Commentary on the Adjudication of the Advertising Standards Authority in respect of H:MC21's Advertisement in a Care Supplement of the *New Statesman* (autumn 2010)

Preliminary Comments by H:MC21

The Advertisement

It should be emphasized that the advertisement appeared in a supplement specifically aimed at professionals in the field of health and caring. The advertisement explicitly stated that its purpose was to promote increased spending on homeopathy by the NHS. For this purpose it drew attention to information derived from medical practitioners qualified in both conventional medicine and homeopathy and working for national health services.

The evidence for homeopathy

The Advertising Standards Authority (ASA) informed H:MC21 that "the ASA /CAP has yet to see significant medical evidence for the efficacy of homeopathy".[1] In 2008 the Society of Homeopaths (SoH) and British Homeopathic Association (BHA) sent such evidence to the ASA and CAP. As recently as 2011, lawyers for the SoH and BHA were informed by the ASA that "CAP was unable to source an expert who was qualified, independent, able and available to review your client's evidence".[2] In other words, the ASA and CAP have seen the evidence but have not been competent to assess it themselves, and have not found anyone (in three years) to assess it on their behalf.

The complaints

Six public complainants, two of whom later became associated with the Nightingale Collaboration, challenged whether claims 1 to 4 could be substantiated, whether claims 5 to 9 were misleading, and whether claims 10 to 12 were irresponsible or denigratory.

The complainants

The Nightingale Collaboration is actively promoting the use of the ASA against homeopathic websites and advertisements. It was 'seed funded' by Simon Singh, a trustee of Sense About Science and one of the authors of *Trick or Treatment?*

The terminology

As regards the terminology used in the Adjudication, it should be noted that the ASA routinely states that marketers "believe" matters to be true, even when they have provided evidence to support their view. Equally routinely, the ASA states that it "considers" or "concludes" matters to be true, even when it has provided no evidence to support its view.

The full adjudication is available at: http://www.asa.org.uk/ASA-action/Adjudications/2011/10/Homeopathy,-c-,-Medicine-for-the-21st-Century/SHP_ADJ_139800.aspx

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[1] Notification of the complaint, 24 November 2010.

[2] Letter from the ASA to Simons, Muirhead & Burton, lawyers acting on behalf of the Society of Homeopaths and the British Homeopathic Association, 19 May 2011.

General Assessment by the ASA

The Adjudication

The ASA acknowledged that H:MC21 believed the RCTs upon which the ASA relied were limited, because they were capable of producing scientifically invalid conclusions if scientifically invalid parameters were used. We noted H:MC21 believed the clinical evidence that was available supported their claims. We also noted the House of Commons Science and Technology Committee had concluded in its report "Evidence Check 2: Homeopathy" that there was a lack of evidence supporting the efficacy of homeopathy, although surveys of patients showed homeopathy made some people feel better.

Comment by H:MC21

The ASA is supposed to base its decisions on "the available scientific evidence" (CAP Code 12.1). The Science and Technology Committee *Evidence Check 2: Homeopathy* was a superficial political report which has been seriously criticised for its failures in assessing the evidence. Two of the three MPs who voted for the report have connections with organisations opposed to homeopathy, and a key organiser of the committee's evidence checks had formerly worked for Sense About Science, an organisation actively campaigning against homeopathy. His work for Sense About Science included writing a paper attacking homeopathy, even though he has no qualifications in medicine or homeopathy, nor any relevant practical experience in these fields.

It should also be noted that the studies cited by H:MC21 involved thousands, even millions, of people, and were conducted by practitioners qualified in both conventional medicine and homeopathy and working for national health services. On the other hand, health and beauty products are routinely advertised on television and in the press on the basis of studies involving less than 500 people.

References to the question of the evidence of efficacy of homeopathy is also confusing. Firstly, proof of efficacy of any medical treatment has no absolute validity since such treatments may be found to be harmful or ineffective in clinical practice and be withdrawn as a result. Every drug which is withdrawn was originally proved efficacious. Secondly, tests of efficacy relate to treatment for a specific diagnosed condition, whereas homeopathy treats patients, not conditions, so there are serious risks of a mismatch between the tests and what they claim to be testing. For both these reasons, evidence from clinical practice is a much more reliable basis for evaluating homeopathy than randomised controlled trials, and such evidence from clinical practice proves to be highly consistent in its support for homeopathy's effectiveness.

