



Advertising Standards Authority  
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Paul Burnett  
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Dear Mr Burnett,

### **Your advertising and concerns about our investigation**

Thank you for your letter of 16 May. Please accept my apologies for the delay in my response.

I'm sorry to see that you have concerns about our handling of this complaint. I respond using your own sub-headings, for ease of reference.

#### **Pre-determined views**

When we first received a complaint about your advertising it was carefully assessed by our staff. When we assess large and complex complaints we do look for opportunities to rationalise and simplify cases where possible. This not only benefits us because it means our investigations are more streamlined, but also you because you would be left with fewer issues to concentrate on.

As part of this process we also look to see where issues can be resolved informally and at an early stage. Resolving complaints informally is a proportionate and fair way of dealing with clear-cut issues where we can reach agreement with an advertiser.

When we first wrote to you, Ms Newell provided you with two options. The first of which was to formally respond to all of the challenges, some 13 at that time. The second option was reduce the size of the investigation by way of you giving us assurances that some of the claims would not be repeated.

Whilst you considered that the claims we identified as being suitable for informal resolution were statements of fact, we considered that they were likely to be misleading if they could not be substantiated (or to be potentially denigratory).

It was of course your choice as to whether to accept this course of action and I see that you chose to defend all of the claims through the formal procedure and to provide evidence in each instance.

Chairman Rt Hon Lord Smith of Finsbury • Chief Executive Guy Parker  
ASA Council • Louisa Bolch • Sally Cartwright • Rachel Childs • Elizabeth Fagan • Ray Gallagher • David Harker • Gareth Jones • John Mayhead • Andrew Motion • Martin Narey • Hamish Pringle • Ruth Sawtell • Anthony Wilkes

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The reason one of the points of complaint was subsequently dropped was because, upon further examination, Ms Newell came to the view that the issue of claiming that there was “propaganda against homeopathy” was already sufficiently covered by another claim in the ad being challenged (that Sense About Science was funded by the industry and that it had a strategy of propaganda stunts).

I hope therefore that this explanation has reassured you that in recommending that these aspects be dealt with informally, we were simply following our usual process of rationalising the complaints and seeking to find informal resolution where we felt that approach might be appropriate.

### **The motives of the complainants**

We are aware of a number of campaigning groups and individuals who are bringing complaints about homeopathic and other alternative health sectors.

Please let me re-assure you that we do take care to ensure that any complaints that are without merit or which are clearly trivial or vexatious are closed down at an early stage.

Whilst it may be the case that some individuals, groups and organisations have questioned the evidence for homeopathy, this does not prevent them from complaining to the ASA about ads which make claims about homeopathy.

We do ask some complainants (normally during the initial stages of complaint) to give their written assurance that they will not ‘gain’ from an investigation. We would not however consider consumers with an interest in homeopathy, or those who run a blog, to always fall into that category.

The ASA always considers whether the content of a complaint is valid, and in this instance, we considered that all of the points of concern that had been raised were worthy of investigation. We do not consider that this complaint is malicious or frivolous.

### **The nature of the advertisement and its readership**

We understand that readers of the New Statesman may be likely to interpret ads in a different way from readers of some other publications and may have had a significant grasp of the types of issues that were referred to the ad. However, we do not think they would have all been experts in health or homeopathy (even if they had an interest in that area). Whilst the intention of the ad may have been to highlight the desire for increased spending by the NHS on homeopathy, we can only comment on the likely interpretation of the specific claims as they are set out in the ad.

The terms “marketer” and “product” are both defined by the Advertising Codes and I’d therefore invite you to review the Codes to see for yourself what we mean when we refer to these terms. You can find the CAP Code at [www.cap.org.uk](http://www.cap.org.uk); the relevant definitions are in paragraphs III a) and g) of the Introduction.

