



The Consumer Healthcare Association

# Advertising Guidance External Complaints

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## 1. About this guidance

This document has been created to provide guidance on processes for reporting non-compliant advertising materials created by non-member companies across the three membership categories.

PAGB can provide advice on complaints but will only take action on behalf of PAGB in circumstances relating to wider industry issues.

## 2. Process

If you wish to make a complaint about a product please use the decision trees in Appendix 1 to make an initial assessment of the best route for making your complaint. If you cannot find an option that suits the material type you can contact [advertisingcomplaints@pagb.co.uk](mailto:advertisingcomplaints@pagb.co.uk) for further guidance.

Once you have decided the best route of complaint see Section 3 for further information about the process for making a complaint to the relevant body

## 3. Regulatory bodies and their processes

### 3.1. The Advertising Standards Authority (ASA)

#### 3.1.1 Remit

The ASA investigates complaints regarding broadcast (under the BCAP Code) and non-broadcast (under the CAP Code) advertising. A detailed breakdown of the ASA's remit is available on their website for [non-broadcast](#) materials.

Key materials outside of remit that will have relevance to PAGB members are:

- claims, in marketing communications in media addressed only to medical, dental, or allied practitioners, that relate to those practitioners' expertise
- packages, wrappers, labels, and price lists unless they advertise another product or a promotion or are visible in a marketing communication
- point-of-sale displays, except those covered by the promotional marketing rules.

#### 3.1.2 Process

The ASA obliges industry complainants to attempt to resolve complaints about competitors directly with them before contacting the ASA.

Members should raise their concerns with the advertiser, ideally by registered post, or by another means of communication which will guarantee swift receipt. The complaint must provide an appropriate degree of detail in relation to the claim and the media in which it appeared together with the factual grounds for complaint. The advertiser should be able to readily identify the advertisement and understand what is alleged.

The complaint should be signed by a suitably senior officer (e.g. CEO, Legal, Marketing or Regulatory Director) or by a person who has suitably delegated responsibility for the accuracy of the complaint. The complaint should be addressed to a senior officer or other appropriate contact of the advertiser.

Members should allow five working days for a response. If, at the end of that period, the advertiser has not responded or you have other reasonable cause to believe that the advertiser will not act within a reasonable timeframe or in good faith in response to your complaint or you cannot reach an agreement, you are able to take your complaint to the ASA.

To make a complaint they will expect complainants to demonstrate that they've tried to resolve the issue directly, grant permission for the company or organisation to be named as the complainants, and confirm that no legal action is underway or will be initiated by the company or organisation in connection with the complaint.

If you have complied with the above and wish to take action, members can log their complaint at <https://www.asa.org.uk/make-a-complaint.html>.<sup>1</sup>

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<sup>1</sup> Advertising Standards Authority Website, <https://www.asa.org.uk/make-a-complaint.html>, 24/11/2020

## 3.2 The Medicines and Healthcare products Regulatory Agency (MHRA)

### 3.2.1 Remit

#### **Advertising Standards and Outreach Unit**

The Advertising Outreach Unit will investigate complaints regarding advertising for medicines which is misleading or otherwise fails to comply with the legal requirements, whether directed at consumers or professionals.

#### **Borderline Section**

The Borderline Section will investigate complaints regarding products making medicinal claims for unlicensed and unclassified products.

#### **Compliance Unit (medical devices)**

The Compliance Unit (medical devices) will investigate complaints regarding advertising for classified medical devices which make misleading or unsafe claims.

### 3.2.2 Process

Normally, if an advertisement is identified that is believed to be in breach of the legislation the first consideration and point of contact for companies should be the licence holder or advertiser outlining the concerns regarding their advertising.

If your complaint relates to a licenced medicine, complaints should be directed to the Advertising Standards and Outreach Unit. A checklist of what to include and details of how to do so are outlined in [Chapter 2 of the Blue Guide](#).

If the advert makes medicinal claims for a non-medicinal product, or it is unclear what type of product is promoting, complaints should be directed to Borderlines Section at [borderline\\_medicine@mhra.gov.uk](mailto:borderline_medicine@mhra.gov.uk)

If your complaint relates to advertising for a classified medical device the complaint should be addressed to the Compliance Unit (Medical Devices) at [devices.compliance@mhra.gov.uk](mailto:devices.compliance@mhra.gov.uk)

## 3.3 The Food Standards Agency (FSA)

### 3.3.1 Remit

The Food Standards Agency is responsible for food safety and will investigate complaints regarding food products or ingredients that could be harmful to consumers.