Issue 1

Challenge: that the statement "Homeopathy has a history of success in chronic illness" is unsubstantiable. **Upheld (unsubstantiated and misleading).**

The Adjudication

The ASA noted there was a large amount of data and numerous case studies on homeopathy that dated back hundreds of years and understood that there was significant support for the use of homeopathy in the treatment of chronic illnesses. We noted H:MC21's belief that there was significant evidence to support the basic science upon which homeopathy was based and to support more specific claims for successful treatment of chronic disease and illness. However, we noted

many of the studies which reported positive outcomes were based on patient self-assessments only, whereas a substantial review of over 100 placebo controlled trials showed no convincing evidence that homeopathy was superior to plaecbo [sic]. We concluded that H:MC21 had not supplied sufficient evidence to substantiate the claim and noted there was a lack of evidence to support claims for its efficacy. We concluded that the ad was misleading.

Comment by H:MC21

The ASA has not questioned the existence of the evidence supporting H:MC21's claim, but its validity. The ASA has previously acknowledged that it does not have the expertise to make such a judgement,[3] and this assessment shows that lack of competence. Firstly, 76% of the information needed to make a diagnosis comes from the patient's own statements about their health,[4] so reports of positive outcomes should not be invalidated on the basis that "many of the studies" are based on patient assessments. Secondly, the ASA's claim that a "substantial review of over 100 placebo controlled trials showed no convincing evidence that homeopathy was superior to plaecbo [sic]" is unsubstantiated. It was included for the first time in the fifth and final version of the investigation team's Draft Recommendation, but when H:MC21 requested more information about this study,[5] the ASA was unable to produce a valid citation.[6]

The suspicion is that this is a reference to the 2005 meta-analysis by Shang and others.[7] If so, then the negative result was actually based on only eight RCTs, and the failure to explain why these particular trials were chosen has led to the study being discredited, since this particular selection is exceptional in producing a negative result.[8]

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[3] Letter from the ASA to Simons, Muirhead & Burton, lawyers acting on behalf of the Society of Homeopaths and the British Homeopathic Association, 19 May 2011.

[4] Diagnoses Michael C. Peterson, John H. Holbrook, De Von Hales; N. Lee Smith and Larry V. Staker, 'Contributions of the History, Physical Examination, and Laboratory Investigation in Making Medical Diagnoses', Western Journal of Medicine, 156 (1992), 163-165.

[5] Email from H:MC21 to the ASA, 6 August 2011.

[6] "The 100 trials referred to were, we understand, presented to the House of Common's Science and Technology Committee" (email to H:MC21 from the ASA, 22 August 2011).

[7] Aijing Shang, Karin Huwiler-Müntener, Linda Nartey, Peter Jüni, Stephan Dörig, Jonathan A. C. Sterne, Daniel Pewsner, Prof. Matthias Egger, 'Are the clinical effects of homoeopathy placebo effects? Comparative study of placebo-controlled trials of homoeopathy and allopathy', *The Lancet*, 366 (2005), 726-732.

[8] A. L. B. Rutten and C. F. Stolper, 'The 2005 meta-analysis of homeopathy: the importance of post-publication data', *Homeopathy*, 2008 at <http://www.aekh.at/fileadmin/Bilder/Hom_opathie_int/RuttenStolperHomeopathyarticle.pdf>, both accessed 15 April 2009.

