

Annex U

# **The ASA's Supplement to the Update on the Process Review**

**More effective, efficient, cost-effective and  
in tune with our stakeholders**

March 2011

Legal, decent, honest, truthful.  ASA

MOD100008755

Annex U

**Contents**

<b>Section 1</b>	Introduction	2
<b>Section 2</b>	Update on the ASA's Response	3 - 5
<b>Section 3</b>	Other ideas	6
<b>Section 4</b>	Summary of newly identified savings	7

Annex U

## 1. Introduction

This paper, *The ASA's Supplement to the Update on the Process Review (Supplement)*, provides a further update on how we are responding to the recommendations in Berkshire Consultancy Ltd's *Process Review Final Report (Berkshire's Report)* of 31 March 2010.

*The ASA's Preliminary Response to the Process Review (Preliminary Response)* was published on 24 June 2010 and *The ASA's Update on the Process Review (Update)* was published on 6 December 2010.

### 1.1 Our commitment

The Process Review is about getting better at what we do. Being more effective, efficient, cost-effective and in tune with our stakeholders. It is not just about saving money, although it has identified real savings that, together with the notional savings, are already greater than the cost of the consultancy that conducted the review.

This supplement fills in one or two gaps in December's update, showing our continued progress. The recommendations we are taking forward will benefit consumers by helping to make our operations more efficient, more focused on priorities and more effective at resolving investigations quickly.

They will also benefit advertisers and other stakeholders by increasing their awareness of our operations and how we apply the Advertising Codes, enhancing two-way communication, closing cases more speedily and, ultimately, helping to improve the already high level of compliance with the advertising rules.

We will publish *The ASA's Final Response to the Process Review* later in 2011, probably in Q3. It will outline in full the changes we are introducing, which we expect to have a lasting effect on our work.

Annex U

## 2. Update on the ASA's response

### 2.1 Investigations

- Develop firm criteria outlining the circumstances in which an informal resolution can be delivered.
- Focus on educating advertisers and increasing the number of informal resolutions.
- Choose the appropriate communication medium – would a telephone call be more collaborative and productive than e-mail?
- Implement submission limits.
- Measure and report the 'waiting time' of cases, and actively manage the progress of cases, regardless of which party is holding up the process.
- Introduce 'timetabling to conclusion'.
- Consider introducing charging for competitor complaints (perhaps with sliding scale of fees coupled with a fast-track process).

#### 2.1.1 Faster Formal Investigations (Formals)

- As mentioned in our December update, we analysed elapsed time in 10% of the cases we formally investigated in 2009 to determine who had responsibility for the case during its life cycle, for how long and how we might reduce 'waiting' time. The results of that 'Waiting time' analysis showed that the ball was in the court of our executives/managers for an average of 69 calendar days per case. That included an average of 15 days when cases were being assessed for their suitability for investigation. The ball was therefore in the court of our investigating executives/managers for an average of 54 days. It was in the advertisers' court for an average of 24 days. The analysis also provided useful data on the average elapsed days, and range of elapsed days, at various key stages.
- We are focusing on reducing 'waiting' time by:
  - setting internal standards for completing key stages of investigations;
  - setting and enforcing more challenging deadlines for external parties;
  - continuing our use of 'timetabling to conclusion'. 'Timetabling to conclusion' involves ensuring that all interested parties are clear early on in appropriate investigations, i.e. difficult investigations that are, or are likely to be, robustly fought by the interested parties, of the deadlines and the ASA's intention to stick to them and
  - adopting stricter criteria for Complex Investigations with a view to increasing significantly the proportion of investigated cases that attract the much more demanding Standard Investigations' turnaround target of 85, rather than 140, working days.

