

Advertising: Lessons Learned Review 2019

Executive Summary

With the recent batch of advertising cases from one source now complete, the GCC has produced, with the help of the GCC Investigating Committee (IC) panel members and chair, a *Lessons Learned* review of the advertising cases.

Background

In 2016, a large volume of concerns about website advertising were received by the GCC (around 20 per month over several months), from a single source. The last batch of the 20 complaints per month was received by the GCC on 1 December 2016.

The aim of this report is to explore learning as a result of having dealt with the advertising cases, as well as proposals for the future – and preventing recurrence where possible.

What have we learned?

Last year we committed to provide feedback by way of lessons learned on conclusion of the advertising case load. In view of this, we gathered feedback from the IC and staff team to inform what worked well, how we might manage such complaints in the future – and what we convey to the profession. We discuss this below.

With regards to the 290 advertising cases where the IC found ‘no case to answer’, it is to be emphasised that the IC gave detailed individual consideration to each case. In many of the cases the IC found matters which may have been of concern at the time of the original complaints in 2016/2017 but which had subsequently been fully remedied in response to the complaint and point of consideration by the IC in 2018 and 2019.

Whether a chiropractor amended their website in response to concerns being raised was a relevant factor for the IC when forming a view as to whether there was a case to answer of UPC. This was on the basis that the IC did not consider that any properly directed panel of the PCC would be able to conclude that the threshold of UPC was met.

In its feedback, the IC noted the fact that so many of the complaints resulted in a decision of “no case to answer” should not be equated with the complaints not raising valid concerns. Indeed, in many of the cases the IC found matters which may have been of concern at the time of the original complaint (to a greater or lesser extent) but which had subsequently been fully remedied by the Registrant so it was unlikely to amount to unacceptable professional conduct.

The IC stated that in the context of a profession which is seeking to become more evidence-based in its approach, and a Code of Practice which requires registrants to adhere to ASA standards and guidance, it was entirely appropriate, although it required significant resource, for the GCC to investigate these concerns.

With regard to the complainant, the IC saw no evidence of vexation or malice in any individual complaint, nor reason to doubt that the complainant had genuine concerns that some of the claims made by chiropractors put the public at risk of harm. The IC indicated that whilst some of those concerns may not be well-founded based on the available scientific evidence (e.g. an apparent general concern that chiropractic carries significant general risks of harm), other more specific concerns related to particular claims or treatments may well have had merit had those matters in question not been remedied.

Lessons for the GCC

The IC recommend the body of evidence that the expert produced for his report(s) to assist the IC could be put to good use going forward by Registrants and the ASA. This will be especially important for the areas which, although not on the ASA/CAP list of “approved” conditions”, are supported by sufficiently robust scientific evidence.

As such, claims can potentially be made for efficacy (particularly in some of the developing fields) including neurological treatment modalities, or whiplash-type injuries, some musculoskeletal pelvic complaints and facet joint syndrome where evidence to a randomised control trial (RCT) standard is as yet scarce.

Further the GCC may wish to consider how to communicate to the public (as well as registrants) which aspects of chiropractic care have a clear evidence base; aspects with an emerging evidence bases; and aspects where there is no objective evidence of efficacy – potentially through a ‘traffic-light’ system, or similar; and keeping this updated as new evidence emerges.

With regards to emerging evidence, the IC recommended that consideration be given to set up a steering group (possibly led by the Royal College of Chiropractors) to monitor scientific publications and maintain a profession-wide, up-to-date shared database of level one and other scientific evidence in support of various treatment modalities and conditions treated, which members of the profession would be able to draw on to support any queries about claims they make.

With regards to guidance, the IC recommended that guidance should be published by GCC in collaboration with the ASA/CAP on the following areas:

- The level/nature of scientific guidance which would be required to substantiate claims of effectiveness for advertising purposes particularly in new or developing areas where level 1 research may not yet be available.
- Clearer guidance on the use of patient testimonials and in particular, the words in the CAP Code which refer to “*Claims that are likely to be interpreted as factual and appear in a testimonial must not mislead or be likely to mislead the consumer*” and the difference between anything which would be understood by a

reader to be making a factual claim, rather than simply a patient reporting their experience.

- Clearer guidance on the use of the courtesy title “Dr”. The IC referred to GCC guidance which says *“you must make it clear within the text of any information you put into the public domain that you are not a registered medical practitioner but that you are a “Doctor of Chiropractic”* and stated that the ASA’s decisions on this matter appear to show that the ASA considered that the title should be followed by the words “Doctor of Chiropractic”.
- The IC have recommended further guidance to clarify the differences referred to above as well as guidance as to whether clarification should be used every time the title appears anywhere on the website, or on every page or heading where the title is used, or simply within the biographical information on the website.

The IC has suggested that the GCC engage with the complainant to provide feedback on the cases closed with “no case to answer” to ensure that they understand that this was not an indication that the complaints failed to raise valid concerns.