Issue 2

Challenge: That the statement "At Bristol Homeopathic Hospital 70.7% of 6,500 patients with chronic conditions benefited from homeopathic treatment and had reduced need for conventional medicine" is unsubstantiable. **Upheld (unsubstantiated and misleading).**

The Adjudication

We considered that most readers would interpret the claim "At a Bristol Homeopathic Hospital 70.7% of 6,500 patients with chronic conditions benefited from homeopathic treatment and had reduced need for conventional medicine" to mean that the study demonstrated over 70% of the patients tested experienced a reduction in the symptoms of their chronic illness following the introduction of homeopathic treatment. We noted the study contained patients' self-assessments of

their health following GP referral to a homeopathic hospital before, during and after the introduction of the homeopathic treatment and that the study reported 50.7% reported the improvement in their symptoms as 'much better' and that in all, 70.7% of patients had reported a degree of improvement . However, we considered that because there was no in-depth objective clinical assessment of patients observable conditions following the introduction of homeopathic treatment, the evidence was not capable of substantiating the claim. We noted several other similar studies had also been carried out and noted those reports, and independent assessments of those reports had stated that many of the patients who were included in the studies reported a reduced reliance on conventional medicine. However, we considered that in the context of the text directly underneath the headline "Homeopathy has a history of success in chronic illness", the claim implied that it had been shown in those cases that any improvement and subsequent reduction in their reliance on conventional medicine was directly related to the homeopathic treatment provided. Because H:MC21 had not demonstrated that, we concluded that the claim was misleading.

Comment by H:MC21

Again, the ASA has not questioned the existence of the evidence but its validity, and again it has shown a lack of competence in assessing the evidence supplied by H:MC21. The issue of the importance of patient assessment has been dealt with under Issue 1. In addition, the ASA has also specifically considered the term "benefit" to mean "reduction in the symptoms", and symptoms are those aspects of a case which are observable by the patient but not by others. Furthermore, several of the most commonly referred conditions treated in the course of the study may not be readily assessed other than symptomatically, such as migraine, IBS, menopausal problems, ME/CFS and depression. The authors of the paper H:MC21 cited also took into account objective measures where these were possible, but the investigation team refused to include this information in the summary of H:MC21's response to the challenge, depriving the ASA Council of information relevant to the adjudication..

Issue 3

Challenge: That the statement "...more randomised controlled trials are positive than negative" is unsubstantiable. **Upheld (substantiated, but misleading).**

The Adjudication

We noted H:MC21's reasoning for not including the percentage of studies which had resulted in inconclusive findings. However, we considered that the statement was likely to be interpreted by the average reader as a claim that randomised controlled trials on homeopathy demonstrated that the science behind homeopathy was substantiated because more "positive" than "negative results were achieved. We noted the assessment of the Faculty of Homeopathy, the British Homeopathic Association and the Complementary Medicine Research Group at the University of York to the Commons Science and Technology Committee evidence stated that 44% of findings reported positive results, 7% reported negative results and that 49% reported "inconclusive" results. We considered that within the context of the claim "…more randomised trials are positive than negative", the 49% of inconclusive results was a significant piece of information and should have been included in the ad because it indicated that under RCT conditions, inconclusive results had occurred more often than positive results. Because this information was omitted, we concluded that the ad was misleading.

Comment by H:MC21
The summary of H:MC21's response to this challenge is extremely confusing, indicating that the investigation team failed to understand the issues involved. In essence, positive and negative RCT results of trials of homeopathy make clear statements about the validity of the treatment being tested, but inconclusive results are more likely to indicate methodological failures. Trials of homeopathy are particularly prone to such methodological failures as they involve a synthesis of two radically different approaches to the treatment process.

It is also significant that data obtained from an analysis of 1016 systematic reviews of RCTs of conventional medicine (and therefore of many more than that number of RCTs in total) reveal that 44% of the reviews concluded that the interventions studied were likely to be beneficial (positive), 7% concluded that the interventions were likely to be harmful (negative), and 49% reported that the evidence did not support either benefit or harm (non-conclusive).[9] In other words, the spread of results from RCTs of homeopathy is virtually identical to those of RCTs of conventional medicine, and the inconclusive results have no significance in respect of the validity of homeopathy, any more than they do in respect of the validity of conventional medicine.

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[9] R.P. El Dib, A.N. Atallah, R.B. Andriolo, 'Mapping the Cochrane evidence for decision making in health care', *Journal of Evaluation in Clinical Practice*, 13 (2007), 689–692.

