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Advertising Standards Authority for Ireland

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# Annual Report

31st Annual Report 2011



## THE OFFICIAL HERALDIC ACHIEVEMENT OF ASAI

The coat of arms or official heraldic achievement of the Advertising Standards Authority for Ireland was granted by the Chief Herald of Ireland and registered in his Office in April, 1983.

The design and composition of the arms graphically symbolise the sphere of influence as well as the function of ASAI.

The heraldic arrangement of the national tinctures enhanced by the wreathed cross is designed to suggest the packaging of goods on a nationwide basis, while the lion, traditional symbol of active vigilance, signifies the role of ASAI as overseer in relation to the advertising of those goods.

The shield, historically an emblem of defence, is symbolic of the protection afforded the consumer public by the ASAI, which seeks to establish and maintain principled advertising in Ireland.

All these items are encapsulated in the slogan or motto of the ASAI, 'FIANT SECUNDUM DESCRIPTIONEM BONA' - let the product accord with its description - which bespeaks the ideal of the Advertising Standards Authority for Ireland.



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## CHAIRMAN'S STATEMENT



Edward McCumiskey, Chairman

I have pleasure in presenting the 31st Annual Report of the Advertising Standards Authority for Ireland. I do so at a time when the industry expects the decline in activity experienced in recent years to cease and that the level of business expected in 2012 should be similar to that for 2011. It was reassuring for the Authority to note that though many of its supporters have recently experienced difficult

trading conditions, there was no discernable change in the overall level of compliance demonstrated by advertisers, agencies and media companies.

Where the occasional problems occurred they were satisfactorily rectified and those involved have renewed their assurances of ongoing compliance with the sometimes onerous responsibilities associated with effective advertising self-regulation.

The Board have, however, been aware for some time that there are a number of advertisers and agencies that are not meeting their full financial obligations in paying the levy collected on the media spend of the industry. After due consideration the Board of the Authority, representing all strands of the industry, have agreed that a new collection exercise will be launched through all agencies with the assistance of the information available from a newly acquired database. The decision of the Board is not solely related to the issue of finances but also the wider question of demonstrating overall support for the advertising self-regulatory system.

In arriving at this decision the Board members are strongly of the opinion that it is important to be able to demonstrate to Government and society in general, that the system of advertising self-regulation has the widest possible level of compliance and support.

During the year, I had the opportunity to make a presentation with others on the very comprehensive systems of regulation for alcohol advertising. This presentation was made to the Joint Committee on Health and Children and I hope the information provided will be of assistance to the members of the Committee and the Minister for Health in arriving at their final policy on the regulation of the advertising of alcohol.

In 2011, the overall level of complaints showed a small decrease against the figure for 2010. This, however, is as a result of the very large number of complaints received in the latter year in relation to a small number of advertisements.

The financial results for 2011 show a small surplus and, in the current market conditions, we consider this to be an acceptable outcome. I do, however, expect that the review of the level of contribution now being undertaken should lead to an improved result for 2012.

I would like to offer my thanks to my fellow Board members and the members of the Complaints Committee who are so ably led by their Chairperson, Dr Bairbre Redmond of UCD. All involved make a meaningful and important contribution to the ability of the Authority to deliver a service to consumers and industry.

Finally, I would like to thank our Chief Executive, Mr Frank Goodman, and the dedicated team in the Secretariat who so willingly perform a varied and complex range of tasks in their complaints work and their support of the Board and the Complaints Committee.

**Edward McCumiskey**  
Chairman



# REVIEW OF THE YEAR

## REVIEW OF THE YEAR

This is the 31st Annual Report of the Advertising Standards Authority for Ireland (ASAI) relating to the year 2011.

The ASAI is the independent self-regulatory body set up and financed by the advertising industry (advertisers, advertising agencies and media) and is committed to promoting the highest standards of advertising and sales promotion in the public interest. Membership of the ASAI embraces all major advertisers and agencies and all major media, including broadcast, outdoor, digital and the print media.