With regards to engaging with appropriate stakeholders, we are of the view that engagement with ASA/CAP will be necessary to implement a Memorandum of Agreement (MOU) whereby any advertising complaint where there is concurrent jurisdiction is first considered by the ASA/CAP within agreed timescales, following which the GCC will consider the complaints.

By way of further feedback from FtP staff, should a further batch of complaints be received from one source, there should be immediate implementation of a project plan with appropriate resources to be considered and approved by Council. This will ensure that cases are progressed as soon as possible and prevent delayed consideration of such cases by IC.

Lessons for the profession

It is unlikely that the scrutiny of chiropractors’ websites by external bodies is going to lessen, so registrants need to be aware of how they can avoid finding themselves in this situation again.

We see considerable merit in promoting learning for registrants to take into account when publishing information on a website or on social media.

It was observed there was a misconception on the part of the registrant about the difference between:

- i. scientific evidence or clinical/anecdotal experience which might be capable of supporting clinical interventions in the context of evidence-based practice, where pros and cons can be discussed with the patient in order to obtain informed consent;

- ii. level one/randomised controlled trials (RCT) based /peer-reviewed scientific evidence sufficient to support claims of effectiveness for the purposes of advertising chiropractic services.

Of course, we must recognise that the evidence base in any form of healthcare intervention is not always without contention and, as such, there is a balance to be struck in ensuring that we do not stand in the way of innovation but at the same time ensuring there are appropriate safeguards for patients made vulnerable by their circumstances.

In particular we will wish to emphasise the following points:

- Awareness of a low-level study or research paper in a particular field will not mean that this is sufficient to warrant claims being made on the website, and claims which cannot be substantiated by adequate scientific evidence may lead to ASA or GCC action even if it might be acceptable to refer to lower-level research in discussion with a patient;
- Check the full content of any website content. If you are a registered chiropractor at a clinic linked to a particular website (whether as owner, associate or employee) you are likely to be considered responsible for claims of effectiveness made on that website in respect of chiropractic / other services offered at that clinic and will need to ensure that there is robust scientific evidence base for any claims made;
- Check content which is published by external third party web providers, particularly if these are companies based overseas where the regulatory requirements for advertising claims may be different. In particular, such external third parties often publish standard pages about the theoretical model of chiropractic which may not comply with guidance issued by the GCC/ASA;
- Check content which is published by other professionals (whether or not they are chiropractors) working at the clinic;
- Check content which is published on social media, including links/retweets/posts to or from external third party websites, which may be regarded as being endorsed by a chiropractor posting a link;
- Check content which is published on “FAQs” or “blog” pages. A high number of the complaints raised related to content which appeared on FAQs/blogs, which appeared to get overlooked when websites were updated;
- Check content which is published in order to give information about the theory or philosophy of chiropractic. It is important to bear in mind the GCC guidance that the theoretical model of subluxations remains a valid historic theory, but that there should not be any suggestion that subluxations are a cause of disease;

- Check contents of patient testimonials as they may be regarded as making indirect claims of effectiveness in relation to conditions where a direct claim could not be made. A disclaimer may not be sufficient to address this;
- Check material about specialist chiropractic techniques (e.g. neurological programmes/therapies for learning disorders) – while there may be evidence to support these specialist techniques, that does not mean that it will necessarily be acceptable to make claims which say or imply that all chiropractic techniques by any chiropractor will be effective;
- Check deleted material – sometimes material which is simply “hidden” from public view may be accessible by using specific search terms and if in doubt, seek expert IT help;
- Re-familiarise yourself with ASA and GCC guidance, including GCC guidance about social media and re-posts/re-tweets;
- Be prepared to seek, and follow, advice from the ASA/CAP Copy Advice Team in respect of website content.

Conclusions:

The lessons learned were considered by the GCC’s Council in June 2019 agreeing the recommendations and next steps set out below.

- a. Publication of lessons learned;
- b. Consideration as to how the body of evidence obtained by the GCC during the investigation of the advertising cases can be put to good use;
- c. Consideration of traffic light system of conditions which chiropractors can claim to treat;
- d. Consideration of establishing steering group to monitor scientific publications and maintain a profession-wide, up-to-date shared database of level one and other scientific evidence in support of various treatment modalities and conditions treated;
- e. GCC/ASA/CAP guidance on three areas, namely:
 - level/nature of scientific guidance required to substantiate claims of effectiveness;
 - use of patient testimonials;
 - use of the courtesy title “Dr”;
- f. Engagement with the following:
 - Complainant to provide feedback on complaints closed;
 - ASA/CAP to update list of conditions and agree MOU.

- g. Consultation and subsequent amendment to GCC code B3 in order to provide clarity that when referring to using only honest, legal and verifiable information when publicising yourself as a chiropractor / advertising your work and ensuring that the information complies with all relevant regulatory standards, this refers to the definitions of honest, legal and verifiable as defined by ASA and regulatory standards refers to ASA and their current guidance. Implemented October 2019.

The recommendations and next steps above will form part of the GCC business plan priorities for completion during 2020.

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