

# Response to the ASA Recommendations

## General Issues

### 1. Terminology

- 1.1. The ASA has failed to define many of the terms it has used, such as “product” (CAP Code), “marketer” (CAP Code and Assessments 11 and 12), “measured clinically” (Assessment 1), “objective clinical assessment” (Assessment 2), and “medical supervision” (Assessment 10). As a result there is a lack of clarity about the basis of its assessments.
- 1.2. H:MC21 did not promote a “homeopathic product” but homeopathy as a therapeutic method (see the advice sent to H:MC21 by the ASA: 2010-11-24 AOL Homeopathic Medicines.pdf). This method of treatment is both legally recognised and available in the NHS. As a result it is unclear whether the ASA has a basis for upholding any complaint against homeopathy, since this implies that the law and the NHS are in breach of the CAP Code.

### 2. The scientific basis of the assessment

- 2.1. The ASA claims to make decisions “on the basis of the available scientific knowledge” (CAP Code 12.1), and a significant proportion of H:MC21’s submission dealt with this issue. The ASA has failed to identify what “available scientific knowledge” it has taken as the basis for its decisions in this case. As a result it is not clear that the ASA has actually assessed the complaints on a basis of “available scientific knowledge” at all (see Assessment 4).
- 2.2. H:MC21 also pointed out certain facts about the dominant empirical paradigm in conventional medicine, including the strict guidelines on the limitations of certain types of evidence, and advised that the ASA appeared to be in danger of failing to apply even this approach correctly. Nonetheless, the ASA appears to have ignored this advice and so it has also failed to abide by the criteria of evidence-based medicine in making its assessments (see, for example, Response 1, and Assessments 1 and 2).
- 2.3. In this context, H:MC21 wishes to draw the ASA’s attention to a written answer to a question put in the Scottish Parliament which has confirmed some of the statements made by H:MC21 about the cost and clinical benefits of homeopathy (attached as “Scottish Parliament.webarchive”).

### 3. Anonymity

“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 marketer or through their trade or professional organization; and confirm that they are not engaged in simultaneous legal action on the point at issue.” (Section 8, *Non-broadcast Complaint Handling Procedures*).

- 3.1. The anonymity of the six complainants implies that they are genuine members of the public with no special interest. However, there are a number of individuals and groups which would qualify as having “an obvious interest in the outcome of the complaint”.
- 3.2. In particular, H:MC21 is aware of two people who publicly stated that they had complained to the ASA, who repeatedly write against homeopathy, and who actively encouraged others to lodge complaints with the ASA. Neither of these people has been identified as a complainant.
- 3.3. H:MC21 would like to know what action the ASA has taken to ensure that the complainants are genuinely “public complainants” and are not connected with “groups with an obvious interest in the outcome of the complaint”.

#### **4. Suppression of facts**

- 4.1. The ASA has accepted that several statements made by H:MC21 are facts but has then argued that these facts cannot be published because they imply criticism of individuals, organisations or conventional medicine (see, for example, Assessments 8 and 10-12).
- 4.2. As H:MC21 understands it, the ASA has no right to argue that facts be suppressed because they are inconvenient to another party.

#### **5. Competence**

- 5.1. The ASA has misrepresented arguments and information supplied by H:MC21 (see, for example, Responses 1-4 and 6-12, and Assessments 1, 4, 6-12)
- 5.2. The ASA appears to have failed to understand evidence supplied by H:MC21, and also appears to have failed to read evidence supplied by H:MC21 (see, for example, Responses 1, 6 to 9 and 11, and Assessments 1, 2, 4, 6-12, emails of 9/2/11 and 15/2/11, and a letter of 18/2/11).
- 5.3. The ASA has applied double standards by basing recommendations on unsupported opinions whilst demanding from H:MC21 unreasonable standards of “robustness” of evidence (see, for example, Assessments 1, 4, 6-11).
- 5.4. The ASA has been inconsistent in the application of its arguments (see, for example, section 18 and subsections below on the removal of complaint number 11)
- 5.5. The ASA has suggested that H:MC21 should have published information which H:MC21 had no brief to publicise and which H:MC21 had publicly criticised as being inaccurate (see Assessment 12).
- 5.6. The ASA referred to an organisation unknown to H:MC21 and to alleged evidence from this organisation (see Assessment 3).
- 5.7. In the context of the issues raised here, H:MC21 considers it appropriate to draw attention to the ASA’s lack of attention to detail in other ways, such as by consistently and inaccurately referring to H:MC21 as HMC:21, and by mis-spelling the name of the Chair of H:MC21 on two occasions (see emails 30/11/10 and 15/2/11).

