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Homeopathy: Medicine for the 21st Century

Poppyseed Cottage, High Street, Stoke Ferry, Norfolk PE 33 9SF

Guy Parker
Chief Executive
Advertising Standards Authority
Mid City Place
71 High Holborn
London WC1V 6QT

8 June 2011

Dear Mr Parker

We wrote to you on 16 May 2011 to formally complain about the way the ASA investigation team is handling complaints made about an advertisement published by us in a Care supplement of the *New Statesman* in the autumn 2010 (reference: A10-139800/JN). Since then we have had additional correspondence from the investigation team and, given their responses, we no longer have confidence in the ability of this team to understand the issues involved in this case or to assess the facts impartially. The concerns we have regarding the performance of the team cover three critical areas of the investigation.

- Lack of timely response
- Errors in the summaries of our responses
- Errors in the assessments

The lack of timeliness indicates a lack of respect for our organisation and puts unacceptable pressures on us. The combined errors in the Draft Recommendation could seriously mislead the ASA Council and contribute to an inappropriate judgement which does not reflect the truth of the matter. Outlined below are examples of some of the additional issues and errors which we would like to bring to your attention.

Lack of a timely response

The latest Draft Recommendation was finally sent on 17 May, almost seven weeks after our submission of 30 March, and nearly a month after we were originally told it would arrive. In this Draft Recommendation we were informed by the Investigation Executive, Janet Newell, that

We consider that this Draft Recommendation is an accurate reflection of your responses and that your assessments are sound. We will not be making any further changes to the Draft

Recommendation and will therefore be submitting the case to the ASA Council for its decision.

In my letter of 22 March, we invited you to write a direct submission to Council to consider during the decision making process. This offer is still open to you provided it is provided by 27 May and is no longer than two A4 pages in length.

We notified Ms Newell that we had made a complaint about the process and that we believed that this should be dealt with before any submission was made to the ASA Council. We received an acknowledgement of our email, with the promise of a response “in due course”, but we had not received such a response by 4 p.m. on the 27 May, and we wrote again to ask whether the deadline had been extended. We received a reply on 31 May. The email exchanges are attached.

The Draft Recommendations and our necessary responses to them now total nearly 120 pages, largely as a result of the investigation team’s failure to understand our arguments or the evidence, and its failure to accurately present these in the Recommendations. We are a small organisation, and dealing with the complexities of this case takes a significant proportion of our resources. The failure of the investigation team to provide us with accurate warning of when to expect a new draft, coupled with the extremely short periods we are permitted within which to respond, places an unacceptable burden on us. This has already led to one request for an extension (of a single day) and to a failure to include important information in a response.

At the same time, we are concerned that the Investigation Executive did not respond ‘in due course’ to our email concerning the formal complaint about the conduct of this case, but only after the deadline had passed, and then in response to a further email. The lack of a prompt response meant that we had to prepare a submission to the ASA Council in anticipation of the hearing taking place regardless of the serious issues surrounding the way the case has been handled. The preparation of this extremely complex document, which should now be irrelevant to the case, constitutes an unacceptable waste of our time.

Errors in the summaries of our responses

We also informed Ms Newell of our concern about the errors of fact in the draft recommendation. Every single summary of our responses contains some mistake, and some of these are serious. Indeed, some summaries contain nonsense, and others include statements which we not only have not made, but with which we actually disagree. We give a selection of examples below.

- In the opening paragraph of the response section, we are alleged to have “argued that the use of that paradigm [evidence based medicine (EBM)] was unjustifiable as a means of assessing the efficacy of homeopathy”. We have never said this, and it does not make sense. The assessment of efficacy is not a product of applying the EBM paradigm, but one activity which forms part of that approach, together with the use of clinical expertise and formal assessments of effectiveness,

and so on. The assessment of efficacy is a process entirely independent of the paradigm, and the problems we explained relating to this process are not applicable to the paradigm as a whole.