#### **The National Food Crime Unit (FCU)**

The Food Crime Unit is a dedicated law enforcement function of the FSA and will investigate serious fraud that impacts the safety or authenticity of food, drink or animal feed. Among others they will investigate complaints regarding adulteration of products, sale of illegal substances and marketing or labelling claims that misrepresent a product's quality, safety, origin or freshness. A detailed breakdown of the FCU's remit is available on the FSA [website](#).

### 3.3.2 Process

To report a food crime committed in England, Wales and Northern Ireland, businesses can log their complaint at <https://www.food.gov.uk/contact/businesses/report-safety-concern/report-a-food-crime?page=overview>, or via their [Food Crime Confidential Hotline](#).

Suspected food crime committed in Scotland should be reported to [Food Standards Scotland](#). This can be done via their Food Crime Hotline or using their [online webform](#).

Members should also report food crime to the relevant company's local Trading Standards Office. Members should contact [Trading Standards](#) to find this information.

## 3.4 Trading Standards

### 3.4.1 Remit

Trading Standards is responsible for ensuring businesses comply with trading standards law and enforce the law across a range of areas, including fair trading (description of goods, digital content and services, pricing and T&C's) and food standards and safety, among others. They will investigate complaints regarding point of sale advertising and misleading or non-compliant food labels (e.g. description, ingredients, health claims, weights).

### 3.4.2 Process

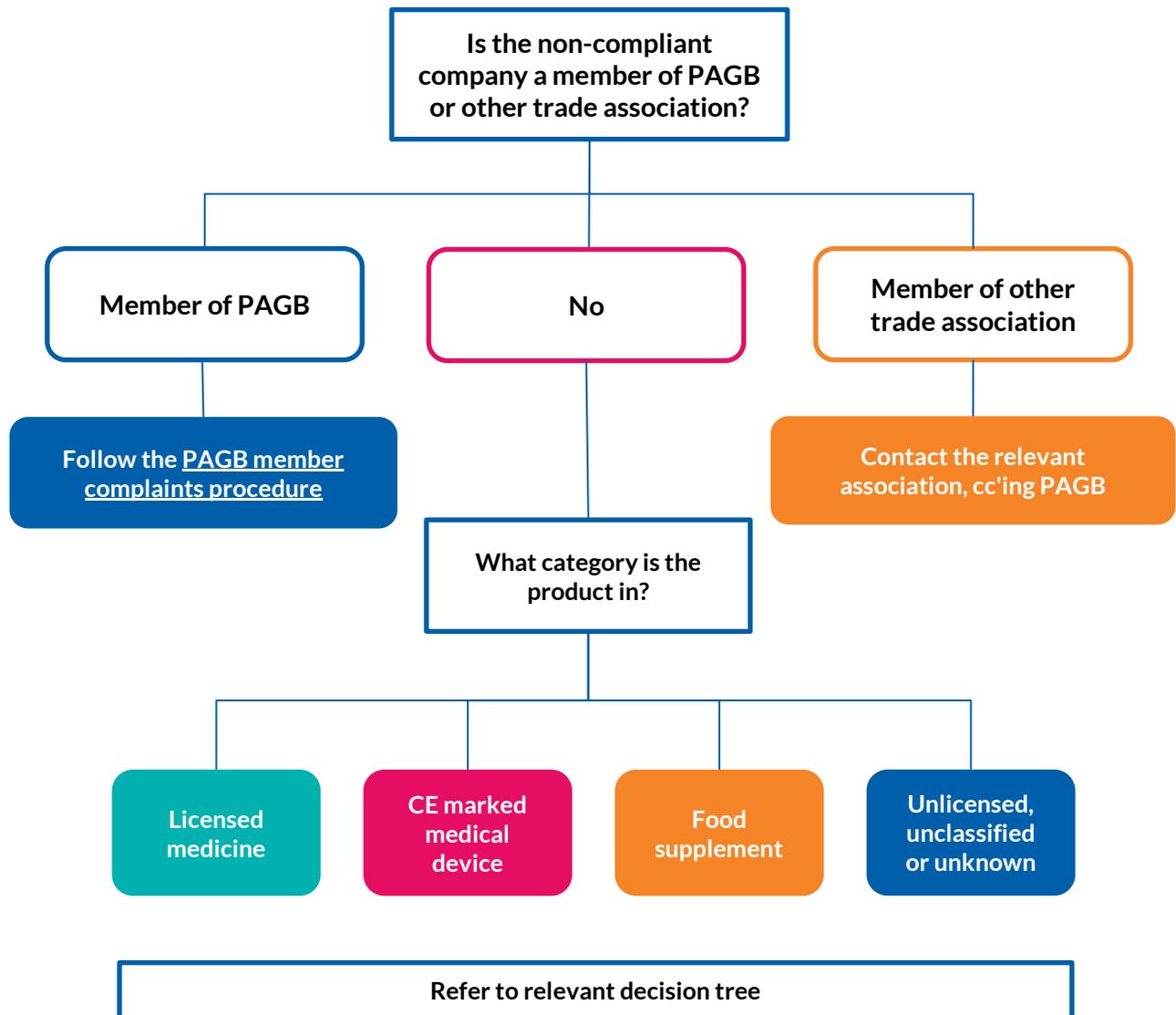
To make a complaint members should contact [Trading Standards](#) to find their local Trading Standards Office (TSO).