## Responses

### 6. Response 1

6.1. This outline of H:MC21's response is seriously inaccurate.

6.1.1. It does not state that H:MC21 distinguished between four types of evidence and explained their relevance.

6.1.2. It does not state that H:MC21 referred the ASA to evidence about homeopathy which has been in the possession of the ASA for 2 years, but about which it has failed to reach any conclusion.

6.1.3. It includes a statement about EBM which is not only inaccurate, but is diametrically opposed to what H:MC21 stated.

### 7. Response 2

7.1. This outline of H:MC21's response is inaccurate.

7.1.1. It does not state that H:MC21 provided the specific evidence cited in the advert.

7.1.2. It does not state that H:MC21 provided detailed supporting evidence from five additional studies for benefit from homeopathy.

7.1.3. It does not state that H:MC21 provided detailed evidence from five additional studies in support of the statement that conventional medication was reduced.

### 8. Response 3

8.1. This outline of H:MC21's response is incomplete.

8.1.1. It does not state that H:MC21 provided the evidence cited in the advert.

8.1.2. It does not state that H:MC21 pointed out that the statement is supported by doctors who have both homeopathic and conventional medical training.

### 9. Response 4

9.1. This outline of H:MC21's response is incomplete.

9.1.1. It does not state that H:MC21 provided the specific evidence cited in the advert.

9.1.2. It does not state that H:MC21 provided supporting evidence on costs.

### 10. Response 5

10.1. This outline is satisfactory.

### 11. Response 6

11.1. This outline of H:MC21's response is incomplete.

11.1.1. It does not state that H:MC21 provided the specific evidence cited in the advert, not just a link.

11.1.2. It does not state that H:MC21 provided supporting evidence, not just a link.

11.1.3. It does not state that H:MC21 pointed out that criticism of this statement is actually a criticism of the *British Medical Journal*, not of H:MC21.

### 12. Response 7

12.1. This outline of H:MC21's response is seriously inaccurate.

12.1.1. It gives an incorrect figure for the share of the NHS drugs budget spent on homeopathic medicines.

12.1.2. It presents an inaccurate and incomplete version of the calculation in our submission.

### **13. Response 8**

13.1. This outline of H:MC21's response is inaccurate.

13.1.1. H:MC21 has not argued, either in its advert or in its submission to the ASA, that Sense About Science has a vested interest in criticising homeopathy.

### **14. Response 9**

14.1. This outline of H:MC21's response is so seriously inaccurate that it suggests a complete failure on the part of the ASA either to read the detailed evidence supplied, or to understand it.

14.1.1. It misrepresents H:MC21's evidence on trials of efficacy.

14.1.2. It misrepresents H:MC21's criticisms of *Trick or Treatment?*

14.1.3. It fails to mention that the evidence supplied identified 19 major flaws in this book.

### **15. Response 10**

15.1. This outline of H:MC21's response is incomplete.

15.1.1. It does not state that H:MC21 provided the specific evidence cited in the advert.

15.1.2. It fails to mention that the information about the cost of treating side effects in the NHS is already in the public arena.

15.1.3. It fails to mention that the information was publicised by the Health Editor of a major UK newspaper.

### **16. Response 11**

16.1. This outline of H:MC21's response is inaccurate and incomplete.

16.1.1. It does not state that H:MC21 provided the specific evidence cited in the advert.

16.1.2. It does not state that H:MC21 supplied supporting evidence of criticisms of Ernst's competence.

16.1.3. It does not take into account the further evidence supplied by H:MC21 in response to the original complaint number 11.

16.1.4. It erroneously states that because Ernst "did not have a qualification in Homeopathy", H:MC21 "therefore believed he was unable to objectively assess any evidence for the medicine".

16.1.5. It fails to acknowledge that H:MC21 drew its conclusions about Ernst's ability from other evidence and prior to publication of the original interview.

16.1.6. It fails to make clear that H:MC21's reason for publicising the "discrepancy between his claims to authority and his actual qualifications" is that Ernst repeatedly states that he has adequate training in homeopathy without any objective evidence that this is true.