- In response 2, we are alleged to have said that all “6,544 participants reported a decreased reliance on prescribed pharmaceutical medication and associated side effects”. We have never said this, but only that 70.7% of these patients had benefited from homeopathic treatment.
- In response 7, we are alleged to have stated that the amount spent on homeopathy in the NHS is 0.001% of the NHS drugs budget but 0.004% the total NHS budget, and that if this amount were increased to 1% (of one of these budgets) then 27 times as many patients would benefit. This is nonsense. The investigation team have failed to distinguish between two entirely separate figures: spending on homeopathic remedies and spending on the provision of homeopathic treatment as a whole, that is, including medicines, personnel and premises. Furthermore, an increase in spending from just under 0.004% to 1% is a 270-fold increase not a 27-fold increase. This is the third time that the investigation team has failed to accurately present the figures in our initial evidence. It suggests that the team is unable to understand our evidence and unable to recognise basic arithmetical relationships. We are profoundly concerned that a team lacking these basic competencies is being allowed to summarise the complex evidence we have provided.
- In response 9, we are alleged to have “stated that they had previously critiqued the publication [*Trick or Treatment?*]”, whereas we actually submitted this detailed critique as evidence. The investigation team has given no indication that it has read this evidence, even though support for our claim for the lack of scientific validity of this 328-page book would require such a detailed analysis. Nobody, not even Edzard Ernst or Simon Singh, has refuted this critique, and a recently published book has praised it as “exceptional”.¹ We should point out that the statement that the critique was written by the Chair of H:MC21 is not accurate (Assessment 9). The author was not elected to that position until some time after the critique was published, and he does not currently occupy a position as a Trustee, let alone as Chair.
- In response 10, we are alleged to have said that “it could not be considered irresponsible to make reference to the savings made through homeopathy”. We never said this.
- In response 11, we are alleged to have responded that “Professor Edzard Ernst had stated that he did not have a qualification in Homeopathy and that they therefore believed he was unable to objectively assess any evidence for the medicine”. We have never said this, and it actually appears to be a combination of three statements about completely separate issues.

¹ Martin J. Walker, *Dirty Medicine: The Handbook* (London: Slingshot Publications, 2011), p. 242.

- In response 12 several statements have been combined to produce nonsense. It is alleged that we “supplied the formal minutes of the Science and Technology Committee hearings which stated that t [sic] given the profound changes demanded by the report, it was not irresponsible for the public to be made aware that only three out of 14 MP’s had actually voted for it”. Clearly the minutes could have stated no such thing.
- We should also like to point out that the investigation has not made clear in this document the extent of the evidence we provided from recognised conventional medical sources, or that many of the things we are alleged to “believe” are actually statements derived from those sources.

The overwhelming impression given by these alleged summaries of our responses is that the mistakes made by the investigation team are actually our mistakes, and that our evidence is based on ignorance, belief, false reasoning, poor arithmetical skills and lack of understanding.

We consider it profoundly unethical to deny us the right to try and get these errors corrected, and to insist on submitting such an inaccurate presentation of our case to the ASA Council.

Errors in the assessments

We have outlined some of the errors in the investigation team’s reasoning in our earlier complaint, and we do not consider it helpful to detail all the complex mistakes made in this section of the Draft Recommendation. At the same time it is essential to bring to your attention one extraordinary development in this draft.

In our discussion of assessment 8 in our original letter to you, we pointed out that between the first and second drafts the investigation team had presented radically different interpretations of our published statement. We include the first two versions below for your convenience:

We therefore considered that most readers would interpret this statement to mean that Sense About Science was wholly funded by the pharmaceutical industry. (Recommendation 1st draft)

We considered that most readers ... would understand the statement to mean that because the charity was partially funded by the pharmaceutical industry, its findings were biased and unreliable. (Recommendation 2nd draft)

However, in this third draft the assessment includes the following addition:

We noted H:MC21 had shown that Sense About Science had been partially funded by the pharmaceutical industry between 2005 and 2009 but had not shown that they were being partially funded by the industry at the time at which the ad appeared. We also considered that, in the context of the ad, H:MC21 had presented their the [sic] 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.

This is the first occasion on which the issue of the timing of Sense About Science's funding by the pharmaceutical industry has been raised, and we have been given no opportunity to address this argument. If this were a significant matter, it should have appeared in the first draft, but its appearance here without any information from H:MC21 in response lends it a spurious significance. The ASA Council would reasonably assume H:MC21's failure to respond to this point was a result of a deficiency in our evidence rather than the result of a lack of any opportunity to respond.