The ASAI, since its foundation in 1981, has built up an extensive body of expertise in the regulation of commercial advertising in all Irish media, including print, outdoor, broadcast, digital and direct mail. Since 2009, the jurisdiction of the ASAI in the area of digital media has been expanding and we now regulate commercial communications on advertisers' own websites, in addition to those on third-party sites. As indicated in the Report for 2010, the ASAI will have a role in the regulation of Online Behavioural Advertising (OBA) in relation to consumer opt-in/opt-out preferences. The bulk of the preparatory work is being conducted between the European Advertising Standards Alliance (EASA) and Interactive Advertising Bureau Europe (IAB Europe) in Brussels, but it is planned that we will commence this work in 2012.

An independent Complaints Committee adjudicates on the content of advertisements. These adjudications are enforced through the co-operation of the Media Members of the ASAI, whom we regard as the 'gatekeepers' for the Code. Media Members should not carry advertisements that are in breach of the ASAI Code. Details of the adjudications are regularly carried in the media and on our website ([www.asai.ie](http://www.asai.ie)). The Complaints Committee of the ASAI still includes among its members nominees of the Director of Consumer Affairs. The practice of the Director of Consumer Affairs making nominations to the Complaints Committee and other bodies has now been discontinued. The Board of the Authority has therefore decided to ask the Consumers' Association of Ireland to nominate a new member to the Complaints Committee when a vacancy occurs in 2012. The current Committee also includes academics, social workers, public servants and a minority of representatives from the advertising industry.

The ASAI Code of Standards for Advertising, Promotional and Direct Marketing is based on the principles established by the International Chamber of Commerce (ICC), which are that all advertising and promotions must be legal, decent, honest and truthful and must be undertaken with a sense of social responsibility. The Code requires advertisers to market and promote their goods and services in a responsible manner. On an ongoing basis, the work of implementing the provisions of self-regulatory codes is being enhanced and supported by the development of Best Practice Guidelines, in all areas of complaints examination, by the EASA. The ASAI now plans to commence the next review of the Code in late 2012, with a view to publishing the seventh edition of the Code in 2013. In developing our new Code, the ASAI will be able to build on the work completed by the ICC on a new Code in 2011 and the work currently being undertaken by the Broadcasting Authority of Ireland (BAI) in the area of code reviews. An extensive consultative process will be put in place and, for the second time, will include inviting comments from members of the public.

For many years, the ASAI has operated primarily by inviting and resolving consumer complaints which help to keep the Authority informed of the public's current concerns regarding advertising. Information on how complaints are resolved by the ASAI is given on page 10. The identity of individual complainants remains confidential unless a commercial or other interest is involved. Anonymous complaints are not pursued and all complaints must be in writing (by post, fax or by using the online complaints form). In certain circumstances, where the interests of consumers are involved, intra-industry complaints will be investigated. The ASAI is not, however, an arbitration service for disputes between commercially interested parties.

Prior to 2006, the ASAI only monitored advertising in particular industries or media when identified issues warranted it. In late 2006, however, a new monitoring programme was introduced. An overview of the monitoring carried out since 2007 can be found on page 8.

The ASAI also operates a pre-publication advice service for the advertising industry. Advertisers, agencies and media can obtain advice on whether a proposed advertisement or sales promotion conforms to Code requirements. This advice is

given on behalf of the Secretariat and does not bind the ASAI Complaints Committee.

The ASAI is a founder and member of the EASA, which brings together national advertising Self-Regulatory Organisations (SROs) and organisations representing the advertising industry in Europe. The EASA supervises the operation of the Cross-Border Complaints system (CBC). Under this system, a complaint received by the ASAI, or other national advertising self-regulatory body, concerning an advertisement published in another member country is referred to the appropriate national regulatory body for consideration under their Code. This ensures that a consumer can have redress in the case of misleading or offensive advertising originating anywhere in Europe. In 2011, 73 complaints were received to be processed under the CBC system. The figure showed a marked reduction on the 200 received in 2010, but the latter figure was inflated by virtue of 138 complaints being received in relation to one online advertisement in Germany.

Membership of the EASA also serves to ensure that the ASAI is informed both on all industry developments and, equally, the developments in 25 other European SROs to the regulation of advertising. These relationships are particularly relevant at the present time when experience is being developed on the handling of complaints in digital media, including the entirely new role in relation to OBA. The EASA has a close working relationship with DG SANCO, the directorate responsible for health and consumer matters, and with the Directorate for the Information Society and Media. This allows the staff of the EASA to keep self-regulatory and industry members informed on – and, where appropriate, have an input into – legislative and policy developments in these critical areas.