### **17. Response 12**

17.1. This outline of H:MC21's response is incomplete.

17.1.1. It does not state that H:MC21 provided the specific evidence cited in the advert.

17.1.2. It does not state that H:MC21 provided supporting evidence to justify concerns about the impartiality of the MPs concerned.

17.1.3. It does not take into account the further evidence supplied in H:MC21's response to the original complaint number 11.

**18. Removal of the original complaint number 11**

18.1. H:MC21 notes the ASA's statement that "we have removed the challenge about the claim "Opposition to homeopathy is based on propaganda" because we believe the nature of the complaint is adequately dealt with in the challenges that followed it." H:MC21 would appreciate an explanation as to why the ASA reached this conclusion only after H:MC21 had submitted substantial evidence to defend its statement.

18.2. H:MC21 would appreciate an explanation of why the evidence provided in response to the original complaint 11 was not transferred to the challenges which followed it where relevant.

18.3. H:MC21 would also like to know why the same principle was not applied to complaint number 1.

## **Assessments**

### **19. Assessment 1**

- 19.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.
  - 19.1.1. The ASA has “noted there was a large amount of data and case studies on homeopathic treatments that dated back hundreds of years and understood that there was significant support for the use of homeopathic medicine in the treatment of chronic illnesses”.
  - 19.1.2. The ASA does not appear to have taken into account all the evidence H:MC21 has supplied (see Response 1 above).
  - 19.1.3. The ASA does not appear to have taken into account the evidence submitted to them by the Faculty of Homeopathy and the Society of Homeopaths in 2008, and referred to in H:MC21’s submission.
- 19.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.
  - 19.2.1. H:MC21 has supplied evidence involving thousands and even millions of people.
  - 19.2.2. H:MC21 has supplied evidence supported by doctors trained in both homeopathy and conventional medicine.
- 19.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.
  - 19.3.1. The complaint has been presented to H:MC21 by the ASA solely as a case of the need for substantiation, an issue which is not covered by this section of the Code.
  - 19.3.2. Nonetheless, in addition to evidence from RCTs, outcome studies and laboratory research H:MC21 has also presented arguments justifying homeopathy in principle, with supporting evidence for these arguments.
- 19.4. In the context of CAP Code 3.1, H:MC21 would like an explanation of statements made by the ASA in this assessment which are potentially misleading.
  - 19.4.1. The statement that H:MC21 has a “belief that the efficacy of homeopathic treatments could not be tested and assessed in the same way as conventional medicine” is a misrepresentation of the facts and of the evidence H:MC21 provided.
  - 19.4.2. The meaning of the phrase “measured clinically” is unclear and therefore potentially misleading.
  - 19.4.3. There is no basis in the dominant medical empirical paradigm (evidence-based medicine - EBM) for asserting that trials of efficacy have primacy over other studies, so the ASA’s insistence on tests of homeopathic treatment which “accurately measure its efficacy” requires an explanation as to what paradigm the ASA is using. This point was made by H:MC21 in its submission.
- 19.5. H:MC21 would like an explanation of why this complaint has been retained when the original complaint number 11 has been withdrawn.
  - 19.5.1. H:MC21 pointed out in its submission that the advert follows a clear structure of general statements followed by specific supporting examples.
  - 19.5.2. The structure of the advert was acknowledged by the ASA in their explanation for the withdrawal of the original complaint 11.
  - 19.5.3. This complaint also addresses a general statement, so the same principle should apply.

19.5.4. H:MC21 is attaching a recent written response from Nicola Sturgeon, Cabinet Secretary for Health and Wellbeing in the Scottish Parliament, which confirms H:MC21's position. It states that: "... In secondary care in Scotland, homoeopathy is only employed within a broader integrative care approach, with surveys showing both enhanced wellbeing and symptom reduction across a broad range of long term conditions ..." (question S3W-39277, available at: <http://www.scottish.parliament.uk/business/pqa/wa-11/wa0223.htm#6>, and attached as "Scottish Parliament.webarchive")

## **20. Assessment 2**

20.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.

20.1.1. The source was cited and the evidence has been provided to the ASA.

20.1.2. Supporting evidence has also been provided to the ASA.

20.2. H:MC21 would like an explanation of how exactly our claim breaches CAP Code 3.7.

20.2.1. H:MC21 is not clear as to what objective assessment there can be of a patient's symptoms other than by asking the patient about the symptoms.

