

**From:** F4H  
**Sent:** 29 May 2014 11:09  
**To:** Daniel Maher  
**Subject:** Ofcom Proposal To Renew The Co-Regulatory Arrangements For Broadcast Advertising

Dear Sir,

We would like to register concern about the way in which the Advertising Standards Authority deals with claims in the field of natural and alternative health in a discriminatory and biased manner. We realise that (to our knowledge) there are no specific instances of the ASA acting in the way described below in the broadcasting field, yet we are concerned that such a practice may affect future instances of broadcasting standards and may already be doing so.

ASA is an advertising member association acting on behalf of its members. Natural therapy associations and practitioners are not members of ASA, but ASA is threatening them with legal and other actions that are restrictive to their practices.

ASA gives the impression to be an official government body (using the name "Authority" in its name and in the tone and approach to people it contacts) when this is not the case.

We also know of at least one case where Ofcom had accepted advertising material yet the ASA did not. It seems that CAP also changed its application of its own code and so, for example, in the past, practitioners could use patients' testimonials on their websites yet this appears not to be acceptable to the ASA anymore.

To be more specific, we have concerns about a number of ASA procedures:

1. The ASA does not base its decisions on "the available scientific knowledge" (CAP Code 12.1), or even on the dominant paradigm of evidenced based medicine (EBM). It is adopting the radical view that only randomised controlled trials (RCTs) are 'objective' and have validity, and that patients' reports on their own health are 'subjective' and invalid, even when backed by other evidence. This position is not only unscientific but is extremely hazardous to the health of patients. 85% of the information required for diagnosis comes from what the patient says. In addition, about 50% of RCTs of medicine as a whole are inconclusive. The MHRA 'yellow card scheme' exists precisely because 'objective' trial results are not reliable guides to the reality of clinical practice.
2. The ASA is refusing to permit publication of evidence of effectiveness in clinical practice, even when the evidence is gathered by national health services from thousands or millions of people, and even when nature of the evidence is clearly identified.
3. The ASA does not have the competence to assess evidence relating to holistic, natural or integrative medical practice.
4. When the ASA does employ the services of 'experts', their qualifications, career path and financial interests have previously been almost entirely allied to conventional medical pharmacology, with no evidence of any training or qualifications relating to the subject therapy.
5. Faced by evidence which contradicts its arguments, the ASA has redrafted the arguments, ignored the evidence, or even redrafted the complaint in order to retain the same conclusion. One complaint was radically redrafted after seven months of

correspondence, despite the fact that the ASA requires that “Complaints must be made within three months of the marketing communication’s appearance”.

6. The ASA makes claims without producing any evidence to support them, and then bases its conclusions on such unsupported claims.
7. The ASA uses slanted language. The investigation team consistently slants its presentation of marketers’ cases negatively by stating that they ‘believe’ that their evidence supports their statements, and ‘believe’ their conclusions to be true. On the other hand, the investigation team positively slants its own opinions by ‘considering’ its own statements to be the case, even when these are opinions unsupported by any evidence, and by ‘concluding’ from these opinions as though they were based on sound evidence.
8. The ASA investigation team presents the ‘prosecution’ case to the ASA Council; the investigation team has complete control over the presentation of the ‘defence’ case; and the investigation team also recommends the judgement. This is a fundamentally flawed approach to justice, especially in the context of the other issues outlined above.
9. The ASA intimidates advertisers, who are mainly self-employed therapists, with language that makes the ASA sound like a government agency, when in fact they are a private limited company created by the advertising industry.

We are therefore concerned that the ASA be given an extended license to adjudicate and suggest that their procedures are thoroughly reviewed.

Should you require further information please do not hesitate to contact me.

Yours sincerely,

Freedom4Health