##### 2.1.1.1 Internal standards

- Our 'Waiting time' analysis showed that the time taken from the day on which cases were allocated for investigation (i.e. after they had been assessed) to the day on which correspondence was sent to the advertiser for comment averaged almost nine calendar days, with a wide range. That is the one stage over which our investigating executives/managers have complete control. From 1 March 2011, we will set an internal target of five working days for that stage.
- We already operate an 'Internal Target Date' for all formally investigated cases, that being the date by which our recommendation must be sent out to interested parties to ensure a

## Annex U

case is closed within its overall target. The Internal Target Date for Standard Investigations will, from 1 March, be shortened by five working days.

### 2.1.1.2 External deadlines

- We will, from 1 March 2011, reduce the time non-broadcast interested parties have to respond to notification from us of all except 'taste and decency' cases from 10 to seven working days. Seven days is in line with our current deadline for broadcast interested parties. The deadline for 'taste and decency' cases will remain at five working days. More time might be allowed for complicated investigations or in other exceptional circumstances. As before, the grounds for an extension request should be set out in writing; an extension is unlikely to be granted for longer than five working days and repeated requests for extensions are likely to be refused.

### 2.1.1.3 Timetabling to conclusion

- We already use 'timetabling to conclusion' successfully to move on difficult, robustly defended cases. We will continue to do so.

### 2.1.1.4 Stricter criteria for Complex Investigations

- Following analysis, we will, from 1 March 2011, restrict our criteria for categorising cases as Complex. Certain types of case, for example those that we have attempted, unsuccessfully, to resolve as No Investigation after Council Decision cases, multi-media cases, competitor cases that are not being investigated under a substantiation rule, teleshopping cases and cases that are re-presented to the ASA Council for a vote, will no longer automatically be categorised as Complex Investigations.
- We are setting ourselves the target of increasing the proportion of Standard Investigations from its current 55% of total formal investigations<sup>1</sup> to 70%, a 15 percentage point increase, without compromising our average day turnaround performance for Standard and Complex Investigations and without significantly affecting our KPI of closing 80% of Standard and Complex Investigations within target.
- We will strive to do that over two years from implementation, aiming to achieve a 7.5 percentage point increase in each 12 month period and the full 15 percentage point increase by 1 March 2013. If successful, we will free up 'case days' with a notional efficiency value of £67,804.84 per year<sup>2</sup>.

### 2.1.1.5 Overall impact of changes

- We expect the above changes to have an impact on the average number of working days that we complete all formal investigations. That figure currently stands at 73 working days<sup>3</sup>. We are targeting a five working days reduction to 68 working days by 1 March 2013. That constitutes a 7% reduction. We will again strive to do that over two years from implementation, aiming to achieve a 2.5 working day reduction each year. If successful, we will free up 'case days' with a notional efficiency value of £65,174.28<sup>4</sup>.

## 2.1.2 Competitor charging

---

<sup>1</sup> based on case levels in the 12 months leading up to November 2010

<sup>2</sup> based on case levels, performance and expenditure in the 12 months leading up to November 2010

<sup>3</sup> based on completed formal investigations in the 12 months leading up to November 2010

<sup>4</sup> based on case levels, performance and expenditure in the 12 months leading up to November 2010

## Annex U

- As mentioned in our December update, our preliminary work on competitor charging revealed that Section 28(2)(a) of the Communications Act prohibits Ofcom from charging for services it is under a duty to provide. We have sought legal advice and believe that that prohibition extends to us; it would be unlawful for us to charge for investigating competitor complaints about broadcast advertising. We considered introducing a charge for complaints about non-broadcast advertising, but that would run counter to our drive towards a media neutral regulatory approach.
- We are, with ISBA and some of its members, re-examining introducing a charge for an expedited competitor complaint handling process, for example involving tighter response deadlines and fewer opportunities to argue the case, with those who chose not to pay receiving a normal service. For that to be successful, we will need to overcome the hurdle that competitor complainants might be willing to pay for an expedited service, but most advertisers would, in our view, opt for the normal service, all other things being equal.
- We continue to consider other ways of reducing the number and nature of 'tit-for-tat' complaints, for example insisting that competitor complainants provide documentary evidence that they have made a genuine attempt to resolve their concerns direct with the advertiser before we will agree to investigate.
- We will report again in our final report.

