

Meeting Note

Note of the Review Committee meeting on Monday 4 February, 2013 09:30 – 17:30
Richmond House, 79 Whitehall, London, SW1A 2NS

Members

Professor Sir Bruce Keogh

Trish Halpin

Catherine Kydd

Dr Rosemary Leonard

Vivienne Parry (Chair)

Professor Shirley Pearce

Dr Andrew Vallance-Owen

Simon Withey

DH Secretariat

Dr Dorian Kennedy

Jude Thorling

Dr Stephen Mulgrew

Nicholas Langman

Nicholas Brooks

Guests

Linsay Taffe, Advertising Standards Authority
(ASA)

Shahriar Coupal, ASA

Rob Griggs, ASA

Nigel Mercer, International Society of
Aesthetic Plastic Surgery (ISAPS)

Tony Close, Ofcom

Prof Nichola Rumsey, Centre for Appearance
Research, University of the West of England

Prof Alex Clarke, Royal Free Hampstead NHS
Trust

Douglas McGeorge, British Association of
Aesthetic Plastic Surgeons (BAAPS)

Ian Stone, DH Finance

Nayim Kadri, Her Majesty's Revenue and
Customs (HMRC)

Hugh Haward, HMRC

Apologies

Sir Ian Kennedy

1. Introduction and Meeting Overview

The Chair welcomed members to the sixth Review Committee meeting and explained that this meeting would focus on examining the regulation of advertising of cosmetic interventions, psychological factors associated with cosmetic interventions, and VAT for cosmetic interventions. Apologies had been received from Sir Ian Kennedy.

The Chair reminded the Committee of the code of conduct and asked that members declare any changes to their previously stated interests at the relevant time during the meeting.

The Review Committee were content with the note of the January Committee meeting. The Chair thanked Vivienne Parry for chairing the meeting with cosmetic injectables stakeholders and Vivienne

gave a brief overview of the meeting. Sir Bruce then handed the chair to Vivienne Parry and left the meeting.

2a. Advertising and Marketing

Guests present: none

Presentation from the review secretariat

The presentation explained the different types of advertising, from print, broadcast, online and direct marketing, and highlighted that, while it could be argued that advertising provides information for consumers, attitudinal research had shown advertising contributes to the normalisation of cosmetic procedures and the trivialising of social attitudes toward cosmetic interventions.

The majority of responses to the Call for Evidence were in favour of tighter restrictions on the advertising and marketing of cosmetic procedures, with particular concerns over time limited deals, buy one get one free or similar package offers and financial incentives. A large proportion supported a full ban in line with rules for Prescription Only Medicines (POMs) – although there was a split over whether this should apply to both surgical and non-surgical procedures.

Issues with the current system of regulation include non-surgical advertising not being covered by the CAP guidance note on cosmetic surgery, how to effectively regulate online advertising, and the regulatory system itself being largely reactive rather than proactive.

2b. Advertising and Marketing: Evidence Gathering Session

Guests Present: Lynsay Taffe, ASA; Shahriar Coupal; (CAP & BCAP); Rob Griggs ASA; Nigel Mercer, ISAPS; Tony Close, Ofcom.

Presentation from the ASA on how advertising is currently regulated

The presentation gave an overview of UK advertising regulation. The CAP draft and enforce the Advertising Codes while the ASA assess if adverts breach the Codes. Regulation is both co-regulatory and self-regulatory with Ofcom as the backstop for TV and Radio adverts and the Office of Fair Trading (OFT) for misleading non-broadcast advertising. Funding comes from an industry levy that is collected by an arm's length third party.

The ASA cover the regulation of print and press adverts, posters, direct mail, television and radio, sales promotions, email and text messages, internet (including banners, pop ups and virals as well as discount voucher websites and providers of time-limited deals), teleshopping and cinema commercials. As of 2011, online marketing was added to the ASA remit and they are now looking at marketing on companies' own websites and other non-paid for space online under the marketer's control like Facebook and Twitter pages. In all, they receive around 30,000 complaints a year with around 30 cases being passed to the OFT in the last 10 years.

[Sir Bruce Keogh rejoined the meeting.]

The presentation drew attention to the guidance around advertising cosmetic surgery which specifies that adverts must not trivialise interventions, make or imply unrealistic claims, mislead about possible complication and side effects, provide insufficient time to make decisions, over-state expertise or qualification, advertise POMs or target under 18s. The provider advertising the procedures must also be registered with the Care Quality Commission (CQC). The ASA believe their rules and guidance are both evidence and principles based, whilst complying with better regulation principles.

