

The Advertising Standards Authority (ASA) has finally published an adjudication on complaints about an advertisement in a 'Care' supplement of the *New Statesman*<sup>1</sup> in October 2010. The advertisement was placed by Homeopathy: Medicine for the 21st Century (H:MC21), and it promoted an increase in spending by the NHS on homeopathy. The ASA Council has upheld seven of the twelve challenges,<sup>2</sup> and ruled that the advertisement should not appear again in its present form. However, closer inspection of this adjudication and of the process leading to it raises serious concerns about freedom of information and about the impartiality of the ASA.

To begin with thirteen issues were originally challenged,<sup>3</sup> not twelve, and the ASA offered H:MC21 two options in dealing with them.<sup>4</sup> In Option 1<sup>5</sup> H:MC21 was to respond to all thirteen challenges, whereas in Option 2<sup>6</sup> H:MC21 would only have to respond to six of the challenges, and the ASA "could remove the other challenges from the investigation providing that you give your written assurance that these claims will not appear again in any future ads for HMC:21 [sic]." In other words, if H:MC21 accepted that the complainants were right in seven challenges, the ASA would not investigate them. H:MC21 refused to do this and responded to all the challenges.

Before looking at the issues in both options, it is worth considering the outcome of these seven challenges which H:MC21 was invited to accept as valid. As it turns out, only one of them was upheld by the ASA Council (issue 9). Of the other six, one was rewritten seven months later and the new version was upheld (issue 8), one was withdrawn immediately following H:MC21's initial response (original issue 11), and two were ruled not to be legitimate challenges (issues 11 and 12). It should be noted that H:MC21 pointed out this illegitimacy in response to version 1 of the Draft Recommendation,<sup>7</sup> but this view was not accepted by the investigation team until version 5.<sup>8</sup>

Of these seven challenges, the other two which were not upheld by the ASA Council were recommended to be upheld by the investigation team on extraordinary grounds (issues 6 and 10). In the case of issue 6, 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". The investigation team required H:MC21 to substantiate this by not only by providing evidence that the BMJ had claimed this (which it did) but by providing evidence proving that the BMJ's claim was true. This is the equivalent of insisting that the statement that "according to the Bible Jesus was the son of God" must be supported by evidence proving that Jesus was the son of God. The ASA Council did not accept this ludicrous position.

In the case of issue 10, the investigation team was suggesting that the juxtaposition of the statements that the NHS "spends £2 billion annually on treating the adverse side effects of conventional drugs" and "homeopathy has no side effects" implied "that homeopathy could successfully treat illness and disease".<sup>9</sup> This effectively prohibits any mention of the side effects of conventional medicine alongside mention of the lack of side effects of homeopathy, even though they are both recognised facts. Again the ASA Council did not accept this ludicrous position that facts cannot be stated because of the implications inherent in their juxtaposition.

If five of the challenges which H:MC21 was expected to accept were so ill-founded, the question arises as to the validity of the two which were upheld (issues 8 and 9). In the case of issue 9 H:MC21 had maintained that "The leading popular book critical of homeopathy (*Trick or Treatment?*) has been shown to be scientifically unreliable." Clearly such a statement requires a thorough critique of *Trick or Treatment?* and H:MC21 had published just such a critique, which was submitted in support of the statement. Its approach is summed up in the 'Preliminary Explanation':

These allegations against two "trained scientists" (p. 3) may seem extraordinary, but it is not our opinion we are presenting, but the opinions of Edzard Ernst and Simon Singh themselves. The attacks on their primary arguments are not made by contrasting their statements with those of other people, but by contrasting them with their own (often contradictory) statements.<sup>10</sup>

The ASA stated "We have not read the book you refer to and we do not intend to read it."<sup>11</sup> The investigation team even refused to accept specific examples of scientific unreliability quoted from

*Trick or Treatment?* itself. In other words this challenge was adjudicated entirely on the basis of ignoring the evidence in support of H:MC21's case.

The case of issue 8 is even more bizarre. The challenge was originally that H:MC21 had been misleading in claiming that "The leading organisation opposing homeopathy, Sense About Science, is funded by pharmaceutical companies". The ASA Council's adjudication does not support this challenge at all. Instead it upholds a challenge which was not presented to H:MC21 until seven months after the original notification.

In its original response H:MC21 provided the published accounts for Sense About Science (SAS) for the six years since it registered as a charity, which revealed that it received an average of 35.7% of its donation funding from the pharmaceutical industry.<sup>12</sup> The investigation team initially argued that H:MC21's statement was misleading because it implied that all SAS's funding was from the pharmaceutical industry, when only part of it was from this source.<sup>13</sup> H:MC21 pointed out that statements that an organisation is funded by a body such as by the National Lottery do not imply that this is the sole funder. In response the investigation team dramatically altered its assessment to claim that it was not the financial question which was in question, but the claim that SAS "relies on a strategy of propaganda stunts rather than scientific research",<sup>14</sup> and the investigation team stated that H:MC21 had not provided any evidence to support its claim.

This outrageous manipulation of the investigation process triggered a formal complaint to the Chief Executive by H:MC21, which we discuss below. Subsequently issue 8 was rewritten in version 4 of the Draft Recommendation to fit the arguments being used in the assessment, and H:MC21 was permitted to submit evidence in support of its claims. H:MC21 was not permitted to correct errors in the investigation team's summary of its response, and much of the evidence supplied was censored and so not seen by the ASA Council. In other words, as with issue 9, this challenge was adjudicated on the basis of ignoring the evidence in support of H:MC21's case.

In responding to the formal complaint, the Chief Executive of the ASA saw no problems with the way the case had been handled, and concluded that "our latest version of the Draft Recommendation provides an accurate summary of your response and that our assessments are sound".<sup>15</sup> Almost immediately 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".<sup>16</sup> Two of the "sound" assessments were also subsequently reversed by the investigation team (issues 11 and 12),<sup>17</sup> and two more by the ASA Council (issues 6 and 10).<sup>18</sup>

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<sup>1</sup> <http://www.hmc21.org/#/care-advert/4544163794>

<sup>2</sup> Adjudication

<sup>3</sup> Original notification

<sup>4</sup> Original letter

<sup>5</sup> Option 1

<sup>6</sup> Option 2

<sup>7</sup> Response to version 1

<sup>8</sup> Version 5

<sup>9</sup> Version 5

<sup>10</sup> Halloween Science, p. 4.

<sup>11</sup> Letter from the Chief Executive, 14 July 2010.

<sup>12</sup> Response 1. SAS also received funding from the pharmaceutical industry in the following year, but the accounts were not published until February 2011.

<sup>13</sup> Version 1

<sup>14</sup> Version 2

<sup>15</sup> Letter from the Chief Executive, 10 June 2011.

<sup>16</sup> Letter from the Chief Executive, 14 June 2011

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<sup>17</sup> Version 5  
<sup>18</sup> Final Adjudication.