Issue 4
Challenge: That the statement "In Cuba, an integrated approach to healthcare has led to homeopathy being used to enable 2.3 million, including the elderly, to be cheaply and effectively protected against endemic Leptospirosis" was unsubstantiable. **Upheld (unsubstantiated and misleading).**

We considered that most consumers would interpret the claim "In Cuba, an integrated approach to healthcare has led to homeopathy being used to enable 2.3 million, including the elderly, to be cheaply and effectively protected against endemic Leptospirosis", to mean that homeopathy had been used to protect against the disease as a result of an integrated approach to a health crisis. We noted a homeopathic medicine had been used as part of the treatment of Leptospirosis prevention in Cuba and that during the same year and the years that followed, it had been reported that incidences of the disease had decreased significantly. We considered that in order to consider the role of the homeopathy in the treatment or prevention of a disease, clinical evidence would need to demonstrate how that remedy acted upon the disease within the body, before then demonstrating how that remedy could be used in the field. We noted evidence had not been supplied to demonstrate that the homeopathic medicine referred to in the report had been shown to be efficacious against Leptospirosis under clinical conditions and therefore considered that the vast reduction in the incidents of the disease had not been shown to be directly attributed to the homeopathic remedy that had been administered. We therefore concluded that the claim was misleading.

Comment by H:MC21
Again the ASA has not questioned the existence of the evidence, but challenged its validity. In doing so the ASA has demonstrated a serious lack of consistency. Despite its demand elsewhere in this adjudication for objective evidence,[10] the significant and objective decrease in incidences of the disease is stated to be insufficient in this case. Instead the ASA has made a new additional demand

"to demonstrate how that remedy acted upon the disease within the body". However, this demand does not appear to be applied consistently by the ASA, since "An understanding of how acetaminophen works remains elusive",[11] and yet this drug (generally known as paracetamol) is available over the counter under such widely advertised names as Panadol, Nuromol[12] and Calpol (a treatment advertised for children).[13] It should also be noted that H:MC21 was informing people of the existence of research, not promoting a particular product, and yet is being required to meet higher standards of substantiation than a potentially dangerous drug.

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[10] For example, in Issue 2.
[11] Robert Berkow (Editor in Chief), *Merck Manual of Medical Information* (New York: Simon and Schuster, 2000), p. 56.
[12] For example, see the advert in *Radio Times*, 9-15 July 2011, p. 33.
[13] Among its side-effects it is stated: "**important**: liver damage (and less frequently renal damage) following **overdosage**" (*British National Formulary*, 62 (September 2011), Section 4.7.1 Paracetamol).

Issue 5
Challenge: That the statement "About 6 million people in the UK choose Homeopathy" is misleading. **Not upheld.**

The Adjudication
We noted the Medicines and Healthcare products Regulatory Agency (MHRA) had informed the Commons Science and Technology Committee that over 10 per cent of the nation chose homeopathic treatments. We considered that this was sufficient to substantiate the claim that six million people in the UK used homeopathy and concluded that the ad was not misleading on this point.

Comment by H:MC21
This is the only issue about which there has been no argument.

Issue 6
Challenge: That the statement "of the 2,500 most commonly used treatments in the NHS, 51% have unknown effectiveness" is misleading. **Not upheld.**

The Adjudication
We noted the ad claimed "Homeopathy has a growing evidence base, but according to the British Medical Journal, of the 2,500 most commonly used treatments, 51% have unknown effectiveness". We also noted H:MC21 provided the pages from the BMJ site upon which this claim was based. We considered that, in the context of this ad, the claim invited readers to consider the view expressed in the BMJ article, but did not go so far as to discourage readers from seeking essential treatment for conditions for which medical treatment should be sought. We therefore concluded that the claim was acceptable.

Comment by H:MC21
H:MC21 had stated that "according to the *British Medical Journal*, of the 2,500 most commonly used treatments in the NHS, 51% have unknown effectiveness". Even in the fifth and final Draft Recommendation the investigation team persisted in arguing that it "considered that H:MC21 had not shown that 51% of the most commonly used treatments had an unknown effectiveness", and so

the advertisement was misleading.[14] H:MC21 repeatedly pointed out the absurdity of this argument. It is obviously true that "according to the Bible, Jesus is the son of God", but the logic of the investigation team's argument was that this must be substantiated by providing evidence that Jesus is actually the son of God.[15] The ASA Council rejected such nonsense.