The ASAI is also part of the European Extra Judicial-Net (EEJ-Net), which was set up by the European Commission and launched by Commissioner David Byrne in October 2001. To belong to this network it was necessary to satisfy the Department of Enterprise, Trade and Employment and the EU Commission that the ASAI complied with the recommended principles established in Commission Recommendation on the Principles Applicable for Out-of-Court Settlement of Consumer Disputes (98/257/CE). These

principles relate to independence, transparency, adversarial process, effectiveness, legality, liberty and representation.

## PUBLIC AWARENESS OF THE ASAI

The ASAI's effectiveness as a regulatory body depends on the practical and active support of advertisers, agencies and the media. The ASAI, together with the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI), is constantly working to ensure that all of those employed in the relevant agencies and the media are aware of the ASAI and its Code.

The ASAI Code specifies that it should be implemented primarily in the interests of consumers. Indeed, the main area of work of the ASAI – the examination of complaints – depends on the public being aware not only of the Authority's existence but also of its role. Consequently, public awareness of the ASAI is a vital element of its successful operation. In December 1998, the ASAI began commissioning independent research to objectively measure such awareness. The research is conducted by means of an omnibus survey by an independent market research organisation.

The ASAI wishes to increase levels of awareness of the organisation and, in particular, of the services offered. This is done partly through the publication of the adjudications of the independent Complaints Committee, which are regularly carried in the media, in trade publications and on the ASAI website. In addition, media members in a range of areas will, when requested, carry advertising which will promote the services of the ASAI. An online campaign has been designed and recently ran on various members' websites.

## COPY ADVICE

The ASAI's principal activities are resolving consumer complaints and actively monitoring advertising. However, it also provides a valuable pre-publication copy advice service which is available to all those involved with advertising – advertisers, their agencies and the media. During 2011, 83 advertisements were submitted to the ASAI Secretariat in this way. Informal advice was also given in respect of a further 60 proposed advertisements. The advice is free and given on a confidential basis but does not bind the independent

Complaints Committee, should the advertisement subsequently come before them. However, it is the case that, where the service has been availed of, advertisements are less likely to contravene the Code in any substantial way.

## MONITORING

2007 was the first full year in which the ASAI conducted continuous monitoring of commercial communications in the media. In 2007, 11,400 advertisements were examined and, as previously reported, the overall compliance rate was 98 per cent, with 100 per cent compliance in some business sectors. During 2008, the number of advertisements monitored was reduced to 4,000. In 2009, just 1,000 advertisements in the print media, direct mail and the broadcast media were monitored. We are glad to say that the compliance rate remained reassuringly high at 99 per cent across all media. In 2010 and 2011, our programme of monitoring was increased across all media and just over 3,500 were reviewed in each year.

The overall results again demonstrated a compliance rate in excess of 99 per cent. In the small number of cases where it was necessary to contact advertisers for non-compliance, agreement was obtained to withdraw or alter the advertising.

## REVIEW PANEL

In January 2007, in line with commitments given in conjunction with the EASA to the EU Commission, the Board of the Authority appointed a three-person Review Panel for a five-year term of office. The Panel comprises a Chairman and two ordinary members. The Chairman of the Panel is independent of the advertising industry and the Authority. One ordinary member has a background in the advertising industry and the second ordinary member has a consumer background.

The members of the Panel are Dr Miriam Hederman O'Brien (Chairman), Mr Tom McGowan (advertising industry) and Ms Josephine Garry (consumer).

The grounds on which a review can be requested and the procedures involved are fully set out in Appendix 1 of the Code. During 2011, there were no requests for a review.

## ALCOHOL ADVERTISING

Since 2003 all alcohol advertisements are pre-vetted by Central Copy Clearance Ireland (CCCI), which was set up under the auspices of the AAI and the IAPI, facilitated by the Drinks Industry Group. No advertisement can appear in the Irish media without pre-vetting and a certificate from CCCI. The ASAI Secretariat and the copy clearance managers from CCCI meet on a regular basis to discuss the provisions of the Code and their interpretation. Such meetings help to ensure that alcohol advertising in Ireland continues to operate to the highest standards.