## 2.2 Consistency

- Improve collaboration with Clearcast, to develop a more common interpretation of the BCAP Code which in turn will build further trust in the overall self-regulatory system.
- Introduce a common pool of experts with Clearcast and make that pool more transparent to advertisers.
- Facilitate collaboration with TSOs to reduce inconsistencies.

### 2.2.1 Common pool of experts

- As mentioned in our December update, we already provide Clearcast, and its experts, with an opportunity to respond to the grounds to any complaint before we consult our own expert; if we are satisfied with Clearcast's or its expert's response, we do not need to go to the time and expense of consulting our own expert. And we are going further in the cosmetics/dermatology area, the source of a disproportionate number of 'battles of the experts'. We, Clearcast and the RACC are establishing a common pool of experts. We have identified five experts who will form that pool. An 'experts' meeting took place on 26 Nov '10 and made real progress discussing: expert selection criteria; guidance for the development and support of claims in cosmetics' advertising; the approach to assessing evidence for claims; areas of concern, e.g. over the level of evidence required for certain types of claim; and how the pool might work operationally.
- Some experts from the pool are currently working on papers on two of those specific issues: the scientific basis for a particular type of claim; and the underpinning for certain clinical studies. That will further help to establish a consensus scientific view, which all members of the pool will operate to, on those key issues.
- We will soon be publishing details of the experts concerned.
- We expect the pool officially to start operating no later than Q2 2011 and will report again in our final report.

Annex U

### 3. Other ideas

#### 3.1 Charge for premium Copy Advice service

- Copy Advice to charge for rapid turnaround.
- As mentioned in our December update, Copy Advice will, from the end of Q1/beginning of Q2 2011, apply a premium charge for rapid turnaround of enquiries from advertisers and agencies. The four hour turnaround will mean that queries submitted before 2pm would be turned-around that same day. The purpose is to regulate the flow of potentially disruptive and time-consuming last minute requests, reducing substantially the number of such requests. That will help advisors to manage their time and to concentrate on other service areas more efficiently. The charge will be £200 + VAT per enquiry, with a 15% discount for upfront online payment. We estimate that such requests could reduce to around 50 per year, which would generate £10,000 (excluding discounts) in year 1.
- In addition, the Copy Advice team launched, from 31 January 2011, a new premium bespoke Website Audit service for advertisers. The audits offer a tailored and expert assessment of companies' websites against the CAP Code with a view to giving their marketing communications a clean bill of health and providing compliance guidance. The aim is to give advertisers peace of mind that marketing communications on their websites comply with the advertising rules, when the ASA's remit is extended online.
- The purpose is to enable the Copy Advice service to manage its resources and help regulate the flow of time-consuming requests to provide advice on entire websites, reducing substantially the number of such requests. That will allow the team to maintain service levels in existing advice, guidance and training areas. The charge is £800 + VAT for standard audits. We estimate that such requests could generate £40,000 in year 1.
- We will report again in our final report.

Annex U

#### 4. Summary of newly identified savings

- 'Notional efficiency value' is a metric that attributes a £ value to changes, allowing them to be compared. It is primarily a relative measure and so should not be confused with absolute 'Savings' and 'Notional savings'. It is derived by working out the cost per 'case day', a 'case day' being one day of elapsed time for one case, and then applying that to the number of 'case days' freed-up by a change and
- 'Income' is direct income from a charge for our added-value services.

##### 4.1 Notional efficiency value

Increasing the proportion of Standard Investigations from 55% to 70% over two years will free up 'case days' with a notional efficiency value of £67,804.84 per year from 1 March 2013.

Reducing the average turnaround of all formal investigations by five working days over two years will free up 'case days' with a notional efficiency value of £65,174.28 per year from 1 March 2013.

##### 4.2 Income

Income from charging for Copy Advice Website Audits = £40,000 in year 1 from 31 January 2011.