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[14] ASA *Draft Recommendation* version 5, 29 July 2011, p. 9.
[15] H:MC21's response to the ASA *Draft Recommendation* version 4, 11 July 2011, para. 20.2.

Issue 7
Challenge: That the statement "Even a small increase in spending on homeopathy could produce dramatic benefits, reducing care needs and increasing patient quality of life" is misleading. **Upheld (unsubstantiated and misleading).**

The Adjudication
We noted H:MC21 had not sent sufficiently robust scientific data, including double blinded clinical trials, to substantiate the claim that homeopathy could effectively treat chronic medical conditions. Furthermore, we considered that the presentation of the claim implied that it was a statement of fact, not opinion. We considered therefore that H:MC21 had not substantiated the claim that increased funding in homeopathy would result in increased benefits to the consumer. We concluded that the claim was misleading.

Comment by H:MC21
The adjudication of this challenge depends entirely on the assertion that homeopathy is not effective in clinical practice as a treatment for chronic illness. The ASA asserts this on the basis that it has not seen relevant evidence, when it has; on the basis of rejecting evidence in favour of homeopathy on grounds which are suspect; and on the basis of unverifiable or compromised evidence. At the same time, the ASA rejected submitted evidence from clinical practice in the NHS in Scotland which confirmed H:MC21's proposition.

Issue 8
Challenge: That the statement "Sense About Science is funded by pharmaceutical companies and relies on a strategy of propaganda stunts rather than scientific research" is misleading. **Upheld (unsubstantiated and misleading).**

The Adjudication
The ASA noted the ad claimed "The leading organisation opposing Homeopathy, Sense About Science is funded by pharmaceutical companies". We considered that most readers would interpret this statement within the context of the following claim in the ad which stated "…and relies on a strategy of propaganda stunts rather than scientific research" and would understand the statement to mean that because the charity was partially funded by the pharmaceutical industry, its findings were biased and unreliable. We noted H:MC21's comments about the practices adopted by Sense about Science but considered that this itself was not evidence that the organisation had no scientific credibility. We also considered that, in the context of the ad, H:MC21 had presented their claim that Sense About Science "relies on a strategy of propaganda stunts rather than scientific research" as fact, not opinion, and that without robust substantiation the claim was misleading

Comment by H:MC21

This issue has an extraordinary history. H:MC21 was originally presented only with the challenge that it was misleading to claim that "Sense About Science is funded by pharmaceutical companies". H:MC21 provided as evidence all the published accounts of Sense About Science since it registered as a charity. These revealed that over six years it received an average of 35.7% of its donation funding from the pharmaceutical industry. The investigation team argued that "most readers would interpret this statement to mean that Sense About Science was wholly funded by the pharmaceutical industry. Because that was not the case, and Sense About Science was only partly funded by the pharmaceutical companies, we concluded the claim was misleading".[16] H:MC21 responded by pointing out that the statement that a project was funded by the National Lottery (for example) was not assumed to mean that it was wholly funded from that source. Subsequently, this claim that H:MC21 was being misleading about the funding of Sense About Science disappeared completely from the ASA's assessment of the issue.

In version 3 of the Draft Recommendation the investigation team stated that "in the context of the ad, H:MC21 had presented their the claim that Sense About Science 'relies on a strategy of propaganda stunts rather than scientific research' as fact, not opinion, and that without substantiation the claim was misleading".[17] Obviously, since H:MC21 had not been presented with a challenge on this issue, it had not provided any evidence. At the same time H:MC21 was informed that this was the final draft and no further corrections could be made.

As a result of this and other issues H:MC21 made a formal complaint about the handling of this case, and subsequently a new version of the challenge appeared in version 4 of the Draft Recommendation, seven months after the original notification of the complaint.[18] H:MC21 was also given the opportunity to submit evidence in response to this new challenge. However, facts provided in H:MC21's evidence were censored and inaccurately summarised by the investigation team, and it refused to allow corrections to be made (contrary to normal procedure).[19] One statement wrongly attributed to H:MC21 was potentially libellous, and this has been altered, though the altered version still seriously misrepresents H:MC21's views.