In 2011, complaints were received in relation to 22 advertisements. Some related to the general provisions of the Code and others related to the alcohol provisions of the Code. One advertisement was found to have breached the alcohol provisions of the Code in 2011.

## THE ALCOHOL MARKETING COMMUNICATIONS MONITORING BODY

The Alcohol Marketing Communications Monitoring Body (AMCMB) was established at the end of 2005 to monitor industry compliance with Voluntary Codes of Practice in relation to the possible exposure of young people to alcohol. This initiative was launched by the then Minister for Health and Children, Mary Harney, TD, in December 2005.

The Monitoring Body, with an independent chairman, Mr Peter Cassells, oversees adherence to the Voluntary Codes of Practice agreed between the Department of Health and Children and representatives of the advertising, drinks and media communications industries.

Secretarial and executive services for the Body are provided by the ASAI. The ASAI also examines complaints arising under the Voluntary Codes. The Voluntary Codes were reviewed and extended during 2008 and the extended Codes, which now also cover the print media and digital marketing communication, are still in use. The system is awaiting a review but will continue in place and operational pending the outcome of the review.

The AMCMB published its fifth report, for the year 2010, in

mid-2011. In the report, Mr Cassells has stated that: “As this fifth Annual Report shows, there was overall compliance in 2010 by television, radio, cinema and outdoor advertisers with the obligation set down in the Codes”.

## THE EUROPEAN ADVERTISING STANDARDS ALLIANCE

Set up in 1992, the European Advertising Standards Alliance (EASA) promotes responsible advertising through best practice in self-regulation for the benefit of consumers and business. Its work is vital to the development and continuation of advertising self-regulation.

The EASA is the unified voice for advertising self-regulation in Europe and, increasingly, it also represents self-regulatory organisations with similar missions in areas such as South America, Canada, Australia, New Zealand and India. In fact, the EASA brings together 34 self-regulatory bodies and 16 bodies representing the advertising industry.

The EASA promotes advertising self-regulation for the benefit of the general public and business. In practical terms, the EASA supports the development of the system of advertising self-regulation through the development of best practice guidelines for all aspects of the work. For consumers, their only likely direct contact with the EASA will be in relation to its function in overseeing the management of the system for cross border complaints. Interestingly, Irish consumers are regular users of this system. (See page 7)

During 2011, EASA also supervised cross-border monitoring exercises on the advertising of toys and food for children.

## DIGITAL MARKETING COMMUNICATION

The Authority’s remit in the area of digital advertising was extended to advertisers’ own websites in 2009. We are glad to report that, with the exception of a small number of individual advertisers, all others are fully compliant when accepting the adjudications of the Complaints Committee or, indeed, advice from the Secretariat.

Currently, a sub-group of the Board of the ASAI is examining proposals for an extension of remit to new areas of digital media, including advertisers’ pages on social media. This extension will involve an extensive consultation exercise with consumers, NGO’s, Government departments/agencies and the public.

A separate area of digital advertising that is currently attracting attention is Online Behavioural Advertising. OBA involves the use of Internet ‘cookies’ based on a web user’s browsing experiences, thus presenting recipients with advertising that is likely to be of most interest.

In 2011, the EASA produced a Best Practice Recommendation on Online Behavioural Advertising. This document incorporates the IAB Europe framework on the same issue.

This industry wide self-regulatory standard ensures consumer privacy in Europe. This will be based on the use of an icon identifying the area of OBA and the companies involved. The icon will incorporate a click through to an online site entitled [www.youonlinechoices.eu](http://www.youonlinechoices.eu). This site will allow consumers to exercise choice as to whether or not they want to receive OBA advertising.

Finally, for consumers who have complaints which cannot be settled through industry based complaints systems, there will be a complaints system available from the ASAI in Ireland and the other self-regulatory organisations throughout Europe.

## COMPLAINTS

In 2011, the ASAI received 1,402 written complaints concerning 867 advertisements. This level of complaint shows a reduction on the figure of 1,736 complaints received in 2010. The principal reason for the reduction is the high level of complaints received in 2010 in relation to a small number of campaigns. Again, a notable feature is that the number is a very small proportion of the thousands of advertisements that were published during the year in all Irish media – TV, radio, newspapers, magazines, outdoor arena, brochures, leaflets and the Internet.

