

Supplementary submission by H:MC21 to the ASA Council for case A10-139800

H:MC21 is a charity set up to promote knowledge about homeopathy. The ad was placed in a supplement of the *New Statesman* which was being distributed at Party Conferences and was targeted on an educated readership working in healthcare, and particularly decision-makers. Its explicitly stated purpose was to advocate an increase in existing NHS funding of homeopathy, and it did this by presenting an argument which was not otherwise being heard. The ad was not aimed at attracting patients to homeopathy nor at promoting treatments for specific diseases, and it explicitly stated the need for an integrated approach.

Homeopathy has been available in the NHS since its inception 60 years ago, and around 40% of GPs refer patients for homeopathic treatment (Edzard Ernst, 'Complementary therapy: What's the point?', *Mail Online*, published by Associated Newspapers Ltd). The ASA was provided with evidence for the success of homeopathy by the Faculty of Homeopathy and the Society of Homeopaths in 2008, but this evidence was not taken into account when the CAP Advice was revised in 2010. In the light of the above, we consider that homeopathy is not a "new" or "breakthrough" therapeutic approach, and those sections of the *CAP Help Note on Substantiation for Health, Beauty and Slimming Claims* relating to such claims are irrelevant. The failure to take account of the evidence already in the ASA's possession seriously compromises the investigation team's assessments 1, 2, 3, 4, 7 and 10, since they are not based on "the available scientific knowledge" (CAP Code 12.1).

For some years there has been an organised campaign against homeopathy, led by Sense About Science (SAS), but there is absolutely no serious published evidence for the claims it promotes. The Nightingale Collaboration is the latest manifestation of the campaign. It was initially funded by Simon Singh (a trustee of SAS), and has publicly declared its intent to target homeopaths by mass complaints to the ASA. Two complainants in this case acknowledge association with the Nightingale Collaboration.

All the information in our ad was already in the public domain, and all the statements were fully referenced via our website so that readers could verify what we were saying. All information about the use of homeopathic treatment was derived from thorough surveys of research and very large-scale studies conducted by practitioners trained in both conventional medicine and homeopathy and working for national health services. We note that many ads for health and beauty products support their claims with a single small-scale study.

The investigation team has made extraordinary demands for additional evidence, such as in assessment 6. The logic in this case is that a marketer who claims that "according to the Bible, Jesus is the son of God" has to substantiate this by providing evidence that Jesus is actually the son of God. Such a demand is in complete contradiction to the normal interpretation of this grammatical construction.

The investigation team has also rejected the validity of our evidence, for example in assessments 2, 3 and 4, presenting technical arguments which are medically and scientifically unsound, and not based on "available scientific knowledge" (CAP Code 12.1). The ASA has acknowledged that these are complex issues. In response to our requests the Chief Executive stated that no outside advice has been sought, but he did not provide evidence that any members of the investigation team had "relevant professional expertise or qualifications" (CAP Code 12.2) in medicine, let alone in homeopathy. We consider that these are the arguments of people who are not competent to assess technical issues of the validity of the evidence. We also wish to point out that the majority of our evidence submitted about the scientific validity of homeopathy was drawn from conventional medical texts.

One aspect of the investigation team's lack of expertise is its use of invalid evidence. For example, it refers to the conclusions of the Commons Science and Technology Committee's *Evidence Check: Homeopathy*, but this was not a scientific report; its main conclusions were rejected by the government; and it has been seriously criticised in a detailed analysis by Earl Baldwin of Bewdley and in an Early Day Motion signed by 70 MPs (see our response to issue 12). Similarly, the team refers to "a substantial review of over 100 placebo controlled trials" (assessment 1), but despite our request for more information, the team has been unable to provide a citation for this evidence. We consider that arguments based on invalid or unverifiable sources should be rejected.

Another aspect of the investigation team's lack of expertise is its use of arguments which have no foundation in scientific or medical facts. The insistence that the only valid evidence is evidence of efficacy ignores the importance of evidence of effectiveness, and is a danger to public health, since it undermines processes intended to protect people. Every drug which is withdrawn has been proved efficacious but then found to be harmful or ineffective as a result of evidence from clinical practice. Also, evidence based medicine explicitly recognises that knowledge of the precise mechanism of action of a treatment is limited, and that explanations are hypothetical or partial. It is inappropriate, therefore, to make explanation of the precise mechanism of action a precondition for accepting evidence of homeopathic treatment.