20.2.2. At the same time, not only were patients asked about their symptoms in a systematic way, but the study reports that two independent surveys of these patients produced results which concurred with this study.

20.2.3. Supporting evidence confirmed that the benefit claimed by patients was not unusual.

20.2.4. H:MC21 is attaching a recent written response from Nicola Sturgeon, Cabinet Secretary for Health and Wellbeing in the Scottish Parliament, which confirms H:MC21's argument. It states that: "... In secondary care in Scotland, homoeopathy is only employed within a broader integrative care approach, with surveys showing both enhanced wellbeing and symptom reduction across a broad range of long term conditions ..." (question S3W-39277, available at: <http://www.scottish.parliament.uk/business/pqa/wa-11/wa0223.htm#6>, and attached as "Scottish Parliament.webarchive")

20.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.

20.3.1. The complaint has been presented to H:MC21 by the ASA solely as a case of the need for substantiation, an issue which is not covered by this section of the Code.

20.3.2. At the same time, the ASA considers that "most readers would interpret the claim" as 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." Those readers would be absolutely correct in their interpretation.

20.3.3. Since the ASA has stated that they believe that most readers would interpret the claim in a way which is entirely correct, the claim cannot be misleading.

20.4. In the context of CAP Code 3.1, H:MC21 would like an explanation of statements made by the ASA.

20.4.1. The specific reference to "no objective clinical assessment of their previously diagnosed chronic condition" appears to be a direct contradiction of the study, which stated that "At the first consultation the current state of health and the nature and severity of each patient's symptoms were evaluated and recorded in detail".

20.4.2. The repeated reference to an “objective clinical assessment” is confusing, as it implies that some other unexplained “objective” assessment should have taken place.

20.4.3. It is possible that the ASA is confused about the difference between signs and symptoms in medicine, and mistakenly believes that the only valid measure of health is one based on signs. If this is so, then it seriously undermines the ASA’s claim to competence in assessing this issue.

### **21. Assessment 3**

21.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.

21.1.1. The source was cited and the evidence has been provided to the ASA.

21.1.2. Supporting evidence has also been provided to the ASA.

21.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.

21.2.1. The evidence was derived from doctors qualified in both homeopathy and conventional medicine.

21.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.

21.3.1. The complaint has been presented to H:MC21 by the ASA solely as a case of the need for substantiation, an issue which is not covered by this section of the Code.

21.3.2. H:MC21 does not understand why the ASA considers that the terms “positive” and “negative” could be ambiguous in the context of this advert.

21.3.3. H:MC21 does not understand why reference to a high proportion of “inconclusive” trials could be relevant since it would serve only to show how unreliable these trials are as a source of evidence, a point made in H:MC21’s submission.

21.3.4. H:MC21 would appreciate further information about the Faculty of Medicine, as nobody at H:MC21 has ever heard of this organisation or seen any of its assessments.

21.3.5. H:MC21 does not understand how its advert could be considered misleading because it omitted irrelevant information from a source it had no occasion to consult.

### **22. Assessment 4**

22.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.

22.1.1. The source was cited and the evidence has been provided to the ASA

22.1.2. Other supporting evidence has also been provided to the ASA.

22.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.

22.2.1. The evidence cited comes from a national health service treating an endemic disease.

22.2.2. The doctors involved have been trained in both homeopathy and conventional medicine.

22.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.

22.3.1. The complaint has been presented to H:MC21 by the ASA solely as a case of the need for substantiation, an issue which is not covered by this section of the Code.

22.3.2. At the same time, H:MC21 has cited a published study which stated explicitly on at least three occasions that the reduction in infection rates correlated closely with the homeopathic treatment.

22.3.3. The ASA has expressed a view on the validity of this assessment without offering any evidence for this view or any evidence of its technical competence to make detailed judgements about the study.

22.3.4. H:MC21 would appreciate seeing any evidence which the ASA has that the infection rates of an endemic disease can be reduced by 80% in two weeks and sustained for a further 57 weeks as a result of “an increase in education about the disease or any other external factors”, especially in circumstances in which there is no record of such an educational campaign, of any other significant factors, or of similar reductions in other sections of the population.