Review Committee discussion

The Review Committee discussed examples of advertising provided by the ASA in their presentation and, in particular, the advertising of cosmetic interventions as competition prizes. The issue of foreign companies advertising cosmetic interventions was also discussed. The ASA noted that they are able to act directly if the foreign company has a business address in the UK, and if not, the ASA would refer the advert and advertiser to their appropriate foreign counterpart. In the event no such regulatory body existed within a foreign jurisdiction, the ASA would take what action it could.

The issue of internet advertising and the difference between online advertising and marketing was discussed. The issue of where marketing stops and advertising begins is particularly blurred in online advertising with links from adverts taking the consumer to a website landing page that could be considered as an extension of the advert itself.

The Review Committee also discussed 'pay by click' methods of advertising and advertising through internet search engines where primary searches are coupled with sponsored adverts and links connected to terms within the search string. Groupon offers were also discussed as this company had been referred to, and for a period solely regulated by, the OFT. Repeat breaches by Groupon included unrealistic and exaggerated claims as well as negating risks.

The ASA highlighted that the vast majority of breaches they deal with are dealt with promptly by the advertisers and there is not generally any intention to break codes and advertise irresponsibly. The issue of irresponsible advertisers was seen by the ASA to be more an issue of professional regulation rather than solely an advertising issue.

Presentation on how advertising is regulated internationally from Nigel Mercer of ISAPS

The presentation began by highlighting that the UK is one of the only countries in the world where 'big business' plays a significant role in the provision of cosmetic surgical and non-surgical procedures. Mr Mercer noted that despite it being illegal to advertise botulinum toxin injections as they are a prescription only medicine, such practice is especially widespread on the internet and in on-site advertising and marketing and could be better enforced by the MHRA.

The presentation provided an overview of the situation in Europe, where:

- In Denmark, the law stipulates only surgeons qualified in the specific surgical specialties can carry out cosmetic surgery and where the advertising of cosmetic interventions is prohibited;

- In Germany, existing federal legislation specifies who can carry out which procedures and prohibits the advertising of cosmetic interventions;
- In France, all forms and methods of publicity and advertising, direct or indirect, in whatever form, including the internet, are forbidden.

The presentation moved on to cover the BAAPS '6 point plan', which calls for the total ban on advertising cosmetic interventions. If a total ban were considered unachievable, Mr Mercer asked the Committee to consider banning the use of images in advertising, and banning incentives such as Buy One Get One Free (BOGOFs) offers, two-for-one offers and bulk purchase and time limited deals.

In summary, the presentation noted the patient's need for information, but drew attention to the effect advertising and marketing has, combined with the need to sell a product, on distorting the market.

Review Committee discussion

The Review Committee discussed the French approach of banning advertising, although it was noted that this would remove one avenue patients use to gain information on cosmetic interventions. The Review Committee discussed the idea within the presentation of limiting the use of marketing, such as BOGOFs and two-for-one offers, and of the use of images in advertising. The notion of a 'responsible image' was discussed as some adverts can use images responsibly. It was noted however, that advertising is there primarily to sell a product or service and the presence of an image is usually to improve the impact and purpose of the advert. It was agreed that the examples provided to the Review Committee by the ASA, which contained clearly photo-shopped images, 'before' and 'after' photos that were clearly of different people and cosmetic interventions offered as competition prizes, were misleading as they made unrealistic claims and trivialised the nature of the procedure being advertised.

The Review Committee also discussed revision of procedures, risks and complications, and reasons behind poor outcomes such as unreasonable expectations of outcomes, aesthetic dissatisfaction, clinical complications and trivialisation of risks. It was noted that the ban in France only applies to French companies, which has consequently seen a rise in foreign-based providers advertising cut-price procedures, resulting in an increase in cosmetic tourism. It was also noted that the ban does not appear to have affected consumer demand or the size of the market. However, there has been a progressive reduction in the surgical activity of non-qualified physicians.

The discussion also covered the use of pricing in advertising, which was seen by some Committee members to promote competition amongst providers and bring a real danger of standards being reduced in a 'race to the bottom'. The idea of a mandatory warning of the risks of surgery was discussed as a possible mechanism for emphasising the seriousness and long-term consequences of having cosmetic surgery. For example, with breast augmentations, advertisements could be required to state that all implants have a finite life and will need replacing.

The discussion moved on to cover broadcast advertising and broadcast programming and the effect of trivialising and glamorising cosmetic interventions. The ASA emphasised that Ofcom have only received a total of 11 complaints about cosmetic surgery programming and there was an overall acceptance that programming had improved in recent times. The Committee noted that some

programmes featuring cosmetic procedures were effectively marketing vehicles for cosmetic procedures, such as Ten Years Younger and The Only Way Is Essex (TOWIE). There was agreement that editorial programming should not be allowed to promote cosmetic procedures in a manner that would not be allowed for advertising.

[Sir Bruce Keogh left the meeting].