In Scotland, complaints can be directed to their local [food safety team](#). Local authority food safety teams are responsible for food business in the area.

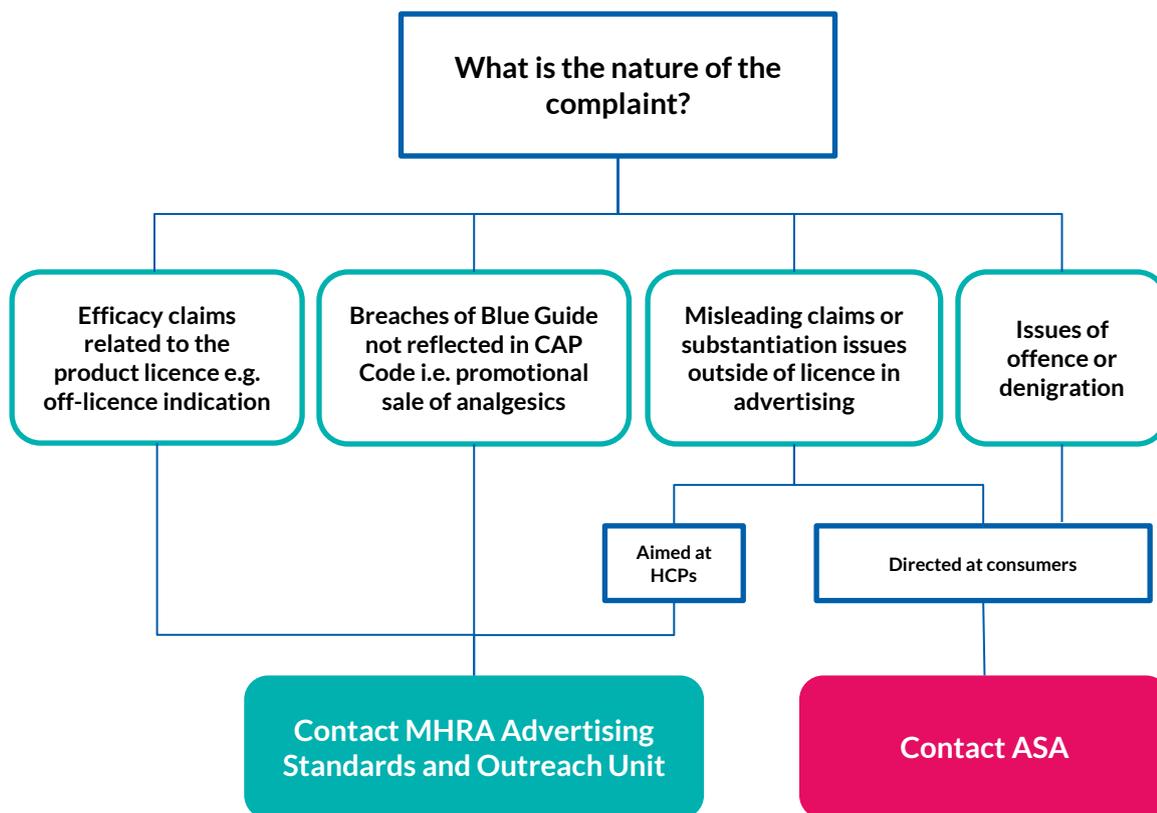
PAGB's Codes of Advertising Practice, guidelines and additional guidance are available at [www.pagb.co.uk/codes-guidance](http://www.pagb.co.uk/codes-guidance). Log in to the members' area to access the full range of guidance. For more information, contact [info@pagb.co.uk](mailto:info@pagb.co.uk).