### 23. Assessment 5

23.1. H:MC21 sees no need to comment on this recommendation

### 24. Assessment 6

24.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.

24.1.1. The complaint has been presented to H:MC21 by the ASA solely as a case of the claim being misleading, an issue which is not covered by this section of the Code.

24.1.2. Nonetheless, the source was cited and the evidence has been provided to the ASA

24.1.3. Supporting evidence has also been provided to the ASA.

24.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.

24.2.1. H:MC21 has provided evidence that the *British Medical Journal* did make the cited statements.

24.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.

24.3.1. H:MC21’s claim was factually correct, since the *British Medical Journal* did make the statements attributed to the journal

24.3.2. H:MC21 informed readers that the statements were made by the *British Medical Journal*.

24.3.3. H:MC21 also directed readers to the original source of information.

24.3.4. The validity of the statements rests openly and entirely with the *British Medical Journal*.

24.4. H:MC21 would like an explanation of a statement made by the ASA that its claim “could discourage some readers from seeking essential treatment for conditions for which medical treatment should be sought.”

24.4.1. The ASA has provided no evidence in support of this opinion.

24.4.2. The ASA has provided no evidence that the *British Medical Journal* has been investigated during the last two years on these grounds.

24.4.3. The ASA also does not appear to have taken into account the fact that the advert was placed in a Care supplement of the *New Statesman*, and was tailored to the readership of such a journal.

24.4.4. The ASA has not taken into account the fact that this advert promoted homeopathy as part an integrated approach within the NHS, rather than as an alternative to NHS treatment.

24.5. H:MC21 would like an explanation of why the ASA has made the excessive demand that H:MC21 justify a statement made by the *BMJ*.

## **25. Assessment 7**

- 25.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.
  - 25.1.1. The complaint has been presented to H:MC21 by the ASA solely as a case of the claim being misleading, an issue which is not covered by this section of the Code.
  - 25.1.2. The ASA has overlooked the point made in H:MC21's submission that this was a conditional claim (based on the statements in the advert), not an categorical one, which was why the word "could" was used rather than the word "would".
- 25.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.
  - 25.2.1. H:MC21 has provided evidence from multiple studies of real world practice that homeopathy produces benefits for patients.
  - 25.2.2. H:MC21 has provided evidence from multiple studies of real world practice that homeopathy reduces the need for conventional medications.
  - 25.2.3. H:MC21 has provided an outline calculation in order to show that these real world benefits could lead to real savings of millions of pounds.
- 25.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.
  - 25.3.1. The ASA asserts that H:MC21 "had not provided sufficient evidence to substantiate the claim that increased funding in homeopathy would result in increased benefits to the consumer", but H:MC21 had never made this categorical claim, but only a conditional claim.
  - 25.3.2. The ASA has failed to understand the basic arithmetic included in H:MC21's submission, which raises questions about its competence to assess this issue.
  - 25.3.3. At the same time, H:MC21 is attaching a recent written response from Nicola Sturgeon, Cabinet Secretary for Health and Wellbeing in the Scottish Parliament, which confirms H:MC21's argument. It states that: "... In secondary care in Scotland, homoeopathy is only employed within a broader integrative care approach, with surveys showing both enhanced wellbeing and symptom reduction across a broad range of long term conditions, and a resultant reduction in NHS costs through reduced GP and hospital visits and repeat prescriptions." (question S3W-39277, available at: <http://www.scottish.parliament.uk/business/pqa/wa-11/wa0223.htm#6>, and attached as "Scottish Parliament.webarchive")
  - 25.3.4. The ASA has failed to take into account the fact that the only "consumers" in this case are NHS managers, since only they can make decisions about NHS funding.
  - 25.3.5. NHS managers are required to be competent to assess clinical and cost benefits, and so they could not be misled by this advert since it could at most only lead them to investigate these issues more fully.
  - 25.3.6. H:MC21 explicitly identified the need for more evidence of cost and clinical effectiveness by stating in its advert the need for "monitoring both clinical and cost benefits".

## **26. Assessment 8**

- 26.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.
  - 26.1.1. The sources were cited and the evidence has been provided to the ASA
  - 26.1.2. Supporting evidence has also been provided to the ASA.