More seriously still, the investigation team has included a completely new complaint in this assessment, about our statement that Sense About Science relies on a strategy of propaganda stunts rather than scientific research. It has claimed that we have not provided evidence to support our statement, when it has actually denied us any opportunity of submitting evidence on this issue by presenting the complaint in the "final" draft and stating that it "will not be making any further changes to the Draft Recommendation". The ASA Council of course, would be wholly unaware of the circumstances surrounding this complaint, and so would again be misled as to our ability to support our statement. We consider this behaviour so grossly unethical as to beggar belief.

Furthermore, we have actually submitted some evidence relevant to this new complaint, but it was excised by the investigation team when the original complaint 11 was withdrawn. At that time we questioned "why the evidence provided in response to the original complaint 11 was not transferred to the challenges which followed it where relevant." The investigation team responded that (our emphasis)

We note your comments that the evidence was not referenced in the remaining issues concerning claims about the opposition to homeopathy, but noted those claims were more specific and so specific evidence was needed to substantiate them. (Letter 21/3/11 para. 18)

In other words, evidence relating to the activities of Sense About Science was explicitly not relevant to complaint 8 at that time, and yet we are accused of failing to supply such evidence now.

We had expressed concern in our previous letter about detractors of homeopathy abusing the ASA complaints procedure in order to discredit homeopathy. We are now profoundly concerned that the investigation team is abusing the same procedure for the same ends. As things stand, we no longer have confidence in the ability of this investigation team to understand the issues involved in this case or to assess the facts impartially. Nonetheless, we still hope and believe that these problems can be dealt with by the ASA itself.

Yours sincerely

Paul Burnett

On behalf of the Trustees of Homeopathy: Medicine for the 21st Century
admin@hmc21.org

Email exchange in respect of the most recent Draft Recommendation

On 23 May 2011 at 15:42 Paul Burnett wrote:

Janet Newell
Investigations Executive
Advertising Standards Authority
Mid City Place
71 High Holborn
London WC1 6QT
23 May 2011

Dear Janet Newell

Reference: A10-139800/JN

We have received your latest letter and draft recommendation. We note that you refuse to make any further changes to this draft, and that we have until the 27 May to provide an additional direct submission to the ASA Council, if we wish, of no more than two A4 pages.

We have already made a formal complaint about the conduct of this investigation, and we believe that this should be concluded before the case proceeds.

We note that we are entitled to comment on “the factual accuracy of the draft Recommendation” (Non-broadcast Complaint Handling Procedures, 26). The current draft recommendation still contains significant errors of fact. As such, it will provide misleading information to the ASA Council, and we consider this to be unethical.

We also note that this draft recommendation contains wholly new arguments which are refuted by the evidence we have supplied, but which we are not being permitted to address at this point. We consider it unethical to rewrite the terms of a complaint and then not allow an opportunity to respond.

In the light of these issues and other statements made in the letter accompanying the recommendation, we consider that the investigation team is denying us the right to a fair hearing by the ASA Council.

Yours sincerely,

Paul Burnett
On behalf of the Trustees of Homeopathy: Medicine for the 21st Century

On 23 May at 15:49 Janet Newell wrote:

Dear Mr Burnett

Thank you for your email. We note its contents and will respond in due course.

Kind regards

Janet Newell

On 27 May at 16:27 William Alderson wrote:

Dear Janet Newell

I understand that Paul Burnett has written to you, but I have not been told of any reply.

Since the deadline for our two-page submission to the ASA Council is today, we really need to know whether the ASA plans to go ahead despite the points made in his letter, or whether these issues are to be dealt with first.

William Alderson
Special Consultant, Homeopathy: Medicine for the 21st Century
reply@hmc21.org

On 31 May 2011 at 09:05 Janet Newell wrote:

Dear Mr Alderson

Thank you for your email. Please accept my apologies for the delay in responding, I was not in the office when your email was received.

I understand that Mr Burnett has raised concerns about certain elements of the investigation and that you had requested that the case be delayed until such a time that these issues are resolved.

Whilst we are willing to hold off on sending the case to Council until such a time that you have received a response to your complaint, I am unable to give an assurance that the case will be held until all of your concerns have been resolved (it may be the case that you are never going to agree with the ASA's position on some points). I will write to you again once you have received a response to your letter of concern and a new date will be set for any responses or submissions at that time.

Kind regards

Janet Newell