The ad makes efficacy claims for homeopathy in order to argue the case that the NHS should increase spending on homeopathic treatments. As such, we feel that it is making claims that we consider likely to affect a consumer's understanding on spending on homeopathy in the NHS.

### **Ignorance of scientific and medical principle**

We acknowledge that you have provided a large amount of information and documentation about the scientific and medical principles surrounding homeopathy and how the relevant medical paradigms should be used to examine it.

We have noted your comments about the Evidence Based Medicine (EBM) paradigm. As part of the investigation, we believe that we have appropriately applied the EBM paradigm. We have examined the evidence for efficacy in line with the scientific rationale that health claims and claims for the treatment of disease or chronic medical conditions must be carried out using a consistent methodology to demonstrate efficacy.

This approach has always been the one taken by the ASA and our approach is therefore entirely consistent with good practice and in line with our practice in previous investigations.

Based on the Code rules the ASA and CAP administers when investigating health claims, we have to see evidence for the 'efficacy' of homeopathy. We understand that a comprehensive review of the evidence for homeopathy was carried out as part of the House of Commons Science and Technology Committee Evidence Check 2: Homeopathy. This included the available meta-analyses and randomised controlled trials. We note the conclusions of the Evidence Check 2 report confirmed that, to date, there is no scientific agreement that the efficacy of homeopathic treatment for specific health and medical conditions had been proven.

Whilst we note the concern you raise about the restrictions of relying on the EBM paradigm, evidence for efficacy, objective evidence and proven theories, this ASA investigation is not the right forum in which to discuss the acceptable paradigms when providing evidence for health claims. The Advertising Code is quite clear that objective claims must be backed by evidence, if relevant consisting of trials conducted on people. The substantiation of claims is assessed on the basis of available scientific knowledge.

### **A disproportionate approach**

In order to accept the claim that patients "benefited" from homeopathic treatment, we explained that we would need substantiation that the patient's medical condition had improved as a result of homeopathic treatment. We did not accept that the trial (which examined the self assessment of patients concerning how they considered their symptoms had improved following treatment) was sufficient as evidence to substantiate a health claim.

With regard to the claim in issue four, (that homeopathy was used to treat a disease in the field) we stated that in order to consider whether any improvements in occurrences of the disease could be attributed to the treatment, we would first of all need to see evidence that was collected during clinical trials that the homeopathic treatment alone could prevent the disease from occurring. Preventing disease is a very significant claim and is subject to the very highest levels of evidential requirements.

We noted that in relation to issue six, you quoted from the British Medical Journal (BMJ) website. We agree that it is a trusted publication. However, we have explained that this does not absolve you of your responsibility to make sure the claims made in the ad are supported by evidence. We have not received a complaint about the BMJ's statement. In any event, the statement appeared on their website and is therefore a piece of editorial and not an advert and so not within the ASA's remit. Furthermore, we feel that the context of the claim should also be taken into account when considering this point. This is because the claim about the amount of conventional medicine that has been shown to have an unknown effect is being used within the context of an ad which encourages the idea of more NHS spending on homeopathy.

We note that you disagree with our interpretation of the claims. However, within the context of the ad as a whole, we think most readers would interpret the text "The NHS spends £2 billion annually on treating adverse side effects of conventional drugs. Homeopathy has no side-effects" as a claim that homeopathy was a viable alternative to conventional medicine. As such, we feel this claim should be substantiated. Whilst we note you say that you had not intended to make this claim, we think that it is unlikely to be interpreted in any other way.

### **An arbitrary and inconsistent approach**

I'm sorry that you feel that our approach shows inconsistency and an arbitrary nature. As with all investigations we are constantly processing details and arguments and forming a view. It is entirely normal for that view to evolve as further information is gathered and as we engage with the parties to a complaint.

I don't propose to give detailed explanations for why we have made amendments to the examples that you have given because I feel that the changes merely demonstrate the point I have just made. Our assessment of this case has evolved over time, in response both to feedback from you and from the complainants and this is why our position has changed on some points.