- 26.1.3. The funding information comes from Sense About Science’s own accounts as lodged at the Charity Commission.
- 26.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.
- 26.2.1. H:MC21’s statement that “Sense about Science is funded by pharmaceutical companies” is factually correct.
- 26.2.2. Organisations which receive funding normally only state that fact without detail, as in “funded by the National Lottery”, for example, and no assumption is made about the extent of the funding.
- 26.2.3. The ASA has not provided any evidence for its opinion that consumers would assume that Sense About Science was “wholly” funded by the pharmaceutical industry.
- 26.2.4. The ASA has failed to acknowledge that the educated readership of the *New Statesman* would recognise that a claim to impartiality by Sense About Science would be compromised by its receiving any funding from the pharmaceutical industry, let alone an average of 34% per annum.
- 26.2.5. In the context of Sense About Science’s leading role in attacking homeopathy, any substantial and sustained income from a vested interest is a legitimate matter of public concern, and should be brought to public attention.

## 27. Assessment 9

- 27.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.6.
- 27.1.1. The ASA has provided no evidence that the claims made about the scientific validity of *Trick or Treatment? In Halloween Science* are subjective.
- 27.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.
- 27.2.1. CAP Code 3.1 requires that “marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation”, and any consumer who reads *Halloween Science* will find that it meets this standard.
- 27.2.2. *Halloween Science* was commissioned by H:MC21 to provide an objective analysis of *Trick or Treatment?*
- 27.2.3. *Halloween Science* was peer-reviewed prior to publication.
- 27.2.4. *Halloween Science* is the only detailed examination of *Trick or Treatment?*
- 27.2.5. It is perverse and would appear to be an application of double standards for the ASA to claim that *Trick or Treatment?* (which has been seriously challenged as unscientific) is a reputable source, whilst *Halloween Science* (which has not been seriously challenged) is not a reputable source.
- 27.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.
- 27.3.1. It is impossible for the ASA to assess the validity of this evidence without reading it.
- 27.3.2. The statements which appear in the ASA’s summary of our response and in its assessment suggest that this evidence has not been read. If this is the case, then to have drafted a recommendation on the issue is profoundly unprofessional and raises questions about the ASA’s competence to assess this case.

## 28. Assessment 10

- 28.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 12.1.
  - 28.1.1. The ASA has not disputed the claim that homeopathy does not produce side effects.
  - 28.1.2. The ASA has not disputed the claim that “The NHS spends £2 billion annually on treating adverse side effects of conventional drugs”
  - 28.1.3. A source was cited and the evidence has been provided to the ASA.
  - 28.1.4. Supporting evidence has also been provided to the ASA.
- 28.2. In respect of CAP Code 12.2.
  - 28.2.1. The ASA has provided no evidence that H:MC21 has “discourage[d] essential treatment for conditions for which medical supervision should be sought.”
  - 28.2.2. In fact, H:MC21 explicitly promoted an integrated approach to healthcare in its advert on the grounds that it should “provide the safest, most economic and most effective service to patients.”
- 28.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.
  - 28.3.1. The ASA has not disputed the claim that homeopathy does not produce side effects.
  - 28.3.2. The ASA has not disputed the claim that “The NHS spends £2 billion annually on treating adverse side effects of conventional drugs”
  - 28.3.3. A source was cited and the substantiating evidence has been provided to the ASA
  - 28.3.4. Supporting evidence has also been provided to the ASA.
- 28.4. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.
  - 28.4.1. The ASA has provided no evidence that the educated readership of the *New Statesman* (especially the readership of a Care supplement in this journal) would assume that the juxtaposition of two facts about side effects constitute evidence that homeopathy “was a viable alternative to conventional medicine”.
  - 28.4.2. It is unacceptable for the ASA to assume that the simple juxtaposition of two facts is a misleading act in itself.
  - 28.4.3. H:MC21 explicitly stated in the advert the need for the “NHS to confirm the benefits of homeopathy in the real world of clinical practice”, which acknowledges that there is a continuing debate about the effectiveness of homeopathy.
  - 28.4.4. In those circumstances where homeopathic treatment has been already been shown to be effective, it is entirely true that homeopathic treatment is “more desirable because it [does] not have any side effects”.
- 28.5. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 1.3.
  - 28.5.1. As a charity H:MC21 has a legal responsibility to promote education about homeopathy.
  - 28.5.2. In the context of the huge cost of side effects of conventional drugs, it is important that the public realises that homeopathy does not produce side effects.
  - 28.5.3. The practice of homeopathy is legal in the UK.
  - 28.5.4. Homeopathy is officially practised in the NHS.
  - 28.5.5. The ASA has failed to define what it means by “medical supervision”

28.5.6. Taking even the most limited and pejorative possible meaning of the phrase “medical supervision”, H:MC21 specifically advocated in its advert an extension of homeopathy within the NHS, so this objection is irrelevant.