There were 265 complaints carried forward from 2010, and the ASAI dealt with 1,535 complaints in 2011, leaving 132 in respect of 96 advertisements to be carried forward to 2012.

	2011		2010	
	Complaints	Advertisements	Complaints	Advertisements
Carried fwd from previous period	265	184	212	170
Complaints received in period	1,402	867	1,738	913
Resolved in period	1,535	955*	1,685	899
Brought fwd to next period	132	96	265	184

\*excludes issues raised by complainants that our outside our remit.

### How complaints are dealt with

After an initial evaluation, and investigation where appropriate, complaints are either dealt with informally by the Secretariat or submitted to the independent Complaints Committee for formal adjudication. The decision on how the complaint will be processed depends on whether or not the advertisement in question is likely to be in breach of the provisions of the Code. Most complaints are suitable for dealing with informally, using well-established procedures. Further details on the complaints dealt with by the independent Complaints Committee are set out in the section of this report devoted to the Complaints Committee.

### Grounds of Complaint

In general, the two main areas of complaint relate to advertising being misleading or offensive. There are, however, a wide range of other issues covered by the Code provisions that are raised by members of the public. These include issues concerning children, health and safety, causing fear and distress, health claims and environmental claims.

### Complaints by Sector 2011

Telecommunications	265
Food & Beverages	256
Travel & Holidays	129
Leisure	116
Health & Beauty	104
Household	99
Financial	92
Motoring	86

### Intra-industry complaints

Advertisements must not only be legal, decent, honest and truthful, but must also respect the principles of fair competition generally accepted in business. Section 2.50 of the ASAI Code states that “advertisers should not unfairly attack or discredit other businesses or their product”.

While comparisons are allowed (for example, between an advertiser’s goods or services and those of competitors) they must be fair and the consumer must not be misled.

Generally, competitor complaints are made under the Code rules relating to substantiation, truthfulness, prices, comparisons and denigration. Of the 95 competitor complaints dealt with in 2011, 26 were formally adjudicated upon by the Complaints Committee and 19 advertisements were found to have breached the Code rules.

The level of complaints received showed a small reduction on the figure of 118 for 2010.

In 2011, digital media gave rise to the largest block of complaints. As mentioned in the 2010 Report, the growth related to an extension of digital remit on 2009. The figure for complaints relating to outdoor media has dropped back to a normal level from the 2010 figure, which was inflated by a large number of complaints relating to a single campaign. A large proportion of the complaints in relation to digital media are for advertisers’ own websites rather than paid-for advertising on third party websites.

	Complaints by Media	
	2011	2010
Digital Media	561	425
Broadcast*	541	526
Print	241	184
Outdoor	171	426
Brochures/Leaflets	120	99
Direct Marketing	22	19
*Television	353	288
Radio	188	238

## Resolution of Complaints

	<u>2011</u>		<u>2010</u>	
	<u>Complaints</u>	<u>Advertisements</u>	<u>Complaints</u>	<u>Advertisements</u>
<u>Additional Information</u>				
Requested but not Provided	199	178	197	185
<u>Out of Remit</u>				
Media/Matter Out of Remit	96	67	115	34
Cross Border Complaint	14	13	55	26
	<b>110</b>	<b>80</b>	<b>170</b>	<b>60</b>
<u>Preliminary Assessment of Advertisement</u>				
Complaint Withdrawn	27	19	21	21
More Appropriate for Another Body	66	52	50	48
No Basis under Code	319	262	252	204
No Evidence of Offence	141	83	92	63
Previously Adjudicated	60	13	25	7
	<b>613</b>	<b>429</b>	<b>440</b>	<b>343</b>
<u>Investigation by Secretariat</u>				
Formal - Referral to CC	326	127	516	127
Informal Resolution by Secretariat	287	241	353	266
	<b>613</b>	<b>368</b>	<b>869</b>	<b>393</b>
<b>TOTAL</b>	<b>1,535</b>	<b>1,055</b>	<b>1,676</b>	<b>981</b>



# COMPLAINTS COMMITTEE



Bairbre Redmond, Chairperson,  
Complaints Committee

## CHAIRPERSON'S STATEMENT

I have great pleasure in presenting my seventh report as the independent Chairperson of the Complaints Committee. The Committee gave full consideration to 127 advertisements in 2011 which had attracted 326 complaints. In addition, a further 191 advertisements, where complaints were dealt with by the Secretariat, were reviewed by the Committee.