# Appendix 1: Decision trees

## Initial Assessment

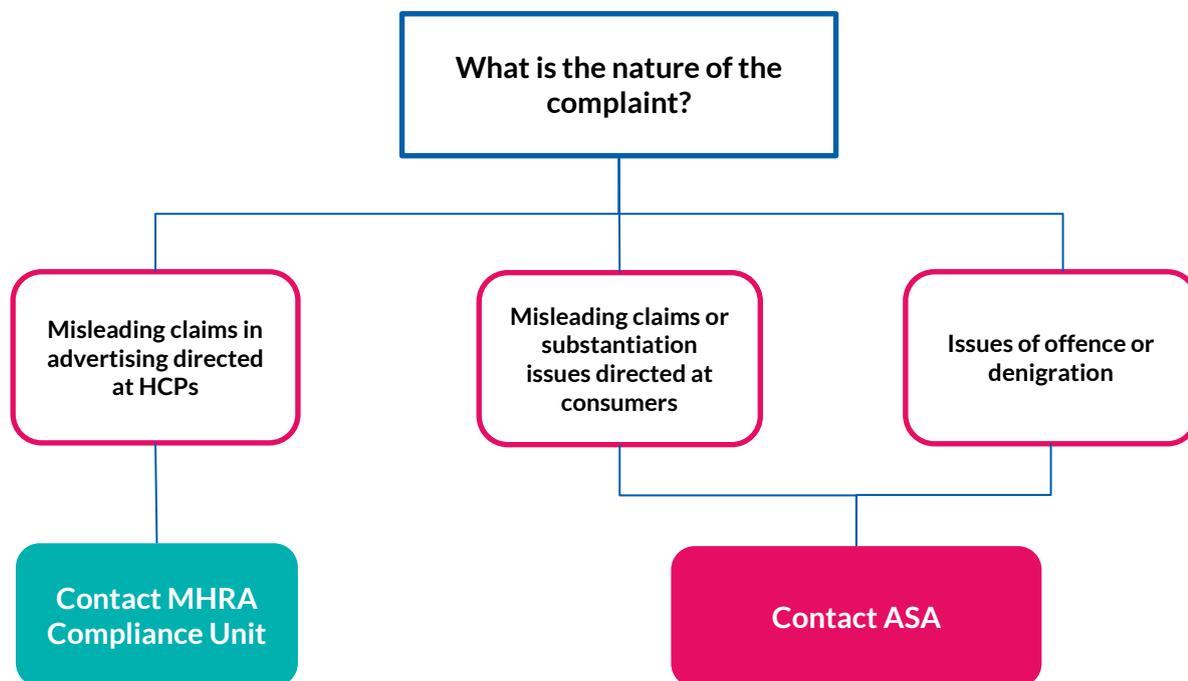


## Licensed medicine



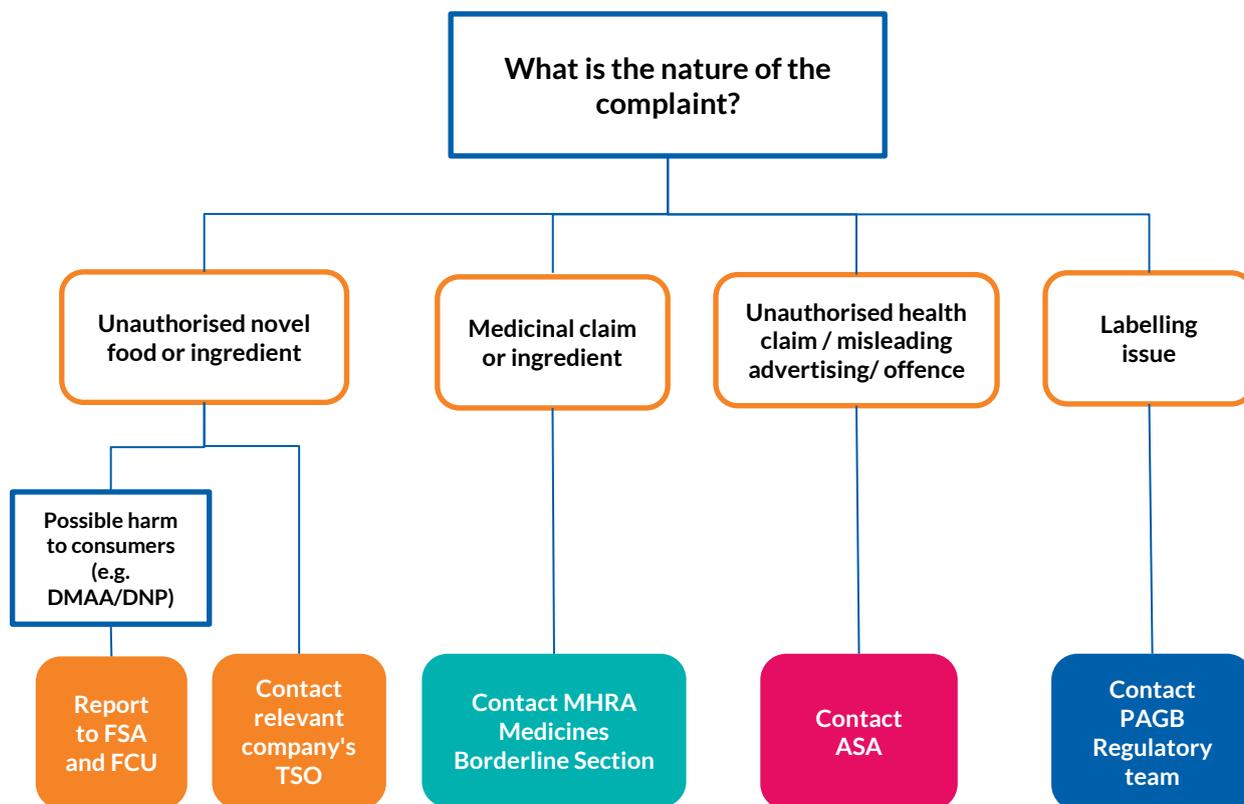
**PLEASE NOTE:** MHRA and ASA may refer complaints to each other when considered appropriate. The above is the recommended first point of contact but depending on the details of individual cases, complaints may be referred.

