

46. Requests should come only from the complainant, the advertiser or the broadcaster (the 'parties to the review'). Those from the advertiser or broadcaster or from a non-public complainant should be signed by the Chairman, Chief Executive or equivalent office holder; requests made only by their solicitor, agency or clearance centre will not be accepted. All dealings with the Independent Reviewer must be in writing.

##### *Grounds for a review*

47. There are two grounds on which such a request can be made:

- where additional relevant evidence comes to light that was available at the time, or shortly after, the ad appeared but could not reasonably have been submitted in the course of the investigation,

and/or

- where it is alleged that there is a substantial flaw in the Council's adjudication or in the process by which that adjudication was made.

48. No review will proceed if the point at issue is the subject of simultaneous or contemplated legal action between anyone directly involved. Requests for a review should make plain that no such action is underway or is contemplated.

49. During the review process, the original adjudication (and any subsequent remedial action or sanctions) will normally stand. The ASA will not delay publication of the relevant adjudication pending the outcome of a review save in exceptional circumstances (on the authorisation of the ASA Chief Executive).

#### *The Assessors*

50. Before deciding whether or not a request for a review merits inviting the Council to reconsider an adjudication, the Independent Reviewer will consult two Assessors. The two Assessors are the Chairman of Basbof<sup>7</sup> (or nominee) and the Chairman of the ASA. The Independent Reviewer will not normally consult the two Assessors about requests for a review of a Council decision that a complaint requires no investigation.

#### *The review process*

51. If the Independent Reviewer decides that an adjudication does not merit reconsideration by the Council because he concludes that the request does not meet either of the two grounds set out above, he will inform the person making the request accordingly and close his file on the case.

52. If he decides that an adjudication (in whole or in part) merits reconsideration by the Council he will undertake, either by himself or with assistance from the ASA or any other source of help or advice, such further investigation as he thinks appropriate. He will also inform the other party to the case and, if appropriate, the clearance centre that a review is being undertaken and he will invite those other parties' comments on the submission made by the party requesting the review<sup>8</sup>.

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<sup>7</sup> Basbof (the Broadcast Advertising Standards Board of Finance) is responsible for funding the system through a levy on TV and radio advertising.

<sup>8</sup> When corresponding with the parties to a review in cases where either the advertiser or the broadcaster has requested the review, the Independent Reviewer will normally treat the person who requested the review (e.g. the advertiser) as the primary point of contact and merely copy important correspondence to the other (e.g. the broadcaster).

53. If he decides that a Council decision that a complaint requires no investigation merits reconsideration by Council, he will recommend to the Council that it asks the ASA Executive to conduct a formal investigation of the complaint.

54. If he decides that an adjudication (in whole or in part) merits reconsideration by the Council and he believes that it would be desirable for the ASA Executive to re-open its investigation, he will make an interim report to the Council making that recommendation. If the Council decides to re-open the investigation, he will notify all parties to the review of that decision. When the ASA Executive makes its recommendation to the Council at the conclusion of the re-opened investigation, he will advise the Council whether all the relevant issues raised in the review request have been satisfactorily resolved. He will inform all parties to the review of the Council's final adjudication.

55. If he conducts the investigation himself he will, at its conclusion, make a recommendation to the Council, stating whether the adjudication should be reversed, amended or confirmed.

56. The Council must consider the Independent Reviewer's recommendation but is not obliged to accept it; the Council's adjudication on reviewed cases is final.

57. The Independent Reviewer will inform the parties to the review of the Council's final adjudication. Adjudications that are reversed or amended following a review will be published on [www.asa.org.uk](http://www.asa.org.uk).

58. The Independent Reviewer contributes a report of his activities to the ASA Annual Report.