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[16] ASA *Draft Recommendation* version 1, 18 February 2011, p. 6.
[17] ASA *Draft Recommendation* version 3, 17 May 2011, p. 8.
[18] The ASA normally has a deadline of three months for making a complaint.
[19] See ASA *Non-broadcast Complaint Handling Procedures*, 29 September 2010, para. 26.

Issue 9

Challenge: That the statement "(Trick or Treatment?) has been shown to be scientifically unreliable" is misleading. **Upheld (unsubstantiated and misleading).**

The Adjudication

We noted H:MC21 believed Trick or Treatment was scientifically flawed on a number of levels and that this had been fully explored in the publication Halloween Science. However, although we noted this paper had been published and peer reviewed we considered that this was the opinion of H:MC21 which presented one side of a controversial argument in which Trick or Treatment expressed the opposing view. We considered that this did not, in itself, prove that Trick or Treatment was scientifically flawed. We therefore concluded that the claim was misleading.

Comment by H:MC21

In order to show that a book is "scientifically unreliable" it is necessary to write a detailed critique of it. H:MC21 had published just such a critique of *Trick or Treatment?* (*Halloween Science*) and submitted it as evidence. The ASA informed H:MC21 that "We have not read the book you refer to and we do not intend to read it".[20] Submissions of sections of *Trick or Treatment?* showing serious failures of scientific rigour were also largely ignored, and the investigation team's summary of H:MC21's response was completely inadequate. In short, the ASA refused to admit the only possible evidence in support of H:MC21's claim, and then based the adjudication on an assumption about the nature of evidence made in total ignorance of that evidence. If this decision were applied by the ASA consistently, then no organisation (Amnesty International, for example) would be allowed to quote its own research in an advertisement, no matter how reliable it might be.

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[20] Letter from the Chief Executive of the ASA, 14 June 2011.

Issue 10

Challenge: That the statements "The NHS spends £2 billion annually on treating adverse side effects of conventional drugs. Homeopathy has no side effects" are irresponsible or denigratory.
Not upheld.

The Adjudication

We understood that homeopathy had been shown to have no side-effects and considered that within the context of the ad, the claim would not be interpreted by most readers to mean that homeopathy was preferable to conventional medicine, but merely as a factual statement that it might be desirable because it did not have any side effects. We concluded that the claim was unlikely to discourage consumers from seeking essential treatment for which medical supervision should be sought and therefore did not breach the Code.

Comment by H:MC21

The team repeatedly argued that H:MC21's statements were irresponsible because "the claim would be interpreted by most readers to mean that homeopathy was a viable alternative to conventional medicine and that it was more desirable because it did not have any side effects".[21] H:MC21 had pointed out early on that "It is unacceptable for the ASA to assume that the simple juxtaposition of two facts is a misleading act in itself".[22] H:MC21 also pointed out that "As it stands, the investigation team appears to be seriously suggesting that a significant proportion of *New Statesman* readers would react to an advertisement which as a whole proposes an increase in the NHS provision of homeopathy by not seeking medical help within the NHS".[23] The ASA Council recognised that H:MC21 had simply stated facts, and that the investigation team's arguments were nonsense.

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[21] ASA *Draft Recommendation* version 4, 22 June 2011, p. 9.
[22] H:MC21's response to the ASA *Draft Recommendation* version 1, 1 March 2011, para. 28.4.2.
[23] H:MC21's response to the ASA *Draft Recommendation* version 4, 11 July 2011, para. 24.7.

Issue 11
Challenge: That the statement "The leading so-called 'expert' and critic of homeopathy, Professor Edzard Ernst, has admitted that he has no qualifications in homeopathy" is irresponsible or denigratory. **Not upheld.**

The Adjudication
We noted H:MC21 had provided evidence to demonstrate that Professor Edzard Ernst, had "admitted that he has no qualifications in homeopathy". Although we considered that the lack of a homeopathy qualification did not demonstrate that he was not sufficiently qualified to comment on the scientific evidence for homeopathy, we noted Professor Ernst, as a scientific commentator, did not fall under the definition of those parties that the subject to CAP Code rule 3.42 concerning denigration. We therefore concluded that the claims did not breach that Code rule.