4. Psychological Factors Associated with cosmetic Interventions

Guests present: Prof Nichola Rumsey, Centre for Appearance Research, University of the West of England; Prof Alex Clarke, Royal Free Hampstead NHS Trust.

Presentation from Professor Nichola Rumsey on Predictors, assessments & outcomes of cosmetic interventions

Prof Rumsey presented the key findings of the literature review that had been carried out for the Review.

The literature review found the most common motivation for having a cosmetic intervention was to improve body image, self-esteem and confidence. It also found a strong association between having a cosmetic intervention and domestic violence and a moderate association with verbal abuse. Poor outcomes were associated with unrealistic expectations of outcomes, undergoing procedures to address relationship issues, and dissatisfaction with previous surgeries. Overall, there was conflicting evidence about whether the psychological status of patients is predictive of poor outcomes.

The literature review looked at the accuracy of pre-intervention assessments identifying those unlikely to benefit from surgery. The majority focused screening on Body Dysmorphic Disorder (BDD) despite evidence suggesting other psychological characteristics are also associated with poor outcomes. It was noted that the evidence base here was limited and of poor quality.

In summary, the literature review found that cosmetic procedures are primarily sought for psychological reasons, yet there is no consistency in psychological constructs or measures. It recommends that improvements are needed in the evidence base with bigger samples, wider age ranges and more males.

Review Committee discussion

The Review Committee discussed the findings of the literature review and the conclusions that cosmetic interventions are primarily sought for socio-psychological factors and the assertion that unhappiness with body image is becoming normal. The discussion covered the negative effects of using social media on perceptions of body image and how the use of social media has led to a rise in the number of people editing photos of themselves. The discussion also covered marketing campaigns, financial incentives, the irresponsible and misleading use of images, and the need for better impartial information available to patients and consumers.

The discussion moved on to the Royal College of Surgeons' recommendation of standard psychological assessment questions to identify patients with unrealistic expectations of what surgery would achieve and the difference it would make to their lives, and to identify patients with

psychological problems who would benefit from a psychological intervention. However, it was noted that people desperate to have cosmetic surgery would use social media and internet chat rooms to exchange the answers needed to pass through this kind of screening process. The psychological screening process was considered to help those willing to accept and receive psychological help, but for those people with psychological issues and who have been refused surgery, there are no follow-ups and many simply disappear. Where these people go to caused some concern as it was noted many may have been provided the procedure by less scrupulous providers, or travelled abroad for interventions.

The Review Committee also discussed the issue of cognitive psychological interventions, which have been used successfully for disfigurements, as an option available for patients showing signs of Body Dysmorphic Disorder (BDD).

5. Consideration of the Review's draft recommendations

Guests present: none

The review committee discussed the interim proposals from the January meeting on the regulation of non-health professionals delivering cosmetic interventions and the regulation of insurance and indemnity arrangements in the cosmetic interventions sector.

The Review Committee then discussed all the interim proposals made so far.

6. VAT

Guests present: Douglas McGeorge, BAAPS; Ian Stone, Department of Health; Nayim Kadri, HMRC; Hugh Haward, HMRC.

HMRC outlined the current internal review of VAT for cosmetic interventions they are carrying out and highlighted they would feed the views of the Review Committee into their work. Currently, the provision of healthcare is generally exempt from the application of VAT, but there has been a growing uncertainty over its application to cosmetic interventions. Recent guidance from HMRC states that VAT should be applied to 'surgery carried out for purely cosmetic reasons' and which is 'not to protect the health of the individual'.

HMRC noted that current legal proceedings in Sweden will have a large bearing on the course of the VAT review as it will hopefully establish whether, and to what extent, the EU-wide medical exemption should be applied to procedures with purposes outside of treating sickness, disease, physical impairment or injury. The case outcome is estimated to be due around mid 2013.

HMRC also highlighted the issue of the VAT threshold where, for example, botulinum toxin administered in a medical institution only has VAT applied if the income of the institution is above a minimum threshold. This is the same principle across all business.

An area within the HMRC review of VAT is to try to establish where the line can be drawn between therapeutic procedures and cosmetic procedures, and hence where VAT can be applied. HMRC stressed that this is simply clarifying where and when VAT is applicable and is not the creation of a new tax.

Review Committee Discussion

The various approaches and overall aim of applying VAT to cosmetic interventions were discussed along with an alternative idea of a professional levy to create a private provider fund which would then be used by the NHS for claiming back costs from the private sector.

Action – Douglas McGeorge, current BAAPS president, will present the Review Secretariat and HMRC with a paper on the application of VAT to cosmetic interventions

7. Any Other Business

The date of the final meeting will be Monday 4 March 2013.

8. Close

The Chair thanked the Review Committee members and reminded them the following meeting on Monday 4 March will be the final Review Committee meeting.

End of Meeting.