## CE marked medical device



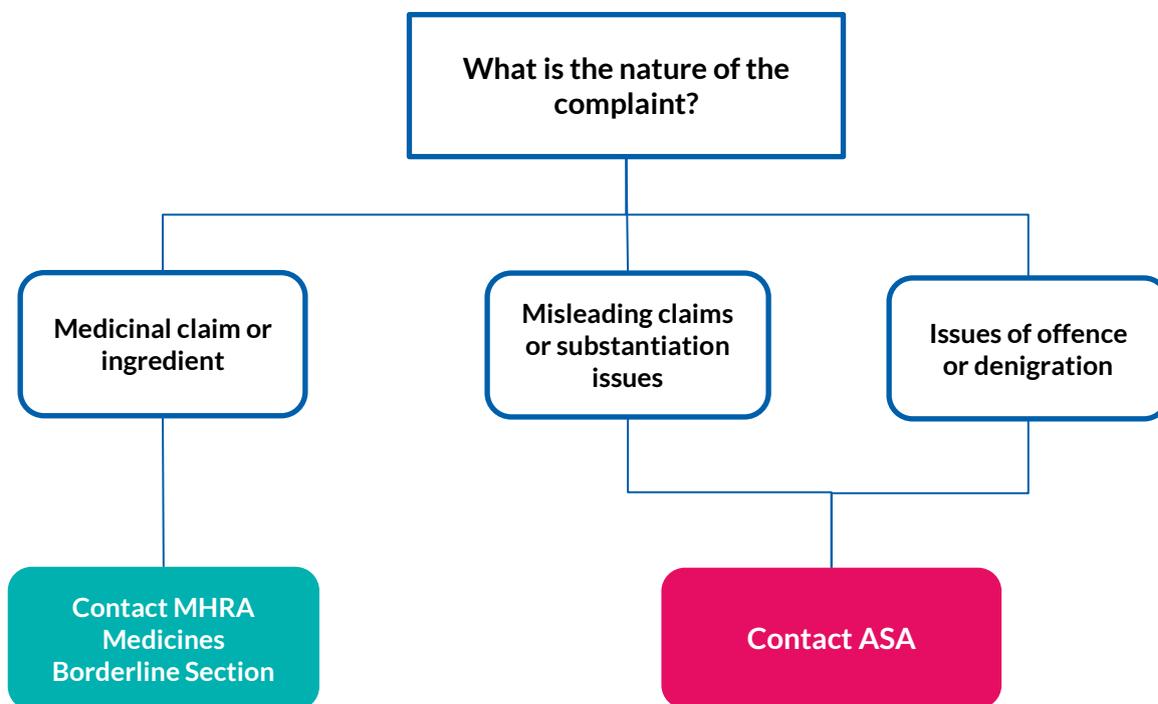
**PLEASE NOTE: MHRA and ASA may refer complaints to each other when considered appropriate. The above is the recommended first point of contact but depending on the details of individual cases, complaints may be referred.**

## Food supplement



**PLEASE NOTE:** MHRA and ASA may refer complaints to each other when considered appropriate. The above is the recommended first point of contact but depending on the details of individual cases, complaints may be referred.

## Unlicensed, unclassified or unknown



**PLEASE NOTE:** MHRA and ASA may refer complaints to each other when considered appropriate. The above is the recommended first point of contact but depending on the details of individual cases, complaints may be referred.