Comment by H:MC21
H:MC21 had raised the question of whether Professor Edzard Ernst is a "product, marketer, trade mark, trade name or other distinguishing mark" (CAP Code 3.42) in response to the first version of the Draft Recommendation,[24] since these are the only categories to which claims of denigration apply. The investigation team only accepted this in the fifth version.[25] Prior to that, the team had argued that to state that Ernst has admitted that he has no qualifications in homeopathy "implied that Professor Ernst was not sufficiently qualified to criticize homeopathy", and so was denigratory.[26] The team seemed impervious to the fact that it was "the actual lack of this qualification which implies that Professor Ernst 'is not sufficiently qualified'",[27] not H:MC21's stating of the fact.

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[24] H:MC21's response to the ASA *Draft Recommendation* version 1, 1 March 2011, paragraph 29.1.1.
[25] ASA *Draft Recommendation* version 5, 29 July 2011, p. 10.
[26] ASA *Draft Recommendation* version 4, 22 June 2011, p. 9.
[27] H:MC21's response to the ASA *Draft Recommendation* version 4, 11 July 2011.

Issue 12
Challenge: That the statement "The recent Science and Technology Committee report on homeopathy was voted for by only three MP's" is irresponsible or denigratory. **Not upheld.**

The Adjudication
We noted the Report made a series of policy recommendations about the future of NHS funding for homeopathy and considered that, without further clarification, the claim implied that MPs had disagreed with the scientific conclusions of the report. However, we noted the report and the Committee did not fall under the definition of those parties that were subject to CAP Code rule 3.42 concerning denigration and therefore concluded that the ad did not breach that Code rule.

Comment by H:MC21
H:MC21 provided considerable evidence for inadequacy of this report, for the questionable credibility of the support for it in the Commons Science and Technology Committee, and for the high level of opposition to it. However, the ASA is relying heavily on this report for its position on homeopathy, including recycling many of its unscientific and invalid arguments in the course of this adjudication. As a result, the ASA refused to explain on what basis it "understood" that the report

was an "objective review of the evidence for the efficacy and effectiveness of homeopathy",[28] especially given that the Chair of the committee explicitly stated that that "this is not an enquiry into whether homeopathy works or not".[29]

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[28] ASA *Draft Recommendation* version 4, 22 June 2011, p. 10.
[29] Q174, House of Commons Science and Technology Committee, *Evidence Check 2: Homeopathy* (London: The Stationery Office, 2010), p. Ev 64.

Final points by H:MC21

The options presented to H:MC21

When H:MC21 was first notified of the complaints it was offered the opportunity to respond to only six of the challenges (Issues 1, 2, 3, 4, 5 and 7), so long as it agreed not to repeat the other seven statements in the future (original Issues 6, 8, 9, 10, 11, 12 and 13). Of these seven challenges, no less than six failed to be upheld, one being withdrawn immediately after H:MC21 submitted its original evidence (original Issue 11), and two being acknowledged to be invalid challenges (existing Issues 11 and 12). The challenge which was upheld (Issue 9), was upheld only on the basis of refusing to admit H:MC21's evidence. One of the seven issues was, of course, later completely re-written and then upheld on the basis of a censored and inaccurate summary of the evidence (Issue 8). This debacle is a matter of profound concern.

Conduct of the formal complaint

Another matter of concern is the conduct of the ASA's internal complaints procedure. The Chief Executive of the ASA fully endorsed the views of the investigation team and stated categorically in June that "our latest version of the Draft Recommendation provides an accurate summary of your response and that our assessments are sound".[30] Only four days later he had to apologise, saying that "I appreciate that some errors and misinterpretations must have caused you concern. Please be re-assured however that we will correct what needs correcting".[31] Subsequently two of the allegedly "sound" assessments were reversed by the investigation team itself on the very grounds H:MC21 had raised four months earlier, and two more were reversed by the ASA Council.

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[30] Letter, 10 June 2011.
[31] Letter, 14 June 2011.