The total number of advertisements brought to the Authority's attention in 2011 was 867 and these had attracted 1,402 complaints.

As in previous years, those complaints received in 2011 relating to digital media comprised a significant level of work completed by the Secretariat. Of the 1,535 complaints resolved during the year, 561 related to digital media and this was on a par with complaints relating to broadcast media. The latter had been the media source attracting the highest level of complaints in recent years.

Unusually, this year I had, on behalf of the Committee, to report on what we considered to be a significant failure by a small number of print media members in fulfilling their obligations under the system of advertising self-regulation. This failure related to carrying advertising that was almost identical in content to

a campaign that had been found to be clearly in breach of the Code by the Complaints Committee when carried in outdoor media in 2010.

Following on this report, the Chairman and the Chief Executive engaged in a series of meetings and contacts with senior management of the companies involved. Uniformly, the companies accepted that they would, in future, show a higher level of attention to the provisions of the Code and existing decisions of the Complaints Committee. They also agreed to contribute to the cost of an industry workshop on the responsibilities of self-regulation. The Complaints Committee takes its responsibility to the members of the public who submit complaints to ASAI very seriously and I am grateful to the Chairman, Chief Executive and to the Board for following up so thoroughly on the concerns of the Complaints Committee in this case.

Finally, I would also like to thank all the individual members of the Committee for giving so generously of their time over the past year, and to the Secretariat for their expertise and their unfailing helpfulness to me and to the Committee. It is very much appreciated.

**Bairbre Redmond**  
Chairperson  
Complaints Committee

## COMPLAINTS COMMITTEE

The role of the independent Complaints Committee is:

- (a) To consider and adjudicate on complaints submitted by the public, by a member of the ASAI, by a government department or by any other person, or body of persons, in the light of the ASAI Code;
- (b) To initiate corrective action where necessary and to issue appropriate directives;
- (c) To notify the Board of the ASAI when the corrective action or directive is not complied with or is ignored.

The Complaints Committee may vary in size from 11 to 15 members, including the independent Chairperson. It comprises people with a background in advertising and others with no connection with the industry. Currently among the latter are four nominees of the Director of Consumer Affairs. The composition of the Complaints Committee is designed to ensure the objectivity of the complaints investigation procedure and to provide assurances that the system is operated with special regard for the interests of consumers. The members of the

Committee act in an individual capacity and consider each case put before them on its particular merits in the light of the requirements of the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland.

As already indicated in this Report, the practice of the Director of Consumer Affairs in making appointments to the Committee has now changed for future appointments. The Board will, therefore, now invite the Consumers' Association of Ireland to nominate new members to fill the vacancies arising as the existing nominees of the Director of Consumer Affairs retire.

While the Secretariat of the ASAI may resolve cases informally when the circumstances do not justify or require referral to the Complaints Committee, the Committee retains the right to review any of these cases and to request that it be put before them for adjudication.

The Complaints Committee met formally seven times during 2011. The Committee's adjudications are published regularly in the media and are posted on the ASAI website.

### Analysis of Adjudications by the Complaints Committee

Of the 127 advertisements considered by the Committee, complaints in relation to 89 were upheld and 35 were found not to be in breach of the provisions of the Code. As in previous years, the principal reason advertisements were found to be in breach of the Code was because they were considered to be misleading. In addition, in the case of three advertisements the Committee decided that it was more appropriate to make a statement providing advice/guidance or indeed warnings for advertisers in relation to future campaigns.

#### **Resolution of complaints by Complaints Committee in 2011**

	Complaints	Advertisements
Submitted to Complaints Committee	326	127
Upheld/In Breach	231	89
Not Upheld/Not In Breach	90	35
Statements	5	3

Advertising Standards Authority for Ireland  
Ferry House, 48 Lower Mount Street, Dublin 2.

Tel: 353-1-6137040

Fax: 353-1-6137043

Email: [standards@asai.ie](mailto:standards@asai.ie)

Or visit our website at [www.asai.ie](http://www.asai.ie)