## **29. Assessment 11**

29.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.42.

29.1.1. H:MC21 is not aware that Professor Edzard Ernst is a “product, marketer, trade mark, trade name or other distinguishing mark”

29.1.2. H:MC21 reminds the ASA of its own requirement that “Health professionals will be deemed suitably qualified only if they can provide suitable credentials; for example, evidence of: relevant professional expertise or qualifications” (CAP Code 12.2).

29.1.3. Since Ernst has no qualifications in the field of homeopathy, it is entirely justified that attention should be drawn to this fact.

29.1.4. The ASA appears to be suggesting that this fact should be suppressed because it is inconvenient for Ernst to have it widely known.

29.1.5. H:MC21 could also have drawn attention to the fact that Ernst has never practised as a regulated homeopath, and so does not have relevant professional expertise.

29.1.6. The ASA has provided no evidence of any other experts in a field of medicine (or indeed in any other field) who are unqualified or lacking in objective evidence of practical experience in their specialism.

29.1.7. It is unacceptable that the ASA has provided no evidence that Ernst’s MD, PhD or Professorship actually confer professional expertise on him, but has merely assumed that they do.

29.1.8. In the context of Ernst’s alleged status as an expert in homeopathy and his claim that he has “practised medicine for many years, including some alternative therapies.” (*Trick or Treatment?*, p.3), the ASA should agree with H:MC21 that it is important to correct the misleading impression that he has qualified to practise homeopathy.

29.1.9. The ASA has provided no evidence that the educated readership of the *New Statesman* would share the ASA’s view that non-specific experience confers expertise in a specific field.

29.1.10. H:MC21 has provided evidence of the fact that Ernst’s expertise has been questioned by other researchers in the field of homeopathy.

## **30. Assessment 12**

30.1. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.7.

30.1.1. The sources were cited and the substantiating evidence has been provided to the ASA.

30.2. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.1.

30.2.1. The ASA acknowledges that the statements made by H:MC21 were factually correct.

30.2.2. The ASA appears to be advocating that these facts should be suppressed because it considers that inherent in them is the implication that the report may be unreliable.

30.2.3. The ASA has failed to note that the report was rejected by the government, and that the government stated that the report was flawed.

- 30.2.4. The ASA fails to note that H:MC21 has supplied other evidence presenting detailed criticism of the report as flawed.
- 30.2.5. H:MC21’s own publications about the report also provide detailed explanations of how the report was flawed.
- 30.2.6. Therefore, even if the ASA is correct in its assumption that these facts inherently imply that the report was flawed, this implication is not misleading.
- 30.3. H:MC21 would like an explanation of how exactly its claim breaches CAP Code 3.42.
- 30.3.1. H:MC21 is not aware that the House of Commons Science and Technology Committee (CS&TC) is a “product, marketer, trade mark, trade name or other distinguishing mark”
- 30.3.2. The CS&TC is a body of public representatives, and its composition and decisions should be open to public scrutiny.
- 30.3.3. The fact that two thirds of those supporting this report critical of homeopathy have publicly stated connections with organisations opposed to homeopathy is a fact of material importance.
- 30.3.4. H:MC21 reminds the ASA of the “Nolan Committee's First Report on Standards in Public Life, with particular reference to the principles of integrity, accountability and honesty.
- 30.3.4.1. “Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.” (available at <http://www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm> and attached as “Nolan.webarchive”).
- 30.3.4.2. “Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.” (available at <http://www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm> and attached as “Nolan.webarchive”)
- 30.3.4.3. “Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.” (available at <http://www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm> and attached as “Nolan.webarchive”)
- 30.4. H:MC21 would like an explanation of why the ASA has made the excessive demand that H:MC21 should “provide information on the recommendation of the report by the Science and Technology Committee” when H:MC21 has no brief to advertise this committee’s work, when the report has been heavily criticised by H:MC21 and others, and when the report has been rejected by the government.