The investigation team has frequently excluded or misrepresented significant evidence, as the following examples demonstrate. In assessment 4 the team does not mention that the "vast reduction in incidents" in Cuba was assessed against four different measures. Response 7 does not include the conclusion of the calculation, that

annual savings could be around £6.9 million per year (i.e. 0.1% of £11 billion less 27 x £152,000). We have been told that excised evidence from the Scottish Parliament has been reincorporated into response 7. Response 3 does not include our point that without careful explanation, readers would assume that inconclusive trials are the same as negative trials, which is not the case. It should also be noted that anyone looking up the source we cited would be presented with all the figures. There is also an error in response 12: of the three MPs who voted for the *Evidence Check: Homeopathy* two (not one) did not attend the hearings.

In assessing issue 9 the investigation team refused to read the critique supplied, even though it constituted the only possible evidence to substantiate our claim. The governing principle of this critique was not (as alleged) to present an alternative opinion, but to consider objectively whether the authors' arguments in *Trick or Treatment?* were consistent with their own demands for rigour. As a result, the team's judgement on the nature of this evidence is inaccurate, and its assessment is an opinion with no basis in fact or knowledge of the evidence.

The conduct of the complaints process has been so extraordinary that we were forced to make a formal complaint after the third version of the Draft Recommendation. The Chief Executive of the ASA concluded that it provided "an accurate summary of your response and that our assessments are sound". Subsequently he acknowledged that there were errors, and asked the investigation team to correct them in a fourth version. In the fifth version two of these "sound" assessments have also been changed, and the arguments used are those we presented in response to the first version of the Draft Recommendation. We should point out that we have not seen a copy of the Draft Recommendation as actually submitted to the Council.

Issue 8 is of particular importance in this context, as it was one of the main triggers for our formal complaint. The original issue only required us to substantiate that Sense About Science "is funded by pharmaceutical companies", and the first three versions of the Draft Recommendation addressed this point, though with completely different arguments in each case. The current argument about the funding is that used in the third version. It should be noted that all the published accounts for SAS since it became a charity (including those for the year ending April 2010) show that it has been funded by the pharmaceutical industry. The records suggest that the accounts covering October 2010 specifically are unlikely to be published before February 2012.

In the third version of the Draft Recommendation, six months after the original notification of the complaints, assessment 8 included a new argument that we had not provided substantiation for our statement about "propaganda stunts", even though this was not an issue presented to us. Additionally, we were told that this was the final version of the Draft Recommendation and no changes could be made to it.

Following our formal complaint, the wording of the issue was changed to its current form and we were permitted to submit evidence in response to the new issue. This evidence was extensive and all in the public domain. However, we have not been given any opportunity to correct the extremely serious deficiencies in the investigation team's summary of our response. To take just one example, the team has alleged that we have stated that "the members of SAS had no relevant qualifications in homeopathy or medicine". We have never stated this, and we consider it potentially libellous. In consequence, we believe that the Council should not rule on this issue at all until it has been properly informed about our response.

Because Sense About Science has played a leading role in attacking homeopathy for some years, we are particularly concerned at the way the assessment (and even the nature) of issue 8 has changed. However, while this is the most extreme case, throughout this process we have found that the investigation team has sought to tailor its summary of our responses to enable assessments which uphold the complaints. In some cases they have attributed statements to us which we have not made, and with which we disagree, as has occurred again in response 8. In some cases information has been inaccurately presented, as is still the case in response 12. In some cases information has been excluded, as is still the case in issues 3, 4 and 7. In some cases the information has become so garbled as to be thoroughly confusing (even to us), as is the case in response 3.

The investigation team has also presented medically and scientifically unreliable arguments against the validity of homeopathy, but has rejected our thoroughly evidenced arguments for the validity of homeopathy. It has stated that it is acting in line with the CAP Code and Advice, but, as we have pointed out, the CAP Advice is not based on "the available scientific knowledge". Since CAP Advice is not binding on the Council, we consider that our evidence exposing the weaknesses in the arguments against homeopathy is of material importance to this case, but we also consider that it has been inadequately presented to the Council. As a result, we believe that the Council lacks significant information relevant to making a decision.

Finally, we would like to draw the Council's attention to a minor point, but one which is significant in a respect of balancing complex arguments. The investigation team consistently uses the term "consider" for its own statements, even when these are unsupported by evidence, whilst equally consistently using the term "believe" for statements made by the marketer, even when these statements are well supported by evidence. We consider this practice inherently liable to prejudice the Council's view of the case.