### **The summary of your arguments**

Given the vast amount of evidence provided and the complex arguments presented, it is always possible that we might misunderstand some of the arguments being made by you or by the complainants. However, the purpose of the Draft Recommendation is to allow the advertiser and complainant to comment on the factual accuracy of the document in order to iron out any such misrepresentations or misunderstandings. Further changes have been made to clarify your concerns on point 12 (which you will have already received in the latest version of the Draft Recommendation).

### **The unethical use of justifications**

The ASA has considered all responses in an impartial way and in line with guidance from CAP and previous ASA investigations on the types of claims that can be made. Whilst it may be the case that the ASA has yet to see evidence to support claims for the efficacy of homeopathy, we did examine the information provided (including the 'Evidence Check' documentation) to establish if there was sufficient reason to change our existing position or the way in which we examine evidence for homeopathy.

We have already explained to you that at the present time, the Evidence Check document is the only significant report that has been carried out into homeopathy in recent times and as such we noted its contents with regard to the evidence for the efficacy of homeopathy.

In any event, Ms Newell has made her recommendations based on the evidence that was supplied by you and which has previously been supplied to the ASA and CAP on homeopathy.

### **An unethical approach to homeopathy**

The Executive has never stated nor implied that homeopathy is anything other than legally recognised and has been available on the NHS for the last 60 years.

The ASA is the recognised regulator keeping advertising in the UK legal, decent, honest and truthful. We enforce the Advertising Codes and we are trusted to keep advertising standards high across a wide range of sectors and media.

Your marketing communications are subject to the Advertising Codes and, as such, you must make sure that they comply with them. It's important to remember though that we are not here to regulate the practice of homeopathy itself, merely the advertising claims that are made in the context of that activity.

We have sufficient knowledge and experience to apply the Advertising Codes to your marketing communications and for this reason I don't accept that we are acting unethically in doing so.

### **Inequitable demands**

I can see from your letter that it did take us some time for us to assess the evidence and I agree that we would have liked to have been faster on some occasions. This is however a complex case and one that has required careful analysis by Ms Newell and to that extent I'm not surprised that she has taken longer to consider matters than is typical.

I'd also ask you to bear in mind that, as an advertiser, you are expected to hold substantiation for the advertising claims you make and it's therefore not unreasonable

to expect you to have such information close to hand. This is of course what the Codes require of you.

I'm sorry that you feel that we have not been even handed in making requests for information. You say that you feel that you cannot make mistakes in your submissions. I would suggest that this is not right. The process of investigating a case requires the ironing out of many differences and mistakes can sometimes creep in. If you feel that you have submitted erroneous information then you should let us know what that is so we can put it straight.

We consider that our latest version of the Draft Recommendation provides an accurate summary of your response and that our assessments are sound. Ms Newell has offered you the opportunity of putting in a two page submission to Council if you wish. This is entirely normal practice in complex cases where a party to a Draft Recommendation is in disagreement on points in the assessment. I'm sorry that you feel that this offer is inadequate but it is an option available to you to make use of, should you wish.

### **Conclusion**

I've carefully considered your arguments and I'm unable to agree with the thrust of them, which is that our investigation is seriously flawed.

The ASA has an established role in the regulation of advertising, and nearly 50 years expertise in applying the Advertising Codes. Our regulation of marketing communications is proportionate and targeted and I don't accept that, in this case, we are having the effect of unreasonably limiting free speech or access to legitimate information.

It will be for the ASA Council, a majority of which are from a non-advertising and marketing industry background, to assess whether your ad has breached the Code and they will apply their independence of action in doing so.

I'm sorry that this matter has caused so much concern for you but I believe that we are investigating this matter appropriately. I've asked Ms Newell to contact you shortly with her next steps to take this matter forward.

**Yours sincerely,**



**Guy Parker**  
Chief Executive